

Te Mātāhauariki Institute

The University of Waikato



Te Mātāpunenga

A Sampler

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Te Mätäpunenga:
*A Compendium of References
to the Terms and Concepts of
Māori Customary Law.*
(Short Sample).

The Compendium is a Project of Te Mātāhauariki , an Institute based at the University of Waikato, funded by the Foundation for Research Science and Technology, and whose objective is the exploration of ways in which the legal system of Aotearoa/New Zealand might better reflect the best concepts and values of both our major component cultures.

What follows is the draft Introduction (pages 3-15) together with one significantly developed Title in draft form ('Mana Whenua'). At pages 16-18 will be found a list of Titles currently under consideration, together with (at page 19) a tentative timetable for completion of the Project Te Mātāhauariki emphasises the provisional status of the drafts, which, together with many other Titles, will be the subject of ongoing work in the Institute in 2003. Accordingly, the material should not be regarded as the concluded view of Te Mātāhauariki at this stage.

The *Introduction* is the joint work of Dr Richard Benton and Dr Alex Frame of Te Mātāhauariki. The compiling of the entries for the Title '*Mana Whenua*' has been co-ordinated by Paul Meredith, who has also carried out much of the research. Other contributors to entries, translation, and context are Tonga Karena, Robert Joseph, Alex Frame, Richard Benton, Nena Benton, and Mark Henare. The overall direction of the project has been provided by the Director of Te Mātāhauariki, Judge M.J.A. Brown.

December 2002

**Note: this is an early and incomplete draft only (December 2002)
Not for quotation or circulation outside Te Mātāhauariki.**

Introduction

1. In 1999 Te Mātāhauariki – an Institute publicly funded by the *Foundation for Research, Science and Technology* in New Zealand - set itself the goal of assembling a collection of references to the concepts and institutions of Māori customary law. The mainspring for this project was the Institute's objective of exploring ways in which the legal system of Aotearoa/New Zealand could better reflect the best of the values and principles of both major component cultures. An obvious and necessary starting point for the Institute was to identify and understand the concepts of Māori customary law. The obstacle immediately encountered was a general absence of systematic written material, and a widespread degree of confusion as to the nature and status of customary law, and its place in the legal system. The Director of the Institute, Judge Michael Brown, in consultation with the Institute's Advisory Panel, accordingly initiated two programmes. Firstly, Pū Wānanga, under which the Institute sought to approach Māori leaders and experts with a view to discussing and recording such knowledge of customary law, or tikanga, as might be offered. Secondly, Te Mātāpunenga – the present work – which would attempt to traverse the existing historical materials with a view to bringing together such references to customary concepts and institutions as appeared to come from an influential or authoritative source and/or to exhibit explanatory insight.

2. The principles of construction for the present Compendium are relatively simple. The Compilers have started with a list of terms, concepts, and institutions found to be in use in historical and contemporary Māori discourse and selected with the assistance of kaumatua and Māori scholars. This list of **Titles** has been arranged alphabetically for the convenience of users. The Compilers have then searched a wide range of records for **Entries** which have been listed in chronological order under each Title. Each **Entry** consists of a sourced statement or explanation relevant to a particular Title together with an explanatory preface intended to supply a **Context** for the statement or explanation. The purpose of the **Context** is to enable the reader to understand the circumstances in which the statement or explanation arose, and to judge its credibility and authority. The Compilers have not set out to determine what is or is not 'true custom', but rather to record what has at various times and in various circumstances been claimed to be custom. Each title begins with a **Preamble** containing standard general meanings for the Title, together with some etymological connections with the wider Polynesian family of cultures, where these are considered to shed light on the core of meaning. Accordingly, the 'building blocks' from which Te Mātāpunenga is made up look like this :

MURU (Title)

Wipe, rub, rub off; smear on; pluck off (leaves); plunder (usu. for cause, esp. the act or institution of ritual seizure or 'stripping' of goods for an alleged

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offence). Hence “wipe out, forgive” (listed as “Modern” by Williams¹). From Proto-Polynesian *mulu “wipe, rub”.(Preamble)

(a) In 1838 , the House of Lords in London appointed a Select Committee to inquire into the state of affairs in New Zealand. A relation of Te Rauparaha , ‘Nayti’, who had travelled to England on a French whaler and stayed for two years with Edward Wakefield in Chelsea , was called to give evidence to the Committee. The official record includes the following exchange : (Context)

Where a Chief is buried the Place is taboo’d?

It is

If a New Zealand Man gets over the Fence , what happens to him ?

He knows the mark which is taboo’d ; they say “You see the Place which is taboo’d ; why do you go to a Place which is taboo’d?”

What do the New Zealand People do to him ?

They take all his Things away. If a New Zealander gets into a taboo’d Ground, the Man whom that taboo’d Ground belongs to goes and takes his Pig , and every thing belonging to him.

Do they ever kill him ?

No.

Report from the Select Committee of the House of Lords appointed to Inquire into the Present State of the Islands of New Zealand...with Minutes of Evidence.’ Ordered to be printed , 8 August 1838 , p.115-116. (Entry)

The immediate purpose of this introduction is accordingly quickly discharged – the user will see what the compilers have tried to do – and what they have not tried to do. However, such substantial issues of epistemology and definition, and of selection and translation, are raised by the present enterprise that the reader is entitled to fuller explanation and elaboration on these matters.

3. Definitions

The *Oxford English Dictionary* records two distinct meanings of ‘Custom’²:

1.A habitual or usual practice ; common way of acting; usage, fashion, habit. (either of an individual or of a community)

2.Law. An established usage which by long continuance has acquired the force of a law or right.

The distinction is thus made between custom which is mere habit (or fashion) – usual but nevertheless optional – and custom which gives rise to obligation and right. To take a simple example , it may be one’s ‘custom’ to carry an umbrella to work but one has no obligation to do so, and deviance would not attract moral criticism. This

¹ *Dictionary of the Māori Language* (Seventh Edition). Wellington: Government Printer, 1971. See Section 8, below, for further information about sources and the conventions adopted for these preliminary notes to each title.

² *The Oxford English Dictionary* , 2nd ed. (1989) , Vol.IV

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Compendium concerns itself only with the second sense of custom – that which connects with legal obligation. The 1608 Case of Tanistry affirmed the potency of custom as a source of law in this way :

‘...custome , in lentendment del ley , est tiel usage que ad obtaine vim legis , & est revera un binding ley al tiel particular lieuCar lou le people trove ascun act destre bon & beneficial , & apt & agreeable a lour nature & disposition , ils usont & practisont ceo de temps en temps ; & issint per frequent iteration & multiplication de cest act , Custome est fait ; & esteant use de temps dont memorie ne court , obtaine le force de un ley...Et issint briefement , custome est un reasonable act , iterated , multiplied & continued per le people , de temps dont memory ne court.’³

‘...custom , in the understanding of the law , is such usage as has acquired the force of law and is respected as a binding law in a particular place ... Because when the people find any rule to be good and beneficial , suitable and agreeable to their nature and disposition , they use and practice it from time to time ; and it happens through frequent repetition and multiplication of the rule , Custom is created : and having been followed for as long as people can remember , acquires the force of law.... **In brief , custom is a reasonable rule , followed consistently and continuously by the people from time immemorial.**’

Sir John Salmond makes a similar distinction between mere habit and customary law when , in setting out the requirements for the reception of custom as law , he includes the following :

‘The third requisite of the operation of a custom as a source of law is that it must have been observed as of right. A merely voluntary practice, not conceived as based on any rule of right or obligation, does not amount to a legal custom...A legal custom must be the embodiment in inveterate practice of the conviction of the community as to the rights and obligations of its members towards one another...’⁴

But what will suffice to add the ‘obligatory’ aspect which turns custom into ‘customary law’? Will organised and systematic social pressure, in the absence of formally constituted judicial and enforcing authorities, allow us to find ‘customary law’?

The American theorist , Hoebel , says :

‘A social norm is legal if its neglect or infraction is regularly met , in threat or in fact , by the application of physical force by an individual or group possessing the socially recognised privilege of so acting’⁵

³ Case of Tanistry 80 Eng. Rep. 516 (1608) , quoted in E.K. Braybrooke , ‘Custom as a Source of English Law’ , Michigan Law Review Vol.50 (1951) p. 71 at page 73. For more detailed discussion, see Alex Frame , Grey and Iwikau : A Journey into Custom, Victoria University Press, Wellington, 2002 , p.29

⁴ Sir John Salmond , Jurisprudence , 7th. Ed. , Sweet and Maxwell , London , 1924 , p.219

⁵ E. Adamson Hoebel , The Law of Primitive Man : A Study of Comparative Legal Dynamics , Harvard University Press , 1954 , p.28

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Hoebel's definition is considerably wider than that of the school of Western jurisprudence which saw the predominant characteristic of 'law properly so-called' as a 'command' within a unitary political system, backed by force. The American jurist Lon Fuller has criticised this tendency to assume

'..that law must be regarded as a one-way projection of authority, instead of being conceived as a collaborative enterprise'⁶

Whatever may have been the contemporary political reasons for the adoption of such a restrictive view by English and British theorists such as Hobbes, Bentham and Austin, the criticism of Sir Carleton Allen in his Introduction to Sir Henry Maine's Ancient Law seems well aimed :

'Its exclusion of historical considerations from the province of jurisprudence led it into the radical fallacy of regarding all systems of law as being typified by Western European monarchical states.'⁷

Although Hoebel's definition is open to objection for clinging to a central position for 'force' as the identifier of 'law'⁸, the present compilers find the definition helpful, on the understanding that collective social recognition and reinforcement of 'supernatural' consequences constitutes a degree of social pressure which is functionally equivalent to more direct applications of physical force. Fuller had raised, but left unanswered, this very question in relation to Hoebel's definition:

'Just what is meant by force when it is taken as the identifying mark of law? If in a theocratic society the threat of hell-fire suffices to secure obedience to its law, is this "a threat of force"?'⁹

Fuller preferred to say simply that :

'A legal system, to be properly called such, has to achieve some minimum efficacy in practical affairs , whatever the basis of that efficacy – a proposition both unobjectionable and quite unexciting.'¹⁰

The approach which discounts centrally administered force as the defining characteristic of 'law' has antecedents in the work of writers such as von Gierke, Ehrlich, Weber, and Pospisil who deny that there is any practical reason to confine the

⁶ Lon Fuller, The Morality of Law, first published in 1964, revised edition 1969, Yale University Press, at page 227.

⁷ Sir Henry Maine, Ancient Law, first published 1861 , with Introduction by Sir Carleton Allen , The World's Classics, 1959, p.xiii.

⁸ Fuller, for example, states that 'the notion that its authorization to use physical force can serve to identify law...has done great harm to clarity of thought about the functions performed by law', The Morality of Law, supra, p.108.

⁹ Lon Fuller , The Morality of Law, supra, p.109.

¹⁰ Lon Fuller, The Morality of Law, p.109-110. Interestingly, the Māori and Polynesian concept of mana is often explained as requiring, among other things, effectiveness in social affairs.

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meaning of ‘law’ to situations in which coercion is guaranteed by the political authority.¹¹

Max Weber has pointed out that :

‘Law, convention, and custom belong to the same continuum with imperceptible transitions leading from one to the other.....It is entirely a question of terminology and convenience at which point of this continuum we shall assume the existence of the subjective conception of a “legal obligation”.’¹²

We must be conscious also of drawing too fast a distinction between ‘obligatory’ and ‘persuasive’ norms, a point recently made by Professor Bruno Saura in Tahiti :

‘The very idea of distinguishing between obligatory customs, because they are of a legal nature, and customs which are more or less arbitrary stems from a Western perspective in which judges – rather than priests, sorcerers or divine forces – are in charge of issuing punishments for breaches of matters that the community deems crucial to respect.’¹³

Malinowski, in his introduction to Hogbin’s Law and Order in Polynesia , made some pertinent observations on the ‘law-not-law’ debate concerning custom:

‘Those rules, the working of which are essential for the maintenance of such primitive institutions as the family, the village community, forms of organised economic co-operation, chieftainship or religious institutions, are entirely compatible with our rules of law. They are really obligatory, they are enforced...’

‘Our own law is nothing but intrinsically valid custom , custom safeguarding the smooth working of our institutions, custom obeyed not so much through the fear of penalties but for much deeper reasons which the sociologist and psychologist have to discover’

‘Co-operation always implies a body of people united by some fundamental constitution, that is , body of rules , which regulates their mutual behaviour.’¹⁴

The cooperative and reciprocal elements in customary law systems seem to require explicit recognition in any definition which aspires to comprehend the social foundation of law. Accordingly, *Te Mātāpunenga* proposes the following adaptation of Hoebel’s definition:

¹¹ See , L. Pospisil, ‘Legal levels and Multiplicity of Legal Systems in Human Societies’ , The Journal of Conflict Resolution, Vol.XI , No.1, March 1967, p.2-26

¹² Max Weber , Economy and Society: An Outline of Interpretive Sociology, ed G. Roth and C. Wittich , transl. E. Fischoff, University of California Press, 1978 , Vol.1, p.319-321

¹³ Bruno Saura , in Custom and the Law , ed. P.de Deckker and J-Y Faberon , Asia Pacific Press , Canberra, 2001, Chapter 4! , p.81.

¹⁴ B. Malinowski , Introduction to H. Ian Hogbin, Law and Order in Polynesia , first published 1934, Cooper Square, New York, 1972. The three quoted excerpts are from pages xxix, xxx and xxxii of the Introduction.

‘A social norm is legal if its neglect or infraction is regularly met, in threat or in fact, by the application of force or the imposition of serious social disadvantage by an individual, group, or agency possessing the socially recognised privilege of so acting.

4. ‘Primitive Law’

The idea that social norms found in traditional, performance cultures were either not law at all, or at best only ‘primitive law’, has been a persistent one in European jurisprudence. It is often found coupled with analyses which propose an ‘evolutionary scale’ for law in which fully-fledged law only emerges as societies struggle into the light of written law, administered in a centralised way by specialist courts. R.C. Maclaurin’s 1898 Yorke Prize-winning study of ‘Title to Realty’ provides our own New Zealand contribution to the ‘evolutionary scale’ view of legal development. Maclaurin discusses the evolution of ‘property’ in terms of such a scale, in which he identifies a ‘number of types’:

‘the lowest – represented by the Bushmen of South Africa, or some of the inhabitants of Central Borneo- consists of a primitive horde of wandering hunters, with neither houses nor cattle...they own only what they actually hold’

‘A slightly higher type is met with in Australia and other places where a clan system prevails. The members of the clan are , or are supposed to be , akin.They have advanced from the lowest type in so far as they have a well defined hunting ground; but this belongs to the clan and not to the individual.....’

‘The next type is represented by tribes from the North American Indians or the Māories of New Zealand. There is now a considerable amount of private property in goods – in food, weapons, canoes, and most important of all in slaves...Wealth accumulates and leads to distinctions of rank and power, and ere long chiefs begin to demand special privileges and do much to develop the idea of private ownership even in land.’

‘The next stage is reached when we come to the village community ...Each tribe is divided into a number of smaller groups bound together by ties of kinship, real or imagined. Agriculture has now become ‘intensive’...The chief has increased his privileges since the last stage ; his land has in many cases become hereditary, and as a rule he claims large powers over all the territory that has not been allotted.’

‘As time goes on the powers of the chief increase, and to meet his growing demands the claims of the kindred and the clan have to be set aside. The idea of private property in land thus fostered by the head of the state is disseminated by many forces – notably by the Church in Western Europe – until at length our present stage is reached when private property seems simple

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and ‘natural’ and we have a difficulty in believing that any other system could ever have prevailed.’¹⁵

Maclaurin was surely right to relate the concepts and institutions of any legal order to the circumstances in which it serves. However, it would not seem to be either a necessary or a desirable step to derive from such analysis any classificatory or definitional ‘scale’ of law as more or less ‘primitive’. Concepts, institutions, and procedures may be judged to work, or not, in a particular social context, but that does not seem to provide a basis for describing law as ‘primitive’ or ‘advanced’, any more than a particular language could intelligibly be characterised in that way. The present compilers agree with the view recently expressed by Professor Rouland of the University of Aix :

‘We believe, following Levi-Strauss, that there is not a *pensée des sauvages* (thinking of the savages) and a *pensée des civilisés* (thinking of the civilised). Rather the *pensée sauvage* and the *pensée civilisé* exist, in different degrees, in all forms of humanity – rationality is not our privileged domain, any more than custom belongs exclusively to exotic societies, it can be as “modern” as the law’¹⁶

5. ‘Genuine’ v. ‘Spurious’ Custom

The year 2000 saw the publication in Australia of a volume of essays and papers titled ‘Voyaging Through the Contemporary Pacific’¹⁷. One of the central pieces was an article by Roger Keesing called ‘Creating the Past : Custom and Identity in the Contemporary Pacific’. In it, Professor Keesing charged that much of what was claimed to be ‘custom’ was invented, ‘edited’, and manipulated for ideological and political purposes. A selection of quotations from the article, some directed specifically at the New Zealand context, will we hope do justice to Keesing’s argument:

‘The ancestral ways of life being evoked rhetorically may bear little relation to those documented historically, recorded ethnographically, and reconstructed archaeologically – yet their symbolic power and political force are undeniable’(p.231)

‘In the framework of functionalist anthropology, societies and cultures have been attributed a spurious coherence and integration and portrayed in a timeless equilibrium’(p.245)

¹⁵ R.C. Maclaurin, *On the Nature and Evidence of Title to Realty*, C.J. Clay and Sons, London, 1901, pp.3-5. The remarkable Maclaurin went on to hold simultaneous Chairs in Law and Physics at Victoria College, as Victoria University of Wellington was then called, and in ? became the founding President of the Massachusetts Institute of Technology.

¹⁶ Norbert Rouland, in *Custom and the Law*, ed. P.de Deckker and J-Y Faberon, Asia Pacific Press, Canberra, 2001, Chapter 1, p.14

¹⁷ *Voyaging Through the Contemporary Pacific*, ed. D. Hanlon and G.M. White, Rowman and Littlefield Publishers, 2000.

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‘In New Zealand, increasingly powerful and successful Māori political movements incorporate idealized and mythicized versions of a precolonial Golden Age, the mystical wisdom of Aotearoa’ (p.234)

‘Warfare and violence (including Māori cannibalism) are carefully edited out of these reinvented pasts. Strikingly, what is edited out in no way violated the values of the real ancestors, as observed in the nineteenth century: what is violated is Western values’(p.242)

‘ Spurious pasts and false histories were being promulgated in the Pacific long before Europeans arrived, as warrior leaders draped veils of legitimacy over acts of conquest, as leaders sought to validate, reinforce, institutionalize, and “celestialize” their powers (to borrow a term from Marx), and as factions battled for dominance.’ (p.236)

Keesing’s argument, which it must be said drew on earlier analyses of the ‘construction’ of ‘traditions’ in Europe and Melanesia¹⁸, was met at its presentation by a fierce denunciation from a leader of the Hawaiian nationalist movement, Haunani-Kay Trask.

The argument is a serious one, and points to dangers too relevant to the purposes of the present work to be dismissed by *ad hominem* argument. However, some points do need to be made in response. First, although Keesing concedes that ‘spurious pasts and false histories were being promulgated in the Pacific long before Europeans arrived’, he could have added that they were also being promulgated flat out by those Europeans as they arrived. In fact, why not go the whole way and say they have been promulgated since time immemorial in every society on earth in which appeals have been made to customary law as a source of rights and obligations. The business of argument based on customary law - and for that matter on written codes - is to present an outcome which is faithful to what are urged to be the fundamental values of the society. Of course that will involve appeals to a ‘Golden Age’, of course there will be attempts to ‘edit’¹⁹. On the other hand, the business of adjudicators, scholars, and the collective memory of society (however that may be recorded, whether in venerable tomes or in traditional genealogies and song) is to identify and denounce fabrications or false pleadings without stifling the necessary dynamism of customary law.

¹⁸ In particular, the work of E. Hobsbawm on the ‘invention of tradition’, and that of A. Babadzan in relation to ‘Kastom’ in Papua-New Guinea, see ‘Kastom and Nation Building in the South Pacific’, a Paper presented at the Rothko Chapel Colloquium on Ethnicity and Nation, Houston, 1983.

¹⁹ If an example be demanded from the early colonisation period in New Zealand, see F.D. Fenton’s ‘The Laws of England Compiled and Translated into the Māori Language by direction of His Excellency Colonel Thomas Gore Browne, C.B., Governor of New Zealand’, Auckland, 1858. In that work, which attempted to summarise the origins and content of English law, Māori were told that:

‘A wise and generous people, the English, have settled in his land; and this people are willing to teach him, and to guide him in the well-made road which themselves have travelled for so many generations; that is the path of the perfected law – in the path by which themselves have attained to all the good things which they now possess; wisdom, prosperity, quietness, peace, wealth, power, glory, and all other good things which the Pakeha possesses...’ (p.ii)

Few jurists and fewer citizens would have described the state of English law in the mid nineteenth century as ‘perfect’.

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Another perspective on the issues raised by Professor Keesing was provided by a further contributor to 'Voyaging the Pacific'. Jocelyn Linnekin told the Conference:

'Genuine and spurious – terms that have been used to distinguish objective reality from hocus-pocus – are inappropriate when applied to social phenomena, which never exist apart from our interpretation of them.'²⁰

What we have tried to do in the present compilation is record **what people have claimed to be custom** - the identity and expertise of the claimant, the circumstances of the claim, and the context within which it is made, are all matters going to credibility. We have tried to supply sufficient detail as to those matters, and a sufficient range of opinion, to allow readers to decide for themselves whether such claims are 'genuine' or 'spurious'.

6. Selection of Titles and Entries

Two issues arise concerning the selection of Titles and Entries. The first concerns the design of the Compendium. As its full name indicates, *Te Mātāpunenga* is interested in the 'concepts and institutions' of Māori customary law. Accordingly, concepts such as 'hau' are listed. 'Institutions' include procedures, such as 'muru', as well as structures such as 'rūnanga'.

A second issue is more difficult – on what basis have we chosen the entries from the greater mass of possible examples? An element of editorial judgement is here inescapable – we have necessarily had to assess such matters as explanatory power and insightfulness, as well as the authority, credibility, and/or public importance of the source. We have tried also to select entries which represent historical periods, while avoiding needless repetition.

7. Translation Issues

Many entries of course originate in the Māori language. In some cases these are accompanied by translations from the original or collateral source and where our researchers have thought it appropriate, comment on these translations has been offered. Where no original translation has been available, Mātāhauariki researchers have supplied one, sometimes adding alternative readings or other comment. We have tried to be conscious at all times of the dangers of 'reading history backwards' by attributing modern meanings and nuances to expressions that would have been understood differently at the time they were made.

8. Etymological and Lexicographical Matters

The preamble to each entry starts with an ordinary language English definition of the term, and a note as to its origin in the evolution of modern Māori, along with the reconstructed meaning or range of meanings, where these are known. The starting point for the ordinary-language definitions is generally the Seventh Edition of Williams' *Dictionary of the Māori Language* (1971), but the material in Williams (as

²⁰ *Voyaging Through the Contemporary Pacific*, supra, p.268. Linnekin was Professor of Anthropology at the University of Connecticut.

this work is referred to in the text) has been supplemented by that in other works, such as the *Reed Dictionary of Modern Māori*, and the authors' own knowledge of the language. In general, these meanings are paraphrased or summarized, and not all possible connotations of a word are included. For clarity, some direct quotes from Williams (and other sources)²¹ are enclosed in quotation marks.

The etymological information has come from a wide range of sources, many of which have been gathered together in the *Pollex* database compiled by Professor Bruce Biggs and some of his close associates, and circulated among his personal network of colleagues until his death in 2000. Other sources, particularly but not exclusively work being undertaken by scholars at the Australian National University and the University of Hawaii, are also drawn upon, particularly for the more ancient terms. It has to be emphasised that the further back in time one goes, the more tenuous some of the reconstructed forms become, and, despite (or perhaps because of) the rigorous scientific methodologies employed by comparative and historical linguists²², many an anathema has been hurled by one eminent scholar at another because of a disagreement as to the nature of a single consonant in an ancient word. Since there is no direct evidence (in the form of written evidence, let alone sound recordings), these conjectures about the ancient forms of the ancestral languages have to be based on comparisons of their living descendants. In cases where there is disagreement, the notes in *Te Mātāpunenga* generally contain a hypothetical form that looks most like its modern Māori descendent. Thus, for example, in the preamble to the title **tangihanga**, the root word *tangi* is said to be derived from Proto-Austronesian *tangit. This is a compromise among a number of forms which have been posited over the years, including tangith, tangit, tangis and changis. Such choices are to a large extent arbitrary, but are based on the selector's own knowledge of the arguments advanced in favour of the various alternatives, and personal knowledge of Polynesian, Micronesian and Philippine languages

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

Earlier forms of a language, reconstructed from evidence in contemporary related languages at increasing levels of abstraction, are termed Proto-Languages. Since the form which a word took in these earlier stages is hypothetical and can be tested only indirectly, these "proto-forms" are by convention written preceded by an asterisk (as with *tangit, above). We have continued this convention in the preambles to the titles

²¹ Unattributed quotes are from Williams, in the entry for the word or phrase cited; other quotations are individually referenced.

²² For a succinct recent discussion of how the relationships of Austronesian languages have been determined, and different approaches to reconstructing the lexicon, see the introductory chapter to *The Lexicon of Proto Oceanic 1. Material Culture*, ed. Malcolm Ross, Andrew Pawley and Meredith Osmond (Canberra: Research School of Pacific Studies, The Australian National University, 1998).

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in Te Mātāpunenga. Forms cited from living languages or attested from written records that were compiled from such sources are written in italics. The indications of the semantic range of the ordinary-language uses of a word at the beginning of the preambles are generally not enclosed in quotation marks or a special font, but extended quotations from other sources, and glosses of reconstructed and other citation forms are enclosed in quotation marks. The various reconstructed languages are by convention preceded by the prefix *proto-*, but this is dropped when they occur before asterisked forms in the preamble, except in the case of Proto-Polynesian, because of the more contemporary flavour of the unprefixed term.

The main historical stages of the development of modern Māori and reflected in the evolution of a distinctive language are generally agreed to have been the Austronesian entry into the Pacific from South China through Taiwan four or five thousand years ago (Proto-Austronesian), thence through the Philippines (Proto-Malayo-Polynesian) and dispersal east and west. Māori is derived from the eastern branch (Proto-Oceanic) which developed as Proto-Malayo-Polynesian speakers moved along the northern coast of New Guinea and out into the Western Pacific. This in turn led to a new linguistic grouping (Proto-Eastern Oceanic) as the argonauts moved further east, into the Central Pacific. There, a further change took place with the evolution of a distinctive Proto-Central-Pacific idiom. A group of these people made their way to the Fiji group, where Proto-Fijiic, the ancestral language of Fijian, Rotuman and modern Polynesian languages is thought to have developed. From the legendary (but nonetheless less real) homeland of Pūlotu in the Fiji group, Polynesian speakers moved in three main stages to Aotearoa/New Zealand – probably first to Tonga, where the Proto-Polynesian language developed, thence to the island of Savai'i in Samoa, long enough for Proto-Nuclear-Polynesian to evolve as a distinctive language, then, probably after several hundred years of relative stability, out into the rest of what is now Eastern Polynesia; keeping in contact long enough for a Proto-Eastern Polynesian language to develop, then Proto-Central Eastern Polynesian, as contact with those who went to Easter Island was lost, and finally, before the settlement of New Zealand, Proto-Tahitic, after the contact with the groups who were to become speakers of Hawaiian and Marquesan was reduced. Finally, a millennium or more ago, Aotearoa was reached, and the Māori language developed independently of its Tahitic sisters (Tuamotuan, Tahitian and Rarotongan). After 1642, words from non-Austronesian sources (principally English and Indo-European sources, but also from other language families) become incorporated in Māori speech, marking a new, modern phase in the development of the language and the ideas and knowledge which it conveys.

There will be words and more often than not strong echoes of their attendant ideas, from all these stages of the Austronesian journey in the titles in Te Mātāpunenga. Those in this sampler come from the first and last stages -- Proto-Austronesian (e.g. **tangihanga** from *tangit), and Non-Austronesian (e.g. **kawanatanga** from English *governor*) – and several in between, including Proto-Oceanic (e.g. **mana**), Proto-Polynesian (e.g. **utu**), Proto-Nuclear Polynesian (e.g. **whāngai**), Proto Central Eastern Polynesian (e.g. **kanga**) and home-grown terms such as **koha** and **rūnanga**.²³

²³ For more detail and examples, see Richard A. Benton, “The Importance of Words” in [Te Mātāhauariki Occasional Publication from the Law and History Conference, July 2001].

9. Sources

A wide range of sources were employed in the compilation of the present work. In addition to well known texts on Māori culture and customs, a serious attempt has been made to traverse relevant primary materials. In particular, the extensive papers held in the Alexander Turnbull Library in Wellington. Early newspapers, especially Māori newspapers were also extensively consulted²⁴. Parliamentary papers were found most useful, in particular the *Appendices to the Journals of the House of Representatives* – although these are today are mainly a bland series of departmental reports, those of the nineteenth century were a rich mine of information. Other governmental publications also yielded entries.

As might be expected in the case of a ‘performance culture’, many clues to customary concepts and principles are to be found in time-honoured sayings, songs, and incantations. Accordingly, attention was paid to collections of such material. As to sayings, the work of Sir George Grey is an unsurpassed starting point²⁵, and a more modern compilation is provided by Hirini Mead and Neil Grove²⁶. As to songs, the invaluable series of *Nga Moteatea* begun by Grey and improved and added to by Sir Apirana Ngata and Pei Te Hurinui Jones yielded several entries. Sound Archives also proved relevant on occasions. Te Mātāhauariki’s own *Pū Wānanga* programme – in which Māori experts and leaders with knowledge of customary principles and practices were consulted in seminar sessions attended also by Institute scholars- was a necessary and valuable source of new material and confirmation and elaboration of what was found in historical sources.

More conventional legal sources were of course also traversed. The work of the Waitangi Tribunal was here the major resource – its Reports contain a profusion of references to and explanations of customary matters, based on its shearing of evidence on marae throughout Aotearoa/New Zealand, and have provided many entries. The judgments of other Courts, found in various law reports, also proved useful on occasion.

End of draft Introduction

²⁴ For a description of which, see Herbert W. Williams, *A Bibliography of Printed Māori to 1900*, Dominion Museum Monograph No.7, Government Printer, Wellington, 1975, introduction, p.xiv.

²⁵ Sir George Grey, *Ko nga Whakapepeha me nga Whakaahuareka a nga Tipuna o Aotearoa: Proverbial and Popular Sayings of the Ancestors of the New Zealand Race*, Saul and Solomon, Cape Town, 1857.

²⁶ HM Mead and N Grove, *Nga Pepeha a nga Tipuna: The Sayings of the Ancestors*, Victoria University Press, Wellington, 2001.

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Mätäpunenga Inventory @ June 28, 2002

Provisional

<i>Titles</i>	<i>Compilation</i>	<u>Status</u> <i>Entry / Subentry</i>
Ahi kā / ahikāroa	Advanced	E
Aituā		E
Ariki		E
Aroha		E
Hahunga		E
Hākari	Advanced	E
Hapū		E
Hara		E
Hau	Advanced – includes <u>Kaihau</u>	E
Hē		E
Hoko		E
Hohou [ki te]		
Rongo	Advanced	E
Hui		E
Ihi		E
Iwi		E
Kaitiakitanga	Advanced	E
Kanga	Advanced	E
Kaumātua		E
Kaupapa		E
Kawa	Advanced	E
Kāwanatanga	Advanced	E
Koha	Advanced	E
Köhuru		E
Kōrero		E
Kotahitanga		E
Mākutu	Advanced	E
Mana		E
Mana Kōrero		S
Mana Moana	Advanced	S
Mana Tangata		S
Mana Whenua	Advanced	S
Manaakitanga		E
Māori		E
Māoritanga	Advanced	S
Matakite		E
Mate Māori		E
Mauri		E
Muru	Advanced	E
Ngau Whiore		E
Noa/Whakanoa		E
Öhāki		E

Te Mätäpunenga Short Sample December 2002

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Päkehä		E
Pana / Peia		E
Pouwhenua		E
Püremu		E
Rähui		E
Rangatira	Advanced	E
Rangatiratanga		S
Raupatu		E
Riri		E
Ritenga		E
Rohe		E
Roromi		E
Rünanga	Advanced	E
Tähae		E
Taiao		E
Takawaenga		E
Take		E
Tangata Whenua		E
Tangihanga	Advanced	E
Taonga		E
Tapatapa		
Whenua		E
Tapu		E
Tatau Pounamu		E
Taua		E
Tika		E
Tikanga		E
Tohunga		E
Tuakana		E
Tuku	Advanced	E
Tumu	Advanced	E
Tüpäpaku		E
Tupuna		E
Türangawaewae	Advanced	E
Ture		E
Tütüä		E
Utu	(Advancing)	E
Wähi Tapu		E
Wairua		E
Waka		E
Wana		E
Wänanga		E
Whakamä		E
Whakamomori		E
Whakapapa		E
Whakatauki / whakatauäki		E
Whakawä		E

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Whakawhiu		E
Whānau		E
Whanaungatanga		E
Whāngai	Advanced	E
Whenua		E

86 Titles

6 Special

Subtitles

22 titles / subtitles advanced/advancing status

Plan for Completion of Te Mātāpunenga

October 1999. Decision made by Te Mātāhauariki to undertake the compilation of a Compendium of References to Māori Customary Law.

June 2002. Stage I. Completion of ‘Sample Te Mātāpunenga’, consisting of a draft Introduction and some Titles significantly developed.

- Continuation of Pū Wānanga Programme by which Titles and Entries are selectively submitted to acknowledged Māori and other experts for comment and refinement.
- Focussed discussions on aspects of Māori and Polynesian customary law carried on within Te Mātāhauariki.
- Research in archives and other records continues as all Titles are progressively developed and improved.

June 2003. Stage II. Completion of ‘Proto-Compendium’, consisting of an improved Introduction together with all Titles significantly developed. This target assumes that the core Te Mātāpunenga team is kept intact and that the primary responsibility of its members is the Compendium.

- ‘Proto-Compendium’ published in ‘internal’ Te Mātāhauariki format for limited external circulation among interested scholars and institutions for comment and discussion with a view to refinement, correction, and improvement. Possibly also open to comment on Te Mātāhauariki website.
- ‘Proto-Compendium’ taken to publishers, with a preference for an international publisher, and a publishing contract solicited. Such contract, which would be between Te Mātāhauariki and the publisher would provide for the maintenance of Te Mātāhauariki standards and continuation of involvement of its researchers.

June 2004. Stage III. Publication of Te Mātāpunenga.

Te Mātāpunenga Short Sample December 2002

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Mana Whenua. Also mana o te whenua, mana i te whenua, mana ki te whenua, e whai mana ana ki te whenua and mana i runga i te whenua. Literally, power, authority, jurisdiction, influence, governance over land.

- a) The following whakatauki suggests dominion over certain territory with mana derived from the relationship to the land:

“Ka wera hoki i te ahi, e mana ana ano.”

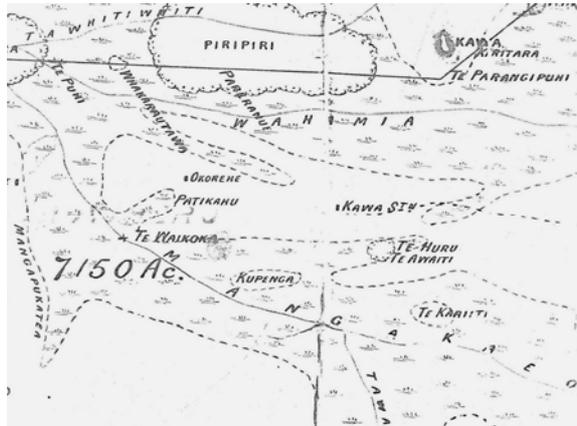
[Translation by Mead] While the fire burns the mana is effective.

‘He Whakatauki’ in *Te Pipiwharauroa: He Kupu Whakamarama* No. 130 January, 1909, p. 6. See also Mead and Groove, *Nga Pepeha a Nga Tupuna*, Victoria University Press, Wellington, p. 197.

- b) Ngati Kaputuhi oral history tells of the ancestor Tamakowhao (fl 1750) resisting an attempt by another tribe to “take land” around the area of Wahimia. Tamakowhao did not, with his success, proclaim that he had or was the *mana whenua* but did author the following whakatauki or proverb which some might argue expresses the same sentiment:

Kia au a Wahimia ki runga ki raro.

[Translation by Te Mātāhauriki] Mine is Wahimia, both above and below.



From Original Survey Map of the Ouruwhero Block, King Country, presented to the Native Land Court, 1892.

- c) There are a number of pepeha or tribal mottos that emphasized not only identification but also association with geographical features and leading individuals. Some might argue that these may be likened to another form of expression of mana whenua, mana moana and mana tangata. For example:

Ko Tongariro te Maunga	Tongariro is the Mountain
Ko Taupo te Moana	Taupo is the Lake
Ko Tuwharetoa te Iwi	Tuwharetoa is the People
Ko Te Heuheu te Tangata	Te Heuheu is the Man



Te Heuheu Tukino IV (Horonuku)
Alexander Turnbull Library,
Ref. No. 1/4-022227



During the attempt by Te Heuheu Horonuku to have his children's names included on the owners list of the Rohe Potae Block, several claimants acknowledged Te Heuheu's mana within the Taupo district citing the above pepeha as evidence of that fact. Te Heuheu Tukino - Claim to have his children's names inserted in the Rohe Potae list, 1 May 1888, Alexander Turnbull Library, Wellington MS-Papers-4760-5

- d) The Declaration of Independence was adopted at Waitangi on October 28 1835 by thirty-five ariki and rangatira representing iwi and hapu from the Far North to the Hauraki Gulf. The document was drafted and translated by the British Resident James Busby:

“... Ko te Kingitanga ko te **mana i te whenua** o te wakaminenga o Nu Tireni...” ([Translation by James Busby] All sovereign power and authority within the territories of the United Tribes of New Zealand...) See Cox, Lindsay, Kotahitanga : the search for Māori political unity Auckland, N.Z. : Oxford University Press, 1993, p. 194.

- e) The notion of an association of mana with land can be found in the Bible. Mathew 28.18 states

“Na ka haere mai a Ihu, ka korero ki a ratou, ka mea, kua tukua katoatia mai ki ahau te **mana i te rangi, a i runga i te whenua.**” ([Translation in King James Version of the Bible] And Jesus came and spoke unto them, saying, All power is given unto me in heaven and in earth.) Ko te Kawenata Hou = The New Testament / compiled and edited by Cleve Barlow Rotorua,. : Te Pihopatanga o Aotearoa, 1991.

- f) In a 'Deed of Sale' of land commonly referred to as Muriwhenua and purportedly dated 20 January 1840, Nopera Pana Kareao and other rangatira of Te Rarawa gave over the 'rangatiratanga' and 'mana' over the land to the missionary Richard Taylor. The proximity of this document to the Treaty makes the coupling of

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‘rangatiratanga’ and ‘mana’ of interest to those concerned with Treaty of Waitangi discourse.

"...kua oti te tuku e matou e Nopera Pana Kareao ma kia Reiha Teira tetahi wahi wenua oti tonu atu me nga rakau katoa me nga aha aha noa me nga aha noa katoa e tupu ana i taua wenua me nga mea katoa o raro o taua wenua me te rangatiratanga me te **mana i runga i taua wenua.**" ([Translation by Te Mātāhauariki] ...we, Nopera Pana Kareao and others have agreed to give to Richard Taylor an area of land that includes all the trees and whatever else that grows on that land and all that is underneath it and the power and authority over that land]) in John White Papers, Alexander Turnbull Library, Wellington MS-Papers-75-106c.

The deed was probably drafted by missionaries. Critical of such deeds, the Waitangi Tribunal states “The deeds were poorly and imprecisely drawn.... Their form is less questionable than their status, however. A written deed is normally the best evidence of that which was agreed on the ground, but this rule of law has little application when one party is of an oral culture, where written documents are of no consequence, and when they contain terms outside that party’s experience. In that situation, the deed evidences no more than that which the party who drafted it sought to achieve.” ‘Pre-Treaty Transactions’ in the Muriwhenua Land Report, Waitangi Tribunal Wellington, p. 56.

- g) A Māori newspaper records a meeting in 1858 where the primary matter was to decide whether that portion of the Ahiwaru tribe now residing at Puketapapa should return to Waikato whence they originally came, or be permanently located on the land they then occupied. The newspaper notes the speakers following Koroniria Tokuwaha of the Ahiwaru tribe:

“... Muri iho, ka whakatika ko etahi o ona hoa, ka korero; otiia, kaore i kaha i ta Paora Tuhaere o Ngatiwhatua, ratou ko Ihaka Takaanini, ko Hohepa Otene, ko nga tangata nona te **mana o te whenua**, Ka mea hoki ratou, me noho tonu ano ki reira.” ([Translation in the original source] After him several of his friends spoke, but Paora Tuhaere, of the Ngatiwhatua, Ihaka Takaanini, and Hohepa Otene, with the latter of whom was the "Mana" of the land, proved too strong for them. These advocated their staying...). The Māori Messenger: Te Karere Māori. Vol. 5, No. 9, 30 April 1858 p

- h) Some commentators have argued that the association of mana and land originated with the Māori King Movement. In 1860 a Select Committee (Waikato Committee) was appointed to enquire into the attempt in 1857 to introduce Civil government amongst Waikato Māori. The chief of the Ngati Mahuta tribe, Takerei te Rau provided information on the origin of the King Movement in Waikato:

“They proposed to elect a King for themselves, to protect them, to be a **mana** over them and **over the land**, over the portions in their possession. Their idea was this – the Queen should be a *mana* over the Pakeha and over the land which you have acquired. The same with respect to the Māori King...This was the cause of the Māori King being set up, it was for a **mana** over the

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people and **over the land.**” Minutes Taken Before the Waikato Committee, AJHR, 1860, F-3, , p.109.

- i) In 1860, with the Waitara question agitating the public mind, a series of papers collected by Mr. Dillon Bell for Governor Browne were printed as a Parliamentary Paper. The paper was forwarded to the Secretary of State for the Colonies. The Secretary had requested that the Governor transmit a report on the territorial rights of the Native chiefs. The Governor’s dispatch was entitled “Seigniorial Right”. And included the following extract from a pamphlet on the “Origin of the King Movement, 1860 from the Rev. Mr. Buddle, Superintendent of the Wesleyan Mission”.]

“Mana of the Chiefs. This word means authority, power, influence. It was originally applied to persons and their words or acts, not to land. The word has of late been used in reference to land, and now we hear of *te mana o te whenua* (the mana of the land). What distinct idea is attached to it, is difficult to say. The disputed land at the Waitara is claimed by the Māori King party because the King’s mana has reached it : ‘*Kua tae te mana o to matou Kingi ki reira*’ (the mana of our King has gone there) ; and wherever this mana has gone the land is held inalienable without the King’s consent . ‘*Kia mau te mana o te whenua*’ (hold fast the mana of the land), is another expression in frequent use. What does it mean? This is altogether a new application of the term : perhaps it has been adopted in consequence of the Queen’s sovereignty over the islands having being translated as the Queen’s mana. But it certainly did not originally mean that which is now claimed for it, viz., a Chief’s ‘manorial right’. This use of the word was not heard until the Māori King movement originated it.”

Buddle, T. AJHR. 1861, E-1, Appendix A ‘Opinions on Native Tenure’, no. 12, p. 11.



Rev. Thomas Buddle

- j) In a letter to Governor Gore Browne 9 July 1861, the term ‘mana whenua’ itself was used by the Te Arawa intellectual Wiremu Te Rangikaheke. Acting as a mediator, Te Rangikaheke tried to propose terms on which Wiremu Tamihana and the King Movement might be reconciled with the Governor.

"E hoa, e te Kawana,
Kua whakaae a Wiremu Tamihana ki
te kupu i whakapuakina e au ki a ia.
1. Ko te Tiriti ki Waitangi, ara ko te
whakaae tanga a te Kuini i te mana
Māori ki a tohungia mana tangata,
mana whenua...."

Friend the Governor-
Wiremu Tamihana has consented to
the word that I spoke him.
1. The Treaty of Waitangi, that is, the
Queen's consent to the "mana" Māori
being respected in regard to the men
and the land...]

[Translation in the original source]

‘Letter from Wiremu Maihi Te Rangikaheke to Governor Gore Browne’, 9 July 1861, AJHR, 1861, E-IB, No. 22, p. 20.

- k) A Government sponsored Māori newspaper gave an account of a ‘native meeting’ at Waiuku, reporting that a great deal was said about the mana over the land. However it surmised that from the tenor of some of the speeches that the speakers had very confused notions on the subject. The newspaper also noted that a paper was read to the gathering:

“He maha nga kupu i puta mo te **mana o te whenua**, a ki ta matou whakaaro kei te pohehe nga whakaaro o etahi o te hunga i korero ki taua hui, he ahua raruraru hoki no nga kupu. Korerotia ana te- tahi pukapuka ki te aroaro o te whakamine- nga, ko nga tikanga i kiia na te hunga e mea nei kia wehe ke te iwi Māori te iwi Whakapaea ana i taua pukapuka na te Pakeha te kupu nei, kei a ia te mana o te whenua kahore i nga Māori nona ake nei te oneone, a 'whakahengia ana tenei kupu, meinga ana, he tikanga tahae i te whenua o te Māori. Ko tenei, me ui atu i konei, ka tika ranei tenei whakapae ki te Pakeha? He pono ranei tenei kei te mea te Pakeha kei a ia te mana o te whenua kahore i te Māori. Ehara ra tena i te pono. E kiia ana, kua peneitia te kupu, ko te mana o nga motu nei, ara, o Nui Tirani, kei a Te Kuini. Engari tenei kupu e tika ana. A, he aha koia tenei mana e meinga nei kei a Te Kuini? Ka hua matou he mana tiaki te mana.” ([Translation in the original source]. A great deal was said about the "mana" over the land, and from the tenor of some of the speeches it is clear that the speakers had very confused notions on the subject. It was stated that the Pakehas claimed the " mana" over the land to the exclusion of the Māori owners of the soil, and this doctrine was accordingly denounced as unjust to the Māori. But is it true that the Pakeha claims this "mana" to the exclusion of the Māori? It is not true. It is true that the ' mana' of the islands of New Zealand is claimed by the Queen. But what is this 'mana'? Is it anything more than the right to protect? Where was the ' mana' of New Zealand before the Queen took these Islands under the protection of her flag and made all its people her subjects? All the inhabitants of these islands are alike her children, and the ' mana' of the country is as much with the Māori as with the Pakeha.) *Te Karere Māori: The Māori Messenger* Vol. 7, No. 5, 15 March 1860, p. 7.

- l) If the application of mana to whenua was a recent invention of the late 1850s/early 1860s, it did not take long for the concept to be employed by those asserting title to land. In 1864 the Ngati Apa leader, Hunia Te Hakeke wrote to the Governor’s secretary John White requesting him to intervene in a debate between himself and a person by the name of Mahi as to who held the mana of the land.

"...ko koe te tangata matau ki nga tikanga o te whakapapa Tupuna, tuakana teina ranei, rangatira nei, ki taku whakaaro kei te tuakana ano te **mana o te whenua**." ([Translation by Te Mātāhauariki] " „you are an expert in genealogy, the senior or the junior line, the chiefs, I believe it is the senior who holds the mana over the land.") Letter to John White from Hunia Te

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Hakeke, November 21, 1864, in John White Papers, Alexander Turnbull Library, Wellington, MS-Papers-0075-14.

- m) Some authorities have argued that mana whenua is a concept that emerged out of Native Land Court investigations into titles to land. The Native Land Court was instituted in 1862 and 1865. Tamihana Te Rauparaha, son of the famed Ngati Toa and Ngati Raukawa ki te Tonga chief, Te Rauparaha, recalled the boundaries set by his father for the interested parties in a Native Land Court investigation into the title to the Himatangi Block 1868. His comment could be interpreted as suggesting that mana whenua can be shared between groups.

“In 1840 my father fixed the end of Ngati Apa mana at Manawatu.... It was done at ‘rūnangas’ – heard that it was settled that the ‘mana’ of the 3 tribes should end there. The Paneiri and Rangitane and Ngati Apa – Mauapoko came and talked about the ‘mana’ to Rauparaha about the time of the Treaty – my father then consented to the ‘mana’ of these tribes on the other side of the Manawatu ... The ‘mana’ of Te Ati Awa was because they came with us and shared in our ‘mana’ over the bush and plains.” Otaki MB No. 1D, (Himatangi Title Investigation), 27 March 1868, p. 387.

- n) In an issue of a government-sponsored Māori newspaper, a summary of the Native Lands Act 1874 was attempted. The Act was translated into the Māori language and circulated among Māori. The translation suggests that Government was content to link the expression ‘mana whenua’ with land rights.

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(3.) *Nga tangata whai whenua e kore ana e tika Me tau he mana whenua ki a ratou.*

54 Ko tenei tekiona he mea whakarite tikanga mo nga porangi me nga tangata kaore ano kia tae ona tau ki te rua te kau ma tahi, ara "nga tamariki" ki ta te ture i ki ai; ae mea ana ki te mea ka kitea e whai take ana e whai tikanga ana ranei aua tu tangata ki tetahi whenua e whakawakia ana, ahakoa tona porangitanga tona tamarikitanga ranei, me tuhituhi ano o ratou ingoa ki roto ki te Tuhinga- whakamaharatanga take hei tangata whai take ki taua whenua, me te rahi o te wahi e tika ana kia tau ki ia tangata ki ia tangata o ratou, me nga tau o te mea tamariki, me te tikanga (ki te mohiotia) i kore ai e tika etahi kia tau he **mana whenua** ki a ratou ki ta te Ture tikanga, me tuhi katoa ki roto ki te Tuhinga- whakamaharatanga take.

Te Waka Māori O Niu Tirani Vol. 9, No. 16 29 October 1873, p. 138.

[(3.) *Owners under Disability.*

54. This section has reference to persons under twenty-one years of age, or "infants," as termed by the law, also lunatics ; and it provides that if such persons be found to be entitled to any interest in the land under adjudication, their names shall never- the less be enrolled in the Memorial of Ownership as owners thereof, together with the proportionate shares (if ascertained) accruing to each of them, and the age of such minor and the nature of the disability, so far as known, shall be added to the Memorial.

[Translation in original source]

- o) The notion of mana whenua was not confined to official discourse surrounding the operations of the Native Land Court or Government policy. It also appeared in popular discourse as illustrated by the following from an article criticising the people of Whatiwhatihoe as giving that place a reputation as a rum stilling area:

“Hei aha te aha i te rama. He mana-tangata tena, he **manawhenua** tena, hei aha i te rama. He hanga whare, he ngakiwhenua, he whatu puweru, he hapai tikanga e purero ake ai te iwi, hei aha i te rama.” [Nevermind this business with the rum. Whats that got to do with mana over the people and land, nevermind the rum. Building houses, working the land, making garments are practices to be encouraged for the advancement of the people, never mind the rum.” *Te Korimako*, No. 22, 15/12/1883, p. 2,

- p) The issue of mana in relation to land continued to occupy the minds of many commentators well into the late 19th century. It became common practice for persons of rank to claim title to land by virtue of their status. This was questioned by some who argued the distinction between mana tangata or mana rangatira and mana whenua. They maintained that a chief who had influence over the people did not necessarily have an extraordinary title to land other than that as an ordinary member of the hapu. During the 1880s a paper outlining the principles

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concerning the mana of a chief was circulated around the country and signed by leading Native Land Court Māori Assessors such as John Ormsby and Paratene Ngata.

“(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 hapus; there are hapus 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. Tamati Tautahi *et al* (n.d.) ‘The Effect of Mana on Native Tenure’, reproduced in AJHR, 1890, G.-1, Opinions of Various Authorities on Native Tenure.

- q) Many claimants in Native Land Court hearings cited mana as a ‘take’ or claim to land. At a Native Land Court hearing, July 15th 1889, Wiramina Ngahuka outlined his ‘take’ or rights to the Omahu Block under investigation:

“Oku take ki tenei whenua, he Tipuna, he Ahika, he **mana i runga i te whenua**, he ringa kaha, ka mutu aku take” ([Translation by Te Mātāhauariki – My rights to this land is ancestral, occupation, mana over the land, and power to hold, that completes my rights.)

- r) A Māori newspaper reported on a session of the Māori Parliament held at Waipatu, Napier, May 9, 1893. Among matters for discussion was a motion put forward by Tamahau Mahupuku concerning the establishment of a Māori government:

“Kume: E rua nga take o te motini a Tamahau, (1) ko te mana tangata (2) me te **mana whenua**.... Mo te take tuatahi i nga tau maha kua pahure ake nei, ia tangata ano te mana o tona whenua o tona whenua, me nga hapu, kia ratou ano te mana o tona whenua karati kaore e taea e tatou te pewhea nga whenua karati o tena iwi o tena iwi, no te mea kei a ratou ano te mana, no reira ka meatia kia riro mai te " mana tiaki" i te kawanatanga a na reira ano hoki i kaha ai te Paremata o te Koroni ki te hanga ture mo ana whenua....”([Translation by Te Mātāhauariki] There are two issues concerning the motion Tamahau. (1) the authority over people (2) and the authority over land. Concerning the first issue, in times past, each individual had authority over his grant of land as with the subtribe, they had authority over their grant of land and we could not do with the land of tribes as we pleased because they had their own authority, therefore let the Parliament of the Colony have the trusteeship and also the ability to make law for its lands...) Huia Tangata Kotahi Vol. 1, No. 11 27 May 1893, p. 4

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- s) In 1890 a second collection of papers offering various opinions on Native Tenure was published in Parliamentary Papers. Included was the opinion of the first Chief Judge of the Native Land Court, Judge Fenton, who was adamant that mana in relation to land was a fallacy:

“There is no such thing as **mana of land**. *Mana* is personal. A chief may – might have had, I should say, for the day is past – sufficient *mana* to greatly influence his power of managing or directing the disposal or withholding from sale of land, but this power is derived from his position as *pater populi*, enabling him to protect what he thinks to be the interests of his tribe. He may have no interest in a piece of land, yet be able to retain it from sale. I never recognised or believed in the existence of such an intangible thing as *mana*, as unrecognizable as the consequential damages were by the Alabama Commission. None of the old Judges recognised such a thing as land *mana* as conferring a title to land recognizable by the Courts” ‘Mana Opinion’, F.D. Fenton in ‘Opinions of Various Authorities on Native Tenure’ AJHR, 1890. G-1, p. 15.

Fenton reiterated this line of argument the following year in evidence presented to the Report of the Commission appointed to inquire into the subject of the Native Land Laws. AJHR 1891, G-1, 46, Minutes of Evidence, Auckland, 16 March 1891.

- t) In undated correspondence to Elsdon Best (c. 1890), the Ngati Porou principal, Major Rapata Wahawaha, outlined his views on mana and take whenua:

“Ko te mana tipuna ka mana tonu ki tona iwi ake hapu ranei. Ka **mana ano ki runga ki ona ake whenua**... Te mana rangatira tamaiti, tuakana. Mehemea i whakataua e to ratou matua te mana ki a, o te iwi, o te hapu ranei, me te whenua hoki... Kaore he mana rangatira o tetahi iwi e mana ana ki runga ki nga whenua o etahi iwi, me etahi atu hapu rangatira hoki. Tona mana ki tona whenua ake ano, ratou ko tona hapu, iwi ranei.” ([Translation by Te Mātāhauariki] The authority of a chiefly ancestor will prevail over his own tribe or sub tribe. It extends to his lands. The authority of the chieftain child: and elder sibling: If the parent bestows the authority to him from the tribe or sub tribe as well as land No tribe has chieftainship over another tribe’s lands or chiefs sub tribes. His authority only extends to his own lands his own tribe or sub tribe.) War narrative of Rapata Wahawaha, MS including stories of Uenuku, Ruatapu and Paikea, introduction of Christianity on East Coast, etc, Mana and Take-whenua, Ropata Wahawaha, Alexander Turnbull Library, Wellington, MS-Papers-0072-39E.

- u) In a last letter to James Carroll before his death, the Ngati Kahungunu leader, Tamahau Mahupuku, provides an early Māori linking of political and territorial authority as complementary aspects of ‘mana whenua’.

“ko au nei te morehu kaumatua o roto o taua hapu e ora nei, no Ngaati-Hikawera hoki te **mana whenua** e mau nei kia matau i roto i enei ra. I whakaaro nui au me takoto atu matau ki raro i to koutou Kawanatanga, hei matua hei tohutohu hei pupuri mai ki roto i te rangimarie o nga ture ka puta

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nei, e awhitia mai ra e nga iwi me nga rangatira o Aotearoa, me te Waipounamu me nga motu ririki.” ([Translation by Te Mātāhauariki) I am the surviving elder of that subtribe and the authority of the land which we hold today belongs to Ngati Hikawera. I thought substantially to place us under your government as a parent and adviser within the peaceful laws that are being enacted and embraced by the people and the leaders of this country. *Te Puke Ki Hikurangi*, No. 21, August 6, 1904. p. 4

- v) Some Māori authorities have doubted that mana is properly associated with land. In an unpublished manuscript the Māori scholar and tutor of Māori during the early 20th century, Hari Hongi (also known as Henry M. Stowell) noted several original rights or “take” by which land was acquired. This included “The sovereign law or Moral Force, Might, or “Mana”. According to Hongi, “the law of Right was Might, and the law of Might was Right”. However he qualified that argument by noting that:

“It is proper to add that though a chief possessed sufficient mana or moral force to turn off a fellow chief and to deprive that fellow chief of his lands, it is not proper to refer to a chief as one having mana to land”. Hongi, Hari (n.d) *Māori Land Rights, Marriage Customs, Kinship*, Alexander Turnbull Library, MS-Papers-5717, p. 19

- w) Percival Waddy, in a Master of Laws thesis completed in 1927, explored the early laws and customs of Māori. He corrected himself on his interpretation of mana as ‘manorial rights’ when applying the concept to land. Waddy’s analysis shows an early concern with the dangers of translation of Māori concepts by English legal constructs.

“I have already stated that the chief exercised his **mana** or manorial rights over the tribal lands, but I am afraid that my use of the expression “manorial rights’ is somewhat unfortunate and liable to be misconstrued.” Waddy, Percival *Early Law and Customs of the Māoris* Wellington, 1927.

Waddy goes on to state that the use of expressions suggestive of a kind of feudal system among the early Māori is not appropriate, maintaining that no such system was known to them. Waddy criticises Shortland’s suggestion that a chief’s mana over the land corresponds to the power of trustee as entirely fallacious and a typical example of European writers misinterpreting Māori customs. (see entry q).

- x) The eminent anthropologist Raymond Firth has recalled that at one period the question of *mana* over land occupied much of the attention of jurists who wished to unravel the intricacies of the native system of tenure. Firth states that mana in relation to land:

“... usually denotes the superior power or prestige and intimacy of association which a tribe possess with regard to its territory as compared with the relation of other tribes to it. The possession of **mana over the land** is correlated with supreme right of ownership, though not with mere occupation.... The chief of a tribe was often regarded as manifesting in special fashion the *mana* of the

tribe over the land, seeing that he was their representative and head. In a *tangi* (lament) for the chief Tahana Turoa of Whanganui, the words occur:

Haere atu, e te mana o te whenua

Farewell, the embodiment of the power of the land.

The native conception of *mana* in connection with land is thus most nearly akin to the idea of sovereignty. It is in reality very vague, and the attempt by some Europeans to formulate this use of *mana* as a clear-cut legal concept has not met with success.” Firth, R. Economics of the New Zealand Māori, Wellington : Govt. Print, Wellington, 1973, p.391-392.

- y) Sir Apirana Ngata, in correspondence (May 30 1931) discussing relationship terms with Dr Peter Buck (Te Rangihiroa), recalled that Pouhenui had two sons Tarawhakatu who married a descendent of Ruatapu, and Te Awariki who mated with the tangata whenua. The descendants of the latter inherited all Whangara lands, though of the junior branch. Those of his elder brother carried on the “mana and rangatiratanga”, and did not connect with landholding until in succeeding generations. They were constrained to acquire land by force or by intermarriage with tangata whenua lines. Ngata states:

"We shall have to emphasise this distinction between **mana whenua** and mana tangata, for it seems to run through all tradition, and is not merely the creation of the Native Land Court." Na To Hoa Aroha, Vol. II, Auckland University Press, Auckland, 1987, p156

Ngata goes on to note "Best dwells on it [the distinction] in 'Tuhoe'. Gudgeon and all the older [Native Land Court] Judges comment on it ad lib."

- z) In his early text on Māori custom with regard to land, Norman Smith, later a Māori Land Court Judge, commented on the treatment of mana as a customary claim to land. He described the mana of the land as “the shadow as distinguished from the substance” and noted that none of the earlier authorities on Māori custom recognised mana as conferring an interest in land as of right. However he also claimed that:

There is no doubt whatever that the chiefs in ancient times possessed and exercised great power and influence over their people... Abundant evidence of the influence of chiefs is seen in early transactions and their power to guide the owners in disposing of it... [colonisation] gave the *mana* of the Māori chiefs an extended rather than a new significance which was in complete accord with the principles of Native custom and the changing conditions of Māori life... it seems safe to say therefore that a chief did exercise **mana over the land**. That being so, the next question is whether his *mana*, if he could show a right to ownership, entitled him to a greater relative interest in respect thereof. The true *rangatira* always considered the interests of his people first... still others would invariably see to it that he received an adequate share of the land commensurate with his influence and in acknowledgement of his *mana rangatira*... there is no doubt that, in ancient times, the position of *rangatira* carried with it certain benefits and personal tributes from the tribe...” Smith, N., Native Custom and Law Affecting Native Land, Māori

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Purposes Fund Board, Wellington, 1942, p. 81-83. See also Smith, N. Māori Land Law, A.H & A.W. Reed, Wellington, 1960.

- aa) H. Te Kani Kerekere Te Ua, in a note to the Journal of Polynesian society on the subject of chieftainship, identifies mana whenua as a key attribute and offers several illustrations:

“Chieftainship is best described under the following headings: (a) *mana tangata*-where a chief has authority, influence, prestige and power over the people; (b) *mana whenua*-where a chief inherits vast territories by ancestral rights or by conquest (*ringa kaha*) rules over land and people; and (c) *mana korero*-where a chief is capable of reciting the tribal lore and history and is a pacificator in settling tribal disputes.” H. Te Kani Kerekere Te Ua. JPS, 1956, vol. 64, p 488-490

- bb) Several references to mana whenua may be found in statutes of the New Zealand Parliament. These include *The Fisheries Act 1996*, *Ngai Tahu Claims Settlement Act 1998*, *Ngati Turangitukua Claims Settlement Act 1999*, *Orakei Act 1991*, *Pouakani Claims Settlement Act 2000* and the *Resource Management Act 1991*. Section 2 of the last states

“**Mana whenua**” means customary authority exercised by an iwi or hapu in an identified area

‘Tangata whenua’, in relation to a particular area, means the iwi, or hapu, that holds mana whenua over that area”

- cc) Under the *Resource Management Act 1991*, the Planning Tribunal and then its successor, the Environment Court, has had to deal with the notion of mana whenua. In *Auckland Regional Council v Arrigato Investments Ltd*, Ngati Wai claimed that the relationship with the sands as its ancestral taonga in the form of mana whenua had not been recognised and provided for as a matter of national importance. The court found that they had mana whenua over the sands. In its judgment, the Tribunal noted that the applicant:

“...gave full evidence of the status of his people as the tangata whenua, and described the **mana whenua** and mana moana of his people in the area. That evidence outlined a special relationship between the people and the natural physical resources of the land, sea and offshore islands of the area after six centuries of occupation. He deposed that the resources of the sea off Pakiri are of paramount importance to his people, and are likely to become more important in their future economy; that those resources are regarded by them as being taonga and part of their inheritance; that the tangata whenua hold mana over them and are kaitiaki of them, so that the use development and protection, or sustainable management, of those resources are part of their heritage and of their tino rangatiratanga. *Auckland Regional Council v Arrigato Investments Ltd* HC Auckland [2001] NZRMA 158, 14 September 2000.

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dd) The 1990s saw much litigation concerning the proposed method of allocation if Māori fishing quota, particularly around the model “mana whenua, mana moana”, which proposed basing allocation of quota on length of tribal coastline:

“The issues in the cases arise because various Māori tribes or groups object to what they perceive or suspect to be the Commission’s intention to include in its report to the Minister under ... a scheme providing for the distribution of pre-settlement assets based on or much influenced by the principle **mana whenua** mana moana: which is to say, authority over the land carries authority over the sea.” *Te Rūnanga O Muriwhenua & Ors v Te Rūnanganui O Te Upoko O Te Ika Assn Inc & Ors* 1996 NZLR ? CA155/95

ee) In her seminal work on Māori group formation 1700-1945, Angela Ballara has conducted a close study of evidence from Native Land Court hearings. Ballara points out that early Māori statements were very likely to advance claims to mana over the land rather than ownership:

“The **mana** of the chief was thought to ‘rest’ or ‘lie’ **on or over his territory**; this usually included his own ancestral lands but also the lands and use-rights of the several hapu living ‘under’ his mana. He did not own everything in his territory, but while he was accepted by his people as the proper bearer of the mana he had the right to make decisions about both the land and the various hapu living under his mana or authority.” Ballara, A. (1998) *Iwi*, Auckland University Press, Auckland, p. 204.

ff) The Treaty of Waitangi Settlement process requires claimants to establish a mandate for the area concerned. Mana whenua has been associated with such mandate. As with Native Land Court hearings of old, this has resulted in competing claims to mana whenua status. The Evening Post reported on a new Treaty of Waitangi claim to the Wellington region launched by the Porirua-based Ngati Toa tribe before the Waitangi Tribunal. The claim was seen by some as a direct challenge to the tangata whenua status often accorded to the Te Atiawa tribe who make up the Wellington Tenth Trust:

“Kuia (woman elder) Hinerau Wineera White, a direct descendent of Ngati Toa chief Te Rauparaha who conquered the region last century, told members that he had secured “**mana whenua**” (ownership) for her people. “It strikes me as unusual that we have mana whenua over Wellington owned by Ngati Toa and yet we have a group of Wellington Tenth running the show.” Mrs. White said.” Roberston, C. ‘Tribal Claim to Region’ *The Evening Post* 8 July 1997, p. 1.



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gg) In an affidavit prepared for litigation concerning the question of what constituted an iwi, Dr Joan Metge offered her understanding of the term mana whenua:

“16.5 The juxtaposition of the nouns ‘**mana**’ and ‘**whenua**’ in one phrase without connecting possessives compounds the complexity of the concepts on their own. The phrase is formed on the same pattern as mana tupuna, mana atua, mana tangata. Each of these four compounds has at least two meanings, being used to signify (first) the means or agency by which a person obtains mana and (secondly) the power and authority to act effectively in the relevant sphere. Thus mana whenua is both the mana a person derives from association with a particular piece of land and the mana which empowers him or her to act with authority in relation to it. (Māori hold that a person or group does not ‘own’ land but is related to it in a relation of mutual benefit.) Mana whenua in the latter sense was transferable...” Dame Joan Metge, ??? p. 38

hh) The prominent Māori Public Servant and chairman of the Treaty of Waitangi Fisheries Commission, Shane Jones, has expressed concern that the customary concept of “mana whenua” has been taken and used out of context. Jones criticises the careless transfer of traditional Māori concepts to the contemporary context, allowing lawyer’s to use terms such as “Mana Whenua” to suit a contemporary argument. His concern is that “Mana Whenua” has been thrown into the debate as to whether or not local Māori should have exclusive rights or “Tangata Whenua” status when being represented on the District Health Boards. Jones is fearful that the continuation of legal battles over who has hapu, or iwi rights, over the area will end up again in the courts as a legal battle over who has “Mana Whenua” over the area:

“They seem to be used by the people who promote the ideology of de-colonisation. It’s a massive diversion away from the real task at hand.... It is actually quite a cunning ploy in the sense that once you put these words into law, you build up a platform or a theatre upon which you start a new dynamic...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.” Audrey Young, ‘Māori Sovereignty Debate May Cloud Health Reform’, *The New Zealand Herald*, August 8, 2000.

ii) The Waitangi Tribunal in its *Rekohu Report* considered the question whether Moriori were the tangata whenua of the Chatham Islands. It remarked on the statutory use of ‘mana whenua’ and ‘tangata whenua’, claiming the definitions in the *Resource Management Act 1991* had needlessly confused the matter, particularly the association of tangata whenua with power and authority.

“The term ‘**mana whenua**’ appears to have come from a nineteenth-century endeavour to conceptualise Māori authority in terms of the British legal concepts of *imperium* and *dominium*. It links mana or authority with ownership of the whenua (soil). But the linking of mana with land does not fit

comfortably with Māori concepts. Recent research tends to agree that the term ‘mana whenua’ itself does not appear in the early records about customary rights to land... We are inclined to think that the term ‘mana whenua’ is an unhelpful nineteenth-century innovation that does violence to cultural integrity. However, subject to such arrangements as may have been settled by the people themselves, our main concern is with the use of the words ‘mana whenua’ to imply that only one group can speak for all in a given area when in fact there are several distinct communities of interest, or to assume that one group has priority of interest in all topics for consideration.” Rekohu: A Report on Moriori and Ngati Mutunga Claims in the Chatham Islands (Wai 64), Waitangi Tribunal, Wellington, 2001, pp. 28-29.

jj) The term mana whenua as a synonym for tangata whenua appears to have become popular during the 1990s, finding its way into public sector discourse. For example as part of the criteria checklist for applicants for ‘capacity-building’ grants being offered by Te Puni Kokiri (Ministry of Māori Development):

8. Your project must take into account the interests of **mana whenua**.
 - a. Mana whenua have a recognised interest in Māori development within their rohe because of their tangata whenua status.
 - b. Mana whenua do not make decisions about your funding but you need to show how you have taken their interests into account in your application.
- Te Puni Kokiri Capacity Building Funding Criteria online at <http://www.tpk.govt.nz/community/capacity/criteria.htm>

kk) In the Ngati Maniapoto-Ngati Tama Cross Claim, Maniapoto submitted a firm view of their mana in relation to the area claimed by it and its’ southern neighbours, Ngati Tama. Ngati Tama was on the verge of signing a Deed of Settlement for its Treaty of Waitangi Claim with the Crown. Redress included resources from the area under cross-claim by Ngati Maniapoto interests. The Crown argued that they recognised both claimants’ interests in the area. The Ngati Maniapoto submission argued that:

“36. ...**Mana** does not equate to physical occupation, and therefore the Mana is retained despite there being periods where certain areas were not physically occupied. The physical occupation of areas were affected by a number of other factors...

39. ...There is not something such as shared Mana. The Mana either rests with Ngati Maniapoto or Ngati Tama...

40. ...Although their Mana is not enforced as it traditionally was many years ago, Ngati Maniapoto does not accept that their Mana has been affected in any way, outside of Ngati Tama trying to override and trample on that Mana, by their claim over interests that belong to, and fall under the Mana of Ngati Maniapoto.”

Closing submissions of Wai 788 Claimant Counsel, 7 March 2001

While not prepared to reach a decided view on the question of mana, the Waitangi Tribunal said that it certainly had some difficulty with the translation into practical application in the present day of the concept of mana proffered by Ngati

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Maniapoto. The Ngati Maniapoto/Ngati Tama Settlement Cross-Claims Report
(Wai 788, Wai 800), Wellington, Legislation Direct, 2001.



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