Article https://doi.org/10.34074/scop.1022012

THE 'ETHICAL TURN' IN CONTEMPORARY ART AS RESEARCH

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The histories of modernism and postmodernism are full of artists who used 'shock tactics' to make 'cutting edge' art, seemingly without care for what anyone else thought. Today, care is paramount. The contemporary 'practitioner' is obliged to take responsibility for the impacts and implications of their work, for what it does to people. The very term 'practitioner' is symptomatic of a context in which art-making overlaps with research and academia.

This article is based on the premise that there has been an 'ethical turn' in contemporary art, and that there is a connection between this 'turn' and the emergent recognition of art-making as a form of research – an activity with, so to speak, something to answer for, or to. It is not within my remit to express an opinion on the ethical turn itself (some may consider it a welcome departure from aggressive, alienating, macho, selfish individualism and irresponsibility, while for others it is a lily-livered, obsequious retreat from the artist's unique responsibility to be irresponsible and difficult, to make people uncomfortable). Rather, I will merely place before the reader both the continuities and tensions between the ethics of the contemporary art world, on the one hand, and the principles of research ethics to which artists working within academic institutions are expected to adhere, upheld usually by an ethics committee (such as the Otago Polytechnic Research Ethics Committee), on the other.

RESEARCH ETHICS AND ART

The ethics committee is tasked with ensuring that principles of ethical research are respected, specifically where research conducted by academic staff or students involves human or animal participants. The researcher must demonstrate that people will participate in the research voluntarily, not under coercion or deception, and are able to give their informed consent; their privacy will be respected, along with the confidentiality or anonymity of their 'data.' Or, conversely, they are given due acknowledgement for their contribution should they desire it; and data will be stored securely during and after the project. The ethical researcher avoids any conflict of interest that could affect participants, and is aware of the cultural diversity and values of the people with whom they engage. Research ethics also considers the safety and rights of so-called 'vulnerable people', and the potential physical, emotional or reputational harm to participants, or to the researcher or their institution.

All these possibilities are addressed *before* a research project goes ahead, before potential human participants are approached (a simple and reasonable proviso, but one that can sit uneasily with the exploratory and unpredictable nature of art as research). Above all, the benefits of the research must outweigh the risks. It is not necessary for the researcher or the committee to completely *eliminate* risk – for there to be *no* potential for harm. In this case there is a sense in which the often inherently risky nature of contemporary art can be accommodated despite the preconceptions about the ethics process, sometimes held by artist–researchers. The task of the researcher is to minimise and mitigate risk, and demonstrate that the time and commitment of human participants is worthwhile. In evaluating these elements, an ethics committee scrutinises not just those parts of the proposed research that relate directly to the treatment of human participants, but the soundness and potential of the research itself: research questions and aims, methods and methodology, anticipated outcomes and benefits.

Research ethics can be traced back to the trial of Nazi doctors at Nuremberg in 1946-47 for their part in the 'research' conducted on Jewish concentration camp inmates – torture conducted in the name of medical science. The Nuremberg Code, a set of guidelines for ethical research, was the outcome. Later guidelines, again stemming from medical research, emerged with the Helsinki Declaration in 1964 and the Belmont Report of 1979, while the phenomenon of the university ethics committee became more widespread during the 1990s. These principles, along with case studies (studies in which things went badly wrong), inform the work of ethics committees today. Research ethics has been shaped, then, by some disciplines more than others, medical science especially, and for current researchers in those disciplines, applying for ethics approval is routine.

What about art? There are two interesting points of connection between contemporary art conventions and the framework of research ethics. Firstly, artworks generate all manner of complex ethical conundrums; ethics is central to the content of much contemporary art, not just the process by which it is carried out. Secondly, art almost always involves, or is intended to involve, human participants; it has an audience. This second point initially seems to suggest that artists working under the auspices of an academic institution will need ethics approval for any work they put on display. Historically, though, and still for the most part today, art audiences are not considered research participants. The Canadian Tri-Council Policy Statement: Ethical Conduct for Research Involving Humans states: "Creative practice activities, in and of themselves, do not require REB review. However, research that employs creative practice to obtain responses from participants that will be analyzed to answer a research question is subject to REB review."[1]

There are two reasons for this "creative practice exemption."[2] One is that making art was not, until relatively recently, considered 'research' (more on this later). The second reason is that art audiences are typically self-selected. When people decide to visit an art gallery, for example, their expectations are different from when they are in other contexts; they know art to be a set of representational codes, and to be sometimes unusual and shocking. The Tri-Council Policy Statement does indicate that if an artist–researcher wants to study the responses of their audience, and explicitly use those responses in a project (practical or written), *then* the audience members become research participants.[3] Also, some artworks include, or represent, material that is potentially upsetting or harmful to certain audiences. In these cases, the sensitive nature of the subject overrides the technical question of whether audience members are participants, and the project might require ethical scrutiny.

A further complicating case is participatory art, including what Nicholas Bourriaud dubbed 'relational aesthetics,' where audiences are implicated as active protagonists.[4] Claire Bishop argues there is a 'feel good' factor to many such participatory works – a benevolent desire for cooperation or whimsical unsettling of social norms.[5] That is, participants are not usually placed in ethically compromising or challenging situations. But this *does* happen in certain instances of relational aesthetics, such as Gillian Wearing's confessional *Signs that say what you want them to say and not Signs that say what someone else wants you to say* (1992-93).

Some artists go further – Bishop describes their work as 'relational antagonism.' The Mexico-based Spanish artist Santiago Sierra recruits people from the margins of society, such as the homeless, paying them paltry sums to perform gruelling and humiliating tasks in an art gallery, such as standing for an hour or more facing the wall, without moving or talking, under the gaze of a typically privileged audience.[6] Sierra exploits his subjects (or objects) to point out entrenched systems of exploitation in capitalist societies, while also, as Bruce E Phillips notes, alluding to the historically alienated position of artists as "workers of precarious labour."[7]

A similarly calculated act of exploitation was evident in veteran performance artist Marina Abramovic's 2011 orchestration of an LA MoCA fundraising event, for which she auditioned performers to serve, or effectively *be* served. For instead of merely waiting on tables, they sprawled naked on the tables with skeletons lying on top of them, or had their heads poking through the table tops and rotating like lazy Susans, for a period of several hours. They were paid $150 plus an annual MoCA membership.[8] Wealthy patrons invited to the event, for their part, dressed in white lab coats.

Like Sierra, Abramovic has her participants act out and thereby represent power relationships. Can the representation of exploitation be separated out, treated differently, from exploitation itself?[9] Again, we will return to this question. Suffice to say that were such a project proposed by an artist within an academic institution, the creative practice exemption would no longer apply, outweighed by the magnitude of the ethical issues involved: potential psychological harm for the people involved; reputational harm to the institution should the event gain media publicity. The contemporary artist is on some level a researcher and, in the case of artists such as Sierra and Abramovic, the inquiry is into the dubious ethics of the capitalist economy; their art is a mirror to the realities of labour exploitation. However, the artist as researcher, in the academic context, does not seem to have the same latitude to reflect ethical injustice.

ART AS RESEARCH, ETHICAL RESPONSIBILITY

Making art is now recognised as research within academia. Exhibitions are research outputs, by way of which academic institutions gain research funding. Artists employed at art schools teach the approved research methods, and assess the extent to which students successfully apply them. Tutors and students alike attain postgraduate qualifications, including doctorates. It has taken time and effort to convince the wider academic community that there is more rigour to practice-based research than a bunch of arty types wanting to make whatever they like and calling it 'research.' But while artists based in academia have jumped through hoops to show that what they do is comparable to what their peers in other disciplines do, there is one hoop some still baulk at: applying for ethics approval.

There are reasons for artists to be reluctant to submit a proposal to an ethics committee. Developing the application can take time. Add to that the review process, and formulating responses to the inevitable requests for more information or for more safeguards. Obtaining ethics approval can be an obstacle, delaying the project itself. Committee feedback can feel like nit-picking, and the strategies for ameliorating risk so inhibiting as to undermine the very substance of the project. The artist might also question the ability of committee members from other disciplines to make judgements about art. Above all, the ethics process could be construed as an exercise in censorship, stifling innovation and risk-taking, qualities held dear by artists.

Arguably, artists are well placed to consider critically the authority of ethics committees. While one of the tasks of such committees is to ease power imbalances between researchers and their participants, perhaps ethics systems themselves involve power imbalances that restrict individual, academic freedoms, and are complicit with what John Ambrosio has called the post-1970s accountability movement.[10] Education today operates on a corporate efficiency model, and the ethics committee serves as just another bureaucratic mechanism for protecting the image of the brand from 'potential harm.' Artists and art audiences alike might therefore ask of an art project, to quote Nato Thompson, "how does it resist instrumentalisation?"[11] That is, how does it resist co-option into neoliberal corporate systems? It is worth reiterating that the purpose of ethics review is not to put a stop to something that involves risk, but to ensure risk is minimised and outweighed by the benefits of the research. Nonetheless, there remains cause for the belief that in relation to ethics systems, the artist is at odds from the outset with what Barbara Bolt and her collaborators describe as "a research culture that is concerned with compliance and risk-aversion."[12]

Artists have the important social role of raising ethical questions, causing discomfort, unsettling beliefs and behaviour – a responsibility to be irresponsible. Yet there is also a sense in which the artist–researcher's resistance to the formal ethics process is in tension with a conspicuous tendency in the wider field of contemporary art extending outside academia – the very 'industry' from which are derived the methods and standards applied in art schools. Call it an ethos of care: a desire to treat both human and non-human beings and things with respect for their agency; embrace diverse and hitherto marginalised cultural values; point out problems with individualism and irresponsibility; adopt sustainable materials; decolonise art institutions. A contemporary artist's concept of risk might be less about confrontation than about striving for an ethical position beyond the injustices of past and prevailing systems and ideologies, beyond what is immediately comfortable or even attainable.

What relationships or overlaps can be drawn between the ethics of the academy and the ethics of the art world? How might artist–academics respond to ethical guidelines and structures, and make them as intrinsic to art as they are to other research disciplines?

CONTEMPORARY ART-WORLD ETHICS

In most academic disciplines, ethical principles come from the 'real world' of practice – the ethical practice of medicine or therapy, or the various sciences. Bolt suggests that the problems artist–researchers have with ethics might stem from the fact that there are few formal ethical guidelines laid down in the art world.[13] But maybe this broader field of art practice is already governed by tacit ethical principles, which have not yet filtered through into academic systems, but nonetheless affect how artist–researchers operate. If so, asking them to make formal ethics applications might represent a duplication or excess of ethical regulation. Artists regulate themselves, in their relationships with the wider art world, which is, after all, the site of their practice. As Lois Klassen argues: "For artists, the execution of an artwork is inseparable from its socially situated emergence – a situation that is increasingly infected by ethical judgment from critics and institutions, as well as participants in the artwork's process of meaning Making."[14]

A brief survey of contemporary art spaces and forums reveals how they register the 'ethical turn.' Exhibitions at Dunedin's Blue Oyster Project Space over the past few years show a concerted effort to represent previously underrepresented issues and communities – to reimagine histories, resist discrimination, fulfil Treaty obligations, unsettle patriarchal, white, hetero norms. Louie Zalk-Neale and Connor Fitzgerald's 2021 exhibition, "GLOSSY LEAF kiss," exemplifies a widespread desire to create safe spaces for artists and audiences alike, in this case inclusive of both indigenous spirituality and queer identities.[15] A 2018 curatorial symposium at AUT in Auckland, "Ko au te au/I am the ocean," was grounded on the ethos of "collective enquiry," structured according to three 'kaupapa:' 'knowledge,' 'language' and 'love.'[16]

Emma Bugden's doctoral research indicates a generational shift whereby some current artist-run spaces do not "facilitate and prioritise 'artistic risk' as a strategy" – and she, initially at least, thought that they *should* do so – instead fostering "safety."[17] The Wellington space, Meanwhile, has a policy that explicitly prohibits "[r]acist, sexist, classist, transphobic, ableist, fatphobic or religiously bigoted comments of any kind," or "[f]ailure to respect the physical and/or emotional safety of others."[18] The policy states: "We encourage innovative practice, but not at the cost of alienating or harming others."[19] Bugden sees this in the context of a heightened awareness of gender diversity, and about the safety of sexual encounters and the #MeToo movement.[20] We might add to this a consciousness of what was once known in some contexts as "cultural safety."[21]

TREATY, TIKANGA AND FREE SPEECH

Connections between the ethics of art and of academic research can be found in responses to Treaty obligations. At Otago Polytechnic, the formal process for ethics approval includes consultation with the Kaitohutohu Office. Art institutions have similarly responded to progressive cultural shifts, from the 'idealised' concept of biculturalism of the 1980s[22] to the growing representation of young Māori artists in spaces such as Blue Oyster, and attempts to 'decolonise' the art gallery.

Tikanga, as Joe Williams and others have argued, is the first *law* of this land,[23] but it is also the first set of ethical principles – 'law' understood in a more holistic sense than Western disciplinary boundaries permit. Tikanga precede, and should therefore ideally inform, all current thinking about ethical research. One must also be conscious of what 'research' has historically meant in a colonial context – that is, appropriation, taking data where the word 'data' immediately has a dehumanising effect, as if it were not intimately connected with the people it came from. The discipline of research ethics has had to revise its own 'research' principles to encompass indigenous ethical

frameworks. Internationally, indigenous ethical principles are (re)gaining primacy, with an emphasis on the collective rather than the individual, relationships and reciprocity, and the vitality or spirit of non-living things and beings.[24] Again, there is an overlap with legal systems, and in Aotearoa New Zealand legislation has been passed that recognises the life or personhood of rivers and other features of the natural environment.[25]

Freedom of speech or expression is a principle to which artists and art writers sometimes turn in the belief that it is an overriding law that trumps everything else. Of course, it is not; it is a European Enlightenment construct, and even in Western legal systems does not constitute a 'natural' or 'absolute' law, a 'default state,' but is context-dependent.[26] In the context of Aotearoa New Zealand, the 'free speech' refrain needs to be reconciled with tikanga. Moana Jackson, for instance, writes about the kawa (or protocol) of the marae, where the marae ātea (the forecourt where speeches of welcome occur) offers a licence to speak freely and argumentatively.[27] "However," he cautions, "the freedom is always exercised with an awareness of the relationships that exist between the home people and their visitors as well as implicit understanding that ultimately those relationships are protected by the domain of peace."[28] The marae context maintains a fine equilibrium between lively debate and collective wellbeing.

In 1995, Diane Prince (Ngāti Whatua, Ngāpuhi) removed her installation *Flagging the Future: Te Kiritangata – The Last Palisade* (1995) from the Auckland Art Gallery, when the gallery bowed to pressure from the police, who advised that the inclusion of a New Zealand flag carrying the words "please walk on me" breached the Flags, Names and Emblems Protection Act.[29] Prince (or the gallery's director) could have resisted this pressure and let the legal debate play out, given that the Flags Act seems to contradict the legal right to freedom of speech.[30] Yet Prince expressly stated that what was truly powerful was the act of removing the work; she was not interested in making it a matter of free speech.[31] To do so would have been to submit her principles, and the fight for tino rangatiratanga, to a European legal construct that, as Jackson observes, has itself been an instrument of colonisation.[32]

The free speech issue came to a head with an exhibition in Auckland in 2020, "People of Colour," by the young artist–directors of the gallery Mercy Pictures. Images of many different flags, stretched on canvases, hung in a grid of clashing ideologies – national flags, rainbow flags, activist or protest flags and fascist flags, including Nazi and white power emblems. The presence of this last category created a backlash. Aside from the offence caused by the show itself, a review by John Hurrell on his website EyeContact fanned the flames by criticising those who, as he saw it, advocated "censorship."[33] This in turn generated a chain of comments, some from artists and writers requesting that Hurrell remove any reviews and images of their work from his website. In a subsequent text, titled "Is there a need for more humour in New Zealand art?," Hurrell deplores the "timidity," "piety," "earnestness" and "worthy" social agendas of the contemporary art scene: "the current political climate … can be seen as miserablist and dour, with its dominant emphasis on post-colonial activism, sociai [sic] change, the pandemic and eco catastrophe – and lack of variety in mood."[34]

Does Hurrell have a point? Is there a dearth of artists prepared to be irresponsible? Perhaps one should accept the hurt of individuals or groups as the price paid for a greater good, which might include freedom of expression, the right of the artist to be irresponsible. One might question too whether some of the reactions to Hurrell's review were justified. Did the snowballing demands that material be removed from the website reflect a mob mentality played out online, a petulant manifestation of 'cancel culture'? If Hurrell did have a point, however, he expressed it so insensitively that he undermined his own case. Tellingly, Hurrell, and other white male commentators, insisted on a need for rational argument, philosophical debate and the legal right to free speech, setting these in opposition to 'mere' trauma and emotive responses in a perpetuation of patriarchal, imperialist, binary rhetoric.[35] From this viewpoint, the flags in "People of Colour" were just representations, a bunch of signifiers, and viewers should have been able to distance themselves from what was represented, to recognise that the representation is something other than what it purports to represent – that it is, in this context, about racism, not inherently racist.

In Te Ao Māori, though, images are not mere representations, but embodiments of ancestors and of life forces such as wairua and mauri.[36] The emergence of speculative realism, vital materialism and various other versions of the idea that non-human things (including artworks) have agency or life suggests that Western theory is undergoing a shift with regard to representations and their 'content.' Representations *do* things and act upon us.

CONCLUDING REMARKS

I have endeavoured to make a start on thinking through the ethics of art as research, as it is carried out in the academy, and in relation to tacit ethical codes evolving in the wider art world. The focus here has been on a tension between the desire for risk – a certain productive irresponsibility – and an ethos of care, responsibility, community and tikanga. More thought remains to be given to some of the key 'problems' arising at the intersection of practice as research and ethical principles and processes. These include the fuzzy guidelines for ethics in creative practice. Art as research has a short history and, while there are case studies, our ability to evaluate them is less clear-cut than in other disciplines. The sheer scope of what counts as art, the constant pushing of (artistic and social) boundaries, also makes the ethical issues less predictable. Moreover, whereas completing an ethics application requires that methodology, research questions and intended outcomes are all known in advance, art as research is typically spontaneous, takes unpredictable turns 'in the moment,' responds to situations immediately at hand, and is not directed toward a known end-point or hypothesis.

Is it simply a reality that art as research is held to standards not generally applied outside academia? I hope to have demonstrated that those standards to some extent *come from* the art world, which is as it should be. We need to protect the ability of artists, inside the academy as well as outside, to make daring, provocative, uncomfortable, unsettling work. Maybe, occasionally, someone has a project that is not advisable to pursue within an academic institution. But if supervisors or tutors steer students away from projects that would require an ethics application, they, rather than the ethics committee, are responsible for restricting innovation and risk-taking.

Ultimately, consolidating the status of art as research means using the mechanisms put in place to ensure research value and rigour. It is possible that, with time, and a higher level of trust in the ethics approval process, artist–researchers might find they are not always trying to fit a square peg into a round hole, and that they share, with their ethicist colleagues, a willingness to embrace, as Sarah Banks puts it, "ethics as decision-making" and the "ethics of care," rather than "ethics as regulation."[37] Artists can themselves shape the ethics system by working with it, thereby building up precedents and case studies, and forming the language and principles to reflect the distinctive qualities of art as research.

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1 Canadian Institutes of Health Research, Natural Sciences and Engineering Research Council of Canada, Social Sciences and Humanities Research Council of Canada, *Tri-Council Policy Statement: Ethical Conduct for Research Involving Humans*, December 2018, https://ethics.gc.ca/eng/documents/tcps2-2018-en-interactive-final.pdf, 19.

2 See Lois Klassen, "Research by Artists: Critically Integrating Ethical Frameworks," in *Ethics and Visual Research Methods: Theory, Methodology and Practice*, ed. Deborah Warr et al. (New York: Palgrave Macmillan, 2016), 240. See also Barbara Bolt's discussion of the "aesthetic alibi" in "Whither the Aesthetic Alibi: Ethics and the Challenge of Art as Research in the Academy," in Warr et al., *Ethics and Visual Research Methods*, 187-99.

3 This means more than an artist simply observing how people respond to a work, and allowing that to implicitly inform subsequent works. Ethics comes into play when collecting data (for example, formally documenting audience responses) and explicitly analysing and reflecting upon it – perhaps to the extent that people's responses to an exhibition, and the people responsible for them, are given a public forum other than the initial exhibition itself.

4 See Nicholas Bourriaud, *Relational Aesthetics* (Dijon: Les Presses du réel, 1998).

5 See Claire Bishop, "Antagonism and Relational Aesthetics," *October*, 110 (Fall 2004), 51-79.

6 An example is Sierra's *Group of people facing the wall and person facing into a corner* (2002).

7 Bruce E Phillips, "The Sympathetic Agent," in *Public Good #2*, ed. Kim Paton (Hamilton, NZ: Ramp Press, 2014), 23.

8 EC Feiss, "Endurance Performance: Post-2008," *Afterall*, 23 May 2012, https://www.afterall.org/article/endurance-performance-post-2008 (accessed 29 April 2021).

9 Legendary dancer and choreographer Yvonne Rainer got wind of Abramovic's project weeks before it took place, and vehemently condemned it. See Yvonne Rainer, Douglas Crimp and Taisha Paggett, letter to Jeffrey Deitch, reproduced in "Yvonne Rainer Accuses Marina Abramovic and LA MoCA of Exploiting Performers," *Artforum*, 11 November 2011, https://www.artforum.com/news/yvonne-rainer-accuses-marina-abramovi-263-and-la-moca-of-exploiting-performers-29348 (accessed 29 April 2021).

10 John Ambrosio, "Changing the Subject: Neoliberalism and Accountability in Contemporary Education," *Educational Studies*, 49:4 (2013), 316-33, https://www.tandfonline.com/doi/full/10.1080/00131946.2013.783835 (accessed 29 April 2021).

11 Nato Thompson, "Ethical Considerations in Public Art," in *Scandalous: A Reader on Art and Ethics*, ed. Nina Möntmann (Berlin: Sternberg Press, 2013), 117.

12 Barbara Bolt et al., "iDARE Creative Arts Research Approaches to Ethics: New Ways to Address Situated Practices in Action," *Proceedings of the 12th Biennial Quality in Postgraduate Research Conference* (Melbourne: University of Melbourne, 2016), https://www.academia.edu/29061375/Creative_Arts_Research_Approaches_to_Ethics_New_ways_to_address_situated_practices_in_action (accessed 29 April 2021).

13 Ibid.

14 Klassen, "Research by Artists," 238.

15 Louie Zalk-Neale and Connor Fitzgerald, "GLOSSY LEAF kiss," Blue Oyster Project Space, 3 March–10 April 2021. See Edward Hanfling, "Exhibitions: Dunedin," *Art New Zealand*, 179 (Winter 2021), 49.

16 "2018 Symposium: Ko au te au/I am the ocean," https://stpaulst.aut.ac.nz/events/2018/symposium-2018 (accessed 29 April 2021).

17 Emma Bugden, "Testing Grounds and Launching Pads: Situating the Artist-run Space Today" (PhD thesis, Victoria University of Wellington, 2020), 45. Bugden argues that, historically, artist-run and alternative/project spaces endorsed experimentation and risk, based on their having a "greater emphasis on artistic agency and less focus on audience development" (107). This might be taken to mean that such spaces felt free to upset or annoy people, not having a very big audience anyway and not being geared to selling. In observing a shift away from what she describes, with knowing paradox, as "traditional notions of artistic risk" (20), Bugden seems to intimate that contemporary art spaces encourage a different kind of risk. Perhaps it resides in artists putting themselves and their audiences in unfamiliar (though not shocking or affronting) situations, considering possible or imagined future worlds, or exploring affect-laden or difficult-to-grasp materialities … but this is merely speculation.

18 Meanwhile, "Values and Guiding Principles," quoted in Bugden, "Testing Grounds," 112.

19 Ibid.

20 Bugden, "Testing Grounds," 113. This calls to mind a further expression of the caring ethos in the contemporary art world – Ayesha Green's letter to the editor in *Art New Zealand*, 177 (Autumn 2021), 112. David Eggleton's review of Green's 2020 exhibition at the Dunedin Public Art Gallery described two of the paintings as representing male and female couples in bed (David Eggleton, "The Psychogeographer's Dream: Recent Work by Ayesha Green," *Art New Zealand*, 176 (Summer 2020–21), 49.) Green puts him right, advising that one of the paintings in fact represents Green and her girlfriend, which she wants to make clear because of the erasure of queer histories and relationships, and her sense of responsibility to the LGBTQIA+ community. But she corrects Eggleton gently: "I write this letter with warm and caring feelings" reads quite differently from the typically aggressive letters to the editor of times past.

21 This phrase, then made current by media coverage of resistance to 'cultural safety' components in the training of nurses, was used as the title of a 1995-96 exhibition, "Cultural Safety: Contemporary Art From New Zealand," shown in galleries across New Zealand and Germany, initiated by Gregory Burke and Peter Weiermair.

22 See Martin Awa Clarke Langdon, "Since 1984: Heaha te Ahurea-rua?," in *Unfolding Kaitiakitanga: Shifting the Institutional Space Within Biculturalism*, eds Abby Cunnane and Charlotte Huddleston (Auckland: St Paul St Publishing, 2016), 12.

23 See Joe Williams, "Lex Aotearoa: An Heroic Attempt to Map the Maori Dimension in Modern New Zealand Law," *Waikato Law Review,* 21 (2013), 1-34, at 3. See also Jacinta Ruru, "First Laws: Tikanga Māori in/and the Law," *Māori Law Review* (September 2018), http://maorilawreview.co.nz/2018/09/first-laws-tikanga-maori-in-and-the-law (accessed 19 July 2019).

24 See Helen Kara, *Research Ethics in the Real World* (Bristol: Policy Press, 2018), 25-6.

25 See Katherine Sanders, "'Beyond Human Ownership'? Property, Power and Legal Personality for Nature in Aotearoa New Zealand," *Journal of Environmental Law*, 30:2 (July 2018), 207-34.

26 The context-based nature of free speech was famously argued for by Stanley Fish in *There's No Such Thing as Free Speech and it's a Good Thing, Too* (Oxford: Oxford University Press, 1994).

27 Moana Jackson, "Rethinking Free Speech," *E-Tangata*, 19 August 2018, https://e-tangata.co.nz/comment-and-analysis/moana-jackson-rethinking-free-speech/ (accessed 29 April 2021).

28 Ibid.

29 See Edward Hanfling, "An Affect Alien in Aotearoa: Diane Prince and the Flag Controversy," *Third Text* (2021, forthcoming). See also Edward Hanfling, "Artist, Activist, Affect Alien: Diane Prince and the Flag Controversy," *Art New Zealand*, 159 (Spring 2016), 66-70, 127.

30 See Sigrid Brigitte Buschbacher, "Protection of Public Symbols in New Zealand and the United States of America: Flag Burning versus Freedom of Expression," *New Zealand Postgraduate Law E-Journal*, 2 (2005), 31. See also Richard Ekins and John Ip, "Flag-burning Law Restricts Free Speech," *New Zealand Herald*, 20 March 2003.

31 Diane Prince, unpublished notes, in email to author, 14 July 2016.

32 Jackson, "Rethinking Free Speech."

33 John Hurrell, "Hoist That Rag," *EyeContact*, 11 November 2020, https://eyecontactmagazine.com/2020/11/hoist-that-rag - c2295 (accessed 19 April 2021).

34 John Hurrell, "Is There a Need for More Humour in New Zealand Art?," *EyeContact*, 3 March 2021, https://eyecontactmagazine.com/2021/03/is-there-a-chronic-need-for-more-humour-in-new-zea (accessed 19 April 2021).

35 Hurrell, "Hoist That Rag."

36 Mānukā Henare, "Tapu, Mana, Mauri, Hau, Wairua: A Māori Philosophy of Vitalism and Cosmos," in *Indigenous Traditions and Ecology: The Interbeing of Cosmology and Community,* ed. John A Grim (Cambridge, MA: Harvard University Press, 2001), 197-221.

37 Sarah Banks et al., "Everyday Ethics in Community-based Participatory Research," *Contemporary Social Science*, 8:3 (2013), 263-77, at 266, https://www.tandfonline.com/doi/full/10.1080/21582041.2013.769618 (accessed 29 April 2021).