**Post Hegemonic Futures:**

**Decolonising Intergenerational Environmental Justice**

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**Abstract**

Post-Hegemonic Futures: Decolonising Intergenerational Environmental Justice

Intergenerational Environmental Justice (IEJ) examines the obligations of the living to structure actions in the present to limit environmental harms to future generations. IEJ may be said to be hegemonic when theorists drawing solely on Western epistemologies and ontologies to structure their responses to this challenge offer their solutions as a universal framework. That is, when they assume some universality for all or some of such culturally specific concepts as neo-liberalism, individualism, time and anthropocentrism. Bounded by these parameters EIJ becomes mired in a web of seemingly intractable problems to the West itself, but more importantly here, to other communities. For instance, it becomes unworkable at the intersection with indigenous communities for whom epistemological and ontological boundaries are drawn from different philosophical foundations. Drawing on some Aotearoa Māori and Australian Aboriginal philosophic approaches to IEJ highlights two things: Western IEJ does not make sense in these indigenous communities; and if we invert the perspective by de-colonising IEJ some seemingly intractable problems within Western IEJ may be resolved.

**1 Introduction**

Indigenous people are: ‘Peoples who are regarded as indigenous on account of their descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonization or the establishment of present State boundaries and who, irrespective of their legal status, retain some or all of their own social, economic, cultural and political institutions’ (United Nations Development Group, 2009; 8)

Decolonisation would decenter Western political theories and a global order, which is regulated by linear thinking, thinking that has produced a ‘colonial matrix of power’ that holds dispossession of those colonised by the state at its core. However, to dispossess, enslave, exploit and dispose of human beings is unlawful, and the state cannot continue to legitimise and make lawful its own crimes.

(Watson, 2015, 149)

The focus of this paper is primarily on two settler states (Australia and Aotearoa New Zealand—henceforth Aotearoa), however the principles at stake could be transported to any settler state[[1]](#footnote-1)⁠. These are sites in which the decolonizing project has barely begun⁠[[2]](#footnote-2). Embedded within political structures, law and social practice are assumptions and processes that allow the settlers to dominate Indigenous Peoples[[3]](#footnote-3). The focus here is on the political philosophy of intergenerational justice (IJ). While primarily concerned with Australia and Aotearoa it also touches on experiences and developments in the United States, Ecuador and Bolivia, where for Indigenous Peoples IJ is always intergenerational *environmental* justice.

Australian Aboriginal[[4]](#footnote-4), Aotearoa Māori, North and South American First Nations, are populations of peoples who were and continue to be subject to demands to become someone other. Denied the dignity of their traditional territories, languages, cultures and wider social acceptance within the dominant societies, many are forced to the physical and social margins (Stewart-Harawira, 2005; Watson, 2002; 2015; Whyte, 2017). And yet, indigenous identity, culture and resurgence persists.

Within Māori and Aboriginal ontologies, epistemologies, laws and philosophy conceptualising and implementing IJ is well resolved. IJ is neither esoteric nor incalculably hard. However, liberal theories of IJ cannot align with a land/country/environment-based ontology. Why is IJ obvious and integral to my Māori heritage, to Australian Aboriginal peoples, and to other Indigenous Peoples⁠[[5]](#footnote-5), while it challenges political and policy theory and practice in the West? What is the disjuncture? More critically, how are Western *justice* theories perpetuating the colonial project and *injustice*?

An attempt to answer and resolve aspects of these questions follows. Firstly, the paper’s philosophic boundaries are described, followed by three recent examples of conflict between indigenous IJ and settler state powers. The third section explores some key aspects of Māori and Aboriginal ontologies⁠[[6]](#footnote-6) important to IJ. The aim is to demonstrate where and how liberal and indigenous philosophies differ. As the section unfolds the focus reveals that the liberal paradigms entrench ongoing epistemological ignorance (Mills, 1997) and unknowability (Dotson & Whyte, 2013). Finally, the discussion narrows to the conceptualising IEJ for indigenous people within Human Rights and Capabilities approaches to justice.

**2 Living at the intersection**

**2.1 Philosophic environment**

Tribal governments have enormous—historic—responsibilities to ensue members can safely practice their relationships with the environment (Creation).

(Whyte, 2011; 199)

Colonization did not destroy this ontological relationship with country. As the descendants and reincarnations of these ancestral beings, Indigenous people derive their sense of belonging to country through and from them….Colonization did not destroy this ontological relationship to country. (Moreton-Robinson, 2015; 12)

For Indigenous Peoples within settler states, particularly where their numbers relegate them to minority status, and entrenched disadvantage moves them to the margins of social consciousness and peripheral geographic locations, the argument here is it is a matter of *justice* to protect and enable their ambicultural values and actions[[7]](#footnote-7). I am specifically addressing Indigenous Peoples of the settler states, where people wish to maintain and pass to future generations their culture, philosophies, customs and practices⁠[[8]](#footnote-8). This is a matter of intergenerational environmental justice (IEJ) where that culture, philosophy etc., is bound with and in the environment. The suggestion is, Indigenous Peoples ability to *be* Indigenous, is impaired by the structures of state, particularly where the state sanctions, and/or fails to stop acts that permanently change or degrade the environment. The freedom to choose is then stifled. Additionally, the indigenous culture and the obligations and duties members of indigenous nations bear are not recognised and acknowledged as seriously as those of the dominant society. The claim is that injustice persists in settler states in circumstances where Indigenous citizens are unable to fulfil their traditional duties and obligations to the environmental and future generations.

The claim the colonial project continues arises where the state chooses to prioritise dominant structures and preferences within the traditional territories of the Indigenous Peoples. Indigenous Peoples’ obligations are based in retained responsibility for their traditional territories, derived from kinship and entwined relationships between the people and the animals, plants, birds, waters, fish, landforms. While most settler state lands are now alienated under fee simple (or Torrens) title, they remain within the purview of traditional owners’ responsibilities under custom and law, as the introductory quotations identify. Indigenous responsibilities of custodianship do not cease with alienation. Traditional owners retain and maintain intergenerational and environmental obligations to their territories whether the state recognises it or not (Durie, 1998; Watson, 2015; Yunupingu, 1997).

For Indigenous Peoples, inclusion in a Western style political and legal structure was, and for some/many remains involuntary: that is the Indigenous Peoples are denied the agency to choose the philosophic and political structures in which they operate and from which their obligations and duties derive. The epistemology and ontology on which the Western laws and politics are based, have been foist upon Indigenous Peoples and they are compelled to adhere to them through various measures of force (Stewart-Harawira, 2005; Watson, 2015).

This paper contrasts the liberal against the indigenous and argues two things. Firstly, for Indigenous Peoples to fulfil their culturally specific obligations and duties of IEJ, political philosophy must develop a deeper, respectful understanding of those duties and obligations and ensure it does not place Indigenous Peoples in a no-win bind. Secondly, I am suggesting that by carefully reflecting on Indigenous ontologies, seemingly intractable liberal conundrums may dissolve. That is, reflection *in* selected indigenous life ways becomes a site of knowledge production that challenges and enables changes to liberal orthodoxies (Moreton-Robinson, 2015). The project is about recognising Indigenous Peoples’ agency.

**2.2 Political environments**

… the specific ways in which tribal sovereignty is defined and represented in relation to non-tribal institutions may leave the tribes open to injustice.

(Whyte, 2011; 199-200)

[Indigenous peoples’/Aboriginal] ontological relationship to land, the ways that country is constitutive of us, and therefore the inalienable nature of our relation to land, marks a radical, indeed incommensurable, difference between us and the non-Indigenous. This ontological relation to land constitutes a subject position that we do not share, that cannot be shared, with the postcolonial subject, whose sense of belonging in this place is tied to migrancy.

(Moreton-Robinson, 2015; 11)

Daily, Indigenous Peoples watch the degradation of lands, waterways and seas sabotaging their heirs’ autonomy (Selby, Moore, & Mulholland, 2010; Whyte, 2017). While many Māori self-describe as ambi-cultural, the structures and law of Aotearoa are not. Some Australian Aboriginal clans have Native Title over their lands, which oftentimes empower them with little more than entry rights to the territory to perform ceremonies and protect sacred sites (as long as those sites will not impede mineral exploration and exploitation)[[9]](#footnote-9). At Standing Rock in South Dakota, the agency to fulfil obligations to protect water has been given and removed by the strokes of two Presidential pens. Within these settler states Indigenous agency is circumscribed by provisos: firstly, agency exists to conform to the dominant/dominating norms of the state and secondly, if Indigenous norms and settler norms conflict, settler norms prevail.

Settler property ownership laws, boundaries, individualisation, time, anthropocentrism (settler ontology) underpin the settler state norm and define the parameters of acceptability and legality. Indigenous Peoples are left in a bind. They have obligations and duties under two systems.

There have been three recent confrontations between the State and Indigenous Peoples in Aotearoa, Australia and the USA that exemplify the indigenous bind. They are not unique or new. They are good examples to provide context for the issues raised in this paper and illustrate the lived experience of Indigenous People in settler states. Each arises from a clash of underlying ontological values that has and will continue to generate irruptions in Indigenous Peoples’ agency, autonomy, human rights, and capability fulfilment until settler states create respectful spaces for Indigenous epistemology and ontology.

*Te Whanau a Apanui* (Apanui), the *iwi* (tribe) who’s *rohe* (territory) covers the north-eastern margins, ranges, waterways and sea of the East Cape region of Aotearoa, were given one month by the Department of Energy to respond to an off-shore oil and gas exploration project consultation. Their elected officials and lawyer were deep in preparing a submission to a related Bill—the Foreshore and Seabed Act (FSA). *Apanui* immediately made two requests: firstly, that the government appoint one ‘agent’ with whom they could negotiate on *iwi* related issues, and secondly their submission to the mining proposal be delayed until the FSA was complete. The government’s agents ignored both requests, the mining permit was granted, a foreign company engaged, and the survey vessels entered the waters of *Apanui* traditional seas. *Apanui* responded with a flotilla blockade that was eventually broken by the country’s navy.

*Apanui* then took the Minister for Energy to the High Court, accusing the Minister of failing to follow due process (Gendall, 2012). The trial considered the Minister and Ministry’s extensive evidence of process. It considered *Apanui’s* single affidavit. It found in favour of the Minister, as did a subsequent appeal. The court and *Apanui* talked past each other throughout the case. The process the Minister presented was that of the dominant Anglo-based law and legislative regime. The process Te Whanau a Apanui presented was that of traditional responsibilities to pass to future generations an environment better than the one received, the responsibilities of *kaitiakitanga*. Responsibilities to the waters and sea creatures based in an ontology that emplaces gods, ancestors, the living, future generations, fish, fowl, beast, plant, waterway and landform in an ever past-present-future-past spiral of interconnection (*whakapapa)*. Their fight continues in the seas off East Cape.

The *Milwayi, Ngapa, Wirntiku* and *Ngarrka* clans of *Warumungu* people of North West Australia fought a long battle to have their traditional lands returned under Native Title, only to be confronted by a Federal Government decision to locate the country’s proposed nuclear waste dump on it. Traditionally, decision making is a collective and iterative process for Aboriginal: a decision is based in consensus (Pers. comm. Des Rogers, Southern Arrernte). In this case, the Government and the Northern Land Council (NLC) chose to negotiate with just one family of the clan, and one legally designated Traditional Owner

(beyondnuclear, 2010). The remaining Traditional Owners, determined to preserve their grandparents’ and ancestors *country*⁠[[10]](#footnote-10) for future generations took the same action as *Apanui*. They went to the High Court. On the eve of the hearing the Minister withdrew, and announced the government would search for a new site.

While a victory for *Warunungu*, this was a pyrrhic victory for Aboriginal people. The new site, in South Australia, is situated on a rural landholding held in fee simple title. The owner will receive financial compensation for the land, and the local community funds for community development. Invisible to the state and the landowner are the Aboriginal people, the *Adnyamathanha* Traditional Owners who have a 50,000-year line of direct descent from the original settlers to *country* (Tobler et al., 2017). 2000 generations have learned from, share kinship ties with, emplaced their ancestors and future generations, and fulfilled custodial obligations to this place. 2000 generations have sung, danced, and listened to, this *county.* That the State structures deem it to now be owned by another in no way diminishes these ties, kinship connections, duties and responsibilities.

More recently is the matter of the Dakota Access Pipeline and the Lakota responsibilities to the Missouri River. The path of the pipeline crosses the Missouri because it has been diverted ‘from a predominantly white suburb to a predominantly Native reservation’ (Geiling, 2017). The response of the Standing Rock Lakota was the rallying cry ‘mní wičhóni’, water is life. In addition to sustaining life, water is sacred (LaPier, 2017). Lakota have spiritual, philosophical, law-based obligations and duties to maintain its purity in the present and for the future. After a site protest, President Obama signed a hold on construction. President Trump picked up a pen and reversed the process allowing construction to proceed. Court challenges, too, have failed (Geiling, 2017). During the process the protesters have been attacked by police (Levin, 2017a), the North Dakota government created new criminal penalties and strengthen existing protest penalties (Geiling, 2017), protesters were arrested and face lengthy prison terms (Levin, 2017b).

These cases provide a glimpse at Indigenous experience in settler states. They demonstrate that despite the settler states’ ongoing attempts to eliminate the cultures of the original nations of invaded lands, these cultures are alive and IEJ is for them a priority. They reveal the ongoing strength of culture and responsibilities to territories that predate the colonial invasion. Importantly, they show these cultures are not historical relics. They live in the present growing, developing and evolving. However, the DAPL protest and fight, like *Apanui’s* and *Warumungu* Traditional Owners’ and *Adnyamathanha* Traditional Owners’ are symbols of ongoing systemic oppression. In each case the state offered minimal (if any) consultation and no effective avenues for negotiated outcomes. In each state actions are legal within the dominant structures. While they transgress the laws of the traditional owners they simultaneously trample on Indigenous Peoples’ ontology and protocols of IEJ.

These cases share common themes. The next section expands on them. The emphasis is on the parameters Aboriginal and Māori philosophies describe. Strongly evoked in the discourse of the key protagonists in the case-studies above, are: a communitarianism which integrates nonhuman within the collective; attribution of subjectivity to environment/nature: and a sense of intergenerational justice that spans past present and future generations. Together they hold the key for cultural continuity and autonomy.

**3 Inseparability: Ontological foundations**

[The] representation of postcolonial Australia offers the symbolic appropriation of the sacred as a way that white Australia can seek to achieve the unattainable imperative of becoming Indigenous in order to erase its unbelonging. A sentiment of belonging is enhanced through white possession of the “Indigenous sacred” as well as Indigenous lands.

(Moreton-Robinson, 2015; 10)

Old Aboriginal people have often stated that White Australians ‘have no Dreaming’, that is, they have no collective spiritual identity, together with no true understanding of having a correct or ‘proper’ relationship with land/reality.

(Graham, 2008; 188)

The environment is always present in Māori and Aboriginal philosophy. Nature (e)merges with culture: culture (e)merges with nature. While some key features of Aboriginal and Māori ontologies are separated in this section, each is inseparable to the other within the source ontologies. Entanglement reverberates through each subsection marking the irrationality of the attempted disentanglement.

The project is pursued because, for instance, while Avner de Shalit’s communitarian theory of intergenerational justice (CTIJ) turns its back on individualism, it is unable to account for Māori conceptions of time nor Aboriginal conceptions of nonhuman subjectivity (de Shalit, 1995). So too, while the individualism of Derek Parfit is rejected by many, holism, place, omni-dimensional past-present-future and nonhuman dignity find not home in their theories (Parfit, 1984). While Simon Caney’s human rights (HR) based approach sweeps future generations into the HR dialogue he pays no head to ancestors (Caney, 2008). Edward Page’s IJ viewed through the lens of reciprocity can include communitarians and acknowledges obligations born(e) of inheritances from ancestors, however, it too objectifies nonhuman (Page, 2007). They are all, resolutely anthropocentric. Martha Nussbaum’s CA while extending subjectivity to some nonhuman sentient beings is individualistic and does not accommodate an entangled human and nonhuman world view (Nussbaum, 2007).

This section teases out aspects of ontology that are actually fibres of the same twine. It does so to underscore the ongoing role Liberally based justice theory has on unravelling the foundations of Indigenous Peoples’—past present future—wellbeing.

**3.1 Holism**

Because the ancestral spirits gave birth to humans, they share a common life force, which emphasizes the unity of humans with the earth rather than their separation. The ontological relationship occurs through the inter substantiation of ancestral beings, humans, and land; it is a form of embodiment. … As the descendants and reincarnations of these ancestral beings, Indigenous people derive their sense of belonging to country through and from them. … Colonization did not destroy this ontological relationship to country.

(Moreton-Robinson, 2015; 12)

…[t]here is one spirit common to all. Humans are part of nature. Humans can no more go out into nature than they can of out into their own bodies. Humans do not ‘make’ laws, rather they discover them. Human well-being depends on maintaining harmonious order in obedience to the laws that govern all of nature.

(Greene, 2011; 133)

In Aboriginal cultures nonhuman is not owned, dominated, tamed or turned to human advantage. It is respected, husbanded and supported as an integral whole and to ensure the wellbeing of human as one element of a total wellbeing (Bird Rose, 2012; Muecke, 2004). Within this understanding of people and environment obligations of justice extend to all living and non-living matter without an extensive privileging of human (Graham, 2008). The *Apanui* affidavit[[11]](#footnote-11) states:

‘The kapu (key philosophical message) conveyed by our ancients here is that we are part of an inter connected and interrelated whole, and like that whole, stand possessed of qualities sourced in Atua (spiritual powers). In terms of our relationships with the environment, they are governed by a tikanga (laws) of deep respect and spiritual bond’

(Gage, 2012; §18, 3).

Maintaining balance in the interrelationships is paramount.

The introductory quotations tell us that cultural identity and structure are deeply entwined in and with nonhuman Aboriginal ontologies. Animals, plants and landscape elements are interwoven with aspects of human behaviour and being. The wellbeing of human and cultural continuity are tied within the wellbeing and continuity of nonhuman. Everything has a dignity and integrity to be honoured and nurtured within the flow between the elements.

To decolonise IEJ requires us to dismantle the Western binary human-nature and accommodate a world view in which nonhuman has an inseparable relationship with human and which endures despite colonisation.[[12]](#footnote-12)

**3.2 Place-focus**

‘When our old people spoke of being the boss or owner for country, their meaning of being in ownership encompassed a relationship of love for ruwe, a relationship, which is ancient and continued forever; it cannot be traded or sold in exchange for beads or money. There can be no lawful agreement to sell the ruwe or its songs, for they are the law’ (Watson, 2015; 153).

*E rere kau mai te Awanui, Mai i te Kahui Maunga ki Tangaroa, Ko au te Awa, ko te Awa ko au.*

The Great River flows, From the Mountains to the Sea, I am the River, and the River is me.

Aboriginal clan stories ‘place’ clans from the beginning of time. Māori are ‘placed’ since landfall and disembarkation from named canoes. Māori expressions of attachment and inseparable connectivity with their *rohe* find voice in variants of Whanganui *iwi’s* expression of belonging quoted above.A foundation for IEJ, the good of nonhuman and human within home-territories is so commingled they are inseparable. This inseparability then demands equal respect for the whole. As Watson identifies place is not a fungible resource.

Both Māori and Aboriginal discourse focusses on enplacement rather than land as property to own, trade or convert to profit. People have relationships with landform, waterways, lakes, and seas—including spiritual relationships—around which story, myth and legend revolve, and from which Law arises (Bird Rose, 2000) (Watson, 2015). Culture, individual identity and place are closely associated (Bird Rose, 2000; 2012; Burarranga et al., 2012; Graham, 2008; Turia, 2012; Watson, 2002). Aileen Morton-Robinson argues,

‘Indigenous ontological relations to the land are incommensurate with those developed through capitalism, and they continue to unsettle white Australia’s sense of belonging, which is inextricably tied to white possession and power configured through the logic of capital and profound individual attachment’ (Moreton-Robinson, 2015; xxi).

Variously ancestors, gods, animals and spirits arise from the landforms, waterways, lakes, and seas that form the places of these cultures. All contribute to philosophy, social norms and behavioural practices. Rules of human and nonhuman engagement arise from the repeated patterns and interactions of all elements of landscape and environment. In upsetting the balance, the rules are broken. ‘Modern’ land management, extractive industries, mining and land re-formation, and toxic waste deposits all transgress place-based rules.

Relationships, obligations, and duties guide harmonious interactions between all things through all time. In this context the form that intergenerational justice takes is very different to a property-based intergenerational justice in which loss of landscape by one generation may be offset by the transference of financial assets to future generations. Here intergenerational obligations include maintaining wellbeing in the nonhuman. No-human is a subject not object: it cannot be owned or possessed.

Decolonised IEJ therefore turns away from fungible property, and rejects such constructs as cost benefit analysis[[13]](#footnote-13) towards a custodial ethic.

**3.3 Communitarianism**

Aboriginal people have a kinship system which extends into land; this system was and still is organised into clans. One’s first loyalty is to one’s own clan group. …. We believe that a person finds their individuality within the group. *To behave as if you are a discrete entity or a conscious isolate is to limit yourself to being an observer in an observed world.*

(Graham, 1999; 182)

Linked closely to holism and attachment to place, are Indigenous People’s communitarian life ways. Where a sense of self is constituted from a timeless continuum of being and relating to multiple others, including nonhuman others, actions are directed at securing good for that wider time-transcending community.

For Australian Aboriginal ‘family’ and ‘community’ can have wide-sweeping meaning. Bob Randall of the *Yankunytjatjara* people describes it this way.

‘Everything living is family. The trees are our family. The same with the kangaroos, emus and all the other animals that live with us. Growing up with the oldies, our parents, the grandparents, they always said we are connected to everything else and the proof of that is being alive. Being alive connects you to every other living things that’s around you. You’re spirit, you’re psychic, you’re physical, you’re mental, you’re all connected with other living forms. You’re never lost and you’re never alone. You’re one with everything else that is there. The oneness, the completeness of the oneness.’ (Lee, 2006)

As Randall describes himself⁠[[14]](#footnote-14) it is clear if we are to know the man we must equally understand the boundary between man, kin, time and place is a zone of fluid interchange, blending one into the other in an exchange of love and giving, care and guardianship.

Similarly, Māori concept *of whakapapa* describes the human descent relationships, from Gods to first explorers, to immediate ancestors, with spirit and non-human animal and plant kin (Durie, 2010; Mead, 2003; Roberts et al., 2004). Obligations and duties move between realms, time, spaces and form.

The cultures are dominated by webs of multiple interconnections, where the sense of self is enfolded in relationships with kin, animal, plant, land and skies, ancestors and future generations.

While the individual is the unitary being, it is strengthened and empowered by and in relationship to a broad and expansive web of other.

The reflective and questing Aboriginal mind,’ says Graham, ‘is always aligned with what everyone in the group wants, and what everyone wants is to understand ourselves in order to have and maintain harmonious relationships.

(Graham, 2008; 184)

And those relationships expand back and forward through time, through human and nonhuman, terrestrial and celestial, physical and spiritual.

IEJ is therefore, communitarian and within the community are enfolded ancestors and non-human and acknowledges benefits accrued in the present from the past[[15]](#footnote-15).

**3.4 Time**

Kaldowinyeri, or time long ago, in the beginning, is also the time now, and time in the future. The beginning, the present and the future encircle the place of Kaldowinyeri. The Nunga ‘I am’ is not like the other, dominant Western subject of being, which is represented by a straight line of thought — beginning, middle and ending. Instead, a Nunga process encircles; within there is a process that allows a person to become one and to begin again. This process is non-hierarchical and no-linear; rather, it takes the form of a cycle, of the continuity of being, becoming another cycle, nurntikki.

(Watson, 2015; 16)

In both Māori and Aboriginal ontology, past and future are in the present. Rather than relentlessly forward moving through a series of stops and new starts, being-in-time circles and spirals catching past and future in the moment in multiple tangles of beings and time (see Watson above). Stewart-Harawira describes how for Māori it as ‘impossible to conceive of the present and future as separate and distinct from the past, for the past is constitutive of the present, and, as such, is inherently reconstituted within the future’ (Stewart-Harawira, 2005; 42).

In explanation here is a very personal *whakapapa*⁠[[16]](#footnote-16). I am the descendant of: Polynesian Pacific explorers who settled Aotearoa and formed the iwi Ngāti Kahugnunu; one of the first Royal Academicians; Scottish immigrants to Ireland whose descendants then fled to Aotearoa; slave-owning cotton growers from British Guiana. These people, and many more besides, are my ancestors, and I am a member of their future generation. Simultaneously, I have a son and a daughter. In them live: the same ancestors; and me. And they are my future generation and the potential creators of even more future generations. And soon I and they will be ancestors.

The I that I am embodies additionally knowledges and ontologies derived from non-kin ancestors. That is, I have inherited more than just genetic material. I have inherited information acquired both consciously and subconsciously from the people with whom my ancestors and I engage. The creators of knowledge are at once ancestors and living in current thought and have the potential to continue to vibrate in the lives of future generations.

And there is an even older I. For in my bones are the traces of the minerals drawn from the volcanic soils of Taranaki in which my father grew our fruit and vegetables. Salt, iodine, assorted minerals from coastal winds are lodged in my lungs and skin.

My biome, which determines much of who I am, bears remnants of the cows, pigs, horses, cats, dogs, lizards and unknown creepy crawlies which have shared my homes and life. I am intimately entangled with and a continuation of all these components. The moment ‘now’, is at once past, present and future: was, is and always will be.

Here I am exploring ways of thinking time that can encompass all that basket of ancestry and future potential—genetic, intellectual, mythological, biological, mineralogical, ontological, physical and experiential. I am, in the Māori expression, walking into the future with the past and present in front of me (Ranginui Walker in

(McKay & Walmsley, 2003)).

Past-present-future-past must underscore a decolonised IEJ[[17]](#footnote-17).

**3.5 Subjectivity**

In ‘knowing’ their human selves to be fundamentally different from animals and the rest of the natural world, the Europeans ended up with their focus being centred on relationships between humans. This limited them; the focus resulted in a hegemony, a ‘master’ and ‘slave’ relationship with the natural world (and with others of their own kind).

(Watson, 2015; 148)

One of the key objectives of our current iwi management practices is the maintenance and protection of the mauri of the biodiversity in our tribal lands and seas. Tikanga associated with the tapu of the sea and the fish and food gathering areas are there to ensure that mauri of the areas are not nullified or desecrated due to improper activity and that the tapu also of this areas and species are cared for and with regards to tapu (as rules) are obeyed.

(Gage, 2012; §32, 5)

Nonhuman subjectivity is woven throughout the last four subsections. Where human and nonhuman are kin no hard distinction is drawn between the intrinsic being-ness of either. Care for and reciprocity between each occurs without distinction. Genealogies connect both. Nonhuman communicates if human will listen carefully (Burarranga et al., 2012). In contrast to the Western master slave relationship, described above by Irene Watson, there is no hierarchy between ‘things’ in the Māori and Aboriginal world view. That is, everything has subjectivity. Everything is a site of justice. Everything ‘always emerging, always unfolding’.

In the Māori ontology this is described through the embodiment of fundamental essences common to all things, but with species and sort specificity.

‘[M]aterial objects possess their own form of life, a mauri, which both distinguishes them (from other objects) and also unites them within a wider network of entities. …The nature of mauri—the vitality—of [an object] depends not only on the structure and form but also on the relationship of [it] with the wider environment. In an indigenous world objects that appear inanimate are not regarded as lifeless or static since they also possess an identity of their own and are part of a wider network. Belonging to that network creates a vibrant relationship that is at odds with the view that motionless objects lack life. … There are energy chains within, and dynamic relationships beyond. (Durie 2010; 243)

Two other components are integral to subjectivity within this Māori worldview, *tapu* and *mana—*potentiality to be and respect. As dignity and respect are conjoined within Western philosophy (Bendik-Keymer, 2014), so are *tapu* and *mana* bound together.

Practically this means that all things have subjectivity. The human obligation is to uphold the *mauri, tapu* and *mana* of all nonhuman. A forest must be respected as a dignity bearing whole. Human duties ensure use of the forest does not damage or impair that dignity. Building and developments should enhance their surroundings reflecting landforms’ life-force, potentiality and respect-worthiness.

Obligations and duties to IEJ stem from subjectivity in the environment per se as well as to future generations of humans.

**4 Blueprints: Generating Indigenous Agency—Expanding Liberal Scope**

…despite having been devalued, marginalized, disenfranchised and frequently submerged throughout the history of Western imperialism, traditional indigenous knowledge forms have a profound contribution to make towards an alternative ontology for a just global order.

(Stewart-Harawira, 2005; 32)

We have an obligation and a mandate to care for and nurture all things for the benefit of future generations still coming. We have an obligation to pass on country to the future. We cannot enter agreements that would destroy life and ruwe. Proposals to develop nuclear waste dumps, or to construct mines that will pollute the natural world, are artefacts of muldarbi deals’.

(Watson, 2015; 161)

Recognition justice requires that policies and programs must meet the standard of fairly considering and representing the cultures, values, and situations of the affected parties. (Whyte, 2011; 200)

Makere Stewart-Harawira identifies above an imminent moment. A moment in which recognition paves new relations of respect between peoples and the environment, past, present, future. Theories of IJ can only be just for Indigenous peoples if they ‘represent[..] the cultures and values and situations’ of those same Peoples as Kyle Powys Whyte suggests.

This paper has identified five values; holism, place-focus, communitarianism, past-in-present-in-future, and nonhuman subjectivity, that IJ needs to integrate to decolonise. Throughout the last section number of existing theories were briefly mentioned. While some may accommodate one or two of these values, none cover them all. Any understanding of IJ within these philosophies must include nonhuman as subject. Critically for Indigenous Peoples all IJ is inherently IEJ.

It is within the Human Rights (HR) and Capabilities Approach (CA)[[18]](#footnote-18) to justice that developments have begun to unfold which may signal the HR approach could provide a structure for decolonised IJ.

In Aotearoa, Bolivia and Ecuador nonhuman protections have been mandated using legal mechanisms of legal personhood and rights. Briefly outlined below these moves integrate the Indigenous ontologies of each nation within legal structures imported from the West.

**4.1 Personhood: past present future**

The Te Awa Tupua (Whanganui River Claims Settlement) Bill 2017

…declares that Te Awa Tupua is “an indivisible and living whole” and comprises the Whanganui River from the mountains to the sea, incorporating all its physical and metaphysical elements and is a legal person with all the rights, powers, duties and liabilities of a legal person.

(New Zealand Government, n.d.)

Similarly, Te Urewera-Tuhoe Bill, 2013, states:

Te Urewera will effectively own itself, in perpetuity’. However, as mute member of society ‘Te Urewera can only act through human agents’ who ‘will be obliged to serve Te Urewera and act in its interests, with a unity of purpose and the utmost good faith, rather than acting on behalf of the appointers.

(Te Urewera–Tūhoe Bill 2013; Part 1).

These geo-regions and their multiplicity of animate and inanimate beings, human, animal, plant and landform, are recognised as one being, a community of placed inter-related interests and dependencies. Challenging though this identity is to some (Arif, 2015), the Te Urewera-Tūhoe and Te Awa Tupua Bills confront the Western framing of time and the animate inanimate divide.

The ontological foundation is steeped in notions of twined care and belonging, neither iwi nor nonhuman is complete without the other, a connection without beginning or end, within which Māori, as *kaitiaki[[19]](#footnote-19)*, work for the benefit of all. This legislation embraces the (ec)ontology *of* Te Urewera, and Te Awa Tupua where time is already always past present future. The time of folded sandstone ranges and volcanic mountain slopes, of birds, insects and human kin, droplets of rain merging in river flows in which tumble grains of sand and ash on their way to coastal deposit to be pressed with other grains into new sandstone layers before they are lifted and folded…*in perpetuity*.

The guardians appointed to be the human representatives of the two regions are required to *think like* the nonhuman person they represent. The time they must represent includes elements that predate the formation of earth, through to the transitory lifespan of a drop of rain merging with the flow of a river.

**4.2 Rights for nature: dignity**

The various Rights for Mother Nature/Earth[[20]](#footnote-20) mechanisms draw heavily on indigenous ontologies from South America. Responsibilities and obligations extend to maintaining respect and reciprocal interconnection and dependence between human and nonhuman. In the Constitution of Ecuador and the Rights of Nature Act in Bolivia all citizens are charged with obligations to respect the wellbeing of nonhuman within the structure of rights. In so doing they harness the language and the intellectual structures of rights, respect and dignity as a normative grounding.

Rights protect human dignity. Human dignity however, within the Western cannon, has be used to separate human from nonhuman⁠[[21]](#footnote-21). It is also conceptualised in many ways—Doris Schroeder suggests five, there may be more (Schroeder, 2008; 2010). Nussbaum suggests, ‘Dignity is an intuitive notion that is by no means utterly clear. If it is used in isolation, as if it is completely self-evident, it can be used capriciously and inconsistently’ (Nussbaum, 2011). It is a flexible concept.

Although Nussbaum includes sentient animals within the CA, Krushil Watene suggest the CA in its current form is ‘is unable to include Māori values as they apply to nature’ (Watene, 2016). However, she also suggests that ‘the spiritual dimensions of the concepts of “mauri”, “mana” and “tapu” could be captured by a modified version of innate dignity’ (ibid. 294). As discussed in 3.5 *mauri* - life force, *tapu* - potentiality for being, and *mana* - respect-worthiness inhere in all things. They are species specific qualities of subjectivity. Taking these three concepts as the foundation, the concept of dignity can be expanded to represent subjectivity in all things in the following way:

P1 All humans, sentient and non-sentient life (living things) and non-living elements on earth are interlinked

P2 Living things and non-living elements have form specific integrity and life force

P3 Living things and non-living elements have a form specific flourishing and form specific capabilities/potential

P4 Non-living elements of the ecosystem contribute to the flourishing of living things

P5 It is clear when living things and non-living elements are not flourishing and/or cannot fulfil capabilities/potential

P6 When non-living elements are not flourishing, living things cannot flourish

P6 Dignity exists in freedom to access the necessary conditions to flourish and fulfil form specific capabilities/potential

C People have obligations and duties to uphold and respect the form specific dignity of living things, ecosystems and non-living things

Rights, says Simon Caney (referencing Joseph Raz on the same topic), indicate that ‘X has interests which are sufficiently weighty to impose obligations on others’ (Caney 2008; 538). Dignity is a weighty interest. Weighty enough to underscore the Universal Declaration of Human Rights[[22]](#footnote-22).

By using a Rights structure, Ecuador and Bolivia suggest human and nonhuman have a weighty interest in wellbeing and flourishing to protect their *inherent dignity*. This weighty interest is sufficient to place obligations on the living to protect nonhuman.

In such a form, intergenerational justice protects interconnected communities of human-nonhuman-place and entanglements of ancestors-living-future generations-ancestor.

**5 Conclusion**

Law is lived, sung, danced, painted, eaten and in the walking of ruwe. Law inheres in all things and is alive in all things, but these days it is an ongoing struggle to keep many things alive in the face of the attempts to bury our law ways as part of the colonial project.

(Watson, 2015; 12)

This paper has outlined some ontological ruptures between particularly Māori and Aboriginal people, settler state policies, and IJ theory. To ensure, in the settler states particularly, IJ theory avoids burying Indigenous Peoples ‘as part of the colonial project’ to which Watson refers above, it has identified the HR family of theories is a promising framework.

The flexibility of the HR framework to accommodate Indigenous ontologies is shown by Rights for Mother Nature/Earth precedents in South America, and creation of geo-regional legal personhood in Aotearoa[[23]](#footnote-23). Both operationalise indigenous ontologies within Western legal structures. These are communitarian rights; the totality of nonhuman is protected in conjunction with humanity. And as nonhuman is inseparable from human, IJ is automatically IEJ.

While generally IJ focuses on obligations to future people, if we understand time as circular or spiral where past-present-future recur together then obligations include passing to the future the inheritances we have from ancestors. This includes the environment from which life is comes.

Drawing from Māori concepts of *mauri*, *tapu* and *mana* this paper suggests the concept of dignity can be expanded to meet the entangled, non-hierarchical and kinship relationships of both Māori and Aboriginal peoples with nonhuman.

Using Caney’s formulation ‘X has interests which are sufficiently weighty to impose obligations on others’ (Caney, 2008; 538) we can claim where X is generations of all things and weighty interests are such things as dignity, life, health and subsistence, the living have obligations to protect human and nonhuman from damages that threatens their weighty interests. Moreover, we have a basis also for the obligations to indigenous justice where weighty interests include the right to maintain ‘customs, spirituality, traditions, procedures, practices and, in the cases where they exist, juridical systems or customs’ (United Nations, 2008).

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1. Usually identified as Aotearoa New Zealand, Australia, Canada and USA, the four states settled by colonial Britain in which the lands of the extant populations were forcibly taken, the Indigenous people experienced systematic genocide, and in which indigenous populations are now minorities forced to operate within the (often coercive) dominant political, legal and social paradigms, and suffer ongoing oppression and disadvantage. [↑](#footnote-ref-1)
2. It could be argued these are sites of neo-colonialism. The examples used here reflect many features of neocolonialism: they ‘[subsume] Aboriginal and Torres Strait Islander [and Māori and other] being under the commodity form of Anglo-Australian [/Aotearoa/USA] property law’ (Parrott, 2007), ignoring the intrinsic relationships Indigenous Peoples can have with nonhuman and lands, the spiritual content of land form and feature, the role of land in identity, fluidity of boundaries, etc. That is, Indigenous Peoples’ ontology is subsumed within the Anglo-Colonial epistemology and ontology. [↑](#footnote-ref-2)
3. Globally the number of people identifying as Indigenous is cited as 370,000-400,000 (see for instance (UnitedNations 2015, 003) and (Whyte, 2017). [↑](#footnote-ref-3)
4. Those people in Australia who trace their roots and heritage back to ancestors living on the continent ‘for all time’, choose different naming conventions. Some prefer ‘First Nations People’, some ‘Indigenous’, some ‘Aboriginal’ and others choose clan or regional naming conventions such as the widely used ‘Koori’ in the lower Eastern side of the continent. I had to choose one. Aboriginal is used at risk of offence to those for whom the term is a symbol of colonial oppression. However, within most legal and official documents the term Aboriginal and Torres Strait Islander (ATSI) is standard. Each clan, and original ‘Nation’ had and has distinct customs, stories, laws, language, and social structures. Territories around the continental perimeter were settled within a short 2,000-year period, and clans remained located custodians of those territories for something in the order of 50,000 years. There was/is no standard word used to describe the population of the continent within the languages of those custodians. [↑](#footnote-ref-4)
5. Here and throughout ‘Indigenous Peoples’ is used as a proper noun. I have, therefore, capitalised the first letters of the name. Where lower case first letters appear in a quotation, I have not adjusted them. [↑](#footnote-ref-5)
6. Although presented here a one ontology, there are many indigenous ontologies. The features highlighted are commonly expressed within Māori and Aboriginal philosophies, and also occur within other indigenous settings. That is not to say they represent an exhaustive list not the universe of indigenous philosophies. [↑](#footnote-ref-6)
7. The descriptor ‘ambicultural’ is widely used by Māori to describe their ability to ‘walk in two worlds’. That is, they have the ability to operate and move comfortably within the dominant political and social milieu and within Māori contexts, to observe protocol and uphold Māori law and procedure.

   It appears first to be used by Erik Schwimmer in 1968 (Schwimmer, 1968; 64). He identifies in a postscript its potential as a more appropriate and accurately descriptive word than ‘biculturalism’ which he had used within his essay in the edition.

   A Google Scholar search reveals it most often occurs now in relation particularly to management practices and Chinese Americans.

   I have not encountered its use by Aboriginal people in Australia, although it could apply equally well for them as it does for Māori.

   To Māori being ambicultural is a signifier of something beneficially additional to that which the dominant society has, in contrast to the deficit discourse that frequently frames indigenous identity. [↑](#footnote-ref-7)
8. Here I mean Indigenous Peoples’ ongoing, living, evolving but distinctly identifiable epistemologies and ontologies. Ones that have continued to exists and evolve within the bodies of knowledge and actions of the peoples. I am not talking here of the cultures of yore, but rather those that have evolve and developed since colonisation—much as the dominant culture has continued to evolve—and however, have remained identifiably distinct from those of the imported dominant culture. [↑](#footnote-ref-8)
9. See for instance the Yindjibarndi Native Title - http://www.nntt.gov.au/searchRegApps/NativeTitleRegisters/NNTR%20Extracts/WCD2005\_001/NNTRExtract\_WCD2005\_001.pdf, accessed 28 march 2017.

   See also the Te Urewera Bill which granted personhood status to a georegion and yet retains for the Crown mining rights (New Zealand Government, n.d.). [↑](#footnote-ref-9)
10. ‘Country’ is the ubiquitous Australian English term for Aboriginal home or clan territory. It means more than that though, country is a term that describes multidimensional spaces that carry history, ancestors, future generations, kinship relations with animals and plants, food, story, song, dance, obligations duties and the Law.

    Country is italicised to distinguish that it is the hold all, stand in word used as the universal form of different language terms, and to distinguish it from the standard English meaning of country. [↑](#footnote-ref-10)
11. Submitted in their High Court case against the Minister of Energy, CIV-2011-485-1897 [2012] NZHC 1422. [↑](#footnote-ref-11)
12. See for instance Locke on human dominance (Locke, 1997), and Kant, in Rosen and Habermas, on fungibility of ‘other’ (Habermas, 2010; Rosen, 2012). [↑](#footnote-ref-12)
13. See Stephen Gardiner, Nicholas Stern and Derek Parfit for analyses of Cost Benefit Analysis in the context of IJ. (Gardiner, 2011; Parfit, 1984; Stern, 2007). [↑](#footnote-ref-13)
14. In his biography Songman (Randall, 2003), and in the documentary Kanyini (Lee, 2006). [↑](#footnote-ref-14)
15. In this situation Derek Parfit’s non-identity problem has no traction (Parfit, 1984). Because community is the primary unit, it is the continuity of community that is critical to IEJ. The view is that community can achieve wellbeing then individuals will flourish. Avner de Shalit’s communitarian theory of intergenerational justice comes closer to meeting the needs of Māori and Aboriginal, however it does not include nonhuman as equal members of the community (de-Shalit, 1995). [↑](#footnote-ref-15)
16. Genealogy. [↑](#footnote-ref-16)
17. No theorist considers this. Edward Page however does suggest that obligations to ancestors, and that which we inherit from them, motivates obligations to give at least as much to future generations

    (Page, 2007). [↑](#footnote-ref-17)
18. Which Martha Nussbaum identifies as part of the Human Rights family of justice theories (Nussbaum, 2007). [↑](#footnote-ref-18)
19. Guardians. [↑](#footnote-ref-19)
20. Ecuador includes the Rights for Nature in the Constitution

    (Ecuador, 2008). Bolivia has a Rights of Mother Nature law (Bolivia, n.d.). The United Nations drafted The Universal Declaration of the Rights of Mother Earth in conjunction with the World People’s Conference on Climate Change and the Rights of Mother Earth in held in Cochabamba, Brazil on 22 April 2010 (United Nations, 2010). [↑](#footnote-ref-20)
21. For detailed discussions of the foundations of human dignity Michael Rosen provides a comprehensive primer (Rosen, 2012). [↑](#footnote-ref-21)
22. UDHR opens with: ‘[w]hereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world’ (United Nations General Assembly:1948). [↑](#footnote-ref-22)
23. Followed in March 2017 by India where the Ganges river and its main tributary the Yamuna have also been granted legal personhood status, see <https://www.theguardian.com/world/2017/mar/21/ganges-and-yamuna-rivers-granted-same-legal-rights-as-human-beings>, accessed 21 march 2017. [↑](#footnote-ref-23)