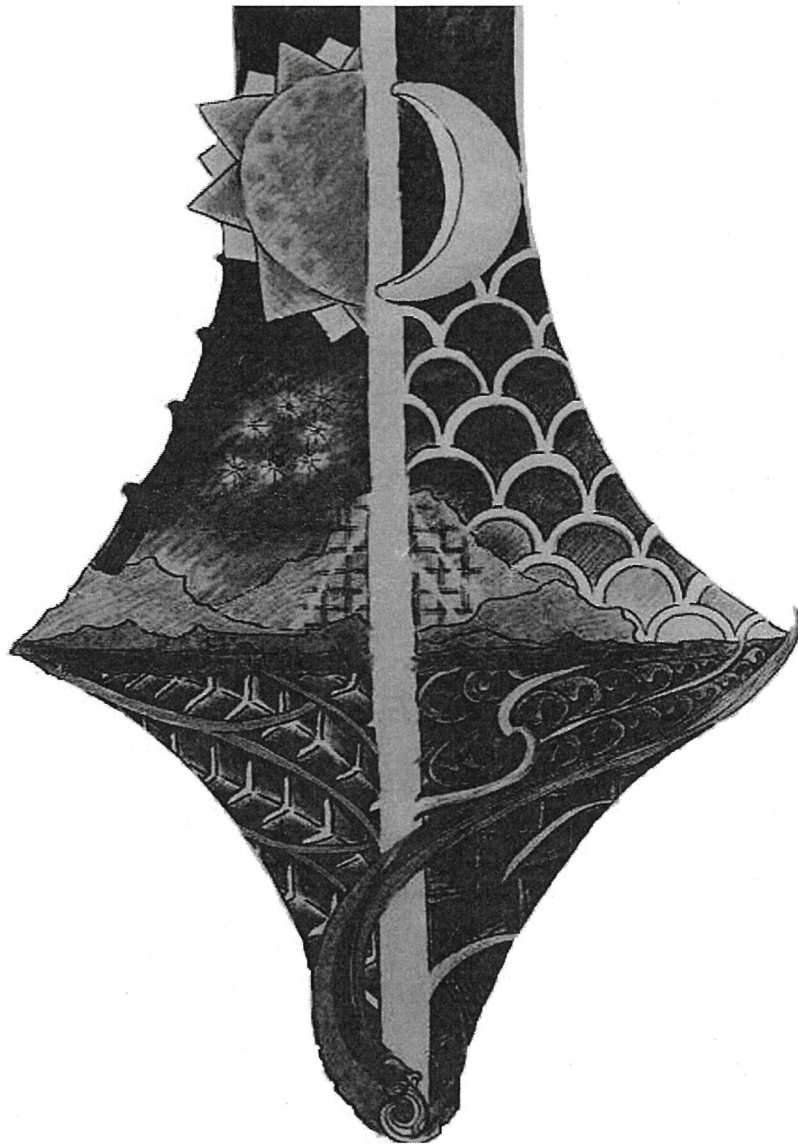


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HE WHAKAARO HERE WHAKAUMU MO AOTEAROA.



**THE REPORT OF MATIKE MAI AOTEAROA -
THE INDEPENDENT WORKING GROUP ON
CONSTITUTIONAL TRANSFORMATION.**



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HE MIHI.

E ngā mana, e ngā reo, e ngā mātāpunawai o ngā mata-ā-waka, e ngā tohunga o te kī, e ngā kaihakairo o te kupu, e ngā puna roimata, e ngā tamariki, mokopuna puta noa i te motu he mihi aroha, he mihi rangatira tēnei ki a koutou i whai pānga ai ki tēnei taonga ko waihangatia hei huarahi anga mua mō te motu whānui i roto i ngā here whanaungatanga katoa.

He hokinga mahara ki te hunga nā rātou te huarahi i para, nā rātou te kaupapa i hakaarotia, nā rātou te mahara i whao ki ō tātou hinengaro, ko ō tātou tūpuna ēnā. Haere mai haere koutou. Ko koutou rā ko ngā kaiwhatiwhai kōrero, ko te aweawe o te rangi, ko te aweawe o te whenua. Kia tū pea mai kia piri, kia tū pea mai kia tata. Ka whitirere-ā-manu ki te paepae o Uenuku. Ka tahuri ō koutou mātakitaki mutunga ki te ao mahue ake nei koutou, ka wheriko, ka nunumi ki tua. E moe, e moe, e moe mai rā koutou.

Hāunga tēnā me mihi anō ki te hunga kaiamo i te kaupapa, e kara Moana e te tuahine Mākere, nā kourua te hakamomori kia puta ai tēnei pūrongo ataahua te takoto o te kōrero, hōhonu te hakaaro, piripono ki ngā mātāpono o ō tātou tūpuna.

E te iwi whānui, puritia ēnei taonga kia titī ki te hinengaro, kia ngoto ki te whatumanawa hei raukura hakaatu ki te ao.

- Hone Sadler, Kaumātua, Matike Mai Aotearoa.

The Working Group on Constitutional Transformation would not have been able to undertake its mahi without the support of many people and organisations. We are grateful first of all to the Iwi Chairs' Forum and the other Iwi and Māori organisations which have supported the Project. The commitment to even embark on the discussion of constitutional transformation was an honourable tribute to the tīpuna who have so often raised the issue since 1840 and a mark of trust in the awareness and insight of our people.

We are of course equally grateful to everyone who participated in the Project. The thoughts you shared about Te Tiriti and the possibility of a transformative constitution were thoughtful and considered as well as imaginative and wise. Your willingness to respond with good humour and common sense to what some might see as its daunting complexity while coping with the undoubted frustration of ongoing Crown inaction was inspiring.

The Working Group is especially grateful for the generous financial support given to us throughout the whole of the Project by the J. R. McKenzie Trust. The Board and the Kaitohutohu Mārama Takao have been considerate and kind in their commitment to the work we have tried to do and the implications it might have for everyone in this country. Thank you.

We have also received generous support from Ngā Pae o te Māramatanga which enabled us to commission some of our initial research. We are especially grateful for the support of the Director, Associate Professor Tracey McIntosh, and the active involvement in the Working Group of the Kaihautū Tikanga, Dr. Joseph Te Rito.

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We owe a special thanks the Contributing Members of the Working Group. The counsel you have given when called upon and the insights you have provided throughout the Project have been valued and valuable. Whether in the initial group meetings or later interviews your thoughtful analysis and contribution has been greatly appreciated.

The burdensome work of Group Secretary was originally undertaken by Catherine Murupaenga-Iken and we are grateful for her help, especially in organising the logistics of our early hui and planning. The role was later undertaken by Kayleen Noho whom we thank for her dedicated and supportive mahi that frequently went beyond the call of duty. Kayleen also transcribed all of the discussions we attended and was helped in this work by Tira Ruru. Thank you both for managing that laborious task with efficiency and surprising good humour.

Finally, we would to thank Tamatea Kopua for designing the logo for the Working Group which was used throughout our mahi and is now featured at the front of this Report. He tino mihi e te hoa.

Ngā mihi ki a koutou katoa.

Margaret Mutu, Chairperson.

Moana Jackson, Convenor.

THE REPORT OF MATIKE MAI AOTEAROA – THE INDEPENDENT WORKING GROUP ON CONSTITUTIONAL TRANSFORMATION. EXECUTIVE SUMMARY.

Matike Mai Aotearoa, the Independent Working Group on Constitutional Transformation, was first promoted at a meeting of the Iwi Chairs' Forum in 2010. The Terms of Reference given to the Working Group were deliberately broad –

“To develop and implement a model for an inclusive Constitution for Aotearoa based on tikanga and kawa, He Whakaputanga o te Rangatiratanga o Niu Tireni of 1835, Te Tiriti o Waitangi of 1840, and other indigenous human rights instruments which enjoy a wide degree of international recognition”.

The Terms of Reference did not ask the Working Group to consider such questions as “How might the Treaty fit within the current Westminster constitutional system” but rather required it to seek advice on a different type of constitutionalism that is *based* upon He Whakaputanga and Te Tiriti. For that reason this Report uses the term “constitutional transformation” rather than “constitutional change”.

A Forum Representative, Professor Margaret Mutu, was appointed the Working Group Chair and Moana Jackson was invited to be its Convenor. Members of the Working Group were nominated by Iwi and other organisations or were co-opted. The Chairperson and Convenor facilitated 252 hui between 2012 and 2015. The rōpū rangatahi that was convened by Veronica Tawhai presented 70 wānanga.

The Working Group also invited written submissions, organised focus groups, and conducted one-on-one interviews. The views we received canvassed a number of topics such as the relationship between Te Tiriti and democracy, what is meant by a treaty relationship, what is a constitution, and other related issues such as –

- The meaning of tikanga and its constitutional relevance.
- The relationship between the Hapū referred to in Te Tiriti and the current Crown policy emphasis on Iwi.
- The effects of increasing immigration on the Tiriti relationship.
- The ongoing implications of the emigration of our people overseas.
- How to engage with others to progress the kaupapa.

This Report synthesises those views and acknowledges both the complexity of the issues our people were asked to address and the insights which they brought to the whole kaupapa. It also recognises, as our people did, that there will be opposition to the ideas presented and that more work needs to be done. This Report should be read as part of an ongoing dialogue into the future. We stress however that it is not a new dialogue as the kaupapa of constitutional transformation has been part of Māori political debate for over 170 years.

The first issue which the Report considers is whether the Terms of Reference were in fact valid grounds for advocating and developing a process of constitutional transformation. In the view of the Working Group history clearly indicates that they are, and that prior to 1840 Iwi and Hapū were vibrant and functional constitutional entities. That is, they had the right, capacity and authority to make politically binding decisions for the well-being of their people and their lands.

The second issue covered in the Report is the historical and contemporary relevance, in constitutional terms, of tikanga, He Whakaputanga, Te Tiriti, and other indigenous instruments. On this matter our people were clear – they were fundamentally relevant because they all express the right for Māori to make decisions for Māori that is the very essence of tino rangatiratanga.

For that reason this Report does not consider in any great detail the contrary views that the Crown has maintained since 1840, and especially its presumption that Iwi and Hapū ceded sovereignty in Te Tiriti. We simply note that they have always been at odds with Māori understandings. Our Terms of Reference were based upon those understandings and we proceeded upon that basis.

The third task for the Working Group arose from the participants' belief that a constitution had to be based on certain values. For example the equality provided for in Te Tiriti was itself seen as a value while others ranged from the importance of the land to a belief that a constitution should enhance the sense of belonging that Te Tiriti reaffirmed for Māori and offered to others. Others related to constitutional conventions such as transparency and mechanisms to ensure that the authority of Māori was not subordinated to that of the majority.

The predominance of the discussions about values indicated that in the view of participants a constitutional model (or models) can only be properly developed once there is clarity about the values it should be based upon. The Working Group accepts that view and notes that the Rangatahi Report which is attached is devoted entirely to suggested constitutional values – it was the major topic at all of their wānanga.

It is also our considered view that the identification of such values indicates a very real desire for a more open constitutionalism and what we describe as a conciliatory and consensual democracy rather than an adversarial and majoritarian one.

In the final Part of the Report the Working Group draws some conclusions and attempts to translate the kōrero about the nature, foundations and values of a constitution into a vision for constitutional transformation. It also describes six indicative constitutional models that have arisen from the kōrero.

We describe the suggested models as indicative because they indicate what models might best ensure the values involved in tikanga and the Tiriti relationship. We also call them indicative because they simply indicate the range of possibilities that are available for those who really want a good faith honouring of Te Tiriti.

It is hoped that the models might at least provide some options for the discussions which lie ahead. They would obviously need to be given detailed consideration, including the financial implications, before any final choice is made. The discussions may even produce an entirely different model.

The underlying kaupapa behind each model is that tikanga and our own history always recognised the independence of each Iwi and Hapū. The only restraint on that independence was the further and unique tikanga of interdependence – that is the belief that whakapapa ultimately bound everyone together and that any concept of constitutional and political authority was reflective of that.

The other kaupapa underlying the suggested indicative models is that Te Tiriti envisaged the continuing exercise of rangatiratanga while granting a place for kāwanatanga. It provided for what the Waitangi Tribunal recently described as “different spheres of influence” which allowed for both the independent exercise of rangatiratanga and kāwanatanga and the expectation that there would also be an interdependent sphere where they might make joint decisions.

We call those spheres of influence the “rangatiratanga sphere”, where Māori make decisions for Māori and the “kāwanatanga sphere” where the Crown will make decisions for its people. The sphere where they will work together as equals we call the “relational sphere” because it is where the Tiriti relationship will operate. It is the sphere where a conciliatory and consensual democracy would be most needed.

The six indicative models are –

1. A tricameral or three sphere model consisting of an Iwi/Hapū assembly (the rangatiratanga sphere), the Crown in Parliament (the kāwanatanga sphere) and a joint deliberative body (the relational sphere).
2. A different three sphere model consisting of an assembly made up of Iwi, Hapū and other representation including Urban Māori Authorities (the rangatiratanga sphere), the Crown in Parliament (the kāwanatanga sphere), and a joint deliberative body (the relational sphere).
3. A further three sphere model consisting of an Iwi/Hapū assembly (the rangatiratanga sphere), the Crown in Parliament (the kāwanatanga sphere), and regional assemblies made up of Iwi, Hapū and Crown representatives (the relational sphere).
4. A multi-sphere model consisting of an assembly of Iwi/Hapū and other Māori representation (the rangatiratanga sphere) and the Crown in Parliament (the kāwanatanga sphere). It also includes a relational sphere which would have two parts – a constitutionally mandated set of direct Iwi/Hapū/Crown relationships to enable direct Iwi/Hapu-Crown decision-making plus a unitary perhaps annual assembly of broader Māori and Crown representation.
5. A unicameral or one sphere model consisting of Iwi/Hapū and the Crown making decisions together in a constitutionally mandated assembly. This model does not have rangatiratanga or kāwanatanga spheres. It only has the relational sphere.
6. A Bicameral Model made up of an Iwi/Hapū assembly and the Crown in Parliament. This model has distinct rangatiratanga and kāwanatanga spheres but has no provision for a relational sphere.

Some similar models have been considered before of course but the kōrero we have has suggested substantial and substantive refinements. Perhaps the most important of those is the jurisdictional positioning of the relational sphere and the overarching constitution itself upon values drawn from tikanga Māori while recognising the integrity and independence of both rangatiratanga and kāwanatanga in their respective spheres.

The values are all inter-related although different people attached greater or lesser degrees of significance to different ones. However all of the “values talk” was contextualised within Te Tiriti and its guarantee to maintain the independent constitutional authority of Māori.

In thematic terms Te Tiriti represented the values of political and social inclusiveness. It was the values base from which other broader ideals were discussed and from which some quite specific ideas about constitutional models eventually emerged.

The values which have been identified are also sourced in or stress the importance of relationships, whether they are environmental values or those that give meaning to the structure of a constitution. They may be defined as whakapapa values which overlap and influence each other just as the relationships in a whakapapa always do. They may be conceptualised under the following broad headings –

1. *The value of tikanga* – that is the need for a constitution to relate to or incorporate the core ideals and the “ought to be” of living in Aotearoa.
2. *The value of community* – that is the need for a constitution to facilitate the fair representation and good relationships between all peoples.
3. *The value of belonging* – that is the need for a constitution to foster a sense of belonging for everyone in the community.
4. *The value of place* – that is the need for a constitution to promote relationships with, and ensure the protection of Papatūānuku.
5. *The value of balance* – that is the need for a constitution to ensure respect for the authority of rangatiratanga and kāwanatanga within the different and relational spheres of influence.
6. *The value of conciliation* – that is the need for a constitution to have an underlying jurisdictional base and a means of resolution to guarantee a conciliatory and consensual democracy.
7. *The value of structure* – that is the need for a constitution to have structural conventions that promote basic democratic ideals of fair representation, openness and transparency.

Many of these values were discussed in some detail at various rangatahi wānanga and they are referenced separately at the conclusion of this Part of the Report.

The history of how that constitutional order was dismissed and suppressed by the Crown throughout colonisation created an injustice which remains as the core grievance that is not yet addressed or even contemplated in any Treaty Settlement. The need to properly remedy that wrong is another general justification for advocating constitutional transformation.

Q As noted earlier it can be tiresome justifying something as basic as the right to self determination and most of the discussions undertaken by the Working Group concentrated on the core imperatives and values of constitutionalism. Thus it was accepted for example that Te Tiriti o Waitangi provided for the continuation of the Māori constitutional order. It created a new constitutional configuration with the grant of kāwanatanga for the Crown to exercise authority over its people while providing for a joint site of power where Māori and the Crown could work together in a Tiriti-based relationship.

C This has never come to pass of course and the failure to honour that promise in word and deed remains the most egregious of all of the Crown's breaches of Te Tiriti. Addressing that breach and finally honouring Te Tiriti is perhaps the most important reason for seeking constitutional transformation. It was certainly one of the main motivations for the establishment of the Working Group.

C All of the discussions the Working Group has been part of have accepted those reasons as givens and devoted most of their time to considering why and how a different constitution might in fact be based on tikanga, He Whakaputanga, Te Tiriti and international indigenous rights Conventions. The extensive kōrero about the values that should underpin the constitution was in itself an illustration of the difference and has led to a particular constitutional vision of governance and democracy that we have described as conciliatory and consensual.

There are many more steps that will need to be taken to achieve that goal. Certainly the objections and practical obstacles to constitutional transformation that will be present in the wider community, and which the participants so often referred to in their kōrero, are very real –

“Getting to where we are now has been a struggle but this one is different because a lot of the early stuff was about changing the hearts and minds of ordinary people as well as politicians about raupatu and other grievances that couldn't be denied...but this one effects the power that Pākehā have and so it'll be harder. All we can do is be firm about the relationship the treaty talked about and not get distracted into some expedient solution that will keep things the same instead of advancing the vision that the old people had (that) our jurisdiction would remain intact and we wouldn't stop being