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IF TREES COULD LOBBY THEY WOULD BE PEOPLE TOO: THE ENVIRONMENTAL AND CULTURAL BENEFITS OF GRANTING LEGAL PERSONALITY TO NATURE

M. Alexis Volner*

INTRODUCTION

In the United States the legal system is incredibly anthropocentric.¹ Unless recognized as a legal person, an entity has no standing or recognition in a court of law save for its monetary value to a human being. The property or person debate has had a number of highs and lows in the history of the United States. For instance, at one time, African Americans were considered property not people. This issue was not solved peacefully; instead the nation went to war to settle this dispute. Next, in *Citizen's United*,² political parties faced off to determine if corporations were legal people. The aftershocks of this decision are still being felt across the nation. The next battle royal to be fought is if the environment can be a person too.

In the Western culture today, the environment is perceived as a source for goods and resources. However, this perspective has resulted in serious environmental degradation and a real threat to our species' survival. To combat these problems there must be a radical shift in the Western culture's conception of nature. The first step in this shift is to recognize the environment as a legal person. The United States should grant legal personality to all publicly owned lands containing sites held sacred by Indigenous peoples and establish a collaborative board to manage the sites to recognize Indigenous cultural rights and encourage a paradigm shift in the Western culture; this in turn will result in a sustainable relationship with the environment.

Part I of this paper discusses the Te Urewera Act 2014, a piece of New Zealand, or Aotearoa,³ legislation that creatively solves land ownership and management issues arising from a history of colonization. Aotearoa was originally inhabited by the Māori people and eventually colonized by the British Empire. In the colonization process a document called the Treaty of Waitangi established a

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¹ *Anthropocentric*, MERRIAM-WEBSTER, (Oct. 23, 2017), <https://www.merriam-webster.com/dictionary/anthropocentric> (considering human beings as the most significant entity of the universe).

² See *Citizens United v. Fed. Election Comm'n*, 558 U.S. 310, (2010) (The government may not suppress political speech based on the speaker's corporate identity).

³ *Aotearoa*, MĀORI DICTIONARY, (Nov. 2, 2017), <http://maoridictionary.co.nz/search?idiom=&phrase=&proverb=&loan=&keyword=s=aotearoa&search> (Aotearoa is the Maori word for New Zealand. Throughout the paper Aotearoa will be used to reference New Zealand).

contentious relationship between the Indigenous peoples and the colonizers. Following years of disputes between the Crown and the Maori, the Crown established the Waitangi Tribunal to investigate and correct Treaty violations. The Te Urewera Act recognizes the Crown and Maori's shared interest in protecting and preserving Te Urewera.⁴ The Te Urewera Act grants legal personality to Te Urewera, a former national park and the ancestral home to the Tūhoe-Māori people.⁵

Part II of this paper explores the idea of granting legal personality to sacred sites to honor Indigenous peoples' cultural rights, and the environmental implications. Currently in the Western legal culture nature has no rights. As a result, the legal system cannot promote a sustainable relationship between the Western culture and the environment. Moreover, granting legal personality honors the current international discourse on cultural rights and the rights of Indigenous peoples.

Part III of this paper describes the origins and development of the Western economy and its inability to recognize the inherent value of the environment crucial to a sustainable relationship with nature. The Western legal system is a product of the Western culture and economy, which is equally incapable of achieving a sustainable relationship with the environment. The Western economy is focused on utility which perceives all natural assets as a vehicle to achieve human happiness. Within the Western economy all natural assets are valued in monetary terms and are free of moral or ethical concerns for nature. The inherent value of nature is not recognized and economic decisions concerning the environment are evaluated in solely monetary terms. As a result, the Western economy cannot achieve a sustainable relationship with the environment without aid.

Part IV of this paper explores the concept of sustainable development and Indigenous cultures' unique ability to develop Sustainable Development policies. Sustainable Development is a theory that aspires to maintain current ways of life without compromising the future generation's ability to do so as well. Sustainable Development relies on the recognition and expression of cultural rights within the Western culture and economy. Indigenous peoples, by virtue of their unique cosmologies and knowledge, are capable of conceiving and promoting Sustainable Development policies. Because Indigenous peoples traditionally have an ecological perspective they have an inherent understating of the value of nature, there is an emphasis on intergenerational equity and an intimate understanding of how renewable resources operate within their ancestral homes.

The paper goes on in Part V to discuss the benefits of collaboration between the Western culture and Indigenous cultures to manage sacred sites and implement Sustainable Development policies. This collaboration recognizes Indigenous cultural rights and promotes a paradigm shift within the Western culture to achieve a sustainable relationship with the environment. This model is applied in Part IV to the controversy surrounding Mauna Kea in Hawaii where Indigenous Hawaiians are struggling to have their cultural rights and environmental concerns addressed. This paper will demonstrate the benefits of granting legal personality to sacred sites and establishing a collaborative management board of Indigenous peoples and national governments.

⁴ Te Urewera Act 2014, Pub. Act 2014 No 51, pt 1(1), ss 3-5 (2014) (Throughout the paper the Government of New Zealand will be referenced to as "the Crown").

⁵ *Id.* at pt 1(3).

I. THE TE UREWERA ACT PROVIDES A MODEL TO PROMOTE A SUSTAINABLE RELATIONSHIP BETWEEN HUMAN BEINGS AND THE ENVIRONMENT.

The Te Urewera Act 2014 is a remarkable piece of legislation that granted Te Urewera, legal personality,⁶ and established a board comprised mainly of Indigenous peoples to oversee its management.⁷ The Act is notable in several ways. First, it vests interest in Te Urewera in Te Urewera itself – assigning the property all the rights and responsibilities assigned to a legal person.⁸ Second, the Act established a board to oversee the management of Te Urewera.⁹ This majority of this board will eventually be comprised of Indigenous peoples from Te Urewera.¹⁰ Third, the legislation recognizes traditional Māori cosmology¹¹, and compels the board to make decisions for Te Urewera based on these principles.¹² This legislation is based on recommendations from the Waitangi Tribunal to remedy Crown violations of the Treaty of Waitangi against the Tūhoe people.

A. *The Treaty of Waitangi and the Waitangi Tribunal*

Prior to 1840, contact between the Europeans and the Māori was limited to whalers, sealers and missionaries.¹³ The idea of Māori sovereignty was initially encouraged by the Crown, but was replaced with an initiative to take control of Aotera¹⁴ in 1839. That year the Crown sent an envoy to coordinate the Māori's surrender of sovereignty.¹⁵ On February 6, 1840, forty-three Māori chiefs signed the Treaty of Waitangi.¹⁶

The Treaty was written in English and translated into Māori.¹⁷ Unfortunately, the translations were imprecise and have caused endless confusion between the Māori and the Crown.¹⁸ In the English version of the Treaty, the chiefs transferred “absolutely and without reservation, all the rights and powers of sovereignty”¹⁹ to the British Crown.²⁰ In the Māori version, the chiefs agreed to transfer “absolutely to the Queen of England forever the Governance of their lands.”²¹ The Māori chiefs did not equate “governance” with “sovereignty.”²² Moreover, the second clause guaranteed that the chiefs would retain “*tino*

⁶ *Id.* at pt 1(3) s 12.

⁷ *Id.* at pt 2(1) ss 16-17.

⁸ *Id.* at pt 1(3) s 12.

⁹ *Id.* at pt 2(1) ss 16-17.

¹⁰ *Id.* at pt 2(1) s 21.

¹¹ *Cosmology*, MERRIAM-WEBSTER, (Oct. 29, 2017), <https://www.merriam-webster.com/dictionary/cosmology> (a theory or doctrine describing the natural order of the universe).

¹² Te Urewera Act, *supra* note 4, at s 18(1) -(3).

¹³ DORA ALVES, THE MAORI AND THE CROWN, 11-15 (1999).

¹⁴ Ranginui J. Walker, *Maori Sovereignty, Colonial and Post-Colonial Discourses*, in INDIGENOUS PEOPLES' RIGHTS 108, 112 (Paul Havemann ed., 1999).

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ Treaty of Waitangi, Art. 1 (1840), <https://nzhistory.govt.nz/politics/treaty/read-the-treaty/english-text>.

²⁰ Walker, *supra* note 14, at 112.

²¹ Treaty of Waitangi, Art. 1 (1840), <https://nzhistory.govt.nz/politics/treaty/read-the-Treaty/differences-between-the-texts>.

²² Walker, *supra* note 14, at 112.

rangatiratanga,²³ which the chiefs understood as absolute chieftainship and sovereignty and was incompatible with the first clause of the Treaty.²⁴

This poor translation has resulted in nearly 200 years of conflict between the Māori and Pakeha.²⁵ It was not until the 1970s that the Māori put pressure on the Crown to recognize and honor the promises made in the Treaty.²⁶ In 1975 the Crown established the Waitangi Tribunal, an independent body to investigate claims of Treaty violations and make suggestions to the Crown to remedy the violations.²⁷ It is from a recommendation from this Tribunal that the Te Urewera Act was conceived and eventually implemented.

B. *Te Urewera and the Tūhoe*

Te Urewera, formerly Te Urewera National Park, is approximately 515,638 acres of heavily forested, mountainous terrain.²⁸ The property is located in the remote northeast corner of the north island of Aotearoa.²⁹ Te Urewera is also the ancestral home to the Ngāi Tūhoe – the tribe that eventually brought a claim to the Waitangi Tribunal regarding the property.³⁰

The traditional people of Te Urewera are the Ngāi Tūhoe.³¹ The name Tūhoe represents an iwi, a confederation of hapū.³² Hapū are individual tribes made up of whānau, or extended family groups.³³ The Tūhoe people trace their connection to Te Urewera to time in immemorial.³⁴ Due to the challenging landscape, the Tūhoe lived in river valleys and small forest clearing, relying on the dense forest for all of their needs.³⁵ The Tūhoe were horticulturists and moved seasonally, traveling around Te Urewera.³⁶ Because of their relative isolation, the Tūhoe had a unique experience with the Crown.

Until the 1860s, the Tūhoe were relatively undisturbed by early encounters with the Crown.³⁷ Unfortunately, hostilities between the Tūhoe and the Crown broke out resulting in the confiscation of 14,000 acres of Te Urewera in 1866.³⁸ Hostilities continued in various forms³⁹ until 1896 when Parliament passed the Urewera

²³ *Id.* at xvi (Tito rangatiratanga is translated to “absolute chieftainship, sovereignty”).

²⁴ *Id.* at 113.

²⁵ *Id.* at xv, (Pakeha is the Maori word used to describe New Zealanders of European descent).

²⁶ Alves, *supra* note 13, at 57.

²⁷ *Id.* at 57-58

²⁸ Te Urewera Act, *supra* note 4, at sch 1 pt 1.

²⁹ Te Urewera, PARKS & RECREATION, (Nov. 14, 2017)

<http://www.doc.govt.nz/parks-and-recreation/places-to-go/east-coast/places/te-urewera/>.

³⁰ Catherine J. Iornes Magallanes, *Maori Cultural Rights in New Zealand: Protecting the Cosmology that Protects the Environment*, 21:2 *Widener L. Rev.* 273, 318 (2015).

³¹ *Id.*

³² Walker, *supra* note 14, at 109.

³³ *Id.*

³⁴ Iornes Magallanes, *supra* note 30, at 318.

³⁵ Elsdon Best, *Tuhoe The Children of the Mist*, 22 *J. Polynesian Society* 149, 157 (1913).

³⁶ *Id.*

³⁷ WAITANGI TRIBUNAL REPORT, TE UREWERA PRE-PUBLICATION PART I, WAI 894, at 259 (2009).

³⁸ *Id.* at 155.

³⁹ See WAITANGI TRIBUNAL REPORT, TE UREWERA PRE-PUBLICATION PART II, WAI 894 (2010) (From 1869 to 1872 the Crown and the Tūhoe were at war. In 1872 a peace agreement was reached which granted the Tūhoe sovereignty over Te Urewera. The Crown immediately began undermining this agreement and purchasing lands surrounding Te Urewera. Fearful of further confiscations the Tūhoe

District Native Reserve Act (“UDNR Act”).⁴⁰ The UDNR Act established 656,000 acres as the Urewera Reserve and guaranteed Tūhoe autonomy over Te Urewera.⁴¹ The Crown continued to encroach on the UDNR Act, purchasing and confiscating lands within the Reserve under a consolidation scheme.⁴² Finding the land unsuitable for Pakeha settlement, the Crown established the Te Urewera National Park in 1954 and expanded the park in 1957.⁴³ The park consisted of 525,526 acres of UDNR Act land illegally confiscated or purchased from the Tūhoe.⁴⁴

The creation of a national park may appear in the best interest of the environment; however, the conservation policies employed by national governments do not promote a sustainable relationship between humans and the environment and are harmful to Indigenous populations.⁴⁵ Most of these protected areas employ strict preservation policies and limit the use of these properties to human recreation.⁴⁶ These protected areas cover nearly 12% of the planet’s land mass.⁴⁷ Moreover, most of these properties are claimed as ancestral homes to Indigenous peoples.⁴⁸ The strict preservation model employed by most national governments is a remnant of colonialism and is not in line with current international discourse on Indigenous peoples’ cultural rights.⁴⁹ Strict preservation frequently displaces Indigenous peoples by removing them from conservation areas.⁵⁰ In addition to displacing Indigenous peoples, strict preservation models prevent Indigenous peoples from practicing their traditional way of life, and destroy Indigenous culture.⁵¹ Moreover, strict preservation also prevents any productive use of the land. For these reasons, there has been a slow shift away from strict conservation towards sustainable use of natural environments. This paradigm shift promotes a sustainable relationship with the environment and is in line with current international policies on cultural rights. The shift has been a greater recognition of cultural rights and Indigenous peoples’ relationship with the environment. The international trend has been to recognize cultural rights, and allow Indigenous peoples to “own, manage and control their lands and territories and to benefit from the application of their knowledge.”⁵² However, the greatest challenge to recognizing cultural rights and sustainable use of the environment is the inability to transfer control of these properties to Indigenous people.⁵³

Like in Aotearoa, many countries have dispossessed Indigenous peoples of their traditional homes and subsequently turned the properties into preservation areas.⁵⁴ Most of these takings occurred during colonization in the 17th and 18th

sought another agreement to preserve Te Urewera. The agreement resulted in the Urewera District Native Reserve Act 1896).

⁴⁰ *Id.* at 361

⁴¹ *Id.*

⁴² WAITANGI TRIBUNAL REPORT, WAITANGI TRIBUNAL REPORT, TE UREWERA PRE-PUBLICATION PART III, WAI 894, at 16-18 (2012).

⁴³ *Id.* at 557

⁴⁴ *Id.*

⁴⁵ Marcus Colchester, *Conservation Policy and Indigenous Peoples*, 7 *Envtl. Sci. & Pol’y* 145, 145-151 (2004).

⁴⁶ *Id.* at 145.

⁴⁷ *Id.* at 151.

⁴⁸ *Id.*

⁴⁹ *Id.* at 145.

⁵⁰ *Id.* at 146-147

⁵¹ *Id.*

⁵² *Id.* at 148.

⁵³ See Colchester, *supra* note 45 at 150.

⁵⁴ *Id.* at 145-147.

century.⁵⁵ At the time, the properties were taken from native title and title was given to settlers, colonizers, and newly formed governments.⁵⁶ Because the original title has been extinguished and the property is held in fee simple by another, it is near impossible to return property taken from Indigenous people through a Western property regime.

The Te Urewera Act is one of the most recent pieces of legislation attempting to combat colonial taking of land title and, later, conservation policies and employs a creative legal solution to return management and use of traditional properties to Indigenous peoples by granting Te Urewera legal personality.

II. GRANTING LEGAL PERSONALITY BETTER PROTECTS THE ENVIRONMENT AND PROMOTES A SUSTAINABLE RELATIONSHIP BETWEEN HUMAN BEINGS AND THE ENVIRONMENT.

Granting legal personality to specific sacred sites encourages a sustainable relationship between human beings and the environment and is a creative solution to recognizing Indigenous peoples' cultural rights. Legal personality is a legal fiction created to establish an entity as a holder of legal rights and duties.⁵⁷ Granting legal personality to non-humans is not novel and has been enacted internationally⁵⁸ and in the United States.⁵⁹

Granting legal personality to the environment is in line with current international attitudes regarding cultural rights for several reasons. First, the recognition of the environment as a person coincides with most Indigenous peoples' conception of the environment. Many Indigenous cultures recognize the environment as a dynamic actor in the world.⁶⁰ Legally recognizing the environment as its own entity with rights is a recognition of Indigenous cosmologies and traditional understandings within the Western legal tradition. Second, granting legal personality and allowing a board of Indigenous people to manage the property honors traditional concepts of land ownership. Many Indigenous peoples reject the concept that land can be owned by an individual.⁶¹ Most understand that the environment is beyond ownership and is cared for by the community.⁶² Creating a board to manage properties honors traditional Indigenous culture. Third, this solution is politically realistic. In most places, including the United States, transferring publicly owned property to an individual or group is near impossible

⁵⁵ Stuart Banner, *Transitions between Property Regimes*, 31 J. Legal Stud. S359, S366 (2002).

⁵⁶ *Id.* at S366-67

⁵⁷ Christopher D. Stone, *Should Trees Have Standing?: Law, Morality, and the Environment* 4 (3d ed. 2010).

⁵⁸ See Iornes Magallanes, *supra* note 30 (New Zealand has granted legal personality to Te Urewera and Whanganui River.); Maria Akchirin, *Constructing the Rights of Nature: Constitutional Reform, Mobilization, and Environmental Protection in Ecuador*, 40 L. & Soc'y Inquiry 937, 937-968 (2015) (Ecuador rewrote its constitution from 2007-2008. In its new constitution, Ecuador explicitly stated nature's right under Ecuador law).

⁵⁹ Michael P. Mueller, Kemily K. Pattillo, Debra B. Mitchell & Rachel A. Luther, *Lessons from the Tree that Owns Itself*, 6 Int'l of Env'tl. & Sci Educ. 292, 2910294 (2011). Interestingly, a white oak in Athens, Georgia, is regarded by locals as owning itself after it was deeded to itself; See Stone, *supra* note 57, Currently in the United States, corporations, trusts, joint ventures, and municipalities are all recognized as legal persons.

⁶⁰ See generally John Grimm, *Indigenous Traditions and Ecology: The Interbeing of Cosmology and Community* (2001).

⁶¹ *Id.*

⁶² *Id.*

for a bevy of political reasons.⁶³ However, vesting legal personality in a non-human is already used in the United States. Currently, corporations, trusts, joint ventures, and municipalities are all recognized as legal persons.⁶⁴ Vesting legal personality in a property and establishing a board will honor traditional conceptions of the environment within a Western framework.

Moreover, granting legal personality to the environment is a benefit to the environment and promotes a sustainable relationship with the environment for a number of reasons. First, granting sites held sacred by Indigenous peoples provides continuities and guaranteed protections for the environment and is less vulnerable to changing politics.⁶⁵ Like rights held by human beings, rights for the environment would be inalienable and not subject to the whims of policy makers. Second, the environment would be given its own identity.⁶⁶ Giving the environment an identity is a first step in achieving a paradigm shift in the United States that recognizes the innate value in nature. Third, granting sacred sites legal personality allows these sites to have standing in a court of law.⁶⁷ Standing in a court of law is an invaluable benefit to sacred sites and the environment in general.

Currently in the United States, sacred sites and the environment are without rights.⁶⁸ As such, the environment itself has no standing in a court of law.⁶⁹ This lack of standing is problematic because there is no way to challenge an affront to the environment, save for a human being demonstrating an invasion of his or her rights.⁷⁰ For example, if a river is being polluted the only way to challenge the polluter is for an individual situated downstream to demonstrate that the pollution is compromising his or her property interest.⁷¹ Moreover, the burden of proof is placed on the plaintiff which creates a great challenge for a favorable verdict.⁷² Unfortunately, the harm done to the river itself is never considered, and may never be remedied even if a plaintiff is successful.⁷³

Additionally, the way that cases involving environmental degradation are decided demonstrates the benefits of granting nature rights. The law protects the rights of property owners and, for environmental issues, the rights of all property owners are balanced against one another.⁷⁴ In the example of the river, courts balance the economic hardships for the polluter against the economic interests in the dependent community downstream.⁷⁵ The harm done to the river, and its ecosystems are not included in the balancing test.⁷⁶ Without rights, the judiciary has no way to consider the river in the balancing equation.⁷⁷

Finally, granting legal personality to nature will allow the environment to benefit from a favorable judgement. Currently, a successful plaintiff will be awarded

⁶³ Issues surrounding the Dakota Access Pipeline are the most visible and current demonstration of conflict between Indigenous peoples and the United States government over land rights.

⁶⁴ Stone, *supra* note 57, at 1.

⁶⁵ Tony Angelo & Elisabeth Perham, *Let Te Reo Speak: Granting legal Personality to Te Reo Maori*, 46 *Vict. U. Wellington L. Rev.* 1081, 1093-1097 (2015) (discussing the value of establishing legal personality to a language).

⁶⁶ *Id.* at 1096.

⁶⁷ Stone, *supra* note 51, at 6.

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ *Id.* at 5.

⁷¹ *Id.*

⁷² *Id.*

⁷³ *Id.*

⁷⁴ *Id.* at 6.

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ *Id.*

monetary damages to make them “whole” following an injury. The damages are evaluated in relation to the individual bringing the suit and not the damages to the river itself.⁷⁸ Restoring the river to “whole” would likely require a higher award of damages.⁷⁹ A successful human plaintiff may or may not use a judgement for the benefit of the river. Granting legal personality to the environment would require that the law evaluate damages in relation to the environment itself, which would result in greater awards to guarantee the repair of the environment and to discourage potential polluters.⁸⁰

As demonstrated above, the law is anthropocentric which makes rights for the environment a critical step in achieving a sustainable relationship with nature. Under the current paradigm the law recognizes nature as existing for the benefit of humans.⁸¹ The wellbeing of humanity is intimately linked to the health of the environment.⁸² Achieving a legal status that recognizes the environment as equal to humanity is for the benefit of both human beings and the environment. Granting legal personality to nature is a first step in changing environmental consciousness.⁸³ Establishing rights for the environment compels individuals to understand the environment as more than property and perceive the intrinsic value of nature.⁸⁴ Recognition of nature’s rights coincides with the Western perspective and traditional Indigenous conceptualizations of the environment.

III. THE WESTERN PERSPECTIVE FAILS TO PROMOTE A SUSTAINABLE RELATIONSHIP WITH THE ENVIRONMENT.

Current economic systems and environmental policies are failing to achieve a sustainable relationship with the environment.⁸⁵ Scientists lament that the oceans are warming and contributing to the “greenhouse effect,” that the polar ice caps are melting and threatening coastal communities, and that portions of the atmosphere are being destroyed, leaving the earth vulnerable to dangerous radiation from space.⁸⁶ These failures stem from the dominant economic model developed from a Western perspective.⁸⁷ Policies based solely from the Western perspective fail to achieve a sustainable relationship with the environment because Western perspective policies perceives nature as a resource and cannot recognize nature’s intrinsic value.⁸⁸

The Western perspective fails to recognize the innate value in nature because it is founded in Judeo-Christian values, resulting in an anthropocentric outlook and a mechanistic view of nature.⁸⁹ The resulting economy is anathema to a sustainable relationship between humanity and the environment.

Much of the world has come into a Western economy by virtue of European colonization. Europeans brought the Judeo-Christian perspective to the rest of the

⁷⁸ *Id.*

⁷⁹ *Id.* (Discussing the cost of making a forest whole would include the cost of reseeded, repairing watersheds, and restocking wildlife).

⁸⁰ *Id.*

⁸¹ *Id.* at 23-24.

⁸² *Id.*

⁸³ *Id.* at 27

⁸⁴ *Id.* at 1-6

⁸⁵ *Id.* at 25

⁸⁶ *Id.*

⁸⁷ See generally Ulrich Klein, *Belief-Views on Nature - Western Environmental Ethics and Maori World Views*, 4 N.Z. J. Env'tl. L. 81, (2000).

⁸⁸ See John Martin Gillroy, *A Practical Concept of Nature's Intrinsic Value in The Moral Austerity of Environmental Decision Making*, 72 (John Martin Gillroy & Joe Bowersox eds., 2002).

⁸⁹ Klein, *supra* note 81, at 83-90.

world in their search for natural resources. The Judeo-Christian perspective generally has a negative view of nature.⁹⁰ This negative perspective is based on three beliefs established in the Old Testament. First, God is clearly separated from, and superior to nature.⁹¹ Second, human beings are separated from nature.⁹² Third, humankind is superior to and dominant over the environment.⁹³ The Old Testament clearly establishes an anthropocentric perspective on the world.⁹⁴

The anthropocentric cosmology has encouraged the development of science.⁹⁵ Because human beings are dominant over nature, and nature is not sacred, science and experimentation could be conducted with no moral qualms.⁹⁶ The development of science has been both a blessing and a curse for the environment.⁹⁷ Developments have made the overexploitation of natural resources infinitely easier, however these same developments will likely be part of the solution to the current environmental crisis.⁹⁸ The Western perspective places an emphasis on science and the scientific method which relies on a mechanistic view of nature.⁹⁹

A mechanistic perspective comprehends the environment as a closed system that operates independent of any other system or factor.¹⁰⁰ The mechanistic view rejects any abstract, symbolic, or spiritual view of reality. Moreover, this concept is problematic to achieving a sustainable relationship because it emphasizes the human capacity to solve environmental problems instead of emphasizing humanity's ability to avoid environmental problems all together.¹⁰¹ The mechanistic perspective is founded on three assumptions. First, reality is objective.¹⁰² Second, a general law governs the system and the system can be mathematically calculated.¹⁰³ Third, rational observation is the only way to understand the system.¹⁰⁴ The understanding that human beings are above nature, capable of manipulating any system has resulted in an economic model that regards the environment as a resource to be exploited and fails to recognize the intimate connection between humanity and our environment.¹⁰⁵

The Western economy reflects this understanding of humanity's relationship within the environment and places an emphasis on utility.¹⁰⁶ Utility dictates that the economic model provides the greatest benefits for the greatest number of people.¹⁰⁷ This translates to an economy that seeks to maximize human

⁹⁰ *Id.* at 83

⁹¹ *Id.* at 85-86; In Exodus, Moses articulates that there is only one God.

⁹² Klein, *supra* note 87, at 83-90; (God creates Adam and Eve and places them both in paradise, separate from nature).

⁹³ Klein, *supra* note 87, at 85-86; (In the creation story God told his creations to "Be fruitful and multiply, and fill the earth, and subdue it; and rule over the fish of the sea and over the birds of the sky and over every living thing that moves on the earth.")

⁹⁴ Klein, *supra* note 81, at 86.

⁹⁵ *Id.* at 89.

⁹⁶ *Id.* at 90.

⁹⁷ *Id.*

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ *Id.* at 91.

¹⁰² *Id.* at 91.

¹⁰³ *Id.*

¹⁰⁴ *Id.*

¹⁰⁵ *Id.* at 97

¹⁰⁶ Klein, *supra* note 87, at 97; David W. Pearce & Jeremy J. Warford, *World Without End: Economics, Environment, and Sustainable Development* 42 (1993).

¹⁰⁷ Klein, *supra* note 87, at 97. *See generally* Pearce, *supra* note 106; Wilfred Beckerman & Joanna Pasek, *Justice, Posterity, and the Environment* (2001).

happiness.¹⁰⁸ While wonderful in theory, this focus is incompatible with a sustainable relationship with the environment. The Western economy is limited to evaluating all assets in monetary terms, and focuses on achieving short term human wants.¹⁰⁹ Under this model, nature can only be valued in monetary terms for its ability to accommodate and provide for human happiness.¹¹⁰ The Western perspective operates on the understanding that the environment is a tool for humans to exploit to achieve happiness.¹¹¹

As the environment is only valued monetarily in the Western economy, economic decisions affecting the environment are devoid of any ethical or moral consideration.¹¹² The Western economy is designed to efficiently convert natural resources into consumable goods to achieve human happiness.¹¹³ To sustain the Western economic model, property must be privately owned and easily alienable, and there must be consistent economic growth.¹¹⁴

Privatization of property inhibits the development of a sustainable relationship with the environment. It is difficult to achieve a cohesive sustainable development plan for private properties. Individual owners may exploit resources on their property to its fullest potential with little concern for the environment, other humans, or future landowners.¹¹⁵ Moreover, it is not in line with recognition of cultural rights. Equally problematic, some natural assets cannot be privatized, and as a result are not valued in the current economy.¹¹⁶ For example, there is no way to monetarily evaluate fresh air or clean water. These are natural assets that need to be enjoyed by everyone and cannot be owned by anyone.¹¹⁷ The Western economy is incapable of recognizing these interests and, as a result, the environment is not valued as highly as economic growth.

The need for limitless economic growth is also a danger to the environment. However, steady economic growth in a sustainable way is possible, as long as resources are managed carefully, and there is a greater emphasis on renewable resources.¹¹⁸ Nearly all natural assets are renewable, but the challenge is implementing sustainable management policies to ensure regeneration.¹¹⁹ Economists, environmentalists, world leaders, and others have worked to create a framework for managing the environment while achieving Western economic goals. These efforts have had limited success in developing *actual* plans and strategies to achieve a sustainable relationship with the environment.

IV. INDIGENOUS PEOPLES ARE UNIQUELY EQUIPPED TO DEVELOP AND IMPLEMENT SUSTAINABLE DEVELOPMENT POLICIES BY VIRTUE OF THEIR UNIQUE COSMOLOGIES AND ECONOMIES.

Sustainable Development is a framework that may be utilized more efficiently and effectively by Indigenous peoples to manage natural resources. Post-colonial international dialogue has produced an interest in Indigenous peoples' cultural rights. These cultural rights correspond with Indigenous peoples'

¹⁰⁸ Klein, *supra* note 81, at 97.

¹⁰⁹ *Id.* at 98.

¹¹⁰ *Id.* at 97

¹¹¹ *Id.*

¹¹² *Id.* at 98

¹¹³ See generally Klein, *supra* note 87, at 98.

¹¹⁴ Klein, *supra* note 87, at 100-102.

¹¹⁵ *Id.*

¹¹⁶ Pearce, *supra* note 106, at 45-48.

¹¹⁷ *Id.*

¹¹⁸ *Id.*

¹¹⁹ *Id.*

cosmologies and the Sustainable Development framework, as discussed in this section.

A. *Sustainable Development*

Sustainable Development is one framework advocated by the United Nations World Commission on Environment and Development in the Brundtland report published in 1987.¹²⁰ The basic philosophy of Sustainable Development is “environmental quality and the general services performed by natural environments are far more important than past development planning and economic management assumed.”¹²¹ The oft repeated definition of Sustainable Development is development that “meets the needs of the present without compromising the ability of future generations to meet their own needs.”¹²² Sustainable Development is not static, but is a process of “changing the quality of growth, meeting essential needs, merging the environment and economics in decision making”¹²³ to ensure “optimal living conditions for the present generation without denying similar opportunities to future generations.”¹²⁴

Unfortunately, this framework has had limited acceptance and success in the Western economy. Much of the criticism is that the definition is too vague, it lacks any theoretical framework, and it is best left as aspirational.¹²⁵ However, recognition of cultural rights may provide guides and a framework to overcome these criticisms.

B. *Cultural Rights and Sustainable Development*

The post-colonial trend has been to recognize the cultural rights of Indigenous peoples.¹²⁶ The international community has placed emphasis on preserving traditional lifeways and allowing Indigenous peoples to express their culture freely.¹²⁷ Culture is “the whole complex of distinctive spiritual, material, intellectual and emotional features that characterize a society or social group. It includes not only the arts and letters, but also modes of life, the fundamental rights of the human being, value systems, and beliefs.”¹²⁸ Allowing Indigenous peoples to express their culture in their traditional environment is both beneficial to the environment and in line with international opinions.

Several international commentaries have emphasized the importance of cultural rights and the benefits of cultural diversity.¹²⁹ The UNESCO *International Convention of the Protection and Promotion of the Diversity of Cultural Expressions 2005* noted that protection and maintenance of cultural diversity is essential for sustainable development and the preservation of benefits for present and future generations.¹³⁰ The *2030 Agenda for Sustainable Development Resolution on Culture and Sustainable Development* recognizes culture as important in international Sustainable Development goals in relation to the environment.¹³¹

¹²⁰ Our Common Future: World Commission on Environment and Development, U.N. Doc A/42/427 (March 20, 1987).

¹²¹ Pearce, *supra* note 106, at 43.

¹²² *Id.* at 49 (quoting Our Common Future, *supra* note 120, at 8).

¹²³ Our Common Future, *supra* note 120, at 49.

¹²⁴ Il Owasuyi, *The Pursuit of Sustainable Development Through Cultural Law and Governance Frameworks*, Potchefstroom Electronic L. J. 2012, 2013 (2015).

¹²⁵ *Id.* at 2015.

¹²⁶ Colchester, *supra* note 45 at 148.

¹²⁷ *Id.*

¹²⁸ Owasuyi, *supra* note 124, at 2019;

¹²⁹ *Id.*

¹³⁰ *Id.* at 2022.

¹³¹ *Id.* at 2023.

The *Universal Declaration on Cultural Diversity* states that intangible cultural expressions must be preserved for the benefit of future generations.¹³²

“Granting legal personality to sacred sites, and establishing a board of Indigenous people to manage the sacred sites recognizes the growing international trend to honor cultural rights. In addition, it is in the best interest of the environment to honor Indigenous cosmologies and economies.” Contemporary environmental Sustainable Development policies are guided by three principles mirrored in the cosmologies of Indigenous peoples. First, a respect for the inherent value of nature.¹³³ Second, a focus on intergenerational equity.¹³⁴ Third, the utilization of renewable resources.¹³⁵ An exploration of the Tūhoe cosmology demonstrates the Tūhoe’s innate understanding of these principles and serves as a guide for future sustainability efforts.

a. *Indigenous Cosmology and Sustainable Development*

Indigenous peoples have never been asked to develop and implement sustainable development plans within the Western economy. Indigenous peoples have a unique cosmology and economy that lends itself to Sustainable Development policies. Creating a board to manage sacred sites and ensuring that Indigenous cosmologies are reflected in board decisions will help to create a sustainable relationship with the environment. The benefit of an established board is that it provides “continuous supervision over a period of time, with a consequent deeper understanding of a broad range of the ward’s problems, not just the problems present in one particular litigation.”¹³⁶ Mandating that the board consider Indigenous cosmologies when making decisions, offers further benefits in establishing a sustainable relationship with the environment.

For example, in the Te Urewera legislation, the Te Urewera Board is to “act on behalf of and, in the name of Te Urewera.”¹³⁷ The Tūhoe cosmology is specifically addressed in the description of the Boards functions. Parliament articulated that:

In performing its functions, the Board may consider and give expression to—

- (a) Tūhoetanga;¹³⁸
- (b) Tūhoe concepts of management such as—
 - (i) rāhui;¹³⁹
 - (ii) tapu me noa¹⁴⁰

¹³² *Id.* at 2027.

¹³³ *See generally* Grim, *supra* note 60.

¹³⁴ Pearce, *supra* note 106, at 49.

¹³⁵ *Id.* at 236.

¹³⁶ Stone, *supra* note 57 at 11.

¹³⁷ Te Urewera Act 2014, *supra* note 44, pt 2 cl. 17.

¹³⁸ *Tanga*. Maori Dictionary.

<http://maoridictionary.co.nz/search?idiom=&phrase=&proverb=&loan=&histLoanWords=&keywords=tanga>. (last visited Dec. 1, 2016). (The suffix -tanga transforms a verb into a noun. In this case Tūhoetanga translates to “Tūhoe-ness” or quality of being).

¹³⁹ Te Urewera Act 2014, *supra* note 4, pt 2, cl 18(3) (Rāhui conveys the sense of the prohibition or limitation of a use for an appropriate reason).

¹⁴⁰ *Id.* (Tapu me noa conveys, in tapu, the concept of sanctity, a state that requires respectful human behavior in a place; and in noa, the sense that when the tapu is lifted from the place, the place returns to a normal state).

- (iii) mana me mauri:¹⁴¹
(iv) tohu.¹⁴²

The inclusion of specific Tūhoe concepts, in the Māori language, is recognition of the Tūhoe's cosmology, and ensures that the Tūhoe cosmology is respected by the board when making decisions. Ensuring that Indigenous cosmologies are considered when making decisions regarding sacred sites in the United States is a first step in implementing Sustainable Development policies.

b. *The Inherent Value of Nature*

The Tūhoe recognize the inherent value of nature through an understanding of the environment as kin. The Tūhoe cosmology reflects a pre-agricultural relationship between the environment and human beings where humanity and nature are interdependent.¹⁴³ The Tūhoe cosmology is centered around *whakapapa*.¹⁴⁴ *Whakapapa* is the "genealogical links between the cosmos, gods, nature, and humankind."¹⁴⁵ This understanding is reflected in the Māori creation myth, and the specific Tūhoe creation myth. For the Māori:

At the beginning only Io (the supreme God . . .) existed and was surrounded by chaos, emptiness, nothingness and the realm of potential being (Te Korekore) Before Io, nothing existed and consequently Io is absolute and parentless. . . Io's essence fertilized Te Korekore and created the world of potential being, the world of potential becoming and the world of being. Io brought into being Ranginui (male principle or Sky Father) and Papatuanuku (female principle or mother Earth). From these two gods all other gods derive. . . Each god is responsible for a particular natural phenomenon. The first-born god was Tane, the God of the Forests and all things that inhabit them . . . Then Tane made a human body and breathed life into its nostrils. It became the first human being, Hineahuone (the Earth-formed maid). Tane and Hine produced one daughter (Hine-titama) who grew up and was beautiful. To continue the human life line, Tane took Hine-titama to wife and together they had numerous children.¹⁴⁶

In this way, all Māori are direct descendants from an otherworldly spiritual ancestor. Specific to the Tūhoe, Te Urewera is recognized as a direct ancestor to the people.¹⁴⁷ The Tūhoe trace their origins to the ancient people of Aeotera, specifically Potiki-Tiketike. Potiki-Tiketike was born from the coupling of Te Maunga (the mountains) and Hine Pukohurangi (the mist).¹⁴⁸ Potiki-Tiketike then went on to populate Aeotera.¹⁴⁹ Because Potiki-Tiketike sprang from the land, the Tūhoe recognize Te Urewera as a literal direct ancestor.¹⁵⁰ These creation stories

¹⁴¹ *Id.* (Mana me mauri conveys a sense of the sensitive perception of a living and spiritual force in a place).

¹⁴² *Id.* (Tohu connotes the metaphysical or symbolic depiction of things).

¹⁴³ Iorns Magallanes, *supra* note 30 at 276-279.

¹⁴⁴ Klein, *supra* note 87 at 105.

¹⁴⁵ *Id.*

¹⁴⁶ *Id.* at 105-106.

¹⁴⁷ Waitangi Tribunal, *supra* note 39, at 28.

¹⁴⁸ *Id.*

¹⁴⁹ *Id.*

¹⁵⁰ *Id.*

demonstrate *whakapapa*; human beings are direct decedents of the spiritual realm, and these ancestors are directly linked to the land.

Also present in the Tūhoe cosmology is the concept of *whanaungatanga*.¹⁵¹ For the Tūhoe, *whanaungatanga* describes a familial relationship felt towards human beings (past, present, and future generations), the environment, and the spirit world.¹⁵² The Māori word for land, *whenua*, is an excellent example of this concept.¹⁵³ *Whenua* is the word for land, but it is also the word for placenta and afterbirth.¹⁵⁴ For the Tūhoe the land, or environment, is the source of life and humanity's provider.¹⁵⁵ The land is the mother of the people and is honored as such.

The land, and all its inhabitants are recognized as kin because all natural elements have *mauri*.¹⁵⁶ *Mauri* is the life force that flows from *Io* to all creation.¹⁵⁷ It is the energy which "makes it possible for everything to move and live in accordance with the conditions and limits of its existence."¹⁵⁸ Recognition of *mauri* is critical for maintaining the cosmos.¹⁵⁹ Tūhoe culture ensures the recognition of nature's *mauri* through the concept of *kaitiakitanga*.¹⁶⁰ *Kaitiakitanga* is the communal obligation to nature and provide care for the environment.¹⁶¹ The Tūhoe understand that the maintenance of the environment's *mauri* is critical to the survival of human beings.¹⁶² The inherent value of nature is understood in all aspects of Tūhoe life, and make overexploitation of the environment culturally difficult, if not impossible.

Sustainable Development policies require an appreciation for the inherent value of nature because a sustainable relationship with the environment is impossible if it is perceived only as a resource. When the environment is perceived as more than a resource, policies accommodate the Western economy and benefit the environment are possible. Without that recognition, the Western economy will continue to overexploit natural resources.

c. *Intergenerational Justice*

Critical to Sustainable Development is a focus on intergenerational equity.¹⁶³ One goal of Sustainable Development is to achieve economic development that serves the current generation provided that resources are preserved for future generations.¹⁶⁴ The concept of intergenerational equity is debated and there is no consensus in what intergenerational equity policies should provide for future generations.¹⁶⁵ However, Indigenous cosmologies recognize a responsibility

¹⁵¹ See, e.g., Iornes Magallanes, *supra* note 30, at 280-281; Waitangi Tribunal, *supra* note 39, at 485; Klein, *supra* note 87, at 107.

¹⁵² Iornes Magallanes, *supra* note 30, at 280.

¹⁵³ See e.g., Iornes Magallanes, *supra* note 30, 280 n.30; Waitangi Tribunal, *supra* note 39 at 485; Klein, *supra* note 87, at 107.

¹⁵⁴ Waitangi Tribunal, *supra* note 39, at 485; Klein, *supra* note 87, at 108.

¹⁵⁵ Klein, *supra* note 87, at 108.

¹⁵⁶ See Iornes Magallanes, *supra* note 30, at 281; See Waitangi Tribunal, *supra* note 39 at 482; See Klein, *supra* note 87, at 110.

¹⁵⁷ Klein, *supra* note 87, at 110.

¹⁵⁸ *Id.*

¹⁵⁹ *Id.* at 111.

¹⁶⁰ Iornes Magallanes, *supra* note 30, at 281; Waitangi Tribunal, *supra* note 39 at 481.

¹⁶¹ Iornes Magallanes, *supra* note 30, at 281.

¹⁶² Klein, *supra* note 87, at 110.

¹⁶³ Pearce, *supra* note 106, at 49; Our Common Future, *supra* note 120.

¹⁶⁴ *Id.*

¹⁶⁵ Gillroy, *supra* note 82, at 148 (The debate centers on what type of assets should be left to future generations i.e. trust funds, actual natural resources, technological innovation etc.).

to future generations and can provide a guide for intergenerational policies within a Western economy.

The Tūhoe cosmology provides an example of innate intergenerational equity that can be applied today. Not only do the Tūhoe recognize an innate value in the environment, the environment is a source of Tūhoe identity and a connection to all Tūhoe people across space and time.¹⁶⁶ Te Urewera is a direct ancestor and the spiritual link to past, present, and future Tūhoe generations.¹⁶⁷ *Whanaungatanga* requires that the land be honored and managed for the benefit of current and future generations. Thus, the Tūhoe have built an economy centered around a long term sustainable relationship with Te Urewera.¹⁶⁸

The Tūhoe economy has been described as an “economy of balance”¹⁶⁹ or “economy of reciprocity.”¹⁷⁰ While there is no complete Tūhoe economic scheme, there are several easily identifiable themes present.¹⁷¹ First is a rejection of materialism and a focus on human need as opposed to human want.¹⁷² Because the focus is on human need as opposed to want, economic and environmental decisions are less likely to end in overexploitation due to overconsumption. Second, the Tūhoe understand a moral obligation to maintain their community and environment.¹⁷³ Economic and environmental decisions are not devoid of moral considerations.¹⁷⁴ Instead, these decisions are made by considering the spiritual, social, and environmental repercussions. Third, there is an emphasis on the community and a rejection of individualism.¹⁷⁵ For the Tūhoe, an individuals’ desires are subordinate to the will of the community. The Tūhoe understand community as the totality of the natural environment, and all past, present and future generations. Tūhoe decisions are made with the best interest of this expansive view of community.¹⁷⁶ Fourth, the Tūhoe have a long-term perspective.¹⁷⁷ As the Tūhoe perceive responsibility to all future Tūhoe generations, the environment must be cared for to maintain the Tūhoe way of life in perpetuity. As a result, the environment is better preserved for future use. Finally, economic activities must be in harmony with nature.¹⁷⁸ The Tūhoe cosmology and economy represent a pre-agricultural system in which human beings were reliant on the local environment to provide all resources. The Tūhoe economy is a reflection of the innate value of nature and the intergenerational responsibility to the community. This type of economy can provide guidance to the Western economy for Sustainable Development policies through and exploration of some of the Tūhoe’s unique cultural practices.

d. *Renewable Resources*

Because of the Tūhoe’s economy, the Tūhoe place a greater emphasis on renewable resources.¹⁷⁹ Many of the cultural practices of the Tūhoe focus on ensuring the consistent regeneration of natural resources. Unlike the Tūhoe, much

¹⁶⁶ Klein, *supra* note 87, at 119.

¹⁶⁷ *Id.*

¹⁶⁸ *Id.* at 116-117.

¹⁶⁹ *Id.* (quoting John Patterson *Maori Environmental Values*, 16 *Envtl. Ethics* 403, 406-407 (1994)).

¹⁷⁰ *Id.* (quoting Waitangi Tribunal *Murīwhēna Fishing Report* (WAI 22, 1989) at 179).

¹⁷¹ *Id.*

¹⁷² *Id.*

¹⁷³ *Id.*

¹⁷⁴ *Id.*

¹⁷⁵ *Id.*

¹⁷⁶ *See id.* at 108-116.

¹⁷⁷ *Id.* at 117.

¹⁷⁸ *Id.*

¹⁷⁹ *See* Waitangi Tribunal, *supra* note 39.

of the Western model is dependent on non-renewable resources. As a result of the overexploitation of non-renewable resources and the mismanagement of renewable resources, the environmental crisis has reached alarming levels.¹⁸⁰ The environmental catastrophes happening all over the world can be dealt with in two ways. Either humanity must greatly reduce its use of natural resources, or natural resources must be utilized sustainably with an emphasis on renewable resources. Sustainable Development is the latter option.

Sustainable Development requires the careful management of renewable resources.¹⁸¹ Renewable resources are resources that are capable of self-regeneration into perpetuity provided the resources are cared for with appropriate management strategies.¹⁸² The simplest way to ensure sustainable management of renewable resources is to consider the resource in all states of the resources' life cycle.¹⁸³ The Tūhoe's customs surrounding the harvest of the kereru is an excellent example of considering all stages of a resources life to ensure renewal.

A study published in 2009 explored the environmental impact on the traditional Tūhoe management of the kereru, a large ground pigeon traditionally harvested by the Tūhoe.¹⁸⁴ In the study the researchers interviewed Tūhoe elders to uncover the methods and rationales of traditional kereru management.¹⁸⁵ For the Tūhoe, the kereru is *taonga*,¹⁸⁶ and a source of Tūhoe identity. Kereru populations are managed through Tūhoe cultural practices surrounding the harvest.¹⁸⁷ Traditional harvest of the kereru occurred between April and July when the birds were feeding on toromiro fruit.¹⁸⁸ By design, the harvesting period was after the breeding period, ensuring a population of kereru the next year.¹⁸⁹ Moreover, the Tūhoe placed a complete ban on harvesting kereru during the breeding season.¹⁹⁰ Tūhoe tradition holds the discovery of a kereru nest *tapu*,¹⁹¹ disturbing a kereru nest is regarded as an affront to Tane, the forest god, and society in general.¹⁹²

The traditional Tūhoe believed that kereru could sense when human beings dishonored its *mauri* by failing to practice traditional harvesting customs.¹⁹³ If the kereru sensed the human infraction they would make themselves unavailable to hunters.¹⁹⁴ In this way custom law was adhered to by the Tūhoe for fear of offending the kereru.¹⁹⁵

¹⁸⁰ See generally Pearce, *supra* note 106.

¹⁸¹ See Pearce, *supra* note 101.

¹⁸² Our Common Future, *supra* note 114, at 236.

¹⁸³ U.N. Environmental Programme, Sustainable Consumption and Production: A Handbook for Policymakers, at 10-11, (June 5, 2015), <https://sustainabledevelopment.un.org/content/documents/1951Sustainable%20Consumption.pdf>.

¹⁸⁴ See Philip O'B. Lyver, Christopher J. Jones James Doherty, *Flavor or Forethought: Tūhoe Traditional Management Strategies for the Conservation of Kereru (Hemiphaga novaeseelandiae novaeseelandiae) in New Zealand*, 14 Ecology & Society 2009.

¹⁸⁵ *Id.*

¹⁸⁶ *Id.* at 2.

¹⁸⁷ *Id.*

¹⁸⁸ *Id.*

¹⁸⁹ *Id.*

¹⁹⁰ *Id.*

¹⁹¹ *Id.* Tapu means bad omen, or a spiritual prohibition. Waitangi Tribunal, *supra* note 33, at 484.

¹⁹² Lyver, *supra* note 181.

¹⁹³ *Id.*

¹⁹⁴ *Id.*

¹⁹⁵ *Id.*

The Tūhoe instituted harsh punishment for poaching of kereru.¹⁹⁶ Before the arrival of the Crown a poacher from another hapu could be disemboweled for taking a kereru bird from another hapu's harvesting area.¹⁹⁷ This harsh punishment for poaching reinforced a motive to ensure future kereru populations.¹⁹⁸ Each hapu had a specific area to harvest kereru, if the kereru were overhunted and the population could not regenerate the hapu could not hunt elsewhere.¹⁹⁹ Thus, all Tūhoe were invested in preserving a sizeable breeding population of kereru.²⁰⁰

Indigenous knowledge and conservation techniques are frequently at odds with the Western mechanistic view of the environment. The kereru management strategy is an example of Indigenous knowledge and custom working to ensure regeneration of a renewable resource. This is one of many ways that Indigenous peoples use accumulated Indigenous knowledge to implement Sustainable Development policies.

C. *Collaboration between indigenous peoples and the western economy will promote a sustainable relationship with the environment and recognizes trends in international recognition of cultural rights.*

Collaboration between Indigenous peoples and the Western perspective and culture is critical to achieving Sustainable Development and benefitting both cultures. The Te Urewera Act ensures that Te Urewera will be managed by a partnership between the Tūhoe and Pakeha.²⁰¹ For the first three years after enactment, the board will be comprised of eight members, and four Tūhoe members nominated by the Tūhoe government, and four members nominated by the Crown.²⁰² After the third anniversary of enactment the board will be made up of six Tūhoe representatives and three members nominated by the Crown.²⁰³ The makeup of the board ensures that both the Tūhoe culture and the Western economy are considered when making decisions regarding Te Urewera.

All of the environmental problems are complex issues with no easy solution.²⁰⁴ There is no simple answer that will solve climate change, provide clean water to all people, correct deforestation, or ensure biodiversity that will preserve a Western way of life. A wholly Indigenous approach to sustainability is incompatible with a Western way of life. Similarly, a wholly Western approach has created much of the current environmental crisis and has failed to course correct. It is a partnership between these two outlooks that will provide answers to the current environmental crisis.²⁰⁵

Blending these two perspectives will allow for Indigenous perspectives to be recognized within the Western economy as well as allow the Western economy to adopt and implement ecological perspective management strategies. This partnership is a benefit to both cultures and is in line with current international cultural rights agendas.

¹⁹⁶ *Id.*

¹⁹⁷ *Id.*

¹⁹⁸ *Id.*

¹⁹⁹ *Id.*

²⁰⁰ *Id.*

²⁰¹ Te Urewera Act, *supra* note 3, at s 21 (1-7).

²⁰² *Id.* at s 21(1).

²⁰³ *Id.* at s 21(2).

²⁰⁴ Fikret Berkes and Nancy J. Turner, Knowledge, *Learning and the Evolution of Conservation Practice for Social-Ecological System Resilience*, 34 Human Ecology 479, 481 (2006).

²⁰⁵ *Id.*

The *United Declaration on Cultural Rights*²⁰⁶ has identified cultural diversity as a development factor.²⁰⁷ Under the Declaration, cultural rights must be preserved and passed on to “foster creativity in all its diversity and to inspire genuine dialogue among cultures.”²⁰⁸ The Declaration also emphasizes the role of all diverse cultures collaborating with the state to preserve and promote cultural diversity to achieve Sustainable Development.²⁰⁹ The Sustainable Development ideal can be achieved through recognition of Indigenous cultural rights within the Western perspective, and collaboration.

One site where this approach may be very successful is Mauna Kea in Hawaii. Mauna Kea is a dormant volcano held sacred by Indigenous Hawaiians on the Big Island of Hawaii. Recently it has been a source of conflict between Indigenous Hawaiians and the Western scientific community. Mauna Kea is currently owned in trust by the State of Hawaii and is designated as conservation land.²¹⁰ The University of Hawaii has successfully placed a number of telescopes on the peak of Mauna Kea because of its ideal location to observe space.²¹¹ In 2010, the Thirty Meter Telescope (“TMT”) Observatory Corporation began the process to build the world’s most advanced and powerful optical telescope on the peak of Mauna Kea.²¹² Native Hawaiians and Indigenous Hawaiian’s protested the construction of the telescope out of cultural and environmental concerns.²¹³ Currently, the TMT Observatory Corporation is in the process of acquiring a building permit to begin work on the telescope while native and Indigenous Hawaiians continue to protest.²¹⁴

Indigenous Hawaiians are concerned about the environmental impact of the telescope and the desecration of a sacred site. For Indigenous Hawaiians, Mauna Kea is considered a temple. Per Hawaiian oral history Mauna Kea is considered *kino lau*, or the physical embodiment of a god.²¹⁵ Specifically, Mauna Kea is the child of the sky father, Wākea, and the earth mother, Papahānaumoku.²¹⁶ For Indigenous Hawaiians, the construction of yet another telescope on the physical embodiment of a deity is an affront to their cultural identity, a desecration of spiritual site, and a limitation to their cultural expression.²¹⁷

Additionally, there are environmental concerns. In the environmental impact statement produced in 2010 the environmental impact of the telescope would have a limited impact on the environment, but noted that the cumulative impact of the several telescopes continues to be “substantial, significant, and adverse.”²¹⁸ These assertions only concerned Indigenous Hawaiians and have led to a standstill on the project.

²⁰⁶ The *United Declaration on Cultural Rights* is not a legally binding declaration.

²⁰⁷ UNESCO, *United Declaration on Cultural Diversity*, at art. 3 (2011).

²⁰⁸ Owosuyi, *supra* note 118, at 2027.

²⁰⁹ *Id.*

²¹⁰ Jonathan Nelson, *Who Owns the Rights to Mauna Kea*, Manhattan Institute for Policy Research, Inc. <http://economics21.org/html/who-owns-rights-mauna-kea-1381.html>. (last accessed Dec. 17, 2016)

²¹¹ *Id.*

²¹² Thirty Meter Telescope, <http://www.tmt.org/about-tmt>. (last accessed Dec. 15, 2016).

²¹³ Nelson, *supra* note 213.

²¹⁴ *Id.*

²¹⁵ Adrienne LaFrance, *What Makes a Volcano Sacred?*, *The Atlantic*, (October 30, 2015) <http://www.theatlantic.com/technology/archive/2015/10/what-makes-a-volcano-sacred/413203/>. (last accessed Dec. 14, 2016)

²¹⁶ *Id.*

²¹⁷ *Id.*

²¹⁸ *Id.*

The issues surrounding Mauna Kea are not so different from the issues expressed around Te Urewera. Both the Tūhoe and Indigenous Hawaiians have been victims of racist colonization processes. Te Urewera and Mauna Kea were both confiscated and put into conservation management without the input or consent of the traditional occupants. Subsequently, both colonizing governments have managed the land in ways inconsistent with traditional Indigenous use. The establishment of a national park, and the instillation of telescopes may seem innocuous enough, but these practices have resulted in environmental degradation and infringement on cultural rights.

By granting legal personhood to Mauna Kea and establishing a board of Indigenous Hawaiians and government representatives to co-manage the property, Sustainable Development policies are possible. Through co-management, Mauna Kea may be used by the Western scientific community in a way that does not infringe on the cultural rights of Indigenous Hawaiians and result in environmental degradation. This is only one example from the United States where the model proffered by the Te Urewera Act may resolve conflict and result in a benefit to both Indigenous peoples and the Western culture. Adopted across the nation, this solution may alleviate many tensions between Native Americans and the American government and propel the world into a system of Sustainable Development and a greener economy.

CONCLUSION

The Te Urewera Act is an excellent solution to the cultural rights issues and environmental crisis facing the world today. Granting legal personality to sites held sacred by Indigenous peoples better protects the sites, honors cultural rights, encourages a paradigm shift within the Western culture, and promotes a sustainable relationship with the environment. The recognition of the inherent value of nature and accommodating it within the Western legal tradition, economy and culture will allow Sustainable Development policies to be implemented across the nation and hopefully the world.

Making this change now is crucial to the global community. The scientific community warns of the environmental crisis and there is real fear for the fate of the planet. Moreover, ecological crises disproportionately affect Indigenous peoples. Recognizing cultural rights for Indigenous peoples is the first step in mitigating the environmental damage already present in the world and achieving a paradigm shift that will allow humanity to continue its way of life while not destroying the planet for future generations.