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**Title:** *Kia tū ko taikākā: Let the heartwood of Māori identity stand - An investigation into the appropriateness of the legal definition of 'Māori' for Māori*

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**KIA TŪ KO TAIKĀKĀ**  
**LET THE HEARTWOOD OF MĀORI IDENTITY STAND**

**An investigation into the appropriateness of the legal  
definition of ‘Māori’ for Māori**

A dissertation submitted in partial fulfilment of the  
degree of Bachelor of Arts (Honours), in Māori Studies  
at the University of Otago, Dunedin

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## ABSTRACT



Māori are not a homogenous people. In contemporary society Māori come in all different sizes, shapes, colours, social conditions, cultural affiliations, religions and opinions. Given this diversity there are thus some complex and often controversial issues involved in determining who should be able to qualify as being Māori. Despite this complexity the law sets out who can qualify as being ‘Māori’ in one clear and concise sentence. Currently, this definition in general encompasses anyone with Māori descent. The main thesis of this dissertation is to determine whether this legal definition of Māori is appropriate for Māori. Ultimately, it is concluded that there is a more appropriate definition of ‘Māori’ that could be employed within the law. However, Māori need to take a more active role in controlling this definition.

## ACKNOWLEDGEMENTS



I dedicate this dissertation to my *koroua*, Wharekaihua Coates

*Kei te tū koe i tōku taha i ngā wā katoa*

*Ki te wāhi ngaro, kua whetūrangihia ki te korowai o Ranginui, ki te okiokinga i o tātou tīpuna, haere, haere, haere rā. Ki ngā tangata katoa e āwhina ana, e tautoko ana i ōku mahi rangahau i tēnei tau, he mihi tino nui tēnei kia koutou katoa. Ko koutou ōku poutokomanawa, ōku tokatū moana hoki. Ā, ahakoa he itiiti noa ōku kupu i runga i tēnei pepa, he iti nā te aroha.*

Although my name is on the front of this dissertation I cannot take sole credit for the final product. This is thus my opportunity to acknowledge those people who played a vital part in the completion of this dissertation.

I would firstly like to acknowledge my supervisors, Paerau Warbrick and Jacinta Ruru. Paerau, my dear uncle, I know you have had a busy year working on your PhD so I thank you for always having your door open. I enjoyed our chats – even though they had a tendency to go on massive tangents. Your cheerful demeanour was always appreciated and of course your input into my dissertation was invaluable. Jacinta, I would like to thank you for not only being an awesome supervisor, but also a friend. I don't know how you managed to find the time to read through my drafts given that you received a wonderful new bundle of joy just as crunch time arrived. I hope you know how much I appreciate all that you have done for me this year.

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*Ki a koe Poia Rewi, e te rangatira, ko koe tētahi o ōku pou whirinaki. Kāore e taea e au te whakapuaki ōku tino mihi aroha ki a koe mō tō āwhina i tēnei tau.*

To my parents, thank you for making me the person I am today. To mum in particular, who helped me with the painstaking task of proof reading, I absolutely appreciate your help. You guys are the best and most supportive parents anyone could ask for. In fact, an acknowledgement needs to go to my entire extended *whānau* – you are all awesome.

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## TABLE OF CONTENTS



Abstract.....	ii
Acknowledgements.....	iii
Table of Contents.....	v
Glossary.....	viii
Preface.....	x
<b>INTRODUCTION.....</b>	<b>1</b>
My Place within this Dissertation.....	3
Summary of Chapters.....	8
Methodology.....	9
Technical Terms.....	11
<b>CHAPTER ONE: CONTEXTUALISING THE TERM ‘MĀORI’ AND ITS USE WITHIN THE LAW.....</b>	<b>12</b>
The Origins of a Collective Māori Identity.....	13
The Legal Definition of a Māori Collective.....	15
(a) Historically: Half blood or more.....	16
(b) Currently: A Descendant.....	18
A Third Option: Self-Identification.....	20
Why Māori are Distinguished within the Law.....	21

**CHAPTER TWO: THE CONSISTENCY OF THE LEGAL DEFINITION OF ‘MĀORI’  
WITH A MĀORI VIEW .....24**

Whakapapa as the Crucial Factor Determining ‘Māori’ .....26

Controversy over Whakapapa being the Key to Identity .....28

    The Exclusionary Effect of Whakapapa .....28

    Māori vs the Tribe .....29

    Māori and Māoritanga .....32

    Māori and Tikanga Māori Values .....36

        Whanaungatanga .....37

        Utu .....39

        Mana .....40

        Manaakitanga .....41

        Ahi kā .....41

**CHAPTER THREE PRACTICAL IMPLICATIONS FOR MĀORI ARISING FROM  
THE LEGAL DEFINITION OF MĀORI .....44**

A Broad Definition & an Increasing Number of Māori .....45

Are the Wrong ‘Māori’ Getting the Leg Up? .....48

The Nature of Law and the Nature of Identity .....51

‘Māori’: An Anachronistic Term? .....53

**CHAPTER FOUR: THE LEGAL DEFINITION OF ‘MĀORI’ IN THE FUTURE .....57**

Retain the Whakapapa Requirement .....58

Self-Identification as a Definition .....59

Focus on the Iwi .....61

Incorporate Cultural Participatory Criteria .....	62
The Incorporation of both Descent and Ethnicity as an Option.....	65
A Mixed Approach based on why Māori are Distinguished within the law.....	66
<b>CONCLUSION .....</b>	<b>70</b>
Appendices.....	75
Appendix A: Poetry .....	75
Bibliography .....	74

## GLOSSARY



<i>ahi kā</i>	fires of occupation
<i>ahi mātao</i>	the extinguishing of the fire
<i>atua</i>	gods
<i>hapū</i>	sub-tribe
<i>hui</i>	meeting
<i>hui ahurei</i>	cultural festival
<i>iwi</i>	tribe
<i>kiri</i>	skin
<i>kuia</i>	elderly woman
<i>mana</i>	power, authority
<i>mana atua</i>	god given authority
<i>manākitanga</i>	kindness
<i>mana tangata</i>	authority derived from personal attributes
<i>mana tīpuna</i>	power derived from one's ancestor
<i>marae</i>	meeting house
<i>mokopuna</i>	grandchildren
<i>pepeha</i>	motto-maxim, proverb
<i>pō</i>	night
<i>rā</i>	sun, day
<i>rākau</i>	tree

<i>rangatiratanga</i>	sovereignty/authority
<i>tamaiti whāngai</i>	child adopted in accordance with <i>tikanga</i> Māori
<i>tangata</i>	person
<i>te ao</i>	the world
<i>te reo</i>	the language
<i>tikanga</i>	procedure, practice, custom
<i>tinorangatiratanga</i>	self-determination
<i>tohunga</i>	expert
<i>tua</i>	beyond
<i>tuākiri</i>	identity
<i>turangawaewae</i>	place to stand
<i>utu</i>	reciprocity
<i>whakapapa</i>	genealogy
<i>whakatauki</i>	proverb
<i>whānau</i>	family
<i>whanaungatanga</i>	relationship
<i>whenua tipu</i>	ancestral land

## PREFACE



All Māori words (with the exception of proper nouns and common words such as ‘Māori’ and ‘Pākehā’) have been italicised in accordance with the policy of Te Tumu, the School of Māori, Pacific and Indigenous Studies. Italics have also been used in accordance with their general use in academic writing, for example, to give emphasis to a word.

Long vowels in *te reo* Māori have been denoted with a macron. And a full list of the Māori terms, employed within this dissertation, can be found in the ‘glossary of terms’.

All short direct quotes have been incorporated into the text in single quotation marks. Long quotes, of three lines or longer, have been typed in eleven point font, single spaced and indented so as to form a block that stands out from the text. In these instances quotation marks are not used. Further, all quotations correspond with the original in wording and spelling. The only changes that have been made to quotations are that Māori words have been italicised and the appropriate macrons inserted.

On some occasions the use of footnotes has been employed to comment on the text. They have been incorporated to provide additional information and so that the flow of thought within the text is not interrupted.

I have followed the Harvard author-date-page style of referencing. I have spelt Indigenous with a capital ‘I’ because this is the convention used by many Indigenous writers.

## INTRODUCTION



These Māori today  
are not Māori anymore  
I don't know what they are

(Taylor, 1989, p. 59)

Māori are a diverse and complex people. The sentiment above, extracted from a poem written from the perspective of a *kuiā* (elderly Māori woman), indicates that the issue of Māori identity in contemporary society is perhaps not as straightforward as it once was when Māori identity was clearly associated with distinctive Māori values, beliefs and cultural practices. Today, there is no single Māori reality. Rather, New Zealand is in the situation where individuals who identify as Māori come from a broad spectrum of backgrounds and socio-economic circumstances, with diverse cultural values, identities and aspirations (Kukutai, 2003, p. 10). Thus, the issue of who is Māori and what is important in determining Māori identity does not have one simple solution. For Timoti Karetu (1990, p. 117), the Chairman of Te Kōhanga Reo National Trust, his Māori identity was dictated by his upbringing and by the society in which he grew up observing all the rites of passage in a Māori way. For the late John Rangihau (1992, p. 183), Māori *kaumātua* (elder) of the Tuhoe *iwi* (tribe), being Māori was about growing up in a Māori community and learning the *kawa* (procedures), customs and traditions that are part of belonging to a particular tribal group. Arohia Durie (1997, p. 160), Head of the School of Te Uru Māraurau (Māori and Multicultural Education) at Massey University thinks that somebody who feels he or she is Māori, and is recognised as such by other people is surely Māori. Divergent opinions therefore

clearly exist within society as to the concept of collective Māori identity and the factors that determine who is Māori.

The conundrum of what exactly constitutes being Māori has been contested since the advent of colonisation. The debate can be likened to questions posed by the Director of Graduate Studies and Research at Te Wānanga-o-Raukawa Dr Charles Royal (2003): what should be considered Māori research? Does 'Māori' research mean research that is conducted by a person of Māori descent, research that benefits Māori irrespective of the researcher's background or, research that uses a Māori methodology? Analogous questions arise in regard to what makes a person Māori. Should *whakapapa* be the only requirement? Are cultural considerations relevant? Is being Māori just a state of mind? These types of questions only just begin to highlight some of the complexities involved with a collective Māori identification. Even the Māori word for identity itself, *tuakiri*, somewhat reflects the complex nature of determining a Māori identity. According to *Te Aka, Māori-English, English-Māori Dictionary and Index* (2005, pp. 178, 570) the word *tua* translates as 'beyond' whereas the word *kiri* is synonymous with the Pākehā word 'skin'. *Tuakiri* thus literally translates as that which extends beyond the skin. This term aptly conveys the expansive terrain involved in the shaping of an identity. Given that determining a Māori identity therefore does not seem to be a straightforward issue, questions arise as to whether there are parameters of a Māori identity and if so, what are they?

Due to the expansive and complex nature of Māori identity, I have chosen in this dissertation, to focus on one particular aspect of Māori identity, that is, how the term 'Māori' has been defined within the law.<sup>1</sup> As demonstrated by some of the preceding comments, there is an abundance of

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<sup>1</sup> Note that there are numerous statutes that define Māori. These include, but are not limited to: the Administration Act 1969, the Adoption Act 1955, the Electoral Act 1993, the High Court Rules, the Māori Affairs Restructuring

difficult issues involved in determining a Māori identity.<sup>2</sup> In the past the law tended to define ‘Māori’ according to blood quantum.<sup>3</sup> In contemporary times, however, the legal definition of Māori tends to include ‘those persons of the Māori race of New Zealand; and includes any descendant of such a person’.<sup>4</sup> The aim of this dissertation is to examine this definition and determine if the law has got it right by Māori standards both in terms of defining a Māori identity and the practical use of this definition within the law. Additionally, the following well known proverb has been instrumental in shaping this thesis; ‘those who name the world have the power to shape people’s realities’ (cited in Reid & Robson, 2001, p. 24). In a New Zealand legal context this ‘namer of names’ is Parliament, as it is the legislature that has the power to define Māori in the law.<sup>5</sup> Given that the legal definition of ‘Māori’ can thus be regarded as a non-Māori construct, in this dissertation I have chosen to specifically focus on whether this legal definition is appropriate *for* Māori.

## **MY PLACE WITHIN THIS DISSERTATION**

‘Objectivity is often considered by mainstream academia to be a desirable goal in research’ (O'Regan, 2001). This line of thinking makes the assumption that the researcher is an ‘outsider’ able to observe without being implicated in the scene (Smith, 1999, p. 137). Canadian Aboriginal researchers Kathy Absolan and Cam Willets (2005, p. 97), however, are of the opinion that

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Act 1989, the Māori Community Development Act 1962, the Māori Housing Act 1935, the Māori Purposes Act 1974, the Māori Purposes Fund Act 1934-1935, the Māori Trusts Boards Act 1955, the Ministry of Māori Development Act 1991, the Ngārimu VC and 28<sup>th</sup> (Māori) Battalion Memorial Scholarship Fund Act 1945, Te Ture Whenua Māori Act 1993/Māori Land Act 1993, the Treaty of Waitangi Act 1975, the Electoral Act 1956, the Income Tax Act 1976, the Law Practitioners Act 1955, and the Māori Affairs Act 1953.

<sup>2</sup> Just like any other type of identity, such as a religious, sexual or political identity.

<sup>3</sup> This is a term that requires a person to have a certain amount of Māori ‘blood’ or Māori ancestry to be able to qualify as a legal ‘Māori’.

<sup>4</sup> This definition for example can be seen in s4 of Te Ture Whenua Māori Act 1993.

<sup>5</sup> This power is given to parliament as New Zealand operates under an imposed Westminster system of democracy.

neutrality and objectivity can never completely exist, as all research is conducted and observed through human epistemological lenses. Given this view, it is important to note that although this dissertation attempts to bring a range of balanced arguments to the fore, the subject matter of Māori identity within the law is directly relevant to me. Therefore, it would be a misrepresentation on my part to assert true objectivity.

Despite complete objectivity being unattainable in this instance, it is not necessarily detrimental. Hana O'Regan (2001, p. 28), for example, states that 'When the subject is cultural identity I believe the 'insider analysis' can be extremely insightful. Identity is about feeling, belief and perception'. Although this observation is helpful, rather than entering into substantive discussion about the particular advantages of how my personal biases may affect the conclusions that are reached, I have instead chosen to simply adopt what Absolon and Willets believe is a fundamental principle to Indigenous research methodology. This is the imperative requirement that one locates themselves within their research (Absolon & Willet, 2005, p. 97). There are a number of reasons that location is considered to be important. Firstly, location tends to avoid ethnocentric research (Absolon & Willet, 2005, p. 107). Secondly, Indigenous peoples have been misrepresented and exploited for countless generations and therefore the Indigenous community and cultural protocols require knowledge of who is doing the research and for what purposes (Absolon & Willet, 2005, p. 107). Furthermore, it is my belief that this is particularly relevant to this dissertation because the conclusions reached are based entirely on personal conceptual reasoning and existing literature. Therefore it is imperative that I explain who I am and the reasons that I chose this particular topic. In doing this it will illustrate that I am accountable for the conclusions that are ultimately reached and will also allow people to draw their own conclusions as to my subjective biases.

Therefore, by way of introduction, my name is Natalie Ramarhia Coates and I identify as being of both Māori and Pākehā descent. From my father, William Wharekaihua Coates, I receive and embrace the *pēpeha* (motto-maxim):

*Ko Mataatua te waka*

*Ko Pūtauaki te maunga*

*Ko Rangitaiki te awa*

*Ko Ngāti Awa te iwi*

*Ko Pahipoto te hapū*

*Ko Kokohinau te marae*

From my mother, Christine Frances Coates (formerly Jones), I am of English, Scottish and Welsh descent. I was raised in a bicultural environment in which I have been fortunate enough to have been exposed to people from many walks of life, including both Māori and Pākehā. My primary and intermediate years were spent at Te Kura Reo Rua o Te Teko and I later attended Whakatane High School. I am relatively competent in *te reo* Māori and I primarily identify as being Māori. However, I also embrace my Pākehā side and family. I am currently attending the University of Otago and am working towards a double honours degree in a Bachelor of Arts (majoring in Māori studies) and Bachelor of Laws.

There are a number of reasons why I choose to research the legal definition of ‘Māori’. One reason relates to an instance where I experienced the controversy that can typically surround the definition of ‘Māori’. In 2004, I overheard a conversation about a student who for the purposes of this dissertation will be called ‘Mere’.<sup>6</sup> ‘Mere’ had applied for Māori alternative entry into second year law school at the University of Otago. Obtaining entry into second year law is a

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<sup>6</sup> The reason for not using the person’s real name is because of ethical concerns.

competitive process as there are a limited number of spaces available. Students of Māori descent, however, have the opportunity to apply for alternative entry whereby they can receive special consideration. Thus it is feasible that a person of Māori descent can progress on to second year law with a slightly lower mark than other students. The parties involved in the conversation, of which I was a passive observer, were extremely animated and upset that 'Mere' qualified to apply for alternative entry. 'Mere' had some Māori 'blood' but had no cultural associations with the Māori world, and only identified as Māori for the purposes of qualifying for alternative entry. The passions which were aroused in this debate, combined with my own identification as Māori, sparked a personal interest in the question, who ought to be entitled to qualify as being 'Māori'?

Once this question arose I found that one does not have to delve very far to discover that the issue of who should be entitled to be 'Māori' is a controversial matter which has been the subject of much debate throughout history. Moana Jackson (2003), for example, noted that whenever the Māori All Blacks play there seems to be issues with how 'white'<sup>7</sup> the team is, complaints against 'born-again' Māori<sup>8</sup> and discussions about what a 'real Māori' is. This issue was brought into the public spotlight in 2003 when Christian Cullen made his debut as a Māori All Black. His inclusion in the team caused a notable amount of controversy as Christian Cullen is, in terms of measuring his blood through descent, 1/64<sup>th</sup> Māori and his father is quoted as saying 'you only need a little fingernail don't you?' (BBC Sport, 2003). This comment divided the nation and crystallised a distinction between ethnicity and descent (Butcher, 2003).

These examples, in which controversy over a Māori identity is evident, forced me to question just who should be permitted to qualify as being Māori. Furthermore, does it make any difference if

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<sup>7</sup> This reference could be referring to white skin colour or a person who has a predominantly Pākehā outlook.

<sup>8</sup> This expression refers to those people who only claim that they are Māori when there is an advantage to gain.

there are advantages attached to that identity? I was drawn to the legal definition of ‘Māori’ (that essentially only requires a person to be of Māori descent) as this definition encompassed a complex interplay of a number of elements. There is firstly the issue that the legal definition of ‘Māori’ is a non-Māori construct.<sup>9</sup> This fact naturally imports the issue of Māori identity and the question of whether the legal definition of ‘Māori’ reflects a Māori reality. However, in conjunction with issues of identity, the legal definition of ‘Māori’ is intrinsically more complicated by virtue of the definition being incorporated within the law and the fact that certain rights are attached to this identification. Hana O’Regan (2001, p. 87) for example, recognises that the process of distinguishing those who have a right or ability to identify with a particular group becomes more complex when economic and political rights are associated with that identity. Thus, given that the law employs the legal definition of ‘Māori’ so as to distinguish Māori for the purposes of entitling them to an advantage, there are implications that extend beyond simple identity matters. It were these issues and the dynamic and interesting way in which the legal definition framed the issue of Māori identity that ultimately lead me to the conception of this dissertation.

The aim of this dissertation is ultimately to provide a researched view into the appropriateness of the legal definition of ‘Māori’ for Māori. Underlying this dissertation, however, are important issues of *tinō rangatiratanga*<sup>10</sup> as the legal definition of ‘Māori’ is an imposed identity which shapes a Māori reality. This dissertation does not deal with the issue of Māori self-autonomy directly, but I take the view that it is imperative that Māori need to start taking an active part in defining and articulating their own legal identity. This dissertation which evaluates whether the

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<sup>9</sup> In this context this expression refers to the fact that Parliament has created the legal definition of ‘Māori’.

<sup>10</sup> There are a number of understandings of *tinō rangatiratanga* however the common translation is ‘self-determination’ (Moorfield, 2005, p. 168). In essence this denotes Māori control of Māori things.

current legal definition of ‘Māori’ is appropriate for Māori is a step in that process. It attempts to provide a platform from which Māori can at least recognise that this issue exists and perhaps start to engage in discussions about whether this definition is appropriate for them. It is a complex issue however, if Māori themselves cannot work through it and decide how they want to be defined, then the legislature will continue to do so in a way that may not necessarily be appropriate for Māori. This dissertation is but one of the steps that could ultimately lead to the reclaiming of this legal definition of ‘Māori’ by Māori.

## SUMMARY OF CHAPTERS

The first chapter of this dissertation provides a context from which the legal definition of ‘Māori’ can be examined. It investigates the origins of a collective Māori identity and looks at how the law has defined Māori both in past and present statutes. It then examines the reasons *why* Māori are distinguished within the law. The purpose of this first chapter is to establish the necessary background in order to be in a better position to subsequently evaluate the legal definition of ‘Māori’.

Chapter Two endeavours to ascertain whether the legal definition of ‘Māori’ is consistent with Māori thinking and Māori values. This chapter will look at Māori notions that both support and oppose the concept embraced by the law that being ‘Māori’ only requires having Māori descent. It further considers whether the Māori concepts of *whanaungatanga*, *utu*, *mana*, *manākitanga* and *ahi kā* are consistent with the legal definition.<sup>11</sup> By looking at Māori views regarding the legal

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<sup>11</sup> Note that definitions of these Māori terms are provided in Chapter Two.

definition this chapter gets to the core thesis underlying this dissertation, whether the legal definition of ‘Māori’ is appropriate for Māori.

Chapter Three discusses some of the practical implications for Māori that either flow from or surround the legal definition of ‘Māori’. For example, this chapter discusses some of the issues resulting from the characteristically broad definition of ‘Māori’, how the nature of law inherently contradicts the nature of a Māori identity, and how the term Māori may become anachronistic given the revived emphasis that society is once again placing on *hapū* (sub-tribe) and *iwi* (tribes). By exposing and highlighting some of the more practical implications, this chapter examines the wider context of the appropriateness of the legal definition for Māori.

Chapter Four analyses alternative options that could be adopted in place of the current legal definition. It also suggests a personal perspective of what could be the most appropriate definition for Māori in the contemporary climate.

## **METHODOLOGY**

The investigation into the appropriateness of the legal definition of ‘Māori’ for Māori is a topic which has not previously been explored in any real depth. Thus, the primary methodology employed here was to collate numerous written sources and written opinions from within existing literature and relate these notions to the subject matter of this dissertation. Interviews were not conducted primarily because of both time constraints and there being sufficient material from which a range of views, as to what makes a person Māori, could be derived. I endeavoured to use this existing literature in a new light, namely, in the context of whether the legal definition of Māori is appropriate for Māori.

This dissertation thus relies on existing literature and my own personal conceptual thinking. In adopting this methodology, however, a limitation did arise. By only depending on existing literature, which usually relies on a person having a certain degree of proficiency within the English language, this method therefore naturally excludes the opinions and views of a large number of people, particularly those that are not academic. There are therefore inherent limitations in the comprehensiveness of the sources and views that are considered within this dissertation. For example in Chapter two, the views of some of the Māori population may not necessarily be represented by those that were identified within the literature. Thus a disclaimer is required stipulating that this chapter does not purport to comprehensively represent *all* Māori views and ideas. This example, in which views and considerations are likely to be excluded from the discussion by virtue of the nature of literature, demonstrates a limitation evident within the methodology employed within this dissertation. This methodology, however, still has its uses for a word and time constrained dissertation such as this one.

In regard to how sources and information were selected for this dissertation, for Chapters One, Two and Three I simply chose literature that was relevant. For Chapter Two, however, a different method was adopted. The ideas presented within this chapter are primarily derived from the views of individual Māori or sources which are relatively authoritative on Māori issues.

## **TECHNICAL TERMS**

There are two technical terms employed within this dissertation that require explanation. The first is the expression the 'law'. The 'law' in general terms can incorporate a vast number of different notions. For example, it includes statutory law, international law, customary law, the common law and civil law. For the purposes of this dissertation, however, the 'law' to which I refer is the law that flows from the legislature as opposed to that which derives from custom or the judiciary. 'Law' within this dissertation is thus employed within a limited sense and includes Acts of Parliament as well as policies and regulations flowing from these statutes.

Another term that requires explanation is the term 'ethnicity'. According to the Collins Student's Dictionary (2004, p. 281) the term 'ethnic' is defined as 'of or relating to a human group with racial, religious, and linguistic characteristics in common'. Ethnicity is thus a term which emphasises cultural characteristics and connections (Song, 2003, p. 10). Ethnicity is distinguishable from descent as it embraces common cultural features as opposed to biological characteristics. For census purposes ethnicity is a self-ascribed notion.

Hence, when these terms are employed within this dissertation, it is done with these explanations in mind.

## CHAPTER 1: CONTEXTUALISING THE TERM ‘MĀORI’ AND ITS USE WITHIN THE LAW



*Titiro ki ngā rā o mua, hei arahi i ngā rā o muri*

‘Move into the future with your eyes on the past’

(Metge 1976, p. 70)

The above extract from Joan Metge encapsulates the way that Māori look to the past as a guide for the present and the future (Higgins & Ka'ai, 2004, p. 21). This chapter thus examines a history of the term ‘Māori’ and how the law has defined this collective concept over the years. This exercise is undertaken with the aim of providing a foundation from which we can move from the past into an evaluation of the present and then proceed to the future. This chapter thus endeavours to contextualise later chapters which focus on determining the appropriateness of how Māori are contemporarily defined within the law and alternative options for this definition in the future. This chapter therefore initially investigates the origins of a collective Māori identity, a concept which was not traditionally associated with Māori social structures. It then moves on to discuss how the law, both in past and present statutes, has specifically defined Māori. To conclude it will investigate why Māori are distinguished in the law as a separate entity from Pākehā.

## THE ORIGINS OF A COLLECTIVE MĀORI IDENTITY

The term ‘Māori’ in contemporary society is generally used to describe the Indigenous peoples of New Zealand. However, the practice of using this term to describe an identity is a development that can be traced back to the arrival of the Pākehā (O'Regan, 2001, p. 47). Prior to European contact, the word ‘Māori’ was not used to refer to a distinct ethnic group but instead indicated that a subject (not exclusively human) was ‘normal, ordinary, or of the usual kind’ (Sharp, 1990, p. 50). Williams (2001, p. 179) provides examples of how the term ‘māori’<sup>12</sup> can be used to distinguish ordinary things from those which have special characteristics. *Tangata māori*, for example, means man or human being as opposed to a supernatural being. *Rākau māori* similarly means ordinary or inferior trees as opposed to a finer timber tree. To be ‘māori’ in traditional times was thus to be normal.

Prior to the first contact with Pākehā there was no need for Māori as a collective group to identify themselves as a distinct race or ethnicity (Reed, 1963). Māori identity markers were instead focused around tribes (Maaka & Fleras, 2005, p. 72), a term that is used loosely within this dissertation to encompass *iwi*, *hapū* and to some degree *whānau*. As Maaka and Fleras (2005, p. 72) describe them, tribes are related groups of people whose defining principle of identity and organisation is based on descent from a common ancestor. The Indigenous inhabitants therefore did not refer to themselves as ‘Māori’; rather they were Ngāti Awa, Tūhoe, or other named kin-group (Durie, 1998, p. 53). Tribal identity links remain important in today’s society, however, since the advent of European contact Māori were faced with a new reality, a people who were very different from themselves (O'Regan, 2001, p. 47). The binary opposition

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<sup>12</sup> Note that the term ‘Māori’ can either be an adjective or a noun. Lower case letters are used in this context to indicate it is being used as an adjective.

that was evident between Māori and Pākehā provided the impetus for emphasising a common Māori ethnicity and distinguishing the Indigenous inhabitants from the newcomers. The term ‘Māori’ as a reference to an ethnically distinct collective thus arose. As time progressed and Māori faced subsequent successive threats from Pākehā in the form of land alienation, economic marginalisation and political disenfranchisement the notion of a common ethnicity provided a means for advancing collective concerns beyond a purely tribal context (Kukutai, 2003, p. 21).<sup>13</sup>

In contrast to these ideas John Rangihau (1992, p. 190) has said that he has a faint suspicion that ‘...Māoritanga is a term coined by the Pākehā to bring the tribes together’. In his opinion this was done because ‘...if you cannot divide and rule, then for tribal people all you can do is unite them and rule’ (Rangihau, 1992, p. 190). The claim that the term ‘Māori’ was derived specifically from Pākehā in an attempt to homogenise a tribal people is difficult to substantiate. It is thus likely that Rangihau was instead referring to how Pākehā have tended to encourage the harmonisation of Māori due to expediency, as it is easier to deal with one voice over a multitude. This is a tactic which has in some instances been used by the Crown to the detriment of smaller tribal structures.<sup>14</sup>

The term ‘Māori’ has therefore evolved from an adjective that describes the state of something to a noun that indicates a class of persons. It has altered from initially signifying those people who were ‘normal’, who shared similar characteristics and were the majority in Aotearoa, to standing

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<sup>13</sup> Examples of how Māori tribal groups have come together for collective causes can be seen in initiatives such as the Treaty of Waitangi, Te Kotahitanga, the Rātana religious movement and in contemporary society the formation of the Māori Party.

<sup>14</sup> The Government for example has increasingly recognised restructured corporate *iwi* entities as the official representative of Māori society. An example of this can be seen in the debate over fisheries assets in which the Treaty of Waitangi Fisheries Commission declared that *iwi* alone were entitled to receive shares of the settlement proceeds. (Poata-Smith, 2004, pp. 169-178). This clearly is to the detriment of smaller groups of Māori such as those that do not identify in *iwi* terms or are members of urban Māori communities. As Maaka puts it, this type of system locks *hapū* and smaller social units such as the *whānau* into a paradigm that favours the powerful (Maaka & Fleras, 2005, p. 66).

for approximately sixteen percent of the population and the group that claims the status of the Indigenous peoples of New Zealand. Irrespective of whether this pan-tribal reference is positive or negative, the term ‘Māori’ has since become generally accepted by the Indigenous people and is in common usage in contemporary society.

## **THE LEGAL DEFINITION OF A MĀORI COLLECTIVE**

Preceding 1974, a variety of definitions of the term ‘Māori’ coexisted within New Zealand’s statute books. One of the first statutes that incorporated the definition of the term ‘Māori’ was the Māori Representation Act 1867 which formed the basis of determining electoral boundaries. This Act defined ‘Māori’ for its purposes as a ‘male aboriginal native inhabitant of New Zealand’ aged twenty one years or older and included ‘half-caste’s’. A similar definition was later adopted (albeit excluding the reference to age and males) by the Māori Affairs Act 1953, the Māori Trustee Act 1953 and the Adoption Act 1955. These statutes defined a ‘Māori’ as ‘a person belonging to the aboriginal race of New Zealand, including a half-caste and a person intermediate between half-caste and a person of pure descent’. The Electoral Act 1956 chose to make a three-fold distinction between those who were more than half Māori (who had to enrol on the Māori roll), those who were less than half Māori (who had to enrol on the European roll) and half-castes (who were allowed a choice). Other Acts, in contrast, such as the Māori Social and Economic Advancement Act 1945 and the Ngarimu V.C and 28<sup>th</sup> Māori Battalion Memorial Scholarships Fund Act 1945, accepted anyone ‘descended from a Māori as otherwise defined’ as a Māori for their purposes. In 1960 J.K Hunn (p. 19) noted that although there were ten different

statutory definitions of ‘Māori’, in essence, these definitions all tended to denote either (a) half blood or more; or (b) a descendant.<sup>15</sup>

**(a) Historically: Half blood or more**

The provisions that necessitated that a person have ‘half or more’ blood are called blood quantum provisions. These blood quantum requirements have been imposed throughout history by governments across the world to define their Indigenous peoples. An example of how these provisions have been employed in Hawaii can be seen in the following extract:

We thought we were Hawaiian...  
...yet, by definition we are not...  
We can't live on Homestead land,  
Nor can we receive OHA<sup>16</sup> money.  
We didn't choose to quantify ourselves  
1/4 to the left                      1/2 to the right  
3/8 to the left                      5/8 to the right  
7/16 to the left                      9/16 to the right  
15/32 to the left                      17/32 to the right  
They not only colonised us, they divided us

(Losch, 2003, p. 120)

Those Hawaiians that did not meet the fifty percent blood quantum definition, such as that found in the Hawaiian Homes Commission Act 1920, were not entitled to certain statutory rights. Examples of these rights included funding from the Office of Hawaiian Affairs (OHA) and being able to lease homestead lots for ninety-nine years at \$1 per annum.

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<sup>15</sup> Those statutes that incorporated a definition of ‘Māori’ in 1960 included; The Māori Affairs Act 1953, The Electoral Act 1956, The Births and Deaths Registration Act 1951, The Māori Trustee Act 1953, The Adoption Act 1955, The Māori Social and Economic Advancement Act 1945, The Māori Housing Act 1935, The Māori Purposes Fund Act 1934-35, The Māori Soldiers Trust Act 1957, The Māori Trust Boards Act 1955, The Māori Purposes Act 1931, Ngarimu, V.C. and 28<sup>th</sup> (Māori) Battalion Memorial Scholarships Fund Act 1945, Public Works Act 1928, Fencing Act 1908, Education Act 1914, Land Act Regulations 1949, Cook Islands Act 1915 (Hunn, 1960, pp. 85-86).

<sup>16</sup> OHA stands for the Office of Hawaiian Affairs.

Blood quantum provisions existed in New Zealand even as late as 1986<sup>17</sup> and are essentially premised on a notion which relies on the false assumption that cultural behaviours and identities are biologically determined (Jones & Hunter, 2003). The effect of these quantum provisions are that they tend to divide, assimilate or extinguish the Indigenous peoples of a land. The New Zealand census in 1926 for example stated that:

Already probably almost one-half of the Māori community is no longer of pure Māori descent, and can never again contribute to the quote of pure Māori. The pure Māori remnant must inevitably suffer attrition as members from time to time marry outside its ranks... it is very doubtful whether the race can survive the gradual infiltration of European strains. (cited in Kukutai, 2003, p. 23)

This quote demonstrates that when definitions are based on quantum taxonomy it inevitably leads to legislative extinction of a group unless inter-ethnic reproduction does not occur. This is an unlikely phenomenon.<sup>18</sup> In the Canadian Indian Act 1985, for example, although specific blood quantum provisions have been deleted, the Act has adopted provisions which stipulate that second generation Indians are not considered 'Indians'. A study conducted in 1992 showed that, based on this sort of restrictive membership criteria, legislative extinction is less than one hundred years away for some bands in Canada (Clatworthy & Smith, 1992). This type of legislative extinction was expressly envisaged and espoused in New Zealand in the infamous Hunn Report (Hunn, 1960, p. 19). Hunn proposed that legislation that entitles Māori to certain statutory privileges should become progressively stricter. The report recommended that initially the 'half-blood' Māori formula should be made universal, with a view to restricting it over time to three-quarter blood and finally removing all references to Māori (Hunn, 1960, p. 19). This

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<sup>17</sup> For example, it was only after 1986 that the census provided people with the opportunity to self-identify themselves without reference to blood fractions.

<sup>18</sup> In New Zealand for example ethnic intermarriage has a long history and data from the 1996 Census shows that around half of partnered Māori men and woman have a non-Māori partner (Callister, 2004, p. 121).

proposed legislative extinction ultimately never eventuated in New Zealand. Instead, New Zealand chose to adopt a homogenised definition of ‘Māori’ that focused solely on descent.

### **(b) Currently: A Descendant**

From 1974, when an amendment was made to the Māori Affairs Act 1953, the generally accepted contemporary definition of ‘Māori’ within the law became: ‘Māori means a person of the Māori race of New Zealand’.<sup>19</sup> This definition, which only requires a person to have at least one Māori ancestor, no matter how distant, illustrates the expansive definition New Zealand has adopted of who can qualify as ‘Māori’ for the purposes of law and policy. This definition is widely used throughout all modern legislation.

The contemporary definition of ‘Māori’, with its stress on ancestry, reflects the ideology that lies behind the Māori concept of *whakapapa*. *Whakapapa* is commonly translated as genealogy. However, the term genealogy, which usually only concerns the lineal descent of humans, does not do justice to the expansive Māori concept of *whakapapa* (Smith, 2000, p. 45). *Whakapapa* encompasses Māori views of existence itself and shows how humans are connected to this existence and the natural world (Smith, 2000, p. 45). Within *whakapapa* one can see the origins and explanations for ‘trees, birds, parts of the human body, words, the cosmos, the gods, *karakia* (prayers or incantations), the moon, the wind and stones’ (Smith, 2000, p. 45). *Whakapapa* therefore not only embraces ones human lineage and genealogy but through its perpetual

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<sup>19</sup> Some of the contemporary statutes that include this definition are: the Administration Act 1969, the Adoption Act 1955, the Electoral Act 1993, the High Court Rules, the Māori Affairs Restructuring Act 1989, the Māori Community Development Act 1962, the Māori Housing Act 1935, the Māori Purposes Act 1974, the Māori Purposes Fund Act 1934-1935, the Māori Trusts Boards Act 1955, the Ministry of Māori Development Act 1991, the Ngarimu VC and 28<sup>th</sup> (Māori) Battalion Memorial Scholarship Fund Act 1945, Te Ture Whenua Māori Act 1993/Māori Land Act 1993, the Treaty of Waitangi Act 1975, the Electoral Act 1956, the Income Tax Act 1976, the Law Practitioners Act 1955, the Māori Affairs Act 1953, the Māori Educational Foundation Act 1961 and the Public Works Act 1928.

layering of descent lines, it goes right back to the *atua* (gods) and the creation narratives. It shows how all life is interrelated. The concept of *whakapapa* thus emphasises all connections and relationships that one inherits by virtue of their descent. In doing this, it defines who people are, where they have come from, and establishes their relationships with those around them and the world in which they live (O'Regan, 2001, p. 50).

The legal definition of 'Māori' does not expressly refer to the Māori concept of *whakapapa*, however, the ideology underpinning the concept is implicit within this definition. The notion embraced by the law, which entitles anyone with Māori descent to identify as being Māori, reflects the inherent interconnected nature of *whakapapa*. *Whakapapa* connects people to all of their ancestors and recognises the importance of lineage in shaping a person's identity. Similarly, the legal definition of 'Māori' embraces the concept of *whakapapa* by attributing significance to one's ancestry and allowing a person who has a Māori descendant to claim a Māori identity. Thus, both *whakapapa* and the legal definition of 'Māori' look to a person's ancestry as being crucial in defining their identity. The legal definition of 'Māori' therefore embodies the Māori concept of *whakapapa*.

In practice, there has been little difficulty proving that a person is 'Māori' under the modern definition. Under the Treaty of Waitangi Act 1975, for example, only a Māori may submit a claim to the Waitangi Tribunal. To determine this requisite descent the Tribunal may request that a claimant provide an affidavit or statutory declaration with supporting *whakapapa*. The Tribunal, for example in one instance, held that a man who had been informally adopted as an adult into a Māori family and who now considered himself to be part Māori, was outside its

jurisdiction as he did not have the mandatory Māori ancestor (Melvin, 2004, p. 17).<sup>20</sup> Similarly, Murray Wicks, the Chief Electoral Office's national manager, has stated that every year some voters on the Māori roll are challenged by other members of the public to prove their Māori descent (Butcher, 2003). The process is the same as for fraudsters using false addresses or names; if they cannot provide birth certificates and do not switch to the general roll they face legal prosecution (Butcher, 2003). There are therefore a number of ways for ensuring that descent requirements are adequately satisfied.

### **A Third Option: Self-Identification**

The Census definition of 'Māori' is one of the few legal mechanisms which have taken a broader approach than that commonly adopted by statutes.<sup>21</sup> For the purposes of the Census Māori are counted in two ways: through descent and ethnicity. An 'ethnic Māori' can be anyone who feels that they are Māori and identifies as such. In the 2006 census there were 565,329 people who identified as belonging to the Māori ethnic group. However, of these people there were 4,059 that did not have Māori ancestry and a further 6,795 did not know if they were of Māori descent (Cormack, 2007). The Census therefore is the closest antecedent to self-identification. This definition however is the exception and for the majority of instances the law defines a Māori as someone of Māori descent.

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<sup>20</sup> 'Memorandum/Directions of the Waitangi Tribunal concerning an application to register a claim by R.Tozer', 22 August 2002 (Melvin, 2004, p. 17).

<sup>21</sup> Note that the census is a creature of statute by virtue of the Statistics Act 1975.

## WHY MĀORI ARE DISTINGUISHED WITHIN THE LAW

This dissertation primarily focuses on *how* Māori are defined within the law and whether this definition is appropriate. However, intimately connected with this discussion and the implications that flow from these definitions, are the reasons *why* the law distinctly recognises Māori. This is important because the legal rights or restrictions that people are subject to if they come within the definition of the term ‘Māori’ may impact on how this very definition should be formulated.

Māori should be entitled to all of the same basic rights as other New Zealand citizens. This was guaranteed to Māori under article three of the Treaty of Waitangi which states in the English text that ‘...Her Majesty the Queen of England extends to the Natives of New Zealand Her Royal protection and imparts to them all the Rights and Privileges of British Subjects’ (see Orange, 1987, p. 258).<sup>22</sup> However a brief glance through history reveals that Māori have often been recognised within the law only to be prejudiced and denied the ordinary rights of other citizens.<sup>23</sup> This ranges from the colonial land tenure system that effectively worked to divest Māori of their land, to specific discrimination, such as in the Pensions Amendment Act 1936 in which the raising of Māori pensions was not automatic, as it was for Pākehā. History is rife with examples of this nature. The Tohunga Suppression Act 1907, for example, specifically denied Māori the freedom to practice their culture by outlawing the spiritual and educational role of *tohunga*,

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<sup>22</sup> Note that in the Westminster system of Government the Treaty of Waitangi itself is not legally enforceable except so far as it has been incorporated into the municipal law, as per *Hoani Te Heuheu Tukino v Aotea District Māori Land Board* [1941] AC 308

<sup>23</sup> It is also notable that on top of prejudicial instances in which Māori were specifically distinguished within the law the law also had mechanisms which had the *effect* of prejudicing Māori. For example the Native Schools Act 1867 held that English should be the only language used in education. This not only prejudiced those native speakers of Māori but it also resulted in the decline and loss of the Māori language.

experts in Māori medicine and Māori spirituality. Also, since 1847 there were even restrictions on selling liquor to Māori, a constraint that lasted over a century (Brien, 2007). There have thus been a myriad of ways in which Māori have been distinguished within the law merely to impose certain restrictions on them.

Recognition of this sort, for the purpose of prohibition, however, is not as prevalent in contemporary society. Today, the law tends to specifically define Māori in order to grant them special privileges or rights. A prime example of this can be seen in the Treaty of Waitangi Act in which only Māori can lodge a claim to the Waitangi Tribunal. Non-Māori are excluded from lodging claims to the Tribunal on the basis of a Crown breach of the Treaty of Waitangi, even if the Crown's actions directly affect their family. Policies that work to favour Māori also exist. This can be seen in affirmative action policies such as the 'Closing the Gaps Policies' that were implemented in the year 2000. These were government designed policies, that were reflected in the budget, to close the social and economic gaps that had developed between Māori (and Pacific people) and other New Zealanders (Minister of Finance, 2000). These policies focused on providing increased funding for Māori in areas such as language revitalisation, education, smoking cessation programmes, creating job opportunities, up-skilling Māori people and reducing youth offending. Other benefits that are exclusive to Māori within the law and resulting policies, include membership on the Māori electoral roll, the ability to have alternative political representation,<sup>24</sup> an ability to apply for Māori governmental scholarships and eligibility for alternative entry into certain restricted university courses.<sup>25</sup> Currently, the majority of references

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<sup>24</sup> Under the Electoral Act 1993 Māori have the right to enrol on either the Māori roll (which has separate Māori electorates) or the General roll.

<sup>25</sup> These advantages are found under the Treaty of Waitangi Act 1975, the Electoral Act 1993, and Acts such as the Ngarimu VC and 28<sup>th</sup> (Māori) Battalion Memorial Scholarship Fund Act 1945. Also under the Education Act 1989 it provides that institutions are entitled to give preference to persons who belong to a class of persons that is under-

to Māori within statutes grant Māori some advantage. Although these advantages are not as considerable as those which attach to Indigenous identity in countries such as Canada, they are nonetheless significant.<sup>26</sup>

This chapter has thus examined the origins of the term ‘Māori’ and found that the collective Māori identity derived from the binary opposition apparent between Māori and Pākehā. The term ‘Māori’ has since come to signify the Indigenous peoples of New Zealand. The law has subsequently adopted this concept and throughout history defined ‘Māori’ in a variety of ways. The general contemporary definition, however, is based solely on whether one is of Māori ancestry. This definition is important due to the fact that when Māori are distinguished within the law, it is usually either to restrict their rights or, as has been more common in contemporary times, to grant Māori a form of positive advantage. Understanding some of the rights which attach to the definition of the term ‘Māori’ within the law provides a deeper understanding of the scope of the subsequent implications. It further leads on to the following chapters that focus on the appropriateness of this definition.

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represented among the students taking the course. Most universities include Māori within this class for their restricted courses, such as the University of Otago Law and Medical Schools.

<sup>26</sup> In Canada if one meets the definition of an ‘Indian’ under the Indian Act 1985, they are entitled to live on a special Indian reserve.

## CHAPTER 2: THE CONSISTENCY OF THE LEGAL DEFINITION OF ‘MĀORI’ WITH A MĀORI VIEW



*Me te tarakihi e papā ana i te waru*

Like the cicada chirping in the eighth month

(cited in Mead & Grove, 2001, p. 306)

Hirini Moko Mead and Neil Grove (2001, p. 306) state that the above *pepeha*, which refers to the eighth month of the Māori year when the constant chirping of many cicadas can be heard, is a metaphor for the animated conversations of people. This chapter attempts to emulate a form of discussion by determining whether the legal definition of ‘Māori’ is consistent with how Māori define themselves in reality, both in terms of Māori thinking and Māori values. The exercise of examining ‘Māori thinking’ is conducted through researching literature concerning Māori identity. The ideas that have been extracted from this literature are primarily derived from the views of individual Māori. In looking at Māori values, however, this dissertation examines values that are commonly attributable to Māori. Both ‘Māori thinking’ and Māori values are measured against the legal definition of ‘Māori’. This contemporary legal definition, as discussed in the previous chapter, espouses the notion that the critical component of Māori identity is having a Māori ancestor. The reason that this dissertation assesses whether this definition is consistent with Māori thinking is that this consideration is directly relevant to the thesis of this dissertation that attempts to ascertain whether the definition is appropriate for

Māori. If Māori overwhelmingly oppose the way in which they have been defined in the law, then the law may require reconsideration.

Initially this chapter will look at whether Māori support the view adopted by the law that *whakapapa* is the crucial and sole indicator of a Māori identity. It commences this discussion by considering sources that support the emphasis that the law places on *whakapapa*. It then introduces more controversial notions in which there are suggestions that this singular reliance on *whakapapa* may be inappropriate. These sources point to factors such as the exclusionary nature of *whakapapa*, the notion that the tribal unit is the primary Māori collective and the idea that Māoritanga is a consideration in determining a ‘Māori’ identity. It is important to note whilst considering these discussions that a somewhat skewed picture may be painted. This is due to the fact that the views and opinions expressed are primarily that of individual Māori and therefore do not necessarily reflect the opinion of the general Māori population. For instance, the notion of *whakapapa* being the sole determinant of Māori identity may gain considerably more support within the broad Māori populace than the objection to the legal definition of the basis of its exclusionary effect for those people who do not know their *whakapapa*. This dissertation aims to consider each individual Māori opinion as being valid in its own right. Therefore the emphasis placed on the various conceptions in the wider Māori society is not manifested. After considering these individual Māori views this chapter finally turns to consider *tikanga* Māori and whether the Māori concepts of *whanaungatanga*, *utu*, *mana*, *manaakitanga* and *ahi kā*<sup>27</sup> are consistent with this definition.

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<sup>27</sup> Note that these definitions will be defined later in this chapter.

## WHAKAPAPA AS THE CRUCIAL FACTOR DETERMINING ‘MĀORI’

*Ko tātou ngā kanohi me ngā waha kōrero o rātou mā kua ngaro ki te pō*

We are but the seeing eyes and speaking mouths of those who have passed on

(cited in Ministry of Justice, 2001, p. 27)

The above *whakatauki*, which reflects the concept of *whakapapa* and the notion that our identity is given to us by our ancestors, is reflected in the legal definition of ‘Māori’ that places sole emphasis on *whakapapa* in determining a Māori identity. The encapsulation of this Māori conception within the law, however, does not necessarily correlate with a Māori consensus that this legal definition is completely appropriate. Because the legal definition only requires proof of Māori *whakapapa* it is therefore important to determine whether Māori support the notion that *whakapapa* is the *sole* defining characteristic of a Māori identity.

There are a number of sources that seem to suggest that in reality *whakapapa* does indeed play a vital role in identity formation and determining whether a person is ‘Māori’. Statements such as ‘I am nothing without my *whakapapa*’ (Hond, 1998) and ‘*Whakapapa* is inalienable... You are born with it and you die with it. It’s special’ (Walsh, 2001) attest to its significance. The critical comments for this dissertation however are those that indicate that *whakapapa* is the *primary* requirement in determining a Māori identity. Moana Jackson (2003), a Māori lawyer of Ngāti Kahungunu and Ngāti Porou descent, unequivocally states that ‘Māori have always defined “Māoriness” in terms of *whakapapa* or genealogy. When children are born with *whakapapa* they are the grandchildren or “*mokopuna* of the *iwi*”. They are Māori’. Jackson is supported by a number of other Māori sources such as Donna Awatere-Huata (1984, p. 86), a former Māori Member of Parliament, who believes that ‘*whakapapa* is the key to identity’, and Willie Jackson

(cited in Sharples, 2006), also a former Māori Member of Parliament, who states that ‘*whakapapa* is what determines being Māori’.

Joan Metge, a social anthropologist, in 1967 (p. 53) also expressly supported the notion that ‘Māori will accept anyone with a Māori ancestor, no matter how remote’. However, she qualified this by stating that the person must desire acceptance as a Māori (Metge, 1967, p. 53).

This perception was mirrored by the Waitangi Tribunal (1986, p. 14) when it stated that:

...if someone has a Māori ancestor, then that person is a Māori even if his ancestor was three of four generations back... The real test is the attitude and the disposition concerned. So long as he is descended from a Māori he can choose for himself whether he regards himself or is to be regarded by others as a Māori or as a Pākehā.... Being ‘Māori’ rather than ‘European’ is as much psychological as biological. A Māori is one who has Māori ancestry and who feels himself to be Māori.

Professor Arohia Durie, Head of the School of Te Uru Maraurau, reinforced this opinion in 1997 (p. 142) by stating that ultimately any person wishing to identify themselves through their Māori ancestry is surely Māori. Durie (1997 p. 142) goes on to say however, the many additional elements from *Te Ao Māori* that a person draws on to supplement that single crucial factor can only make identification stronger. Thus, although these views do not claim to represent that of all Māori many are nevertheless opinions by those who consider themselves Māori or are authoritative on Māori issues. These sources support the notion that *whakapapa* and the desire to identify as ‘Māori’ is instrumental in establishing a Māori identity. These ideologies are consistent with the conception that the law has ultimately adopted.

Another factor that supports the primacy of Māori ancestry as a means of determining Māori identification, is the importance that Māori institutions themselves have consigned to *whakapapa* for their affiliation purposes. A number of formal tribal structures representing *iwi* and *hapū* have adopted *whakapapa* as the primary requirement for registration as a beneficiary. For

example, Te Runanga o Ngāti Awa, the institution that administers assets received from the Ngāti Awa Treaty settlement, requires that an individual trace descent from a *hapū* of Ngāti Awa before they can register as a beneficiary (Te Runanga o Ngati Awa). Similarly, to enrol with Te Rūnanga o Kai Tahu<sup>28</sup> as a beneficiary one must be able to prove their descent back to the Blue Book, which is a complete record comprising of all the names of Kāi Tahu alive in 1848 (O'Regan, 2001, p. 53). The acceptance and use of the *whakapapa* requirement by these Māori institutions indicates a Māori acceptance of the use of *whakapapa* for determining membership of a Māori group. It can therefore be inferred that a similar requisite is appropriate for a pan-tribal Māori collective.

## **CONTROVERSY OVER WHAKAPAPA BEING THE KEY TO IDENTITY**

As evidenced above, there are a number of people whose comments relating to *whakapapa* clearly support the notion employed by the law that *whakapapa* is the ultimate determinate in ascertaining whether a person is Māori or not. However, existing alongside these opinions are notions that are decidedly more controversial. The following paragraphs introduce sources which contest the notion that *whakapapa* is appropriate as the sole determinate of a Māori legal identity.

### **The Exclusionary Effect of *Whakapapa***

One of the arguments against the sole reliance on ancestry currently adopted by the law, is that, although *whakapapa* is a continuity that exists in perpetuity, some people are denied knowledge of their *whakapapa*. The suppression of a person's *whakapapa* is often not due to their own omission and is aided by factors such as colonization, urbanization and the death of *kuia* and

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<sup>28</sup> Note that Kai Tahu is also sometimes referred to as 'Ngai Tahu'.

*kaumātua* (Rawson, 1999, p. 16) . Dr Tīmoti Karetu (1990, p. 112), of Tuhoe and Ngāti Kahungunu descent, for example recognised that there are three to four generations of Māori who are highly urbanised and who in many cases are unaware or ignorant of their tribal origins. Dr Margaret Stewart-Harawira (1993), Assistant Professor in the Department of Educational Policy Studies at the University of Alberta in Canada, points out the exclusionary effect that *whakapapa* can therefore have on people who are unable to trace their genealogy. She argues that this inability should not preclude an individual's claim to a meaningful Māori identity. This assertion by implication infers that the definition of 'Māori', that relies on a person knowing and having access to their *whakapapa*, is perhaps inappropriate as it will exclude those people who, through no necessary fault of their own, do not have this access.

### **Māori vs the Tribe**

Another more controversial notion is the idea that because tribes are the primary Māori assemblage then the concept of a pan-tribal Māori collective is unnecessary and inappropriate. As briefly discussed in Chapter One, traditional Māori society was not based on a pan-tribal Māori collective, but instead centred on kin-based descent groups, including *hapū* and *iwi*. These tribal groups since the advent of colonisation have faced numerous challenges, including geographical and cultural dislocation, as well as government policies which served to legally deconstruct the tribes, diminish their influence and debase their *rangatiratanga* (authority) (O'Regan, 2001, p. 109). Despite these challenges, the tribal unit has survived and continues to be a fundamental political entity in Māori society. A simple example of the importance of the tribe can be seen in the way in which some people introduce themselves at *hui*, or gatherings,

through immediate reference to their tribal group and its associated identity markers. The following is my own personal example;

*Ko Pūtauaki te maunga*  
*Ko Rangitāiki te awa*  
*Ko Ngāti Awa te iwi*

Pūtauaki is my mountain  
Rangitāiki is my river  
Ngāti Awa is my *iwi*

Hana O'Regan (2001, p. 110), of Kai Tahu, also demonstrates the importance of the tribe in her statement that:

To take the tribe away is to take away the core of Māori cultural identity: the significance of the connection to one's land, tribal burial ground and sacred places, one's *whakapapa* and history, one's resource rights. To remove the tribe would mean a total deconstruction of the Māori cultural world view...

This sentiment is reflected in a statement by Hana's father, Sir Tīpene O'Regan (cited in Reid & Robson, 2001, p. 7) who highlighted the important and inalienable aspect of *iwi* identity. When accused of being 'nothing but a Pākehā with *whakapapa*':

I said, 'You are absolutely right. I am not a Māori. I'm Ngāi Tahu! I knew, when I said that, that no one could define it except me and my kin group, my *iwi*! No amount of analytical theory from outside can penetrate that. The Crown cannot define it. It can only recognize it. It is beyond the power of parliament and that is its beauty. The source of power is in the people themselves and their *whakapapa*. (Sir Tīpene O'Regan cited in Reid & Robson, 2001, p. 7)

Because of the substantial role that the tribe clearly continues to occupy within contemporary society, some *iwi* argue that the term 'Māori' should not exist because *iwi* are the primary representative body of Māori (Barcham, 1998, p. 311). This view insists that attempts to describe Māori as if they were of a single group, are forced (Durie, 1998, p. 5). John Rangihau (1992, p. 190), an advocate of this opinion, explicitly refutes the concept of a united Māori collective and believes that the tribal unit is the fundamental Māori consortium. Based on these views the

reference to 'Māori' within the law becomes somewhat objectionable. The legal definition, through employing the homogenising term 'Māori', lumps all tribal groups together and in doing so, obscures the important distinguishing characteristics of each. On this view the legal definition which adopts the concept of 'Māori' is therefore inappropriate in some instances.

Despite the relevance of tribal affiliations within contemporary society, Mason Durie (1997, p. 3), Deputy Vice-Chancellor of Māori at Massey University, has stated that 'no *iwi* is insulated from another nor can Māori aspirations be totally found within tribal agendas'. Although individual tribal groups cater to many of the needs of Māori society, there is also a place for the recognition of Māori as a collective. An example of where the notion of a united pan-tribal Māori has been proved beneficial can be seen in initiatives such as Kōhanga Reo (language nests), the establishment of the Māori Woman's Welfare League and the New Zealand Māori Council. These examples attest to the mobilising prowess that Māori can achieve both politically and socially when they act as a collective. As well as some aspirations being better satisfied by pan-tribal movements, tribal affiliation also no longer provides the degree of meaning and interaction that it once did to many Māori due to influences such as urbanisation (Barcham, 1998, p. 303). A collective Māori concept thus has merit for those people who live away from their tribal homelands and do not have an active association with their *iwi*. Although the importance of descent-based tribal identity in contemporary society is indisputable, the concept of a Māori collective reflects the diversity of modern Māori individuals. Mason Durie (1998, p. 59) points out this reality in his statement that 'while some Māori choose to identify with a particular tribe, others might wish to but have lost access, and others still might be content simply as Māori, with no desire to add a tribal identity'.

In reality, although the notion of a tribal identity is seemingly opposed to a pan-tribal Māori identity, there is no need for either identity to be mutually exclusive. A Māori identity is a meaningful wider social construct that both serves to accommodate and exist in tension with the more particularistic traditional line of affiliation (May, 2003). Therefore for the law to identify a Māori collective for a particular purpose, is not necessarily inconsistent with a Māori reality that has the ability to embrace and adopt both tribal and pan-tribal identities.

### **Māori and Māoritanga**

The New Zealand legal definition of ‘Māori’ which states that *whakapapa* is the only requirement to Māori legal status, has resulted in a significant amount of Māori culture and values being severed from a Māori legal identity. Therefore, unlike the direction provided by Timoti Kāretu (cited in Mead & Grove, 2001, p. 219) in the *whakatauki*: ‘*Kia ū, kia mau ki tō Māoritanga*’, ‘Be firm in holding on to your Māori culture’, the law may have made a separation between being Māori in terms of ancestry and ‘Māoritanga’.

‘Māoritanga’ can be translated as ‘Māoriness’ (Metge, 1967, p. 59). It is a concept that embraces those elements of traditional Māori expression which are considered to reveal the essential nature of Māori culture (Richie, 1963, p. 37). Sir Apirana Ngata (cited in Richie, 1963, p. 37), a prominent New Zealand politician and lawyer in the first half of the twentieth century, for example listed eight components of Māoritanga, these included:

1. The Māori language;
2. The sayings of the ancestors;
3. Traditional chant songs;
4. Posture dances;
5. Decorative art;
6. The traditional Māori house and *marae*;

7. The body of Māori custom, particularly that pertaining to the *tangi* and the traditional welcome; and
8. The retention of the prestige and nobility of the Māori people.

The legal definition of ‘Māori’, with its solitary requirement of a Māori ancestor, simply does not take these cultural components into consideration. In detaching these cultural elements from being ‘Māori’ the law is allowing those people who have no affinity with the Māori culture, its values, or its beliefs, to legally classify themselves as being ‘Māori’, on the basis of ancestry alone. By implication the law also prohibits those people who may have strong associations with *te ao Māori* but do not have the requisite *whakapapa*, from qualifying under the legal definition.

Journalist Margot Butcher (2003) illustrates this point clearly when she notes that:

Under no circumstances can a Pākehā who lives on a *marae* with her Māori children and husband and whose whole chief political concerns centre on the well-being of her family vote for her preferred family ME<sup>29</sup>, but a voter who lives and identifies as an ethnic Pākehā and who happens to have a Māori great-great-great-grandfather is legally entitled to have a say in issues affecting Māori. Go figure.

John Broughton (1993, p. 507), an Associate Professor at the University of Otago Medical School, impliedly disagrees with how the law divorces being ‘Māori’ from ‘Māoritanga’. Broughton thinks that although descent is crucial in the first instance, being Māori also involves the acknowledgement of a distinct cultural identity and it encompasses ‘having, living, recognising and acknowledging a whole range of beliefs and practices...’. This view, that emphasises aspects of ‘Māoritanga’ in determining a Māori identity, is supported by Mason Durie (1998, p. 58) who affirms that:

The concept of a secure identity rests on definite self-identification as Māori together with quantifiable involvement in, and/or knowledge of *whakapapa* (ancestry), *marae* participation,

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<sup>29</sup> Māori Electorate

*whānau* (extended family), *whenua tipu* (ancestral land), contacts with Māori people, and Māori language.

These views suggest that ‘being Māori’ entails more than just having *whakapapa*.

A similar emphasis on ‘Māoritanga’ is demonstrated in a question posed by a *kaumātua* (cited in Maaka & Fleras, 2005, p. 71) who effectively censured the non-observance of custom by a Māori protest group by asking: ‘*He aha te take o te whenua mehemea kāore he tikanga o runga?*’ What’s the point in having land if there are no customs to be observed on it?’ This question recognises the crucial role that Māori custom and *tikanga* have within *te ao* Māori. Analogous questions can be phrased in terms of being Māori: What’s the point in being Māori if genetic material is the only thing that differentiates Māori from Pākehā? If we have no customs, are we still ‘Māori’? These types of questions are relevant given that the law has chosen to detach the cultural aspects of Māoritanga from being legally ‘Māori’. By focusing solely on *whakapapa* the law pays no heed to those aspects that make Māori unique, therein, ignoring the contributing role that Māoritanga has in shaping a Māori identity. Therefore, on this view, the law is inconsistent with the proposition, supported by some Māori, that being Māori entails a commitment to core values as a precondition for identity (Maaka & Fleras, 2005, p. 70).

In relying on Māoritanga to determine a Māori identity even Broughton (1993, p. 507) however, recognises that the degree to which one practices and implements Māori beliefs and customs varies considerably from individual to individual. In accordance with this diversity, in not taking into account Māoritanga, the law may therefore simply be reflecting the contemporary reality of many Māori. There are a number of people in modern day society who do not associate with Māori culture and whose Māori identity ends with their Māori descent. Timoti Karetu (1990, p. 113) terms these people ‘*iho ngaro*’, people who do not know or have a connection with their

*turangawaewae* (a place to stand, or a place of identity). Ranginui Walker (1989, pp. 37-38) further recognises that there are ‘many’ Māori who belong to this group of people, who cannot speak their language and have little knowledge of Māori traditions and customs. This may be through no fault of the individuals themselves as many Māori were left in this state as a consequence of colonisation. The contemporary reality that therefore exists in New Zealand is that there are a number of Māori who are estranged from their Māoritanga or have formed new social structures and ways of living that are not recognised by traditional Māori culture.<sup>30</sup> Just because these people do not fit the mould of what was traditionally associated with being Māori, does not necessarily mean that they should be denied the right to claim a Māori identity. The late Manuhua Bennett (1989, p. 76), former Anglican bishop of Aotearoa, states that ‘Just as a body is more important than the raiment, so I believe the Māori is more important than his Māoritanga’. This view, that emphasises people over culture, recognises that those who do not embrace Māoritanga are entitled to claim Māoriness just as much as those who derive their Māori identity from certitudes of the past.

These opinions thus seem to leave somewhat of a conundrum. On the one hand there are those Māori who think that cultural considerations are important in forming a Māori identity. On the other hand there are those who recognise that Māori society and its people have evolved. This latter view, like that which places emphasis on *whakapapa*, recognises the entitlement of people who are disengaged from the cultural facets of Māoritanga to identify as being Māori. There thus exists a conflict of values between an enlarged definition of Māori that includes everyone with *whakapapa* and a more restrictive definition of ‘Māori’ that would necessitate aspects of

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<sup>30</sup> Manuhua Barcham (1998) discusses this issue in his article: *The Challenge of Urban Māori: Reconciling Conceptions of Indigeneity and Social Change*. He recognises that Māori have shifted in increasing numbers into the urban environment and in doing so they have created new forms of social networks and institutions in order to fulfil their new social needs. The difficulty however is that these new forms of social institutions have not yet been reconciled with concepts of tradition.

Māoritanga. The important point for the purposes of this chapter is that these contradicting views exist. The law at present in general assumes an expansive approach, encompassing those disassociated with Māori culture, by allowing everyone with Māori *whakapapa* to claim that they are ‘Māori’. In adopting this practice the law is thus consistent with the notion that a lack of traditional cultural associations should not be detrimental in one’s ability to identify as being Māori. The law however is correspondingly inconsistent with the notion that culture and Māoritanga also play important roles in shaping a Māori identity. The point is therefore inconclusive. The issue of whether these two views can be reconciled within the law is addressed in Chapter 4 that looks at alternative options that could be adopted within the law.

## **MĀORI AND TIKANGA MĀORI VALUES**

As previously discussed there are varying views as to whether a person’s individual ‘Māoritanga’ and affinity with Māori *tikanga* and values should be taken into account in determining whether a person is ‘Māori’. The following paragraphs consider whether the way Māori have been defined within the law is in itself consistent with *tikanga Māori*. *Tikanga Māori* has been described by Hirini Moko Mead (2003b, p. 12), retired Professor of Māori Studies at Victoria University of Wellington, as Māori tools of thought and understanding that help organise behaviour. Joe Williams, recently appointed judge of the High Court and former Chief Judge of the Māori Land Court, (cited by the New Zealand Law Commission, 2001, p. 16) further depicts *tikanga Māori* as being ‘a Māori way of doing things’. The New Zealand Law Commission (2001, p. 17) however has said that when looking at *tikanga Māori* it is important to understand the underlying values as it is these values which provide the primary guide to behaviour. In this dissertation I therefore

look at some of the values and Māori concepts underpinning *tikanga* Māori and whether they are consistent with the way in which the law has defined Māori. The reason for undertaking this exercise is that those people who are *committed* to being Māori generally regard themselves as being bound to uphold *tikanga* Māori (Mead, 2003b, p. 7). Therefore by gaining an insight into where the law stands in reference to Māori concepts and values, I attempt to shed further light on some Māori attitudes towards this legal definition.

In conducting this exercise it must first be noted that in this dissertation I do not comment on all of the central concepts and values that underpin the totality of *tikanga* Māori. Although all Māori values are closely interwoven (New Zealand Law Commission, 2001, p. 29) this chapter only proceeds to discuss those concepts which seem most applicable. This includes *whanaungatanga*, *utu*, *mana*, *manākitanga* and *ahi kā*. The concept of *whakapapa* has already been examined. Secondly, it is important to note that the measuring of Māori concepts and values against the legal definition of Māori is a theoretical undertaking. Māori principles are ideals that are therefore subject to interpretation and are not necessarily manifested in reality (Mead, 2003b, p. 18). There is fluidity in their application, as well as there being notable tribal variations. However, in general there is enough commonality between Māori concepts and values that general definitions can be given.

### ***Whanaungatanga***

The Māori concept of *whanaungatanga* is closely interwoven with the concept of *whakapapa*. The New Zealand Law Commission (2001, p. 30) has stated that *whanaungatanga* is one of the most pervasive Māori values, and it denotes the fact that relationships are everything. Unlike *whakapapa* however, which is a continuum that exists in perpetuity, the concept of

*whanaungatanga* stresses the importance of *maintaining* relationships, both kin and non-kin. Therefore, not only should individuals expect support from a group (such as relatives) but there is also the corresponding obligation of support and help owed by the individual back to the collective group (Mead, 2003b, p. 28). The ideology underlying *whanaungatanga* is thus the creation of meaningful relationships between people. If, for example, a relationship is not actively fostered then in accordance with the concept of *whanaungatanga* that relationship may become stagnant and possibly obsolete. This is demonstrated by Joseph Williams (cited in New Zealand Law Commission, 2001, p. 31) who states that the traditional transfer of rights in respect of land only lasted as long as the relationship between the parties remained healthy. If the relationship failed, then the land transfer was also considered void.

The legal definition of Māori, which solely employs *whakapapa* as the mechanism for defining ‘Māori’, *prima facie* seems inconsistent with the general concept of *whanaungatanga*. Under the law, a person of Māori descent is permitted to claim certain rights, that are associated with being Māori, even though they may not have a relationship with the Māori collective or they may have even abused this relationship. Therefore, although the legal definition of Māori, with its sole focus on *whakapapa*, provides individuals the *opportunity* to identify and have a relationship with Māori, it no way provides or ensures that such a relationship is created or fostered. Under the law, a person can take rights by virtue of having Māori descent without having a relationship with a Māori collective. The legal definition of Māori therefore does not necessarily accord with the ideology underpinning *whakawhanaungatanga* which encourages the establishment and maintenance of relationships.

## *Utu*

According to Metge (cited in Mead, 2003b, p. 31), the primary purpose of the Māori concept of *utu* is also to maintain relationships. The central thesis of *utu*, however, is that of reciprocity; obtaining equivalent value for services or gifts and the righting of injustices for the balancing of social relationships (Marsden, 2005, p. 69). As Metge (cited in New Zealand Law Commission, 2001, p. 38) explains ‘*utu* refers to the return of whatever is received: the return of ‘good’ gifts (taonga and services) for good gifts, and the return of ‘bad’ gifts (insults, injuries, wrongs) for bad gifts’. The whakatauki ‘*Aroha mai, Aroha atu*’ or ‘love towards us, love going out from us’ (Mead & Grove, 2001) is an example of positive reciprocity.

The legal definition of Māori, which allows people to qualify for the privileges that attach to being ‘Māori’ without necessitating reciprocation, does not seem to accord with the concept of *utu*. Under the law anyone who is of Māori descent is entitled to be ‘Māori’. Therefore, although there may be some recipients of Māori legal rights who feel a personal undertaking to give something back to the Māori community there is no requirement that these measures are taken.

Moana Jackson’s (2003) statement refers to these people:

Of course the Māori way of defining was based on a concept of reciprocity, in the sense that being born of the *iwi* and *hapū* gave rights but also imposed obligations. When colonisation redefined what it is to be Māori it distorted that sense of reciprocity and in recent years it has been even more distorted by individualism and greed that has evolved out of the New Right political and economic ideologies. For some people, reclaiming their *whakapapa* has sadly become a demand for rights and resources without a corresponding acceptance of the obligation to give.

Some Māori feel strongly against those people who take rights but do not accept any responsibility for reciprocation. Tipene O'Regan's comments (cited in O'Regan, 2001, p. 102) reflect such negative sentiments:

I think if all you've ever done is basically bludged off Ngāi Tahu and never contributed to the *iwi*; if all you've ever done is shown up for dinner and never put down a *koha*... if you have only sort of come around when it's time to get the education grants for your kids... then in my view you... are basically Pākehā with a *whakapapa*... I rate those that *tautoko*, whatever their abilities or lack of them...those that give something back of themselves to the group, I rate them much more importantly than those who don't.

Although this statement is coming from an *iwi* perspective, it illustrates the ill-feeling that can exist towards those who take but do not reciprocate. The legal definition of Māori, with its sole requirement of *whakapapa*, neither encourages not assures that *utu* is fulfilled.

## ***Mana***

*Mana*, as defined by Williams (2001, p. 172) in the *Dictionary of the Māori Language* has a number of meanings including: 'authority, control', 'influence, power, prestige', 'psychic force', 'effectual, binding, authority,'. Marsden (cited in New Zealand Law Commission, 2001, p. 33), however, has broken this concept down into three divisions; *mana atua* – God given power; *mana tūpuna* – power from the ancestors; and *mana tangata* – authority derived from personal attributes. For this dissertation *mana tūpuna*, which is reflected in the *whakatauki*; '*Ko te mana i ahau, nō ōku tūpuna nō tua whakarere*', 'My power and authority comes from my ancestors, from out of mind' (cited in New Zealand Law Commission, 2001, p. 33), is relevant. *Mana tūpuna* is a continuity that exists in perpetuity and is power passed down from generation to generation (Barlow, 1991, p. 62). Unlike *mana tangata*, which is *mana* acquired in accordance with one's skill or knowledge (Barlow, 1991, p. 62), the intrinsic *mana* that one receives from

their *tūpuna*, cannot be overcome or annihilated (Ministry of Justice, 2001, p. 52). Therefore, all Māori have *mana* by virtue of being a descendant of someone. The concept of *mana tūpuna* supports the legal definition of 'Māori' as it works in a similar way to *whakapapa*. Even the most far-removed descendant can claim that they have the *mana* of their Māori forebearer. The notion adopted within the law that requires a person to have a Māori ancestor to be considered 'Māori' therefore seems consistent with the notion of *mana tūpuna*.

### ***Manākitanga***

Mead (2003b, p. 29) states that all *tikanga* are underpinned by the high value placed upon *manākitanga* – nurturing relationships, looking after people, and being very careful about how others are treated. If a person practices *manākitanga* then their *mana* will be raised through their generosity (New Zealand Law Commission, 2001, p. 122). The *whakatauki* 'Tēnā te mana o Rehua' or 'Behold the greatness of Rehua' (the God of kindness) (Karetu, 2005, p. 61) is an expression that can be used when kindness or *manāki* has been demonstrated. The legal definition of 'Māori', which entitles a broad number of people to qualify for privileges, seems consistent with the concept of *manākitanga* that encourages the unqualified nurturing of others. The legal definition is inclusive and through encompassing all those of Māori descent it takes a wide approach that demonstrates *manāki* towards all Māori regardless of their affiliation with *tikanga Māori* and Māoritanga.

### ***Ahi kā***

The concept of *ahi kā*, means the 'long burning fire of occupation' (Mead, 1997, p. 264). This concept requires *whānau* or *hapū* to maintain the ability to control and exercise *mana* over land

by continued occupation or use (Ministry of Justice, 2001, pp. 48-49). If land is abandoned for more than three generations the fire is considered to have gone out. If this occurs, then the validity of one's claim to land is weakened or extinguished (Ministry of Justice, 2001, p. 49). The ideology underlying *ahi kā* is therefore the maintenance of a relationship with the land.

The ideology behind *ahi kā* can perhaps be applied to Māori identity. Although traditionally this concept was primarily used in regard to land, Joan Metge (1995, p. 77) uses *ahi kā* in reference to membership of *whānau*, *hapū* and *iwi*. She states that descent alone is not enough to assure membership of these three Māori groupings. For *full* membership, as distinct from nominal or potential membership, those who are eligible to belong to a group by virtue of their descent have to back up their claims with active participation in the group affairs. Metge (1995, p. 77) specifically calls this active participation *take ahi kā*. This view is supported by Tīmoti Kāretu (1990, p. 112) who states that in contemporary times the *ahi kā* stipulation can be met by honouring one's tribal obligations; that is, being seen at all the more important rites of passage of the tribe. Not to be seen over a long period of time is tantamount to *ahi mātao*, the extinguishing of the fire. From these sources, it is evident that it is important within the Māori world for a person to actively maintain their connections. Further, given that Metge has recognised that participation in the group is important in a *whānau*, *hapū* and *iwi* membership context then it is likely that this reasoning will apply to a pan-tribal context. Therefore if a person does not maintain an active relationship with their *turangawaewae* or their connection to the Māori world then perhaps their 'fire' and claim to a Māori identity will correspondingly die out or weaken. The legal definition of 'Māori', in only considering one's *whakapapa* as the basis of identity, simply does not consider or accord with the philosophy behind the concept of *ahi kā*.

In this chapter I have examined whether the legal definition of ‘Māori’ is consistent with how Māori define themselves. The primary conclusion that can be drawn is that Māori thinking and Māori opinions, like Māori themselves, are diverse. There are a number of sources that support the notion that *whakapapa* is the crucial factor in determining a Māori identity. However, there are also a number of contested notions that suggest that not all Māori agree with the way in which they have been defined within the law. These sources point to the exclusionary effect that *whakapapa* can have on those who do not have access to their *whakapapa*, the notion that the tribe is the main representative bodies of individual Māori, and the importance of Māori cultural values in determining a persons identity. In this chapter I also looked at *tikanga* Māori values and found that there were values that both supported and opposed the current legal definition of ‘Māori’. In summary, there is therefore discord amongst Māori themselves over notions relevant to whether the legal definition of ‘Māori’ is wholly appropriate for Māori.

## CHAPTER 3: PRACTICAL IMPLICATIONS FOR MĀORI ARISING FROM THE LEGAL DEFINITION OF ‘MĀORI’



*Anei tātou nā ko te pō: anā tātou nā he rā ki tua*

Here we are in the night and the day is yet to come

(cited in Mead & Grove, 2001, p. 16)

In reference to the preceding *whakatauki*, Best’s (cited in Mead & Grove, 2001, p. 16) figurative interpretation cites ‘Here affliction grips us, yonder is relief’. The current chapter discusses some of the practical implications for Māori that emanate from or surround the legal definition of ‘Māori’. This chapter is thus represented metaphorically in the above *whakatauki* by ‘*te pō*’ or the period where difficult and problematic issues are brought to the fore. Following this chapter is ‘*he rā*’ or the approaching period of relief. In this dissertation the ‘light at the end of the tunnel’ is the following chapter, that attempts to reconcile the implications and concerns evident in the current legal definition of ‘Māori’ and suggest possible alternatives as to where New Zealand could head with this issue in the future.

This chapter thus raises a number of varying implications regarding the legal definition of ‘Māori’. Importantly, it attempts to address the primary thesis of this dissertation by focusing on the implications that the legal definition of ‘Māori’ has *for* Māori. The initial discussion focuses on the implications arising as a result of the broad legal definition of ‘Māori’ being combined with an ever increasing Māori population. Secondly, this chapter addresses the issues that arise

for Māori when affirmative action policies or statutes solely employ the legal definition of ‘Māori’ to determine a persons entitlement to an advantage. This chapter then moves on to examine how the nature of law is inconsistent with the nature of an identity and the implications that this has for Māori. This final issue addressed is how the legal term ‘Māori’ itself may become anachronistic as a result of the re-emergence of *hapū* and *iwi* as the primary vehicle for Māori development.

### **A BROAD DEFINITION & AN INCREASING NUMBER OF MĀORI**

In New Zealand one of the practical implications that results from employing a broad legal definition to define Māori, is that the number of people who are entitled to claim that they are ‘Māori’ is increasing. Dr Michael Bassett (2006), former Member of Parliament and Waitangi Tribunal Member, has stated that: ‘Given the extent to which we have intermingled our blood lines, the day is not far off when most New Zealanders will qualify to call themselves Māori’. There is a degree of truth behind Bassett’s claim. In the 2006 census 643,977 people indicated that they had Māori ancestry, representing approximately eighteen percent of the New Zealand population (Cormack, p. 14). This represented an increase of seven percent since the 2001 Census and twenty-six percent increase since 1991 (Cormack, p. 14). This growth is likely to continue in the future. Although there are no specific future projections on the Māori *ancestry* group, forecasts show that there is likely to be an increase in the Māori *ethnic* population<sup>31</sup> both numerical and proportional to the New Zealand population (Cormack, p. 15). This projection can be viewed as an indicator of the type of growth that the Māori ancestry group are also likely to

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<sup>31</sup> For statistics purposes and census purposes ethnicity is a self-defined concept

experience.<sup>32</sup> Statistics New Zealand (2005) has stated that the Māori *ethnic* population is projected to increase from fifteen percent of the total population to seventeen percent by 2021. Thus clearly both the Māori population and the proportion of Māori in the New Zealand population are increasing. Correspondingly, this means an increase in the number of people entitled to claim a ‘Māori’ identity under the law.

The mounting number of Māori within the population, which in turn results in an increasing number of people becoming eligible to qualify for the rights that attach to being legally ‘Māori’, potentially raises some problems for Māori. These problems arise from the practical application of adopting the legal definition of ‘Māori’ in specific statutory contexts. One such example that has proven to be particularly problematic is in those statutes that have a limited amount of resources. Because this definition is so broad and there are an increasing number of Māori, if an advantage is based solely on Māori ancestry, an increasing strain is correspondingly placed on the given resource. An example which highlights this issue can be seen in the ‘Manaaki Tauira’ educational grants that were eventually abolished in 2006. These were grants that were established to ensure that participation by Māori in tertiary education was not adversely affected when significant increases in tertiary fees were introduced in the early 1990s (Auditor-General, 2004, p. 25). The grants were available to all those students who could claim Māori descent (provided that they did not earn over a given income). The funds for these scholarships were sourced from a capped pool of government money and successful applicants could receive up to the lesser of either \$1,250 or ninety percent of their tertiary fees (Auditor-General, 2004, p. 25). This fund of money, however, was allocated proportionally among eligible applicants and in reality students only received approximately \$500 (Horomia, 2006). According to the Minister of

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<sup>32</sup> This statement is based on the fact that a large proportion (approximately 86 percent) of those who identified as having Māori ancestry also identified as being a part of the Māori ethnic population.

Māori Affairs and Associate Minister of Education Parekura Horomia (2006) one of the primary reasons that the Manaaki Tauira grants were abolished was because of the increasing number of Māori participating in tertiary education. Further, a review by the State Services Commission in 2004 (cited in Horomia, 2006) held that the \$500 that students were receiving was in fact insufficient to reduce Māori disadvantage. Therefore a two-fold problem was evident, as not only was there an increasing number of people who were eligible to receive the grants, but there was also only a limited amount of funds available. Thus, the more people that claimed the right, the more the resource had to be increasingly divided into smaller portions. In the instance of the Manaaki Tauira grants the resource was divided to a point where it could no longer fulfil its original purpose of reducing disadvantage. This is a prime example of the issues that can arise in situations when there is a limited resource but the law has adopted a wide definition of those who are eligible to apply for a share in the resource. Thus, when broad based Māori rights are attached to a limited resource, the increasing number of Māori within the population is likely to place pressure on that resource. As a consequence, these types of Māori rights within the law, like the Manaaki Tauira grants, may be abolished. This is an important implication for Māori as they may start to lose their rights under the law or their rights may become diluted to a point where they are of no longer of significant benefit.

The above example demonstrates a practical implication that flows from statutes that have adopted a wide definition of Māori. The Waitangi Tribunal (1986, p. 15) has further noted that due to the advantages that are offered to Māori, which are not offered to Pākehā, as time goes on it is more likely that more people will claim their Māori ancestry. Whether this is solely due to the advantages offered to Māori or because there is an increased pride in identifying as Māori, is unknown. The point, however, is that there are an increasing number of people eligible to claim

Māori advantages under the law. Māori thus need to be aware of the implications that this increasing number of legal 'Māori' will have on their legal rights.

### **ARE THE WRONG 'MĀORI' GETTING THE LEG UP?**

The issue of how to define Māori is not only a question of Māori identity but it is inextricably linked to the question of which Māori should benefit from public policy. Thus as Maaka and Fleras (2005, p. 67) state: the answer to 'who is Māori' is inseparable from the broader questions of 'who gets what, how and why'. Thus, just because a person satisfies an initial Māori legal definition of *whakapapa*, does not necessarily mean that they should be entitled to the corresponding advantages offered by the law. Therefore, when considering the appropriateness of the legal definition of 'Māori' not only must the definition be contemplated in isolation but it also should be looked at in a holistic manner. This requires consideration into the practical application of the definition and whether the people who are being captured by the definition are the Māori for whom the policy or statute are targeting.

This leads to an implication that has arisen for Māori in regard to the practical application of the legal definition of 'Māori'. Essentially, when laws or policies that offer Māori an advantage (such as affirmative action policies) specifically target the broad Māori population, these advantages risk being captured by the considerable number of Māori who already have jobs, skills, high income and good prospects (Chapple, 2000). In other words, for policies and statutes that are based on Māori ancestry, the 'wrong Māori' may receive the advantage. A prime example of these is scholarships. Referring back to the Manaaki Tauria grants, those Māori who may have already had financial support to attend university were also eligible to receive the grants. This would have resulted in those Māori who financially required the grant having to

share a smaller proportion of the resource. This example shows that, in those instances where affirmative action policies are based solely on the simple descent requirement, there is the major drawback. The drawback being that not all individuals within a descent-based group will face the discrimination and disadvantage for which a given policy may be implemented (Callister, 2004, p. 133). Charlie Tawhiao (cited in Butcher, 2003), former Treaty Relationships manager for the Corrections Department, recognises the problem that arises when these sorts of broad policies are employed:

Just lumping all Māori together assuming them all to be disadvantaged is doing a disservice to those who aren't, but an even greater disservice to those who are – because you're diluting the resource. And sure my gut wants to say nah, bugger it, let's get as much money as we can for Māori, pour it in there and hope some of it does some good. But the sensible person in me says look, if we're going to be spending scarce taxpayer resources, why don't we look carefully at how we're doing that rather than throwing mud at the wall, hoping some sticks and letting the rest wash down the drain.

This quote thus highlights some of serious implications that can arise for Māori when descent is employed as the sole basis for determining an entitlement or advantage. Not only is the resource diluted but it perpetuates negative perceptions of Māori which do not take into account the diversity of Māori society.

Contrary to Tawhiao's position some opponents, for example Mason Durie (2005a), support rights which are based on descent or ethnicity. They contend that due to the fact that Māori are generally more disadvantaged than others it is not inappropriate to focus policies solely on the Māori community and Māori descent. In comparison to the general New Zealand population, Māori have higher rates of unemployment,<sup>33</sup> lower income levels,<sup>34</sup> and less participation in early

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<sup>33</sup> The unemployment rate for Māori for the year to June 2008 was 7.7 percent. This is above the annual average rate for all persons, which is only 3.6 percent (Statistics New Zealand, 2008a).

childhood<sup>35</sup> and university education.<sup>36</sup> Their children are also more likely to live in a single parent family,<sup>37</sup> not to be immunised<sup>38</sup> and to have no parents in paid employment (Durie, 2005a, p. 5).<sup>39</sup> Further, the life expectancy of Māori is significantly lower than non-Māori.<sup>40</sup> When viewing statistical information, it is evident ethnic or ancestral links to disparities cannot be dismissed and therefore affirmative action programmes that focus on ancestry may be appropriate.

Contrary to these arguments it is difficult to escape the fact that, although Māori feature predominantly and disproportionately in negative statistics, Māori in contemporary society are extremely diverse. Dena Ringold (2005, p. 16) for example notes that there is a growing divergence within the Māori population between highly successful, well-educated Māori employed in high skilled jobs, and Māori who leave school without qualifications, face unemployment, or are employed in low-skilled jobs. Ian Pool (1991, p. 16) has recognised this diversity and has noted that the growth of a large-scale Māori ‘middle class’ could create the situation where the factors determining disadvantage, for example, inadequate access to

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<sup>34</sup> According to the 2006 census the median income for Māori aged fifteen years and over was \$20,900 (Statistics New Zealand, 2007). This is compared to the median annual personal income for the general population which was \$24,400 (Statistics New Zealand, 2008b).

<sup>35</sup> In 2007 ninety eight percent of New Zealand European children attend an early childhood education service (Ministry of Social Development, 2008). This is compared to eighty four percent of Māori children (Ministry of Social Development, 2008).

<sup>36</sup> According to the Ministry of Social Development (2006) Māori participation in tertiary education is considerably lower than non-Māori participation at the core tertiary education ages of eighteen to twenty four years. In 2005, twenty four percent of Māori aged eighteen to twenty four years were enrolled in tertiary education compared to thirty seven percent of the general population (Ministry of Social Development, 2006).

<sup>37</sup> Some forty one percent of Māori children lived in sole-parent families in 1996. This compares with twenty nine percent of Pacific Islands children, seventeen percent of European children and twelve percent of Asian children (Statistics New Zealand, 1999).

<sup>38</sup> In 2007 77.5 percent of New Zealand children were fully immunised at two years, this is compared to only sixty nine percent of Māori children (Child Health Watch, 2007).

<sup>39</sup> According to Statistics New Zealand (2004a) in 1996, 23.4 percent of all children did not have a parent in paid work. Comparatively a total of 41.2 percent of Māori children had no parent in paid work in 1996 (Statistics New Zealand, 2004).

<sup>40</sup> According to Statistics New Zealand (2004b) Māori life expectancy at birth is about 8.5 years lower than for non-Māori. A newborn Māori girl can expect to live 73.2 years and a newborn Māori boy 69.0 years, compared with 81.9 years for a non-Māori girl and 77.2 years for a non-Māori boy (Statistics New Zealand, 2004b).

education, housing, jobs and health care, were entirely socio-economic in origin, with ethnicity or ancestry playing virtually no role. Thus, although there have been reports stating that there is a continuing disparity between Māori and non-Māori, such as that produced by the Te Puni Kōkiri (1998), not *all* Māori will face disadvantage and discrimination. Therefore a natural implication of basing legal rights and policies solely on descent is that it will allow people to receive the right, for whom the advantages under the law may not be targeted. This is an important consequence for Māori as not only are the wrong Māori being advantaged but the truly disadvantaged among the Māori population may continue to be disadvantaged.

#### **THE NATURE OF LAW AND THE NATURE OF IDENTITY**

Another implication of the definition of ‘Māori’ existing within the law is that there may never be an appropriate definition that incorporates all those people who in reality may be considered Māori. The reason for this is that the nature of law inherently contradicts the nature of an identity.

The ‘rule of law’, which in its most basic form is the principle that no one is above the law, is a political ideal that is globally endorsed and is advocated worldwide (Tamanaha, 2004, p. 3). One reason that the rule of law is important relates to predictability and certainty. For the law to work effectively people need to know what it prescribes so that they can conform their conduct and activities in order to comply with the law (Scalia, 1989). Thus, the nature of law is such that it attempts to set clear boundaries of who qualifies for certain rights and what people can and cannot do. In accordance with this principle it is therefore desirable that the legal definition of Māori clearly delineates who falls within its ambit. If it does not create patent boundaries then there will be uncertainty and the possibility of lengthy and expensive court challenges.

The problem that is inherent with the legal definition of ‘Māori’ is that the law, which attempts to set out easily discernable confines, is attempting to define a concept that is not usually determinate in nature. As previously discussed, Māori are a diverse people and there are numerous opinions as to what is important in determining who is ‘Māori’. Some people believe that Māori culture and values are important in being able to claim a Māori identity whereas others assert that *whakapapa* is the only important determinant. Intermarriage and changing ideas about race have further complicated how people self-identify and are identified by others (Kukutai, 2004, p. 86). Hana O’Regan (2001, p. 37) states that:

Identity cannot be analysed as a static concept frozen in time, but instead must be seen as being in a continual state of evolution, containing elements of the past and elements of what it is to become.

A Māori identity is thus a concept which is fluid and in a perpetual state of evolution. An example of the fluid nature of a Māori identity is that in 2001 a young basketballer named Che Yandall was permitted to try out for the national Māori basketball team (Butcher, 2003). Yandall was a *tamaiti whāngai*<sup>41</sup> of a Māori family, was fluent in *te reo* Māori and had spent his life immersed within a Māori cultural environment (Butcher, 2003). Usually a person must be able to demonstrate Māori *whakapapa* to be able to try out for this Māori team, however, an exception was made after a *hui* decided that Yandall was Māori at heart (Butcher, 2003). The exception and circumstances evident in Yandall’s case demonstrate that a Māori identity is not a fixed concept. The changing contours of what makes a person Māori, however, causes difficulties when attempting to reconcile the changeable nature of identity with the more rigid disposition of

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<sup>41</sup> *Tamaiti whāngai* is the New Zealand Māori term for a foster or adopted child (Adoption Network, 1995). ‘*Tamaiti*’ (plural ‘*tamariki*’) means ‘child’ and ‘*whāngai*’ means to feed or nourish, in the narrow and broadest senses, so a *tamaiti whāngai* is a child who is nurtured or raised by someone other than his or her birth parents (Adoption Network, 1995).

the law. Of important consequence to Māori, this conundrum illustrates that no matter what the definition of ‘Māori’ is within the law, there are likely to be people both included and excluded from the group that may not necessarily be so in reality.

### **‘MĀORI’: AN ANACHRONISTIC TERM?**

Another implication for Māori concerning the legal definition of ‘Māori’ is that the term ‘Māori’ itself may become antiquated due to the revitalisation and re-emphasis that Māori society is placing on *iwi* and *hapū* groups. As discussed in Chapter Two, tribal and Māori identities do not need to be mutually exclusive. However, if the nature of Māori society were primarily based on *iwi* and *hapū*, the term Māori may consequently be rendered anachronistic and redundant. If this were to occur there would clearly be implications for the legal definition of ‘Māori’.

The contemporary climate within Māori society is that increasing prominence by Māori themselves is being placed on *iwi* and *hapū* groups rather than the more ‘bland Māori identity’ (Durie M, 1998, p. 55). For example, every two years the descendants of the Tūhoe *iwi* gather together at a *hui ahurei* (cultural festival) in which they remember family who have passed away, their deeds, their joy, their pain and to celebrate the vitality and vibrancy of being Tūhoe (Biasiny-Tule, 2007). This type of re-focus on traditional tribal structures began in the mid-1980s and was actively encouraged by the government in the form of legislation such as the Runanga Iwi Act 1990 (Barcham, 1998, p. 306). Although the Runanga Iwi Act was quickly repealed it left a legacy that facilitated and emphasised the centralisation of *iwi* as a primary Māori structure (Barcham, 1998, p. 306). Another process which has worked in a manner that has promoted the reemergence of Māori tribal groups is the Treaty of Waitangi settlement process (Poata-Smith, 2004, p. 178). This settlement process has resulted in many tribal groups

regaining control over their resources as well as receiving significant injections of cash and assets.<sup>42</sup> By providing tribes with resources, which they can use to rebuild and advance, it is likely that their people will be encouraged to retribalise. For example, the Chief Negotiator for Te Rūnanga o Ngāti Awa, Hirini Moko Mead (2003a, p. 8) stated on the occasion of the signing of the Ngāti Awa deed of settlement with the Crown in 2003 that they had over 15,000 registered members of Ngāti Awa. In 2005, just two years later, Te Rūnanga o Ngāti Awa had over 17,000 registered members (Te Puni Kōkiri, 2005). Whether this increase is due to Ngāti Awa gaining additional resources by virtue of the Treaty settlement process or for other reasons, a reemphasis on the *iwi* by its people is clearly evident. Further, the settlement process in some instances has also directly promoted *iwi* interests over that of the broader Māori group. This can be seen in the saga that followed the signing of the fisheries settlement between Māori and the Crown in 1992. This settlement was to be for the benefit of ‘all Māori’ however the Treaty of Waitangi Fisheries Commission, declared that *iwi* alone were the appropriate entities to receive shares of the settlement proceeds (Poata-Smith, 2004, p. 178). This decision, that clearly excludes all of those people who cannot trace their links back to ‘traditional *iwi*’, represents an institutional shift from a focus on ‘Māori’ to a focus on *iwi*.

This shift is also reflected in a Māori reality. Mason Durie (2005b, p. 8), for example, specifically notes that within the last two decades there has been a transformation within Māori society which has resulted in a reemergence of *hapū* and *iwi* for Māori development. Hirini Moko Mead (1997, p. 114) makes the same point in his statement that:

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<sup>42</sup> For example under the Ngāti Awa deed of settlement the Crown, as a result of its historical breaches of its Treaty obligations, provided Ngāti Awa with a combination of Crown-owned land selected by Ngāti Awa and cash value of up to \$32.39 million (Wilson, 2003). As well as other things, under this agreement, the Crown also returned a number of areas of special significance to the *iwi* as well as gifting one million dollars to assist in the redevelopment of the Matātua meeting house complex (Wilson, 2003).

*Iwi* identity has re-emerged as a powerful force. While the government might want to support Māori enterprises that are non-*iwi*-specific, the majority of Māori want to work within and for their *iwi*. The tribal unit has always been a dynamic, descent-based group and will remain a meaningful unit for a long time.

The census statistics also demonstrates that there is an increasing number of people that affiliate with a tribal group. In the 2006 Census a total of 102,366 people of Māori descent did not know their *iwi* (Statistics New Zealand, 2007). This is a decrease of 8.4 percent, compared with 2001 and a 9.1 percent decrease since 1996 (Statistics New Zealand, 2007). There is thus clearly a resurgence of retribalisation within contemporary society that is consistent with sentiments expressed by people such as John Rangihau and Tīpene O'Regan who assert a tribal identity over a Māori one (Rangihau, 1992, p. 190; O'Regan, 2001, p. 54-55).

Despite there being an escalating focus on *iwi* within Māori society, according to the 2006 Census approximately 16% of those who identified as being of Māori descent indicated that they did not have tribal affiliations (Statistics New Zealand, 2007). Therefore, although this number has decreased, at present there are still a significant number of Māori that do not identify as associating to a tribe. Because this is a considerable number of people, it may be inappropriate at this stage to completely move away from a legal definition of 'Māori'. However, if Māori continue on the current trend of tribal resurgence the day may not be far off when the term 'Māori' becomes redundant. If this were to occur the legal definition may require amendment in order to reflect a new *iwi/hapū* reality.

It is apparent from this chapter that there are practical implications that have or are likely to arise due to the broad definition of 'Māori' employed within the law. This includes problems arising

from an increasing number of Māori, the wrong people being able to receive advantages under the law, the static nature of law and the changing nature of Māori society which is increasingly placing emphasis on tribal groups. However, to allude back to the *whakatauki* employed at the beginning of this chapter, now that these complexities have been endured it is time to emerge into the light. The following chapter thus attempts to make sense of the discussions that have taken place and suggests ways that New Zealand can move forward with this issue into the future.

## CHAPTER 4: THE LEGAL DEFINITION OF ‘MĀORI’ IN THE FUTURE



*Ka pū te ruha, ka hao te rangatahi*

The old net is cast ashore and a new net will be used

(cited in Mead, 1997, p. 136)

In this chapter, the ‘old net’ referred to in the above *whakatauki* is a metaphorical representation of the current legal definition of ‘Māori’. The objective of this chapter is to determine whether the ‘old net’ needs to be cast aside or whether a ‘new net’ would be more appropriate. As Arohia Durie (1997, p. 161) states; ‘as long as there is growth and change, what once may have been settled, may need to be renegotiated over again’. The previous two chapters demonstrate that there are positives and negatives that are apparent with the current legal definition of ‘Māori’. This chapter thus attempts to reconcile all of the issues and considerations that have been brought to the fore and review a number of possible alternatives. This chapter first looks at whether the New Zealand legal system should retain the current definition of Māori with its qualifying criteria exclusively based on Māori *whakapapa*. Secondly, it examines the feasibility of several alternatives, for example, self-identification, substituting tribal affiliations and the possibility of adding some sort of cultural participatory requirement. This chapter then considers whether having both a descent *and* an ethnicity requirement would be appropriate to determine legal ‘Māori’. In conclusion it examines the feasibility of different statutes adopting varying criteria to

qualify for a right, dependent on why the Act distinguishes Māori and what the law is aiming to achieve.

## **RETAIN THE *WHAKAPAPA* REQUIREMENT**

One of the obvious paths that New Zealand could take in regard to the legal definition of ‘Māori’ is to retain the status quo. As demonstrated in chapter two there are a number of Māori that impliedly support the legal definition of Māori that, in general, adopts the approach that Māori *whakapapa* is the primary requisite in ascertaining whether a person is Māori. The following contributors, Moana Jackson (2003), Donna Awatere-Huata (1984), Willie Jackson (cited in Sharples, 2006), Joan Metge (1964, p. 53), the Waitangi Tribunal (1986, p. 14) and Arohia Durie (1997, p. 142) have all recorded their support that the Māori concept of *whakapapa* is extremely important in a Māori world view. Thus, if the government ever attempted to move the legal definition away from Māori descent it is likely that they would meet significant opposition from many Māori. The legal definition of Māori, with its emphasis on Māori descent, is also supported by a number of other Māori entities. Historically, *iwi* organisations have largely adopted *whakapapa* as the primary requirement that one must satisfy to be entitled to become an *iwi* registered member, as well as it being consistent with the Māori concepts of *mana tīpuna* and *manākitanga*.

Another practical advantage of employing the *whakapapa* requirement, which is not discussed in the previous chapters, is that the *whakapapa* test is also conducive to administrative ease. Sir Tipene O’Regan (cited in Maaka & Fleras, 2005, p. 87), a prominent leader of Kai Tahu, has pointed out that there is a practical dimension in only requiring *whakapapa* for identity purposes.

He has stated ‘If they don’t have a *whakapapa* how do they know if they are Māori? I might say I’m a descendant of King George V but I can’t claim an inheritance unless I can show it’ (cited in Maaka & Fleras, 2005, p. 87). The *whakapapa* requirement thus provides a relatively simple and easily verifiable test. If further conditions were attached to the legal definition that considered a person’s cultural involvement, difficulties may arise in terms of measurement and subjectivity. As well as this, the process by which the Māori public gain access to benefits under the law must also be relatively simple. If, for example, the process is made too difficult then Māori may simply not apply for the right, and the advantage may become unutilised. Thus, in terms of broad based rights, where there are large numbers of Māori involved, the *whakapapa* approach provides an easy and practical definition of who can qualify for the right.

However, as discussed in Chapter Two and Three there are also a number of problems evident with the legal definition of ‘Māori’. Thus, we are left with somewhat of a dilemma. There are some strong arguments supporting the retention of the legal definition of ‘Māori’ with its focus on *whakapapa*. However, there are also difficulties that are inherent within this legal definition or have flowed from its practical application. Ultimately, whether this definition should remain depends on the feasibility and appropriateness of other alternatives. The following discussion explores the viability of alternative options that the law could adopt that may be more appropriate for Māori given all of the issues raised in the previous chapters.

## **SELF-IDENTIFICATION AS A DEFINITION**

One of the criticisms of the current legal definition of ‘Māori’ is that by requiring people to have Māori descent those who cannot trace their *whakapapa* are unable to qualify as being ‘Māori’.

One foreseeable way to circumnavigate this difficulty would be to adopt self-identification as the measure of Māori identity under the law. This approach embodies the concept of *tinorangatiratanga*, or self-determination, as it allows people to decide for themselves whether they are Māori or not. This approach would also help resolve the problem of the current legal definition excluding individuals such as *tamaiti whāngai* who are predominately embraced as Māori within a Māori reality.

If, however, self-identification was to replace Māori ancestry as the pre-condition for qualifying as a legal Māori, one of the inherent dangers, is that it opens the door for the opportunist to choose to identify as Māori for the sole purpose of gaining access to the advantages that are available under the law. The open criterion of self-identification places no limits as to who could claim a right to be legally 'Māori'. Thus, those people with no legitimate claim to identify as Māori could use and abuse the attaching rights.

Self-identification has been adopted by the Electoral Act 1993 and is a category that is now considered within the census. Statistics that have emerged from the census show that, at least for census purposes, people have not tended to identify themselves as being ethnically Māori unless they also have Māori ancestry (Kukutai, 2004). In the 2006 census, for example, only 1.92 percent of those people who identified as being ethnically Māori did not have Māori ancestry or did not know if they were of Māori descent (Statistics New Zealand, 2007). This small proportion of people, whose claim to being Māori rests solely on self-classification, suggests a disinclination to identify as being 'Māori' unless a person also has Māori ancestry or perhaps a strong affiliation to being Māori. Anthropological studies, for example, suggest the reasoning behind individuals identifying as Māori, even though they may have no Māori ancestry, includes having been raised in a Māori family, residing in a Māori community, or marrying a Māori

(Metge cited in Kukutai, 2004). Thus, for census purposes the incorporation of self-identification as a measure of Māori identity has not yet opened any floodgates.

Despite the census not resulting in a flood of people claiming to be ‘Māori’, the Electoral Act 1993 can be distinguished from other statutes and policies. The census, unlike some instances in which Māori have been defined within the law, does not lead to the direct access to certain rights to resources. It therefore does not run the risk of people claiming to be Māori solely for the purposes of obtaining an advantage. The danger of opportunism, however, is a reality that other statutes and policies are likely to face if they were to incorporate self-identification as the primary condition required for a person to qualify as being ‘Māori’. Self-identification alone therefore seems to have some inherent risks that would need to be considered if such a definition were to supplement the current legal definition of ‘Māori’.

## **FOCUS ON THE IWI**

As discussed in the previous chapter, *hapū* and *iwi* are re-emerging as the primary mechanism and functioning unit of Māori society. There are two ways in which the legal definition of ‘Māori’ could undergo changes to reflect this emphasis. The first, is that the legal definition of ‘Māori’ could be made redundant and replaced with a definition that focuses solely on *iwi*. Alternatively, the definition of ‘Māori’ could remain but it could be modified to incorporate only those people who are affiliated with their *iwi*. There are, however, a number of immediate problems that are inherent within these two suggestions. Firstly, the question arises as to whether these definitions would capture contemporary Māori circumstances. Despite there being an increasing focus on *hapū* and *iwi* there are still a significant number of people who are

disassociated or do not know their tribal affiliations.<sup>43</sup> This is in part due to the urbanisation which occurred extremely rapidly after World War II and worked to fragment rurally based tribal networks (Pool cited in Kukutai, 2004). There are also those Māori children who were adopted into non-Māori families without knowledge of their *iwi*. It is thus questionable whether detribalised Māori should be defined out of the population because of historical forces (Kukutai, 2004). Another consideration relative to this tribal-based option is the issue of which specific tribes should be substituted for the legal definition of ‘Māori’. There has, for example, been significant controversy over the validity of urban tribes as legitimate forms of *iwi* (Barcham, 1998, p. 303). These implications suggest that at present a definition which focuses on *iwi* and *hapu* may be inappropriate. If, however, Māori society continues to strengthen its tribal functions, this may become a viable option in the future.

## **INCORPORATE CULTURAL PARTICIPATORY CRITERIA**

Another possible amendment could be to incorporate a cultural participatory requirement in addition to the *whakapapa* criteria. If such criteria were adopted, then it would support the notion, adopted by some, that being Māori encompasses having a distinct cultural identity. An example of the type of standard or requirement that could be introduced can be seen in a project undertaken by Te Pūtahi-ā-Toi, the School of Māori Studies at Massey University. This project, entitled *Te Hoe Nuku Roa* measures a person’s Māori cultural identity by weighing an aggregate of an individual’s scores on seven cultural indicators (Stevenson, 2004, p. 37). These indicators include self-identification, *whakapapa*, *marae* participation, *whānau* associations (extended

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<sup>43</sup> As discussed in the previous chapter approximately sixteen percent of those people who identified as being of Māori descent did not indicate that they were affiliated to a tribal group (Statistics New Zealand, 2007).

family), *whenua tipu* (ancestral lands), contact with Māori people and the Māori language. From these indicators the study constructed four cultural identity profiles; a secure identity, a positive identity, a notional identity and a comprised identity. A secure identity encompassed those people that tended to subscribe to Māori values, have good access to Māori language, Māori land, *whānau* and other elements of the Māori world. Māori with a positive Māori cultural indicator, however, included those who had a strong sense of being Māori, but they were somewhat estranged from the Māori world and did not have good access to Māori cultural and social resources. The third group with a notional cultural identity described themselves as Māori but did not have any contact with the Māori world. The final group, those with a compromised identity, did not actually describe themselves as being Māori even though they may have had access to the Māori world (Stevenson, 2004, pp. 37-40). These profiles, that in essence purport to encapsulate the degree to which an individual is Māori, are examples of ‘measurements’ that could possibly be incorporated into the legal definition of Māori. The legal definition, for example, could explicitly exclude those Māori that have a notional or a comprised Māori cultural identity. If such an approach were adopted the legal definition of ‘Māori’ would align with sentiments such as that expressed by the late Sir Apirana Ngata (cited in Stevenson, 2004, p. 39) who states: *Ki te kore koe e mōhio ki te kōrero Māori ehara koe i te Māori* – if you do not speak Māori you are not Māori. Although the qualifying criteria may not be so extreme as to explicitly deny a Māori identity based on the inability to speak the language, these considerations would be directly relevant and influential in issues of entitlement.

If a degree of cultural participation were required then it may also serve to overcome the inconsistency of the current legal definition of ‘Māori’ with the Māori concepts of

*whakawhanaungatanga*, *utu* and *ahi kā*.<sup>44</sup> Generally, if an individual is actively involved within the Māori community, then they will automatically have a relationship with that community and therefore be acting in a manner consistent with *whanaungatanga*. Furthermore, the concept of *utu*, or reciprocity, may also be satisfied. An individual who identifies strongly with their culture, is likely to feel a personal obligation to give back to the Māori community. This definition may also be consistent with the concept of *ahi kā* as it would ensure that a person is actively fostering and maintaining their relationship and connection to the Māori world. Thus the incorporation of a cultural participation requirement would be consistent with these Māori concepts.

There are, however, problematic issues that would arise if cultural criteria, similar to those discussed above, were added to the legal definition of ‘Māori’. Hana O’Regan (2001, p. 96) recognises this in her discussion as to why Kai Tahu has adopted the clear and easily applicable *whakapapa* requirement to determine one’s entitlement to beneficiary status. O’Regan notes that management difficulties would inevitably arise if other criteria, extending beyond *whakapapa*, such as participation and commitment were placed on the distribution of resources. This would include issues such as; ‘who could define what participation is? What symbolises a commitment? Who has the right to set criteria? How can fairness be ensured?’ (O’Regan, 2001, p. 96). These questions raise difficulties due to the fact that any culturally based prerequisite would naturally exclude a significant number of people from qualifying under the legal definition. The incorporation of a cultural requirement would also be problematic in that it seems to imply that the Māori culture is static, unchanging and unresponsive to different environments and circumstances (Reid & Robson, 2001). By introducing cultural standards to the equation of Māori qualification, it seems to freeze the culture and does not recognise either the history of

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<sup>44</sup> See chapter two for a definition and explanation of these cultural concepts

forced assimilation experienced by Māori or the changing nature of an identity. The creation of a participatory cultural requirement also espouses an exclusionary as opposed to inclusionary approach to identity. Denying a person who does not meet a certain cultural indicia the right to legally identify as a 'Māori', essentially removes an aspect of one's personal identity. In doing this, it may alienate and further perpetuate the disassociation of some Māori from their culture. There are therefore some serious implications that would need to be considered before this option was adopted as an alternative to the broad *whakapapa* approach.

### **THE INCORPORATION OF BOTH DESCENT AND ETHNICITY AS AN OPTION**

Another possible alternative that could be adopted to establish legal qualification as a 'Māori' would be to require a person to have Māori descent *and* identify ethnically as Māori. This is a less fervent and exclusionary version of the aforementioned proposal, which suggests a stringent cultural participation criteria. Tahu Kukutai (2004), a PhD student at Stanford University, supports this dual requirement. She firstly argues that 'persons of Māori descent who do not identify as Māori should not be counted as Māori for most general policy and legal purposes'. Kukutai's justification for this notion is that there is a distinction between New Zealander's of Māori ancestry and those persons who consider themselves to be culturally Māori. This ethnicity requirement espoused by Kukutai thus goes some way to satisfying, or at least somewhat appeasing, those people who contend that being Māori requires a degree of cultural affinity. Furthermore, Kukutai (2004) also argues that the small number of persons who culturally identify as Māori but are not of Māori descent should not be considered part of the Māori population because they have no *whakapapa* claim. This suggestion thus recognises and supports those that assert the important role that *whakapapa* plays in Māori identity formation. Moreover, by

retaining the *whakapapa* requirement as a baseline test it may also serve to limit opportunism by those people who have no legitimate claim to the rights that are attached to the legal definition of ‘Māori’. This dual criterion thus seems to somewhat reconcile the importance of *whakapapa* as well as the significance of culture in forming a Māori identity. It is also not an unduly exclusive definition compared to tribal affiliation (Kukutai, 2004) nor is it an unacceptably broad definition.

## **A MIXED APPROACH BASED ON WHY MĀORI ARE DISTINGUISHED IN THE LAW**

Another possible avenue that New Zealand could adopt for the legal definition of ‘Māori’ would be to assume varying definitions that focus on the reasons *why* Māori are distinguished within the law. The following are examples of how this could function. Firstly, each individual statute or policy on a case by case scenario could define the term ‘Māori’ in a way that is appropriate for that particular law. A hypothetical illustration of this is that an affirmative action policy could define ‘Māori’ as including; a person of Māori descent and ethnicity who earns under a certain income threshold. Alternatively, all statutes could adopt a broad initial definition of ‘Māori’ but then individual statutes could add further criteria that restrict those who qualify for the actual right. For example ‘Māori’ could be defined as including a person of Māori descent and ethnicity. However, as an additional requirement, given the purpose of the statute, it could also stipulate that one must also be earning under a certain income. Although these two approaches yield the exact same result, if one of these options were to be adopted, the latter of these seems more appropriate. The reason for this is that by separating the restrictive criteria from the actual definition of ‘Māori’, a clear distinction is made between those who should be considered

‘Māori’ and those who should be entitled to receive a certain right. By adopting an initial broad definition of ‘Māori’ the law is recognising that being able to qualify as being legally ‘Māori’ is an aspect of one’s identity. However, in having additional restrictions that limit who can actually receive the rights that attach to being ‘Māori’, the law also acknowledges the diverse reality of Māori society and the fact that Māori are distinguished from others in the law for specific purposes. This approach would allow the law to maintain a degree of consistency across all statutes and policies as well as provide the flexibility to tailor the law itself so that they are operational and effective.

The supplementary criteria incorporated into statutes could vary according to each individual policy or Act. It is proposed that any extra criteria should directly reflect the purpose of a given statute or law. For example, if New Zealand simply wants more Māori within the medical and legal professions then the broad definition of Māori is likely to suffice as the only consideration under alternative entry. However, if the reason for having allocated spaces is to have people who can culturally relate to Māori people, then further criteria that reflect this rationale should be added. Thus, whatever restrictions are placed on who is ultimately eligible to receive Māori legal rights depends on the reason for the implementation of the right.

This proposition is one which has already been adopted by the law to a certain extent. An example of this is the Ngarimu VC and 28<sup>th</sup> Māori Battalion Memorial scholarships that are administered under an Act of Parliament.<sup>45</sup> The primary criteria for these scholarships are that the applicant must *whakapapa* to a member of the 28<sup>th</sup> Māori Battalion (Ministry of Education, 2008). However, in conjunction with this, the applicant must also be able to address other characteristics such as demonstrating an ability to operate within both Māori and Pakeha worlds,

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<sup>45</sup> The Ngārimu VC and 28th (Māori ) Battalion Memorial Scholarship Fund Act 1974.

their first strength must be cultural competency, they should know *te reo* Māori, they must be grounded among their people and they must have pulled their weight within the community (Ministry of Education, 2008). Another example can be seen in Te Ture Whenua Māori Act 1993. Under this Act the ‘preferred class of alienee’s’ (to which Māori freehold land is preferably alienated to) includes *whanaunga* (or family) of the alienating owner ‘who are associated in accordance with *tikanga* Māori with the land’.<sup>46</sup> In both of these instances there are additional criteria, that accord with the purpose of the Acts, that work to restrict those who are entitled to claim the actual privileges that attach to the legal definition of ‘Māori’.

There are a number of advantages for adopting this approach. Firstly, not only does it allow for maximum flexibility to ensure that policies and statutes operate effectively but it also combats a number of the problems that have arisen in regards to the current legal definition of ‘Māori’. For example, the argument that broad policies are resulting in the wrong Māori getting the leg up can be negated by criteria which limits those Māori who can actually receive the right.<sup>47</sup> This approach could also address the issue of increasing numbers placing pressure on limited resources. This approach to the legal definition of ‘Māori’ thus seems to embrace the best of both worlds. It allows for a relatively broad definition of ‘Māori’ that should ideally reflect a Māori reality as well as having the flexibility to ensure that the statute or policy is operating in the manner for which it was designed. This conception is one that, to a large extent, is reflected in the status quo. However, as I will soon discuss, I propose that this approach is adopted with some slight modifications.

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<sup>46</sup> S2 of Te Ture Whenua Māori Act 1993.

<sup>47</sup> For example in regards to affirmative action policies that aim to reduce economic disadvantage criteria that requires that a person must earn under a certain income threshold could be adopted.

This chapter, thus far, has discussed a number of possible options that New Zealand could take in regard to the legal definition of ‘Māori’. It is a reality, however, that a perfect definition may never be attainable because, as discussed in the previous chapter, the nature of law is somewhat irreconcilable with the nature of an identity. Thus, as Tahu Kukutai (2003, p. 92) puts it; ‘When it comes down to it, there is no master descriptor or right way of defining Māori’. Therefore, the imperative step to be taken is to determine which definition is the most *appropriate* for Māori given all of the arguments. From a personal perspective, I believe that the most suitable approach in the contemporary climate would be to adopt Kukutai’s suggestion, that ‘Māori’ should be defined within the law as a person who has both Māori descent and identifies as being ethnically Māori. However, in conjunction with this, I also believe that individual statutes should be able to incorporate further criterion, if suitable, that limits those who actually receive the right attached to being ‘Māori’. Such reasoning for preferring this dual approach is that it seems to reconcile a number of varying Māori views and concerns. It takes into account the importance of *whakapapa* in determining a Māori identity as well as providing that a person has at least a limited degree of cultural affinity to Māori by virtue of their ethnicity. It also provides the necessary flexibility, to ensure the effective operation of a particular statute or law. This approach thus appreciates that an appropriate definition of ‘Māori’ needs to recognise that there is both an identity and a practical element that needs to be taken into account.

## CONCLUSION



*Kua noi te rā ki runga*

The sun is high in the sky

(cited in Mead & Grove, 2001, p. 273)

According to Hirini Moko Mead and Neil Grove (2001, p. 273) the above *pepeha* is a metaphor that indicates that a matter is well advanced and discussion has reached its high point and thus its conclusion. For the purpose of this dissertation it signifies the final comments that draw this dissertation to a close. This chapter commences with a summary of previous chapters and concludes with my own personal comments relating to the ultimate aim of this dissertation and what I personally hope will occur in regards to this issue in the future.

Chapter One opens this dissertation by contextualising the legal definition of ‘Māori’ in a chronological manner. It traces how the term ‘māori’ has evolved from initially indicating those things that were normal, to its current representation of the Indigenous peoples of New Zealand. It discussed how the law has subsequently adopted the term ‘Māori’ and throughout history defined Māori in a variety of ways for a variety of different purposes. Importantly for the purpose of this dissertation, in contemporary times the legal definition of ‘Māori’ embraces all individuals with Māori descent. Further, Māori are generally distinguished within the law in order to grant them a special right or advantage.

This chapter is followed by a substantive discussion on whether the legal definition of ‘Māori’ is consistent with Māori thinking and certain Māori values. This dissertation found that there were a number of Māori that supported the sole emphasis that the legal definition places on Māori *whakapapa*. However, there were also a number of contested notions that ran contrary to this definition. These included the *whakapapa* requirement having an exclusionary effect, the term ‘Māori’ being inappropriate as *iwi* are the primary Māori representative group and cultural factors also playing a role in Māori identity formation. From these discussions it was concluded that like Māori themselves, Māori opinions regarding Māori identity are somewhat diverse. Thus although the importance of *whakapapa* was stressed there was no single or overwhelming Māori consensus regarding whether the current legal definition of ‘Māori’ is appropriate for Māori. This chapter also discussed the Māori concepts of *whanaungatanga*, *utu*, *mana*, *manākitanga* and *ahi kā*. It was concluded that the current definition was not consistent with the Māori concepts of *whanaungatanga*, *utu* and *ahi kā* however the definition was supported by the notions of not only *whakapapa* but also *mana tūpuna* and *manākitanga*.

Chapter three presented a discussion on the implications affecting Māori arising from the legal definition of ‘Māori’. This chapter discussed the issues relating to an increasing number of Māori being able to qualify as ‘Māori’ under the current legal definition. It also recognised that due to the current broad definition of ‘Māori’ in some instances the ‘wrong’ Māori may be able to access and obtain the advantage. In these cases the truly disadvantaged Māori are thus more likely to remain so. Another implication recognised in this chapter was that the nature of law is inconsistent with the nature of identity therefore a perfect definition of the term ‘Māori’ within the law can perhaps never be created. Finally, this chapter addressed how the term Māori may in the future become anachronistic due to an ever increasing focus on *iwi* and *hapū* groups.

The final substantive chapter of this dissertation attempted to reconcile the previous chapters by identifying a number of possible alternatives that could be taken in regards to the legal definition of 'Māori' in the future. It detailed explicit options that could negate most of the problems that were identified in the previous two chapters. This exercise was undertaken because, despite the implications and issues arising with the current definition, if there is no better way of defining 'Māori' then the current definition may be by default the most appropriate for Māori. This chapter thus discussed maintaining the current definition, adopting self-identification as the prime qualifying criteria, the possibility of focusing the definition on tribal groups, incorporating a form of cultural participatory criteria, requiring a person to have both Māori descent as well as identifying as being ethnically Māori and finally the possibility of adopting a mixed approach based on why Māori are distinguished within the law. From a personal perspective it was held that, at present, the most appropriate definition for Māori would be to adopt a mixed approach. I thus proposed that the initial definition should require a person to have both Māori descent and identify ethnically as Māori. My suggestion was that additional criteria should also be incorporated on an individual statutory basis in order to limit those Māori who actually receive the right in accordance with the purpose of the statute. If this approach were adopted it would reconcile a number of the concerns identified with the current legal definition.

Despite expressing my personal opinion regarding what I think would be the most appropriate legal definition of 'Māori' for Māori, it must be remembered that the purpose of this dissertation is not to definitively stipulate how Māori should be defined within the law. In discussing his opinion on Māori identity, Moana Jackson (2003) cites the well-known proverb, 'the namer of names is the father of all things'. The power to define Māori has, throughout history, been a destructive colonising force (Jackson, 2003). Thus ultimately, it is not up to an individual to

decide how Māori should be defined, nor should it be for the government to decide. Instead Māori have to reclaim the right to define themselves. Appropriately, given the metaphoric use of the sun at the beginning of this chapter, I shall again use the sun as an analogy to frame the issue of the legal definition of ‘Māori’, as I see it, in a more poetic manner. According to Māori legend the demi-god Maui and his brothers used ropes to slow down and control the sun (told by Dame Kiri te Kanawa). Figuratively speaking, if a Māori legal identity was represented by the sun then the ropes which control the sun are currently held by Parliament. This dissertation thus looked at and evaluated whether the manner in which parliament is controlling the sun is appropriate for Māori. Ultimately, however, Māori need to be the ones in control of the ropes and the manner in which they are defined within the law. Māori need to determine whether they are content for the current definition to remain or if contemporary circumstances call for a new path to be taken.

The process of Māori arriving at some sort of consensus will not be an easy task because as can be seen throughout this dissertation Māori are a diverse people with differing opinions. Thus, it may simply be easier for Māori to continue to ‘pass the buck’ to Parliament, an external force more accountable to the majority than they are to Māori. However despite it being easy to put this issue into the ‘too hard basket’ it needs to be stressed that how Māori are defined within the law matters. Not only does the definition relate to who can gain access to rights and advantages but it also involves an aspect of how Māori view themselves and how they are represented in society. Consequences occur as a result of inaction and if Māori do not start to define themselves, then the government will continue to do so in a manner which may not be entirely appropriate for Māori. As Moana Jackson (1999, p. 75) eloquently puts it:

If we are to reclaim the truth of what is us, if we are to bequeath to our *mokopuna* a world in which they can stand tall as Māori, then we have to reclaim the right to define for ourselves who we are, and what our rights are. We have to challenge definitions that are not our own, especially those which confine us to a subordinate place.

Māori thus need to decide how they want to be defined and begin to regain and assert control over the reins that delineate their identity.

Ultimately the thesis of the dissertation was to determine whether the legal definition of ‘Māori’ is appropriate for Māori. What was discovered was that there were numerous different Māori perspectives that both agreed and disagreed with how Māori were defined within the law. Further, it was found that there were also some practical considerations that called for reconciliation or amendment of this definition. Given all of these considerations, it was concluded that from a personal perspective there is a *more* appropriate definition of ‘Māori’ that could be adopted within the law. Having answered the primary thesis of this dissertation what is hoped now, as I am sure is hoped by many honours students, is that the issue at the core of this dissertation will transcend the bounds of these pages and be addressed in reality. This dissertation aims to serve as a foundation from which Māori can initiate discussions and move forward on the path of claiming a degree of *tinorangatiratanga* over the shape of their own legal identity.



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