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**DURIE, E.T. (1994)**

**CUSTOM LAW**

**Preface to 2013 Reprint.**

In early 1994, Edward ('Eddie') Taihakurei Durie, at that time Chairman of the Waitangi Tribunal, prepared a discussion paper called 'Custom Law'. It was designed to stimulate debate among Members of the Tribunal. It both succeeded in this purpose, and did far more besides.

Its value was quickly appreciated by a number of people (including officials working on Treaty of Waitangi issues) after its limited-circulation release. As a result, 'Custom Law' came to be widely circulated in public sector circles, coming to be an influential background document for policymakers. The paper contributed in a number of ways, moreover, to serious scholarly investigation by both Maori and Pakeha of a significant subject that had long been neglected in the literature.

Over the years since its first dissemination in 1994, the typescript became increasingly difficult to locate. The editors of this series have decided, therefore, with the kind permission of Sir Edward Durie, to make 'Custom Law' more widely available by republishing it online. We have decided that it is best presented as an historical document, and we therefore republish it below as an exact copy of the original typescript.

Richard Hill,  
Treaty of Waitangi Research Unit,  
May 2013.



CUSTOM LAW

E T Durie, January 1994

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PURPOSE OF PAPER with the permission of Tā ET Durie

Maori institutions, laws and processes were flexible and fluid but certain ethnic traits may be regarded as characteristically 'Maori'. This paper attempts a national description of Maori social organisation particularly as affecting land tenure, in the context of the work of the Waitangi Tribunal. It is proposed with these caveats:

- practice and process varied from place to place, over time and according to particular contemporary circumstances. The changes and variations were such that a rule may not have acquired the status of a rule (though there was a consistency in the underlying ideology, norms or values);
- the picture of Maori custom and tenure may also have been distorted by the opinions of settlers and colonial officials, and further distorted by the incorporation of some of those opinions within the Maori community itself;
- modern Maori may postulate custom not according to what it was but according to how it was conveyed to them, with overlays of colonialism and recent change, or according to how they would now have it be.

There is also a danger that in listing the principles of customary practice and law, a degree of rigidity will be perceived that did not exist, and that the dynamics of custom and oral tradition, their plasticity and adaptability, will be subverted.

Oral tradition re-shaped history to strengthen a current position. History was as it now is. To assess events in contemporary context the Tribunal must consider custom and tradition in western, lineal terms, but this does not and should not be seen to invalidate modern custom, or require that custom should change to fit historical modes. It was custom that people lived by the laws and structures that suited them at the time, and modern preferences and ideologies adjusted to new needs are

as much a part of custom as that which existed before.

Despite local variations, there was (and is) a degree of certainty in customary expectations. In 1846 Bishop Hadfield described pre-contact customs as so regular that one 'tribe' could predict accurately the conduct of another in any given circumstance. Substantial changes occurred in the post-contact period however, through increased warfare and western influences, and the Bishop considered there was less predictability in his time.

The contact period 1769-1840 is targeted in this paper with some reference to subsequent changes in illustration of the differences. The contact era is chosen as there is no contemporary written source of the earlier times, and the post contact period was even more affected by western influences.

Here 'pre-contact' means pre-1769, the 'contact period' is 1769-1840, and 'post contact' is thereafter.

This paper does no more than postulate a series of generalisations as a basis for further research and discussion. There is an ultimate goal to settle guidelines for the Waitangi Tribunal and Maori Land Court that might clarify the issues to be addressed on claims and custom law cases. It is produced to provoke discussion and contributions to that end.

Reliance has been placed on Maori evidence to the Native Land Court of the 1860s and 1870s as referenced by Manatu Maori in Customary Maori Land and Sea Tenure (1991), on the analysis of other evidence to the Native Land Court by Heather Angela Ballara in the Origins of Ngati Kahungunu (PhD thesis in history, VUW, 1991) and on recent, revisionist texts of historians and anthropologists in the Custom Law Reading List sent to members and judges in 1993. The Maori evidence though given in the post-contact period, mainly described the contact era as known to the witnesses. The emphasis and expressions however may reflect the

politicisation of Maori ideology from about 1850.

#### CONCEPTS OF LAW

- 'Tikanga' described Maori law, 'kawa' described ritual and procedure, and 'ture' (Hebraic 'Torah') described church law, western institutional law and institutionalised Maori land law.
- Tikanga derived from 'tika', or that which is right or just. 'Tikanga' may be seen as Maori principles for determining justice.
- 'Tikanga' was also used for ritual, but in the sense that ritual was also 'tika', customary or correct. Ritual and ceremony themselves were described by 'kawa'.
- 'Kawa' referred also to process and procedure of which 'karakia' (the rites of incantation), formed part.
- Many colonists perceived Maori law in light of the western system. Analogies assisted their understanding but distorted the reality. Maori law has now to be revised in its own cultural terms.
- The question of whether Maori behavioural norms constituted 'law' is an issue of definition. "Were there rules that were viable as governors of conduct?" is usually asked. This comes from analogies with rules-based western law (as distinct, for example, from christian law). The question might more aptly be whether there were values to which the community generally subscribed. Whether those values were regularly upheld is not the point but whether they had regular influence. Maori operated not by finite rules alone, or even mainly, but as in christian law, by reference to principles, goals, and values that were not necessarily achievable. They were largely idealised

standards attributed to famous ancestors.

- Maori norms were sufficiently regular to constitute law, in this context a social norm being defined as legal if its application or neglect provoked a predictable response. Law is also law, in this opinion, whether or not disputes were settled through an external agency, or whether, as was usual amongst Maori, disputes were adjusted by the parties themselves.
  - Nineteenth century Maori referred to "our law" rather than "our custom".
  - 'Custom law' means law generated by social practice and acceptance as distinct from 'institutional law' which is generated from the organs of a super-ordinate authority. Custom was a significant source of English law but has since been mainly replaced by common law (case law) and statutory regulation.
  - Tikanga was pragmatic and open ended. Its lack of rule-like definition was compensated by its ability to change without institutional intervention.
  - Tikanga was flexible, subject to reinterpretation according to circumstances. Decisions were pragmatic, not bound by unbreakable rules.
  - Kawa was 'rule-like', more rigid and applied mainly to process and procedure.
  - The principles of tikanga provided the base for the Maori jural order.
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- Whanaungatanga, mana, manaakitanga, aroha, mana tupuna, wairua and utu, may be described as conceptual regulators



of tikanga, or as providing the fundamental principles or values of Maori law.

- Whanaungatanga (kinship) was demonstrative of:
  - the primacy of kinship bonds as determiners of action;
  - the primacy of whakapapa (genealogical tables) in social reckoning and rights formulation;
  - the right of individuals to determine, develop and validate their individual identity and status within a chosen descent group;
  - the basis for hapu allegiance; and
  - the inter-connectedness of Maori people.
- Whakapapa was a highly developed politico-social tool, providing a flexible system of self and group identification and permitting of descent line manipulation to suit different situations. Whakapapa were not used to constrain individual or group status but to enlarge it, and did not limit future direction but expanded on the possibilities.
- The widespread and bilateral genealogical lattice of whakapapa also prescribed the essentially inclusive nature of Maori society. Well developed whakapapa gave the individual an entry to numerous communities, and allowed the communities to claim the adherence of widely scattered persons.
- Aroha (love, empathy, approval) was the basis for peaceful relationships. It was the word most used by Maori in proposing an alliance, agreement or common purpose with settlers or the governor.
- Mana described the personal and political dimensions of Maori authority and illustrated:

- the close connection between the people and authority (as compared with institutional authority);
  - the association of authority with personal power and influence; and
  - the freedom for class mobility through the demonstration of mana enhancing traits. These traits included honesty, integrity, reliability, keeping one's word, generosity, bravery, fearlessness, humility, respect, caring for others, community commitment and oratory.
- The individual of whatever class or caste gained or regained mana through personal achievement and ability for the benefit of others.
  - Manaakitanga, as the word suggests, was an aspect of mana on which Maori placed special store. It amounted to generosity, caring for others and compassion.
  - Utu concerned the maintenance of harmony and balance. It was fundamental to most Maori tikanga and thinking, governing social relationships, the creation and maintenance of reciprocal obligations, the conceptual avenging of death, the appeasement of killings, the punishment of wrong doing, the maintenance of the cycles of nature, gift exchange, the formation of controls, the maintenance of alliances, the performance of fiduciary obligations and the like. Utu underpinned the essential 'give and take' nature of the Maori social and legal order.
  - Maori mental constructs were based on cycles in preference to lineal progression, as shown in the cyclical and repetitive patterns of art forms. The nurturing of social cycles was as critical to survival as the maintenance of the cycles of nature. Reciprocity protocols were formulated for commerce, social intercourse, behavioural controls, and peace-making, all encapsulated in utu. The

weighting to reciprocity disclosed the Maori world-view that life's basic needs and survival depended on co-operation and interaction between persons and peoples. The 'rugged individualism' valued by colonists, was not prized as a value by Maori.

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- The maintenance of these conceptual regulators or values depended in part upon the recounting of myths, legends, history, stories and whakatauki (proverbs). The terms 'korero tupuna' or 'korero o mua' were sometimes used for myths and legends, 'korero o nga ra o mua' for recent history and 'korero purakau' and 'korero pakitara' (or 'pakiwaitara') for stories, factual, fictional or based on fact. 'Pakiwaitara' was also used for 'gossip'. Elements of each of these were sometimes present in a single recounting.
- The artifices of story telling included the telescoping of drawn-out processes to present them in short order, the collapsing of time with ancestors of distant generations speaking to one another, and the re-arrangement of sequence. Maori chronology in oral tradition was not lineal but was categorised according to how the purpose was best achieved, the main purposes being to relay messages, transmit values, describe the essential outcome, explain the nature of the world, legitimate the current social or political position or to justify proposed action by ancestral precedent. Time was telescoped or collapsed according to the tradition that the ancestors and the past speak to and are part of the present. The order and spacing of events was not as important as the outcome and the value or ancestral advice to be relayed.
- Mana tupuna expressed the basic ideology that all things came from ancestors, land rights, status, authority, kinship, knowledge, ability etc. Mana was usually presented

as ascribed but ascription was usually retrospective to validate achievement ('he is brave, caring etc for he is the descendant of so and so') so that in practice, mana was both ascribed and achieved.

- Wairua (spirituality) and the associated presence of tapu (sacredness) made the spirit world a part of reality to be manipulated, reckoned with or accommodated with the same diplomacy as governed inter-personal relationships. Tapu was connected to and reinforced personal mana.
- The Maori legal conception was thus values oriented not rules based, more akin to the broad laws of the New Testament as distinct from the prescriptive rules of the Old or of the canon law and articles of faith that subsequently developed. The goal was to promote emulation of the idealised characteristics and achievements of renowned forebears and to eschew those of the unsuccessful.

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- History presents Maori society as open to the challenges of change but protective of the fundamental norms or principles of the conceptual regulators described.. Major changes were made without compromise to principles, or to enhance them. Tapu and wairua became emeshed with christian protocols but christianity served to sustain the spiritual dimension of the culture in the more material colonial world.
  - The adherence to principles, not rules, enabled change while maintaining cultural integrity. This compares with occasional settler depictions of Maori as hide-bound by custom, and occasional Maori depictions of custom as immutable. Maori inherited a lengthy, static period of cultural history when change was imperceptible but in fact occurring. The consequential presentation of custom, tradition and kawa as unchangeable, fortified by hallowed

sayings and stories authenticated by longevity, was deceiving however. Much tradition in fact developed to legitimise or explain past changes. Tradition thus tended to portray contemporary norms or political ascendancies as having always existed. In practice, even kawa was reversed if occasion required.

- There were thus noticeable disparities between custom as verbalised and as practised. This was apparent throughout the Pacific. Order required emphatic statements, and it was inevitable that custom was expressed in absolute terms but applied relatively.
- Customary stories also recounted conflicting admonitions enabling a choice in selecting what seemed right for the occasion. Custom thus served to guide, not bind, rules were not as important as their origins and purpose, and decision making was based on the pragmatic needs of survival. The conceptual regulators were directed to that end.
- Maori society had in fact been founded on change, in the shift from the tightly knit, densely populated Pacific Islands to the open expanses of Aotearoa. There were modifications in land tenure and social structure as a result. The ability to change without diminishing cultural integrity was manifested again in the incorporation of European technologies and christian beliefs while upholding an independent cultural and political identity.
- This vitality and flexibility of Maori custom may also have been sustained because custom was unwritten and because precedent formulated in other social and political conditions could be forgotten or disregarded if no longer convenient. The greater threat to the survival of Maori custom has therefore been, not the uncertain access to its laws or any vagaries in its application, but subsequent

codification. This happened with Maori land law where a modified custom was fossilised and made rigid, and which became incapable of meeting new needs and changed circumstances. In reality, traditional art lay in the selection of those principles that most seemed right, or tika, for the moment, and not in the formulation of prescriptive rules.

- There was, in this context, regular redefinition of standards. Rules were made to suit cases.
- Accordingly while custom was posited as finite law that had always existed, Maori customary policy was in fact pragmatic and able to adapt, but change was effected with adherence to fundamental principles and beliefs.
- Maori society and law may be characterised as dynamic and receptive to change but committed to the maintenance of fundamental values for the governance of human relationships.

#### **CONCEPTS OF IDENTITY**

- Self-identification came from belonging to an identifiable community. The group was the individual's point of reference. An individual living in isolation could not generally be conceived of.
- Self-identification was reinforced from the community's association with a particular territory. The land was also a point of reference.
- Self-identity came also from the maintenance of whakapapa. These served to validate one's position in the community and to maintain connections and alliances with other communities.

- Group identity was based upon the sharing of common values, symbols, knowledge, history, ancestry, livelihood and location. Ancestry and the transmission of a common knowledge, history and values reinforced identity.
  - Transmission was effected through informal instruction (waiata, story telling), formal instruction (wananga, korero), ritual, and structural debate or whaikorero which incorporated pepeha (sayings), whakatauki (proverbs), korero tupuna (traditions), korero o nga ra o mua (history) and waiata.
  - Group identity was sustained also by association with distinctive land forms, waters and sacred places including ancestral urupa (burial sites).
  - Group identity was also supported by whakapapa.
  - Whakapapa was mainly used inclusively to 'claim' the adherence of a wide range of persons to the group or to enable the individual to claim interests with or connections to a range of places and communities.
  - Whakapapa was also used exclusively to define seniority or ariki lines.
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- Community associations were both primary and distal. Primary membership of the community was characterised by kinship, residence, contribution, linked participation in certain activities and adherence to the community's norms. The relative importance of each criterion varied. Strangers were admitted as primary members subject to acceptance of the communities' standards but non kin, including spouses from other hapu, remained hunga, or persons from outside, acceptable only for so long as their social obligations were maintained.

- Kin living at a distance were also recognised as community members for certain purposes, usually without land rights but with the inchoate right to re-enter the community and assume residence.
- Modernly, access to land rights by descent but without residence, is recognised more than formerly through the operation of modern Maori land law. Because of new needs many modern Maori object to 'succession arrangements' that exclude certain issue though the land 'shares' are small and the issue are unlikely to reside in the area. There has been a shift in emphasis from community of living to to a community of kin in distal associations. Land shares have come to represent identity, turangawaewae (a place to stand) and whanaungatanga (kinship).
- A consequence is that Maori now have rights in a much wider range of lands than they could have acquired or maintained traditionally.

#### **GROUP FORMATION**

- Law is conditioned by social and political exigencies. Maori law reflects the dynamics and volatility of its communities.
- Maori society was characterised by the atomisation and reformation of autonomous groups, or hapu, and by the absence of centralised regional authorities.
- The pre-contact period presented settled communities and transient camps with high mobility due to shifting agriculture, hunting, reconnaissance, intra-territorial migration, inter-territorial migration (less usually), residential relocation for territorial maintenance, and the expansion of hapu over a region.



- The contact period was marked by unprecedented social change with major migrations and relocations and a marked increase in warfare between unrelated groups.
  - Post-contact saw a period of social and political transition, more regular habitations, permanent agriculture, less mobility, larger aggregations, less unit fractionation, more settled community polities, and the development of the latent ideology of a wider collective represented in waka and iwi.
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- Current academic opinion appears to be that Aotearoa was settled by wave upon wave of Pacific migrants over an extended period to about 1350, each wave inter-marrying with those here before them.
  - The incorporation of migrants into pre-existing communities was an early societal feature in Aotearoa, just as it had been throughout the Pacific. Intermarriage was usual.
  - Maori thus descend from original inhabitants (tangata whenua) and subsequent migrants (tangata heke). By intermarriage, the descendants of the migrants were also tangata whenua.
  - The former picture, with some earlier academic support, of the arrival of the Maori to wipe out original peoples (Maruiwi, Moriori, Kahui Maunga etc) is not generally sustainable on the evidence. Genealogies (whakapapa) are against this. Maori trace descent from original peoples and groups of subsequent migrants who arrived in various stages.
  - Fighting occurred but tradition suggests this was not between earlier and later arrivals on first landing, but between bifurcations of the descendants of both at a later

period. The single recorded instance of original people's immediate subjugation occurred much later in the Chatham Islands, but that was in the contact period and reflected the anomalies of that era (as is referred to later).

- The last wave of waka (canoes), probably in about 1350 or 26 generations ago, appears to have been larger than those earlier. The crews came to occupy parts of the country that were more thinly settled, especially in the central North Island, and although they intermarried with earlier groups, the waka crews, or their descendants, generally became more famous. Later generations emphasised their descent from the canoes, as the main source of their mana, or in this context, their power and authority. However they also traced descent from the original peoples who held the ancestral land connection, and which was a mana of another kind.
- Thus two types of mana came to be perceived, a mana in the land and a mana over it, both represented in the word 'mana whenua'. A mana in the land or whenua (whenua meaning also the after-birth), derived by descent from the earth mother and sky father and their demi-god children. From them descent was traced through tupuna (ancestors) to the tangata whenua, the people of the land, or in Aotearoa, the original people who were deemed to have been here from before time.
- Mana over the land came from the prowess inherited from leading ancestors of whom the most famous were linked to the later waka. In the inclusive manner of Maori thinking it was not enough to have either mana tupuna or mana tangata but rather, one should have both, and thus have all ten toes embedded in the soil.
- Maori therefore traced descent from both 'original' occupiers and subsequent migrants. Some whakapapa were

traced from the deities, some from early explorers like Kupe, the opinion being the longer the line that connected to the land, the greater the right, status and authority of the descendants.

- Descent from original occupiers was thus seen to give mana tupuna, the ancestral right to land, while descent from waka gave mana tangata or authority over the people of the district. In the 19th century 'mana whenua' became applied to both, to mean simply 'authority', for by inter-marriage, mana tupuna and mana tangata had long been fused. The distinction remains important however, for Maori continue to claim mana whenua by virtue of mana tupuna, in respect of land they no longer own, occupy or control. The ancestral connection was an historical reality that could not be obliterated by political revolution, conquest or land sales.
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- In the pre-contact era all land became vested in groups which were based on common descent, residence in a particular area, and participation in community activities. The groups were generally of sufficient numbers to afford protection, the communal exploitation of large resources and a limited division of labour. The descent groups were called 'pu' or 'hapu' and in some districts, 'whanau'. Hapu membership appears to have varied from about 100 to 1000.
- As hapu grew they divided to occupy different places, generally in reasonable proximity to one another. They did not form sub-groups but divided laterally to form autonomous units of the same people. The people as a whole in a district were called the 'iwi'. By way of comparison those of other districts were called 'tauiwi'.
- The word 'whanau' described the more immediate relatives,

those descendant from an ancestor some 3 to 4 generations back, but whanau (with district exceptions), were not a political entity. The members of a whanau were quite usually distributed amongst several hapu or lived at different places within a hapu. Because close kin tended to live and work together however, in units of about 30, whanau could sometimes be perceived as a hapu sub-unit. It is important to note however, that not all of a whanau were in one place.

- Those of a whanau living together might do so under the name of a close forebear, and in time, through residence and expansion within a discrete locality, a whanau might constitute an autonomous hapu.
  - Some groups were called hapu or whanau interchangeably.
  - On the Te Kaha coast, whanau were hapu and as a prefix, 'Whanau' substituted for 'Ngati'. The word 'whanau' was also often preferred to 'hapu' in North Auckland.
  - The terminology conceptualised the groups as of the one expanding body. 'Hapu' described pregnancy, the swelling or conception and 'whanau' the giving of birth, both symbolic of human inter-connectedness and increase and both linked to whenua, the after-birth or the land. 'Iwi' depicted the bones or skeleton, the underlying base that held the parts together and which connected to ancestral remains. It also meant simply 'the people as a whole'. 'Pu', a variant of hapu, described the centre or the heart.
  - For the pre-contact and contact periods, hapu constituted the essential political units for local governance and social intercourse. Post contact saw an increasing shift of political functions to iwi.
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- Each hapu was named either for a common ancestor or, less frequently, for an event or saying symbolic of shared experience. The ancestral hapu names were generally prefixed by Te, Nga, Ngai, Ngati, Tini, Ati, Uri or Aitanga, each representing descent or procreation.
- Hapu names changed to reflect a new consciousness of identity through the selection of an alternative ancestor, more remote or usually, much closer. Hapu names also changed on the emergence of a new leader, the followers elevating an ancestor more important to that person.
- Hapu waxed, waned, divided, fused, restructured and relocated in various combinations over time. Nomenclatures changed to suit. Each new division might subscribe to a separate calling, a migrating division might acquire a new name in time with the home people retaining the original title, or a common ancestral figure would be found for several groups on a merger. In the latter case this meant that old names were sometimes revived.
- The ancestral name for a group could be indicative of the period of its existence, recent divisions usually assuming names further down the genealogical ladder. More ancient names applied to groups that had fused or to hapu of longer historicity.
- A hapu could have more than one name by assuming a larger categorical name when fighting or working with others, and reverting to a corporate name for the exercise of daily functions.
- Numerous hapu names recorded in the 19th century have fallen into disuse but the disappearance of a name does not evidence group extermination, only a name change. It could equally have signified the expansion of a hapu through division or through a coalescence to constitute a more

powerful unit.

- Some hapu were named by others from some event, but usually they called themselves, and were acknowledged by others according to their own calling (karanga). It was courteous to ask as to the "karangatanga hapu" (not "hapu") on visiting an area so as not assume that the hosts would call themselves as previously.
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- Hapu divided to autonomous units for many reasons, through growth, casual dispersal over the territory, planned migration or internal dissensions for example. Limitations on food production and the need to access resources from a wide area worked against large aggregations in the pre-contact era, that period being also more peaceful than post-contact times. Pre-contact times were probably more marked by unit dispersal with mobile groups ranging over a wide territory for seasonal hunting, gathering, planting and harvesting. Early Pakeha explorers however described large aggregations from North Auckland to the Bay of Plenty.
  - Hapu also fused for many reasons, if a major war portended, to regain strength if famine, war or introduced disease had depleted numbers, as a consequence of an arranged marriage or through the magnetism of an influential leader, for example. In the contact period aggregation became more usual, possibly as a result of introduced foodstuffs and agricultural techniques, and very likely as a result of increased warfare.
  - Hapu combined in pa during war time and dispersed to their kainga when hostilities ceased. They did not consistently return to their original places but sometimes relocated to join with others as a result of new associations formed in war. They also joined with others if their numbers had

been depleted or if their main rangatira had been captured or slain.

- In some cases after prolonged fighting the incorporation of allies and some temporary retreat, the ancestral lands were re-allocated amongst the morehu (remainder) when the people returned, forming new units under the surviving rangatira.
- The migration of an entire hapu or of the majority of a hapu was unusual before the 19th century. Such migrations as occurred usually involved sections only of a community and concerned small numbers, rarely exceeding 10-200 persons. Later migrations of 2,000 or more are recorded in the 19th century.
- Migrants to distant places regularly incorporated with local inhabitants to form new identities. Sometimes the name of the local group was maintained, the name of the migrating group was adopted or a new name emerged.
- Despite the trend to fragmentation and local autonomy a sense of common ancestral origin survived amongst the various hapu of a region, assisted by the meticulous maintenance of whakapapa and various strategies for strengthening kin associations. Related hapu might therefore join easily in war. Hostilities between hapu and some stress on autonomy however, meant equally that hapu might stand apart, or join in various combinations to fight each other.
- The processes of division, incorporation, fusion and intermarriage, and the bilineal tracing of descent enabled hapu to relate to numerous others near and far, and to join with others for any common venture according to a range of combinations.
- This fluidity was complicated by the facility for

individuals to change residence and hapu allegiance or to hold different allegiances to different hapu. This was a natural consequence of inter-marriage between hapu and the bilineal tracing of rights in whakapapa. It also resulted from the tendency to fetch children from one hapu to another or to have them living from time to time with either, in order to maintain kin links. Young women or men were also 'fetched' from one hapu to another for marriages arranged for the same purpose. Whakapapa illustrates that some kin ties were renewed by marriages, presumably arranged, at least every second generation. Society existed within the dual tensions of upholding hapu unity and maintaining the wider whanaungatanga.

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- With such flexibility, the cementing of internal hapu unity became focused upon the magnetism and influence of rangatira. Subsidiary aids were kinship ties and new hapu names emphatic of commonality but these were uncertain variables. The role of rangatira was crucial for the maintenance of self governing units (rangatiratanga).
- Native Land Court minutes refer to the transfer of mana from one rangatira to another, or of the mana over land, the mana over the whole or a section of the hapu, or of the mana over the land and people. This was not in itself an act of submission or evidence of supreme power to so treat the people affected, but was a political act for the purposes of avoiding war, securing greater protection for the people or augmenting their status by paving the way for a stronger coalition. It was also seen as enhancing the mana of the rangatira transferring, for such an act of compassion and concern for the welfare of the people was evidence of greatness and breeding.
- The transfer of the mana of land and people became common in the 19th century for the purpose of preventing land



sales, for if custom law had prevailed, the Crown purchasing officers would then have been obliged to treat with a single rangatira opposed to land selling. In those instances it was clear that the mana was transferred not for all purposes but for the purpose of land retention.

- The transfer of the mana of the land was also effected to quieten disputes over land, leaving it for the transferee to adjudicate on at some appropriate time. Maori Land Court minutes refer to the transfer of the mana of land for this purpose to hapu residing in distant regions.
  - Rangatira are recorded as having transferred their mana to successors in their lifetimes. This protected the hapu, avoiding posthumous fighting and the lengthy interregnum that often elapsed before a new rangatira was recognised.
  - Hapu integrity and connections were maintained by several techniques including mana transfer, arranged marriages, the fetching of children, alliances and peace pacts.
  - Marriages were also arranged to prepare for future migrations. Fusion or incorporation was thereafter the invariable consequence. Migrations to non-kin areas were unusual, for the occupation of the territory of another was not tika unless founded on some cause.
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- Hapu connections became increasingly important in the 19th century as hapu fused in larger aggregations.
  - More extensive warfare changing from local hostilities to confrontations between unrelated groups in the late 1800s, caused local hapu to combine in the face of outside aggression. This did not happen immediately and local hapu also fought with invading hapu combinations.

- Distant but related hapu became more regularly recruited as allies or were resorted to for refuge.
- Outside aggressors referred to all locals as simply the iwi, or blanket labelled them, according to the hapu that historically was better known. Local hapu combining for defence likewise adopted that calling or resorted to another historical title. These became the iwi names.
- Descent lines traced back to more than one main source however and hapu, though related, associated more with one source than the other. In those cases distinctive iwi names were adhered to within one region. This dichotomy was readily tolerated by reference to whakapapa and tradition, and a group could legitimately identify with one iwi for one purpose and with another iwi on another occasion.
- The 19th century shift from inward looking autonomy and intestinal hostilities to outward looking regionalism and regrouping under iwi identities, was caused or accentuated by unprecedented external pressure.
- The shift was also from the formation of groups under recent names to the combination of existing groups under names of greater antiquity. Whakapapa and tradition assisted the transition. In cultural terms the iwi became portrayed as having always existed, which was true in that they were invariably founding hapu but in western mental constructs they were rather rediscovered.
- Pockets of autonomous kin groups who had originated from other districts, remained scattered across the territory. These too could be accommodated in the inclusive Maori society by reference to marriages, while yet respecting those separate tupuna important to them.
- Like all social revolutions however, the 19th century shift

was not uniform and there were exceptions to the pattern. Homogenous tribal territories had not previously been conceived, a range of variables existed, and the variables had continually to be negotiated by careful attention to kawa (protocol) at meetings.

- The introduction of new foods, agriculture and buildings, and less hunting, foraging and garden relocation, likewise led to larger, more permanent villages. Hapu identity became more settled and name-changes less frequent. Ancestral houses became permanent structures, the change of the house name was more difficult, and as land sales became widespread, the facility to divide and relocate diminished.
- 'Kainga' meaning campsites, homes or wherever the fires burnt came to mean 'homes'. 'Pa' a term for any concerted undertaking but especially pallisaded forts, was applied to the new concentrated villages .
- Increasingly meetings and hakari (feastings) were maintained between distant hapu and iwi. Surplus foods and other gifts were accumulated for utu required a hakari of sufficient display and lavishness to recapture the mana taken in the hakari to which it was responding. The requirements of organisation and hapu co-operation were a further influence in compelling greater aggregations.
- The concentration of Maori in sedentary villages, the bonding of disparate hapu for war, the gathering of hapu around mission stations, new economic activities in horticulture, agriculture, flax processing, timber extraction, whaling and ship provedoring, easier communications, land selling and boundary definition all assisted the conception of regional and iwi identification.
- The process was abetted by the intervention of christianity to break the cycles of war, the formation of major hapu and

iwi peace pacts in the late 1830s, the blanket labelling of hapu according to iwi by missionaries, settlers and crown purchase agents, and by the informal and (later) formal description of regions and provinces for the purposes of state administration.

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- 'Iwi' was a term of general description for the people of a locality, district or region and denoted that they generally came from a common source. 'Iwi' also came to be used for the Maori as a people (te iwi Maori).
- 'Iwi' referred also to the connected hapu of a district.
- 'Iwi' was also used for a combination of hapu for a particular war or expedition that included some only of the district hapu, or individuals of different hapu.
- 'Iwi' combinations took various names in the same manner as hapu, but usually from a more remote and thus common ancestor.
- As the combinations varied, different names were used, the most recent common ancestor, the main ancestor of the prime leader or the name of the leader's hapu.
- Combinations of related hapu fought each other under different iwi titles.
- 'Iwi' was also applied to unrelated hapu or individuals from several hapu embarked on a common venture. Non-kin combinations became more usual in the 19th century. Alternatively the several groups stood under the hapu name of the most prominent leader.
- Hapu could fuse for a combined venture or could retain their separate identities, but they generally divided to

their autonomous units when the venture was over.

- District hapu generally stood united in war but independent in peace.
  - During the 19th century however 'iwi' came more regularly to mean the several hapu of a region standing under the name of a common, remote and famous ancestor.
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- Nineteenth century restructuring was sometimes characterised by a more stratified hierarchy of authority, traditionally based but with greater power at the top. This was assisted by official and missionary perceptions based on English feudal tenure and Old Testament precedents, and by Maori movements to incorporate western models to establish stronger polities.
  - For the purposes of transacting with Maori, missionaries enhanced the role of rangatira at the expense of the populace, with some church precedent for so doing, and augmented rangatira status when advising officials. As portrayed, rangatira tenure was shifted from the conditional to the absolute, and from contract with the people to independent status. Some rangatira responded to the colonial expectations of their role, at least when treating with Pakeha.
  - In their teachings however, missionaries reduced the role of rangatira, portraying Christ as the rangatira and the people as of equal status. The term 'rangatira' became displaced by 'kaumatua' in North Auckland. In about 1850 a new political awareness developed amongst Maori and much of the old language of 'mana' and 'rangatira' was revived, but in the preceding missionary period, there was some coyness with using those words when treating with Pakeha, and as a term of respect, leading government officials were

referred to as 'matua' (parents, elders) and koroua (male elders and leaders).

### GROUPS

- The unit for the management of affairs in the contact period was the hapu.
- The society was the various whanau spread throughout the related iwi of a region and politically organised as hapu.
- Hapu aggregated in various iwi combinations for war, expeditions or hosting visitors. In the contact and post contact periods, iwi combinations and names became more regular and settled.
- Hapu ranged from isolated groups in discrete localities to major hapu comprised of several connected villages over a large area. Major hapu became more usual in the contact and post contact eras.
- A typical major hapu was comprised of several rangatira and small hapu with various residential areas and marae but focussing on a principal rangatira, hapu and ancestral house. A range of circumstances prevailed however and hapu combinations changed.
- Some circumstances included:
  - hapu of equal status sharing the same locality, combining at times but maintaining distinctive identities;
  - hapu sharing the same locality with one subordinate to the other, paying tribute or existing on sufferance and occasionally raided to demonstrate status;
  - clusters of client hapu, autonomous but adhering to a major hapu or rangatira, bound by obligations in

exchange for protection, through past services or assistance, or through land gifts and the provision of a place to stay;

- hapu in tenuous association comprised of migrant hapu with mana tangata and original occupiers with mana tupuna; and
  - hapu with separate identities but so inter-related by marriage that one was not readily distinguishable from the other.
- Hapu restructured according to the influence and power of rangatira. Rangatira were crucial in determining hapu composition. Hapu enlarged or reduced as the influence of a rangatira increased or diminished.
  - The hapu were not united in purpose on all matters. As with any political unit there were factions and contests but unity was especially apparent during war. A principal rangatira was not bound to espouse the cause of one segment.
  - At the start of the contact period the hapu was a mobile community with several favoured residences. Sections of a hapu were widely dispersed at times for seasonal fishing and hunting.
  - Ideally each hapu provided at least one taua (fighting unit) which was also an expeditionary unit, labour force and reception team, of sufficient size to provide protection, a surplus harvest, and to maintain the mana of the hapu in hosting visitors.
  - Hapu were primarily descent groups but frequently incorporated individuals or groups from outside, as slaves, refugees, or as members. Residence alone did not affirm membership but usually required inter-marriage, acceptance of the community's norms and the maintenance of social

obligations as in the supply of food and arms. There are instances of slaves acquiring elevated status, sometimes leadership, in the society of their former captors, through outstanding bravery, contribution to the hapu, a marriage, or later, the adoption of christianity and the assumption of lay-reader functions.

- Hapu did not exist in isolation but were punctilious and exact in applying the arts of oratory and kawa to secure or maintain peace pacts, alliances, kin associations, gift exchanges for economic advantage, and reciprocal obligations with others. Particular aids to achieving those ends included kawa (the rules of conduct in meeting, greeting, mourning, challenging and debating), ritualised combat, adherence to promises and undertakings, arranged marriages, the fetching of youngsters (young adults at a hapu level, children in whanau adoptions), the rendering of services, tangi attendance and utu (giving, from the shedding of blood to koha and land gifts in the expectation of a future rejoinder and of long term mutual benefits).
  - Those arts when practised amongst local hapu sometimes led not only to alliance but to fusion.
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- Hapu were comprised of individuals with commitments both to the hapu and their whanau, or extended families that spanned three to four generations. Through extended kinship lines, individuals could attach to a number of hapu, and different whanau members identified with different hapu, or individuals changed residence and thus hapu allegiances. Individuals held different kinds of allegiance to different hapu, the one with whom they generally resided, those with whom they occasionally associated, and others with whom they could claim connections.



- Whanau members tended to live together however under a kaumatua, or family head. The kaumatua was also called a rangatira. While political commitment was to hapu, emotional commitment was to whanau and to ones' immediate kin. As with hapu, whanau were at pains to maintain links with scattered whanau members by arranged marriages and adoptions.
  - The expanding members of a whanau situated in one place might in time constitute a hapu.
  - The responsibilities to kinship changed as the genealogical lattice expanded. Whanau members were entitled to the support of their kin in any circumstance. Hapu support was necessary for survival. The iwi provided a wider collectivity to be called upon when required.
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- 'Iwi' referred variously to original or early cognatic descent groups, a combination of local hapu, the people of a region generally, or the several people joined in a common expedition.
  - Early descent group appellations were not forgotten but were remembered in genealogies and traditions, the more successful being remembered longer. Some names were retained by sections of the people although the original group had long since divided, and were recalled as 'iwi' names. These were often adopted, or other early names revived, when hapu combined for particular purposes.
  - In the contact period, the iwi of a region exercised no corporate functions as politico-economic units and had no mechanisms of political control.
  - Iwi as hapu combinations, though conceptualised according to their districts, were not defined by district boundaries

but by the extent of the hapu alliance.

- Iwi constituted a social category, those of common descent, while hapu constituted a social group, those who regularly operated together. Iwi existed at ideological and expeditionary levels.
- In the 19th century iwi as hapu combinations became more regular and settled. In the later 19th century, these iwi came to assume corporate functions.
- Several iwi existed in some districts. There were also pockets of hapu distinct from the combined descent groups or iwi of an area.
- The terms 'hapu' and 'iwi' were used interchangeably by missionaries and settlers but only 'hapu' was used in the operative sections of the Treaty of Waitangi. Maori witnesses in the Native Land Court in the 1860s invariably used 'hapu'.

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- The term 'waka' was deployed to describe the numerous and scattered hapu over a wide territory including those who had migrated to distant places but who descended from the crew of major canoes. Waka symbolised the common origin of many, engendered a sense of wider group collectivity, and served as a rallying call for unity in times of outside aggression.
  - Waka became conceptualised as political units in the aftermath of the wars of the 1860s.

#### **FUNCTIONARIES AND CLASSES**

- Rangatira ('leaders' or literally, 'those who hold the group together') led and represented the hapu, either

regularly, or sometimes for the purpose of a particular project (a war, migration etc). They were the most significant functionaries in community affairs as the community organisers and representatives. They were the cement that bonded the various elements of the hapu. They were not necessarily older persons.

- Kaumatua (or literally, 'senior parents') were whanau heads who represented the whanau at hapu meetings. 'Kaumatua' were usually synonymous with 'elders' and were also referred to as rangatira. It appears others might substitute as kaumatua at a runanga if one was absent.
- 'Kaumatua' was often preferred to 'rangatira' in North Auckland. This could have been due to missionary influences.
- Ariki (or literally, 'the few' or 'the fine thread') were the most senior ranking blood representatives of a hapu or collection of hapu. They held descent on senior lines from the leaders of significant founding canoes.
- Ariki may or may not have been active as rangatira. Many disdained or were shielded from political affairs and debates. An ariki who was an active leader or rangatira, especially in war, was seen to be very powerful.
- Ariki were not institutionalised by strict rules of succession. Hapu leaders might meet, especially after group reconstruction, to elect an appropriate ariki having regard to their common descent lines. Other ariki were simply recognised as such by the people.
- Tohunga were specialists in a discipline (tohunga whakairo, tohunga ta moko etc), teachers and advisers. The word is related to 'tohu' to point out, and 'tohutohu' to teach and advise. They were also priests, sorcerers and seers.

- 'Toa' meant usually 'a warrior' but sometimes 'toa' was applied selectively to individuals renowned for feats of bravery, strength or skill. These also had a particular status or function in the hapu. The toa was called upon to represent the hapu in arranged combats to settle disputes.
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- Within the hapu there usually existed a principal rangatira and a number of subsidiaries. Rangatira were not graded by class however, but by the extent of their influence or personal mana.
- Rangatira influence was seen to depend on senior descent lines and personal leadership skills.
- Rangatira may be seen as executives, executing consensus decisions of the hapu or making decisions that the hapu could accept and support. Principal rangatira however, were, as the name implies, the key persons for holding the various strands of a group together, which they did by displays of leadership, skill and power.
- Rangatira especially in war, were seen to hold unity through attributes of tapu (sacredness), ihi (awesomeness), wehi (the power to instil fear) and wana (personal authority). These were all elements of political mana.
- Rangatira led also by the power of persuasion so that oratorical skills were essential and highly developed.
- Rangatira tenure was not certain being dependant on popular recognition. Their mana increased and diminished. The same applied to tohunga, although an ariki, once recognised, was always an ariki, and a kaumatua was always a kaumatua.
- The positions of tohunga, toa, kaumatua, rangatira and

ariki were not mutually exclusive but could be variously combined in one person.

- Women were also tohunga, toa, kaumatua, rangatira and ariki, but with the exceptions of kaumatua and ariki most were men.
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- Although colonists ranked Maori by classes by reference to such terms as ware, tutua (commoners) or rangatira, the terms were rather descriptive of persons than of classes. Unlike other Pacific places where an hierarchy existed, Maori society was relatively classless, there being mobility between stations. One could become a rangatira. There was also a sense in which every person of some ability was a rangatira. Persons were not commoners by birth but because they were less than ordinary in their performance, though that too was often attributed to descent lines. Slaves were war prisoners but were able to regain status either for themselves or for their children, by inter-marriage or by particular acts of courage or contribution to the community.
  - Opinions differ on how rangatira came to assume authority. On the traditional account, rangatira owed their mana and rank to noble descent, that is to say, mana rangatira was ascribed. On another account, the traditional position amounted to retrospective justification, rangatira being recognised for their leadership skills, their leadership skills being then attributed to their descent lines. On that basis mana rangatira was acquired. There was no rule of primogeniture to determine rangatira as a class and leadership could change. Most likely, mana rangatira depended upon both ascription and acquisition. There were many, however, who could point to noble descent lines through the appropriate deployment of whakapapa.

- Despite seniority of descent, ineffective rangatira could be considered as lacking mana and effective leadership could pass to others. Whakapapa were manipulated to make a claimant to high rank appear close to the senior lines of ancestry.
- There is a sense in which Maori society can be seen as having only two classes, rangatira or the people, of varying degrees of mana, and war prisoners without mana but able to regain it. Leading rangatira were those of excessive mana through birth and achievement.
- Edward Shortland, Sub-protector of Aborigines, was probably accurate in portraying Maori society as 'a democracy, limited by a certain amount of patriarchal influence'.

#### **LOCATION OF AUTHORITY**

- The authority of a rangatira was dependent upon support from the community. To that extent authority may be seen as vested in the community and the rangatira may be seen as a community representative and leader.
- Rangatira did not generally do anything affecting the whole of the hapu (declare peace or raise war etc) without the people's sanction. Nor could the hapu be commanded to move but had rather to be persuaded.
- Although senior rangatira were normally deferred to by their kin they were still dependent for economic and military strength upon reciprocal kinship services, and could not take independent decisions or persistently flout opinion without risk of repudiation.
- Through warfare or greater strength, one hapu might obtain

dominance over others and exert authority without reference to them. In those cases, authority vested in the dominant hapu.

- There was plasticity however. Subject groups sought regularly to re-establish their autonomy. Others voluntarily aligned to the group of a strong rangatira, temporarily for protection, or permanently by incorporation, and with only a partial status surrender. Groups also divided through internal dissension or fused through common purpose or inter-marriage. Authority thus shifted as communities divided and fused in different combinations.
- There developed from time to time, dominant groups and rangatira with authority over numerous other groups and rangatira. These were generally linked by ancestry and held a collective identity under the name of a common ancestor. In times of peace the more powerful rangatira acted in concert with those of lesser influence. During and shortly after war or oppression, the authority of a single rangatira could be absolute. Power in peaceful circumstances depended on the promotion of personal mana, persuasion and the exercise of diplomacy. Decision making involved several rangatira and kaumatua, sometimes meeting formally as a runanga. In these cases, authority vested in the collective representatives each of whom was answerable to his or her people.
- In war, hapu combined in absolute allegiance to a single leader but divided to autonomous units thereafter.
- In the mid-nineteenth century it became common for the numerous rangatira of a large district or province to meet as a runanga to discuss common concerns and alliances, as occasion required. Stress was placed on their genealogical connections in ceremonial openings. The same was done when





rangatira met from separate and distant parts of the island. In the 19th century selection of a King, the King's significant whakapapa connections to many places was an important factor in determining his authority.

- The local communities however may be described as anti-totalitarian and republican at least in peace time, dependent on rangatira but changing allegiances if need be. Apart from those undergoing a state of subjugation, the individual possessed many political freedoms. The requirements of rangatira accountability compelled a process that was generally democratic. The need for unity and harmony compelled some sensitivity for minority group opinions.
- The absence of permanent state-like institutions meant there was a high adaptability in rule formulation but a tendency to atomise, or for groups to fractionate when disputes could not be settled. It meant adjustable group definitions, re-definition of standards (rules were made to suit cases), complex exchange relationships for the maintenance of peace and a change in expectations during war. The power and authority of the people, the kaumatua and the rangatira at any place and time, must be assessed in terms of the relationships and circumstances then pertaining.

#### **MANA RANGATIRA**

- The basis for the political autonomy and the cohesion of a hapu was the mana of a rangatira
- Mana describes the personal, spiritual and temporal dimensions of power, authority and prowess.
- Mana rangatira was seen to be held by a combination of ascription and acquisition, that is from lineage and

achievement.

- Every free person (and certain objects) was deemed to have mana, though the mana each possessed was of different kinds and degrees.
- Although all free persons had mana, the mana of a rangatira was tapu.
- Senior rangatira were charged with such powers that contact with them or their artifacts was precarious. They were tapu. The rangatira could protect other persons and property by declaring them tapu. Few would dare to touch the property of a high ranking rangatira.
- Different rangatira possessed different mana. Thus, some led in peace not war. There was a tendency for Pakeha to treat toa rangatira as rangatira for all purposes when that was not necessarily so. Some rangatira possessed more mana than others through greater personal prowess and more distinguished pedigrees.
- Mana waxed and waned. It is necessary to assess not only the type of mana a rangatira held but the strength of that mana at any point in time.
- Older siblings were considered to have greater mana than their juniors. Sometimes however, leadership shifted to junior rangatira who showed greater leadership skills.
- The possession of mana was deemed to be revealed through the possession of such mana enhancing traits as bravery, hospitality, eloquence, generosity, honesty, integrity, fearlessness, honourableness and scrupulous adherence to promises. The mana of a powerful war rangatira was said to be exemplified in a personal tapu, ihi, wehi and wana.

- Possessors of mana were impelled to demonstrate it by boldness and by constant concern for their names and stations. This made rangatira, especially young and aspiring rangatira, enterprising travellers, entrepreneurs, adaptors and innovators when European material wealth and ideas were introduced. It also made them sensitive to insult, slight, or diminution of status. A curse levelled at a rangatira led to demands for compensation or bloody retribution.
  - Rangatira variously held mana in their own hapu, within several hapu, or throughout a large district. Last century Te Wherowhero was considered to have mana throughout the motu (country). The mana of a rangatira could be greater in one place than another.
  - Pakeha ranked rangatira as 'paramount' and as 'subordinate' or 'local'. The Maori vocabulary had no such gradations of title but used additional words of assessment. Rangatira were assessed by their personal (and fluctuating) influence and were called rangatira nui, tino rangatira and sometimes tino tangata. 'Upoko rangatira' may be modern. 'Upoko nui' was originally a term of insult. Words of diminution, like rangatira iti, do not appear to have been used. 'Whenua rangatira' did not mean the land of chiefs as in some modern usage but meant 'a state of peace'.
  - 'Paramount' was also used by Pakeha for 'ariki' but 'ariki' were not necessarily power figures.
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- Within a hapu there was usually a principal rangatira and several subsidiaries; but positions could change.
  - Every family head might be called a rangatira and a rangatira might address the people figuratively as "aku

rangatira".

- Rangatira of greater mana carried the support of a larger number, and the more support the greater the mana.
- Despite the larger mana of some, other rangatira sought to maintain an autonomous mana within their own hapu.
- As the maintenance of mana depended upon a following of people the rangatira had to be responsive to hapu opinion. Larger rangatira had need to respect the opinions of others. Accordingly hui (gatherings), hakari (feasting) and runanga (councils) were regular and many. There was emphasis on diplomacy, persuasive oratory, negotiations, consensus and appeasement. There was considerable democracy. All sections had to be considered lest they break from the fragile alliance and align elsewhere.
- Mana rangatira was not absolute. Even rangatira could be subjected to muru.
- The mana of a rangatira was identical with the mana of the people. It was necessary for the people to protect the mana of the rangatira in order to protect themselves. It was the duty of rangatira to protect those living under them and to protect their own mana, for it was by the mana of the rangatira that a group was protected and united.
- Mana rangatira increased or reduced according to the success or otherwise of military and other ventures. Military mana depended on the ability to rally a large number of taua. Rangatira therefore ranged widely in soliciting alliances including alliances from distant hapu. Their marriage links were important.
- Defeat in battle did not in itself mean loss of mana (except for those who were captured and enslaved), but

created an obligation for utu. Mana could be lost if the defeat remained too long unavenged. A defeated rangatira could regain mana through the avenging of death and some rangatira regained mana even within the community of their captors.

- Internal integrity was maintained by both diplomacy and the ability of a rangatira to raise a large taua if need be. Peace lay also in the threat of war and unity lay also in the perception that a rangatira could muster a powerful following if need be to castigate the recalcitrant sections of a hapu.
  - Mana could be transferred through the transfer of objects, a whale bone patu for example, the object being imbued with the mana of the rangatira.
  - A rangatira could have mana over people, over land, or over both land and people. A senior rangatira could hold mana over the people, but the authority to allocate land rights in a particular area might vest in another.
  - Power was thus a product of mana, not of institutionalised structures.
  - Generally mana rangatira was founded in leadership, care of the people and the ability to engender consensus.
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- New types of mana rangatira were spoken of post contact, thus there were mihinari rangatira whose mana was increased from association with missionaries, moni rangatira or those recognised as rangatira by land purchase officers (they were not necessarily sellers), and government rangatira. These were rangatira whose mana was thought to have been increased through recognition by pakeha. The terms were not initially seen as derogatory.

- The word 'kupapa rangatira' was not used before the wars of the 1860s, and was a misnomer. 'Kupapa' meant those who remained seated when others joined the debate or went to war, and thus neutrals. 'Kupapa' were wrongly perceived by the Government as 'friendlies' and the term became applied to those who fought with the Crown.
- For the purposes of transacting with Maori, missionaries augmented rangatira status in advising officials. As portrayed, rangatira tenure was shifted from the conditional to the absolute, and from contract with the people to independent status. Some rangatira responded to the colonial expectations of their role, at least when treating with Pakeha.
- In their teachings however, missionaries reduced the role of rangatira, portraying Christ as the rangatira and holder of mana, and the people as being of equal status. There was some coyness thereafter in using the former language of 'mana' and 'rangatira' when treating with Pakeha, but the old laws and terms were revived with the new Maori political awareness of the 1850s and subsequently.

#### **WARFARE, CONQUEST AND LAND TENURE**

- The traditional systems of Oceania, including that of Maori, regarded the use of force for the acquisition of the territory of another as improper unless backed by rights claimed by some legitimate principle or cause (take). 'Raupatu' or 'ringakaha', both used by settlers as equivalents for conquest, was not a source of land rights by itself. Ringakaha, in reference to land rights, sometimes described a defensive position, or the ability to maintain land holdings. Warfare was rarely pursued with the overt purpose of acquiring land, but changes in hapu structure and allegiances and thus the acquisition of a wider influence by dominant groups, was a common

consequence of warfare. Apart from the abberational migrations during one generation of the 19th century however, individual and group land interests over several centuries were not much affected by violence, and numerous, perhaps most groups, remain where their waka first settled.

- The picture of continual conquest and an unbridled struggle for power was largely a colonial perception, probably based on the abberational Maori warfare of the first few decades of the 19th century, and probably perceived in light of the European Napoleonic wars of the same time and other European historical experience. Te Rauparaha became 'the Napoleon of the south'. This colonial picture was entrenched within officialdom when the Claims Court, Compensation Court and Native Land Court assumed a similar position.
  - There was however, a marked change in the nature and extent of war in the early 19th century which had a marked impact on custom, social organisation and boundary formation.
  - It also had another unexpected consequence. The Native Land Court perception of conquest as a source of title influenced and distorted the popular understanding of custom and created long term enmities and anomalies.
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- Pre-contact hostilities were mainly intestinal involving local fighting between and within related descent groups.
  - The law of utu required that an equivalent be taken for the loss of each person of rank or their family members. This portended of a cycle of war between related descent groups, and long-lasting schisms to weaken the military strength of an area and exposure of the district to outside aggression. Hostilities were therefore often ritualised and constrained, rarely involving large numbers. Peace-making

strategies for the avoidance of war probably consumed more effort than warfare itself.

- Utu was often achieved by other than open warfare, by sorcery, secret-slayings or trickery, to avoid large-scale battles and permanent kin group enmities. Utu was sometimes appeased through gifts including the gift of land resources, the gift of land and people or the transfer of mana.
- In the complexity of relations between hapu there normally existed a catalogue of unrequited grievances which might erupt from time to time into feuding.
- Peacemaking to end or to avoid war involved alliances, continual gift exchanges, mana transfers, the sparing and return of captives, the adoption of young adults, and the custom of muru. Arranged marriages were especially important for while battles were forgotten marriages remained embedded in whakapapa. There was a mythological justification and an appropriate set of rituals for making peace - the elusive and precious tatau pounamu or greenstone door.
- The causes of war included disputes over resources, wrongful slayings, breach of rahui, desecration of wahi tapu, tampering with or stealing the property of a rangatira, kanga (curses), marital infidelity, the future status of widows, conflicting claims to the betrothal of young women, or migration to an area without significant kin links. Each was perceived to involve a theft of mana that had to be requited.
- Warfare was rarely spontaneous and was usually preceded by lengthy discussions on the rightness of the case. Only a war with good cause was tika. A killing was not avenged if the killing had been justified. An unjust war could mean



the loss of allies, loss of local standing, loss of mana and the expectation of misfortune. Peacemaking was also preceded by hapu discussions.

- Customary rules of warfare included that fighting should end at sunset, that fighting should not be commenced during a karanga, and that fighting should cease for discussions. Arrangements included decisions that the battle would be decided by the first to be slain, that some would drop out to provide parity of numbers, or that the issue would be decided by personal or limited combat amongst selected toa. There were also informal constraints on killing such persons of rank as would lead to an escalation of hostilities by inviting retribution from other kin groups.
- The ties of kinship constrained warfare but could also expand warfare unless peacemaking initiatives were regularly maintained.
- There are instances where groups invited outsiders to exact retribution because the guilty party was closely related to the victims. This usually required elaborate feasting and hosting of the hired group and gift presentations. This technique was to avoid a permanent schism or war cycle within the descent group structure.
- Muru (plunder) was a further device for the avoidance of war and involved the voluntary acceptance of plundering raids to appease misdemeanours.
- There are many instances where wrong was admitted and muru was allowed. Muru rarely involved a killing. It seems never to have involved the offer of hostages. The purpose was to prevent warfare not to provide a cause for more war. Muru enabled utu without further loss of mana. Hapu acceding to muru were sometimes claimed to have gained mana. Native Land Court witnesses claimed land rights on

the basis that they had acceded to a muru, the muru party taking only that which could be carried away and thus effectively affirming the subject group's land entitlements.

- Warfare was a course of last recourse if mana could be restored to the aggrieved party (utu) without further diminution of the mana of the offenders.
- At least five types of 'conquest' are described by Native Land Court witnesses:
  - by defeating opponents in battle;
  - by protecting another hapu, or throwing a cloak over them to warn off potential invaders;
  - by causing a hapu to vacate a resource by threatening war;
  - by forcing a marriage upon a hapu; and
  - by accepting a marriage alliance in return for a promise of protection.

In each case the vanquished hapu might continue to occupy the area, it being mana, or the use of a particular resource and not land rights generally that the stronger group thus obtained.

- 'Ringakaha' and 'raupatu' were used interchangeably for conquest, but some witnesses used ringakaha for the retention or capture of mana by success in battle, while raupatu was used for all five forms of conquest.
- Conquest gave mana over people but mana over land derived from ancestral associations and was acquired by conquerors from the tangata whenua women whom the conquering rangatira or their sons took as wives.
- While intestinal warfare was the norm, there were many

instances of large war expeditions to distant places where major battles between non-kin took place with many losses. In these cases distance placed its own constraints on the formation of an intense war cycle and a generation could elapse before utu was sought for the loss of certain lives.

- The accounts of wide ranging war expeditions in the pre-contact era evidence considerable mobility but few, if any, describe the outright conquest of foreign territories with the permanent relocation of large numbers of invaders and expulsion of the locals. The primary purpose appears to have been the achievement of fame and booty by short visits.
- Wide ranging war expeditions quite regularly involved volunteers from a number of hapu over a large geographical district.
- Hapu migrations with accompanying wars in the pre-contact era have often been telescoped in oral tradition. Closer analysis of the evidence suggests many migrating groups were smaller than depicted and the shift occurred in stages over many years or generations the migrants combining with other groups in the movement or leaving pockets of people in various localities. Inter-marriage with locals en route was common and migrations were regularly to areas with existing kin associations. The leadership of the group changed in the process and sometimes new names were adopted. The picture of a sudden migration, conquest of the locals and re-settlement, is not generally sustainable though it may be presented in that form in story-telling.
- Several accounts of extended migrations of hapu to remote or less populated places do not present conquest as the primary purpose, although local fighting eventuated. Whakapapa evidences extensive intermarriage with locals and the local fighting was often between sections of the

migrating group over resource allocations.

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- The character of warfare appears to have changed dramatically towards the end of the 1800s through pressure on resources in more densely populated areas. It was most marked by larger migrations, usually north to south, and an increase in non-kin warfare. Domestic warfare changed to regional warfare.
- The occupiers of distant places were referred to generally as the iwi, or the people of that territory. Iwi associations became more pronounced as larger groups migrated and local people combined to confront them.
- Cannibalism may have increased during this period, for food as well as for the customary denigration of mana.
- Shortly after, musket warfare spread also, again, generally north to south, causing considerable alteration through indiscriminate and more extensive slayings. This taxed the custom of utu that compelled the pursuit of an equivalence in rejoinder. Musket warfare was not a new kind of war but introduced a new technology which in turn had consequences with which custom could not cope.
- Although the initial musket warfare comprised raids only, it led to a spiral of unprecedented dislocation. Hapu or hapu combinations shifted to less densely populated areas away from military pressure, or relocated for better access to muskets at places where Europeans had settled or were likely to reside. These movements were in themselves a further cause of friction.
- Even hapu combinations or iwi sometimes gave an insufficient protection or fighting force and the recruitment of non-kin individuals or sections of hapu,

became much more common. Aggressors recruited non-kin with promises that they would be well fed and would obtain plunder.

- The 19th century produced accounts of large expeditionary forces involving several hapu or sections of hapu from widely scattered places. There are also accounts of hapu breaking from the alliance, of turning on the hapu that initiated the movement in compensation for an unsatisfactory outcome, or of changing alliances to join the tangata whenua if the latter were winning. There was not always the same unity of purpose in 19th century non-kin expeditionary forces. Customary allegiances to kin proved a stronger unifying factor.
  - Large campaigns were confused by intervening local clashes between sections of invading and defending groups, fighting between sections of the invaders (or defenders) and temporary alliances of invaders and defenders in opposition to others.
  - Warfare fed on itself. Peace-making techniques in the new environment could not keep pace with the customary compulsion of utu. There was probably more group relocation in the 30 years following the musket than in the 300 years preceding.
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- Generally the Claims courts and Native Land Court did not distinguish the warfare of the pre-contact and contact periods. Early officials were more familiar with the warfare of 1810-1840 which they perceived as having been traditional.
  - From 1841 the Land Claims Court declared conquest as a primary source of title. This finding was repeated in the Compensation Court and later the Native Land Court. It is

apparent that many Maori witnesses thereafter shaped their testimony accordingly, most especially in the 1870's when greater use was made of lawyers, agents and native representatives. Maori testimony of the 1860 appears more reliable though that too many have been influenced by the courts' weighting to conquest.

- Much evidence served to reinforce the courts' opinion. The graphic manner of Maori expression and some desire to achieve utu through the court process, may have given an exaggerated impression. Closer analysis of the evidence of pre-contact warfare suggests however that the numbers involved were fewer and that the frequency of warfare was less. It also appears that ascendancy was achieved over a longer period than that described. Several battles became reduced to one. 'Major' battles were depicted but the subsequent recitation of those killed referred to small numbers, even less than five. The alleged extermination of local people was occasionally belied by whakapapa records of inter-marriage. Massive slaughter appears to have occurred in post-contact warfare however, but there was a tendency to apply that retrospectively to earlier battles, often in justification of the extent of retribution, and to claim greater mana through the numbers slain with analogies to Old Testament precedents.
- 'Major' wars and migrations in the pre-contact era could have involved as few as 30. Migrating groups in the contact period were described, it appears, accurately, as involving over 2000. Migrating groups to Wellington and the Kapiti coast, appear to have involved several times that number in a series of migrations.
- Some witnesses appeared regularly in the Native Land Court at different places and over an extended period, with temperate and consistent accounts of events and whakapapa, even when that evidence was not to their own favour. It is

helpful to gain an impression of the witness in reviewing Native Land Court evidence and not to rely on selected extracts from irregular attenders.

- The model of conquest with the total subjugation, expulsion or annihilation of the locals was advanced by some witnesses, but was rarely claimed and was usually hotly contested when an opposing party was present. Nor was it always sustainable on the evidence. The more regular model, corroborated by whakapapa, was that of a series of on-going battles with inconclusive ascendancy, or a conclusive ascendancy that focused on particular rangatira coupled with fusion, joinder, co-existence or coalition.
- In the more usual picture, where migrants fought to establish themselves in new territories, migrants did not significantly displace the tangata whenua but reached an accommodation with them and validated their residence by inter-marriage.
- Migration to escape warfare has been overly simplified in some cases as having led to distant conquests and mass slaughter. The migrators intentions were in fact often peaceful and were sometimes preceded by an arranged marriage to justify subsequent residence. The 'invasion' of Te Rauparaha appears to have been in that category. Warfare often developed later, despite marriages, between migrators and tangata whenua, and between sections of the migrating group, usually over issues of authority and resource demarcations. Local people were not necessarily exterminated or forced out. Where the migrant groups comprised several hapu, and the tangata whenua remained, pockets of one descent group in an area mainly occupied by another became common, in addition to the division of territory between them.
- The escalation of warfare, the demands of utu and the





inability of customary peace-making to cope, led to dissatisfaction. The condemnation of warfare was developed by many Maori as a doctrine. Christianity provided a new method for breaking the war cycle and of securing peace with honour through conversions.

- Recorded addresses by Maori on the signing of the Treaty of Waitangi evidence the desire for an authority that could end warfare and recapture the greater certainty of land tenure that applied in the olden times that the speakers then recalled.
- A customary practice of conferring mana over land to a rangatira to prevent war between disputants or to secure peace was revived and reshaped with the vesting of lands in missionaries. The missionaries took an active role in standing between warring parties, and in accepting conveyances of land for the maintenance of peaceful relationships.
- The transfer of disputed land to others to hold was later extended to other settlers and Crown officials. Later still the practice developed of 'transferring' land to other Maori to hold as a hedge against land-selling, for example to Potatau te Wherowhero, Tawhiao and Rapata Wahawaha in the 1850s and 1860s.
- It also became practice to sell disputed lands while retaining the more secure 'home' areas. Uncertainty of tenure following 19th century warfare and migrations, exacerbated the desire to sell amongst those who had recently acquired occupation or had recently lost it.
- Lands were also sold to obtain secure reserves on parts, reserves being awarded to vendors not to the non-sellers, the latter eschewing any association with the transaction.

- Lands were also sold to secure mana, the Crown recognising the mana of the vendors as against others.

#### **SOCIAL CONTROL**

- The behavioural code was regulated by the ties of kinship and the laws of tapu and utu.
- Kinship bonds compelled support for whanau during crisis without reference to cause or blame.
- It involved respect for tuakana (elder siblings), matua (parents, uncles, aunts etc), kaumatua (elders) and tupuna (ancestors) and for the decisions and admonitions passed down from antecedents.
- Social control was also maintained through collective responsibility. An injury by one of the whanau to another was visited on the offender, but an injury to another outside of the whanau or hapu, offended the whole whanau or hapu of the victim and would be visited on that of the offender. It was unnecessary to determine individual guilt.
- Spousal differences were resolved between whanau, quarrels were rarely private and the keeping of one's problems to one's self was not a virtue.
- Joint responsibility made communities watchful of their recalcitrant members, and offenders conscious of their communities.
- A muru (plunder to appease offences) against an offenders' whanau or hapu was not resisted beyond a nominal display for muru restored the mana of the victim without diminishing that of the offender. It was undertaken by a taua and served to prevent warfare. The offer of

compensation did not always appease for it denied the victim the satisfaction of a show of force.

- Muru were conducted for any purpose necessary to appease a breach of tapu or taking of mana, and could extend to an unintended slight, a breach of etiquette, the rejection of a lover or the theft of food.
  - Despite their power, rangatira were not immune from muru. Since the offence (and the severity of a muru) increased with the rank of the offender, wrongdoers and their kin were known to encourage the plunder party to sieze all their goods in order to demonstrate their high status.
  - However, a low ranking person with little kinship backing might need to resort to sorcery to secure redress against a rangatira.
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- Wrongdoing or non-fulfillment of obligations caused personal loss of mana, and reduced mana exposed the person to spiritual interference and misfortune (aitua). Offenders were 'cured' by kin support, voluntary acts of compensation, achievement on behalf of the whanau, and sorcery.
  - Behaviour was influenced by belief in tapu. Mate maori was a mental sickness that followed a breach of tapu rules and resulted in illness, infirmity and death.
  - Sorcery served to punish or restore offenders, cure sickness and determine future action.
  - Resources were protected by rahui or tapu imposed with ceremony by tohunga or simply declared by a rangatira whose mana was tapu.

- The fear of supernatural sanction may have been over played in some early settler commentaries however. Modern studies suggest that people acted with considerable freedom of choice. Many customary norms were secular and tapu was deliberately breached on occasion, as a calculated risk, offenders readily admitting their actions as evidence of their boldness and mana.
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- Utu concerned the maintenance or balancing of mana through reciprocity between individuals, between descent groups, and between the living and departed. It prompted wars of revenge, gift exchange, the keeping of promises, the repayment of debts for military assistance or hospitality, the maintenance of natural cycles and the like. Numerous acts that caused a change of circumstance, including those of either kindness or aggression, constituted a capture of mana that had to be restored.
  - The debts were both spiritual and material. Death was 'repaid', or was made satisfied (kua ea) through tangi and recall of deceased persons in whaikorero (oratory), the dead being addressed and argued with, the ancestors being always present to reproach, advise and guide.
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- There were widely accepted rights of person and property. There were also widely accepted expectations respecting good or appropriate conduct and personal achievement, and a strong sense of whakama (shame) in the event of personal failure.
- Theft was wrong but only a few possessions were not held communally. With the exception of heirlooms and personal ornaments, personalty was not so much owned as imbued with the mana of those who expended labour on it, and a number of kin might feel entitled to access the object because of

their connections with the persons concerned or with the figures associated with the ornamented carvings.

- Few would dare to touch the possessions of a high ranking rangatira however.
- Thefts were occasionally committed in a spirit of boldness and daring, offenders readily admitting their actions. Powerful people deliberately broke rules to prove that they were strong and possessed of great mana.
- Although there were widely accepted rights of person and property, it was not unethical to try to advance one's fortunes, or those of one's kin, by tricky conduct. It was more shameful to be caught out, or demonstrably to fail.
- Child discipline inculcated the sense of community responsibility from an early age. Children were more frequently disciplined by community members in an ad hoc way, than by their parents.
- Within the kinship group, defaulters were punished by the withdrawal of community assistance, demands for compensation, beating, and more rarely, by execution. Banishment does not seem to have been widely practised, and Maori society differs in that respect from the tribal societies of North America.
- Kinship ties made it difficult for one section of the community to dominate another, a persons friend in one context being an enemy in another, and in any quarrel, some were friends of both sides. This limited conflict.
- Disputes were generally adjusted between the parties themselves, but there are many instances of impartial mediators being used, including mediators from other hapu, sometimes from distant iwi, being called upon to resolve

disputes.

- The whakawa - accusation, investigation and decision or judgment, were often quite formal and structured.
- Customary maxims and practices attained a high sense of equity. A muru might be effected against a rangatira following his wife's adultery, if his bullying and incontinence had caused her to stray, for example.
- Some elderly rangatira were so valued as 'heralds' or peace-makers that they made it a vocation to mediate between contending parties in order to avert fighting.
- Custom and kinship principles were flexible, resilient and adaptable, and decisions were essentially pragmatic.

#### **DECISION MAKING**

- Debate at runanga proceeded by established kawa, often following a clockwise pattern. 'Whaikorere' (to pursue a speaker) indicated the circular pattern, and that speakers should be conscious of others' status and opinion and should not break the flow by changing topic or assuming an entrenched position too early.
- Runanga meetings appear to have been open, not exclusive, but not all of the relevant community presumed to attend. Decision making generally involved the rangatira and kaumatua.
- Consensus decisions were preferred to majority rule and in practice decisions were based on appeasement for it was preferable to reach conclusions that all sections of the community could abide, and not to have some sections stand apart. The influence of rangatira was crucial in securing common policy, for a decision was not binding on those who

declined to agree.

- It was characteristic but not a finite rule, that silence, absence or evasion showed disapproval and that assent required positive affirmation.
- Ancestral decisions were persuasive precedents but not compelling in altered situations.
- It was a matter of honour for a group to stand by its undertakings and promises for so long as such reciprocity was maintained as was appropriate having regard to changed circumstances. Utu was sought or decisions revisited on a change of allegiance, a change of circumstance, or if the other party was seen to have acted or to be acting with dishonour.
- The permanency of sales, and the advance definition of terms in leases were irregular for Maori. Many continued to act as though purchasers had continuing obligations or as though transactions had been voided for failure to meet expectations that were not contained in the deeds. Maori transactions were based on alliances with continuing reciprocal obligations that relied on honour and required adjustment over time in order to be maintained.

#### **POST-CONTACT GROUP REFORMATION**

- Pakeha ascribed various names as cultural equivalents for Maori units and functionaries being usually clans, tribes, sub-tribes, confederations and nations, led by chiefs and sometimes by kings, lords and princes. Settlers married princesses. Society was graded by lords (ariki), chiefs (rangatira), wizards (tohunga), middle classes (tutua), lower classes (ware) and slaves (taurekareka) or according to other synonyms. Many of these concepts were soon discredited but some equivalents survived, even in some

20th century anthropological studies, to describe a more authoritarian, institutionalised, graduated and rigid society than existed.

- Maori self-definition changed too, in the 19th century, not only in response to Pakeha ascription but from the new forces in play from the late 1700s and from a need to inter-face with settlers and a government of increasingly national influence, at more concentrated levels.
- During the 19th century a more structured demacration of whanau, hapu, iwi and waka came to be perceived, in that order of ascension with kaumatua and rangatira as gradated office bearers.
- Most especially a new iwi ascendancy can be traced to various centripetal forces from the late 1700s; an escalation of local warfare through diminishing resources in more settled areas, followed by large north to south war expeditions and migrations, and warfare between unrelated groups through consequential relocations. Increased local and extra-territorial warfare led to larger aggregations of defenders and aggressors in iwi combinations.
- Warfare was compounded by the introduction of muskets and by the custom of utu compelling the taking of an equivalent for the deaths of each leader and their families.
- Post contact reconstruction was marked by the pre-eminence given to long-standing hapu names of renown and success and was abetted by the use of such blanket titles for all the Maori of a district by tauiwi Maori and Pakeha, and by the increased adoption of those titles by the local people themselves. Early descent group appellations were revived as hapu collectivised, or the names of the successful major hapu became adopted more widely.



- In the late 19th and 20th centuries especially Maori promoted 'iwi' and occasionally 'waka' as a unit for collective governance, with hapu as sub-units for local administration.
- A countervailing force, especially from 1840 to 1850, arose from the incorporation of western values of individual status. Christianity and colonial economies both served to emphasise individual freedom and the worth of individual labour and property ownership. New occupations enabled the individual to survive and prosper without dependence on group effort or without the need for group protection. While some Maori promoted group rights and the strengthening of larger hapu, iwi or even pan-iwi political rights, to land sales for example, other Maori reacted in the opposite way and equated land use rights with private ownership. An iwi runanga decision to 'disallow' land sales in a district, was likely to be followed a rash of land offers from individuals or small groups protesting their individual or autonomous status.
- Hapu continued (and continue) to exercise corporate functions however, and iwi became more settled and defined and increasingly assumed political responsibilities at a regional level.
- Various iwi and iwi confederations became authoritative at regional levels. The term 'iwi' became synonymous with more state-like institutions. Autonomous district polities of the 19th century included the Rohe Potae the Kauhanganui of the Kingitanga and the Urewera Council. Autonomous or semi-autonomous district authorities included Kemp's land trust, the Carroll-Wi Pere Trust (and in certain respects the preceding East Coast Land Settlement Company), district runanga from the 1850s and tribal Trust Boards from the 1940s.

- Maori initiatives in engendering and institutionalising iwi identities were apparent in the formation of tribal executive committees, the larger tribal land trusts and incorporations, runanga and iwi authorities.
- Pakeha practices influencing the formation of iwi included land purchase policies, Native Land Court operations and the fixing of administrative boundaries.
- National and large 'pan-tribal' assemblies developed, underpinned by iwi, including the Government sponsored Maori parliaments, the Maori sponsored Maori parliaments (Kotahitanga mo te Tiriti o Waitangi), the Kauhanganui of the Kingitanga, and later, the New Zealand Maori Council and the National Maori Congress.
- The term 'iwi' was applied also to the Maori as a people.
- National non-tribal movements also grew including the Repudiation Movement, various church movements, and more recently Te Matakite o Aoteaora and Mana Motuhake. Some national groupings of unifying influence had gender connotations, the 25th Maori Battalion, the Health League and the Maori Womens Welfare League for example.
- Modern custom may regard 'iwi' as having become the main political unit for the purposes of management, administration and dealings with Government. There is still some tension between hapu and iwi however, and many hapu now more regularly describe themselves as 'iwi'.
- Modern custom may also distinguish between hapu and iwi and the administrative units now set up to represent them.
- Modern custom may also regard pan-tribal urban authorities (taura here) as a valid political unit for the purposes of management and administration, having regard to urban

realities.

- 'Iwi' was the group that was recognised for Government devolution policies under the Runanga Iwi Act 1990.
- Custom and customary society has never been static but continuity and consistency has been maintained through the persistence of fundamental cultural concepts and values.
- The process of atomisation and aggregation may be seen as continuing in order to meet changed needs, with new groups emerging or reviving as autonomous hapu or iwi, and with other groups disappearing as members associate under more settled iwi nomenclatures. Customarily each group should be recognised according to its calling.
- The recognition of hapu or iwi for modern administrative purposes however may need to depend not upon local callings but current political exigencies. Relevant factors include group numbers and dispersal, the nature and purpose of the separate or conjoint allegiances, the relative weighting to be given to regional interest or to local community effort for the particular administrative purpose for which group identification is required, and the existence of taura here in the new customary order.

#### CONCEPTS OF LAND

- Land was an important base for group identity.
- The cultural, social and spiritual life of the community was built around land. The land was posited as a living being from which the community derived. Founding ancestors enhanced this organic identity by naming lands for parts of their bodies. The practice of strategically placing afterbirth was also consistent with this philosophy. Land partitioning by Crown purchase agents or the Court was

described as a severing of the sinews of Papatuanuku (earth mother).

- 'Whenua' or 'land' meant also 'afterbirth'. The idiom was that people belonged to the land (as distinct from the land belonging to the people). It was also observed that people were the putake (source, origin) of the land, the land being born of a woman.
- The land was contained in the people. It was not necessary for Maori to prove their land right in treating with the colonists. They were the land and it was sufficient for them to say who they were in order to claim the land, or to refer to their parents or grandparents. The obvious did not need elaboration. It was only with court evidential requirements of long term use and the court's reference to 'time immemorial', that Maori produced their longer whakapapa.
- Associated with land was also a complex relationship between people, the natural environment, gods, ancestors and spirits.
- The mountains, lakes, rivers and sacred and historical sites represented cultural expressions of territoriality. There was an emotional attachment to them. Even today groups will act to retain or recover the landed symbols ahead of more productive properties. 'The maintenance of symbolic associations' may be regarded as a customary principle.
- The individual right to use land derived from membership within the community. Membership was achieved primarily by birth and also by adoption, incorporation and participation.
- Other groups and individuals generally had no rights of

user except by special arrangements, as gifts for assistance in war, to secure peace or to provide refuge for example.

- A land gift may not have been absolute and may have been subject to the maintenance of obligations to the donors. In the usual course, land given eventually returned to source, through inter-marriage or incorporation of the donees, or through being vacated. 'Reversion to source' may be described as a customary principle. Land was rarely, if ever, given away forever for the ancestral connection was an unchangeable reality.
- There was no individual right to gift land rights outside the kin group. There was no private title. Gift transactions between groups occurred in limited situations where reciprocal obligations were owed or were sought. There were customary principles of 'group responsibility' and 'the maintenance of reciprocity'..
- The land was not a marketable commodity but was held as an ancestral trust. There were no 'private interests' that stood separate from the group and that could be privately alienated outside of it (though individual use rights might be transferred within it).
- Those with interests in the land extended beyond the living community. They included the ancestors and the generations yet unborn. The spirits of the ancestors as superintendents of earthly affairs was a present reality. At death people did not cease to exist but changed status from kaumatua to tupuna (the 'source of descent', or 'ancestors', also said as 'tipuna'). The spirit of ancestors encompassed the living and those still to be born. The land was shared with the dead, the living and the unborn. Even land that was given would eventually return to source, to the tupuna as represented in the then

generation. The principle was that of 'ancestral continuity'.

- Maori were thus transient sojourners conscious of responsibilities to past and future generations behind and before them in unbroken succession.
- Customary land interests transcended 'western ownership', having both proprietary and political dimensions. Land rights and rights of political autonomy and control were both fused and severable. 'Ancestral authority' was also a principle.
- The individual use of land may now be characterised as a usufruct or something less than 'ownership'. The group right however involved more than ownership and was akin to sovereignty. There was a principle of 'territorial control' as distinct from land use entitlements.
- Leases, not sale would have been more consistent with customary expectations, or more especially, the grant of conditional rights of use and occupation from hapu.

#### LAND AND WHAKAPAPA

- The right to land was validated by whakapapa (genealogies).
- Whakapapa were carefully preserved, regularly recited at gatherings and formally taught to youngsters.
- Whakapapa linked the land's occupiers to the earliest occupying groups, and even to the atua (gods) that formed it. There are whakapapa extending back to Papatuanuku, Maui and Kupe.
- Land was claimed by whakapapa because all things derived from the ancestors and were passed to future generations.

- Whakapapa were also traced to conquering ancestors, those from the main canoes about 26 generations back, or to famous ancestors who subsequently dominated the area. The earlier the ancestor the stronger the right, especially where an element of conquest was involved for as in most societies, time could legitimate original violence.
- Efforts were made to whakapapa to both original occupiers and dominant migrants. The former had manawhenua (right to the land), the latter, mana tangata (control over persons). By descent from both one had all toes embedded in the soil.
- Land rights after conquest or immigration were secured to the new-comers by inter-marriage. Conquering and conquered groups fused or one was incorporated with the other. Group identities changed. Maori had few difficulties with standing under changing hapu names for their ancestral links and whakapapa connections were still maintained and respected. Conquerors and conquered had need of one another.
- An alternative was that conquered groups were exterminated by the conquerors or driven out altogether, but this was rare.
- In the further alternative, conquered communities maintained a separate autonomy through peace pacts that endured, or they existed in a state of subjugation. In either event, inter-marriage still happened or was arranged, and a common identity was likely to emerge over time.
- A group might migrate to avoid conquest. In the view of the migrating group, their right to the land remained.
- It was usual that the original occupiers' names for the prominent features of the land were retained where they had

ancestral significance and the names were incorporated into waiata and whakapapa. Place names might be supplemented however as where conquering rangatira claimed authority by naming certain land features for parts of their bodies.

#### LAND TENURE

- 'Land tenure' describes the allocation of land interests for the purposes of survival, society and ideology.
- Land tenure for survival involved the production of food, clothing and shelter and the management of defence. Maori survival, and thus tenure, was founded on individual and group effort in hunting, foraging, farming and fighting.
- Distinctive elements of the tenure were the focus on land use (as compared with land ownership), the distribution of categories of uses to groups and individuals, the apportionment of resource uses (as distinct from the allotment of land parcels), and the allocation of several use rights in any one area.
- The term 'use right' is appropriate though Maori had no equivalent for 'right' as an entitlement, for the 'right' was inherent in the land, not in current users. 'Take' denoted the ancestral source of a right, 'tapu', in this context, the reservation of a right, 'taputapu' the property itself, and 'tika' (or occasionally 'whakaaro') as that which was right and proper. By English conceptions however, the use-holders had a right, albeit conditional. Resource areas were made 'tapu' or 'sacred' to the users.
- Tenure was conditioned by society, Maori society being arranged in cognatic descent groups with extensive protocols for intra and inter group co-operation. Use rights were therefore conditional upon contribution to the common good, participation in collective operations, and



assistance in making and repaying gifts or tribute, hosting visitors or succouring migrants and refugees. Tenure was linked to kinship obligations and the principles of reciprocity.

- Later, the Crown simplified Maori land rights in terms of idealised patterns of ownership. These ignored social processes. The ideal became ossified in Maori land law and the law became dysfunctional, rigid and unrelated to needs.
  - The term 'ownership' is inappropriate in Maori customary contexts, western 'ownership' vesting the several rights of use, benefit, control, transfer, reversion and identification in a single proprietor divorced from community relationships.
  - The Western-Maori distinction would not appear to be between 'individual tenure' and 'communal tenure'. In varying degrees, western and Maori societies had elements of both. Maori use rights were vested in individuals. The distinctive feature of Maori tenure was that individual tenure was conditioned by community responsibilities.
  - Tenurial ideology was based on ancestral devolution and descent continuity. Entitlement was determined by whakapapa from founding ancestors.
  - Maori ideology was so linked to land that the culture did not exist independent of it. The degree of cultural survival today may be measured by the extent of land retention.
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- Land interests were proprietorial, inchoate, symbolic and political, were held by either or both groups or individuals, were maintained at different levels and intensities and were referenced to specific resources or in

the political sense, to territory.

- Proprietary or inheritable use rights pertained to specific resources represented in ngakinga or mara, pua manu, ara kiore, pa tuna, tauranga ika etc. Those who first cleared land or established some user, held use rights for themselves and their descendants. Individuals and groups both had use rights in any resource area, resources being worked either individually or collectively according to what was required.
- There existed a complex web of overlapping rights to the resources of the local forests, rivers, lakes, swamps, ocean fishing grounds, lagoons and cultivations, distributed amongst individuals and groups.
- Proprietary interests thus pertained to resources, not land blocks and individuals owned usufructs, not territory. The right was to use a particular resource for a settled purpose intermittently or at an agreed time or season or to cultivate or fish at some spot. Consequently many persons and groups had different and overlapping interests in any discrete area, one to collect berries, another to plant kumara, some to hunt pigeons at a certain time and others to build or reside etc. There were also subsidiary use rights to traverse the area or to take water.
- A further proprietary interest was the right to benefit, to receive tribute for example.
- Small families maintained private knowledge of 'their' resources, guarded secrets concerning soil types, water purity, seasonal peculiarities, life habits and habitations and the like.
- There are no references to the maintenance of use rights by whanau but only by individuals and hapu. Obviously however

individual use rights were shared with and worked by close kin.

- Certain specific resources were for the rangatira alone, including stranded whales, cast up canoes or, in the contact period, wrecked vessels.
- Use rights were also held on sufferance as 'noho tikanga kore' (occupation without rights), 'noho noa iho' (occupation of no account) or as 'poka noa' (without the sanction of custom). These arose mainly when migrants entered an area without kin connections. Such occupations were tolerated but the occupiers were liable to occasional raids to remind them of their status. Later, incorporation was likely to be effected.
- The right to use or to continue user depended upon incorporation into the hapu by marriage, descent or otherwise, upon continued use of the resource and residence within the hapu, upon regular contribution to the hapu and upon acceptance of the community's norms. Conversely, the hapu presumed to control, limit or expropriate user if need be.
- Use rights were thus terminable, rights being lost for non-user or failure to deliver on expectations. Rights also changed through shifting cultivation, retired plots reverting to bush and becoming again 'common'.
- Use rights were claimed by descent or were exercised through marriage, spouses enjoying the interests of their partners.
- Thus user was not proof of entitlement. One could be working the interests of one's spouse. Also a group could be harvesting on behalf of an individual use right holder.

- Use rights passed to descendants, were assigned to immediate kin, or with hapu approval, were transferred or allocated to outsiders.
- The bilineal inheritance of use rights gave individuals inchoate rights in many places through descent from a range of ancestors, but since proprietorship depended on user, use rights were limited by the extent to which user was practicable. The individual tended to use resources inherited from one or other forebear so that in practice, inheritance tended to be ambilineal.
- While failure to use had the effect of extinguishing proprietorial use rights inchoate rights remained by reference to past association and whakapapa. Interests by association had less kaha or intensity than user with residential qualifications and weakened with longer absence; but associational interests could be reclaimed as proprietorial through the resumption of residence with tacit or express consent, or without successful opposition.
- There were no customary constraints on the ordering of whakapapa, though senior lines were preferred. Whakapapa were manipulated and adjusted for the occasion by pursuing alternative lines.
- Inchoate or associational interests were also recognised in the turangawaewae status accorded to visiting absentees or their issue, being rights to stand as tangata whenua on marae or to access kin resources when visiting, or in the deference paid by subsequent use holders to earlier occupiers who had vacated or gifted the resource in question.
- The different intensities of rights may be described as primary (by descent and residence), secondary (by descent but not residence), contingent (by descent with an

intention to return) and permissive (by residence but not descent). The strength or intensity of a right depended also on the length or extent and seniority of lineage.

- Constant adjustment was required to accommodate the primary rights of a lineage born and resident on the land, the contingent rights of those who married or were adopted out of the lineage but later returned, the rights of their children who returned, and the rights of those who married into the lineage or were given permissive residence in time of war or migration.
- Symbolic interests were maintained in mountains, rivers, lakes, natural promontories, wahi tapu and ancestral houses. These were treasured as ancestral group symbols independently of use rights or any resource potential. The right to symbolic interests was generally vested in several associated hapu but was sometimes limited to particular hapu or individuals.
- Sacred sites were important in the subsequent claim to land rights in the Native Land Court. The burial of an ancestor in the lands of another hapu, or even the shedding of ancestral blood, during war or on the occasion of a visit, was a basis for claims to land rights. The correlation between ancestors and land was thus endemic, but generally, sacred sites were treated by the Court as evidence of past association but not necessarily of continued occupation, and therefore of lesser strength than might be assumed.
- The symbolic right of identification, least understood by pakeha, was a significant right for Maori. It described the relationship to ancestral land and served to remind donees, immigrants and conquerors of their continuing responsibilities to tangata whenua, and the inherent right of recovery or reversion in cases of wrongful dispossession. It is used today in the context that mana

whenua is not dependent on ownership or occupation and that the interest of the ancestral holders remains.

- Political rights of control, reversion, recovery and expropriation were vested in hapu (or sometimes iwi) as represented in rangatira, and extended to the collective resources of the territory over which the hapu had influence. The political right of control was expressed in terms of mana. Interests were recovered for non-user or non-compliance with community expectations. In western legal parlance the hapu (or iwi) held the underlying or radical title.
- The hapu right to limit or control individual user was not absolute. The management of use was mainly a family affair or the affair of those with a proprietorial interest. The hapu interest, or the interest of the people, was primarily political, to prevent the extension of user to outsiders without tacit or express approval, to prevent a user that impacted on others or could cause friction, to rahui or retire areas threatened through excessive exploitation or to maintain seasonal cycles, and to ensure that the community, not just the use-right holders, benefitted from the exploitation.
- Rahui to retire resources for preservation, or to denote the right to exploit a particular resource were generally instituted for a particular purpose at a particular time.
- The largest unit with rights to land was the one ultimately responsible for its defence being hapu originally but increasingly the iwi in the contact and post-contact periods.
- The distinction between use rights and political rights may also be posited as a distinction between individual and group rights, the former being subsidiary, the latter

residual. Resources requiring large collective exploitation and major fishing and hunting grounds however, were held by hapu in both political and proprietorial senses.

- Hapu interests also weakened through absence or irregular use. Rights were therefore maintained in open areas by symbolic ahi ka or lighting of fires.
- Just as history cannot be erased, so also ancestral footsteps burnt fires that could not be extinguished to the extent that absence without ahi ka did not terminate all interests. Associational rights were maintained and mana and proprietorial rights were re-established on the recovery of occupation, presumably where any intervening adverse occupiers either consented or were unable to resist. The Native Land Court opinion that interests were lost if ahi ka was not maintained, or had not been maintained for three generations, was overly simplistic, and was probably based more on Maori contentions before the court than on what happened in practice. Taranaki Maori considered it tika to return to Taranaki after a long absence from about 1820 to 1860, irrespective of the claim that a small home group had kept the fires burning.
- The Court's conception of the ahi ka rule, may have been more appropriately applied to individual use-rights, though even there, inchoate associational interests were maintained.
- Interests were provided for or judged at different levels, disputes over cultivation allocations at a lower level than the allocation of lands to immigrants and strangers. The latter were political acts requiring hapu approval.
- Through hapu reconstruction and alliances and through territorial and status mobility, hapu interests also spread widely, intersected and overlapped.

- Territorial mobility through widespread hunting and shifting agriculture gave interests in the many places resorted to. Groups and individuals also changed residence to keep warm their claims in various localities. Greater mobility resulting from the larger land mass of Aotearoa, and the tenurial adjustments made, distinguishes Maori land tenure from that of other Pacific cultures.
- Marriage alliances between chiefly groups meant also that rangatira had land interests in several places, and rangatira and their retinue travelled between places in order to retain them.
- Inter-marriage between neighbouring descent groups and the bilateral inheritance of use rights also meant that in time those of one hapu regularly exercised use rights in the territory of another. In this way resource use interests regularly overlapped and hapu territories were not discrete but were combined with or were intersected by the use rights of other hapu.
- Hapu also relied on ancestral origins and kin connections to access resources in the adjacent territories of others or at distant places. They were not restricted to their locality. Numerous related hapu congregated seasonally at river mouths for example, or at lakes, swamps or lagoons.
- Several hapu travelled long distances to camp at river mouths, coasts, harbours or lakes occupied by others, either within their own iwi group, or by arrangement, outside of it. The same applied to the collection of Tuhua obsidian and greenstone. Some pa tuna were constructed a considerable distance from the home kainga.
- One hapu might have an interest in one resource area at a prescribed time for a particular purpose, another at another time. Some were regularly shared by different



hapu.

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- Resource use re-allocations were often effected after warfare, under the authority of the surviving rangatira, on the return from pa, and re-allocations were effected as hapu fused, united, or migrated to join with others.
  - In the result there was rarely a hillock or 'place' without a name and without active or past uses associated with it. Place names served to pin-point use rights in intra and inter hapu discussions.
  - The naming of lands for persons or parts of their bodies were significant declarations of entitlement. The naming could also be disputed however.
  - Use rights were regularly amended and ameliorated by the changing circumstances of a fluid society, political and territorial rights were adjusted by warfare, but most change was not by violence but by regular process consistent with ideology. Hapu influence waxed and waned but local usage persisted, or changed voluntarily, through the mechanics of hapu reconstruction and territorial and status mobility.
  - Rangatira rarely abrogated the settled use rights of groups or individuals except to physically separate and relocate the parties to a dispute. The separation of warring factors was sometimes determined by outside adjudicators.
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- The right to use was protected by the mana of the rangatira and the strength of the hapu. Mana and land rights were distinguishable but inter-dependant.
  - Land interests and authority have regularly to be

distinguished in certain contexts. Rangatira could have large mana in a place but no land interests there. In many instances mana was more crucial than ownership, a rangatira eschewing any claim to a land interest while asserting a control or a policy for the wider benefit of the hapu generally. Sometimes a lack of land interests augmented the role of rangatira as arbiters in local land disputes.

- Security of tenure, for individuals or hapu, was achieved through adherence to ideology and acceptance of norms and standards (tikanga), through group cohesion and allegiance to central rangatira, through the incorporation of migrants and refugees and through gift exchange for the maintenance of alliances. Security was related to protection from famine and outside aggression.
- Food production and security maintenance were connected. Outsiders were regularly incorporated to increase the strength of the hapu and its ability to utilise a wider range of resources, characterising Maori society as open and inclusive despite the weighting to kinship. Security lay in an increased ability to harvest the land's products and to afford protection from famine and aggression.
- Immigrants did not buy land but might buy into the land-holding community through marriage or the rendering of services.
- Security did not lie in the accumulation of land or food, but in the ability to harvest the land's products, and the products being perishable, the gifting of any surplus to other groups with the expectation of a rejoinder in times of crisis. Maori had no savings banks but banked on the goodwill earned from giving.
- Security of tenure thus depended upon the maintenance of social contracts (gift exchange, contribution to the

community etc); and survival depended not on the accumulation of land, but on its user, in attracting workers and in gifting surpluses to outside groups who would then become indebted.

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- Gifts were made for many reasons but never without purpose, the intention being to secure mutual advantages, the giver gaining mana and increased chances of survival through the duty thereby imposed of a rejoinder. Gifts were made to obtain something, either immediately or in the future, to provide security by compelling support in times of local crisis, or to create an ongoing relationship or alliance and thus, recurring future benefits. The nature of a gift therefore varied by reference to its purpose.
- In addition to food, various rights of resources user were also given, though not the land per se, being any combination of rights to dwell, cultivate, hunt etc. A return was required in the form of produce, tribute or support, the obligations recurring so long as user continued. As with all use rights, the rights endured only for so long as use was maintained and community obligations were rendered. Migrants, castaways, fugitives, spouses and relatives were incorporated by this process to add to the descent group's potential.
- The goods sought in exchange were sometimes nominated. Exchanges had twin goals of economics and politics (peace).
- Access to resources were given to distant groups in exchange for equivalent rights of user elsewhere or to maintain friendly relations.
- Gifts of use rights were not absolute but for life, for other limited periods, for so long as amicable relationships existed; or they were 'forever', so long as

user continued and reciprocal obligations were rendered. This was in accordance with the ideology that the land itself was not transferable but was fated to remain with or revert to the ancestral descendants. Each gift of land use rights was conditional also on regular acknowledgement of the gifts source.

- Gifts could be of services and of people, or gifts could be given in exchange for services rendered.
- Individual use rights were given within the resident kin group but not outside of it without wider group approval, for the admission of outsiders to the community affected everybody.
- There was more mana from giving than receiving or possessing. Greater land rights were achieved through giving. One could transfer use rights while retaining mana, or transfer mana while retaining use rights.
- Usually a gift of land was a gift of the right of user. The mana of the giver was conveyed only in special circumstances.
- A gift of land, or of land and people, was an affirmation of the donor's mana.
- A gift of land for war services, or a gift from a position of weakness to avert war, could be interpreted as an absolute conveyance, for such a gift was a payment, not an investment.
- There was reciprocity in giving, feasting and gift exchange. Reciprocity was a customary principle that pervaded all aspects of Maori thinking. Reciprocity was expressed in terms of utu.

- If a returned feast could not be matched, mana required some other gift, for example of land, the services of those living on the land, or of prized heirlooms.
  - The gift of use rights led to a gift of produce from the land to the giver.
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- Many land court witnesses, and other accounts, describe the transfer of the mana of the land, in the land, over the land, of the land and people, over the land and people or of a section of the land and/or people. The possible combinations were numerous but each may be rationalised not by reference to the words used, for much depended on the interpreter, but by reference to the transferor's purpose. Mana transfers would appear to have been to secure an alliance, to gain protection, either permanently or in the context of a contemporary rivalry or projected invasion, to have an independent transferee re-arrange land interests, adjudicate on a dispute, or to hold the land until a dispute was settled, to require a third party to conduct negotiations concerning the land with the transferee, to secure unity within a hapu beset by dissension, to honour a rangatira of expanding influence, to show support, or to demonstrate the impartiality of the transferring rangatira in a local dispute. Invariably the transfer did not in fact diminish the mana of the rangatira transferring, and usually augmented it by securing an advantage to the people. Use rights were generally not conveyed by a mana transfer, but rights or responsibilities of administration. Naturally, obligations then accrued to both the transferor and transferee, and particularly to the transferor who needed to demonstrate support in return for the assumption of responsibilities.
  - Mana transfers are not to be confused therefore with gifts or land transfers. Mana tupuna was not (and could not be)

conveyed and mana tangata was transferred for a specific and generally, transient purpose.

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- The customary assertion of control rights by the group to constrain individual alienations seen as inimical to group interests, was generally insufficient to withstand the uncustomary authority that the Crown gave to individuals or smaller groups through individual purchase negotiations.
- The assertion of customary control rights by groups to constrain individual alienations to the Crown in the 19th century, led to the more precise definition of large iwi boundaries and a greater emphasis on iwi associations.
- In Maori society, unlike western society, land rights and expectations were held through both contract and status within the local communities. Land rights and social obligations were not independent but inter-dependent. Maori land rights were as complex as societal relationships and varied according to the community circumstance.
- Comparatively, western tenure is characterised by the definition and aggregation of use rights in individuals or groups according to defined land parcels held for an indefinite duration and freely transferrable without reference to the wider community, characteristics not featuring in Maori land tenure.
- Maori tenure may therefore be characterised as an ancestral trust estate of indefinite magnitude vested in hapu but with internal use rights distributed amongst such ancestral descendants and incorporated outsiders who used them, the use rights being transferrable within families but use rights being not transferrable outside of the group without a general group sanction.

- The Native Land Court converted use rights to the absolute ownership of defined land parcels by individuals, expunged symbolic, political and group rights, modified inchoate rights by substituting land shares for linkages and associations, and enforced bilateral inheritance without residential requirements to give to individuals more land interests than they could customarily have utilised. Share and title fragmentation was an inevitable consequence. Another consequence was that people did not regularly assume land rights until land shares were succeeded to, when they were past their most productive years.
- An intermediate group tenure based on hapu, with subsidiary occupation licences to individuals, would have better satisfied Maori customary expectations than the granting of freehold titles to Maori individuals in prescribed shares.

#### **HAPU POLITICAL RIGHTS AND EXTINGUISHMENT**

- Absolute land alienation was generally inconceivable, but may have occurred if one group voluntarily withdrew from a district entirely.
- Voluntary exodus was usually through internal dissension however, the land remaining with a section of the ancestral holders so that ancestral continuity persisted.
- A migrating group rarely abandoned its rights voluntarily, and might return to resume occupation if previously forced out, or might seek to return when the group was stronger, even if that meant waiting some generations. Similarly a hapu deprived of resources on the border with another, would later seek recovery. Most warfare was in this category and occurred between hapu that were related.
- After war, it was mana that was mainly ceded. The conquered remained in partial or shared occupation, or if

they withdrew, regarded their withdrawal as temporary. The total extermination or withdrawal of the conquered was unusual. A distinction was to be made between land rights and mana, or between mana tupuna and mana tangata.

- Greater security of tenure came not from driving out the first occupiers but by incorporating them, so that the conquerors became inheritors of the ancestral connection.
- Ahi ka was good evidence of possession but not proof of entitlement. The absence of ahi ka for some generations was likewise evidence of extinguishment but not proof of it. Land interests were extinguished if not kept warm by association but the right of recovery was dormant.
- Occupation was evidence of entitlement but not proof of exclusive entitlement or even of any entitlement. Some refugee groups existed on sufferance, were occasionally raided or they paid tribute as reminders or in acknowledgment of their temporary status (noho noa iho). Likewise some conquerors claimed land interests, or mana tangata, even after their withdrawal from the territory, sometimes reflected in visits from taua to engage in symbolic crop planting.
- Pakeha commentators perceived a rule that the interests of absentee groups grew cold if not rekindled after three generations. This may accord the period required for attachment to a new location to predominate, but the test is subjective and the attachment to homeland may continue longer. It is doubtful that it was a finite rule in custom. For Pakeha it may have been a useful rule of thumb but reality depended upon the particular circumstances and opinions of those affected.
- The 'rule' may have had greater application to individual land interests following the marriage of persons from



distant hapu.

- The more general principle was that the land of the ancestors was the land of the ancestors, an unalterable fact in being. Vanquished ancestral descendants would reclaim their 'birthright' if they could or maintain a foothold in it. Immigrant groups became part of the land by incorporation or by incorporating the vanquished.
- Use rights assigned in exchange for gifts were not usually tantamount to extinguishment but were subject to the recognition of the continuing mana of the ancestral holders, through ongoing tributes, payments or the rendering of services.
- Use rights were sometimes exchanged for objects. It is doubtful that 'absolute ownership' was ever so ceded for no-one can cede what they do not have, and the ancestral past was an unalterable fact that predetermined the land's future direction.
- Land gifts were likewise a gift of the resource but not a transfer of the ancestral connections. The land reverted to source for failure to uphold customary expectations, on becoming vacated, or if the donees failed to respect the source of the gift.
- Donees could not further transfer land interests except within the donee group, or with the permission of the donors.
- The more regular circumstance was that the hapu as a political unit was subject to name change and reformation but the people remained in location, incorporating immigrants, being incorporated by them, or sharing lands with immigrant groups that retained a separate identity.

**LAND DIVISIONS AND BOUNDARIES**

- English words like 'territory', 'estate', 'dominion', 'domain', 'manor' and 'boundaries' require careful application to Maori situations because of inappropriate connotations of prescriptive definition, ownership, and a centralised, unitary jurisdiction. The term 'territory' may denote either a prescribed area under a sovereign body or an indeterminate area not admitted to statehood. 'Tract' is better used for an area of indefinite extent and has no jurisdictional implications.
- 'Territory' in the Maori context, might be defined as those areas over which the hapu effectively resisted or ousted adverse user, a use being 'adverse' when effected by persons without allegiance or recognised connections to the hapu in question.
- Many resource areas were defined by boundaries but the concept of hapu and iwi boundaries (or political boundaries) probably did not develop until the 19th century.
- At western law, land rights involve the vesting of exclusive use rights to the total resources of defined blocks in specified proprietors, independent of kin or community ties but subject to the state's right to control or limit user within the state's territory, the country being divided for that purpose into administrative regions. State, regional and private land boundaries are prescribed by lineal surveys.
- In Maori law, land rights pertained not to blocks but resources, the individual right being that of access and user subject to the interests of the hapu of the territory. Resource 'boundaries' were described by reference to the location and size of the resource, use rights by the places

of habitual exploitation and territoriality by the extent to which territoriality was claimed.

- To the extent that political or hapu boundaries existed, they should be distinguished from resource boundaries, resource boundaries being capable of definition by physical markers, political boundaries varying according to the shifting structures and allegiances of hapu.
- Resource boundaries were conceived of lineally, and radially with rights or authority radiating from a central heart to uncertain fringes.
- The authority of a hapu in an area was not necessarily exclusive. Hapu claimed the resources of territories exclusively or conjointly with others. Many resource areas were shared by several hapu. Not all hapu areas were contiguous but were intersected by the use rights of others.
- It was also common that from a variety of historical causes discrete and autonomous communities of one descent group resided in a district generally populated by another.
- The use rights of individuals were not necessarily exclusive. Individuals claimed use rights exclusively, with other members of the kin group, or conjointly with members of other hapu.
- The model of pyramidically structured 'tribes' in discrete territories is not sustainable in the contact era. Hapu resources were not all localised or discrete, hapu members accessing resources in adjacent hapu areas and even at distant harbour, lakes, coasts and river-mouths. These were generally based on kin associations and long-standing arrangements between hapu.

- Nonetheless Maori had specific and extensively detailed names for most features and locations of the district (wa, takiwa). A knowledge of place names and a correct tracing of the inter-linking boundary lines (rohe, kaha) was necessary for dispute resolution and formed an important part of rangatira education. Resource areas were defined and redefined by this process and blocks were given names.
- Names are imprints on the land, demonstrative of past association but not necessarily of contemporary occupation.
- Place names were not generally changed following conquest or the major influx of migrants but might be added to.
- There was rarely a hillock or 'place' without a name and without active and past uses associated with it. Place names served to pin-point use rights in intra and inter hapu discussions. Discrete localities or blocks also bore names for the same purpose.
- Block descriptions served to delimit user to particular groups or individuals but did not serve to confer absolute ownership or to oust the general interest of the hapu in the territory.
- Resource areas were often delineated by stones, posts (pou whenua), trees, marks and natural features. They ranged from specific cultivations ngakinga, (mara) to expansive hunting and foraging areas (takiraha). Districts (wa, takiwa) were also defined by reference to marks and natural features.
- Use areas were also proclaimed radially from a tree or other natural object, or from a pou rahui or other marker placed not at the edge, but at the centre of the resource.
- Some resource areas, especially fishing grounds, were

defined by bearings from markers and natural land features.

- Many resource areas needed no definition, river mouths and estuaries for example which were used by several interior hapu that travelled long distances.
- Boundaries were unnecessary for the specific reserved resources like particular trees. Others, like rat runs, were defined by reference to use patterns. The pa tuna of some individuals were located a distance from their residence and in the area of another hapu.
- Coastal reefs and fishing grounds were as much restricted, apportioned and defined as the land.
- The sea itself however was not territory but an open highway. Claims to own adjacent seas appear to represent a modern conceptual development.
- Rivers were used as highways but were also regarded as territory and restrictions on access might be enforced.
- It is not clear when a lake was seen as a restricted lake or as an open sea, the words 'roto' and 'moana' being used interchangeably. Control over lake use may have depended on its size, portability, temperament and the extent of enclosure by a single hapu or iwi.
- Pou rahui were generally to retire areas and warn off users.
- Pou whenua were generally to declare resource ownership and warn off trespassers. They were sometimes erected when rights were disputed and accordingly might be challenged.
- Aukati were not regular boundaries but lines occasionally declared to warn off prospective aggressors. An aukati

might extend across land or sea, a harbour for example. It was an invitation to war if crossed.

- Rohe whakatete or disputed areas were declared at meetings to call upon a contender to negotiate a settlement or accept war.
- To the extent that political boundaries existed, they fluctuated according to the shifting structures and allegiances of hapu, or border communities were a fusion of peoples with multiple, common divided or changing allegiances, or there were vacant border areas of uncertain status used by rival contenders.
- More generally however political boundaries were not clearly defined, were non-existent, or were regularly mutable, political authority extending more over people than territory though expressed territorial.
- There was nonetheless a sense of territoriality supported by a wealth of tradition, names, other ancestral imprints and accounts of past user. The naming of lands for founding ancestors or parts of their bodies, and the use of pou whenua, were proclamations of territoriality but were not necessarily unchallenged.
- The sense of territoriality extended to a geographical district. While a takiwa had imprecise or flexible boundaries there were nonetheless distinctly bounded resource areas within it. Conversely hapu and hapu members might have land interests outside of it.
- Although there was no land not claimed by at least one hapu, and some boundary marks were well known and accepted, the extent of territory within which a hapu could cultivate and hunt became less well-defined the further one drew from the central village.

- Between many hapu lay areas of disputed land left uncultivated.
  - Rivers served as boundaries in apportioning rights between members of related hapu, but rivers were not always political boundaries, river valleys being central to wider hapu or iwi collectives in many cases.
  - In those instances ranges were more likely political boundaries but even there, related hapu came to occupy both sides of ranges and other geographical dividers, and individuals had interests and connections in distinct and disparate localities.
  - Pepeha (sayings) described large waka or iwi districts. These proclaimed areas of commonality by reference to history, descent and expansion but they were not territories governed by a single entity.
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- New concepts of land and political boundaries developed in the 19th century.
  - This was partly in response to increased warfare from the late 1800's involving larger iwi units. Previously, boundaries laid down in past peace agreements between hapu were superceded in time by changing alliances and allegiances, but increasingly 19th century boundary settlements severed large land tracts between iwi, and the boundaries became more regularly recognised.
  - Block definitions developed from the desire to attract settlers and the settlers' preference for lineal boundaries in deeds. Maori had few difficulties in defining boundaries by linking the multitude of specific place names that had been developed to describe use locations. Boundaries were cut and walked but Maori had no experience

in assessing areas or acreages. The prospect of attracting settlers led to considerable activity in Maori initiated boundary definition.

- With the impetus for boundary definition came new markers, compass bearings and measurements and the admission of many transliterations to the Maori vocabulary. Oral maps (the tracing of lines by the sequential recounting of place names), used traditionally to describe use areas, changed into sketch maps.
- Land-sale blocks did not necessarily accord traditional block descriptions and were usually larger. Additionally the prescribed blocks became regarded as 'owned' by particular individuals even before the Native Land Court required this transformation, and "our land" (or "my land" in the Maori idiom) became "land in which I have an interest".
- The new definition and apportionment of lands to individuals did not subvert the tradition that the hapu had authority over and an interest in all lands of the territory.
- Lands were also allotted and divided by Maori to sever selling and non-selling sections of a hapu.
- Inter and intra hapu rivalry over land sales, divisions between sellers and non-sellers and the inability of many hapu to regulate or control the offer of lands by individuals, led to the assertion of anti-land sales policies at a larger iwi or combined hapu level, and the further definition of larger iwi boundaries or of multiple iwi 'no-land-sales' areas. This was sometimes formally announced after multi-hapu runanga and was followed by the erection of new pou whenua and the pronouncement of aukauti.



- The Native Land Court allotted land in surveyed titles having regard to blocks as defined by Maori (independently or in concert). In some cases the court settled 'tribal boundaries' as well, the court assuming that Maori society was structured according to tribes in occupation of settled territories. Many of the court boundaries became adopted or incorporated into Maori tradition.

#### LAND SEVERABLES

- The land was a whole entity. Soil, rocks, sand, water and air were all part of a territory but different parts were distinguished for the purposes of use by individual group members.
- There was no custom that a group may own the surface soil while an outsider may own certain resources found on, under or above it, but as in all things, certain individuals might possess the right to extract, subtract or sever different resources at prescribed places based on historic user. It would follow that the right to unexploited resources was dormant and became activated when a hapu member found a use for them, rights of user being then vested in that person at the place of user. It would also follow from custom that the hapu would possess rights to limit, control, regulate and benefit from any user that impacted on others, by the admission of outsiders for example, in order to develop it.
- A constraint on the use of newly discovered minerals, was the custom that personal user was not entirely for the benefit of the individual but had also to benefit the community.
- The principle was that the hapu had control of the territory, the individual a right of user from the point of first use.

- Some complaints suggest minerals and trees were seen separately from land in the context of a land sale. ("I sold the land not the stones or trees"). In some Government directions to Crown purchase agents there was an instruction to include stones and trees in land deeds. Other complaints were that birds, eels, rats etc had not been included in the deeds and thus presumably, it was claimed that while the land was sold, certain use rights had not been extinguished.
- Another complaint was that trees were sold but not the land, as where timber extraction was the purchaser's primary object.
- Customarily, separate use rights pertained to trees and the subjacent land. A tree could be accessed by one person or group while others had gardening, foraging or hunting rights beneath it. Trees associated with particular rights included those that produced berries, shoots, leaves and bark for food, clothing, utensils and medicines, those used for snaring particular birds and those providing timber for housing, carving or canoes.
- Geothermal resources were associated with a number of individual and group use rights and geothermal interests were both political and proprietorial.

#### INTER-ACTION WITH COLONIALISM

- Colonial authority had the attraction of offering a more finite settlement of disputes and a more lasting peace than the customary regime could cope with in the pre-1840 aberrations. There is historical evidence that a superordinate authority, and the prospects of certainty and peace, were widely sought after by Maori but with the expectation of just results.

- Colonial administrators were not always equal to the task of dispute settlement. The wealth of historical detail that Maori could bring to a dispute was too trying on patience, and Maori custom was so incomprehensible to them, that of necessity they ruled from their own cultural perceptions.
  - Custom law was scantily understood by many officials. Maori were either 'slaves to custom' or the 'passing of traditional authority' was regretted. There was a tendency to convert customary values to finite rules and to oversimplify matters. Rangatira were elevated as 'leading chiefs' or demoted as having 'lost power' according to colonial agendas. An hierarchical model was presumed that did not in fact exist. Rangatira were treated as 'chiefs' (or as 'lesser chiefs' if their opinion was unwelcome) and some were attributed with an authority they did not formerly possess.
  - The predominant colonial picture was that of distinct tribes in discrete and bounded territories led by hereditary chiefs, with ascribed social classes, and with a political structure of units, sub-units and sub-sub units called iwi, hapu and whanau. It is now clear that that depiction was too neat.
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- Several distortions arose from the Native Land Court conception of custom and the Maori framing of cases to suit the court's expectations and prior rulings.
  - Generally the court perceived of rigid social and societal structures. Apparent contradictions in describing groups as hapu or iwi, or in depicting leadership and mana, led to findings that witnesses were untruthful or involved in chicanery. Much of the 'untruthful' evidence can now be shown as consistent with customary thinking.

- The court generally considered that Maori groups were relatively homogeneous within prescribed territories or that the area was occupied by conquerors and conquered. The precise relationship was not always understood and the pockets of autonomous descent groups within 'the boundaries of a tribal territory' were often wrongly assumed to be subordinates.
- Ascendancy was sometimes assumed by balancing the successes or losses in battles, when in fact the groups had remained autonomous and not in dormant and submissive relationships.
- Hapu were also counted as tribes and sub-tribes to make smaller hapu sub-ordinate to some other without closer examination of the actual relationships.
- Autonomous hapu in temporary alliances were also sometimes counted as one body.
- The Court's indiscriminate use of 'tribe' for small hapu, major hapu and for iwi led to confusion. It also inferred that a wider group than in fact had consented to a transaction.
- Maori witnesses speaking English sometimes used 'sub-hapu', but analysis suggests the references were to related hapu named for ancestors at different levels of the genealogical ladder, and that the references were not indicative of structural subordination or of an hierarchical chain of command.
- Some judges do not appear to have appreciated the dynamics of customary group formation or that structures were not static but had been and were still changing as the Native Land Court was sitting. The insistent search was not for operative, functioning units but for historical winners and losers.

- There was little or no attempt to assess land rights in terms of Maori ideology, and reliance was placed simply on evidence of past user, battles and current occupations.
- The court equated resource use with ownership, discounting mana except sometimes with regard to unoccupied hunting areas.
- Sometimes there was a preference for those who occupied and cultivated as compared with those who used the land for hunting and gathering, it being assumed the former had land rights, the latter an unrecognisable mana.
- Generally, the court did not correctly distinguish use rights and mana. Some judges allocated more shares to rangatira on account of their mana, and often in places where they had no interests. Other judges were critical of that course and declared that mana was not a source of land rights, declining shares to rangatira where they did have interests.
- Loss of mana through captivity or prolonged absence was sometimes discounted and at other times held as crucial.
- There was a preference for Maori as against those whom some judges called "autochthones", or original peoples, on an assumption that these had all been conquered. This led to the suppression of tangata whenua lines and greater emphasis on waka lines in the recitation of whakapapa.
- An '1840 rule' that was developed, legitimised transient occupations and wrongly excluded several migrants from ancestral lands to which they were entitled. The rule was basically that all persons proven as the possessors of land at 1840 must be regarded as the owners, and for all time except where changes of ownership had subsequently taken place with the consent, expressed or tacit, of the

government, or without its actual interference to prevent those changes. However, the rule was not always applied.

- 'Ahi ka' was changed from a principle to a rule, and was applied in inappropriate circumstances.
- Maori claims and the evidence to support them became formulated in terms of the judges' expectations.
- Most witnesses in the early Native Land Court were also, in fact, sellers. Blocks were presented for adjudication following surveys arranged by purchasers. The issue was often not who owned for the purposes of future living, but who should be included in the purchase money distribution, or whether those selling had authority. It appears some Maori absented themselves because they wanted no part in selling, or those who attended were those who were paid to do so.
- The Land Court was also a place to score off outstanding debts in utu for past battles.
- The techniques of oral tradition were rarely understood and led to confusion or inferences of distortion, lying or bad memory. Most especially, the Court did not appreciate the idiom, the customary predilections for synecdoche, where ancestors are used as symbolic of their descendants and posited as living at a later period, retrospectivity, where a current hapu is depicted as having always existed, and telescoping, where the outcome of drawn out warfare or migration over generations is posited on having happened in one or two battles or in a single movement. The practice of using singular personal pronouns (I, he), to stand for the whole hapu, and the use of hapu names as though all were involved or had agreed, does not appear to have been regularly appreciated.

- The prosecution of claims may be seen to have changed in the 1870s with the use of lawyers, conductors and agents. Evidence became more laundered to suit the judges' predilections or boundaries were manufactured.
- The judges were dependent on the interpreters. In relating the mores of one language to another however, the interpreters task was necessarily subjective.
- Some interpreters had their own personal agendas in assisting purchasers, being involved in purchases, or through being allied to particular Maori groups. They interpreted Maori evidence according to their own preconceptions of the structure of tribal societies, filtering evidence through cultural lenses.
- Assessors legitimised judges rulings, but often had little influence.
- Some judges, writing extra-judicially, disclosed obvious prejudices, for example:
  - that land should be alienated for the benefit of colonists and the moral benefit of Maori, compelling them to work for a living. Maori landlessness was the natural and unavoidable consequence of the contact of the two races;
  - that 'proper' land tenure, was the English feudal system, and custom should be bent to fit it for it represented the natural order of progression;
  - that landowners must be deemed to have possessed absolutely a continuous piece of territory; and
  - that one group alone could have interests in a prescribed territory.

- Many judges favoured Queenites or kupapa and were clearly less disposed to Kingites, Hauhau etc.
- In the result Maori were to establish their own runanga or komiti to determine cases and settle arguments prior to the court hearings. In many cases the court adopted the runanga decisions as settlements out of court, but in those cases the basis for the land award is not now known.
- Criticisms of the Native Land Court need to be tempered by the fact that the Court was bound to effectuate the intention of its governing legislation. Its task was largely impossible, to award land ownership to individuals having regard to custom when custom did not admit of that arrangement. The judges were also 'slaves' to the colonial perception of custom and their opinions were merely representative of contemporary colonial society.
- Criticism of the Native Land Laws needs also to be tempered by the fact that with reduced Maori land-holdings and the need to inter-act with the colonial economy, some change to customary tenure was probably necessary. The main criticism would appear to be however, that the change imposed was one that in fact confiscated legitimate hapu and iwi interests.
- The consequential abolition of the interests of hapu and iwi effectively obliterated the economy of rangatiratanga, and the lack of 'tribal revenue' that resulted would appear to have affected every hapu and iwi. It is this, rather than the rights or wrongs of individual past decisions, and the refurbishing of groups according to what are today the appropriate group structures, that would appear to constitute the proper focus for the claims resolution process.

#### CONTRACTS



- Legal documentation was unknown and the spoken word had power. Value was placed on honouring oral promises despite unexpected consequences, and for so long as the obligations of the other party were maintained. There are many settler commentaries to the effect that "a chief's word was never broken" and that "they never fulfilled promised to the ear and broke them to the sense".
- The declared word carried great weight and was often couched in figurative language to be better remembered.
- Individual messengers (karere) and group ambassadors (teretere) were used to declare contractual intentions to distant hapu. Quite usually they were women, youngsters, or junior rangatira whose attendance was indicative of goodwill or peaceful intentions. Some Government officials wrongly saw the despatch of 'juniors' as a slight. 'Karere' and 'teretere' were also deployed by travelling ope (parties) to warn local hapu of their approach in the hope of hospitality or unimpeded passage.
- In transacting, Maori were more concerned with the power and integrity of the other party or the group they represented, than in the particulars of the transaction. The manner in which the other party might be expected to respond was more important than prescriptive contract terms.
- Maori contracts were therefore personal and directed more to establishing beneficial relationships than to gaining immediate returns.
- Contracts were also for alliances and involved gifts of land and even people.
- Maori contracts were thus open to regular review. While

the honouring of promises was important, contracts were defined by reference to objectives, and not by everalsting, prescriptive terms. They were primarily social contracts bent on maintaining relationships through ongoing reciprocal obligations. Contracts were reviewable if perceived obligations were not maintained, or if circumstances so changed that honour required alternative responses.

- The transfer of authority over land to an independent rangatira or hapu to prevent conflict between local groups, or pending the resolution of disputes between them, was also a custom. Later, Maori conveyed land to missionaries and others for the same purpose. The expectation was that the transferee would resolve the dispute, apportion the land, or hold it and keep both rivals out until the dispute was settled.

#### LAND SALES

- In the post-contact period, and assuming land sales in western terms had become understood and accepted, who could alienate?
  - Rangatira could not alienate the communal estate of their own volition. At best they could alienate only their own interest but it is doubtful that they or anyone had an interest that was entirely severable from that of the community.
  - Individuals could not alienate outside of the kin group, and in any event could alienate no more than they held, and that being a use right conditional on support of the hapu.
  - It appears that at very least a general consensus was required of all with an interest, and that would have

entailed several large and prepared public meetings over an extended period.

- Large meetings may even have been required for small, discrete land transactions, for the admission of strangers to the district affected everyone.
- Some Pakeha commentators considered the 'chiefs' had a power of veto, but 'power' may be an overstatement. It was more customary that chiefs would conform to a general consensus opinion, and would 'veto' only if there was insufficient consensus, if all interests had not been consulted, or if the alienation was contrary to some previously agreed kaupapa (policy), for example, a 'pupuri whenua' decision.
- Sales may have been confused with the custom of transferring the mana of the land. This was not a transfer of the land with vacant possession and exclusive future user, but was a transfer for a particular purpose, to manage, administer, protect, adjuciate on etc, and with responsibilities accruing between the transferring and receiving parties. As with all Maori contracts they must be seen in the context of the motives, purposes, intent and expectations of the alienating party.
- The record of some alienations by rangatira without full consultation or consensus, is not necessarily evidence of an alternative custom, but may evidence the influence of western perceptions and the assumption of 'westernised' power by rangatira when handling 'Pakeha' transactions.
- The large influence of rangatira in many land transactions does not necessarily indicate that they were motivated by personal greed or the elevation of their personal status. Some historical evidence suggests that rangatira projected land sales as opening up long term and enduring benefits



for their people by associations with settlers and pursued land sales accordingly. Some rangatira declined to participate in the money distributions but were eager to sell or encouraged others to do so.

- There is historical evidence that Maori sold land not for its value but to attract the prosperity associated with Pakeha and the colonial economy.
- The customary assertion of control rights by the group to constrain individual alienations seen as inimical to group interests, was generally insufficient to withstand the uncustomary authority that the Crown and settlers gave to rangatira and preferred groups in individual purchase negotiations.
- The agreement of many at a large public meeting is not evidence that all with an interest consented. Subjugated and minority groups, assuming they had an interest, may not have dared to have spoken. Others may have spoken of their opposition by their absence.
- Compensation acknowledged 'ownership' but did not ease the cultural sense of loss or the expectation of continuing rejoinders. In early transactions, demands or 'novel' claims for further payment were usual.
- Under custom, subsequent generations also had rights to the land. Absolute alienations were thus not conceived of. There is some modern opinion that the sale of land today requires the reinvestment of the proceeds for the generations to come with interest only to current shareholders. Previously, proceeds were spent on consumer goods there being no experience of modern business mechanisms.
- Leases, licences to occupy and joint developments may have provided more amply than sales, for Maori cultural

expectations.

- It is not clear that from the sale of land Maori intended to abandon the land altogether or to abandon their access to resources. Sometimes resource areas were specifically mentioned and excluded (for example, pa tuna) and accordingly, despite the emphatic wording of deeds that Maori would depart the area, the need to access those resources could only have admitted of the presumption of a continuing presence.
  - Ancestral associations survive land sales and conquest. Even when land is lost, by Maori law the spiritual connection is retained. An historical link cannot be erased, and ancestral footsteps are fires that cannot be extinguished.
  - It is necessary to assess land sale intentions in the context of the particular time and the local circumstances than prevailing.
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- Considerable alteration accompanied Pakeha settlement and desires to acquire land. Maori adjustment appears to have passed through several stages. An early stage was marked by land offers from rangatira reminiscent of the customary incorporation of migrants to strengthen the home people and the allocation of use rights. Another, perhaps later, was the offer of land to create alliances and on-going relationships with a view to increasing the trading power and wealth of the Maori community. Associated with this was some opposition to the Crown's acquisition of land unless settlement followed immediately thereafter.
  - A further stage may also be conjectured. As missionary and other western influences grew, as rangatira were downplayed and individual status was promoted, and as

individuals found new livelihoods independent of community obligations, so too numerous individuals began to offer land independently of their communities. There developed a tension between the individual and the group, especially 1840-1850, and it was open for Maori to give greater acknowledgement to either the rights of the individual use holders, or the community right of control. Different persons had different positions and when rangatira and runanga pronounced against land alienations, individuals hastened to sell and to proclaim an independent, individual status.

- The politicisation of Maori from the 1850s, in response to land sales, may be seen as a subsequent stage overlapping with that last described. It was marked by a determination that the collective right should prevail, that the incorporation of Maori into the value-system of the colonists should be resisted and that the independent Maori polity should be maintained. Individual offers of land nonetheless continued along with the individual right and group right tension.
- The Native Land Acts opted for individualism and the group right thereafter continued only in Maori law, but not in the ascendant law of the country, or the law that governed the alienation and devolution of Maori land. In many respects however, the individual right and group right tension remains.

### **SUMMARY AND OVERVIEW**

The analysis of available material suggests:

- Maori tikanga or law was precise but essentially pragmatic and receptive to change. Major changes were initiated in response to changing circumstances but with consistent adherence to principles of whanaungatanga, other norms and

basic values. What was tika were not 'rules', but that which was fair or was likely to succeed and was consistent with broad principles or ideology.

- Customary social structures likewise changed. There was a substantive shift of corporate functions from small hapu to large hapu, iwi or waka, as appropriate to the new political age, and with a division of functions between hapu, iwi, or waka according to the matter in hand, some matters being local, others requiring regional policy or concerted action. The location of authority depended upon the particular purpose.
- Groups continue to aggregate, divide or emerge however, as was customary, and as they have the right to do. Tensions between hapu and iwi, and between individuals and groups therefore exist, as they did traditionally.
- Resolution depends not upon finding for one or the other, or upon making one subordinate to the other, but upon recognising the status and contribution of each, and upon finding a structure that accommodates the various interests.
- The issue is not entirely resolved by the level of consensus. Minority interests have also to be considered, and just as in custom the appeasement of conflicting interest groups was essential to unity, so too today, appeasement must remain important in Maori dispute resolution.
- Structures should be tailored to suit cases, and custom developed to meet new situations. Customarily, custom served the people's survival and development, and was not designed to shackle them in unalterable positions.
- What is customary would therefore appear to be that which



works best for today, and supplies the basic needs for Maori physical and spiritual survival, the latter encompassing the customary preferences for whanaungatanga, consistent ideology, and inter-personal and inter-group reciprocity and respect.

- Modern hapu and iwi associations and boundaries are largely post-contact constructs developed in response to changing needs. They are valuable when used to unite people in common purpose, but unhelpful when used to impose upon people, to sever them or unnecessarily divide. Structure should not detract from the important linkages that sustain wide sections of Maori society, or used to inhibit local community identity and initiatives.
- New groups should be respected that demonstrate adherence to fundamental Maori values and ideology. Taura here and other associations now exist, provide satisfaction to significant numbers and contribute to tradition, people's needs and the emerging cultural mosaic. These too must be acknowledged and accommodated where practicable.
- Native Land laws effected substantial changes to the perception of land tenure, social structures and customary principles. Most of the land tenure arrangements cannot now be undone and there is little point in revisiting past land allocations. The current need is to focus on that which was mainly expropriated, the hapu or iwi interest and the underlying tribal economy.
- All groups suffered from the tenure conversion process. The focus now should be on the refurbishing of the groups, not as they once stood but as they now prefer to be, and with decisions based not only on the number of group identities, but on pragmatic scales of economy.
- Where the objective is to restore groups to an economic

base on account of past losses, it may not be necessary to determine boundaries in order to do so, but to determine what is needed to restore each group. Where particular blocks are claimed by rivals as part of a settlement package, the issue may need to be determined not just by ancestral associations, where each can demonstrate an historic association, but on where the asset can best be located in terms of future management and on how each group can best be compensated.

- It is necessary for the Tribunal to assess the custom and society as it was at the time in order to contextualise claims concerning land transactions, court operations or other matters of history. Old custom is no more important than modern custom however. The former may govern the examination of claims, but the latter may need to apply in considering what must now be done.