

TE AWA TUPUA, INDIGENOUS LAW AND DECOLONISATION

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Worldwide, Indigenous peoples are building an emerging area of law which can be described as Indigenous jurisprudence. Indigenous jurisprudence is firmly grounded in a legal philosophy that conveys an Indigenous consciousness of all life existing as expressions of sacred life energy. All life, including people, are also children and grandchildren of Grandfather Universe and Grandmother Earth. All life are therefore close and revered kin who coexist interdependently. This article describes the Indigenous law that underpins the Te Awa Tupua Agreement. For Whanganui Iwi, the agreement is a first step towards decolonising New Zealand and its nation state. Decolonisation will be achieved when the natural world determines New Zealand's constitutional framework, and New Zealand's nation state and our Whanganui Iwi nationhood—and our respective legal and governance systems—coexist interdependently.

I INTRODUCTION

The [New Zealand] government and courts did not understand that the River is sacred. What was done was a direct attack on [Te Kawa Ora] and such an attack is forbidden by law.¹

Titi Tihu, Whanganui tohunga

Indigenous peoples worldwide continue to assert our nationhood and legal and governance systems. For Whanganui Iwi, our Whanganuitanga (or Whanganui Iwi nationhood) is the collective

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1 Titi Tihu "Parliamentary Petition on behalf of Whanganui Iwi (1975)" as cited in RJ Young *Whanganui River Claim and Related Issues* (Manatū Māori | Ministry of Māori Affairs, 19 May 1990) at 13. Whanganui tohunga = Whanganui whare wānanga exponent(s), male and female, who are experts in Te Kawa Ora and tikanga Whanganui.

Earth, Sky and Waters of Te Awa Tupua and all its natural life, including its people, coexisting interdependently as expressions of sacred life energy – and close and revered relations.²

The Te Awa Tupua Act 2017 passed the 2014 Te Awa Tupua Agreement into New Zealand law.³ The agreement is a partial recognition of the Indigenous law it expresses. This article offers a restricted description of the Indigenous legal philosophy and principles that underpin Whanganuitanga and the Te Awa Tupua Agreement. It also describes just a few of the very many nation-to-nation acts of leadership and diplomacy by which Whanganui Iwi have consistently asserted our nationhood since 1840.⁴ My descriptions are written from an Indigenous law standpoint.

For Whanganui Iwi, the Te Awa Tupua Agreement is a starting point towards decolonising New Zealand's legal and governance systems. The end point will be reached when Te Awa Tupua determines (instead of participating in) all decision-making that affects the River, and the natural world determines New Zealand's constitutional framework. In addition, Whanganui Iwi and New Zealand's respective nations and systems of law and governance will coexist interdependently. Other similar international developments are the United Nations Declaration on the Rights of Indigenous Peoples, and the Bolivia and Ecuador constitutions which provide for the rights of Grandmother Earth and Indigenous Peoples.

II TE KAWA ORA

The Whanganui River retains and, maintains ... [our] *ihi, tapu, and mana*. ... Each one is dependent upon the others. An interference or breach of one affects the rest. Any interference with nature, including the River, breaks the law of tapu ... [and] reduces the mana ... of the Whanganui River ... to being nothing more than a Product for Commercialisation or, a product for purely aesthetic appreciation. The Whanganui River is far more than that. ...

2 Te Awa Tupua is one of a number of Whanganui Iwi names for the Whanganui River. In this article I adopt the convention of capitalising "Indigenous" when used as a proper noun for Indigenous peoples and any aspect of our nationhood. It is not capitalised when generally referring to life that is indigenous to an area. Earth, Sky, Waters and River are capitalised when they refer to atua (see below n 13) or tūpuna (ancestors).

3 Te Awa Tupua (Whanganui River Claims Settlement) Act 2017.

4 This article is not a definitive or exhaustive description of Whanganuitanga and the history that preceded the Te Awa Tupua Agreement. Whanganui whānau, hapū and iwi hold many more kōrero tuku iho than those shared here. Iwi = kin grouping of uri of a common tupuna (ancestor) who live or lived in a defined geographical area for many generations. An iwi is made up of a number of hapū or a confederation of iwi. Hapū = kin grouping of uri of a common tupuna (ancestor) who live or lived in a defined geographical area for many generations. A hapū is made up of a number of whānau (extended family comprising 3–4 generations). Kōrero tuku iho = Indigenous philosophy and knowledge. It is also sometimes referred to as wānanga or wānanga korero within Whanganui hapū and iwi.

[It also] breaks the ihi or Sacred Affinity of our ... People with the River ... [which] *affects us*, mentally, physically, and, spiritually ...⁵

Hikaia Amohia, Whanganui rangatira

Te Kawa Ora is the Whanganui Iwi legal philosophy that weaves together as close and revered relations the Earth, Sky and Waters of Te Awa Tupua and all its natural life, including its people. In doing so, it weaves us together as our collective nationhood.⁶ We also refer to Te Kawa Ora as natural law.⁷ The following is a restricted description of Te Kawa Ora which is a body of legal philosophy that extends far beyond this abbreviation. It also extends beyond abstract intellectualism to collective spiritual and physical relationships with the River and all its natural life including its people.⁸ I respectfully defer to Whanganui whare wānanga exponents and hapū practitioners who are experts in this specialist body of knowledge.⁹

5 Waitangi Tribunal *The Whanganui River Report* (Wai 167, 1999) at 56 (emphasis original). Whanganui rangatira = Whanganui hapū and iwi leader(s), male and female, who maintain our Whanganui Iwi nationhood. I note that within Whanganui hapū decisions are made collectively and Whanganui rangatira represent those decisions (see also below n 25).

6 Te Kawa Ora is one of a number of Whanganui Iwi names for whakapapa atua or the relationships between all life, including people, coexisting interdependently within Te Awa Tupua as expressions of sacred life energy – and close and revered relations. Other iwi sometimes refer to their whakapapa atua as "te orokohanga o te ao".

7 For Whanganui Iwi "kawa" means whakapapa atua or natural law, whereas some iwi use "kawa" to mean "te kawa o te marae" or marae protocols which we refer to as "ngā tikanga o te marae". See the following brief discussions about natural law by the Taranaki-Aotea tohunga Huirangi Waikerepuru "Natural Universal Law" (presentation to the IRI Kaupapa Māori Research Conference, Waipapa Marae, University of Auckland, 16 November 2004); Huirangi Waikerepuru "Mouri me te Mouriora" (presentation to the Otago University Medical School, Wellington Campus, 8 May 2014); Huirangi Waikerepuru "The Universe and Universal Law" (presentation to the ISEA 2012 Symposium, Albuquerque, USA, 20 September 2012); and the brief discussion by the Ngā Rauru-Aotea tohunga Ruka Broughton "Incompatibility between Maoritanga and Christianity" *Tu Tangata* (Wellington, 1 December 1985) at 5–7, where he describes natural law as "te wairua Māori (Māori spirituality)" and as more an "organism" than "organisation" that "doesn't only involve myself a human being ... everything has life, the stones, the trees, they have [mouri] ... and are all connected. ... We all share a common whakapapa".

8 See for example the Whanganui Iwi statements as cited in Part V A of this article.

9 Very little has been written by Whanganui Iwi about Te Kawa Ora. My description reflects my learnings from my Ngāti Rangi-Whanganui and Tamahaki-Whanganui pāhake (elders). It has been restricted in accordance with the tikanga of kaiponu which is discussed further in Part IV A of this article. Whanganui whare wānanga exponents and hapū practitioners hold the full knowledge of Te Kawa Ora and tikanga Whanganui. Kaiponu = to protect and maintain Whanganui hapū specialist expert knowledge of Te Kawa Ora and tikanga Whanganui within Whanganui hapū and iwi.

A Te Kore, Te Pō and Te Ao Mārama

Within Te Kawa Ora, three natural worlds regenerate the life and vitality of Te Awa Tupua. We refer to those worlds as Te Kore, Te Pō and Te Ao Mārama.¹⁰ Each one holds a distinctive role and collectively they sustain the River and all its life. They establish interdependence as a central tenet of Whanganuitanga.

1 Te Kore

Te Kawa Ora begins with mouri emerging in Te Kore and with it the potential for life.¹¹ We understand this unseen sacred life energy to be both the source and natural state of all life. All the natural life within Te Awa Tupua including its people are connected because we fundamentally exist as mouri, each one with its own inherent consciousness.¹²

2 Te Pō

In Te Pō, mouri developed into great unseen sacred life energy systems each one with its own consciousness. We refer to them as atua who establish natural law and govern the life and vitality of Te Awa Tupua. Atua are the powerful life energy systems that are *ā tua* or intrinsic to the River and all its natural life including its people.¹³ They are the unseen life energy systems of Ranginui (Grandfather Universe) and Papatūānuku (Grandmother Earth) and their children.

Their children are the life energy systems of Tānemahuta (Forests and all life within them), Tangaroa (Oceans and all life within them), Maru (Fresh Waters and all life within them) and many, many others. Some are atua tāne (male) and some are atua wāhine (female).¹⁴ Atua collectively

10 Te Kore = the world of the potential for life; Te Pō = the world of unseen life energy systems; and Te Ao Mārama = the seen physical world. See for example the discussions by the Taranaki-Aotea tohunga Huirangi Waikerepuru, above n 7.

11 The Whanganui Iwi-Aotea spelling of mouri is used throughout this article. "Mouri" refers to the sacred life energy that is intrinsic to all life. "Mouri ora" refers to the spiritual and physical expressions of sacred life energy, including people, coexisting interdependently within Te Awa Tupua. Other iwi spell these as "mauri" and "mauri ora".

12 See for example Broughton, above n 7, at 7 for the brief discussion by the Ngā Rauru-Aotea tohunga Ruka Broughton that all life has mouri and is therefore connected.

13 Atua = powerful unseen life energy systems that establish natural law and govern the life and vitality of Te Awa Tupua. They are often incorrectly translated as "gods". See for example Waikerepuru "Mouri me te Mouriora", above n 7; and Broughton, above n 7, at 6, where the Taranaki-Aotea tohunga Huirangi Waikerepuru and Ngā Rauru-Aotea tohunga Ruka Broughton describe atua as "ā tua" or "beyond" meaning the mouri or sacred life energy that is just beyond (or intrinsic to) physical life.

14 I learnt from my pāhake how "male" and "female" are understood within Te Kawa Ora. New Zealand and other Western nations generally consider "leadership and authority" to be male qualities and "love, care and nurturing" to be female qualities, whereas within Te Kawa Ora those qualities are not gendered. They are instead equally shared and expressed by both life forms. Similarly, for New Zealand and other Western nations

replenish and sustain the mouri of the River and all its natural life, including its people, who are children and grandchildren of atua. Whanganui Iwi also refer to atua as "ngā atua o Te Pō" which describes their natural state as unseen life energy systems.

3 *Te Ao Mārama*

When light and space emerged, mouri developed into its many spiritual and physical expressions in Te Ao Mārama or the seen physical world.¹⁵ As Papatūānuku turns within Ranginui, they establish the River's life cycle of renewal, abundance and decline. Their children and grandchildren shift, move and regenerate with those life cycles which in turn regenerates and sustains the River's life and vitality.

The legal philosophy of Te Kawa Ora underpins Whanganui hapū legal and governance systems – and our tikanga Whanganui (or Whanganui hapū laws).¹⁶ Ruruku are fundamental to tikanga. Ruruku recite the whakapapa of Te Kawa Ora or the understanding of the River's natural life, including its people, coexisting interdependently as expressions of sacred life energy – and close and revered relations.¹⁷ Ruruku and tikanga reciprocate the River's mutually enhancing acts of generosity to its natural life. They also reaffirm Whanganui hapū as junior kin to our senior relatives of the River's natural life.

B Mouri, Tapu and Mana

Three natural law principles (among others) principally guide Whanganui hapū to live as part of Te Awa Tupua's natural life. They are: mouri or the principle of sacred life energy and consciousness; tapu or the sanctity of life principle; and mana or the vitality of life principle. They establish coexistence as a central understanding of Whanganuitanga.

1 *Mouri*

Mouri respects all life fundamentally as sacred life energy, each with its own consciousness. Tikanga Whanganui reflect this in two ways. First, no distinction is made between animate and

the male-female relationship is generally characterised as one of dominance and submission, whereas for Whanganui hapū and other Indigenous peoples it is a relationship of respect and balance (see below n 25). See also Linda Tuhiwai Smith *Decolonizing Methodologies: Research and Indigenous Peoples* (2nd ed, Zed Books, London, 2012) at 32–33, 47–48 and 152–153.

15 In this article, I use the term "spiritual" to refer to a consciousness of all natural life within Te Awa Tupua, including its people, coexisting interdependently as expressions of sacred life energy – and close and revered relations.

16 Whanganui hapū are the core political units within Whanganui Iwi. Whanganui Iwi is Whanganui whānau, hapū and iwi acting together for the benefit of each kin grouping, the collective kin group and Te Awa Tupua.

17 Ruruku = short or long recitations of the whakapapa of Te Kawa Ora often incorrectly translated as karakia or prayers.

inanimate life. The Earth, Sky and Waters of Te Awa Tupua and all its natural life, including its people, primarily exist as *mouri*. Each one is a living being with its own consciousness.

Secondly, the *mouri* of Whanganui hapū are understood to be intrinsically connected with the *mouri* of the River's lands and waters.¹⁸ When Whanganui hapū live our *tikanga* we nurture within our *tamariki mokopuna* a reverence for and close belonging to the River – and in doing so uphold our collective *mouri* as Te Awa Tupua.¹⁹

2 *Tapu*

Tapu respects the sanctity of life by acknowledging that *mouri* and therefore all life is sacred.²⁰ More importantly, it understands each *mouri* to be unique and distinctive. Just as no two people or other life forms are the same, neither are two rivers the same because each one has its own *mouri*.²¹ *Tapu* maintains Te Awa Tupua's diversity and vitality of life. When Whanganui hapū live our *tikanga* we live as part of the River's life energy systems and its natural life – and in doing so uphold our collective *tapu* as Te Awa Tupua.

3 *Mana*

Mana respects that the River's life and vitality are spiritual and physical expressions of its *mouri*, which are nurtured and sustained by many *atua* in Te Pō.²² Whanganui Iwi revere Te Awa Tupua as a sacred *tupuna* who provides generously for all its natural life.²³ It defines us and determines our conduct and activities. So, for example, we express our *mana* or spiritual and physical vitality when

18 See for example the statement by the Whanganui-Aotea *tohunga* Matiu Māreikura about this relationship, below n 89. See also the discussion, below n 54, about how a breach of this relationship results in a state of *wairua poke* (spiritual and physical imbalance). The *tikanga* of *aukatī* is applied to prevent such breaches (see below n 48). The *tikanga* of *rāhui* (temporary restriction) is applied to restore spiritual and physical vitality to the River and all its natural life, including its people.

19 *Tamariki mokopuna* = children and grandchildren, future generations.

20 *Tapu* = sanctity of life.

21 See for example the statement by the Whanganui-Aotea *tohunga* Matiu Māreikura, below n 86.

22 *Mana* = spiritual and physical vitality. See also above n 15.

23 See also ET Durie "Will the Settlers Settle? Cultural Conciliation and Law" (1996) 8 Otago LR 449 at 454, where Kahurangi Sir Edward Taihākurei Durie in the same vein describes natural law as "divine law". I note that within Whanganui Iwi, we often refer to *tapu*, *mana*, *ihi* and *wehi* together (see above n 5 and below n 90). They describe the physical and metaphysical elements of the River and all its natural life including its people. *Tupuna* = ancestor.

we act with generosity and humility and show leadership in any endeavour.²⁴ Manaakitanga, aroha and rangatiratanga are just a few examples of tikanga that express our collective mana.²⁵

When Whanganui hapū live our tikanga we nurture a collective consciousness that affirms Te Kawa Ora – and in doing so uphold our collective mana as Te Awa Tupua. Collectivity also means that everyone's voice is valued in decision-making. Consensus decision-making is of the utmost importance in tikanga Whanganui. Taking time to find a collective decision is considered to be just as important as the outcome. Observing tikanga in the process of decision-making through mutually enhancing acts of generosity towards each other and the River binds Whanganui hapū firmly together with our Whanganui Iwi nationhood.²⁶

Whanganui whare wānanga and whare rūnanga are the principal legal and governance institutions that maintain Te Kawa Ora and tikanga Whanganui.²⁷ They reaffirm the mana of the River to provide for all its life – and our collective Whanganuitanga. Whanganui Iwi describe the natural sovereignty of this legal and governance system as "Te Mana o Te Awa Tupua" and "Te Mana o Te Iwi o Whanganui".²⁸ It is reaffirmed through strong and determined leadership that is grounded in Te Kawa Ora and tikanga.

III 1840–1900 WHANGANUI IWI ASSERTIONS OF WHANGANUITANGA

In 1840, Whanganuitanga was fully intact and Whanganui hapū continued to assert Te Kawa Ora and tikanga Whanganui through our legal and governance systems. In 1840, Te Awa Tupua also became a place where two nations converged. One, our long-established Whanganui Iwi nationhood

24 See for example the statement by the Whanganui-Aotea tohunga Matiu Māreikura, below n 91.

25 See also Durie, above n 23, at 455–456. Manaakitanga = kindness, generosity, care; aroha = love, respect, equality; and rangatiratanga = to assert leadership and authority that maintains Whanganui Iwi nationhood. I note again that within tikanga Whanganui these acts are not gendered; they are instead equally shared and expressed by both men and women (see above n 14). Accordingly, within Whanganui hapū, men have always asserted love, care and nurturing within relationships and women have always asserted leadership and authority. They are expressed as acts of generosity and humility towards each other, others and the River. Men, women, boys and girls are equally valued, as are the relationships between past, present and future generations – and with all the River's natural life.

26 My pāhake often emphasised that our old people would hui until a consensus decision was reached. Those discussions could continue for days.

27 Whare wānanga = Whanganui hapū or iwi specialist expert knowledge of Te Kawa Ora and tikanga Whanganui; and whare rūnanga = Whanganui hapū or iwi government or Parliament based in Te Kawa Ora and tikanga Whanganui. I note that while specialist knowledge is learned in whare wānanga, prior to New Zealand's colonising or extinguishing activity in Te Awa Tupua, all Whanganui uri learned naturally to live according to Te Kawa Ora and tikanga Whanganui within our whānau and hapū.

28 Interview with Gerrard Albert, Whanganui Iwi lead negotiator for the Te Awa Tupua Agreement and Whanganui-Aotea whare wānanga exponent (the author, Raetihi/Whanganui, 11 June 2020).

and, the other, the recently established New Zealand nation state. We engaged in nation-to-nation acts of leadership and diplomacy with New Zealand, and our respective legal and governance systems coexisted interdependently until 1890.

Whanganui *whare rūnanga* developed further into Whanganui *hapū* and *iwi* Parliaments, courts and administrations that are based in *Te Kawa Ora* and *tikanga Whanganui*. Whanganui *Iwi* also played active leadership roles in establishing the two national Māori Parliaments which operated in this period. For most of this period, the more than 5,000 Whanganui *uri* living in *Te Awa Tupua* were the political majority in our homelands.²⁹ By its end, however, New Zealand had gained a political majority by flooding the country with Pākehā settlers. Their nation state began to take determined steps to firmly extinguish our Whanganuitanga.

A 1839, 1840 and 1848 Whanganui Deeds and 1840 Te Tiriti o Waitangi

In May 1840, Whanganui *Iwi* engaged in the first of many nation-to-nation acts of leadership and diplomacy with New Zealand by entering into *Te Tiriti o Waitangi*. In the preceding days, Whanganui *rangatira* had met with EJ Wakefield of the New Zealand Company and entered into the 1840 Whanganui Deed. The agreed terms were that limited Pākehā settlement could occur in the lower coastal flat areas of our homelands within a relationship of interdependent coexistence between our nationhood, the New Zealand Company and Pākehā settlers.³⁰

Whanganui *rangatira* had met with the Pākehā missionary Henry Williams the previous year. At the meeting, Williams drafted an 1839 Whanganui Deed which held Whanganui *hapū* lands "in trust for their benefit alone". Whanganui *rangatira* *Te Ānaua* presented it to Wakefield at their May 1840 meeting. Later in 1880, *Taitoko Te Rangihwinui (Te Keepa)* created an extensive Whanganui *hapū* lands trust based on the 1839 Deed. The 1840 Whanganui Deed reaffirmed our Whanganui *Iwi* nationhood while confirming our willingness to welcome Pākehā settlers to live amongst us. Whanganui *Iwi* continued to assert our Whanganuitanga largely unaffected by Pākehā settlers and their New Zealand nation state for the next 40 years.

On 23 and 31 May 1840, 14 Whanganui *rangatira* signed *Te Tiriti o Waitangi*, including *Te Pēhi Topia Tūroa*, *Te Pēhi Pākoro Tūroa*, *Te Ānaua*, *Te Māwae* and *Rereōmaki*.³¹ They later rejected any suggestion that by signing *Te Tiriti* they had ceded our Whanganuitanga which they simply continued

29 Waitangi Tribunal, above n 5, at 147–149 and 164.

30 Pākehā = New Zealand settlers of European descent.

31 Waitangi Tribunal, above n 5, at 117–118. *Te Tiriti o Waitangi (Te Tiriti)* is the agreement written in *te reo Māori* (Māori language) which was signed by *rangatira* throughout Aotearoa. The Treaty of Waitangi is the agreement written in English. The terms of the two agreements differ substantially. Whanganui *rangatira* agreed to and signed the terms of *Te Tiriti*. In doing so, they reaffirmed the authority of our nationhood (*tino rangatiratanga*) and agreed that New Zealand be self-governing (*kāwanatanga*) in a relationship of two nations coexisting interdependently. See also Waitangi Tribunal *The Manukau Report* (Wai 8, 1985) at 65–70.

to assert. For their hapū, Te Tiriti formalised a relationship of interdependent coexistence with the recently established New Zealand nation state. They agreed to engage in ongoing nation-to-nation acts of leadership and diplomacy.

In May 1848, Whanganui rangatira agreed to enter into another Whanganui Deed with New Zealand. The previous 1840 Deed had cemented a relationship of interdependent coexistence by which Whanganui Iwi would provide land for Pākehā settlement while also affirming our Whanganuitanga. The 1848 Deed enlarged the scope of that agreement and reaffirmed a nation-to-nation relationship with New Zealand.³² The 1848 Whanganui Deed was not a deed of sale. Whanganui Iwi have no conception of ownership or the sale of lands and waters. According to Te Kawa Ora and tikanga Whanganui, hapū belong to our lands and waters who are tūpuna and living beings.³³

Whanganui hapū share whakapapa relationships to Te Awa Tupua with all its natural life. We maintain those spiritual and physical relationships by living according to tikanga Whanganui. They are passed on from generation to generation and are inalienable. Accordingly, people from outside the hapū can be allocated land to live on so long as a relationship of interdependent coexistence is maintained with the lands, waters and natural life. This tikanga is often referred to as "tuku whenua" and is similar to a licence to occupy.³⁴ So, for example, even after the 1848 Deed was signed, Whanganui Iwi continued to determine the land plots where Pākehā settlers would live. We also continued to assert our Whanganui hapū systems of law and governance right up until 1890.³⁵

B 1848–1890s Whanganui Kōmiti, Rūnanga and Rūnanganui

By 1848, Whanganui hapū legal and governance systems had developed further into kōmiti or hapū courts and administrations. They sat continuously to issue certificates of hapū land title and licences to occupy, settle land issues, charge fees, hear and resolve conflicts, summon people for offences, impose fines and seize property. Decisions were made according to Te Kawa Ora and tikanga Whanganui.³⁶

32 Waitangi Tribunal, above n 5, at 130–140; and Waitangi Tribunal *He Whiritauonoka: The Whanganui Land Report* (Wai 903, 2015) at 240–248 and 269–270.

33 Waitangi Tribunal, above n 5, at 106–111. Tūpuna = ancestors (plural).

34 At 28–48. In this article I adopt Kahurangi Sir Edward Taihākurei Durie's description of the right to land within Māori law as being similar to a licence to occupy, but with concomitant obligations to the natural kin group of lands, water and natural life that have no equivalent in English or New Zealand law: see Durie, above n 23, at 453–454. Land transactions between Whanganui hapū and Pākehā settlers were also expected to function in this way and in doing so uphold Te Kawa Ora and tikanga Whanganui.

35 See also Durie, above n 23, at 458, where Kahurangi Sir Edward Taihākurei Durie notes that "[i]n most districts Māori continued to abide by their own laws long after 1840".

36 Waitangi Tribunal *He Whiritauonoka*, above n 32, at 298–299.

Whanganui hapū also regularly convened rūnanga and rūnanganui which operated as hapū and iwi Parliaments that are based in Te Kawa Ora and tikanga Whanganui.³⁷ In 1872, 300 Whanganui rangatira met at a Koroniti rūnanganui. They placed hapū lands between Hiruhārama and Pūtiki in hapū reserves. Another rūnanganui held in 1880 sanctioned a proposal by Taitoko Te Rangihiwini (Te Keepa) to hold 2 million acres of Whanganui hapū lands in trust for their descendants. Known as Kemp's Trust, it was supported by a kōmiti of 180 Whanganui hapū rangatira.

Whanganui rangatira and hapū also built where rūnanga which operated as Whanganui Iwi Parliaments. One was Te Mātangireia, which Te Ānaua and his hapū built at Pūtiki pā. Another was Huriwhenua, which Taitoko Te Rangihiwini (Te Keepa) and his hapū built at Rānana pā. From 1860, inter-iwi rūnanganui were also convened to agree on boundaries between our iwi homelands and provide a forum to advance collective political issues.³⁸ For example, rangatira from Ngāti Tūwharetoa, Ngāti Te Whiti, Ngāti Tama, Ngāi Te Ūpokoiri, Ngāti Kahungunu and Ngāti Raukawa attended an 1860 Kōkako rūnanganui convened by Whanganui Iwi. Rangatira from Ngāti Apa, Ngāti Raukawa and Ngāti Te Whiti attended an 1871 Parikino rūnanganui convened by Whanganui Iwi.³⁹

C 1850–1900 National Māori Parliaments

The Kīngitanga and Te Kotahitanga were national political movements that established Māori Parliaments to coexist interdependently with the recently established New Zealand Parliament. Pākehā settlement and the New Zealand nation state were welcomed by both movements so long as the respective nationhood of hapū and iwi were respected. They prohibited land sales but permitted hapū licences to occupy (which were generally referred to as leases).⁴⁰ Whanganui rangatira played prominent leadership roles in both the Kīngitanga and Te Kotahitanga and they were all strong proponents of their Māori Parliaments. Each one went to considerable lengths to maintain a relationship of interdependent coexistence with New Zealand.

1 Kīngitanga

Many Whanganui rangatira and hapū supported the establishment of the Kīngitanga from its initiation in the early 1850s. Whanganui hapū established Kīngitanga-aligned where rūnanga at Kaiwhaiki, Rānana and Ōtūmaire. Te Pēhi Topia Tūroa, Te Pēhi Pākoro Tūroa and Tōpine Te Mamaku were the most prominent Whanganui rangatira who became Kīngitanga leaders and strong

37 At 291–294. Rūnanganui = a particularly large Whanganui Iwi Parliament that is based in Te Kawa Ora and tikanga Whanganui or an inter-iwi Parliament that is based in whakapapa and tikanga.

38 At 294–296.

39 Albert, above n 28.

40 Waitangi Tribunal *He Whiritaunoka*, above n 32, at 302–310 and 311–313. See also above n 34.

proponents of its Te Kauhanganui Parliament. They were approached alongside Te Ānaua to become the first King to lead the Kīngitanga.

2 *Te Kotahitanga*

In 1860, more than 200 rangatira from throughout the country attended the national Kohimarama Conference where they resolved to establish the Te Kotahitanga Parliament. Eight Whanganui rangatira attended, including Te Ānaua, Te Māwae, Hīpango and Metekīngi Te Rangipaetahi. Te Ānaua declared that his hapū would retain their lands, waters and nationhood. Shortly afterwards, more than 800 Whanganui rangatira and uri met at a Parikino rūnanganui, each of whom supported either the Kīngitanga or Te Kotahitanga movements. They all reaffirmed a commitment to our Whanganuitanga and to establishing a Māori Parliament to coexist interdependently with New Zealand's Parliament.⁴¹

In 1874, an eight-day rūnanganui convened at Kaiwhaiki established a Whanganui kōmiti to operate as part of the national network of Te Kotahitanga kōmiti. In 1877, Metekīngi Te Rangipaetahi built a Whanganui Iwi Parliament at Pūtiki called Te Paku o Te Rangi where a Te Kotahitanga national rūnanganui was held in 1888. In 1892, another national rūnanganui convened at Parikino drafted legislation to formally establish the Te Kotahitanga Parliament that operated for ten years from 1892 to 1902. Its inaugural meeting was hosted by Ngāti Kahungunu at Waipatu marae.

D 1865–1866 New Zealand Declares War on Whanganuitanga

From 1840 to 1890, Whanganui Iwi thrived. Our nationhood remained largely intact and our legal, political, economic and social systems experienced rapid growth and development. Whanganui hapū built larger, beautifully designed whare rūnanga, wharepuni and other whare.⁴² We were the main suppliers of produce, goods and services to Pākehā settlers within Te Awa Tupua. We built houses for settlers to live in under licence to occupy-type agreements.⁴³

New Zealand first tried unsuccessfully to assert its unilateral authority over Whanganui Iwi in 1847. Its 750-strong Pākehā settler military force had to abandon its campaign, however, when it was unable to make its way upriver through the dense indigenous rainforest.⁴⁴ Nearly 20 years after that incident, New Zealand tried unsuccessfully again to assert its unilateral authority. It did so by bringing its war against the Kīngitanga into Te Awa Tupua following the 1864 Battle of Moutoa.

41 At 311–313; and Waitangi Tribunal, above n 5, at 158–160.

42 Wharepuni = Whanganui hapū ancestral house; and whare = house.

43 Waitangi Tribunal, above n 5, at 147–149.

44 At 129.

1 1864 Battle of Moutoa and 1865 Battles of Ōhoutahi and Pipiriki

By 1864, New Zealand had declared war against Taranaki and Waikato hapū aligned to the Kīngitanga and had started confiscating their lands and waters.⁴⁵ Those hapū had sought a relationship of interdependent coexistence with New Zealand, which chose instead to seek absolute power by way of political and military force. Many Whanganui hapū went to support our Taranaki and Waikato relations to defend themselves against New Zealand's military invasion of their homelands.⁴⁶ In addition, Whanganui rangatira Mātene Rangitauira led a Paimārire and Whanganui tauā intent on protesting in the Whanganui township against New Zealand's actions.⁴⁷ The tauā, however, risked New Zealand retaliating and bringing war into our homelands.

Within tikanga Whanganui, war is only ever chosen as a last resort when all peaceful and diplomatic options have been exhausted. When diplomatic attempts by Te Pēhi Pākoro Tūroa failed to stop the Paimārire-Whanganui tauā, an aukati (refusal of passage) was placed on the River at Moutoa.⁴⁸ Whanganui hapū of that area considered nation-to-nation acts of leadership and diplomacy to be the best option at that time to limit the risk of war spreading into the River. Furthermore, Te Ānaua and Te Māwae were adamant that the relationship of their hapū with Pākehā settlers and New

45 Waitangi Tribunal *He Whiritauonoka*, above n 32, at 305–306 and 310–311. In 1863, New Zealand's Parliament passed the New Zealand Settlements Act. Its purpose was to facilitate Pākehā settlement. Hapū aligned to the Kīngitanga wanted their authority to coexist interdependently with New Zealand's and to issue licences to occupy rather than sell their lands. Under the New Zealand Settlements Act 1863 they were deemed to be "in rebellion" against New Zealand and their lands and waters were confiscated.

46 I note also that, in 1866, the Taranaki spiritual and political leaders Tohu Kākahi and Te Whiti o Rongomai established Parihaka papa kāinga. It was a sanctuary for Taranaki hapū who, in non-violent resistance to New Zealand's confiscation of their lands and waters, would continue to live together and assert their own legal and governance systems alongside New Zealand's. Many Whanganui hapū went to live at Parihaka in support of our Taranaki relations. It became the largest papa kāinga in Aotearoa – until New Zealand's nation state attacked and ransacked it in 1881 and imprisoned Tohu and Te Whiti and many other Taranaki uri without trial.

Whanganui hapū returned to our papa kāinga. Ngā Paerangi named two of their wharepuni at Kaiwhaiki pā "Te Rongo o Te Poi o Tohu Kākahi" and "Tē Whakahāwea" to affirm Tohu and Te Whiti's teachings. Ngāti Tuera rangatira Te Umurangi built the wharepuni "Maranganui" at Pungarehu pā to commemorate the remarkable spiritual and political resistance led by Tohu and Te Whiti at Parihaka: Albert, above n 28.

47 The Paimārire movement is a spiritual and political movement established by Te Ua Haumene of Taranaki. It is closely aligned to the Kīngitanga and advocates for hapū to continue to assert our legal and governance systems alongside New Zealand's, and to retain the authority of our lands and waters: see Waitangi Tribunal, above n 5, at 308–309. Many similar movements were established throughout Aotearoa in this period. Tauā = expert fighters.

48 Two other well-known aukati (refusals of passage) placed on Te Awa Tupua at this time were Taitoko Te Rangihwinui's (Te Keepa's) aukati in 1880 refusing Pākehā settlers passage on the lower reaches of the River without a hapū permit, and Te Pēhi Topia Tūroa's aukati in 1884 refusing the Pākehā surveyor John Rochford passage to travel on the River: Waitangi Tribunal, above n 5, at 161–162.

Zealand within the Whanganui township was strictly a hapū matter to be addressed within and by the hapū.⁴⁹

Despite the aukati, many Whanganui rangatira and uri continued to support the Paimārire-Whanganui tauā. Those who opposed it, however, included the key Kīngitanga leaders Tōpine Te Mamaku and Te Pēhi Pākoro Tūroa. They unequivocally supported the Paimārire and Kīngitanga movements but acted to assert our Whanganuitanga. The Battle of Moutoa was a Whanganui Iwi matter that was settled within and by the iwi. On 14 May 1864, the Paimārire-Whanganui tauā of nearly 150 fighters from Whanganui Iwi, Ngāti Ruanui and Taranaki arrived at Moutoa led by Mātene Rangitauira. There, they met another Whanganui tauā of 400 fighters led by Tōpine Te Mamaku and Te Pēhi Pākoro Tūroa who stood alongside Metekīngi Te Rangipaetahi and Hīpango.⁵⁰

The Paimārire-Whanganui tauā came close to defeating the opposing tauā but eventually had to retreat. Altogether, 65 fighters from both sides died that day. Whanganui hapū of Moutoa lovingly cared for rangatira and uri from both sides who died or were seriously wounded there. The conflict remains one of the most difficult events ever faced by Whanganui Iwi. Afterwards, we engaged in an intensive process to restore iwi relationships. It continues today with uri continuing to be born from that reconciliation process. New Zealand, however, pressed ahead with its political and military campaign to break the Kīngitanga within Whanganui Iwi and any other resistance to its assertions of unilateral authority. Its actions were wholly unjustified. All Whanganui rangatira and hapū, including those aligned to the Kīngitanga, had consistently sought a relationship of interdependent coexistence with New Zealand.

Despite this, when Te Pēhi Topia Tūroa and Te Pēhi Pākoro Tūroa returned upriver to Ōhoutahi pā and Pipiriki pā, New Zealand determined to bring its war against the Kīngitanga into Te Awa Tupua and attack those Kīngitanga-aligned pā. It enlisted the political and military support of Hīpango, Metekīngi Te Rangipaetahi, Te Ānaua, Te Māwae and Taitoko Te Rangihiwini (Te Keepa) who raised a 400-strong Whanganui tauā to fight alongside a 200-strong Pākehā settler militia. Those Whanganui rangatira saw their support for New Zealand as a natural extension of a relationship of two nations coexisting interdependently, not as an act of submission.

In January 1865, they attacked and captured Ōhoutahi pā and Pipiriki pā. Te Ānaua let Te Pēhi Topia Tūroa, Te Pēhi Pākoro Tūroa and their surviving fighters leave the pā in acknowledgement of their mana and to maintain relationships within Whanganui Iwi. In July 1865, fighting resumed between the two tauā at Pipiriki pā after Te Pēhi Pākoro Tūroa and Te Pēhi Tāhana Tūroa formed a tauā of 1000 fighters from Whanganui Iwi, Ngāti Maniapoto, Ngāti Raukawa and Ngāti Tūwharetoa

49 Albert, above n 28.

50 Waitangi Tribunal *He Whiritaunoka*, above n 32, at 325–330.

which attacked the garrison occupying the pā. After 12 days of fighting, they withdrew to beyond Ōhinemutu pā.⁵¹

2 *Kūpapa*

The term *kūpapa* has become incorrectly defined as Māori fighters who were pro-Crown or aligned to New Zealand against their iwi and/or other iwi. *Kūpapa* is a Whanganui Iwi term that means specialist expert *tauā* or fighters. Some Whanganui *tauā* at times aligned with New Zealand, but they were not pro-New Zealand. For example, Te Ānaua, Te Māwae, Hīpango, Metekīngi Te Rangipaetahi and most notably Taitoko Te Rangihiwini (Te Keepa) are often described as *kūpapa*. Each of those Whanganui *rangatira* acted alongside other prominent *rangatira* including Tōpine Te Mamaku and Te Pēhi Pākoro Tūroa to assert our Whanganuitanga. They also acted to establish Māori Parliaments to coexist interdependently with New Zealand's Parliament. They never relinquished our nationhood, which they continued to affirm and assert.

The reasons why Whanganui *rangatira* and *hapū* sometimes aligned with New Zealand are complex and varied, as are the ways they did so. For example, Taitoko Te Rangihiwini (Te Keepa) often simply ignored New Zealand when he supported its Taranaki and Te Urewera military campaigns. Similarly, Te Pēhi Topia Tūroa fought against New Zealand's military invasion of Waikato and Taranaki. Yet, he later supported New Zealand in its pursuit of Te Kooti Arikirangi in Te Urewera.⁵²

What is clear is that Taitoko Te Rangihiwini (Te Keepa), Te Pēhi Topia Tūroa and many, many other Whanganui *rangatira* and *hapū* consistently asserted our Whanganuitanga and a nation-to-nation relationship with New Zealand. Any activities with New Zealand were undertaken within a relationship of interdependent coexistence, not of submission.

E 1865–1872 He Whiritaunoka Reconciliation Process

1 Reconciliation

A principal *atua* in Te Kawa Ora is Rongo, who is the unseen life energy system of balance and stability. In Te Kawa Ora, enormous shifts and changes in sacred life energy occurred, which brought Te Awa Tupua and all its natural life into existence. They established the River's natural law or its life energy systems. Once those shifts and changes settled, its life energy systems stabilised, bringing spiritual and physical balance to all its life.⁵³ Balance and stability ensure that all the River's natural

51 Waitangi Tribunal, above n 5, at 151–154.

52 Albert, above n 28.

53 See for example Waikerepuru, above n 7, for the brief discussion about Rongo by the Taranaki-Aotea *tohunga* Huirangi Waikerepuru.

life, including its people, coexist interdependently, which brings growth and vitality within Te Awa Tupua.

Within tikanga Whanganui, reconciliation is the process of restoring spiritual and physical balance following a disruption or breach. Reconciliation restores balance within ourselves and in our relationships with each other as whānau, hapū and iwi – and with the River and all its life. Restoring balance as the natural state of being is essential for healing and wellbeing.⁵⁴

2 *He Whiritaunoka*

In late July 1865, following the Battles of Ōhoutahi pā and Pipiriki pā, Te Ānaua initiated a reconciliation process by first brokering an agreement for New Zealand to withdraw its military forces from Pipiriki pā in 1866. Whanganui rangatira and hapū aligned to the Kīngitanga had not surrendered nor had they ceded our nationhood, which they simply continued to assert. For example, in 1884, Te Pēhi Topia Tūroa travelled to England with the Kīngitanga leader Tāwhiao and other Kīngitanga-aligned rangatira. They formally reaffirmed to Queen Victoria their intention to maintain our nationhood in a relationship of interdependent coexistence with New Zealand.

It took seven years of intensive diplomacy beginning in 1865 to restore relationships within Whanganui Iwi and with New Zealand. Te Ānaua travelled upriver and convened Whanganui Iwi rūnanga. Te Pēhi Topia Tūroa reciprocated by building the whare rūnanga Te Ao Mārama at Pipiriki. It symbolised Whanganui Iwi united again in the World of Light. This reconciliation process became known as He Whiritaunoka and the lower whare rūnanga at Hiruhārama is named Whiri Taunoka after it.

It concluded at a Whanganui Iwi rūnanga convened by Taitoko Te Rangihiwini (Te Keepa) at Pūtiki in 1872. Whanganui rangatira exchanged taonga symbolising a unified Whanganui Iwi nationhood coexisting interdependently with New Zealand. A peace pact was also entered into with New Zealand, which wanted peace as much as Whanganui Iwi. Both sides were satisfied we had each asserted our authority.⁵⁵ Whanganui Iwi continued to assert our nationhood through our kōmiti, rūnanga and rūnanganui for another 20 years.

54 See for example the discussion by the Ngāti Porou and Ngāti Kahungunu tohunga whakairo Tākīrangī Smith about Rongo and restoring balance and vitality following trauma: Tākīrangī Smith "Atuatanga, Healing and Healing Spaces" (presentation to He Kokonga Whare: A Seminar on Māori Intergenerational Trauma and Healing, Rangahaua Marae, Whanganui, 5 October 2016). Whanganui Iwi refer to the spiritual and physical imbalance that results from trauma as "wairua poke". We have consistently sought to restore our Whanganuitanga in order to address the trauma that New Zealand's extinguishing and extinguishing activity has and continues to cause to the River and all its natural life (see below Part IV A). Restoring our collective spiritual and physical relationships will restore our collective vitality as Te Awa Tupua. Tohunga whakairo = whare wānanga exponent in carving.

55 Waitangi Tribunal, above n 5, at 154–157.

F 1890 New Zealand Takes Definitive Action to Break our Whanganui Iwi Nationhood

By the 1890s, New Zealand had completely abandoned a relationship of interdependent coexistence with Whanganui Iwi. It flooded the country with Pākehā settlers to gain a political majority, which it used to gain absolute power to assert its authority. It then took determined action to definitively break Whanganui Iwi and our Whanganuitanga.

It pressed ahead with its Native Land Court and other statutory bodies to wrongfully expropriate Whanganui hapū lands and waters. It asserted an unrestrained authority of its own legal, political, economic and social systems over Te Awa Tupua. It firmly rejected any notion of Whanganui hapū legal and governance systems and our Whanganui Iwi nationhood.⁵⁶ As a result, New Zealand entrenched its Pākehā settler population and local government and economy within Te Awa Tupua. They stopped trading with Whanganui hapū and only traded with themselves. They also acquired a majority of Whanganui hapū lands.

The tikanga of reconciliation for spiritual and physical healing gained new significance as Whanganui Iwi moved into the next period. There, we faced New Zealand's increased and unrelenting efforts to extinguish our nationhood. The profound impacts of those activities emerged rapidly. Whanganui Iwi continued to affirm our Whanganuitanga but this time for our sheer day-to-day spiritual and physical survival.

IV 1900–1975: WHANGANUI IWI RESISTANCE IN TE KAWA ORA

In this period, Whanganui Iwi experienced serious and rapid decline as New Zealand took determined steps to firmly extinguish our Whanganuitanga. Its nation state continued to pass legislation that authorised and directed its central, regional and local statutory bodies to implement its extinguishment agenda. They began replacing the legal, political, economic and social systems of Whanganui hapū with their own. In doing so, New Zealand established the unilateral authority of its own legal and governance systems.

Despite this, Whanganui hapū, papa kāinga and pā – represented by our tohunga and rangatira – took equally determined steps to maintain our Whanganuitanga.⁵⁷ We mobilised to focus our activity on our spiritual and physical survival. We continued to live Te Kawa Ora and tikanga Whanganui where we could. We also continued to engage in nation-to-nation acts of leadership and diplomacy to assert our Whanganuitanga. In doing so, we sought to reconcile New Zealand's extinguishing activities with Te Kawa Ora and tikanga Whanganui.

⁵⁶ At 158 and 162–164; and Waitangi Tribunal *He Whiritaunoka*, above n 32, at 341–343.

⁵⁷ Papa kāinga = Whanganui hapū settlement; and pā = enclosed papa kāinga.

A Whanganui Whare Wānanga

By the 1890s, New Zealand's statutory bodies began making systematic changes to the River, which caused extensive damage. They took steps to first begin systematically removing Whanganui hapū from our lands and waters. They then began removing much of the rest of the River's natural life. They set about clearing Te Awa Tupua's indigenous rainforests and draining its extensive wetlands, which caused the loss of other species populations that are indigenous to the River's catchment lands.

Those activities, along with their alterations to the natural state of its waters, caused the loss of species populations that are indigenous to the River's waterways. At the same time, they systematically replaced the River's natural life with people, trees, animals, birds and fish life from their own homelands. Whanganui hapū experienced enormous loss and change following New Zealand's mass wrongful expropriations of our lands and waters. The very fabric of life within Te Awa Tupua was being torn, unravelling the sanctity of life within the River and Whanganui hapū. Spiritual and physical survival became our day-to-day preoccupation.

The critical leadership role of Whanganui whare wānanga and tohunga gained new significance in this period. In response to New Zealand's activities, Whanganui tohunga took determined steps to continue to assert Te Kawa Ora and tikanga Whanganui. They firmly maintained that Te Awa Tupua is a living being comprising its Earth, Sky, Waters and all the natural life within them. They continued to provide the leadership and guidance for Whanganui Iwi to assert Te Kawa Ora in order to maintain the spiritual and physical integrity of the River and its people.

There were many active Whanganui whare wānanga in this period, with four at Hiruhārama alone. Ūpokotauākī at Hiruhārama was regarded as the principal Whanganui whare wānanga of this period and is sometimes also referred to as "Te Whare o Rongomaihuia".⁵⁸ Whanganui tohunga were tied together by whakapapa and worked closely together to guide the activities of hapū and rangatira.

For example, Tamakehu Kātene was a prominent tohunga of Ūpokotauākī in this period, who worked closely with Wī Pauro in the Whanganui whare wānanga at Kaiwhaiki. Wī Pauro had been taught by Te Riaki of Ngāti Rangi in the Whanganui whare wānanga at Karioi. Titi Tihu of Ngāti Tū was another prominent tohunga in this period. He had been taught by Te Kere Ngātaierua in the Whanganui whare wānanga at Tawata. Whanganui tohunga are both tohunga tāne (male) and tohunga wāhine (female), and Te Utamate Tauri of Ngāti Hau at Hiruhārama was another prominent tohunga in this period.⁵⁹

58 Albert, above n 28.

59 Albert, above n 28.

The tikanga of kaiponu remains of central importance to Whanganui Iwi.⁶⁰ Kaiponu requires that the full details of Te Kawa Ora and in particular its full whakapapa are kept strictly within and not disclosed outside of Whanganui Iwi. It also respects that only Whanganui Iwi can speak about Te Kawa Ora and tikanga Whanganui. The waiata Te Whare o Rongomaihuia was composed to reaffirm this tikanga.⁶¹ It responds to the invitation from the Ngāti Kahungunu tohunga Te Mātorohanga to Whanganui tohunga Wī Pauro to participate in wānanga about whakapapa with tohunga from other iwi. Those wānanga were called for tohunga throughout the country to support each other to retain their whakapapa atua and whakapapa tūpuna as the basis of their respective nationhood.⁶²

In the 1920s, Whanganui tohunga met in the Pikimai whare wānanga at Rānana to reaffirm the determinations that would critically support Whanganui hapū and rangatira to retain our Whanganuitanga. The principal tohunga to participate in those wānanga were Tamakehu Kātene, Hōri Paamu Tinirau, Rākei Kīngi, Te Whatanui and later Te Rangimotuhia Kātene. Their foresight and leadership guided many significant hapū and iwi activities.⁶³

Whanganui tohunga met again in the early 1930s to determine the case to be presented in support of our Whanganui River claim. The Whanganui tohunga who participated in those determinations included Tamakehu Kātene, Hōri Paamu Tinirau, Tanginoa Tapa, Te Rama Whanarere, Titi Tihu and others. Their leadership not only determined our Whanganui River claim presented first to New Zealand's courts and then to the Waitangi Tribunal, but also most recently the 2014 Te Awa Tupua Agreement.⁶⁴

B Whanganui Iwi Submissions and Petitions

Beginning in 1876, Whanganui Iwi filed submissions and petitions with New Zealand asserting our Whanganuitanga.⁶⁵ In 1883, Whanganui Iwi, Ngāti Maniapoto, Ngāti Raukawa and Ngāti Tūwharetoa filed a parliamentary petition declaring we would decide our iwi boundaries ourselves and permit hapū licences to occupy but prohibit land sales. We firmly opposed the operation of the Native Land Court within our homelands. New Zealand nonetheless pressed ahead with it to wrongfully individualise and extinguish our collective nationhood.

60 See above n 9.

61 Albert, above n 28.

62 Wānanga = to learn and/or convene discussions about or based in whakapapa and tikanga; whakapapa atua = natural law or the relationships between all life including people as expressions of sacred life energy – and close and revered relations; and whakapapa tūpuna = relationships between people as close and revered relations.

63 Albert, above n 28.

64 Albert, above n 28.

65 Waitangi Tribunal, above n 5, at 184–195.

Whanganui rangatira filed petitions in 1887, 1888, 1895, 1913 and 1914 declaring as wrongful New Zealand's activities to remove Whanganui hapū pā tuna, utu piharau and utu inanga, extract large quantities of gravel from the River and take Whanganui hapū lands for scenic reserves.⁶⁶ Ngā Kōmiti Wāhine o Te Tai Hauāuru was an assembly of 151 Whanganui rangatira wāhine (female leaders) led by Mereaina Rauangina who filed the 1895 petition. Pauro Tūtaawhā and 66 other Whanganui rangatira and uri, Werahiko Aterea and 166 other Whanganui rangatira and uri, Te Wera Haeretūterangi and 196 other Whanganui rangatira and uri, and Waata Hīpango and 406 other Whanganui rangatira and uri filed the other petitions.

In 1927, Te Piki Kōtuku and 125 other Whanganui rangatira and uri filed a petition continuing to declare as wrongful New Zealand's activities to remove Whanganui hapū pā tuna and utu piharau, extract large quantities of gravel from the River, take Whanganui hapū lands for scenic reserves and release trout.⁶⁷ The release of trout had caused the loss of toitoi, pāriiri, papanoko, inanga, paneroro and tunariki.⁶⁸ New Zealand ordered a Native Land Court inquiry into the petition but none was ever held. Instead, New Zealand pressed ahead to wrongfully extinguish many Whanganui hapū and other life that was indigenous to Te Awa Tupua.

In 1934, Whanganui tohunga and rangatira Hekenui Whakarake, Wharawhara Tōpine and Titi Tihu therefore filed an application with the Native Land Court on behalf of Whanganui Iwi. It declared Whanganui Iwi to be the owners of Te Awa Tupua under New Zealand law. They asserted an ownership right in order to assert Te Kawa Ora and our Whanganui hapū legal and governance systems. So began the first of many court cases in which Whanganui Iwi acted to assert our Whanganuitanga and halt its extinguishment by New Zealand. We sought for New Zealand to reconcile itself and its laws with the principles of coexistence and interdependence.

C 1938–1962 Whanganui River Claim before New Zealand's Courts

Whanganui Iwi's first claim for Te Awa Tupua progressed through the courts over 24 years to become New Zealand's longest running case. Our declaration of ownership was for the River in its entirety. Under the rules set by New Zealand, however, its courts can only consider a claim for the land under the River, not its waters or catchment lands. The case was therefore limited to the Riverbed rather than the River as a living being and whole system.⁶⁹ In a 1944 Native Appellate Court decision, however, one judge held Whanganui Iwi to be the owners of Te Awa Tupua inclusive of its Riverbed and waters.

66 Pā tuna = eel weir; utu piharau = lamprey eel weir; and utu inanga = whitebait weir.

67 Waitangi Tribunal, above n 5, at 193.

68 Toitoi, pāriiri, papanoko, inanga, paneroro and tunariki are indigenous fish species of the Whanganui River.

69 Waitangi Tribunal, above n 5, at 196–197.

1 1934 Whanganui Iwi application

In the seven years leading up to our 1934 application, Hekenui Whakarake and Titi Tihu met with other Whanganui tohunga and rangatira to prepare the Whanganui Iwi case. Titi Tihu also worked closely with Whanganui hapū to fundraise to meet the substantial costs of litigation. Hekenui Whakarake and Wharawhara Tōpine presented our case to the Native Land Court. The case described Whanganui Iwi's right to Te Awa Tupua as being based on a close belonging to the River which in turn is based on whakapapa. It also described how our nationhood, which is comprised of the Earth, Sky and Waters of Te Awa Tupua, defines us as part of the River's natural life.⁷⁰

They explained that Whanganui hapū maintain mutually enhancing relationships with the River's lands and waters, each other and other iwi. More importantly, they argued that those relationships amount to an ownership right in New Zealand law with corresponding rights to enforce the authority of our Whanganuitanga. In presenting our case, they asserted a relationship of two nations and our respective legal and governance systems coexisting interdependently. They gave examples of how our Whanganui hapū systems of law and governance are based in Te Kawa Ora and tikanga Whanganui.

They described the names and location of each rapid on Te Awa Tupua and their respective pā tuna and utu piharau, which they explained belonged to Whanganui hapū and our papa kāinga. They also described the different kinds of tuna gathered from the River.⁷¹ They described how hapū gathered large amounts of kai according to the maramataka which included tuna, piharau and manu.⁷² Kai was gathered as hapū catches, some of which were preserved and stored while some were shared with other hapū. They explained that it was common for members of one hapū to visit others along Te Awa Tupua. If other iwi wanted to travel on the River, a Whanganui hapū would seek permission from the others on their behalf.

They explained that Whanganui Iwi have firmly and consistently opposed New Zealand's activities that adversely impact on the natural state of the River as being in breach of our Whanganuitanga. They described how those activities, along with the clearance of the River's indigenous rainforests, had severed many Whanganui hapū from our collective ways of life. That had forced many Whanganui uri to leave our papa kāinga, causing immense emotional, psychological, physical and collective distress.

70 At 199–203.

71 Tuna = eel(s).

72 Kai = food; maramataka = lunar phases which determine the correct time for gathering kai and observing other tikanga and whānau, hapū and iwi activities; piharau = lamprey eel(s); manu = bird(s). See also the brief discussion about the maramataka in Interview with Rereata Makiha, Ngāpuhi tohunga kōkōrangī (Saturday Morning, Radio New Zealand, 29 May 2021). Tohunga kōkōrangī = whare wānanga exponent in astronomy.

2 1939 Native Land Court and 1944 Native Appellate Court decisions

In its 1939 decision, the Native Land Court found that on the facts Whanganui Iwi did own Te Awa Tupua's Riverbed.⁷³ In doing so, it upheld the iwi case of two nations coexisting interdependently. It held that under the doctrine of native title the Riverbed is part of the territory and therefore property of Whanganui Iwi. More importantly, it held that Whanganui Iwi hold our property according to our legal and governance systems.⁷⁴ The Court held further that those property rights are to be respected by New Zealand unless we knowingly and willingly agree to relinquish them.

The Court also held that the Treaty of Waitangi guaranteed to Whanganui Iwi our property for so long as we wish to retain it. One judge noted that if it had been suggested to Whanganui rangatira that our lands would become the property of New Zealand under the Treaty of Waitangi, they unequivocally would not have signed it.⁷⁵ New Zealand appealed that decision to the Native Appellate Court. In its 1944 decision, the Native Appellate Court upheld the Native Land Court decision.⁷⁶ One judge held further that on the facts Whanganui Iwi owned Te Awa Tupua's Riverbed inclusive of its waters.

3 1949 Supreme Court, 1958 Māori Appellate Court and 1962 Court of Appeal decisions

New Zealand appealed those decisions to the Supreme Court. It argued that it was entitled to extinguish our Whanganui Iwi nationhood should it wish to secure our lands and waters for its own exclusive use and benefit. New Zealand unequivocally opposed the Whanganui Iwi case of two nations coexisting interdependently. In its 1949 decision, the Supreme Court upheld New Zealand's case.⁷⁷ It held that Whanganui Iwi had owned Te Awa Tupua's Riverbed, but that under the Coal Mines Amendment Act 1903 New Zealand had vested that ownership in itself.

Moreover, it went on to hold that New Zealand had the authority to do so. This was despite the fact that Whanganui Iwi had neither knowingly nor willingly agreed to relinquish our rights. Two weeks after the Supreme Court decision, Hekenui Whakarake and Titi Tihu met with ministers of the New Zealand nation state. They opposed the decision and sought an agreed solution by engaging in

73 *Whanganui River* (1939) Whanganui MB 226 (100 WG 226) as cited in Waitangi Tribunal, above n 5, at 203–205.

74 Under the doctrine of native title, Indigenous legal and governance systems are referred to as native customary law.

75 See above n 31.

76 *Whanganui River* (1944) 8 Wellington Appellate MB 35 (8 AP 35) as cited in Waitangi Tribunal, above n 5, at 205–206.

77 *The King v Morison* [1950] NZLR 247 (SC).

nation-to-nation acts of leadership and diplomacy. The ministers offered to establish a Royal Commission of Inquiry to consider our declaration of ownership.

In its 1950 report, the Royal Commission upheld the Supreme Court decision.⁷⁸ However, it also found that Whanganui Iwi were entitled to compensation for the large quantities of gravel that New Zealand was extracting from the River. New Zealand referred that issue to the Court of Appeal for determination. This time, it argued that Whanganui Iwi had in fact knowingly and willingly agreed to relinquish our rights prior to the Coal Mines Amendment Act. New Zealand was therefore not required to pay compensation for its gravel extraction.

The Court of Appeal sought the advice of the Māori Appellate Court.⁷⁹ Titi Tihu presented the Whanganui Iwi case to the Māori Appellate Court. In its 1958 decision, the Court dismissed Tihu's declaration of Whanganuitanga as "mere symbolism" rather than "practical realism".⁸⁰ It went on to hold that, because Whanganui Iwi had not previously asserted a collective ownership claim for our lands, we could not now make such a claim for the Riverbed. The case was sent back to the Court of Appeal.

In its 1962 decision, the Court of Appeal held that, given the findings of the Māori Appellate Court, Whanganui Iwi had knowingly and willingly relinquished our rights to the Riverbed.⁸¹ In 1999, the Waitangi Tribunal held the Māori Appellate Court and Court of Appeal findings to be factually incorrect.⁸² It found that Whanganui Iwi had, in fact, taken firmly determined steps to keep our nationhood intact by establishing kōmiti, rūnanga and rūnanganui, by engaging in nation-to-nation acts of leadership and diplomacy, and, where needed, by resorting to defensive military action.

It also found that Whanganui Iwi had firmly opposed the activities of New Zealand's Native Land Court and its other central, regional and local statutory bodies. Despite this, New Zealand pressed ahead with those activities to individualise and to extinguish our collective nationhood. The Tribunal found the Whanganui Iwi case – that we have never relinquished our Whanganuitanga – to be an understatement. It held that we have indeed gone beyond exhaustion to continue to assert it.⁸³

78 Harold Johnston "Report of Royal Commission Appointed to Inquire into and Report on Claims Made by Certain Maoris in Respect of the Wanganui River" [1950] II AJHR G2 as cited in Waitangi Tribunal, above n 5, at 212–219.

79 *Re the Bed of the Whanganui River* [1955] NZLR 419 (CA).

80 *Re the Wanganui River Bed* Māori Appellate Court Rotorua, 6 June 1958 as cited in Waitangi Tribunal, above n 5, at 227.

81 *Re the Bed of the Whanganui River* [1962] NZLR 600 (CA).

82 Waitangi Tribunal, above n 5, at 275–307 and 335–348.

83 At 286.

V 1975–ONGOING: WHANGANUI IWI RESILIENCE IN TE AWA TUPUA

By 1975, Whanganui Iwi and our nationhood had become seriously weakened by New Zealand's past and ongoing extinguishment activities. Moreover, New Zealand's nation state largely continues today to operate to extinguish our Whanganuitanga. Despite this, many Whanganui whānau, hapū, papa kāinga and pā are taking determined steps to restore Te Kawa Ora and tikanga Whanganui in our day-to-day life. This includes restoring whānau and hapū whakapapa and tikanga, and restoring papa kāinga, pā and hapū lands and waters. It also includes restoring te reo o Whanganui and tikanga Whanganui through the establishment of kōhanga reo, kura kaupapa, whare kura and wānanga.⁸⁴

Te Kawa Ora and tikanga Whanganui continue to guide Whanganui Iwi activity, and Whanganui whare wānanga and whare rūnanga continue to operate as our principal legal and governance institutions. Key iwi activities in this period included the establishment of the Whanganui River Māori Trust Board in 1988, Te Rūnanga o Te Awa Tupua and Te Pae Matua in 1996, and the 2002 Whanganui Iwi Declaration of Nationhood. Two activities of central importance were the 1994 Whanganui River claim heard by the Waitangi Tribunal and the 2014 Te Awa Tupua Agreement.

A 1994 Whanganui River Claim before the Waitangi Tribunal

In 1994, Whanganui Iwi continued our case for Te Awa Tupua by presenting a claim before the Waitangi Tribunal 60 years after we filed our first application in 1934. Whanganui Iwi once again asserted our Whanganuitanga and an ownership right to the River under New Zealand law. In doing so, we once again asserted a relationship of two nations and our respective legal and governance systems coexisting interdependently.

1 Whanganui hapū legal and governance systems

Whanganui Iwi explained again that our nationhood is defined by relationships rather than boundaries. Those relationships are first and foremost with Te Awa Tupua itself, then between Whanganui hapū and collectively as Whanganui Iwi, and then with other iwi and peoples. Nurturing in those relationships the collective Earth, Sky and Waters of Te Awa Tupua – and all the life within them, including its people – upholds Te Kawa Ora as the basis of our Whanganuitanga.⁸⁵

84 Kōhanga reo, kura kaupapa, whare kura and wānanga within Whanganui hapū provide nurturing and learning for young children, children, young adults and adults that is grounded in Te Kawa Ora, te reo o Whanganui (Whanganui language) and tikanga Whanganui.

85 Waitangi Tribunal, above n 5, at 55–89.

We reiterated that it would be inconceivable for anything other than natural law or Te Awa Tupua's life energy systems to prevail. Whanganui tohunga Matiu Māreikura explained it in this way:⁸⁶

The waters down in the Whanganui River are different from the waters in the Mangawhero here, or the Mangateitei over there, or the Manganui-a-te-ao. Each river has its own mana and its own korero.⁸⁷ And so it's not just water we're talking about, we're talking about the spirituality of the Whanganui River, the spirituality of the Manganui-a-te-ao, the spirituality of the Mangawhero River, the spirituality of the Mangateitei, all have a reason to be there and to run the courses that they run, for reasons far beyond us. Reasons that were put there right from the beginning.

We described kaitiaki as intrinsic to Te Awa Tupua's natural law. Kaitiaki are therefore also an integral part of Whanganui hapū systems of law and governance. Matiu Māreikura spoke about the important role of kaitiaki:⁸⁸

You know to take away my Kaitiaki, you might as well take away my life. I might as well give you my hand to sever from my arm, because that's what you do to me.

The Kaitiaki is very, very important for us because he is our connection to our rights to go to the river. You see it's not just going to the water, you have to talk to these things first. You sit, and you pray, and ask for their help, their assistance and their guidance and they give it to you and then you go. ... [W]e know that we have many Kaitiaki and we can inter-relate with them ... as we go up the river.

We referred to the River as a tupuna or our tupuna awa. Te Awa Tupua is a tupuna in the rich web of life it nurtures and sustains, including its people; and a tupuna who is part of our whakapapa and who ties and keeps its people together. Matiu Māreikura spoke about this saying:⁸⁹

The [Whanganui River] is ultimately our mana. Our tapu, our ihi, our wehi⁹⁰ ... It is our life cord, not just because it's water – but because it's sacred water to us. ...

86 Matiu Māreikura "Evidence Brief to the Wai 167 Whanganui River Claim Hearing" at 5. The Whanganui-Aotea tohunga Matiu Māreikura worked closely with the Whanganui-Aotea tohunga Rangitihī Tahupārae. I note that the latter led the kawa or formal opening (according to tikanga Whanganui) of Wellington's Old Government Buildings as Te Herenga Waka | Victoria University of Wellington Law School in 1996.

87 Kōrero, kōrero tuku iho = Indigenous philosophy and knowledge.

88 At 12. Kaitiaki = spiritual and physical beings that protect the mauri of the lands, waters and natural life of Te Awa Tupua, including its people.

89 At 2–3.

90 Ihi, wehi = spiritual relationship and sacred affinity of Whanganui hapū with Te Awa Tupua.

And so we go back to the river, and the river is the beginning, the beginning for our people from the mountain to the sea. It ties us together like the umbilical cord of the unborn child. ... Without that ... [life] has no meaning. ...

We have been taught to treasure the river ... [a]nd we care for it jealously, which is why we argue about the things that go on today. ... Without the river we really would be nothing ... [our] Whanganuitanga, is something to be always treasured ...

We also described how close relationships between hapū have been nurtured and sustained through a long historical record of collective action. That action has consisted of mutually enhancing acts of generosity towards each other and strong and determined leadership. If disputes arise between hapū, they are quickly followed by acts of reconciliation. Matiu Māreikura described the importance of nurturing a collective Whanganui Iwi:⁹¹

It is ultimately important to have those inter-hapu, inter-whanau, inter-tribal links and relationships. They are important ... because it's not good for Ngati Rangi to be okay and Ngati Tupoho not to be. It's no good for Hinengakau to be okay when Tamaupoko is not okay. ... We need one another for strength ... to hold ourselves together as a people ... Without that, we become individuals. That wasn't what the old people wanted us to do. ...

By being stronger together, it stops anything coming in from the outside ... It's important that we do these things and hold ourselves in that manner, to look after ourselves and our whakapapa. ... If you know your whakapapa, you can feel very good about being anywhere, because you know who you are, and ... wherever we go, we know how we're linked.

2 *New Zealand's activities to extinguish our Whanganuitanga*

Whanganui Iwi described some of the consequences of New Zealand's relentless drive to extinguish our nationhood. Matiu Māreikura described it as causing a separation of Te Awa Tupua from its people, as well as a separation of the people from each other:⁹²

Ultimately, by diverting the water away from us, Whanganui iwi, [through the Tongariro Power Scheme] they have severed our cord of unity. ... And that to us is sacrilege. ... And so you know the spirituality of that has untold heartaches; tears have flowed.

91 At 9.

92 At 4.

New Zealand's activities to extinguish our Whanganuitanga have left many Whanganui uri in a state of profound loss and grief which has been passed down the generations. We refer to this distressed state as "wairua poke".⁹³ Te Kuia Peeti described it in this way:⁹⁴

To my sorrow my own children and mokopuna have not grown up [with the river] ... what we had as children is no longer there. ... Our beautiful safe swimming places have all gone. Because so much of the water was taken away, and therefore made it inhospitable for fishlife to live, it was not uncommon for us to see dead [fish] floating down the river. Where once stood strong trees all along the river, we now have very serious erosion on our banks. ...

Where once we had crystal clear water flowing up and down our marae ... the river is filthy dirty most of the time ... our friend, tupuna, our whanau, has been desecrated. ... Where once we had a healthy waterway, we now have a sick river, which is dying ...

Tariana Turia explained further:⁹⁵

[My mother spoke of] her relationship with the River as if it was an integral part of her life. ... the river [was] their sustenance. It provided for them physically, spiritually, and culturally. ... I never understood this as a teenager, because my experience of the river down here at Putiki was that we were not allowed to swim or to eat kai from the river as it was polluted.

...

Our [young people] no longer have an affinity with their awa⁹⁶ ... They are wandering around our streets of Whanganui today with no sense of purpose in life. Some have taken their lives. It breaks your heart.

...

Our health which is tied irrevocably to the Awa has suffered. When the Awa became sick, so did the wellbeing of our Iwi. Such is our relationship.

3 *A sustained assertion of Whanganui Iwi nationhood*

Despite all that has happened, Whanganui Iwi remain steadfast in our determination to continue to assert our Whanganuitanga. Whanganui hapū continue to assert our legal and governance systems in a number of ways. One way is by maintaining our wānanga. Matiu Māreikura described the significance of maintaining wānanga and tikanga Whanganui:⁹⁷

93 See above n 54.

94 Waitangi Tribunal, above n 5, at 80.

95 At 80 and 84.

96 Awa = river.

97 At 57.

[Our Whanganui ruruku, tikanga,] poi, action songs and haka all go back to the river, and go the mountains, and to the sea.⁹⁸ We have been given the task to hold and preserve these things for our mokopuna – not for us, but for the generations yet to come. We do that because if we say it's for us, the time is only short, but if we say it's for our mokopuna, then that time is like this shadow.⁹⁹ It starts to spread out and spread out and spread out, and when our shadow is long, we are in line with the old people and [our tūpuna].

The Tira Hoe Waka began in 1989. It is a Whanganui Iwi wānanga in which uri journey the River's length and along the way learn about tikanga and our Whanganuitanga. Leon Rerekura described its significance:¹⁰⁰

The daily wananga on the awa and in the evenings around the fires [with] our [pāhake] were so special to me.¹⁰¹ The more I learned about the awa and our tupuna, the closer I felt to it and them. ... I have been able to share and experience the totality of Whanganuitanga with regards to learning some of the ancient ruruku and tikanga, concepts of aroha, manaakitanga, wairua, mouri, iwi, hapu, whanau.¹⁰² ...

Learning to appreciate the awa as they did has enhanced my own wairua and reasons for being. Mere words cannot express the feelings I have for our awa. I only know I am as much a part of the awa as it is of me.

B 1999 Whanganui River Report

In its 1999 report, the Waitangi Tribunal found our Whanganui Iwi declaration of nationhood and ownership of the River to be a declaration that the River and its people are one. It found that according to Whanganui hapū legal and governance systems the people do not own Te Awa Tupua but rather we are owned by the River. It also, however, found that relationship to amount to an ownership right under New Zealand law which extends to the Riverbed, its waters and catchment lands.

In upholding the Whanganui Iwi case, the Tribunal upheld a relationship of two nations and our respective legal and governance systems coexisting interdependently. The Tribunal therefore made two principal recommendations. First, that the whole of Te Awa Tupua, including its waters and catchment lands, be vested in a tupuna or tūpuna of the iwi. Secondly, that any resource consent in

98 Poi, waiata and haka are forms of Whanganui hapū ancestral literature.

99 Mokopuna = grandchild, grandchildren, future generations.

100 At 88.

101 Pāhake (te reo o Whanganui) = elders.

102 Wairua = spirituality, spiritual relationships. See also above n 15.

respect of the River be approved by a Whanganui Iwi consenting body either alone or jointly with a New Zealand consenting body.¹⁰³

C 2014 Te Awa Tupua Agreement

Our Whanganui River claim sought to exercise the authority of our Whanganui hapū legal and governance systems. We sought to require New Zealand to reconcile its activities that extinguish the spiritual and physical vitality of the River with Te Kawa Ora and Whanganuitanga. In doing so, we sought to restore a relationship of two nations coexisting interdependently. From 2002 to 2004 and 2009 to 2017, Whanganui Iwi engaged again in nation-to-nation acts of leadership and diplomacy with New Zealand. This time, we sought to find agreed solutions given the Waitangi Tribunal's report.

New Zealand unequivocally opposed the Tribunal's findings and recommendations. It was unwilling to recognise anything less than the unilateral authority of its legal and governance systems. It would, however, agree to a collaborative governance relationship with Whanganui Iwi for Te Awa Tupua. The 2014 Te Awa Tupua Agreement was passed into New Zealand law by the Te Awa Tupua Act 2017. It is set out in the two documents *Ruruku Whakatupua Te Mana o Te Awa Tupua 2014* and *Ruruku Whakatupua Te Mana o Te Iwi o Whanganui 2014*.

The agreement partially recognises Te Kawa Ora and Whanganuitanga within a new legal framework for the River under New Zealand law. It does this in four key ways. First, it centres the framework in a new status for Te Awa Tupua as "an indivisible and living whole comprising the Whanganui River from the Mountains to the Sea, incorporating its tributaries and all its physical and metaphysical elements".¹⁰⁴ It then provides for Tupua Te Kawa to further guide the framework. New Zealand statutory bodies that fall within the framework must recognise and provide for Te Awa Tupua and Tupua Te Kawa in their decision-making.¹⁰⁵

Tupua Te Kawa are the following four kawa or intrinsic values of Te Awa Tupua (which are also referred to as natural law in the agreement):¹⁰⁶

1. Ko Te Kawa Tuatahi

Ko te Awa te mātāpuna o te ora (The River is the source of spiritual and physical sustenance)

Te Awa Tupua is a spiritual and physical entity which supports and sustains the life and natural resources within the Whanganui River, and the health and wellbeing of the iwi, hapū and other communities of the River.

103 Waitangi Tribunal, above n 5, at 335–348.

104 Ruruku Whakatupua Te Mana o Te Awa Tupua 2014, cl 2.1.

105 Clauses 2.8–2.15.

106 Clause 2.7. See also above n 7.

2. Ko Te Kawa Tuarua

E rere kau mai te Awa nui mai i Te Kāhui Maunga ki Tangaroa (The great River flows from the mountains to the sea)

Te Awa Tupua is an indivisible and living whole from the mountains to the sea, incorporating the Whanganui River and all of its physical and metaphysical elements.

3. Ko Te Kawa Tuatoru

Ko au te Awa, ko te Awa ko au (I am the River, the River is me)

The iwi and hapū of the Whanganui River have an inalienable interconnection with, and responsibility to, Te Awa Tupua and its health and wellbeing.

4. Ko Te Kawa Tuawhā

Ngā manga iti, ngā manga nui e honohono kau ana, ka tupu hei Awa Tupua (The small and large streams flow into one another and form one River)

Te Awa Tupua is a singular entity comprised of many elements and communities working collaboratively for the common purpose of the health and wellbeing of Te Awa Tupua.

Secondly, the framework provides for the River to have legal personhood. This makes it tripartite in nature, with Te Awa Tupua deemed to be a party to it alongside Whanganui Iwi and New Zealand. The River is represented by Te Pou Tupua (the River Guardian) who functions in a leadership and governance role by acting to uphold Te Awa Tupua and Tupua Te Kawa, and administering the Te Awa Tupua Fund to assist projects that support and uphold Te Awa Tupua and Tupua Te Kawa.¹⁰⁷ In addition, the agreement vests ownership of New Zealand-owned parts of the Riverbed in Te Awa Tupua itself.¹⁰⁸ It notes that returning parts of the Riverbed to Te Awa Tupua is a first step towards restoring the River as a unified whole.

Thirdly, the framework provides for the Te Awa Tupua Strategy Group to develop collaboratively the Te Awa Tupua Strategy, which is centred in Te Awa Tupua and Tupua Te Kawa. New Zealand statutory bodies that fall within the framework must have particular regard for the strategy in their decision-making.¹⁰⁹ The strategy group functions in a leadership and governance role and comprises representatives from River iwi, central and local government, commercial, recreational and

107 Clauses 7.1–7.3. Te Pou Tupua are two persons appointed to a single position. One is appointed by Whanganui Iwi and the other by the New Zealand nation state. The inaugural and current Whanganui Iwi appointee is the Whanganui-Aotea whare wānanga exponent Tūrama Hawira. The inaugural New Zealand appointee was the Whanganui uri who served as the New Zealand Member of Parliament for Te Taihauāuru from 1996–2014, Kahurangi Dame Tariana Turia; and the current New Zealand appointee is the Whanganui uri Keria Ponga.

108 Clauses 6.1–6.29.

109 Clauses 4.1–4.24 and 5.1–5.48.

environmental groups, and other River communities. The strategy will identify and address issues that affect the environmental, social, cultural and economic health and wellbeing of Te Awa Tupua. Whanganui Iwi chair the group and lead the development of the strategy.

Fourthly, the framework provides for Whanganui Iwi (represented by Ngā Tāngata Tiaki o Whanganui) to function in a further leadership and governance role by recognising we have an interest in it which is greater than the public generally.¹¹⁰ Furthermore, the agreement provides for a range of Whanganui hapū and iwi activities that reaffirm and seek to restore us as part of the natural life of the River.¹¹¹ In particular, it recognises the significance of ripo (rapids) to the close relationship of Whanganui hapū with Te Awa Tupua.¹¹²

For Whanganui Iwi, the agreement's intent is to build with New Zealand a shared commitment to support the life and vitality of the River and its people. This will be achieved when the outcomes of the new framework reflect an understanding that the River is a living being and a whole system, and that its wellbeing and the wellbeing of all its natural life, including its people, are one and the same. Furthermore, the agreement provides a starting point for New Zealand to understand itself as part of the natural world (rather than separate from it), and for the natural world to guide its decision-making and activities alongside (instead of extinguishing) those of Whanganui Iwi.

D Indigenous Jurisprudence and Decolonisation

For Whanganui Iwi, the Te Awa Tupua Agreement is a first step in decolonising New Zealand's systems of law and governance.¹¹³ It is a starting point towards entirely reshaping New Zealand's relationship with Te Awa Tupua and Whanganui Iwi according to natural law. The end point will be reached when Te Awa Tupua determines (instead of participating in) all decision-making that affects the River and when the natural world determines New Zealand's constitutional framework. In addition, New Zealand's legal and governance systems will coexist interdependently with those of

110 Ruruku Whakatupua Te Mana o Te Iwi o Whanganui 2014, cls 6.1–6.9. Whanganui Iwi (represented by Ngā Tāngata Tiaki o Whanganui) hold this role only to ensure Whanganui hapū are supported by this interest. Whanganui leadership and governance remain with Te Kawa Ora by Whanganui hapū meeting collectively as Te Rūnanga o Te Awa Tupua and Te Pae Matua. These arrangements are set out as Te Kauwae Runga and Te Kauwae Raro in the Rārangi Matua Framework: Albert, above n 28.

111 Clauses 7.1–7.25 and 8.1–8.9.

112 Clauses 8.1.

113 Elaine C Hsiao "Whanganui River Agreement: Indigenous Rights and the Rights of Nature" (2012) 42 EPL 371 at 374.

tāngata whenua.¹¹⁴ In doing so, it will reconcile its parliamentary sovereignty with the natural sovereignty of the natural world and tāngata whenua.¹¹⁵

Worldwide, Indigenous peoples are building an emerging area of law which can be described as Indigenous jurisprudence. It is firmly grounded in Indigenous legal philosophy and law. The intent is to rebuild our Indigenous nationhood and restore relationships of interdependent coexistence with the Western nation states that have sought to extinguish us.¹¹⁶ Other important developments in this area of law are the United Nations Declaration on the Rights of Indigenous Peoples, and the Bolivia and Ecuador constitutions which provide for the rights of Grandmother Earth and Indigenous peoples.¹¹⁷

The closest Western law equivalent to Indigenous jurisprudence is the emerging area of Earth jurisprudence.¹¹⁸ Earth jurisprudence contends that Western peoples think of themselves as individuals and as more important than the natural world and Indigenous peoples. As a result, they do not accept the natural world and Indigenous peoples as their equal.¹¹⁹ It contends further that this consciousness is destroying the Earth and its natural life, including its diversity of peoples. It is also ultimately self-destructive.

Earth jurisprudence seeks to shift Western nation states towards a greater complexity in awareness and thinking that they are part of a sacred Earth community – and an expansion in consciousness. This will be achieved when Western legal and governance systems and their economies regulate

114 Aotearoa = one of the Indigenous/Māori names for New Zealand; and tāngata whenua = Indigenous peoples of Aotearoa, literally meaning the people of the land.

115 Albert, above n 28.

116 See for example Moana Jackson "Where to Next?: Decolonisation and the Stories of the Land" in Rebecca Kiddle and others (eds) *Imagining Decolonisation* (Bridget Williams Books, Wellington, 2020) 133; and Taiaiake Alfred *Peace, Power, Righteousness: An Indigenous Manifesto* (2nd ed, Oxford University Press, Ontario, 2009).

117 Moana Jackson "Constitutional Transformation" in Malcolm Mulholland and Veronica Tāwhai (eds) *Weeping Waters: The Treaty of Waitangi and Constitutional Change* (Huia Publishers, Wellington, 2010) 325. I note that Whanganui Iwi refer to Ranginui rāua ko Papatūānuku rather than Grandmother Earth by herself. See also Broughton, above n 7, at 6, where the Ngā Rauru-Aotea tohunga Ruka Broughton refers to the statement by the Te Arawa tohunga Te Rangikaheke "kotahi te tupuna o te tangata", which means people have one set of grandparents who are Ranginui and Papatūānuku.

118 Thomas Berry *Evening Thoughts: Reflecting on Earth as Sacred Community* (Sierra Club Books, San Francisco, 2006).

119 Similarly, in this article I distinguish between "Indigenous nationhood" and "Western nation states". "Indigenous nationhood" refers to Indigenous peoples and our legal and governance systems which are based in whakapapa, coexistence and interdependence. "Western nation states" refers to Western peoples whose legal and governance systems are based on individualism, self-interest and domination.

themselves as subsets of larger Earth legal and governance systems and economies, and alongside those of Indigenous peoples.¹²⁰

VI CONCLUSION

Speaking about the Te Awa Tupua Agreement, Whanganui Iwi lead negotiator and inaugural Ngā Tāngata Tiaki o Whanganui chairperson Gerrard Albert said:¹²¹

The reason we have taken this approach is because we consider the river [a tupuna] and always have. ... We can trace our [whakapapa] to the origins of the universe. ... And therefore rather than us being masters of the natural world, we are part of it. We want to live like that as our starting point. ... [T]o begin with the view that [the river] is a living being, and then consider its future from that central belief.

The Te Awa Tupua Agreement is one of many ways that Whanganui whānau, hapū, papa kāinga and pā and a collective Whanganui Iwi are working to rebuild our Whanganuitanga. We are seeking to restore the life and vitality of Te Awa Tupua – and to restore ourselves as part of the River's natural life. We continue to assert strong and determined leadership and engage in mutually enhancing acts of generosity towards the River, each other and others. The intent remains, as it has always been, to coexist interdependently with Te Awa Tupua, each other and others.

120 Peter Reason "Earth Community: The human economy is a subsystem of the Earth economy" *Resurgence* (United Kingdom, January/February 2001) at 10–14.

121 Eleanor Ainge Roy "New Zealand River Granted Same Legal Rights as Human Being" *The Guardian* (online ed, United Kingdom, 16 March 2017) at 1.