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**Kei ō tātou ringa te rongoa? Is the remedy already at hand?**  
**The assertion and application of tikanga as a valid and credible  
response to contemporary issues.**

A thesis  
submitted in fulfilment  
of the requirements for the degree  
of  
**Master of Arts**  
at  
**The University of Waikato**  
by  
**MIKAERE TAITOKO**



THE UNIVERSITY OF  
**WAIKATO**  
*Te Whare Wānanga o Waikato*

2013

## Abstract

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This thesis examines the notion that tikanga is well positioned to address issues confronting Māori and other indigenous groups who strive to achieve self-determination and the freedom to be and to do. This work is inspired by the late John Te Rangi-āniwaniwa Rangihau's statement, "Ko te rongoā kei roto i ō tātau ringa" (1987, p. 24), which promotes the notion that through culture and identity Māori already have within their grasp the answers to contemporary matters of import in te ao Māori. This thesis inverts that statement and presents it as a question querying whether indeed the remedy is at hand and, if so, could tikanga and cultural identity be that remedy. To that end this study deliberately sets out to examine if the rongoa of self-determination, power and freedom can be achieved by the assertion and application of Māori ways of being and doing, that is to say by exercising tikanga.

Understanding notions of tikanga, sovereignty, and indigeneity is pivotal to this study as is articulating the notion of third space. This thesis argues that these four notions are interconnected when considering ideas of self-determination for disempowered groups. A case study forms a large part of this work and focuses on an indigenous group operating from a pre-contact tupuna worldview and based on *He Whakaputanga o te Rangatiratanga o Nu Tireni 1835/Declaration of Independence of New Zealand 1835*. This particular group was chosen because it presented as being a point of intersect for the four notions of tikanga, sovereignty, indigeneity and the third space.

This thesis argues that whilst tikanga is a powerful mechanism for determining and rationalising ways of being and doing it has less to offer at a pragmatic level when it comes to effecting change in the status quo. However, when overlaid with the third space lens new perspectives can be enunciated and new opportunities detected which in turn can lead to determining new actions. Through this study it becomes clear that the assertion and application of tikanga contributes to, but on its own is not, the whole answer.

## He pepeha

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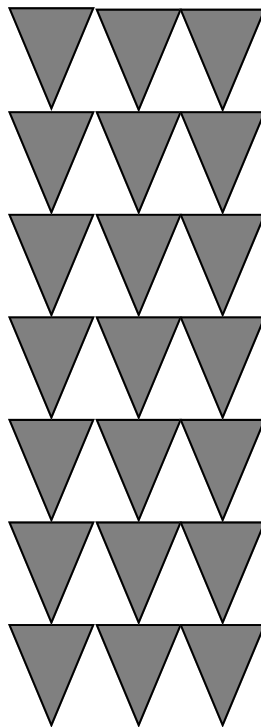
Ko Tainui te waka;

Ko te Nehenehenui te rohe;

Ko Ngāti Runga-te-rangi te hapū;

Ko Maniapoto te tupuna;

Hou!



*Figure 1:* Ko te āhuatanga o taku tirimoko tēnei. E mau nei ia i aku kōrero whakapapa, kōrero-ā-whānau, kōrero-ā-hapū hoki (Source: Taitoko, 2008).

## He mihi

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Rere ana taku mihi ki te uru, ki te takenga mai o ngā waka o ngā tūpuna; ka topa whakarunga ki te tonga, ko reira te paenga taonga. Hiki ake, ka hāro whakawaho ki te marangai, ki te aranga ake o te rā; hoka whakararo ki te raki, ko ia tērā te rerenga wairua... reia atu.

Tēnei te maioha ake ki te hunga nā rātou ahau i āwhina, i tautoko ki te whakatutuki i tēnei kaupapa nui, mai i tōna tīmatanga tae noa ki te putanga ake o tēnei tuhinga.

Tuatahi ake, ka mihi atu au ki a John (Hoani) Te Rangī-āniwaniwa Rangihau BEM mō ana kupu whakaoho i taku wairua hei ranga wairua mō te hirikapo, hei horopaki hoki mō ngā kaupapa matua i roto i tēnei tuhinga.

Tēnei te tuku aroha atu ki taku tuakana a JJ me tana tonono kia tuhi ai au i ēnei kōrero e pā ana ki tēnei kaupapa nui a ō tātou mātua tupuna. Kāore e ārikarika ana aku kupu whakamahi mōu me tō kaha ki te whāngai kupu mai hei whakaarotanga mō te hunga e ngākau nui ana, e kimi māramatanga ana. E te hoa whanaunga, ko te tūmanako ia kua purua kau ētehi piere o te kaupapa nei i ēnei kōrero āu, i ēnei tuhinga āku hoki.

Me mihi ka tika a Pania Melbourne mō tana māia ki te arataki i ahau i runga i tēnei huarahi kōpikopiko. Tēnā koe e hoa mō tō kaha, me tō manawanui ki te ārahi, ki te whakatenatena hoki i ahau i roto i ēnei mahi.

Nei hoki te mihi ki aku hoa mahi o Te Wānanga o Aotearoa mō tā rātou whakawātea mai i ahau kia whai wāhi ai ahau me tēnei kaupapa. Heoi, nui whakaharahara aku mihi ki a Pani Berghan mō ana karu miromiro me tana āta pānui i ēnei tuhinga āku, me tōna kaha ki te karawhiu pātai mai. Tau kē koe e te hoa.

Heoi, mokori anō te mihi ki a koe e taku teina Glenn, me tō kaha whakatikatika mai i aku mahi tuhi whakapānga. Nōu te taumahatanga ki te whakarite mai kia tika aku kupu whakamana i ngā puna mōhiohio nā rātou kē te nuinga o ngā kōrero tautoko i ōku nei whakaaro. He toki koe me tēnei mahi.

And lastly but by no means least I extend my heartfelt gratitude to Albie and his beautiful getaway bungalow in Rarotonga. Thanks for the thirteen days of peace and tranquillity which allowed me the undisturbed space to take my musings and put them into some sense of order. E te hoa, mei kore ko koe me tō kāinga ātaahua rā kua kore pea ēnei tuhinga āku i whai wāhi ki te ao nei. Meitaki maata.

Pai mārire

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## 1.0 CHAPTER ONE – HE KŌRERO TĀTAKI

Māku anō e hanga tōku nei whare  
Hei whakataui i te ara,  
Hei whakangungu i ngā moemoeā;  
Kia ora, kia mura, ko te ahi-kāroa.  
(Taitoko & Waitai, 2004, p. 1)

### 1.1 He kupu whakataki

It will likely be apparent to any reader of this thesis that I use two languages throughout, te reo Māori and English. I have done this in the belief that I am better able to express my thoughts and musings through the language in which they appeared in my mind. I do this quite happily believing it is reflective of me, the author, and my ethnic, cultural, historical, social, political and educational make-up.

No translations of any tuhinga reo Māori are provided save for a glossary appended at the end of this work, which is offered merely as a guide to comprehending my interpretation of some kupu and kīanga as used by me in this work. I fear that to do more by way of offering English translations for all tuhinga reo Māori only privileges the status of one language whilst marginalising the other. Hence the deliberate effort to, “regain a speaking position that is not determined by the coloniser” (Gilbert & Tompkins, 1996, p. 166). This is also the reasoning behind my decision not to translate any title or sub-title used in this work and to let them stand as they are. I believe that in doing so the reader is left unfettered from my proffered interpretations allowing them to develop and enunciate their own understandings of that which is presented before them.

Each of the seven chapters contained in this thesis all commence with a portion of a composition that I, either solely or in collaboration with others, created in earlier years. Each of these selected portions has been included for the deeper messages contained within the reo huahuataui used, which speaks to their relevancy to the overarching kaupapa of each chapter and offers a deeper philosophical approach to perceiving the situation. The inclusion of reo huahuataui is a deliberate strategy to magnify the contributions that each selected portion can make to discussions

and to celebrate and pay homage to the worldviews, language and wisdom of my tūpuna.

## **1.2 Te hanganga o te whare**

In an effort to articulate how tikanga influences and informs the nature and perceptions of other human constructs, namely sovereignty and indigeneity, a number of theories and notions are discussed throughout this thesis. During this process the suitability of each of these theories and notions when engaging with this kaupapa has become evident. Initially it seemed to me that post-colonial theory (Ashcroft, Griffiths, & Tiffin, 1995; Fanon, 1965; Freire, 1993; Said, 1978) had the capacity to provide a sound platform from which to launch a robust examination of such a kaupapa. Unfortunately it soon became apparent that although post-colonial theory does make a contribution to the discussion it struggled to move beyond reinforcing already existing diametrically opposed positions. Post-colonial theory's eagerness to focus on events, chronologies, circumstances, and the protagonists involved left me little opportunity to venture below the surface and to delve into critical elements such as culture and identity, which, I contend, are intrinsic to discussions around tikanga, sovereignty and indigeneity. Since the purpose of this thesis did not involve generating such a constricted, and I hesitantly propose impotent, result post-colonial theory was in the main put to the side in favour of home-grown theories such as Kaupapa Māori.

Kaupapa Māori theory, which I would argue, is rooted in both culture and identity by being intrinsically linked to principles, values, and worldviews (Barnes, 2000; Bishop, 1996, 1999; C. Royal, 2006; Saba, 2007; G.H. Smith, 1997, 2003), presented itself as a viable theory option inasmuch as it offered a framework from which kaupapa such as this can be approached, unpacked, and interpreted from a te ao Māori perspective in a culturally safe and robust fashion. This thesis does not explicitly claim to be a Kaupapa Māori theory-based work but it does acknowledge Kaupapa Māori theory for what it brought to an examination of this nature. As work progressed it became clear that to frame this thesis purely within my understanding of what Kaupapa Māori theory is might well mean that opportunities to go to places not explicitly recognised by Kaupapa Māori theory could be missed, an example of which is alluded to shortly. There was a nagging

suspicion within me that should I hitch my wagon to Kaupapa Māori theory exclusively then three things would likely happen. Firstly, a great portion of this work would be given over to arguing why it should even be considered to be a Kaupapa Māori theory-based piece of work. Secondly, using Kaupapa Māori theory on which to base my arguments was, in my opinion, tantamount to positioning the argument within the orbit of one of those existing diametrically opposed positions inherent in post-colonial theory. This meant potentially dragging the work back to a post-colonial type discussion tethered to arguments about this side says this and that side says that. Lastly, to locate this work within Kaupapa Māori theory threatened to expose it to the debate around varying perceptions, interpretations and understandings of what exactly Kaupapa Māori theory is.

For these reasons I sought out an alternative that made available to me the best-suited aspects of both post-colonial theory and Kaupapa Māori theory, a blending one might say, hence my attention shifted to the notion of hybridity. Interestingly it was found that the notion of hybridity has both its supporters and detractors and this is considered further in Chapter Five. Relief was finally realised in the work of Homi K. Bhabha whose interpretation of hybridity, which although itself is an off-spring of post-colonial theory, focuses more on negotiating the difference in matters such as culture and identity (Meredith, 1998). Assuming that culture and identity play a critical role in determining the nature of sovereignty and indigeneity it was decided to examine the notion of hybridity and the third space (Bhabha, 1994) which interrupts processes, interrogates situations and enunciates new understandings (Bhabha, 1996).

Whilst examining third space theory I felt compelled to muse that maybe third space is not an unfamiliar concept or practice to te ao Māori cultural practitioners. I suggest instead that third space is endemic to, and underpinning of, tikanga, both formalised ritual and commonplace habitual behaviour inasmuch as it is the direct result of the interruption of a process, the interrogation of a situation and the enunciation of an understanding. In support of this suggestion I propose that the practice of pōwhiri is an example of a formal and ritualised process from te ao Māori that occupies a third space and then interrupts, interrogates and enunciates. Likewise I put forth the practice of hongī as an example of third space in action at

a common-place habitual level. My reasons for making these assertions are presented in greater detail in Chapter Two. Third space presented itself as offering the opportunity for other voices to be heard above the dinning roar of post-colonial theory's seemingly irreconcilable positioning. It also gives shape and form to a process that Kaupapa Māori theory implies but does not explicitly define or describe.

Since it is the relationship between tikanga, sovereignty, indigeneity and third space that is being examined in this thesis, there has been a deliberate attempt made in this work to apply third space theory throughout. This work sets out to identify an unoccupied space in the commentaries and articulations so as to interrupt processes, interrogate situations, and enunciate new perceptions. This is done in the hope that the outcomes of this study might bring new perspectives to those who struggle to be heard and seen.

I propose here that this thesis is in some measure an example of the application of the notion of third space. Originally the intent was to examine the history of a Māori Incorporation and attempt to understand how tikanga influenced its origins, its ways of being and acting, its worldview, its underpinning philosophies and its visions for the future. It was initially positioned in the context of a critical examination of why 'this' works and the 'other' does not – a somewhat essentialist view, hence the initial leaning towards post-colonial theory. As work progressed that position slowly morphed into an examination not so much of what is there but more so of what isn't there and what could be. My attention turned to attempting to find out what could occupy the space in between opposing stances. This work quite deliberately set out to attempt to extricate itself from the mire of trying to understand two sides of a story and instead focussed on listening out for a voice from the void in between. It was assumed that any detectable voice could potentially indicate the existence of a different way of interpreting the situation. This in turn might provide an alternate way of feeling, theorising, doing and being.

### **1.3 Methodology**

This body of work is the result of a two-pronged approach to information gathering. The search commenced with a series of literature reviews to identify what current canon says about tikanga, sovereignty, indigeneity and third space

theory. The second part involved a series of three one-to-one interviews with the Chairman of a Māori Incorporation, who is hereafter referred to simply as JJ. The resultant data of the interview was then thematically analysed to detect any recurring or dominant themes and these themes were then reviewed using the third space lens, and the findings are herein presented.

The literature reviews focussed on tikanga, sovereignty, indigeneity and third space and elicited a range of understandings and insights which provided the context-suite in which this examination could occur. This context-suite covered pre-contact, post-contact and present-day understandings and perceptions of both tikanga and sovereignty, along with post-contact and present-day understandings and perceptions of indigeneity. The interviews furnished this study with information on the recent past and present-day endeavours of a group at a local hapū level – a Māori Incorporation.

Why this approach? As mentioned earlier, the focus of this study was, in part, to understand how tikanga influences and informs sovereignty and indigeneity, two constructs arguably at the core of the Māori Incorporation concerned. In considering the part that culture and identity play in the make-up of tikanga, sovereignty, indigeneity and Māori Incorporations, I saw these constructs as natural affiliates in a study of this kind and their interconnectedness deserving of understanding.

To have supposed that the Māori Incorporation examined in this study is just another ‘sovereignty movement’ or just another Māori Land Court structure, could have prejudiced this study. Making such an assumption presupposes the aims and objectives of that group of people and denies oneself the opportunity of understanding what it is they strive to achieve. However, of more importance to this work is that such a stance would enfeeble this study by limiting the scope in which this group can be approached and engaged with. Equally debilitating would be any assumption that this hapū-based organisation is only capable of acting in the interests of those directly linked by whakapapa to an eponymous tupuna. It has been made clear to me that this is not the situation for this group and this is examined in greater detail in Chapter Six.

The one-to-one interviews, which took place at a date, time and location of the interviewee's choosing, were structured around a guided question set. All questions were slanted towards eliciting tikanga-focussed responses. Despite others being invited to participate only one finally opted to do so. Although only conducted with one individual, JJ, the interviews produced a wealth of information, which was not too surprising in light of the fact that the one interviewee was a co-founder of a local Māori Incorporation and had intimate knowledge of the structures, processes and objectives of such groups. A lot of JJ's articulations I initially failed to recognise as relevant to the kaupapa of this study, however during the transcribing phase of the data gathering process I had the chance to review and carefully digest exactly what had been said. It was at this point I realised the responses provided did indeed have pertinence and relevance to the enquiry, just not in the way that I had expected. In fact they were at a far deeper and more profound level than I had anticipated. This added a degree of ihi to this study that I had not until that stage appreciated and provided yet another aspect of enquiry worthy of exploration. This is expanded upon in Chapter Six.

It is fitting at this point that I declare my relationship to the interviewee. JJ is a cousin of mine as we share a common great-grandfather and furthermore I am a registered beneficiary of the Māori Incorporation concerned. I do not perceive any conflict of interest in this situation since this specific part of the enquiry is about attempting to understand how tikanga influences and informs the being and doing of this group and is not an exposé about the group and its constituent membership.

Part of the initial intent of this thesis was to explore whether the findings of this study could lead to the development of a framework or model that could assist other groups engaged in similar struggles to advance their causes. This specific aim was abandoned towards the latter stages of the study in the realisation that it was a project of such a magnitude that precluded it from being actioned within the time constraints of this thesis' requirements. However, it is not abandoned totally; it is merely deferred to another yet to be determined time and study, where it can be given the attention and diligence it deserves. What this thesis gladly offers to



that project are the findings, understandings and insights contained within these chapters.

#### **1.4 Te aronga matua**

The preceding is all intended to guide the enquiry into being able to answer the principal question – ‘Kei ō tātou ringa te rongoa? Is the remedy already at hand?’ John Te Rangi-āniwaniwa Rangihau offered up the statement, “Ko te rongoa kei roto i ō tātau ringa” (1987, p. 24) when considering the challenges confronting teachers of te reo Māori of that time. In proffering this statement I believe he expresses his belief that Māori destiny lies in Māori hands, tacitly urging Māori to be more self-reliant and to be aware of those things that make-up their ancestral heritage – culture and identity, two things that can never be taken; only surrendered. I have taken that phrase and rendered it here as a question which opens up the opportunity for a study to occur that seeks out answers for both it and the ancillary questions such as, what is the remedy required to treat, will it work, who is it for and who has access to it? Whilst Rangihau proposes we already have within our grasp the foundation to develop responses to te reo Māori teaching challenges, I wish to explore whether the same axiom can be applied in the political/legal spheres of this ao hurihuri with particular focus on notions of self-determination, hapū sovereignty and freedom as indigenous people.

This desire is premised on a notion that potentially tikanga is enough, meaning that Māori do not need to turn to constructs of another paradigm to enable Māori to be self-determining through exercising actual power and authority with mana whenua, mana rangatira and mana tangata intact. To that end this study deliberately sets out to examine if the rongoa of self-determination, power and freedom can be achieved by the assertion and application of Māori ways of being and doing, that is to say by exercising tikanga.

#### **1.5 Te whakatau ara**

This thesis sets out to build an argument that sees tikanga positioned as the tāhuhu kōrero to which the other themes of sovereignty, indigeneity, and third space are positioned as pou linked to and supportive of that tāhuhu. Therefore the chapters of this thesis are presented using the metaphor of constructing the central load-bearing structure of a whare; in this case a whare kōrero in which to house this

study. I would argue that the use of metaphor and the imagery of a whare are typical and representative of both Kaupapa Māori theory and the notion of third space. I propose it as typical of Kaupapa Māori theory because the metaphor posits this study in a cultural setting which is familiar to Māori (Irwin, 1994; Ka'ai, 2004; Poata-Smith, 1996; C. Royal, 1998; L.T. Smith, 1999), and representative of third space because it doesn't engage in normative practice (interrupts), it instead seeks out a culturally appropriate alternative (interrogates), and then declares itself to be in a different location (enunciates new understandings) (Edwards, 2009). The Māori Incorporation studied in this thesis is examined as potentially being representative of such a whare built around that same load-bearing structure.

Chapter One, which deals with theories, methodologies and introductory discussions, is likened to the process of scoping out, planning and preparing the site where the whare kōrero will be located inasmuch as it contemplates construction tools, methods, blueprints, foundations and rationales.

Chapter Two sets out to shape and fashion the tāhuhu of the whare kōrero by seeking to articulate what tikanga is, its essence, its origins, its purpose, and application. I suggest here that since its principal function is to bear the entire weight of the whare, creating a robust tāhuhu is critical to the stability of that whare, just as clarity around articulating the nature of tikanga is pivotal to comprehending this study.

Chapter Three establishes the first of three interrelated pou directly connected to the tāhuhu by sculpting the discussion around sovereignty and identifying what sovereignty is and then examining how tikanga informs, influences and determines the shape and nature of this pou.

Chapter Four installs the second pou that supports the tāhuhu, that of indigeneity and its affinity to tikanga through culture and identity. Although tikanga is a kupu of this whenua and its indigenous people, it is the make-up of tikanga that is applied to all indigenous groups no matter where they come from. I would argue that it is not the word but the concept that finds commonality amongst indigenous groups.

Chapter Five introduces third space as the third pou but willingly allows it to position itself, rejecting notions of prescribed and predetermined locations. It is my contention that such is the nature of third space that it is not of one position or the other but that it is from a place not yet discernible to the planner.

Chapter Six examines what is arguably an example of a house built on such a structure and aligns the learnings from earlier chapters to the situation of a local Māori Incorporation. Without living beings to philosophise and practice tikanga, sovereignty, indigeneity, and third space theory the very existence of the tāhuhu would likely be imperilled.

Chapter Seven steps back to gaze upon and ponder the work completed thus far. It articulates and exhibits the new understandings gleaned from this study and attempts to reiterate the interconnectedness of all the pou with the tāhuhu.

All these combined, the tāhuhu and the three pou, comprise the load-bearing structure that supports and houses this study to this point. As can be surmised, there are as yet no pou pou or heke to complete the base frame of the whare. That is simply because although this study may be concluded the story remains as unfinished as does a house without framing or cladding. Those yet to be completed sections of this whare, the pou pou and heke, are representative of those concepts yet to be addressed, such as viability and sustainability: the viability of that which is practiced by the examined Māori Incorporation in today's socio-economic and legal/political climate, and its sustainability in an ever-changing world. It is likely at this point the development and testing of a model or framework, mentioned earlier as a specific aim of this study that was abandoned, could make a contribution to understanding both viability and sustainability.

## **1.6 He āka roa**

I roto i te ao Māori kua mōhio whānuitia te mana o tēnā iwi, o tēnā hapū, ki te whakatau i āna ake tikanga mō ōna ake poro, whenua, awa, moana, tāngata hoki. Kāore i te tika mā iwi kē atu e whakahou tētehi iwi anō kia huri āna ake tikanga ki ērā e pai ana ki te rāwaho.

Mai rā anō tēnei tūāhuatanga whai mana ai i te ao tūroa nei engari he āhuatanga tēnei i takea mai i ngā mahi a ngā atua i te orokohanga mai o te ao, arā, i te

wehewehenga o ngā mea katoa ki ngā kauwhanga ngahuru-mā-tahi (Best, 1976; Whatahoro, 1913-1915), me te tāinga o ngā kawa ki tēnā kauwhanga, ki tēnā kauwhanga, mō ngā āhuatanga tipu, ora hoki i roto i ia kauwhanga o ngā rangi-tūhāhā.

Koia pea te tauira i whāia nei e ō tātou mātua tupuna mō te noho o ngā iwi, o ngā hapū i runga anō i te whakaaro he ōrite te noho motuhake o ngā mea katoa i ngā kauwhanga ki tō te noho motuhake o ngā iwi me ngā hapū i roto i ō rātou ake rohe. Arā, mā tēnā iwi, mā tēnā hapū āna ake tikanga e whakamārama, e whakatau hoki mō ngā whakahaeretanga katoa i tōna ake takiwā – kāhore rawa mā tētehi atu.

I te taenga mai o Tauīwi i tere te huri o te ao o ō tātou tūpuna i ngā whakaaro hou, i ngā hangarau hou, i ngā tikanga hou hoki i kawea mai e ngā tauhou. Hou mai ko te Rongo Pai, he mea wero tērā i te ahurea o ō tātou tūpuna me tō rātou noho motuhake i ngā pā-tūwatawata (A. Awatere, 1969). Hou mai hoki ko te tikanga o te Kunitanga me te Kāwanatanga, ā, riro noa atu te mana rangatira o ngā iwi me ngā hapū i ngā ringa o iwi-kē.

Koinā ngā hua i puta mō ngāi tātou i tēnei mea te whakawaimehatanga i ngā tikanga-ā-iwi me te whakawhenumitanga, ā, kua motuhia te kaha-mārōrō (A. Awatere, 1969), arā, ko te taura e here nei tātou i a tātou anō, hei whānau, hei hapū, hei iwi.

Heoi, i ngā tau 1970 i tīmata te haumanutanga mai o te ahurea Māori me te tutū o te Māori ki te whakahoe o te Pākehā ki ngā take Māori. Ahakoa he rōpū anō tēnā me tāna kaupapa ake, he rōpū anō tēnā me tāna kaupapa ake, kotahi tonu te aronga, ko te hāpai ake me te whakangungu i ngā taonga a ō tātou mātua tupuna kei ngaro i te ngaronga o te moa.

Ahakoa kei te kite tātou i te hē o tēnei mahi a Tauīwi, kei whea he ara hei whai mā tātou hei haukotī i tēnei mahi, kia mau pū tātou ki ā tātou ake tikanga?

Mehemea ka whai tātou i te ara o te mana whakairo hinengaro Māori me te takahi i te ara ki te Whakakotahitanga o ngā Whenua o te Ao whakatakoto ai ō tātou nawe, e kore pea e ea tēnei kaupapa i a rātou, i te mea, kāore he mana o te *United Nations Declaration on the Rights of Indigenous Peoples 2008*.

Mehemea ka whakahouhia e tātou ngā mema Māori o te Whare Pāremata ki te wero atu me te kōkiri i tēnei kaupapa ki te aroaro o te Kāwanatanga, e kore pea e ea tēnei kaupapa i a rātou hoki, i te mea ko te whare mīere te kāinga o te hoariri.

Mehemea tātou ka whakapuaki atu i ō tātou whakaaro ki te hāpori whānui o Aotearoa mā te hunga pāpāho, e kore pea e ea tēnei kaupapa, i te mea, kāore te nuinga o ngā tāngata o Aotearoa, me te hunga pāpāho, e mārāma ana ki ngā uara me ngā mātāpono Māori.

Ina kua haukoti ēnei ara i a tātou kei whea kē mai he huarahi hei putanga mō tātou me ō tātou wawata? Tērā pea me ui atu tātou i ngā pou o tō tātou nei whare, arā, me titiro anō tātou ki ngā tikanga i waihotia mai e kui, e koro mā hei ārahi i a tātou kia eke panuku, eke tangaroa tātou me tēnei kaupapa whakahirahira. Kei reira pea he rongoa hei oranga mō tātou – kei roto i a tātou anō.

### **1.7 Te whakangungu moemoeā**

I believe it worthwhile at this point to attempt to create a snapshot overview of the New Zealand political/legal landscape in which Māori are making efforts to be heard and the range of responses these efforts achieve. This is so done as I believe it brings another perspective that informs the sovereignty and indigenous freedom discourse beyond the protest and activist rhetoric which tends to polarise opinions.

Tino rangatiratanga! Mana Motuhake! Sovereignty! Ka whawhai tonu mātou, ake, ake, ake! These are just a sample of phrases that over the last 40 years have elicited, and continue to do so, a wide range of emotional responses within the citizenry of Aotearoa. Heightened passions amongst the disenfranchised indigenous population; a feeding frenzy within the media; weariness and angst in Parliament; aggravation in those who insist they remember the ‘good old days when we all got along’; even apathetic grunts of boredom from those whose indifference leads them to assume their settler heritage is unassailable and inviolate. All manifest themselves in varying degrees when Māori strive to have their say; a voice which I propose is often misunderstood or misinterpreted by the majority.

The coloniser-sponsored notions of settler-state hegemony and hegemonic settler-sovereignty (J.T. Johnson, 2008) as a means of packaging the New Zealand resident population at large belies the tensions that lay just beneath the surface. A cursory glance at the diverse nature of cultures and ethnicities occupying this land suggests that each might well perceive themselves in a way that doesn't conform to a single sameness. Such, I argue, is the situation for the indigenous population of this whenua. Māori have a long record of attempting to transform their condition from being subjects of colonisation to being determiners of their own future and masters of their own destiny, albeit with various degrees of success.

Legislated efforts such as redress through Te Rōpū Whakamana i te Tiriti o Waitangi/Waitangi Tribunal claims process, and more recently direct negotiations with the Office for Treaty Settlements, provide a veneer of reasonable and reasoned settlement for issues dealing almost exclusively with claims over resources, mostly whenua and more recently wai. However, when considering natural justice these two efforts present an almost surreal situation where the accused doer of wrong has the power to set the rules of engagement and to make final determinations. That most hapū and iwi actively engage in these processes is arguably more representative of their frustration and eagerness to at long last achieve some resolution to past wrong-doings rather than as a testimonial to the just and honourable nature of the process.

Alternatives have been proposed and promoted over the years, some claiming links to pre-Treaty times. Some even dismiss entirely the notion of the *Tiriti o Waitangi 1840/Treaty of Waitangi 1840* as this nation's founding document, relegating it instead to the status of nothing more than an international trade agreement (JJ, personal communications, 2004-2012). These rōpū instead prefer to place their trust in the mana of *He Whakaputanga o te Rangatiratanga o Nu Tireni 1835/Declaration of the Independence of New Zealand 1835*. The actions of some who subscribe to this belief have become notorious over recent years for their apparent proclivity to engage in brazen status quo challenging activities that ultimately are decried in the media as being nothing more than money-making criminal ventures. The best publicised of these include passports for sale (NZPA, 2009; Ruscoe, 2009; Sharples, 2009), or the issuing of Maori driver licenses

(Davies, 2010; Ihaka, 2010), and even the adoption of over-stayers into my own iwi, Ngāti Maniapoto (Gay, 2010; Radio Waatea, 2011).

Beyond the hype and sensationalism that make such good media fodder lies a core of tikanga driven collectives who, whilst not denying the right of hapū to make such determinations under mana rangatira and mana tupuna authority, prefer instead to focus on more flax root realities. Living and exercising mana rangatira, mana tangata, mana kaitiaki, and mana whenua – these are some of the flax-root realities that have their origins in times long gone but not forgotten, namely in tikanga. It seems that to those involved in such collectives the act of asserting and applying tikanga to address contemporary issues promotes the relevancy and normalcy of concepts such as mana atua, mana rangatira, mana whenua, mana tangata, and mana kaitiaki. These tried and tested principles and values that underpin how our tūpuna rationalised and made sense of te ao kōwhatu and the many phenomena contained therein are informing an understanding in our perception of the issues and phenomena of the present-day.

### **1.8 Kia mura te ahi-kāroa**

Māori Incorporations play a critical part in this study but understanding what a Māori Incorporation is and what it does probably more so, and this is addressed more fully in Chapter Six. There are two types of Māori Incorporation discussed in this study and both have their genesis in New Zealand law, namely *Te Ture Whenua Māori 1993/Māori Land Act 1993*. Both use whenua Māori as a focus for their existence and both employ the legal mechanisms provided for in this Act to avail themselves of the protection and advantages the Act offers. However there are a number of differences. Critical amongst these is a philosophical difference inasmuch as while one draws its authority and powers directly from the New Zealand Government, through Article the Second of the *Tiriti o Waitangi 1840*, the other claims to draw its authority and powers from ngā tūpuna rangatira and the British Crown, via *He Whakaputanga o te Rangatiratanga o Nu Tireni 1835/Declaration of Independence of New Zealand 1835*. This is borne out by understanding that one type of Māori Incorporation goes through the Māori Land Court to receive its constituting document whereas the other has its constituted mana rangatira status ratified by affiliation to Ngā Tikanga Māori Law Society

(Inc.) o Aotearoa (NZ), and endorsed by all other affiliates. The structure, processes and procedures of Ngā Tikanga Māori Law Society (Inc.) o Aotearoa (NZ) are explored in Chapter Six.

Yet another difference is that one type of Māori Incorporation is established in a structure similar to that of a company, with the express purpose of facilitating and promoting the “use and administration of Māori freehold land on behalf of the owners” (Maori Land Court, 2009, p. 2). The other type, such as that co-founded by JJ, acknowledges that same purpose but goes further by claiming sovereignty over that land in all matters concerning the exercise of tikanga Māori, tino rangatiratanga, mana whenua, and mana tangata (JJ, personal communications, 2004-2012). These differences see one type of Māori Incorporation operating strictly within the legal/political confines of the Act, whilst the other feels empowered by specific sections in that same Act to go beyond the boundaries prescribed by legislation, striding not only into the legal/political forum but also into those of sovereignty, unextinguished Native Title, indigeneity, culture and identity.

The establishment and purpose of Māori Incorporations is a subject that has particular interest to me inasmuch as my cousin, JJ, presents himself as something of an authority on this subject, as well as being a driving force behind, and co-founder of, a local Tainui Māori Incorporation. JJ is a staunch proponent of the kaupapa and resolute in his belief that hapū never surrendered their sovereignty and are still sovereign lords and masters in Aotearoa under the guaranteed protection of the British Crown, and not the Colonial Settler-Government of New South Wales Resident at Wellington, as he regards the institution that most people commonly recognise as the New Zealand Government. JJ is quite simply passionate and committed, seizing any opportunity to get the message across.

JJ has always been adamant on the primacy of tikanga that stems from kawa, which itself is imparted by te ao wairua, coupled with the significance of the roles, responsibilities and obligations of those who claim to hold mana whenua, mana tangata and mana kaitiakitanga within their respective rohe (JJ, personal communications, 2004 - 2012). When planning permission for a number of subdivisions on land five minutes-drive from JJ’s Māori Incorporation land base



was granted by the local District Council, JJ used all the Māori Incorporation tools at his disposal to have the planning permission thrown out. This happened not once but twice: once in the Environment Court 2006 and once in the High Court 2007. The Environment Court case involved the proposed development of land for housing above a burial cave. Such a development would, in JJ's eyes, mean the desecration of that wāhi tapu, rendering any subsequent housing built on that site as unfit and unsafe for human occupation (JJ, personal communications, 2004 - 2012). The High Court case again involved proposed land development where resource consent had been granted by the local district council, but in doing so it ignored and then tried to circumvent the resource consent process, particularly in relation to consultation with local hapū. It did not consult fully with local hapū, it then tried secret negotiations, which it then denied and tried to cover up (JJ, personal communications, 2004 - 2012). JJ's success in these two cases saw most in the whānau, much to our shame, finally begin to take notice. JJ's actions were motivated not by greed or indignation but by an overwhelming sense of duty to the preservation of the wāhi tapu, to the memory of the tūpuna who lay there, and to honouring the reciprocal obligatory relationship to the decedents' living descendants. All these, in JJ's view, were imperilled by such developments (Personal communications, 2006-2012).

How was JJ able to succeed in the New Zealand Court system? Identifying and articulating the aspects or strategies that seemingly make this kaupapa successful is critical to realising the potential for successful and positive outcomes for all hapū throughout the land who are struggling through the minefield of the court system and other bureaucracies. The mere fact of knowing that it has been successful at a local level elsewhere allows hapū to go about the business of defending, protecting, retaining and reclaiming their customary rights with an increased expectation of success – a situation that, I would argue, currently doesn't exist.

### **1.9 Killing cows**

The whānau has been listening on-and-off to JJ's message for almost ten years. Few within the whānau ever took it seriously especially not when JJ was espousing some radical and controversial ideas such as Māori Incorporation

beneficiaries having no need for New Zealand driver licences, nor New Zealand car registrations and license plates, and perhaps most outrageously no debt liability (JJ, personal communication, c2004). On one occasion he summoned the local District Police Commander to a Native Assessor's Court held at a local marae. Although the District Police Commander did not attend the Court still sat and went through the motions of hearing evidence.

JJ's persistence is unrivalled, as is his knowledge recall in matters pertaining to historical events that inform and influence the operations of his Māori Incorporation, and he never misses an opportunity to share this kaupapa with anyone who will listen. It happened so often that many in the whānau ignored him, whilst others rolled their eyes and laughingly dismissed his lengthy offerings as, 'Oh, there he goes, killing cows again', a kōrero whakatoī that implies JJ talks so incessantly and so long that cows would die waiting for the message to end. While the whānau generally found this situation humorous and most pooh-poohed the whole idea it suddenly became quite real when JJ started winning in court.

It is a desire to unpack and attempt to finally understand what JJ has been saying all these years that has motivated me to engage in this study. In all likelihood though it would be overly ambitious on my part to assume that at the conclusion of this work I would have all the answers regarding what Māori Incorporations such as those co-founded by JJ will achieve in today's world. I do anticipate however that I will have a clearer picture as to whether or not through asserting and applying tikanga this kaupapa of Māori Incorporations, as explained by JJ, offers a plausible remedy to some of the issues confronting whānau, hapū and iwi in the present-day.

### **1.10 He kupu whakahiato**

Ki taku mōhio kua oti te mahere tuhingaroa nei te whakatakoto. Kua whakamōhiohia atu te kaupapa o te tēnei tuhingaroa, tana kaupapa rangahau, me āna pātai hei whakautu. Kua tūtohungia te whānui o te titiro me te aronga matua hei arohaehae, hei tātari mā te hinengaro. Kua whakaatuhia te hanganga o tēnei tuhingaroa me āna upoko e whitu. Ko te tūmanako ia ka whai māramatanga, ka whai hua hoki tātou i roto i ngā kupu kōrero, i ngā whakaaro hoki e whai ake nei. Hei aha? Hei oranga ngākau, hei oranga hinengaro, hei oranga wairua hoki mō te

hunga e kimi rongoa ana. Me te whakaaro anō, tērā pea ko ā tātou tikanga Māori taua rongoa.

## 2.0 CHAPTER TWO – TIKANGA

Whakawātea ngākau kia tau pai ai te wairua Māori,  
Kia huhua ai ngā taonga tuauriuri whāioio.  
Ruia te kākano o te mātauranga Māori ki tō hinengaro  
Kia tupu, kia whanake, kia pua te māramatanga tāukiuki.  
(Taitoko & Rangihau, 1997, p. 4)

### 2.1 He kupu whakataki

This chapter sets out to present a number of articulations about what tikanga is, its origins, how it is validated, and how it is positioned in relation to notions of sovereignty, indigeneity, Māori Incorporations and contemporary issues. In doing so it is hoped that new understandings can be enunciated about how tikanga contributes to the interrupt, interrogate and enunciate formula of third space theory.

This chapter celebrates perspectives of tikanga sourced from te ao Māori whilst Western definitions and interpretations are for the most part avoided. This is done because it is too easy in a study of this nature to allow the discussion to be shaped and confined by notions of the relationship between tikanga and legal/political concepts which draw upon interpretations and definitions of tikanga as furnished by Western academics and commentators. These non-Māori worldview interpretations and definitions are not of the same paradigm as that which birthed the notion of tikanga. I would argue they are void of any mātauranga Māori underpinning and of any ao Māori perspective, and therefore ill-suited to make any significant contribution to this study. Accordingly, it seems sensible to contemplate tikanga based only on those articulations and commentaries that can reliably be acknowledged as coming from a Māori worldview and informed by mātauranga Māori.

This study is not an invasive dissection and unpacking of individual tikanga with the intention of interpreting, or re-interpreting, efficacy and relevancy. Indeed, it is the stance of this study that all tikanga are relevant. Nor is this study a survey of the health of tikanga, i.e. how many people teach or practice which types of tikanga; which tikanga are most actively and regularly engaged with and in

whatever specific geographical regions or contexts; and which tikanga should be abandoned and consigned eternally to the past. Such a survey would require a huge investment of time, effort and funding, and leaves me wondering what benefit could possibly be derived at the end, and for whom.

I propose that critical to any undertaking of this nature is first gaining an understanding of the essence of tikanga, its origins, purpose, and application, and in attempting to achieve this, this study draws upon the collective wisdom of those who can confidently be recognised either as cultural practitioners and/or culturally informed. One such contributor is Mead whose book *Tikanga Māori: living by Māori values* (2003) is drawn upon heavily throughout this study inasmuch as the first three chapters of his work offer insights that lay the groundwork allowing for a structured examination of tikanga to occur. However, in this study I have taken the liberty to consider in reverse Chapters Two and Three of Mead's book by examining the underlying principles and values in the first instance and through that, attempt to describe the purpose and function of tikanga. I suggest this then provides a platform from which an understanding of how the assertion and application of tikanga can be posited as a credible and valid response to contemporary issues currently facing tikanga-based societies.

## **2.2 He taonga tuauriuri whāioio**

That pre-contact Māori society was underpinned by principles and values is difficult to refute, as I contend this is so for any society. I propose that which distinguishes difference between societies are the specific collective aspirations embodied in each society's principles and the profound beliefs encapsulated in their values. It is these principles and values, I suggest, that inform decision-making, which in turn dictate ideal actions to achieve optimum outcomes that ultimately most closely align to the principles and values espoused by the collective. In Māori societies this is discussed in terms of being tikanga, that which is tika. Any action or belief that did not align with the acknowledged principles and values would be incongruous, and as discussed later in this chapter, could well be risky too. But where do these principles and values come from and who determines the validity and appropriateness of such?

It is argued here that tikanga is not only representative of those principles and values but also the actions involved are the very embodiment of those aspirations and beliefs. In his introduction to understanding tikanga Mead seems to support this representative notion of tikanga when he offers that,

Tikanga is the set of beliefs associated with practices and procedures to be followed in conducting the affairs of a group or an individual. These procedures are established by precedents through time, are held to be ritually correct, are validated by usually more than one generation and are always subject to what a group or an individual is able to do. (Mead, 2003, p. 12)

Marsden (as cited in Pihama, 2001) compliments the preceding offering by adding that,

The cultural metaphysics or basic convictions which provide a people's guidelines to life evolve over generations of life experience in which succeeding generations add their quota of knowledge and fresh discoveries to the corpus of their cultural heritage. The customs and traditions of previous generations based on their beliefs and attitudes regarding the nature of ultimate reality, of the universe, and of man are the foundation stories upon which the mores, standards and values comprise the body of the cultural physics. (p. 131)

Eruiti (as cited in Roughan, 2009) contributes to the discussion by identifying some of the spheres directly linked to tikanga when he notes that tikanga includes “matters that cross into religious, moral, and spiritual modes of regulation in breach of the codes of the ancestors and creators” (p. 143).

Other spheres with direct links to tikanga, that I believe should not be ignored, include the physical, mental and societal realms. These will be addressed further later in this chapter. In returning to principles and values Marsden (1992) offers that,

Tikanga Maori translates as Maori custom. They denote those customs and traditions that have been handed down through many generations and have been accepted as a reliable and appropriate way of achieving and fulfilling certain objectives and goals. Such proven methods together with their accompanying protocols are integrated into the general cultural institutions of society and incorporated into the cultural system of standards, values, attitudes and beliefs. (p. 15)

Mead contributes the following when considering a conference presentation by Chief Māori Land Court Judge Joseph Williams (as cited in Mead, 2003) noting that, “Williams (2000) argues that tikanga Māori deals not so much with rules and regulations but with values which are subject to various cultural tests of appropriateness, correctness and adequacy” (p. 27).

The preceding statement nudges this discussion towards the tikanga and political/legal definition discourse but still contributes to this discussion by offering a perspective of the difference that exists in the essence of what tikanga is and what it is not. Durie (as cited in Mead, 2003) contributes to the conversation by offering that,

The question might more aptly be whether there were values to which the community generally subscribed. Whether those values were regularly upheld is not the point but whether they had regular influence. Māori operated not by finite rules alone, or even mainly, but as in Christian law, by reference to principles, goals, and values that were not necessarily achievable. They were largely idealised standards attributed to famous ancestors. (p. 26)

### **2.3 He māramatanga tāukiuki**

From the preceding articulations two distinct elements have appeared on the tikanga discourse horizon inasmuch as it would seem to have been indicated by most of the previous commentators that there is a time or intergenerational consideration relevant to tikanga. Phrases such as, ‘established by precedents through time’, ‘validated by usually more than one generation’, ‘codes of the

ancestors’, ‘customs and traditions that have been handed down through many generations’, and ‘attributed to famous ancestors’, all lend an air of time-tested validity being an essential part of tikanga, and give us our first reference point from which to measure validity. Mead (2003) addresses and celebrates this by explaining that,

Tikanga Māori are not frozen in time although some people think that they ought to be... It is true, however, that tikanga are linked to the past and that is one of the reasons why they are valued so highly by the people. They do link us to the ancestors, to their knowledge base and to their wisdom. (p. 21)

So it would seem that in response to the first question about where these principles and values that inform tikanga come from, a likely answer is that they come from learnings gleaned through the lived-experiences of the preceding generation, or generations, some possibly extending back through millennia. These learnings are deposited into a society’s collective memory, into its knowledge bank, and constitute a living repository of a society’s total knowing from, I would suggest, possibly before the time a society recognised itself as a separate collective entity. I propose that this knowledge bank provides a reference point on which a society’s worldview compass is calibrated and serves to give credibility to the self-determining behaviour of the society that created it.

This leads the discussion into another dimension, one that relates to the knowledge bank and its relevance to tikanga and indicates two more reference points from which, I suggest, validity and credibility can be measured. Mead (2003) informs the discussion by commenting that,

A different approach is to look at tikanga Māori as an essential part of mātauranga Māori, or Māori knowledge. In point of fact tikanga cannot be understood without making use of mātauranga Māori. All tikanga Māori are firmly embedded in mātauranga Māori, which might be seen as Māori philosophy as well as Māori knowledge. While mātauranga Māori might be carried in the minds, tikanga Māori puts that knowledge into practise and adds the aspects of



correctness and ritual support. People then see tikanga in action, and they do it, feel it, understand it, accept it and feel empowered through experience. Tikanga Māori might be described as Māori philosophy in practice and as the practical face of Māori knowledge. (p. 7)

The positioning of mātauranga Māori as critical to understanding tikanga and the correctness of enacting through appropriate ritual give two more reference points from which to gauge validity and credibility. If some custom or practise is proposed to be tikanga yet it has no evident foundation in mātauranga Māori then it would be found lacking in cultural integrity and would not be regarded as pono. Similarly is the fate that awaits supposed tikanga where there is confusion or discord regarding the correct manner in which a particular tikanga should be enacted and the appropriate ritual that should be applied to it. It would be lacking in general comprehension and acceptance by the society and accordingly would not be regarded as tika. Pono and tika are equally as important as longevity in measuring the validity and credibility of tikanga and are examined in more depth later in this chapter.

Returning to mātauranga Māori, Marsden (1992) seemingly acknowledges the critical role it plays in informing a Māori knowledge-based philosophy inasmuch as he celebrates the role of myth and legend as transmitters of such vital information when he offers that, “Myth and legend are an integral part of the corpus of fundamental knowledge held by the philosophers and seers of the Maori” (p. 2).

It is argued here that even if a custom or practise has gained some measure of longevity, and even if it is acknowledged as pono and tika, there is no guarantee that it will continue to be treated as tikanga if the body of knowledge (mātauranga Māori) and accompanying philosophies (Māori worldview) that underpin and support it are not transmitted to subsequent generations.

#### **2.4 He kākano i ruia**

So where then does this Māori philosophy come from? As indicated earlier there would seem to be an inter-generational link which influences tikanga but is that as

far as it goes? One contributor is quite clear that it traverses time to an epoch that humankind has been hypothesising about since time immemorial, back to creation. In discussing the role of myth and legend in the Māori worldview Marsden (1992) offers they,

were deliberate constructs employed by the ancient seers and sages to encapsulate and condense into easily assimilable forms their view of the world, of ultimate reality and the relationship between the creator, the universe and man... Cultures pattern perceptions of reality into conceptualisations of what they perceive reality to be: of what is to be regarded as actual, probable, possible or impossible. These conceptualisations form what is termed the 'world view' of a culture. (p. 2)

The world view is the central systemisation of conceptions of reality to which the members of culture assent and from which stems their value system. The world view lies at the very heart of the culture, touching, interacting with and strongly influencing every aspect of the culture. (p. 3).

The role of narrative through myth and legend as the transmitter of perceptions of reality forms a large part of the discussion in Chapter Six when attempting to understand JJ's worldview articulations, which for him validates and gives credibility to his Māori Incorporation's way of being and doing.

As well as the progenitive contribution the knowledge bank makes in establishing tikanga one is compelled to also consider the players involved in divining the mysteries and complexities presented by the phenomena they are confronted with. This function is arguably a responsibility mainly reserved unto the most knowledgeable members of a society, those who have a broadly acknowledged and proven understanding of the records held within the knowledge bank. They are, as a matter of course, of the society and in being so it seems reasonable to assume they have a vested interest in increasing the collective memory of their society and working towards realising that society's aspirations and upholding their beliefs.

Kruger (as cited Waitangi Tribunal, 2009) joins in the discussion by contributing,

Tikanga is the way we conduct our lives consistent with our beliefs, with our philosophical baselines, as they manifest themselves in our behaviours, our relationships, our way of life. The practice of tikanga must be grounded in an understanding of the philosophy that underlies it. (p. 80)

Sadly though, observers and commentators not affiliated to that same society and/or lacking in understanding of its underpinning philosophies tend to derogate this collective memory by denouncing aspects of it as outdated and irrelevant to the modern day and age. This they do primarily by asserting that a pre-colonial society could not have had any knowledge whatsoever of 20<sup>th</sup> century developments, such as genetic engineering or motorways. In 2002 AgResearch applied to produce transgenic cows (containing synthetic human genes) at its site at Ruakura in Hamilton. The hapū of that area, Ngāti Wairere, took the lead in opposing this application based on their worldview and philosophies concerning whakapapa and mauri. Also in 2002 Ngāti Naho opposed the development of a three-lane motorway at Meremere, in Waikato. The site was the dwelling place of a malevolent taniwha, whom they held responsible for the high death rates on that stretch of road. They contended that building the motorway there would expose a greater number of road users to increased risk.

General opinion of the day to these culturally valid and credible articulations reflected a “frustration that a ‘primitive culture’ is being allowed to halt development because politically correct Pakeha are too afraid to tell Maori to get real, get over it or get lost” (Corbett, 2002, para. 7).

I argue that ill-informed outbursts such as this are simply attempts to render the entire contents of a society’s knowledge bank as irrelevant and immaterial and in doing so visit the same fate upon that entire society. Whilst it is accepted that there were no motor vehicles or studies in deoxyribonucleic acid sequencing back in the societies of early 19<sup>th</sup> century Aotearoa, neither were there likely to be any in early 19<sup>th</sup> century anywhere-else-in-the-world societies.

So how could a stone-age and illiterate society possibly develop appropriate and applicable tikanga for such things in any subsequent day and age? This appears to be the main thrust of the criticism laid against tikanga responses put forward by societies endeavouring to rationalise new phenomena via their own tried and tested processes. I would suggest the problem with criticisms of this nature is that they are formulated and provisioned by postcolonial amnesia, a blinkering malaise that leaves the afflicted misguided and ill-informed. Gandhi (1998) comments on this affliction noting that,

The emergence of anti-colonial and ‘independent’ nation-States after colonialism is frequently accompanied by a desire to forget the colonial past. This ‘will-to-forget’ takes a number of historical forms, and is impelled by a variety of cultural and political motivations. Principally, postcolonial amnesia is symptomatic of the urge for historical self-invention or the need to make a new start – to erase painful memories of colonial subordination. (p. 4)

Put more plainly, I propose that the wrong question is being asked and those asking don’t even realise it. In short, there were no tikanga in existence that related directly to motor vehicular transportation requiring motorways or studies in deoxyribonucleic acid sequencing. However, I argue that the worldviews, philosophies, principles and values that inform how new phenomena should be approached, unpacked and interrogated, did.

Motorways exist to serve mankind’s dependency on motor vehicles for land transportation and motorways require land on which to be built. Most land in Aotearoa is not flat and uninterrupted but is curvaceous, undulating and lacerated by streams, swamps, gullies and ravines. Whilst no mātauranga Māori existed relating to motor vehicles and motorways there was an abundance of mātauranga Māori relating to whenua. It was this accumulated knowledge that allowed for the creation of tikanga relating to matters pertaining to the whenua and not the mode of transportation. Likewise, where no mātauranga Māori existed relating to deoxyribonucleic acid sequencing there was a plethora of data about whakapapa, mauri, and the interconnectedness of all species known to exist in Aotearoa, including humankind. It was this knowledge that allowed for the development of

tikanga relating to matters concerning all living beings, not just cows. It was this same knowledge that allowed for the examination and interpretation of these new phenomena of motorways and deoxyribonucleic acid sequencing and ultimately to the establishment of tikanga responses that were tika and pono to the contents of the knowledge bank and the worldview. Much of this mātauranga Māori data was and still is stored in the knowledge bank, which allows for the formulation of society's attitudes to the onslaught of ever newer developments. I propose that it is this perspective that informs the development of tikanga.

I suggest this whole process is yet another form of validating the appropriateness of tikanga inasmuch as it serves to reinforce the notion that only those who are of the society in that time and in those circumstances can rightfully determine the above, as it is based on the knowledge bank, principles and values of that society at that time. External commentators who venture to proffer opinions on such matters do so from a tenuous position, in so far as they are not of the society and have no vested interest in its wellbeing. They have nothing to lose and everything to gain. Here perhaps we have the strongest argument against allowing those of 'other' paradigms to make comments from the far side of the fence.

The preceding would seem to indicate that tikanga "are not frozen in time" (Mead, 2003, p. 21) but can be created or can evolve, a condition that I argue can only occur if it is accepted that tikanga are not static and are in fact fluid, even organic things. If this is the case then it indicates that tikanga changes, evolves and responds to meet the events and conditions of the time and the environment a society finds itself living in. Where no tikanga relevant to a specific matter exists then it seems quite plausible that a society's knowledge bank would be scoured and its principles and values consulted. This would all be done with the goal of formulating appropriate tikanga responses to achieve optimum outcomes in the face of unanticipated and/or unfamiliar circumstances.

If one accepts that tikanga can be created and/or adapted to meet specific conditions then one should be open to the notion that tikanga can also be discarded. I propose that such is the destiny of tikanga that no longer hold any relevance to the aspirations and beliefs of a society. Being no longer relevant they soon fall into disuse and eventually disappear from the societal landscape. I

suggest that such was the fate of kaitangata and certain funerary practices of pre-contact and immediate post-contact societies. Many of this present-day generation, including myself, would quite likely find these types of tikanga distasteful, even repugnant, but I argue that these extinct practices would more rightly be seen in the light of being no longer necessary or relevant to today's conditions. When these tikanga disappear I suggest it does not necessarily follow that the knowledge, principles and values that informed their evolution and application would also disappear. I argue that the knowledge of all tikanga, whether extant or extinct, is stored in the knowledge bank and as long as the principles and values that brought them into being still remain relevant, then I propose that those records are always accessible by that society.

## **2.5 Ngā ao e rua**

I propose that tikanga belongs to, and is a construct of, the human mind. It is a set of human ideas and beliefs manifested in human-initiated practices and rituals. This having been said, I suggest that tikanga is also a mechanism deliberately contrived to straddle two worlds – te ao wairua me te ao kikokiko. It appears to me that it is a stratagem designed to safely navigate the space between the proven and the imagined, the natural and the supernatural, which, interestingly enough, I believe a tikanga-based society's worldview would treat as being totally natural. I would argue that tikanga operates on two levels – thought and deed. It appears to be the direct product of a worldview that divides the big picture into two major realms and then establishes a device that can facilitate ideal outcomes for humankind at the points in time and space where both realms intersect. To a large degree it seems to be the antithesis of the attitude of only believing in that which can be seen or touched. In contrast, this worldview seems to liberate its adherents enabling them to embrace the notion of the existence of the 'other world', one that holds ultimate sway over all things in creation and beyond, both seen and unseen.

These points compel one to explore the relationship tikanga has with te ao wairua and te ao kikokiko in an attempt to understand what part spiritual and temporal influences have on tikanga, and perhaps vice versa. Here again we return to the discussion on the worldview and its significance to understanding tikanga. Paterson (2008) notes this relationship and provides us with a hint of the function

of tikanga in relation to the two realms by stating, “Māori possessed a holistic worldview, where the spiritual and temporal concerns impacted upon each other. The spirit world was appeased or cajoled, and forms and rules were followed in order to safeguard physical well-being” (p. 233).

This articulation seems to cast tikanga in the light of being not so much an intermediary or intercessory force but as more of a formalised structure or system occupying a buffer zone between both realms, which I will venture to put forward as being representative of Bhabha’s third space (1994). However, with this done it then creates the need to re-examine the interrupt, interrogate, and enunciate formula he also proposes (1996) as being critical to the third space. This shift, I argue, is due to the mysterious supranatural perception of te ao wairua, a place or thing that can be influenced to a certain degree by humankind but never controlled by it. I propose then that it is more useful to interpret the process as not so much interrupted but more as engaged with, and not so much interrogated but more as negotiated, and the response not so much enunciated but more as celebrated. At this point I raise my suspicions that these encounters take place in a perilous space fraught with risk for the inexperienced, and accordingly I put forward the notion that it is understandable then that these encounters are cloaked in formality, ritual and protocols, and overseen by the select few steeped in such knowledge.

Illness through disease is an example of how this aspect can be evidenced. Pre-contact societies in Aotearoa believed that the diseases that afflicted humankind were due to the machinations of elements in the “supernatural world” (Lange, 2012, para. 4) and “their treatment of disease lay in the sphere of magic and shamanism” (Goldie, 1999, p. 5). Illness, whether physical or mental afflictions – since within my own people no such differentiation was made until post-contact times, was most commonly attributed to some transgression in tikanga, mostly incidents where tapu was breached (Goldie, 1999; Lange, 2012; Mead, 2003). It seems that when a transgression occurred the transgressor’s spiritual/temporal balance was disturbed, causing them to suffer in some discernible manner (Mead, 2003). Sadly though, worse than this is the belief that in some instances the ‘punishment’ was meted out not to the transgressor but to an individual or individuals close to him or her, particularly in the case of whakamā. The remedy

almost always required the intercession of one or some of those select few (Lange, 2012; Mead, 2003) whose profound knowledge in dealing with tikanga in the third space offered the afflicted the best opportunity for recovery.

Accordingly, I argue here that tikanga exists primarily to maintain a balance or equilibrium between the influences of both te ao wairua and te ao kikokiko acting upon the individual. I also propose that if one should focus too much on matters of te ao kikokiko they would be susceptible to the illnesses of individualism, selfishness, gluttony and self-importance, which in turn impacts on his/her society. I believe that as a result of his/her illness the individual abrogates his/her reciprocal responsibilities as obliged by the principles of manaakitanga and whanaungatanga. On the other hand, should one focus too much on te ao wairua and lose their connection to te ao kikokiko they run the danger of being overcome by 'other world' influences, rendering them afflicted in a manner I suggest that this generation would recognise as being mentally ill. In te ao Māori, it is widely understood that transgressing tikanga invites consequences (Mead, 2003), ranging from the benign and momentary to the catastrophic and enduring. Thankfully I have only personally experienced momentary whakamā as a consequence of transgressing tikanga – however its impact was profound and provided a lifelong lesson.

## **2.6 He āhuatanga nō te tikanga**

This understanding then leads me to propose that anything labelled as a tikanga, yet fails to address te ao wairua, is not in fact tikanga. I argue it is little more than a ture inasmuch as it only concerns itself with matters of te ao kikokiko. Marae auahi kore is probably the best example of a ture that some treat as a tikanga. Ture of this nature seem to be concerned purely with the physical realm and lack any te ao wairua connection, thereby voiding themselves from qualifying as tikanga. I argue that they could never be anything more than ture. Likewise, I propose that tikanga that have no consideration for te ao kikokiko are not tikanga, they are not even of the human realm and, I suggest, impossible for the human mind to conceive let alone comprehend.

It would then seem to follow that tikanga plays a critical role in people's everyday lives, particularly for those who are culturally aware, since influences of both te



ao wairua and te ao kikokiko would be ever-present. I suggest that this Damocles sword type of existence would be almost intolerable save for the existence of commonly-shared societal concepts that govern the behaviour and conduct of its members and thereby furnishing a sense of collective security. I would argue that these too are sometimes referred to as tikanga. The concepts I refer to are things such as aroha, tautoko, and whai koha. I further propose that these are framed in guiding notions designed to provide clear parameters in which such successful engagements can take place and, as a prerequisite, must be reflective of that society's principles and values. Some of these notions are addressed in this study and known as mana, tapu, tika and pono.

Irwin (as cited in Paterson, 2008).notes and expands on this by offering that,

Māori life was regulated by the concepts of mana, the numinous authority of chiefs, and tapu, restrictions affecting individuals and human activity. Both mana and tapu emanated from divine sources, and the observance of tapu ensured the physical and spiritual well-being of Māori people, their society, and resources. (p. 220)

I propose that mana, whether that of the individual or the collective, was fiercely guarded. Barlow (1991) connects mana to te ao wairua by defining it as, “the enduring, indestructible power of the gods” (p. 61). This having been said, he goes on to acknowledge a different and more contemporary view of mana by stating that, “In modern times the term mana has taken on various meanings, including the power of gods, the power of ancestors, the power of the land, and the power of the individual” (p. 61).

When considering mana and te ao kikokiko, mana as used in the language also refers to privilege and status that is derived by individuals and collectives who are competent in meeting their responsibilities and obligations (Mead, 2003). Here I propose that mana is one of two measuring tools that aid people in determining their response to any matter of significance inasmuch as it compels them to consider how a potential action in te ao kikokiko might impact upon te ao wairua, with, I suggest, the view towards maintaining a balance between the two.

I also propose tapu as another measuring tool inasmuch as it delineates the parameters in which actions born of te ao kikokiko can impact on the requirements of te ao wairua. Again I turn to Barlow (1991) who provides us with the following definition, “First and foremost, tapu is the power and influence of the gods” (p. 128), a clear link to te ao wairua, and a connection that he reinforces in his closing sentence, “the important thing to remember is that tapu comes from the gods, and embraces all the powers and influences associated with them” (p. 129).

Mead (2003) acknowledges a connection between tapu and te ao kikokiko when he contributes that,

The concept of tapu is an important element in all tikanga... Tapu is everywhere in our world. It is present in people, in places, in buildings, in things, in words, and in all tikanga. Tapu is inseparable from mana, from our identity as Māori and from our cultural practices. (p. 30)

Examples of how mana and tapu act as measuring tools can be found in whakataukī stored in the knowledge banks of all hapū. Some allude to the potential non-physical consequences, namely whakamā, brought about by the actions of those who imperil their own and others’ mana, whilst others delineate the sphere of influence of tapu upon the physical. I suggest the following as examples of both concepts. “Kāore te kūmara e kōrero mō tōna māngaro (Brougham & Reed, 1999, p. 93) condemns self-praise and promotes modesty whilst “He amorangi ki mua, he hāpai ō ki muri” (Brougham & Reed, 1999, p. 120) indicates the separate yet complimentary roles of the sacred and the temporal.

If mana and tapu act as measuring tools to gauge the efficacy of tikanga in mediating the intersection between te ao wairua and te ao kikokiko, then I propose that the longevity of a particular custom or practice attests to its validity. To determine the credibility of a specific tikanga I return to examine tika and pono.

## **2.7 Te tika me te pono**

It would seem that while mana indicates likely outcomes in te ao kikokiko when interacting with te ao wairua, tapu indicates parameters surrounding the extent of that interaction. However, there are two other concepts worthy of consideration when dealing with tikanga, those being tika and pono. Mead (2003) addresses these two concepts by contributing that,

The concept of tika, or being correct, is a base principle that applies to all tikanga. So the practice of a particular tikanga needs to be correct and right. But in making a judgement about the correctness there is another key term that should be considered. This is the concept of pono, which means 'true' or 'genuine', that is, true in terms of the principles of Māoritanga. (p. 25)

Here then, we have articulated for us an important link between tikanga and the society that practices it. I again propose that while the mana and tapu of a particular tikanga can be weighed against likely outcomes, one would do well to also consult the society's knowledge bank to establish whether or not a proposed action is pono to its principles and accurately reflective of its beliefs. I suggest that initiatives such as Te Kōhanga Reo, Kura Kaupapa Māori, Wharekura and Wānanga Māori are examples of initiatives based on tikanga, supported by the knowledge bank and embraced by the society because, I argue, it was seen as being tika and pono. These tikanga-based initiatives also have an ao wairua aspect which is fundamental to their very existence inasmuch as they all deliberately set out to instil those beliefs and values practiced by tūpuna Māori and acknowledged as being influenced by atua, and therefore attracting both mana and tapu.

I humbly leave the penultimate word on this matter to Mead (2003) who summarises the preceding notes by stating that,

Tikanga are tools of thought and knowledge. They are packages of ideas which help to organise behaviour and provide some predictability in how certain activities are carried out. They provide templates and frameworks to guide our actions and help steer us

through some huge gatherings of people and some tense moments in our ceremonial life. They help us differentiate between right and wrong in everything we do and in all activities that we engage in. There is a right and proper way to conduct one's self. (p. 12).

As a framework then, I propose that tikanga offers space and time to interrupt uncertain or tense situations, interrogate those situations and enunciate new understandings. At this point I return to my earlier propositions from Chapter One that pōwhiri and hongī are examples of how tikanga acts in the manner that reflects the purpose attributed to third space theory. When considering the formal and ritualised process of pōwhiri I argue that its composite stages of karanga, whaikōrero, and whakaratarata are reflective of the interrupt, interrogate and enunciate stages as prescribed by Bhabha (1996). As for the common-place habitual practice of hongī I propose that the stages of initial touching with the hand, and then the pressing of ihu, followed by the exchange of hā are also reflective of the interrupt, interrogate and enunciate process. In both cases, I would argue, what is occurring is a negotiation of positions at both a physical and spiritual level to articulate the quality of a relationship.

This then leads to considering another aspect inherent in third space theory, that of hybridity. The notion of hybridity proposes that in the encounter between coloniser and colonised there will be some type of social, cultural, political and even language exchange and this is examined in Chapter Five. There are a number of practices evident in today's pōwhiri process that I propose as being representative of such an exchange inasmuch as they are adoptions and adaptations from the 'other' paradigm. Shaking hands and kissing, offering koha of cash and cheques, the establishment of dedicated pae tapu and pae manu, even the presence and role of Māori Wardens, are likely the most obvious of these hybridised practices. Rather than criticising these practices as non-traditional and foreign, and therefore having no place in pōwhiri, I suggest that their very existence attests to the fluid and organic nature of tikanga. Moreover, given the length of time these practices have endured on marae across the country, easily more than fifty years, they attract unto themselves an aura of general acceptance, appropriateness, credibility and validity.

For tikanga-based societies suffering under colonisation I would suggest that being tika and pono is paramount as it allows them to remain loyal to the legacy of their ancestors and to their inherited collective memory. It is this stance of loyalty that I propose does to a large degree motivate indigenous groups and those seeking sovereignty, such as JJ's Māori Incorporation, which itself is arguably an example of hybridity operating in the third space. These points are explored in greater depth in Chapter Six.

## **2.8 He kupu whakahiato**

Throughout the preceding discussions of this chapter a number of articulations about tikanga have been explored. The first was that of considering the manner in which discussions occur about tikanga and the concepts and definitions employed to contextualise and guide those discussions. It is argued here that to make a meaningful effort to appreciate what tikanga is, where it originates from, its purpose and application, one is better positioned to do so from within the paradigm from which tikanga emanates. Doing so locates the discussion within the same sphere as the knowledge bank of the tikanga-based society concerned.

Second, is about understanding the nature of tikanga and what underpins it, which I believe the commentaries have shown to be a society's worldview and philosophies. This worldview furnishes a society with its principles, values and beliefs, allowing its members to rationalise their world in their present time and condition. Furthermore, I believe, it has been shown that it is this worldview that informs decision-making, which in turn dictates ideal actions to achieve optimum outcomes, remembering that tikanga is itself a physical manifestation representative of those same principles, values and beliefs.

Thirdly is the notion that tikanga is a non-static, fluid and organic way of being and doing. I would argue here that this is probably one of its strengths inasmuch as in having such a characteristic it is well positioned to respond to new or unanticipated challenges and innovations constantly being cast forth from this ao hurihuri. Also it is proffered here that this coupled with a society's commonly-shared expectations and aspirations furnish it with a sense of assuredness and collective security, even a sense of balance and continuity, particularly in matters concerning points of interface between te ao wairua me te ao kikokiko.

I contend that it is important to note also the functions of mana and tapu in relation to tikanga. Often these seem to be treated as separate and exclusive of each other however, I would argue that, this examination has confirmed for me that there does and always did exist an intimate and inextricable link between all three. As mused earlier mana compels tikanga practitioners to consider how an action occurring in te ao kikokiko might impact upon te ao wairua, whilst tapu delineates the parameters in which actions occurring in te ao kikokiko could impact on the requirements of te ao wairua. I propose that all this contributes towards stressing the importance of the notion that this all happens in an effort to maintain balance.

Equally significant, I argue, is appreciating the importance of tika and pono to not only enacting tikanga but also to even considering the act. I accept the commentaries that argue that for tikanga to be recognised as tika and pono the practitioner must remain tika to their cultural heritage and the legacy of their tūpuna whilst enacting tikanga in a manner that is distinguishable as pono. It is here that there could well be some disagreement between tikanga-based societies as to which tikanga are tika and pono. This is not unusual as many hapū have different ways of being and doing which all within their respective societies see as being tika and pono.

That indigenous groups and others seeking sovereignty can and do operate in the third space has raised the issue of hybridity of tikanga, which attests to its non-static nature.

All of the preceding would seem to present as prerequisites for any group, such as JJ's Māori Incorporation, who lay claim to being a tikanga-based entity. Is his Māori Incorporation a tikanga-based society and are the tikanga they enact informed by that society's knowledge bank and clearly aligned to that society's principles, values and beliefs? When considering the non-static nature of tikanga as enacted by JJ's Māori Incorporation, is this manifested by seemingly radical actions such as the issuing of Māori driver licenses, Māori car registration plates, and tangata whenua passports? Does the maintenance of balance between the temporal and spiritual realms play a significant part in forming JJ's worldview and if so does it influence the ways of being and doing as espoused by his Māori Incorporation? Given that JJ's worldview differs somewhat from other tikanga-

based entities, is it safe to assume that JJ's Māori Incorporation observes and enacts different tikanga in the belief that it is tika and pono? Is JJ's Māori Incorporation an example of a tikanga-based entity operating in a hybridised manner, whilst occupying the third space? All of this is examined in Chapter Six.

As to the question about the validity and credibility of tikanga, it is the contention of this thesis that it is the sum of all the qualities and characteristics of tikanga discussed in this chapter that attribute validity and credibility to it. Its origins, its underpinnings, its intent and its application all serve to validate it and, I contend, position it as potentially a credible response to contemporary issues facing tikanga-based societies.

### **3.0 CHAPTER THREE – SOVEREIGNTY**

Koia tērā te kōingotanga,  
He paoa kōmiro, kauruki tōrino,  
Ka puta mai i te ngarahu muramura e.  
He konga tahutahu, he kounga kakā;  
Ko taku manawa kakapa, panapana,  
I tāwhiria e te hau mātaratara e.  
(Taitoko, 2006, p. 1)

#### **3.1 He kupu whakataki**

This chapter sets out to present a number of articulations about what sovereignty is, how it is acquired, how it is exercised, and how it is positioned in relation to communities, nations and states. In doing so it is anticipated that through applying the lens of the third space new understandings can be enunciated about how tikanga might be perceived as a transformative agent to address issues confronting those seeking sovereignty.

Reviewing literature encompassing notions of sovereignty involves navigating a morass of legal and political terms. Although it is not the intent of this study to unpack, examine and then interpret, or re-interpret, these terms it quickly becomes apparent that for the lay person to attempt to engage meaningfully in a study of this nature knowledge of the current definitions of these terms is a pre-requisite. Somewhat more daunting is the realisation that these legal and political terms are the linguistic product of the dominant player in the coloniser versus colonised phenomenon and as such, I contend, anchor the current discourse squarely within the coloniser's paradigm. Therefore, to have any hope of being able to perceive, discern or appreciate any potential alternative to that being prescribed and promoted by the dominant player, I contend that, one would be well served to have at least a modicum of cognisance of such terms.

In attempting to understand sovereignty I can attest that one must be prepared to undertake the task of unravelling the lexical tangle that shrouds sovereignty discourse. The conventional definitions available from published authorities such as dictionaries have been deliberately avoided in this review in an effort to not



restrict the exercise to a mere comparison of conventional definitions to the range of other interpretations provided by commentators, and in doing so be free to focus on and then gain a greater understanding of what is being said and how these terms are being used in the context of the commentaries reviewed. The variety of words used, the lack of a singular definitive explanation for each, and most challengingly, their seemingly liberal interchangeability, all contribute to fostering an almost overwhelming sense of inadequacy within the reviewer. However, coming to grips with and being able to discern the usage of these terms, I found, was critical to developing what I propose to be a cohesive and comprehensible position that produces a coherent examination of the complex and abstract construct that is sovereignty.

### **3.2 Te uku me te rino**

Without exception all commentators reviewed in this study at some point discuss the term sovereignty in conjunction or association with the notions of nation and/or nationhood, nation-state and/or state, citizen and/or citizenship, constitution and/or constitutional, corporate or central body politic and/or body politic, unified political authority, the Crown and/or the Crown-in-Parliament, Parliament, and Treaty. I would argue that these notions have been transported from the northern hemisphere and inculcated by various colonising powers into the realities of long-established societies residing on ‘newly discovered’ lands (Caldas & Alcadipani, 2003; Pihama, 1997, 2001). However, I contend that the wisdom of transplanting these unfamiliar notions into societies that arguably did not require such offerings is worthy of being challenged, especially in light of the events of the past one-hundred and seventy-seven years in this land. One’s thoughts immediately turn to the whakatauākī, sometimes credited to Taranaki peace activist and prophet Te Whiti-o-Rongomai, a prophetic utterance that, I propose both then and now, declaims the futility of attempting to meld two distinct and inapposite elements,

‘E kore te uku e piri ki te rino; ka whitihia e rā, ka ngahoro’

I suggest that it could be argued that introducing such ‘civilising’ influences on indigenous populations is likely the root cause of those populations’ subsequent injury, pain and suffering. However that is a subject for another study and will

not be explored to any great extent here beyond attempting to understand the influence that these attitudes have had on the sovereignty discourse.

### **3.3 He kōingotanga**

Commentaries reviewed in this study involving the above notions led to the realisation that these discussions were introducing qualifying concepts, which are likely to be more familiar (if not the actual words then at least what they represent) to those not occupying the coloniser's paradigm. Those concepts include independence, legitimacy, autonomy, authority, power, control, incommunicability and inseparability, the rule of law, politics, customs, mutual welfare and security. All of these 'new' concepts, I suggest, are mirrored in indigenous people's perceptions of themselves and their world. In the Aotearoa context, these are reflected in terms such as mana motuhake, mana heke, mana tupuna, mana rangatira, mana, mana pūmau, tapu, tikanga, mana whakahaere, kawa, mana whatu āhuru, and whakangungu. It is not proposed here to attempt to furnish, what I suggest are, introduced terms with equivalent translations but rather to make the point that a fair measure of familiarity with these 'new' concepts already existed in the worldview of pre-colonised societies of Aotearoa.

Pre-contact societies represent this notion inasmuch as their independence and autonomy were drawn from the legitimacy of authority, power and control (Barlow, 1991; Mead, 2003) imbued in their rangatira who were established by whakapapa (Barlow, 1991), and linked to geographical locations (A. Awatere, 1969). Kawa dictated the inseparability of these (A. Awatere, 1969) whilst tikanga defined acceptable ways of acting to realise mutual welfare and security (A. Awatere, 1969; Barlow, 1991; Mead, 2003).

Whilst arguing for the existence of some conceptual commonality between both coloniser and colonised I suggest that the same cannot perhaps be said when discussing the application of the word sovereignty. Although some commentators make reference to "tribal sovereignty" (M. Johnson, 2011, p. 106), or "Māori sovereignty" (McHugh, 2002, p. 79), or "independent sovereignty" and "original sovereign status" (McHugh, 2002, p. 81), or "each chief's sovereign status within his territory" (Moon & Biggs, 2005, p. 70), this, I argue, is generally done so when discussing the presumed secession or even non-existence of such ideas. A

prime example of this attitude is supplied by McHugh (2002) when he identifies Chief Justice Prendergast's 1877 decision in the matter of *Wi Parata v Bishop of Wellington*, which insisted "that the Crown could not call into existence that which did not exist – original Māori sovereignty" (p. 79). Durie (1998) seems to swim against the tide, albeit in isolation, when explicitly referring to the pre-Treaty Māori mind-set he proffers that, "Māori self-determination was securely bound to collective Māori sovereignty" (p. 3).

### **3.4 He paoa kōmiro**

With most commentators seemingly confined to discussing sovereignty in Aotearoa from what I argue to be the dominant player perspective and for some reason, possibly the restrictions of observing sovereignty through a historical lens, unable to acknowledge the pre-Treaty existence of Māori sovereignty, it is doubtless worth examining sovereignty more closely in an attempt to understand its origins and character.

In struggling to understand the notion of sovereignty some relief is drawn from the statement that "Sovereignty is a relatively mysterious word in English" (Cleave, 1986, p. 385). The mysterious nature of the word presents a somewhat precarious situation inasmuch as it leaves the quest for understanding susceptible to interpretation and misinterpretation. To add to the mystery Fleras and Spoonley (as cited in J. T. Johnson, 2008) perceive sovereignty as being akin to power and self-determination inasmuch as it "is an intangible, which cannot be seen or touched" (p. 46). An interestingly pictorial image of sovereignty is presented by former New Zealand Prime Minister Geoffrey Palmer (as cited in Durie, 1998), who states, "Far from being the indivisible omnipresent concept that Hobbes made it in *Leviathan*, sovereignty is more like a piece of chewing gum. It can be stretched and pulled in many directions to do almost anything" (p. 219).

Others however have a more prescriptive view. In his 19<sup>th</sup> century treatise on the law of nations *de Vattel* (1852) defines sovereignty as follows, "Every nation that governs itself, under what form so ever, without dependence on any foreign power, is a Sovereign State. Its rights are naturally the same as those of any other state" (para. 4).

In the above we see an example of a commentator connoting the notion of sovereignty with that of nationhood or statehood. Without abandoning that connotation de Vattel (1852) continues,

Such are the moral persons who live together in a natural society, subject to the law of nations. To give a nation a right to make an immediate figure in this grand society, it is sufficient that it be really sovereign and independent, that is, that it govern itself by its own authority and laws. (para. 4)

So it would appear, in the dominant paradigm at least, that sovereignty can only follow nationhood. Could this be Hobbes' 17th century notion of *Leviathan* (1651), which I would propose is later referred to in the twentieth century as 'the system', or 'the man', or 'nanny state'? Whatever the response it seems that de Vattel's position supports Article 3 of the *Declaration of the Rights of Man and the Citizen 1789* (as cited in Hawksley & Howson, 2011) which states, "The principle of sovereignty resides essentially in the nation. No body nor individual may exercise any authority which does not proceed directly from the nation" (p. 247).

Given that this declaration was drafted during the French revolution it is understandable that it reflects the attitudes of the day. Particularly so when considering that from the preceding statement it appears that sovereignty emanating from an individual, such as an absolute monarch or ruler, contravenes this declaration and is therefore invalid. Present-day constitutional monarchies, such as those in Belgium, Denmark, Japan, the Netherlands, Norway, Spain, Sweden and the United Kingdom of Great Britain and Ireland that draw their authority from the nation or state seem not to contravene this declaration.

The previous commentators return to reassert the absoluteness of the authority of the state by offering that, "In political theory sovereignty denotes absolute legal and political authority, the right of the state to make and enforce law, collect taxes and so on, over its defined territory" (Hawksley & Howson, 2011, p. 249).

In Aotearoa the New Zealand Government's journey to achieving sovereignty was a staggered and somewhat drawn-out process. According to New Zealand

Parliamentary Library research analyst, John Wilson (2007), Aotearoa/New Zealand was first treated as a colony eventually gaining some measure of self-administration through representative government in 1854; however it still drew its sovereignty from Britain. In 1857 more autonomy was realised when the Parliament at Westminster passed the *New Zealand Constitution Amendment Act (UK)* but this still didn't furnish it with sovereignty. After petitioning King Edward VII New Zealand's designation was changed from a colony to a dominion in 1907, however sovereignty was not achieved until Royal Assent from Britain was received for the *New Zealand Constitution Amendment (Request and Consent) Act 1947*. It is from this time the New Zealand Government dates its claim to sovereignty ultimately leading to the *Constitution Act of 1986* where it claims New Zealand to be "a free-standing constitutional monarchy whose parliament has unlimited sovereign power" (Wilson, 2007, p. 11). For any of the preceding to have occurred I would argue that there needed to be no existing sovereignty being exercised. Successive New Zealand governments have asserted that such was the situation once the *Tiriti o Waitangi 1840* was signed, whilst groups such as JJ's Māori Incorporation refute this passionately.

As will be seen in Chapter Six the question of sovereignty in Aotearoa plays a significant part in understanding the perception held by JJ's Māori Incorporation as to the invalidity of the New Zealand Government's claim to sovereignty and therefore its legitimacy and authority to act.

### **3.5 He ngarahu muramura**

To achieve the aforementioned state of absoluteness, I argue that, an array of tools is at the coloniser's disposal ranging from constitutions, to charters and legislation, even military force. Therefore, perhaps the question is can sovereignty only be discussed in terms of nation-state authority, and if so does it then deliberately set out to exclude those not recognised by others as possessing a nation-state appearance or appellation? If the answer is affirmative, then this will always sound the death knell for those not of the dominant paradigm, indigenous people in particular, who wish to argue to the contrary, and could quite possibly give rise to an adherence to Turkish soldier, politician and writer Mustafa Kemal Atatürk's (n.d.) assertion that, "Sovereignty is not given, it is taken" (para. 22).

Fortunately, in a less strident tone comes an offering from McHugh (as cited in Cox, 1993) which seems bereft of any allusions to nation or state. He offers that,

Fundamental to the concept of sovereignty is the acknowledgement of that sovereignty, from both within the community and without. It is essential that members of a population act in accordance with the designated administration and adhere to its direction. Further, sovereign bodies must accept each other's autonomy and authority. Thus sovereignty may be rendered as the acknowledged political power of a social group acting in concert for their mutual welfare and security. (p. 3)

I would suggest that the above sounds strikingly like a reasonably accurate representation of the pre-contact situation of this land's indigenous inhabitants.

Despite the momentum of the discourse seeming to orbit the concept of nationhood as a precursor to sovereignty, it seems that once the discourse space has been claimed opportunities arise for the addition of other qualifiers. These qualifiers appear to extend, even refine, the sovereignty notion, teasing out threads that I argue align with the mores of the coloniser's paradigm. In discussing common law McHugh (2002) identifies two new qualified notions, legal sovereignty which is held by the Crown and political sovereignty which is "vested in the electorate" (p. 70). He goes on to identify the notion of "the sovereignty of Parliament" (p. 75), which of itself seems somewhat distant from the definition as provided by de Vattel and Article 3 of the *Declaration of the Rights of Man and the Citizen*. This would seem to be the case unless the community or populace had determined to vest sovereignty in a body such as a Parliament.

It is at this juncture in history that the term democracy enters the sovereignty discourse. Moran (as cited in J. T. Johnson, 2008) offers that "hegemonic settler sovereignty" (p. 47) refers to the way that descendants of colonial settlers have adopted and adapted the notion of sovereignty to their way of being, embracing it and exalting it as the dominant and therefore right way of being, without the need to consider the situation of the indigenous population. Any claims to the contrary easily cause angst amongst this group as former German Chancellor Gerhard

Schroeder (n.d.) observes, “Nothing enrages citizens more than the suspicion of a creeping loss of sovereignty” (para. 2).

### **3.6 He kounga kakā**

It would appear that the redefining of sovereignty continues over time arriving at a point in the twentieth century where some commentators propose the notion of shared sovereignty, represented as either indigenous people acquiring a status of being “semi-sovereign” or having “limited sovereignty” (Hickford, 2010, p. 182). As a compromise this seems a plausible solution in addressing the coloniser versus colonised situation. However I am left to query why these concepts weren’t proposed or implemented in the 19<sup>th</sup> century at the height of tensions between both groups. Moreover, there are warnings about such a relationship that I argue should be considered. The eighteenth-century poet, critic and writer Samuel Johnson (n.d.) warns that, “In sovereignty there are no gradations” (para. 420). The British peer and politician Michael Ancram (n.d.) provides two statements in opposition to the notion of shared sovereignty asserting that, “Shared sovereignty doesn’t work, because sovereignty depends on being able to exercise authority”, and, “If you share with someone else, and you don’t agree with the person you share with, there’s no sovereignty” (para. 3). Perhaps these same sentiments formed part of what Donna Awatere (1982) was trying to convey when, considering the Māori condition of the time, she stated “It is not sovereignty or no sovereignty. It is sovereignty or nothing, we have no choice” (p. 42).

A less dire and I would propose more positive interaction is claimed by post-colonialism theorists proposing the notion of hybridity. Hybridity acknowledges that a third space (Bhabha, 1994) exists between the coloniser and the colonised, an interruptive, interrogative, and enunciative (Bhabha, 1996) space straddling “two cultures and the consequent ability to negotiate the difference” (Meredith, 1998, p. 3). Although hybridity focuses primarily on culture and identity I would argue that it relates to the sovereignty discourse inasmuch as during the colonisation process both culture and identity are impacted upon. Hybridity allows for a third space to open up and to be acknowledged, a place where the

colonisation process can be interrupted, the situation interrogated and new perceptions enunciated for new understandings to emerge.

Kaupapa Māori theory is offered here as one such ‘new’ understanding and proposed as another stage in the evolution of Māori self-determination and sovereignty reclamation. Kaupapa Māori allows for mātauranga, āhuatanga and tikanga Māori to claim the position of being normal, as opposed to being abnormal or “other” (R. Mahuika, 2008, p. 16). Perhaps Kaupapa Māori is even that which occupies the third space. Mead (as cited in Rautaki Ltd & Māori & Indigenous Analysis Ltd, n.d.).states,

Kaupapa Māori is concerned with sites and terrains. Each of these are sites of struggle. Each of these sites have also been claimed by others as ‘their’ turf. They are selected or select themselves precisely because they are sites of struggle and because they have some strategic importance for Māori. (para. 9)

Pihama, K. Smith, Taki and Lee’s (2004) offering seemingly aligns Kaupapa Māori with Bhabha’s notion of the third space as an interruptive, interrogative, and enunciative space by stating that,

Kaupapa Māori thus challenges, questions and critiques expressions of dominant Pākehā hegemony. In doing so Kaupapa Māori engages with and seeks to intervene in and transform unequal power relations that exist within Aotearoa and which continue to subordinate Māori aspirations (p. 10).

Seen in the light of the preceding two statements it would seem that Kaupapa Māori can be recognised as a transformative agency. This then seemingly has the capacity to occupy the third space, to interrupt the current process, to interrogate the situation, to enunciate perceptions, and in doing so allow for the emergence of new understandings that ultimately change the conversation. This transformative process might be what Foucault (1981) alludes to when he comments, “as soon as people begin to have trouble thinking things in the way they have been thought, transformation becomes at the same time very urgent, very difficult, and entirely possible” (p. 457).



### **3.7 Te manawa kakapa**

From my review of literature it seems compelling that most of the sovereignty discourse revolves around the concepts of all authority and power residing in the body politic. This is something I would argue which is entrenched firmly in the coloniser's constitutions, charters and legislation, ostensibly tools that strive to control behaviour and maintain the status quo. These tools serve to memorialise nation-state perceptions, values, beliefs and ways of being and doing, as informed by their own knowledge bank and worldview. This they leave as a legacy to their future generations. Tikanga-based societies, particularly those with a strong practice in oral tradition, had no need for such written memorialisations. I would argue that for tikanga-based societies no such documentation is required or even appropriate since their continued existence and the continued exercise of their ways of being and doing confirm and maintain a contract with the past (their tūpuna) and the future (ngā uri whakatipu). I propose that such a contract is far more sacred and compelling than written words on paper could ever be. It would appear then that sovereignty might well be more about being and doing rather than politics and paper.

The mere existence of these written memorialisations, I suspect, discourage dissenters from peeping beyond the colonising paradigm's borders to imagine broader interpretations of sovereignty, such as individual sovereignty, a notion that seems actively frowned upon as fractious and contrary to the common good. However some have already taken a step towards exploring such ideas and offer emancipatory statements such as, "The sovereignty of one's self over one's self is called liberty" (Pike, n.d., para. 1). For those afforded the opportunity to opine alternative interpretations of sovereignty there is guidance and encouragement available in the following offerings, "The simple step of a courageous individual is not to take part in the lie. One word of truth outweighs the world" (Solzhenitsyn, n.d., para. 1) and "The strongest man in the world is he who stands alone" (Ibsen, n.d., para. 15).

As will be addressed in Chapter Six these statements seem to resonate with the situation pertaining to JJ's Māori Incorporation inasmuch as the members both individually and collectively refuse to participate in what they see as the lie, the

sovereignty of the Parliament of New Zealand. The truth for them is that their sovereignty remains intact under the protection of the British Crown. That they take this stance differentiates them from other groups seeking redress from the coloniser and can see them isolated and therefore requiring considerable courage.

It would appear then that from Solzhenitsyn and Ibsen's statements there is a degree of bravery required to venture beyond the norm, the accepted or the status quo. Such actions defy conventional acceptances of the notion of hegemonic-sovereignty and its interpretation of the concepts of power and authority which it seems to jealously reserve unto itself. I would suggest that this act of defiance gives rise to questions that challenge whether or not that power and authority is real or merely imagined. It is JJ's contention that the sovereignty of the New Zealand Parliament is indeed imagined (Personal communications, 2004-2012).

One aspect of this study that is not imagined is the evolving vernacular during the pre, post and contemporary periods of the colonising process, particularly in the Aotearoa/New Zealand context. However that too requires a separate study and is only alluded to here.

I propose here that the exercise of defining sovereignty is of itself an assertion of one's sovereignty inasmuch as it furnishes the opportunity to determine for oneself the most relevant, plausible and defensible understanding based on the knowing of one's own position, situation, and condition. Moreover, the examination of existing definitions is an exercise in empowerment in that it furnishes the seeker with the opportunity to acquire clarity around the foundations and cornerstones of the 'other' (coloniser's) reason for being and doing.

This review does not aim to be critical of those commentators whose offerings have been the subject of this study, indeed I am simply grateful that these commentaries even exist. My purpose has been to gain a better understanding of the parameters in which the sovereignty discourse operates and through that gain a more Aotearoa/New Zealand relevant viewpoint of how sovereignty is perceived, discussed and approached.

However a warning has been sounded. It has been signalled that sovereignty as a principle is diminishing and its use in political dialogue should be avoided

because it can mean whatever the speaker wants it to (Durie, 1998). As for this study, quite simply put, I would argue that this review is critical to preparing to engage in dialogue with those who were interviewed as part of this study. Therefore, although not actively seeking out and articulating the alternative perspective of the ‘other’ (colonised) paradigm, it is still a place where enquiries can begin and be built upon, including the examination of that which is crucial to understanding the situation, and can be found at the very core of the ‘other’ paradigm, in its own tikanga.

As has been presented in Chapter Two tikanga is a way of being and doing. I suggest then that sovereignty too is an action as well as a notion, a way of being and doing. To be regarded as a sovereign entity, I propose that one must first act in a manner reflective of possessing sovereignty, something that indigenous people across the world have attempted through the assertion and application of their own ways of being and doing.

### **3.8 He kupu whakahiato**

If transformation of the perception of sovereignty, and through that reclaiming sovereignty, is the desired outcome, how then can tikanga be employed as the transformative agency? I propose that any society that enacts its own time-tested and proven tikanga, and does so in a way that is tika and pono to their worldview and their collective aspirations, is functioning in a manner that acclaims them as possessing sovereignty.

I would argue that what appears to be the broadly accepted attitude that sovereignty is the sole preserve of bodies politic such as nations and states serves only to undermine the place and position of those groups that require neither nationhood nor statehood. Such groups include JJ’s Māori Incorporation. However JJ’s group could also be referenced as a product of hybridity inasmuch as it recognises the position of both the coloniser and the colonised, then interrupts that process, interrogates the situation, and enunciates new understandings, which are manifested in its ways of being and doing. This is representative of occupying the third space.

As has been mentioned earlier and will be addressed further in Chapter Six this local group makes claims of possessing sovereignty in their local area. It has acted in ways that assert their sovereignty and challenges the status quo. However, if acquiring sovereignty is dependent on the acknowledgement of and acceptance by those already possessing sovereignty (Cox, 1993), and those possessing it cannot perceive any advantage in sharing it, then groups such as JJ's, or any other small and relatively powerless groups, will most likely continue to struggle to gain any measure of self-determination.

I propose that sovereignty is a perception of the collective, just as are their perceptions of their own culture and identity, which as has been argued already, are based on a society's values, beliefs and worldview. If then a group of people who fit the above criteria and act accordingly, I propose, they are exercising and proclaiming their sovereignty. Where this proclamation would likely be challenged is in the lack of any memorialising documentation declaring and supporting that perception. As a rebuttal to any such challenge I put forward the notion that memorialisations do already exist through the practice of oral tradition, a practice common to indigenous communities across the world.

## 4.0 CHAPTER FOUR – INDIGENOUS PEOPLE

Tērā te haeata e kuku nei i te pō;  
Mea kau ake, ka māroharoha he ao hou.  
Nau mai, nau ake e Rongo, e Tioro e,  
Hikina te matapōrehu kia mārāma te titiro.  
(Taitoko & Waitai, 1997, p. 1)

### 4.1 He kupu whakataki

This chapter sets out to present a number of articulations about what being indigenous is, how some indigenous groups act, and how indigenous groups generally are positioned in their relationships with nation-states. Once again using the third space lens to overlay these articulations it is anticipated that new perceptions can be enunciated about how alternate approaches can be made in addressing issues confronting indigenous groups in the present day. Political disenfranchisement, cultural disaffection, and identity discord will be shown to be issues facing all indigenous groups seeking sovereignty and the freedom to be and to do.

The thought of reviewing literature concerning the present-day condition of indigenous peoples across the world presented itself as a truly inviting and attractive prospect. This feeling was due mainly to an expected spiritual uplifting that would be experienced by me through reviewing and celebrating the anticipated advances made by indigenous peoples over the last thirty to forty years. There had been, at least in my mind, significant and real shifts in advancing the causes and aspirations of a wide range of people who self-identify as being indigenous. However, it soon became quite clear that the only things significant and real were the sameness of the present-day situation of most indigenous peoples when compared to their pre-struggle condition. Disappointingly, despite high profile publicity achieved by indigenous people in the international arena, particularly with the adoption of the *United Nations Declaration on the Rights of Indigenous Peoples* (UNDRIP) in 2008, very little change seems to have occurred for indigenous people, indeed, as is presented later in this chapter, it has arguably worsened to the point of being perilous. Generally speaking, the struggles of indigenous peoples now are the same as before. The

protagonists, the locations, the rhetoric, the sites of engagement are all the same and the fight for recognition and self-determination continues.

Understanding both the pre-struggle condition and present-day situation of a range of indigenous peoples from across Asia, the Pacific, and the Americas, is one focus of this review. What is it they fought for and to whom did they carry the fight? What strategic approaches did they employ and how effective were these in realising their objectives?

It is not the intent of this review to pick the scab off festering wounds by revisiting and unpacking a range of claims of wrong-doing – that would be far too painful, far too toxic and, more pragmatically, far too time-consuming to be covered in this study. Nor is this study an exercise in developing a chronological catalogue of indigenous people's histories of struggle and action. This is instead a reflection on the struggles engaged in by a small number of indigenous peoples, the nature of those struggles, the battlefields where these encounters took place, and the outcomes, whether positive or negative. Kaupapa Māori theory is applied to occupy the third space to interrupt the situation, to interrogate the conditions, and then enunciate 'new' understandings, since I contend there is still a place for a study that would see the development of a framework or model incorporating third space theory that could assist indigenous peoples and other groups engaged in self-determination struggles to advance their causes.

#### **4.2 I te pōuri kua koa, i te mate kua ora**

It would appear the appellation 'indigenous people' is a relatively new construct, making its appearance in the late-twentieth century in titles such as the World Council of Indigenous People in 1974, the Working Group on Indigenous Populations in 1982, and in documents such as the ILO Convention Concerning Indigenous and Tribal Peoples, 1989, No. 169, and the World Bank Operational Directive 4.20 – Indigenous Peoples, September 1991. It appears that the title 'indigenous peoples' serves as an alternative to other descriptors such as tribe, native, aboriginal, first people or first nations, and here in Aotearoa the term *iwi taketake* has become a commonly used translation.

The concept of these indigenous groups having specific rights and the accompanying movement to reclaim these, would according to Graham and Wiessner (2011), appear to have its origins in one of the most traumatic and cataclysmic events in the history of humankind when they offer that,

The atrocities of World War II and the realization by nation-states that countries could not always be relied on to protect the basic rights of their citizens internationalized claims to universal human rights. This post-war human rights agenda provided a platform from which to launch an international Indigenous rights movement. However, it was the perseverance of Indigenous peoples themselves that kept this struggle alive through the generations. (p. 404)

In acknowledging the role indigenous people have played in maintaining the momentum of asserting the existence of particular rights through the “worldwide Indigenous rights recovery movement” (Gayman, 2011, p. 23), it is probably more interesting to acknowledge that which is conspicuous by its absence – any acknowledgement of state-sponsored promotion of these indigenous rights in either local, regional or international fora. I would argue that to a large degree this is a stance that remains to this day. Indeed I suggest that in the present-day climate of fear born out of violent acts of terrorism, indigenous people’s rights are perceived as a threat to nation-state sovereignty and treated with heightened suspicion. This situation is examined in more depth later in this chapter.

This study considers the manner in which indigenous people found visibility on the world stage and notes they achieved effective mobilisation by taking advantage of new and emerging cross-border networks. Graham and Wiessner (2011) offer up a summary view that touches upon this development by commenting that,

It wasn’t until the 1960s when the UN turned its attention to the question of racism and racial discrimination that Indigenous peoples actually gained a voice in the international arena. Indigenous peoples were able to internationalize their efforts at resistance by building on the pan-Indigenous movement that had taken hold in

countries such as the United States and Canada, and by taking advantage of improved communications across borders. (p. 404)

It appears then that the perpetration of violence, such as the horror inflicted on populations by Nazism and irrational race-based prejudice, was the catalyst for the emergence of resistance and struggle by many disaffected groups, including indigenous populations in many countries. In the glow of international efforts towards protecting universal human rights and an ever growing movement seeking rights for indigenous peoples, visibility and recognition of indigenous groups would appear to be the critical first steps needed to be achieved. A summary on the evolution of this part of the journey notes that,

First formally recognised in ILO conventions 107 (1957) and 169 (1989), the indigenous peoples' movement only really took off after it entered the UN system in the 1980s and 1990s. At its origins, indigenous peoples' rights became part of the international agenda after mobilization in the Americas. By 1977, the international network was launched when representatives from more than sixty indigenous groups met in the International NGO conference on Discrimination against Indigenous Populations. (Bertrand, 2011, p. 853)

At its 1957 General Conference in Geneva, the International Labour Organization (ILO) produced Convention 107; a document that served to bring the existence of indigenous populations into the limelight of the international arena, and required its member nations, upon ratification, to afford protection to these indigenous groups and their well-being. Later, in 1989, its General Conference adopted Convention 169, an international instrument that specifically acknowledged the existence of indigenous and tribal people's rights, and as stated in Part 1, Article 1. s1(b) with particular regard to "their own social, economic, cultural and political institutions" (International Labour Organization, 1989).

I would suggest however that as a mirroring of generally held societal attitudes of the time towards indigenous peoples and their causes, the rights of indigenous peoples were more of an after-thought rather than an initial goal of the ILO. The



plight of indigenous peoples seems to have taken a backseat to greater concerns of the ILO regarding working conditions, violence against workers, and even the practice of child labour (International Labour Organization). Out of the first 50 conventions created by the ILO only Convention 50 addresses matters specifically concerning indigenous people. In all there are seven conventions to date addressing indigenous people's issues, out of 189 conventions in total. It would also seem that both Conventions 107 and 169 were originally intended to provide a wider protection mechanism for people who were being discriminated against because of gender, age, and ethnicity rather than indigeneity. Another pressing area of concern for the ILO at the time would appear to be bio-piracy where indigenous people's knowledge of their natural environment was being appropriated by outsiders without permission and used to generate profit. This drew attention to the potential harm that could result from uncontrolled economic development of rainforests and its impact on flora and fauna, particularly in regions such as South America, Africa, and Asia.

A combination of events in the late 20<sup>th</sup> century particularly in information and communication technologies, including mass-media telecommunications and Internet accessibility, plus strengthened developments in worldwide indigenous networks, all contributed to a growing global awareness that it wasn't just rainforests and wildlife being decimated but also clusters of little heard-of and even less thought-of indigenous peoples as well. I propose that it is due in the main to changing times and hard fought battles using access to ever evolving technologies at local, regional, national and international levels that indigenous people's struggles have achieved recognition in the present-day.

Perhaps not surprisingly few nations ratified either of the ILO Conventions – Convention 107 only 18 countries and Convention 169 only 20, whilst the remainder seemingly struggled to reach a consensus understanding of an appropriate definition of what constitutes an indigenous people. It is not the intent of this study to engage in that quandary and is happy instead to adopt the definition as provided by Kenrick and Lewis (as cited in Debelo, 2011), who propose that,

According to the existing working definition, indigenous peoples are groups of people who: a) have priority in occupancy of a particular territory; b) demonstrate cultural distinctiveness, continuity and attachment to their traditional land; c) identify themselves and are identified by mainstream society and state authorities as distinct collectivities; and d) have experiences of subjugation, dispossession, marginalization, exclusion or discrimination whether or not these conditions persist. (p. 260)

I would argue at this juncture that the most critical element contained within the above definition is in the third point that expresses the importance of self-identification of a group as indigenous, and the need for acknowledgement of such by others. This act of self-identification is, I propose, an intrinsic part of the larger act of self-determination, an act that recurs repeatedly throughout the stories of all indigenous peoples, and seemingly informs and drives their resistance strategies and recovery efforts. This practice of self-identification is important in avoiding the pitfall of creating a homogenised indigenous identity. I suggest that it was this one-size-fits-all collective concept that was to the fore of his mind when Rangihau, “warned of the cultural dangers of collectivising to the extent that whānau, hapū and iwi are denied” (Pihama, 2001, p. 133).

The preceding statement gives rise to a situation I propose is worthy of addressing. Although it might appear that there is a measure of commonality in the colonisation stories of all indigenous groups I argue that each group’s occupation stories, cultural expressions and practices, relationships to land, and legacies of suffering are distinct and particular to them. Accordingly, I argue that there should be no attempt made on the part of others to cloak all groups under a single perspective or interpretation. To do so, I suggest, is to ultimately remove the individuality and uniqueness of these groups from sight, making them and their distinctness invisible, and thereby nullifying their existence. Lumping all the clans of Australia’s original inhabitants under the collective term of Aborigines denies the existence of each of the approximately 600 clans or nations present at the time Europeans arrived (Australian Government, 2008). Similarly, the aggregation of all whānau, hapū and iwi into a single entity called Māori,

undermines my right to expect others to recognise my distinctive status and heritage as a member of the whānau Taitoko, of the hapū Ngāti Runga-te-rangi, and of the iwi Ngāti Maniapoto.

### 4.3 Tērā te haeata

The quest for self-determination has exhibited itself in the different ways indigenous groups action their resistance and this in turn has to a large extent determined the arena of engagement. Historically, indigenous groups such as those of Australasia, Scandinavia, and the Americas, tramp the path to the doors of the coloniser's palaces of power, seeking to create an opportunity to give voice to their claims via political and legal means. Sometimes the door remains firmly shut, as evidenced on the occasion of Kīngi Tāwhiao being denied an audience with Queen Victoria in 1884 (Kirkwood, 2000) at the direction of the New Zealand Government. Sometimes they gain admittance to the inner sanctum but in such small numbers so as to be ineffective at instigating change, as seemingly pre-ordained by the *1867 Maori Representation Act*. I propose that as a result some groups finding little, or no, satisfaction via this route will turn to the laws of the land in their search for justice as was the case in *Wi Parata v the Bishop of Wellington* 1877.

After finding the organs of their nation-state law to be impotent in advancing their cause, I suggest that, some groups looked hopefully towards the augustness of international legal and political fora for relief. It is in these international fora that I contend indigenous groups have made the most significant gains to date, particularly in achieving some measure of recognition, as witnessed by the ratification of UNDRIP by all member states of the United Nations. However, as will be seen shortly, this success does not afford indigenous groups a solid guarantee of realising their aspirations, as this is still ultimately subject to the will of individual member states. Debelo (2011) notes that, "Although the United Nations General Assembly adopted the *Declaration on the Rights of Indigenous Peoples* on 13 September 2007, the success of this legal instrument strongly depends on genuine recognition and its practical implementation at local and national levels" (p. 259), and that, "the adoption of the declaration does not make

a difference unless genuine recognition of indigenous people's status is put in place practically at all levels" (p. 268).

Kariyawasam (2010) contributes the following that provides explanation of how such a dilemma could possibly be. "Article 46 (1) specifically denies any action that may impact the 'territorial integrity or political unity of sovereign and independent states'. This section stresses that the right to self-determination should be exercised within its own 'sovereign' state" (p. 8). Kariyawasam continues, "Therefore, reading Articles 3, 4 and 5 along with Article 46 makes the Declaration appear vague and, at times, conflicting, leaving the issue of self-determination versus territorial integrity and state sovereignty unresolved" (p. 9).

This seeming contradiction in the Articles leaves the definitiveness of the Declaration in a state of limbo, hanging somewhere between hope and disappointment, depending on how the protagonists perceive it. Kariyawasam (2010) provides further clarity on this matter by identifying that,

the central difficulty with the Declaration is that it does not have any legally binding obligation or legal force and therefore, the operation and the enforcement of the law is in question. It was not drafted as a legal instrument or as a binding set of obligations – rather, it creates basic moral principles and broad political commitments and thus, its enforceability depends substantially on Member States' compliance with their obligations and their bona fide desire to act on them. (p. 16)

Interestingly the extent of adoption of the Declaration by some member states ranges from total adherence to selective application. By way of example, in considering the situation in two countries, one in South America and the other in Central America, Graham and Wiessner (2011) note,

Recently, Bolivia incorporated all of the provisions of the declaration into its constitution, and the Supreme Court of Belize relied on key aspects of the declaration to affirm the land and resource rights of the Maya people. Yet in other recent land and resource disputes involving indigenous peoples of the Amazon,

basic tenets of the declaration on the rights to consultation and prior informed consent were ignored. (p. 406)

Seeking satisfaction through the dominant versus subordinate legal and political arenas seems to be the most popular approach adopted by indigenous groups and doesn't always produce a negative outcome. As can be seen from the following contributions, in those situations where indigenous groups are a numerically significant force, or where they can create a critical mass, they can achieve surprising results. Chong (2010) reflects briefly on the advances of indigenous groups in political arenas in two South American nations, Bolivia and Ecuador when commenting that, "In Bolivia, the arrival of indigenous power through popular elections has opened a new sea of expectations" (p. 265), and, "In Ecuador they have demonstrated great capacity for controlling mass mobilizations and establishing political alliances in the institutional context" (p. 266).

These advances have brought with them their own dynamics which potentially threaten the gains made by the indigenous groups within those countries. As far as Bolivia is concerned it is a problem of maintaining a balance of the interests and expectations set by seemingly opposed agendas; economic prosperity and the rights of indigenous peoples, whereas in Ecuador, "setbacks for indigenous people in past elections have led them to propose ways to build strong organizations and alliances without depending on national, mestizo<sup>1</sup> political parties" (Chong, 2010, p. 266).

Some indigenous groups, such as those below, have made claims of rights under the banner of the freedom of religious practice; however, these religious claims are not heard in any ecclesiastic court but in the secular realm of common law courts, an arena that seems incapable or ill-disposed towards making legal determinations on cultural practices of a spiritual nature. Ahdar (2003) provides us with some examples of such encounters and their outcomes, and as one can see, these are examples drawn from two nations that have relatively large and active indigenous populations, the United States and Canada. In *Bowen v Roy*,

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<sup>1</sup> *mestizo*: of mixed heritage or descent

the Abenaki Indian parents of a two-year-old girl... refused to supply their daughter's social security number in order to secure certain welfare benefits. The welfare agency's use of the unique number would, they believed, rob the spirit of their daughter. The Supreme Court held that this state requirement did not violate the Indians' religious rights under the First Amendment. (p. 612)

In *Lyng v North-western Indian Cemetery Protective Association*, the Yurok, Karok and Tolowa Indians fought against the building of a road through sacred high country that would,

'virtually destroy' the ability of the Yurok, Karok and Tolowa Indians' to practice their religion. The Supreme Court found no infringement of the Indian's free exercise rights, the majority stating rather tersely, 'however much we might wish that it were otherwise, government simply could not operate if it were required to satisfy every citizen's religious needs and desires'. (Ahdar, 2003, p. 612)

In *Kelly Lake Cree Nation v British Columbia*,

two First Nations peoples sought to have set aside government approvals for exploratory drilling for gas in an area of land that was of 'the utmost spiritual significance' to those peoples. The Kelly Lake Cree Nation and Sauteau First Nations argued that the gas well by its mere presence defiled the image of sanctuary that they were, by their prophecies, entrusted to preserve. The British Columbia Supreme Court in dismissing their petition held that the Canadian Charter right of religious freedom in section 2(a) had not been breached and [noted] the Charter did not protect a concept of stewardship of a place of worship within its religious liberty guarantee. (Ahdar, 2003, p. 613)

The only conclusion I can draw from my readings thus far on this matter is that any advances or gains made by indigenous peoples are ever vulnerable to being undermined and/or dismissed by legislative means.

I feel obliged at this point to raise a matter concerning the ways in which different indigenous groups act or, in some cases, do not act. In countries such as New Zealand, Australia, Canada and the United States, where the body politic tends to see itself as enlightened and accommodating, it is a reasonably straightforward matter for their indigenous populations to advance their causes before the politicians or the judiciary. I suggest however that it is not so straightforward a matter in countries where to raise your head and call for indigenous rights could be interpreted as subversive, seditious, reactionary or even rebellious. There is a long list of instances where nation-states have reacted adversely and brutally to their indigenous populations' calls for recognition of their rights, eliciting state-sanctioned responses. A small representation of those instances range from displacement (Soguk, 2007), to disappearing (Bertrand, 2011), to beatings (Becker, 2010; "Military Madness", 2002; Tilly, 2007), to rape (Ledebur, 2005; Tilly, 2007), to torture (Ledebur, 2005; "Military Madness", 2002; Tilly, 2007), to imprisonment ("Military Madness", 2002; Tilly, 2007), and even murder and assassination (Bertrand, 2011; Klein, 2006; Ledebur, 2005; Leech, 2002; Soguk, 2007; Tilly, 2007). That some indigenous peoples have endured this brutality and yet continue to promote their cause is, I contend, a living testament to their stamina and their conviction in the validity of their claims.

Another point I propose here is that despite the general commonality in the colonisation process enacted upon indigenous groups I suggest that there has been little commonality in the consequent losses suffered by each. That is, I propose that not all indigenous groups lost their language and not all have lost their cultural practices or access to traditional resources. However, that having been said, I argue that it is a difficult thing to attempt to quantify exactly what amount constitutes a loss.

Thus far it would appear that indigenous groups tend to promote their struggles through a limited range of approaches, predominantly resulting in encounters in the legal or political arenas. In doing so, I contend, indigenous groups validate and give credibility to these fora, which by default are constructs of the 'other' paradigm, and accordingly intolerant of non-paradigm conducive perspectives and ways of being and doing. Accordingly, this leads one to muse that as long as

indigenous peoples engage with their colonisers in these fora, can they truly ever expect to achieve anything beyond that which they have historically received. The old adage of, 'If you always do what you've always done, then you'll always get what you've always got', resounds clearly in one's ears. If the mechanisms that will facilitate positive change for indigenous peoples aren't offered on the current nation-state citizen support menu then, I argue, need necessitates that alternatives be either sought out or created. Perhaps this is where application of the third space lens could assist indigenous groups in identifying and enunciating new understandings that would inform different approaches.

I propose that for indigenous peoples the creation of alternatives should be premised on the dreams and aspirations of each group. Likewise, effective strategies to realising their goals should be informed by their cultural beliefs and actions – their ways of being and doing and be tika and pono. Anything else, I suggest, would be contrary to their culture and therefore susceptible to being challenged and undermined, both from within and without. Before being able to identify effective strategies, I propose that, one requires an understanding of what it is that indigenous people want.

#### **4.4 Ka māroharoha he ao hou**

Whilst acknowledging the distinctiveness of individual indigenous groups as important, I argue, one should not make the mistake of assuming that this precludes these groups from sharing some common beliefs and aspirations. It is these, I suggest, that are deserving of examination and articulation since it would seem these beliefs and aspirations direct the thinking towards why these are important. A number of commentators recognise that self-determination is consistently positioned as a priority for indigenous collectives. Debelo (2011) offers that, "it suffices to draw attention to the central concerns of most indigenous organizations for self-determination; that is, to gain representation at local, regional and national political decision-making processes that affect their livelihood" (p. 266).

Kuppe (2009) concurs and contributes by noting that a commonly held goal amongst disaffected groups is that, "self-determination of indigenous peoples



regarding all aspects of their lives that have been subjugated to the colonial system of external control is restored” (p. 111).

Freedom from rule is an aspect of self-determination proffered by Volmert (2010), who states that, “indigenous peoples have substantial moral rights to self-determination because they can credibly claim that their moral right to equal freedom from rule is not adequately protected within settler states” (p. 53).

But how legitimate is this call for the right to be self-determining in light of the advantages that can be attained through conforming to the norms and requirements of the greater collective of the nation-state? Holder (2008) goes some way towards addressing this by highlighting the illegitimacy of compunction when she offers that,

states, groups and persons violate human rights when they compel indigenous peoples and the persons that constitute them to abandon a way of life or to restrict the development of their way of life to terms or pathways of someone else’s choosing. (p. 18)

This stance is supported by Kuppe (2009), who affirms that, “indigenous peoples do not seek out measures that would see them assimilated into the mainstream of their colonizing nation” (p. 109).

Two earlier commentators return to extend our thinking around self-determination by linking it to culture and identity, which, I would argue, for indigenous peoples is the very soul of their distinctiveness, their difference, their uniqueness. In making this link, Graham and Wiessner (2011) assert that these two things, culture and identity, are inseparable from self-determination inasmuch as one demands something the other naturally offers. They explain that,

Claims to self-determination and autonomy are closely linked to the Indigenous peoples’ struggle for cultural integrity. Indeed, these concepts are indivisible, at least where Indigenous peoples are concerned. As Vine Deloria Jr notes, ‘To the degree that a nation loses its sense of cultural identity... it suffers a loss of sovereignty’. (Graham & Wiessner, 2011, p. 413)

Second only to self-determination as a high priority item on the indigenous rights agenda would seem to be the expectation that their respective culture and identity is not the 'other', but that in its own right, is deserving of equal acknowledgement and unfettered freedom of practice. Kuppe (2009) notes this and more when contributing that, "the protection of their culture-specific characteristics will be advanced by the official promotion of proper institutions and the exemption from the validity of general legal standards by which indigenous peoples are structurally and systematically disadvantaged" (p. 112).

It appears then that indigenous people's calls for self-determination are inseparable from their respective culture and identity, and as such, I would propose, it should not be surprising that these things top their list of items to be recovered. For indigenous groups, freedom seems to be key – their freedom from the rule of the 'other', freedom to celebrate and cultivate themselves, and freedom to express themselves and be recognised as a member of their indigenous group. I would contend that freedom is not an enigma to democratic nation-states; indeed many make great publicity about their commitment to live by and defend it. This having been said, it would appear to be an enigma that those same nation-states who proclaim their defence of freedom are so strident in denying it to certain sectors of their own populations. When challenged on this point, nation-state governments proffer the stock standard answer which implies that rather than being simple and straightforward, the issue is actually a deeply complex one. I argue that the tardiness of the United States, Canada, New Zealand and Australia in signing the UNDRIP is a case in point. I propose that most of the delay was caused by internal debate over what relevance this had to each nation-state and its relationship with its indigenous populations compounded by fear about the potential consequences for the status quo. The choice of freedom or no freedom is not complex but it would seem that coloniser self-interest spawns the litany of excuses that delay its delivery.

#### **4.5 What stops it?**

In attempting to understand that which motivates nation-states to laud their power over the less powerful inhabitants who share occupancy of the same territories, I contend that in the first instance, one need look no further than a seemingly

insatiable hunger for wealth and the assumed power it brings with it. This, I propose, can be evidenced by simply acknowledging that indigenous people would never have been noticed had it not been for their habit of resisting private sector and state-sponsored wealth generating schemes, particularly in the rainforests, which directly impacted on their traditional lands and way of life. Debelo (2011) alludes to this when noting that, “modern forces such as globalization, industrialization, mechanized agricultural expansions, oil explorations, logging, conservation projects and dam constructions threaten cultural practices, economic subsistence and overall livelihoods of these groups” (p. 266).

Debelo (2011) continues to offer a reason as to why this should impact indigenous peoples more than other land holders, “In economic aspects, indigenous peoples’ territories are among a few peripheral areas where untapped resources remain” (p. 269).

The intimate relationship of indigenous groups to land is a matter of record; indeed, I would venture to suggest that, it is often misinterpreted by onlookers as the real reason these groups even came into being in the first place, as opportunists with an eye for a windfall. However, I contend that, this is an uninformed view as the Inter-American Court of Human Rights (as cited in Holder, 2008) states in its *Awas Tingi* decision,

The close ties of indigenous peoples with the land must be recognized and understood as the fundamental basis of their cultures, their spiritual life, their integrity and their economic survival. For indigenous communities, relations to the land are not merely a matter of possession and production but a material and spiritual element that they must fully enjoy. (p. 17)

However, there are other factors beyond economics that are worthy of consideration and Debelo (2011) draws our attention to two of these when stating that, “It becomes uneconomical to delve on specific factors behind each nation state’s reluctance to accept and recognize the rights of these groups, but on a broader level, three central factors can be cited: political, economic and conceptual confusion” (p. 268).

For nation-states economic and political factors are intrinsically intertwined and the glue that binds them together, I argue, is legislation. I would also argue here that this triad exists for two specific purposes – the preservation of the nation-state as a viable wealth-producing and power-brokering unit, and the maintenance of the sovereignty of common law. Debelo (2011) recognises aspects of this relationship when commenting that, “The political dimension of the resistance to recognition has been the major obstacle, emanating mainly from the perception of nation states of the right to self-determination as a threat to national integrity” (p. 268).

That courts of law are ill-disposed towards entertaining claims that could potentially impinge on either of the two purposes as proposed above is something, I contend is, well-known to indigenous peoples across the world and will not be dwelt upon in this study. However, Kariyawasam (2010), when considering the Australian High Court decision in the 1992 *Mabo v. the State of Queensland* in case, which overturned the notion of terra nullius and gave rise to the *Native Title Act 1993*, and then the subsequent inconsistent application of the law by the Australian judiciary, notes that,

There is strong evidence that the courts have not been reliable in all applications of the law, and there is wide confusion over the scope of the principle in some native title cases, which is a very different path from that followed in other international jurisdictions.  
(Kariyawasam, 2010, p. 14)

Following on from the above I suggest that it is worthwhile to explore Debelo’s earlier mentioned notion of “conceptual confusion” (2011, p. 268), a seemingly benign condition but one that, I argue, lies at the heart of nation-states’ attitudes and behaviour towards indigenous groups. Many elements contribute to this malaise and it is not exclusively endemic to nation-states – indigenous groups are also susceptible to contracting this ailment, as will be examined shortly. The following commentators contribute their understanding of, what I would argue are, both causes and symptoms that pertain to this disorder. Kuppe (2009) offers the notion of the fiction of homogeneity in stating that,

the recognition of these indigenous rights can result in conflicts with some of the basic principles of modern ‘Western’ constitutional democracy: the declared equality of all citizens; the legitimization of the state being based on the common good of all; and the legal fiction of one homogenous people making up the state. (p. 103)

Another condition worthy of note is ‘cultural bias’, which I contend contributes towards conceptual confusion, inasmuch as it is irrational and serves only to debilitate others. Kuppe (2009) again offers that the “state is not neutral in regard to culture. The cultural bias of the state – the specific set of values on which state organization is based – necessarily causes that the state promotes certain cultural identities, and disadvantages others” (p. 113).

Kuppe finds an ally when quoting Kymlicka (as cited in Charters, 2010) notes that a,

multicultural state which accords universal rights to all its citizens, regardless of group membership, may appear to be neutral between various national groups. But in fact it can (and often does) systematically privilege the majority nation in certain fundamental ways. All of these decisions can dramatically reduce the ... cultural viability of a national minority, while enhancing that of the majority culture. (p. 233)

The question now arises about where these confused concepts originate. Kuppe (2009) returns to furnish this study with what seems an interesting notion that delineates the social modus operandi of the primary protagonists into two distinct spheres and offers an insight into understanding the root from which this phenomenon springs.

The (social) world is divided into two spheres: public and private. The private sphere is dominated by desires, beliefs and irrationality, while the public sphere is the place for rational procedures for the attainment of defined goals. Culture, just like religion, is assigned to the private sphere, which is dominated by subjective criteria like

aesthetics, faith or impulse force, while public life is based on the rational functions of the social contract of citizens. Modern constitutionalism views the recognition of indigenous cultures as a violation of its principles because by definition culture falls into the private sphere. At the same time, the public sphere is not considered to be an expression of the respective mainstream culture, but rather as an expression of law and order based on rational decision-making. (p. 117)

If it was accepted that nation-states would most likely argue indigenous people's claims originate from the 'private sphere' then they present as the antithesis of 'rational', indeed they could be perceived as violators of everything the majority culture holds to be valid, credible and real. I would argue that in maintaining this narrow view nation-states assume unto themselves an entitlement to dominate, to make decisions, and thereby, to rule. Volmert (2010) addresses the notion of ruling and the consequences it has on the ruled, when offering that,

Rule can be defined as the imposition of one party's will on another with regard to the other's affairs... Rule is a coercive relationship not a voluntary one... Rule is a moral harm because it undermines the individual's ability to live her life as she sees fit, in accordance with her own preferences, desires, and commitments – in short, in accordance with her own will...the same harm is also perpetrated in cases in which rulers act without regard to the interests of the ruled. (p. 54)

In reflecting on the preceding points one is led to suggest that the combination of factors such as preserving the nation-state, maintaining the sovereignty of common law, protecting wealth generation, plus conceptual confusion, compounded by the fiction of homogeneity, cultural bias, and the presumption to rule, creates, what I would argue is, a notional cocktail. I further suggest that it is this cocktail that is promoted and consumed universally within nation-states but presents to indigenous people as a poisoned chalice from which they are expected to imbibe. Given the harmful nature of this brew, I propose that, it is worth celebrating the fact that any vestige of indigeneity and difference remains, albeit

in varying degrees of well-being. The volumes of nation-state statistics indicating indigenous people's over-representation in the deficit range of social indicators – health, education, employment, housing, income, and crime – all bear testament to some form of malaise running rampant throughout these societies.

However, one factor that is yet to be examined, and one that I propose is possibly the most challenging for indigenous groups, is that of 'internalised oppression'. In discussing the situation of the Ainu people resident in the nation-state of Japan, Gayman (2011) picks up on this point, noting that,

Nowadays, passing, in which the Ainu hide their identity, has proceeded to an advanced degree... Coupled with feelings of humiliation and inferiority, lack of solidarity among the Ainu ... has presented a major issue for the progress of the Ainu rights recovery movement. This lack of enthusiasm might derive from the structures of discrimination and 'internalized oppression' (Duran and Duran 1995), the system of welfare colonialism (Siddle 1996), or from divisiveness spurred by federally run policies which pit Ainu against one another (Ponpe Ishii, personal communication, June 26, 2008). (p. 19)

I would suggest that this is evidence of how indigenous groups too can suffer from 'conceptual confusion' particularly where culture and identity are concerned. Gayman (2011) goes on to denounce the Japanese government's role in actively and passively enabling this condition and its failure to counter the effects it has had within Ainu communities, and offers that,

it is these very issues, namely, internalized oppression, empowerment, and physical distance, which are being dragged into perpetuity as the Japanese government hedges Indigenous policy legislation upon the conditions of Ainu solidarity, instead of empowering the Ainu people to recognize the above barriers as obstacles to their own group cohesion. (p. 24)

I propose that a study into the notions of conceptual confusion and internalised oppression presented here by Gayman would avail indigenous peoples with a

greater awareness and ability to consider and address this modern-day phenomenon that informs the worldview of some within their societies.

As if all these weren't enough of an obstacle to indigenous people realising their dreams and aspirations, I present an unrelated development on the international stage that has furnished nation-states with yet another tool that can be, and has been, applied to indigenous people's acts of resistance and claims of self-determination.

#### **4.6 He atirū i te paerangi**

Whilst some indigenous groups still survive in perilous conditions I propose it is appropriate to acknowledge that there have been shifts in the nature of engagement between indigenous peoples and nation-states, some even for the better as can arguably be evidenced by the Australian Government's apology to the 'Stolen Generations' of aboriginal children on the 13<sup>th</sup> February 2008, and the US Congress passing the 1993 Apology Resolution for the overthrow of the Kingdom of Hawai'i one hundred years earlier. However, I would argue that as a direct result of recent events unrelated to indigenous people's struggles a foreboding spectre, that once seemed far off and disconnected from the whole indigenous rights recovery movement, has swooped over the horizon and landed squarely at indigenous people's feet – and it is potentially lethal to all and any who would raise their voices in dissent.

After the violence perpetrated upon the citizens of New York on September 11 2001, many nation-states have taken unto themselves the right to draft and enact radical laws ostensibly designed to protect their citizenry. I have elected here to focus on the four countries with large indigenous populations, and as it happens the same four who were last to sign UNDRIP. The United States of America passed the *Uniting (and) Strengthening America (by) Providing Appropriate Tools Required (to) Intercept (and) Obstruct Terrorism (USA PATRIOT) Act* in 2001 followed by the *Homeland Security Act* in 2002; Canada the *Anti-Terrorism Act* in 2001; Australia the *Anti-Terrorism Act (No.2)* in 2005; and New Zealand the *Terrorism Suppression Act* in 2002 followed by the *Counter-Terrorism Bill* in 2003.



These Acts are a two-edged sword striving to secure protection for the nation but at the expense of their citizens' liberty. The *USA PATRIOT Act 2001* is a case in point in that whilst presenting itself as a tool against terrorist activities it also allows for federal agency intrusions into the lives of its citizens. An online article entitled *10 scary things about the Patriot Act* (Admin, 2011) lists ten provisions within the Act which allow for "expanded access to personal information held by others" (para. 2) such as doctors, banks, schools, or internet providers; "gag rules" (para. 3) applied against those who have supplied your information; "secret searches" (para. 4) of your property, "secret confiscations" (para. 5) of your property, "church and political gathering surveillance" (para. 6) without probable cause, "extended wiretap authority" (para. 7) without probable cause, "roving wiretaps" (para. 8) of any phone or computer a suspect might have access to, "untargeted wiretaps" (para. 9) of computers belonging to universities, libraries and individuals associated with a suspect, "unknowing associations deportations" (para. 10) of non-US citizens legally in the country who have some association with a terror suspect, and "uncharged detention authority" (para. 11) allowing arrest and indefinite detention without being charged with a crime or having access to legal counsel.

Despite some aspects of these laws being direct breaches of generally held human rights, in the afterglow of the horrific nature of the terrors brought to the doors of powerful nation-states, this move towards protection and self-preservation could, I suggest, be seen initially as a reasonable response to external aggression. However, some nation-states have now seen fit to apply these same measures internally against sections of their own populations all the while citing counter-terrorism as justification for doing so. Wakeham (2012) recognises this and contributes, "the expansion of the rhetoric and resources of state 'counterterrorism' in these settler states has been similarly utilized to suppress Indigenous anticolonial activism" (p. 22), meaning that, "Indigenous struggles for justice are evacuated of their particular political content and framed as obstacles to national healing and threats to national security" (p. 22).

Just what this means for indigenous groups within nation-states is potentially disastrous as Wakeham (2012) goes on to point out, stating that,

The implications of terror's connotations for Indigenous self-determination struggles in settler states are profound: when Indigenous anticolonial resistance is spuriously denounced as terrorism, autochthonous nations are denied recourse to the principles of national self-protection and autonomy that European nation-states hold as sacrosanct for themselves. (p. 8)

For evidence that this can happen, and indeed already has happened, one need look no further than nation-states' armed reactions to supposed internally fomented terrorism. Two specific cases are examined, one in Aotearoa/New Zealand and the other in the Canada. In the Aotearoa/New Zealand case, under the guise of the *Suppression of Terrorism Act 2002*, Police conducted,

a series of early morning raids across the country on Indigenous, peace, and environmental activists who allegedly participated in a weapons 'training camp' and were supposedly involved in the planning of future assassinations of New Zealand and US political leaders. (Wakeham, 2012, p. 10)

There were eighteen arrests and much publicity but in the end only two of those arrested were imprisoned – on gun possession and participation in a criminal group charges and not on charges relating to the suppression of terrorism (Ministry for Culture and Heritage, 2012). There is a lot more to tell about this case however it is not the intent of this study to analyse this sad tale any further than to note that it happened and to highlight the potential risks that now exist for those who have cause to protest and resist.

In the case of Canada, in 1990, the Kanien'kehaka people – called Mohawk by their colonisers, resisted the illegal appropriation of land in their ancestral territory known as Kanehsatake, for the development of a golf course and luxury condominiums "upon sacred pine trees and the site of traditional burial grounds. The Kanien'kehaka erected a road blockade to prevent the development" (Wakeham, 2012, p. 14). However a court injunction was secured by local government authorities and one hundred police officers were used to pull down "the blockade and surround the Kanehsatake reserve – actions that resulted in the

death of one police officer” (Wakeham, 2012, p. 14). During a press conference the Canadian Prime Minister of the time, Brian Mulroney, “denounced the Mohawks as a ‘band of terrorists’ while simultaneously issuing his own threat of the potential for ‘loss of life’ if the protesters were to fight back against military force” (Wakeham, 2012, p. 15).

I would argue that these heavy-handed responses on the part of nation-states have resulted in a truly unusual situation. That being, that something once perceived as a wide almost unbridgeable divide between two protagonists, both claiming the right to self-determination, has suddenly been redefined as a fine line, but a fine line, I suggest, between life and death. This situation leaves indigenous groups vulnerable and exposed to escalated incidences of ‘counterterrorism’, which, I would propose, is most likely to come from a nation-state’s need to maintain control whilst responding to a fear-filled citizenry. The threat of counterterrorism action against indigenous groups and others seeking sovereignty, as a tool of control and maintaining the status quo is, I propose, a subject most pressing and real and therefore deserving of further attention and examination.

I would suggest that nation-states and their citizens react in this way because they feel exposed and vulnerable. In a strange twist, it might well be this perceived state of vulnerability that provides an opportunity for indigenous groups to achieve that which they have long sought.

#### **4.7 Hikina te matapōrehu**

Colonising nation-states have a long history of undermining the constructs and systems of indigenous groups. The strategies employed range from assimilation, as in New Zealand, Australia and Canada, to subjugation as in Wales, Ireland and some South American countries. For whatever reason, I argue, they have set a determined course of imposing the architecture of their paradigm upon those who are not of their way of being and doing. The colonising power’s willingness to exploit any advantage their technologies and knowledge can afford them over that of others is, I suggest, primary in their strategies. In doing so they are able to discern deficiencies, weaknesses and vulnerabilities in the ‘other’ upon which they can capitalise. So it is with any contest, that in the pursuit of victory one either seeks out or creates a weakness, a point of vulnerability in the opponent’s

defences. In the main, indigenous people are numerically inferior, a condition, I propose, democracy happily exploits.

Many, such as the hundreds of thousands of urban-dwelling indigenous people, are dislocated from their histories, cultural heritage and traditions, a condition, I propose, national pride and loyalty to the state and its symbols sets out to foster. Such, I contend, is the purpose and function of stirring anthems, solemn pledges of allegiance, and flags. These, I argue, are rallying points for expressions of anti-difference and as such are ever-present indicators of the vulnerability of indigenous groups whose protestations are primarily founded on their points of distinctiveness and difference. That nation-state sponsored notions of anti-difference have been successful and continue to be so are, I would argue, due mainly to numerical superiority and a sense of national cohesion and commonality built around the mythology of their nation's history. In considering JJ's Māori Incorporation it would appear that given the small numbers involved and localised sphere in which they operate, it seems they have an even greater battle ahead of them to be heard, let alone realise their aspirations. How this numerical factor and collective loyalty to a common purpose impacts on this group is explored further in Chapter Six.

Where notable gains have been made by indigenous groups it seems due to them having developed either numerical superiority or loyalty to a collective. These were then used to exploit a detected weakness in their nation-state's structure. For examples of this approach we turn to South America and South-East Asia.

That indigenous groups have capitalised on nation-state vulnerability can perhaps best be evidenced by the dynamism of South American indigenous groups, who also happen to be coca leaf growers, but who organised themselves and their collective strength to achieve a position of authority and decision-making power in their respective nation-states. Warren and Jackson (as cited in Albro, 2005) furnish this study with clarification around the events that occurred in late-twentieth and early twenty-first century Bolivia, and offer the following insights,

Coca growers have articulated their goals with those of the hemisphere's indigenous movements, namely self-determination,

autonomy, recognition of cultural distinctiveness, political restructuring of the state, territorial rights, access to natural resources and greater control over their own local economic development. (p. 438)

Albro (2005) continues to expand on how these events brought about change in the Chapare region by commenting that,

With the early institutional absence of the Bolivian State in the region, agrarian unions became a collective form of local governance responsible for the distribution of land grants, the establishment of boundaries, the building of small-scale public works and the maintenance of the scales of exchange for the market, as well as the management of market outlets for coca and other products produced in Chapare. Subsequent State efforts to isolate the coca growers helped feed a ‘cocalero’<sup>2</sup> militancy, galvanising the internal unity of local unions already so intrinsic to the daily life of the Chapare. This militancy was also encouraged by the arrival of ex-miners to the Chapare in large numbers after 1985, bringing with them their own radical union tradition and long history of resistance to State oppression. (p. 438)

So it would seem that the tactic of exploiting a nation-state’s vulnerability presents itself as a plausible alternate strategy to those that have habitually been used by indigenous groups in the past. Bertrand (2011) joins the discussion and offers another example of indigenous groups capitalising on a nation-state’s vulnerability, and introduces the story of the Cordillerans of the Philippines and the Papuans of Indonesia and focuses on how these two groups were astute enough to take advantage of an economic crisis in Asia that, “led to rapid economic deterioration” (p. 861), and this combined with a “regime weakened under attacks of corruption” (p. 861) provided the opportunity to effect change. However it would appear that in this case there was also a significant element of sustained agitation on the part of the indigenous groups. Bertrand (2011) elaborates on this stating that,

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<sup>2</sup> *cocalero*: a term used to describe the coca leaf growers of Peru and Bolivia

In both cases, accommodations came at a time of state vulnerability. In the Philippines, concessions to Cordillerans was part of the government's strategy to counter the NPA's<sup>3</sup> on-going insurgency. In Indonesia, concessions to Papua were partly driven by attempts to find an overall solution to conflicts in East Timor and Aceh, as well as Papua. Autonomy was part of such a strategy. (p. 865)

I would propose here that picking the right time to prosecute your battles is a strong message that comes through the experiences of these indigenous groups, a point that Bertrand (2011) makes clear and supplements with a warning by stating that,

The cases of the Cordillerans and Papuans show the particular importance of timing, where articulating a position at moments of state weakness can create sufficient momentum to constitutionalize indigenous peoples' rights. When such critical junctures are missed, it becomes more difficult to use sustained international and domestic pressure to produce such gains. (p. 866)

In light of these offerings it would seem that all is not doom and gloom for indigenous groups and that their fortunes can rise and fall dependent on a number of factors, some internal and some external. I would propose here that most significant amongst those factors that can effect change is the capability to discern the best conditions for optimum outcomes, and the capacity to bring them into being. In the current political and legal climate, compounded by the very real threat of counterterrorism responses, I would argue that, the optimum conditions for change do not exist for most indigenous groups. Instead this should perhaps be seen as an articulation of the coloniser's position and in that find encouragement for indigenous groups to look beyond what has always been done and explore options outside these arenas. I propose that nation-states are most vulnerable when their systems are shaken, which allows for the relevance of those systems to be questioned and challenged by indigenous groups.

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<sup>3</sup> *NPA*: New People's Army

#### **4.8 Kia mārama te titiro**

There are messages in all stories. The skill lies in being able to detect and interpret them. It would be too simple to propose that all indigenous peoples use carbon copies of those strategies that have proved successful for one group, in one place, at one time, and in one set of circumstances, in the hope they will bear similar fruit in a different time, space and context. Looking at a seemingly unsolvable problem without availing oneself of the opportunity to examine it from different angles or perspectives, results merely in the perpetuation of the problem. To gain a different and/or new perspective of the situation is, I suggest, tantamount to solving half the problem then and there. Why should the reclamation of indigenous rights only ever be seen as a political or legal issue? Why should indigenous groups allow others to define them, their status and condition? Cronin (2003) recognises this situation and provides an insight into this thinking by offering that,

In order to define their status and the extent of their authority and power, Indigenous groups must look to their cultural values, the traditions, customs, and institutions that constitute the basis of their society. They must also develop practical ways to exercise that authority and power. Indigenous governance must be based on the exercise of authority and power whether it is inherent flowing from culture and tradition or delegated by other levels of Governance. This is the essence of indigenous governance. (p. 161)

Indigenous governance, which I proffer, is a synonym for indigenous people's self-determination, demands certain attitudes and behaviours of those who make claim to it. On the other hand it has the potential to capitalise on an existing weakness in nation-states, which, I would argue, is its inability to perceive that anything other than that which the nation-state promotes could ever have validity or credibility. However, should a group choose to resist this notion and act as a self-determining entity in direct opposition to the nation-state it then forces the state to be reactive instead of normative, a condition, I propose, it is not designed to be, hence a weakness.

In light of the recent global recession I suggest there are other areas of potential weakness that could be monitored by indigenous groups. Areas such as growing unrest due to economic disparity amongst the citizenry, ill-ease at perceived political pandering to big business, a feeling of social inequity between different demographic groupings, and even disputations over true national identity. The key however, is to be proactive and not constantly reactive – one, I suggest, creates opportunity whilst the other manages threat. I suggest this indicates a need for greater examination of what it means to indigenous groups discerning and exploiting vulnerability and of what third space theory can contribute to that examination.

Resistance by its very nature is both opportunity and threat management. In contemplating resistance and the relationship of indigenous groups to land Harjo (as cited in Graham & Wiessner, 2011) expands on this notion by offering that,

Resistance means honouring this relationship, means honouring this life force, and those powers of this earth that feed and inspire us... We resist by continuing to stand up with integrity for what is right... We also resist by writing, singing, making new art; reviving and continuing... traditions, by rewriting law, [and] making new law. (p. 403)

That indigenous groups continue to resist nation-state hegemony and prosecute their various claims is evident. Equally evident, I would argue, is that nation-states are slow to change and are now armed with lethal powers and a preparedness to use them. The manner in which indigenous groups pursue their rights is, I suggest, an area worthy of greater consideration by those groups. However I propose that more important for indigenous groups is to step away from the habit of confronting nation-states within their palaces of power – in the political and legal fora. Here I would encourage the application of the third space lens to discern a location where new perceptions and articulations can arise, and that location, I suggest, is wherever the nation-state is vulnerable. In saying so I offer up the following location as a possible point of vulnerability currently existing in nation-states generally, in their political, economic and conceptual confusion (Debelo, 2011) compounded by their fear of terror. I do not propose



that indigenous groups launch into campaigns of terror against their colonisers nor do I propose they set about trying to re-educate the citizen majority. What I do suggest is that indigenous groups develop their capability to discern those vulnerable points and their capacity to exploit them. One factor that I contend is critical to successfully realising change is that of time, as articulated by Bertrand (2011). Whilst identifying and then exploiting points of vulnerability might seem a reasonably straightforward proposition, I would argue that discerning the optimum time to act makes all the difference.

#### **4.9 He kupu whakahiato**

It would appear that despite battling for forty or more years, and with the exception of a few nation-wide advances made in South America, little change has occurred for indigenous people in advancing their causes. During this period they found visibility on the international stage as part of the post-World War II wider global movement to secure human rights for all peoples (Gayman, 2011; Graham & Wiessner, 2011), even if as an afterthought to labour and environmental concerns. They built cross-border networks with other indigenous groups whose collective representation at the United Nations has seen the adoption of the *Declaration on the Rights of Indigenous Peoples* by all member states. However, the sometimes contradictory nature of text of the Declaration has led to articulations of doubt as to whether it can ever deliver that which indigenous people anticipated (Debelo, 2011; Kariyawasam, 2010).

In the struggle to advance their causes indigenous people promote their ways of being and doing (Cronin, 2003), their tikanga, as a point of difference from those of the nation-state citizenry. They formulate their arguments accordingly when seeking redress through the nation-state's palaces of power – in their legal/political fora. This creates a dichotomy where arguments based on “desires, beliefs and irrationality” (Kuppe, 2009, p. 117) of the private sphere are litigated in the public sphere of “law and order based on rational decision-making” (Kuppe, 2009, p. 117). These bastions of coloniser power and control appear to be maintained through the force of numerical superiority and loyalty to a sense of pride in a constructed national identity based on “hegemonic settler sovereignty” (J. T. Johnson, 2008, p. 47).

Interestingly it has been through achieving momentum via these same forces, namely accruing sufficient numbers and fostering loyalty to a common cause, that indigenous people have achieved some measure of success (Albro, 2005; Chong, 2010). As has been shown in those instances achieving a numerical superiority requires the development of coalitions or networks with other groups affected by their nation-state's ambivalence towards them. It is then understandable how the cross-border collective approach of indigenous people and their networks has realised success at the international level but stumbles once individual groups return to within the borders of their territories within their respective nation-states.

In pursuing their claims indigenous people have to contend with both external and internal forces. They not only confront the nation-state's dedication to wealth-generation and maintenance of power (Debelo, 2011) but also with internalised oppression (Gayman, 2011) within the ranks of their membership. This cultural confusion undermines the very cultural integrity that, for indigenous groups, forms their point of commonality (Ahdar, 2003; Cronin, 2003; Graham & Wiessner, 2011; Kuppe, 2009).

As has been articulated in this chapter pressing claims for indigenous rights can be a risky even perilous venture with some nation-states treating their indigenous populations with greater suspicion in the wake of recent acts of terror (Wakeham, 2012). By applying the third space lens to this specific situation I propose that this fear of terrorism compounded by conceptual confusion, cultural bias, and an increased loss of liberties for the wider citizenry presents as a vulnerability in the structure of nation-states.

Bertrand (2011) points out the importance of identifying vulnerability and the optimum time to capitalise on them. This offers indigenous groups a new enunciation of their situation and potentially creates opportunity for determining new ways of acting and prosecuting their causes. I suggest here that this is in essence reflective of the how JJ's Māori Incorporation perceives their situation and how it has informed their actions. JJ and his group hold up their tikanga, their indigeneity and their sovereignty as the foundation for their being and doing. They are part of a nation-wide collective drawn together by their commonly held worldviews, values and beliefs. They reject the opportunity to engage in nation-

state sponsored political/legal processes such as the Waitangi Tribunal to press their claims. Instead they operate as if they are indeed lords and masters in the territory of their ancestors. Just how they arrived at these determinations is explored in-depth in Chapter Six but how they developed these perceptions is, I argue, a reflection of third space theory in action.

## **5.0 CHAPTER FIVE – THIRD SPACE**

Tuma te mirimiri, tō kai i mihi mai;  
Tīkape te manga, tō kai i rongoā.  
(Taitoko, 1997b, p. 1)

### **5.1 He kupu whakataki**

This chapter sets out to present a number of articulations about what third space is, why it is relevant to a study of this nature, how it is applied, and what relationship it has to tikanga, sovereignty, and indigeneity. This chapter also informs on the relationship third space has to JJ's Māori Incorporation, positing its ways of being and doing as examples of third space in action. In doing so it is anticipated that new understandings can be enunciated about how through third space theory tikanga can be recognised as a transformative agent to develop valid and credible responses to address contemporary issues.

Although this study rejected Kaupapa Māori theory as the ideal platform for its examination of this kaupapa, I would suggest, it is worthwhile in a separate study to look at both Kaupapa Māori theory and the notion of third space, using the third space lens, to see what 'new' enunciations can be made about that relationship. Are they reflective of each other or is one the transformative agent of the other? Knowing the answers to these questions could possibly lead to the extension or growth of either one or both.

In an effort to present a cohesive discussion about tikanga, sovereignty, indigeneity and third space it is important to grasp what third space theory proposes. Tikanga, sovereignty and indigeneity have already been examined in this study and during this chapter there will be regular references made to the main aspects articulated in the preceding chapters. A deliberate attempt is made in the following discussion to apply the notion of third space theory by interrupting processes, interrogating situations and enunciating new perceptions.

### **5.2 Tuma te mirimiri**

Why third space theory and not post-colonial theory? As has been alluded to in Chapter One of this study, post-colonial theory was initially perceived as being

the best positioned theory to address a study of this nature. Eventually that perception changed and an alternative was sought as it became apparent to me that although post-colonial theory has a contribution to make, I maintain that “it struggled to move beyond reinforcing already existing diametrically opposed positions” (Chapter One, p.2).

However I confess that my greatest difficulty with post-colonial theory lies in its positioning within the Western paradigm. Gandhi (1998) recognises this and introduces another aspect of what might limit its usefulness when she offers that, “Postcolonial theory principally addresses the needs of the Western academy” (p. ix).

Since I shy away from wishing to be seen as colluding with the Western academy any more than I am now, doubts formed in my mind as to the efficacy of post-colonial theory and its appropriateness for this study. It is this Western paradigm positioning, I would argue, that not only hinders post-colonialism’s suitability but ultimately disqualifies it from being able to encompass and consider two specific notions critical to this study, those of culture and identity. Again Gandhi (1998) recognises this and contributes that, “What postcolonialism fails to recognise is that what counts as ‘marginal’ in relation to the west has often been central and foundational in the non-West” (p. ix).

I interpret what counts as ‘marginal’ as a reference to culture, identity, worldviews, principles, beliefs, values and aspirations. The suitability of post-colonial theory is further challenged by Ashcroft, Griffiths and Tiffin (as cited in Meredith, 1998) who offer that, “In postcolonial discourse, the notion that any culture or identity is pure and essential is disputable” (p. 2).

It is not the intention of this study to argue the points of purity and essentialism of culture but it does argue that culture, in the context of tikanga, is fundamental to this study.

N. Mahuika (2011) recounts his initial introduction to post-colonialism and what he perceived as its strength when he identifies it as, “an approach that sought to destabilize the ‘centre’ by writing back against the grain” (p. 18). He goes on to

articulate two aspects of post-colonialism; one that he perceives as having merit, the other as a failing.

On the one hand, it has provided a highly useful way of thinking about problems within colonial encounter, while on the other it has been critiqued for its failure to accentuate the obvious continuation of colonialism within our contemporary context. (N. Mahuika, 2011, p. 18)

This study does not propose to engage in any debate surrounding whether or not colonisation continues in the present-day and is only interested in post-colonialism for what it can offer to the process of examining tikanga, sovereignty, indigenous peoples and the kaupapa of JJ's Māori Incorporation.

I contend then that it is because of the notions contained in the articulations presented above that post-colonial theory is limited in what it can bring to this study and for those reasons was set aside. However before departing from post-colonialism I feel compelled to acknowledge it for what it has contributed to this study. I gladly confess that it was during my research of post-colonial theory that the bulk of information concerning the notions of hybridity and third space came into view.

### **5.3 Tikape te mānga**

Third space theory has often been mentioned throughout this study and aspects of it briefly described in the preceding chapters. As has been mentioned in those chapters the notion of third space has its origins in the notion of hybridity, which itself originates from post-colonialism (Meredith, 1998). I would argue that it is worthwhile taking the time to consider articulations of third space made by those much more familiar than I with this theory. In doing so I suggest that a better picture can be gained about what it is and what makes it critically different from post-colonialism. To do that though first the notion of hybridity should be examined. To do this I propose that the following rather lengthy passage from Meredith (1998) summarises a lot of what is said about hybridity.

Bhabha has developed his concept of hybridity from literary and cultural theory to describe the construction of culture and identity

within conditions of colonial antagonism and inequity (Bhabha 1994; Bhabha 1996). For Bhabha, hybridity is the process by which the colonial governing authority undertakes to translate the identity of the colonised (the Other) within a singular universal framework, but then fails producing something familiar but new (Papastergiadis 1997). Bhabha contends that a new hybrid identity or subject-position emerges from the interweaving of elements of the coloniser and the colonised challenging the validity and authenticity of any essentialist cultural identity. Hybridity is positioned as antidote to essentialism, or “the belief in variable and fixed properties which define the ‘whatness’ of a given entity (Fuss, 1991: xi)”. (p. 2)

How do these articulations sit with JJ’s Māori Incorporation? I propose that, as will be seen in the following chapter, the kaupapa of JJ’s Māori Incorporation is a construct born out of culture and identity during a time of “colonial antagonism and inequity” (Meredith, 1998, p. 2). There are other similarities inasmuch as the entity itself is arguably the result of ‘the interweaving of elements of the coloniser and the colonised’ ultimately creating a separate being that exhibits aspects of both the coloniser and the colonised and yet struggles to find recognition and acceptance by either. This too is examined in Chapter Six.

It appears that the notion of hybridity is not without its detractors and Meredith (1998) offers an insight into some of those articulations.

The history of hybridity has caused some to consider the employment of the concept as problematic, indeed, offensive (Mitchell 1997; Werbner 1997). In colonial discourse, hybridity is a term of abuse for those who are products of miscegenation, mixed-breeds. It is imbued in nineteenth-century eugenistic and scientific-racist thought (Young 1995). (p. 2)

I would argue here that the above criticisms of hybridity seem to be based on perceiving race or ethnic origins as the sole determiners of identity. I would further argue that it is this perception that sets hybridity apart from the notion of third space. As Meredith (1998) has noted, Bhabha (1994, 1996) sees hybridity as a descriptive process that allows for new identity and cultural constructs to

develop. I contend that Papastergiadis' (as cited in Meredith, 1998, p. 2) comments imply that when this construction is carried out by the coloniser the result is less different than it is repackaged. The contribution that Fuss (as cited in Meredith, 1998, p. 2) makes is interesting inasmuch as it argues that hybridity allows for the emergence of a new identity to occur through the interweaving of elements from both sides. These three points do not make any mention or implication of race or ethnic origin but do address notions of culture and identity and it is this difference, I would argue, that leads to third space.

Here is another example of how JJ's Māori Incorporation is arguably a result of hybridity and of third space in action. Its origins and its ways of being and doing are founded on culture and identity. Race and ethnic origin hold no sway and as will be seen later his group, although working in the first instance for whānau and hapū interests, is capable and contemplative of all peoples of the world.

It seems that all this so far does little more than realign already fixed positions of seeing or perceiving the self of either the coloniser or colonised. However, a difference I propose with third space theory is that it recognises the locations of those positions and then virtually ignores them instead seeking out an alternative space between the two locations. This situation is, I suggest, something akin to creating initiatives to go around an obstacle instead of expending energy and resources tackling it head-on.

This notion would seem to be supported by Meredith (1998) who claims that, "the third space is a mode of articulation, a way of describing a productive, and not merely reflective, space that engenders new possibility" (p. 3).

J. T. Johnson (2008) contributes to the locative discussion by noting that,

Bhabha's work only implies using thirdspace to describe a politics of place. I see thirdspace more as Butz and Ripmeester describe it, as a 'descriptor for particular spaces that have been produced from particular types of discourses and social interactions'. (p. 45)

Hoogvelt (as cited in Meredith, 1998) offers that,



In fact the concept of hybridity occupies a central place in postcolonial discourse. It is “celebrated and privileged as a kind of superior cultural intelligence owing to the advantage of in-betweenness, the straddling of two cultures and the consequent ability to negotiate the difference” (Hoogvelt 1997: 158). (p. 2)

Meredith (1998) returns to furnish this study with another articulation of his interpretation of how Bhabha perceives the nature of third space, commenting that “For Bhabha it is the indeterminate spaces in-between subject-positions that are lauded as the locale of the disruption and displacement of hegemonic colonial narratives of cultural structures and practices (Bhabha 1994; Bhabha 1996)” (p. 2).

I propose that from the preceding insights provided by various commentators a number of commonalities can be deduced. Third space is aware of current opposing positions. Third space can be located anywhere within the void that separates those two known and fixed positions. Third space, as an “antidote to essentialism” (Meredith, 1998, p. 2), is well positioned to consider matters relating to culture and identity. Third space is a site where a process occurs to produce something new and not merely a repackaging of the old. The process that occurs in the third space is interruptive, interrogative and enunciative.

Just what is meant by interruptive, interrogative and enunciative and to what extent is, I would suggest, at the discretion of the instigator of the process. The argument I make here is that the extent to which one goes towards actioning the three parts of the interrupt, interrogate and enunciate process is dictated by the measure of importance it has to the instigator. I suggest though that this should not be confused with the basic ‘rethink and innovate’ process that arguably only delivers the same rhetoric in a creative and as yet unanticipated way. The actions of terrorists are, I suggest, examples of the ‘rethink and innovate’ process inasmuch as the same positions of opposing sides are maintained, as are their messages to each other but delivered in a repackaged form. This behaviour, I contend, is not third space in action it is merely reinforcing the status quo.

#### 5.4 Third space in action

Who instigates the third space process? I propose that colonisers cannot as this would bring into contention the notion of power and its holders. Maintaining power and the status quo, I argue, precludes the coloniser from contemplating shifting their position. I also suggest that those who recognise their colonised condition are the only ones who will also recognise the need to instigate the process. I propose that they simply have nothing to lose and potentially everything to gain. I further propose that the present-day situation that indigenous groups, including Māori, find themselves surviving in sees them authorised to instigate this process as a means of gaining new perspectives and insights into their specific situations, and using those new insights to advance their causes.

J. T. Johnson (2008) provides this study with another insight that speaks to the effects of indigenous groups engaging in this process.

By reading the landscape for evidence of the exercise of indigenous self-determination, it is possible to glimpse places outside of the hegemonic control of the settler-state. These landscapes lie somewhere between the settler and colonized, creating thirdspaces, holes in the fabric of the state that sit outside of this binary relationship. (p. 31)

J. T. Johnson (2008) continues and articulates what he perceives has brought about this need to glimpse the landscape offering that, “As indigenous populations have been forced toward the edge of the state, they have been forced to reassert their cultural values in order to fundamentally reinvent the relationship between colonizer and colonized” (p. 29).

In the Aotearoa/New Zealand context tino rangatiratanga has for many years been the catch phrase on the lips of many who struggle to ‘reinvent the relationship’ with the state. The following commentators discuss tino rangatiratanga and even challenge its existence. However another accepts that it exists in more than the minds of those who seek it and locates it in a landscape.

As Augie Fleras and Paul Spoonley observe in Reading Aotearoa, ‘Only the exercise of tino rangatiratanga [indigenous self-

determination] provides tangible evidence of its existence'. This exercise of indigenous self-determination does not occur in metaphoric "sites of resistance" but in, as Donald Moore states, "a politics of place 'on the ground'. (as cited in J. T. Johnson, 2008, p. 31)

Butz and Ripmeester (as cited in J. T. Johnson, 2008) offer an opinion on the advantages that engaging in this process can bring to those who instigate it by offering that, "a third space sensibility can allow the radically disempowered to discursively reconstruct actual spaces in ways that allow them to engage more productively in directly oppositional resistance" (p. 45).

If third space allows for the articulation of new perceptions on culture and identity then I argue that tikanga finds a place in this discussion. I have earlier used the pōwhiri process and hongi as examples of tikanga that, I argue, are acting in a way reflective of the third space process. I further propose that the links that tikanga has with third space occur at a number of levels. Short of suggesting that tikanga is third space in action I would argue that its very nature makes it a transformative agent that naturally occupies the third space.

### **5.5 He kupu whakahiato**

In part tikanga is a perception, a product of a society's worldview, incorporating its principles, values and beliefs and third space is about articulating perceptions from the perspective of the instigator. In part tikanga is also an action, a physical manifestation of those perceptions and third space is about being a productive and not merely reflective space. The organic and evolving nature of tikanga positions it as able to respond to change whilst third space is all about identifying opportunities to effect change. The collective practice of tikanga gives its society a sense of assuredness and security which, I would argue, also happens in the third space by privileging a society's worldview, principles, values and beliefs within the articulation process. Tikanga exists to maintain a balance between two worlds whilst third space strives to radically redefine the fulcrum upon which the balance between two positions is centred. Tikanga requires that any actions taken are tika and pono which serves to validate and give credibility to those actions and ways of thinking. I propose that although third space makes no such requirement it

provides the space where the worldviews, principles, values, beliefs and actions can be validated and seen as credible. For these preceding reasons I contend that both tikanga and third space are about being and doing.

Like tikanga, I would argue that sovereignty is naturally positioned as a transformative agent in the third space. Just like tikanga, sovereignty is an expression of a society's self-perception, a perception stored at the heart of a society as a sacred contract with past, present and future generations and third space privileges that perception. Acting in a sovereign manner acclaims a society as possessing sovereignty, which again third space privileges. Societies that require neither nationhood nor statehood can still be sovereign, which, I would argue, is a notion that is valid and credible within the third space. I propose that sovereignty, just like tikanga and third space, is about being and doing.

Indigenous groups, I suggest, are the physical transformative agents, the instigators and the enactors. The connection between indigenous groups and third space is more akin to that of consumer and service provider. Indigenous groups are most likely to be the instigators of the third space process. They will be the ones to populate that third space with their own perceptions, worldviews, values and beliefs and determine subsequent actions. Whilst indigenous groups have similar stories they also have differing contexts and third space does not filter or censor those perceptions but accommodates all as provided by the instigators. Indigenous groups who engage in the third space process generally force the coloniser to be reactive and potentially this creates nation-state vulnerability.

Third space offers an alternative site of engagement for indigenous groups and their colonisers, thereby avoiding the palaces of coloniser power. Indigenous groups live with the threat of counterterrorism and whilst third space offers no physical safe haven it actively encourages 'new' enunciations that could serve to defuse any perceived terror threat and thereby mitigate any response of force from the coloniser. Indigenous groups need to develop their capability to discern vulnerability and their capacity to exploit those vulnerable points, and third space offers a forum for that development to be addressed and planned for. I propose then that indigeneity, just like sovereignty, tikanga and third space is about being and doing.

I would propose that to a large degree JJ's Māori Incorporation is an example of the practical application of third space theory. As will be seen in the following chapter they challenge dominant perceptions of history and enunciate 'new' perceptions. They are founded on tikanga and sacred pacts which influence their perceptions of themselves and their location in the New Zealand legal/political landscape. JJ's Māori Incorporation articulates 'new' perceptions relating to a number of historical situations and challenges the authority of New Zealand governments to govern. They embrace te ao wairua in their ways of being and doing, which influences their worldview. They claim legitimacy based on international agreements, which sees them position themselves in a space outside of the current tino rangatiratanga versus settler-hegemony discourse. JJ's Māori Incorporation accepts the principle of kaitiakitanga and the mutual protection of all people, places and resources, which I would argue is an inclusive and collectivist approach and not exclusive and individualistic. JJ's Māori Incorporation takes a clear and controversial position when they enunciate that Māori have failed to live up to certain agreements. They assert that the native title to land is unextinguished and dismiss the fiction of negotiating settlements with the New Zealand Crown. Māori Incorporations such as JJ's have identified what they believe to be present-day points of vulnerability and strive to capitalise on those perceived weaknesses. All of the above, I propose, has either occurred in, or because of, the notion of the third space.

## 6.0 CHAPTER SIX – MĀORI INCORPORATIONS

Ko te tāhuhu he hīnau,  
He okiokinga tikanga;  
He ōhākī nō ngā tūpuna,  
Kia kaha, kia māia, tū rangatira.  
(Taitoko & Waitai, 2004, p. 1)

### 6.1 He kupu whakataki

This chapter sets out to present a number of articulations about what Māori Incorporations are, and introduces the different notions of ture-Māori Incorporations and tikanga-Māori Incorporations, terms I have constructed in the process of this study to differentiate between the two types of Māori Incorporation. What are Māori Incorporations, what underpins them, and how are tikanga-Māori Incorporations positioned in relation to contemporary issues, are some questions addressed in this chapter. In doing so it is anticipated that new understandings can be enunciated about how tikanga-Māori Incorporations, such as JJ's, are representative of third space theory in action and therefore perceived as offering a new perspective on being and doing that addresses issues confronting present-day indigenous groups and others seeking freedom and sovereignty.

It must be stated here that many of the entities and structures addressed in this chapter relating to JJ's tikanga-Māori Incorporation no longer operate, or do so in diminished numbers and capacity. The reasons for this demise are addressed in JJ's articulations, however it is the worldview, philosophical underpinning, principles, beliefs, values, aspirations, and ways of being and doing of this group that are of primary interest to this study. From JJ's perspective the kaupapa still lives even if the physical representations do not and that is how his narratives are presented.

If avenues exist that can lead to empowering and enabling the disenfranchised to reclaim and assert their mana then, I contend that, these are worthy of exploration. If these paths to restoration already exist within the cultural heritage of whānau, hapū and iwi, as well as the cultural legacies of our ancestors, I propose that, these should be the first to be sought out, examined, and tested. It is perhaps wisest

then to accept that for the most part the destiny of whānau, hapū, and iwi lies in their hands. As mentioned previously this sentiment is an echoing of that articulated earlier by Rangihau (1987). The challenge, I suggest, is to mauria te taki and do the best that we can with the resources available and, I would further argue that, the most critical of resources is knowledge. I propose here that if the answer lies within, then why look without? Pātaihia ngā pou o tō whare. Ākuni, ko reira te whakaeanga ake o te take.

The kaupapa of tikanga-Māori Incorporations is arguably a candidate for consideration as a home-grown tikanga-based response addressing matters of sovereignty and indigenous freedom. It is founded on sacred agreements made in the nineteenth century and expressly sets out to enact and enable the tenets articulated in those agreements, namely guaranteed sovereign independence of Māori and the protection of that sovereignty by the British Crown. The structures and processes created by this kaupapa are reflective of tikanga at local, regional and national levels and all work towards maintaining the mana of those early signatories to those sacred agreements.

Some, maybe a lot, of what is presented in this chapter will be met with suspicion or doubt, or even incredulity. However, that the kaupapa of tikanga-Māori Incorporations did, and in some places still do, exist and operate is evidenced by documents I possess bearing the signatures of tangata past and present as well as the official marks of some of the entities mentioned herein. I can personally attest that I have attended a number of tikanga-Māori Incorporation hui and on one occasion have met and spoken with the man that all sources reviewed credit as being its founder.

## **6.2 Te tikanga me te ture**

Purely for the purposes of facilitating ease of differentiating two types of Māori Incorporation I have taken the liberty to refer to one type as ture-Māori Incorporation and the other as tikanga-Māori Incorporation. Those referred to as ture-Māori Incorporations are by far the most common and draw their authority from New Zealand legislation. Tikanga-Māori Incorporations are much fewer in number and draw their authority from their sovereign whānau/hapū status. Despite this difference both types of Māori Incorporation being discussed in this

study have their genesis in New Zealand legislation, namely *Te Ture Whenua Māori 1993 / Māori Land Act 1993*. In section 2(2) the Interpretation of the Act states that,

it is the intention of Parliament that powers, duties, and discretions conferred by this Act shall be exercised, as far as possible, in a manner that facilitates and promotes the retention, use, development, and control of Maori land as taonga tuku iho by Maori owners, their whanau, their hapu, and their descendants, and that protects wahi tapu. (Te Ture Whenua Māori 1993, p. 18)

Accordingly this Act mainly deals with matters concerning whenua Māori, including the Māori Land Court and the Māori Appellate Court. It also allows for the constituting of five different types of Māori Land Court trusts, as well as Māori Reservations and Māori Incorporations. According to Te Puni Kōkiri (TPK) (2011c) the five types of trust include: “Ahu Whenua Trusts... a land administration trust designed to manage whole blocks of Māori freehold land” (para.22) most of which are run as commercial enterprises mainly farming. “Whenua Tōpū Trusts... designed to manage land belonging to an iwi or hapū” (para.29) and share similar features with Ahu Whenua Trusts. “Kaitiaki Trusts are designed to protect minors or persons under disability who are unable to manage their affairs” (para.32). “Whānau Trusts are designed to hold and manage beneficial interests or shares in Māori land or general land owned by Māori” (para. 33) allowing “whānau members to bring together all of their interests or shares in land for the benefit or advancement of the whānau and the descendents [sic] of the tipuna (either living or deceased) named in the trust order” (para.34). “Pūtea Trusts... designed to deal with uneconomical smaller share interests within a block or within various blocks” (para.37).

As for Māori Reservations, TPK informs us that they are, “a very common land holding structure... (2011b, para. 1)... Typically over land that is culturally, spiritually, or historically significant to Māori” (2011b, para. 3).

Māori Incorporations established under the above Act are constituted by the Māori Land Court and can cover “one or more blocks of Māori freehold land provided that at least one of the blocks has more than two owners” (TPK, 2011a,



para. 1). They have the powers to act as a body corporate and those powers, “are set out in the order of incorporation, constitution and the Te Ture Whenua Māori Act 1993” (para. 2). According to Tanira Kingi (2012), in 2008 there were 129 of these ture-Māori Incorporations and 5,201 Ahu Whenua Trusts, covering just over fifty per cent of all whenua Māori. These I refer to as ture-Māori Incorporations.

Māori Incorporations then are structures based on land ownership or shareholding since only Māori land owners and/or shareholders can apply to the Māori Land Court for registration as a Māori Incorporation. Despite the seemingly benign nature of the aforementioned entities they are nonetheless processes, structures and systems born out of the coloniser’s political/legal context. By their very nature they bind the owners to a structure and process not necessarily representative of their own cultural heritage and customary practices, or tikanga.

There is however a tikanga-based kaupapa that has stepped onto the Māori Incorporation stage and countless personal communications with JJ indicate to me that he firmly believes it has the potential to see the rise of whānau and hapū as the primary authorities in matters relating to resource management and local, regional and national governance. Interestingly this ‘new’ kaupapa also has its roots in the establishment and practice of ture-Māori Incorporations constituted under the *Ture Whenua Māori 1993 / Māori Land Act 1993*. These tikanga-Māori Incorporations are also based on Māori land ownership and/or shareholding. The land owners and/or shareholders also apply for registration to become Māori Incorporations but not to the Māori Land Court. Instead they apply to another authority they believe supersedes the coloniser institution of the Māori Land Court – they apply to the Parliament at Waitangi. These I refer to as tikanga-Māori Incorporations.

Conversations with JJ and others suggest that changes made to the rules and regulations in Part 13 of the Act have opened the door for whānau/hapū to now establish what I have termed tikanga-Māori Incorporations without having to seek constitution through an order from the Māori Land Court. Instead, these tikanga-Māori Incorporations organise themselves under tikanga Māori, namely through their sovereign status as whānau/hapū with long established ties to specific geographical locations. There can be many tikanga-Māori Incorporations in a

single region and representatives from the various local whānau and hapū tikanga-Māori Incorporations make-up a regional governing collective whose boundaries follow those traditionally acknowledged territorial lines of rohe waka tupuna. Indeed, as JJ informs, these regional governing bodies, which number ten across the country, all take their names from waka tupuna, i.e. Tainui, Te Arawa, Aotea, Mataatua, Tokomaru, Mamari, Horouta, Ngā Toki-mata-whaorua, Kurahaupō, and Tākitimu. These regional waka bodies in turn affiliate to a national body known as the Parliament at Waitangi, with representatives from the regional waka bodies making up the majority of members sitting in that Parliament. The structures, systems and processes of these three bodies will be examined in greater detail later in this chapter.

It appears that it is this affiliation of tikanga-Māori Incorporations to the regional waka body and thence to the Parliament at Waitangi that endorses their right to act as sovereign entities in their own right, within their own rohe. More interesting is JJ's assertion that this kaupapa has the potential to effect nation-wide even international change for all oppressed and disenfranchised people. His reasons for believing so were articulated in our interviews.

### **6.3 He uiui**

As mentioned in Chapter One a series of three one-on-one interviews were held with a cousin of mine, JJ, who is the Chairman of the aforementioned tikanga-Māori Incorporation and of the Tainui waka body. For some time JJ has been encouraging me to use my research and teaching skills to develop information and education programmes about the kaupapa of tikanga-Māori Incorporations. It seemed appropriate then that when the opportunity arose for such information to be collated through this thesis that he be involved as a primary contributor of the articulations on what this new kaupapa is all about. I was grateful not only for the opportunity to share time and kōrero with him but also to be able to provide him with a structured and reviewable process such as this study in which he could invest his knowledge. That we are cousins is one connection. That we are members of the same tikanga-Māori Incorporation is another. That we are both participants in this study is yet another. However, that the interview process was

done in a tika and pono manner was paramount and served to reinforce those existing relationships where both parties were trusting and trusted.

I propose that having only one informant to participate in the interview should not be seen as a weakness in the process but rather that it should be celebrated for who that one person was and the quality of information he brought to the study. Despite others having been given the opportunity to participate only JJ felt comfortable enough to do so and even then with some trepidation. JJ's main concern was that in discussing this kaupapa he would likely need to address some matters concerning te ao wairua that he was not willing to reveal or engage in discussion about at this point in time. Therefore a clear set of boundaries on topics to be discussed, supported by specific guarantees around processes and procedures were put in place before the first interview commenced.

Principal amongst these guarantees was the right of review of the recorded interviews and transcripts and the option to alter, amend, or veto anything at JJ's discretion. Equally important was the removal of any content that might identify the interviewee and any other individuals mentioned (excepting public figures), or the tikanga-Māori Incorporation itself, and any location names that might lead to the identification of any or all of the preceding. For these reasons no real names, whether of people, places or entities connected to JJ, are used and where necessary the names have been replaced with two-letter codes, i.e. JJ. The reasons for these tight conditions were not interrogated; they were simply accepted as the absolute right of the knowledge holder. After all, I would argue that, in these situations it is the knowledge seeker who has the greater need. In engaging in this study I deliberately set out to privilege JJ's unfettered voice by incorporating Kaupapa Māori theory to provide, "a platform from which Māori are striving to articulate their own reality and experience, their own personal truth as an alternative to the homogenization and silence that is required of them within mainstream New Zealand society" (R. Mahuika, 2008, p. 4).

The information provided by JJ covers a wide range of topics that he believes are all interconnected. JJ tells a compelling story and I have treated these offerings in the same vein as I would the narratives of oral tradition, by listening to the story and seeking out the messages within, whilst not becoming distracted by, or

engrossed in, the decorative detail. His offerings are representative of Marsden's (1992) articulations on how perceptions are patterned into conceptualisations of what reality is and "of what is to be regarded as actual, probable, possible or impossible" (p. 3) and accordingly form JJ's worldview.

Through the conversations with JJ a number of questions have been left unanswered that, I argue, are critical to ever seeing the cause of tikanga-Māori Incorporations advanced. These include accessing and reviewing some obscure documents identified by JJ relating to his understanding of the early and present-day relationship between Māori and the British Crown, and an examination of the consequences of such discovery, whether proving his position or not.

The topics are presented here categorised in prominent and/or often recurring themes. These cover the influence of the founder of the tikanga-Māori Incorporation kaupapa, who is hereafter referred to as NP; JJ's understanding of the historical and present-day relationship between Māori and the British Crown; the establishment and functioning of tikanga-Māori Incorporations and the Parliament at Waitangi; JJ's assertions regarding constitutional matters affecting the New Zealand Government; the role and influence of te ao wairua on the preceding; and matters influencing future outcomes for whānau, hapū and others seeking relief from their present condition.

#### **6.4 Ko te tāhuhu he hīnau**

I would suggest that critical to understanding what initially led JJ to become involved in establishing and leading a tikanga-Māori Incorporation is first exploring the nature of the man JJ credits as being his inspiration. That man was NP.

According to JJ, NP studied law in New Zealand but after refusing to give his oath of allegiance he was sent back home by his grandfather. After a while this same grandfather sent NP to study law in England. After five years of study and a further three years gaining experience in international settings, NP's studies were completed. JJ offers up that at this point in the 1990s NP's thoughts turned towards home and helping all whānau, hapū and iwi. When queried about exactly what it was that NP had to do, JJ offered the following response,

He had to teach us about our rights, our powers, our privileges, [our] sovereign rights and how [these] can be achieved... Like I said, [NP was] the most intelligent man I've ever met ... and he was the most humble, humble man I've ever met too.

When JJ was asked how it came about that he became involved with NP and this kaupapa he replied,

There was a whānau hui to do with Waitangi Tribunal claims and one of the relations informed me of someone he had met, a little Ngā Puhī man. He spoke about this little man's aims and visions and all those things, and obligations and duties and responsibilities, and what it [all] encompassed.

It would appear that whatever JJ's relative had said to him was enough to convince him to go and meet with NP and in the following JJ articulates the influence of te ao wairua upon him; an influence that seems to inform his worldview and is present in many of his narratives.

I was going on my way up to Waitangi to meet this man... as we drove along ... a white rainbow appeared on my side where I was sitting... a pure white rainbow. It's the first time I've seen one. It followed me for about three miles and I knew this man I was going to meet was a spiritual man.

[NP] had spiritual knowledge but he never ever said anything to the people about it. See that was what those white signs were from.

You see [NP] is a spiritual man. He had to be to know where he was going in his future and to do all those things he had to do. It was all for the Māori people and nothing for him. He ended up a poor, destitute man. One arm he [could] just hold a cup with a strap around, the other arm was completely useless, [and] both his legs cut off above the knee. He had nothing in his life [but was] very clever.

According to JJ, through NP's training in England and his experiences in the international arena he had acquired specific knowledge he believed could benefit

whānau, hapū and iwi. As will be evident in the articulations presented in this chapter, the arrival of NP's knowledge on the New Zealand sovereignty scene created a third space where existing process were interrupted, long-established situations interrogated and new understandings of being and doing enunciated. When asked about this new knowledge JJ turns to look back into history to provide an insight into the notions that underpin this movement.

### **6.5 He okiokinga tikanga**

This study has so far deliberately set out to avoid any type of chronological examination of events. However given the nature of the topic of this chapter I deem it is necessary to do exactly that. JJ, in my estimation, is a font of knowledge and has an amazing capacity for memory recall when it comes to discussing this kaupapa. Although not directly asked what underpins the kaupapa JJ's responses in other areas seem to provide an inkling of an answer. It would appear that during his time of study in England NP had the opportunity to access papers and records of the early nineteenth century, in particular papers relating to the Māori people, Nu Tirenī/New Zealand, the Privy Council and the British Colonial Office. JJ comments that,

[NP] saw all the [pre-Declaration] letters written by the Ngā Puhi chiefs and the tohunga asking the King if he would take their lands and protect it forever, and if he will protect the Māori people as an infant state, or as was written, 'i tō mātou tamarikitanga', and he could protect the laws of the Māori people and their mana.

It wasn't until 1820 when Hongi Hika and all those chief[s] in Ngā Puhi and the tohunga, actually went to see the King in person and presented the last pieces of papers for him to accept all the land and taonga of this country and to become the protector and trustee of everything that belongs to Māori – their language, their laws, their land, ngā mea tuku iho katoa.

When queried about what the possible significance of these pre-Declaration and pre-Treaty period letters and papers might be JJ is adamant that it is about,

“protection over Māori people, their mana, and their sovereignty. Protection is what it’s all about”.

JJ then goes on to link the above with the more well-known events of the time in this period of the relationship between Māori and the British Crown.

The chiefs, the Whakaminenga o ngā Hapū o Nu Tireni, began to sit down and work out a plan and that plan eventuated in 1835 with the Declaration of the Independence of New Zealand.

The Declaration of Independence was solely a protection mechanism that was granted to King William IV through his House of Lords and the Privy Council at the Parliament of Westminster. They never gave him occupation rights or anything of that sort except to be the Protector.

The story of *He Whakaputanga o te Rangatiratanga o Nu Tireni 1835* has been well documented elsewhere (Cox, 1993; Durie, 1998; Orange, 1987, 2004) and will not be dealt with here except to locate it within the context of this study. The notions of guaranteed sovereign independence and protectorship feature often in JJ’s narratives and appear to be fundamental to tikanga-Māori Incorporations. To this end JJ refers to the *Standing Orders in Council 1836* which he sees as being evidence of the British Crown’s commitment to act as Protector for Māori. This perception seems to be based on an extract from a communication between the British Colonial Office and the Governor of New South Wales, Major-General Richard Bourke, indicating certain understandings between Māori and the British Crown regarding mutual protection (The British Crown’s Feudal (Protectorate) Title of New Zealand, 1836).

According to JJ, this guarantee of sovereign independence and commitment to protectorship did not automatically transfer to Queen Victoria on the passing of her uncle King William IV in 1837. He asserts that,

The first thing that Queen Victoria had to do was come and do a treaty with the Māori. It was her wish to do the treaty, not Māori, only because King William was no longer able to offer that protection over Māori people, their mana, and their sovereignty. So

Queen Victoria required [the] Treaty of Waitangi to fulfil that part of the agreement, so she would be the Protector for her lifetime of the same things that [were] in the Declaration, which is tino rangatiratanga, the unextinguished native title, [and] tikanga Māori laws.

This then presents a picture of how JJ and tikanga-Māori Incorporations perceive the importance of the *Declaration of the Independence of New Zealand 1835* and the *Standing Orders in Council 1836*, as a recognised statement of the sovereign and independent status of Māori under the protectorship of the British Crown. He also offers an insight into how he perceives the role of the *Tiriti o Waitangi 1840* and provides explanations as to why the British Crown would want to enter into such an arrangement as a treaty with Māori of the time.

The chiefs had promised in the Declaration to protect all King William's subjects that come to these shores for the purpose of trade and that was because King William provided them with the flag<sup>4</sup> they asked for. So you see the Treaty of Waitangi is only an amendment to the Declaration of Independence and that amendment was to provide [for] Queen Victoria to be the occupier on behalf of all her subjects, and Queen Victoria will become the legal trustee and protector of all those things that are included in the Declaration.

I suggest that we now have an indication of a critical philosophical difference between the two types of Māori Incorporations. Tikanga-Māori Incorporations acknowledge the primacy of the *Declaration of Independence of New Zealand 1835* over the *Tiriti o Waitangi 1840*, which as has been seen in JJ's comments is regarded as an amendment to the Declaration. Ture-Māori Incorporations constituted through the New Zealand government system on the other hand owe their very existence to the *Tiriti o Waitangi*, as alluded to in the Preamble of the *Ture Whenua Māori Act 1993*.

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<sup>4</sup> The Flag of the United Tribes of New Zealand, also known as *Te Kara*, acknowledged by King William IV in 1834.



JJ also refers to an additional right that was granted to Queen Victoria in the Tiriti o Waitangi and it would seem from JJ's perspective it is a significant addition and, I would argue, a critical underpinning of the tikanga-Māori Incorporation kaupapa.

In the second part of Article Two it refers to she be given first pre-emptive rights to purchase the title, or not to purchase the title. So that's why the title has been protected since right back then to today and no-one can ever extinguish the native title except for the British Crown. No-one will ever have any rights to purchase the native title. That stopped Americans, [French], Spanish and all these others from coming here to attempt to purchase the title because Queen Victoria had the first pre-emptive rights above all others and no-one else would ever have that chance... and the British Crown has never exercised that right by purchasing any land here.

The pre-emptive purchase rights and the unextinguished native title, which when combined with a belief in the sovereign, independent and protected status of whānau/hapū are, I propose, fundamental to understanding how tikanga-Māori Incorporations perceive issues and situations confronting whānau and hapū in present-day Aotearoa/New Zealand. JJ articulates this perception by offering that,

Today no-one has yet purchased the native title and when I think of this water claim right now, that comes under the unextinguished native title, so there is a big con happening right now and no-one is talking about the unextinguished native title.

I propose that a separate examination of JJ's claims about the unextinguished native title and his interpretation of the right of pre-emption would be valuable inasmuch as it would generate more debate around these two almost invisible and yet rather contentious issues.

By way of making his point about the significance of unextinguished native title in relation to a contemporary issue before Māori, JJ turns to the hui-ā-iwi called by Kīngi Tūheitia, and held at Tūranga-waewae Marae on 13<sup>th</sup> September 2012, to discuss iwi rights to wai. In doing so JJ seems less than sympathetic to those who

attended and implies that there is another agenda afoot that has slipped past the notice of iwi.

The worst thing is that they're being lead around [by the] wrong question because people today don't even know that the Iwi [Leaders] Forum [has] been established by John Key, not [by] the Trust Boards, not [by] the Rūnanganui, but it's John Key that has established that group of people, and that's who John Key wants to lead the whole kaupapa to do with the wai... John Key is trying to pull the wool over the eyes and many, many Māori don't even know it... They're all looking at the money. They're all looking at their pockets, and they're looking at interests rather than the unextinguished native title. [The hui is] just a waste of time - completely 100%.

Whilst it might be argued that the Iwi Leaders Forum is a New Zealand Government initiative the existence of an as yet undisclosed agenda on the part of the Government is difficult to prove. However, that JJ feels this way is an indication perhaps of the distrustful nature of the relationship that tikanga-Māori Incorporations have towards the New Zealand Government. This relationship is probably best summed up in JJ's reference to the Government as, "the New Zealand Crown not the British Crown".

Returning to the relationship between Māori and the British Crown JJ shares an interesting note that, I suggest, will cause some to reconsider their beliefs about the British Crown's purported failure to honour the Tiriti o Waitangi. Whilst Queen Elizabeth II was touring New Zealand in 1963 she attended the Waitangi Day celebrations at Waitangi.

When they had the celebrations ... after the mihimihi and the pōwhiri Turi Carroll got up and said to the Queen, 'It is the wish of the people that you whakamanahia te Tiriti o Waitangi'. Queen Elizabeth said back to him, 'The Māori people must honour the Treaty of Waitangi'. She is exactly right and not one Māori at that hui understood what she said. Yep, she was exactly bang-on. It is Māori that have failed to honour the Treaty of Waitangi. They had promised in the Declaration and in the Treaty they would set up a

Māori Parliament and Government but they have failed. It is not the British Crown that has failed in any way, it is Māori.

It is this notion of the failure of Māori to fulfil their obligations under the 1835 Declaration that will, I suggest, be most unpalatable for those who have long maintained the fault lies with the British Crown. Moreover, I propose that it is a new enunciation that has come from using NP's knowledge to interrupt an on-going long-term relationship and to interrogate an existing situation between the coloniser and the colonised.

## **6.6 He ōhākī tupuna**

It appears from JJ's narratives that this drive to establish a Parliament at Waitangi is mandated by the text of *He Whakaputanga o te Rangatiratanga o Nu Tireni 1835*. Articulating what this means leads to gaining a better understanding of the entire structure that tikanga-Māori Incorporations operate under and the processes they engage in.

As best as can be determined from information reviewed the kaupapa of tikanga-Māori Incorporations appears to be a three-tiered law making process comprising local whānau/hapū tikanga-Māori Incorporations, regional waka bodies and the national Parliament at Waitangi. There is one Parliament at Waitangi and there are ten waka regions. There must be no less than seven local tikanga-Māori Incorporations in a waka region for it to be considered ready to fulfil its functions and duties. In JJ's case there were seven local tikanga-Māori Incorporations established and active in the Tainui rohe. Each chairperson of those seven local tikanga-Māori Incorporations sat on the regional waka body and represented their local tikanga-Māori Incorporation. From their group they elected a Chairperson – in the case of the Tainui regional waka body it was JJ. All seven members of the regional waka body represented their rohe at the Parliament at Waitangi, with six sitting in the Lower House whilst the Chairperson represented their rohe in the Upper House. Given that there are ten regional waka bodies in the kaupapa this means sixty waka representatives in the Lower House and ten waka representatives in the Upper House.

The regional waka and Lower House levels take responsibility to manage five portfolios which are registered as Charitable Trusts within this structure. These portfolios are designated as Kaitiaki Pūtea Trusts (economic responsibility), Kaitiaki Whenua Tōpū Trusts (social responsibility); Kaitiaki Whānau Trusts (justice responsibility), Kaitiaki Ahuwhenua Trusts (trade responsibility), and Kaitiaki Trusts (environmental responsibility). The specific responsibility detail of each of the five trusts is quite extensive so, for the sake of brevity, only the overarching responsibility has been noted here.

The process of law making in the tikanga-Māori Incorporation system has a familiarity about it. According to JJ *Te Ture Whenua Māori 1993/Māori Land Act 1993* empowers tikanga-Māori Incorporations to write and pass Special Resolutions that can have effect locally, regionally, nationally and even internationally.

The power to make the laws is all in the Part 13 of that [legislation] section 268. Then you transfer that in partnership with section 253. So you add them together [and] Māori can write their own laws within New Zealand and outside New Zealand.

Section 268 (3) of the Act states, “A Maori incorporation may, by special resolution of the shareholders, alter, add to, or replace its constitution in any way that is not inconsistent with any provision of this Act or any regulations made under this Act”. Section 253 of the same Act states that,

every Maori incorporation has, both within and outside New Zealand, in addition to the powers expressly conferred on it by this Part, — (a) full capacity in the discharge of the obligations of the trust in the best interests of the shareholders, to carry on or undertake any business or activity, do any act, or enter into any transaction; and (b) for the purposes of paragraph (a), full rights, powers, and privileges.

It appears that JJ takes these two sections and interprets them in a manner that justifies for him the right of tikanga-Māori Incorporations to make their own laws through Special Resolutions. These Special Resolutions then go on to be scrutinised and endorsed by the regional waka body. It is the regional waka body

that upon accepting and endorsing the resolutions then tables these in the Lower House during the three-month period that the Parliament at Waitangi sits each year. The three-month sitting period of the Parliament at Waitangi runs from 28<sup>th</sup> October, the first signing date of *He Whakaputanga o te Rangatiratanga o Nu Tireni 1835*, to the 6<sup>th</sup> February, the first signing date of the *Tiriti o Waitangi 1840*. These Special Resolutions are then debated in the Lower and Upper Houses, where they are either ratified or sent back for further consideration. JJ explains why this process is used.

They had to have those same three structures like the Westminster system, first reading, second reading and third reading. Māori are still apolitical, we still do not follow that process of the Pākehās, and we are still apolitical because everything has to be done in accordance with tikanga Māori.

If a whānau wants to bring out a law they pass it by a special resolution at an Incorporation hui, then it goes to [the] waka to be discussed and if they like it and agree with it they'll send it up to the Upper House for the third reading. If the waka don't like it then they'll send it back to fix it up... [but] each waka can only do so much now until it gets to the Upper House and then they do the final laws because it has to blend in with the kawa.

In mentioning kawa JJ once again makes reference to the importance of tikanga in this process. It appears that while whānau/hapū tikanga-Māori Incorporations can pass special resolutions to suit local conditions and tikanga, those resolutions are required to be acceptable at regional and national level. I suggest that strictly speaking JJ is correct in stating that tikanga-Māori Incorporations don't follow the 'process of the Pākehās' since the process he describes involves local, regional and then national scrutiny of proposed laws. I would argue too that his assertion that Māori are apolitical, because they follow tikanga Māori, also has merit inasmuch as the scrutinising and endorsement process is done at whānau, hapū and iwi levels. I propose that this is an example of the third space in action inasmuch as the three tiers of the structure create space in three different locations

for the law-making process to be interrupted, the situation to be interrogated and new enunciations made.

I propose that a more in-depth examination than that carried out here into the establishment and functioning of tikanga-Māori Incorporations and the Parliament at Waitangi is advisable since it would furnish greater detail and understanding of the processes and procedures involved. A noticeable dearth of published information on tikanga-Māori Incorporations and the Parliament at Waitangi has been something of a hallmark of this study.

There are two further aspects of the tikanga-Māori Incorporation structure worth noting – namely the role of Ngā Tikanga Māori Law Society (Inc.) o Aotearoa (NZ) and the participation of the Kīngitanga. As with most nation-states, including Aotearoa/New Zealand, authority in the tikanga-Māori Incorporation kaupapa is exercised through the three branches of governance – the Executive, the Legislature, and the Judiciary. The aforementioned structure of whānau/hapū tikanga-Māori Incorporations, regional waka bodies and the Lower and Upper Houses of the Parliament at Waitangi describes the Legislature. The role of the Judiciary is fulfilled by Ngā Tikanga Māori Law Society (Inc.) o Aotearoa (NZ) which is comprised of members drawn from regional waka bodies (one each) plus a Registrar General, the Secretary to the Registrar, the Attorney General, the Chief Justice and the Governor-General. This Society registers tikanga-Māori Incorporations, provides legal advice to all three tiers, issues orders and holds court sittings, including the Native Assessors Court mentioned earlier. The Executive branch, or Head of State, is reserved for the head of the Kīngitanga, currently Kīngi Tūheitia. The importance of the role the head of the Kīngitanga plays in this Parliament is explained by JJ.

All the laws – everything's got to go through the Upper House [and] in the Upper House sits Tūheitia... he's there... Every law that's passed up there goes under his signature... His is the mana that gets sent to the Queen and only through him can you give the instructions on what you want the Queen to do.

JJ expands on the role of the head of the Kīngitanga by offering an opinion on what under this kaupapa could eventuate in the future.

The Head of State is his position and not of Māori but it is of all indigenous people in the Commonwealth and any other indigenous people around the world who wish it to be, they can be in there too, we can't stop them. That's [who] the Treaty was done for - all indigenous people in the world because the Queen knows she hasn't got mana over the indigenous [people] she only has mana over Pākehā people in the Commonwealth.

When questioned about how much Kīngi Tūheitia did or did not know of this kaupapa and his expected participation in it, JJ reveals that nothing has been disclosed to Kīngi Tūheitia yet. When quizzed as to why this is so JJ shares his belief that the Kīngitanga was never designed to last as long as it has and that it was always intended that its leader would move into the role of Head of State of the collective sovereign hapū of Aotearoa. For many long-time adherents of the Kīngitanga, even in my own whānau, the notion that the Kīngitanga would cease to exist after so many generations of loyal service would be devastating and probably perceived as a threat requiring an immediate and ardent response. It is perhaps then understandable why this subject hasn't been raised with the current leader of the King Movement.

Ironically it appears that instead of the Kīngitanga ceasing to exist it has been the kaupapa of tikanga-Māori Incorporations that has suffered that fate. JJ reveals that the status of the tikanga-Māori Incorporation kaupapa has diminished recently, especially in light of the passing of NP in 2006. Considering the Parliament at Waitangi he notes that many original adherents to the kaupapa have pulled away and why some have done so.

Once all those fellas didn't get any money they all pulled out... That really blew me away when I realised that... We had seventy incorporations register with us and out of the seventy only ten [were] the genuine ones. The [rest] were all there for the money. So it's in abeyance, in recess... the time isn't right.

When asked about the current situation with his own tikanga-Māori Incorporation his response informs this study of how it came to be in its current condition and an ending similar to that of the Parliament at Waitangi.

The time is not right [so] it's still in recess. It wasn't till towards the end when I knew we had to go into recess, that's when those fellas went against it but I didn't blame them because they achieved some great things in the courts then all of a sudden they all changed... Where they transgressed was when they went into the courts and kept challenging... The kaumātua asked that all of our people from now on never go into the Pākehā courts, only our Māori Courts, our Native Assessors Courts. It was passed there at home and these guys [were] getting gamer you know and big-headed. Well they were challenging the courts and the Police all the time and then they [used] our seal. They were carrying our seal around [saying] this is us, and this is our mana. They went out too far.

When asked if he sees the kaupapa as part of the sovereignty movement JJ's response gives another insight into his worldview when he responds, "No, not even as a tino rangatiratanga movement. No it's much more than that. I see it as a tupuna movement because that's where it came from".

I suggest that there are a few aspects of this kaupapa that at first glance are somewhat hard to accept. There are other aspects that clearly challenge the status quo. There are even some things that, I would argue, seem to be occupying the third space and are enunciating new perceptions and perspectives. Just why JJ believes the time isn't right for this kaupapa is explored later in this chapter. In the meantime I contend that to be better able to understand this kaupapa one would be well served by understanding the environment that adherents of this kaupapa believe exists and that allows the kaupapa to come into being.

### **6.7 A lawless vacuum**

A kaupapa such as tikanga-Māori Incorporations and the Parliament at Waitangi could only gain traction if certain conditions existed. To borrow terms from criminal investigation vernacular, it would require motive, means, and opportunity. I argue that a commitment to upholding and giving mana to the agreements made between tūpuna rangatira and the British Crown in both *He Whakaputanga o te Rangatiratanga o Nu Tireni 1835* and the *Tiriti o Waitangi 1840* provides this kaupapa with a powerful motive. The three-tiered law-making structure via the



Parliament at Waitangi, the regional waka bodies and the local whānau/hapū tikanga-Māori Incorporations provides the means. The opportunity, I suggest, comes from the lawful, or unlawful, status of post-contact New Zealand governments to govern and operate. JJ is very clear on this aspect and offers the following articulations.

There are no more laws in this country because they repealed the 1852 New Zealand Constitution Act. That's where the Government got all their powers to be established in the country. Before that only the Governor had powers to govern this country but not Māori, only to govern Pākehā.

According to JJ *The Constitution Act 1986* brought about the end of the *New Zealand Constitution Act 1852 of the Parliament of the United Kingdom*, the foundation of New Zealand's right to establish representative government.

When queried about the significance of that event and just who carried it out JJ is adamant that in 1986 the government of the day, "signed away its constitution to govern, its warrants to govern, and of course it went through the Parliament and the House of Representatives and they dissolved themselves. Parliament and the House of Representatives [are] dissolved. It's gone".

This seemingly incredible revelation is difficult to accept especially when it is evident that it is business as usual in the Beehive and politicians and matters political consume so much media airtime. Politicians are obviously engaging in their duties as Members of Parliament and going about the business of running and governing this country. How can JJ's claims be true when the weight of evidence suggests the contrary? The point here is that the third space I have spoken of previously is occupied here by JJ and others of like mind – acceptance by non-adherents is neither here nor there and JJ doesn't seem fazed. He willingly accepts that the world is still turning but sees it as turning on the wrong axis, which it must do so as to create a space where he can position his kaupapa.

This positioning allows for messages he has gathered over the years to find voice in support of the tikanga-Māori Incorporation kaupapa. In particular he often says, "We live in a lawless vacuum, save for the lawful sovereigns", a statement he

attributes to Judge Joe Williams. When queried further on this JJ indicates what he sees as a weakness and a flaw in the current government structure – a vacuum created by a lack of authority to govern and make laws.

It's gone because after 1986 when they repealed the Constitution, the Queen never, ever gave them anymore Royal Assent. [There is] no more Royal Assent in this country. So they used the Governor-General to give Royal Assent and the Governor-General only has powers to give Regulations Assent, that's it, not [to] Acts.

Such a system collapse would not slip past the notice of someone like JJ who would quickly identify it as a point of vulnerability and an opportunity to prosecute his cause. If challenging the legitimacy of the government's authority to rule isn't enough JJ then turns to capitalise on what he sees as another point of vulnerability in the New Zealand government system by redefining the authority of the person who is generally accepted as the British Crown's representative here in Aotearoa/New Zealand, the Governor-General. He starts by naming who he sees as being the true authority figure of the British Crown in the present-day New Zealand government system.

Sian Elias is the Chief Justice. She is the highest mana in this country in the government system. She's the official governor and the official government administrator, so she is higher than the Governor[-General who] today is an artificial, fictional creature created by the Government, [and] whose mana comes from the Government.

Just what consequences JJ sees of this somewhat confusing situation are detailed in the following commentary.

There's a lot of Acts that the Government have written since 1986 and in there most times it says that this Act will come into force when it receives Royal Assent... and it will never receive Royal Assent. Sometimes they haven't even put that in there at all and that means it's not a real law. So if it hasn't got Royal Assent then it isn't a real law. It's only a Regulation or what they call a Provincial

Common Law... So they can't write [laws] for the country, they can only write [regulations] for the Provinces.

The notion of living in a lawless vacuum and the challenge it represents to the New Zealand Government's authority to govern are subjects whose impact upon not only the ruler but also the ruled are, I propose, worthy of a separate study.

If this perceived condition of governmental impotence is indeed the case then, I would argue, it is quite understandable why JJ would see a lawless vacuum. If successive post-1986 Constitution Act governments have been acting without the appropriate authority to write laws for the nation and govern the country then, I contend, those governments have been acting unlawfully, which is a system failure and accordingly they are vulnerable. If the situation as JJ sees it is in fact correct that then imperils the existence of a long list of laws, the loss of which would have an unsettling effect on many sectors of society. The post-Constitution Act 1986 period includes every budget produced by every government since that time. To give an idea of the magnitude of the situation, if JJ's claim could be proven as fact, a brief list of 'unlawful' legislation from 1987 alone includes the *Official Information Amendment Act 1987*; the *Conservation Act 1987*; the *New Zealand Nuclear Free Zone, Disarmament, and Arms Control Act 1987*; and the *Māori Language Act 1987*.

It would appear then that this legal vacuum, caused by what JJ identifies as stemming from a lack of a lawful constitutional status to govern and an inability to acquire Royal Assent, then provides tikanga-Māori Incorporations with the opportunity to claim and occupy a space wherein they can activate their processes and structures and in doing so fulfil their part in upholding their ancestors' sacred agreement. This agreement however is not the only area where sacredness and spirituality feature in JJ's articulations of the kaupapa and it presents as a significant contributor to his perspectives.

## **6.8 Te ao wairua**

JJ is a very spiritual man and constantly refers to aspects of te ao wairua when discussing the kaupapa of tikanga-Māori Incorporations. He acknowledges that in his whakapapa there are notable tohunga and in the interview he recalls some of

those tūpuna and their deeds. JJ acknowledges others whom he believes have similar powers, including one of his daughters, and credits his own mother with having that same gift, or what he calls ‘mana’. JJ himself is sensitive to te ao wairua operating in te ao kikokiko and there are multiple examples in his statements of his connection to te ao wairua and tūpuna communications that guide him. He believes that his involvement with the kaupapa and with NP was pre-ordained by other-worldly powers. He is also sensitive to what he perceives as tohu from te ao wairua, which he sees manifested in dreams and natural phenomena, such as the aforementioned “pure white rainbow” (Chapter Six, p. 99).

When given the opportunity to provide his own perception of the part wairua plays in the kaupapa of tikanga-Māori Incorporations, JJ offers that,

There’s the other part, the wairuatanga is the most important because the knowledge I was given was called the knowledge of the Whare Wairua, not the Whare Wānanga, that’s man’s kōrero. Just like Te Mātorohanga, that’s man’s kōrero. Whare Wairua is totally tuku iho, straight from the top.

JJ then goes on to link this knowledge with the kaupapa.

All that knowledge is really focussed on one thing, those customary laws, values, practices, priorities, and all those other things: integrity, honour, sincerity, truth, honesty and righteousness. This is what it’s all about, what the Whare Wairua is all about. What’s God’s kawa? The retention, maintenance, protection and preservation of the natural environment [and] natural order.

It would appear then that wairua, or wairuatanga, is an integral part of JJ’s life and has influenced how he contextualises the kaupapa of tikanga-Māori Incorporations, by, I would suggest, making it an integral part of normal tikanga-Māori Incorporation practices and responsibilities. However he alludes to another aspect of wairua that is deserving of acknowledgement and that is the less pleasant side of living in a constant state of striving to maintain a balance between two worlds. When asked about how he keeps himself safe JJ offers up that he’s

protected to some degree by “a korowai of aroha”. Despite this he goes on to explain that sometimes he receives directions and corrections for his own transgressions stating that, “Sometimes I am given direction by getting a knock on the head, making [me] fall over, tripping [me]”.

For these transgressions there is a price to pay and JJ pays it both wairua-wise and physically-wise, particularly when he divulges knowledge that is too much for others to accept, hence, perhaps, his initial hesitance to engage in the interviews.

Apart from these seemingly negative aspects of living with te ao wairua there does come some insight into what the future holds for Māori and the entire human race. When discussing the misunderstandings and misinterpretations of the fate of the world at the end of the Mayan calendar on the 21<sup>st</sup> December 2012, JJ offers up a different perspective on exactly what awaits the world at that time. He is adamant that “One Loving God” has told him a wairua age is about to come upon the world which will see Māori get back all they are entitled to. Those that don’t like it will leave and those who stay will realise “God’s promise of one thousand years of peace, love, harmony and unity”.

It would seem then from his own accounts that JJ has information received through his relationship with te ao wairua that lead him to forecast events that concern not only the kaupapa of tikanga-Māori Incorporations but the whole of humankind. His last statement contains a vision and this coupled with his previous concerns about the time not yet being right, suggest to me that JJ believes we live in troubled times. Yet his faith in his One Loving God which can manifest itself in Māori ways and through tohu Māori is indicative of a dualism that Maori have lived with since colonisation. He seems to accept that a lot of harm was done in the past but I propose that he could only accept that if he also believed there was something better to move towards in the future. This is borne out in his articulations of the remedies that will be needed to address the woes of not only indigenous people and those seeking sovereignty but for all peoples of the world.

## 6.9 Time for healing

Throughout my conversations with JJ he regularly comments about the significance of time. He attributes the failure of Māori to establish the Parliament at Waitangi as being due to the time not being right. He makes the same assertion about the Kotahitanga Movement of the nineteenth and early twentieth centuries. This too he offers as the reason that the kaupapa of tikanga-Māori Incorporations has failed to achieve that which it set out to do and even states this is why he put his own tikanga-Māori Incorporation into recess. It would appear that time and signs from te ao wairua play a critical role in him determining actions.

Today the most important element of all is time. It's time but at the moment it's still not right for me to give out this knowledge, not the other knowledge but time is important now. I won't do anything at the moment because the time is not right but when I am given permission then I'll start giving it out. The best thing is to make sure that the people are fully aware that the time isn't right to do this yet.

It would appear then that JJ believes that the salvation of whānau, hapū and iwi is preordained by influences originating in te ao wairua and sign-posted somehow by time – whether dates or events is never discussed. JJ was asked if he believed that worldview and tikanga, along with mana atua, mana rangatira, mana whenua, and mana tangata validated the kaupapa of tikanga-Māori Incorporations. His response was,

Yep, it has to be the whole lot. It's all one... the land and Māoritanga is always one... We all have those same responsibilities, obligations and duties to uphold the integrity, honour, sincerity and the truth, honesty and righteousness of our tūpuna. Yeah, it's mana tupuna alright and it is mana rangatiratanga... [Law making is] all still secondary. The first is always that main structure up the top, that's the main structure, Māori customary laws, values and practices.

When it was proposed to JJ that the establishment of the Parliament at Waitangi was the primary kaupapa he responded, "Yeah that's our kaupapa, the real kaupapa but it's not ready to start yet mainly because the time is not right".

Perhaps JJ is expressing here his sensitivity to the same notion as articulated by Bertrand (2011) when acknowledging the significance of timing as a contributing factor in the successes realised by the Cordillerans and Papuans (Chapter Four, pp. 75-76).

It seems then JJ is sure that what should not be done at the moment is the reactivation of the Parliament at Waitangi and re-commencement of law making. However, until the right time does come along he urges whānau and hapū to start doing the preparatory work so that they are ready when the time is right. JJ is adamant that the preparatory work that whānau and hapū can do is to set up their own tikanga-Māori Incorporations. This he proposes would see an eventual shift in the role of government offering that, “Every marae in the country becomes a government. That’s where the government is, it’s not in an office in Wellington; it’s at the marae”.

It is somewhat difficult to identify exactly what remedies are currently available via the kaupapa of tikanga-Māori Incorporations. JJ on the one hand seems to offer relief and then qualifies that offer by attaching an undeterminable time factor to it. In the interim he encourages whānau and hapū to set up their own tikanga-Māori Incorporations in preparation for a time when it will be right for the kaupapa to come to the fore. I would suggest though that this offers little relief to those who seek it now. That a lot of JJ’s articulations have a spiritual connotation to them might be a challenge for those who do not share his convictions. However, I would argue that, it does bear out the aforementioned commentaries on maintaining a balance between two worlds (Chapter 2, pp.28-30). This I contend is what JJ does and has willingly accepted that it applies to his endeavours when engaging with the kaupapa of tikanga-Māori Incorporations.

### **6.10 He kupu whakahiato**

Through the articulations provided in this chapter I propose that the kaupapa of tikanga-Māori Incorporations can lay claim to being a point where the other themes of this study, those being tikanga, sovereignty, indigeneity and third space theory, all intersect.

JJ's articulations about the origins and foundations of the kaupapa of tikanga-Māori Incorporations link it to the knowledge bank of post-contact Māori society, which by association aligns it to that society's worldview, principles, values and beliefs. This then implies a commonality with that society's expectations and aspirations which, as has been argued in Chapter Two, furnish societies with a sense of assuredness, collective security, balance and continuity. That the physical structures of the kaupapa of tikanga-Māori Incorporations no longer endure seems neither important nor surprising to JJ, however remaining forever tika and pono to the legacy of those tūpuna who established a sacred and enduring agreement most certainly is.

The radical actions engaged in by tikanga-Māori Incorporations, such as the issuing of tikanga-Māori Incorporation driver licenses, tikanga-Māori Incorporation car registration plates, and tangata whenua passports, as well as summoning a District Police Commander to appear before the Native Assessor's Court, all bear testament to the non-static and organic nature of tikanga. Whether as responses to unanticipated situations or as physical manifestations of that society's principles, values and beliefs, these actions were guided by and measured against mana and tapu. No tapu was breached and no mana abused.

Also representative of the notion that tikanga is organic is the manner in which the kaupapa of tikanga-Māori Incorporations had the capacity and capability to adopt and adapt other ways of being and doing in the establishment of its Westminster-style structure and processes. Arguably this would have been little more than a straightforward response that enabled the post-contact tupuna society to create a space in which they could manage and deal with foreign constructs such as declarations and treaties between sovereign entities. For the preceding reasons I propose that tikanga-Māori Incorporations both apply and assert tikanga – their ways of being and doing, and they use their collective worldview, principles, values and beliefs to accord validity and credibility to those tikanga.

JJ's articulations about his sensitivity to te ao wairua indicates that it influences his worldview and he has even declared it as a point of difference between his group and other tikanga-Māori Incorporations. Arguably it is his sensitivity to this spiritual influence that fomented the parting of ways for some of his group and



ultimately led him to make the decision to put the group into recess. I suggest here though that this action of putting the group into recess is JJ's way of maintaining a balance between the temporal and spiritual realms.

The establishment of the three-tiered structure for the kaupapa of tikanga-Māori Incorporations is an act attributable to being a sovereign entity as well as a mechanism deliberately designed to abet that sovereign status through the making of laws. This kaupapa as a whole is reflective of a society enacting its own validated tikanga in a manner that is tika and pono to their collective worldviews, principles, values, beliefs, expectations and aspirations, and accordingly is operating in a way that proclaims them as being possessed of their sovereignty.

Everything about this kaupapa – its structure, processes, documents and terminology all point towards JJ believing in the extant sovereignty of whānau and hapū, and in the kaupapa of tikanga-Māori Incorporations as a way in which their sovereignty finds expression framed in both tikanga and Westminster law.

In an effort to determine JJ's tikanga-Māori Incorporation status as an indigenous group I return to the definition furnished by Kendrick and Lewis (as cited in Debelo, 2011), as presented in Chapter Four (p.57). The first part of their four-point definition requires an indigenous people to “have priority in occupancy of a particular territory” (Debelo, 2011, p.260). Since tikanga-Māori Incorporations can only register using their ownership of, or shareholding in, whenua Māori and therefore are whenua Māori-based entities, it appears reasonable to claim this criterion as satisfied.

The second part requires demonstration of “cultural distinctiveness, continuity and attachment to their traditional land” (Debelo, 2011, p.260). That tikanga-Māori Incorporations exercise their culturally distinctive ways of being and doing (tikanga) and are linked to the whenua of their tūpuna by whakapapa (continuity) has been articulated earlier in this chapter, and therefore meets the burden of proof to satisfy this criterion.

Part three of the definition expects that indigenous peoples “identify themselves and are identified by mainstream society and state authorities as distinct collectivities” (Debelo, 2011, p.260). By virtue of their registration as a tikanga-

Māori Incorporation I contend that groups such as JJ's have clearly identified themselves as a distinct collective and have been acknowledged as such by their peer network. After having been profiled through the mass media, as well as having been targeted by Police, having participated in Court matters both legal and civil, and having been publicly vilified by the odd politician, I would argue that they have well and truly been identified by the wider society and regulatory authorities as a collective quite distinctive.

The final defining criterion requires that an indigenous group is one that has, "experiences of subjugation, dispossession, marginalization, exclusion or discrimination whether or not these conditions persist" (Debelo, 2011, p.260). JJ is adamant that his tikanga-Māori Incorporation has been undermined, misled and dismissed by local authorities, that their sovereign status has been continually denied, that they have been marginalised as mere protestors and homogenised as Māori, and ultimately excluded from local, regional and national decision-making processes. Although this might not quite be what the drafters of these definitions envisaged, I maintain that all the criteria are satisfied and tikanga-Māori Incorporations, under the provided definition, are indeed recognisable as an indigenous group.

I contend that from the articulations presented in this chapter tikanga-Māori Incorporations not only occupy a third space but are a product of the interrupt, interrogate and enunciate formula, and also an example of third space in action.

The existence of two apposite types of Māori Incorporation creates a division between two positions occupied by protagonists who, apart from both being whenua Māori-based entities, have little in common and are effectively divorced of each other. This creates a void, a third space, allowing for other voices to be heard.

As mentioned in Chapter Five (pp. 88-89) third space is about articulating perceptions from the perspective of the instigator and privileging the instigator's worldview, principles, values and beliefs, no matter how incongruous with mainstream thinking. Tikanga-Māori Incorporations exercise this through their observance of *He Whakaputanga o te Rangatiratanga o Nu Tireni 1835* as having primacy over the *Tiriti o Waitangi 1840*, and therein acknowledging a sacred

agreement and relationship with the British Crown. Third space is about being productive and not merely reflective (Meredith, 1998). That tikanga-Māori Incorporations have developed structures and processes to accommodate their worldview, principles, values and beliefs, indicates that they have reflected upon the conditions of the day and produced appropriate 'new' responses and not merely repackaged rhetoric. Third space is about effecting change inasmuch as it strives to radically redefine the fulcrum upon which the status quo is maintained. That groups, such as JJ's, spurn the status quo is evident and that their opposition to it can be viewed as an attempt to radically shift the location of the discussion is another example of them acting in the third space. As an action third space behaviour forces the coloniser to be reactive and by tikanga-Māori Incorporations avoiding the colonial palaces of power and instead engaging their colonisers at different and unusual sites again testifies to their behaviour as being representative of third space theory.

JJ's contention that tikanga-Māori Incorporations have their foundation in tikanga seems warranted and his narratives often mention this. That they are also founded on a sacred agreement memorialised in documents from the early nineteenth century is also articulated by JJ. Whether or not this sacred pact is still in force or even enforceable today is a matter for another study to determine, and whether others believe it is not necessarily relevant to the beneficiaries of tikanga-Māori Incorporations, who quite plainly do.

If Māori made a commitment to the British Crown to establish a Parliament at Waitangi then it is evident that, as JJ asserts, Māori have failed. Just why they failed and what the failure means is another area for separate enquiry. Also worthy of further examination is JJ's contention that the native title to this whenua is unextinguished. If this could be proven and prosecuted effectively then, I suggest, it has the potential to throw the entire country into chaos. This coupled with JJ's assertions that we live in a lawless vacuum compounded by the lack of constitutional authority for New Zealand governments to govern leaves the entire nation-state vulnerable and maybe it is this vulnerability that tikanga-Māori Incorporations could seize upon to further their cause.

I have no reason to doubt that JJ believes he is influenced regularly by te ao wairua. His whakapapa links him to it and his articulations lead me to accept that he lives with it and strives to maintain a balance between it and te ao kikokiko. He clearly allows it to inform his decisions and he believes he is being guided by it. I do not challenge in any way the veracity of his beliefs but am compelled to note that I do not know of any tool capable of measuring or gauging this phenomenon, except perhaps by one's own heart and intuition. This is why I muse that maybe he sees the past, agitates the present and has within him an as yet unrevealed picture of the future.

If all the claims made by JJ could be proven and supported by evidence then I would contend that this kaupapa is potentially the way forward for whānau, hapū and all indigenous groups of the world. However, on a pragmatic level, which is another aspect of valid and credible tikanga (Mead, 2003), that the structures and processes of this kaupapa are in recess; that the New Zealand Government continues to govern; that even despite living in a lawless vacuum the majority still adhere to the law, I suggest that one would be understandably apprehensive about committing to this kaupapa. At the present there seems to be no quick-fix remedy available from this kaupapa. Whilst it informs about who is involved, why it should happen, and how to go about it, it delivers a non-committal position on the question of timing and when all this should happen, which is reflected in JJ's statement, "I know the end vision ... but how we get there? It's going to be a slow process".

## **7.0 CHAPTER SEVEN – HE KUPU WHAKAKAPI**

Poua te rongomau, whakatōngia te aroha;  
Whakatinahia, kia māia, kia tū kaha;  
Rapua te mea ngaro, e kake kia ikeike;  
Ārohia te mānia, amioa te whenua;  
Rurukutia te mana, whakaūhia te tikanga.  
(Taitoko, 1997a, p. 1)

### **7.1 He kupu whakataki**

This chapter sets out to consolidate the new understandings, articulations and enunciations made thus far in regards to the interconnectedness of tikanga, sovereignty, indigeneity, and third space through the kaupapa of tikanga-Māori Incorporations. This is done with the aim of proposing how these can be applied and asserted as credible and valid responses drawn from within a tikanga-based society to address contemporary issues.

Tikanga weaves its way through all themes represented in this thesis. I contend that it is integral to understanding worldviews, deciphering societal beliefs and values, and defining identity (Marsden, 1992; Mead, 2003; Paterson, 2008; Waitangi Tribunal, 2009). It is also a mechanism that enables change. It is not static (Mead, 2003) but rather is organic in nature. It is an action informed by the collective wisdom contained in a society's knowledge bank (Marsden, 1992; Mead, 2003). Its assertion and application is underpinned and determined by long-held philosophies (Marsden, 1992; Mead, 2003; Roughan, 2009). It is of human construct yet enables co-existence with the non-human realm (Mead, 2003; Paterson, 2008). It can be collectively or individually enacted, in a formal and ritualised manner as well as habitual and commonplace (Mead, 2003). I contend that it motivates expressions of self-determination and is a way of being and doing.

### **7.2 Being and doing**

When examining emotive subjects such as culture, identity and the struggle for self-determination, I suggest, it is all too easy to fall into the trap of colouring the discussion by loading it with terms such as entitlement, righteousness, manifest

destiny and fate. This thesis deliberately set out to avoid such traps and in doing so present a perspective of what is and what can be. That tense and turbulent relationships between the powerful (coloniser) and the powerless (colonised) have existed throughout the history of humankind is undeniable. That many relationships have ended in great loss for one and great gain for the other is etched into the annals of history and is still vividly present in modern times, especially here in Aotearoa/New Zealand.

Back in my mid-twenties the reading of post-colonial commentaries on what and when something happened, by whom and to whom, all within the context of the short history of New Zealand's colonial existence provided a smorgasbord of information well-suited to developing and nurturing an attitude of outrage whilst feeding a sense of righteous indignation. These accounts of abuse of the powerless by the powerful resonated very clearly within me, agitating my Anglo-Protestant upbringing and leading me to make comparisons between those post-colonial commentaries and the tales and legends of my youth involving the great European and religious heroes who stood-forth and confronted their oppressors. Boudicca of the Iceni, Joan of Arc, the Swiss William Tell, and David of Israel are all great names of the northern hemisphere's past who many centuries ago took up the challenge to meet a fearsome and supposedly indomitable threat to themselves and their societies. To my mind these paragons of virtue found comparable contemporaries here in 19<sup>th</sup> century Aotearoa in the likes of Hone Heke, Te Rauparaha, Te Kooti, Tītokowaru and others. Both groups strove to preserve not only life itself but a way of life as well. Interestingly though in the present-day both receive very different press. The former are broadly romanticised and lionised as champions of their people whilst the mere utterance of the names of the latter leaves an unfamiliar taste in the mouths of many.

No matter which group we consider it is evident that the renown of each named individual stems from their willingness to defend that which they held sacred – their identity, their way of being, and their freedom to be and to do. But moreover, I argue, it is clear that these individuals acted in accordance with the values, beliefs and worldviews of their respective societies. They all drew upon the information capital of their own society's knowledge bank to develop appropriate responses conducive to achieving the most beneficial outcome but, as history has

proven, not without considerable risk to those very things they sought to protect and preserve. They clearly pushed the boundaries of their respective paradigms and, I propose, without exception they chose to act in a manner that was not anticipated or expected for their time. Ultimately, the actions they took served to change the tikanga of their own and subsequent eras. The impact of some of those changes can still be discerned to this day especially when recalled as a metaphor for extraordinary behaviour.

I also contend that it is likely that those notable persons all saw themselves as belonging to a specific and distinctive group of people who historically occupied a particular territory where their authority to determine their own direction was sacrosanct. Their identity, their way of being, and their freedom to be and to do is inextricably entwined with their geographic location and was exercised through their claims of sovereignty as a people indigenous to that land.

Indigenous groups across the world and throughout the ages have a track record of expressing their self-determination. I argue that critical to those expressions is tikanga, a powerful and living thing that is intrinsic to their culture and identity inasmuch as it informs one how to interpret their world and to actualise themselves within their societies. Whilst the particular conditions pertinent to specific indigenous groups may vary, I would argue that, it is evident that there are commonalities, namely a clear determination to retain their identity, their way of being, and their freedom to be and to do.

Through the establishment of their structures and processes, tikanga-Māori Incorporations, such as JJ's, have shown their willingness to promote a different way of being and doing. These 'new' enunciations are based on tikanga and international agreements between sovereign entities and present an alternate way of addressing issues that have been part of the Aotearoa/New Zealand political landscape for over one hundred and seventy-five years. Although not currently active I contend that tikanga-Māori Incorporations and what they stand for present the world with an opportunity to see the notion of third space in action.

### **7.3 Te whakatinanatanga**

As stated in this thesis, tikanga is not only a way of thinking and philosophising but is also a physical reflection of societal values and beliefs (Marsden, 1992; Mead, 2003; Paterson, 2008; Waitangi Tribunal, 2009). It is all well and good to theorise and ponder those values and beliefs but the validity and credibility of these beliefs and values can, I suggest, only be tested and realised when asserted and applied. It is at this point that concepts such as tika and pono come into play. To act correctly and do honour to the values and beliefs of one's society tikanga must be asserted and applied in a tika and pono way (Mead, 2003). To do otherwise, I propose, is to undermine the very essence of what that tikanga sets out to achieve and leaves the individual and their society open to derision and attack. This situation is probably best evidenced by the experience of the cocaleros of Bolivia whose initial goals were true to their society's values and beliefs, but who now having achieved those goals, find themselves being urged to compromise those very values for the sake of maintaining control of nation-state power (Chong, 2010). Even the Ainu experience where so many deny their identity leads the observer to question why anyone should take their calls for recognition and self-determination seriously when it is evident some of their own have no wish to be identified as a part of that group (Gayman, 2011).

This too has been the experience of the tikanga-Māori Incorporation examined in this study. In some instances while enacting tikanga reflective of values and beliefs of their society some members have not necessarily asserted and applied them in a manner that could be recognised as tika and pono, ultimately leaving them exposed to derision and ridicule from both within and without, as evidenced earlier in Chapter Six. The actions of a few have led to generalised perceptions of the whole group as a collection of tino-rangatiratanga trouble-makers, which immediately marginalises them and consigns them to a status of being less than genuine or credible, and ultimately threatens to invalidate their ways of being and doing. I suggest that it was this situation that played a large part in JJ making the decision to put his group into recess. Having seen the inability of those members to act in a tika and pono way, he did the only tika and pono thing he could do that would not breach tapu or abuse anyone's mana. It is arguable that this too is where JJ gets the idea that the time wasn't right yet for this kaupapa.



The assertion and application of tikanga is an empowering act of resistance and an enabling force of resilience. It provides a rallying point and commonality for groups who find little satisfaction in achieving their goals through channels established by those who hold all power and control. It furnishes such groups with a connection to their past and an impetus to act in the hope of preserving that legacy for their future generations. I would argue that such has been the experience of the groups examined in this thesis, those from Bolivia, Ecuador, the United States, Canada, the Philippines, Indonesia and Aotearoa/New Zealand. In the early days of indigenous people's calls for recognition and self-determination this stance could be seen as reactionary and merely responding to a threat. In the latter years, I would argue, it took on a more proactive positioning, almost a strategy by building networks and coalitions. My explanation for this shift occurring is that such actions present the coloniser with a situation it is ill-equipped to deal with since nation-state hegemony struggles to acknowledge the significance of difference amongst its citizenry.

#### **7.4 Rurukutia te mana**

As revealed in this thesis the longevity of tikanga is put forward as a measure of its validity and credibility (Marsden, 1992; Mead, 2003; Roughan, 2009). In the case of tikanga-Māori Incorporations where the structures and processes have only been around since the return of NP in the 1990s, this seemingly recent occurrence must be considered against the longevity of the kaupapa, which JJ claims stems from the late nineteenth century. But more significant than that perhaps is his articulation that the tikanga applied and asserted in the structures and processes of the kaupapa have their origin in pre-contact times in concepts such as mana atua, mana rangatira, mana tupuna, mana whenua, and mana kaitiaki. Having such tools as tried and true tikanga at your disposal lends an air of a surety and consistency to determining appropriate actions to change conditions.

However, longevity is not the only factor contributing to determining the validity and credibility of tikanga. One aspect of tikanga that sets it apart from other frameworks for being and doing is that it is an organic and fluid thing, which is flexible and adaptable enough to respond to the influence of unanticipated variables. As has been noted in this thesis, tikanga changes dependent on the

times and conditions that societies find themselves in (Chapter Two, pp. 27-28). Here again we find tikanga-Maori Incorporations acting in such a manner inasmuch as they have adapted their long-held ways of being and doing to suit a different context. This is evidenced in the way they carry out their law-making processes by using whānau, hapū and iwi scrutiny to reflect the Westminster process of first, second and third readings to achieve widespread acceptance and endorsement of their laws. By doing this the decision-making power is devolved back to all strata of their society.

In addition to the above are those aspects of tikanga which have already been alluded to in this chapter, which I assert all attest to its validity and credibility. Tikanga has an inalienable association with worldviews, societal beliefs and values, culture and identity. It has its origins in a society's knowledge bank and is underpinned by long-held philosophies of that society. It has the capacity to mediate the points where human and non-human realms interface. It can be ritualised as well as commonplace. It has the ability to motivate expressions of self-determination. It is tempered by tika and pono and guided by considerations about mana and tapu. It empowers resistance and enables resilience. It is a rallying point and a position of strength for the members of its society. It is a connection to the past and the future. It is a strategy adopted by indigenous peoples worldwide. All of these aspects accord tikanga the essence of validity and credibility. But what then makes tikanga a valid and credible response to contemporary issues? It is my contention that the answer lies in the ability of tikanga to interrupt processes, interrogate situations and enunciate new understandings. This is done by locating tikanga in the third space.

### **7.5 Whakaūhia te tikanga**

It is the position of this thesis that the concept of the third space provides opportunity for the relationship between the powerful and the powerless to be examined in another dimension and/or location, refuting the traditional adversarial stance of protagonists reminiscent of post-colonial discourse. That this has already happened can be seen in the very actions of those heroes mentioned earlier (Chapter Seven, pp. 124-125). When confronted with a threat of considerable import, all chose to act in a manner that was not anticipated by either their

opponents or even their own society's members. They each stepped away from the norm and sought out an alternate solution. They took a risk but I would argue it was a calculated one. And I propose that the formula used in those calculations was the interrupt, interrogate and enunciate process informed by their tikanga.

In the struggle between the powerful and the powerless tikanga is a natural occupant of the space between opposing opinions. Where diametrically opposed factions stand glaring at each other across the abyss tikanga can occupy the space between and set about finding a different understanding of the situation that neither side's paradigm permits them to initially see. Such, I propose, is the situation with the kaupapa of tikanga-Māori Incorporations. JJ and his kind saw iwi and the New Zealand Crown locked in contest and dispute over rights guaranteed in the *Tiriti o Waitangi 1840*. In reflecting upon the knowledge bank of their particular society they determined that this was the wrong battle being fought for the wrong reasons on the wrong battlefield. They reflected Solzhenitsyn's insight by refusing to participate in the "lie" (Chapter Three, p. 48) and instead began to act in a manner and location that neither party orbiting the Tiriti discourse could understand. JJ and his peers' battles were for sovereignty not for resources or compensation and they occurred on the streets in everyday life and not in the palaces of coloniser power. I do not propose that the goal was about creating a win-win or negotiated outcome. Rather it was about maintaining the integrity of the sacred agreements made by their tūpuna and in doing so realise the freedom to exercise their ways of being and doing. This situation seems to resonate with Kuppe's (2009) articulations around public and private spheres, where aspirations and beliefs are debated in an environment of rationality and rights. JJ's actions demonstrate his determination to disturb the centre (N. Mahuika, 2011) and rattling the status quo by refusing to participate in that arena and instead locating it in a different place and space.

That having been said there are examples, as have been shown in this study, of indigenous groups using nation-state tactics to defeat their coloniser and such is the story of cocaleros of Bolivia. When confronted with the existing assumed power of the nation-state they organised themselves into collectives around the values, beliefs and worldview of their indigenous self. There they found numerical power and eventually gained control (Albro, 2005). However, I

suggest that having engaged and prevailed in that struggle all the cocaleros have won in reality is a seat on the back of a beast that only ever respects power through numerical superiority and a constructed collective identity. In essence they are the heirs to the oppressive powerbase structure of their colonising predecessors.

It is timely perhaps at this point to contend that tikanga occupies the third space for the purpose of engaging in battles of ideas, attitudes and perceptions. However it is the subsequent action born out of new enunciations that exhibit the fruits of those ideological contests. This having been said it should also be noted that these ideological confrontations can, and do, morph into actual physical conflict and the recent history of indigenous people's struggles is littered with such events, as has been presented earlier (Chapter Four, p. 61).

This thesis proposes that, whether knowingly or not, the tikanga-Māori Incorporation focussed on in this study does exactly that – it engaged in an ideological contest. It saw the threat posed by the oppressor and then considered conventional options, ultimately choosing to rely on its own strengths – strengths which lay in tikanga, mātauranga Māori and international agreements. It waged ideological war in the third space, eliciting amusement and incredulity within the enemy camp and, as noted earlier in this study, those efforts resulted in a mixed bag of success. However, it is most encouraging to know that through using tikanga it has tangled with and overcome threats to the livelihood of its members and their way of life. As evidenced by the results of the Environment and High Court cases (Chapter One, p. 15) the machinery of local and regional government was made impotent.

As an aside, I argue that, the role of the detractors and naysayers, both internal and external, should not be underestimated since they provided an important point of contest where the rigour and relevance of tikanga could be regularly tested and assessed and the fortitude and stamina of its members in the face of adversity confirmed. However, probably more important is the realisation within the group itself that the things they have been saying and doing for years have at last born fruit and can now be seen as credible and valid responses to those things that threatened them and their being and doing in the present day.

Tikanga is a tool already at the disposal of cultural practitioners and the culturally aware. I contend that it is real, it is present and it is available. What remains to be seen is what contribution of consequence it can make to others and their struggles. Tikanga occupying the third space is not a way of planning but rather, I argue, it is a strategy to reconsider, to inform, to influence and to determine action. Therefore I propose that as an answer to the principal question that queries if the assertion and application of tikanga is a credible and valid response to contemporary issues, I must give a qualified reply. That being, in some regards yes and in some aspects no. The greatest insight gained reveals to me that having valid and credible ways of being and doing at your disposal does not necessarily translate to effecting change at a pragmatic level.

The assertion and application of tikanga articulates the being and doing of a society however of itself it is not the whole answer. Looking at the information gleaned from investigating the kaupapa of tikanga-Māori Incorporations, I suggest that although it appears they fit the criteria of asserting and applying tikanga, this is done so to guide and validate the manner in which they operate. Tikanga is not clearly seen here as the transformative agent for what they strive to achieve, which I suggest is whānau/hapū self-determination and sovereignty. Tikanga may have validated their worldview and aspirations but in the end they still carried their fight to the coloniser, albeit on the streets and in everyday life. Seldom is tikanga seen as being asserted or applied in the way in which they challenge the status quo which generally occurs in the political and legal landscape. Since the kaupapa of tikanga-Māori Incorporations has already appeared on the radar it could be argued that it is already at hand, even if in abeyance.

The concern for me is that with so many aspects about tikanga-Māori Incorporations left unproven does it qualify as a remedy in the context of the question. My answer to that is, currently no, it does not. What it does offer this study is an opportunity to examine it using the lens of third space, a notion that I would argue currently potentially holds greater relief to those seeking these kinds of remedies.

## He papakupu

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ao hurihuri	<i>ever changing world</i>
ao kikokiko	<i>the natural physical realm</i>
ao wairua	<i>the supranatural spiritual realm</i>
hā	<i>breath of life</i>
haumanutanga	<i>revival</i>
he kōrero tātaki	<i>an introductory dialogue</i>
he kōrero whakakapi	<i>a concluding dialogue</i>
he kōrero whakataki	<i>an introduction</i>
ihi	<i>intensity, magnitude, quality</i>
iwi-kē	<i>non-Māori</i>
kīanga	<i>phrase</i>
reo huahuatau	<i>metaphoric language</i>
mana whakairo hinengaro Māori	<i>indigenous intellectual property</i>
	<i>rights</i>
ture	<i>law, regulation</i>
whai koha	<i>respect</i>
whakahoe	<i>indifference</i>
Whakakotahitanga o ngā Whenua o te Ao	<i>United Nations</i>
whakamā	<i>shame borne out of embarrassment</i>
whakawaimehatanga i ngā tikanga-ā-iwi	<i>colonisation</i>
whakawhenumitanga	<i>assimilation</i>

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