

Commentary on Judge Durie's Custom Law

Joan Metge

1.0 Introductory Comments

1.1 I am not trained in the theory and practice of law. I have interpreted my brief as providing a commentary on Chief Judge Eddie Durie's text Custom Law from my background as an anthropologist. I leave it to Maori lawyers and pukenga (knowledge experts) to use my comments as seems good to them in revising the text and drawing up Guidelines for High Court Judges. I see these as separate tasks, the Custom Law text being a necessary background to but not itself constituting guidelines to judicial practice.

1.2 I am an anthropologist who has specialised in contemporary Maori society and Maori-Pakeha communication. I am acquainted with scholarly writings about Maori society before and during the early phases of contact with Europeans but I have had no training either as an historian or as a linguist. In this commentary I make use of what I have learned about the Maori world view, values and social practice, and about social and political change in human societies generally, to test and illuminate Judge Durie's discussion of Maori custom law. My understanding is not that of an insider in Maori culture but is based on participant observation in public and private contexts, extensive recorded discussions with Maori of all ages, and the constant referral of what I have written to Maori pukenga (knowledge experts), over a period of forty years, for comment and correction.

1.3 I agree whole-heartedly with the general approach taken in Judge Durie's paper on Custom Law and the insight shown into the social structure and organisation of Maori society in pre-contact, contact and post-contact periods. I endorse the summarised points on pp.1-2 and pp.104-7. I do however feel that there is a good deal of repetition as similar points are made under different headings. The paper would benefit from re-ordering and tightening up. Well chosen illustrations would help to demonstrate that the conclusions are soundly based and make them more intelligible.

1.4 In the interest of brevity, I propose to follow academic precedent and refer to Judge Durie by his surname without the title.

2.0 Concepts of Law

2.1 The debate about whether law exists in societies (like pre-contact Maori society) which do not have codified laws, law courts and judges is an old one in Anthropology. I suggest referring to Chapter 18 of Roger Keesing's introductory text Cultural Anthropology: A Cultural Perspective for a useful summary of the debate and the most generally accepted conclusions. Most anthropologists nowadays accept that all human societies have law (legal principles and legal processes),

Joan Metge "Commentary on Judge Durie's 'Custom Law'"
(unpublished paper for the Law Commission, 1996, with errata 2020)

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whether or not they have laws and law courts. Except in times of exceptional crisis, all human societies pursue as key aims the maintenance of order, the reinforcement of accepted values and the punishment of breaches. Large-scale, complex state societies use formal means to achieve these ends: a law-making body, laws codified into a system, courts and judges. Small-scale societies with simpler political structures use means which are mainly informal, implicit and serve other purposes as well.

2.2 As an anthropologist I accept Durie's conclusion that "Maori norms were sufficiently regular to constitute law" (p.4) and his characterisation of Maori law as "custom law" distinguished from "institutional law", though those are not technical terms used in Anthropology. (' "Custom law" means law generated by social precedent and acceptance as distinct from institutional law generated from the organisation of a superordinate authority.' p.4.) I would however emphasise that Maori custom law was developed in and adapted to a socio-political order of a particular kind: one in which the largest and most important socio-political groupings were relatively limited in size, were based on kinship connection (so that individuals either knew each other personally or could place each other by reference to a kinship frame), preserved and transmitted knowledge orally, and were relatively mobile both in space and time. For these reasons it was able and clearly did emphasise the importance of contextualization in the application of legal principles and processes, tailoring them to take account of particular circumstances. State legal systems, on the other hand, operate on the legal fiction of the "equality" of individuals.

2.3 There is a lingering tendency among the general public to see custom and custom law as rigidly constraining, obeyed without question, fixed and unchanging. These are misunderstandings which were early dispelled by anthropological fieldwork. Every society works out its own balance between choice and constraint, and wherever there is choice there is potential for change. Pre-contact Maori society was notable for the large degree of choice it offered its members. For example, individuals could trace their descent and attach themselves to descent-groups through forebears of both sexes in each generation. The high value placed on oratory is evidence of the importance of debate in decision-making and the need for rangatira constantly to mobilise support for their leadership. The East Polynesian culture brought to Aotearoa by the first settlers was transformed in the course of a millenium of occupation into the highly distinctive Classic Maori culture and archaeologists have documented continuing changes in settlement patterns and life-styles on both a national and a regional basis. (See Davidson 1984, Sissons 19..)

2.4 To come to grips with Maori custom law, it is necessary to recognise that Maori concepts hardly ever correspond exactly with those Western concepts which they appear, on the surface, to resemble. While there is a degree of overlap, there are usually divergences as well. Even if the denotation -- the direct reference -- is substantially the same, the connotations are significantly different. Commonly, several sentences of explanation are needed to deal adequately with the similarities and divergences. For these reasons it is unwise (though tempting

for the sake of brevity) regularly to translate the Maori word for a concept by a single English word or phrase, for listeners inevitably hear the English meaning. For example, the common practice of translating 'kaumatua' by the English 'elder' has misled Pakeha into taking advanced age as the defining feature of this role, whereas to Maori the exercise of leadership functions is as if not more important.

2.5 What is the alternative? In discussion, the best procedure is probably to use the Maori word, reminding oneself and alerting others to the fact that the reference is to a Maori not an English concept. In drafting legislation, however, using a Maori word opens the way to legal challenges based on disputes about meaning. Attempts to get round this problem by defining the Maori word in the Interpretation section of a Bill are resented by Maori because they pre-empt the authority of Maori pukenga and 'fix' a meaning that may be wrong or in the process of change. If contention about the meaning of a Maori word is likely, provision should be made to refer the issue to Maori pukenga to debate in a Maori setting. This could be done as part of the process of formulating the legislation and/or built into the legislation itself as a means of dealing with particular cases.

2.6 In his paper Durie discusses the Maori words tikanga, kawa and ture. I agree with him in identifying tikanga as of key importance in the context of custom law, but I would expand the list to include ritenga (likeness, a repeated pattern, hence custom), kaupapa (plan, scheme, proposal) and whakaaro (thought, way of thinking).

2.7 Ture. This word was developed in the contact period from the Hebrew word Torah. It was used initially to refer to the religious laws taught by the missionaries, then extended to include the laws promulgated by the Kawanatanga (first the Governor and later Parliament).

2.8 Kawa. I agree with Durie that kawa refers basically to ritual and formal procedures, especially those which include karakia. In Muriwhenua in the 1950s kawa (often in the form kawanga) was used only with reference to the dawn ritual which lifted the tapu from a newly built or renovated meeting-house. The use of the word to apply generally to "marae protocol" spread rapidly in the 1960s, largely due (I believe) to the influence of Ngati Porou pukenga Arapeta Awatere and Koro Dewes, who taught numerous courses entitled "Te Kawa o Te Marae" under the auspices of the University Extension Department of the University of Auckland. However, kaumatua in certain iwi (e.g those of Te Arawa and Tai-Tokerau) reject the use of kawa in this general sense as not tika for them.

2.9.1 Tikanga. Tikanga is a noun formed by adding a noun ending to the adjective tika. It should be emphasised that tika has three meanings: 1. straight, direct; 2. just, fair; 3. right, correct. Exactly which of these meanings is intended can be determined only by reference to the context of use, and even then the other meanings are present as over-and under-tones. Tikanga has an even wider range of meanings. Williams' Dictionary of the

Maori Language gives it six: 1. Rule, plan, method; 2. Custom, habit; 3. Anything normal or usual; 4. Reason; 5. Meaning, purport; 6. Authority, control.

2.9.2 I have discussed tikanga at some length in New Growth From Old (pp.20-21, 86-7). There I describe tikanga as "a word which identifies 'the right way', a rule or custom embodying accepted understandings of what is tika" (p. 87). Because of the range the word tikanga covers, I consider it the best translation for both custom and culture. I note that the phrase 'nga tikanga Maori' is increasingly being used to mean 'Maori culture' and define it as "the rules or guidelines for living generally accepted by Maori as tika" (p. 21). I like the use of 'nga tikanga Maori' to translate 'Maori culture' because the plural form reminds us that despite its singular form 'a culture' is not a singular monolithic thing but a collection (singular) of customary ways (plural). In Reed's Dictionary of the Maori Language Ryan translates culture as 'tikanga-a-iwi'.

2.9.3 It should be noted that tikanga can be used both as an ordinary singular with a plural form and as a collective singular. Ordinary singular: "He tikanga Maori ko te powhiri ki te manuhiri." (Giving visitors a ceremonial welcome is a Maori custom.) Collective singular: The new constitution of the Anglican Church establishes three Tikanga, one of which is Te Tikanga Maori." Te Tikanga Maori is "The Maori Way", encompassing the many, particular tikanga/ways. Durie uses tikanga as a collective singular on p.4, in a context where it is entirely appropriate.

2.9.4 Tikanga incorporates all three of the meanings of tika, but it is my understanding that the primary emphasis is on rightness. Nga tikanga are believed to originate in the spiritual realm with the gods/God and are endorsed and sanctioned in this world by the community as a whole. I agree with Durie that tikanga may be seen as "Maori principles for determining justice" (Custom Law p.3) but I see justness/fairness as a secondary rather than the primary meaning. In New Growth From Old (p. 21) I point out that "nga tikanga Maori fulfil other functions besides maintaining the rule of law, cover the whole range of human behaviour, including moral and spiritual aspects, and are enforced by other means" (i.e. than legal ones). Having said that, I would join Durie in emphasising that the idea of justice is implicit in the concept of tikanga.

2.9.5 In his discussion on pp.3-4, Durie uses the word rule to refer to something highly prescriptive, rigid and inflexible: e.g. in his phrases "rules-based western law" (p. 3), "(tikanga's) lack of rule-like definition", "not bound by unbreakable rules", "kawa was 'rule-like', more rigid" (p.4). I question this usage as confusing and unnecessarily limiting. In ordinary popular usage, the English word rule has a wide range of meaning. It can refer to highly prescriptive rules laid down by authoritative rule-making bodies (such as the councils controlling sports or professions as well as Parliament) in a code, along with codified penalties for breaches. But it can also refer to mildly prescriptive rules generally accepted in a community as wise and right, rules which provide guidelines for

action and are sanctioned by informal rather than formal means (public disapproval, gossip, ostracism); in the words of The Concise Oxford English Dictionary, it is "a principle to which an action conforms or is required to conform". It can also mean, thirdly, what is usually done: according to the COED, "a prevailing custom or standard; the normal state of things". Far from describing tikanga as "lacking rule-like definition", I regard 'rule' as quite a suitable translation for the concept, because the word has such a range of reference.

2.9.6 While strongly endorsing Durie's perception that tikanga Maori differ fundamentally from Western laws, I question his attribution of the difference to tikanga Maori being "values-based" while Western laws are rule-based. As I understand it, Western laws are also based on values, but at one remove, the values concerned being interpreted by the law makers. I suggest that the difference between tikanga Maori and Western laws originates in their respective sources and in the contrast between oral and written modes of communication. Tikanga arise out of on-going community debate and practice and are communicated orally; as a result they are adapted to changing circumstances easily, quickly and without most people being consciously aware of the shift. Western laws are formulated and codified by a formal law-making body and are published in print; their amendment, while possible, is a complex and lengthy process. As a result laws often lag behind community opinion and practice; at times, however, they can be ahead and formative of it.

2.9.7 While I locate the difference between tikanga Maori and Western laws elsewhere, I agree with Durie that tikanga Maori are "values-based". In New Growth From Old I suggest that "nga tikanga Maori encompass and hold together ways of thinking (whakaaro nui) and ways of doing (mahinga), principles and practice" (p.21). They are frequently expressed in words as prescriptions or directives stating what ought to be done. However, the word is also used to refer to actions which conform to the prescriptions, describing what is done. There is a feedback loop between these two aspects of tikanga: the prescriptions/principles govern what is done, and by repeatedly conforming to or modifying the prescriptions/principles practice either reinforces the latter or leads to their modification. An understanding of the Maori world view and value system is essential for the interpretation and understanding of tikanga Maori. At the same time, it seems to me important to emphasise the double aspect of tikanga, recognising that they issue in action. While tikanga are values-based, they are not synonymous with values.

2.9.8 While tikanga are not formally promulgated or published in a codified form, Maori do express them in words from time to time. Typically they do so in contexts where they are relevant rather than in the abstract. They may phrase them either as prescriptions or as descriptions of what is usually done. When I was helping to prepare evidence for the Muriwhenua claim to the foreshore of Ninety Mile Beach, each person I interviewed gave me five or six tikanga relating to the gathering of mataitai (seafood). Some of these were the same but never all, and there

was no fixed order of presentation. When I put them all together, I had a list of 30. The tikanga given me in this form were highly particularised: e.g. do not drag baskets or dredges across shellfish beds, use your hands (not implements) to collect shellfish, do not shell shellfish on the beach, do not gut fish on boat or beach.

2.9.9 In considering these particularised tikanga, I found it easy to arrange them into groups with a common purpose which could also be expressed in words: e.g. avoid actions which damage the physical environment and well-being of mataitai; avoid actions which pollute the physical environment of mataitai; avoid actions which endanger people. In my Submission to the Waitangi Tribunal on the subject (See Metge 1991: Notes) I used the word kaupapa to describe the common purpose of each group of tikanga. Now I would identify prescriptions of this order as tikanga of a middle order of generality and suggest that they in their turn can be seen as expressions of a tikanga of high generality, namely "manaaki ki ou whanaunga, ki nga uri o Tangaroa" (treat your relations, the descendants of Tangaroa, with respect and loving care).

2.9.10 I originally undertook this re-arrangement of the tikanga relating to the gathering of seafood in order to demonstrate that, although they are presented higgledy-piggledy and incompletely by practitioners, they do in fact form a system that is coherent and based on general underlying principles. I am sure that tikanga governing other aspects of Maori culture could be similarly ordered into at least three levels of generality and shown to be coherent and systematic. However, I must stress that this procedure is mine, formulated for a particular purpose, and not a procedure that most Maori follow or are particularly comfortable with. I am sure that Maori pukenga are perfectly well aware of these different levels of generality and of the underlying system of interconnections, but for purposes of teaching and communication, they prefer to focus on the tikanga appropriate in particular contexts, leaving learners to work out the connections and levels of generality for themselves as a test of their understanding. Some do, others never quite cotton on.

2.9.11 Tikanga of high generality are very obviously values-based; in fact, they are couched in almost identical terms. They generate and are expressed through tikanga which are more particularly focused. In the case of such particularised tikanga, it is not always easy to see that they are values-based, nor which value is being served. That is why it is so important to locate them in the wider system and to seek the assistance of pukenga in doing so.

2.9.12 In my understanding, the most knowledgeable kaumatua of past and present generations do not rank tikanga of comparable levels of generality in any absolute or invariable order. Instead, they treat them as a resource upon which they draw when deciding how to act in particular situations. In each situation, they review past precedents and present needs, and on that basis they decide which tikanga are most relevant and should take precedence in that context. As a result, different tikanga are emphasised on different occasions. The operation of nga tikanga

Maori has extensive choice and flexibility built into it. The underlying generative values remain the same, but the way they were and are expressed in words and action varies between situations and over the course of time.

2.9.13 The tikanga identified as relevant in a particular situation can contradict as well as reinforce one another. There is a particular tension between tikanga directed to the object of maximising mana and tikanga directed to the object of maximising aroha. Different kaumatua make different choices, according to personality and their differing assessments of the situation. Today, in the later 20th century, if there is one tikanga which most pukenga stress as of primary importance, it is 'arohanui ki te tangata' (loving concern for people). Conversion to the Christian faith may have had something to do with the elevation of this tikanga to this primary position but there is evidence that it was also held in high regard in pre-contact and contact times, though the concept of aroha was undoubtedly interpreted more narrowly to apply to kinsfolk rather than human beings generally. Evidence for this can be found in the many stories about besiegers identifying kin among the occupants of the besieged pa and either arranging their escape or making peace.

2.10 Ritenga. The word ritenga is sometimes used as a synonym for tikanga. It is a noun formed from the adjective rite which has the basic meaning of 'like' (similar to). According to Williams, it means 'likeness' and also 'custom, habit or practice', that is, the repetition of like actions. On the face of it, ritenga does not have the same depth of meaning as tikanga, referring to what is done (practice) rather than what ought to be done (principle). However, in a Law Commission meeting to discuss Custom Law, Kate Walker said that in her experience ritenga was a stronger word than tikanga, used to indicate rules with the highest degree of importance and obligation. Ritenga is the word used in the statement appended to the Treaty of Waitangi in response to Bishop Pompallier's concerns about 'matters of faith'. Oranga says that ritenga "was inserted at Colenso's suggestion to act as a 'correlative' to the clause on Rome" and that ritenga was "what Busby termed 'heathen practices'" (Orange 1987: 53). The meanings and usage of ritenga needs further exploration.

2.11.1 Values. At the bottom of p.4 Durie identifies seven concepts which he describes as "conceptual regulators of tikanga, or as providing the fundamental principles or values of Maori law". He does not provide a Maori translation for either "principles" or "values". On p.5 Durie makes brief comments on six of these (whanaungatanga, whakapapa, aroha, mana, manaakitanga and utu) while a comment on wairua and tapu appears on p.8.

2.11.2 There is no doubt that pre-contact Maori recognised and governed their lives in accordance with a system of fundamental values but it is less clear what word(s), if any, they used to refer to them as a body. As far as I am aware, there is no

general agreement on this subject even today. In his English-Maori Dictionary Ngata gives translations for the word value, but none for value in this sense.

2.11.3 For a while I used kaupapa for this purpose but I have now decided against it. Like tikanga, kaupapa has many meanings. Williams itemises 12, of which only two are relevant here: 1. Level surface, floor, stage, platform, layer; 12. Plan, scheme, proposal. In Reed's Dictionary of the Maori Language Ryan gives kaupapa as the Maori translation for English 'strategy' and 'theme' and uses it paired with adjectives or other nouns to indicate a wide range of concepts including guidelines, procedures, agenda, plan and programme. Kaupapa has become widely known by Pakeha as well as Maori through its use in the phrase Kura Kaupapa Maori. Remembering that its basic meaning is level surface/floor, kaupapa could be interpreted metaphorically to mean 'foundation' and hence 'values', but I think this is stretching its meaning too far. Many Maori speakers, especially those who speak Maori as their second language, are currently using kaupapa very loosely to convey a multitude of meanings. To use it with the meaning of 'values' would increase confusion and misunderstanding.

2.11.4 In New Growth From Old I have rendered the concept values into Maori by the phrase nga whakaaro nui (literally, big thoughts). This phrase was suggested by Hone Kamariera of Te Rarawa. While not in general currency, it has the advantage of not being already tied up with other meanings. The word whakaaro is formed by adding the causative prefix whaka- to aro. As a noun aro refers to the capacity for thinking and feeling, functions which Maori see as intertwined, not separate or opposed; as a verb its basic meaning is 'to face, turn towards or have a certain direction'. Williams' Dictionary defines the noun whakaaro as meaning: thought, intention, opinion; understanding; and plan. In his English-Maori Dictionary Ngata gives whakaaro as the translation for 'view' (on a subject). The adjective nui indicates big in terms of importance as well as size. Perhaps an even better term might be whakaaro pu, pu having the meanings of 'origin, source, cause; root (of a tree); base, foundation (of a mountain); heart, centre'. Other possibilities are whakaaro tika, a phrase Ngata gives in his Dictionary to translate 'perspective', and whakaaro pono. This issue of a Maori label for the concept 'values' is a subject which I should love to hear debated by pukenga.

2.11.5 I agree that a section is needed, under the general heading Concepts of Law, which identifies and defines the key elements of the Maori value system. Durie identifies seven key concepts on pp.4-6 but does not define or explain them so much as comment on their functions. I suggest that the content of this section should be limited to fairly brief definitions, and the concepts should be explored in depth under a separate heading Maori Values, following immediately after Concepts of Law and designed to lay a foundation for all the subsequent sections.

2.12.1 A case could be argued for comment at this point, just after the identification of basic concepts or values, on Maori

modes of thinking and expression, but it needs to be carefully thought through, soundly grounded, and relatively succinct. In this connection and as a background to the discussion of Maori values generally, I recommend Professor Ann Salmond's work, especially the articles "Te Ao Tawhito" (1978), "Theoretical Landscapes" (1982), "Maori Epistemologies" (1985), "Tribal Words, Tribal Worlds" (1988), "Tipuna -Ancestors" (1991).

2.12.2 On pp. 6-8 Durie makes several comments about "Maori mental constructs" which require critical examination with regard to both content and placing. The statement in the last paragraph on p.6 that "Maori mental constructs were based on cycles in preference to lineal progression, as shown in the cyclical and repetitive patterns of art forms" is an over-generalisation and inaccurate on several counts. While certain forms of Maori visual art (whakairo, kowhaiwhai) make use of curvilinear (not cyclical) shapes, others (tukutuku, taniko and mat weaving) use rectilinear forms, capitalising on technical necessity. While repetition is a common device in both visual and literary Maori art forms, it is never complete nor unvaried: typically, patterns are subtly altered at some point, as in the whariki on the cover of my book Te Kohao o Te Ngira. Relevant works here are Allan Hanson's article "Art and the Maori Construction of Reality" and Te Aho Tapu by Mick Pendergrast. While they contradict aspects of Durie's over-hasty generalisation, these works support his overall thesis that the Maori world view is characterised by flexibility in modes of thinking and expression.

2.12.3 In debate, Maori speech-makers certainly tend to present their argument in a round-about rather than linear fashion but that does not necessarily mean that they do not think their argument through logically. In storytelling, poetry and oratory they make frequent use of analogy and the linking of complementary pairs which together make a whole. The northern missionary Joseph Matthews referred, sometimes disparagingly, sometimes admiringly, to their "parabolic way of thinking" (from the word parable). In approaching this subject we have to beware of all-or-nothing assertions: all human groups use both linear and non-linear modes of thinking, for different purposes. Analogy, symbolism and metaphor are widely used by the literary and visual artists of Western as of all human societies, and great scientists have often drawn upon visual and other images and analogies when making their discoveries.

2.12.4 The reference on p. 7 to the "rugged individualism" valued by the colonists perpetuates a common stereotype which, like all stereotypes, has some basis in truth but is too sweeping. While such an attitude was common among many male colonists, it was not universal, was far less characteristic of female colonists (who in the 19th century were more likely to be dependent on men) and was offset (at least in rural and working-class areas) by stress on neighbourliness and rallying round in crises. Probably both values existed side by side, with one or the other coming to the fore in different times, places and situations. Coping with the same physical environment and low population densities, the early (and not so early) colonists had more in common with their Maori neighbours than is usually recognised.

2.12.5 If a section is included on Maori modes of thinking and expression, the two paragraphs on Maori storytelling and proverbs on p.7 should be integrated into the argument, the content of the second paragraph of the two being particularly pertinent. I would however question Durie's classification of kinds of stories. The categories 'myths', 'legends', 'traditional history' and 'history' used by Western scholars cannot and should not be imposed on the Maori categories. When I was teaching Maori literature I discussed the Maori terminology with Wiremu Parker and other kaumatua and came to the conclusion that the Maori terms in use among Maori did not correspond neatly with Western categories nor did they constitute a single, unified classification system. Instead of constructing a series of discrete pigeonholes, they overlap. Maybe different iwi give the words different meanings, but as far as I could make out, the basic division is between korero purakau, regarded by the northern iwi I know as serious stories which are tapu (sacred) and pono (true) in the deepest sense, and korero pakiwaitara, light-hearted stories told primarily to entertain. (Some tribes however seem to reverse the application of these terms.) As Durie observes, pakiwaitara also means gossip. Korero tupuna are stories about ancestors, from grandparents back: most are korero purakau but some fall into the korero pakiwaitara category. I have not heard the distinction made in the paper between korero o mua (identified by Durie as "myths and legends") and korero o nga ra o mua ("recent history"): to me these terms are synonyms, both meaning 'stories of past times', literally "of before". The terms I know for stories of the distant past are korero o nehera and korero onamata. I would agree with Durie that storytellers included elements of korero purakau and pakiwaitara in the same telling.

2.13 The paragraph on mana tupuna at the bottom of p.7 and that on wairua and tapu on p.8 would be better integrated into the fuller discussion of values proposed as the next section.

2.14 The paragraphs on pp.8, 9 and 10 make good points about social change in Maori society and with some polishing could serve well as a conclusion to the section on Concepts of Law.

3.0 MAORI VALUES/BASIC CONCEPTS

3.1 The concepts identified on pp.4-6 as "fundamental principles or values of Maori law" are fundamental principles or values of Maori society as a whole. They could be dealt with separately where the need arises in the text but because they are so pervasive I think it is probably simpler and better for easy reference to deal with them in one, early section. Doing so would obviate the need for much of the repetition in the existing text.

3.2 There are two main sources of knowledge on this as on all aspects of custom law, the knowledge transmitted within Maori groups, which can be supplied only by Maori pukenga, and a growing body of writing on the subject. Published works include those of Maori Marsden (1976), Cleve Barlow (1991), Rose Rangimarie Pere (1991), Margaret Orbell (198), John Patterson

(1992), Ann Salmond (1982, 1985, 1988, 1991), and myself (1976, 1986, 1995). Pat Hohepa's statement on Succession Law (1995) should be added to this list. Marsden, Barlow, Pere and Hohepa base their accounts primarily on teachings transmitted in oral form in their own whanau, hapu and iwi. Significantly, they present them without reference to historical context, regarding them as timeless. Salmond's studies are based on linguistic and anthropological analyses of early Maori texts and pay careful attention to the time and context of recording. Patterson sets out to discover the Maori philosophical system through analysis of proverbs and writings by Maori available in print in English. Reviewing his book for the *JPS* (1993), I praised the depth of understanding achieved while pointing out limitations and omissions.

3.3 My own writing, based on fieldwork spanning forty years, deals with the contemporary understanding of Maori values. The values cited are held by Maori to have been *tuku iho no nga tupuna* (handed down from the ancestors); it is generally assumed that they have survived the process of transmission unchanged. In the experience of anthropologists, values are, of all aspects of culture, the most stable and resistant to change but they do undergo subtle modifications over time, especially (though not only) in encounter with other cultures. I believe that there have been some changes in Maori values, especially in the understanding of and relative weighting of *aroha* and *mana*, as a result of the encounter with Western culture and especially of conversion to Christianity. However, these changes have involved matters of emphasis and detail and have not altered the fundamental concepts and orientation of the value system as a whole. Modern expressions of Maori values can be used to cast light on those of the pre-contact era, but allowance must be made for two hundred years of modification and development.

3.4 The Maori system of values is a complex one encompassing concepts which do not match up exactly with Western ones and are often markedly different. Even after forty years I am constantly refining and extending my understanding of them. At this present time, I would summarise them as falling into six main groups: *aroha*, together with the associated value of *whanaungatanga*; the complementarity of *taha wairua* and *taha tinana* (the spiritual and the bodily dimensions), together with the associated paired concepts of *tapu* and *noa*, *ora* and *aitua*, *tika* and *he*; *mana*, with the associated values of *whakapapa*, *mana tupuna*, *mana atua*, *mana tangata*, *mana whenua*, *mana tane* and *mana wahine*; *nga mahi-a-ngakau*, obligations arising from *aroha* and/or *mana*; *utu* (the principle of reciprocity); and *kotahitanga* (unity). I have set out my present understandings of these concepts in Chapter 5 of New Growth From Old with the aim of making them accessible to non-Maori readers. This chapter should be regarded as an introduction to, not a full or definitive exploration of, the subject. That can be provided only by Maori *pukenga*.

3.5 I agree entirely with Durie that we must beware of reading contemporary values into the pre-European past or evaluating the values of that time by contemporary standards. At present I detect a tendency among both Maori and Pakeha to concentrate on those Maori values which are currently considered acceptable and

praiseworthy and ignore the others. Durie does not entirely avoid this trap himself. His list of "mana enhancing traits" on p. 6 is limited to currently acceptable ones. According to my limited knowledge of pre-contact Maori society we need to add at least: extreme sensitivity to perceived threats to one's mana or that of one's group; success at trickery and the out-witting of others, whether rivals, enemies or friends. Maui was and is an admired role model as much for his success as a trickster as for bestowing benefits on human beings.

3.6 I do not propose to go into detail about the content of this section on Maori values: the task of collating the various sources of information on the subject is appropriately left to the writers of the Guidelines. However, the subject of mana is such a difficult one, misunderstandings so rife and an understanding of it so fundamental to understanding of concepts of identity and of interpersonal and intergroup relations in Maori society that I feel constrained to make some suggestions.

3.7 In particular, I suggest that it is necessary to discuss: 1) the essential nature of mana (not human reputation or prestige but power with a spiritual dimension and origin), the way it flows into/invests people, objects and natural phenomena in the world in which humans live, and the connection between mana and tapu; 2) the way individuals acquire mana, i.e. through different routes or channels, and the concepts of mana tupuna, mana atua, mana tangata, mana whenua, mana tane and mana wahine; 3) the consequences of differences in individual mana for interpersonal relations, rank and leadership; 4) the ways in which the mana of individuals and groups is increased or diminished; and 5) the consequences of breaches of the tapu associated with mana.

3.8 At some stage the characteristics and functions of whakapapa also need to be explained, because of the part whakapapa plays in individual and group identity and ranking, the inheritance of mana tupuna, the reckoning of whanaungatanga, and the choice of leaders.

3.9 The concept of mauri and its relationship with mana also needs to be explored. Some iwi and pukenga seem to use these two words interchangeably (e.g. by John Rangihau in King 1976). Others define mauri as the physical life force; loss of mana does not automatically and immediately result in death but leaves a person without spiritual protection and vulnerable to accident, assault and illness, so that death is a constant threat.

3.10 I have explored contemporary understandings of mana and mauri in In and Out of Touch and of mana and whakapapa in New Growth From Old. Again my formulations should be carefully checked against those of Maori pukenga and writers and of Ann Salmond, especially in her article "Tribal Words, Tribal Worlds".

4.0 CONCEPTS OF IDENTITY

4.1 This section needs to begin by stressing two important points: (1) the crucial part played in the constitution of identity by the concept of mana and (2) the interdependence of

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individual and group identity. This should be done in brief at the beginning, then explored in greater depth. If mana and whakapapa have been explored in the previous section, this section can proceed directly to discuss the constitution of individual and group identity and the relation between them.

4.2 I suggest that the first three paragraphs under the heading Concepts of Identity on p.10 be used as the basis of a discussion of individual identity, not 'self identification' which is the term that Durie uses. Individual identity is not just a matter of what the individual thinks about his/her/self but of self-identification in interaction with what the community expects and thinks of him/her. While agreeing with Durie that belonging to an identifiable community, that community's association with a particular territory and maintenance of whakapapa are key elements in individual identity, I would add the management of a personal store of mana constituted by the combination of mana inherited from ancestors (mana tupuna), mana associated with gender and mana won by ordinary and extra-ordinary personal performance (mana tangata). It might be a good idea to start with the concept of a store of personal mana and then point out that this necessarily involved belonging to a community, association with a territory and maintenance of whakapapa.

4.3 Jean Smith has written an article "Self and Experience in Maori Culture" which examines the idea of "the individual" in pre-contact Maori culture, Maori attitudes to "unwanted emotions" and reference to "the organs of experience". This article is based mainly on the analysis of linguistic material supplied especially by Best. It also refers to the work of Prytz Johansen, a Dane who wrote two studies on Maori religion and ritual (1954 and 1958) entirely from a study of Maori texts. Without firsthand contact with Maori he sometimes got things wrong but on the whole his work is astonishingly perceptive. I would have to track down the full reference for the Smith article but can supply a copy of the text if wished.

4.4 The concept of individual identity needs to be extended to take in the contact and post contact period. In particular, attention needs to be paid to the consequences of intermarriage between Maori and non-Maori for the identity of the children. I attempted to explore the subject "Who is a Maori?" in New Growth From Old, and Hohepa does the same in his paper on Succession Law. While there seems to be general agreement among Maori that descent from a Maori is a necessary qualification for recognition as a Maori, there is a greater variety of views on the relative importance of residence, lifestyle, knowledge of tikanga Maori and ability to speak the Maori language. See Pool 1991: 3-25, Gould 1992 and Mason Durie 1994: 125-28.

4.5 With respect to group identity, I suggest that the first, third and fourth paragraphs on p. 11 be treated as source material but that the second, fifth and sixth should be omitted from this section, the points made in them being more appropriately made elsewhere. The grounds of group identity could be expressed more succinctly as: (1) shared ancestry, especially descent from an ancestor chosen as group symbol, supported by whakapapa; (2) shared territory (whenua = both earth and water),

which provided/s places of residence, resources/sources of livelihood, and group symbols (maunga, wai); and (3) matauranga (knowledge of things Maori), including knowledge about ancestry and territory. These points could be underlined by quoting pepeha which identify particular hapu by naming a mountain, a body of water, and an ancestor ('te tangata').

4.6 A final paragraph could then underline the interrelationship and interdependence between the identity and mana of individuals and of groups.

4.7 The last paragraph on p.11 of Durie's text and the first three on p.12 would I think be better dealt with in the section on Groups. In the first two of these paragraphs Durie uses 'community' in two senses, to refer to 'community of living' and 'community of kin in distal associations'. I think most people would have difficulty understanding the distinction thus worded. For one thing, 'distal' is not a common word: I did not know and had to look it up. For another, most people associate 'community' with close and frequent interaction in a local situation. I suggest that the point made here -- the distinction between localised groups (communities) and co-descendants living dispersed over several communities -- is better made as part of the discussion of whanau, hapu and iwi.

4.8 Likewise, the second and third paragraphs on p. 12 would be better integrated into the section on land tenure. In doing so, it would be a good idea to stress that "modern Maori land law" originates not in Maori customary law but in the interpretation of customary law by the Native Land Courts and lawyers trained in Western law.

5.0 GROUPS AND GROUP FORMATION

5.1 To me there is a problem talking about the formation of groups before discussing the groups themselves. I would reverse the order of the sections headed Group Formation (pp. 12-26) and Groups (pp.26-30) and integrate them under a single heading. As far as pre-contact Maori society is concerned, we do not know for certain how groups were formed and have to do a great deal of hypothesising. Early hypotheses (Best, Firth, Buck) talked about smaller groups growing into larger ones (whanau into hapu, hapu into iwi); contemporary hypotheses stress the complexity of the processes involved (Webster 1975, Schwimmer 1990, Metge 1995: 44-46, Ballara 1995). I suggest it would be best to start with what is known, an identification of the kinds of groups known to be important in Maori society at the time of early contact, then introduce current discussions and hypotheses about processes of change in pre-contact and post-contact periods.

5.2 At present much that is presented under the heading Group Formation overlaps with and duplicates the content of the section Groups. Following the suggestion just made would I think obviate much of this repetition.

5.3 The first five paragraphs under the heading Group Formation in Durie's text (pp. 12-13) make important points but I am not sure that this is the best place for them: they pre-empt what

follows. Perhaps they could be used as a summary at the end or amalgamated with other sections making the same points. I would amend the second paragraph/sentence to read "by continuing processes of atomisation and re-constitution of autonomous groups (hapu)". The other three paragraph/sentences need re-writing to clarify meaning and qualify the sweeping generalisations. Salmond's work Two Worlds (1991) continually underlines the importance of regional variation related to differences in resources which characterised the Maori world at the time of contact.

5.4 I advocate starting this section on Groups and Group Formation with a paragraph or two summarising the content of the six paragraphs which come after the line on p. 13 plus the paragraph which runs over from p. 14 to p. 15, i.e. with a paragraph or two setting out the relationship between earlier and later migrants as understood both by Maori and by modern scholars. This section should be worded clearly and strongly in order to counter current popular misunderstandings.

5.5 The paragraphs which deal with "two types of mana ...a mana in the land and a mana over it" (two on p. 14 and one on p. 15) present interpretations of the concepts mana whenua and mana tangata which are new to me. I should be most interested in the evidence on which these are based. It is an important issue which needs careful exploration. Whether this is the best place to explore it should also be considered carefully. It could be discussed in conjunction with mana under the heading Maori Values or in the section on Land Tenure.

5.6.1 Durie's text from p.15 to p. 30 makes many useful points but is repetitive and over-simplified. It needs re-presenting in a logical order. Also the three paragraphs on p. 25 after the line would be better placed with the discussion of leadership.

5.6.2 Having cleared away misconceptions about the relationship between early and later migrants, I suggest the next step is to identify and describe the kinds of groups operative in Maori society at the time of first contact, their structure and functions, with a reasonable degree of succinctness. There are several ways of approaching this. One could begin with the smallest, i.e. the whanau, and proceed through hapu to iwi and waka; one could reverse this process; or, following Durie's example on pp. 15-16, one could home in on hapu as the "essential political units for local governance and social intercourse" (p. 16), then deal with the whanau of which hapu were constituted and finally turn to the larger groups formed when hapu established relatively long lasting alliances, sometimes called hapu and sometimes iwi, and to the waka, which was in pre-contact and contact times more of a conceptual than an operative grouping. In each case attention should be paid to both the structure (membership) and functions of the group and to regional and other variations in naming and operation. Reference should be made where necessary to the other meanings given the words and the imagery involved.

5.7 With reference to the whanau, the paragraph which spans pp. 15 -16 is confused and confusing. I suggest defining whanau first as a domestic production/consumption unit formed round a core of persons descended from a key ancestor or ancestral pair but including in-married spouses, adopted children and slaves, then pointing out that the word was also used for: (1) a sibling set without their parents; and (2) a descent category consisting of descendants of a common ancestor wherever they were living, whether together or scattered through other groups. These other usages must be recognised, but also kept in perspective as of secondary importance. The paragraph on p. 16 which refers to a whanau growing into a hapu should be left out.

5.8 Reference needs to be made to hapu known by titles including the term Whanau but the discussion must be carefully worded. Perhaps a distinction could be made between describing a group as a whanau and use of the word Whanau as a title. In the case of Te Whanau-a-Apanui it is my understanding that the reference is to descent not from Apanui so much as from members of the sibling set constituted by his eight children.

5.9 Discussion of the word 'iwi' would be better placed here, drawing on the sections on pp.24-25 and 29-30 apart from the references to 19th century developments which could be dealt with under that heading. The statement on p. 25 that "district hapu generally stood united in war but independent in peace" needs qualifying. As I understand it, when hapu united to wage a war campaign, the taua of the hapu involved recognised the leadership of none but their own rangatira and might pull out at any time, even on the battlefield. See Vayda 1960.

5.10 Once the general framework has been set out, this would be an appropriate place to introduce the distinction between localised and non-localised forms of the main kinds of groups referred to above in 4.7. The most common application of the words whanau and hapu were to localised (community) groups characterised by kinship connection, co-residence, shared participation in activities and adherence to group norms. Such groups were made up a core of co-descendants plus in-married spouses and slaves. As Durie says (p.11), non-kin (including spouses from other hapu) were acceptable only as long as they fulfilled their social obligations. However, the words whanau and hapu were also used, less frequently, to refer to co-descendants of a common ancestor (a descent category) who lived dispersed among several groups, as a result of marriage or migration for various reasons.

5.11 Durie makes a distinction between primary and distal community associations which confusing. I find it helpful to make finer distinctions. I distinguish, in the first place, between those members of a descent category who were active members of a localised group and those who were inactive because living elsewhere. Within each localised group there was, secondly, a distinction between those active members who had a connection with the land as a result of descent from an occupying ancestor (tangata whenua) and those active members who were non-kin from outside (manuwhiri, rawaho, tangata heke). The latter's membership in the group was conditional, dependent on their

accepting the group's tikanga and fulfilling their social obligations. Kin living elsewhere (not with the local group) were also recognised as members, but with reservations. See Durie's first paragraph on p.12.: "recognised as community members for certain purposes, usually without land rights but with the inchoate right to re-enter the community and assume residence". It is my impression that even that right was subject to debate by the active members of the group and to the approval of its head. I question whether it is necessary to go into this amount of detail. I suggest describing "kin living at a distance" as either potential or dormant members of the group, who had the right to apply to enter the group and seek rights of land use.

5.12 Once these matters have been sorted out, attention can be given to a fuller exploration of the hapu in pre-contact and contact periods as "the essential political unit for local governance and social intercourse". I would endorse the content of pp.17-20, especially the emphasis on the dynamism and flexibility of hapu political arrangements, but suggest that it needs condensing in a way that brings out the main points and avoids repetition. I would advocate using the opening sentence of the third paragraph on p. 17 to introduce a section on hapu formation and re-formation, summarising the contents of pp. 18-20, and concluding with a paragraph or two on the naming of hapu (at present dealt with first on pp.17-18). This order would reflect my conviction that hapu names were chosen well after the ancestor's death, and so expressed present political realities rather than causing them.

5.13 In dealing with the formation and re-formation of hapu, the complexity of the process should be emphasised. It was not simply a matter of smaller groups growing into larger ones but of groups at each level of organisation subdividing and re-combining in ways affected by the quality of and competition for leadership, and the effects of natural and man-made disasters such as disease, famine and war. The main sources are referred to in 5.1.

5.14 I would challenge the assertion that the pre-contact period was "more peaceful" than the contact and post-contact periods. So much depends on how "peace" is defined. Durie is right I think to challenge the over-concentration on warfare of both Maori and European chroniclers of tribal histories but it is not necessary to go to the other extreme. In this as in other respects it is important to stress the extent of variation between different regions and different periods. Some areas were rich enough in resources to support large aggregations of population and to attract competitors, notably the Bay of Islands, Tamaki-makau-rau (that surely is the significance of that name), the Waikato valley and the Bay of Plenty. I am not up-to-date on the latest theories about pa-building but the great number of pa that were built and the complexity of many suggests that the threat of war was very real in some areas at certain times.

5.15 The term 'bilineal' used on p.19 (near the bottom) and on p.20 (near the top) should be replaced by the term 'ambilineal' to conform with anthropological usage. 'Bilineal' literally means "two lines": because descent can be traced through links of both

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sexes in each generation, individual Maori can trace multiple descent-lines, not just two. 'Ambilineal' (which also means 'two lines') is equally inaccurate but has come to be accepted as the appropriate technical term.

5.16 The section between the lines on p. 20 and p. 21 should be recast to focus more clearly on the means used to maintain hapu integrity internally (through "the magnetism and influence of rangatira") and externally (through mana transfer between rangatira, arranged marriages, the transfer of children, alliances and peace pacts). It is unnecessary to go into too much detail: the issue of the transfer of mana over land should be flagged here but dealt with in full under the heading of Land Tenure and Transfer.

5.17 The section between the line on p.21 and that on p. 24 is important but could probably be improved by condensing and re-arrangement of the order. There are I think five main points under which the discussion could be organised: (1) the development of associations of hapu into more permanent, larger units, (2) the trend to more permanent settlements and structures, (3) the influence of the missionaries and their Christian faith, (4) the increase in migratory movements, both reversible and non-reversible, including the scattering of isolated pockets of autonomous kin groups outside their own territories, (5) the efflorescence of large-scale meetings and hakari. I think it is important to stress that while there were marked changes in the organisation of Maori society in the 19th century they grew out of the pre-existing social and political structure and did not constitute a radical break with them. In the fourth paragraph on p.22, I think that the reference should be to 'internecine' rather than 'intestinal hostilities'.

5.18 A section on 19th century changes would be a logical conclusion to the section of Groups and Group Formation.

6.0 RANK AND LEADERSHIP

6.1 I would discard the title Functionaries and Classes. 'Functionaries' has an out-dated air to it, and the idea of "classes" was imposed by European commentators rather than by Maori themselves. As Best pointed out, every Maori claimed to be a rangatira (aristocrat) because related to a rangatira.

6.2 The large middle paragraph on p. 33 covers some of the ground but needs critical appraisal and rewriting. I would begin by referring back to the discussion on mana and explore the tension between mana tupuna (inherited differentially by siblings) and mana tangata (the product of personal achievement). Points that need to be made include the relativity of mana, the fact that it was continually vulnerable to challenge, always needing to be asserted and demonstrated, prone to (often marked) fluctuations. It is probably fair enough to talk of classes, as long as it is indicated that their boundaries were neither clear cut nor fixed and upward mobility was always possible.

6.0 RANK AND LEADERSHIP

6.1 I would discard the title FUNCTIONARIES AND CLASSES. 'Functionaries' has an out-dated air about it. The concept of class was imposed by European commentators and it is questionable whether it is appropriate in the Maori case. I suggest a neutral term such as 'categories of rank'. I would reverse the order and deal with rank first, because it was the basic component in leadership, though modified by other considerations.

6.2.1 Concerning rank/classes, the paragraph just after the line on p.33 covers some of the ground but needs critical reappraisal and rewriting. I would begin by referring back to the discussion on mana and whakapapa suggested in 3.7 and 3.8 and explore the tension between mana tupuna (inherited differentially by members of each sibling set) and mana tangata (the product of personal achievement). Points that need to be made, or underlined if already made, include the insight that a person's mana was (and is) always relative to that of specific others, was continuously vulnerable to challenge and therefore had to be constantly asserted and demonstrated, and was prone to fluctuations. As a result of the differential inheritance of mana, the firstborn/eldest of each sex were marked out to occupy leadership positions, though usually qualification by descent had to be supported by demonstration of capacity. Emphasis on descent also led to the differentiation and increasing divergence of senior from junior lines of descent and this became the basis for recognising some families and their members as rangatira and others as ware or tutua.

6.2.2 Drawing on their own class background, European observers identified these two categories as aristocrats (or nobility) and commoners but the appropriateness of these labels and of identifying the categories as 'classes' need careful re-examination. The boundary between them was blurred by intermarriage and by the possibility of acquiring mana from other sources (direct from the gods and from personal achievement). As Best pointed out, no free Maori admitted to being ware or tutua, every Maori claimed to be rangatira by reason of kinship connection with a rangatira.

6.2.3 It is also a moot point whether slaves (taurekareka) constituted a class. They were not born into slavery but were war captives who had lost their mana by being captured. The children resulting from sexual relations with their captives were reckoned as free though of low status.

6.3 Only when the questions of mana, mana maintenance and rank in general have been discussed is it possible to discuss positions of leadership, covered by Durie between pp.30 and 41. This section would profit from re-ordering and condensing. The discussion on rangatira in particular needs consolidating, drawing in the last two paragraphs on p. 25 as well as those between pp. 33 and 41.

6.4.1 Kaumatu. Here is another case where a word had several meanings, all of which need to be seen in relation to each other.

On p. 31 Durie glosses kaumatua as 'senior parents'. This is not an interpretation I have heard before. I should be interested in learning the source. My first acquaintance with the word was in Best's writings, where he identifies it as the title used to describe the head of the whanau household. Firth and Te Rangi Hiroa (if I remember rightly) pick up this usage, but Orbell in her article on 'The Traditional Maori Family' (1978) says the head of the whanau was called rangatira. Was this a matter of iwi or waka differences or were the two words used imprecisely and/or interchangeably for this purpose (cf hapu and iwi in 19th C) ?

6.4.2 On p.31 Durie says that " 'kaumatua' was often preferred to 'rangatira' in North Auckland" and suggests "this could have due to missionary influence". The preference to which he refers relates to the term used to describe the leading members of the hapu and in my experience is no more than that, a preference and not a fixed rule. I doubt that it can be attributed to missionary influence: in my experience it is fairly recent and reflects two current tendencies: a tendency to group all 'traditional' leaders together and a tendency to simplify the use of Maori labels for them, perhaps for the benefit of Pakeha. When I first went to Ahipara three men were introduced to me as "our rangatira". Later I placed them as leading members of and ceremonial spokesmen for three whanau. They were also leading members of three different hapu, but hapu in Kotare were little more than names, inoperative as social groups (Metge 1964: 60). Since then I have noted an increasing preference for kaumatua over rangatira in Muriwhenua.

6.4.3 Kaumatua had (and still has, according to the dictionaries) two other meanings. First, it has the meaning of 'adult' as compared with 'child' (including adolescent). (See New Growth From Old pp. 135-7.) It should be remembered that the definition of 'adult' is socially determined. In pre-contact Maori society it was pegged to admission to the fighting force and having children. The whakatauki "He puta ki te tane, he whanau tamariki ki te wahine" can read this way (as well as in others). Secondly, the dictionaries give it the meaning of 'old man, old woman'. Again, the description 'old' is determined within a particular social and physical context. What did 'old' mean in 18th century Maori society? In view of the evidence assembled by physical anthropologists on the average life span in pre-contact times, a man or woman may have been considered 'old' if they lived past thirty years of age.

6.4.4 I disagree strongly with Durie's gloss of kaumatua as 'elder': this matching is a fruitful source of misunderstanding. I suggest that the concept kaumatua has five components, age plus social seniority plus life experience plus wisdom gained from reflecting thereon plus current occupancy of a position as leader to a group. Of these age is perhaps the least essential. True, the word 'elder' as used in English also has implications of experience and wisdom, but because of its form it is associated first and foremost with advanced age. It was this identification which led Government officials in the 1980s to limit invitations to a Hui Kaumatua to Maori over 70 years, thus cutting out many unequivocally recognised as kaumatua in their own communities. Kaumatua (and its sex specific forms koroua and kuia) is (I believe) properly applied to persons leading a group, regardless

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of their age. I myself was addressed as *kuia* by a host speaker when I took a party of students on a *marae* visit in the 1970s, though I was under forty at the time. In my view *kaumatua* was defined in terms of role rather than age.

6.4.5 I suggest that in the 18th century the head of the *whanau* was identified as the *kaumatua* of the *whanau*, chosen for seniority of descent and wisdom out of a wider category of older persons qualified by age and life experience. However, given life expectancy and the limiting effect of the environment on the size of *whanau*, there must have been many cases in which there was only one candidate for the position and the title.

6.5 Rangatira and ariki. Best, Firth and Te Rangi Hiroa, who formulated the classic *whanau-hapu-iwi* model of Maori social organisation attached the word *kaumatua* to the role of head of the *whanau*, *rangatira* to the role of head of the *hapu*, and the word *ariki* to the role of head of the *iwi*. This neat tripartite assignment has to be reviewed along with the model itself. The early missionaries used the word *ariki* to translate the title Lord applied to Jesus Christ in the Bible, so they must have heard it used to refer to persons of the highest status. The people of Muriwhenua and (I think) Tai Tokerau generally do not apply the word nowadays to any living person. I have in the past hypothesised that this was a consequence of its use for Christ but I do not know if this hypothesis has ever been tested against evidence. The people of Tai Tokerau seem always to have emphasised the independence and equality of *hapu* rather than ranking them in a hierarchy: this is reflected in the *pepeha* "Ngapuhi kowhao rau". It may have been that *rangatira* and *ariki* were used imprecisely and interchangeably, just as *kaumatua* and *rangatira* were, and as *hapu* and *iwi* were, especially in the north. However, there is evidence to suggest that at least in some *iwi* *ariki* was used to refer to a special class of leader, persons whose senior descent through a succession of firstborn or eldest sons gave them incomparably high *mana tupuna*, made them highly *tapu* and so qualified them to perform key group rituals. If they were capable in other ways they might combine this ritual leadership with active political leadership of the group (as Durie suggests on p. 31); if not, the political leadership was assumed by persons of less elevated descent with the needed abilities. This is a subject on which more research is needed, unless there is some of which I am unaware.

6.6.1 Rangatira. I have always understood that the word *rangatira* was applied in the first place to all members of the senior families of a *hapu* (persons descended through senior members of a succession of sibling sets), and then to one person singled out from their ranks as public leader and symbol, analagous to the head of a Scottish clan being known as (for example) The MacDonald. I have not heard the literal interpretation "those who hold the group together" given by Durie on p. 30. Ngata warned against trying to get at the meaning of words by breaking them into parts and I doubt that it can be done here. However, both *ranga* and *tira* have meanings which emphasise the idea of group, referring respectively to "company (of persons)" and "company of travellers". The word is definitely

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associated with a group in the technical (anthropological) sense, that is, a collection of persons who recurrently interact in an interconnected set of roles, and with the leadership thereof. In the 19th century Maori applied rangatira as a title to persons in charge of other sorts of groups, e.g. to the captain of coastal and sea-going ships. It implies a directorial/managerial role.

6.6.2 There is evidence to suggest that some if not all iwi used rangatira for the heads of hapu at a variety of levels of complexity. In their letters to the Church Missionary Society the missionaries Matthews and Puckey stationed at Kaitaia refer to Nopera Panakareao as "the chief of chiefs" and "the principal chief". Assuming that they were using "chief" as the English equivalent of rangatira, this suggests that there was not a different term for the chief who united a number of hapu in an alliance, at least in Muriwhenua.

6.6.3 Durie's discussion of the role and responsibilities of rangatira is very extensive. I suggest dealing with the definition, application and interrelationship of the terms kaumatua, rangatira and ariki first, and then devoting a whole section to studying the role of rangatira in depth, under the title RANGATIRATANGA.

6.7.1 Ariki. Again I have not heard the literal meanings of ariki put forward by Durie (p. 31) and would like to know the source. I have already warned (6.6.1) against attempts to arrive at the meaning of Maori words by breaking them into their component parts. The three paragraphs on ariki on this page require serious scrutiny and checking, especially as they seem to be contradictory. I have always understood that an ariki was marked out by senior descent (eldest son of eldest son of a line of ariki), that he held that title regardless of capacity, and that the role included an important ritual component which could not be delegated to anyone else. If the ariki thus identified was incompetent or unsuited for active political leadership, different iwi dealt with the problem in different ways, by assassination or by delegating the managerial aspect of the role to a suitably qualified junior relative, leaving the ariki with the mana and ritual duties of his status, but politically a figurehead.

6.7.2 I should like to know more about the basis for Durie's suggestion that an ariki might be elected. It is not an idea that I am familiar with. I would associate the idea of election with the status of rangatira rather than ariki. Derek Asher of Tuwharetoa once told me that two major hapu of Tuwharetoa had an agreement that the position of ariki alternated between them but when one hapu broke the sequence because the other group's candidate was young and untried the rangatira of the latter hid him away and trained him until he was able successfully to challenge the incumbent, after which the position became hereditary in his line. I am relying on my memory here: my recollection should be checked with Derek and other Tuwharetoa experts.

6.7.3 Recently I heard a man taught by an old Tuhoe tohunga explain that there were seven grades of ariki, giving their titles and functions. This was an elaborate hierarchy, far more elaborate than any I am aware of in the written records. I recognise that a lot of esoteric knowledge of this order has never been recorded. Confusion also arises from the Maori practice of attaching adjectives to nouns singly instead of in strings, as English does. The result can easily be interpreted as separate, and even ranked, categories when in fact they may simply be descriptions of different aspects of the same object or subject. Cf whare puni, whare whakairo, whare hui, whare runanga, whare wananga, where the first two are descriptive of physical structure and the last three of functions, and all could describe the same house.

6.8.1 Tohunga. The brief paragraph on tohunga is far too sketchy. The word tohunga certainly is formed from 'tohu', but in the noun form this means 'sign', so that tohunga can be interpreted as "one who is or has been marked out by signs", signs indicating special contact with or gifts conferred by atua or tupuna. These signs included external signs (birth accompanied by unusual natural phenomena such as comets, meteors, hurricanes etc, breech birth or birth in a caul) or intrinsic conditions held to be of supernatural origin, such as epilepsy and trances.

6.8.2 The word certainly referred to "specialists in a discipline", though "field or branch of knowledge and practice" would be more accurate than "discipline". In pre-contact Maori society practical and religious knowledge went hand in hand: a specialist in any particular craft knew and used the appropriate karakia and rituals. However, it is a good idea to distinguish those specialists who were primarily concerned with the practice of craft specialities (tattooing, carving, weaving, kumara growing, deep sea fishing, birding etc.) and those who were specialists in specifically religious knowledge and ritual.

6.8.3 Best divided the latter into three classes, naming the first and third as tohunga ahurewa and tohunga makutu respectively. He left the second unnamed but I could not see that it differed greatly from the first. This leaves two kinds of religious experts which correspond neatly with the anthropological categories of priests and shamans (de Waal Malefijt 1968 pp. 229-40). Tohunga ahurewa, it seems to me, can be identified as priests, selected by community approved mechanisms, trained by community authorised teachers (existing tohunga ahurewa) in community authorised teaching institutions (whare wananga) to serve community purposes by carrying out rituals concerned with community well-being, where "the community" was probably the larger hapu or alliances of hapu. Tohunga makutu (also known as tohunga maire) had many characteristics in common with shamans. They were selected by an atua or an existing tohunga makutu or their own aspiration and trained on their own as apprentice to a tohunga makutu. They operated on the fringes of the community pursuing their own ends or those of the individuals who consulted and paid them. Successful operation as a tohunga makutu greatly increased the operator's mana and thus was a means to social advancement.

6.8.4 A matakite was a tohunga in that he or she was marked out as touched by an atua. He or she received no training: seeing visions was a gift and not a skill which could be learned. However a matakite might combine that role with those of other kinds of tohunga. See de Waal Malefijt for an anthropological comment on the role of seer.

6.8.5 The various categories of tohunga were not mutually exclusive: often several were combined in one person. Thus the tohunga ahurewa was also usually expert in one or more craft specialities, especially those of house and canoe building, carving and tattooing. Tohunga ahurewa also mastered the art of makutu but were supposed to exercise it only on behalf of the community, as when they set up a rahui to protect community assets with a curse on those who breached it or cursed someone branded an enemy of the people. No doubt some tohunga ahurewa as well as tohunga makutu used their powers to coerce people into giving them what they wanted or to curse personal enemies but such misuse was inhibited by the belief that failed sorcery turned back on its originator. The ability to see visions was a gift of the atua or tupuna and possibly a basis for selection for training as a tohunga ahurewa. If he had the ability, an ariki could be selected and trained as a tohunga ahurewa. Particular tohunga could combine several specialties, but not all tohunga were teachers, advisers, priests, sorcerors and seers.

6.9.1 Women as leaders. This topic deserves much more than the sentence accorded it on p.33. See Salmond 1991, Mahuika in King 1975. In some iwi women carried out at least some of the same leadership roles as men, in all there was complementarity between at least some of the roles carried out by women and those carried out by men. Concepts which need exploring are ariki tapairu (the title often used for Dame Te Atairangikaahu), kahurangi, puhu, ruahine, kuia. In at least some iwi (e.g. Ngati Porou) women rangatira successfully managed community life while their male counterparts were away travelling or fighting. It is commonly held that women were not admitted to the whare wananga but oral evidence now coming to light suggests either that they were in some cases or that there were women's whare wananga. While women did not train or practice as tohunga ahurewa those of requisite rank and ability did have access to much if not all of the knowledge, as apprentices and companions selected by senior male relatives, and they had their own ritual roles, especially as ruahine (I suspect after menopause). Women could and did become tohunga makutu and matakite, the roles which depended on the favour of an atua.

6.9.2 Looking at specific cases, it seems to me that the most successful leadership of hapu and alliances of hapu resided not in one leader but in a team consisting of three or four close relatives fulfilling the roles of political leader, ritual leader and social facilitator. While Te Rauparaha is remembered as a great rangatira, much of his success depended on his close association with and dependence on his brother Nohorua who was a tohunga and matakite and his sister Waitohi who was a diplomat. Some women signed the Treaty of Waitangi as rangatira in their

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own right: more would have if the European officials had not disallowed it, on the basis of their own cultural preconceptions.

7.0 LOCATION OF AUTHORITY/ MANA RANGATIRA

7.1 These two sections traverse similar ground and could be telescoped and condensed, possibly under the heading RANGATIRATANGA. I have no fault to find with the contents of these sections and strongly endorse the two paragraphs on p. 36 which conclude the section Location of Authority.

7.2 I have three minor comments to make on the text of these sections. First, with regard to the waxing and waning of a rangatira's mana (p. 37), I would add that it was always measured relative to that of some significant other, a rival for leadership of the same group or the leader of a competing group.

7.3 Secondly, with regard to muru (p. 39), a rangatira was plundered in proportion to his mana: the more mana he was deemed to have, the more would be taken. A similar principle applied in war: victory was counted in terms of the number and mana of the rangatira and toa slain, not absolute numbers.

7.4 Thirdly, in the next paragraph on p. 39, I would prefer to say that the mana of a rangatira was intimately linked rather than identical with the mana of the people. There was a feedback relation between the two: if the rangatira failed, his group's mana was affected but could be recouped under another leader.

7.5 This section seems to me to be an appropriate place to explore rangatiratanga not simply in its own right but with reference to current usages and modifications. In particular the relationship between mana, rangatiratanga and mana whenua needs to be spelled out. I made an initial attempt to do this in an appendix to my submission to the Waitangi Tribunal Cross Cultural Communication and Land Transfer in Muriwhenua 1832-1840 (1992). I append a copy of this statement to this report.

7.6 In this Appendix I defined mana whenua as "the mana which comes from association with a particular territory on the basis of conquest, ancestral inheritance or gift supported in each case by occupation, and which empowers the holder to act with authority in relation to that territory." On the face of it this definition does not recognise the distinction Durie makes between mana whenua (the mana in the land held by the tangata whenua in the sense of the original inhabitants and their descendants) and mana tangata (the mana over people occupying the land held by the later immigrants associated with the waka and their descendants). As I have said before, this is a distinction I am not familiar with. However, I go on in the next paragraph to distinguish between two kinds of mana whenua, that which can be transferred (or retained) and that which is "the power inherent in the land or embedded in it by a person of sufficient mana". This distinction was based on evidence given before the Tribunal by Rima Eruera of Te Rarawa and subsequent discussions with him. It can be seen as analagous to that made by Durie but does not make the association Durie makes between the two different kinds of mana and the early and later groups of immigrant settlers. In

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the Appendix I also point out that in Te Rarawa and (I think) Tai Tokerau generally the word mana is the word used to refer to the supernatural beings elsewhere called taniwha, tipua or kai-tiaki. Rima Eruera agreed that Tuputupuwhenua (the son sacrificed for the purpose by Kupe) became a mana in this sense, the source and the guardian of the mana of the land. In sacrificing him, Kupe explicitly set him to guarding the mana in the land for Kupe's descendants, who came in a series of migrations on both early waka (Ngatokimatawhaorua, Mahuhu, Mamari and Kurahaupo) and late ones (Mataatua).

7.7 In the same Appendix I also suggest that "mana is closely associated and almost synonymous with rangatiratanga. When used together, mana refers primarily to power and authority, the power that endows the holder with the authority and ability to act in particular circumstances, and rangatiratanga refers primarily to the exercise of that power and authority in practice. ... However, when used on their own each term implies and subsumes the other, so that in effect they are inseparable". This is a topic which I would love to hear debated by pukenga. It is a subject of the greatest relevance to the interpretation of the Treaty of Waitangi and to the resolution of contemporary conflicts between iwi and urban authorities.

7.8 Near the beginning of any discussion of rangatiratanga it needs to be pointed out that the word (like all important words) has several meanings. In its simplest form it refers to the role and characteristic qualities of a rangatira. These include behaving in ways that are tika and pono, serving as symbol of the group he or she heads, acting as trustee and guardian of group taonga, acting as manager of group resources and acting as director of group enterprises. Because its rangatira is a prime symbol of the group (whether hapu or iwi), rangatiratanga was (and is) also used to refer to the right and capacity of the group (including the rangatira) to manage its own affairs, members and possessions. Since the mana of the rangatira depended to a large extent on the endorsement and support of the group, in a real sense rangatiratanga was located in the group rather than the person of the rangatira. See 7.4 above.

8.0 WARFARE, CONQUEST AND MANA WHENUA

8.1 Again I am in general agreement with the tenor of this section and have only minor comments and criticisms. I have special praise for the following paragraphs: p. 43 para. 3 (peace-making); p.44 last para. (muru); p. 46 para.3 (hapu migrations); p. 49 last para. (Native Land Court witnesses), p. 51 all paragraphs.

8.2 A couple of repeated mistakes that need correcting. The word "intestinal" is used on pp. 42 and 45 with reference to warfare in contexts where I am sure that internecine is meant. In view of the early discussion on CONCEPTS OF LAW it would be better to refer to the principle (rather than the law) of utu and of other regulating values.

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8.3 Concerning migration, I suspect that it was rather more common in pre-contact times than Durie suggests in the sentence at the top of p. 42. The numbers involved may have been small and migration a series of small moves rather than one large one, but many of the linkages between present day iwi are the result of the travelling propensities of leaders like Tamatea Pokai Whenua. Te Ati Awa of the west coast and Ngati Awa of the east coast both derive from Ngati Awa-nui-a-rangi, who were originally based in Muriwhenua and kept moving south for various reasons. Ngai Tahu takes its origin from Tahu Potiki, who migrated south from the East Coast. Durie himself comes to a rather different conclusion in subsequent paragraphs on p. 46.

8.4 The point (made in paragraph 2 on p. 42) that European visitors interpreted Maori warfare in the light of their own historical experience, especially the Napoleonic wars, is a valid one and needs to be made early in this section but it should be followed by a balanced examination of the nature and role of fighting/warfare in Maori society. While it was not the only way, it was one of the major ways in which rangatira, hapu and individual males established and maintained their mana. In particular, it needs to be stressed early in the section that there were many ways of ending fighting besides conquest. Durie indicates these methods in later paragraphs.

8.5 In a text given in an Appendix to Bruce Biggs' book Maori Marriage (1960, pp. 85-97) Wiremu Maihi Te Rangikaheke puts a speech into the mouth of one of the actors which identifies pakanga and women as "nga hanga nunui onamata" and "nga taonga nunui o te ao marama" (p.93). The word he used is translated by Biggs as "fighting". It is a derivative of paka (to quarrel) and is glossed by Williams in his Dictionary as "strife, dissension, hostility, war". It is clear from the context that the word covered a range of meaning, from fighting with words through the fighting associated with the taking of muru to full war. Pakanga is the word used by Maori when referring to the two World Wars. (It can be argued that gift exchange too was a form of "fighting" in the sense of contention for mana: an anthropologist writing about the potlatch among North West Coast Native Americans entitled his book Fighting with Property.) The other word for war (whawhai) covers a similar range. Undoubtedly there were gradations of pakanga and strategies for preventing it escalating from one grade to another. As Durie recognises, muru was one of the latter, as well as being a means of social control.

8.6 Though the paragraph at the bottom of p. 42 begins with a sentence about utu, it really sets out the root cause of fighting, the need to maintain mana by obtaining compensation for actions which diminished it. The paragraph then goes on to note the negative consequences of this pursuit of utu and the existence of strategies used to prevent escalation of hostilities and to make peace. These are three important points which deserve to be treated separately. Discussion of these topics in subsequent paragraphs (e.g. of the causes of war in para. 4, of alternative ways of obtaining utu in para. 2, of peace-making strategies in para.3 on p. 43 and of customary rules of warfare on p. 44) needs to be consolidated and arranged in a more logical order.

8.7 With reference to the reasons for warfare other than land acquisition, Jeff Sissons' book Te Waimana: The Spring of Mana (1991) might be helpful. He suggests that most inter-group fighting was the result of struggles to establish mana. (Remember the point about mana being relative.) At the bottom of p. 43 Durie says that "only a war with good cause was tika". True, but I suspect that where mana was concerned good cause was not difficult to find.

8.8 Durie examines muru in two paragraphs at the bottom of p. 44. While it undoubtedly was a strategy for preventing the escalation of hostilities, muru was even more important as a means of social control, punishing offences against tikanga, reinforcing community values, restoring the balance and interrelationships upset by the offence, and so maintaining order. As an key institution muru deserves extended treatment. It would I suggest be better to do that in the next section on social control. However, it has to be mentioned in this section as one of the gradations of "fighting" and one of the strategies for containing hostilities between closely related groups. Looked at from the other direction, the exercise of the option of muru was a good measure of the relationship between the groups concerned. Choosing the muru option was an indication that they considered themselves linked by whakapapa and wanted to maintain friendly relations. Hapu were more likely to go to war with groups that were unrelated competitors.

8.8 On p.45 in paragraph 4 Durie reiterates the distinction between mana over people and mana over land made in an earlier section. Anything said in this section must be co-ordinated with the treatment of the subject elsewhere e.g. 5.5 and 7.6 above.

9.0 SOCIAL CONTROL

9.1 In the first paragraph under this heading on p. 52, I would replace "laws" with "principles" or "values", extend the list of values which regulate the behavioural code, and use the Maori words, thus: "The behavioural code was governed by the values of aroha, whanaungatanga, mana, tapu and utu."

9.2 In paragraph 3 under this heading, I suggest that "forebears" would be less ambiguous than "antecedents".

9.3 The principle of collective responsibility is of central importance. I think it could be stated even more forcibly and explained more fully than in paragraph 4. The final sentence needs more exposition. It was unnecessary for the aggrieved party to determine individual guilt, but the whanau or hapu of the offender must have been concerned to do so, in order to reinforce group standards of behaviour and to guard against repetition by rebuking the offender. Durie himself makes this point in paragraph 5 on p. 55.

9.4 This would seem to me the best place for a thorough exposition of the institution of muru, including the details of how it was carried out, the rules that governed it and the

purposes it served. In this context the word plunder should be avoided, because it expresses the prejudices and preconceptions of Europeans judging it from their own background. Muru involved the ritualised taking of compensation to atone for (not appease) offences. (It was the aggrieved parties who were appeased, not the offences). In dealing with muru it should be pointed out that in certain circumstances the taking of compensation in muru gave legitimacy to the offence. In the story "The Great Muru" (JPS), several aggrieved parties mounted taua muru against the hapu of a young rangatira who deserted his wife to elope with another woman. When compensation had been exacted, the first marriage was dissolved and the second one recognised.

9.5 On p.53 para 6 Durie refers to the use of sorcery for several disparate purposes. In terms of the special technical definition given the word by anthropologists, whether sorcery is the right English word to use here is problematic. (Anthropologists define sorcery in terms of the use of ritual materials and procedures, witchcraft as the projection of an innate substance or power. The tohunga makutu did both. See de Waal Malefijt pp.243-44.) The best procedure would be to use the Maori word. I suggest that Durie is referring to makutu, which involves the use of words in karakia or kanga (cursing), the projection of the tohunga's mana to attack the victim's (often by means of a fixed gaze), and/or the use of something belonging to the victim (such as hair, nail clippings or clothing). According to my understanding, makutu was used for malevolent purposes (to injure or kill), mostly by tohunga makutu but by tohunga ahurewa in the service of the community. Healing the sick used other procedures (karakia used in conjunction with rongoa plant medicines), as did seeing into the future (mata or trance). Pre-contact Maori also practised divination for the two latter purposes.

9.6 I heartily endorse the point made in the first paragraph on p. 54. An apt illustration occurs in the story of Ponga and Puhihuia recorded in one of John White's books and reprinted with translation by Margaret Orbell in Te Ao Hou 19...-.... In this story Ponga, a junior chief from Awhitu accompanying superiors on a visit to woo Puhihuia, the puhi of Maungawhau, was encouraged by his pononga to make his suit known to Puhihuia personally, despite her superior rangatira rank, arguing that tapu is as tapu does and that challenging it is evidence of courage and mana.

9.7 I likewise endorse the content of the next two paragraphs on utu. However, I wonder whether this discussion should not come earlier in this section and its relevance for social control be spelt out more clearly.

9.8 The subject of the education and disciplining of children needs deeper treatment than it is accorded on p. 55 paragraph 4. See Salmond's article "Tupuna" (1991). Pre-contact disciplining of children seems to have been minimal -- the missionaries were shocked by the freedom accorded children and the way adult men talked to them as equals. Two points are worth stressing. First, in the raising of children, great stress was laid on exhorting them to behave correctly (tika), so that they reflected credit and not shame on their group and elders. Secondly, all members

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of the group participated in the raising of the group's children, not the parents only.

9.9 In the summing up, I should like to see stress laid on the restoration of balance and harmony within the group, dispute resolution and mediation.

10.0 DEBATE AND DECISION-MAKING

10.1 This is an important section which could be usefully expanded. In this connection Jane NacRae's examination of "The function and Style of Ruunanga in Maori Politics" (JPS 1984) is relevant and helpful, though concerned mostly with post contact runanga.

10.2 I have not heard whai-korero attached as closely as Durie does to a clockwise pattern. I would have thought that whai-korero meant to pursue discussion or a topic rather than a speaker. Since whai has as one of its meanings "to proceed to the next in order" it could be interpreted as referring to "going round the circle". However, I have always understood that whai-korero was the generic term for speech-making, a term which covers several different forms or strategies: 1) the forms called paeke and utuutu used by different iwi in the powhiri (welcome ceremony); 2) going round the circle, used in the opening stages of plenary discussion after the powhiri and/or at night inside the meeting house, an effective method for breaking the ice; 3) whakawhitiwhiti (literally criss-cross), in which speakers stand as they feel inclined wherever they are placed, having claimed the floor by an introductory call or tauparapara and rising to their feet; 4) by passing round a carved rakau. I am not sure how old the latter form is; it seems to be a peculiarly northern practice.

10.2 On p. 57 in para. 4, Durie characterises "permanency of sales and the advance definition of terms in leases" as "irregular for Maori". What is meant by irregular needs spelling out. Perhaps the point is that these were significantly new ideas which Maori did not at first understand or accept. Their understanding improved with time but that does not necessarily mean that they fully accepted these concepts. There is evidence that for much of the 19th century rangatira used their understanding to get the best deal possible but still held to at least some of their own traditional expectations.

11.0 POST-CONTACT GROUP REFORMATION

11.1 The point in the first paragraph under this heading (the last on p. 57) is well taken. I have not however heard tutua and ware matched with the middle and lower classes before. I always understood them to be alternatives favoured by different tribes and identified by Europeans as "commoners". Williams in his Dictionary glosses tutua as "mean, low-born; person of low degree" and ware as "mean, low in social position".

11.2 While I would agree that significant changes in socio-political organisation occurred in the 19th century, it should be

made clear that they were only partly and not entirely the result of encounter with the Europeans. As Durie himself points out in para. 3 on p. 58, some major changes began in certain parts of Maori society, especially where there was population pressure and ambitious leadership, in the 18 century if not earlier. (See Jeffrey Sissons "Re-Thinking Tribal Origins", JPS 1988. Probably these changes increased Maori receptivity to European influence and new ideas.

11.3 I endorse the ideas put forward in para. 2 on page 59, but would qualify the assertions in para.3 by suggesting that the corporate functions of hapu were exercised mainly at community (district) level and that while iwi assumed political responsibilities at a regional level, the scope of those responsibilities was considerably curtailed, especially where most of the land had passed from Maori ownership. A large proportion of the political responsibilities formerly handled by iwi had passed to the state. This is what the current pursuit of rangatiratanga is about.

11.4 I am puzzled by Durie's reference to "Government sponsored Maori parliaments" in para.3 on p.60. The only Maori Parliaments I know of (and they deserve the dignity of a capital) were Maori sponsored and frowned upon by the Government, who eventually persuaded Maori to abandon them by passing legislation setting up Maori Councils (1901).

11.5 The Ratana and Ringatu Churches should be mentioned by name in para.5 on p. 60.

11.6 The last three paragraphs on p. 60 need re-writing in the light of recent events, with particular reference to the entrenchment of iwi as the Maori political form by the Department of Maori Affairs in the 1980s, the ideological championing of this stance by certain sectors and the challenges coming from other directions.

11.7 The last three paragraphs in this section (paragraphs 2,3 and 4 on p. 61) are well worded and of key importance.

12.0 WHENUA/LAND: CONCEPTS, TENURE AND TRANSFER

12.1 I suggest that the next six sections (pp. 61-92: CONCEPTS OF LAND, LAND AND WHAKAPAPA, LAND TENURE, HAPU POLITICAL RIGHTS AND EXTINGUISHMENT, LAND DIVISIONS AND BOUNDARIES and LAND SEVERABLES) could be grouped under a major heading, such as that suggested above. Again, I agree with the content of these sections and any criticisms are of minor importance. One annoying typographical error is the repeated use of "user" where "use" is obviously intended.

12.2 In para.1 on p. 62 I suggest using "placenta" instead of "afterbirth". Tame Winitana pulled me up on this point. The significance of the identification of placenta and land is that the placenta is what nourishes the unborn child.

12.3 In para 1 on p. 63 I would advocate dropping "may" in the first sentence, and re-wording it thus: "Except in very special

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circumstances, a land gift was not absolute but was conditional on the recipients fulfilling the obligations entailed." In the last paragraph on the same page, the word "encompassed" is ambiguous.

12.4 On page 64 the point made in the first sentence of paragraph 2 needs clarifying. The word "transcended" is not quite what is wanted. "Customary land interests went beyond / had wider implications than Western concepts of ownership, having political as well as proprietary dimensions".

12.5 The next paragraph (3 on p. 64) is crucial and should be highlighted.

12.6 Paragraph 2 on p. 65 raises the mana whenua issue again and must be linked with earlier discussions of the subject (5.5, 7.6). I wonder why toes rather than feet, presumably as a translation of waewae.

12.7 Paragraph 5 on p. 65: I wonder if subjugation is quite the right word. Dependency, perhaps, or conditional toleration?

12.8 The first, one-sentence paragraph under the heading LAND TENURE needs re-wording. Land tenure is literally the way the land is held. In this section I have noted special approval for para. 3 on p. 66, para. 3 on p. 67 and para. 3 on p. 68. I would query the statement that "'Take' denoted the ancestral source of a right" in para. 4 on p. 66. 'Take' denotes the source of a land right, but that source may be ancestral or something else e.g. a gift or an event such as the shedding of blood. I would advocate rephrasing this sentence by putting "In this context of land tenure...." at the beginning.

12.9 Re land holding by whanau, discussed in the paragraph which runs over from p. 68 to 69, I find this surprising, because the whanau was the major unit of production. However, if this statement is true, it may be because the whanau had a relatively limited length of life, its cycle of formation, growth and disbandment being much shorter than that of the hapu.

12.10 P. 70, para.2: the use of the terms bilineal and ambilineal is confusing. Anthropologists would use bilateral (meaning "through both sides", i.e. mother's side and father's) in preference to bilineal but would probably spell out exactly what they meant by saying "inheritance through both parents". Likewise they would avoid the term ambilineal and say "inheritance tended to be (mainly) from one side or the other."

12.11 The word inchoate (used in paragraphs 2 and 5 on p. 70) is not very well-known. Perhaps it has a legal meaning? Why not say undeveloped, rudimentary or imprecise, if that is what is meant? Or is something else intended, such as unrealised, potential or dormant?

12.12 The classification of land rights proposed in the paragraph which runs over from p. 70 to 71 is helpful and could be linked back to the earlier section on the definition of groups

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(5.11). However, I would suggest that "permissive" is the wrong word: "permitted" would be better.

12.13 I confess to be stumped by the claim that "the correlation between ancestors and land was endemic" in para. 3 on p.71. "Regularly found among", as the Concise Oxford Dictionary defines the word endemic? Surely a clearer expression could be found: universal perhaps, or widespread or characteristic?

12.14 I have marked with approbation the last paragraph on p. 71, paragraphs 1 and 4 on 72, 1 and 2 on p. 74, 4 and 5 on 76. On p. 78 in para 6, it might be worth adding that an absolute gift could, by cancelling out the debt exactly, return the relationship between the parties to the status quo ante, enabling them to continue to exchange as before, or it could bring about the end of the relationship if there was no imbalance to be redressed.

12.15 The section LAND DIVISIONS AND BOUNDARIES is of key importance. I endorse its content but suggest that it needs re-ordering. I have marked with special approbation the paragraphs 1 on p. 84 and 1 on p. 85.

13.0 POST-COLONIAL DEVELOPMENTS

13.1 The sections INTERACTION WITH COLONIALISM (p. 92-98) and LAND SALES (pp.100-04) could be grouped under a title identifying developments under the colonial government. The section on CONTRACTS (pp.99-100) refers to pre-contact practice and should be placed elsewhere, perhaps right at the beginning in CONCEPTS OF LAW or in conjunction with the section on DISCUSSION AND DECISION-MAKING. I have no criticisms of these sections.

14.0 SUMMARY AND OVERVIEW

14.1 I have only two comments on the concluding pages. On p. 105 in the very first line, I would prefer to avoid the word "rules" for reasons given in an early section of this report and would substitute the word "mandatory". In para. 2 on p. 105 I would expand the second sentence to make it clear that "Tensions between hapu and iwi and between individuals and groups are not new developments but continuations of traditional ones, though often exacerbated by changing contexts".

14.2 For the rest I have the highest praise for the perspicacity of Durie's summary.

Joan Metge "Commentary on Judge Durie's 'Custom Law'"
 CUSTOM LAW GUIDELINES PROJECT: READING LIST
 (unpublished paper for the Law Commission, 1996, with errata 2020)

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Corrections to “Commentary on Judge Durie's Custom Law”, provided by the author, Dame Joan Metge, 16 October 2020

Corrections to the text

Paragraph 2.1 – The sub-title of Roger Keesing’s book should be “Cultural Anthropology: A Contemporary Perspective”.

Paragraph 2.12.1 – “Ann Salmond” should be “Anne Salmond”.

Paragraph 3.2 – The date of the cited article by Margaret Orbell should be 1978.

Paragraph 3.10 – “Ann Salmond” should be “Anne Salmond”.

Page 18, paragraphs 6.0, 6.1 and 6.2 – These paragraphs should have been deleted from the text as they were replaced by the subsequent paragraphs in the text.

Paragraph 6.2.3, line 4 – “Captives” should be “captors”.

Paragraph 6.4.3, line 7 – The whakataukī should be “He puta taua ki te tane...”.

Paragraph 9.4 – The date of the cited story, "The Great Muru", should be 1919.

Paragraph 10.1 – “Jane NacRae” should be “Jane McRae”.

Corrections to the bibliography

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Addition to the bibliography

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