

TE MANA MOTUHAKE O TŪHOE

By

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ABSTRACT

The primary purpose of this thesis is to provide a way in which the law can protect and respect Te Mana Motuhake. In the course of achieving this purpose, the meaning of Te Mana Motuhake o Tūhoe is discussed. Firstly, a discussion is presented on the concept of mana motuhake as a part of tikanga Māori. Like all tikanga Māori, mana motuhake is sourced from Māori cosmogony. Secondly, a Tūhoe specific analysis of mana motuhake is presented. While mana motuhake has unique meanings for different iwi, for Tūhoe, mana motuhake is connected to Te Urewera, the lands within which they dwell, the lands that sustained Tūhoe in times of adversity and in times of peace. Mana motuhake is also intertwined with Tūhoetanga or Tūhoe identity. Mana motuhake is in the songs Tūhoe sing, the haka Tūhoe perform, and the phrase adorns the flag that has become known as Tūhoe's symbol. Mana motuhake for Tūhoe is also about having Tūhoe control over the governance of Te Urewera.

To create avenues through which the law can better respect mana motuhake, the Urewera District Native Reserve Act 1896 is analysed. Although this Act was considered by Tūhoe to give recognition to Te Mana Motuhake o Tūhoe, an analysis of this Act reveals that mana motuhake was not recognised.

This thesis concludes with notes for a draft Act which would capture and reflect the essence of Te Mana Motuhake o Tūhoe. These notes are not intended to be a full draft of an Act and many decisions regarding Tūhoe tikanga are left for Tūhoe to determine. However, the notes do intend to give life to the essential aspects of Te Mana Motuhake identified in this thesis, which are Tūhoe Land, Tūhoe People and Tūhoe Self-determination.

Word Length

The text of this paper (excluding abstract, table of contents, footnotes and bibliography) comprises approximately 22,718 words.

Subjects and Topics

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CHAPTER ONE: INTRODUCTION

I The Thesis

Ko tō mana motuhake tō Tūhoetanga, ko tō Tūhoetanga tō mana motuhake, ka kore tēnei; ēhara noa tātau.

*Your sovereignty is your Tūhoetanga, Your Tūhoetanga is your sovereignty. Without this we are nothing.*¹

Mana motuhake is a philosophy that is central to Tūhoe. For Tūhoe it is more than a catch-phrase to live by, it is part of a Tūhoe identity. Tūhoe are currently seeking to gain mana motuhake through their Treaty settlement with the Crown. This thesis explores the meaning of mana motuhake for Tūhoe and poses the question whether mana motuhake can ever effectively be recognised through Crown law. In answering this question this thesis provides an analysis of the Urewera District Native Reserves Act 1896 and its intention to grant Tūhoe self-government. The final aim of this thesis is to suggest ways in which mana motuhake can be effectively recognised through Crown law.

II My Background

I trace my lineage to Tūhoe-Pōtiki through my father, Te Rāpaki Williams. Although my siblings and I were not raised in Ruatoki, we often returned for holidays, tangi, birthdays, family reunions, and christenings. Ruatoki was a totally different environment, however, nowhere has ever felt like home more than Ruatoki. In my first year of high school my Aunty took my sister and me for a tramp around Waikaremoana. Then in my final year of high school my Koro took our whānau for a tramp from Ruatāhuna to Ruatoki (although Koro was on horseback). I have never felt more aware of myself and my connection to the land than in these instances. These two events excited in me a desire to learn more about my Tūhoetanga, an understanding I feel is necessary for personal, whānau, hapū, and iwi development.

I decided to come to university three years after I left high school. I chose law as I thought I was pretty good at arguing and I did not know what else to study. Fortunately for me law seemed to fit with the skills I had acquired throughout my life and the subject came easily to me. Throughout my law school journey there was little

¹ Te Kotahi ā Tūhoe “Te Mana Motuhake o Tūhoe” (paper presented to Tūhoe at Mandate Hui, Wellington, 28 November 2006).

taught on Māori world views. The core subjects would have three classes or so dedicated to Māori aspects of the area and we as Māori students were looked at to answer the questions on behalf of all of Māori. This is despite the fact that we weren't and still aren't highly knowledgeable in any area of Māori knowledge. It was not until third year where I was able to take the one paper offered on Māori knowledge, Māori Customary Law that my passion for my Māoritanga and my skills in law began to combine. This course looked at tikanga and its place within the wider New Zealand legal system. For me the course articulated many feelings I had of injustice against Māori and inflamed my passion to learn more about tikanga and its position within New Zealand. That year I was also fortunate to attend the Māori and the Criminal Justice System Colloquium held in Napier that was convened by Moana Jackson. This colloquium brought together over 200 Māori working in diverse areas to discuss the relationship between Māori and the criminal justice system in light of the 20 year anniversary of Moana Jackson's report, *He Whaipanga Hou: Māori and the Criminal Justice System – A New Perspective*.² This colloquium enabled me to meet Māori and other indigenous activists who were passionate in their desire to eradicate the effects of colonisation, further sparking my interest in this area.

This desire to fight the effects of colonisation and my passion for my Tūhoetanga have led me to this topic. Gaining mana motuhake is a step in forward in the fight against the effects of colonisation and it is hoped that this thesis contributes to the achievement of Tūhoe's mana motuhake.

III Social and Political Background to the Thesis

Tūhoe are an iwi located in the Eastern Bay of Plenty of New Zealand. The different hapū of Tūhoe are situated within and on the edges of Te Urewera. Te Urewera is home to Tūhoe and has sustained the people of Te Urewera since time immemorial. Tūhoe trace their lineage to the land, highlighting the strength of the connection Tūhoe have to Te Urewera.

Due to their isolated physical location, Tūhoe was one of the last iwi to feel the effects of colonisation. Being one of the last iwi to be affected by colonisation did not mean their experience of colonisation was any less brutal than that of other iwi. The purpose of this thesis is not to discuss the history and injustices committed against Tūhoe in the process of colonisation. However it is mentioned here as this history led to the erosion of mana motuhake, the central theme of this thesis.

² Moana Jackson *He Whaipanga Hou: Māori and the Criminal Justice System – A New Perspective* (Department of Justice, Wellington, 1988).

The injustices committed against Māori throughout New Zealand have been recognised by the Crown as wrong and the Waitangi Tribunal has been created to address these issues. The Waitangi Tribunal was established in 1975 under the Treaty of Waitangi Act 1975.³ The Waitangi Tribunal hears claims from Māori or groups of Māori who claim they have been prejudicially affected by any Ordinance, Act, Regulation, Order, Proclamation, Notice or other statutory instrument, policy or practice, act or omission, in a way that is inconsistent with the Treaty of Waitangi. The Tribunal will deliberate and make recommendations to the Crown that action be taken to compensate for or remove the prejudice or prevent others from being affected in a similar manner in the future.⁴ Claims are then settled by direct negotiations between the Crown and the Māori or group of Māori. The Office of Treaty Settlements negotiates on behalf of the Crown. The process of negotiations includes an Agreement in Principle, Initialled Deed of Settlement, Ratification of Deed of Settlement, Signing of Deed of Settlement and finally the establishment of a suitable Governance entity and settlement legislation.

Tūhoe have engaged in the Waitangi Tribunal process. There are many claims laid by individual members of Tūhoe or groups representing members of Tūhoe that are being addressed in the negotiations. The first of these claims was laid by Wharehuia Milroy and others in 1987. This was the Wai 35 claim entitled “Tūhoe Lands and State Owned Enterprises Act Claim.” The second claim was the Wai 36 claim, laid by Wharehuia Milroy and Tama Nikora on behalf of the Tūhoe tribe and Tūhoe-Waikaremoana Trust Board. Wai 36 covered “...the entire range of Ngāi Tūhoe issues for those who supported it.”⁵ The Waitangi Tribunal hearings for the Urewera area took place between November 2003 and June 2005.⁶ The findings of the Waitangi Tribunal are being released in parts. Part I was released on 9 April 2009, Part II was released on 2 August 2010. Further parts remain to be released.

Despite not all parts of the report being released yet, Tūhoe are currently in another stage of negotiation with the Crown. Te Kotahi ā Tūhoe have the mandate to

³ Treaty of Waitangi Act 1975, s 4.

⁴ Ibid, s 6.

⁵ Waitangi Tribunal *Te Urewera: Pre-Publication Part I* (2009) at 4.

⁶ Ibid, at Appendix: Claims by Wai Number.

negotiate on behalf of Tūhoe.⁷ The guiding principles of the negotiations are based on the tikanga of Kōrero Rangatira. Kōrero Rangatira respects:⁸

- a) the mana motuhake of both parties;
- b) the accountabilities and responsibilities owed to constituent groups;
- c) the negotiations and settlement objectives, priorities and values contribute to a new generation of a Crown/Ngāi Tūhoe relationship;
- d) the formative literature of Te Urewera Hearings processes including the Waitangi Tribunal Te Urewera report; and
- e) a commitment to a constructive relationship which enables the parties to work together to achieve the best outcomes.

Tūhoe have agreed to three areas that are bottom line for the negotiations. The first is Te Mana Motuhake. This includes the shifting of Crown authority to Tūhoe and provisions for Tūhoe to be the primary deliverer of Tūhoe infrastructure, planning and services. The second is the return of Te Urewera. This means ownership of the area Tūhoe claim ancestral rights to. The third is financial redress, based on the sum total of grievances that Tūhoe have with the Crown. My primary focus in this thesis is on the first bottom line, Te Mana Motuhake, and more specifically, Te Mana Motuhake o Tūhoe. Tūhoe received their first offer from the Crown which was immediately rejected on 12 August 2009 as it did not meet Tūhoe aspirations.⁹ Tūhoe were close to receiving a second offer which included the agreed areas of negotiation when Prime Minister John Key pulled the return of Te Urewera off the negotiating table at the eleventh hour.¹⁰ A table detailing the offer and Tūhoe's response can be found at Appendix A.¹¹ This details the redress areas, what the Crown offered and the Tūhoe response to the offer. Tūhoe are now required to renegotiate their position in light of the removal of Te Urewera.

⁷ Letter from Hon Mark Burton and Hon Parekura Horomia to Tāmāti Kruger regarding the recognition of Mandate (27 September 2007).

⁸ Te Kotahi ā Tūhoe "Te Kotahi ā Tūhoe and the Crown Terms of Negotiation" (2008) Tūhoe Establishment Trust Tūhoe ē Tū
<http://www.ngaituhoe.iwi.nz/LinkClick.aspx?fileticket=_Ay37ykuUoY%3D&tabid=99>

⁹ Letter from Tāmāti Kruger to the Honourable Chris Finlayson regarding the rejection of the Crown offer (12 August 2009).

¹⁰ Tracy Watkins "Tuhoe negotiators told Urewera off the table." (2010) Stuff.co.nz
<www.stuff.co.nz/national/politics/3677975/Tuhoe-negotiators-told-Urewera-off-table>

¹¹ Above n 9.

IV Research Methodology

This thesis is based on Kaupapa Māori research methodologies. According to Linda Tuhiwai Smith:¹²

Research is implicated in the production of Western knowledge, in the nature of academic work, in the production of theories which have dehumanized Māori and in practices which have continued to privilege Western ways of knowing, while denying the validity for Māori of Māori knowledge, language and culture.

This attitude toward Māori world views has led to the rejection of research by many Māori. Since the revitalisation movement of the 1970s, Māori have begun to take control of the research process through Kaupapa Māori research. A Kaupapa Māori research methodology challenges “...the dominance of the Pākehā worldview in research.”¹³ According to Bishop, “Kaupapa Māori research is collectivistic, and is orientated toward benefiting all the research participants and their collectively determined agendas...”¹⁴

Graham Smith says Kaupapa Māori research:¹⁵

1. is related to ‘being Māori’;
2. is connected to Māori philosophy and principles;
3. takes for granted the validity and legitimacy of Māori, the importance; of Māori language and culture; and
4. is concerned with the ‘struggle for autonomy over our own cultural well-being’.

This thesis is strongly centred on a Māori world view, and more specifically, a Tūhoe world view. Mana motuhake is given validity, legitimacy, and importance as a philosophy, principle and ‘law’ which governs Tūhoe conduct and behaviour. I hope that this research will benefit Tūhoe in its analysis of mana motuhake and how mana motuhake can be respected by Crown law. Mana motuhake is a collective desire of Tūhoe and I hope this research will assist in the achievement of this collective desire.

¹² Linda Tuhiwai Smith *Decolonizing Methodologies: Research and Indigenous Peoples* (University of Otago Press, Dunedin, 1999) at 183.

¹³ Russell Bishop “Kaupapa Māori Research: An indigenous approach to creating knowledge” (paper presented to Māori and Psychology Research Unit, University of Waikato, 1999).

¹⁴ Ibid.

¹⁵ Graham Smith “Research Issues Relating to Māori Education” (paper presented to NZARE Special Interest Conference, Massey University, 1990).

A large section of my research relating to mana motuhake was conducted through discussions with members of Tūhoe. As a rangatahi I am humbled by the information that the kaikōrero I spoke to imparted. I realise that these kaikōrero were willing to impart the information due to my whakapapa and I thank them for this. Through the research process I was lucky to be guided by these kaikōrero and my tuākana who ensured the work I was doing respected and protected the mana of Tūhoe.

I conducted two sets of interviews, one at the beginning of my study and one towards the end. The second set of interviews is utilised more in this thesis as I had a better understanding of mana motuhake at this time so was able to ask more relevant questions. I appreciate the information all interviewees provided and a list and summary of each interviewee who I quoted in this thesis follows in alphabetical order.

Wairere Tame Iti is a Tūhoe political activist and artist. One of the founding members of Ngā Tama Toa, he helped develop the Te Mana Motuhake o Tūhoe flag and is staunchly committed to Tūhoe and their mana motuhake.

Tāmāti Kruger, of Ngāti Koura, Ngāti Rongo, and Te Urewera, is the current Chairman of the Tūhoe Establishment Trust, Te Kōtahi ā Tūhoe, and is the lead negotiator for Tūhoe claims with the Crown.¹⁶ He is acknowledged as a great orator and a learned person in te reo and tikanga of Tūhoe and is a spokesperson for Tūhoe on political matters. Kruger was raised in Ruatoki and still resides within Te Urewera.¹⁷

Patrick McGarvey of Te Whānau Pani, Te Māhurehure, Ngāti Rongo, Hāmua, Patuheuheu, and Kākahutapiki, is acknowledged by his whānau, hapū and iwi for his knowledge in Te Reo and Tikanga of Tūhoe. Patrick is the current Representation Project Leader on the Tūhoe Establishment Trust Board and is a member of the Western Tūhoe Tribal Executive. Patrick is also the chairman for the Te Whānau Pani Hapū committee.¹⁸

Timi-Pōkai McGarvey is a respected Tūhoe elder who was raised and schooled in Ruatoki. He is a canon within the Anglican Church in Ruatoki and is knowledgeable in Te Reo and Tikanga of Tūhoe. Timi-Pōkai is currently a Māori language teacher at Te Whare Wānanga o Aotearoa.

¹⁶ Tūhoe Establishment Trust “About the Trust: The People” (2010) Tūhoe Establishment Trust: Tūhoe ē Tū < <http://tekotahiatuhoe.iwi.nz.win2.mydns.net.nz/About/ThePeople.aspx> >

¹⁷ NZPA “Tuhoe assured UN visitor on apartheid – Kruger” (2010) <http://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=10662352>

¹⁸ Tūhoe Establishment Trust, above n 16.

Wharehuia Milroy is a distinguished Tūhoe scholar and respected Tūhoe elder. In 2005 he was awarded an honorary doctorate from the University of Waikato for his “... contribution to Waikato University and the nation, through his commitment to the revitalisation and regeneration of te reo and tikanga Māori.”¹⁹

Dr Linda Nikora, of Ngāti Rongo, is currently an Associate Professor at the University of Waikato. In addition to being a distinguished academic Linda is also involved with the development of Ngāi Tūhoe as a past member of Tūhoe Fisheries Charitable Trust.

Te Umuariki Mary Williams is a respected Tūhoe kuia. She is knowledgeable in Te Reo and Tikanga of Tūhoe. Te Umuariki has resided within and around the Te Urewera for most her life.

V Aim, Objectives, and Structure of the Thesis

The aim of this thesis is to assess the relationship between mana motuhake and Crown law and develop ways to improve this relationship. The focus throughout is on the Land, the People, and their Self-determination. The aim will be achieved by:

- Providing an analysis of mana motuhake and what this concept means to Tūhoe. This objective is addressed in Chapters Two and Three.
- Legally analysing the Urewera District Native Reserves Act 1896 (UDNRA) and its attempt to provide self-government to Tūhoe. This is addressed in Chapter Four.
- Assessing whether the UDNRA respected the mana motuhake of Tūhoe. This objective will be dealt with in Chapter Five of my thesis entitled Mana Motuhake and UDNRA.
- Developing ways in which the law can respect mana motuhake. This objective will be dealt with in Chapter Five.

¹⁹ The University of Waikato “Honorary Doctorate Awarded to Wharehuia Milroy” (2005) The University of Waikato <www.waikato.ac.nz/news/archive.shtml?article=462>

CHAPTER TWO: MANA MOTUHAKE

I Introduction

For Tūhoe, mana motuhake is inseparable from their Tūhoetanga,¹ and is thus an underlying principle for any future Tūhoe iwi authority. The purpose of this chapter is to explore different contextual aspects of mana motuhake in terms of tikanga Māori.

This chapter will first look at tikanga Māori to provide context for mana motuhake. The meaning of mana motuhake is then explored based on interviews I have conducted and materials I have read.

The meaning of mana motuhake will inform the overall purpose of this thesis which develops ways in which the law can better respect and protect mana motuhake for Tūhoe.

II Tikanga Māori

Hirini Moko Mead states tikanga is the set of beliefs associated with practices and procedures that guide the conduct of groups or individuals. Tikanga are packages of ideas that help to organise behaviour and provide some predictability in how activities are carried out. These ideas include concepts such as mana, whakapapa, and mana motuhake. These ideas guide Māori and help Māori to differentiate between right and wrong.²

An example of tikanga Māori guiding conduct is the role whakapapa plays in Māori society. Whakapapa, as part of tikanga Māori, is a factor that helps determine what is right and wrong in relations between Māori.

Whakapapa helps to determine the leaders within Māori society.³ Traditionally, the highest leaders in Māori society were the chiefs. Chiefs were separated into two categories, the ariki and the rangatira. The ariki was recognised as the head of the waka and had the senior lines of genealogy. The rangatira was the head of the hapū, lower than the ariki, but a member of the original founding family. Another leader was the kaumatua, or the elder. The kaumatua was the leader of the whānau and

¹ Waitangi Tribunal *Te Urewera: Pre-publication Part I* (2009) at 78. Tūhoetanga is translated as Tūhoe uniqueness.

² Hirini Moko Mead *Tikanga Māori: Living by Māori Values* (Huia Publishers, Wellington, 2003) at 11.

³ Sidney Moko Mead *Landmarks, Bridges and Visions: Aspects of Māori Culture* (Victoria University Press, Wellington, 1997) at 198-199 lists leadership attributes or talents of a chief.

would represent them in iwi and hapū decisions.⁴ These forms of leadership all stem from whakapapa, as those of higher birth inherit higher social standing. All social interactions are then guided by whakapapa, as social status must at all time be acknowledged and respected.

As outlined above, whakapapa, as part of tikanga, established the various social groups and the leaders of these groups, a tradition that was maintained and respected. This tradition survived for years before the colonisers arrived and whakapapa, as part of tikanga Māori, helped to ensure the effective governance of Māori society. Mana motuhake, like whakapapa, is also a tikanga that helped to govern Māori society.

Though Abel Tasman arrived in New Zealand in 1642, it was with the subsequent arrival of Captain James Cook in 1769 that sustained European contact and changes to Māori society began.⁵ The impact of this contact is evident in changes he noticed between his expeditions to New Zealand.⁶ When Captain Cook first landed in 1769 at Queen Charlotte Sound he noted Māori were willing to trade fish for goods such as nails and cloth, but were against parting with treasures such as greenstone.⁷ On his return in 1773 to Queen Charlotte Sound the effects of the first contact were evident. Māori were more willing to trade with the European settlers and went to such lengths as prostitution, and attacking, and murdering others to obtain these goods.⁸ On another visit to Queen Charlotte Sound in February 1777 Cook noted Māori had now established a large and permanent settlement and were making items such as cloaks for the purpose of trading.⁹ As a result of the desire to trade, inland tribes were forcefully penetrating the territories of coastal iwi in order to trade.¹⁰ The subsequent infiltration of Pākeha diseases attributed to the significant decrease of the Māori population in the 19th Century,¹¹ leaving Māori in a weak position.

The arrival of the missionaries brought what has been described by Ani Mikaere as “a concerted campaign of attack on belief systems, a campaign which was taken up by subsequent arrivals and a campaign which continues today.”¹² The first missionaries landed in North Cape in 1814. However, it was not until the late 1820s that the work

⁴ Ibid, at 196.

⁵ Tony Simpson *Te Riri Pakeha: The White Man's Anger* (Alister Taylor, Martinborough, 1979) at 13.

⁶ Ibid, at 14.

⁷ Ibid, at 13.

⁸ Ibid, at 14-15.

⁹ Ibid, at 15.

¹⁰ Ibid.

¹¹ Ranginui Walker *Ka Whawhai Tonu Mātou: Struggle Without End* (2nd ed, Penguin Books, Auckland, 2004) at 80-81.

¹² Ani Mikaere “The Balance Destroyed: The Consequences for Māori Women of the Colonisation of Tikanga Māori” (Master of Jurisprudence, University of Waikato, 1995) at 74.

of the missionaries began to have real effect.¹³ Chiefs had had enough of the inter-tribal warfare and were looking to missionaries as peacemakers. These missionaries included Reverend Henry Williams who helped negotiate peace between Waikato and Ngāpuhi at Ōtāhuhu in 1836.¹⁴ In return the missionaries demanded conversion to Christianity.¹⁵ The objective of the missionaries was to convert Māori from “...heathenism to Christianity”.¹⁶ Underlying this mission were attitudes of cultural and religious superiority. This assumption of superiority was reinforced in the introduced institutions. For example, the mission schools, though they taught in the Māori language, taught only the standard subjects of the English school curriculum such as arithmetic, reading, and writing.¹⁷ The assumption of superiority of Pākehā beliefs and laws that seeped into the world of the Māori through the early settlers, the missionaries, and eventually the Crown agencies, contributed to the colonisation of tikanga Māori. All of these factors managed to enforce the Pākehā beliefs and rendered Māori values and beliefs subordinate. Mikaere argues that if tikanga continues to be subordinated, the inevitable result will be cultural death.¹⁸

As part of tikanga Māori, the role of mana motuhake has also been subordinated. An examination of the meaning of mana motuhake is perhaps one tiny step in the journey toward reinstating tikanga to its pre-colonisation position. The following sections provide an explanation on mana motuhake, and look to different aspects of mana motuhake.

III Mana Motuhake

A Introduction

“...liberty is an instinct in all human beings...it’s a human urge...It is really unstoppable because of what it is”.¹⁹

¹³ Simpson, above n 24, at 24-28.

¹⁴ Walker, above n 30, at 85.

¹⁵ Simpson, above n 24, at 28.

¹⁶ Walker, above n 30, at 85.

¹⁷ Walker, above n 30, at 85.

¹⁸ Ani Mikaere “How will future generations judge us? Some thoughts on the relationship between Crown law and tikanga Māori” (2006 paper presented at the “Mā te Rango te Waka ka Rere: Exploring a Kaupapa Māori Organisational Framework Hui,” Ōtaki, 3-4th November 2006) at 7.

¹⁹ Interview with Tāmami Kruger, Chairperson Tūhoe Establishment Trust, Te Kotahi a Tūhoe (the author, Taneatua, 23 June 2010).

Imagine if one had no liberty. The desire of one to regain one's liberty would burn within. The journey one would take towards regaining their liberty is mana motuhake. This section will explore the meaning of mana motuhake.

In attempting to define the phrase mana motuhake, the difficulties of explaining a Māori concept in English must be recognised. An English translation of a Māori phrase will never suffice as English and Māori do not have shared cultural principles, thus one cannot assume that an explanation in English can fully capture the Māori concept. Mana motuhake will be explained as best as possible here in English. Keeping this difficulty in mind, this section will begin by looking generally at mana motuhake and will then identify different aspects of mana motuhake, particularly as they are described by the kaikōrero.

B Mana Motuhake

Tame Iti explains mana motuhake as:²⁰

I am in control of my own faculties. I am in control of my inner and my outer thoughts ... We [are] in control. Ā-hapū, ā-iwi, ā-whānau and taku reo, aku waiata, aku kōrero.

Patrick McGarvey says:²¹

To me mana motuhake is being in control of your own destiny, being in control of your own circumstances, being in control of your ability to live your life. Mana motuhake is maintaining ... your identity, your customs, your tikanga, your language, survival ... of all those ideals.

From these quotes it is clear that mana motuhake centres on self-control over the major aspects of one's life. As stated above, when liberty is restricted there is an urge within to gain control back over one's oppressed situation. This feeling is the struggle for mana motuhake, and the attempt by one to gain that control back is an exercise of that mana motuhake.

²⁰ Interview with Wairere Tame Iti, prominent Tūhoe figure, Chair of Te Mahurehure Hapū Committee (the author, Whakatane, 16 June 2010).

²¹ Interview with Patrick McGarvey, Project Leader - Representation at Tūhoe Establishment Trust, Chair of Te Whānau Pani Hapū Committee, Board Member Tūhoe Fisheries Charitable Trust (the author, Ruatoki, 25 June 2010).

According to Tāmāti Kruger:²²

Mana motuhake ... is basically saying we take responsibility and we do not want you to pay for it, we want to pay for it ourselves...Mana motuhake exists to do one thing and that is to avert poverty, ignorance and powerlessness and secondly it is there to encourage prosperity.

Thus when one has control over one's life, one must then use this control to avert poverty. To fail to do so is to negate the existence of mana motuhake.

If this phrase is broken down into its two components, the importance of control and autonomy as part of mana motuhake can be seen. Mana has no one meaning.²³ Mana is defined by Williams²⁴ as “authority, control ... influence, prestige, power ... psychic force ... effectual, binding, authoritative”. As stated earlier, the structure of Māori society is based on whakapapa. Those that descend from the senior whakapapa lines have more mana as they are more closely linked to the gods.²⁵ Thus they have more authority and power. The late John Te Rangiāniwaniwa Rangihau describes mana as:²⁶

A term closely linked to the concept of tapu used to refer to authority, power, control, influence and prestige in relation to atua, people, land and the environment. Mana is linked to other cultural concepts such as tuakana/teina, whakapapa, and rangatiratanga.

As part of mana motuhake, mana brings a connection to the atua which gives a sense of godly authority to the autonomy that mana motuhake describes.

Motuhake is described as “separated”,²⁷ “private, extra, absolute, cross-section, or independent”.²⁸ *He Pātaka Kupu: te kai a te rangatira*²⁹ describes motuhake as “Kāore e piri tahi ana ki tētahi atu mea, kāore rānei e tū ana hei wāhanga o tētahi atu

²² Kruger, above n 38.

²³ Waitangi Tribunal, above n 20, at 85.

²⁴ H W Williams *Dictionary of the Māori Language* (7ed, Legislation Direct, Wellington, 2004) at 172.

²⁵ Tānia M. Ka'ai and Rawinia Higgins “Te Ao Māori: Māori World View” in Tania M. Ka'ai and others (ed) *Ki Te Whaiiao: An Introduction to Māori Culture and Society* (Pearson Education New Zealand, Auckland, 2004) at 13-14.

²⁶ Ibid, at 17.

²⁷ Williams above n 43, at 212.

²⁸ P.M. Ryan *The Reed Dictionary of Modern Māori* (7ed, Reed Books, Auckland, 2004) at 171.

²⁹ Te Taura Whiri i te Reo Māori – The Māori Language Commission *He Pātaka Kupu: te kai a te rangatira* (Penguin Group (NZ), North Shore (Auckland), 2008) at 478.

mea; e tū ana ko tōna kotahi.”³⁰ Mana motuhake is described as “separate identity, autonomy”,³¹ and “independence”.³² Motuhake, as part of mana motuhake, stresses the importance of the separateness of the power. There is no need for the power to depend on anything else to validate itself; one is in control of one’s own affairs and one’s own destiny.

D Mana Motuhake has Existed since Time Immemorial

Mana motuhake has deep roots in Māori philosophy and can be seen in the creation stories. One of the first exercises of mana motuhake can be seen in the creation stories. The popular version of the creation stories dictates three separate categories of creation. The first is cosmogony, or the creation of the world. At first there was Te Kore, where there was nothing and the world was void. Then followed Te Pō, a period of darkness and ignorance. Papa-tū-ā-nuku (Papa), the earth mother developed spontaneously in Te Pō. Ranginui (Rangi), the sky father, was somewhere in the distant space. Papa and Rangi lay together and produced children who existed between them in the darkness. The second category of creation stories begins here, with the creation of the Gods. This category is known as theogony. The children of Rangi and Papa were confined in a tight space. They were unhappy with this situation, and craved more space and light. Six of Rangi and Papa’s children debated how best to let light in and create space. Tūmataunga, the God of War, wanted to kill the parents. Tanemāhuta (Tane), God of the Forest, suggested they separate the parents. The majority agreed. Four of Tane’s brothers attempted and failed to separate the parents. Tane was then able to separate the parents by using his legs to push Rangi away from Papa.³³ The act of Tane separating his parents showed mana motuhake. The brothers resisted the restriction on their liberty. They desired freedom, light and space in which to exist, thus they exercised their authority and control over their destiny. They exercised their mana motuhake. This example shows the longevity of mana motuhake, which has existed since time immemorial and is handed down from the atua and the tīpuna.

³⁰ This translates to “they do not cling to any other thing nor are they part of another thing, they instead stand alone.”

³¹ H.M. Ngata *English-Māori Dictionary* (3ed, Learning Media, Wellington, 2006) at 23-24.

³² Ryan, above n 47, at 265.

³³ Peter Buck *The Coming of the Māori* (2nd ed, Department of Internal Affairs, 1949) at 431-439; Elsdon Best *The Māori As He Was* (3rd ed, R E Owen Government Printer, 1952) at 37-38.

E Mana Motuhake of the Individual, Mana Motuhake of the Collective

Mana motuhake can be exercised at an individual level and at a collective level. Dr Linda Nikora supports this idea stating that there can be a variety of domains in which mana motuhake is exercised in, including personal domains and wider community domains.³⁴

Mana motuhake of the individual is shown when one exercises one's desire to control their life. The exercise of individual mana motuhake can be seen in the following two examples provided in relation to the 19th century prophetic leader, Te Kooti Arikirangi Te Turuki. Te Kooti, of Ngāti Maru a hapū of Rongowhakaata, established the Ringatū faith that is still strongly practiced throughout Tūhoe. Through his faith and his actions, Te Kooti played an influential role in Tūhoe history.

In 1865, the Pai Mārire religion arrived in the East Coast bringing messages of peace. This message however, was overshadowed by the killing of Anglican missionary Carl Volkner and was said to be brought about by the preachings of one of the emissaries of Pai Mārire.³⁵ The Pai Mārire religion was rejected at various places on the East Coast.³⁶ Te Kooti also rejected Pai Mārire. In the struggle to gain rule over the East Coast, war erupted between the Pai Mārire and the Government in Tūranga. Te Kooti became known as a rebel leader even though he did not support the Pai Mārire movement and reportedly fought on the side of the government. During the warfare, Te Kooti was arrested. The reason for this was unclear but he was released after a hearing was conducted.³⁷

There was a siege on Tūranga that ended with the surrender of the Hauhau (Pai Mārire followers) and the killing of 71 Tūranga Māori.³⁸ Shortly after this Te Kooti was arrested again on 3 March 1866 for reasons unknown.³⁹ As a result of the arrest Te Kooti was exiled to Wharekauri.⁴⁰ During this time, the Spirit of God came to him telling him he had to make God known to his people. The Ringatū faith was founded here based on his interaction with God.⁴¹

³⁴ Interview with Dr Linda Nikora, Associate Professor at the University of Waikato, of Tūhoe descent (the author, Hamilton, 24 September 2009).

³⁵ Judith Binney *Redemption Songs: A Life of Te Kooti Arikirangi Te Turuki* (3rd ed, Bridget Williams Books, Auckland, 1997) at 37-38.

³⁶ *Ibid*, at 41.

³⁷ *Ibid*, at 54.

³⁸ *Ibid*, at 51.

³⁹ *Ibid*, at 54.

⁴⁰ *Ibid*, at 58.

⁴¹ *Ibid*, at 65-68.

The release of Te Kooti and other prisoners from Wharekauri was continually and unfairly delayed. Because of this Te Kooti led an escape. In early July 1868 the schooner, Rifleman, arrived in Wharekauri with supplies and Te Kooti and his followers seized this opportunity to escape from the island.⁴² They bound up the crewmembers, boarded the schooner and headed for the main land. This commenced the long hunt for Te Kooti, and eventually led to Te Kooti seeking shelter with Tūhoe. At a hui held at Tawhana, in the Waimana Valley on 20 March 1869, the Tūhoe leaders agreed to allow Te Kooti to enter the Urewera.⁴³

This brief description of these incidents in Te Kooti's life touches on two instances where he exercised his individual mana motuhake, his rejection of Pai Mārire and his escape from Wharekauri. In both instances, Te Kooti took great risks to stand up for what he believed in. He repelled the attempts of others to enforce their ideals upon him and restrict his liberty, by exercising his mana motuhake.

Collective mana motuhake focuses on the achievement of self-determination by an entity. Linda Te Aho describes mana motuhake as the "... authority of distinctive and dynamic tribal groups to make their own choices and determine their own destiny."⁴⁴ Wharehuia Milroy describes mana motuhake as having "...the right to be able to set up processes, structures which will provide benefit [to the people]."⁴⁵ It is clear from these two view points that collective mana motuhake requires the ability for a group to run their affairs in the manner they choose. Whilst it is hard to have a group in which all agree with the decision, having the ability to make their own decisions is a sign of collective mana motuhake.

The desire for the collective to maintain their mana motuhake can be so strong that economic prosperity of the entity is forsaken for the need to be in control of one's destiny. According to Kruger:⁴⁶

... since European occupation Tūhoe have deliberately made decisions that [have] economically disadvantaged themselves...that's part of the reason why we [Tūhoe] still retain a lot of our culture ... we have rejected the view [that] a temporary place of safety is better than resistance.

⁴² Ibid, at 79-80.

⁴³ Ibid, at 103.

⁴⁴ Linda Te Aho "Contemporary Issues in Māori Law and Society: Mana Motuhake, Mana Whenua" (2006) 14 Waikato LR 102, at 102.

⁴⁵ Interview with Professor Wharehuia Milroy, Tūhoe elder and distinguished scholar (the author, Hamilton, 24 September).

⁴⁶ Kruger, above n 38.

F Can Mana Motuhake be Exercised by Non-Māori?

An interesting issue that is raised in discussions on mana motuhake is whether a non-Māori person or entity can exercise mana motuhake or whether mana motuhake is a concept belonging solely to Māori. Exploring this idea provides further analysis on mana motuhake.

Whether mana motuhake can be exercised by non-Māori is a discussion that can be had with regard to any Māori tikanga. Hirini Moko Mead states that while it is up to Māori to protect the integrity and take ultimate responsibility for tikanga, it is human nature to borrow from other cultures. Non-Māori may practice tikanga but it is up to Māori to protect tikanga and develop it to suit changes that time may bring.⁴⁷ Taking this approach, non-Māori may exercise mana motuhake.

Kruger believes non-Māori do exercise mana motuhake, though they do not refer to the concept as mana motuhake.⁴⁸

I think other nations and other cultures have another word for it, but in essence it is the same thing...there is the need and the want by other minority groups in New Zealand to retain their culture, language and identity and they do that largely without the support of the Crown. But then there is this urge to do it...The very migration of Pākehā people to Aotearoa was a result of their quest of mana motuhake from the oppression of Europe.

Like other tikanga, mana motuhake is a concept that can transcend different ethnicities.

Patrick McGarvey takes a contrasting view and believes that mana motuhake is intertwined with Tūhoetanga. “Mana motuhake is about being a Tūhoe person...Tūhoetanga, tikanga, reo...those are all part of our identity. That is part of...our mana motuhake.”⁴⁹ Mana motuhake cannot be separated from Tūhoetanga so in his view mana motuhake is not “...something belonging to another culture or another iwi even.” To Patrick, mana motuhake is only exercised when one is able to practice Tūhoe tikanga, Tūhoe reo, and express one’s Tūhoe identity.

⁴⁷ Moko-Mead, above n 21, at 353-354.

⁴⁸ Kruger, above n 38.

⁴⁹ Patrick McGarvey, above n 40.

It is my opinion that mana motuhake can transcend culture; though different cultures would have different phrases for the concept. The strength and the consistency through which Tūhoe have expressed their mana motuhake is perhaps why Patrick sees mana motuhake as a uniquely Tūhoe concept.

Whether or not non-Māori exercise mana motuhake, it is up to Māori to maintain the integrity of mana motuhake, including ensuring it is practised in the right way and taking responsibility to protect and develop mana motuhake to suit the changing environment.

G Mana Motuhake and Tino Rangatiratanga

Mana motuhake and tino rangatiratanga have overlapping meanings and examining the relationship between the two provides further insight into mana motuhake. Tino rangatiratanga is a phrase that was used in the second article of the Tiriti o Waitangi as the equivalent of “... full exclusive and undisturbed possession of ...”⁵⁰ Tino rangatiratanga is also translated as sovereignty.⁵¹ The interviews produced varying, thought provoking ideas in relation to this issue.

Timi-Pōkai McGarvey distinguishes between the two. He believes that tino rangatiratanga is sovereignty as granted by the Crown to Māori, however mana motuhake is inherent. In the context of the Treaty, tino rangatiratanga was granted to Māori from the Crown. McGarvey believes mana motuhake cannot be granted, as it already exists, without the need for the Crown or any outside agency to affirm this.⁵² Tame Iti subscribes to a similar school of thought:⁵³

I think tino rangatiratanga is a concept that kind of came about i roto i te ao Pākeha,⁵⁴ from a Pākeha concept, Christianity ... But I think tino rangatiratanga comes second to mana motuhake ... There’s more to mana motuhake than tino rangatiratanga, [mana motuhake is] more absolute ... than tino [rangatiratanga].

For both interviewees it is apparent that mana motuhake is a stronger concept than tino rangatiratanga. Tino rangatiratanga has more connections, and possibly

⁵⁰ Treaty of Waitangi 1840, art Two.

⁵¹ Ngata, above n 50, at 441.

⁵² Interview with Timi-Pōkai McGarvey, Tūhoe elder (the author, Whakatane, 24 September 2009).

⁵³ Wairere Tame Iti, above n 39.

⁵⁴ This translates as “in the Pākeha world.”

originates from the interaction of Māori with the Crown and Christianity. Mana motuhake has a stronger grounding in Māori philosophy.

Kruger believes mana motuhake and tino rangatiratanga have different roles in the journey for self-determination:⁵⁵

Tino rangatiratanga ... is like the product of mana motuhake. It's like the benefits, the privileges, the outcomes of it. Rangatiratanga is the proof that you have got prosperity. You are enjoying all the benefits of past effort. Mana motuhake I think is pointing to the necessary infrastructure that is required in order to have that result.

According to Kruger tino rangatiratanga is the state we are trying to achieve, whilst mana motuhake is the journey we are on to reach that state.

To do a full analysis on the differences between mana motuhake and tino rangatiratanga would require another thesis. However it is of interest to mention here the perceived differences between the two phrases. The differences draw out the mana and history existent in mana motuhake that is perhaps not as prevalent in tino rangatiratanga. Kruger's statement that tino rangatiratanga is a desired state indicates that mana motuhake is the driving force behind our struggle to achieve that state. It is a mindset that inspires our people to achieve tino rangatiratanga.

H Keeping Mana Motuhake Alive

Mana motuhake, like tikanga Māori, must evolve as society changes in order to retain relevance and remain living. Patrick McGarvey says that:⁵⁶

Mana motuhake, like anything else in your culture ... has to evolve. In order to survive it has to stay alive ... if we try to maintain a mana motuhake approach like Te Purewa and Tamahore⁵⁷ did in the early eighteen hundreds well we wouldn't last long because it was a different time...Today we have to live our life according to our Tūhoetanga based on the environment that we live in.

⁵⁵ Kruger, above n 38.

⁵⁶ Patrick McGarvey, above n 40.

⁵⁷ See Waitangi Tribunal, above n 20, at 39 which mentions Te Purewa and Tamahore. Te Purewa and Tamahore were chiefs of Ngāti Rongo, a hapū of Tūhoe. Their reputation was so renowned that they, along with their brother Tumatawhero, were known as Te Tokotoru a Kokamutu (the three sons of Kokamutu).

Māori cannot hope to emulate the behaviour of our tīpuna when the world they live in is drastically different to their ancestors. Māori can instead take the principles underlying mana motuhake and use them to guide their behaviour in today's society.

Kruger also stresses the importance of the evolution of mana motuhake to meet today's circumstances:⁵⁸

If mana motuhake means we have to give up everything that we regard as wisdom and go retrospective in time [then] that is not mana motuhake ...

I think today proof of mana motuhake must be around ... better access to housing, better roads, premier social services, better education systems.

In Kruger's quote we see the shift in focus of mana motuhake as part of evolution. Māori must adapt the way they express mana motuhake in any society in order to achieve the goals of mana motuhake. The evolution of mana motuhake is crucial to its long-term survival.

IV Conclusion

This chapter has discussed the role of tikanga and its importance to the effective operation of Māori society. Mana motuhake, as part of tikanga, is also important to the operation of Māori society. This chapter has explored different contextual aspects of mana motuhake including the origins of mana motuhake, examples of collectives and individuals exercising mana motuhake, the relationship between mana motuhake and other non-Māori ethnicities, the relationship between mana motuhake and tino rangatiratanga, and keeping mana motuhake alive. These meanings will help inform Chapter Three which discusses Te Mana Motuhake o Tūhoe, and will also inform the overall purpose of this thesis, which is providing a better way for law to recognise mana motuhake.

⁵⁸ Kruger, above n 38.

CHAPTER THREE: TE MANA MOTUHAKE O TŪHOE

Māori are an iwi-centric and hapū-centric people. Tikanga and the principles that underlie tikanga have distinct meanings for each iwi and hapū. While the previous chapter sought to explain the general meaning of mana motuhake, this chapter will look to the phrase as seen by Tūhoe. This section is structured according to three important aspects of Te Mana Motuhake o Tūhoe. These aspects are the People, the Land, and Self-determination.

Within Tūhoe itself, the concept will have slightly different shades of meaning for different members of Tūhoe. It is hoped that this chapter will respectfully express these varying views in capturing the essence of Te Mana Motuhake o Tūhoe. Te Mana Motuhake o Tūhoe is not something that can be explained easily. It is something that needs to be lived to understand its full meaning. This chapter, however, touches on aspects of Te Mana Motuhake o Tūhoe that must be included in any law that proposes to reflect Te Mana Motuhake o Tūhoe.

This chapter serves the overall purpose of this thesis by providing a clear explanation of Te Mana Motuhake o Tūhoe that can be used when creating legislation to recognise this.

I Te Mana Motuhake o Tūhoe

“Nā Toi rāua ko Pōtiki te whenua. Nā Tūhoe te mana me te rangatiratanga: The origins of Te Mana Motuhake o Tūhoe.”¹

For Tūhoe, mana motuhake has connotations of unique power and authority, freedom, liberty, nationhood, self-determination and independence that are inseparable from Tūhoetanga.² Tūhoe is a collective entity of hapū located within the Te Urewera. This land is also known as Te Rohe Pōtae o Tūhoe.³ The above whakatauki recognises the connection Tūhoe has to the Urewera region, through their ancestors Toi and Pōtiki. It also recognises the mana and the authority Tūhoe have over that area which stems from their eponymous ancestor Tūhoe-Pōtiki.

¹ Sydney Melbourne “Te Manemanerau a te Kāwanatanga: A History of the Confiscation of Tūhoe Lands in the Bay of Plenty” (MA Thesis, University of Waikato, 1987) at 1.

² Waitangi Tribunal *Te Urewera: Pre-publication Part I* (2009) at 78.

³ Judith Binney *Encircled Lands: Te Urewera, 1920-1921* (Bridget Williams Books, Wellington, 2009) at 5.

A *Tūhoe People*

Tūhoe-Pōtiki is the great-grandson of Toroa, the rangatira of Mataatua waka. When Mataatua landed in Whakatane, those on board began to establish links with the indigenous people's of Te Urewera, Te Tini o Toi, Ngāi Tūranga, Te Mārangaranga, Te Hapuoneone, Ngā Pōtiki, and Ngāi Tauira.⁴ Aboard Mataatua was Tāneatua, the tohunga wairua of the waka and the brother of Toroa. Tāneatua married Hinemataroa, (of Ngā Pōtiki and Te Tini o Toi descent) and from that union Paewhiti was born. Paewhiti married Tamatea-ki-te-huarahi, the grandson of Toroa. Paewhiti and Tamatea had three sons whom she referred to as Te Tokotoru a Paewhiti. They were Ueimua, Tānemoeahi and Tūhoe-Pōtiki.⁵

The political realisation of Te Mana Motuhake o Tūhoe originates from a dispute that took place between Tūhoe-Pōtiki and Ueimua.⁶ Tūhoe-Pōtiki and Ueimua had a dispute over cultivation rights at Owihakatoro, located in Ruatoki, in the Eastern Bay of Plenty district. As the tuakana,⁷ Ueimua had mana over Tūhoe-Pōtiki, however instead of moving out of the area, Tūhoe-Pōtiki chose to stay and to remove his brother's authority from him. He did so by killing his brother and eating his heart.⁸ In this way, Tūhoe secured mana motuhake for himself and his heirs. Tūhoe have 'inherited his obsession with independence and sovereignty',⁹ they have a determination to secure their own destiny.

Though mana motuhake is not a concept that originated with Tūhoe, it has over time become synonymous with Tūhoe. Mana motuhake is a concept that is ingrained in the minds of Tūhoe, a concept that is spoken about in whaikōrero on marae, and sung about in schools throughout Te Urewera. Kruger says that mana motuhake for Tūhoe "... is Tūhoe nationhood and all of the features that nationhood holds ... self-government."¹⁰ For Patrick McGarvey Te Mana Motuhake o Tūhoe is:¹¹

⁴ Waitangi Tribunal, above n 79, at 24.

⁵ Waitangi Tribunal, above n 79, at 32-44.

⁶ Interview with Tāmami Kruger, Chairperson Tūhoe Establishment Trust, Te Kotahi a Tūhoe (the author, Tāneatua, 23 June 2010).

⁷ This translates as "older brother or cousin."

⁸ Waitangi Tribunal, above n 79, at 78; Rawinia Higgins "He Tānga Ngutu, He Tūhoetanga, Te Mana Motuhake o te Tā Moko Wāhine: The Identity Politics of *Moko Kauae*." (PhD thesis, University of Otago, 2004) at 205.

⁹ Waitangi Tribunal, above n 79, at 79.

¹⁰ Kruger, above n 83.

¹¹ Interview with Patrick McGarvey, Project Leader - Representation at Tūhoe Establishment Trust, Chair of Te Whānau Pani Hapū Committee, Board Member Tūhoe Fisheries Charitable Trust (the author, Ruatoki, 25 June 2010).

...living in your own world, speaking your language, or having the ability to speak your language. To know your customs, to live by your customs, to know your history and live your life based on the knowledge of the past. And [to] use those principles to guide you through your future but being in control of all of those.

B Tūhoe Land

The importance of Te Urewera to Tūhoe and Te Mana Motuhake o Tūhoe cannot be underestimated. Te Urewera is synonymous with Tūhoe. Without the geographical terrain that is Te Urewera, mana motuhake would be harder to maintain. Te Urewera's remote, dense bush makes it hard to access for non-Tūhoe. Historically, at times of adversity, Tūhoe could retreat back into Te Urewera to re-gather and coordinate.¹² This made it easier for Tūhoe to maintain their practices and thus their identity, as contact with the outside world was limited. Patrick McGarvey agrees with this and also says that the terrain of Te Urewera is similar to the mindset Tūhoe have.¹³

Mana Motuhake as many others have said in the past is part of our landscape, so our landscape has also assisted to an extent Tūhoe's ability to maintain that Mana Motuhake ideal. The terrain I suppose you can say reflects Tūhoe's mindset. It is unrelenting.

Thus without Te Urewera there would be no mana motuhake or Tūhoetanga.

The existence of mana motuhake within Te Urewera was respected by outside agencies when Te Umuariki Mary Williams was a child circa 1930. Williams recalls how government laws would not apply beyond the confiscation line in Ruatoki. Children would be mischievous but as long as they made it behind the confiscation line in Ruatoki, the police would not be able to touch them.¹⁴

...you know the police used to chase them and they'd go flat out on their horses, as soon as they get over the confiscation line, the boundary line, they would stop and they would haka to the police and do all sorts because the police couldn't go over their lines and get them.

¹² Waitangi Tribunal, above n 79, at 27.

¹³ Ibid.

¹⁴ Interview with Te Umuariki Mary Williams, respected Tūhoe kuia (the author, Whakatane, 22 September 2009).

C Self-determination

Te Mana Motuhake o Tūhoe is about maintaining Tūhoe control over every aspect of Tūhoe life. For Tūhoe, this specifically means the ability to speak Māori, living by Tūhoe tikanga, and living with knowledge of Tūhoe history. In order to have Te Mana Motuhake o Tūhoe, Tūhoe must have the ability to establish its own processes that bring prosperity, a goal of mana motuhake, within Te Urewera.

Timi-Pōkai McGarvey provides the following description of mana motuhake, “To keep the Pākehā and his laws and his systems out of Tūhoe and his ideologies.”¹⁵ This description supports the idea of maintaining Tūhoe control over Tūhoe ways of life.

Wharehuia Milroy describes mana motuhake as:¹⁶

...the right to be able to set up processes, structures which will provide benefit [to the people] ... To establish ways and means in which our people can work for the benefit of Tūhoe rather than for the benefit of others. So that is part of a mana motuhake model. And mana motuhake idea is the, this is my word for want of a better word, is the Tūhoe-ising of the control ... of the destiny of our people.

History shows the strength and resolve of Tūhoe to retain their customs and identity through their passion for mana motuhake. According to Iti:¹⁷

The soul ... the mind and the thinking still remains to every individual Tūhoe despite ... colonisation ... I think that Tūhoe [have] done really well ... against the superiority of white domination ... So I think that mana motuhake [is] even more clear in the minds of many whānau, hapū and individual person in Tūhoe.

Tūhoe aspirations for maintaining their mana motuhake can be seen more recently as part of the Treaty negotiations with the Crown. Despite the quantum that was offered, Tūhoe flatly refused the offer inside and outside Te Urewera. The return of Te Urewera, which is crucial to mana motuhake, was not part of the offer. According to

¹⁵ Interview with Timi-Pōkai McGarvey, Tūhoe elder (the author, Whakatane, 24 September 2009).

¹⁶ Interview with Wharehuia Milroy, Tūhoe elder and distinguished scholar (the author, Hamilton, 24 September 2009).

¹⁷ Interview with Wairere Tame Iti, prominent Tūhoe figure, Chair of Te Mahurehure Hapū Committee (the author, Whakatane, 16 June 2010).

Patrick McGarvey, "...Tūhoe struggling from week to week rejected that one hundred and thirty million dollar offer based on the idea and mindset of mana motuhake."¹⁸ As discussed in the mana motuhake section of the previous chapter, mana motuhake is such an important concept to some that it comes before economic advancement. The desire of Tūhoe to live their lives according to Tūhoe tikanga, with no restrictions, is so strong that the most economically desolate refused an offer of millions of dollars. This is yet another example of the resolve of Tūhoe toward mana motuhake.

The Urewera District Native Reserve Act 1896,¹⁹ an Act of the government, also attempted to respect Tūhoe and their mana motuhake. Judith Binney describes the Act as "...unique in Aotearoa New Zealand, for the Urewera is the only autonomous tribal district that was recognised in law."²⁰ Though the Act had many shortcomings, it is also evidence that Te Mana Motuhake o Tūhoe was recognised by outside agencies.

The effects of Tūhoe desire to maintain its identity and mana motuhake are still evident today. Tūhoe have managed to maintain its own Tūhoe language. Tūhoe tikanga is still practised within the Te Urewera area. Despite this, there are still many instances where Tūhoe identity and tikanga are not so strong. Patrick McGarvey recalls a time where tikanga from another iwi was being followed on a Tūhoe marae, thus compromising Te Mana Motuhake o Tūhoe.²¹

I remember a tangihanga at Tauarau²² and a koroua [stood up] to mihimihi ... he said this is the last night, this is the night where the whānau, the kīrimate are able to get up and speak to their departed. Well another koroua immediately stood up and said no that is not the case, that is not a Tūhoe tikanga, that is not part of our culture or identity. That is a Te Arawa tikanga ... Tūhoe people do not get up and speak to their own [as] kīrimate.

In this situation it was fortunate that the tikanga was able to be corrected. Yet this highlights the fact that in tikanga from other iwi are creeping in, eroding Tūhoe tikanga and mana motuhake. Erosion may be attributed to many factors. In this example, a member of a hapū had moved to an urban area and had taken up the tikanga of that area. This member then attempted to practice the new tikanga on a

¹⁸ Patrick McGarvey, above n 88.

¹⁹ See generally Chapter Four of The Urewera District Native Reserves Act 1896 where this is discussed in depth.

²⁰ Binney, above n 80, at 4.

²¹ Patrick McGarvey, above n 88.

²² Tauarau is the marae for the hapū of Tūhoe, Ngāti Rongo. It is located on the main road in Ruatoki.

Tūhoe marae. As discussed the maintenance of identity is crucial to the maintenance of mana motuhake. If Tūhoe want to maintain their mana motuhake, it is important they continue to practice their tikanga. In situations where many have moved away from Te Urewera and are not knowledgeable in their tikanga, it is important to educate or re-educate Tūhoe on these tikanga.

D Future of Mana Motuhake

The extent to which mana motuhake exists within Tūhoe today has been greatly diminished. This statement is in no way intended to derogate from the tireless effort many Tūhoe have put in to maintain Tūhoe identity. There is no doubt that it exists within the minds and spirits of the people living within Te Urewera and many Tūhoe outside Te Urewera. However, the ability to practise Tūhoe tikanga and live life according to Tūhoe customs is greatly decreased due to Crown laws that apply to the people within Te Urewera. When asked if mana motuhake exists today, Kruger replied:²³

I think largely today it exists symbolically. I think there is imagery around it, symbolism around it. There is a history, a memory of it, a recollection of it. There are even instances of it being replicated, reproduced, mimicked, copied, but very much in a limited form.

Tūhoe negotiating for their mana motuhake is a courageous step toward Tūhoe self-determination, the right to define and control our own destiny. It seems unlikely that the government will heed Tūhoe's call for mana motuhake. Thus it is important to educate our younger generations on Tūhoe tikanga and the importance of mana motuhake. When it comes time for negotiations with a more open-minded government, subsequent generations will be able to fight for mana motuhake with as much passion as the tīpuna that have gone before them. Education and re-education will require a concerted effort from Tūhoe as a whole, to commit to the path of mana motuhake.

II Conclusion

This chapter explored the unique meaning mana motuhake has to Tūhoe. This chapter identified three important aspects of mana motuhake, the People, the Land and Self-determination and discussed Tūhoe views on each aspect. This chapter then concluded with a look at the future for mana motuhake. As discussed, mana motuhake is less strong in today's society than it has been in the past. It is hoped that

²³ Kruger, above n 83.

protection and recognition of Te Mana Motuhake o Tūhoe can be achieved by respecting important aspects of mana motuhake for Tūhoe. The next chapter looks to the Urewera District Native Reserve Act 1896 and whether it met the aspirations of Tūhoe.

CHAPTER FOUR: THE UREWERA DISTRICT NATIVE RESERVE ACT 1896

The Urewera District Native Reserve Act 1896 (UDNRA) was considered by Tūhoe to be a piece of legislation that would give legal life to the spiritual connection Tūhoe have with their land. Through this connection and the absolute determination of Tūhoe to maintain their mana over their land this Act was law from 1896 until its repeal in 1921.¹

This chapter examines the Urewera District Native Reserve Act 1896. The purpose of this chapter is to provide a section by section analysis of the UDNRA as a base for Chapter Five. Chapter Five will discuss whether mana motuhake was recognised and reflected in the UDNRA. Chapter Five will also suggest ways in which mana motuhake can be better reflected in law. In providing a base for Chapter Five, this chapter helps to achieve the overall purpose of this thesis, that is to provide ways in which law can better reflect mana motuhake.

This chapter first discusses the history of the Act, why it was established and in what context. It will then describe and analyse each section of the UDNRA. The chapter concludes with a discussion in which issues regarding the usurping of tikanga Māori by Western law, and the overarching power afforded to the Governor are highlighted. These issues will then be addressed in Chapter Five.

I History

This section will outline the reasons for the UDNRA and provide a history of the establishment of the Act.

Section 2 of the UDNRA lists the boundaries of the Urewera District. These boundaries are not the traditional Tūhoe boundaries but rather boundaries that are a result of confiscation of Tūhoe land.² Thus the history of UDNRA will start with these confiscations.

On 17 January 1866 an Order-in-Council was issued, confiscating a large area of land in the Eastern Bay of Plenty.³ Map A indicates the land within the confiscation area

¹ Urewera Lands Act 1921-22, s 20.

² See Sydney Melbourne “Te Manemanerau a te Kāwanatanga: A History of the Confiscation of Tūhoe Lands in the Bay of Plenty” (MA Thesis, University of Waikato, 1987) at 65, which records the traditional boundaries of Tūhoe. These are contrasted to the boundaries that are listed under section 2 of the UDNRA.

³ Ibid, at 58.

that Tūhoe are currently claiming under the Treaty settlement process. The Crown has conceded that the confiscation was ‘a breach of the Treaty, unjust, and excessive.’⁴ According to Melbourne, the land was confiscated due to Tūhoe involvement at Ōrākau in 1864 and alleged involvement in the deaths of Reverend C Volkner and Mr James Te Mautaranui Fulloon.⁵ Volkner worked in the Ōpōtiki area as a missionary; however, the local iwi Whakatōhea discovered he was a government spy. They ransacked and auctioned his property and sent him a letter forbidding his return. Volkner did return, and was hung for being a traitor and betraying the local people who had taken him in.⁶ Mr Fulloon was killed later that year on 17 July.⁷ Mr Fulloon, of Ngāti Awa and Tūhoe descent, was sent as an interpreter after the Volkner killing, with the intention of apprehending those that killed Reverend Volkner.⁸ The exact reasons for Fulloon’s death are unclear but it is known that the locals were suspicious of him as a government worker. He also provoked local Māori by inviting them aboard his ship to have their heads blown off.⁹ In 1864, Tūhoe did indeed assist Waikato in the defence of Ōrākau against the Crown due to genealogical and historical links with Waikato.¹⁰ However, the Waitangi Tribunal have stated that Tūhoe were not involved in the murders, with the Crown acknowledging that Tūhoe were closely related to Fulloon and there is evidence they were aggrieved at news of his death.¹¹

⁴ Ibid, at 155.

⁵ Melbourne, above n 102, at 58.

⁶ Ibid, at 48.

⁷ Ibid, at 43.

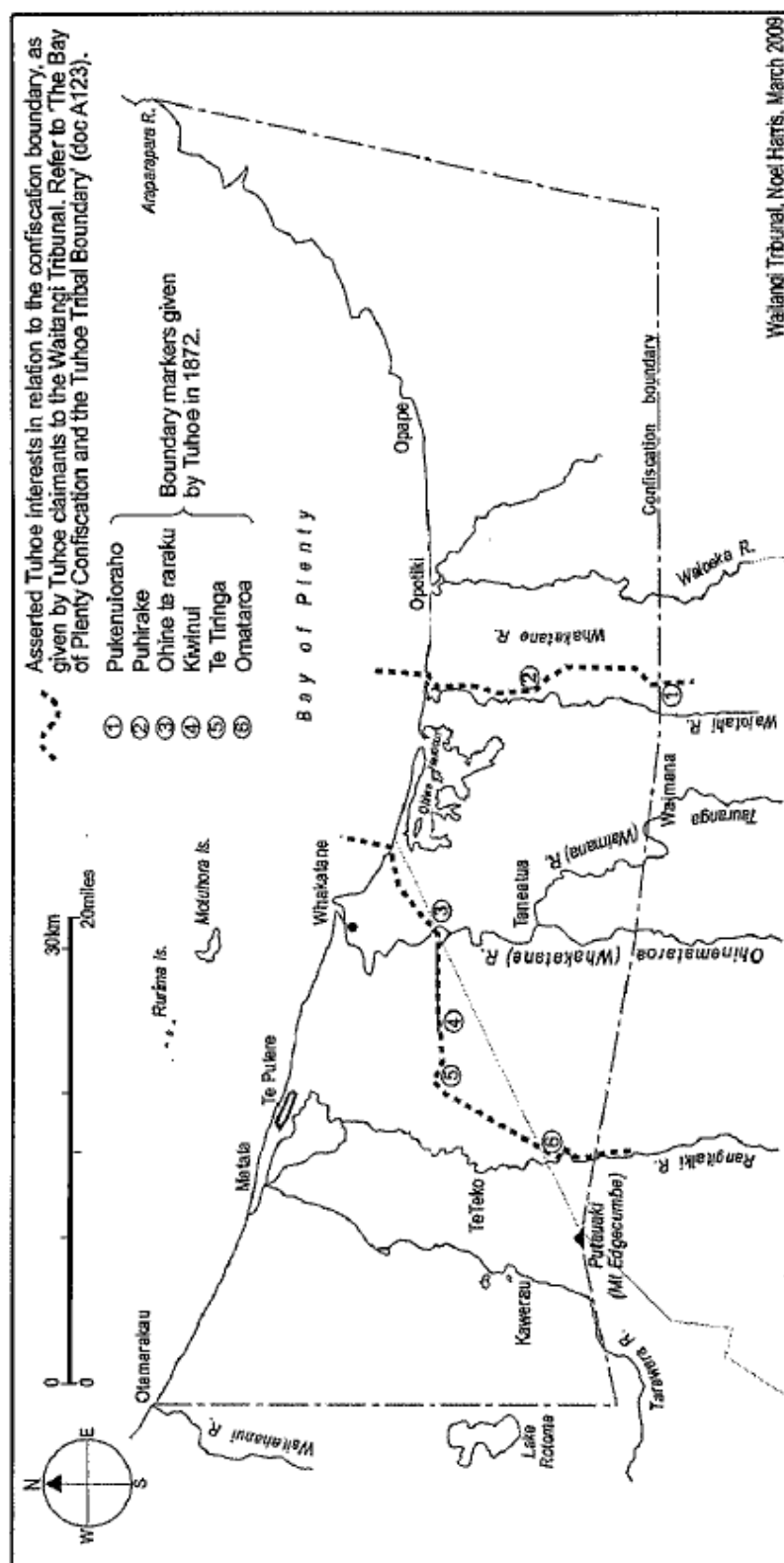
⁸ Ibid, at 50.

⁹ Ibid, at 51.

¹⁰ Melbourne, above n 102, at 43.

¹¹ Waitangi Tribunal *Te Urewera: Pre-publication Part I* (2009) at 176.

Map A: Land Within Confiscation Area that are subject to Tūhoe Claims¹²



¹² Ibid, at 154.

The Waitangi Tribunal believes that the capture of Volkner and Fulloon's murderers was not the prime motive for the confiscation of land. They state that if this had been the case then the Crown could have used the Outlying Districts Police Act 1865 which allowed land to be confiscated when Chiefs and other inhabitants persistently refused to give up the perpetrators or suspected perpetrators of a serious crime. The Waitangi Tribunal states that colonial settlement was the reason behind the confiscation as the Crown used the New Zealand Settlements Act 1863 to confiscate the land. The Tribunal argues that this piece of legislation was used by the Crown as it enabled military settlement in confiscated areas that would guide colonial settlement, a major aim of the Crown at that time.¹³

In 1928 a Commission investigating the Bay of Plenty confiscation said that while Tūhoe assisted in the defence of Ōrākau, they were pardoned by a Proclamation of Peace the Governor issued on 2 September 1865. This stated that the war was over and the Governor would not take any land on account of that war.¹⁴ There is also no evidence recorded of Tūhoe presence at Ōpōtiki or Whakatāne prior to, at, or after the deaths. However confiscation took place and the boundaries of Tūhoe under UDNRA are the product of the 1866 confiscation.¹⁵

After the confiscation of lands in the Eastern Bay of Plenty in 1866, Te Urewera was one of the last areas to be surveyed by the government. The government had not surveyed Te Urewera until 1889 when Samuel Locke, the Resident Magistrate at Wairoa, visited to make arrangements with Tūhoe for the utilisation of the area and its resources. Until then Te Urewera was viewed as rugged terrain that was unsuitable for agriculture or settlement. However, by 1889 the government had turned its surveying efforts on to Te Urewera. During Locke's visit Tūhoe and Locke discussed the unauthorised entry of Europeans into their land. Europeans had been entering Te Urewera to attempt to survey the land and to prospect for rumoured gold in the area. Locke suggested dialogue occur between Tūhoe and the government. Tūhoe began the dialogue, setting the boundaries to their land. These boundaries were not traditional boundaries, but instead took into account government confiscation that had occurred.¹⁶

Tūhoe's strong opposition to land surveys stemmed from the fear that their lands would be lost. In the political context of the time, these fears were well grounded, particularly because through surveying the government had created inter-hapū rivalry

¹³ Ibid, at 167-168.

¹⁴ Melbourne, above n 102, at 46.

¹⁵ See generally Melbourne, above n 102, for a more in depth history of the 1866 confiscation.

¹⁶ Anita Miles *Rangahaua Whānui District 4: Te Urewera* (Waitangi Tribunal, 1999) at 237-240.

and the individualisation of land ownership through the Native Land Court.¹⁷ Tūhoe had seen the negative effects that the Native Land Court and land surveying had on iwi land retention throughout the country,¹⁸ and after witnessing this land loss, Tūhoe begin developing political models to pre-empt attempts to survey and alienate the land.¹⁹

In 1891 Governor Onslow visited Ruatoki to discuss opening Te Urewera to surveyors. A resounding “no” was voiced by Tūhoe against surveyors, prospectors and other Europeans entering Te Urewera.²⁰ Following the meeting, Numia Kereru of Ngāti Rongo applied to have the Ruatoki block surveyed. It is speculated that Kereru applied in response to both Ngāti Awa and Te Mākarini Tamarau, chief of Ngāti Koura, lodging a claim for the block. Te Makarini subsequently withdrew his application and was a leader in the Tūhoe opposition to surveying. Kereru was also aware that outsiders were interested in Tūhoe lands and resolved to retain the land through processes established by the Native Land Court.²¹ Kereru’s application to have the land surveyed drew opposition from other hapū and whānau in the Ruatoki valley. An urgent meeting was called for 17 March 1892 where it was decided that the survey would be stopped. On 29 March a government survey party bound for Ruatoki was stopped and escorted back to the confiscation line. The Native Minister of the time, Alfred Cadman, refused to retreat using the Kereru application as justification for entry into the area and subsequent surveying. In April Sir James Carroll was sent in to the Te Urewera to discuss the matter with Tūhoe. Carroll told Tūhoe they would be given time to settle the dispute amongst themselves but told Cadman to proceed with the survey stating that Tūhoe had initiated the surveying so they had to go ahead with it.²² The survey recommenced on 23 May but was blocked again by Tūhoe protestors, with Cadman threatening to move the confiscation line back further if protests continued. Protests continued when the survey began again in 1893.²³ These were passive protests, which involved women taking the surveying tools.²⁴ Despite this, 25 of the rangatira and women protesting were arrested, including Te Mākarini. In 1894 Tūhoe took the Ruatoki survey to the Native Land Court, an indication of the changing political climate. Where there was once staunch opposition to surveying, the once-despised Native Land Court was now being utilised

¹⁷ Ibid, at 241.

¹⁸ Vincent O’Malley *Agents of Autonomy: Māori Committees in the Nineteenth Century* (Crown Forestry Rental Trust, Wellington, 1997) at 169.

¹⁹ Miles, above n 116, at 241-243.

²⁰ Miles, above n 116, at 244.

²¹ Judith Binney *Encircled Lands: Te Urewera, 1920-1921* (Bridget Williams Books, Wellington, 2009) at 329-330.

²² Ibid, at 335.

²³ Miles, above n 116, at 248.

²⁴ Binney, above n 121, at 340.

to determine title to land – a reaction to the arrest of those protesting the surveys.²⁵ The 25 imprisoned were fined and could not afford to pay the fines. The chiefs that once protested now approved the survey in the hope the fines would become more lenient, creating further division amongst chiefs in Ruatoki. Those chiefs still protesting were incensed that chiefs who had told the people to protest were now supporting the surveys. The hearings for what would eventually become the three Ruatoki blocks began in April 1894.²⁶

The protests over land surveys drew the attention of the new Liberal Premier and Native Minister, Richard Seddon, to Te Urewera. Seddon wanted to assess Te Urewera for its potential wealth in minerals and tourism.²⁷ Seddon, along with Carroll travelled to Te Urewera and first met with Tūhoe in Ruatoki in April 1894. At this meeting Seddon stated that a topographical survey would be undertaken for the whole of Te Urewera and Tūhoe made it clear that they would not be selling any of their land. Kereru refused, stating that much of the land was already lost through the land court and its processes. Though Kereru did apply for a survey, he did not want the survey extending to the whole of Te Urewera and all the speakers at Ruatoki took this stance. As Tūhoe had seen the devastating impacts of land loss on other tribes and wanted to ensure it did not happen to them,²⁸ the speakers desired their own committee to deal with land titles.²⁹ Seddon threatened to take the land by force if he could not convince Tūhoe to submit to the surveys and argued that in order for Tūhoe to keep their land, surveys were required to determine true ownership and prevent further land loss. With the two parties at loggerheads Carroll suggested Tūhoe send a delegation to Wellington to discuss the issue further. From Ruatoki, Seddon and his contingent travelled to Galatea and Te Whaiti. There were tensions in these areas between Tūhoe and the Ngāti Manawa and Ngāti Whare peoples due to competing land interests. Seddon exploited these tensions with the aim of undermining Tūhoe and their decision against surveying. Seddon then travelled to Ruatāhuna and delivered the same advice he had given to Tūhoe at Ruatoki - survey your lands in order to protect them. The chiefs' reply was that whatever was binding in Ruatoki would be binding on them and that they also desired a committee to determine their own land ownership. Seddon's final stop was Waikaremoana where he again stated that land surveys were the key to land retention. Here Seddon also faced opposition.³⁰

²⁵ Miles, above n 116, at 248-249.

²⁶ Binney, above n 121, at 343-344.

²⁷ Ibid, at 328.

²⁸ Miles, above n 116, at 257.

²⁹ Ibid, at 345-349.

³⁰ Ibid, at 259-268.

In April 1895 the government persisted with a triangulation survey of the Urewera despite Seddon's promise that surveying would not occur until the Tūhoe delegation had visited Wellington. As soon as the survey began the government was faced with protest in the form of confiscation of tools and blocked entry. In response to this the government sent the first of two military forces to suppress the objections. Carroll was sent by the Crown to negotiate with the Tūhoe leaders and these negotiations lasted for eight days. Kereru finally suggested that the survey begin based on the premise that the land would continue to belong to Tūhoe.³¹ Though surveying did begin, this was not enough for Seddon who also wanted a road survey completed. Tūhoe strongly opposed this, blocking surveyors and escorting them out of the area. This saw the second military force ordered in to Te Urewera. In June 1895 the road survey began under the watchful eye of the military force, provoking Tūhoe at Waikaremoana to imprison the survey party. The government negotiated for the release of the prisoners and as part of the negotiations Carroll offered separate legislation for Te Urewera. Shortly after this offer the first delegation of Tūhoe travelled to Wellington.³²

The first delegation arrived in Wellington in late August 1895 and consisted mainly of younger chiefs of Tūhoe. At the meeting Carroll said there was no intention of partitioning the land and it would be reserved as a native reserve for the local people. Then at another meeting in late September the delegation were given a draft Bill and memorandum from Seddon.³³

II Seddon's Memorandum

The memorandum from Seddon to Tūhoe (Appendix A) is dated 25 September 1895 and is contained in the Second Schedule to the UDNRA. Signed "...your loving friend..." its content indicates strong friendship between Tūhoe and Seddon. The promises contained within the memorandum are largely reflected in the Act so it is unnecessary to go into too much detail of the memorandum. Despite this there are some interesting points to note. In the memorandum Seddon made promises that were not fulfilled. For example, the memorandum states that the number of Local Committee's should reflect the number of hapū in Tūhoe. This statement was not fulfilled in the UDNRA. Seddon also said he would protect the forest and birds of Te Urewera. This was not mentioned in the Act. The longest paragraph of the memorandum is dedicated to the methods of prospecting for gold, which perhaps shows the true intent of Seddon.

³¹ Binney, above n 121, at 372.

³² Ibid, at 367-380.

³³ Ibid, at 383-385.

III The Act

The Urewera District Native Reserve Act was assented to on 12 October 1896, and proclaimed the grant of Tūhoe local government and ownership of their lands. The long title of the Act declares this as “An Act to make Provision as to the Ownership and Local Government of the Native Lands in the Urewera District.” Thus ownership and local government are declared as the major purposes of the Act. A closer look at the Act reveals that these purposes are somewhat distorted and restricted through various sections of the Act. Themes that constantly appear throughout the Act show the true major focus of the Act. These themes are the usurping of tikanga Māori by Western law, and the control still maintained by the Government. These will be explained in a section-by-section analysis.

Preamble

The preamble of the Act has two main parts. Firstly, the ascertainment of Native ownership of the Urewera District and secondly, the provision of local government of the Urewera District. At that time, the preamble was given the same status at law as an actual provision of a piece of legislation, thus ascertainment of title and local government was a requirement of the Act.³⁴

Native ownership of the area was to be ascertained in a manner not inconsistent with Native customs and usages. The phrase “Native customs and usage”, or “custom and usage”, or simply “Native custom”, was a familiar term in legislation at that time. Section 23 of the Native Lands Act 1865 stated that investigation of land ownership was to be ascertained according to Native custom. Section 7 of the Native Land Act 1873 stated that the title to Native land should be ascertained in accordance with Native custom and usage. The Native Rights Act 1865 stated that:³⁵

Every title to or interest in land over which the Native Title shall not have been extinguished shall be determined according to the Ancient Custom and Usage of the Māori people so far as the same can be ascertained.

This appears to be recognition of Māori customary law; however, the use of the phrase brought mixed results. This is not surprising, as “Lawyers and legal scholars trained in Western systems have often seen the legal systems of non-Western societies

³⁴ Interpretation Act 1888, s 5(4). This rule still applies today under the Interpretation Act 1999, s 5(3).

³⁵ Native Rights Act 1865, s 4.

as vague and unsophisticated.”³⁶ According to Boast, “Māori customary law until recently has been simply invisible.”³⁷ In fact in 1877, Prendergast CJ denied the existence of Māori customary law.³⁸ The New Zealand Law Commission described the recognition of Māori customary law at the time as temporary. Recognition was simply to smooth the transition from Māori customary law to the laws and customs of England.³⁹ In the context of the UDNRA, there was recognition of Māori custom and usage in the preamble but then reinterpretation of what Māori custom was in relation to land ownership. Under Māori land custom, no one person or group owned or held all the rights in relation to one piece of land. Instead different persons and groups held varying rights in that piece of land.⁴⁰ The UDNRA effects a system of individual land ownership, which is evident through ss 6, and 8. Thus the inclusion of native custom and usage in the preamble was mere words with little substance.

The Preamble also states that the ascertainment of Native title to the area “...must meet the views of the Native owners generally and meet the equities of each particular case.” The concept of equity is used twice within the UDNRA, in the preamble and at s 6 where the Commission is required to reach a ‘just and equitable’ decision. The use of this phrase in the UDNRA reflects the influence of the English legal system where there was once a Court of Chancery that decided cases based on equity and fairness, rather than common law.⁴¹ Alternatively the legislators could have simply been pleading for justice to be done in each case. In either case, a result that was fair was desired as well as a result the Natives agreed with.

The second part of the preamble stated that provision was to be made for the local government of the Urewera District. Local government at the time was legislated for in the Counties Act 1876. The Counties Act established the boundaries of various counties⁴² and provided for the governance of each county. Each county was to have a County Council that could “...make alter or repeal by-laws for the good government of the county in the manner and in respect to the several matters hereinafter mentioned.”⁴³ These matters included ‘...the care and management of all county roads...’⁴⁴ County Councils could use the County fund for the erecting, maintaining, or ‘...contributing to the cost of the erection establishment or maintenance of, any

³⁶ Richard Boast and others *Māori Land Law* (2nd ed, LexisNexis, Wellington, 2004) at 25.

³⁷ *Ibid.*

³⁸ *Wi Parata v Bishop of Wellington* (1877) 3 NZ Jur (NS) 72, 77-78.

³⁹ Law Commission *Māori Custom and Values in New Zealand Law* (NZLC SP9, 2001) at 21.

⁴⁰ Boast, above n 136, at 42.

⁴¹ Grant Morris *Law Alive* (Oxford University Press, Auckland, 2009) at 15.

⁴² The Counties Act 1876, sch 1.

⁴³ *Ibid.*, at s 176.

⁴⁴ *Ibid.*, at s 184.

asylum hospital or other charitable institution...’;⁴⁵ and ‘...provide[ing] market-places in such places in the county as may be thought necessary...’⁴⁶ Each Council also had legal personality and could enter into contracts with any persons.⁴⁷ Whilst the preamble states that provision was to be made for the local government of the Urewera District, nothing else in the Act came close to emulating the provisions of the Counties Act 1876. This leads to the question whether the legislators were serious about the provision for self-government over Te Urewera.

Mana motuhake and a Tūhoe form of local government are currently on the negotiating table, yet this sits uncomfortably with the New Zealand government who want co-management between Tūhoe and the Department of Conservation.⁴⁸ Local government has existed for over one hundred years, through various pieces of legislation including the New Zealand Constitution Act 1852, the Counties Act 1876, and currently, the Local Government Act 2002. The New Zealand Constitution Act (UK) 1852 in fact made it possible to set aside areas for Native customary laws to be practised.⁴⁹ This piece of legislation was only recently repealed by the Constitution Act 1986.⁵⁰ It provides a precedent, right up until 1986, for the reservation of areas in which Native customary law can be practised.

The Chatham Islands Council, though not governed by Native customary law, provides an example of local law-making powers. The Chatham Islands was declared a territory, known as the Chatham Islands Territory under s 5 of the Chatham Islands Council Act 1995. There is a territorial authority known as the Chatham Islands Council⁵¹ which has the same functions as a territorial authority under the Local Government Act 2002, the Local Government Act 1974, the Local Government (Rating) Act 2002, and the Resource Management Act 1991 and any other public Act. Chatham Islands also have the same functions as Regional Council under the Resource Management Act 1991.⁵² A territorial authority is described as a city or district council.⁵³ The Chatham Islands Council is neither a city or district council but is still defined as a territorial authority, thus has the powers stated in the Acts listed above.⁵⁴ In order to establish a governing authority for the Chatham Islands, the government declared it as a territorial authority and listed the New Zealand Acts

⁴⁵ Ibid, at s 190.

⁴⁶ Ibid, at s 194.

⁴⁷ Ibid, at s 172.

⁴⁸ Patrick Gower “Tuhoe deal – first step to self-rule?” (2010) 3News <www.3news.co.nz/Tuhoe-deal--first-step-to-self-rule/tabid/419/articleID/151788/Default.aspx>

⁴⁹ New Zealand Constitution Act (UK) 1852, s 71.

⁵⁰ Constitution Act 1986, s 26(1)(a).

⁵¹ Chatham Islands Council Act 1995, s 6.

⁵² Ibid, at s 7(1).

⁵³ Local Government Act 2002, s 23(1).

⁵⁴ Ibid, at s 23(5).

which described the Chatham Islands law-making functions. In addition to this, s 14(1) of the Chatham Islands Council Act 1995 enables the Chatham Islands Council to establish import and export tax. From the Chatham Islands example it is evident that the Government is willing to create areas that have limited self-governing powers, including taxation powers. The government can recognise areas of land that are run by Native customs and laws in 1852, or separate laws from New Zealand through these pieces of legislation. These pieces of legislation offer support for Tūhoe mana motuhake and can provide the government with ways in which mana motuhake can be supported through legislation.

Section 2

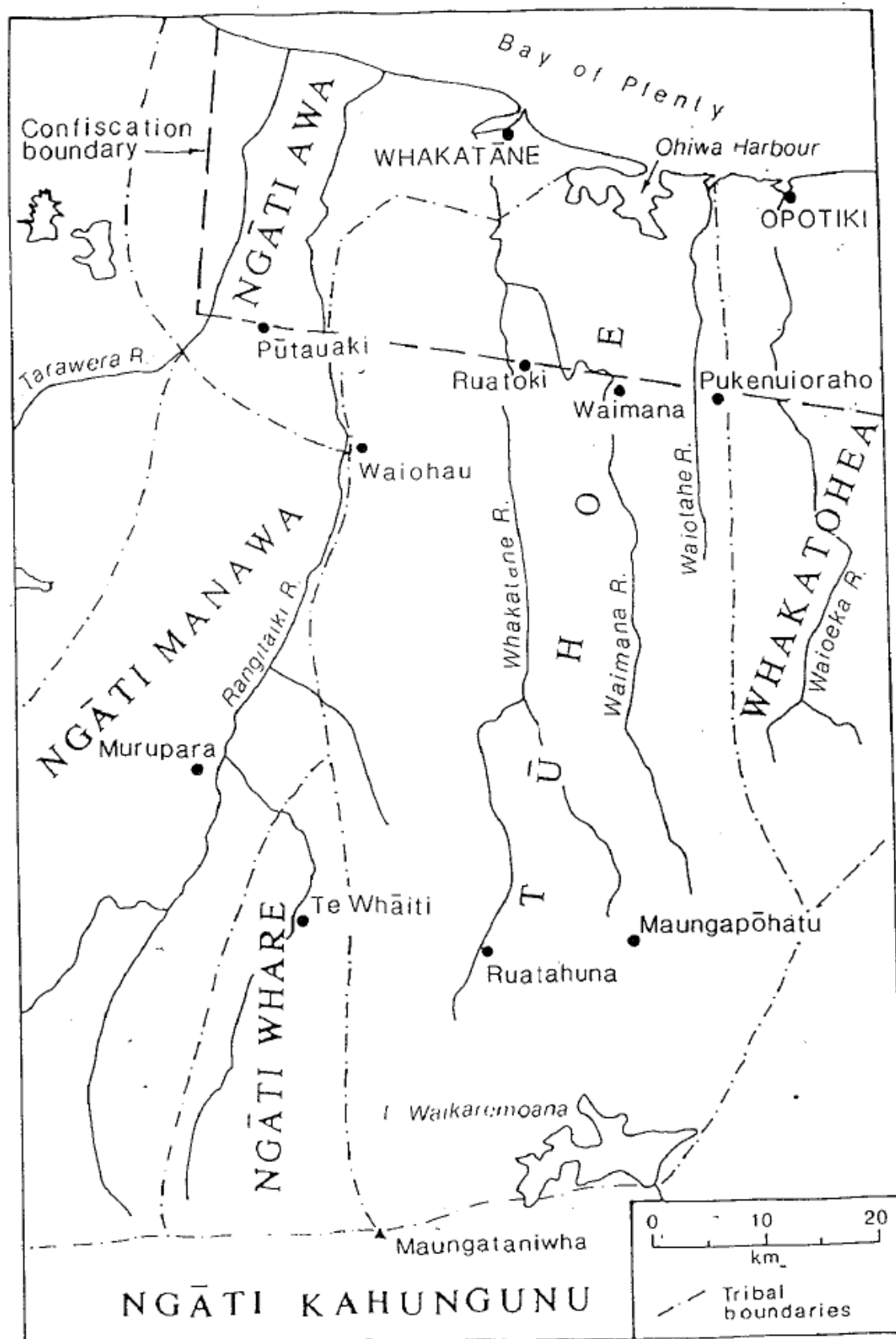
Section 2 of the Act declares the Urewera District a Native Reserve subject to the provisions of the Act. The boundaries of the area are set out in the First Schedule of the Act. They are as follows and are illustrated by Map A:⁵⁵

All that area in the Auckland and Hawke's Bay Land Districts, containing by [ad measurement] 656,000 acres, more or less. Bounded towards the north by the Confiscation Boundary-line; towards the east generally by the Waimana and Tahora No. 2 Blocks; towards the south-east by the Waipaoa Block, the Waikaremoana Lake, by Forest Reserve, Educational Reserve, Block V., Waiau Survey District, and Section No. 1, Block VIII., Mangahopai Survey District; towards the south-west by the Waiau River to the northernmost corner of Maungataniwha Block; thence by a right line to the Trig. Station on Maungataniwha, and thence by Heruiwi No. 4 Block; and towards the west generally by Whirinaki, Kuhawaea No. 1, Waiohau Nos. 1B, 1A, and 2, and Tuararangaia Blocks to the Confiscation Boundary-line at Tapapa-kiekie.

These boundaries describe Tūhoe boundaries at 1896. These were not the traditional boundaries of Tūhoe. The traditional boundaries of Tūhoe are illustrated by Map B.

⁵⁵ Urewera District Native Reserve Act 1896, s 2.

Map B: Tūhoe Tribal Boundaries in Eastern Bay of Plenty Pre-Confiscation⁵⁶



⁵⁶ Melbourne, above n 102, at 68.

These boundaries were last recited by Tamahou Peehi (Kūpai) McGarvey on 23 October 1971:⁵⁷

Te Pukenui-o-raho
Tārua-mauku
Te Waiputa-ā-tawa
Te Wai-ā-te-atua
Te Tūturitanga o Rangipāroro
Ngā Pī-o-werewere
Te Taumata-o-Hākōpūrakau
Waipahihi
kia puta ki te ngutu awa o Waiotahe
to emerge at the river mouth of Waiotahe

Te Karihi-potae
ka huri ki te rā tō, ka haere i te ākau
turning to the setting sun along the coast

Te Kōhai-o-Tama-puta-ana
Wainui-tohorā
Te Ana-kai-ā-rara
Waikaria tū ranga-o-tairongo
Ōhiwa
Ihukatia
Te Parinui-o-te-pukenui-o-tao
Te Horonga-o-Ngai-Te-Hapū-Paparinga-tohorā
Te Puke-i-ahau
Marae-Tōtora
Ka whiti ki te tonga

Mokorua
Ka whiti ki te hauāuru, ka piki, ka eke ki
turning west to ascend to

Tūtūmānuka
Te Taumata-pātītī o Tama-ā-mutu
Kia taka iho ki
descending into

Te Tāpapatanga o Hineauripo
Ōhine-te-raraku

⁵⁷ Melbourne, above n 102, at 65-67.

Tāhunaroa

Ka whati ki te tonga
turning south to

Taumata o Takaretō

Raua ko

Mumuhau

Kia whakawhiti i te awa o Whakatāne, kia hāngai ki
crossing the Whakatāne River directly in line with

Te Puaha-o-Kahu

Ka haere i roto o
journey within

Tauwhare-pukatea-tawa

Ka piki, ka eke ki
then climbing to reach the summit of

Tūpakihīwi

Ka heke, ka tatū ki te awa o te
descending until reaching the river of

Waioho

Whakawhiti, ū atu ki
crossing over to arrive at

Te Puaha-o-Kahu

Ka haere i roto o Kahu
passing through Kahu to

Kiwinui

Ki te marangai o
continue east of

Tokanui

Rere atu i kona
thence direct from there to

Te Ahirarātu

Te Mangaroa

Te Whiti-o-Tū

Te Tiringa-o-te-kupu-ā-tamarau

Whakairihau
Te Waiariki
Te Awa-o-Rangitāiki

The boundaries described by UDNRA are a product of the confiscation of Tūhoe lands in 1866. As is evident, the difference in land mass is significant. Originally Seddon had stated in his memorandum that a Commissioner be appointed to define the boundaries of Te Urewera. This was ignored in the UDNRA with boundaries being listed without the opinion of a Commissioner. As discussed in Chapter 2, the connection Tūhoe have to their land, Te Urewera, is a major component of mana motuhake. To not have the traditional land boundaries recognised has major ramifications for mana motuhake. This issue is further discussed in Chapter 4. Nevertheless these were the boundaries defined for the creation of a ‘...unique Native reserve, unlike any other in New Zealand, in which the intention was to preserve the people, their customs, their lands, and the beauty of their environment.’⁵⁸ However while analysing this Act, the wrongful confiscation and resulting boundary lines must be kept in mind.⁵⁹

Section 3

The UDNRA, the Act was set up due to Tūhoe desire to distance Tūhoe from the Native Land Court and its processes. Tūhoe had seen that the Native Land Court led to alienation of tribal land, which is why they desired their own institutions to deal with Tūhoe land matters.⁶⁰ Section 2 of the Act declared the Urewera District a Native reserve subject to the provisions of the Act. Though declared a Native reserve, section 3 stated that neither the Native Reserves Act 1882 nor the Native Land Court Act 1894 had any operation in the area, unless stated by the Act. The Native Reserves Act left control of native reserves up to the Public Trustee who would often lease the land out to settlers.⁶¹ Thus it is appeared promising for mana motuhake that this Act was left out of the Urewera District. The Native Reserves Act was not mentioned again in the Act, however the Native Land Court was mentioned and given jurisdiction in certain areas. Section 10 of the Act stated that anyone who was aggrieved by the decision of the Urewera Commission could appeal to the Native Minister (the Urewera Commission is discussed fully later but in short it was a Commission established to ascertain land title within the Urewera District). The

⁵⁸ Waitangi Tribunal *Te Urewera: Pre-publication Part II* (2010) at 440.

⁵⁹ See generally Melbourne, above n 102, for a more in depth history of the 1866 confiscation.

⁶⁰ O'Malley, above n 118, at 169.

⁶¹ Waitangi Tribunal, above n 158, at 440.

Native Minister could then refer the appeal to the Native Land Court to make a decision.⁶² The Native Minister could also refer the appeal to the Governor in Council who could then confer jurisdiction on the Native Land Court.⁶³ As this system of land tenure was foreign to Tūhoe, it was highly likely that the land titles would be disputed, thus allowing the Native Land Court jurisdiction within Te Urewera.

Power was also given to the Native Land Court through section 14 of the Act. Under this section the Governor, by Order in Council, could confer jurisdiction on the Native Land Court to determine succession claims and ‘any other specific purpose’ relating to Te Urewera. Any order made by the Native Land Court could then be registered as a certificate of ownership, at the Native Minister’s discretion.⁶⁴

The Native Land Court, (now known as the Māori Land Court),⁶⁵ was created under the Native Lands Act 1865.⁶⁶ The initial job of the Native Land Court was to investigate title to Māori land and issue titles based on Māori customs.⁶⁷ Boast states that the Native Lands Act of 1865 and 1862 ‘...exemplify a distinct trend away from collective rights in land to individualised tenure...’⁶⁸ This was in direct contrast to the communal land ownership system that Māori traditionally followed.⁶⁹

Despite section 3 alluding to the Native Land Court not operating within the Urewera District, other provisions of the Act actually allowed the Native Land Court to be the final adjudicator on matters of title to land. This led Tūhoe to the court they strongly desired to avoid. This also undermined the mana of the Urewera Commission to determine title based on Native customs and usages.

Section 4

Section 4 of the Act established the Urewera Commission (the Commission). The Commission was to consist of two Pākehā and five Tūhoe, thus enabling a Tūhoe majority when decisions were made regarding the title of Urewera land. However, this majority was eventually eroded, and a Pākehā majority, who adopted a ‘winner-takes-

⁶² Urewera District Native Reserve Act 1896, s 12.

⁶³ Ibid.

⁶⁴ Ibid, s 15.

⁶⁵ Māori Purposes Act 1847 s2(2). This states that where the term ‘Native’ appears in any Act or regulation that the term shall be thereafter read as the term ‘Māori’.

⁶⁶ Native Lands Act 1865, s 5. See generally Boast, above n 35, at 70-71, who argues that although the Native Lands Act 1862 envisaged a Native Land Court, it was of an informal nature, and more connected to the existing system of that time of resident magistrates and Māori assessors. The 1865 set the Native Land Court up as a Court of record and was more formal.

⁶⁷ Boast, above n 136, at 85.

⁶⁸ Ibid, at 72.

⁶⁹ Ibid, at 42.

all' mentality in relation to land titles, made many of the decisions of the Commission.⁷⁰

The majority was eroded due to s 4(1) and (2) of the Urewera District Native Reserve Amendment Act 1900 (Amendment Act 1900). Section 4(1) stated:

In any case where, on the investigation of the ownership of any land by the Commissioners, it is found that any of the Native Commissioners present at the meeting are interested, every Native Commissioner so found to be interested shall abstain from the sitting or voting, and if he votes his vote shall not be counted.

Section 4(2) of the Amendment Act 1900 stated:

If all the Native Commissioners present as aforesaid are found to be interested, the ownership shall be decided by the votes of the European Commissioners alone, and the limitation as to quorum shall not apply:

The requirement for a Native Commissioner to have no interest in the land being investigated was unrealistic as it was an idea that would naturally exclude the majority of the Commissioners. This was because most of the Tūhoe Commissioners would have genealogical links, however distant, to the various blocks of land, deeming them unfit under these sections to sit on the Commission. This was also an issue the High Court faced in *R v Grace*.⁷¹ In that case it was alleged that two members of the jury were related to the accused and therefore had a conflict of interest and should not sit on the jury. The evidence showed that there were at least 17 links between the jurors and the accused.⁷² Thorpe J held that this was too distant to create a conflict of interest, saying:⁷³

...it would be contrary to the broad interests of justice, and in particular to the interests of Māori people resident in the East Coast if half (or,...all) those of Ngāti Porou descent fell within a forbidden relationship.

Thorpe J also stated that the right of an accused to a jury trial by their peers would be greatly hindered if a conflict of interest existed in this case. *R v Grace* highlights the difficulty of getting a completely unbiased group of Māori from the same area. There will always be genealogical links, yet the English legal system does not allow for this.

⁷⁰ O'Malley, above n 118, at 178.

⁷¹ *R v Grace* (1990) 5 CRNZ 679.

⁷² Ibid, at 680.

⁷³ Ibid. at 682.

Thus inserting this section only served to exclude those with Tūhoe ancestry (and the most knowledge of the Tūhoe world), from sitting on the Urewera Commission. Whether or not this was intentional, it was the effect this section had. There were two Urewera Commissions established, both referred to as the Barclay Commission. The first Commission sat between 1899 and 1902. The second one sat between 1906 and 1907.⁷⁴ Wherever the first Commission went there were at least two or three Tūhoe commissioners who had interests in the land, which meant a full commission was unable to sit at any one time.⁷⁵

Section 4 also required the Commission to fulfil the purpose of the Act, this being ascertaining title and local government. The provisions of the UDNRA focused the work of the Commission on ascertaining title rather than local government.⁷⁶

Section 5

Section 5 of the Act stated that the details of the powers and functions of the Commissioners were to be left to the discretion of the Governor to prescribe. Thus the Commissioners were given the jurisdiction to fulfil the purposes of the Act, yet the Governor was to decide the manner in which they achieved this. This restricted the power of the Commission to determine their own roles and responsibilities, which subsequently restricted their authority.

Section 6

Section 6 of the Act determined the work that the Commission was to carry out. This was to divide the district into blocks, having regard to native customs and usages. The Commission was then required to investigate the ownership of each block, adopting as much as possible, hapū boundaries.

This task seemed at odds with itself, as to divide land into blocks went against native customs and usages. O'Malley states that "This was always going to be a problem for any tribunal charged with the task of deciding on definite boundary lines where none had previously existed."⁷⁷ As discussed previously, under Māori land custom, different social groups exercised different kinds of rights in one area of land. Thus boundaries to land were not fixed but rather fluid in that one hapū could have the right

⁷⁴ Miles, above n 116, at 285.

⁷⁵ Ibid., at 287-288.

⁷⁶ Urewera District Native Reserve Act 1896, s 6.

⁷⁷ O'Malley, above n 116, at 178.

to traverse one piece of land but not to the exclusion of other hapū who may have the right to cultivate or hunt on that same piece of land.⁷⁸

Finally this section requires the Commission to reach a ‘just and equitable’ decision.

Section 7

According to the Act the Government was to bear any costs incurred under the Act.⁷⁹ The Act does not state what kinds of costs the government would be liable for but ‘any costs’ suggests anything from surveying roads to sittings at meetings. Section 7 of the Act reinforced this by stating that a sketch-plan may be used to investigate and determine any particular block, the costs of which are to be borne by the Government. This was a positive section for Tūhoe as it released pressure on Tūhoe to provide money by perhaps selling or leasing their land in order to cover the costs mentioned.⁸⁰

Section 8

Section 8 looked further at the responsibilities of the Commission. Through this section, the Government began to effect an individualistic system of land ownership. The Commissioners were to make an order for each block declaring:⁸¹

- The names of the owners of the block, grouping families together but specifying the name of each member of each family.

This shows recognition of communal ownership in the grouping of people as owners of one block of land. However the communal ownership is divided into individual owners in the following, which required the declaration of:

- The relative share each family has in the block.⁸²
- The relative share each individual has in the block.⁸³

⁷⁸ Boast, above n 136, at 42.

⁷⁹ Urewera District Native Reserve Act, s 25.

⁸⁰ See generally The Urewera District Native Reserve Act Amendment Act 1900 (the Amendment Act). In this Amendment Act the Government changed their policy declared under ss 7 and 25 of the principal Act. The Amendment Act allowed the Native Minister to set aside lands for leasing purposes. Under s 6 of the Amendment Act, land was to be leased for 21 years with a perpetual right of renewal and adjustment of rent every 21 years. The profits from the rent paid on leased lands were to be distributed according to the Act. According to section 7 of the Amendment Act, the rents would first pay for the expenses incurred in the administration of the principal Act and the Amendment Act, and any survey made under either Act. The leftover money could be used for the benefit of the Native owners of the land.

⁸¹ Urewera District Native Reserve Act, s 8(1).

⁸² Ibid, s 8(2).

Whilst the first subsection recognises communal land ownership, which is in line with Tūhoe practices of land ownership, the second subsection requires each owner of land to be named and a relative share afforded to them. As discussed, individual title to land was not a Māori land custom.

Section 9

Under section 9, every order that the Commission made was to be published in the *Kahiti*, the *New Zealand Gazette*. If no appeal was lodged within the succeeding 12 months, the Governor was to confirm the Commission's order. This is one of many sections that grant powers to the Governor. Despite this power being only a confirming power, it is a role similar to the one the Governor-General exercises when affirming legislation, and recognises the Governor-General as the position with the power to affirm a Commission order. The requirement that the Governor confirms an order of the Commission is unnecessary and only serves to diminish the mana of the Commission in the eyes of the Tūhoe people, by putting it below the Governor in a hierarchy of governing positions over Te Urewera. The dominance of the Governor is seen throughout the Act, as will be evident throughout this discussion.

Section 10

Under section 10, any person who felt aggrieved by any order made by the Commissioners could, in the prescribed manner, appeal to the Native Minister. The Native Minister then had the power to:

- Confirm the Commissioner's order, unaltered, or
- Modify or vary the order as he saw equitable.

The Native Minister, who was a representative of the Government, made decisions on appeals which were final. Like the power of the Governor to confirm an order, this section served to undermine the Commission. Under this section, the Native Minister was granted the ultimate authority to determine land ownership. The processes through which the Commission was required to go in order to determine title were foreign to Tūhoe thus it is highly likely, even inevitable, that appeals would be lodged. As a result of the inevitable appeals, the Native Minister, and consequently the Native Land Court, were the true adjudicators of land title to the Urewera District.

⁸³ Ibid, s 8(3).

Section 11

Section 11 stated that every order that was confirmed by the Governor or Native Minister had to be registered in the prescribed manner and would then operate as a certificate of ownership under the Act. There was no elaboration on the effect of that certificate of ownership and no categorisation of title of that ownership. Thus section 11 provided no illumination on what type of land title is confirmed under section 9. Illumination on the issue could perhaps be found in Seddon's memorandum to Tūhoe. This stated that when dealing with title of a person and his family, they were to be deemed joint tenants.

Joint tenancy is a form of co-ownership.⁸⁴ Joint tenancy occurs when land is transferred inter vivos or by will to two or more persons without reference to the specific shares they take.⁸⁵ For example, by stating the land goes to A and B. Joint tenancy involves the right of survivorship (*jus accrescendi*). The right of survivorship means that on the death of one joint tenant, their interest is extinguished and goes to the surviving joint tenants. This goes on until there is only one survivor, who gets sole ownership. Under this principle, a joint tenant cannot alienate their interest by will or through intestacy.⁸⁶ This was the system chosen for land tenure in Te Urewera. This system is preferred in common law as opposed to other forms of co-ownership as it is more likely that the land would eventually vest in a sole owner, thus making it easier for the Courts to deal with.⁸⁷ The eventual individualisation, as has been discussed, was another way of enforcing the Crown's law upon Tūhoe.

The type of land tenure that was employed by the Native Land Court at that time was Crown-granted freehold tenure. The process required the owners of a block of Māori land to prove ownership according to Māori customary law. If they were successful a certificate of title under the Land Transfer Act was issued.⁸⁸

The issue of the exact type of land title that was granted under UDNRA is not a central point to this thesis. However it is interesting to note that joint tenancy would eventually lead to the individualisation of land title.

⁸⁴ GW Hinde and DW McMorland *Introduction to Land Law* (2nd ed, Butterworths, Wellington, 1986) at 483.

⁸⁵ *Ibid*, at 485.

⁸⁶ *Ibid*, at 486.

⁸⁷ *Ibid*, at 500.

⁸⁸ Boast, above n 136, at 69.

Section 12

Section 12 is discussed under s 3.

Section 13

Section 13 states:⁸⁹

There shall be recorded on each certificate of ownership, in the prescribed manner, -

- (1) The names of the Local Committee for the block comprised in the certificate, and of the General Committee, and particulars of every change in the membership thereof respectively:
- (2) Every dealing with the block or any portion thereof:
- (3) Every change of ownership in the block:
- (4) Such other particulars as are prescribed.

This is the first mention in the Act of the Local Committees and the General Committee. This section is mainly focused on the certificate of ownership: the Committees are focused on from s 16 onwards. The work of the Local Committees is discussed below under ss 16 – 21. Thus, the first mention of the Committees relates to the work they are required to do for ascertaining title of land, and not to local government. This is perhaps a sign of the true intent of the legislators.

Section 14

Section 14 stated:⁹⁰

The Governor, by Order in Council, may from time to time confer jurisdiction on the Native Land Court to determine succession claims, or for any other specific purpose relating to the said district.

This is another way in which the Native Land Court, a court Tūhoe wished to avoid, was given authority within the Urewera area. By giving the Native Land Court jurisdiction over succession claims, the Act allowed the Court continuing involvement in the administration of the land block.⁹¹ The Waitangi Tribunal points out that the

⁸⁹ Urewera District Native Reserve Act 1896, s 13.

⁹⁰ Ibid, at s 14.

⁹¹ Boast, above n 136, at 74.

life of the Commission was intended to be short, however, this section along with the section allowing the Native Land Court to hear appeals, allows for the continuing involvement of the Native Land Court.⁹² This went against the desires of Tūhoe.

Section 15

Section 15 stated that any order made by the Native Land Court under s 14 could be registered as a certificate of ownership under the Act, or an order could be recorded on a certificate of ownership and entitled to registration as provided in regulations under the Act. Thus the certificates of ownership under this section are given authority by this Act. It is unclear what registration meant in this context. It could mean registration under the land ownership that was current in New Zealand at that time, or it could have created a new category of registration. It is also unclear in the Act whether other certificates of title that are issued in relation to the Urewera District are entitled to registration as this section only applies to s 14 decisions.

The following diagrams represent the institutions provided by the UDNRA to administer land issues in comparison to institutions Tūhoe actually desired.

Diagram A

⁹² Waitangi Tribunal, above n 158, at 449.

Land Title in Te Urewera under the UDNRA

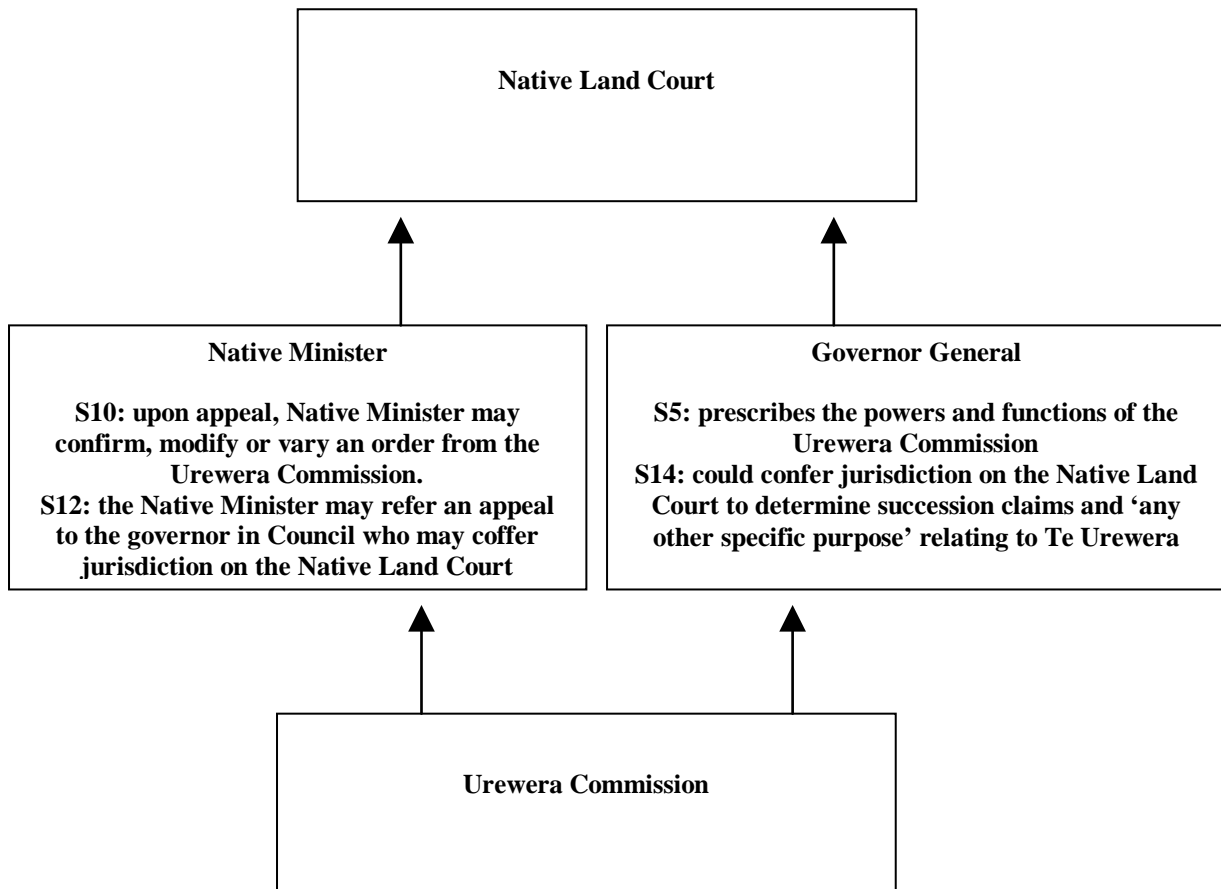


Diagram A can be contrasted with the institutions Tūhoe actually desired in relation to land title ascertainment. Tūhoe wished to retain control over the administration of affairs relating to Tūhoe land. They wanted a Tūhoe land committee which would administer Tūhoe affairs.⁹³

Diagram B

Te Whitu Tekau and a Tūhoe Land Committee

⁹³ O'Malley, above n 118, at 169.

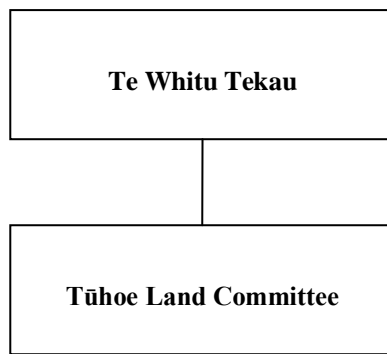


Diagram C
Role of the Government

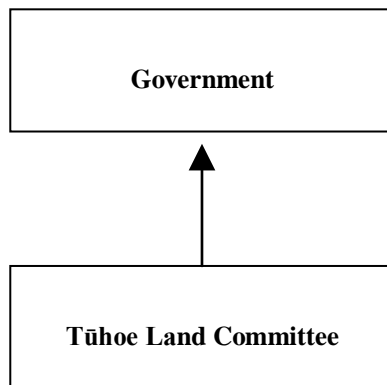


Diagram B shows the inclusion of Te Whitu Tekau, the Council of 70, who were set up in 1872 at a time when Tūhoe distrust of the Pākehā was strong. Te Whitu Tekau set out to guard lands and define boundaries within which no land would be leased or sold.⁹⁴ Tūhoe did desire a Land Committee but it was unclear whether this would be a successor to Te Whitu Tekau or a Cabinet-Executive type branch of Te Whitu Tekau. This diagram represents the latter idea.

Diagram C represents Tūhoe desires for a Committee to control and protect their own affairs with the suggestion that the government could give effect to the decisions of the Committee.⁹⁵

It is clear in this comparison that the Native Land Court was not desired in any possible Tūhoe Land Committee. The government was included in diagram C only to give effect to Tūhoe decisions but not to take part in any of the decisions. The

⁹⁴ Ibid, at 163.

⁹⁵ Ibid, at 171.

comparison between what Tūhoe wanted and what was actually granted shows how little Tūhoe desires to retain control over their land were actually listened to.

Sections 16 - 20

Sections 16 to 20 deal with the infrastructures that were to administer local government in the Urewera District. Under s 16(1), provisional Local Committees were to be appointed by the Commissioners in the prescribed manner. There would be a provisional Local Committee for each block and the members were to be drawn from the owners of each block. The Committees were to consist of no fewer than five members and no more than seven members.

Under s 17 provisional Local Committees were to be in place until an election was held, by the members of the block, for a permanent Local Committee. The election was to be held at a time and in a manner that the Governor prescribed. This section did not state that Local Committee members must be drawn from owners of the land block. If this did occur then a person with no whakapapa to the land block would be controlling issues in relation to that land block. That would go against traditional leadership patterns which require whakapapa when choosing leaders.⁹⁶ Also, giving the Governor the power to determine when the election was held gave the power to delay elections to a time that suited the Government. This could in turn delay the creation of a General Committee, which had to be drawn from the Local Committee members.

Under section 18 of the Act, each Local Committee, in the prescribed manner, was to elect one of its members to sit on the General Committee. Their jurisdiction, also described in section 18, was “...to deal with all questions that affected the reserve as a whole, or affecting any portion thereof in relation to other persons than the owners thereof.”

Under section 19 of the Act, any decision of the General Committee was binding on all the owners. This was subject to regulations. The General Committee was established as the authority higher than the Local Committees but its power was still subject to the Governor to prescribing regulations. Thus the General Committee sat below the power of the Governor.

⁹⁶ Ranginui Walker *Ka Whawhai Tonu Mātou: Struggle Without End* (2nd ed, Penguin Books, Auckland, 2004) at 65.

The subordinate position of the Tūhoe local government structures was reinforced by section 20. Section 20 stated that the powers and functions of the Local Committee and the General Committee were to be prescribed by the Governor in Council. The powers of the Local Committee were to be limited to their specific land block. This section did not mention what the purposes were of the powers and functions of the Committees. Thus the Governor in Council could broadly determine those powers and functions to suit any purpose he saw fit. This limited the power of the Committees by denying them the ability to determine and control their own powers.

Section 21

Through section 21, the legislators inserted the pre-emption policy of the government of the time. This section stated that the General Committee had the power to alienate land to the Crown. The General Committee could alienate absolutely or for any lesser estate or by way of cession for mining purposes. The section did not give the General Committee the power to alienate to any other entity. The pre-emption clause was in direct contrast to the desires of Tūhoe. Tūhoe specifically stipulated that they did not want to sell the land.⁹⁷ Though the power to alienate rested solely with the General Committee, this section of the UDNRA did not meet Tūhoe aspirations to retain Te Urewera under the protection of Tūhoe.

Sections 22 and 23

The Act granted (or purported to grant) local government to Tūhoe, however sovereignty was still vested with the Crown. This was shown in Seddon's Memorandum where Seddon stated "It is a cause of gratification to the Governor, and to me also, to hear you acknowledge that the Queen's mana is over all, and that you will honour and obey her laws." Sections 22 and 23 further supported the sovereignty of the Queen. Section 22 gave the Governor power to lay roads and landing places in the Urewera District.⁹⁸ These were deemed public roads and landing places and were vested in Her Majesty the Queen.⁹⁹ This power applied to any land in New Zealand and was not specific to Te Urewera. Section 23 stated that the Governor could take land for 'accommodation-houses', 'camping-grounds', 'stock' and other public utility purposes as listed under the Public Works Act 1894. The land taken could not exceed

⁹⁷ Waitangi Tribunal, above n 158, at 440-441.

⁹⁸ Urewera District Native Reserve Act, s 22(1).

⁹⁹ Ibid, at s 22(2).

400 acres. The ability of the Governor and the Crown to take land showed its absolute authority over the Urewera District.

Section 24

Though the Act purported to grant local government, most power was vested in the Governor in Council which weakened the power of Tūhoe. Under s 24, the Governor had power to make regulations as he thought necessary for the following purposes:

1. Mode of election of the members of the Local Committees, and General Committee.¹⁰⁰
2. Fixing the term of office of the members of the respective Committees.¹⁰¹
3. Giving effect to anything the Act declares to be prescribed;¹⁰²

Generally under the Act, the following were required to be prescribed:

- The powers and functions of the Commissioners;¹⁰³
- The form in which the Commissioners made an order with respect of each block, and particulars to go on the order;¹⁰⁴
- How the Governor or the Minister of Native Affairs should register orders they made in relation to title of land;¹⁰⁵
- How particulars were to be recorded on certificates of ownership and deciding what further particulars should be recorded on the certificates;¹⁰⁶
- The way in which the Commissioners should appoint the Local Committees and the way vacancies in Local Committees might be filled;¹⁰⁷
- The time and the manner in which elections for Local Committees would be held;¹⁰⁸
- The powers and functions of the Local Committees and the General Committee.¹⁰⁹

¹⁰⁰ Ibid, at s 24(1).

¹⁰¹ Ibid, at s 24(1).

¹⁰² Ibid, at s 24(2).

¹⁰³ Ibid, at s 5.

¹⁰⁴ Ibid, at s 8.

¹⁰⁵ Ibid, at s 11.

¹⁰⁶ Ibid, at s 13.

¹⁰⁷ Ibid, at s 16.

¹⁰⁸ Ibid, at s 17.

¹⁰⁹ Ibid, at s 20.

4. Any other purpose for which regulations are contemplated.¹¹⁰ Regulations were contemplated by section 15 for the registering of certificates of ownership based on decisions of the Native Land Court, or the recording of Native Land Courts decisions on certificates of ownership that will be entitled to registration. Any registration or recording was to be directed by the Minister of Native Affairs;

5. Anything the Governor felt was necessary to give full effect to the Act.¹¹¹

6. To give effect to the memorandum from Premier Richard Seddon to the representatives of Tūhoe dated 25 September 1895.¹¹² Things within the memorandum that would need to be given effect to by s 24(4) were:

- Appointment of a Commissioner to define the boundaries of the rohe pōtae of the Tūhoe land;
- Commissioner to inquire into the title of the persons owning land and to determine boundaries of land belonging to hapū or individuals, and set this down in writing;
- Commissioner to make a sketch plan of the area to be approved by the Surveyor-General;
- Boundaries are to be determined by land marks. If this is not possible then a survey is to be conducted with the concurrence of the land owners;
- In doing this work, the Commissioner is to have due consideration to Native customs and usages and must follow hapū boundaries;
- Those declared owners of a block of land are deemed joint tenants;
- Local Committees to be elected consisting of not less than seven members;
- Local Committees to have administrative powers and act on behalf of the owners of the land;
- The number of Local Committees was to reflect the number of hapū and owners of the land;
- The establishment of a General Committee to deal with matters affecting the tribe;
- Local Committees to appoint one person to represent their committee on the General Committee;
- The erection of schools;
- The promise of work for Māori on the roads that were being built;
- The introduction of English fish for the dual purpose of tourism and more food sources, and the protection of Tūhoe forests and birds;

¹¹⁰ Ibid, at s 24(3).

¹¹¹ Ibid, at s 24(3).

¹¹² Ibid, at s 24(4).

- Provision for the prospecting of gold should Tūhoe wish, with proceeds going to Tūhoe.

This extensive list of powers shows how little power was given to Tūhoe and that ultimate control was vested in the government. The power the Governor had, also outweighed that of the power that the counties were granted under the Counties Act 1876. The power of the Governor to regulate on almost anything under the Act is larger than any power either the Local Committees or the General Committee had. Therefore, real local governance power lay with the Governor.

Section 25

Section 25 reinforced section 7 of the Act and stated that all expenses the Government incurred under the Act were to be paid out of money that Parliament appropriated.

IV Conclusion

Whilst the preamble states that provision was to be made for the local government of the Urewera District, nothing else in the Act came close to emulating the provisions of the Counties Act 1876.

An examination of the history leading to the passing of the UDNRA reveals how staunch Tūhoe were in their opposition to the Western legal system and its institutions. Tūhoe only began to concede to the Western system due to fear land would be taken and lives were at danger. Those in Ruatoki who conceded to land surveying did so out of fear of their land would be claimed by others through the Western land title processes. Though they did accede to land surveying they never wanted the surveying to reach within Te Urewera, yet this is what happened. Surveying was forced upon Tūhoe and when Tūhoe resisted, military forces were sent to force Tūhoe into allowing the survey. The government only began negotiations for UDNRA when some of their surveyors were imprisoned by Tūhoe. Thus the lead up to the UDNRA shows relations between Tūhoe and the government to be in a much worse state than Seddon's memorandum suggests.

With the passing of the UDNRA came the promise of Tūhoe local government and ownership of their lands as per the Preamble of the Act. However a closer inspection of the wording of the Act reveals this was an empty promise.

One of the major issues that arose from the Act is the usurping of tikanga Māori by western legal concepts. As is evident from the analysis of the UDNRA, there is reference to tikanga Māori through the recognition of Native customs and usages in the preamble, but the western legal framework eventually trumps this recognition. There is the creation of the Urewera Commission, yet the systems of the Native Land Court override this. There is Tūhoe majority on the Urewera Commission but this is gradually replaced by Pākehā control. These are obvious instances where tikanga is usurped by western ideas. However there are less obvious instances too. For example joint tenancy is stated as the type of ownership that is granted under the UDNRA, and though this sounds like a communal form of ownership, it is a type of ownership that eventually leads to individualisation of title. It is clear from these examples that whilst the legislators may have had good intentions in including ‘Māori-friendly’ provisions, the overall desire to gain control of the Urewera was the government’s main intention.

A further issue that arises from the UDNRA and is linked to government desire to retain control is the extremely strong position of the Governor and in some cases the Native Land Court and the Native Minister. The local government that was promised in the Preamble was restricted in nearly every direction by the powers of the Governor. The restrictions from the Governor, the Native Minister and the Native Land Court made it highly unlikely that local government for Tūhoe was ever a serious possibility.

Although the UDNRA failed in many respects to afford local government to Tūhoe and to respect Tūhoe tikanga, it was an attempt to recognise Tūhoe strong desire to govern themselves and have ownership over their lands. The Urewera Lands Act 1921 recognised that the Urewera District was under special administration due to the UDNRA and gave effect to arrangements made by the Crown in that area.¹¹³

The focus of this chapter was to provide a discussion on the UDNRA in order to provide a basis for Chapter Five. Chapter Five discusses whether mana motuhake was recognised and reflected in UDNRA, then provides ways that mana motuhake can be reflected by law.

CHAPTER FIVE: MANA MOTUHAKE AND THE UREWERA DISTRICT NATIVE RESERVE ACT 1896

¹¹³ Ibid, at Preamble.

This chapter will examine the extent to which the Urewera District Native Reserve Act 1896 (the UDNRA) respected mana motuhake, and lessons that can be learned from the UDNRA.

This chapter is structured according to the three important aspects of Te Mana Motuhake as determined in Chapter Three. These aspects are namely, Tūhoe People, Tūhoe Land, and Self-determination. In this Chapter I will devote a section to each of these aspects. Under each section, I will firstly explore the lessons that can be learnt from UDNRA, and I will then go onto discuss briefly how mana motuhake could be better recognised in the various aspects, by virtue of a piece of legislation.

This chapter concludes by setting out suggestions and ideas for legislation that could be implemented to better recognise the mana motuhake of Tūhoe. This is a means to achieve the purpose of this thesis which is to provide an appropriate vehicle for the expression of mana motuhake.

I Tūhoe People

When discussing Te Mana Motuhake o Tūhoe, the people of Tūhoe are vitally important. Mana motuhake is in the heart and mind of Tūhoe and it is an ever-present theme underlying their songs and haka. Tūhoe inherited their obsession with mana motuhake from their eponymous ancestor, Tūhoe-Pōtiki. Tūhoe-Pōtiki risked his life to secure mana motuhake for his descendants. It is thus up to his descendants to maintain and protect mana motuhake for future generations. To do this Tūhoe need to be solid in their identity by retaining knowledge of their culture, their language and their histories. This includes, retaining the Tūhoe way of life in accordace with their tikanga.¹¹⁴

The importance of maintaining identity is not only an important part of mana motuhake; it is internationally recognised as a right of indigenous peoples. In particular, it is recognised in the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) that states:¹¹⁵

Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State.

¹¹⁴ The role of tikanga in relation to maintaining identity is dealt with under the self-determination aspect of mana motuhake.

¹¹⁵ United Nations Declaration on the Rights of Indigenous Peoples, art 5.

The UDNRA did not actually state that the Act applied to Tūhoe. This failure of the UDNRA to specifically address and include Tūhoe as a people, meant that the Act did nothing to strengthen Tūhoe identity. The application of UDNRA to Tūhoe therefore has to be impliedly read into the Act, by virtue of Seddon's memorandum and s 4 of UDNRA. Seddon began his memorandum "To the persons who come hither to represent Tūhoe, and who have addressed me with reference to certain matters affecting the tribe." Furthermore, Section 4 required the Urewera Commission to have five Tūhoe members. The fact that Tūhoe were not actually mentioned leads to confusion over who the UDNRA applied to and to whom the Act granted local government. This did nothing to strengthen Tūhoe identity, subsequently doing nothing for the recognition of Tūhoe's mana motuhake.

Whakapapa is an important aspect of one's identity. Whakapapa determines one's place in society.¹¹⁶ Tūhoe whakapapa back to Tūhoe-Pōtiki. This genealogy remains important as part of Tūhoe identity and as the origins of mana motuhake. Nowhere in the UDNRA is there mention of the atua, or gods, which Tūhoe hold in high esteem, nor the ancestor, Tūhoe-Pōtiki, who induced political realisation and secured mana motuhake for Tūhoe. The inclusion of the native customs and usages clause and the attempt to have a Tūhoe majority on the Commission could have enabled the recognition of the history and whakapapa of mana motuhake. However, these avenues were eventually westernised and hope for recognition through these avenues dissipated.¹¹⁷ Seddon's memorandum states that the Queen has mana over all. However, this notion ignores the fact that Tūhoe believe that their gods and their eponymous ancestors possess mana over all. This idea further ignores the mana of Tūhoe-Pōtiki, the one who secured mana motuhake for Tūhoe

Language is also important to one's identity. Tūhoe's native language is Māori. UDNRA was written in English and thus ignored an important part of Tūhoe identity. For a piece of legislation to respect mana motuhake there needs to be explicit recognition of Tūhoe as the iwi which will govern Te Urewera. The histories and connections Tūhoe have to the land, needs to be recognised. The legislation needs to be in both English and Māori.

An issue that was raised in Chapter Three was the weakening of Tūhoe's mana motuhake. Whilst this issue would not have been as prevalent at the time of the UDNRA, as colonisation had not affected Tūhoe as much at this stage, it is an issue that will need to be addressed by any new piece of legislation that purports to

¹¹⁶ See generally Chapter 2, II for a discussion on whakapapa.

¹¹⁷ See generally Chapter 3, IV, A for a discussion on the phrase "Native customs and usages" within The Urewera District Native Reserves Act 1896.

recognise the mana motuhake of Tūhoe, if it is serious about giving recognition to mana motuhake.

These ideas are reflected in ss 3, and 4 of the piece of legislation I propose.

II Tūhoe Land

The land which is important to the mana motuhake of Tūhoe is Te Urewera. Te Urewera is home to Tūhoe and continues to sustain the iwi. Tūhoe trace their lineage to Te Maunga and Hinepūkohurangi, landmarks that have been personified within Te Urewera.

Pepeha (or proverbs) of Tūhoe recognise the link Tūhoe have to land marks within Te Urewera. Moana Jackson states:¹

...pēpeha were also devised as statements of mana or tino rangatiratanga in which borders were demarcated in the features in the land and the extent of authority, the reach of one's rights and responsibilities, was marked by the permanence of a river's flow and the steadfastness of a mountain's presence. Pēpeha were learned as expressions of political independence within a particular land.

The link between Tūhoe and Te Urewera can not be underestimated. Without Te Urewera, there is no Tūhoe. Without Tūhoe, there is no mana motuhake. It is within Te Urewera that Tūhoe were able to retreat during threatening times and it is the isolation of Te Urewera that enabled Tūhoe to retain much of their culture. Te Urewera also sustained the iwi as Tūhoe were able to survive off the resources Te Urewera provided.²

Recognition of the traditional boundaries to Te Urewera is important to mana motuhake. It is within these boundaries that Tūhoe traditionally exercised their mana motuhake. It is also within these boundaries that Tūhoe-Pōtiki first secured the political realisation of mana motuhake for Tūhoe.³ Further, the confiscation line that resulted from the 1866 Order in Council is also etched in the minds of many Tūhoe. In contemporary times, at the confiscation line in Ruatoki, there are signs that were erected expressly warning non-Tūhoe to keep out. It was also here that the dramatic Waitangi Tribunal hearing over the Urewera and Tuhoe claim showed the government that the confiscation, and its negative effects on Tūhoe, is still a cause of grief to

¹ Moana Jackson "He Awa Tupua – A Proposal for Whanganui." (paper presented to the people of Whanganui).

² Waitangi Tribunal *Te Urewera: Pre-publication Part I* (2009) at 38.

³ See generally Chapter 2, IV, B which records the realisation of Tūhoe mana motuhake.

Tūhoe. The confiscation line, known as Te Manemanerau, helps to strengthen Tūhoe resolve to adhere to the principles of mana motuhake as it serves as a constant reminder of the presence of the Crown and its wrongful acts of confiscation.

Section 2 of the UDNRA sets out the boundaries of the Urewera District. The boundaries recognised by UDNRA were not the traditional boundaries of Tūhoe.⁴ When Tūhoe-Pōtiki secured mana motuhake for his descendants, he secured rights to areas of land that are not recognised by UDNRA. Seddon's memorandum stated that a Commissioner would be appointed to determine land boundaries, however, this was not the case and never occurred. As McGarvey stated "Mana motuhake...is part of our landscape...".⁵ Mana motuhake, however, is harder to exercise when connections to land that once helped sustain mana motuhake, are lost through arbitrary boundary lines. This failure to recognise the traditional boundaries of Tūhoe leads to the failure to recognise the connection Tūhoe have with areas of Te Urewera which would have helped to support Tūhoe mana motuhake.

The UDNRA was meant to protect Te Urewera and keep it in Tūhoe ownership however, by 1927, 75% of Te Urewera had been purchased through individual shares.⁶ The processes in the UDNRA that led to the individualisation of land title and the sale of land, would have assisted in this tragic loss of Tūhoe land.

For Te Mana Motuhake o Tūhoe to be recognised by law, the confiscation of Tūhoe lands needs to be addressed. The confiscation is currently being dealt with in the Treaty negotiations. However, the government has stated that Te Urewera will not be returned to Tūhoe. Issues surrounding confiscation and whether traditional boundaries will be recognised are beyond the scope of this thesis. However, any legislation that purports to recognise Tūhoe mana motuhake needs to recognise traditional boundaries. The ultimate outcome should be the return of Te Urewera in its entirety. If Te Urewera is not returned or only returned in part, then the traditional boundaries need to be recognised, along with an apology for the wrongful confiscation. Some form of compensation also needs to be provided to recognise the wrongful confiscation. This compensation could be in monetary form. This would encourage Tūhoe prosperity and enable Tūhoe to start programmes to enhance and encourage their mana motuhake. This issue is dealt with in the draft notes under section 5 for a proposed piece of legislation.

⁴ See generally Chapter 3, IV, B which lists the traditional and post-confiscation boundaries.

⁵ Interview with Patrick McGarvey, Project Leader - Representation at Tūhoe Establishment Trust, Chair of Te Whānau Pani Hapū Committee, Board Member Tūhoe Fisheries Charitable Trust (the author, Ruatoki, 25 June 2010).

⁶ Waitangi Tribunal *Te Urewera: Pre-publication Part II* (2010) at 362.

Further, a system of land ownership needs to be employed that does not lead to the individualisation of land title or to the sale of land. This system needs to recognise customary systems of land ownership. Moana Jackson has developed the concept of tūpuna title, a concept which “...encapsulates the notion that an Iwi or Hapū belonged to the land of their rohe and assumed certain entitlements and obligations when they were born on that land.”⁷ The four baselines of tūpuna title are:⁸

1. As a concept of title it naturally presupposes a set of subsequent rights or entitlements – title without recognised and enforceable entitlements is a contradiction in terms.
2. The integrity of the title presupposes and was always dependent upon the fact that a river for example belongs to the iwi whose land it nurtures.
3. The title also depends upon the full and effective exercise of rangatiratanga – every law requires the sanction of political authority if it is to be practically enforceable.
4. It is a concept sourced within our tikanga and has no exact equivalent in Pākehā common law.

I suggest that the concept of tūpuna title be used when dealing with land title within Te Urewera. This is because tūpuna title recognises the importance of the connection Tūhoe have with Te Urewera.

This issue is dealt with under s 9 of the notes for a proposed piece of legislation.

III Self-Determination

The final important aspect of mana motuhake for Tūhoe is the collective achievement of self-determination. Self-determination of indigenous peoples is recognised by the United Nations. The UNDRIP states that indigenous peoples have the right to self-determination. Although the UNDRIP does not provide a definition of self-determination it does state, “By virtue of that right [self-determination] they freely determine their political status and freely pursue their economic, social and cultural development.”⁹ The UNDRIP also states that:¹⁰

Indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal

⁷ Moana Jackson, above n 218.

⁸ Ibid.

⁹ United Nations Declaration on the Rights of Indigenous People, art 3.

¹⁰ Ibid, art 4.

and local affairs, as well as ways and means for financing their autonomous functions.

Thus the requirement of self-determination as part of mana motuhake includes notions of autonomy, control, self-government in internal and external affairs and financial freedom. All these notions apply to Tūhoe as indigenous peoples.

Part of the self-determination aspect of mana motuhake is having systems which work for the benefit of Tūhoe. According to Wharehuia Milroy, to have mana motuhake is “To establish ways and means in which our people can work for the benefit of Tūhoe rather than the benefit of others.”¹¹

As discussed in Chapter Four, the avenues established to achieve local government under UDNRA were vague and led to the conclusion that local government was not actually achieved nor was it intended. The General and Local Committees were intended to be the bodies established to carry out local government of Te Urewera. However, the UDNRA failed to deliver this promise. Tūhoe had no input into the processes of the General and Local Committees, it was therefore never going to be the case that a system of government would be created which employed Tūhoe methods of pursuing economic, social and cultural development. Self-determination through the General and Local Committees was simply not achieved.

The UDNRA established the Urewera Commission due to the Tūhoe desire to avoid the Native land Court. The Commission, through its Tūhoe majority, would have helped to assert Tūhoe autonomy over decisions regarding title to land within the Urewera district. However, through the processes established by the UDNRA, the Native Land Court was included as an appeal body and a body to decide succession claims.

The immense power that was afforded the Governor of the time, rendered impossible the freedom of Tūhoe to exercise their autonomy. These extensive powers of the Governor, contradict the requirement for self-determination as part of mana motuhake.

Under s 25 of UDNRA, the Government was to bear any costs incurred under the Act. This was reinforced by s 7 which stated that the cost of any sketch plan was to be borne by the Government. These sections helped to support mana motuhake as lowering any costs Tūhoe would have had to incur, would have financially assisted Tūhoe, enabling more prosperity than if Tūhoe did have to bear the costs. The

¹¹ Interview with Wharehuia Milroy, Tūhoe elder and distinguished scholar (the author, Hamilton, 24 September 2009).

support of the government, however, changed in the Amendment Act of 1900, which saw Tūhoe land being leased to non-Tūhoe. The profits from the leasing of the lands were to be used to pay expenses incurred under the UDNRA and only the leftover money was to be used for the benefit of the Native owners of the land. This granting of money to Tūhoe owners of the land *prima facie* supported the notion of *mana motuhake*. Tūhoe could have used the profits from their land to help sustain their people. However, under the Amendment Act, the owners were not to see the money until the other expenses were paid. It was unreasonable to require Tūhoe to pay for expenses and the costs incurred for surveys under the UDNRA. Once these were paid, there would have only been little money to help sustain Tūhoe. Thus these processes did not benefit Tūhoe and were detrimental to Tūhoe's *mana motuhake*.

An important part of autonomy and governance is having the ability to conduct affairs in accordance with one's own customs. This means Tūhoe should have the ability to conduct its affairs in accordance with their *tikanga*. Section 3 of the UDNRA stated that the Native Land Court Act 1894 would have no operation in the Urewera area (unless otherwise provided); however, other provisions of the Act contradicted this statement. Thus an institution was employed in the Urewera area whose job was to effect individualisation of title with little recognition of Tūhoe *tikanga* and systems of land title. As stated, the Urewera Commission was the body established to ascertain title to land. UDNRA required that the majority was to be Tūhoe by five to two. This would have helped to ensure that Tūhoe *tikanga* was respected and Western laws and systems kept out. However, as was seen in Chapter Four, this majority was eventually eroded, thus lessening the assurance that Tūhoe *tikanga* would guide the Commission's work.

The work of the Urewera Commission was to divide the Urewera district into blocks, dissecting the land in order to determine title to land more efficiently. This would lead to the eventual individualisation of land title, a western concept not in line with customary systems of land ownership.¹² The type of land ownership the Commission was to grant was unclear. However, joint tenancy was suggested in Seddon's memorandum. As discussed this would also lead eventually to individualisation of land title.

An important aspect of *mana motuhake* is self-determination, Tūhoe taking control over Tūhoe governance. The Crown conceded in the Te Urewera Waitangi Tribunal hearings that Seddon's government believed they granted real powers of self-government and collective tribal control of lands in the UDNRA. The Crown admitted in the hearings that they in fact "Failed to establish an effective system of

¹² See generally Chapter 3, IV, H for a discussion on this.

local land administration and local government.”¹³ Thus the UDNRA fell short of this requirement. The only plan in the UDNRA, introduced in the 1900 Amendment Act, to enable financial independence, was thwarted by requirements to use funds for the expenses incurred under the Act. Thus, not only did Tūhoe not request the leasing of their lands, but the financial gains from renting Tūhoe land, did not even financially benefit Tūhoe. The governance bodies established to administer local government had vague powers and were ultimately subject to the word of the Governor. Tūhoe tikanga was barely given room to breath in the UDNRA. Every hope there was in the UDNRA of recognition of Tūhoe tikanga, was subsequently overpowered by the Western system of law. This analysis shows that, in practice, UDNRA did not provide for any meaningful measure of self-determination.

To have self-determination, Tūhoe must have autonomy and control over its internal and external affairs as well as financial freedom. Tūhoe must also have systems in place which benefit Tūhoe.

The UDNRA failed to grant Tūhoe self-determination. UDNRA set up inadequate bodies through which Tūhoe were meant to govern. The UDNRA allowed the intrusion of the government into the governance process through the powers afforded to the Native Land Court, to the Governor and to the Native Minister. There were no systems established which benefited Tūhoe financially, thus no help provided for economic development. Tūhoe tikanga was overridden by Western customs and ideas.

For mana motuhake to be respected by legislation, many changes need to be made. The Government needs to relinquish governmental power to Tūhoe. This includes allowing Tūhoe to establish their own processes according to their own tikanga. When setting out legislation, the legislators need to be clear with the details surrounding Tūhoe governing bodies. The powers and functions of these bodies need to be explicit and they need to be established by Tūhoe so it is a Tūhoe controlled process. Government control thus needs to be kept to an absolute minimum. Tūhoe should be able to choose whether or not to include the Government into its decision-making processes. However, the Government should only be included if it is to further Tūhoe aspirations for mana motuhake.

These issues and suggestions are dealt with in ss 3, 6, 7, 8, 9, 10 and 11 of the proposed legislation.

¹³ Waitangi Tribunal, above n 219, at 362.

IV Notes for a Draft Act Recognising Te Mana Motuhake o Tūhoe

“Mā te tangata te whare e hanga, mā te whare te tangata e tipu”

*As one builds their house, they are in turn shaped by their house*¹⁴

This section sketches a draft Act which would recognise the three important aspects of mana motuhake for Tūhoe. The focus is on those three aspects and how legislation can best reflect them.

The above whakatauki expresses the desire of Tūhoe to shape its own processes. This desire is reflected in the draft Act by leaving important issues up to a Tūhoe Authority to decide.

The proposed Act would be promulgated both in Māori and in English; for the purposes of interpretation the Māori enactment will be the primary text.

This section provides an annotated version of the draft. A skeleton version can be found in Appendix B.

Te Ture o Te Mana Motuhake o Tūhoe 2010

1 Title

This is Te Ture o Te Mana Motuhake o Tūhoe 2010

2 Interpretation

(1) In this Act –

Mana motuhake – includes Tūhoe having control of the governance over Tūhoe identity, tikanga and land.

Te Urewera – encompasses the land described in section 5;

Tikanga – the set of Tūhoe beliefs associated with Tūhoe practices and procedures followed in the conduct of the affairs of Tūhoe.;

¹⁴ Te Kotahi ā Tūhoe *Te Ara Whakaea: Pathways to Negotiations and Settlement: Book 2* (Te Kotahi ā Tūhoe, 2009) at 3.

[This idea taken from Mead at 11]

Tūhoe – Members of Tūhoe that whakapapa back to Tūhoe-Pōtiki, or Pōtiki.

[Whether you qualify as a member of Tūhoe will be decided on criteria that a new Tūhoe Authority decides.]

Tūhoe Authority – means the body established by section 6.

(2) This law is enacted in Māori and in English. In the event of any conflict in meaning, between the Māori and the English version of the Act, the Māori version shall prevail.

[This principle is adopted from Te Ture Whenua Māori Land Act 1993, s 2(3)]

3 *Purpose*

(1) The purpose of this Act is to recognise –

- (a) the mana motuhake of Tūhoe and to empower the exercise by Tūhoe of mana motuhake in the Te Urewera in accordance with Tūhoe tikanga;
- (b) the importance of the histories of Tūhoe and the loss of this knowledge to Tūhoe through the government imposed process of colonisation;
- (d) the loss of Tūhoe language due to the process of colonisation;
- (e) the need for government support for the costs of wānanga to help educate Tūhoe in their histories and language.

[The purpose of the Act is sourced from the discussion on mana motuhake and what is needed in order to respect and protect the mana motuhake of Tūhoe]

THE PEOPLE

4 *Whakapapa*

(1) The Government recognises the mana and rangatiratanga of Tūhoe-Pōtiki, the eponymous ancestor of Tūhoe and recognises the mana motuhake of Tūhoe in Te Urewera due to this connection.

(2) The Tūhoe Authority alone has authority to determine membership of Tūhoe.

(3) The Tūhoe Authority will keep a register of membership of Tūhoe.

TE UREWERA

5 *Boundaries*

(1) The land of Tūhoe is listed in Schedule 1.

(2) The Crown recognises that the boundaries in Schedule 1 are not the traditional boundaries of Tūhoe but are a result of the wrongful confiscation of 1866.

(3) The formal apology for that wrongful confiscation is set out in this Act as is the sum of monetary compensation for the confiscated land.

[The matters in subsections (2) and (3) are not the subject of this thesis. They need to be addressed but not necessarily in this Act.]

SELF-DETERMINATION

6 *Creation of the Tūhoe Authority*

(1) The Tūhoe Authority is established as a territorial authority and as a general governing body for Tūhoe.

(2) The Tūhoe Authority is a body corporate with perpetual succession and with all the powers and responsibilities of a natural person of full age and capacity.

(3) The leader of the Tūhoe Authority will be a Rangatira of Tūhoe.

(4) The members of the Tūhoe Authority will be the Rangatira and one representative of each hapū of Tūhoe.

(5) The rangatira and hapū representatives for the Tūhoe Authority will be chosen in accordance with Tūhoe tikanga.

(6) The Tūhoe Authority will conduct the affairs of the Authority in accordance with such rules and procedures, not inconsistent with this Act and Tūhoe tikanga, as it sees fit.

[Tūhoe are to decide the name of any future Tūhoe Authority. Also for consideration would be whether Tūhoe should be incorporated, and whether it would be appropriate to incorporate both Tūhoe and the land as a single entity in order better to capture the spirit of mana motuhake. The role of the governing body would remain but it would be the agency directly acting for Tūhoe. The establishment of a Territorial authority was inspired by the Chatham Islands example. Establishment has been set as a matter for the New Zealand Parliament but its operation as a matter personal to Tūhoe, as an expression of mana motuhake.]

7 *Powers, Functions and Responsibilities of the Tūhoe Authority*

(1) Except as otherwise provided under this or any other Act, the Tūhoe Authority has the functions, duties, and powers of—

(a) a territorial authority under—

(i) the Local Government Act 2002; and

(ii) the Local Government Act 1974; and

(iii) the Local Government (Rating) Act 2002; and

(iv) the Resource Management Act 1991; and

(v) any other public Act; and

(b) a regional council under the Resource Management Act 1991; and

(c) a regional authority under the Building Act 2004.

(2) The Tūhoe Authority has special responsibility to:

(a) establish Tūhoe language programmes;

(b) establish Tūhoe programmes for the advancement of knowledge in Tūhoe history and tikanga;

(c) establish and maintain systems for resolving disputes in accordance with Tūhoe tikanga;

(d) to impose sanctions, in accordance with Tūhoe tikanga, on those who offend Tūhoe tikanga.

(3) The Tūhoe Authority shall establish the procedures for the setting up of Te Urewera Land Commission (TULC) and for the operation of TULC.

[The Chatham Islands Council Act 1995 was the basic model for this provision.]

8 *Financial Matters*

(1) The Tūhoe Authority has responsibility for the management of all money provided to it or Tūhoe and for the management of all assets vested in it.

(2) There shall be a Tūhoe Authority Account established with a registered trading bank in New Zealand.

(3) All revenue received for the purposes of the Tūhoe Authority is Tūhoe public money and must be paid into the Tūhoe Authority Account.

(4) No money shall be withdrawn from the Tūhoe Authority Account except—

(a) To meet expenditure authorised by the current budget approved by the Tūhoe Authority; and

(b) In accordance with a by-law of the Tūhoe Authority.

(5) The Tūhoe Authority shall appoint a New Zealand Chartered Accountant as Auditor.

(6) The Auditor shall at least once annually, prepare and forward to the Rangatira of the Tūhoe Authority, for presentation to the Tūhoe Authority and the hapū of Tūhoe, a report on the financial affairs of the Tūhoe Authority, together with such other information relating to the Tūhoe Authority Account, or to such other funds or accounts which under this Act or under any enactment are required to be audited by that Auditor, as the Auditor considers desirable.

[These or similar clauses are fairly standard for financial accountability. Some such would be necessary for the dealing with New Zealand public monies.]

9 *Te Urewera Land Commission*

(1) Te Urewera Land Commission will be established for the purpose of:

- (a) Determining tipuna title to land within Te Urewera;
- (b) Determining succession claims;
- (c) Dealing with any land issues that arise within Te Urewera.

(2) TULC will consist of Tūhoe chosen based upon Tūhoe tikanga.

[See Chapter Six for a discussion on tūpuna title.]

GENERAL PROVISIONS

10 *Government Support of Mana Motuhake*

(1) Notwithstanding any other enactment the Crown maintains a continuing responsibility to provide necessary economic and administrative assistance to Tūhoe.

(2) The Crown recognises that Tūhoe's unique language and culture of Tūhoe is a source of strength and identity and essential to mana motuhake, and undertakes to work with Tūhoe and to support an agreed programme to ensure their retention and development.

[Subsection (1) is taken from the Niue Constitution, s 7. Subsection (2) is inspired by the draft Tokelau Treaty.]

11 *Regulations*

(1) The Governor-General in Council may, at the request and with the consent of the Tūhoe Authority, make regulations for the purposes of this Act.

[This is a variation on the standard regulation making power. It was inspired by the provisions in the Cook Islands and the Niue Constitution Acts. It enables appropriate development of the purposes of the Act but only with due respect to mana motuhake.]

SCHEDULE 1

Boundaries

V Conclusion

The three aspects of mana motuhake, the Land, the People, and Self-determination, were not respected by the UDNRA.

With regard to the Land, mana motuhake was not satisfied due to the failure of the UDNRA to recognise traditional Tūhoe boundaries. This failure was addressed in the “Notes” under s 4.

Regarding the People, the identity of Tūhoe people was not recognised and encouraged. The UDNRA did not explicitly state that it applies to Tūhoe. The UDNRA did not mention Tūhoe mana motuhake over Te Urewera and where that mana motuhake originates from. The UDNRA by not acknowledging the language of Tūhoe, showed disrespect to that language. These failures were addressed in the “Notes” under ss 3, 5 and 10.

The Self-determination of Tūhoe was not recognised in the UDNRA. Local Tūhoe bodies had basically no power. There were no local government processes established. Major control rested with the Governor, the Native Minister and the Native Land Court. Tūhoe customs were not recognised and there was no plan for Tūhoe to sustain itself financially. These failures were addressed in the “Notes” under ss 3, 6, 7, 8, 9, 10 and 11.

The UDNRA was considered by Tūhoe to be a piece of legislation that would give life in the laws of the Government to the spiritual connection Tūhoe have with Te Urewera. Part of this spiritual connection was mana motuhake. The mana motuhake of Tūhoe, seen through the lens of the three aspects I have identified, was not recognised by the UDNRA. It is hoped that the failure of the UDNRA to address these aspects is rectified in the Notes for a Draft Act Recognising Te Mana Motuhake o Tūhoe.

CHAPTER SIX: CONCLUSION

Tūhoe and the Crown are currently in the midst of Treaty of Waitangi negotiations. Encouragingly, Te Mana Motuhake o Tūhoe is on the negotiating table. However, it

is questionable whether the Crown is well-equipped to protect and respect Tūhoe aspirations of mana motuhake. The purpose of this thesis was to provide a way in which the law can protect and respect mana motuhake.

This thesis began by exploring the basic principles of mana motuhake. Chapter Two explored mana motuhake and discussed different aspects of the concept. The purpose of this chapter was to gain a general understanding of mana motuhake so as to inform the overall purpose of this thesis.

This thesis then explored the meaning of mana motuhake in a Tūhoe context. This is pertinent as it is Te Mana Motuhake o Tūhoe that is seeking to be protected and respected in the overall purpose of this thesis. This was addressed in Chapter Three.

An early example of an attempt at the legal recognition of Te Mana Motuhake o Tūhoe is found in the Urewera District Native Reserve Act 1896 (UDNRA). This thesis provided a legal analysis of the UDNRA and discussed how it corresponded to the aspirations of Tūhoe. This was addressed by Chapter Four and which found that the aspirations for mana motuhake and the indications and hopes raised by the UDNRA were not fulfilled.

On the basis of the Chapter Four analysis, and the findings of Chapters Two and Three, Chapter Five analysed whether the UDNRA realised Tūhoe aspirations for mana motuhake. Chapter Five concluded that it did not and suggest better ways in which this could be achieved. This was done in the form of notes for a draft Act recognising Te Mana Motuhake o Tūhoe.

Tūhoe are more than ready accept the challenge of reviving and of living by the principles of Te Mana Motuhake. The challenge for the Crown and New Zealand society as a whole is whether they can accept Te Mana Motuhake over Te Urewera.

Mana motuhake is an entity in itself but within the structures of the law there is much more that should and can be done.

APPENDIX A: Table of Tūhoe's response to Crown's Offer

Redress Areas	Crown Offer	Tūhoe Response
<p>Historical Account, Crown.</p> <p>Acknowledgements & Crown Apology.</p>	<ul style="list-style-type: none"> • The cornerstone of the Crown's settlement offer. The DOS will contain an agreed Historical account that outlines the historical relationship between the Crown and Ngāi Tūhoe. • On the basis of the Historical Account, the Crown will acknowledge in the DIS that certain actions or omissions of the Crown were a breach of TOW and its principles. The Crown will then offer an apology to Ngāi Tūhoe in the DOS for the acknowledged Crown breaches of TOW and its principles. The Historical Account, Crown acknowledgements and Apology will be finalised following the signing of the AIP. 	<ul style="list-style-type: none"> • Agreed. • Agreed also providing that the Crown Apology is received only when Ngāi Tūhoe requital is achieved.
<p>Mana Motuhake Redress</p>	<p><i>Ngāi Tūhoe/Crown Relationship</i></p> <ul style="list-style-type: none"> • The development of a principle-based statement that affirms a new Crown/Ngāi Tūhoe relationship and outlines the guiding principles and concepts by which Ngāi Tūhoe and the Crown intend to 	<ul style="list-style-type: none"> • Agreement to completing and agreeing a principle-based statement that renews and clarifies the future Crown/Ngāi Tūhoe political relationship into the future.

	<p>conduct their relationship statement will include an acknowledgement of Ngāi Tūhoe's Mana Motuhake, which is balanced by an acknowledgement of the Crown's mana and a statement of consistency with TOW and its principles. A draft relationship statement is provided.</p> <ul style="list-style-type: none"> • The establishment of a compact between Ngāi Tūhoe and certain Ministers of the Crown, principally social services-health, welfare, housing, employment, education and environmental sectors. The compact will: • Outline the Crown's commitment to a rangatira-to rangatira approach with Ngāi Tūhoe on service delivery in the Urewera region. • Commit certain Ministers of the Crown to meet annually, following DOS, with Ngāi Tūhoe leaders to discuss the Crown's contribution to Ngāi Tūhoe's economic and social development and the relationship with its agencies. • The detail of the compact will be developed in consultation with relevant Crown 	<ul style="list-style-type: none"> • Encourages detailed discussions around the form and function of the compact. Provision for the further governmental portfolio's to be included. • Encourages a rangatira to rangatira level relationship at a political level that enables unimpeded collaboration and authorisation over all strategic, political, and functional goals applied within Te Urewera. • Agree to the commitment of Ministers of the Crown and to post-settlement discussions on the Crown's role and contribution to rebuilding Ngāi Tūhoe's economic, social, political and cultural potential. • Support and
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	<p>agencies as soon as practicable after the signing of the AIP.</p> <ul style="list-style-type: none"> • The establishment of an Ngāi Tūhoe Development Taskforce and development of a plan that will enable Ngāi Tūhoe to deliver over time Iwi focussed services within Te Urewera. • The key Crown agencies to include MOH, MSD, MOE, MOE, DIA, Dept of Building and Housing and TPK. • As soon as practicable after AIP, the taskforce will form and commence meeting with Ngāi Tūhoe to agree a timetable for the development of the Service Management Plan to be included in DOS. <p><i>Ngāi Tūhoe Governance</i></p> <ul style="list-style-type: none"> • The provision of 2 full-time positions through existing programmes to assist Ngāi Tūhoe with the implementation of their vision for economic, social and cultural development and assist with the development of the Service Management Plan. <p><i>Ngāi Tūhoe/Local Government Relationship</i></p> <ul style="list-style-type: none"> • Following AIP, 	<p>agreement to discussing the detail of the compact with relevant Crown agencies post AIP.</p> <ul style="list-style-type: none"> • Support and agreement to discussing the detail of the Development Taskforce to deliver focussed services within Te Urewera • Recognise that the key agencies are included however, may wish to consider the merit and inclusion of other agencies. • Support and agreement to the urgency of detailed discussions. • Support and agreement to further detailed discussions. • Support and agreement to the Crown's involvement to facilitate and develop workable Ngāi Tūhoe and Local Government
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	<p>MICTOWN will write to principal local authorities within the Ngāi Tūhoe area of interest seeking their support to develop an Iwi/Council agreement that will clearly set out how parties will interact with each other. If the parties agree to enter into an Iwi/Council agreement, the agreement will be drafted and agreed for signing at the time of signing DOS</p>	<p>relationships which can be renewed, agreed and enabled through DOS and legislation.</p>
<p>Financial & Commercial Redress Amount (Quantum).</p>	<ul style="list-style-type: none"> • The Crown offers a Financial and Commercial Redress amount of \$120m comprising of \$66m to be taken as cash and \$54m from the CNI settlement. 	<ul style="list-style-type: none"> • We acknowledge an initial offer as being within our advised band of \$120-\$170m. • We rejected the current offer and the view that only 37, 000 acres 'qualifies' as confiscated lands. Ngāi Tūhoe can provide evidence of Crown takings of land in excess of 1 million acres. • We refute the application of the on-account deduction due to the CNI settlement and request that this issue be noted as a post AIP issue for determination prior to DOS. • Ngāi Tūhoe consider the severity of acts levied by the Crown against Ngāi Tūhoe, the

		<p>extent of lands taken and current population an area of the Iwi rohe to accord with a quantum figure of \$170.</p>
<p>Te Urewera Nation Park</p>	<p><i>Rangatira Relationship</i></p> <ul style="list-style-type: none"> • The establishment of an ongoing relationship between the Chair of the Ngāi Tūhoe PSGE and the MOC through regular annual meetings. <p><i>Shared governance and management</i></p> <ul style="list-style-type: none"> • The formation of a joint Crown/Ngāi Tūhoe Park Board that would have a role in the governance and management of Te Urewera National Park and to which certain 'attributes of ownership' would be transferred. • The functions of the joint Park Board would include: • Development of the National Park Management Plan with DOC. • Recommending the Plan for joint approval by the NZCA. • Considering and determining the priorities for implementing of the Plan. • Reviewing and reporting to the DG of Conservation on the effectiveness of the 	<ul style="list-style-type: none"> • The proposal in its current form is rejected. Ngāi Tūhoe requires unencumbered ownership of Te Urewera. • The transfer of unencumbered ownership to Tūhoe to occur over a 2-5yr max transition period. The transfer would taken into account outlying DOC lands associated with the National Park. • Ngāi Tūhoe would guarantee ongoing: <ul style="list-style-type: none"> • public access; • conservation values and principles • preservation of bio-diversity designated areas • Once fully transferred Ngāi Tūhoe would resource the programmes and upkeep of the conservation values and principles and ensures the public enjoyment is continued through the guarantee of public access. • The current proposal does not

	<p>administration of Te Urewera National Park.</p> <ul style="list-style-type: none"> • Advising the DG on the interpretation of the Plan. • Advising the DG on any other matters relating Te Urewera National Park. • In undertaking annual planning DOC would meet with the Park Board to discuss funding priorities; • In making decisions on concession applications, the Minister of Conservation would consult the Park Board <p><i>Ngāi Tūhoe values.</i></p> <ul style="list-style-type: none"> • The Park Board, NZCA and Conservation Board would have particular regard to the spiritual, historical and cultural significance of Te Urewera National Park to Ngāi Tūhoe. • When approving the Plan the NZCA would have particular regard to the views of the Ngāi Tūhoe PSGE, in addition to having regard to the views of the MOC. 	<p>materially differ from the framework currently in place and does not meet or resolve the long standing grievance Ngāi Tūhoe have with the fundamental disconnection from the exercise of authority over and within their homelands /Te Urewera National Park.</p>
‘Other’ Cultural Redress/Address	<ul style="list-style-type: none"> • Negotiations to date have focussed on addressing Ngāi Tūhoe’s aspirations in request of the 3 key areas of Mana Motuhake, quantum and Te Urewera. The Crown acknowledges 	<ul style="list-style-type: none"> • Agreed.

	<p>that during the course of these negotiations Ngāi Tūhoe have identified key components and aspirations for ‘other’ cultural redress/address.</p> <ul style="list-style-type: none"> • The Crown confirms its commitment to exploring with Ngāi Tūhoe further possible forms of cultural redress/address following the signing of the AIP for inclusion in the DOS. 	<ul style="list-style-type: none"> • We are pleased and acknowledge this commitment. Further detailed discussions to occur post AIP.
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APPENDIX B: Notes for a Draft Act Recognising Te Mana Motuhake o Tūhoe

[Skeleton Draft]

Te Ture o Te Mana Motuhake o Tūhoe 2010

1 Title

This is Te Ture o Te Mana Motuhake o Tūhoe 2010

2 Interpretation

(1) In this Act –

Mana motuhake – includes Tūhoe having control of the governance over Tūhoe identity, tikanga and land.

Te Urewera – encompasses the land described in section 5;

Tikanga – the set of Tūhoe beliefs associated with Tūhoe practices and procedures followed in the conduct of the affairs of Tūhoe;

Tūhoe – Members of Tūhoe are those that whakapapa back to Tūhoe-Pōtiki, Toi, and Pōtiki.

Tūhoe Authority – means the body established by section 6.

(2) This law is enacted in Māori and in English. The authentic text is that in Māori.

3 Purpose

The purpose of this Act is to recognise –

- (a) the mana motuhake of Tūhoe and to empower the exercise by Tūhoe of mana motuhake in the Te Urewera in accordance with Tūhoe tikanga;
- (b) the importance of the histories of Tūhoe and the loss of this knowledge to Tūhoe through the government imposed process of colonisation;
- (d) the loss of Tūhoe language due to the process of colonisation;
- (e) the need for government support for the costs of wānanga to help educate Tūhoe in their histories and language.

THE PEOPLE

4 Whakapapa

- (1) The Government recognises the mana and rangatiratanga of Tūhoe-Pōtiki, the eponymous ancestor of Tūhoe and recognises the mana motuhake of Tūhoe in Te Urewera due to this connection.
- (2) The Tūhoe Authority alone has authority to determine membership of Tūhoe.
- (3) The Tūhoe Authority will keep a register of membership of Tūhoe.

TE UREWERA

5 *Boundaries*

- (1) The land of Tūhoe is listed in Schedule 1.
- (2) The Crown recognises that the boundaries in Schedule 1 are not the traditional boundaries of Tūhoe but are a result of the wrongful confiscation of 1866.
- (3) The formal apology for that wrongful confiscation is set out in this Act as is the sum of monetary compensation for the confiscated land.

SELF-DETERMINATION

6 *Creation of the Tūhoe Authority*

- (1) The Tūhoe Authority is established as a territorial authority and as a general governing body for Tūhoe.
- (2) The Tūhoe Authority is a body corporate with perpetual succession and with all the powers and responsibilities of a natural person of full age and capacity.
- (3) The leader of the Tūhoe Authority will be a Rangatira of Tūhoe.
- (4) The members of the Tūhoe Authority will be the Rangatira and one representative of each hapū of Tūhoe.
- (5) The Rangatira and hapū representatives for the Tūhoe Authority will be chosen in accordance with Tūhoe tikanga.
- (6) The Tūhoe Authority will conduct the affairs of the Authority in accordance with such rules and procedures, not inconsistent with this Act and Tūhoe tikanga, as it sees fit.

7 *Powers, Functions and Responsibilities of the Tūhoe Authority*

- (1) Except as otherwise provided under this or any other Act, the Tūhoe Authority has the functions, duties, and powers of—

- (a) a territorial authority under—
 - (i) the Local Government Act 2002; and
 - (ii) the Local Government Act 1974; and
 - (iii) the Local Government (Rating) Act 2002; and
 - (iv) the Resource Management Act 1991; and
 - (v) any other public Act; and
- (b) a regional council under the Resource Management Act 1991; and
- (c) a regional authority under the Building Act 2004.

(2) The Tūhoe Authority has special responsibility to:

- (a) establish Tūhoe language programmes;
- (b) establish Tūhoe wānanga for the advancement of knowledge in Tūhoe history and tikanga;
- (c) establish and maintain systems for resolving disputes in accordance with Tūhoe tikanga;
- (d) to impose sanctions, in accordance with Tūhoe tikanga, on those who offend Tūhoe tikanga.

(3) The Tūhoe Authority shall establish the procedures for the setting up of TULC and for the operation of TULC.

8 *Financial Matters*

(1) The Tūhoe Authority has responsibility for the management of all money provided to it or Tūhoe and for the management of all assets vested in it.

(2) There shall be a Tūhoe Authority Account established with a registered trading bank in New Zealand.

(3) All revenue received for the purposes of the Tūhoe Authority is Tūhoe public money and must be paid into the Tūhoe Authority Account.

(4) No money shall be withdrawn from the Tūhoe Authority Account except—

- (a) To meet expenditure authorised by the current budget approved by the Tūhoe Authority; and
- (b) In accordance with a by-law of the Tūhoe Authority.

(5) The Tūhoe Authority shall appoint a New Zealand Chartered Accountant as Auditor.

(6) The Auditor shall at least once annually, prepare and forward to the Rangatira of the Tūhoe Authority, for presentation to the Tūhoe Authority and the hapū of Tūhoe, a report on the financial affairs of the Tūhoe Authority, together with such other information relating to the Tūhoe Authority Account, or to such other funds or accounts which under this Act or under any enactment are required to be audited by that Auditor, as the Auditor considers desirable.

9 *Te Urewera Land Commission*

(1) Te Urewera Land Commission will be established for the purpose of:

- (a) Determining tūpuna title to land within Te Urewera;
- (b) Determining succession claims;
- (c) Dealing with any land issues that arise within Te Urewera.

(2) TULC will consist of Tūhoe chosen based upon Tūhoe tikanga.

GENERAL PROVISIONS

10 *Government Support of Mana Motuhake*

(1) Notwithstanding any other enactment the Crown maintains a continuing responsibility to provide necessary economic and administrative assistance to Tūhoe.

(2) The Crown recognises that Tūhoe's unique language and culture of Tūhoe is a source of strength and identity and essential to mana motuhake, and undertakes to work with Tūhoe and to support an agreed programme to ensure their retention and development.

11 *Regulations*

The Governor-General in Council may, at the request and with the consent of the Tūhoe Authority, make regulations for the purposes of this Act.

SCHEDULE 1

Te Urewera

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