

# ARCHITECTURE AND THE RIGHTS OF NATURE

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## ABSTRACT

This paper critiques the application of the rights of nature in the production of eco-friendly architecture from a decolonizing perspective. The question at the center of our argument is whether the rights of nature can be useful as a method to express deeper relationships between natures and not peoples in architectural practice, or is the taking up of the rights of nature just another colonial manifestation of *terra nullius* meant to ensure settler colonial regimes are maintained in perpetuity? To tease out this question, a recent architectural competition in Hawaii is analyzed and explored as a methodology, alongside other architectural projects that serve as far more successful attempts at addressing indigenous rights, epistemologies, and ways of building that acknowledge settler colonialism and the need to decolonize architectural practice through respectfulness and reflexivity.

The term the *rights of nature* is often used within the discourse of environmental justice to achieve particular goals and effects, which, we argue, is yet another colonial expression of *terra nullius* meant to ensure settler colonial regimes are maintained in perpetuity. This paper posits that use of the rights of nature is problematic in its production of eco-friendly legislation and eco-friendly architecture, and both require critical assessment. The rights of nature is plagued by conflicting usages, post-colonial interpretations, and a historiography that stretches back from the early yearnings of American environmentalist John Muir for environmental justice to a growing number of legal arguments that have now been established as precedential cases expanded as the result of fears of environmental degradation and indigenous activism over lands and resources that were previously stolen, abused or neglected under settler regimes. In 1972, the case of *Sierra Club v. Morton* came before the US Supreme Court, which led to deliberation over whether nature should have its own rights, although without success. Justice William O. Douglas wrote in his dissent, "Contemporary public concern for protecting nature's ecological equilibrium should lead to the conferral of standing upon environmental objects to sue for their own preservation."<sup>1</sup>

New Zealand was one of the first countries in the world to create and pass laws acknowledging that nature is no longer subject to human ownership. This new ideology appeared in New Zealand acknowledging that people are part of nature; they are not separate from it or dominant over it. These laws have since expanded globally to emphasize nature as a rights holder, as well as the importance of human beings to uphold and protect these rights. The rights of the *Te Urewera National Park* and the *Whanganui River* in New Zealand were precedent-setting cases in which nature was granted legal recognition in 2014.

Current architectural practices, framed as "green," often operate under the guise of ecological sustainability using the rights of nature as a form of justification, but the architecture that results often produces an inauthentic form of Indigenization using methods that are problematically embedded within the interweaving of the rights of nature and *terra nullius* in support of settler-colonial fantasies. The rights of nature can provide a dangerous form of justification for the consumption of indigenous knowledge and can justify efforts to occupy and develop land in ways that are perceived as being more sensitive and harmonious with nature, yet are not. To derail these dangerous fantasies and practices, we need to provide limits for how concepts like the rights of nature may be applied as guidelines within architectural pedagogy and practices, while respecting and acknowledging the domain and the intellectual property of indigenous peoples. We must actively question how we teach and use the rights of nature in the architectural studio, while constantly reflecting on whom these enlightened approaches are serving.

In consideration of the dialectical relationship between humans and nature, the rights of nature posits that nature has fundamental rights of its own. Yet, humans are intrinsically a part of nature. Dr. David R. Boyd, who currently serves as the UN Special Rapporteur on human rights and the environment and is an Associate Professor of Law, Policy, and Sustainability at the University of British Columbia, draws upon many real-life examples, including New Zealand's *Te Urewera Act*, that have granted ecosystems legally enforceable rights, as well as other ground-breaking lawsuits, to argue how the rights of nature could restructure environmental law and public policy.<sup>2</sup> In 2019, a number of rivers, including the Klamath in the US and the Plata in Colombia, became bona fide legal "subjects" using the rights of nature as a legal instrument. Lake Erie, too, now has legal rights, which allows citizens to sue on behalf of the lake when it's being polluted.

"From 1954 to 2014," Boyd writes, "*Te Urewera* was an 821-square-mile national park on the North Island, but when the *Te Urewera Act* took effect, the government gave up formal ownership, and the land became a legal entity with 'all the rights, powers, duties and liabilities of a legal person' as the statute puts it."<sup>3</sup> Nevertheless, the rights of nature provides a groundbreaking, albeit

flawed, method for navigating nature and personhood simultaneously, while providing a legal framework for non-indigenous persons and institutions to acknowledge complex epistemological frameworks that go beyond the limits of western notions of land, property and place, amongst others. The Global Alliance for the Rights of Nature asserts:

The rights of nature is about balancing what is good for human beings against what is good for other species, what is good for the planet as a world. It is the holistic recognition that all life, all ecosystems on our planet are deeply intertwined...Rather than treating nature as property under the law, rights of nature acknowledges that nature in all its life forms has the *right to exist, persist, maintain, and regenerate its vital cycles...*<sup>4</sup>

Furthermore, the landmark design and construction of a "Living Building" by one of Aotearoa, New Zealand's Maori tribes, the *Ngai Tahu*, provides an example of a potential model to respectfully engage the rights of nature, respect indigenous epistemologies, and prioritize the sovereignty of community to produce a building that attempts to fulfill decolonizing goals. The Living Building Challenge, of course, still operates within the dominant oppressive colonial knowledge system, and its exemplary goals and practices have been established in relation to the colonial norm. Arguably, the Living Building Challenge appropriates indigenous systems design principles and commodifies them within western constructs. The Living Building Challenge eschews industrially produced building products in lieu of local crafts, but building codes and standard construction techniques still shape its normative practices. As benevolent as it might seem, the Living Building Challenge has limits in addressing the goals of the rights of nature on a very practical as well as conceptual level.

In *Te Urewera*, longstanding legacies of colonisation and oppression, ranging from illegal land confiscation (*terra nullius*) to scorched earth policies and treaty abuses, resulted in a number of damaged relationships and a damaged landscape, which was further exacerbated by a succession of New Zealand governments that ignored the belief systems and land practices of the *Tuho*. In

2014, Te Urewera, Tuhoe's ancestral homelands, were legally returned to the Tuhoe alongside an official governmental apology. The Tuhoe people then built the first ever "Living Building" in Aotearoa as part of this reclamation, working together with a New Zealand architect who respected and cared about their beliefs and conceived of the building as a symbolic testament to Ngai Tuhoe values and their vision of self-governance centred on a relationship with the land as a subject. By adapting Living Building Challenge criteria as a methodology to respectfully engage, adapt and compromise western building practices and green building practices, they foregrounded and respected Tuhoe values and beliefs with the personhood of the land at the center of all design and construction decisions.

Central to the notion of the rights of nature are the intertwined notions of property and *terra nullius*. The historical notion of *terra nullius* remains central to many contemporary post-colonial critiques and reminds us that *terra nullius* is a tool that centers the colonizer by allowing for the conquest of land deemed empty and in need of improvement. One might say that the notion of *terra nullius*, therefore, remains a significant component within architectural practice, even when framed as eco-friendly and sustainable. Unimproved land, seen through settler eyes, is unsettling. *Terra nullius* translates as "land that belongs to no one." In international law, *terra nullius* was originally established to allow that the first nation to "discover" unoccupied land was entitled to seize it, as long as it could be proven that the land had never been occupied or improved. *Terra nullius* is still used to justify the occupation and seizure of land, as well as environmental and social degradation from a settler colonial perspective.

The rights of nature also appears to be situated within current environmental politics, with Ecuador playing a large role in this definition.<sup>5</sup> However, seen from another vantage point, the rights of nature appears, on the ground, as a historical indifference to the environment as well as indigenous peoples and their ways of being. The notions of environmental justice and spatial justice, while used interchangeably, are notions driven by neoliberalism, as the capital-driven metabolic of sustainability drives green architecture.

This mindset has created its own body of white saviours, most noticeably in the Public Interest Design movement and in the "greening" of architectural pedagogy worldwide. The stilted language of Public Interest Design is shaped by catchphrases such as the "Triple Bottom Line" and is supposedly shaped by "Professional Ethics," which both serve legitimizing the socio-political and environmental agendas that capital requires to rebrand and repackage development to align with dominant cultural trends. The colonial tropes of rationality, industry, progress, and capitalism persist. Inasmuch, Public Interest Design is as mired in failure as the modern project it attempts to critique, and remains compromised from the start.

Furthermore, imagining the rights of nature as a legal framework, the case studies of the Ecuadorian and Brazilian constitutions have provided scholars with a testing ground for how to apply the rights of nature to post-colonial systems that could affect architectural practice and attitudes in profound ways. Where these notions fail, such as in the expansion of the Trans-Amazonian highway, gold mining conflicts, and other development projects in Brazil, persecution of indigenous peoples and their land rights still follow. The Water Protectors movement, spurred by indigenous opposition to the Dakota Access Pipeline at Standing Rock Reservation, highlights issues at the intersection of the rights of nature, *terra nullius* and indigenous rights.

As a more current example, Hawaiian groups have opposed building the Thirty-Meter Telescope (TMT) on top of Mauna Kea for years because they know the mountain as a sacred part of their cosmology. Mauna Kea towers more than six miles above the seabed, and for indigenous Hawaiians, the peak is known as the most sacred ground in the entire Pacific. It is both a burial ground for indigenous Hawaiians' most revered ancestors, and the point believed to have been created by the gods as the place from which humans can ascend to heaven. However, Mauna Kea's height and location also makes it appealing to astronomers and a conglomeration of international researchers, universities, and commercial interests.<sup>6</sup> After a five-year search, Mauna Kea was chosen as the place to build the most sophisticated telescope in the world. While previous attempts to place telescopes on Mauna Kea



Figure 1: A photograph depicting the Pu'uhuluhulu University at the base of the Mauna Kea Access Road. Through Kapu Aloha, Kanaka Maoli have used this space to conduct protocol and provide educational courses to the public regarding indigenous knowledge, rights, and more. Courtesy: James Miller

were averted, this time seems different. There is more money and a broader range of actors who will benefit from the project, meaning protesters will have to dig in and do whatever it takes to keep the project at bay, and that they will face challenges they have never seen before. At the core of this conflict is an epistemological argument, as well as a legal argument. Recently, the movement of Kanaka Maoli (native Hawaiians) to *kia'i* (protect) Mauna Kea has demonstrated the continuity of indigenous peoples calling upon of the rights of nature to ground their case. For Kanaka, the earth is considered a sibling and an ancestor.<sup>7</sup>

Furthermore, it is worth exploring the case of the Kia'i Mauna Kea as a segue to issues pertaining to a recent architectural competition hosted by the University of Hawaii. Since 2015, with initial site preparation for a TMT underway, Kanaka Maoli have been standing ground to protect the rights of Mauna Kea. Figure 1 depicts the

Pu'uhuluhulu University set at the base of the Mauna Kea Access road and heart of the Kapu Aloha movement. To Kanaka Maoli, the peak of Mauna Kea is the place where Wakea [Sky Father] and Papahānaumoku [Earth Mother] united to give birth to the Hawaiian People. Mauna Kea is the *piko* (umbilical cord) of Kanaka Maoli. However, it is also the site at which colonial power resides through the ideals behind *terra nullius*. The state government of Hawaii has claimed this site for the development of twelve observatories and the contentious TMT, since Mauna Kea remains "empty" and undeveloped. The state considers Mauna Kea to be ceded land, a highly contested designation that dates back to the overthrow of Queen Lili'uokalani by the United States government.<sup>8</sup>

While the TMT International Observatory claims economic benefits for Hawaiians through jobs and STEM scholarships for Hawaiian students, the TMT and the

state government of Hawaii both ignore the rights of indigenous peoples and the true impact of the development on the environmental, social, and cultural wellbeing of Hawaii. Kanaka Maoli value astronomical technology, as arguably the greatest navigators to have traveled the earth by direction of stars; however, Kanaka do not support the environmental, social, and cultural degradation that the TMT will create. In fact, support for the TMT dropped sharply between July and September 2019.<sup>9</sup> Existing astronomical development on Mauna Kea to date has been unpermitted and built against the will of the Kanaka Maoli community, demonstrating a pattern of disregard for the rights of Mauna Kea and the Kanaka Maoli.<sup>10</sup> Today, this site can be seen as a modern battleground between the rights of indigenous peoples, the rights of nature, and settler colonialism. This case exemplifies the rightful place of indigenous peoples in the protection of nature—a space threatened by colonization. It has not been discussed as of yet, but under their right to self-determination, Kanaka Maoli would likely support the designation of The Rights of Nature over Mauna Kea with Kanaka as the party responsible for the mountain's protection.

Earlier it was argued that a conquest of Western knowledge systems is both to marginalize indigenous knowledge and colonize and commodify indigenous knowledges of value, such as the inherent sustainability of indigenous systems design. The TMT represents yet another act of western science discrediting the value of indigenous knowledge. Hawaiians and their Polynesian ancestors possessed unparalleled knowledge of the sea, the winds, and the stars—knowledge that allowed them to traverse thousands of miles of open ocean to the most remote archipelago in the world. In her translation of the Kumulipo, Princess Liliuokalani stated, "The ancient Hawaiians were astronomers, and the terms used appertained to the heavens, the stars, terrestrial science, and the gods. Curious students will notice in this chant analogies between its accounts of the creation and that given by modern science or Sacred Scripture."<sup>11</sup> Westerners, until recently, did not believe that Hawaiians had the capacity to charter the sea without sophisticated material technology; rather, they assumed the islands were discovered by happenchance. This led to the misguided assumption of the indigenous genius, like today, that robs indigenous

knowledge systems and technology of their relevance. Claiming the use of Mauna Kea for the advancement of modern science and for the betterment of society strips Hawaiians of their right to self-determination, their right to sovereignty, their intellectual property rights, and their rightful place in the protection of Mauna Kea and its rights.

Furthermore, as a methodology for revealing the limits and fears around the use of the rights of nature in more detail, an international architectural design competition hosted by the University of Hawaii provides another explanatory case study to see how interpretations of the rights of nature collide. The competition brief challenged architectural designers to provide innovative design solutions responsive to "the uniqueness of the Hawaiian context and to drive change in the urban and rural development of Hawaii using ecologically sensitive approaches to design."<sup>12</sup> It sought new design ideas for buildings, environments, landscapes, community programs, transportation solutions, and more. Designers were called to address multiple topic areas including housing for all, food autonomy, resource independence, community-centered mobility, and healthy citizens, with singular designs centered on a quadruple bottom line approach (socially, economically, ecologically, and culturally sustainable). Building Voices was more about innovative ideas than place-based design. However, neither the competition brief nor the entries critically engaged the structures of settler-colonialism that have driven the Hawaiian built environment toward unsustainability—the issue that the competition was positioned to respond to in the first place. Framed within a professional institution and staged as an international event, the competition can be seen to continue the marginalization of Kanaka Maoli voices while perpetuating the claiming of indigenous knowledge and indigenous space without respect or accuracy, while actively reinforcing settler-colonial structures through the subordination of local indigenous knowledge systems as a trope.

The most heralded entries demonstrated a complete disregard for indigenous design knowledge systems and sensibilities. This absence reveals a fundamental inadequacy of the competition to acknowledge indigenous epistemologies as having value. These entries appropriated and whitewashed indigenous

knowledge as framed as "enlightened" practices. Shaped by a more grounded relationship to the land and the rights of nature, the flawed methods these entries displayed included directly referring to indigenous belief systems without accuracy nor permission. While the sustainability and resilience goals of the competition were thoughtful, they disregarded the larger context of development in a settler-colonial state and Hawaii's fraught settler colonial context. If the cultural richness and ecological diversity of nature were central to the competition's theme (not to mention its title) consideration of asymmetrical power dynamics within the context of Kanaka Maoli needed to be centered as well.

The competition itself did not critically engage the voices of Kanaka Maoli. To truly situate a competition in Hawaii, the competition should have recognized the dynamics of the settler-colonial structure and recognized the Hawaiian peoples to be affected by its results through the inclusion of Kanaka Maoli kapuna (elders and keepers of Hawaiian knowledge) in both the development of the competition and evaluation of

entries. In fact, the voices of Hawaiian scholars seemed to be marginalized to the periphery of the 2017 Building Voices Symposium that accompanied the competition. A panel on decolonizing cities provided a space for Hawaiian scholars such as Konia Freitas to engage with the notion of decolonization. Unfortunately, the engagement of these valuable thoughts, methods and frameworks remained peripheral to the architectural competition.

The winner of the competition, "Outside House," posed a design for a house that placed the land first, thus delving into the rights of nature as an ethical position (see Figure 2). Consisting of two small pavilions, labeled *mauka* (mountain side) and *makai* (ocean side), the concept was designed to organize living space outside on the agricultural land of upcountry Maui. The design was thoughtful, with minimum impact to the landscape, and was described as supporting health through living outside with nature. However, the description of the design draws reference to a specific relationship with the land without acknowledging the borrowed practices of Kanaka Maoli that sustained a healthy and



Figure 2. A photo of Outside House. The *makai* [*hale noai*] structure is to the left and the *mauka* [*hale kukei*] is to the right in the photograph. Courtesy: From "Hawaiian cabins by Erin Moore are designed for life outdoors," by James Britton, 2017, Dezeen. <https://www.dezeen.com/2017/11/18/outside-house-erin-moore-float-life-outdoors-cabins-maui-hawaii/>, Copyright 2017 by Olivier Koning.

resilient relationship with the land through indigenous design practices. The design and documentation of the project further reinforced settler-colonial attitudes, while serving as a clear example of settler-adoption and settler-nativism and avoiding settler self-critique competition as well as revealing its function as a vehicle for the territorialisation of indigenous lands.<sup>14</sup> The fundamental problem remains that indigenous architectures, inclusive of Kanaka Maoli architectures, are largely disregarded within architectural disciplines or appear on the periphery as *traditional* and *vernacular* practices.<sup>15</sup>

*Modern on Maui*, an online magazine dedicated to “an online celebration of Hawai‘i’s unique form of modernism through the lens of architecture, photography, real estate, and style,” published a telling review of the project titled, “Hawaii as the Perfect Architecture Laboratory.”<sup>16</sup> The article disregards a Kanaka representation in the production of the built environment and denotes Hawaii as a land free for the taking of imaginative minds. Rather, proponents of architectural design and real estate development on Hawaii need to recognize their position within the structure of settler colonialism and acknowledge the voice and authorship of Kanaka Maoli. Through disregarding these critical issues, they are able to claim the land as free of natives. The article describes the winning project by stating that, “It offers us a chance to focus on a simplified response to these primal human concerns.” This describes the design approach as a form of architectural deconstruction, splitting uses of the traditional western home and opening it up for outside living as a means to address more “primal” needs and desires. The trope of expressing indigenous dwelling as being outside in nature and primal [primitive] reproduces colonial and racist stereotypes. Edward Said tells us that the “Orient” is not something out there; rather, it is something that Europeans imagined it to be in service of their own self-imagination. The Orientalizing gaze thus allows the colonizer to see people not as people, which translates into practices, policies, and architectures. These perceptions become a basis of how the colonized, in turn, are forced to reconstruct themselves.<sup>17</sup>

Appropriated knowledge such as the *hale kuke* (cookhouse) and *hale noa* (sleeping house) on the *kaulahale* (homestead) have been a living tradition of Kanaka Maoli design knowledge for centuries, but this tradition is neither recognized nor respected, just as in the case of Hawaiian astronomical and navigational knowledge. In the projects, disregard of living traditions tied to the land both decontextualizes the history of the land and disregards Kanaka identities in the land. The will to adapt and appropriate building methods and ways of being, as represented by the “Outside House,” lacks acknowledgement of the epistemological systems and beliefs that produced the spatial practices and ways of being on the land that are supposed to be celebrated. The *Modern on Maui* article states that the land was put first, “when creating the innovative and flexible compound for clients with an eco-centric worldview.” This both invokes notions of *terra nullius* and settler-adoption, but denies indigenous authority. The competition entry reminds us that thoughtful design processes need to be respectful of the design knowledge(s) being borrowed, adopted, or reinterpreted, and their intent. Without reflexivity on the matter, the settler-colonial structure can only be further reinforced as an act of ongoing manufactured ignorance.

The client, a land conservationist, is also a problem. She is framed as existing outside of local traditions and contexts, which is yet another colonial trope. She requested a project that would reinforce her connection with the sub-tropical landscape of upcountry Maui.<sup>18</sup> The Outside House is intended to demonstrate the client’s eco-centric worldview.<sup>19</sup> This worldview epitomizes the notion of settler nativism and settler adoption. Inasmuch, the Kanaka Maoli worldview and cultural traditions are based on a very different relationship to Hawai‘i than that of settlers. This cannot be overstated, and it is here that the rights of nature becomes a methodology for abuse. Kanaka representations of land are unlike those of settlers; as descendants of Haloa, nature is the Kanakas’ sibling. The notion of having “roots,” as born and raised in Hawai‘i, is problematic for non-native Hawaiian inhabitants. Hawaiian scholar Ho‘omanawanui Ku‘Ualoha describes the issues tied to settler nativism in contrasting the difference between settler and Kanaka views of the land:

These differences are also apparent in settlers’ continued references to Hawai‘i as a “landscape,” “geography,” and “environment.” English words that connote a Western-based understanding of what land is, terms that overshadow and negate Native understandings of land as ‘ina, which for Kanaka Maoli is familial... The value of ‘aina is familial. The land sustains us, nurtures us like a family member. In our culture, the values of aloha ‘aina (love for the land) and malama ‘aina (caring for the land) are fundamental. But for non-Natives, land is a commodity that can be bought and sold, it is the monetary value land possess in haole [white] culture that accelerated Kanaka Maoli dispossession of ‘aina.<sup>20</sup>

In the end, the Building Voices competition provided a platform for designers to misappropriate Kanaka traditions using a variety of hegemonic tropes, while further participating in the land dispossession of Kanaka Maoli. By prioritizing environmental aspects of context without addressing the settler-colonial structures in place, the competition further dispossessed indigenous peoples for the purpose of claiming their knowledge systems and ancestral home—with the rights of nature as a form of righteous justification. Just as the critique of Hawaiian literature demonstrates the dispossession by hegemonic power, Hawaiian architecture furthers the asymmetric power of the settler state and dispossession of Kanaka Maoli’s rights.<sup>21</sup> Within the discourse of environmental and ecological sustainability, one must think critically about the encroachment of indigenous peoples’ rights. Kanaka Maoli stand firm behind the land and their right to manage it: *ma hope o ka ‘aina*.<sup>22</sup> We propose that further limits for how the *rights of nature* is taken up in architectural practice are needed, and that these limits must be centered on the intertwined notions of respect and reflexivity.

The thoughtless adaptation of indigenous tropes, imagery and sensibilities can only perpetuate settler colonialism, while foreclosing opportunities for productive dialogue and reform. We must promote spatial justice by acknowledging these limits. There are a number of methods in which the rights of nature may be taken up more thoughtfully. The work of Douglas Cardinal serves as a model for how indigenous

architecture is both possible and able to productively trouble the settler-colonial mindset. Douglas Cardinal, who is of Métis and Blackfoot heritage, and is known for his flowing curves and canon-rupturing modern buildings such as the First Nations University of Canada in Regina, provides this kind of voice. However, his voice is noticeably absent from classrooms across North America today. Cardinal’s work in an exercise in methodology, which becomes apparent in how he speaks about his work, his clients, and how he sees himself.

To conclude, architectural designers must become more cognizant of power structures, such as settler-colonialism, within contextual analysis and problem defining. While a simple bullet-point list of key pathways for students, *kumu* (professors), and practitioners may be desired, the Rights of Nature’s relationship to indigenous epistemologies and practices cannot be answered with a simple list of objectives. Rather, an indigenous or decolonial methodological approach to the rights of nature and its use within architecture requires transformation – it requires surrendering to an alternate epistemology. As the discipline shifts focus more from artifact to process, there is opportunity to engage with the complexities inherent in these power structures and to overcome them, and through this process decolonize the discipline. We need to prioritize indigenous knowledge, intellectual property, and sovereignty over western notions of knowledge, and indigenous knowledge cannot be commodified. ■

## ENDNOTES

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## SUBVERTING THEORY

TRIP MR. NOBODY UP BY ARCHITECTING YOUR BODYMINDS, *S'IL VOUS PLAÎT*  
ANNELIES ALICE DE SMET

(IM)PROPER SUBVERSION: TAKING ARCHITECTURE FROM BEHIND  
COLIN RIPLEY