



COLLOQUIA

Tears of Rangi

Water, power, and people in New Zealand

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In this article, I consider a series of exchanges and entanglements, convergences, and collisions involving ancestral Maori, Western, and modernist onto-logics in relation to fresh water in New Zealand. Maori (and by implication, non-Maori) rights to fresh water have been a topic of passionate, often confrontational debate, instigated by the privatization of local power companies. In an innovative response to a claim to the Waitangi Tribunal by Whanganui *iwi* (kin groups), the Whanganui River has been declared a legal being, one of the first rivers in the world to gain this status. In the Whanganui deed of settlement with the Crown, ancestral Maori and modernist framings are juxtaposed, despite being incommensurable in certain respects. Drawing upon divergent forms of order, participants in the process have sought to weave together a concerted approach toward the management of New Zealand's waterways. This interweaving avoids the need for a merging of horizons, a "theory of everything" in which only one reality is possible and only one set of assumptions about the world can prevail.

Keywords: Rivers, fresh water, Maori, ontology, cosmology, ontological exchanges

The Whanganui River settlement

On August 5, 2014, a large crowd including leading *rangatira* (chiefs), mayors, ambassadors, local Maori and other residents gathered at Ranana *marae* (a ceremonial center with its carved meeting-house) beside the Whanganui River, on the west coast of the North Island of New Zealand. On this occasion, representatives of Whanganui River *iwi* signed a deed of settlement with the New Zealand government that legally recognized the river as a living being, one of the first waterways



in the world to gain this status.¹ In many ways, this was a revolutionary step. By recognizing the river, Te Awa Tupua (lit. River with Ancestral Power)² as a legal person with its own rights, the Whanganui River was placed in a new relation with human beings. Key parts of the document are in Maori. In the opening section, the Whanganui River is described as the source of *ora* (life, health, and well-being), a living whole that runs from the mountains to the sea, made up of many tributaries and inextricably tied to its people, expressed in a saying often used by Whanganui people, “*Ko au te Awa, ko te Awa ko au*” (“I am the River, the River is me”).

In the deed of settlement, two people, mutually chosen by the Crown and the Whanganui tribes, are established as Te Pou Tupua, “the human face” of the river, acting in its name and in its interests and administering Te Korotete (lit. a storage basket for food from the river), a fund of \$30 million to support the health and well-being of the river. These two individuals are supported by Te Kopuka (lit. white *mānuka*, the timber from which eel weirs across the river were built), a group representing people with interests in Te Awa Tupua; and Te Heke Ngahuru (lit. the autumn migration of eels), a strategy that brings these people together to advance the “environmental, social, cultural, and economic health and well-being of Te Awa Tupua.” In addition, a payment of \$80 million is made to Whanganui *iwi* as redress for breaches of their rights in relation to the river under the Treaty of Waitangi.

In the Maori text of the Treaty, the version that was debated and signed around the country in 1840 by *rangatira* (chiefs) and representatives of the British Crown, Queen Victoria agreed to uphold “the full chieftainship of the *rangatira*, the tribes and all the people of New Zealand over their lands, their dwelling-places and all of their prized possessions.”³ In the English draft, the Queen guaranteed to their ancestors the “full, exclusive, undisturbed possession of their Lands and Estates Forests Fisheries and other properties . . . so long as it is their wish and desire to retain the same in their possession.”

Since 1975 the Waitangi Tribunal, established to inquire into breaches of Treaty promises by the Crown, has held hearings around the country and investigated many complaints by Maori kin groups, including claims relating to the loss or degradation or both of ancestral rivers, lakes, springs, wetlands, estuaries, and other waterways. The Tribunal has issued reports and made recommendations, and over this period, successive governments have offered apologies and settlements in cash and in kind to many *iwi* around the country.

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1. Ruruku Whakatupua 2014; see also de la Cadena 2010; and a recent legal judgment in Ecuador (where the constitution gives rights to Nature—Pacha Mama—as a living being), requiring a provincial government to remedy damage to the Vicabamba River on these grounds (*Wheeler versus Director de la Procuraduria General Del Estado en Loja*, www.gaiafoundation.org/earth-law-precedents).
 2. *Tupua* is something extraordinary, from the ancestral realm (for a discussion of *tupua*, see Tcherkézoff 2008: 141–44).
 3. In the Maori text: *te tino rangatiratanga o o ratou wenua o ratou kainga me o ratou taonga katoa* (see Anne Salmond 2010a and 2010b for commentaries); see also Waitangi Tribunal 2014, which reports on the history and import of the Declaration of Independence by Northern *iwi* in 1835, and the Treaty of Waitangi in 1840.



In the Whanganui deed of settlement, Maori conceptions of the relations between the Whanganui River and its people are recognized—with a number of significant caveats—that the agreement does not interfere with any existing private property rights in the river; and that Te Pou Tupua’s consent is not required for the use of water from the river or its tributaries, for instance. Instead, the use of water is subject to a review process that is intended to resolve the issues of rights and interests in water, in which the Crown’s position is that “no one, including the Crown, owns water” (Ruruku Whakatupua 2014: 45)—although rights to its use might be quantified and commodified. In this way water is divided from Te Awa Tupua, although as Whanganui *iwi* members argued before the Tribunal, the river is precisely fresh water (*wai māori*) flowing through time and space, the “lifeblood” of the land.

In this article, I examine the way in which ancestral Maori and modernist framings are juxtaposed in the Whanganui deed of settlement and the processes that led up to it, despite being incommensurable in certain respects.⁴ Recognition of this incommensurability has led participants in these negotiations to try and weave divergent forms of order together in a collaborative approach toward the management of New Zealand’s waterways. This interweaving avoids the need for a merging of horizons, a “theory of everything” in which only one reality is possible and only one set of assumptions about the world can prevail.

Freshwater debates

At the time when the Treaty claims of Whanganui tribes were being negotiated with the government, from 2009 onward, the control of fresh water was a topic of passionate debate in New Zealand. In part, this was provoked by the degradation of rivers, springs, and aquifers in many parts of the country, and in part by Maori claims to waterways in the face of the imminent privatization of local power companies. During the 2011 election campaign, the center-right National Party announced that if it were elected, it would partially privatize a number of state-owned assets, including three power companies. After it was elected, the National-led government decided to proceed with the asset sales, despite strong public opposition. In preparation, government representatives began to negotiate with the Freshwater Iwi Leaders Group, representing those *iwi* whose ancestral lakes and rivers would be affected by the asset sales, including Whanganui. The exact terms

4. Contrary (at least in part) to Povinelli’s argument that in late-modern liberal imaginings, the “state apparatuses do not need to experience the fundamental alterity of indigenous discourses, practices or their potentially radical challenge to the nation” (Povinelli 1999: 581). Her more recent writings about “indigenous critical theory” (or theory/practice), however, are more open to the possibility of such irruptions: “the ends of indigenous critical theory are to make this spacing [between law and justice?] practical in a world in such a way that they make the content of statements and practices practical and sane rather than impractical and mad—or if not mad, then mythological” (Povinelli 2012: 27–29).

of these discussions have not been made public, but they involve various kinds of comanagement of these waterways between regional bodies and *iwi*.

As noted earlier, the Waitangi Tribunal has heard many complaints from Maori kin groups that, contrary to Queen Victoria's promises in the Treaty of Waitangi, since 1840 the Crown has unfairly stripped them of rights to ancestral lakes, rivers, springs, wetlands, estuaries, and harbors, and that many of these waterways have been severely degraded. In general, the Tribunal has upheld these complaints (e.g., Waitangi Tribunal 1992, 1993, 1999). Where Maori kin groups voluntarily shared their ancestral waterways with the incoming settlers or sold the land around them, however, the Tribunal has ruled that these rights have been qualified. In response to these findings, successive governments have offered compensation, including comanagement arrangements for lakes and rivers; and in 2009, the Land and Water Forum was established to bring together major "stakeholders" in freshwater management, including hydro-power generators, Federated Farmers, Fonterra (New Zealand's largest dairy company), environmental NGOs and five major river *iwi* to negotiate agreed approaches to the management of freshwater in New Zealand (Fisher and Russell 2011). After the 2011 election, too, the government began to talk with the Freshwater Iwi Leaders' Group whose ancestral rivers would be affected by the partial privatization of the power companies, although the Crown excluded the question of ownership from these discussions.

In February 2012, these delicate negotiations were disrupted when the New Zealand Maori Council, a statutory body representing all Maori, submitted a claim to the Tribunal asking for an urgent hearing of a nation-wide claim that the asset sales were detrimental to Maori interests in fresh water. Once the power companies were partially privatized, they argued, private owners who were not bound by the Treaty would resist remedies for the loss of Maori rights in water, such as shares in the power companies, a say in their governance, or water royalties. Sir Eddie Taihakurei Durie, a former justice of the High Court and chairman of the Waitangi Tribunal, was the spokesman for the New Zealand Maori Council's fresh water claim. During his time as chairman of the tribunal, he had heard many complaints about ancestral waterways, and indeed, wrote one of the most eloquent and influential reports on this subject, the report on the Whanganui River (Waitangi Tribunal 1999).

In their claim, the Maori Council asked for the asset sales to be delayed until the government had made a formal commitment to uphold Maori rights in fresh water. Prime Minister John Key opposed this request, as did the Freshwater Iwi Leaders Group, saying that they were already in tribe-by-tribe discussions with the Crown, and that on this matter, negotiations were preferable to a hearing in front of the Waitangi Tribunal or litigation in the courts. Despite their opposition, however, the Waitangi Tribunal decided to hold an urgent hearing on the claim, which began in July 2012. Soon afterward, the Tribunal strongly recommended that the asset sales should be delayed until after the first stage of the inquiry had been completed.

When the prime minister expressed frustration, asking the Tribunal to issue an early report on its findings, the Freshwater Iwi Leaders Group supported him at first. Along with Whanganui and other *iwi*, this includes Waikato-Tainui, a confederation of kin groups based on the Waikato River, at the heart of the Maori King movement led by Tuheitia, the present Maori King. The Waikato River is



also a major source of water for Auckland, the largest city in New Zealand, and for Mighty River Power, the first power company that the government intended to privatize. This great river, famed in tribal history, is celebrated in the proverb, *Waikato taniwha rau, he piko he taniwha, he piko he taniwha* (aikato of a hundred *taniwha*, at every bend, a *taniwha*), celebrating the powerful chiefs who live on its banks. *Taniwha* are guardians, sometimes in the form of animals such as giant eels, sharks, stingrays, owls, or lizards, who protect rivers, harbors, and other significant places. Tuwharetoa, a confederation of kin groups around Lake Taupo and another powerful member of the Freshwater Iwi Leaders Group, also supported the government's position. Tuwharetoa and Waikato have been allies for many generations, since the founding of the Maori King movement and beyond.

While the Tribunal was sitting, the prime minister declared that “no one owns the water”—the position adopted by the Crown's lawyers during the hearing. When the Tribunal issued its first report, however, it dismissed the Crown's arguments and found that Maori kin groups do have property rights in fresh water (Waitangi Tribunal 2012). The Tribunal recommended that the government should hold a national *hui* (gathering) to discuss these issues and delay the asset sales until they were settled. In addition, it suggested that in recognition of Maori rights to fresh water, the kin groups should be awarded shares and some governance rights in the partially privatized power companies.

As soon as the Tribunal's findings were released, there was a furor. In letters to the editor, articles, blogs, and in private, many New Zealanders expressed incredulity that Maori should claim to own fresh water (although some were sympathetic). Buoyed by these expressions of public support, the prime minister contested the Tribunal's findings, reiterating that “no one owns water, no one owns wind, no one owns sunlight, no one owns the sea.”⁵ For this reason, he argued, there was no need for a national *hui* or gathering to discuss the matter.

When, in defiance of this admonition, King Tuheitia summoned such a gathering, the prime minister announced that he would not attend and forbade members of his government (including the Maori MPs) to go there. This put the Maori Party in a difficult position. Along with two other small parties, the Maori Party (which seeks to advance the interests of Maori people and kin groups) was in coalition with the National government, holding the balance of power. When the coleaders of the Maori Party announced that they would not attend the *hui*, their former colleague Hone Harawira abused them, using an offensive term implying that they were slaves.

Despite widespread popular opposition to the partial sales of the power companies, public anger was now diverted against Maori claims to the ownership of fresh water. Rodney Hide, a former right wing politician, wrote in the *New Zealand Herald*:

Who would have believed it? Singing a song can make a river yours. Plus give you a chunk of a power company and a say over how that company's run. Well, that's what the Waitangi Tribunal says. It's not quite enough to just sing a song. You should also know the river's *taniwha* and use the river to wash away spells and curses. But the clincher is to recognise the river's life force. Then it's yours. (Hide 2012)

5. John Key, quoted in *New Zealand Herald*, September 26, 2012.

At the same time, the idea that Maori kin groups enjoy special relationships with particular waterways is quite widely accepted. When the *Herald* reported that the Whanganui River would be granted legal status in its own right, for instance, there was little controversy (*New Zealand Herald*, August 30, 2012). Indeed, many New Zealanders who are concerned about the state of the country's waterways support the idea that a river can be a legal person.

In the event, the national gathering to discuss Maori water rights was held, attended by leaders from across Maoridom, including the leaders of the Maori Party. Toward the end of the gathering, King Tuheitia went head-to-head with the prime minister by declaring, "We have always owned the water." In his speech, the king said that his tribe intended to take back control of the Waikato River. "We have never ceded our mana [ancestral prestige] over the river to anyone," he added. "In the eyes of our people, Pakeha (Western) law was set up to minimise our *mana* and maximise their own" (*New Zealand Herald*, September 14, 2012).

After many of the tribal leaders had left the gathering, resolutions were moved that all negotiations between Maori kin groups and the government over ancestral waterways should cease. These recommendations were adopted but later disavowed by a number of key leaders who were absent when they were passed. During the weeks that followed, public controversy about Maori water rights died down. Although Waikato boycotted a subsequent meeting with the government, most other members of the Fresh Water Iwi Leaders Group decided to continue their negotiations with the Crown.

Subsequently, the government decided to press ahead with the sale of Mighty River Power, while the New Zealand Maori Council appealed to the Supreme Court to seek a review of the asset sales process. In its decision, the Supreme Court ruled that despite the partial sale of the hydro companies, the government would be able to compensate Maori for any losses of their rights to fresh water, and that the asset sales process should not be halted as a result of the appeal.⁶ In the event, the asset sales went ahead. It was these disputes that set the scene for the Whanganui River settlement.

"I am the river, the river is me"

In these clashes and debates, deep-seated assumptions emerge that may appear contradictory or to invite contestation. The New Zealand law professor Alex Frame, for example, has observed that in front of the Waitangi Tribunal, Maori witnesses involved in freshwater claims often deploy modernist conceptions of private property and ownership to make their arguments (Frame 1999). At other times, however, they appeal to ancestral cosmological ideas. In the process of these shifts and juxtapositions, differences emerge that imply—indeed sometimes explicitly assert—the simultaneous relevance of alternative realities, not merely different perspectives on the same things.

6. <http://www.scoop.co.nz/stories/PO1302/S00285/judgment-nz-maori-council-and-others-v-attorney-general.htm>.

Te Ao Māori or “the Maori world,” for example, is a phrase often invoked by Maori speakers, where “*ao*” is a dimension of reality, often translated as “world” (but without the implication of a bounded, singular whole that underpins that term in English). In contemporary parlance, *Te Ao Maori* is often paired as a dyad with *Te Ao Pakeha* (roughly, European or Western ways of being) just as *Te Ao Hou* (the new world, contemporary life) is paired with *Te Ao Tawhito* (the ancient world, ancestral ways). *Te Ao Maori* and *Te Ao Pakeha*, in particular, which evoke complementary but different realities locked in ongoing exchanges, generate divergent and contested accounts of the world that require constant and careful negotiation.

When explaining ancestral approaches to particular waterways, for instance, elders often speak of fresh water as the “lifeblood of the land” (Tipa 2013: 44), reciting chants that reenact the origins of the cosmos. To paraphrase Eduardo Viveiros de Castro 2007: 153), such cosmological accounts do not merely reflect a Maori “world view” but rather may be seen to “express the (Maori) world *objectively from inside it*,” an account that accords well with the understandings of Maori speakers, and the idea of *Te Ao Maori*.⁷

In a chant recorded by Te Kohuora of Rongoroa for the missionary Richard Taylor in 1854, for example (Taylor 1855:14–16), the world begins with a burst of energy that generates thought, memory, and desire. Next comes the Po, long eons of darkness. Out of the Po comes the Kore, unbound, unpossessed Nothing, the seedbed of the cosmos, described by an early ethnologist as “the Void or negation, yet containing the potentiality of all things afterwards to come” (Tregear 1891: 168).

In the Void, *hau ora* and *hau tupu*, the winds of life and growth, begin to stir, generating new phenomena. The sky emerges, and then the moon and stars, light, the earth and sky and ocean:

<i>Nā te kune te pupuke</i>	From the source of growth the rising
<i>Nā te pupuke te hihiri</i>	From rising the thought
<i>Nā te hihiri te mahara</i>	From rising thought the memory
<i>Nā te mahara te hinengaro</i>	From memory the mind-heart
<i>Nā te hinengaro te manako</i>	From the mind-heart, desire
<i>Ka hua te wānanga</i>	Knowledge becomes conscious
<i>Ka noho i a rikoriko</i>	It dwells in dim light
<i>Ka puta ki waho ko te pō</i>	And Po (darkness) emerges . . .
<i>Nā te kore i ai</i>	From nothingness came the first cause
<i>Te kore te whiwhia</i>	Unpossessed nothingness
<i>Te kore te rawea</i>	Unbound nothingness
<i>Ko hau tupu, ko hau ora</i>	The <i>hau</i> of growth, the <i>hau</i> of life
<i>Ka noho i te atea</i>	Stays in clear space
<i>Ka puta ki waho ko te rangi</i>	And the sky emerges that stands here
<i>e tū nei</i>	

7. Interestingly, during the early contact period *te ao māori* simply meant the “ordinary, everyday world,” in contrast with *te pō*, the dark, powerful realm of ancestors. “*Māori*” means normal, ordinary, everyday; and it was not until Europeans arrived in New Zealand, one kind of “common sense” was confronted and challenged by Western alternatives, that this was transformed in common parlance into an ethnic category.

Te ata rapa, te ata ka mahina
Ka mahina te ata i hikurangi!

The early dawn, the early day, the mid-day
The blaze of day from the sky!⁸

When earth and sky come together, the ancestors of the winds, sea, and waterways, and plants and animals are produced, followed by birds, fish, reptiles, insects, and people. Complementary pairs of beings engage to create new forms of life. As Marshall Sahlins has remarked, “The [Maori] universe is a gigantic kin, a genealogy . . . a veritable ontology” (Sahlins 1985: 195).

In this generative process, water appears early. In another chant, water emerges while Ranginui, the sky and Papa-tuanuku, the earth are locked together:

The Earth trembles, the Sky trembles, the Ground trembles, the Source trembles
The numerous trembles, the resounding tremble, the ebbing
The Waters of the earth, the Waters of the Sky, the Waters of the Ground
The Source of Waters, the ebbing.⁹

When the children of Rangi and Papa appear, they find themselves crushed between earth and sky, huddled in darkness. Led by Tane, the ancestor of forests and birds, they decide to push their parents apart, letting light into the cosmos. As they are parted, Rangi and Papa weep for each other. Rain falls from sky to earth and mist rises to the heavens. Particular great rivers—Whanganui and Tongariro, for instance, come into being from the teardrops of Rangi.¹⁰

Seeing the distress of their parents, Tawhiri, the ancestor of winds, who did not agree that they should be separated, attacks his brothers, the ancestors of sea and fish, forests, root crops, and people. As trees fall and waves crash, fish flee to the ocean, and lizards dive under rocks, while root crops hide in the ground. Only Tu, the ancestor of people, stands against the Space-twister, earning for his descendants the right to dominate those of his brothers (Schrempp 1985). Their kinship is never forgotten, however. In this relational universe, ordered by *whakapapa* (often translated as “genealogy”), the phenomena of the world emerge from reciprocal exchanges (*utu*) between complementary powers. In this way, relations between the ancestors who emerged from Rangi and Papa alternate between gift giving and union, and quarrelling and exclusion. In the same way, their descendants care for or attack the *hau* (the “breath of life” or energy) of other life forms, including land and water bodies.

Hau, the wind of life, thus emerges at the very beginning of the cosmos, animating exchanges of all kinds in the *whakapapa* networks. In 1907, Elsdon Best, a New Zealand ethnologist who had spent a lifetime studying Maori customs, wrote to an elder called Tamati Ranapiri, asking him to explain the idea of the *hau*. Ranapiri replied,

As for the *hau*, it isn't the wind that blows, not at all. Let me explain it to you carefully. Now, you have a treasured item (*taonga*) that you give to

8. Te Kohuora of Rongoroa, dictated to Richard Taylor (1854).

9. Te Rangikaheke, translated by Jenifer Curnow, Auckland Public Library.

10. Matiu Mareikura, quoted in Waitangi Tribunal (1999: 56); also John Tahuparae, quoted on p. 76.



me, without the two of us putting a price on it, and I give it to someone else. Perhaps after a long while, this person remembers that he has this *taonga*, and that he should give me a return gift, and he does so.

This is the *hau* of the *taonga* that was previously given to me. I must pass on that treasure to you. It would not be right for me to keep it for myself. Whether it is a very good *taonga* or a bad one, I must give to you, because that treasure is the *hau* of your *taonga*, and if I hold on to it for myself, I will die. This is the *hau*. That's enough.¹¹

As Ranapiri explains, if a person fails to uphold their obligations in such exchanges, their own life force is threatened. As gifts or insults pass back and forth, impelled by the power of the *hau*, patterns of relations are forged and transmuted, for better or for worse.

When Elsdon Best published Ranapiri's account of the *hau*, it captured the imagination of French sociologist Marcel Mauss, who cited it in *The gift*, his classic work on gift exchange in a range of societies, including his own. Mauss deployed Ranapiri's words to develop a contrast between the Maori concept of the *hau* and chiefly generosity with the utilitarian assumption in contemporary capitalism that all transactions are driven by self-interest, arguing that this gives an impoverished, inaccurate view of how relations among people shape social life (Mauss 1990). For Mauss, the *hau*, or the "spirit of the thing given" impels a gift in return, creating solidarity, but *hau* goes far beyond the exchange of gifts. It also animates and transforms those who exchange them. In greeting each other, people press noses and breathe, mingling their *hau* (wind of life) together. People speak of themselves as *ahau* (myself), and when *rangatira* or chiefs speak of an ancestor in the first person, it is because they are the *kanohi ora* (living face) of that ancestor, and if they speak of their kin groups in the same way, it is because they share ancestral *hau* together.

In the Whanganui settlement, Te Pou Tupua, the two representatives of the river, are defined in this way as its "human face and voice." It is this sense of sharing *hau* that leads Whanganui people to say, "*Ko au te awa, ko te awa ko au*" ("I am the river, and the river is me"). Such comingling is instantiated in many ways. In ancestral times, for instance, it was necessary to offer the first catch of the season to a river ancestor to ensure the *ora* (health, well-being) of the river, and that of the donors. If these and other gestures of respect are not made, the *hau* of the river and the people who exchange with it will suffer. This logic is neither utopian nor sentimental. When the exchanges are in a state of balance, *hau* flows unimpeded and the networks of relations (families, communities, and ecosystems) are in a state of *ora*—healthy, prosperous, and in good heart. If reciprocity fails, however, this is known as *hau whitia*, or *hau* turned aside. *Hauhauaitu* (or "harm to the *hau*") is manifested as illness or ill fortune, a breakdown in the balance of reciprocal exchanges. The life force has been affected, showing signs of collapse and failure.

This can happen in relations among people and in relations between people and other life forms. In the Whanganui Tribunal, for example, an elder lamented,

11. Letter from Tamati Ranapiri to Peehi (Elsdon Best), November 23, 1907, p. 2, MS Papers 1187–127 in the Alexander Turnbull Library, Wellington, translated by Anne Salmond.

It was with huge sadness that we observed dead tuna [eels] and trout along the banks of our awa tupua [ancestral river]. The only thing that is in a state of growth is the algae and slime. Our river is stagnant and dying. The great river flows from the gathering of mountains to the sea. I am the river, the river is me. If I am the river and the river is me—then emphatically, I am dying.¹²

Witnesses also describe particular *taniwha*, ancestral guardians who exercise uncanny powers, the places where they live and their idiosyncratic habits. They discuss the practice of *rāhui*, where a leader places a stretch of water under a prohibition because someone has drowned there, or fish and eels are becoming scarce.

Such associations between people and waterways are deep and intimate. In formal speeches, Maori orators identify themselves by naming their key ancestor, their mountain, and their river, and these landmarks and their paramount chiefs and ancestors are regarded as one. After the Land Wars, for example, when many of his territories were confiscated in 1865, King Tawhiao sang a lament, bidding farewell to his ancestral land as a beloved woman, the Waikato River springing from her breasts:

I look down on the valley of Waikato
As though to hold it in the hollow of my hand . . .
See how it bursts through
The full bosoms of Maungatautari and Mangakawa,
Hills of my inheritance:
The river of life, each curve
More beautiful than the last,
Across the smooth belly of Kirikiriroa,
Its gardens bursting with the fullness of good things,
Towards the meeting place at Ngāruawahia
There on the fertile mound I would rest my head
And look through the thighs of Taupiri.
There at the place of all creation
Let the King come forth.¹³

It is in these terms that people, land, waterways, and ancestors are literally bound together—thus the term *tāngata whenua* (land people), the people who belong in a particular place. The umbilical cord and placenta of their children and the bones of their ancestors are buried in the ground; and a single word may refer at once to a tribal boundary, an umbilical cord, a line of descent, or communication with ancestors:

kaha
line of ancestry, lineage
rope, hill ridge, navel string
line on which *niu* rods were placed for divination
boundary line of land

12. Turama Thomas Hawira, brief of evidence for the Whanganui District Inquiry (do B28), 11.

13. King Tawhiao, quoted in Muru-Lanning (2010: 45).



aho

string, line

woof of a mat

line of descent

medium for an *atua* “god” in divination

kanoi

weave the *aho tāhuhu* “main thread” of a garment

trace one’s descent

strand of a cord, rope

authority, position

In this form of order, rivers tie land and people together. They may be spoken about as plaited ropes in which different genealogical lines are entwined, tying land, people, and ancestors. It is in such a sense that the Whanganui River was described in Tribunal hearings as a “three stranded rope,” binding the upper, middle, and lower river *iwi* (kin groups) together; which in turn assisted the different kin groups to join forces in advancing their claims about the river. In Maori, another way of invoking the binding power of rivers is to speak about vortices—whirlpools and eddies—in which the flows and currents from different streams and springs spiral together. In Maori carving, the double spiral enacts the recursive emergence of the cosmos, in which time is not unilinear, and *whakapapa* lines swirl in and out of an ancestral source.

My own links with the Whanganui River began in the 1920s, when staff at the Dominion Museum in Wellington mounted a series of expeditions to record Maori ancestral practices in different tribal areas, inspired by an earlier visit by the anthropologist W. H. R. Rivers from the University of Cambridge, and sponsored by Apirana Ngata, the Minister of Native Affairs. Accompanied by Te Rangihiroa/Peter Buck, a Maori medical doctor and former MP who was about to embark on an international career in anthropology, they included the ethnologist Elsdon Best and my great-grandfather James McDonald, a photographer, filmmaker, and artist who also worked at the Museum.¹⁴

The Dominion Museum party visited Gisborne (1919), Rotorua (1920), Whanganui (1921), and the East Coast (1923). During the Whanganui expedition, McDonald (then Acting Director of the Museum) shot silent film footage and hundreds of glass plate photographs on and beside the river, recording people, river canoes, villages, *marae*, the great eel weirs, weaving, local amusements (including skipping), and a divination ritual by a *tohunga* or priest—images later used as evidence in the Whanganui claim to the Waitangi Tribunal.

In 2010, when two Maori filmmakers, Libby Hakaraia and Tainui Stephens, decided to make a documentary about the Dominion Museum expeditions featuring

14. McDonald, whose parents had arrived in New Zealand from Ulva in Scotland in 1863, was fascinated by Maori art, and also trained as a Maori carver. Many of his photographs and sketches were used to illustrate publications by Elsdon Best and Te Rangihiroa, and in his retirement, he helped to establish a School of Maori Arts and Crafts near Lake Taupo (*Evening Post*, January 22, 1932).

McDonald's films and photographs,¹⁵ they invited me as his descendant (and professor in Maori Studies and Anthropology at the University of Auckland), my husband Jeremy, our daughter Amiria (also an anthropologist), and her son Tom to retrace his footsteps. During this journey we traveled together down the Whanganui River by car and canoe, where we were formally welcomed on *marae* along its banks. At night in the meeting-houses, we showed McDonald's films and photographs to descendants of the people who had welcomed the Dominion Museum Expedition more than eighty years earlier. Such recursive, intergenerational exchanges are commonplace in the world of *whakapapa*, binding descent lines together.

In November 2014, when I was asked to deliver a version of this paper in Whanganui and chair a "Rivers Workshop" at Ranana *marae*, where the Whanganui settlement had been signed several months earlier, this was partly due to these ancestral and more recent entanglements. When some of these same elders welcomed the Rivers Workshop to Ranana *marae*, they spoke about those earlier meetings and about Te Awa Tupua, what the Treaty settlement meant for their people, and some of the challenges they faced in getting other New Zealanders to understand their relationship with their ancestral river as a living being.

"No one owns the water"

In their article "The politics of ontology," Martin Holbraad, Morten Axel Pedersen, and Eduardo Viveiros de Castro (2014) speak of anthropologists having the ability to "pass through" what they study, like an artist "releasing shapes and forces that offer access to what may be called the dark side of things," and "leaving a way out for the people you are describing" while "giving the ontological back to 'the people'"—as though this was in the anthropologist's gift.¹⁶ There are other possibilities for anthropological engagement with "others," however, which may be less heroic. It is not unthinkable to experiment with other's approaches to relationships, for instance—as exchange partners, friends, and allies in shaping "*how things could be*"—working together to confront current challenges and dilemmas, generating new kinds of insights and outcomes on the way.¹⁷

For anthropologists, this might involve experiments in philosophical reciprocity with their "informants." The ethnographic relationship would be differently defined in such a case, where assumptions about what is real, ways of describing, and ideas about desirable purposes are genuinely up for grabs. In the process, a field of play might emerge that opens up the possibility of ontological creativity,

15. Hakaraia, Libby, *The Scotsman and the Maori*. digitool.auckland. http://www.ac.nz/R/?func=dbin-jump-full&object_id=380839&local_base=GEN01.

16. Holbraad, Pedersen, and Viveiros de Castro (2014). See Bessire and Bond (2014) for a recent critique of "ontological anthropology," and Amiria Salmond (2013, 2014) for an analysis of the diversity of its approaches to ontological alterity.

17. See Cameron, de Leeuw, and Desbiens (2014) for an exploration of such possibilities. In long-term relationships in Te Ao Maori, for instance, exchanges of *hau* are desirable, and mutually transformative.



juxtapositions, and convergences, as well as collisions and clashes. Indeed, something of this kind seems to be happening in the Whanganui deed of settlement.

At the same time, different forms of order may rely upon incommensurable—that is, alternative—assumptions about how the world works (e.g., that ancestors and descendants may or may not be copresent, that a person can or cannot move between the everyday world and the ancestral realm, or that a river is or is not a living being), and such differences may be both potent and resilient. Just as ancestral ideas and practices from Te Ao Maori are deployed in front of the Waitangi Tribunal, for instance, the position adopted by the prime minister and the government in the freshwater debates—that while water rights can be sold to private owners, “no one owns the water”—derives from ideas that arrived in New Zealand with the first European settlers.

These habits of mind are so deeply entrenched as to be almost invisible, until they collide with competing realities. These include systems that turn on radical, interlocked divisions between mind and matter, animate and inanimate, tame and wild, and culture and nature, reflected for instance in the idea of the “state of nature,” those aspects of reality that are wild and beyond human control, for instance “wild” and “barbaric” peoples (including Maori), and the “untamed wilderness” with its plants and animals (Glacken 1967; Descola 2013). In New Zealand, for instance, certain things held to belong in a state of nature could not be owned as property or bought or sold—e.g., fresh water—at least until instruments were invented that enabled their alienation into corporate and private hands.

At the same time, while the “wilderness” is still sometimes endowed with properties designed to inhibit its appropriation, the radical split between nature and culture is associated with a powerful and long-standing impetus to bring nature under human control. Underpinned by ancient Western myth-models including the Genesis account of creation and the Great Chain of Being (Lovejoy 1936; Hodgen 1971; Bennett 2010: 87–88), this process is often described in terms of “improvement” and “development.” The doctrine of *terra nullius*, for example, held that unless people applied their labor to the land to improve it, usually through cultivation, they could claim no sovereign authority over it. Inhabited largely by hunters and gatherers, the South Island of New Zealand was claimed in this way by the British Government in 1840 and sold to European settlers who would bring it under cultivation.

In keeping with such “command and control” strategies, a succession of New Zealand governments have recently passed laws to appropriate and then privatize radio waves, fishing grounds, fresh water, and (perhaps most controversially) the foreshore of the country’s coastline, all formerly held as commons. From the outset, Māori have contested such wholesale alienations, appealing to the courts and to the Waitangi Tribunal:

The commodification of the “common heritage” has provoked novel claims [to the Waitangi Tribunal] and awakened dormant ones. . . . Claims to water flows, electricity dams, airwaves, forests, flora and fauna, fish quota, geothermal resources, seabed, foreshore, minerals, have followed the tendency to treat these resources, previously viewed as common property, as commodities for sale to private purchasers. Not surprisingly, the Maori reaction has been: if it is property, then it is *our* property! (Frame 1999: 234)

As mentioned earlier, in the English draft of the Treaty the chiefs ceded sovereignty to the Queen of England, who in turn guaranteed to Maori the undisturbed possession of their lands, forests, fisheries, and other property (including waterways) as long as they wish to retain them. In the Māori version, however, Queen Victoria agreed to uphold “the full chieftainship of the *rangatira*, the tribes and all the people of New Zealand over their lands, their dwelling-places and all of their prized possessions.” In the event, this obstacle to European settlement was resolved by legally defining Maori rights (including rights to fresh water) as a “burden” on the Crown’s title until they were extinguished.

At first this was achieved by voluntary sales, although many of these early transactions were later repudiated. Later, when Maori began to refuse to release land and waterways, their rights were extinguished by military action, followed by confiscation, forced sales, and freehold titles imposed by the Native Land Court, a process that has been closely documented (Banner 1999; Williams 1999; Boast 2013)—although some Europeans, including the first chief justice of New Zealand, Sir William Martin, railed against the injustice of these proceedings as violations of the Treaty of Waitangi (Martin 1860).

With respect to fresh water, where land blocks were adjacent to nontidal rivers and lakes, it was assumed that under English common law, title to the land ran to the center line of the waterway (or the center point in the case of lakes)—the maxim of *ad medium filum aquae*.¹⁸ At the same time, it was assumed that fresh water itself could not be owned. As Sir William Blackstone argued in his *Commentaries* (1765–1769), because “water is a moveable, wandering thing, and must remain common by the law of nature, . . . I can only have a temporary property therein.”¹⁹ Since it was “wild” and “untamed,” fresh water was held to exist in a state of nature, where property rights did not apply. As European settlement intensified, however, the Crown claimed the control of all navigable rivers and lakes in New Zealand, on the grounds that this was necessary to protect the “national interest” in drainage, flood control, and town water supplies. Nevertheless, it did not claim to own the water itself, which was still regarded as part of the commons.

In the recent debates over Maori claims to fresh water, the Crown has continued to uphold this position. At the same time, in New Zealand as elsewhere, the idea that fresh water is part of the commons is under siege. From Brazilian rain forests to the Arctic and Antarctic ice caps to “wild” waterways, the last refuges of “untouched nature” are being redefined as “resources” for human uses. In this anthropocentric framing, even those who seek to protect these places talk about the “services” that they perform for humanity (in talk of ecosystem services, for example), fostering the illusion that people are in charge of the planet. Once these services are quantified and a price is put on them, they too become commodities, available for sale.

18. For commentary on this doctrine, see Waitangi Tribunal (1993:16–17, 1998: 83).

19. Blackstone W, 1765–1769, quoted in Taggart (2002: 112). Blackstone went on to qualify this, however: “For water is a moveable, wandering thing, and must remain common by the law of nature, so that I can only have a temporary, transient usufructuary property therein” (quoted in Taggart 2002: 110).



Within such a logic, it makes sense to charge for the use of fresh water; and to suppose that a river, even one that is a “legal person,” needs humans to speak on its behalf. In the first draft agreement between Whanganui *iwi* and the Crown, for instance, the two people appointed to speak for the river were described as guardians, one appointed by local kin groups and one by the Crown. Under this arrangement, the river was placed in the same legal category as children, or adults who are incapacitated, and have guardians to make decisions for them.²⁰ In this draft version, the river’s “independent voice” was a kind of ventriloquism. For Whanganui Maori, as we have seen, this marked a radical shift from ancestral conceptions, in which earth and sky, mountains, and rivers are powerful beings upon whom people depend, and where river *taniwha* act as *kaitiaki* (guardians) for people, not the other way around. It is possible, however, that this inversion has been avoided in the final version of the Whanganui deed of settlement, which describes Te Pou Tupua as “the human face” of the river, echoing the Maori idea of *kanohi ora*, a person as a living face of their ancestors. How this works out in practice is yet to be seen.

“Bind the lines”

Ancestral Maori relations with rivers and other waterways remain powerful in New Zealand. Nevertheless, as we have seen, this is not the only logic deployed by Maori, whether in front of the Tribunal or in the wider debates about fresh water. While elders or young people who are immersed in Te Ao Maori (the Maori “world”) make unselfconscious, matter-of-fact statements about *taniwha* and river ancestors, for instance, others use such concepts strategically, or with “scare quotes” around them. Indeed, outside of the context of these debates, many Maori regard rivers in ways that differ little or not at all from other New Zealanders. This is not surprising, because since the early contact period in New Zealand, Maori have engaged with a range of Western ontological styles, often very successfully, and sometimes exclusively. While some of these styles are difficult to reconcile with ancestral ways of doing things, others resonate across worlds, making some kind of sense-making possible.

In the claims presented to Tribunal hearings, ancestral Maori and modernist propositions are often strategically interwoven, forming a single complex *kaupapa* or argument, articulated in English paragraphs containing Māori words that are given without translation.²¹ The Maori claimants typically include not just elders and tribal experts, but also historians, lawyers, scientists, priests, administrators, and Tribunal members. Many of these individuals are highly educated, well travelled, and cosmopolitan, accustomed to moving within and between Te Ao Maori and other worlds. As Marilyn Strathern has written about the reasoning process: “I take a thread [of thought] as something to be caught, both caught hold of and

20. For a commentary on guardianship under New Zealand law, see Family Court of New Zealand (2012). *Powers to Act on Behalf of Others*. <http://www.justice.govt.nz/courts/family-court/what-family-court-does/powers-to-act#fc3>.

21. Henare [Salmond], in Henare [Salmond], Holbraad, and Wastell (2007: 50).

getting itself caught onto what is in its vicinity. . . . Any particular thread of thought might appear as a singular twist, might seemingly take the form of a genealogy or archaeology, but in truth was never unknotted from innumerable others” (see Marilyn Strathern’s article in this volume). This idea of weaving an argument from diverse strands evokes the way in which ancestral Maori and modernist ideas invariably entangle in debates about freshwater in New Zealand. They do not exist in immutable, binary boxes, far from it. Indeed, some of the most interesting scholarship on freshwater in New Zealand is carried out in this mode, with environmental scientists (e.g., Hikuroa, Slade, and Gravley 2011; Tipa 2013; Morgan 2007, 2008), anthropologists (e.g., Muru-Lanning 2010) and sociologists (Douglas 1984), many of them Maori, weaving Maori conceptions together with global frameworks in exploring river systems.

Such intertwining is also happening in the law, with ideas from global discussions (e.g., Christopher Stone’s [1974] suggestion that natural resources might be given legal personality) being picked up by lawyers involved in the Treaty process in New Zealand (e.g., Frame 1999, including Maori environmental lawyers (e.g., Morris and Ruru 2010),²² and tribal claimants in relation to waterways. In their 2010 article, for instance, James Morris and Jacinta Ruru suggested that rivers might be recognized as legal persons in New Zealand. They outlined Stone’s arguments, examined a series of Waitangi claims around rivers and offered a draft Rivers Bill, which they then critically analyzed. As they remark,

the beauty of the concept is that it takes a Western legal precedent and gives life to a river that better aligns with a Maori world view that has always regarded rivers as containing their own distinct life forces.

Furthermore, the legal personality concept recognises the holistic nature of a river and may signal a move away from the western legal notion of fragmenting a river on the basis of its bed, flowing water, and banks. (Morris and Ruru 2010: 58)

This danger of fragmentation has not entirely been avoided in the final Whanganui River agreement, however. Nor did Morris and Ruru think that this path is without its dangers, including overgeneralizing the state of rivers in relation to particular *iwi*.

In front of the Tribunal, too, this kind of weaving of different lines of argument with distinct yet entangled genealogies or archaeologies is ubiquitous. As mentioned earlier, the Treaty of Waitangi itself exists in two different versions, the original draft in English and the Maori translation that was debated in 1840 at Waitangi and other places, and signed by almost all of the English witnesses and the *rangatira* or chiefs. Contemporary discussions about the Treaty typically shift, almost imperceptibly, from Maori to English and from one text to the other, often juxtaposing rather than interrogating or even noticing their differences (Salmond 2012). This ontological braiding is easy to do in *whakapapa*, a multidimensional, open-ended and intricate field of action, where a single ancestral link suffices for membership, although this link has to be activated and kept alive by active participation. In different contexts, a person may call upon different arrays of relations,

22. See Ruru (2009) for an excellent review of writing about Maori legal engagement with freshwater issues until that date.



turning from one *taha* or “side” of themselves to another (for instance, different kin groups or ethnic identities) in the networks, shifting states of being in the process (Pedersen 2010).

While at one moment, a person may stand in Te Ao Maori, where river ancestors are real and copresent, at another, they may speak and think as a physicist, or an historian, or a highly trained lawyer, with no evident sense of contradiction. Place in the relational field and modes of being are mutually implicated. In ancestral Maori ways of being, indeed, there is nothing new about shifting between different dimensions of reality (for instance Te Po, the realm of ancestors, and Te Ao, the everyday world of light), or between different *papa* or levels in the relational field—hence *whakapapa*, to move among *papa*, different dimensions of being. At certain strategic points, these dimensions intersect, and the sites at which this happens are particularly potent. These sites, which act as *pae* (or portals between different dimensions of reality), may be *taonga* or ancestral treasures; *toi Māori*, ancestral art forms; people (for instance *tohunga* (priests), or *ariki* (high chiefs)); or places and events in which Maori “ways” are dominant—for instance, *marae* (kin group ceremonial centers), *kapa haka* (action song) groups, or *waka ama* (outrigger canoe) paddling groups, et cetera. In these people, practices, and places, ancestral Maori concepts are active and alive, adapting to changing conditions, including various modernist assumptions about reality. The process of juxtaposition and exchange has generative effects. It makes it possible to deal creatively with competing and shifting universalisms without feeling the need for an “eye of God” account in which only one set of propositions about reality can prevail.²³

This is just as well, because throughout the Tribunal hearings and public debates over fresh water, it was evident that the Freshwater Iwi Leaders Group and the claimants were being placed in a series of double binds.²⁴ On the one hand, as the Tribunal observed in its Interim Report, if Maori kin groups do not claim “ownership” of ancestral freshwater bodies and rights to fresh water are privatized, they may be left with nothing. As a claimant from one tribe, Te Arawa, exclaimed at the Freshwater Tribunal hearing, while his people had been comfortable with the Crown managing their rivers for the good of the nation, they did not agree that these waterways should be handed over to partially privatized power companies. “Te Arawa begins to wake up,” he said. “Blame the Government for us claiming ownership.”²⁵ In consequence, claimants and their counsel in that particular claim drew on British common law and New Zealand case law to argue that at the time of the Treaty, they were in undisturbed possession of their ancestral waterways, and that in 1840, the rights guaranteed to them under the English text of the Treaty

23. “In keeping with its monotheistic origins, ours is an ontology of *one* ontology. . . . For if cultures render different appearances of reality, it follows that one of them is special and better than all the others, namely the one that best *reflects* reality. And since science—the search for representations that reflect reality as transparently and faithfully as possible—happens to be a modern Western project, that special culture is, well, ours” (Henare [Salmond], Holbraad, and Wastell 2007: 10–11).

24. See Bateson’s discussion of the double bind in Bateson et al. (1956: 251–54).

25. Maanu Wihapi quoted in Waitangi Tribunal (2012: 18).

equated to absolute ownership. Since then, those rights may have been modified but have never been extinguished.

On the other hand, various witnesses expressed frustration about being forced into a language based on possessive individualism (“property,” “ownership,” and “rights”) to speak about their relations with ancestral water bodies. Toni Waho, for example, exclaimed, “It’s not an ownership issue . . . it’s *kaitiakitanga* [guardianship], it’s *mana*. My Maori heart says let it cease; but my Western mind says perhaps we can find a solution.”²⁶ In his closing remarks, however, the Crown Counsel quoted these words back at the claimants, arguing that in their own terms, Maori could not properly claim to own waterways in New Zealand.

In its findings, the Tribunal identified the nub of the problem (without offering any real solution):

We agree with the Whanganui River Tribunal, which found in respect of that river: *It does not matter that Māori did not think in terms of ownership in the same way as Europeans*. What they possessed is equated with ownership for the purposes of English or New Zealand law. (Waitangi Tribunal 2012: 89)

In other words, if Maori claimants wish to uphold their relations with ancestral waterways, they must acquiesce in having these redefined as property interests “for the purposes of the law”—an act of commensuration entailing a kind of ontological submission. If they refuse, their claims will have no legal force. If they do agree, however, they may appear opportunistic and insincere. Statements such as “*Ko au te awa, ko te awa, ko au*” (“I am the river, and the river is me”) are turned against them, framing their position as self-betrayal if they allow ancestral springs, streams, and rivers to be turned into resources for sale. At the same time, the Maori claimants could be depicted as betraying a wider public interest in retaining fresh water as part of the commons, bargaining for shares and cash when they might have stopped the asset sales.

To make matters worse, if different Maori groups deal with this paradox differently (as in the case of the Freshwater Iwi Leaders Group and the NZ Maori Council), they can be accused of inconsistency, undermining the overall legitimacy of kin group claims to special relationships with ancestral waterways. No matter which way they turn, they risk losing *mana* and public support. In front of the Tribunal, Maori claimants in the Freshwater claim were acutely aware of these dilemmas. As Toni Waho remarked, posing the question in explicitly ontological terms:

But here’s the problem. There is no place where things can be graded with proper legal form in our world [Te Ao Maori], here in our land [New Zealand], which is able to resolve the conflict of the two worlds [Te Ao Māori, Te Ao Pākehā—the Maori and Western “worlds”]. (Waitangi Tribunal 2012: 88)

In such a situation, is there any way out? There may be. In Gregory Bateson’s formulation of the double bind, it is suggested that one way to escape such “lose-lose” situations is to shift to another logical level. This is most likely to happen when

26. Toni Waho, oral evidence, quoted by Crown counsel, closing submissions, Waitangi Tribunal (2012: 88).



current attempts at constructing intelligibility and workable solutions are being thwarted (Bateson et al. 1956). The struggles between Maori kin groups and the Crown over claims to fresh water present such an opportunity. A space opens up in which resonances as well as contradictions between different ontological styles are being recognized and new forms of order explored. This experimental process, which has been under way since the beginnings of New Zealand's shared history, arguably led to the drafting and signing of the Treaty of Waitangi and more recently to the establishment of the Waitangi Tribunal and the claims process.

Backed by Maori and other advocacy, such experiments suggest the potential of interweaving divergent philosophies or approaches, rather than trying to force a convergence of horizons. In many spheres of life in New Zealand, distinctively Maori practices and conceptions are indeed being deployed, often without translation. Some non-Maori New Zealanders, for instance, now speak of themselves as *kaitiaki* or guardians for rivers, beaches, and endangered species. As Maori terms increasingly migrate into New Zealand English (Macalister 2006), and vice versa, European and Maori ways of thinking alike are being actively transformed. This is also having a major impact on the law in New Zealand. In the Local Government Act, for instance, in making their decisions, councils are required to take into account the relationship of Maori and their culture and traditions with their ancestral land, water, sites, *wāhi tapu* (ancestral sites), and other *taonga* (ancestral treasures). Similar Maori terms are used in the Resource Management Act, and elsewhere. As Amiria Salmond has argued, when terms such as this are used in New Zealand law, the legal process is being transformed by the irruption of ancestral conceptions, thus acknowledging “the persistence and creativity of a distinctively Maori register of value” (Henare [Salmond] in Henare, Holbraad, and Wastell 2007: 49).

This kind of mutual transformation is very evident in the recent agreement between Whanganui iwi and the Crown over the Whanganui River. The Crown has signed an agreement replete with Maori conceptions relating to the Awa Tupua—a river flowing from the ancestral realm. The agreement is prefaced with a statement in Maori:

*Nga wai inuinu o Ruatipua na
Nga manga iti, nga manga nui e honohono kau ana
Ka hono, ka tupu, hei awa
Hei Awa Tupua*

Those are the drinking fonts of Ruatipua
The small and large streams that flow into one another
and continue to link, and swell, until a river is formed
Te Awa Tupua
(Ruruku Whakatupua 2014)

In this hydrological account of identity, distinct streams of people with their different histories swirl together to form a river, which in turn flows out to sea, an ancestral Maori conception.

At the outbreak of the Land Wars, for instance, Wiremu Tamihana, a Christian *rangatira* who had helped to establish the Maori King movement, drew upon such a notion when he accused the Governor of being “double-hearted,” with his “lips given to this side (*taha*) and [his] heart to the other side (*taha*):”

This is my thought with regard to the inland rivers that flow into their deep channels from their sources with their mouths open, until they reach the point where they terminate. I thought that the currents of every river flowed together into the mouth of Te Parata [a great *taniwha* in the ocean, whose breathing caused the tides], where no distinction is made.

It is not said there that “you are salt water and that is fresh water,” nor that you should prefer only salt water, since they all intermingle. Just as the currents from the different islands flow into the mouth of Te Parata, so the kingdoms of the different nations rest on God as the waters rest in the mouth of Te Parata (Tamihana 1865).

At the heart of the Pacific, according to Tamihana, fresh water (*wai māori*, associated with Maori people) and salt water (associated with Europeans) flow together with the currents from the different islands as they descend into Te Parata, a great vortex leading to Te Po, the ancestral realm, from which people are born and to which they return. Likewise, Europeans and Maori alike rest on God, and for this reason, the governor was wrong to prefer one people above the other.

At the same time, as Tamihana recognized, the law has been a powerful force for domination and control in New Zealand. The agreement between Whanganui *iwi* and the Crown is still constrained in many ways by power relations and legislative frameworks based on very different assumptions about how the world works. Nevertheless, the agreement shows that creative jurisprudence and experimental practice are possible. Rather than defining waterways and forests and fisheries as “common pool resources” (still an anthropocentric construct), for example, as the Nobel Prize-winning economist Elinor Ostrom has suggested (Fennell 2011)—it is evidently not unthinkable in New Zealand to pursue the idea that lakes, harbors, and forests may have their own life and rights. As the Whanganui agreement suggests, it is possible to experiment “across worlds” (or between *ao*), shaping “*how things could be*”—drawing upon divergent strands from different philosophical legacies to confront current challenges and dilemmas, generating new kinds of insights and outcomes on the way (Povinelli 2011).

Such approaches should be “contingent, modest, practical, and thoroughly down-to-earth; ways of proceeding that acknowledge and respect *difference* as something that cannot be included” (Law 2011). Like the Treaty of Waitangi itself, with its two texts in Maori and English, such approaches might juxtapose rather than try to assimilate different ways of being different, contributing to a “planetary conversation on human possibilities” (see David Graeber’s contribution to this volume). Particular waterways, for instance, might engage in exchange relations with *iwi*, *hapū*, and other local communities, and all those who use them. This would include their right to remain *ora*—with sustainable flows and healthy ecosystems, ensuring that in their relations with people they are not degraded or destroyed, while respecting the right of human communities to flourish. It might also include ways of acknowledging that people depend upon fresh water for their survival, not the other way around.²⁷

27. For discussions of strategies in other jurisdictions to address similar challenges in relation to rivers, see Ruru (2010); Jackson and Barber (2013); Archer (2014); and for a suggestion that legal personhood might be extended to *taonga* in general, see Angelo (1996).



In the Pacific and elsewhere, it is likely that the most intransigent obstacles to solving environmental (and other) challenges lie at the level of presupposition. As Jane Bennett has argued, “the image of dead or thoroughly instrumentalised matter feeds . . . our earth-destroying fantasies of conquest and consumption” (Bennett 2010: ix–x). Thus, *Homo hubris* trumps *Homo sapiens*. In such a situation, despite scientific claims to the contrary, epistemological solutions will not work. Fundamental conceptions and forms of order will have to shift if more lasting, flourishing styles of living are to be found. Here, ontological styles in which matter has never been dead or separated from people may prove helpful. When Bennett urges us to “picture an ontological field without unequivocal demarcations between human, animal, vegetable, or mineral” where “all forces and flows are or can become lively [and] affective” (Bennett 2010: 116–17), I think of the nineteenth-century Maori philosopher Nepia Pohuhu, who said, “All things unfold their nature (*tupu*), live (*ora*), have form (*āhua*), whether trees, stones, birds, reptiles, fish, quadrupeds or human beings” (Pohuhu in Smith 1913: 13).

Weaving distinct, even incommensurable vocabularies together in legal frameworks, as in the case of the Whanganui River agreement, will have unpredictable outcomes, but they may prove enlivening. As my mentor Eruera Stirling used to chant:

<i>Whakarongo! Whakarongo! Whakarongo!</i>	Listen! Listen! Listen!
<i>Ki te tangi a te manu e karanga nei</i>	To the cry of the bird calling
<i>Tui, tui, tuituiā!</i>	Bind, join, be one!
<i>Tuia i runga, tuia i raro,</i>	Bind above, bind below
<i>Tuia i roto, tuia i waho,</i>	Bind within, bind without
<i>Tuia i te here tangata</i>	Tie the knot of humankind
<i>Ka rongo te pō, ka rongo te pō</i>	The night hears, the night hears
<i>Tuia i te kawai tangata i heke mai</i>	Bind the lines of people coming down
<i>I Hawaiki nui, i Hawaiki roa,</i>	From great Hawaiki, from long Hawaiki
<i>I Hawaiki pāmamao</i>	From Hawaiki far away
<i>I hono ki te wairua, ki te whai ao</i>	Bind to the spirit, to the day light
<i>Ki te Ao Mārama!</i>	To the World of Light!

(Stirling and Salmond 1981)

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Les larmes de Rangi : Eau, pouvoir et peuples en Nouvelle Zélande

Résumé : Dans cet article, je considère une série d'échanges et d'enchevêtrements, de convergences et de collisions entre les onto-logiques respectives des traditions Maori, occidentale et moderniste au sujet de l'eau douce en Nouvelle-Zélande. Le droit des Maoris (et par conséquent, des non-Maoris) au contrôle de l'eau a fait l'objet



d'intenses débats et de controverses à la suite de la privatisation menée par des pouvoirs économiques locaux. A la suite d'une requête des Whanganui *iwi* (un groupe de parenté) au Tribunal de Waitangi, une déclaration établit la rivière Whanganui en tant que personne légale; cette rivière devint ainsi l'une des premières rivières à acquérir ce statut dans le monde. Dans l'acte de décision explicitant l'accord entre la Couronne et le groupe Whanganui, les modes de pensée Maori traditionnel et moderniste sont juxtaposés, bien qu'ils soient en certains aspects incommensurables. En s'appuyant sur des traditions divergentes, les différents acteurs tentent d'élaborer une approche concertée pour la gestion des cours d'eau Néo-Zélandais. Cet assemblage permet d'éviter la nécessité d'une fusion des horizons, une "théorie de tout" dans laquelle une seule réalité serait possible et qui ferait prévaloir un seul ensemble de concepts pour penser le monde.

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