

Queering Whanganui River's Legal Status

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Abstract

This study discusses the political implications and consequences of subverting colonial frameworks and legal definitions of personhood to include more than human entities. I argue that the Whanganui River's legal recognition as a person recognizes the value of Māori worldviews; however, I am not convinced such recognition indicates an interruption of ongoing settler-colonialism. I authored this paper to facilitate conversations about decolonization and self-sovereignty that are mindful of the process without utilizing reformist politics.

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In 2017, New Zealand officials granted the Whanganui River, the third-longest waterway in Aotearoa/New Zealand legal personhood. Aotearoa is the Māori traditional endonym for New Zealand. New Zealand will be used in this paper to refer to the colonially constructed country, its legal system and government officials whereas Aotearoa will be used only in relationship to Indigeneity. The decision to use both names is not to suggest Māori people are outside of New Zealand but rather to indicate different perspectives and values in relation with land. The move to denote the Whanganui River as a legal person is rooted in traditional Māori ways of knowing and being. Iwi are the regional Māori tribes and Indigenous peoples of Aotearoa. The extension of personhood status to the Whanganui River is an existing example of how legal titles and legal systems are socially constructed institutions. Countries with legacies of colonialism like New Zealand reinforce their presence and control through socially constructed institutions, continuing to have authority over how person, property and land are defined. By using a Queer theoretical framework, we can begin to conceive of futures outside of colonial institutions and frameworks.

What's the Use? On the Uses of Use offers the reader a language of use that is as diverse and nuanced as embodied experiences of Queerness and thus unable to be fully captured here. However, Sara Ahmed's language of use is foundational in developing productive understandings of why extending the legal status of person to the Whanganui River is not an act of decolonization. Moreover, using Queer theory accomplishes a re-understanding of the limits of colonial legal systems and their uses.

Ahmed's argument frames my discussion of decolonization and Queerness, aiding in my exploration of why New Zealand's legal reorientation to incorporate aspects of Māori ontological, epistemological, and metaphysical histories, worldviews, and relationships is complex. I will address how and what the Whanganui River's newfound title is as well as its ability to

challenge but not interrupt existing colonial legal systems and conceptions of person and property. This discussion will include an interrogation of anthropocentrism as an oppressive reasoning model that is difficult to challenge within socially constructed and colonial institutions. Lastly, I will continue to elicit a conversation on the potential downfalls of the legal concept of personhood when it intends to protect non-human entities, especially concerning industries and climate change.

The word *Queer* has many connotations attached to it. Within this paper, I reject the use of Queer as a negative descriptive word. Queer instead will denote creativity, intervention, reimagination, and most crucially, interruption. *Queer use* can also foreground the unappreciated, changing the experience of use by subverting what it means to use something. For instance, Ahmed's description of *Queer use* suggests the Te Awa Tupua Act subverts the legal definition of a person; remaking the human experience through an altered legal concept of personhood. Used in this way, Queer demystifies the normalcy of legal statuses—often taken for granted by white, non-Indigenous, middle-class, cisgender, able-bodied, heterosexual members of the commonwealth—making visible legal titles' malleable when officially extended to the Whanganui River. The Te Awa Tupua becomes the legal name for the Whanganui River as an entity with personhood. Furthermore, when Ahmed's framework of Queer use is applied to the Te Awa Tupua Act, it suggests that the altered legal concept of personhood has a developed awareness of what is at stake, namely for the river itself and all the life that exists in constant relationship with the river. Indeed, the environment, non-human entities, and more than human animals have been positioned in a different light than they have previously been seen in before.

Ahmed characterizes *Queer uses* as "when things are used for a purpose other than the ones for which they were intended, still referencing the qualities of things; queer uses may linger on those qualities rendering them all the more lively." Framing the

Whanganui River's legal personhood through Ahmed's work draws attention to what qualities contributed to this legislation. In "The Whanganui River a legal person," Abigail Hutchison discusses the qualities taken into consideration when in 2014 the Whanganui iwis proposed a change in the river's legal status. This proposal reflected a "concern for the river's health and desire to preserve the resource for future generations." An intimate relationality to the river is implied through the Whanganui iwis' positionalities. Within this understanding, the river has qualities that, when threatened, challenges the river's integrity and future. If the river's integrity must be protected, it must possess "intrinsic value of its own," and such qualities denote the river as having a life separate but equal to humans and corporations that have similar legal standings. However, the intrinsic value of the river, namely because it is a river, is lost within the legal definition.

The Whanganui iwis have a proverb that articulates the relationship they have with the river, that is characterised by the truth that they are connected with the river; it is "I am the River. The River is me'." Whether through longstanding historical and reciprocal relationships with geographies, or distinct connections to place by nature, or an identification with the whole of creation, these features characterize the Māori worldview. Moreover, Māori iwis know the Whanganui river to be their living ancestor. An open system theory characterizes the Māori worldview. The perceivable differences or borders between a river and human are perforated to exchange knowledge, ceremony, communication, community, identity, and material physiological exchanges.

Open system theory relies on a language and understanding of systems as organizational structures around which we can understand and perceive dynamic relations. Therefore, the Whanganui River and the Whanganui iwis have distinct open systems that maintain a perpetual flow of inputs and outputs provided by their longstanding relationships. Open system theory

thus suggests that all pollution that the Whanganui River experiences will, in part, transfer to the Māori iwis through a receptive circulation or feedback system. This may account for the Māori iwis' ability to use their worldviews to elicit convicted emotional and validated responses from New Zealand officials. The relational argument by the Māori iwis has successfully granted the river legal status, invalidating the definition of personhood as separate from the environment. Subsequently, the Te Awa Tupua Act provides a way to orient humans as one system within a network of forever exchanging systems, concluding that the health of one depends on the health of all.

I am not suggesting that the relational linkages between the Whanganui River and settlers should be valued equally, as there is a longstanding system of mutual exchange between the Whanganui River and Māori iwis. However, one can understand the level of conviction from such an argument is deeply rooted in respect and reciprocity with the river, which exemplifies the river's agency and integrity. The Māori iwis' argument shifts the status quo of what a river can be and what will be the Whanganui River's appropriate use, as to not impose on the river's rights, integrity, and future. In the view of the fact that the Whanganui River attained personhood through the Māori iwis gifting New Zealand officials their worldviews, from the perspective of New Zealand officials, the river's legal status significantly depends on the people living in relation to it. Without the Whanganui iwis issuing the claim of personhood, there might never have been a move towards a New Zealand legal system which makes space for non-human entities. The Te Awa Tupua Act alludes to a perceived inherited responsibility that Māori iwis have to care and advocate for the environment in order for it to be respected.

The limitation of the Whanganui River's legal status of person is that it was only gained through the rights of those in a relationship with it. The "Deed of Settlement [that] comprises two

documents, Ruruku Whakatupua – Te Mana o Te Awa Tupua (‘Framework Document’), which contains the agreed terms of a new legal framework for the river, and Ruruku Whakatupua – Te Man o Te Iwi o Whanganui, which includes the other elements of the native title settlement” provide modes of operations that the Whanganui iwis provided on behalf of the river Whanganui River. The limitation reinscribes proper use of those with the legal status of personhood. The Framework Document instructs how and in which contexts one can use the river and protects private ownership of the pre-existing river. The Framework Document permits parts of the river to continue being used for development, farming, forestry, and run-off which challenges the river’s health and ecology by introducing fecal bacteria and fine sediment. The dual status of the Whanganui River as a person and property is not new, as we can compare it to the legal status of corporations. However, it begs the question of whether the Whanganui River’s legal status as both person and property actually (1) Queers the legal use of person and (2) effectively protects the river’s rights, integrity, and future.

The title settlement includes Whanganui River's right to own riverbeds that were previously Crown property. This move to return stolen land is directly connected to the river being brought back partly to a state of *self-ownership*. Self-ownership is a concept that Carole Pateman outlines, that opposes definitions of autonomy as independent. Pateman suggests *property in the person* is a more meaningful concept because it clarifies the divide between subject and object constituted within legal definitions of personhood. The ethical consequences of *property in the person* reveal that within personhood, some attributes are alienable. *Property in the person* would ensure the Whanganui River rights and jurisdiction over oneself while being honest about the duality of its personhood status. Property in the person, would provide legal personhood appointed with greater importance because of its sincerity. Property in the person grants the river distinct sovereignty separate from the state of

New Zealand and to occupy in the legal system as an entity with the ability for self-sovereignty. For instance, self-sovereignty for a river may include the right to bifurcate unrestricted. Self-sovereignty has a different connotation than property in the person because self-sovereignty recognizes one is right to alienate aspects of oneself—the ability to negotiate with other sovereign nations and to occupy and protect with the mindfulness of one’s relationships and responsibilities.

Hutchison suggests that the Whanganui River’s “new legal standing will afford it the rights, powers, duties, and liabilities of a legal person. However, what is less clear is what the nature of the rights affords to the river and whether they will be 'river specific' or take the form of rights extended to humans and corporations.” Nonetheless, I suggest that whether the rights attributed to the river are person or river specific through an open system theory, the Whanganui River owning itself in-parts provides a basis for the Whanganui iwis to move towards a post-colonial identity and reclaim core characteristics of themselves, including land-based knowledges, through the self-sovereignty of their ancestor.

Consequently, from The Framework Document, the property interests of the river will be skewed by the “rights in the river that will impose corresponding obligations on others to respect those new rights and will challenge already established interests in the river.” The Framework Document changes how one can form property interest while within the colonial framework of legal use. Notably, the newfound legal status of the Whanganui River reflects the notion that within existing social and political arrangements there is protection of the rights of personhood to ensure the continuation of an existing contract that preserves the rights of personhood as a legal concept. Simultaneously, The Framework Document also protects the interests of Genesis, a hydroelectric power who has legal rights to divert the river until 2039 for power generation. Using a contract

theory can help us understand how the contract is expanding to include the Whanganui River but with limitations.

Carole Pateman and Charles W. Mills view contracts as a mechanism that reinforces the domination of the "subjects of the contract" or contractors, who in this case study are the New Zealand officials that have the political power to determine governing legal systems and definitions of person and property. The other parties are known as "objects of the contract," who are instrumentalized to re-justify the contractors' domination and subjectivity. There are also "objects with respect to which the contract has implications." This tier includes those that are impacted by the governing legal contracts and, therefore, have access to the benefits attainable to the legal concepts of personhood. The Whanganui River's legal status may fall somewhere unclearly in both the "objects of the contract" and "object with respect to which the contract has implications" because the "subjects of the contract" ascribes the Whanganui River's legal status and re-establishes New Zealand's governmental officials ability to provide rights as well as revoke them. Additionally, even though the Whanganui River now falls within the legal definitions of person, the Whanganui River can not autonomously access the benefits which reside in those legal concepts. Understanding the contract's legal limitations aids in making sense of the power relationships that persist within social and political arrangements.

Legal use is different from everyday use. Legal use denotes a normative use for regulating interaction between humans. Everyday use denotes a tentative use that guides relationships, behaviours, and responses. Everyday use might be guided by legality or rather it may be outside of legal frameworks, creating Queer relations, behaviours, and responses. Legal and everyday uses are similar in that they orient the terms of use. They are different in that they orientate the contractor's subjectivity in different yet sometimes simultaneous ways. Ahmed would argue that legal systems are normative because all institutions are like "a well-worn garment: it has acquired the

shape of those who tend to wear it such that it is easier to wear if you have that shape.” Ahmed’s argument about the “well-worn garment” considers how normative uses by design are not as accessible to everyone and that their designs are informed by those who create and enforce them. For those who are initially left out from the design of colonial frameworks and legal systems, such as the Whanganui River, using its legal status is arduous. Contemporary, everyday use by the Māori iwis are historical examples of relationships, behaviours, and responses that were originally prior to and outside of colonial frameworks and institutions. Additionally, what happens to these pre-existing relationships, behaviours, and responses when use becomes normative?

At first, the use of personhood as a normative use of the legal system to identify and protect the rights of humans, corporations, and non-human entities—such as the case with the Whanganui River—appears to favour fixing “broken” legal and political systems that are permitting environmental ownership, degradation, and exploitation. However, under further consideration, the positivity of reparations is mitigated by a condition of appropriate use that must be followed. The Whanganui River’s uncertain everyday use status is bound to a normative legal use that protects ownership, degradation, and exploitation of a significant percentage of the river. The usefulness of The Framework Document lies in what it claims to protect. The shortcoming of the usefulness of the legal system is that it does not always effectively protect what it sought out. If Ahmed describes Queer use as “when we aim to shatter what has provided a container,” Queering the legal definition of personhood as well as the legal and political system by association should bring about effective impediments on the river’s use. A more encompassing confinement of normative use or proper use resembles a contradiction: is it Queer if it reproduces the traditional use of a legal system's normative function?

Anthropocentrism is the point of view that humans are the only or primary holders of moral standing. Anthropocentrism is human-centred or *anthropocentric*. The human-centeredness of colonial frameworks of social and political governing is killing the planet, Indigenous societies, the global South, and all life that sees their survival as inseparable from the planet's survival. On the one hand, decentering humans from the legal concept of person challenges human supremacy within legal systems designed to regulate and stabilize human interaction. Alternatively, it is a re-inscription of human knowledge and intelligence as superior, as the Whanganui River attained its legal status by association with Māori iwis' proposed to protect and preserve the river's integrity and futurity. The intra-human qualities thus are bolstered to attain a status of a legal person. Expanding legal concepts does not entirely challenge anthropocentrism, but it arguably subverts or reorients it, resembling Ahmed's conceptualization of Queer use.

In *Queer Phenomenology*, Sara Ahmed reminds the reader that it is important to question one's orientation as "what we can see in the first place depends on which way we are facing. What gets our attention depends too on which direction we are facing." It is also important to ask questions that appear out of sight due to the orientation one is provided. With that in mind, I want to acknowledge the importance of asking the questions as I have, about the actual limitations of colonial frameworks and socially constructed legal definitions of personhood to include rivers instead of protecting rivers because they have inherent value as rivers. Furthermore, what is lost when we use the term Queer to denote a change rather than an interruption? Interruption, specifically as an end that precedes a new beginning, rather than a continuation of the same only presented as different.

Ahmed's study of phenomenology, in short, sums up how we "perceive things insofar as they are near to us, insofar as we share a residence with them. Perception hence involves orientation; what is

perceived depends on where we are located, which gives us a certain take on things." My own orientation as a Queer, non-binary and non-Indigenous person has taught me to be skeptical of normalcy that is presented before me, including the legal victories of the Whanganui River's personhood status. My orientation towards the subject of the case study, the Whanganui River, is unfamiliar; thus, my understanding is more or less familiar only in loose relationships, through studying and thinking about decolonization in Canada. Additionally, from the orientation of the Whanganui iwis, their historical understanding of the world and the Whanganui River is being vindicated by New Zealand officials, a significant win in the move towards Indigenous sovereignty. Nevertheless, vindicating the Whanganui iwis' orientation towards the Whanganui River offers a better alternative than leaving the river situated at complete risk of further degradation and exploitation by industry and climate polluters.

In conclusion, the Whanganui River's legal status as a person is latent with contradictions and ambiguity. For the Māori iwis, the legal status of the river is undoubtedly a success within a history of separation from land and culture due to colonialism and ongoing settler-colonialism. I have shown through the use of open systems theory that the greatest success of the Whanganui River's legal status is a reconnection to self-sovereignty not only for the river itself, but also for the Whanganui iwis who gifted their traditional worldviews to New Zealand officials. Furthermore, I discussed the limitations of changing socially constructed legal status to be more inclusive. Consequences include reinscribing the "subjects of the contracts" authority to designate and provide legal protection to whom or what they find appropriate. For New Zealand officials this means remaining within a colonial framework. Additionally, reinscribing anthropocentrism into the legal system because the Whanganui River's legal status was only appointed through Māori iwis proposition to respect the river's integrity, and not because of the

orientation that nature is inherently deserving of respect. The New Zealand officials have show that their believes are the river is only inherently deserving of protection by association to humans. Because of these contradictions, I am skeptical if expanding the legal concept of personhood as well as using colonial legal systems to protect unconventional entities is an act of Queering. I suggest from my orientation, in order to Queer the use of the colonial frameworks and legal system, one must renounce them instead of reforming them.

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