Legal Anthropologist to Visit Te Matahauariki

Te Matahauariki are pleased to announce that Dr Anne Griffiths, a leading scholar in the anthropology of law, will be visiting New Zealand from 11 –16th October 2004 as a guest of the Institute. Dr Griffiths will speak at the Institute on the subject of *Customary Law in a Transnational World* and will also give public addresses during her stay. Her address will cover the role that customary law has played in different societies and how it interacts with other systems of law and will also consider the implications of globalisation and transnationalism on customary law systems.

It is envisaged that through her extensive scholarship and research, Dr Griffiths will bring a valuable insight and global context to the work that the Institute has been doing in the compilation of *Te Matapunenga: A Compendium of References to the Concepts and Institutions of Maori Customary Law*.

Dr Griffiths obtained her Ph.D from the University of London in 1988. She is Reader in Law at the University of Edinburgh and currently on a visiting Professorship at the University of Texas. She is also associated with the Max Planck Institute for Social research in Halle, Germany.

Since her promotion to Reader in 1999 she has been working with Professors Franz and Keebet von Benda-Beckmann on the transnational dimensions of law at the Max Planck Institute for Social Anthropology. She is also currently editing a book entitled *Mobile People, Mobile Law: Expanding Legal Relations in a Contracting World* which has been accepted for publication by Ashgate in its series ‘Law, Justice and Power’ edited by Professor Austin Sarat, former President of Law and Society in America. The importance of this work in the light of current conditions posed by globalisation has been recognised by the E.S.R.C. and the Wenner-Gren Foundation for Anthropological Research who have awarded Dr Griffiths grants to fund meetings involving an interdisciplinary group of international scholars at the universities of Edinburgh, London, and Sussex. The meetings will focus on the themes of Governmentality, The State and Transnational Processes of Law and Space, Territoriality and Time. The aim of these meetings is to reframe the ways in which the conflicting relationship between ‘global’ and ‘local’ issues are conceived, and to reformulate the plurality of law to take account of the fact that culture, geographic space and territoriality need not coincide.

Symposium on Polynesian Customary Law
Fale Pasifika, University of Auckland

Te Matahauariki is to host a symposium on Polynesian Customary Law in the soon to be opened Fale Pasifika at the University of Auckland on Tuesday 12 October 2004. The keynote speaker will be Dr Anne Griffiths, a leading scholar on the anthropology of law, from the University of Edinburgh. She will speak on the subject of ‘*Customary Law in a Transnational World*’. There will be four further papers for presentation as follows: Dr Richard Benton: ‘Comparative Etymology and Concepts in Polynesian Customary Law’; Dr Tui Adams, Dr Alex Frame and Paul Meredith ‘Performance and Maori Customary Legal Process’; Tuiatua Tupua Tamasese: ‘Samoan Customary Legal Concepts’ and Ms Joeliee Seed-Pihama and Dr Alex Frame: ‘Some Customary Legal Concepts in Maori Traditional Migration Accounts’.

A report on the symposium will appear in the next issue of the newsletter.
Who was ‘Nayti’?

During the course of our historical research we have come across some intriguing characters. One such figure was a ‘native’ by the name of ‘Nayti’. It will be remembered that when Europeans began to write down the Maori language, they used a phonetic spelling. This has thrown up many a puzzle in determining historical names, ‘Nayti’ being one such example.

Our first encounter with ‘Nayti’ was in the minutes of the Select Committee hearing of the House Of Lords into the state of affairs in New Zealand in 1838. Nayti was called to give evidence to the Committee and commented on serveal aspects of Maori custom.

In fact Nayti we now understand was Te Whaiti (‘Na-y-ti’, the ‘h’ being silent). He was a son of Mahurenga of the Ngati Toa tribe and relative to the famed Te Rauparaha. Te Whaiti was born about 1812 around the Kawhia district before his people migrated south to the Kapiti area with Te Rauparaha. Te Whaiti arrived in France in 1837 on board a French whaler with another Maori referred to as Jackey. The Captain had promised Te Whaiti that he would see King Louis Philippe. When Edward Gibbon Wakefield heard of these two ‘natives’ from New Zealand, he had them brought over to England. Jackey unfortunately died of tuberculous. Nayti however spent the next two years living with Wakefield in Chelsea learning the English language and becoming very much accustomed to the English way of life. He quickly became a novelty amongst the London social circles, regarded as somewhat of a ‘Native Prince’. He is mentioned in an article with an accompanying image in the Saturday Magazine [London] in December of 1837.

In 1839 he returned to New Zealand with the preliminary expedition of the New Zealand Company on the Tory. He was appointed as the Company’s official interpreter and was to be promoted as a lofty example for what Maori could become in adopting a European lifestyle. However on arrival, there quickly exhibited a strenous relationship with Te Rauparaha and his nephew Te Rangihaeata. According to accounts, Te Whaiti was often rebuked by these two for misrepresenting his status in England. It was suggested that reference by other Maori to him as ‘E Ariki’ was in fact a transliteration for a nickname he had picked up in his youth, namely ‘Dickey’.

Te Whaiti abandoned his English employers and reverted to his ‘native’ lifestyle residing at Te Tai pa some 16 kilometres from Port Nicholson (Wellington). He was also recorded as being a resident of Mana Island. He may have possibly signed the Treaty at Guards Bay, Cloudy Bay on 17 June 1840, a Waiti (Whaiti) of Ngati Toa so recorded as having done so. Nayti, (Te Whaiti) did not live for much longer, his death from consumption being recorded in 1842.

If you have any further information on ‘Nayti’, please email Paul Meredith at matauhariki@xtra.co.nz.

‘Nayti’ on Tapu

Where a Chief is buried the Place is taboo’d?
It is
If a New Zealand Man gets over the Fence , what happens to him ?
He knows the mark which is taboo’d ; they say “You see the Place which is taboo’d ; why do you go to a Place which is taboo’d?”
What do the New Zealand People do to him ?
They take all his Things away. If a New Zealander gets into a taboo’d Ground, the Man whom that taboo’d Ground belongs to goes and takes his Pig , and every thing belonging to him.
Do they ever kill him ?
No.
Report from the Select Committee of the House of Lords appointed to Inquire into the Present State of the Islands of New Zealand...with Minutes of Evidence.’ Ordered to be printed , 8 August 1838 , p.115-116.
Te Matapunenga: Introducing the Titles

Professor Richard Benton

A major undertaking by Te Mātahauariki is the production of Te Mātāpunenga – a compendium of historical references to key Māori customary legal concepts. This is based on a thorough exploration of historical materials, many of which have lain unnoticed for decades in archives and private collections, and brings together references to customary concepts and institutions which appear to come from influential or authoritative sources and throw light on both historical and contemporary meanings of these ideas and the means for implementing them. The concepts themselves are organized in “titles” (generally each legal or institutional term constitutes a separate title), which in turn consist of a number of illustrative “entries”.

Aspects of this work have been highlighted in each issue of Te Mātahauariki Newsletter. General accounts of Te Mātāpunenga are given in Issues 1 and 3, examples of some of the materials from which entries are drawn appear in Issue 2, and subsequent issues contain a great deal of material drawn from entries to various titles. Additionally, Issue 4 contained an in-depth look at the evolution of the contemporary meaning of the word “Maoritanga”, Issue 6 contains notes towards a definition of customary law, and Issue 7 contains an article by Dr Alex Frame and Paul Meredith presenting a particularly informative set of entries bearing on customary legal notions of ownership rights of access and use in relation to the foreshore and seabed.

Each of the titles is introduced by a preamble. At present these preambles have three components: an ordinary language English definition of the term, a note as to its origin in the evolution of modern Māori, and a reconstructed meaning or range of meanings in the original source of the term, where this is known. The starting point for the ordinary-language definitions is generally the Seventh Edition of Williams’ Dictionary of the Maori Language (1971), but the material in Williams (as this work is referred to in the text) has been supplemented by that in other works, such as the Reed Dictionary of Modern Māori, and the authors’ own knowledge of the language. In general, these meanings are paraphrased or summarized, and not all possible connotations of a word are included. For clarity, some direct quotes from Williams (and other sources) are enclosed in quotation marks.

The etymological information has come from a wide range of sources, many of which have been gathered together in the Pollex database compiled by Professor Bruce Biggs and some of his close associates, and circulated among his personal network of colleagues until his death in 2000. Other sources, particularly but not exclusively work being undertaken by scholars at the Australian National University and the University of Hawaii, are also drawn upon, particularly for the more ancient terms. It has to be emphasised that the further back in time one goes, the more tenuous some of the reconstructed forms become, and, despite (or perhaps because of) the rigorous scientific methodologies employed by comparative and historical linguists, many an anathema has been hurled by one eminent scholar at another because of a disagreement as to the nature of a single consonant in a ancient word. Since there is no direct evidence (in the form of written evidence, let alone sound recordings), these conjectures about the ancient forms of the ancestral languages have to be based on comparisons of their living descendants. In cases where there is disagreement, the notes in Te Mātāpunenga generally contain a hypothetical form that looks most like its modern Māori descendent. Such choices are to a large extent arbitrary, but are based on the selector’s own knowledge of the arguments advanced in favour of the various alternatives, and personal knowledge of Polynesian, Micronesian and Philippine languages.

Although (contending schools notwithstanding) the exact form of a word does not make much of a difference, the ability to trace plausible historical and contemporary links between concepts is very important in gaining an insight into the wider and deeper meanings of the ideas the words encapsulate, and how these have evolved in Māori legal and philosophical thought. In the prototype version of Te Mātāpunenga (announced in the last issue of this newsletter), most titles are accompanied by very brief etymological notes, but in the more developed versions, some will be given a lot more attention.

We are now getting to this “more developed” stage, and two draft preambles follow, the first for the term Ariki, which is introduced quite briefly, and the second for the term Mauri, a key philosophical notion which merits extended treatment.
Ariki The core meaning of this word in Māori appears to have been “first-born male or female in a family of note”, from which the specific subsidiary meanings “chief, priest” flow automatically, given the importance of birth order and seniority in classical Māori social and political structure, and by extension the secondary meaning of “leader with exceptional authority and mana”. The word is from Proto-Polynesian *’ariki “chief”; originating in the Polynesian homeland, this word is reflected in its primary meaning of “chief”, usually a superior chief by right of descent, in all major and most minor Polynesian languages.

Mauri (also, mouri). This was a central notion in Māori philosophy, although in its abstract sense of “the essence which gives a thing its specific natural character” it had almost faded from memory by the 1960s¹, only to make a very strong resurgence in recent years, especially in discussions on genetic modification and the natural environment. The word is difficult to grasp because it encapsulates two related but distinct ideas: the life principle or essential quality of a being or entity, and a physical object in which this essence has been located. Williams defines the abstract sense term first as “life principle”, and equates the human manifestation of abstract mauri with “the thymos of man”. The Greek notion of the mortal, but immaterial, thymos, embracing consciousness, activity, rationality and emotion (in contradistinction with the immortal but more quiescent psyche) probably parallels Māori thought on this aspect of mauri (and its contrast with the notion of wairua) as accurately as is possible in a brief English definition. There is certainly no single English word to express this concept. Joan Metge’s definition, quoted above, covers the wider sense of the abstract connotations of mauri well; it is important to remember that the kinds of “thing” which the mauri integrates include ecosystems and social groups as well as objects and individuals. From the abstract senses of mauri come the expressions mauri ora (vital or living mauri – sometimes equated with “person”), mauri rere (fleeing mauri – “panic stricken”), and so on. The concrete representations or depositories of the mauri, particularly that of a cultivation, productive area of forest, fishery, community or social group, were also called mauri; when both the abstract and physical symbol were being discussed at the same time, the term ariā might be used for the concrete aspect of mauri. (It should be noted that in some recent writing, the terms mauri and wairua seem to be used interchangeably; this was not the case in the nineteenth century, by which time the notions of “life essence” and “spirit”, still combined in the cognates of mauri in some other Polynesian languages, had been separated in Māori thought). This is an ancient term, derived from the Austronesian *hudip “to live”, through Oceanic *ma’udip (incorporating the stative prefix ma-) to Proto-Polynesian *ma’uri “live, life (principle), alive”. In modern Polynesian languages, cognate terms occur in Samoan (mauli, “seat of the emotions”), Hawaiian (mauli “life, seat of life, spirit”, also Mauli Ola, a name for the god of health who is also called on to protect the integrity of a new household) and Rarotongan (with a similar range of meanings); the term has been refined and deepened as a technical philosophical notion in Aotearoa. The compilers of Te Mātāpunenga have decided that a further component should be added to the preamble, in the form of a “roadmap”, to guide the reader through the material in the particular title, and also to point the way to significantly related ideas and discussions in other titles. These roadmaps are still in the preliminary stages of drafting – an outline of how they are being constructed and a preview for at least one title will appear in the next issue of the Mātāhauraki Newsletter.

(Endnotes)
¹ Unattributed quotes are from Williams, in the entry for the word or phrase cited; other quotations are individually referenced.
² For a succinct recent discussion of how the relationships of Austronesian languages have been determined, and different approaches to reconstructing the lexicon, see the introductory chapter to The Lexicon of Proto Oceanic 1. Material Culture, ed. Malcolm Ross, Andrew Pawley and Meredith Osmond (Canberra: Research School of Pacific Studies, The Australian National University, 1998).
⁴ Joan Metge wrote in the revised edition of her book The Maoris of New Zealand (1976) that while still believed by “many older Maoris”, this notion “no longer has general currency, probably because it was not reinforced by Christian beliefs, as tinana and wairua were” (p.57).
A Study of ‘Europeanised Maori’

Institute Research Fellow, Paul Meredith, is soon to publish a study of Maori who had themselves declared European pursuant to a little known legislative provision enacted in 1912. Section 17 of the Native Land Amendment Act 1912 gave the Governor-General the power to declare a ‘Native’, on the recommendation of the Native Land Court, to be a European in law. 77 Maori successfully took advantage of this legislation during the time it was in force between 1912 and 1931.

The study deals with a fascinating period in New Zealand’s attempt to manage race relations. It goes beyond the simple explanation of assimilation in action and explores the more complex issues surrounding hybridity, identity, cultural positioning and the agency of Maori in re-inventing themselves to survive and thrive in the early 20th century.

A key contribution of the work is its original historical research, Paul making extensive use of National Archives files, parliamentary debates, mainstream and Maori newspaper reports, and Native Land Court Minutes. The study is also intriguing for the range of Maori who had themselves Europeanised. There is the Maori who, to his dismay, was Europeanised by ‘departmental error’; a graduate of London University with a first class Masters in Languages in the 1920s who, had she not been Europeanised, would have been the first female Maori University graduate (technically speaking); a very wealthy young man whose Europeanisation enabled the two Europeans who facilitated this new identity to defraud him of much of his extensive land holdings; several prominent leaders within their Maori communities including one who was informed that because he had been Europeanised was now ineligible to stand as a candidate in the South Maori electorate. He subsequently had his Europeanisation revoked.

The article is to be published by the Online Journal of Australian and New Zealand History.

Ohaaki: A Power Station on Maori Land

In a recently published Institute monograph, Professor Dame Evleyn Stokes provides a personal account of the impact of the Ohaaki geothermal power station constructed on Maori land close by Te Ohaaki Marae and the ancestral papakainga of the Ngati Tahu community. Dame Evelyn shows how this dispersed Maori community was able to cope with such a major development project dumped in their backyard in the national interest.

Dame Evelyn’s initial involvement began early in 1977 when she was asked by the New Zealand Electricity Department to comment on likely social and economic impacts. Then in 1980 Dame Evelyn was appointed by the Maori Land Court as one of the trustees of Te Ohaaki Marae and the lands affected by the power project. An outsider, with no ancestral ties or other connections with Ngati Tahu, she held this position until she resigned in 1992.

Working in the Geography Department at the University of Waikato during the 1970s, Dame Evelyn had developed a growing interest in the new field of environmental impact assessment which was being applied to public works in New Zealand. She had already worked with colleagues Robert Mahuta, John Rangihau and Jim Ritchie on the impacts of the Huntly Power Station on a small Maori community before turning her attention to Ohaaki. Through the 1980s and until her resignation as a trustee, Ohaaki, Ngati Tahu and energy issues generally occupied a substantial portion of her life. How she became so involved with the Ngati Tahu community is part of this story.

Dame Evelyn locates the developing scenario at Ohaaki in the late 1970s admist a time of increasing awareness and policy-making in the area of resource management in New Zealand and Maori land issues too. She highlights her particular concern with the problem of weighing the “national interest” expressed by the dominant European urban industrial culture, against the potential destruction of viable indigenous cultures and economies.

The work is somewhat timely as we witness some rethink by officials and law-makers around resource mangament law and policy in New Zealand.
Treaty Title Proposed for Foreshore and Seabed

Dr Alex Frame made a personal submission on Thursday 12 August to the Select Committee of Parliament considering the Foreshore and Seabed Bill. It is now a public document and is reproduced in our Newsletter because of its relevance to the Institute’s purpose of studying ways in which our legal system might reflect the best of the concepts and values of our founding cultures.

The Chairman and Members, 
Fisheries and Other Sea-Related Legislation Select Committee, 
PARLIAMENT.

Monday 12 July 2004

Dear Chairman and Select Committee Members,

I respectfully make the following three submissions concerning the Foreshore and Seabed Bill currently before the Committee. The first two submissions deal with specific provisions of the current Bill. The third submission proposes an entirely different and alternative approach to the issues, and sets out a draft ‘Treaty Title Bill’ which should be self-explanatory as to the main features.

1. Clause 9 of the Bill.

1.1 The intention of the clause as drafted is apparently to extinguish customary rights in the foreshore and seabed recognised at common law, and to replace these by the more circumscribed rights provided for in the Bill. This is consistent with the apparent aim of the Bill to create a balance between rights based on custom on the one hand, and the general public interest on the other.

1.2. However, the inclusion in clause 9 (3) of the words ‘fiduciary duty of the Crown’ will have the effect of also extinguishing any right to redress where the Crown may, by word or conduct, have assumed fiduciary duties in relation to specific parts of the foreshore and seabed. If enacted it would appear to release the executive branch of government from any enforceable duty, past or future, to preserve interests which it may have committed the Crown’s honour and good faith to protecting.

1.3. The nature of the fiduciary duty has been explained and enforced against the modern Canadian State in recent times by the Canadian Courts in such cases as Guerin1 in 1984 and Charles in 19972. Significantly, the duty has been regarded as applicable to New Zealand circumstances also, see the observation of the President of the New Zealand Court of Appeal, Sir Robin Cooke (as Lord Cooke of Thorndon then was) in 1990 in the Muriwhenua case3 where it was said:

‘The judgments in Guerin...delivered by Dickson J and Wilson J seem likely to be found of major guidance when such matters come finally to be decided in New Zealand...There are constitutional differences between Canada and New Zealand, but the Guerin judgments do not appear to turn on these. Moreover, in interpreting New Zealand parliamentary and common law it must be right for New Zealand Courts to lean against any inference that in this democracy the rights of the Maori people are less respected than the rights of aboriginal peoples are in North America.’

1.4. The facts in Guerin were these. In the 1950’s, the Indian Affairs Branch of the Federal Government of Canada granted a lease to a Golf Club over certain lands of the Musqueam Indian Band, descended from the...
original inhabitants of Vancouver in British Columbia. Although there had been consultation with the Band in general terms and the Band had agreed that its surplus lands could be leased for the proposed purposes, the terms of the lease (which were very unfavourable to the Band) were found by the trial judge to have been put to the Band ‘only in the most general terms’, and that when the Band agreed in 1957 to the ‘surrender’ of the relevant lands to the Crown, it did not have before it several of the most unfavourable features of the lease subsequently agreed between the Crown and the Golf Club. The Crown argued that once the surrender documents were signed, the Crown was free to lease on any terms it saw fit. The matter eventually came before the Supreme Court of Canada, which found that a fiduciary duty lay upon the Crown to deal with the lands for the benefit of the Musqueam Band, and that this duty was enforceable by the Courts in the same way as if a trust were in effect. The Supreme Court upheld the award of substantial damages to the Band. Dickson J stated:

‘I believe that in this sense the Crown has a fiduciary obligation to the Indian Bands with respect to the uses to which reserve land may be put ...it does hold the lands subject to a fiduciary obligation to protect and preserve the Bands’ interests from invasion or destruction’ (p.848)

Dickson J defined the nature of the fiduciary obligation in this way:

‘it is my view that the Crown’s obligations vis-à-vis the Indians cannot be defined as a trust. That does not mean, however, that the Crown owes no enforceable duty to the Indians in the way in which it deals with Indian land (p.864).... This obligation does not amount to a trust in the private law sense. It is rather a fiduciary duty. If, however, the Crown breaches this fiduciary duty it will be liable to the Indians in the same way and to the same extent as if such a trust were in effect (p.865)

1.5. It is submitted that it would be a very bad practice and precedent for the Executive branch of Government to be released from the consequences of its own breach of present and future fiduciary duties where these are established to the satisfaction of Her Majesty’s Judges.

2. **Clauses 42 and 61 of the Bill**

2.1. Clauses 42 (2) (a) and 61 (2) (a) appear to be an attempt to clarify the requirement earlier in the Clauses that an ‘activity, use or practice’ must have been carried on ‘in a substantially uninterrupted manner’ to support a ‘customary rights order’. They appear to address the situation where an ‘activity’ – say, the launching of waka at a particular place – has been discontinued not because of any wish to discontinue, but because a rival use has forced the discontinuance. The Bill appears to say that, so long as the interrupting use was ‘under an enactment or rule of law’, it will effectively extinguish the customary right. Thus, if the waka-launching activity had been interrupted by water-skiing, that would serve to terminate the custom so long as the water skiing had been carried on within the relevant local body rules and even if the iwi had protested and asserted their wish to continue the old practice.

2.2. This result seems unduly harsh. A more reasonable principle might be a requirement on those asserting the custom to show that the interruption was involuntary and objected to at the time and since.

3. **An Alternative Approach**

3.1. Although the Bill before the Committee sets out to balance Maori and general interests, it does not in my submission embody principles and create processes which are likely to foster the cooperation needed to bring out the best from the Maori, Pakeha, and other communities making up our collective citizenry. On the contrary, the circumstances of the Bill’s conception, the confiscatory construction which it can too easily be given, and the labyrinthine and confused processes it creates, are likely to divide rather than conciliate our cultures and communities. It will create adversarial, even confrontational, positions at many levels. This,
when what we need are practical decisions which take account of Maori needs and interests as well as the rightful claims of all our citizens to use and enjoy the common heritage.

3.2. In its attempt to ‘judicialise’ the process of determining Maori rights, the Foreshore and Seabed Bill creates adversarial relations between Maori and Maori, between Maori and other New Zealand citizens, between Parliament and the Courts, and between Maori and Government. Having done that, it then creates further problems in relation to the kinds of judicial order it permits. ‘Ancestral connexion orders’ are likely to create expectations that cannot be met; ‘Customary rights orders’ leave practical problems unanswered; ‘Territorial customary rights orders’ create a further grievance requiring settlement.

3.3. The approach in the proposed Treaty Title Bill is to create an administrative structure responsible for the management of the foreshore and seabed within broad parameters laid down by Parliament, and capable of generating practical general principles whilst taking account of specific local issues. The terms of reference proposed are intended to ‘lock in’ all three Articles of the Treaty – Article I as to the Crown’s regulatory function, Article II as to protected Maori rights, and Article III as to the legal equality of all citizens – without trying to specify in advance how these rights might be balanced on any particular issue. That would be a matter for discussion, development, and ‘give and take’, among members of the ‘Treaty Council’ as principle emerges from concrete applications to real circumstances. The constitution of the proposed Treaty Council is intended not only to assure Maori real representation in the decision-making process by Members chosen by Maori in a manner preferred by Maori, but indeed to draw on Maori wisdom and concepts so as to produce a better management regime for the foreshore and seabed than could be arrived at by the Executive branch of Government through its existing mix of agencies.

3.4. It is submitted that the time has arrived to seek more cooperative answers to the questions thrown up by the clash between Treaty or custom–based Maori claims on the one hand, and the claims of all New Zealand citizens to fair and equal enjoyment of the common heritage on the other. It used to be thought that ‘the Crown’ provided a mechanism in which ‘the public estate’ could be vested in perpetuity, safe from alienation to private interests. Regrettably, this confidence has been damaged by the actions of successive governments in relation to public assets of all kinds in the last two decades.

This submission is made in an entirely personal capacity and the views expressed in it are those of the writer as an independent scholar. I would welcome an opportunity to appear before the Committee to add explanation on some points and to answer any questions which Members may have.

Yours faithfully,
(Dr Alex Frame)

The Treaty Title Bill

1. The Treaty of Waitangi, Te Tiriti o Waitangi, shall be deemed to be a legal person.

2. The foreshore and seabed shall be vested absolutely in The Treaty of Waitangi.

3. The control and management of the estate of the Treaty of Waitangi shall be vested in the Treaty Council which shall act in all matters in accordance with the Three Articles of the Treaty ,the general laws of New Zealand as enacted from time to time, any relevant norms of international law, and the following rules:

(a) the Council’s management of the estate shall be such as to accord to all New Zealand citizens the greatest degree of public access, enjoyment and use , without discrimination on grounds of race, origin, belief or status, compatible with the Three Articles of the Treaty of Waitangi, the general laws of New Zealand, and the efficient and preservative management of the estate.
(b) The Council shall not sell any part of the estate or subject any part of the estate to a lease or other charge for a period longer than 20 years.

4. The Treaty Council shall be constituted as follows:

(a) **3 Members** appointed by Parliament following nomination by the Prime Minister

(b) **3 Members** appointed by the Maori people in a manner to be determined by them

(c) **1 Member** appointed from persons holding, or having in the past held, the office of Judge of the High Court, to be appointed by the Attorney-General following consultation with the Chief Justice. The Judicial Member, who shall have an equal vote with other Members, shall have the responsibility of advising and voting in all matters in accordance with the requirements of the constitution, customs, and laws of New Zealand, including the Treaty of Waitangi.

5. Members of the Council shall be appointed for a period of ten years and shall not hold any other office, or accept any other engagement or remuneration of any kind, during their term of office.

6. Where any three Members of the Council determine that a particular management decision involves issues of significant concern to a particular tribal region, or local body or community, the Council shall co-opt two **Special Members** to represent the tribal and local interests, one selected by the Members appointed under section 4(a) to replace one of their number, and one selected by the Members appointed under section 4(b) to replace one of their number. The Special Members shall have all the rights of full Members for the purposes of the particular management decision but shall relinquish office as soon as the decision is made.

(Footnotes)

3. Te Runanga o Muriwhenua Inc. v Attorney-General [1990] 2 NZLR 641 at page 655

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**Tuku Whenua**

Captain Bolger, with 35 years of association with Maori principally in the Bay of Islands (including the land purchase of land), gave the following evidence to the 1856 Board of Inquiry into Native Affairs and the system of land purchasing from natives:

“For a long time after I had been in the country, the natives had an idea that the land sold by them would in a short time revert to them. They did not appear to have an idea of an alienation of their land for ever… My experience all through the South Seas is the same, namely that what a European considers a sale of land is considered by the natives a mere right of occupancy. Between the years ’30 and ’35, the natives became more intelligent, and then learned that the Europeans expected the land forever…”

British Parliamentary Papers NZ10:1860
Researchers
Nga Kairangahau

Judge Michael Brown
Dr Tui Adams
Adjunct Professor Richard Benton
Professor Dame Evelyn Stokes
Dr Alex Frame
Nena Benton
Robert Joseph
Wayne Rumbles
Paul Meredith
Joeliee Pihama

The Advisory Panel
Te Ropu Kaitohutohu

Hon. Justice David Baragwanath
Professor Richard Bedford
Professor Margaret Bedggood
Denese Henare
Dr Manuka Henare
Hon. Justice Paul Heath
Dr Dame Joan Metge
David Oughton
Professor Tamati Reedy
Professor James Ritchie
Judge Anand Satyanand
Professor Dame Evelyn Stokes
Professor Richard Sutton

Some Publications Available

Dame Evelyn Stokes, Wiremu Tamihana: Rangatgira
Dr Alex Frame, Property and the Treaty of Waitangi: A Tragedy of the Commodities?
Rachel Parr and Paul Meredith, Collaborative Cross-Cultural Research for Laws and Institutions in Aotearoa/New Zealand.
Dame Joan Metge, Korero Tahi – Talking Together.
Dame Evelyn Stokes, Tikanga Maori and Geothermal Resources.
Dame Evelyn Stokes, Bicultural Methodology and Consultative Processes in Research.
Robert Joseph, Comparative Analysis of the Constitutional Frameworks of New Zealand and Canada within a Pluralistic Context.
Dr Alex Frame Grey & Iwikau: A Journey into Custom.
Gay Morgan Reflections on Pluralist Conundrums.
Leilani Tuala-Waren, A Study into the Ifoga: Samoa’s Answer to Dispute Healing
Dame Evelyn Stokes Ohaaki: A Power Station on Maori Land

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