

HE ITI TE KUPU HE NUI TE KORERO: THE WORD IS SMALL BUT IT HAS MANY MEANINGS

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He iti te kupu he nui te kōrero—The word is small but it has many meanings. This *whakatauāki*, or saying, captures the essence of *tikanga Māori* law or Maori customary law. Maori *tikanga* law permeates the cultural practices of Maori people, it is likened to living according to religious rules.

During the last several decades, the mainstream legal system has come into conflict with Maori *tikanga* law. The most well-known example of this conflict of the two legal systems was the situation that arose after Mr James Takamore died in Christchurch in 2007.¹ Mr Takamore's *whānau* from Kutarere in the Bay of Plenty arrived at the *tangihanga*, or funereal ceremony, and decided that the practices were not as they expected for a family member. For example, Mr Takamore's partner was not seated beside the coffin as is customary for Maori. The visiting *whānau* decided to uplift Mr Takamore's coffin and take it back his *marae* at Kutarere. They did this without the consent of Mr Takamore's partner and apparently contrary to his last wishes.

As a consequence of this action and the furore that followed, the *tangihanga* customs of Maori were written about or portrayed in the media in a very negative way, although for many Maori these practices were the same as those upheld by their elders and communities for a long time. For Maori, the Maori *tikanga* law is about doing what is appropriate in the circumstances according to the teachings handed down by their ancestors. The reasons for carrying out those practices needed little explanation to a Maori audience; but now an explanation which could be understood by the mainstream of the community was required².

In the debate as to why Maori 'snatch' bodies, Maori *tikanga* practices had to be explained in the context of the *Pakeha* legal system and justified as being the legally and socially acceptable to the wider community. Of course, this was very difficult to achieve because most *Pakeha* people had no knowledge of the reasons why Maori treated deceased persons as they did and why it was important that these practices were carried out. Maori had to explain and justify their own world-view.

Maori *tikanga* law as to death can be explained in this way. For Maori, when a person dies he or she is not yet dead. Though the body shows no signs of life, the *wairua* or spirit is still present where the body is laid out and able to watch and hear what is going on.³ Maori people address the deceased in the first person as if he or she can hear, and believe that by using certain *tohu* or signs the deceased can and does communicate with the living. Dreaming about

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¹ *Takamore v Clarke* (2011) NZCA 587; see also Nin Tomas in *Yearbook of New Zealand Jurisprudence* (2008–2009) vol 11/12.

² A similar situation arose when Billy T James died in 1991. The person who took the body, Mr Bill Awa, unsuccessfully sued the newspaper that described him as a 'body-snatcher'. The same emotive language was used in the reporting of the Takamore case.

³ People who survive near-death experiences describe leaving their body and resting near the ceiling, watching the proceedings around their dead body. Maori refer to this experience when describing the position of the spirit on the ceiling of the meeting house during the *tangihanga*.

the deceased is a common method of response to the family, though for some the signs are on the body itself.⁴

The onus on the bereaved family is to meet the requirements of a 'good' *tangihanga* and to avoid any *hara* or offence for which the deceased might take umbrage and refuse to leave for its final journey when it is required to do so. Having the *wairua* of the deceased around after the time in the *tangihanga* when it is farewelled is a very bad omen for the family and can cause misfortune later. An unhappy *wairua* is often manifested in the disturbed behaviour of close family members after the burial, which need to be resolved as soon as possible. Maori always fear that *utu* or payment for such a *hara* could pass to the children of the *whanau* if it is not resolved. For the last days of the *tangihanga*, the speakers direct a path which the *wairua* is to take before it joins the ancestors in Hawaiki.⁵

At the time that a person is known to have died, the elders of each *marae* to which that person affiliates will go at once to the place where the deceased is lying. If death is imminent the wider *whanau* will have gathered already and discussed informally what is about to happen. If at home, the deceased will be kept there until the gathering takes place. The purpose of the gathering is to discuss formally at which *marae* the deceased is to lie and the *tangihanga* is to be held. All *marae* representatives will express a desire for the deceased to lie at their *marae* and, in doing so, they will recall the *whakapapa* or genealogical connections that the deceased has to them and highlight the important reasons supporting their *tono* or request. A good supporting reason would be that the parents of the deceased had lain at the *marae* of the speaker.

This is a highly regarded process because each speaker will refer to the *mana* by which the deceased is held in their *whanau* and *hapu*. All *marae* representatives must be given a turn to state their case because of the possibility that they may be denied the opportunity to host the *tangihanga*. It is important they have their say in a formal way. A similar process is followed on the night before the burial, whereby the *marae* representatives have another opportunity to convince the *whanau* of the appropriate burial place of the deceased. All these processes reinforce the *mana* of the deceased and their *whanau*.

After all have spoken, the designated spokesperson for the *kiri mate*, or bereaved family, will announce what is to be done; this decision is always made keeping in mind the feelings of those present. I have been present when it was decided that the *tangihanga* was to be held at one *marae* and the funeral was to be held at another, to recognise the equal claims of those kin. It also avoided having a part of the *whanau* hold a grudge for having been left out.

This will be one of the few occasions when the *kiri mate* will speak because it is expected that they should direct their attention to mourning their deceased relative. Mourning in a public way has two purposes: it expends the grief of the *kiri mate* because all of the dead spirits brought onto the *marae* by the visitors are mourned. Also, it shows the deceased that the *whanau* are following the *tikanga* practices and there is no reason for *awangawanga* or to be troubled. The sound of mourning is said to help the *wairua* on its journey to Hawaiki. The

⁴ My grand uncle Te Rauhuhu Tāwhiao cried tears when his Ngāiterangi kin arrived at his *tangihanga* at Kokohinau *marae* in Te Teko. His niece was named Nga Roimata o Te Rauhuhu (the tears of Te Rauhuhu) to commemorate this event.

⁵ For my tribe, Ngāiterangi in Tauranga, the departing place for the spirits is Karewa Island offshore from Matakana Island. This island reinforces its *tapu* state by being the home of the tuatara lizard, which is the keeper of dead spirits. The references to Maori cultural practices in this article are taken from my tribal area, taught to me by my maternal grandparents Te Whana and Te Paeroa Tāwhiao, who raised me on Matakana Island.

mourning is led by the closest female kin of the deceased, thus explaining the upset caused to the Takamore *whanau* when they went to Mr Takamore's *tangihanga*.

Thus, the explanation given above is a brief summary of Maori *tikanga* law that came into play when Mr Takamore died. A fuller explanation would incorporate Maori ideas of *mana* (prestige), *manaakitanga* (caring for others) and *whakawhanaungatanga* (family relationships). One can therefore see that the need to understand Maori *tikanga* law is complex but ultimately fulfilling, because it offers opportunities for the resolution of disputes where the two systems clash. Better understanding makes for better cooperation in dealing with various issues. Maori dispute resolution practices, for example, are much underutilised and are a source of *matauranga Maori* knowledge which could benefit mediation and negotiation law.

Maori *tikanga* law is described as being the first law of Aotearoa/New Zealand⁶ and so it is. Maori post-contact with *Pakeha* had a legal system which ordered their society as much as did the laws of England order the settlement colonies. Maori *tikanga* law was retained in the oral traditions of the Maori and passed down inter-generationally by the elders by their example or by more formal *wānanga*, or houses of learning. The body of learning is referred to as *Mātauranga Maori* or Maori knowledge.⁷

Tika means right, correct or proper. *Ngā tikanga* are the practices which, according to Maori belief, are the appropriate behaviours and customs that need to be followed to avoid calamity or misfortune.⁸

The processes of colonisation as expressed by Chief Judge Prendergast in the *Wi Parata* case,⁹ whereby he concluded that the *Treaty of Waitangi* was a nullity and that Maori had no law but lived as a barbarian people, was the common view of the judiciary and settler governments toward Maori. This attitude persisted until the learned comments of Justice Cooke in what is called the *Lands* case in 1987.¹⁰

In that case, Cooke J made reference to the importance and the spirit and intent of the *Treaty of Waitangi* to Maori and to the legal system of the country. This new view of the *Treaty* in the legal system led to the beginning of a more comprehensive and inclusive teaching of Maori *tikanga* law in law faculties.¹¹ The move toward including Maori *tikanga* papers was also prompted by the increase in *Treaty* settlements of *iwi* or tribes and their subsequent economic growth and need for new governance structures. Legal firms now saw an opportunity for business in this area and required lawyers whose knowledge included *matauranga Maori* knowledge.

A discussion as to how the bicultural nature of the law could be taught in a law faculty was already taking place in the Law School Committee established to promote the setting-up of the new Law Faculty at the University of Waikato. The report of that committee was the titled *Te Matahauāriki*, which refers to the horizon and the breaking of a new day

⁶ Ani Mikaere, *Colonising Myths and Maori Realities – He Rukuruku Whakaaro* (2011) 109.

⁷ See 'Report of the Waitangi Tribunal' in WAI (2011) 262.

⁸ Hirini Moko Mead, *Tikanga Maori* (2003) 11.

⁹ *Wi Parata v Bishop of Wellington* (1877) 3 NZ Jur (NS) SC 72, 78.

¹⁰ See *New Zealand Maori Council v A-G* [1987] 2 NZLR 641.

¹¹ By contrast, when I was a student at the Law School of Auckland University in 1974, Maori Land Law was taught for the first time as a separate paper to Land Law. The paper was more about legal theory rather than giving advice as to practice in the Maori Land Court or Maori *tikanga* law. I disagreed with the lecturer as to his explanation of the meaning of *Ahi Kā* and *Ahi Mātao* and had to apologise for disagreeing.

symbolising the new path the Law Faculty was to pursue.¹² In this report, the Maori community expressed its view that it wanted a Law Faculty that, in teaching biculturalism, embraced the teaching of Maori *tikanga* law and other important aspects of Maori cultural practice. The report also referred to the partnership of good faith spoken about in the *Treaty* as being an operative process for the Law Faculty.

In her article about the bicultural vision of the Faculty, Leah Whiu concluded that though the aspirations of the Faculty were admirable, it had been difficult to fulfil them. She wrote from her experience as a student, academic and researcher of the Faculty. She also surmised that the success of such an endeavour rested with its unqualified support by the leader of the Faculty.¹³ I agree with this assertion. The bicultural endeavour of the Faculty, if it is to be successful, has to be led by the Dean of Faculty and supported by all members of staff, both academic and administrative. That, after all, is how Maori leadership works in their community. The leaders set the example and the members of the community support them because the benefits of the leaders' decisions are for the community or the collective. Maori are used to this way of working together. We have a saying: *Ma tou rourou, ma tōku rourou ka ora ai te iwi*, which means, 'with your contribution and mine, the people will prosper'. Students who are supporters or detractors of this bicultural *kaupapa* are quick to recognise support which is not genuine, so there is a need for this *kaupapa* to be imbedded in the culture of the Faculty.

When I started lecturing at the Faculty I met some student resistance to having to learn about *matauranga Maori*.¹⁴ Some students wondered aloud why they were required to learn about Maori 'stuff' and how could it benefit them when they go out to practice as new lawyers. I know that for some of my Maori academic colleagues and Maori students, these awkward moments were unpleasant and frankly racist. As a group of Maori academics¹⁵ we persisted because we believed in the bicultural *kaupapa* of the new Faculty. We rallied around and supported each other, including the students who were offended by these remarks, but it was not an easy task to impart our own *matauranga* knowledge to groups of people who were hostile and unappreciative. Thankfully, such people were a small minority who sometimes after several years of legal study became supporters of the bicultural *kaupapa*.

There were positive highlights too, concerning some of the students who graduated with very good grades and a solid knowledge of *matauranga Maori*. Three members of the academic staff¹⁶ were also appointed to the Bench, which acknowledges their personal contribution to the bicultural nature of teaching the law and their knowledge of *matauranga Maori*.

Time and changes in attitude have made the teaching of Maori *tikanga* law easier and a better fit with the Faculty. Students know and accept that if they come to the Law Faculty at Waikato University they will be taught, as part of their compulsory law papers, *kaupapa* Maori topics such as that referred to at the beginning of this article. The students begin to realise that having extra knowledge as to *matauranga Maori* or the first law of the country, can improve their employability when they graduate. The official name of the Law Faculty was changed in 2011 to Te Piringa – Faculty of Law. The name 'Te Piringa' was given to the

¹² *Te Matahauariki* (1988) 1.

¹³ Leah Whiu, 'Waikato Law School's Bicultural Vision' (2001) 9 *Waikato Law Review* 265.

¹⁴ I started in 1996 and taught *kaupapa Maori* topics in the Law and Societies Year 1 paper, the Crimes paper, the Corporate Entities paper and Maori Land Law.

¹⁵ The Maori academics were Ani Mikaere, Stephanie Milroy, Marama Henare, Linda Te Aho, Caren Wickliffe, Craig Coxhead, Harata Paterson, Dr Rob Joseph, Dr Nin Tomas (visiting lecturer), Valmaine Toki and Andrew Erueti. The last two have recently joined the Faculty.

¹⁶ Stephanie Milroy, Caren Fox and Craig Coxhead were appointed to the Maori Land Court bench.

new Faculty by the late Maori Queen, Te Arikinui Dame Te Atairangikaahu together with a carved *maihi* or barge board when it was opened in 1990. The name refers to a *tongi* or saying of her ancestor Kingi Pōtatau, the first Maori King, who predicted that some time in the future, knowledge of the *Pakeha* law would be important for Maori.¹⁷ The *tongi* has been adapted to become the *waiata* for the Faculty. The Faculty is within the tribal *rohe* or district of Waikato-Tainui people and, as with the University, it maintains a strong connection to the tribal people and their customs.

The founding goals of the Faculty are discussed by the Dean and other senior staff at the orientation for new students held as the first lecture of the academic year. This gives students an indication of the support that the leaders in the Faculty have for those goals, particularly for the bicultural endeavour of the Faculty. A *mihi* or welcoming speech is given to the students and where possible a response from the students is encouraged as required in Maori *tikanga* at the welcoming *hui*. Both languages are used at beginning of the lecture to acknowledge the importance of both.

Teaching appraisals by students indicate that they prefer that *kaupapa* Maori is taught by Maori academic staff and this is a responsibility that Maori staff accept. *Matauranga* Maori knowledge has been at the forefront of Maori cultural revival throughout the country. Maori Television and all sorts of activities (like the Rugby World Cup) that have Maori cultural input have made New Zealanders more knowledgeable about Maori *tikanga* law.

The *tangihanga* held for the Maori Queen Te Arikinui Dame Te Atairangikaahu in 2004 was broadcast live and brought into the country's living rooms a part of Maori cultural practice usually confined to the *marae* and to the Maori community. This was a milestone in spreading *matauranga* Maori knowledge to others. The curricula in schools at all levels have helped in improving knowledge of Maori *tikanga* law. Nowadays the Faculty receives students whose knowledge of *matauranga* Maori is more comprehensive than their counterparts of 20 or even 10 years ago. It has become easier (and more pleasant) to teach Maori *tikanga* law to a more receptive audience. However, keeping it this way needs constant attention and learning from both sides of the equation.

An article by two academics of the Faculty published in 2004 refers to the legal writing skills paper taught at Year 1, Legal Method, and how aspects of *matauranga* Maori have been incorporated into the content of the paper. Because *matauranga* Maori has an oral tradition, there might be a cause for conflict; however the bicultural *kaupapa* of the Faculty makes both systems relevant to a legal education in this particular Faculty.¹⁸ It is difficult and it needs to be nurtured but it is achievable, according to the writers.

In 2008 as the result of a conversation I had with Judge Caren Fox (Wickliffe), I put forward a proposal to teach an optional paper at Year 4 called *Nga Tikanga* Maori/Maori Custom Law.¹⁹ The intention was to teach the paper in *te reo Māori*, the Maori language, as there was a steadily growing number of students enrolling who were bilingual in English and Maori. I have always encouraged student Maori-speakers to take a leadership role in the Faculty and to use their knowledge of Maori language and *matauranga* to enhance their legal studies and to support the *kaupapa* Maori of the Faculty. The first *te reo* mooted held at the Hunga Roia

¹⁷ See Matiu Dickson, 'Te Piringa' (2010) 18 *Waikato Law Review* 66.

¹⁸ Jacquelin Mackinnon and Linda Te Aho, 'Delivering a Bicultural Legal Education: Reflections on Classroom Experiences' (2004) 12 *Waikato Law Review* 62.

¹⁹ *Nga Tikanga* Maori/Maori Customary Law, LAWS 413.

Conference in 1998 was promoted by the Faculty. Students from the Faculty have placed first in all except one of the competitions in *te reo*.

I had taught in *te reo Maori* to the legal studies Masters students at Te Wānanga o Raukawa and enjoyed the experience and wanted to replicate it at the Faculty. In the end, because of the enrolments, the paper was taught using both languages depending on the *te reo* fluency of each of the students. The topics covered were those that students were likely to meet in the Maori community in which some of them lived. For example, students wanted to know more about the *tangihanga* practices and other issues current in Maori society.

Five *Pakeha* students and one Pasifika student joined the fifteen Maori students in the paper. Each class began in the tradition of Maori *hui*, with a *karakia* or prayer and *waiata* or traditional song. The *waiata* was *Kaōre te mokemoke* ('I will not be overcome by loneliness') a *waiata tangi* or lament known throughout the Mataatua *waka* area. It was therefore a song that students could sing if ever they were part of a welcoming ceremony on any *marae*. Oral traditions of the Maori like *waiata*, *karakia* and *whakapapa* were also taught.

The *kawa* or protocol of the *marae* was covered as were examples of other *hui* held on the *marae*. Classes required students to attend the Kingitanga Day presentations held at the University and many students volunteered their time to the day. Students were given the opportunity to attend at several Poukai or Kingitanga gatherings held on Waikato *marae* during the course. It turned out that the students soon realised that the learning of *matauranga Maori* was about learning the everyday activities in which Maori participate. It was not necessarily a study learnt from notes and textbooks.

I impressed upon the students the responsibility they would have as lawyers in the Maori community to know about *matauranga Maori* because they would be regarded as potential leaders of the tribe. Any *matauranga Maori* knowledge they had, particularly *te reo* fluency, would enhance their reputation as Maori lawyers and leaders.

The assessment for the paper required the students to choose a topic of research for presentation at a seminar to their colleagues and invited staff and to write a research paper. Many students choose topics which are related to their own communities and *whanau* but which also had a legal aspect; for example, the concept of *whāngai* or fostering children in a Maori *whanau* as compared to a legal adoption. The paper is offered in conjunction with other law papers which have *kaupapa* Maori content.

Maori have a saying: *He pai te iti i te kore*, which means 'something is better than nothing at all'. This sentiment can be applied to the teaching of Maori *tikanga* law in the Faculty. There are those who believe that the partnership model of the *Treaty* requires a more proactive stance being taken in teaching and embedding *kaupapa* Maori in the Faculty. I believe that this can be done if the will to do it is present in those who have leadership roles. Other pragmatic people look at the circumstances and do the best that they can. Their efforts are no less valuable than others who make a contribution to the *kaupapa*. Knowledge about *matauranga Maori* points to a truly New Zealand jurisprudence. It also invites Maori to participate more in the development of this new legal ideology.