

"KEI A KOE, CHAIR!" – THE NORMS OF TIKANGA AND THE ROLE OF HUI AS A MĀORI CONSTITUTIONAL TRADITION

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Hui and hui rūnanga, Māori decision-making gatherings, are vital in Māori constitutionalism. Hui demonstrate the practical exercise of tikanga Māori. There is a set of relatively stable Māori legal norms, derived from tikanga Māori, that can be seen at work in such hui-based decision-making. These norms (mana, tapu, whakapapa, whanaungatanga and rangatiratanga) serve to strengthen and demonstrate group processes. They arguably do not establish merely optional guidelines for group behaviour; they can serve to constrain decision-making. A case study set in a hui in a modern Māori urban context serves to demonstrate the exercise of such Māori legal norms in civic decision-making.

I INTRODUCTION

Hui and hui rūnanga,¹ Māori gatherings, have an important place in Māori constitutionalism, particularly in the exercise of civic decision-making power.² The constitutionality of such hui derives from the practical exercise of tikanga Māori. This article argues that there is a set of relatively stable

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1 Hui rūnanga will often be larger assemblies. The term "hui" can refer to a gathering of any size.

2 See Māmari Stephens "A Loving Excavation: Uncovering the Constitutional Culture of the Māori Demos" (2013) 25 NZULR 820 at 823.

Māori legal norms,³ derived from tikanga Māori, that can be seen at work in hui-based decision-making. Such norms can be seen often in the historical narrative, and in modern contexts, and serve to demonstrate a certain degree of coherence within groups.

Tikanga-based Māori legal norms that appear fairly consistently in historical accounts, commentary and observation are:⁴

- (a) Whakapapa;
- (b) Whanaungatanga;
- (c) Mana;
- (d) Tapu; and
- (e) Utu.

Tikanga Māori include the deeper concepts encapsulated in the five legal norms listed here, as well as their specific manifestations in community life by way of practices, rules, interests, rights and obligations. Other norms of tikanga Māori are also vital, but these particular norms appear to reinforce each other in ways that seem significant in the context of group formation, group decision-making and group survival.

The norms identified here are deeply interlinked with each other and crucial to the formation of Māori descent groups. This article posits that such norms can also be crucial to modern Māori communities of practice that may not be connected primarily on the basis of kinship. Such communities of practice can comprise aggregates of people who come together for a project or mutual endeavour over an extended period of time. In the course of that engagement, shared language, beliefs, values and practices emerge.⁵

3 Use of the term "legal norm" and "norm" is discussed in Part II of this article.

4 In identifying five specific norms of tikanga to focus on in this article in the context of group formation and survival, I acknowledge Dr Mike Ross's work among his Waikato iwi and his identification of mana, tapu, utu and rūnanga as the four pou of Māori governance: Michael Ross "He iwi rangatira anō tātou i mua, kia pai te whakahaere o ngā tikanga mō te iwi. Kia mangu ki waho kia mā i roto: an investigation into the guiding processes and stabilizing processes of mana, tapu, utu and rūnanga in Waikato-Tainui" (Doctoral Dissertation, Auckland University of Technology, 2015). My work incorporates the notion of pou as "markers" of Māori jurisprudence, critically important in the establishment, survival and regulation of effective Māori groups.

5 Penelope Eckert and Sally McConnell-Ginet "Think Practically and Look Locally: Language and Gender as Community-Based Practice" (1992) 21 *Annual Review of Anthropology* 461 at 464; and Etienne Wenger *Communities of Practice: Learning, Meaning, and Identity* (Cambridge University Press, Cambridge, 1998) as cited in Stephanie Schnurr, Meredith Marra and Janet Holmes "Being (im)polite in New Zealand workplaces: Māori and Pākehā leaders" (2007) 39 *Journal of Pragmatics* 712 at 715.

For Māori descent groups and communities of practice, hui and hui rūnanga have long been the primary institutions for civic decision-making as well as the development of shared language and practices, including the validation and communication of the norms of tikanga.

The practice of hui survives to the modern day, and they are not usually examined as institutions of relevance to legal scholarship in Aotearoa New Zealand. Yet, hui can be constitutional moments within which the legal norms of tikanga Māori are clearly communicated, established and remembered. Hui may well be the pre-eminent Māori constitutional tradition, as an embodiment of cultural values and practices enabling decision-making.⁶ The discourse of hui can reveal how such norms can constrain behaviour, constrain the use of power, and how those constraints are accepted. Careful analysis of the language of hui can reveal that, even in the context of modern, pan-tribal hui in mundane circumstances, Māori group processes are controlled by specific norms of tikanga Māori. The discipline of sociolinguistics and the analysis of Māori hui-based discourse offer further insight: the language used in hui can reveal how the legal norms of tikanga Māori can be identified, but also *constituted* within the hui process.

*He Pounga*⁷ is a kaupapa Māori pilot research project based at the Faculty of Law at Victoria University of Wellington that explores tikanga Māori, keeping Māori legal concepts, Māori thinking and Māori people at the centre of analysis. To paraphrase Graeme Hingangaroa Smith, it is not enough simply to think in legal terms about the oppression and disproportionate disenfranchisement that Māori continue to experience by way of "state law".⁸ Instead, kaupapa Māori is a method, framework or approach that shifts the lens of analysis and genuinely centres Māori people and Māori practices.⁹

6 Some authors have recognised that hui can be constitutionally significant: see M H Durie "Proceedings of a Hui Held at Hirangi Marae, Turangi" (1995) 25 VUWLR 109; and Wendy Louise McGuinness, Miriam White and Perrine Gilkison *The Evolution of New Zealand as a Nation: Significant Events and Legislation 1770-2010* (Sustainable Future Institute, Wellington, 2010). See also David Williams' references to constitutionally important hui in David Williams "Constitutional Traditions in Maori Interactions with the Crown" (2014) 12 NZJPIIL 231; and Carwyn Jones "A Maori constitutional tradition" (2014) 12 NZPIL 187.

7 Pounga can refer to the digging of post holes or the erection of posts for the construction of a house or other purposes. See Herbert W Williams *Dictionary of the Māori Language* (7th edition, Legislation Direct, Wellington, 1998) at 297.

8 Graham Hingangaroa Smith "The Development of Kaupapa Māori: Theory and Praxis" (PhD Thesis, University of Auckland, 1997) at 36.

9 Following this precept, *He Pounga* examines the language of six decision-making hui Māori in urban settings. The project investigates how such hui in mundane and urban settings can contribute to the constitution and validation of tikanga Māori norms, and how such norms may bind or constrain the behaviour and decisions of hui participants. The study is an interdisciplinary one, using the tools of sociolinguistics (particularly the work of the Language in the Workplace project) and socio-legal studies, including indexicality studies, legal consciousness and legal recognition scholarship, with the overarching mode of kaupapa Māori placing Māori and Māori knowledge and experience at the heart of the analysis.

This article will suggest by way of a case study derived from *He Pounga* data in Part Two that hui-based discourse can show that individuals and groups can understand themselves to be constrained in the making of decisions by the existence of tikanga Māori. They accept tikanga Māori's claim to hold legal authority over them, even in the face of other claims to legal authority sourced in state power and state law.

A note about terminology: the term "state law", as used above, is a phrase that excludes Māori legal concerns that are already present in New Zealand law. "Tātai ture", by comparison, is a broad term that can refer to the system of laws produced by the institutions of the New Zealand state but can also include, within that system, rules and laws influenced by, and of direct relevance to, Māori and all New Zealanders, regardless of whether they are sourced from the legislature, the courts or other (for example, international) sources of law.¹⁰ In this article, therefore, this more inclusive term "tātai ture", rather than "state law" will be used to refer to the New Zealand legal system.

It is necessary, before diving into the primary materials, to spend some time establishing the context for exploration and interpretation of the language of hui. This article first considers definitions of tikanga Māori, and its recognition as law, along with its place within the broader notion of Māori jurisprudence. This article then also identifies the importance of groups in Māori jurisprudence and how the five specific norms of tikanga Māori create, maintain and control groups. The article then considers the constitutional importance of hui for Māori group processes, both in Māori legal history and in current practice today.

10 The word "ture" is itself a reworking by missionaries in Tahiti of "Torah", referring to Old Testament laws (to avoid the connotation of penile erection in the direct transliteration "tora" in Polynesian languages including Māori, see Richard Benton, Alex Frame and Paul Meredith *Te Mātāpunenga A Compendium of References to the Concepts and Institutions of Māori Law* (Victoria University Press, Wellington, 2013) at 462–464). Although ture is commonly used now to refer to law not originally created by Māori collectives, it is also clear that Māori from early arrival of translated scriptures, and the signing of the He Whakaputanga, the Declaration of Independence, have understood "ture" to refer to Māori-enacted law *as well as* Pākehā created law: see for example the 1835 text of He Whakaputanga, art 2:

... a ka mea hoki e kore e tukua e matou te wakarite ture ki te tahi hunga ke atu, me te tahi Kawanatanga hoki kia meatia i te wenua o te wakaminenga o Nu Tireni. ko nga tangata anake e meatia nei e matou e wakarite ana ki te ritenga o o matou ture e meatia nei e matou i to matou huihuinga.

... we also declare that we will not allow (tukua) any other group to frame laws (wakarite ture), nor any Governorship (Kawanatanga) to be established in the lands of the Confederation, unless (by persons) appointed by us to carry out (wakarite) the laws (ture) we have enacted in our assembly (huihuinga) [translation by Dr Mānuka Hēnare].

See Ministry for Culture and Heritage "He Whakaputanga – Declaration of Independence, 1835" (14 September 2021) New Zealand History Nga korero a ipurangi o Aotearoa <www.nzhistory.govt.nz>.

II PART ONE: TIKANGA MĀORI¹¹

The term "tikanga Māori" or simply "tikanga" is often used to refer to "Māori customary law", or "Māori law".¹² Some see tikanga Māori as co-extensive with the entire body of mātauranga Māori, or at least grounded in that Māori customary knowledge. Such mātauranga Māori include correct process and procedures¹³ (often referred to as kawa)¹⁴ for the placing and lifting of restrictions from people, places and objects. Others see tikanga Māori primarily as offering a set of precepts, principles or values which serve to drive behaviour and practice.¹⁵ Any such usage of the term tikanga Māori will be valid, depending on context. Any tikanga, to survive over time, must be *useful* in determining the "tika" or correct thing to do in the situation at hand,¹⁶ and tikanga must also be *genuine* – pono or tūturu – in the sense of being derived from Māori communities.¹⁷ Sir Hirini Moko Mead describes "tikanga" as actions, forms of actions and principle, repeated over time, enabling the correct regulation of social groups:¹⁸

... a set of beliefs and practices associated with procedures to be followed in conducting the affairs of a group or an individual. These procedures, as established by precedents through time, are held to be ritually correct, are validated by usually more than one generation and are always subject to what a group or an individual is able to do.

Correctness here can refer to procedural correctness as well as what might be morally or ethically just at a given moment. Correctness is validated across generations. Tikanga Māori can include specific rules derived from obligations (also referred to as "tikanga"), where an issue or breach of the rule can be identified and settled in some way, by way of punishment, spiritual sanction or some other response.

11 Some of the material reproduced in this Part is included in Māmari Stephens "Fires Still Burning? Māori Jurisprudence and Human Rights Protection in Aotearoa New Zealand" in Kris Gledhill, Margaret Bedggood and Ian McIntosh (eds) *International Human Rights Law in Aotearoa New Zealand* (Thomson Reuters, Wellington, 2017) 99.

12 Law Commission *Māori Custom and Values in New Zealand Law* (NZLC SP9, 2001) at 1–2.

13 Hirini Moko Mead *Tikanga Māori: Living by Māori Values* (Huia Publishers, Wellington, 2003) at 17.

14 Benton, Frame and Meredith, above n 10, at 117–120.

15 See for example Carwyn Jones, who describes tikanga "as a values-based system (as opposed to a rules-based system)": Jones, above n 6, at 190.

16 The Mātāhauariki Research Institute based at Waikato University published their compendium of customary law references: Benton, Frame and Meredith, above n 10, at 429.

17 Mead, above n 13, at 25.

18 At 12.

Such rules only exist, however, because tikanga Māori also comprises socially normative values and principles that set standards and create expectations in the first place for people to engage in correct and appropriate behaviour. The aim of such standards and expectations is to ensure and maintain peace and consensus and, thereby, community survival.¹⁹

The use of values and principles to direct behaviour to socially useful ends may not resolve an immediate issue or dispose of a particular problem as more obvious rules will do. Nevertheless, these values and principles will undergird the potential courses of action for relevant decision-makers to weigh and then take.²⁰

Some such tikanga will result in the establishment of useful habits and patterns that people of a community of practice will repeat and pass on, adding to their own cultural distinctiveness, while other tikanga will demand more of that community, giving rise to binding obligations that must be met. According to Dr Robert Joseph, the creation of obligations can be the point at which Māori law can be distinguished from mere habits of Māori custom.²¹ This is not the only point of distinction but may well be a key one.

The basis of tikanga Māori is whakapapa and relationships between people. Tikanga Māori is therefore, inescapably, a messy political and legal phenomenon.²² As articulated by Val Napoleon, everyday life, including the messy and mundane, cannot be separated out from the phenomenon of law in Indigenous legal thinking.²³ Uncertainty and fluidity in Māori legal thought and practice, therefore, is consistent with Māori political reality, springing from the same source: the primacy of relationships in the Māori worldview.

19 Joseph Williams "Lex Aotearoa: An Heroic Attempt to Map the Māori Dimension in Modern New Zealand Law" (2013) 21 Waikato L Rev 1.

20 A very clear example of tikanga illuminating a choice of a path or paths to take is examined in the case study in Part Two.

21 Robert Joseph "Re-creating Legal Space for the First Law of Aotearoa New Zealand" (2009) 17 Waikato L Rev 74 at 85.

22 As is Māori constitutionalism. The creation of law and legal precepts in Māori communities inevitably arises out of what Mark Hickford describes as "rivalrous, fractious and contestable" relationships: Mark Hickford "Historicity and the Political Constitution" (2019) 30 KLJ 97 at 111.

23 Hadley Friedland and Val Napoleon "Gathering the Threads: Developing a Methodology for Researching and Rebuilding Indigenous Legal Traditions" (2015) 1 LLJ 16 at 33.

III WHAT COUNTS? RECOGNISING TIKANGA MĀORI AS "LAW"

The true story of the recognition of tikanga Māori as Māori law is not told in ethnographical descriptions of Māori social and sacred behaviours. Nor will it be found in the positivist debates²⁴ in courts or academic institutions about when the bright line is crossed between mere social habit and enforceable obligations. It will not be seen in discussions on the fine distinctions on who may "count" as officials in a true legal system pursuant to HLA Hart's rule of recognition.²⁵ Such descriptions and debates about what behaviours are, and how such behaviours might "count" as law in any society are illuminating, but almost inevitably locate and centralise the phenomenon of all law as a product of Western thinking.

The term "law" is broad indeed, and requires other terms to clarify the nature of the law at issue and what is demanded of the people bound by such law. "Rules", for example, are legal directives that require strict compliance, and might be considered "law" more readily than other instructions or directives. The question of breach is binary: either a person breaches the rule or does not. "The maximum speed-limit in this road is 100 kilometres per hour" provides a clear enough example of a legal rule. A person either breaches this rule, or she does not. Of course, the extent to which the rule may be enforced might depend on other factors.²⁶ By comparison, a "principle" seeks to promote a certain kind of behaviour and does not provide a binary choice. Drivers may be required to drive carefully, with no indication of what "careful driving" is.²⁷ This is a principle at work: drivers should

24 A positivist understanding of law also holds that the limits of individual laws are knowable, as is the limit between what counts as law and what does not. In positivist thinking, law is a distinctive sphere of human activity; rules, principles and norms can be identified that meet observable and set criteria so that they can meet the standard required for "law".

25 The most prominent and arguably foundational positivist legal theorist is HLA Hart, who identifies two conditions for the existence of law and a legal system. The first criterion consists of primary rules of behaviour that have to meet an ultimate criterion of validity (the "rule of recognition"). These rules are to be generally obeyed. The second criterion is made up of secondary rules of recognition, change and adjudication; these standards are recognised by officials: HLA Hart *The Concept of Law* (2nd ed, Oxford University Press, New York, 1997) at 116.

26 At the time of writing an earlier draft of this article, the grounds of the Parliament Buildings in Wellington New Zealand had been occupied by several weeks by anti-vaccination mandate protestors. Many rules were breached at the time, but there were relatively few instances of enforcement against those who breached the rules. Law enforcement was light-handed due to considerations other than the legal breach.

27 Of course, the absence of care in driving may be penalised. Under s 8 of the Land Transport Act 1998, drivers are under a duty not to drive carelessly, and if they do drive carelessly they can be penalised (for example, under s 38, careless driving causing injury or death).

drive carefully, but the standard of behaviour required to be careful in driving is flexible, and what "counts" as careful driving may differ in specific circumstances.²⁸

Much of tikanga Māori involves the application of principles, but the term principle does not adequately describe the operation of tikanga Māori in given circumstances. The English language term likely to be most useful in discussing what comprises a large proportion of Māori law, including tikanga Māori, in Aotearoa New Zealand is "norm". The term "norm" in this article refers in a general sense to standards, conventions, values, principles, obligations and expectations that individuals and collectives are expected to abide by, and importantly, that they *accept* themselves to be bound by.²⁹ Such norms guide and direct actions.³⁰ There can be sanctions for breaching norms, and the language of "norms" is compatible with the maintenance of relationships.³¹ Māori processes and self-definition are perhaps better respected on their own terms by the use of the word "norm" or "legal norm" (rather than "law", "lore" and "custom") to describe behaviours in dynamic Māori communities.

A focus on legal norms also requires a focus on the *people* whose interactions and whose language provide the evidence for the patterns that reveal the existence of norms in the first place.³² Legal norms, and the ways in which we determine the rules and principles that govern us, depend on the behaviours of real people.³³ People make and also recognise such norms. As indicated by Brian Tamanaha in discussing legal realism, "law (and translations thereof) *is* whatever social groups

28 My thanks to Joel Colón-Rios for pointing me to this articulation. See also Ronald Dworkin "The Model of Rules" (1967) 35 U Chi L Rev 14 at 25; and Ronald Dworkin *Taking Rights Seriously* (Harvard University Press, New York, 1977) at 24.

29 Note the test applied by the Supreme Court (now High Court) in *Public Trustee v Loasby* (1908) 27 NZLR 801 (SC) in determining whether or not to consider Māori custom (in that case, a tangihanga or mourning process for the dead). The test required a determination as to: (1) whether the custom is a general one; (2) whether the custom is contrary to statute; and (3) whether the custom is reasonable in the circumstances. In determining that the tangihanga in that case was a "general custom", Cooper J accepted the arguments of counsel that a general custom that was "not unreasonable" would also be one that would be "considered morally binding by the Maoris themselves": see headnote and 804–805.

30 See Gordon Christie "Obligations', Decolonization and Indigenous Rights to Governance" (2014) 27 CJLJ 259 at 266 (following Raz).

31 Hickford, above n 22, at 112–113.

32 For example, this can be seen in the case of indigenous peoples' norms in the international law context: see Raizda Torres "The Rights of Indigenous Populations: the Emerging International Norm" (1991) 16 Yale J Intl L 127 at 145–146 as cited in Claire Charters "The Legitimacy of Indigenous Peoples' Norms under International Law" (PhD Thesis, University of Cambridge, 2011) at 14, n 18.

33 New Zealand jurists affirmed this realism in the context of constitutions: see John Salmond *Jurisprudence: Or The Theory of Law* (Sweet and Maxwell, London, 1902) at 203 as cited in Janet McLean "Crown Him With Many Crowns: The Crown and the Treaty of Waitangi" (2008) 6 NZJPIL 35 at 35; and Matthew Palmer *The Treaty of Waitangi in New Zealand's Law and Constitution* (Victoria University Press, Wellington, 2011) at 19–20.

conventionally attach the label 'law' to".³⁴ A theory of law that focuses on what people actually do brings with it dangers of over-inclusiveness that may make the labels of law and legal norms meaningless. Nevertheless, collective recognition of what counts as binding matters.³⁵

Such people may accept legal norms as binding in their lives; they may criticise others who do not, considering that these norms create standards that others ought to accept. This acceptance is referred to as the "internal point of view",³⁶ as is sometimes expressed by Māori individuals who consider themselves bound by the norms of tikanga Māori and say phrases like "that was not tika", or "that is not our tikanga".³⁷ Those who accept norms of tikanga Māori as binding in their lives will usually inhabit some culturally Māori ways of life. As Sir Hirini Moko Mead observed, "People who are committed to being Māori generally consider themselves to be bound by tikanga Māori."³⁸ Such commitment need not be expressed to the world at large, just lived.

The norms underpinning tikanga Māori take on a stronger degree of authority when affirmed in Māori group processes. Such norms will be used to solve problems and provide reasons to determine actions far more readily in a group context than outside it. In certain circumstances, Māori groups can establish institutional authority about what is permitted, what is possible and what is obligatory under the norms of tikanga Māori.³⁹ Such norms will be communicated orally and can be adapted in changing circumstances.⁴⁰

There is no space to articulate an overarching theory of Māori tikanga as law in this article, nor even a coherent account of Māori legal norms. Such norms form part of a whole but cannot comprise it. We turn now to consider an important and under-theorised part of that whole.⁴¹

34 Brian Z Tamanaha *A Realistic Theory of Law* (Cambridge University Press, Cambridge, 2017) at 194.

35 At 48: "Law in the first instance is a folk concept because law *is* what people see as 'law'".

36 HLA Hart termed this kind of acceptance as "the internal point of view": Scott J Shapiro "What Is the Internal Point of View?" (2006) 75 *Fordham L Rev* 1157 at 1157 and 1164.

37 This kind of affirmation has a particular role in Māori hui-based discourse, as will be referred to in Part Two of this article.

38 Mead, above n 13, at 7. By the same token, Sir Hirini Moko Mead here also cautions that culturally disconnected Māori individuals may no longer understand themselves to be bound by tikanga Māori.

39 Christie, above n 30. See also the case study in Nicole Roughan "A Case Study in Relative Authority: Crown-Māori Relationships in New Zealand" in *Authorities: Conflicts, Cooperation, and Transnational Legal Theory* (Oxford University Press, New York, 2013) 216.

40 Joan Metge *Commentary on Chief Judge Durie's Custom Law* (Unpublished Custom Law Guidelines Project Paper, 1997) at 5 as cited in Joseph, above n 21, at 83.

41 I am grateful to the anonymous peer reviewer who directed me to the legal realism of Brian Tamanaha and to the legal theory framework set out by Michael Twining, which sets out four tasks for a theoretical framework: (1) to create a coherent total picture of law-in-the-world as peoples seek to manage themselves; (2) creating

IV CONSTITUTING THE GROUP – KO NGĀ POU E RIMA⁴² – FIVE MARKERS OF MĀORI JURISPRUDENCE

Identifying effective groups to pursue such an analysis, particularly in urban contexts, can be difficult. What might "count" as an effective decision-making group is of primary importance for iwi, hapū and some pan-tribal groups in the Treaty settlement context, as the New Zealand state requires formalisation of group membership in order for settlements to be completed. Such requirements generate a formal tribal constitutionalism that Kirsty Grover notes has unavoidably deep impacts upon the developing identity of indigenous groups as they seek political recognition.⁴³ Despite these constraints, it is still fruitful, as far as it can be possible, to focus on Māori views of the world that explain the dynamic and extraordinarily flexible nature of Māori group formation in the first place.⁴⁴

This Part examines how five pou (whakapapa, whanaungatanga, mana, tapu and utu) appear again and again in historical narratives. They seem to serve to constitute valid groups that can, in turn, legitimate and enact legal norms. The pou can also explain group interconnection and group regulation.

A Whakapapa and Whanaungatanga

Whakapapa is a constantly self-renewing matrix of ancestral connections. Each connection brings with it access to more knowledge, as well as specific obligations and entitlements. Group members may emphasise or de-emphasise different obligations and connections in acknowledging their

and clarifying important general concepts of law and how that law might require language to facilitate interface between systems of law; (3) developing generally normative principles as well as clarifying values and determining the universality of those principles and values; and finally (4) considering how to theorise participation in real time within the law, including, for example, in constitution-making and dispute resolution. This work, when viewed in the light of legal realism and Twining's framework, can only be seen as a tiny piece of a larger whole of the Māori legal (and constitutional) order. See William Twining *Globalisation and Legal Theory* (Cambridge University Press, New York, 2000) at 242; and see Valerie Ruth Napoleon "Ayook: Gitksan Legal Order, Law, and Legal Theory" (PhD Dissertation, University of Victoria, 2009) for the application of the Twining framework in an indigenous legal order.

42 In the choice of five pou, I acknowledge Dr Mike Ross's work (see Ross, above n 4) and also allude to the pou whenua established in the tribal rohe of Te Rarawa in 2009 to mark the establishment of a rāhui prohibiting the gathering of seafood between Te Kohanga and Tauroa Point. Two of those pou, Te Aho and Te Omu, were vandalised in 2019, causing widespread community concern. The pou were restored in December of that year, strengthening the relationships and iwi and hapū identities of the area. See "Far North iwi replaces two vandalised pou" *The Northern Advocate* (online ed, New Zealand, 19 December 2019).

43 Kirsty Grover *Tribal Constitutionalism: States, Tribes, and the Governance of Membership* (Oxford University Press, New York, 2010) at 161–165.

44 For a provocative account of the flexibility of Māori hapū formation, often in response to political imperatives and traditionalism, see Robert Joseph "The government of themselves: Indigenous peoples' internal self-determination, effective self-governance and authentic representation - Waikato-Tainui, Ngāi Tahu and Nisga'a" (PhD Dissertation, Waikato University, 2006) at 239–362.

whakapapa to others. Such connections can be nurtured or abandoned; they can shine or fade according to political necessity and relevant circumstances. Each acknowledged connection gives rise to obligations and entitlements.

This dynamism shows that the effective descent group or collective itself is not the foundational moral particle of Māori society,⁴⁵ but such groupings comprise a characteristic of that society. Rather, *whakapapa* establishes the moral fabric of the Māori universe.⁴⁶ Metaphorical language can assist here to a point. David Jones, examining the role of whakapapa in governance issues for his Rongowhakaata people, refers to understanding whakapapa as a "takapau wharanui", the birthing mat woven for the arrival of a chiefly child, that illustrates the connections of Māori people to each other and the world around them, and provides the framework for understanding rights and obligations under tikanga Māori.⁴⁷ Jones describes the takapau wharanui as a powerful metaphor for the coherent woven collective genealogies that every Māori person can connect with or relate to, acknowledging that in the modern world all Māori people now descend from, or connect to, chiefly lineage, rather than only the first-born of senior descent lines.⁴⁸

Not only do the aho (threads) of whakapapa embody and lay down⁴⁹ connections between humans, it also encompasses the processing and transmission of knowledge between and among whakatipuranga (generations), between the human, animal, spiritual and the divine. The spiritual world (te ao wairua) generates, and sometimes intermixes with, the physical world (te ao kikokiko),

45 As suggested, and then debunked, by Andrew Sharp "'What If Value and Rights Lie Foundationally in Groups?' The Maori Case" (1999) 2(2) *Critical Review of International Social and Political Philosophy* 1 at 4.

46 For the importance of whakapapa, see Cleve Barlow *Tikanga Whakaaro: Key Concepts in Maori Culture* (Oxford University Press, Tāmaki Makaurau, 1991) at 171–174.

47 David John Rodney Jones "Whakapapa Membership and Post Settlement Governance Entities: The Erosion of Whakapapa as the Heart of Māori Institutions?" (LLM Dissertation, Victoria University of Wellington, 2013).

48 At 27. David is a highly accomplished weaver, and even in my own experience as a (very) novice weaver, the use of the term "whakapapa" to denote the laying flat of the base of a woven item such as a konae is common.

49 Whakapapa literally means to "place in layers": Williams, above n 7, at 259.

and whakapapa spans and connects both worlds.⁵⁰ The whakapapa and whanaungatanga connections between atua and people can be viewed as the source of tapu and mana.⁵¹

The existence of connections by way of whakapapa determines how people live and interact with each other through time and in place. Further, those whakapapa connections give rise to norms, including principles, rights and obligations between people. The group may be the vehicle, but whakapapa enables and facilitates various permutations of collective identity and group membership, particularly the descent groups of Māori society, being the whānau, the hapū, the iwi, and confederations between such groups that coalesce and disaggregate for specific political and constitutional purposes.

The importance of whakapapa remains in modern Aotearoa New Zealand. If whakapapa provides a means of *identifying* those with rights, obligations or interests in resources such as people and land, the guiding principle of whanaungatanga provides a means of building relationships between people.⁵² Whanaungatanga is broadly understood today to refer to relationships between people, especially the notion of *collective obligation* within kin groups whereby the collective is entitled to expect the support of its individuals, and individuals are entitled to the support of the collective.⁵³ The importance of whanaungatanga and its grounding in whakapapa cannot be understated, yet whanaungatanga also enables those without blood connections to be incorporated into Māori kin groups without necessarily "doing violence" to whakapapa.⁵⁴

50 Māori Marsden "God, Man and Universe: a Māori view" in Michael King (Ed) *Te Ao Hurihuri – The World Moves On: Aspects of Māoritanga* (Longman Paul, Auckland, 1981) 143 at 160. See also Tania M Ka'ai and others *Ki Te Whaiao: An Introduction to Maori Culture and Society* (Pearson Education, Auckland, 2004) at 13 as cited in Mānuka Hēnare *Brief Of Evidence of Manuka Henare on behalf of Te Runanga O Te Rarawa before the Waitangi Tribunal* (Wai 45, 2012) at [20]. Both te ao wairua and te ao kikokiko emanate from Te Kore, unlimited and unorganised potential. See also Te Ahukaramū Charles Royal "Te Ao Mārama – Te Ao te Pō" in *Te Ara: the Encyclopedia of New Zealand* (Manatū Taonga–Ministry for Culture and Heritage, 2007), citing Barlow, above n 46, at 55.

51 Henare Arekatera Tate "Towards Some Foundations of a Systematic Māori Theology: He Tirohanga Anganui ki etahi Kaupapa Hohonu mo te Whakapono Māori" (PhD Dissertation, Melbourne College of Divinity, 2010) at [2.5.3.2.1.5]. Pa Tate speaks specifically of whakapapa and whanaungatanga as the source of tapu and mana in a pre- and post-Christian context in Māori thought.

52 This is a point demonstrated by the case study in Part Two, where none of the participants is connected by whakapapa, but whakapapa still drives decision-making within the context of an urban group.

53 Mead, above n 13, at 28.

54 Nin Thomas "Key Concepts of Tikanga Māori (Māori Custom Law) and their Use as Regulators of Human Relationships to Natural Resources in Tai Tokerau - past and present" (PhD Thesis, University of Auckland, 2006) at 75.

Whanaungatanga is no longer restricted in modern practice to people connected by blood relationships.⁵⁵ It can also incorporate those who are already connected, and those who *become* whanaunga, by way of shared experiences,⁵⁶ shared language, shared purpose and shared practice. Māori communities of practice therefore can exist beyond descent groups such as whānau, hapū and iwi, incorporating other collective groupings of choice. A common example is the establishment of pan-tribal or urban marae, such as university-based marae Te Herenga Waka at Victoria University of Wellington, or pan-tribal marae in the community, such as Ngā Hau e Whā o Paparārangī marae in Newlands, also in Wellington. Such complexes can only function because of shared vision, shared practice and shared willingness to uphold obligations to the marae and its people, regardless of kinship-based connection.

Thus, whanaungatanga can facilitate the development of a sense of *civic* obligations whereby Māori individuals and collectives begin to accept that decisions could be made for and on behalf of Māori groups *outside* immediate kin-based connections.⁵⁷ The signing by some northern rangatira of He Whakaputanga o Te Rangatiratanga o Nu Tireni (The Declaration of Independence) in 1835–1839⁵⁸ sought to establish civic decision-making assemblies beyond those of the immediate hapū and has long been seen as a constitutional milestone, especially for iwi and hapū of Te Taitokerau.⁵⁹ The signing of Te Tiriti o Waitangi in 1840 and the establishment of the Kīngitanga in 1858 were both constitutional events that increasingly recognised the possibility of Māori kin-based collectives coalescing broadly, even unifying, for civic and political reasons beyond their own immediate iwi and hapū interests, although still upholding the interests and needs of their peoples.

B Mana, Tapu and Utu

Whakapapa and whanaungatanga may provide the fabric for the formation of Māori descent groups and communities of practice, but the creation, viability, survival and effectiveness of such groups and communities depend on the appropriate and correct exercise of authority, responsibility, accountability, power and influence. The exercise and control of mana, tapu and utu are therefore crucial.

55 Jones, above n 6, at 192.

56 Mead, above n 13, at, 28–29.

57 Stephens, above n 2, at 820–843.

58 For the Waitangi Tribunal's conclusions on hapū and iwi unification at the time of the signing of He Whakaputanga, see Waitangi Tribunal *He Whakaputanga me Te Tiriti: The Declaration and the Treaty: The Report on Stage 1 of the Paparahi o Te Raki Inquiry* (Wai 1040, 2014) at [4.7.1].

59 *He Whakaaro Here Whakaumu mō Aotearoa: The Report of Matike Mai Aotearoa – The Independent Working Group on Constitutional Transformation* (Auckland, 2016) at 44–49. See also Waitangi Tribunal, above n 58, at 214.

As indicated earlier, tapu and mana can be regarded as sourced in whakapapa and whanaungatanga, and are deeply interconnected; one cannot exist without the other, both are concepts that can sometimes be used interchangeably, and both derive from te wāhi ngaro (the unseen realm, which may include specific atua).⁶⁰

Tapu has further been described as a "spiritual institution set up for political purposes" as a form of social control, regulating behaviour and setting behaviour standards.⁶¹ The institution of tapu involved only the highest ranked ariki and tohunga imposing appropriate ritual restriction upon people, places and objects, with accompanying moral guidelines for safe conduct.⁶² In regard to the person, the state of tapu refers to the often ritualised setting apart of the person possessing mana for the spiritual purposes of the atua. In Māori Marsden's view, tapu did not involve notions of righteousness or purity, but *did* involve the imposition of an enforceable obligation.⁶³

... it suggests a contractual relationship has been made between the individual and his deity whereby a person dedicates himself in return for protection against malevolent forces and the power to manipulate his environment to meet needs and demands [of people].

Tapu can also be seen as a way of controlling access to te wāhi ngaro, the realm of the divine, and of ensuring that appropriate acknowledgment and respect is paid to that realm, both in traditional spiritual contexts as well as in a Māori Christian context.⁶⁴ The nature of the relationship between atua and people within whakapapa is also understood to have an inherent quality of tapu.⁶⁵ Breach of tapu can involve the failure to observe appropriate acknowledgment of the divine.

Further, tapu may be understood, to some degree, as a mechanism to control and correctly direct the force of a person's mana. A breach of tapu can also involve matters such as the failure to observe restrictions in the case of death, serious illness, burial and the cutting of hair from the head. Such breaches would mean that the psychic force of mana itself could then be left uncontrolled and could cause great harm.

60 Marsden, above n 50, at 160. See also Ross, above n 4, at 12.

61 Bishop Manuhua Bennett in "Te Pū Wānanga Transcript No 2" (Seminar with Bishop Manuhua Bennett, Bishop Whakahuihui Vercoe and Mr Te Ariki Morehu, Te Mātāhauariki Research Institute, University of Waikato, 23 March 2000) as cited in Benton, Frame and Meredith, above n 10, at 409.

62 Ross, above n 4, at 25.

63 Te Ahukaramū Charles Royal *The Woven Universe: Selected Writings of Rev Māori Marsden* (Estate of Rev Māori Marsden, Ōtaki, 2003) at 5. See also Marsden, above n 50, at 160.

64 Tate, above n 51, at [2.4.1.3].

65 At [2.5.3.2.1.5].

Mana is a term of ancient relevance referring to such psychic force⁶⁶ throughout Polynesia and Aotearoa and it has a solid presence in variants of the English language as well.⁶⁷ Mana is also understood to have several distinct legal senses, prime among them being "authority", to "enact" law and "jurisdiction".⁶⁸

Related to the notion of mana as a psychic force, personal mana also refers to a man or woman possessing both authority and decision-making power in the context of Māori society.⁶⁹ While mana must be controlled, channelled and used appropriately, the degree of an individual's mana will be determined by his or her whakapapa, his or her place within the kinship group, taking into account factors such as ancestry and birth order.⁷⁰ A concept such as sovereignty in the Westminster system demonstrates that ultimate authority derives from an identifiable single source, reticulated through various channels. In Māori thought, authority resides in many sites and is contestable.

As mana is determined by whakapapa, it is also true that mana is derived from atua, including Papatūānuku; therefore, it derives also from whenua.⁷¹ Mana can derive from land and also enables

66 Benton, Frame and Meredith, above n 10, at 154.

67 Mary Boyce "Mana Aha-Exploring the Use of Mana in the Legal Maori Corpus" (2011) 42 VUWLR 221 at 229–232.

68 Māmari Stephens and Mary Boyce *He Papakupu Reo Ture – A Dictionary of Legal Māori Terms* (LexisNexis, Wellington, 2013) at 36. The Legal Māori Corpus (LMC) was designed and compiled to provide evidence of the use of Māori terms for Western legal concepts. It was designed as a large lexicographic corpus (approximately 8 million words of legal Māori texts) to provide information to underpin the writing of entries for the dictionary. The corpus is searchable at <www.legalmaori.net/corpus>.

69 Benton, Frame and Meredith, above n 10, at 154.

70 Mead, above n 13, at 29–30.

71 A very clear example of the notion that collective mana derives from land can be seen in art 2 of He Whakaputanga o Te Rangatiratanga o Nu Tirenī, The Declaration of Independence, signed by Northern rangatira from 1835 and 1839. The text of art 2 states (emphasis added):

Ko te Kingitanga, ko te mana i te wenua o te wakaminenga o Nu Tirenī, ka meatia nei kei ngā Tino Rangatira anake i tō mātou huihuinga; a ka mea hoki, e kore e tukua e mātou te wakarite ture ki tētahi hunga ke atu, me tētahi Kawanatanga hoki kia meatia i te wenua o te wakaminenga o Nu Tirenī, ko ngā tāngata anake e meatia nei e mātou, e wakarite ana ki te ritenga o tō mātou ture e meatia nei e mātou i tō mātou huihuinga.

All sovereign power and authority within the territories of the United Tribes of New Zealand is hereby declared to reside entirely and exclusively in the hereditary chiefs and heads of tribes in their collective capacity, who also declared they will not permit any legislative authority separate from themselves in their collective capacity to exist, nor any function of government to be exercised within the said territories, unless by persons appointed by them, and acting under the authority of laws regularly enacted by them in Congress assembled.

mana to be exercised over that land. A landless person with no standing place on the land, no tūrangawaewae, no spiritual protection, can thereby lose mana.⁷²

An individual's or a people's mana can extend beyond their own person to cover objects, land or people over which they have control. When Ngāti Kahungunu rangatira Arihi Te Nahu wrote of her disgust at the actions of Henry Russell in giving her property to someone else to reside in, she wrote not merely that she had lost her possessions, but that the interloper had sought to deprive her of her authority over them:⁷³

Katahi ka riro katoa te mana o aku mea ki taua Pakeha. Ka tonu au i tetahi tangata ki te tiki rakau maku ka panaia mai e taua Pakeha. ... Kahore hoki i tukua e au ki a ia te mana o aku rakau, me aku heihei ...

Then the authority [mana] over my things was given to this Pākehā. I asked for someone to collect wood for me and that person was driven out by this Pākehā. I never gave to him authority [mana] over my trees or my fowls ... [author's translation]⁷⁴

Mana is not solely determined by kin-based membership of the group. Individuals can achieve mana or have it recognised by reason of their actions. An individual's mana imports its own set of duties and obligations. As an individual's mana can be understood as a manifestation of the favour of atua, earning that favour, keeping it, protecting it and acknowledging its presence in others has long been a major driver for behaviour in Māori collectives.⁷⁵ The higher the level of personal mana accruing to a person (or place or object), the stricter the ritual control by way of tapu would need to be and the more severe the consequences of a breach.

According to Mānuka Hēnare, the Māori text reflects the idea that sovereignty ("kīngitanga" in this text) resided in the *collective mana of rangatira in assembly*, by virtue of *mana derived from the land* ("te mana i te wenua"), and in turn from atua. Hēnare, above n 50, at [44]–[48].

72 Tui Cadigan "A Three-Way Relationship: God, Land, People. A Māori Woman Reflects" in Helen Bergin and Susan Smith (eds) *Land and Place He Whenua, He Wāhi: Spiritualities from Aotearoa New Zealand* (Accent Publications, Auckland, 2004) 29 at 29–43 as cited in Wayne Manaaki Rihari Te Kaawa "Re-visioning Christology through a Māori lens" (PhD Thesis, University of Otago, 2020) at 208.

73 Arihi te Nahu "Ki a te Etita o te Waka Maori" *He Wharangi Tuwhera, Waka Maori o Niu Tirani* (New Zealand, 8 August 1876) at 192–194 as cited in Lachy Paterson and Angela Wanhella *He Reo Wāhine: Māori Women's Voices from the Nineteenth Century* (Auckland University Press, Auckland, 2017) at 240–245. This letter formed the basis of a famous libel action by Henry Russell against *Te Waka Maori* for publishing this letter by Arihi Te Nahu and the three other authors.

74 Note that *Te Waka Maori* translates mana as denoting possession: "... who immediately took possession of all my goods and chattels, and property thereabouts. I once sent a man to get some timber for me but he was driven away by that Pakeha. I did not transfer to him my trees or my fowls."

75 Ross, above n 4, at 182. See also an example of mana driving decision-making in the case study in Part Two of this article.

Mana has also been understood as a driver of reciprocity in relationships, giving rise to obligation and onus to uphold the mana of others:⁷⁶

Mana is a recognition of the reciprocity in relationships, between peoples, and between peoples and places. Each has a responsibility to one another. Mana today is often misconstrued as a manifestation of power, as sovereignty. Instead, we argue that there is an onus and expectation within the relationship that the relationship itself is acknowledged, nurtured; maintained. That we look after the land, and the land looks after us. In this way, mana connects to "te āta noho", encouraging and enhancing wellbeing.

Therefore, as tapu can regulate and control mana, so utu is vital in regulating relationships between members within groups and between groups in ways that can enhance and decrease mana and thereby strengthen or weaken groups' standing and cohesiveness. Utu can be said to refer simply to enacting a *return* for something that has occurred⁷⁷ and can cover many processes that achieve reciprocity, assign responsibility, accountability and blame or credit for praiseworthy or blameworthy actions.

Many actions can be understood as upholding utu as a return or payment: the responding karanga to the initial call of welcome; the responding whaikōrero in the pōwhiri process;⁷⁸ the use of koha in acknowledgment of the hospitality of a host group or some other action;⁷⁹ or the imposition of punishment upon a community or individual for the breach of a rule. Key to understanding the ongoing role of utu is its connection to mana. Utu encompasses processes that enhance and diminish mana. Utu can see a response to an act of generosity by one group as requiring an act of similar or greater generosity in return, enhancing the mana of both groups. A failure to reciprocate, to discharge that liability or obligation, could lead to a decrease in mana for those groups.

For men or women to fail to adhere to, or to flout, the imposed obligations and ritual restrictions of tapu could affect the mana of whole communities. For just as the attribution of mana to individual men and women could be also attributed to the whole community, so could its loss, depending on the circumstances.⁸⁰

However, while the threat of such punishment in order to uphold the requirements of utu may serve as a deterrent to group members, the imposition of punishment could enhance mana rather than lessen it in some cases. A breach of tapu by a person with a lower degree of mana may simply not be

76 Priscilla Wehi and Tom Roa "Reciprocal relationships: identity, tradition and food in the Kīngitanga Poukai He Manaakitanga: o te tuakiri, o te tikanga me te kai ki te Poukai o te Kīngitanga" (11 December 2019) SocArXiv <www.socopen.org> at 8.

77 Law Commission, above n 12, at [156]–[162]. See Benton, Frame and Meredith, above n 10, at 467–475 ("Utu").

78 Ross, above n 4, at 29.

79 Particularly in the context of a modern monetary economy, koha will often take the form of cash.

80 Mead, above n 13, at 51.

worth human retaliatory actions by way of *utu*. Even where a breach of *tapu* goes unnoticed by others, spiritual sanction would apply regardless of human design.⁸¹ In fact, seeking recompense for breach from a person or people of low *mana* may not be considered a rational approach, as the application of a sanction such as *mu* (the ritualised stripping of goods from an individual or collective)⁸² could confer *mana* rather than deplete it.⁸³

Na, ko taua tu *Muru* he whakanui mo te Rangatira. Me he mea hoki kaore e peneitia te mahi, ka whakataukitia: "E! to te kuri tona mate te ai he ahātanga."

The effect of such *mu* or stripping would be to exalt or advance the importance of the chief; if he was not served this way, people would apply to him the proverb: "Alas the death of a dog, no notice be taken of it."

Based on *mana* and its regulation and control by way of *tapu* and *utu*, rights to land, moveable properties and other natural resources, such as fisheries, could be properly allocated to individual members of a group, or to subgroups. As Mānuka Hēnare observed, "individuals are more correctly seen as agents of their people",⁸⁴ thus *mana* provided (and continues to provide) the justification for choosing certain individuals to enter into negotiations with other *hapū* and *iwi* and to contract or covenant on behalf of their own people with other collectives.⁸⁵ Sometimes also *mana* could prevent high-ranking individuals from initiating or engaging in negotiations or agreements with others, necessitating the use of other agents or third parties.⁸⁶

C Effective Māori Groups

Effective Māori kin-based collectives and communities of practice may well rely on these five *pou* to varying degrees, including in modern contexts. If so, they will, in their formation, hold and respect *whakapapa* and *whanaungatanga*, and relationships will give rise to rights, entitlements and obligations, including in land. People possessing sufficient *mana* will be critical to the formation, functioning and survival of such communities, and such power and authority will also give rise to

81 Johannes Andersen "Maori Religion" (1940) 49 *Journal of the Polynesian Society* 513 at [518], citing Ruatara.

82 Benton, Frame and Meredith, above n 10, at 254–265 ("Muru").

83 "Ko te *Muru Whakanui* (Stripping to Exalt)" *Te Manukura – Maori Recorder* (Auckland, February 1917) at 13 as cited in Benton, Frame and Meredith, above n 10, at 260.

84 Sharp, above n 45, at 7, citing Hēnare.

85 Nin Tomas and Khylee Quince "Maori Disputes and Their Resolution" in Peter Spiller (ed) *Dispute Resolution in New Zealand* (2nd ed, Oxford University Press, Melbourne, 2007) 256.

86 Wakena Rukaruka reportedly told James Busby, circa 1839, that his *mana* could be diminished if Rukaruka himself were to initiate negotiations with other *hapū* and *iwi*, but the Resident did so as an appropriate intermediary between the parties: Claudia Orange *The Treaty of Waitangi* (Bridget Williams Books, Wellington, 1987) at 17.

rights and obligations, under the appropriate control of tapu. Utu will regulate relationships between group members and between groups. Utu will also uphold or undermine mana.

A short historical example can illustrate the interplay between whakapapa, whanaungatanga, mana, tapu and utu in the creation of obligations that are binding upon groups and individuals upholding tikanga Māori norms.

In the year 1900, a group of 16 Māori school children and two adults drowned near the Mōtū river mouth in the tribal area of Te Whānau a Apanui.⁸⁷ This disaster affected several local hapū. The bodies of the dead were not all recovered at the time⁸⁸ and the event had revealed the extraordinary risks to others crossing the river,⁸⁹ as well as the risks that the dead represented to the entire ecosystem.⁹⁰ The waters were understood to be highly tapu due to the presence of the dead and the risks of further damage to resources and people. Those risks had to be managed and controlled. Therefore, the leaders of these communities exercised their mana to impose a rāhui of up to five years, which covered coastal waters between Maraenui to the south and Ōmaio, a distance of hundreds of kilometres, and included a prohibition on fishing for kahawai on the Mōtū river, gathering seafood or navigating the coastal waters.

As a suitably proportionate collective response to the sheer size of the tragedy, utu required that many communities were bound to respect the rāhui. Failure to do so would lead to further imbalance, and a need to restore balance by requiring the collective responsible for the breach to be penalised, for example by being stripped of their possessions (muru), or being subject to some other spiritual sanction.⁹¹

All of those communities affected by the tragedy and the rāhui were connected by whakapapa, and whanaungatanga-based connections between people grew and developed in the wake of the disaster. Relationships led to communities distant from the site of the tragedy being bound by obligation. Several communities changed their names to remember the disaster,⁹² and even right up

87 Mead, above n 13, at 198.

88 Martin Johnson "Memory of children's deaths in Bay of Plenty's flooded Motu River kept alive by tribe" *New Zealand Herald* (online ed, New Zealand, 5 August 2018).

89 Johnson, above n 88.

90 See Kimberly Maxwell "Informing Ecosystem-Based Fisheries Management from an Indigenous Perspective: The Mōtū Kahawai Fishery" (PhD Thesis, Victoria University of Wellington, 2019) at 60.

91 Mead, above n 13, at 197.

92 According to Te Whānau a Apanui descendent Kimberly Maxwell, Te Whānau-a-Hikarukutai became Ngāti Horomoana (taken by the sea), the hapū at Whitianga became Ngāti Paeakau (cast ashore on the beach), the hapū at Ōmaiō became Ngāti Horowai (the flowing waters) and the hapū at Ōtūwhare became Ngāti Terewai (the fast waters). The wharenui at Maraenui is named Te Iwarau, referring to the year the whānau members were lost. See Maxwell, above n 90, at 59–60.

to modern times a rāhui has been observed on Saturdays at the Mōtū river, now more as a means of intergenerational memorialisation, but also of resource protection for the Mōtū river's kahawai fishery.⁹³

D Hui

Sir Hirini Moko Mead also observed that the decisions to place rāhui and other aukati (other forms of ritual restriction forbidding trespass) could be placed by individuals of high rank, but were more usually made in decision-making hui called by hapū or iwi.⁹⁴

Such hui comprise a constitutionally important mechanism of Māori jurisprudence, and a necessary instrument in the use and dissemination of the norms of tikanga Māori, particularly the five pou discussed above. It is to this institution this article now turns.

V THE HUI AS A GENERATOR OF MĀORI JURISPRUDENCE⁹⁵

Hui, and particularly hui rūnanga, have long been the most vital social and political control mechanism of Māori groups. As Mike Ross identifies, whakapapa and the concepts of mana, tapu and utu in communities require the establishment of hui, as:⁹⁶

... the gathering of the community. It was at the formal and informal gatherings that people would learn about their history and the ideas and practices which guided and protected daily activities. Formal *hui* [*rūnanga*] would plan strategy and organise for the survival of the *whānau* or *hapū* and celebrate its successes or analyse its failures. Where the violation of *tapu* and *mana* of the *whānau* or *hapū* has been seriously damag[ing], *rūnanga* would determine and witness the need for restorative action.⁹⁷

Such gatherings also affirmed and enacted rangatiratanga, denoting the ability of individuals and groups to *make decisions*, on the basis of appropriate mana, as well as political will and necessity.⁹⁸

93 At 60.

94 Mead, above n 13, at 198.

95 In this article, "Māori jurisprudence" refers to the matrix of foundational principles and practices, along with the resultant decisions, maintained, developed, repeated and upheld primarily in groups, by way of the institution of hui.

96 Ross, above n 4, at 12 (emphasis original).

97 In other words, the implementation of utu.

98 Benton, Frame and Meredith, above n 10, at 331.

A Rangatiratanga

Moana Jackson has described rangatiratanga as "total political authority" and such a definition inevitably requires the consent and participation of the collectives for its exercise.⁹⁹ If rangatiratanga refers to the exercise of leadership by those holding sufficient mana to lead, an important aspect of rangatiratanga is the role of those being led, who also determine the existence and exercise of rangatiratanga. The mana of the collective could not be subordinated by individual rangatira.¹⁰⁰ Rangatiratanga includes the duties of care and protection that leaders and members of a Māori community owe to each other.

An early historical account of the apparent importance of the agreement of those being led to being led appeared in J Gorst's 1864 account of his time as resident magistrate and civil commissioner in the Waikato:¹⁰¹

Men like Wiremu Tamihana and Rewi Maniapoto have, indeed, the title of Chief, and their abilities have gained them respect and influence both in their own tribes and among strangers; but these men only execute the will of the people, and do not guide it. In all their plans, they have to consider what their tribes will think and say; and when their own opinions differ from that of the multitude, the former has to give way.

The Waitangi Tribunal also considered this aspect of rangatiratanga in its *Waipareira* report:¹⁰²

A relationship of rangatiratanga between leaders and members is how a Maori community defines itself; it gives a group a distinctly Maori character; it offers members of a group identity and rights. In short, rangatiratanga applies to much more than the customary ownership of lands, estates, forests, fisheries and other taonga. It describes a value that is basic to the Maori way of life, that permeates the essence of being Maori.

This particular Tribunal report marked a new direction in analysis of rights and obligations in Māori thinking, not only because it affirmed the importance of political consent among the governed in a contemporary context, but also because it explored the extent to which a community and its leaders could be said to be exercising rangatiratanga in accordance with tikanga in the *absence* of the usual iwi and hapū kin connections. Te Whānau o Waipareira Trust is an urban Māori authority and claimed

99 Moana Jackson "The Treaty and the Word: the colonization of Maori philosophy" in Graham Oddie and Roy W Perret (eds) *Justice, Ethics and New Zealand Society* (Oxford University Press, Auckland, 1992) 1 at 5.

100 *He Whakaaro Here Whakaumu mō Aotearoa*, above n 59, at 35.

101 John Eldon Gorst *The Maori King: Or, The Story of Our Quarrel with the Natives of New Zealand* (MacMillan, London, 1959) at 266.

102 Waitangi Tribunal *Te Whanau o Waipareira Report* (Wai 414, 1998) at [1.5.4(5)].

before the Tribunal that the Crown was bound under art 2 of the Treaty of Waitangi to guarantee *their* rangatiratanga as much as that of traditional descent groups such as a hapū or iwi.¹⁰³

On the basis of consent, rather than descent, the Tribunal determined that the Trust did exercise rangatiratanga. Further, it determined rangatiratanga could be exercised *by* particular Māori groups or *within* particular Māori communities, whether tribally based or not. The exercise of rangatiratanga could show whether that group would therefore be entitled to the same protections as other Māori collectives.¹⁰⁴ The Tribunal looked primarily at the behaviour of leaders ("rangatira values in action")¹⁰⁵ but also at the actions of those led. Rangatiratanga resides within the community itself, and it is deeply relational:¹⁰⁶

It is the reciprocal relationship of rangatiratanga between leadership and membership that binds people together in a Maori community. The boundaries may be permeable – members can come and go – but the community can be discerned from the exercise of rangatiratanga.

As rangatiratanga cannot exist without the effective consent of those being led, a community can fade away and its rangatiratanga can be lost in the absence of such political cohesion, support and consent.¹⁰⁷ Hui provides the institution that *enacts* decision-making and consent, and affirms group cohesion.

B Hui and Decision-Making for Those Beyond the Kin-Based Group

Community participation and validation of the exercise of authority are key to understanding and engaging in Māori legal thinking.¹⁰⁸ The validation, creation and amendment of rules, the application of directive values, the imposition of obligations and sanctions in tikanga Māori can all be carried out in hui. Hui are often defined very simply as "meetings" but can occur for many different reasons, ceremonial and otherwise. "Hui" as a verb refers to gathering people together in the sense of congregating and assembling.¹⁰⁹ "Hui" as a noun refers to the hui event itself. A wide range of events can be identified as hui, from highly ritualised tangihanga and hui rūnanga, tribal assemblies, comprising hundreds or even thousands of people on the marae, to much smaller events such as a meeting in an office with fewer than 10 people. It is already well known that the role of the larger hui

103 At xxii-xxiv. Note that the case study in Part Two involves a pan-tribal entity.

104 At xxiv.

105 At xxv.

106 At [1.5.4(4)].

107 At xxiv and [1.5.4(4)].

108 Williams, above n 19, at 4.

109 Benton, Frame and Meredith, above n 10, at 97–98 ("hui").

such as hui rūnanga provides the context in which Māori culture and society is most "deeply expressed".¹¹⁰

Hui involving participants beyond immediate hapū groups were also growing in importance as Māori developed notions moving towards a supra-tribal identity at least between hapū in the 19th century. The Waitangi Tribunal in 2017 accepted Ngā Puhi accounts that the Northern rangatira who signed *He Whakaputanga o Te Rangatiratanga o Nu Tirenī – The Declaration of Independence* in 1835 had occasionally taken part in strategic inter-hapū hui rūnanga prior to 1835 to discuss local issues and problems related to the arrival of settlers, law and order, perceived threats from other countries¹¹¹ and other "important matters of the day".¹¹² Modern Ngā Puhi accounts affirmed the hui rūnanga among Te Whakaminenga, the Confederation of Ngā Puhi hapū, as law-making events, centred on collective decision-making:¹¹³

Te Wakaminenga was a place to make "command decisions" about the relationship with Europeans: "they came together, they debated an issue, they made a decision and everyone was bound by that decision."

Thus Te Wakaminenga became an additional lawmaking authority, and a new expression of mana.

Hui rūnanga also used the norms of relevant tikanga in upholding rangatiratanga¹¹⁴ and in making decisions that could be expected to bind their people, and were often accepted as binding by those people. *Te Mātāpunenga* records a few of many such examples in the 19th century. In 1862, Waikato rangatira Wiremu Tamihana called a great hui of representatives of all tribes as war between Waikato tribes and colonial forces inexorably approached. The decision of the hui was to establish an aukati, a boundary forbidding travel, as explained by Hetaraka Nero of Ngāti Māhanga:¹¹⁵

Kua tae au ki Peria i reira te hui huinga nui o nga Rangatira o te motu nei. Ko te take a taua hui huinga he puru i te rori kia kaua e whiti i Mangatawhiri, he puru hoki i te iwi o Whaingaroa kia kaua e puta ki Waipa.

110 See for example Anne Salmond *Hui: A Study of Māori Ceremonial Gatherings* (Reed, Wellington, 2004) at 1–2. See also Ross, above n 4, at 13.

111 One such hui included a group of 13 northern rangatira that met to discuss the rumour of a French plan to avenge the killings of Marion DuFresne and many of his men in 1772. Rangatira of the North gathered again in 1834 to choose a flag. See Orange, above n 86, at 11–12.

112 See Waitangi Tribunal, above n 58, at [4.7.2].

113 See Waitangi Tribunal "Affidavit of Nuki Aldridge" (Wai 1040, Doc B10, 28 May 2010) as cited in Ingrid Huygens, Takawai Murphy and Susan Healy *Ngāpuhi Speaks: He Wakaputanga o te Rangatiratanga o Nu Tirenī and Te Tiriti o Waitangi: Independent Report, Ngāpuhi Nui Tonu Claim* (Te Kawariki and Network Waitangi Whangarei, Kaitiāia, 2012) at 45.

114 Ani Mikaere "Cultural Invasion Continued: The Ongoing Colonization of Tikanga Māori" (2005) 8 Yearbook of New Zealand Jurisprudence 134 at 142.

115 Hetaraka Nero "Papers Relative to the Native Meeting Held at Peria" [1863] AJHR E12 at 20–21 as cited in Benton, Frame and Meredith, above n 10, at 51 (emphasis added).

He mea panui na taua huihuinga te purunga o enei huarahi e rua. Kia oti te panui ka whakatika a Wiremu Tamehana *ka panui i tenei kupu ki taua huihunga* [sic]. *Ka mea hei Ture* tenei ma tatou mo ake tonu atu.

I went to Peria where the great meeting of the chiefs of this island was held. That meeting was for the purpose of stopping the roads, to prevent the road being carried across Mangatawhiri, and to stop the Raglan road from being taken to Waipa. The stopping of these two roads was proclaimed by that meeting. After the proclamation Wiremu Tamehana arose and *spoke out this word to the meeting*, "*This is to be law for us* for ever."

In the Māori language we see that Wiremu Tamihana is reported to say: "ka panui i tenei kupu ki taua huihunga [sic]. Ka mea hei Ture tenei ma tatou mo ake tonu atu" – "he spoke out this word to the meeting. This is to be law to us for ever". The use of the word "kupu" is invested with some importance in this passage. Kupu can refer to specific utterances, such as a word or saying.¹¹⁶ The word "mea" can refer to merely saying something, or to *creating* something.¹¹⁷ In this case, what is created – the *outcome* of the hui – is a "Ture ma tatou", a law for us all.¹¹⁸ This decision to establish an aukati was understood to be a binding one, not only because of the mana and presence of Wiremu Tamihana, but because of group process, agreement and language.

As a further example, in 1875 a dispute arose over whether Ngāti Kahungunu rangatira Renata Kawepo had a right to receive money from the sale of a particular area of land. Kawepo himself wrote a letter to *Te Wananga*, a Māori-owned newspaper in the Hawkes Bay, noting the erection of his post, or pou whenua,¹¹⁹ on the land to mark his legitimate right that he maintained was publicly ratified in a hui rūnanga.¹²⁰

I te tau 1860, 22 o nga ra o Maehe, ka tu te hui ki Kokako, wahi o Patea, *ka kii taku kupu* i reira i runga i te mano tangata, kia rohea te whenua, a *mana tonu taku kupu* i taua ra, a tu ana ki Pikitara ko Whiti Kaupeka, te ingoa o taku pou ...

In the year 1860, March 22, a great meeting was held by the Maoris at Kokako, in the district of Patea. And I *spoke my word* in the hearing of all that assembly, that the land should be divided, and *my word that day was agreed to*; and at Pikitara my post called Whiti Kaupeka was put up ...

116 Benton, Frame and Meredith, above n 10, at 149 ("Kupu").

117 Williams, above n 7, at 200.

118 See above n 10, regarding the use of "ture".

119 A pou or pou whenua is used to mark possession of, or jurisdiction over, an area. They can be considered boundary markers and claims to authority for various purposes. See Benton, Frame and Meredith, above n 10, at 301.

120 "He Utu Korero Mo Te Reta a Hunia Te Hakeke" *Te Wananga* (New Zealand, 4 September 1875) at 195 as cited in Benton, Frame and Meredith, above n 10, at 303 (emphasis added).

In the Māori of this account, again the importance of "kupu" is affirmed, and the phrase "mana tonu taku kupu" is perhaps better translated as "my statement held true authority", showing again the importance of a statement in a duly convened hui as having the force of proper binding authority.

These Māori-sourced accounts, alongside more well-known European accounts, show that Māori were fully able, by virtue of the exercise of rangatiratanga and by the mechanism of hui, to change the rules by which they were bound and even incorporate new ideas from outside the kin collective, making decisions affecting those beyond those collectives. These examples all referred to the issuing of a word or a statement that was considered (by their own account) to be binding on participants.

In order for a word or a statement to hold such power, due attention must be paid to mana, tapu, utu and whakapapa. Only those with sufficient mana can exercise, preserve and build rangatiratanga, as community autonomy, in such a way, with public agreement, often with the attendance of hundreds or even thousands of people.¹²¹

C Hui in the 20th and 21st Centuries

Just as our understanding of rangatiratanga has had to change to account for enormous transformation in Māori society, so too our understanding of hui and their modern usages and importance has had to change. By the early decades of the 20th century, hui rūnanga no longer involved Māori communities in the way they used to,¹²² although community observation and validation could still be expected at important formal hui.¹²³ Crown legislation and other legal requirements saw Māori processes replaced with Europeanised decision-making processes. Decision-making hui, including those of governance bodies, became small, mundane and often not based on the marae.

Writing in 1972, anthropologist Anne Salmond doubted that such small and ordinary events could even comprise hui at all. She suggested that in the meetings and conferences of pan-tribal groups such as the Māori Women's Welfare League and the Māori University Students' Associations, "the greater part of their activities are conducted in English according to the committee procedures, and the

121 As further examples of the vitality and importance of hui rūnanga, such public gatherings were also important to the functioning and validation of the activities of the various Kotahitanga Parliaments held between 1879 and the end of the century. Over 300 attended the Parliament called by Paora Tuhaere at Ōrakei in 1879. Over 1,000 individuals and 50 individual rangatira attended a hui in the Bay of Islands in 1892 to arrange the structure of the first Paremata Māori. See Lindsay Cox *Kotahitanga: The Search For Māori Political Unity* (Oxford University Press, Auckland, 1993) at 66–68.

122 For an account of the decline of traditional rūnanga and the Crown attempts to co-opt Māori rūnanga practices, see Stephens, above n 2, at 838–842.

123 For example, the critical role still played today by the Poukai of the Kīngitanga (the King Movement) in maintaining the cohesion of the movement and its constituent communities. See generally Toon Van Meijl "The Poukai Ceremony of the Maori King Movement: An Ethnohistorical Interpretation" (2009) 118 *The Journal of the Polynesian Society* 233.

gatherings only marginally qualify as hui".¹²⁴ Nearly half a century later, small and "marginal" hui thrive and multiply throughout Aotearoa New Zealand, and they too can play their part in the creation, dissemination and repetition of the norms of tikanga Māori.

Hui in mundane settings away from the marae can still uphold rangatiratanga and pay attention to the crucial norms of tikanga Māori discussed so far: whakapapa, whanaungatanga, mana, tapu and utu. In such hui, the vast majority of participants will be Māori, and hui of any nature remain deeply relational. Often, participants will be able to identify whakapapa-based connections with other participants or at least find shared experiences and purpose to create connection.¹²⁵

Hui are a manifestation of whanaungatanga, a value that embraces whakapapa and focuses on relationships. Hui, like Western meetings, are both a communication event and can be used as decision-making forums. However, the relational aspects intrinsic to hui mean they have greater complexity and provide a trusted framework for the people who attend them to assert and confirm their cultural and community identity.

Māori individuals in possession of sufficient mana, inherited and earned, will control various aspects of the hui, including the purpose and direction of the gathering, and the mana of those present may well determine the allocations of any resources or tasks that the hui may deal with. Mana can also deeply affect whether decisions get made at all, and if so, how binding they may be on others. Tapu will also usually be acknowledged in a number of ways in hui. Karakia will usually serve to open and close hui, in part to enable participants to enter into the shared purpose of the hui and then again to mark the end of that shared purpose. Karakia are also crucial as a primary way in which to acknowledge the whakapapa and whanaungatanga between people and the divine. Commencing any important shared endeavour such as a hui requires acknowledgment of the (divine) source of all tapu and all mana. Tapu will also be relevant in the early acknowledgment of those who have passed away, and by karakia or *inoi* to return us to the world of the living, after acknowledging the world of the dead. Food at the conclusion of a hui too can be an effective way to mark the end of the hui process and a return to ordinary, unrestricted life.

The hui also remains the primary institution that provides for the determination, recognition, amendment and contestation of who may hold the mana, whether political will exists, and what the applicable tikanga Māori may be in the circumstances.

¹²⁴ Salmond, above n 110, at 208.

¹²⁵ John O'Sullivan and Colleen Mills "The Maori Cultural Institution of Hui: When meeting means more than a meeting" (2009) 10(2) *Communication Journal of New Zealand* 18 at 32. This research reported back on the input of 14 Māori individuals involved in a management capacity within a Māori organisation concerned with economic development.

Hui are also the institutions that govern the relationship or association *between* collectives that hold primarily to tikanga Māori, as well as between such Māori collectives and other authorities or entities that hold primarily to other bodies of law.¹²⁶

It is almost always within the context of hui that knowledgeable individuals and collectives of sufficient mana must articulate and seek political validation for changes to rules, obligations and principles of tikanga Māori and kawa. Similarly, it will be within hui that group processes maintaining and upholding whanaungatanga¹²⁷ and rangatiratanga will take place.¹²⁸ The proceedings of such hui will not often be put into writing and distributed to a wide audience, but *Te Mātāpunenga* records an example of the outcome of one such relatively modern hui among the hapū of Te Arawa:¹²⁹

On 16 November 1975, Ngāti Tararawai, Ngāti Rangitahi and Ngai Tūhourangi convened a hui at Wahiao marae in Whakarewarewa to deliberate on marae protocol within Te Arawa. A similar hui was held on 25 May 1923, where the outcome of the deliberations was recorded in writing in a detailed form. The 1975 hui published the record and noted amendments decided upon. Thus, for example, under the heading "Nga Tikanga mo te tu korero i te wa e takoto ana he tupapaku" ("Rules and procedures relating to speakers while a body is lying in state") the original provision was amended as is indicated below:

Te Kawa May 25th, 1923

3. Mehemea e haere ana te Iwi ki tetahi TANGIHANGA me haere i te wa e HII ana te RA.

The Protocol, 25 May 1923

3. If people are going to a tangihanga they should go while the sun is up.

1975 Addition:

Inaianei, no te mea kaore e taea wetehi ki te haere i te wa e hii ana te Ra, kua whakaaetia ki a amo mai i te Po engari kauaka i waenganui Po.

1975 Addition:

Nowadays, because some people cannot travel during daylight, it is permitted to arrive at night provided it is before midnight.

Up to this point, this article has explored Māori jurisprudence understood as a matrix of foundational principles and practices, maintained, developed, repeated and upheld primarily in groups, through the institution of hui. Using this theoretical framework, we can begin to look more

126 Roughan, above n 39; and Stephens, above n 2.

127 Williams, above n 19.

128 See Christie, above n 30.

129 Benton, Frame and Meredith, above n 10, at 129.

closely at how the language of hui reveals the constitution of Māori jurisprudence, including the norms of tikanga Māori, and how that can be observed in a small trust hui in a downtown Wellington office on a Tuesday afternoon in 2017.

VI PART TWO: MĀORI JURISPRUDENCE – A CASE STUDY

The aim of *He Pounga* (as described in the introduction) has been to capture everyday Māori hui processes in action, focusing on the recording of oral sources. Instead of asking "what is tikanga?", "how does it work?", or "is there a rule of recognition that allows us to identify what counts as tikanga?", *He Pounga* asked a slightly different question. In light of what we already know about the role of the group in Māori society and the hui in Māori jurisprudence, this article asks: *how might the legal norms of tikanga Māori constrain group-based behaviour in modern decision-making hui?*

In order to explore possible answers to this question, the language used in hui becomes a crucial source of information. The five pou examined in the first half of this article then provide the set of norms with which we can analyse the decision-making discourse of such hui.

He Pounga recruited three urban Māori organisations in 2016 to take part in this pilot research. Each body had to be one that would have the moral or legal authority to make decisions on behalf of a number of people not in the room, thus incorporating a civic aspect¹³⁰ to their decision-making. One group was a school parents' and teachers' group, making decisions on behalf of the whānau of Māori learners in a mainstream primary school in Porirua. Another group was a Treaty of Waitangi subcommittee of a community centre based in Wellington city. The third group was a Māori media charitable trust, also based in Wellington city. All three groups are urban, all make decisions on behalf of a set of people (whānau, clients, stakeholders) not in the room and all include a majority of Māori participants. Two hui were recorded for each organisation over the period of April 2017 to February 2018 (a total of six hui).

A broad aim of the research was to investigate the decision-making language of such hui, to determine the extent to which the norms of tikanga have been utilised in group decision-making where others (such as whānau, clients, stakeholders) would be affected by those decisions. The transcripts of the hui have been analysed for evidence about what participants create in the course of the hui, and what they appear to understand themselves to be bound by. This article offers some analysis of the hui of one organisation to illustrate what appears to be the norms of tikanga Māori at work in the decision-making process.

Existing research has identified culture-specific language as a driver of behaviour in hui Māori. The Language in the Workplace Project (LWP) based at Te Herenga Waka Victoria University of Wellington has done significant work analysing the discourse of hui Māori in New Zealand workplaces. The LWP has amassed a corpus of approximately 2,000 interactions in New Zealand,

¹³⁰ Stephens, above n 2, at 834–836.

involving over 700 people and recorded within at least 30 different Māori and Pākehā-majority workplaces. Research produced by the LWP has argued that the discourse of hui Māori exhibits what Professor Janet Holmes referred to as a "culture order": a particular set of culturally distinct characteristics present in Māori discourse which influence behaviour.¹³¹ Holmes posited that hui Māori involve distinctive socio-linguistic phenomena that incorporated "pervasive, hegemonic assumptions which constrain and shape social interaction".¹³² In Holmes' analysis of hui, Māori exhibited a cultural order with several identifiable components:

- (a) Distinct and ritualised meeting openings, including the use of karakia;¹³³
- (b) More relaxed speaking rules, which might include participants speaking over one another more frequently than in other meetings;¹³⁴
- (c) Collectivist criticism and complaint: instead of participants receiving individually targeted negative feedback, collective criticism and complaint would be employed to ensure no individual would be targeted (and therefore shamed); and¹³⁵
- (d) A distinctive role for modesty (known as whakaiti), and an absence of assertions of expertise.¹³⁶

The components of this cultural order can provide a useful lens to understand the discourse. However, analysis suggests that hui-based discourse can also reveal a deeper richness: the norms of tikanga Māori operating, certainly, to "shape and constrain social interaction", but also to drive binding decision-making in hui Māori. This article offers a case study that can show the legal norms of tikanga Māori driving decision-making in a small urban trust hui in Wellington on a Tuesday afternoon.

A The Scene: A Wellington Office

The transcript evidence below comes from a hui that was recorded in December 2017. The organisation is a small Māori charitable trust, based in Wellington city. The entity is publicly funded and registered as a charitable trust, and its constitution describes the entity as a rūnanga. The rūnanga is pan-tribal. It provides services to a large public footprint, but a smallish group of mainly Māori consumers. Rūnanga meetings are conducted every two months. Rūnanga meetings (hui-a Poari) are conducted bilingually; proceedings switch between Māori and English with relative fluidity.

131 Janet Holmes "Negotiating the culture order in New Zealand workplaces" (2018) 47 *Language in Society* 33.

132 At 34.

133 At 39–40.

134 At 41–42.

135 At 44.

136 At 52.

There were six participants in this hui:

- (a) DA – trust secretary and deputy chair;
- (b) SK – chair;
- (c) WT – trust member;
- (d) MB – trust member (minute taker);
- (e) TB – trust member (absent for this part of the meeting); and
- (f) WA – an ex-officio member who was present for some of the hui but had no voting rights.

I am one of the members of the rūnanga (WT) and I was present in the hui in my capacity as a rūnanga member and also as a researcher. All of us present in the room had known each other for several years and some of us for more than 20 years. None of us were directly related; our membership reflected a variety of iwi; and we were not members of each other's hapū or iwi. One person was Pākehā but fluent in te reo Māori. All present were capable Māori speakers.¹³⁷ All had been involved in some degree of Māori political activism or advocacy over the years. The membership of the rūnanga is fairly stable, and does not change much from year to year. At the time of this meeting SK was the chair, and had been for several years. DA had been the secretary since 1994. There were no other officials.

The following exchanges occurred in the second hui of the two recorded for this rūnanga. It involved what looked on the surface to be a pretty mundane, functional part of any legal entity's process: a trust meeting followed by an AGM, including the election of officers. What transpired in the hui, as evidenced in the transcript, appears to be a very clear example of the norms of tikanga Māori constraining the behaviour of group members in very specific ways.¹³⁸

B A Preliminary Exchange

There was a preliminary exchange before the hui commenced formally. Participants were chatting and looking at papers in preparation. Incumbent secretary DA asked SK, as the incumbent chairperson, to chair the hui. But SK asked instead that DA chair the hui as SK had not chaired for a long time:¹³⁹

1. DA: [to SK] ((whispers)) (you're chairing us mr chair aren't you?)
2. SK: True?
3. DA: you're our chair mr chair
4. MB: [organising papers]

137 I am the least capable speaker of the group.

138 Please note that all participants are identified by initials that do not correspond with their actual names. The names of individuals and tribal groups that are mentioned in the transcript have either been omitted or anonymised.

139 Please see the transcript conventions provided at the end of this article.

5. SK: [to DA] ((whispers)) (can *you* chair our hui?)
 6. DA: Yeah
 7. SK: [to DA] ((whispers)) 'cause I haven't been out here for so long
 8. DA: alright I can do that, alright, happy to do that
 9. ka manaakitia te tono o [Iwi] engari kei teka taku kawē i te kawa '*the request of [iwi name omitted] will be respected, but let my carrying [the chair role] not [undermine] the proper process*'

The use of Māori here in this exchange performed an important function: it identified SK as a member of his iwi.¹⁴⁰ Māori, not English, is the appropriate language to use to affirm this identity. In this exchange, DA acquiesced to SK's request that DA take a deputy chairing role, but stated as he did so that: "ka manaakitia te tono o [Iwi]", that the request of SK's *iwi* will be respected, elevating SK's request from an individual's request to one that reflects SK's membership and prominence within his iwi, his people. It is not uncommon to hear high-profile Māori individuals referred to in discourse among Māori as the name of their iwi, emphasising their whakapapa-based membership of the kin-based collective, rather than by their individual names. There was also subtle use of humour here as DA granted SK's request with the alliterative and quite elegant phrase: "engari kei teka taku kawē i te kawa" ("*but let my carrying [the chair role] not undermine the proper process*").

C Stage One: The Beginning of the Hui

Hui beginnings are very important, and if roles are fulfilled well, such beginnings set the scene for what follows. Holmes identifies a key component of the cultural order of hui Māori being ritualised and formal meeting openings:¹⁴¹

... typically the opening of a meeting involved a ritual component involving an explicit welcome or greeting formula and a *karakia* "a prayer/traditional chant", typically in *te reo Māori* ...

Indeed, each meeting recorded for *He Pounga* included such a ritual component to the hui openings and endings. The hui for this rūnanga was no exception, although the formal openings to these hui were often longer and richer because in addition to a *karakia* there would usually be a *mihi whakawātea*. A *mihi whakawātea* can provide another formal element of a hui's beginning: an acknowledgment of those who have passed away since the last hui was held, or of those who are ill. Such a *mihi* may be followed up by further acknowledgment of those who remain in the world of the living, including those present in the room. Such hui beginnings are not mere ritual for the sake of it. Depending on what is said and done, such beginnings will often be freighted with meaning and affirm

140 Here, DA provides an overt mention of a particular category of identity – tribal membership – as a means of emphasising SK's tribal affiliations and his *mana* through those whakapapa-based connections. See Mary Bucholtz and Kira Hall "Identity and interaction: a sociocultural linguistic approach" (2005) 7 *Discourse Studies* 585 at 594.

141 Holmes, above n 131, at 39–40 (emphasis original).

obligations and relationships that are crucially important for the people present. The legal norms of tikanga, particularly whakapapa, whanaungatanga, tapu and mana, can be seen to be at work in the following exchanges.

At this hui, DA stood to karakia. The only appropriate language with which to carry out karakia, karakia inoi and mihi whakawātea at the commencement of a hui is Māori. Thus, the language choice does more than simply identify or label the nature of the proceeding. Such components serve to constitute or construct the identity of the proceeding *as a hui* as well as affirm that same identity.¹⁴²

After the karakia, DA sat, and SK then stood to carry out a mihi whakawātea. Before he did so, however, SK noted his own long absence:

48. SK: ... ka nui
 49. te mihi ake kua roa te wā e ngaro ana ā engari ko te kōrero pea
 50. he kanohi kitea, he kanohi ora kua tae mai i tēnei rā=
 51. DA: =kia ora [SK]=
 52. SK: =ki waenga i a tātou nō reira tēnei te mihi ake ki a koutou

SK: '*... I strongly acknowledge, it has been a long time that I have been absent, and it is said perhaps that it is a seen face, a living face that has arrived today...*

DA: *well said [SK]*

SK: *...among us, therefore I acknowledge you all'*

SK then carried on with the mihi whakawātea to those who had passed on, and then greeted those who remained in the world of the living, each person present at the table, and he then acknowledged the work that they had been doing to keep the rūnanga and its activities surviving. Not only did this mihi lift any tapu associated with death or illness from the proceedings to allow the hui to carry on unencumbered, but in acknowledging those present, this mihi was also an exercise in whakawhānaungatanga, as each person and their contribution was acknowledged. In response, at the conclusion of the mihi, all present made the final response in unison:

92. All: kia ora¹⁴³

In fact, interjections of "kia ora" featured frequently throughout both hui that were recorded for *He Pounga*, but particularly during this time of mihi, and participants in such meetings were certainly able to speak over the main speaker at such moments. This undercurrent serves to demonstrate another component of the Māori culture order, whereby participants speaking at the same time as the main

142 Bucholtz and Hall, above n 140, at 582.

143 Note that "kia ora" takes on different meanings. It can mean "hello", "thank you", "I acknowledge what you say", "I agree", and can also be a phrase that brings an exchange to a natural end.

speaker (perhaps more often than in other meetings) is not considered disrespectful and in fact is considered highly respectful.¹⁴⁴

During his mihi, SK referred once more to his long absence, referring to those present as having stepped into the role left by his absence in a way that was necessary to ensure the organisation could survive and carry on:

67. [SK:] Kei te mihi ki a koutou te
 68. āhuatanga a::h (...) *te pau i a au te kotahi tau kāore e*
 69. tae mai ana ki wā tātou hui engari a::h [clears throat] e pānui
 70. ana i ā koutou mahi i ā tatou whakahaere i tā tatou kaupapa nō
 71. reira he mihi (aroha) //ki a koutou\\ i e (kawe nei) i a
 72. DA: //Kia ora koe [SK]\
 73. SK: tātou (...) te taumahatanga o ngā kaupapa e kawe ana
 74. koutou kia haere tonu te [tōpūtanga], whakarerea mai ai tēnei
 75. [tōpūtanga]
67. [SK:] *'I acknowledge before you the*
 68. *circumstances in which (...) almost one year gone by where I did not*
 69. *come to our hui but ah, I was reading*
 70. *of your work of our carrying out our plans*
 71. *and so I warmly acknowledge you all for carrying the*
 72. *[DK: Thank you SK]*
 73. *heaviness of our (...) of the work that you carry*
 74. *in order that our [organisation] continue, that this*
 75. *[organisation] operate'*

Here it could be said that, in these two exchanges, another component of the culture order became visible: a distinctive role for modesty (whakaiti) and absence of assertions of expertise.¹⁴⁵ The LWP provides evidence in its own work of the importance of the role of whakaiti or humility in hui Māori proceedings. In their analysis, hui participants usually downplayed their own roles and achievements and were less likely than participants in other workplace meetings to emphasise their own experience or expertise.

In my view, however, this dialogue reveals something more serious than demonstrating whakaiti. When SK was delivering his mihi he made explicit mention (twice) of his long absence (in the first excerpt, SK referred to himself as being "ngaro", which can also mean lost or hidden from sight). Combined with SK's pre-hui comments (recorded above) about not being able to chair the hui, it

144 Bucholtz and Hall, above n 140, at 41–42.

145 Holmes, above n 131, at 52.

appears that SK was not showing modesty: he was questioning his own authority as chair. This could be a very serious matter and during the second mention (line 68 above, in italics) DA appeared to grimace obviously and look sharply up at SK. This was an unusual moment, and it seems that something did not sit well with DA about SK's words at that point. When he finished speaking a couple of minutes later, SK passed proceedings on to DA, clearly expecting DA to begin to chair the meeting:

94. SK: Kei a koe chair.
 94. SK *'Over to you chair'*

It may be that what concerned DA was a matter of routine governance, as the chair had admitted to absence for longer than what was permitted in the constitution of the rūnanga. However, this exchange was in Māori; it was part of the mihi whakawātea and unlikely to be recorded in full in the minutes, as the "business" of the hui had not yet begun. Yet, even before that business commenced at this moment, it appears there was something of a crisis of authority. The acknowledged leader of a group had cast some doubt on his authority (mana) to hold and exercise the position of chair. If the hui was to continue, arguably this situation demanded a clear and swift response that was tika (correct) for the circumstances to uphold SK's mana. Only then could the hui carry on properly.

Therefore, DA then stood again *immediately* to add a formal coda to SK's mihi whakawātea – a very clear and direct riposte to SK's statements. He addressed directly the issue of SK's long absence:

95. DA: Ehara i te mea te whakaroa i ngā mihi, kore noaiho, kotahi noa te
 96. kōrero o tō roanga roa ehara i te mea e whakatūarangitia i
 97. roto i tēnei pōari engari ko te hiahia kia roa tō noho tonu i konei.
 98. Kua eke ki te rua tekau tau koe i roto i tēnei o ngā pōari e noho nei koe
 99. hei tiamana hei puna mātauranga, hei tautoko anō [unclear]
 100. SK: kia ora [DA]

95. DA: *'I won't lengthen the acknowledgments; not at all, there is just one thing only
 96. to say of your long length of time it is not as if you have been made distant
 97. from this board but it is our desire that your long stay continues.
 98. You have achieved 20 years on this particular board upon which you have sat
 99. as chairman, as a wellspring of knowledge, as a support again [unclear]
 100. SK: Thank you [DA]'*

Here, DA implied that even though there had been physical absence, there was no real "distance" between SK and the board that could not be overcome. Rather, it was the board's desire that he remain as chair, given all SK had achieved in 20 years as a chair, as a source of knowledge and support.

DA then referred to another man who passed away some years ago: a leader of great mana in his own right who was a core and founding figure in the organisation's activism. DA drew a connection between the rangatira who had passed and SK, implying the longevity of such connection. DA then

went on to pay tribute to SK's own iwi, and acknowledged people who had worked for the rūnanga, and reminded SK of key relationships he still shared with others at the organisation. This passage provides a powerful example of the role whanaungatanga and whakapapa have in reminding one of one's own ongoing obligations to others, while at the same time calling on those relationships to demonstrate the mana of the person being addressed:

101. DA: Ka titiro ki a koe ka mahara ki a [R___], tō
 102. tāua =
 103. SK: =[laughs]
 104. DA: (.) hoa i kaha hoki tēnei o ngā kaupapa nō reira ka rongo au i
 105. tērā āhua o [SK] ka aroha ki a koe hei whakauru koe i ngā mate
 106. ah engari aroha tonu ki a koe me tōu iwi o [Iwi], ko [H___] kei konei i mua
 107. te nuinga tonu o [Iwi] kua mahi i
 108. roto i tēnei o ngā (...) ko [I___], e whakakata tonu nei i a [H___]
 ...
 111. I wāea mai nei a [K___], nō reira e mihi ana ki a koe me
 112. tōu rahi me te tūmanako ka tino kitea tōu kanohi i roto i ngā
 113. āhuatanga o tēnei pōari mō ngā tau roa ake (nui te ora) nō reira
 114. kia ora anō

101. DA: *I look at you and I remember [R___ – a well known leader & rangatira who had passed away]
 102. our friend
 103. SK laughs
 104. who advocated so strongly for our purposes and I sensed
 105. that also in [SK]'s presence, [to SK] thank you for including the dead [in your
 acknowledgments]
 106. and our affection still extends to you and your people of [Iwi name omitted], such as [H___]
 who used to work here before
 107. and those many people of [Iwi name omitted] who have worked
 108. in this [organisation] such as [I___] who still makes [H___] laugh
 ...
 111. [K___] called me by phone and sends her greetings to you and
 112. your importance with the hope that your face will be truly seen in the
 113. activities of this board for many good years, with good health, and so
 114. thank you again'*

DA concluded by stating again the wish that SK would remain active on the board for many years to come. This was a powerful statement after DA had already reminded SK of his relationships and of his obligation to uphold those connections. By referring to SK staying with the board, he has perhaps extended a reminder to SK to continue to act in such a way that continues to uphold his own mana,

the mana of his people, as well as of the organisation. There is also an inevitable political and pragmatic element here too: DA leaned on these relationships, all of which are important for the survival of the organisation, to make the point about SK's ongoing importance to it.

During this passage, DA spoke in an unusually emphatic fashion, using crisp hand gestures to accompany his words. This was clearly not an exchange to *celebrate* SK's expertise or achievements, nor was it a moment taken to re-establish governance norms. Rather, it appears more to have been a statement confirming SK's mana in such a way that then enables the rūnanga to survive. Members present then vocally affirmed DA's statement upholding the mana of SK:

116. MB: Tautoko
 117. SK: Kia ora tātou
 118. MB: =Kia ora kia ora DA
 119. WT: =Kia ora

- 116. MB: 'I support that*
117. SK: Thanks everyone
118. MB: I agree, thank you DA
119. WT: I agree'

Despite the clear political aspect and the importance of the connections mentioned, it seems likely that DA felt *obligated* to stand to make such a statement at this point of the hui because SK himself had sought to undercut or undermine his own authority at the very beginning of the hui and twice again during his mihi whakawātea. DA's quick and strong response addressed SK's perceived lack of authority by instead affirming the mana of SK in the strongest terms possible, and pointing to his achievements ("hei tiamana, hei puna matauranga"),¹⁴⁶ his importance ("tōu rahi"), his mana inherited by way of his position in the iwi ("tōu iwi"), and the relationship through which he remained tightly connected to the organisation.

DA's actions at this point have perhaps rescued the hui from an unfortunate situation by upholding, if not restoring, the mana of the chair. DA also sent a clear signal to the rest of the rūnanga. In short, SK must be retained as chair because:

- he brings the influence and importance of his iwi, his people; and
- those connections can help to enable the survival of the organisation.

This crucial exchange happened right near the beginning of the hui, during the formal opening, but was extremely important for later proceedings.

¹⁴⁶ "As chairman, as a wellspring of knowledge" (author's translation).

D Stage Two: The Business of the Hui

By 42 minutes into the hui, a number of decisions had already been made, such as the decision to reconvene the AGM during this hui, and the decision to accept the draft accounts and to appoint a new secretary. Other discussions had also been held about other matters such as staff pay rises. At this point, discussion turned to whether it would be appropriate to appoint a new chair.

At this time, SK tried hard to argue that he should step down as chair, and that the role should pass to DA instead. In this, SK acknowledged the hard work DA had carried out in his role to keep the rūnanga and the whole organisation functioning. He returned, however, to the theme of his own relative absence over the previous year. He identified that the rūnanga would benefit from someone more knowledgeable than him being at the helm, although he offered to stay on as a member of the rūnanga in support. SK turned to English for this exchange, but switched between languages.

58. SK: ki ōku whakaaro *'to my thinking'* like facing the realities of things that I do
 59. right now, um, I've been struggling to get here ki a tātou *'to us'*
 60. to be there and I've been absent for the best part of
 61. the year. ko koe te kai- te kawe i ngā kaupapa [DA] *'You have been the carrier of such functions [DA]'* and I
 62. think that's important in terms of the face out there that
 63. [the rūnanga] does have a face out there. Ko te tīro mai i ngā *'the perspective of the'*
 64. tāngata mōhio he aha te mea te mea te mea te mea *'people that know what is what'*, that um,
 65. the ideal situation would be for you to chair, to chair the
 66. board um, ka noho au hei kaitautoko i te taha *'I will stay as a supporter on the side'* as a board
 67. member if you'll still let me be. [laughs]
 68. WT: Yeah
 69. DA: Is this really what you would prefer because I-
 70. see I- I- I've thought that over the years that um that...
 71. SK: I- I would be- I would much prefer that.

DA was again quick to respond, and this time he stated specifically that "tikanga and seniority" required that SK stay on as chair. He did not identify what he meant by "tikanga", but the preceding excerpts in Stage One make matters clear enough. DA's concern throughout the hui so far has been the upholding of the mana of SK, which in turn upholds the mana of the rūnanga. His reference to seniority, here, also speaks to mana. SK is the senior holder of authority on the rūnanga. The rūnanga needs a chair of the degree of mana that SK has. His mana provides the rūnanga with protection and authority. For SK to vacate the position in such a manner would lead to questions being asked by "Te Ao Māori", or the Māori world. The clear implication, here, is that the mana of the chair is required to ensure the survival of the rūnanga.

Finally, DA made reference to SK remaining as chair being "just so right":

72. DA: ah in terms of the tikanga and seniority and the

73. way people in Te Ao Māori look at the [rūnanga] that there's only
 74. one (.) candidate at the moment, that is- if you're staying
 75. on (in any of) the board I would want you to stay on as chair
 76. and ah I- I think that it is just so right.

Even so, SK attempted to argue *again*, this time on the basis of competency. In his own view, he had not done a "good job", and he hinted at the vulnerability that the rūnanga was facing. The vulnerability was not discussed in the hui, but was well known to all members, as the organisation had recently been threatened with closure. In SK's apparent view, the chair's role in public was not that important as long as a united front was presented, and good competent decisions were being made by the rūnanga. This exchange illustrates a keen tension between the demands of tikanga Māori to ensure that the mana of the rūnanga is upheld by a chair with appropriate mana themselves and the requirement that the chair also be in close touch with the practical issues "on the ground" facing the rūnanga. Both sets of demands look to the long-term survival of the rūnanga.

77. SK: Look (.) I feel that I haven't been
 78. doing a very good job and [the rūnanga is] at- it's at an important stage
 79. DA: Aw well I've told you about that
 80. SK: of its journey I think and I think e hara i te mea ka tirohia '*it is not as if it would be seen*'
 81. mai i waho '*from the outside*' ahhh, we're ... our two roles are
 82. still synonymous with one other you know you know what I mean, um
 83. You're still the chair and I'm- I'm sort of the
 84. secretary and you're still the secretary and I'm the chair koinā '*that is*'
 85. te kite mai i waho i a tātou e whakahaere nei i a tātou '*what is seen from outside when we are*
running ourselves' so you
 86. know no I ah, I'm happy to be ah, a part of the board
 87. but allow the board to make clear decisions through a chairman
 88. that can be there for all the stages.

Faced with this dilemma or tension, we see the clear impact of a norm of tikanga Māori on decision-making. What happened next was that other members of the rūnanga sought a solution that would enable the mana of the rūnanga to be upheld, first and foremost. It was in this way that the requirements of good governance were met. However, rather than principles derived primarily from Western concepts of governance, it was the legal norm of mana that provided the decision-makers here with the task of weighing potential options in order for good governance to occur.

E Stage Three: Resolution

First, WT suggested the creation of a co-chairing position that could be held by both SK and DA. DA pointed out then that a co-chairing arrangement might lessen the clarity of kaupapa, or purpose, that a single chair provides. Then MB suggested the use of the deputy chair role, which was already provided for in the constitution but had never been formally appointed. This position would enable

SK to delegate to the deputy the authority to chair meetings, but SK alone would hold the chair's position to the world, and in particular to Te Ao Māori, the Māori world:

89. DA: =Mm=
 90. WT: =What about co-chairs? you- you be co-chairs
 91. SK: I'll be a co-chair
 92. DA: (quiet) I like the idea of SK being the chair
 93. SK: [laughs]
 94. DA: =But to be honest I- I really do but for the time- if you've got
 95. time to come to us (.) even for three out of our five hui of the
 96. year because we recognise ngā take ki runga i a koe *'the burdens upon you'*
 97. i tōu rahi *'because of your importance'* ah I like the i- I like the clarity of seeing the
 98. role for its kaupapa *'purpose and principles'* I do
 99. WT: Okay yep
 100. MB: What about- what about a deputy chair who deputises when
 101. the chair is not there, you know so
 102. DA: Yeah we've got that in the
 103. constitution it's- we're supposed to have one- te Tūmuaki o Raro *'the Deputy Chair'*
 104. is in that
 105. MB: a- of this- of the [rūnanga]?
 106. DA: yeah, yes
 107. MB: Mm
 108. DA: it's right in there, we're supposed to have
 109. MB: Well that's quite a
 110. good thing so in other words y- you know we have a- we have
 111. chair- there is a chair and you know his name is on all the
 112. documents and- and who comes when he can to the meetings but (.)
 113. in the event that the chair can't make it to a meeting there's a
 114. clear delegation=
 115. WT: that's kind of how I thought we operated anyway

The relief in the room was palpable at this stage and there appeared to be group agreement as to the path to follow at this point, with no verbal confirmation that any decision had taken place. The next actions confirmed collective agreement and a decision was then explicitly confirmed. Then the positions of secretary, deputy chair and chair were nominated and confirmed in the election of officer, as set out above.

F Stage Four: Decision on Electing the Chairperson of the Entity

Despite the several moments during the hui (and before it) where SK had sought to disqualify himself from being retained as chair, the final decision was made with a simple motion at about 50

minutes in. At that point there were four trustees present, with other participants having had to leave earlier. The meeting was quorate:

237. DA: Now, who are we nominating as chair?
 238. MB: Okay. I nominate SK as chair
 239. DA: I'll second that. All those in favour say āe 'yes' [assent communicated by participants nodding]
 240. SK: Koina tonu tōu hiahia? 'that is still what you want?'
 241. WT: [clears throat]
 242. DA: Against? Carried. Stay on as chair [to SK].
 243. WT: So do we need to nominate a deputy chair?
 244. MB: Yeah I think we do.
 245. WT: I nominate [DA] as deputy chair.
 246. SK: Āe tautoko 'Yes I support that'
 247. DA: All those in favour say āe 'yes'
 248. SK/MB: Āe 'yes'
 249. DA: Against? Carried.
 250. WT: Āe ka pai 'Yes. That's done'

At first glance, this looks very straightforward. There were, however, as we have seen, three stages that were carried out *well before* the above final decision was made. It is only by understanding these earlier stages of the decision that it is possible to understand that the moment of decision set out above was simply a pro-forma "Pākehā law" moment, with the decision *according to tikanga Māori*, and some political considerations, having been carried out some time before. Another way of understanding this moment is that good governance, in this context, *required* the appropriate application of tikanga Māori to important governance decisions.

A solution was found that upheld SK's mana and ensured that the rūnanga continued to be protected by this undiminished mana. SK was assured that he could have as much input as he was able to give, given his own burdens, without compromising good and clear decision-making in governance. But it is important to note that this decision was predicated primarily upon upholding tikanga norms.

G Towards a Conclusion

In the light of the exchanges set out above, what seemed to bind or constrain the participants, and what did participants appear to accept as binding?

1. *The requirements of karakia*: Participants accepted as binding the requirement that the process and content of the meeting be properly constituted by way of karakia, which acted to denote the transition from ordinary non-restricted meeting time to a more restricted and specialised hui process. Karakia upholds a degree of *tapu* by acknowledging the realm of the divine: te wāhi ngaro. This hui continued until the closing karakia, at which time the participants transitioned from being in a special hui Māori context to an unrestricted and

non-special gathering. The requirements of *karakia* and of acknowledging *tapu* did not serve to drive decision-making as other legal norms did in this hui Māori. However, following the correct process ensured that the rest of the hui was similarly ordered and effective. *Mihi whakawātea* were also necessary in a similar way.

2. *The requirements of mihi and mihi whakawātea/mihi whakanoa:* Not all *mihi*, or acknowledgments of others at the start of a hui, will include a *mihi whakawātea* or *whakanoa* (*mihi* that clear the way, or lift *tapu* from a proceeding). However, such *mihi* are crucial. All participants may bring with them grief or a heaviness connected to death or illness that should be acknowledged and lifted to ensure that such matters do not affect the hui process. The *mihi whakawātea* or *mihi whakanoa* is expected to smooth the way for the hui by acknowledging those who have passed and the accompanying grief or strong emotion. This is a form of *tapu-lifting* in its own right, freeing the participants to take part in the hui process. All participants showed that they accepted the necessity of the process by behaving in accordance with the process, as also demonstrated by added verbal affirmations.

While all participants expected the *mihi whakawātea* to take place, the exchange as recorded above between SK and DA shows that the process is not merely formulaic. An attentive listener, attuned to the norms of *tikanga* Māori, will notice problems that may arise. On this occasion, SK exhibited some hesitance and self-deprecation prior to the beginning of the hui proper, and again during his delivery of the *mihi whakawātea*. This appears to have introduced a degree of disequilibrium that DA considered to require an immediate response. There were two legal norms of *tikanga* at work, it seems. DA sought to restore an equilibrium that seemed to have been shifted, providing a response (a form of *utu*, or return). His riposte to SK and his affirmation of SK was a necessary and proportionate response, with the goal of ensuring that *mana* was being upheld appropriately. What bound alert participants, here, was the need to restore a degree of equilibrium by upholding the *mana* of SK in the face of a threat to it.

3. *The need to uphold the mana of the rūnanga and organisation:* This imperative seemed to require that the *mana* of the chair continue to be upheld by way of SK *only* retaining the chairmanship. Upholding the *mana* of the individual alone did not seem to be sufficient to bind participants to the decision to retain SK in that role, but supporting the *rūnanga* and the whole organisation, and *its* standing, authority (*mana*) and survival, *was* sufficient.
4. *The continuing importance of whakapapa in an urban entity without obvious whakapapa connections between members:* The reasoning behind the drive to retain SK as chair relied on the facts of his *whakapapa* connections, and his position within his own *hapū* and *iwi*.
5. *The decision to retain SK as chair:* SK tried very hard, over the course of the meeting, to resign. Ultimately, he appeared to accept that he was bound:

- (a) To agree to the path that best facilitates the survival of the organisation, enabling it to retain its autonomy, or *rangatiratanga*. That path required, at that time, his ongoing role as chair;
 - (b) To uphold the expectations placed on him by his *iwi* and by *te ao Māori* more generally. Such expectations included him using the network of relationships he had built up over decades; and
 - (c) To accept a solution that upheld good governance.
6. Other participants appeared to accept that they were bound by similar things:
- (a) To agree to the path that best enables the survival of the *rūnanga* (in this circumstance, by having the person with the greatest known *mana* (reputation) in the position);
 - (b) To uphold the expectations placed on the *rūnanga* by people in key relationships and *te ao Māori* more generally; and
 - (c) A solution that enables good governance to occur. *Tikanga Māori* is relevant to, and not separate to, notions of good governance.
7. What drove the decision by the *rūnanga* was not primarily the ideals of typically understood notions of corporate governance and charities legislation, or even the constitution of the *rūnanga*. The constitution provided a solution to solve a problem that had been caused by a threat to *mana* and *rangatiratanga*, as required by the conception of good governance according to *tikanga Māori*. Nevertheless, rules of Western notions of governance, and the requirements of constitutional process, were *also* considered necessary and binding.

While the notion of a culture order provides an interesting and useful lens with which to view Māori hui-based discourse, there may well be hidden depths to such proceedings that require further analysis through a lens that identifies the legal norms of *tikanga Māori*.

Hui are an essential part of Māori civic decision-making. In such civic-decision-making hui, the exercise of *mana and tapu* will be present as indicators of effective hui process and decision-making. Such exercise also serves to consolidate group identity. This group identity is also established and affirmed due to group processes based on the requirements of *whakapapa* and *whanaungatanga*, and the rest of the norms of *tikanga Māori* uphold not only good decision-making, but also group autonomy, or *rangatiratanga*. These norms (*mana*, *tapu*, *whakapapa*, *whanaungatanga* and *rangatiratanga*) do not establish merely optional guidelines; instead, such norms can constrain decisions made in the relevant hui and operate alongside ordinary legal processes that may also be present, and which can also serve to constrain decision-making.

More data is required to investigate and confirm that legal norms of *tikanga Māori* impose similar constraints on groups beyond the case study in this pilot. It may be, for example, that the use of *te reo Māori* encoded the legal norms of *tikanga Māori* far more strongly than in primarily English-language

discourse. A further question to ask is to what extent those *outside the room*, but part of the organisation examined here, considered themselves bound by the decision to retain SK as chair. What is clear is that hui, old and modern, cannot be ignored; they comprise vital institutions of Māori constitutionalism.

Transcript conventions

//\ and /\ is overlap

= is continuous speech from one person to the next

(.) is a pause where <1.0

(X.0) is a pause where >1.0

(words) is an approximation of what is being said

(...) is speech that is unable to be comprehended — usually because it is inaudible, said very quickly, mumbled or all of those

: is where the vowel or consonant sound is drawn out — the more :::: there are, the more drawn-out a sound is

[word] is paralinguistic data like laughing, sniffing, coughing, burping, clapping hands, etc.

((word)) is metalinguistic info like whether something is said in a whisper

