Māori Customary Laws and Institutions –
Crimes Against the Person, Marriage, Interment, Theft

DRAFT

LAWS AND INSTITUTIONS FOR AOTEAROA / NEW ZEALAND

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ABSTRACT

It is clear in pre-colonial times that Māori customary law for social control regulated Maori society and presumed a collective responsibility for offending and restoration. Māori concepts were constructed on fundamental values such as collectivism and interconnectedness. The committing of a hara (crime) would damage the mana tapu (intrinsic prestige) of a hapu and would upset the balance. Constraints on behaviour had to be developed to preserve harmony among individuals and the whānau, hapu and perhaps iwi. It seems that Maori customary law grew out of and was inextricably woven into the religious and hence the everyday framework of Māori life. Moreover, there existed a collective rather than an individual criminal responsibility and a sense of direct as well as indirect liability.

Māori customary law on homicide varied significantly according to the context and people involved. Māori marriage as an institution had a procreative function but was also a formal agreement between two whānau with reciprocal duties and obligations. The condition of tapu pertaining to death, burial and exhumation was prescribed and to honour the death of a Rangatira the hahunga institution was established, with the subsequent anniversary being religiously attended to. Theft existed within Māori customary law but the act of theft depended on the context of the taking of the goods, for example, goods taken as part of a taua muru were not viewed as theft but as a group’s right to acquire.

Maori customary law thus embodied ideals, hopes and potential, as well as a longing for harmony which ideals were not necessarily achievable. Further, it seems Māori seldom acted against their customary law but they always tried to justify that their actions were tika (correct) for the specific situation and task at hand. Perhaps this explains why there were so many inconsistencies and contradictions within Māori society. However, those same ideals did provide some strengthening and direction for individuals and the whānau, hapu and iwi.
INTRODUCTION

The present article does not assume to be a description of pre-contact Māori law and customs among all iwi and hapu of Aotearoa/New Zealand. It is difficult to summarise precisely the laws and customs of all Māori, other than in general terms, because of the differences in customs that undoubtedly existed. The Māori were a cautious people, and it seems that they generally adhered to ancient customs and norms, social and otherwise. Crimes against the person, marriage, interment, and theft would most probably have been no exception. While certain customs and norms may have been ignored occasionally, whanau, hapu, or iwi opinion condemned such breaches thereby regulating social conduct within society. However, despite Māori generally subscribing to social norms and values, those same values and principles were largely idealised and not necessarily achievable. Perhaps this explains why there were many inconsistencies and contradictions within traditional Māori society.

CRIMES AGAINST THE PERSON

Overview

This section discusses a number of crimes against the person within a restorative justice context. The crimes include murder, suicide, infanticide, abortion, rape, incest, adultery, domestic violence, duelling and kanga - a peculiar form of swearing.

Pratt noted that the Maori legal system in pre-contact times emphasised a restorative nature. The process, it seems, took the form of the people coming together for a hearing on the marae or inside a meetinghouse. These hearings investigated the matter at hand and attempted to restore the balance that had been disturbed. An integral component of the hearing usually meant redressing the harm done to the victim. The level of redress depended on the degree of the offence and, it seems, the personal status of the persons involved. A form of compensation (utu) for some offences existed with mediation to remove tension. Other offences (hara) for breaches

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of *tapu* were perceived as so serious that death was demanded. The interests of the victim and their *whānau* or *hapu* were central to the administration of justice. The victim’s right to redress could also be passed down from one generation to another and could be pursued against the offender and their kin or *hapu*. Hence the importance attached to dispute proceedings, which might last for days while a resolution was being negotiated.\(^2\) The justice system did not exist in isolation from the rest of society but was completely integrated within it, rooted in the everyday experiences of the people.

The most prevalent sanction seems to have been *utu*. The usual methods for securing satisfaction in this way were for the offended party and their kinsmen to *tauau muru* and seek redress (*muru*) from the offender and their kin. The scope and extent of the event could be arranged in advance. However, not all cases ended in reconciliation and a subsequent feud could go on for many years between subsequent generations until the aggrieved party was compensated. Consequently, tribal disputes occasionally continued for centuries particularly when blood was spilt.

**Murder (Kohuru)**

Mere killing in cold blood was not considered murder by Māori. Occasionally such killing was the vehicle for attaining revenge sought for an insult offered against the forefathers of the slayer. This occurred as a dispute because the memory of an insult or defeat to be avenged was handed down through several generations. A woman whose husband had been killed might dedicate a son, even before his birth, for the purpose of obtaining revenge. If a person was insulted by another so that it was perceived that blood needed to be shed to right the imbalance, the aggrieved person might kill someone else from the offender’s group. They were not particular about killing the offender. The only condition was that he slew a relative or a person connected in some way, even a member of the tribe might serve this purpose. Nevertheless, neither of these incidents was classified as murder (*kohuru*).

However, if a chief brought guests to his house, provided food and invited them to sleep in peace, but subsequently killed them, this act would be deemed murder and a *hara* (sin) to be atoned for. Such a treacherous murder of members of

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\(^2\) Idem.
another tribe was dealt with sternly, without fear of consequences or consideration of persons. This type of wholesale murder was termed *kohuru*. In 1831 Polack observed one such murder and stated:

A feud some years back, had existed between the immediate ancestors of two tribes in Hokianga. Peace had apparently been arranged between both parties. One of them who lived on the banks of the Waiakea River, went to pay a friendly visit to his late enemy. On meeting, the usual pressing of noses took place, and while performing the act of salutation, the visitor was struck on the head by the tomahawk of his treacherous antagonist, and killed on the spot.

A *kohuru* occurred when Ngāti Haua at Maungakawa massacred two hundred Ngāti Paoa men, women and children living under the protection and with the friendship of the great chief Te Waharoa. Another *kohuru* caused the long war between Nga Puhi and Ngāti Whakaeue. A party of thirty Nga Puhi visiting the people of Mokoia were hospitably received, and after a feast, joined in the singing with the *tangata whenua* (hosts). Once the song was in its second verse, the Nga Puhi were butchered. This *kohuru* was severely punished with Hongi Hika’s *tau a seeking utu* using muskets and slaying many Ngāti Whakaeue people in 1823. Ironically, a *kohuru* was later committed by Hongi Hika when false peace was made during the siege of Totara Pa at Thames.

If a *kohuru* was the cause of war and the name of the assassin was unknown, the aggrieved people sent a small war party to find a victim. The party (*tau a*) slew the first person they met belonging to the tribe under suspicion, young or old, male or female. Not surprisingly, this exacerbated the increasing conflict.

**Suicide**

Suicide seems to have been prevalent within Māori society. Pembroke recorded a number of suicides among Māori in the early contact period of colonisation. He stated that in his first year of residence in New Zealand, suicides

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4 Polack, *1 New Zealand Being a Narrative of Travels and Adventures in that Country Between the Years 1831 and 1837*. (London, 1840) at 10.  
5 Dieffenbach, *Travels in New Zealand* (London, John Murray, 1843) at 133.  
7 Idem; supra., n.3 (Treagar) at 368.  
8 Supra., n.3 (Treagar) at 329
were a daily occurrence. It was considered a matter of duty for a wife to commit suicide by hanging following the death of her husband. This suicide pact appeared to be reciprocal with husbands commonly killing themselves when their wife died.

However, suicide was not confined to occasions of spouses dying. Pembroke also witnessed examples of suicide when an acquaintance cut his throat as a radical cure for a toothache. On another occasion, a person committed suicide in front of his debtors because he could not pay his debts. Makereti commented on suicide occurring when lovers were forbidden to marry by their respective hapu.

Sometimes a wahine rangatira fell in love with a tangata rangatira of another hapu which her parents did not approve of, and nothing could persuade them to agree to her marrying him. Because her love was so great, and she was not allowed to marry him, she would whakamoremore (die). She would commit suicide by not eating anything and just pining away, dying of a broken heart.

Suicide was sometimes the result of infidelity. Biggs noted that occasionally the offending woman would hang herself with the assistance of a female relative from her husband’s family. An Arawa woman also threw herself into a boiling hot spring because her husband had been unfaithful. In another case a woman left her husband following a quarrel, and when he pursued her to bring her home, she jumped off a high cliff.

Infanticide (Roromi)

Records show that infanticide existed within Māori society but whether it was a social exception and not the rule is elusive. Earle stated that most female children were destroyed in infancy. The rationale for this act, he claims, was the difficulty encountered in rearing females and the equivalent cost for rearing a male child. Moreover, females did not go to war and become warriors as the males did. Earle noted that the strength and pride of a chief existed in the number of sons he had; while

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10 Idem. Infra page 29 with spouses committing suicide when their spouse died.
11 Idem. However, Biggs disputes this because he found no record of an instance. Infra., n.15 Biggs at 76.
12 Idem.
13 Idem.
14 Makereti, M The Old-Time Māori (New Women’s Press, Auckland, 1938) at 79.
16 Best, E Māori Marriage Customs (Lecture Series given before the Auckland Institute, 5 October 1903) at 59.
the few females who had been suffered to live were invariably looked down upon with contempt. In 1829 Atkins also noted that female infants in Tauranga were destroyed if their number exceeded the number of males.

Furthermore, Dieffenbach recorded that if a woman boasted that her unborn child was expected to be a particular gender but was the opposite, that child was subsequently sacrificed. The children of an exogamous union sometimes had divided loyalties often resulting in kai-wai-u (milk-drinking), a form of treachery stemming from the relationship to both parties to a dispute. For this reason the male relations of a woman who had married into another group sometimes killed any male children she had. There are several traditions of a woman concealing the sex of her child from her relatives for this reason. Occasionally the mother or her relations while in fits of passion or jealousy murdered children. Marsden cited the case of Riwa who returned from a war expedition with a new wife. His first wife subsequently killed their first child out of spite and much to the father’s distress.

In some cases infanticide was the result of superstition occasioned by fear of divine anger and punishment. This occurred with Rangitaautau of Rotorua who killed her first child because she offended an old priestess who cursed her with the child’s fate. The threat was frequently repeated until the woman buried her child alive. Still, Dieffenbach stated that with this case, the woman afterward ‘deeply repented having thus violated the most sacred law of nature.’ Sometimes children were sacrificed during long sieges as at Te Whetumatarau in 1829. It was said that the women traded their children to each other as food ‘i hokohoko nga wahine i a ratou tamariki ki a ratou ano hei kai.’

However, Biggs asserted that infanticide was not the norm but the exception in Māori society. He concluded that infanticide was the outcome of extreme

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17 Earle, A Nine Months Residence in New Zealand in 1927 (Whitcombe & Tombs Ltd, Wellington, 1909) at 196. It seems there existed a strong desire for male children within Māori society. Thus Te Kanawa was so angry because his first children were girls that he wanted to kill them. When dissuaded he spared them grudgingly saying that they might later be of some use for the “entertainment” of visitors. See Kelly, L Tainui (Polynesian Society Memoir, No. 25, Wellington, 1949) at 260.
18 McNab, R Historical Records of New Zealand (Wellington, 1908) at 1, 696.
19 Supra., n. 5 (Dieffenbach) at 25.
20 Best, E Tuhoe Children of the Mist (Polynesian Society Memoir, New Plymouth, 1908) at 1, 696.
21 Ibid., at 97; Best, E The Māori (Polynesian Society Memoir, Wellington, 1924) at 2, 300; Downes, T Old Whanganui (Hawera, 1915) at 38-9; .
22 Elder, J (ed) Letters and Journals of Samuel Marsden (Dunedin, 1932) at 371.
23 Supra., n. 5 (Dieffenbach) at 25.
25 Wirepa, T ‘Te Whetumatarau’ in Te Kopara (1 August & 12 October, 1918) at 2, 24-26.
circumstances such as jealousy, revenge, and economic hardship. Dieffenbach affirmed this when he found that sometimes a child was sacrificed as an act of revenge including broken faith, desertion by the husband, illegitimate children, matrimonial dissension’s, slavery during pregnancy, and separation from the husband.

**Abortion**

Writings show that abortion did occur within Māori society, but whether there existed any customary law for or against abortion is obscure. Dieffenbach, a medical doctor, witnessed accounts of this act when he stated that abortion occurred with ‘the head of the infant not yet fully born being compressed and thus terminated. Sometimes abortion was effected by pressing violently upon the abdomen with a belt. Dieffenbach also suspected that with the many still born births ‘in almost all cases the death was caused by the mother. Whether this was the norm or exception is difficult to ascertain.

**Rape**

Rape occurred within Māori society with severe sanctions. Pratt noted that the act of rape was a *hara* punishable by death, not just because it physically hurt the victim, or because it damaged a member of the *whanau* unit. Rather, rape was forbidden because it violated the inherent *tapu* of woman. It thus in turn upset the spiritual, emotional and physical balance within the victim herself, and within the relationships she had with her community and *tipuna* (ancestors). The act of rape was therefore proscribed against to protect that balance and to preserve the woman’s *tapu*. Hence the severity of the sanctions. Hohua Tutengaehe recalled hearing from his mother that the brother of an Ariki had raped a woman of high birth. The hearing was held at a *hui* on the *marae* and it was the unanimous decision of the *rangatira* present that he would have to pay with his life for assaulting the *tapu* of the *tangata*. He was executed publicly on the *marae* by his older brother, the *ariki*, so that ‘the stain and blemish was removed from the aristocracy of ancient bloodlines.’ He was

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26 Supra., n. 15 (Biggs) at 74.
27 Supra., n.5 (Dieffenbach) at 24-5.
28 Ibid., at 26.
29 Idem.
30 Supra., n. 1 (Pratt) at 13.
clubbed in the temple. Before the execution, the brothers clasped each other in tears, with the doomed man’s last words to his brother being ‘kei te pai’ (it’s alright).

**Incest (Ngau Whiore)**

To marry any one of closer kinship than a third cousin was deemed incest, and great exception was taken to such unions. An incestuous union was viewed despairingly and condemned. Best noted that incest was uncommon among Maori. When it did occur, however, it was spoken of as *he ngau whiore, he whakahouhou*! (it is incestuous, it is disgusting!). *Ngau whiore* means ‘tail biter’ thus those who committed this heinous crime were compared to a dog which turns and bites its own tail for only among dogs did near relations have connection with each other. Hence the injunction against incest which acted as a means of social control. Furthermore, incestuous marriages were followed by a *tipuheke* (degeneration, deterioration) in the offspring.

Platt explained that the crime of incest was similarly predicated in a specific weave of ancestral and spiritual prohibition. It was forbidden because it violated the inherent *tapu* of woman. It thus in turn upset the spiritual, emotional and physical balance within the victim herself, and within the relationships she had within her community and *tipuna*. The act was therefore proscribed to protect that balance and to preserve the *tapu* of woman as the *wharetangata*.

**Adultery (Puremu)**

The sexual freedom allowed women ceased abruptly on marriage, and adultery involving married people was a serious crime. Reported penalties for *puremu* included subjection to a *taua* and even death. The nature of the punishment...

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32 Supra., n. 16 (Best) at 15.
33 Ibid., at 31.
34 Ibid., at 21.
35 Supra., n. 1 (Pratt) at 13.
36 For a very detailed account of adultery and its consequences, Supra., n. 16 (Best) at 51-62.
37 A great sense of shame seems to have been felt by those discovered to have committed adultery. This seems to have been responsible for many suicides. See supra., n. 4 (Polack) at 85; Polack, *Manners and Customs of the New Zealanders* (1976 Reprint)1 at 146-7; Ward, *A Show of Justice: Racial Amalgamation in the Nineteenth Century* (Auckland University. Press, 1973) at 7.
depended on the relative ranks of the offender and the person offended against. If a chief’s slave wife committed adultery she would be slain, together with her lover if he were similarly of lower status. If the guilty woman was of higher rank the husband would not exact the extreme penalty for fear of reprisals from her own people. He would then cast her off or perhaps beat her.

Earle provided an account of an adultery dispute at Kororareka in 1827 that resulted in an interesting dispute resolution mechanism - a duel:

Atoi had two wives and his brother seduced one of them who was entrusted to his care while Atoi was away. When Atoi arrived at the village he seized a club and rushed upon his brother with some heavy blows passing between them. The brothers having completely exhausted their strength were separated and the families then sat down in a circle to converse and consult on the affair. Atoi’s wife totally denied the charge and protested her innocence, and many circumstances were brought to corroborate her statements. The husband at length was satisfied, and all parties were reconciled.

Makereti commented on another severe sanction for puremu. She stated that herehere (prisoners of war) were often men of high standing and exceedingly good looking. They were treated well by the chief and his people, and indeed, often married into the tribe. If one of these men so far forgot himself as to carry on illicit love with the wife of one of the chiefs, the punishment was very severe. He was made impotent by lesion caused by tension with the kotiate. The victim was flung on his back, and was seized and held in such a manner that the scrotum could be entered and held in the orifice on one side of the kotiate. The appendage was then stretched until its membrane could be inserted into the other orifice of the kotiate. The weapon was then given a circular twist and a vigorous upward jerk. This had the effect of severing the

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38 In Kaitaia, Puhipi Ripi noted the intractability of adultery disputes. He stated: ‘murder and theft we may subdue but adultery is very common among us. How we are to subdue it, for it often occasions wars amongst us.’ See Richard Taylor, *Journal*, 14 April 1840. See also Colenso to Mantell, 26 July 1869, McLean MSS, 183. In Wellington in 1840, Ensign Best commanded a detachment of troops who interceded in a violent adultery dispute in which the principal Wellington chiefs were threatening to take sides. Best disarmed the groups and settled the dispute with compensation. He stated that ‘but for our mediation the man would have murdered his wife and a war would have been inevitable.’ See Best, A.D *The Journal of Ensign Best 1837-1842* (1966) at 228. See supra., n 4 (Polack) at 85.

39 Earle provided an account of a woman executed for puremu: He states: a chief, resident in the village, had proof of the infidelity of one of his wives, and, being perfectly sure of her guilt, he took his patoo-patoo and proceeded to his hut, where this wretched woman was employed in household affairs. Without mentioning the cause of his suspicion, or once upbraiding her, he deliberately aimed a blow at her head, which killed her on the spot; and, as she was a slave, he dragged the body to be devoured by the dogs. Supra., n. 17 (Earle) at 73-4.

40 Elder, J.R *Marsden’s Lieutenants* (Dunedin, 1934) at 257.


42 McNab, R *Historical Records of New Zealand* (Wellington, 1914) at 371.

43 Supra., n. 17 (Earle) at 89-90.
spermatic cord, and resulted in the eventual atrophy of the organ. One would be inclined to conclude that such a sanction would have been a very strong deterrent for this crime.

**Domestic Violence**

Records show that domestic violence occurred frequently within Māori society. An example was Takarehe of Ruatoki who struck his wife, Mahuru, with his club because his meal was poorly prepared. She subsequently left him and told him to marry his weapon as a wife. Her father later killed Takarehe for his crime. Endogamous marriages were also discouraged because of past experiences of trouble arising from extra-tribal marriages where couples quarrelled and the husband was violent towards his wife with inter-tribal war resulting.

Jealousy and quarrelling within polygynous marriages also resulted in domestic violence. There was much jealousy on the part of a junior wife who tried to influence the husband against the senior wife. An example was Wairangi of Ngāti Raukawa who was away on a visit when a kinsman visited his senior wife. The junior wife told Wairangi on his return, and Wairangi beat his senior wife, who subsequently fled to the home of her hapu. The inevitable result was war between the two tribes.

A further example of domestic violence occurred between Takutai and his second wife Huia. The difference with this example was the wife beat the husband. The aged Takutai tried to publicly humiliate and insult Huia by commanding her to do the slave chores. Huia replied ‘*karangatia to mokai*’ call your slave. Takutai then seized her by the hair, threw her to the ground and raised his foot to stamp on her. But Huia caught his ankle, pulled him down, and bit his leg. There was a short scuffle from which Huia rose as victor. She then spat in his face and cried, ‘and this is how a slave avenges her insults!’ She then said ‘let no man call me wife of that thing there’ pointing to Takutai. Then she clutched at his ears and ripped out his pounamu.

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44 Supra., n.14 (Makereti) at 91.
45 Supra., n. 16 (Best) at 59
46 Buck, P *The Coming of the Māori* (Whitcombe & Tombs Ltd, Māori Purposes Fund Board, Wellington, 1962 ) at 366. Infra page 12 on duelling as another mechanism for settling disputes.
eardrops, cast them in his face, then went home to her own people. The inevitable result was a *tauau muru* and inter-tribal war.\(^{47}\)

**Duelling**

As a sub-branch of war, duelling seems to have been used for settling disputes. Single combats often took place between chiefs of opposing forces, when one leader or celebrated warrior would step forward and challenge another. But besides this kind of fighting there would be, within the tribe itself, individual ‘affairs of honour.’ In many cases the cause was woman, generally the light conduct of a wife. The injured husband would, with a party of his friends, armed with light spears (*timata*), visit the offender, who probably had his party of friends also. A discussion would arise as to whether compensation was to be offered or the matter pass to the stage of single combat. If arrangements could not be made a duel was arranged. The rules differed with different tribes, but generally the matter proceeded as follows: The wrong doer crouched down with one knee on the ground and with his spear held vertically. The aggrieved man thrust at the other’s breast, and if the lunge was parried made a second and third, but if the three thrusts were warded off, the kneeling warrior would spring to his feet and fight on equal terms. As soon as one was wounded the duel was over, but if either of the combatants received fatal injury one of his relatives would claim *utu* and a war would ensue.\(^{48}\)

Such a duel occurred at Ohinemutu, Lake Rotorua. The chief Utu had eloped with the wife of his neighbour Tua, and when tired of his new mistress resolved to go home again, but was not allowed to rest without a challenge from the deserted husband. Utu came to the ground with a friend named Ana as his second, while Tua with four other friends soon followed. Ana was not supposed to fight, but Tua’s four friends were all relatives of his or of his wife’s, and therefore they, too, considered themselves injured and claimed the right to satisfaction. Tua’s friends had the choice of weapons, and selected spears. Utu sat down on the sand, armed with a short warding-stick (*karo*), with which to turn aside a spear-thrust, but the priest with very potent spells had charmed this stick. Each of Tua’s friends advanced in turn and

\(^{47}\) For this interesting and entertaining account see Otorohanga, W.B *Where the White Man Treads* (Wilson & Horton Ltd, Auckland, 1928) at 29-31.

\(^{48}\) For a detailed account of a duel, supra., n. 9 (Pembroke) at 110-114.
hurled his spear at Utu, who managed to ward them all off. This exhausted their right to attack. They might have gone close enough to thrust, but took care not to do so, as, if they thrust and failed, Utu would have a right of retaliation. Tua was terribly exasperated, by the clumsiness of his friends and went off into a mad dance of frenzied defiance, brandishing his weapon, then, rushed upon the unsuspecting and innocent Ana and struck him a fatal blow. Thus, as somebody had been hurt, honour was satisfied, and survivors became good friends. Tua had a brother who refrained from his right of throwing a spear at Utu, and in recognition of this forbearance Utu satisfied him by the gift of a small piece of land overlooking Lake Rotorua.

Kanga (Swearing)

The Māori were highly sensitive to insult, slight, or diminution of status. Kanga was a curse or execration levelled at a chief, (particularly at his head, the most sacred part of his person) that was a frequent source of demand for compensation, or bloody retribution. The usual provocations for war were curses (kanga sometimes uttered almost without serious intention), quarrelling as to boundaries, squabbles about woman, and revenge taken for murders. Sometimes even the elopement of a girl to her lover provoked bloodshed through the girl’s tribe trying to recover her by force.

One chief induced his tribe to go to war and take revenge on the relations of his wife because he suspected her of having in secret better food than supplied to him. As a reverse cause of quarrel to this it was recorded that Te Rauparaha noticing at a feast that his principal wife had no savoury portion allotted as her share, remarked, ‘a war party shall go and kill some of the Waikato people as a savoury morsel to eat with that portion of food.’ Werowero of Mahia once quarrelled with a neighbouring chief who signified that he would cut off his head and sell it to Europeans. For this kanga, Werowero determined to have full utu, even though the two subsequently became

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49 Supra., n. 3 (Tregar) at 370.
50 Sometimes the resolve for war was hidden in the heart of the principal chief until he considered the time for action ripe. Then he would make a carved wooden image, and, having assembled his people round it, he would call the image by the name of the chief of the enemy and strike the head (the most sacred part of the person) of the effigy with his weapon. Whatever the motive of the war, when once decided on, the resolution was conveyed to the people generally by blowing the large war gong (pahu). The dance of defiance (whakatoamoa) would follow to express derision and contempt for the enemy and then the ceremonies commenced.
friends. When the opportunity arose, the treacherous Werowero slew his enemy, decapitated his body, then sent the head to some Europeans. 51

A terrible and bloody war took place on the East Coast through a musical insult, or what was regarded as one, for the chief Pakanui considered that the notes of a trumpet that sounded in the pa at Waikawa conveyed a curse against him. Calling together his men, he attacked the pa, overpowered the offenders and exterminated most of them. 52 Thus *kanga* was a crime against a person as well as the wider community with severe sanctions following it. Interestingly, in 1857 Governor Gore Brown even instructed Fenton, Resident Magistrate in the Waikato, to draw up a code of Māori law that included *kanga* - ‘that peculiar form of swearing considered so heinous by the Maori.’ 53

**Summary**

When we consider homicide - the taking of human life - Māori customary law varied significantly according to the context and people involved. To kill a slave was no crime because slaves had no *mana* or rights. To kill an enemy was an achievement provided the *hapu* could withstand the sure vengeance of the offended *hapu*. To kill a member of the *hapu* would bring not only a host of indignant relatives for *utu* but would rouse the displeasure of the whole *hapu*, as losing a valuable member of the unit. 54 To kill a spouse for infidelity was sometimes considered the duty of the aggrieved spouse. For the wife of a slain warrior to kill herself was praiseworthy so that she could accompany her husband. Slaves were also killed at the death of a warrior to work for them in the spirit world. Infanticide, especially of female children,

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51 Polack, J.S New Zealand: Being a Narrative of Travels and Adventures During a Residence in that Country Between the Years 1831 and 1837 (Richard Bentley, London, 1840 at 57-8. Polack also records incidents of *kanga*: ‘We have often seen and heard two men cursing each other with the most bitter and injurious expressions, several spectators looking on, bestowing applause on the ruffian who best acquitted himself, or whose expressions were more insulting. Among such maledictions, are the following: ‘E kai na to wangana’ may your head be eaten off (as food for your enemy); *kai koe to matua* eat thou of thy parent; *puke tuki tukia* may your stomach be eviscerated. Supra., n. 58 (Polack) at 282-3. The Reverend John Morgan also observed an incident of *kanga* in 1848 at Otwahao. Differences arose and an improper expression occurred while some Ngati Raukawa men were dragging out the *waka* (canoe). Morgan observed that one of the men said: ‘Drag the backbone of Te Werowero into the water.’ By this statement, Morgan states, *waka* (canoes) according to Maori custom became sacred but it was curse to the great Te Wherowhero which required mediation to settle. Morgan, J Letters and Journals of the Rev. John Morgan, Missionary of Otawhao 1810 – 1865 (Alexander Turnbull Library, qMS-1390-1392) at 346, 349.

52 Supra., n. 3 (Treagar) at 325-7.

53 See Brown’s memo to Ministers, 28 April 1857 and Stafford’s reply, 6 May 1857 ; AJHR 1858, E-5, at 7-10. A specific example of *kanga* and a subsequent *muru* was in 1840 with the Hawkes Bay chief, Te Hapuku, who retrieved a whale boat from a settler who had cursed him. Stanley / Hobson, 10 September 1842, CO 209/14, at 195.
seems to have occurred but whether the act was the established norm is elusive. Finally, murder (*kohuru*) was not so much the taking of a life, but the treacherous act of welcoming visitors into one’s *hapu*, showing hospitality so the guests felt safe, and then killing them, which act was revenged with ruthlessness throughout subsequent generations.

Still, it is clear in pre-colonial times that Māori law presumed a collective responsibility for offending and restoration. The Māori concept was built on a most fundamental of all Māori values – collectivism and interconnectedness. Jackson commented:

> the rights of individuals, or the hurts they may suffer when their rights were abused, were indivisible from the welfare of the *whānau*, the *hapu*, the *iwi*. Each had reciprocal obligations found in a shared genealogy, and a set of behavioural precedents established by common *tīpuna*. They were based too on the specific belief that all people had an inherent *tapu* that must not be abused, and on the general perception that society could only function if all things, physical and spiritual, were held in balance.\(^{55}\)

The committing of a *hara* or crime would therefore damage that *tapu* and upset the balance. Constraints on behaviour had to be developed to preserve harmony within and among individuals and the *whānau*, *hapu* and *iwi*. It seems that the law grew out of and was inextricably woven into the religious and hence the everyday framework of Māori life. Moreover, there existed a collective rather than an individual criminal responsibility and a sense of direct as well as indirect liability. The law thus embodied ideals, hopes and potential, as well as a longing for harmony, which ideals were not necessarily achievable. Perhaps this explains why there were so many inconsistencies and contradictions within Māori society. However, those same ideals did provide some strengthening and direction for individuals and the *whānau*, *hapu* and *iwi*.

*Utu* or compensation and satisfaction, were important concepts at the heart of Māori justice. *Muru*, a formalised concept of retributive compensation, was another central feature to Māori law to restore the balance that was lost. It would seem that *muru* was a means of obtaining *utu* that parties agreed to. However, not all cases ended in reconciliation. Māori justice also provided the death penalty as an

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\(^{54}\) Keesing, F *The Changing Māori* (Board of Māori Ethnological Research, New Plymouth, 1928) at 30.

appropriate sanction on occasions. But the overall aim of Maori customary laws and institutions seemed to be restorative: restore the mana of the iwi, hapu or whanau and of the offended parties. If the victims were of high birth, then sometimes only drastic measures such as death could achieve restoration.

MARRIAGE

Purpose of Marriage

Buck stated that the primary purpose of marriage was for the procreation of children to continue the family kawai (lineage). The higher one’s rank and personal status was, the need for careful consideration of a suitable mother likewise increased. The parents of a daughter of rank, such as a puhi, exercised great caution in selecting an appropriate husband and a whanau meeting was usually held to discuss this issue. Another purpose for marriage was the promised protection that resulted from the new alliance among hapu. Marriage also functioned as a form of conquest.

Arranged Marriages

In making a selection for marriage, it seems that two principles were involved which, although contradictory, were used – endogamous (marriage within the group) and exogamous (marriage outside) selections. The endogamous principle was summarised in the injunction ‘e moe i to tuahine, kia kino e kino ana ki a koe ano,’ - marry your cousin so that if trouble arises it will be within the family. The note of warning was a consequence of past experiences whereby trouble emerged from exogamous marriages - extra-hapu or tribal marriages. If a husband was physically

56 Supra., n. 46 (Buck) at 366.
57 Durie, E Custom Law (1994) at 45.
58 In 1840, Polack commented on Māori customs for arranging marriages when he stated: Of marriages there may be said to be three systems in vogue; the contract formed with the first wife being pre-distinct from any after connection; when the females are generally under the domination of the first; and, lastly, handmaids, or women raised from slavery to the marital embrace. Marriages take place very early in life, and affiances or betrothals, often take place among friends before the objects spoken of see the light. Among brothers and relatives, in order to cement and perpetuate friendship, it is often arranged that if the one party has a girl and the other a male child, their marriage shall take place at an early period. The writer was often requested by elderly chiefs and their wives to allow their daughters, children perhaps, five years of age, to be affianced to a son or younger brother, inquiring of us if we could accommodate their paternal wishes with either, and promising that the most rigid tapu should be placed over the young lady when she should arrive at years of discretion, and that nothing short of a refusal should militate against the tapu with which she would become invested. See Polack, J Manners and Customs of the New Zealanders: With Notes Corroborative of Their Habits and Usages, etc and Remarks to Intending Immigrants, with numerous cuts drawn on wood (Vol. 1) (James Madden & Co., Piccadilly, 1840?) at 129-136.
violent towards his wife or used disparaging remarks about her or her family, she typically returned home to her hapu and reported the insults. The result was often inter-hapu or tribal warfare. In endogamous marriages (intra-hapu or tribal marriages) quarrels between husband and wife remained within the confines of the kinship group. This meant that the most extreme consequence might be marital separation as opposed to inter-tribal conflict.\textsuperscript{59}

Notwithstanding this injunction, exogamous marriages did occur. Some of the reasons for this included for fame; maintaining the standard of rank; the formation of a blood alliance between the leading families of the hapu concerned; for military assistance against other hapu; to avert hostilities between the hapu because of successful claims based on kinship; and to end hostilities and cement peace with a defeated hapu often giving their chief’s daughter in marriage to the leader of the conquering force.\textsuperscript{60}

**Taumau – Betrothal**

Among various iwi and hapu, marriage was usually preceded by a formal act of betrothal (taumau), which once entered into, was regarded as absolutely binding. Buck stated that ‘infant betrothal (taumaha - to bespeak) was occasionally requested by a friend of the child’s father, a branch of the expanded family, or another tribe who wished to form a friendly alliance.’\textsuperscript{61} The family desiring the betrothal would send a messenger (toro) with valuable gifts (paremata) such as jewellery, to the village of the child’s parents. At a public assemblage in the tribal meeting-house, the messenger made a formal request in an eloquent speech and ceremonially laid his gifts before the family. The decision was a sensitive affair as refusal was considered an insult by the family or tribe requesting the alliance and remembered for future reprisal.

The representative of the family replied and if the request was permitted, he recited a chant termed a hono (joining) and accepted the gifts. It then became a point of honour to ensure that the marriage was carried out when the child grew up. A male child might have temporary ‘liaisons’ before the time arrived, but a female was tapu to her betrothed and was carefully guarded during adolescence. This type of betrothal

\textsuperscript{59} Supra., n.46 (Buck) at 366.
\textsuperscript{60} Ibid., at 367. Infra page 21 with Tarapipipi giving his daughter, Raumoko, for marriage to Ngāti Apakura to cement peace.
\textsuperscript{61} Supra., n. 46 (Buck) at 355.
was not confined to infancy but could also occur during the later years. The betrothal was particularly important when land transfer complications were considered.

Puhi

A puhi was a daughter of a high chief whom the parents had decided should maintain her virginity until an alliance was formed with some chief of high rank. A number of female attendants were allocated to protect her from the attentions of aspiring lovers and also from allowing her own feelings to weaken her resistance before a regular alliance was arranged. Sometimes a special house was set aside for her but she always slept in the midst of her attendants. Her social restrictions made her more desirable and her fame usually spread to surrounding tribes, as well as adding to the mana of her parents. Desirable suitors were not wanting and a historic marriage was ultimately concluded. Makereti noted that if the puhi broke the rules regarding her virginity she was immediately killed. Treagar commented that the puhi system also applied to boys.

Personal choice of a spouse

Obviously the choice of a spouse was restricted by factors that favoured certain types of marriage. There were proscriptions against incest and other practical objections to marriage outside of the local hapu. Too near an affinity was carefully guarded against between different generations, and the marriage or intercourse between parent and child, brother and sister, or nephew and aunt, met with much condemnation. Best affirmed that relatives three generations from a common ancestor were free to marry, with sibling and first cousin marriages being incestuous. He further mentioned that first cousins wishing to marry were forbidden. However, Biggs noted that first cousin marriages had occurred. Pei Jones additionally quoted two such marriages.

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62 Idem.
63 Supra., n.3 (Treagar) at 293.
64 Supra., n. 46 (Buck) at 365.
65 Supra., n.14 (Makereti) at 91.
66 Supra., n. 4 (Treagar) at 285.
67 Supra., n.16 (Best) at 1.
68 Supra., n.15 (Biggs) at 23.
Some aims of consanguineous marriage were to rejoin divergent lines to a common ancestor, to lessen the possibility of inter-group quarrels arising out of domestic squabbles, and to increase group solidarity. A further complication that arose with marriages outside the group was the greater organisational difficulty of arranging such marriages than in the case of endogamous marriages. In addition, quarrelling over real or supposed irregularities sometimes flared into open conflict, especially if the lovers effected an elopement. Elopements did occur, one famous example being Hinemoa and Tutanekai of Te Arawa which, fortunately, did not escalate into conflict.

Bilateral inheritance of land was also important because the children of an exogamous union were able to claim land in two groups, which could cause quarrelling especially in the view of the great value with which land was invested. The bilateral cognatic descent system could also mean divided loyalties resulting in kai-wai-u (milk-drinking), a form of treachery stemming from the relationship to both parties to a dispute. For this reason the male relations of a woman who had married into another group sometimes killed any male children she had.

On the other hand, for various reasons exogamous marriages were also seen as tending to tie communities together. They were sometimes called taura (ropes) and were condoned or even sponsored. Peace negotiations often included marriages between the parties to the truce, in an effort to ensure the permanency of the truce. In particular the puhi was expected to make an inter-group marriage of diplomatic importance. After the long war between the Nga Puhi and Waikato tribes, peace was finally cemented in 1823 by the marriage of Te Wherowhero’s close relative, Kati, to

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70 For a full account of this famous elopement, supra., n.14 (Makereti) at 92-100, and Del Mar, F A Year Among the Maoris: a Study of Their Arts and Customs (Ernest Benn Ltd, London, 1924) at 88-90.
71 Supra., n.20 (Best) at 1, 279, 281, 319.
72 Best, E The Māori (Polynesian Society, Wellington, 1924) at 2, 300; supra., n. 45 (Buck) at 367.
Matire Toha of Nga Puhi. A further example was with Wiremu Tamihana Te Waharoa of Ngāti Haua. He was involved in the death of Rangianewa which was a subsequent obstacle for Te Wherowhero accepting the kingship in 1858. Tamihana removed this obstacle by gifting his daughter Raumoko to Ngāti Apakura in marriage to cement peace between the groups and to establish the Kiingitanga. Durie noted that arranged marriages were especially important because battles were forgotten but marriages remained embedded in whakapapa.

In addition, the marriage of Turongo to Mahinarangi provided an important tie between the otherwise unrelated Waikato-Maniapoto tribes with Ngāti Kahungunu. Further, a number of exogamous marriages provided genealogical lines linking the Waikato-Maniapoto tribes to all the main iwi in Aotearoa / New Zealand which was another reason for Te Wherowhero being chosen as King. The importance of such links is attested by the fact that both groups concerned have remembered these marriages for many generations. Thus a certain amount of pragmatism prevailed with exogamous marriages being possible but endogamous marriages were the norm.

The Marriage Rite

The performance of traditional marriage rites seemed to have depended on personal status. The general and approved norm for marriage between those of lower rank was extremely simple. Shortland commented that the brothers of a female were the persons who consented to her marriage and when the marriage was agreed on, the bride had a house prepared for her by her relations. The bridegroom was then conducted to the house at night and found her alone ready to receive him. There was no other ceremony than this, which was called whakamoe, causing to sleep together. Hence Treagar’s observation that marriage was merely alluded to as a ‘dwelling-together’, or a ‘sleeping together.’

The property of the husband became equally that of the wife, and the same feeling of mutual intercourse followed this simple ceremony. The ceremony of marriage differed from a state of concubinage inasmuch as the lover stole to the hut of

73 Oliver, S ‘Potatau Te Wherowhero’ in The People of Many Peaks (The Māori Biographies from the Dictionary of New Zealand Biographies, Volume 1 1769-1869, Wellington, 1990) at 141-143.
75 Supra., n.57 (Durie) at 43.
his mistress, but once he took her to his house, the marriage was complete. Polack witnessed many such marriages that generally took place early in the morning with the disputants enforcing their claims on the evening previous. The bridegroom conducted the lady to his hut, the priest gave his blessing, (consisting of a hope that the marriage would turn out prosperous,) and the parents of the lady indulged the family of the bridegroom with a feast.

Still, there seems to have existed a *karakia* ritual for marriage, (invocations pronounced by the *tohunga* over young couples) between those of considerable rank and importance in the tribe. Elsdon Best maintained that marriage among Māori was more formal. He concluded that there was a marriage rite and there existed a recognised and enforced mode of procedure regarding marriage. However, Biggs refuted Best’s assertions of the existence a marriage rite. Biggs claimed that ‘the existence of a marriage rite or wedding ceremony was attested only by the evidence brought forward by Best.’

Best’s account divided Māori marriage into three types according to the social observances, which are said to have distinguished them. The aristocratic wedding consisted of a ceremonial at which ritual spells known as *whakapiri* (cause to cling), and *ohaoha* (blessing) were repeated over the couple. A feast was then held which was known as *umu kotore* (*kai kotore, kai reperepe*) (oven of the tail end). It was the *umu kotore* which distinguished the aristocratic from the ordinary wedding, for the subsequent *pakuwha* or formal handing over of the wife to the husband was common to both types. In any case the *pakuwha* might take place long after the couple had set up house together, and could not therefore be considered part of a wedding ceremony. It is the *umu kotore* then that has been called by Best, a marriage rite. He nowhere suggests that such a rite characterised any but the marriages of highborn chiefs.

Notwithstanding this, Makereti affirmed that among the *rangatira* class ritual was performed over the couple that wished to marry. A *tohunga* would *karakia* over them the *karakia ohaoha* (nestling) and *whakapiri* (to stick, cleaving together), which

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76 Supra., n. 36 (Polack) at 140-43.
77 Idem. Makereti commented that very little ceremony was observed in marriages among the ordinary people of the hapu. If a couple fell in love, the parents were consulted, and if there was no opposition, the man took the girl to his parent’s house, and they slept together there. There may be no ceremony, but the mere fact that he had taken her to his father’s house and *kua mau raua* (they slept together or became husband and wife) was binding. Supra., n. 14 (Makereti) at 72-3.
78 Cowan, *J The Maoris of New Zealand* (Whitcombe and Soc Ltd, Wellington, 1910) at 146-148
79 Supra., n.16 (Best) at 14.
bound them together for always. Another *karakia* was performed for their happiness, so that the woman would bear many children to carry on the *kawai* (line), and so that the man would take care of her. This was followed by long recitals of *whakapapa* of both the bride and groom, and when the couple had been led to their new house the proceedings terminated. It therefore appears that a marriage rite did exist.

**Polygyny**

Chiefs sometimes exercised the privileges of rank and wealth by having more than one wife. Monogyny seems to have been the general rule and polygyny the exception. Buck stated that plural marriages were generally made for the practical reason of producing children. If the first wife was barren or produced only girls, the chief felt duty bound to his lineage to marry another wife in order to produce a male heir. The wife of the first marriage was senior (*wahine matua*), and her children were senior (*tuakana*) to the others. A second wife was termed a *punarua* and a third wife a *punatoru*. The marriage of two sisters to the same husband was the best form of polygyny, for any quarrels between the wives would be within the same household and any repercussions were localised.

Moreover, plural wives were of economic and political importance in the household of a *rangatira* for they provided more food and wove more cloaks, which added to the stock available for various social obligations. Furthermore, chiefs often took wives from several *hapu* to maximise labour in food gathering and for additional support in war. Such wives often continued to reside on their own estates and superintended their management, while the husband spent his time sometimes with one, sometimes with the other. Some *rangatira* also had several other wives or concubines taken from families of inferior rank or from slaves. Cowan noted that a plurality of wives was in some quarters still considered the prerequisite of a *rangatira* and a man with more than one wife was called a *puna-rua*, a man of ‘two wells.’

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80 Supra., n.15 (Biggs) at 40-1.
81 Supra., n. 14 (Markereti) at 72-3.
82 Supra., n. 3 (Tregar) at 295.
83 Supra., n.46 (Buck) at 370.
84 Cowan, *The Maoris of New Zealand* (Whitcombe & Tombs Ltd, Wellington, 1910) at 147.
Levirate Marriage

On the death of the elder brother, it was the established custom for the next in succession to take his wife at the same time. Buck stated that the widow of a chief went into a protracted state of mourning during which time she was tapu. The right person to remove the tapu by marriage was her late husband’s brother, thus a custom resembling the levirate of the Jews was present among Māori. If a brother was not available, the right to make other arrangements remained with the family of her husband. Makereti noted that the proposal for the widow to become the wife of one of her husband’s brothers would be made with ceremonial speech-making during the tangi (mourning) when the widow’s people would be present, especially if she belonged to another hapu. It seems that the purpose for this custom was so that the widow and her children were provided for, to keep the land within the realm of the tangata whenua, and to carry on the husband’s kawai (line). The widow and her children were all looked after by her husband’s or her own relatives.

Divorce

Marriage was not regarded as indissoluble and divorce was not infrequent. It was not dependent always upon the wish of the married couple either. Sometimes the woman’s relations removed her from the house of a husband they disliked or wished to annoy. In other cases, the husband would discard his wife and go off to another place where he would marry again; or some speech of the husband would be considered by the wife as insulting to her relatives and she would leave him and return to her own people. Adultery (puremu) was a frequent cause of the break up of marriage. Sterility, ill treatment of children, and infanticide were other reasons. It is debateable but there seems to have been a certain ritual for divorce that was based upon the separation of Ranginui (the Sky Father) and Papatuanuku (the Earth Mother). The ceremony was performed in a stream during which time the people

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85 Shortland, E Traditions and Superstitions of the New Zealanders (London: Longmans & Roberts, 1856) at 139-142.
86 Supra., n. 46 (Buck) at 370.
87 Supra., n. 14 (Makereti) at 85-6.
88 Supra., n. 36 (Polack) at 159-162. For an interesting account of a marital break-up and subsequent divorce, see the case of Takutai and Huia; supra page 12.
89 Supra., n. 21 (Best) at 112.
were sprinkled with water by the *tohunga* (priest) and a divorce karakia was uttered called *wehi ki te wai* (separation with water).

**Adultery**

Before marriage the greatest license was permitted to Māori youth. The more admirers they could attract, the greater the reputation for intrigue, the fairer was their chance of making an advantageous match. But the moment they were married they were required to become prudent and chaste, or to suffer the consequences, which were always severe. Cowan noted that young girls were allowed to do pretty well as they pleased, and they and the boys enjoyed full liberty in sexual matters, unless indeed a girl was a *puhi* or was *tapu* or betrothed to some young chief. But when a girl became a wife all that was changed, and all promiscuous acts were interdicted, punishable by a *taua muru* or often the tomahawk.

Reported penalties for *puremu* included subjection to a *taua* and even death. The nature of the punishment depended on the relative ranks of the offender and the person offended against. If a chief’s slave wife committed adultery she would be slain, together with her lover if he were similarly of lower status. If the guilty woman was of higher rank the husband would not exact the extreme penalty for fear of reprisals from her own people. He would then cast her off or perhaps beat her. Sometimes the offending woman took her own life, usually by hanging, in which business she might be assisted by some female relative of the husband. What sometimes occurred was that husband’s relatives killed the offending woman when the husband would have spared her. If the husband and the lover were both free men

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90 Supra., n. 3 (Treagar) at 297; supra., n.15 (Biggs) at 79, Supra., n.21 (Best) at 112.
91 Supra., n. 85 (Shortland) at 139-142.
92 Supra., n.78 (Cowan) at 146-148
93 See Best, A.D *The Journal of Ensign Best 1837-1842* (1966) at 228. See also supra., n.36 (Polack) at 85.
94 Earle provided a heinous account of a slave wife executed for *puremu* whose *tupapaku* (body) was subsequently devoured by the dogs. Supra., n. 39 (Earle) at 73-4.
95 Elder, J.R *Marsden’s Lieutenants* (Dunedin, 1934) at 257.
96 Savage, J *Some Account of New Zealand* (London, 1805) at 30.
97 McNab, R *Historical Records of New Zealand* (Wellington, 1914) at 371.
98 Elder, J.R *Marsden’s Lieutenants* (1932) at 430. A great sense of shame seems to have been felt by those discovered to have committed adultery. This seems to have been responsible for many suicides. See supra., n. 8 (Polack) at 85; Ward, A *Show of Justice: Racial Amalgamation in the Nineteenth Century* (Auckland University Press, 1973) at 7.
99 Elder, J.R *Letter and Journals of Samuel Marsden* (Dunedin, 1932) at 430-31; Elder, J.R *Marsden’s Lieutenants* (Dunedin, 1934 ) at 257.
compensation was due for the offence, for example, goods, or even land. When material satisfaction would not be accepted, or was not forthcoming, a duel between the offended husband and the seducer of his wife was the usual practice.

Marriage was a formal agreement not between two individuals but between two kinship groups. Thus if either husband or wife transgressed by having an extra-marital affair, action was taken by the kinship group or sub-tribe of the non-offending person against the family of the transgressor and that of the admirer. A war party termed a *taua wahine* raided the offender’s village to exact *utu*. The kinship group was held equally responsible with the offenders because the individual was merely a unit of the kinship group. In extreme cases, war probably resulted; but usually the right of the invading party was recognised peaceably and the taking of the village borne resignedly. If the erring party was the wife, her husband had the right of one free blow with a club at her admirer. Whether the blow struck or was avoided, honour had to be satisfied for a second blow was beyond the law and would form sufficient cause for the admirer’s tribe to rise in defence.

**Summary**

Māori marriage was an institution to serve its main procreative function within society. Toleration developed for arranged marriages where sexual attraction was a subsidiary motive for other important motives, usually economic, political and social ends. Flexibility existed to permit the love matches where mutual attraction led to the relaxing of the usual norms. However, marriage was a formal agreement between two whānau or *hapu* and there was no toleration of extra-marital liaisons, at least, hypocritically, as far as women were concerned. Still, the intrinsic value with which woman were vested was connected to their sacred and honourable role as bearers of children (*whare tangata*).

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100 Supra., n.85 (Shortland) at 241; Barton, R.J (ed.) *Earliest New Zealand: the Journal and Correspondence of the Rev. John Butler* (1927) at 124.
101 Supra., n 85 (Shortland) at 237-40. See the account of such a duel supra., note 42.
102 Supra., n. 46 (Buck) at 371.
INTERMENT

Overview

In traditional Māori society the customs surrounding the death, interment and burial of a person were very sacred events. In pre-colonial times, following the tangi, the body was suspended in a tree or placed on a special platform until just the bones were left. When the flesh had all disintegrated, the bones were taken and interred in a cave or some other special burial place. This was the origin of the term hahu or interment. Following the contact period, areas of land were set-aside as sacred burial places. Consequently, many Māori gathered the bones of their ancestors from the wahi tapu and re-buried them in cemeteries. Wahi tapu covered many things including burial caves, cemeteries and places where blood and other body fluids fell on the earth.

Death

The Māori attitude towards death was that usually the dead were to be cared for, cherished, spoken to, and honoured in a very emotional and demonstrative way. The act of dying was termed whakahemohemo and when the dying person drew their last breath, the female relatives raised the long wailing cry announcing death. The ritual of tuku wairua followed which was the ‘giving of the spirit back to the Gods’ – a ‘releasing.’ Death imposed a tapu over the building in which the death occurred. The proper treatment for the removal of this tapu was to burn the building down. The only way of saving valuable houses then was by not allowing anyone to die in them. Consequently, when patients became seriously ill, they were removed to a temporary shelter (whare mate). For people of rank, the temporary whare mate was erected near the meeting house and facing onto the marae. If death occurred elsewhere in the village or in the country, the tupapaku (body) was conveyed immediately to a whare mate near the meeting house so as to face the marae.

103 Barlow, C Tikanga Whakaaro:Key Concepts in Māori Culture (Oxford University Press, Auckland, 1991) at 15.
105 Supra., n.46 (Buck) at 416.
106 Idem.
Tangihanga

Depending on one’s rank and status Māori wanted to see their dead to have them with them until the *tupapaku* was buried in the earth. Del Mar observed that in the event of death there were several ways of disposing of the *tupapaku*. The common people and the slaves were buried in the ground, or else dropped into the sea.¹⁰⁷ The chiefs and *rangatira* had more elaborate ceremonies with the *tangihanga*.¹⁰⁸ The *tangihanga* was a major ceremony held so that the dead could be properly farewelled, their virtues were extolled along with their faults and failings, the bereaved were comforted, and kin bonds were renewed.¹⁰⁹

The *tupapaku* was first laid out on a superior mat and covered to the neck with a fine cloak. A chief’s body was placed in a sitting posture with the knees doubled up. The face was painted with red ochre and oil, the hair was oiled and decked with huia feathers, and a tuft of albatross feathers was placed in one ear and a greenstone pendant hung from the other. Weapons and heirlooms belonging to the deceased would be placed beside the body, and relatives would place other prized heirlooms by the body.¹¹⁰ Sometimes a low platform (*atamira*) was erected and the *tupapaku* was laid out at full length with the head raised. Thus, the body would remain in state during the period of the *tangi*.

While feasting went on outside, the watchers inside the ceremonial house would keep up an incessant wailing (*tangi*), and women of the family, and sometimes others of the tribe, would gash their chest, face and other parts of the body with sharp stones and shells causing blood to flow as a relief to the intensity of their grief.¹¹¹ (It seems that blood and tears *had* to flow). Sometimes slaves were sacrificed to serve the deceased into the spirit world¹¹² and they were *utu* or compensation for death – ‘*kua ea te mate*’. In addition, it seems that the widow of the deceased committed suicide to accompany her husband as a matter of duty.¹¹³ Pembroke noted that the suicide pact

¹⁰⁷ Supra., n. 70 (Del Mar) at 60-3.
¹⁰⁸ For a very detailed and passionate account of a *tangi*, see the account of King Tawhiao’s *tangi* in Cowan, *J The Māori Yesterday and Today* (1930) at 241-248.
¹⁰⁹ Supra., n 104 (Dansey) at 110.
¹¹⁰ Reed, A.W *Encyclopedia of Māori Life* (A.Reed, Wellington, 1963) at 28.
¹¹¹ Supra., n. 46 (Buck) at 417.
¹¹² Supra., n. 70 (Del Mar) at 60-3.
¹¹³ Supra., n. 46 (Buck) at 417.
was reciprocal for husbands when their wife died. In former times, the widow and near female relatives cut all or part of their hair short. Widows also fasted during the period of attendance on the *tupapaku* but were persuaded to take nourishment during hours of darkness. Moreover, widows wore a wreath (*potae taua*) of dry seaweed or kawakawa leaves ("pare kawakawa") during their period of mourning, which continued for an indefinite period of time after the husband’s death.

The length of time the *tupapaku* was kept before burial was indefinite mainly because it was never known when the last visitors would arrive. Before the final disposal, the *tupapaku* was wrapped up in the cloak and mat which had been in contact with the body.

**Hahunga**

After the lying in state, the body was placed on a platform in a cemetery, laid upon a structure among the branches of a tree, or buried in the earth (*nehu*) all to promote the decomposition of the *tupapaku*. Del Mar noted this period to be about two years. The bones (*koivi*) were then exhumed (*hahu*), scraped clean, oiled, and painted with red ochre. Usually a number were exhumed at one time and the bones of each individual were arranged on the village *marae*. Shortland stated that the skeleton after being disinterred was exposed to public gaze for a short time. The people who had gathered for the *hahunga* ceremony welcomed the arrival of the bones with wailing and tears. Buck even commented that the *hahunga* excited more grief than the *tangi* ceremony for several remains were on exhibition at the same time and each had its group of closely related mourners.

Shortland observed a *hahunga* ceremony where the skulls of the dead were exhibited to the living relations before finally being deposited. He stated that while residing at Maketu he witnessed the skulls of three celebrated chiefs.

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114 As mentioned previously, it is disputed whether this custom existed. Neither Biggs, Treagar, Best, Buck, Shortland, Cowan, Smith or any other noted New Zealand historian or anthropologist has even alluded to the custom of husbands committing suicide when their wife died except Pembroke. I have been unable to find any other references to support this finding. Supra., n. 9 (Pembroke) at 176.
115 Supra., n. 70 (Del Mar) at 98
116 Supra., n. 85 (Shortland) at 146.
117 Supra., n. 46 (Buck) at 424-5.
118 Ibid. For a detailed narrative of a *hahunga* ceremony, supra., n. 36 (Polack) at 73-90.
There was a great feast on the occasion, and a large number of persons present. At one extremity was a sort of stage, on which were placed the three figures in a sitting position, clothed with the mantles of the country of the handsomest description. Where their heads should have been, there were to be seen only the fleshless skulls, their eye-sockets stuffed with red cloth for eyes, and feathers of the huia and kotuka in place of hair. A tangi was held with much mourning and some woean cut themselves with shells and sharp stones in honour of the dead, to whom they were addressing praises in form of a wailing extemporary recitative.\textsuperscript{119}

Burial or Cremation

A custom for many northern Maori was when the bones of the chiefs and nobles were disinterred they were placed in carved boxes (\textit{waka tupapaku}) following which they were deposited in secret places, such as natural caves (\textit{rua koiwi}). The caves were also used as a repository for the \textit{tupapaku} of commoners deemed unworthy of concealment. Very few were entrusted with the secret of these caves because if an enemy discovered the bones, they might have treated them with indignity by using the bones for fishhooks.\textsuperscript{120}

In some coastal areas, sand burials were the established norm. Occasionally the wind would uncover the bones and articles buried within them so a very strong \textit{tapu} would be imposed. This occurred in Whakatane with the \textit{wahi tapu} named \textit{Opihi whanaunga kore} (Opihi without relatives) because anyone seen near the \textit{wahi tapu} was killed.\textsuperscript{21} Swamp burial was also used in some districts where a suitable swamp (ie. one that was sufficiently acidic to decompose rather than preserve the body) offered a mode of disposal. The \textit{tupapaku} was wrapped up in mats and then pushed down into the mud at the bottom.\textsuperscript{22} Tree burial also was used in some districts that were thickly forested like the Uruwera country. Natural hollow trees were utilised when available or platforms for holding the bodies or the bones were constructed among the branches.\textsuperscript{23}

\textsuperscript{119} Supra., n. 85 (Shortland) at 148-9.
\textsuperscript{120} Ibid., at 146.
\textsuperscript{121} Supra., n. 46 (Buck) at 426.
\textsuperscript{122} Idem.
\textsuperscript{123} Idem. An interesting account is given by Pembroke who was subjected to \textit{taua muru} for desecrating a tree from which a body had been previously hung. A man approached him and stated ‘You have roasted my grandfather.’ Pembroke had on a journey made a fire at the foot of a tree, in the top of which the bones of the man’s grandfather had once been deposited, but from which they had been removed ten years before. The tree caught fire and had burnt down. Pembroke therefore by a convenient figure of speech, had ‘roasted his grandfather’ and had to pay the penalty accordingly. The man told Pembroke that if he did not give him handsome damages, the law of \textit{muru}
Cremation seems to have also been employed by some Māori for disposing of the body particularly during war in enemy territory. This was seen as an effective method for preventing the *tupapaku* or *koiwi* from being desecrated. One such example occurred with the battle of Taumatawiwi near Kemureti (present day Cambridge) between Ngāti Maru and Ngāti Haua in 1830. During a pause in the battle, Te Waharoa decided to burn his warriors to prevent them from being mutilated. A pyre was built at the foot of a column of rocks by the Waikato River and Te Waharoa’s warriors were burnt on them thus making the rocks *tapu* to Ngāti Haua.\[124\] Sometimes the bodies of the enemy were honoured by being burned on the battlefield.\[125\] One example was Titokowaru who burnt the bodies of British soldiers (including von Tempsky) who died in the attack on Te-Ngutu-o-Te Manu.\[126\] Cremation was also the norm for the Ngāti Mutunga of Northern Taranaki, and Buck claims that it may have been used by others.\[127\] Cowley noted that sometimes at a *tangi* the body would be kept out so long that instead of burying it, they would just touch a match to it and burn it.\[128\]

**Taua Moa**

Polack observed that when the bones of the chiefs were reconveyed to the cemetery, it was considered a sin in any person viewing a corpse in the coffin, however accidental. A strict *tapu* was thrown on any person who touched the body of a dead chief, and in the southwest of the North Island, the surviving relations discharged several rounds of ball-cartridge towards the villages of their enemies, for the soul to lie at rest, and which alone could dissolve the *tapu*. This ceremony was termed *taua moa* (sacred fight). In other areas, when a chief died, their possessions were also buried with them including weapons so that they were armed for the sacred fight (*taua moa*) on their way to the world of spirits. At such burials slaves were also killed to serve the spirit of the person in the next world.

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\[124\] Clarke, T Koroki - Kahukura Hui Whakawhanaunga (23 - 30 December 1996) at 33.
\[125\] Supra., n. 104 (Dansey) at 112.
\[126\] Idem.
\[127\] Supra., n. 46 (Buck) at 426.
\[128\] Cowley, M ‘Diary’ in Smith, H Matthew Cowley - Man of Faith (Bookcraft, Utah, 1954) at 47.
Another interesting custom was the consumption of a relished food before death. When a person felt the end was nigh, they sometimes asked for some special article of food or for water from some well-known stream. This was termed o-matenga (death journey food) which figuratively sustained the person on their long journey after death. If the person was of considerable rank, no pains would be spared in procuring the food or water.\footnote{Supra., n. 21 (Best) at 114}

Ohaki

On approaching death the nearest survivors hung over the dying person, anxious to catch the last breathe of the person. The ohaki (last words) of a chief or priest were attended to with peculiar earnestness, from the supposition that a spirit of prophecy would issue from the lips of the person about to enter eternity.\footnote{Supra., n. 36 (Polack) at 110-2.} Such a speech usually consisted of advice as to future actions of the people, and a statement of their desires as to property and family. They were usually short for example: ‘Hei konei ra! I muri i au, atawhairia te iwi’ (Farewell! After I have gone, cherish the tribe). Any such utterance gave the assembled people satisfaction, in that their chief had observed the traditions of their rank.\footnote{Supra., n. 46 (Buck) at 415.} Pembroke recorded another ohaki in 1824. The dying rangatira uttered:

Hide my bones quickly where the enemy may not find them; hide them at once. Oh, my tribe, be brave! Be brave that you may live. Listen to the words of my Pākehā; he will unfold the designs of his tribe. I give my mere to my Pākehā; my two wives will hang themselves. I am going; be brave after I am gone.\footnote{Supra., n. 9 (Pembroke) at 222.}

The old rangatira then began to recall some of his old battles and began calling to his old comrades who had died many years earlier. His final utterance was ‘How sweet is man’s flesh,’ and then he died.\footnote{Idem. Hone Heke’s ohaki is contained in the same text at 239-40.} The next morning, the ohaki was carried into effect with the tupapaku being buried immediately (contrary to custom) and secretly. His two wives were also found hanging on a tree.\footnote{Supra., n. 9 (Pembroke) at 222.} An often-expressed ohaki of those taken ill away from home was that they be conveyed back to those homes. Thus sick persons were often carried long distances that they might die on their own land.
Finally, a great variety of articles were also interred with the deceased, comprising almost every thing the deceased peculiarly delighted in.

Summary

The condition of tapu pertaining to death, burial and exhumation was intense because it was so important for Maori to release and farewell their departed one appropriately. The tupapaku (body) was considered extremely tapu and was under the stewardship of the whānau and hapu for protection against enemies both living and dead. Accordingly, those about to engage in exhuming bones of the dead discarded their garments and immersed their bodies in water, while a certain ritual was recited over them. Polack also noted that if Māori wahi tapu (sacred areas) were violated of any portion of the precincts of the dead, it was accounted the greatest hara (crime) that a human being could commit, and was visited with the direst revenge of a surviving tribe, to be atoned for only by blood or loss of property.

Still, among the laws and customs of the Māori surrounding death and interment contradictions occurred. It seems that a chief who stole the tupapaku (body) of a rich man was entitled to a large portion of his property. In times of war, the greatest insult to a person was to ravage the cemetery of the antagonist and desecrate their wahi tapu. Perhaps it was a means of obtaining some of the deceased person’s mana.

Moreover, the wahi tapu were within tribal boundaries so that the deceased rested within the embrace of Papatuanuku (mother-earth) and within their tribal turangawaewae (place to stand). When a chief died, their possessions were also buried with them including weapons so that they were armed for the sacred fight (taua moa) on their way to the world of spirits. At such burials slaves were also killed to serve the person in the next world. In honour of such people the festival of the hahunga was established, with the subsequent anniversary being religiously attended to. Even in modern times the precincts of the Māori dead are tapu, and held in great reverence by Māori and others alike.
THEFT

Overview

Theft was not unknown among Mãori. However, a thief ran considerable risks because there also existed some strong sanctions against theft. Still, the severity of the sanctions seems to have depended on who the offender was and a number of other factors that significantly affected the outcomes. Moreover, one is inclined to assume that if property among Mãori could be stolen, then it must have been owned individually. This section will discuss these issues of ownership and theft, along with the sanctions, mitigating circumstances, and the crime or art of theft.

Sanctions

The punishment for theft varied depending on the gravity of the offence, the anger of the victim, the powers of the tohunga (priest), even the status of the thief, but in extreme cases the result was death. Polack affirmed that robbery under certain circumstances incurred the penalty of death. At times the aggrieved owner, at other times the community took action, the means ranging from physical violence to makutu (sorcery) or exaction of compensatory payment. Thus Hotungakau, a great thief, went by night to a plantation, stole some taro; and on being discovered was speared and killed. Iratumoana slew Tumakoka whom he found stealing a fish from his net on the seashore. Some narrowly escaped the death penalty for theft, as was the case with Tamatekapua who stole the fruit of the poroporo tree belonging to Uenuku in Hawaiki.

When a theft was discovered and the thief was not known or physical punishment was impossible, makutu was resorted to, either to induce the thief to restore the stolen property or to punish them for their crime. The victim would take something overlooked by the thief or something they had handled to the tohunga, who would cause the wairua (spirit) of the thief to materialise. He then brought the powers

139 Supra., n. 36 (Polack) at 8.
140 Colenso, W Transactions and Proceedings of the New Zealand Institute (Vol.xiii, Wellington, 1891) at 51-2; White, J Ancient History of the Mãori (Vol. iii, Wellington, 1887) at 143
142 Firth, R Economics of the New Zealand Mãori (1959) at 346.
of *makutu* to work to bring punishment to the offender. Such punishment was supposed to render the thief insane, or kill them unless they returned the goods stolen. A further punishment was a *makutu*, which caused the thief’s finger to contract, which prevented him from stealing again.

Theft by slaves was summarily treated, a severe beating or death following discovery. In Northland, Polack observed theft committed among slaves and stated that in thieving from each other, slaves only took satisfaction in a mutual sparring match. But further south Polack noted that it was the interest of either of the aggrieved slave to be mutually silent, especially at periods when provisions were scarce or ripening; for the chiefs at such periods were strictly severe in putting the laws in execution. Some chiefs were fearful amid contrary evidence that the guilty should escape, resulting in orders being issued to have both slaves killed, often before the merits of the case were heard. The chief’s ideas of morality at such times often caused themselves to become the executioners of their own mandates.

**Muru Not Theft**

Polack further observed that theft was punishable with death if committed by a slave, but the same action performed by a chief was viewed in a far different light. The immorality of the transaction principally consisted in the skill and dexterity by which the appropriation of the goods was accomplished by the titled practitioner. If a chief was offended, or received any hurt by accident, he imagined he had ample cause to seek for satisfaction (*muru*) from some person, and he generally pounced on someone and stole something from him or her, however innocent the person may have been. If the robbery was committed in open day before anybody, he was not supposed to have dishonoured himself, but if he acquired the same article covertly, he was a *tangata tihi* (robber). But there was some commutation to this offence if he enacted his theft with ability; he then was termed a *tangata angareka* (fellow of infinite jest) but if a slave emulated his master in these jests, death followed. Thus highlighting

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144 Reed, A.W *Encyclopedia of Māori Life* (A.Reed, Wellington, 1963) at 181.
145 Supra., n. 36 (Polack) at 96.
146 Idem.
147 Ibid at 86-89.
148 Idem.
some of the inconsistencies and contradictions within Māori society with the actions surrounding *muru* being perceived as theft.

**Crime or Art**

According to one early writer theft among Māori was regarded not as a crime but as an art. Cook related an example of one such bold theft: He had been purchasing a great quantity of fish from the Māori when he stated:

> While we were on this traffic, they showed a great inclination to pick my pockets, and to take away the fish with one hand, which they had just given me with the other. This evil, one of the chiefs undertook to remove, and with fury in his eyes made a show of keeping the people at a proper distance. I applauded his conduct, but at the same time kept so good a look out, as to detect him picking my pocket of a handkerchief, which I suffered him to put in his bosom before I seemed to know anything of the matter, and then told what I had lost; he seemed quite ignorant and innocent, until I took it from him; then he put it off with a laugh, acting his part with so much address, that it was hardly possible for me to be angry with him, so we remained good friends, and he accompanied me on board to dinner.

Polack alleged that many private robberies were committed on board ships and these robberies were generally committed by the common people and slaves, but for the especial benefit and with the cognisance of the chiefs. Polack also recorded a number of bold thefts while he resided in Northland. An old priest named Popatai had stolen a box of percussion caps and Polack had accused him of theft. Popatai opened his only garment to show Polack that he had wrongfully accused him. Angered, Popatai seized a paling and advanced towards Polack who also acquired a small stick for self-defence. Popatai then tightened his belt ready for a fight and in doing so the concealed box fell on the ground. Popatai then endeavoured first to persuade Polack that it was an accident. Polack replied by demanding and receiving *utu* for the attempted theft.

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149 Craik, G.L *The New Zealanders* (London, 1830) at 207.
150 Supra., n. 36 (Polack) at 88-9.
151 Ibid at 96.
152 Polack observed: ‘Another time I missed a silver coin somewhat antique from the table, and accused the only native present, who vainly protested his innocence. I locked the door and told him to prepare for a sound drubbing; in the hurry of uttering his protestations that indeed he had not got it, the coin fell from his mouth, on which I made him give me a pig for satisfaction or *utu*. At another time I missed a paper of fishhooks. Two ancient brothers were sitting on the floor of the apartment; my housekeeper who was also present, cast several times, first a glance at me and then at one of the old gentleman’s legs. I gently put aside his blanket, and found the paper within the only stocking possessed by both parties. An excuse was instantly made, that it was a joke undertaken to see if I
Thus thefts were occasionally committed in a spirit of boldness and daring it seems as an art. This included thefts committed by powerful people who deliberately broke rules to prove that they were strong and possessed great *mana*. The theft act and its effects varied with circumstances especially the status of those involved. Further, although there were widely accepted rights of person and property, it was not unethical to try to advance one’s fortunes, or those of one’s kin, by tricky conduct. However, it was more shameful to be caught out or to fail which in itself was a form of social control.\textsuperscript{153}

**Theft of Private Property**

Thurnwald stated that the attitude of the Māori community towards theft indicates the reality of the idea of private property among this people.\textsuperscript{154} Theft of another’s property was wrong but very few possessions were owned or were held individually within Māori society. With the exception of heirlooms and personal ornaments, personalty was not so much owned as imbued with the *mana* of those who expended labour on it, resulting in a number of kin feeling entitled to access the object because of either their connections with the persons concerned or with the figures associated with the ornamented carvings.\textsuperscript{155} Thus the theft of property among Māori was regarded as a crime (perhaps to a lesser extent an art) against a community because property was ‘owned’ communally not individually. Moreover Firth noted that this being the case, theft did not seem to have been of very common occurrence.\textsuperscript{156} The main reasons being because of the fairly even distribution of wealth among the people, the absence of extreme poverty, and the customs of hospitality which provided assistance for those temporarily in need.\textsuperscript{157} In addition, goods that had value (*taonga*) were often given to kin to establish or reinforce social relations. The most important *taonga* were continually on the move in circulation but were eventually brought home.
Summary

Theft existed within Māori customary law but the act of theft depended on the circumstances of the taking of the goods. For example, goods taken as part of a taua muru were not viewed as theft but as a group’s right to acquire with the person being termed a tangata angareka (fellow of infinite jest). It also seems that theft in some ways was more an art rather than a crime because thefts were occasionally committed in a spirit of boldness and daring. Further, although there were widely accepted rights of person and property, it was not unethical to try to advance one’s fortunes, or those of one’s kin, by tricky conduct. However, it was more shameful to be caught out, or to fail which itself was a form of social control. In addition, the sanctions for theft could be very serious.

Mitigating circumstances for punishment depended on the rank and status of the person taking the stolen goods - if a slave then death normally followed, if a person of rank they could be hailed as a tangata angareka or be punished with physical violence, makutu, or exaction of compensation. Still, Firth maintained that theft was an uncommon occurrence within traditional Māori society.

CONCLUSION

It seems that Māori seldom acted against their local customary law, but they always tried to justify that what they did was tika (correct) for the specific context. Perhaps this explains, from an ethnocentric perspective, why there were many inconsistencies and contradictions with their social norms and within their customary framework.

Interestingly, the causes of war included disputes over resources, marital infidelity, the future status of widows, conflicting claims to the betrothal of puhi, wrongful slayings, kanga (curses), desecration of wahi tapu, tampering with or stealing the property of a rangatira, or migration to an area without significant kin links. Durie stated that the reason why these hara (crimes) were so serious was because each was perceived to involve a theft of mana that had to be requited.\[158\] Thus there existed values, which prescribed against the taking of another person or

\[158\] Supra., n. 57 (Durie) at 43.
communities’ goods which Māori communities generally subscribed to and which had regular influence.
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