Greetings and salutations!

This is the first issue of a quarterly newsletter to keep you informed of our continuing programme of research which examines a question central to contemporary constitutional and political debates in New Zealand: *If laws and institutions shape and reflect the values of a society, do the laws and institutions of New Zealand adequately fulfill that role?* The programme does not aim to answer this fundamental question, but rather to build up a body of soundly based data, knowledge and commentary to inform an essential national discourse.

To date the project has enabled the researchers to address methodology, lessons to be learned from models in other jurisdictions and historical information relating to Maori jurisprudence and early Maori-Pakeha interaction. With continued generous funding from the Foundation for Science Research and Technology, projects for the next phase of the programme will include an investigation of common ground between Maori and Pakeha, a reference work of Maori jurisprudence and a practical guide to restorative justice.

The research collated will serve to inform, sharpen and facilitate public conversation around the development of an inclusive jurisprudence and institutions which will promote social cohesion. We are aware that the dualism of the past (and indeed, in much present-day discussion and scholarship) is unhelpful and untrustworthy in facilitating such cohesion. Nevertheless, we remain committed to the overall objective of finding and indeed strengthening the points of convergence, so that unity and diversity can coexist in a creative rather than oppositional tension.

Central to achieving that objective is the continued support of an Advisory Panel of eminent experts drawn from the judiciary, leading academic and public institutions and the private sector. We have also held consultative meetings and seminars with Maori experts. I remain grateful for such support and look forward to continued generous funding from the Foundation for Science Research and Technology, projects for the next phase of the programme will include an investigation of common ground between Maori and Pakeha, a reference work of Maori jurisprudence and a practical guide to restorative justice.

The research collated will serve to inform, sharpen and facilitate public conversation around the development of an inclusive jurisprudence and institutions which will promote social cohesion. We are aware that the dualism of the past (and indeed, in much present-day discussion and scholarship) is unhelpful and untrustworthy in facilitating such cohesion. Nevertheless, we remain committed to the overall objective of finding and indeed strengthening the points of convergence, so that unity and diversity can coexist in a creative rather than oppositional tension.

Central to achieving that objective is the continued support of an Advisory Panel of eminent experts drawn from the judiciary, leading academic and public institutions and the private sector. We have also held consultative meetings and seminars with Maori experts. I remain grateful for such support and look forward to continued generous funding from the Foundation for Science Research and Technology, projects for the next phase of the programme will include an investigation of common ground between Maori and Pakeha, a reference work of Maori jurisprudence and a practical guide to restorative justice.
Objective 1 of the research programme, 'Bicultural Methodology and Consultative Processes', required that we identify the range of methodologies and consultative processes for bicultural socio-legal evaluative research.

Drawing from work to date in the programme it became apparent that while kaupapa Maori is indeed a central part of our research activity, our wider kaupapa is Maori-Pakeha cross-cultural collaboration. We realised that the task of the development of an inclusive jurisprudence and institutions that will promote social cohesion is one for all New Zealanders. For either Maori or Pakeha not to participate is to abrogate their Treaty responsibilities.

To that end a summary paper for the objective has been drafted highlighting this key issue of collaborative cross-cultural research. The paper addresses research methods and methodologies that engage and include both Maori and Pakeha in search of not only divergence, but also more importantly, convergence. The paper argues that collaborative cultural research is about the bridge-building exercise. It is about producing knowledge that answers questions, where possible, for both Maori and Pakeha about Maori and Pakeha worlds, Maori and Pakeha perspectives, Maori and Pakeha cultural practices and values against a background of trying not only to understand dif-

Collaborative Cross-Cultural Research
Kia Rangahau Ngatahi, Maori me te Pakeha

Kua kitea mai i nga mahi i mahia, ahakoa he wahanga nui ano to te kaupapa Maori ko te whanuitanga o Te Matahauariki ko te mahi tahi o te Maori me te Pakeha. Ma te kaupapa nei e waihanga nga ture e mau ai te mana o tena me tena. He kaupapa tenei mo tatau katoa. Ki te kore te Maori me te Pakeha e whaiwhai ki tenei kaupapa ka whakarere noa iho nga herenga ki te Tiriti o Waitangi.

No kona, kua tuhia he pepa he whakamarama ana i te matau e whai nei. Ka arohia tenei pepa ki nga whainga rangahau e whakauru ai te Maori me te Pakeha, e rapu tahi nei i nga rereketanga me nga oritenga. Ko te matu o tenei pepa he whakakotahi. Me rangahau kaupapa hei whakapuakitanga i nga whakaaro, hei matapiti tirohanga mo te Maori me te Pakeha ki roto ki o ratou whare, ahakoa he rereke, he orite ranei. Me waiho te kupu whakamutunga ki te ruruhi ra, a Dame Joan Metge, nana nei te kaupapa i tautoko, i awhina mai. “Ka whakarangatira tatou i a tatou, ka whakakoi ake, ka wero ake, a, ka tutu te puehu hoki. He pai ake te mahi tahi i to te mahi weherua. Ma te mahi tahi e marama ake ai, e pawerawera ake ai te kaupapa. Tirohia mai te pepa nei kaore ano.
The search for a common future in Aotearoa/New Zealand has always been the goal of the research programme – hence its name: Te Matahauariki. In this phase, however, our research on law and institutions is being even more consciously focused within a framework entitled “Seeking Common Ground”, where common is used both in the sense of uniting across difference and of belonging to the people.

Within this theme of ‘common ground’ we have identified a number of aspects:

(1) Identifying and sourcing what is common: here we aim to build on earlier methodological and comparative work, to identify the “values” of New Zealand Society on which the law is based and to consider other sources of “commonality” – the Treaty of Waitangi, the effect of 160 years of living together and the increasing importance of international law.

(2) Constructing a common framework that accommodates difference: here we aim to build on earlier examination of ways of accommodating different values and different ways of doing things. We see a number of topics on which work is planned as fitting within this concept, difference but also commonality between both cultures. Dame Joan Metge who collaborated with us on the paper in her final comment reminds us that, “we complement each other. We also stimulate, challenge and strike sparks off each other. We will understand more, explore more deeply by working together than we could ever do separately”.

A draft copy of the paper is available online for viewing at www.lianz.waikato.ac.nz/pub1.html. We would welcome any feedback/comments. Please email these to meredith@waikato.ac.nz.

A Research Framework for Seeking Common Ground
He Tahuhu Rangahau mo te Rapunga i nga Oritenga

The search for a common future in Aotearoa/New Zealand has always been the goal of the research programme – hence its name: Te Matahauariki. In this phase, however, our research on law and institutions is being even more consciously focused within a framework entitled “Seeking Common Ground”, where common is used both in the sense of uniting across difference and of belonging to the people.

Within this theme of ‘common ground’ we have identified a number of aspects:

(1) Identifying and sourcing what is common: here we aim to build on earlier methodological and comparative work, to identify the “values” of New Zealand Society on which the law is based and to consider other sources of “commonality” – the Treaty of Waitangi, the effect of 160 years of living together and the increasing importance of international law.

(2) Constructing a common framework that accommodates difference: here we aim to build on earlier examination of ways of accommodating different values and different ways of doing things. We see a number of topics on which work is planned as fitting within this concept, difference but also commonality between both cultures. Dame Joan Metge who collaborated with us on the paper in her final comment reminds us that, “we complement each other. We also stimulate, challenge and strike sparks off each other. We will understand more, explore more deeply by working together than we could ever do separately”.

A draft copy of the paper is available online for viewing at www.lianz.waikato.ac.nz/pub1.html. We would welcome any feedback/comments. Please email these to meredith@waikato.ac.nz.
such as restorative justice discussed below.

(3) Setting common goals and envisioning a common future: again we will build on earlier work in the Programme, developing the theme of “being a New Zealander” and exploring the Treaty of Waitangi as establishing a covenantal relationship in our past on which to base our future together.

We would also seek to contribute to public discussion of these themes.

Judge Brown’s Practical Guide to Restorative Justice

He Pukapuka Arahi Na Tiati Brown i te Mahi Whakawa, Whakatika Hoki.

Restorative justice has found renewed support of recent. The Government has pledged $4.8 million over the next three years to develop projects for the scheme, called Restorative Justice, and to expand some existing small-scale programmes.

The Institute has been giving some consideration as to how it might support this initiative and has decided to draft a practical guide to restorative justice. It is envisaged that this will be a useful introductory tool for members of the judiciary, community groups, marae/hapu and government officials interested in the area but not sure where to start.

The contents of this resource will include an overview of restorative justice, an explanation of the legal process, key contacts, useful readings and some examples of restorative justice in practice drawing from, but not limited to, Judge Brown’s “kete of restorative justice” anecdotes. The guide will be available in hard copy and online.

The project is very much in its infancy and the Institute is very interested in hearing from persons or groups who have ideas as to what they would like to see in this guide. Contact meredith@waikato.ac.nz

I te rangi nei kua kaha ake te tautoko o tenei kaupapa mahi whakawa, whakatika hoki. Kua whakaritea e te Kawanatanga kia tohaina he putea 4.8 miriona taara tona rahihono mo nga tau e toru e heke mai nei hei whakapakari haere i te kaupapa e kia nei ko "Restorative Justice", a, hei whakarai ake i nga kaupapa iti e whakahaerehia ana i tenei wa. Kua whakarohia e te Matahauariki me pehea e tautoko ake tenei kaupapa. Kua whakaritea me tuhi he pukapuka tohtohou mo te Restorative Justice. E whakarohia ana, he pukapuka pai tenei mo nga Tiatino, ropu-a-riwai, nga marae, nga hapu, me nga tari kawanatanga e hiahia ana ki te whai i tenei kaupapa, engari kaore i te moho me timata ki hea. Ko te kiko o tenei pukapuka he whakamarama i te tikanga o te whakawa, whakatika hoki, nga whakamaramatanga o te ture, nga tangata pai hei whakapa atu, nga pukapuka pai kia panuihia, me etahi pitopito korero kei a Tiati Paraone, kei a wai ake. Ka whakapukapukatia, ka whakaipurangitia te tuhia nei.

Kei te kuao tonu tenei kaupapa, a, mena he whakaaro a koutou, tena whakapa mai ki a meredith@waikato.ac.nz

"According to Maori usage the aggrieved should make concession, and propose peace; and should the aggressor have the hardihood to visit the injured party his own life would be the penalty; hence the allusion, "you are mine" simply means, you are at my mercy, your life is at my disposal."

Interview Between the Governor and the Native Chiefs of Waikato, Te Karere, March 1855, vol 1, no. 3, p. 8

"E ai ki nga tikanga Maori ma te tangata i tukinotia ai e hohou te rongo, a ki te haere te kaitukino ki mua i tera i tukinotia ai, ko ia ano te utu. Kua whakatakoto nei i tona upoko. No kona te korero, "Nou ano ahuau," ara ka tuae koe e au te patu, mena ra au e hiahia ai."

He korero i waenga i te Kawanatanga me nga rangataa o Waikato Te Karere. Mahe putanga, putanga 1, nama 3, wharangi 8.
Te Matapunenga:  
A Compendium of References to Customary Maori Legal Concepts

The Project is aimed at providing a base of knowledge about Maori customary law from which to advance the Institute’s study of ways in which our legal order can reflect the values of both of its major component cultures. As part of the Institute’s Programme, the research team has set itself the task of compiling a reference work, named Te Matapunenga, which will attempt to bring together and present in accessible form the historical uses and meanings of selected terms and concepts of Maori customary law.

Te Matapunenga seeks to provide alphabetically listed entries setting out the terms and concepts of Maori customary law as they are recorded in traditional Maori accounts, and in historical records both written and oral. Modern interpretations of the terms and concepts will also be noted where appropriate. The contexts for the cited uses of the terms and concepts will be provided wherever possible.

Etymological information will be included, enabling links to words and traditions in other parts of Polynesia to be traced, where these are known. Regional differences relating to customary law will also be noted. Of interest also will be the manner in which customary concepts have been recognized or modified by the legislative and judicial branches of the New Zealand government since 1840. The citations will provide a guide to leading sources for further information under each topic. Work on the entries has begun and will be linked to the Institute’s programme of consultations and discussions with senior Maori scholars and leaders.

It is envisaged that the ‘end-users’ of Te Matapunenga will be members of Maori communities, students and scholars at all levels within New Zealand, Government at many levels of policy and decision-making, and judicial officers across the range of Courts and Tribunals. It is also envisaged that the compilation will be of interest to international scholars seeking an understanding of...
Hei ta nga korero, na Ta Timi Kara tenei kupu te Maoritanga i whakahua tuatahitia i nga tau 1920. Heoi ano, na Dame Evelyn Stokes i tuku mai tetahi puka korero reo Maori mo tetahi huihuininga i Te Kuiti i te tau 1911. I reira etahi Rangatira e huihui ana i runga i te whakaaro whakakotahi me te whai whakaaro mo te kupu o te Maoritanga. (ahakoa i kitea tuatahitia tenei kupu “Maoritanga” i te tau 1844.) Ko H.R Wahanui te kaituhi i nga korerorero, he rangatira i a no Ngati Matakorere / Maniapoto rangatira H.R. Wahanui.

While Sir James Carroll is at the forefront of the discussion, others in attendance include Taonui Hikaka, Aprirana Ngata, Te Kahupukoro, Kipa Te Whatanui, Tuniarangi, Pepne Eketone and Heremia Tawake. Discussion included the role of the Maori people, status of the Maori language, culture and identity and relationship with laws and government. There are also references to land development and grievances about confiscations in Taranaki, Waikato, Tauranga and Whakatane districts.

The transcript is a significant contribution to Maori scholarship and members of the Research Team are currently working through the document with a view to publishing it and an associated analysis.

The closest historical reference re mana whenua, mana moana found to date:

Elsdon Best quotes these comments from Te Rangikaheke:

‘The tumu on which Hinemoa rested in Rotorua Lake was a post (or stake) erected in a shoal part of the lake. It was named Hinewhata and was erected as a token of mana of Umukaria. Ka whiwhi te tino rangatiratanga i te one, whiwhi ana ki uta, whiwhi ana ki te moana…’

In recent times debate has surrounded the meaning of the term *iwi* and its relationship to fish. However some 100 years ago the major concern was the meaning of mana and land. The following was found as a newspaper clipping in W. H. Grace’s Diary 1882. It also appears in the Appendices to the Journal of the House of Representatives, 1890, G. - I Opinions of Various Authorities on Native Tenure.

“We, the persons whose names are hereto attached, are aboriginal natives of New Zealand, who have been instructed in the Maori usages of our ancestors. We have also traveled through various places in the islands of New Zealand, and know that the Maori usages observed by other tribes in no way differs from those of our districts. Now, this example is written by us for the consideration of the Judges of the Native Land Court in order that they may know what the Maori custom is in relation to the “mana” of the chiefs of the Maori. That is to say, there are many degrees of chieftainship, such as the superior chief of a district, and the lesser ones of a hapu having its own chief.

(1) The superior chief of the large districts is the principal chief by descent and has great “mana” over the other chiefs and tribes within the boundaries of the district under his control (chieftainship). His “mana” is over the people only, and does not affect the lands of those people; but he has a claim to his own particular portion through his right to the land if his occupation was derived from his ancestors or his parents.

(2) The lesser chiefs of the haps; there are haps whose chief occupies the land belonging to him and his hapu. Such chiefs have a form of “mana” - that is, over their own hapu; but that mana does not confer (on him) the right to take the land of such hapu for himself. But that chief has a claim to the portion of land he has a right to through ancestry, conquest, gift, or occupation from the time of his ancestors down to himself whether large or small.

(3) As for “mana” itself, unaccompanied with a right to the land, a chief would not have a right to the land through “mana” alone.

These are the “Maori” customs observed in the islands of New Zealand in connection with “mana”. Now understanding as we do the customs of the “Maoris,” we have correctly set them forth herein, and we ask this exemplification of ours be superadded to those examples already supplied by the elders in the documents which are used as precedents for the work of the Native Land Court of New Zealand. That this statement also be left as guiding principle whereby the administration of the Judges of the Native Land Court for the future in dealing with usages of the Maori in relation to “mana” may be clear.”

-Signed by Tamati Tautahi, Hamuera mahupuku, Hoani Paraone, Tunuiarangi, Hemi matenga, Wi Parata, Kakakura, hone Omi, Pepene Eketone, Hamiora mangakahia, Paratene Ngata.

I enei ra kua tautohetohetia te whakamarama o te kupu iwi me tona herenga ki te ika. Engari kotahi rau tau ki mua ko te maharahara nui, ko te whakamarama o te kupu mana me te herenga ki te whenua. I kitea tenei e whai ake nei i tetahi niupepa e takoto ana i te rataka a W. H. Grace i te tau 1882. I kitea hoki i te Pukapuka Korero o te Paremata, 1890, G-1, Nga Whakaaro o Nga Pukenga mo te Mana me te Whenua Maori.

“Ko matou, ko nga tangata i tapirihia ai nga ingoa nei, he tangata whenua no Niu Tiren, he matatau hoki ki nga tikanga Maori a o matou tipuna. Kua takahia te mata o te whenua nei, me te mohio hoki kaore he rereketanga o nga tikanga o tena rohe, o tena rohe. Tena, he mea whakatauira tenei e matou mo nga tiati o te Kooti Whenua Maori kia mohio ai ratou he aha nga tikanga e pa ana ki te mana o nga rangatira Maori. Heoi ano ra, he maha nga ahuatanga o te rangatiratanga pera ano ki nga rangatira nona te mana noni me nga rangataira nona te mana iti.

(1) Ko te rangatira nona te mana o te rohe whanui tonu kei a ia te mana whakahaere, a, ka noho tera atu rangatira me nga hapu o taua rohe ki raro i tona mana. He mana tangata anake tona, kaore he whai panga ki o ratou whenua; engari e whai panga ana ia ki tona ake whenua mena i whakahaere mai taua mana i ona matua tupuna.

(2) Mo nga rangatira, no ratou te mana iti o nga hapu, ka noho ratou i runga i o ratou whenua ake. To ratou mana, kei runga noa iho i o ratou hapu. E koe e taea e ratou te tango i nga whenua hapu mo ratou ake, engari ano nga whenua i heke iho i o ratou tupuna ake mai i nga whakapapa, raupatu, takoha, ahikaraoa, ahakoa iti, rahi ranei.

(3) Ki te kore he mana whenua, he mana tuku iho ranei, kua kore hoki he whai panga ki nga whenua. E kore e taea ma te mana anake.

Koia nei nga tikanga Maori i kitea ki Niu Tiren e pa ana ki tenei mea ko te "mana". Na te mea e marama ana matou ki nga tikanga Maori, kua tika te whakatakoto, a, e inoi atu kia tapirihia ai enei pitopito korero kei era kua horainia ma e nga tupuna i roto i nga tuhinga tawhito hei taumata tohutohu ki te Kooti Whenua Maori o Niu Tiren i enei rangi. Ka waiho iho tenei korero hei pouherenga e taea ai e nga tiati te whakahaere pai i nga tikanga o te Maori e pa ana ki te mana.”

“By inserting a term like ‘mana whenua’ into public welfare legislation, my deep fear is that we are handing over a customary concept with limited relevance in the modern function of society, handing over the definition, the meaning, the relevance of that customary concept to the High Court and to the legions of lawyers who currently feast at the trough of the fisheries settlement.”

Shane Jones, New Zealand Herald 8/8/2000
Te Matahauariki Online at www.lianz.waikato.ac.nz

Researchers
Nga Kairangahau

Judge Michael Brown
Tui Adams
Professor Margaret Bedggood
Associate Professor Richard Benton
Professor Dame Evelyn Stokes
Dr Alex Frame
Manuka Henare
Robert Joseph
Catherine Iorns-Magallanes
Paul Meredith
Gay Morgan
Rachel Parr
Wayne Rumbles
Tonga Karena

Some Publications Forthcoming
Etahi Pepa kei te Haere Mai

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.*
Wayne Rumbles, *Africa: Received and Customary Law -Under One Umbrella.*

Dr Alexander Gillespie, *Maori, Biodiversity and International Law.*
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, *A Journey Overland to Taupo in 1849 by Governor Grey and Te Heuheu Iwikau.*

See www.lianz.waikato.ac.nz/publications1

Whakapa Mai:
c/- Te Wahanga Ture
Te Whare Wananga O Waikato
Pouaka Poutapeta 3105
Kirikiriroa, Aotearoa
Waea 64 7 858 5033
Whaki 64 7 858 5032
E-mere smacleod@waikato.ac.nz