# Resisting the Myth of Hobson's Pledge and Crown Benevolence: Repairing the Record as Part of Weaving Together a Legal Future

Khylee Quince*

**Abstract:**
On the 6 February 1840 at the first signings of the Tiriti o Waitangi between Māori and the British Crown, the pledge 'he iwi tahi tātou' 'together we are a nation' was attributed to Crown representative Lieutenant Governor William Hobson. That was allegedly corrected at the time by prominent chief Hone Heke, who noted that a more appropriate phrasing was 'he iwi kotahi tātou' – or 'together we are one nation', which implies a very different bargain underpinned by pluralism. Whether this happened or not, it conveniently established a mythology of Crown/Māori relations that has permeated our national consciousness and legal orderings, with Hobson's pledge held up as a unifying mantra for people from 'two worlds with one law'. That mythology embedded the assumption of Crown benevolence toward Māori – that the colonisers brought law, order and civilisation where there had been none.

This mythology denies the existence of Māori law and Māori agency in creating legal relationships with others, including early settlers. Ngāpuhi chief Patuone's engagement in trade in the fledgling colony of New South Wales illustrates Māori concepts and practices of sovereignty and laws of obligations. It is also a deliberate mis-remembering of Māori resistance and the consistent assertion of Māori voice in both engaging with and rejecting settler law.

* Khylee Quince is Professor and Dean of Law at Auckland University of Technology. This article is adapted from a keynote presentation given at the Law and Society Association of Australia and New Zealand (LSAANZ) conference at the University of Technology Sydney on 7 December 2023. The style of this paper reflects the oral nature of the original presentation, with references where appropriate.

*Legalities* 4.2 (2024): 161–176
DOI: 10.3366/legal.2024.0073

www.euppublishing.com/legal

Contemporary politics and jurisprudence wrestle with understanding our history as part of the weaving together of our legal future in Aotearoa. Reckoning with that past requires repairing the record, and recognising the existence and operation of Māori law. A number of recent developments are providing hope in this space – including decolonisation and indigenisation of legal education.

**Keywords:** Māori, Decolonisation, Resistance, History, Education.

## INTRODUCTION

I first greet the peoples of this territory on which we are gathered – the Gadigal people – your forbears and your grandchildren, the living and dead – warmest greetings to you all. To the chiefly peoples and distinguished guests amongst us – I greet you also. And to the people of the many tides and four winds who have gathered here today – I respectfully greet you.

Who am I? I am a daughter of the iwi or tribes of Te Tai Tokerau and Te Tai Rāwhiti – whose territories span the north and east coasts of the North Island of Aotearoa. The island is known as Te Ika a Māui to us as first peoples – referring to the great fish pulled from the ocean by our ancestor Māui in our storytelling traditions. My name is Khylee Quince and I am honoured to be with you all this morning.

Thank you very much for the opportunity to come and speak to this hui, this conference on Gadigal lands. We tread carefully and with respect and gratitude on your territories.

The theme of this conference, 'Law and Living Together' was obviously set some months ago, and its relevance has been thrown into stark relief in the aftermath of the failed Voice referendum here in Australia and the election of a right-wing coalition government in Aotearoa who campaigned on a platform underpinned by retrograde race politics. For indigenous peoples on both sides of the Tasman, this has been a time of despair, anger and disbelief as we have seen many years of work towards reconciliation and nation-building towards collective flourishing futures threatened or thrown into question as a result of these events. However, native peoples have always played the long game – we think and act in terms of intergenerational thinking – looking to our tūpuna or ancestors for guidance, and our mokopuna or grandchildren for hope and inspiration. We have also never been so naïve as to rely upon the settler state for affirmation of our status or worth. As many indigenous, minority and radical scholars and activists have observed before now, 'the revolution will not be funded!' (Smith 2007).

## TAKU HONONGA/MY CONNECTION TO SYDNEY

When we as tribal peoples venture outside our territories, we seek a hononga or connection between ourselves and places and people that we engage with in the communities we visit. This is because the indigenous worldview is framed by what we as Māori call whakapapa – literally the layering of things on Papatūānuku or Mother Earth, to determine the connectedness between things, a genealogical framework or taxonomy of relationality. When indigenous peoples travel therefore, to walk on new territory and to meet new peoples, our modus operandi is to figure out our connection to place and people in order to determine our histories with, and our duties and obligations towards, one another.

The connection for me and my whakapapa to this place – the Eora Nation and the territory of the Gadigal people is through my ancestor Patuone, my great, great, great, great grandfather, one of the most important chiefs of the early colonial period in Te Tai Tokerau/ Northland.

Patuone was born in 1764 in Hokianga, the territory of my mother's people. He was a chief of the Ngāti Hao hapu or subtribe of Ngāpuhi – the largest tribal confederation in Aotearoa. As a child with his father, the chief Te Tapua Patuone, he was one of the first Māori to have contact with Europeans during the visit of Captain James Cook on the Endeavour in 1769 – and he and his sister were said to have been given a cooked joint of pork from the ship (Davis 1876, 8). Thus began a long intergenerational familial love of good roast meat!

Through Te Tapua, Patuone inherited chiefly and spiritual authority, as part of the Northern fighting aristocracy – which underpinned his capabilities and also his achievements over his very long life. Patuone was very well known throughout his life for many achievements and movements, in forging alliances, war, peacemaking, and business – he was a chief of peoples as well as a chief of industry (Ballara 2010). Part of that entrepreneurial spirit saw Patuone engage in trading relationships with Pākehā – the new arrivals and visitors to his lands. He first visited Sydney seeking trade opportunities in 1826, and returned home to establish the first shipyard in his village of Hōreke, in partnership with two Sydney merchants Gordon Browne and Thomas Raine (Davis 1876, 20–24). Agreement to use the lands in Hōreke for this purpose was granted in exchange for two muskets, a case of powder, four axes and four hoes. The arrangement led to inflamed tensions between rival senior chiefs, who were all seeking to advance their commercial interests with Pākehā. These tensions saw one of Patuone's rivals, Taonui, set fire

to the timber belonging to the Scottish carpenters working in the Hōreke shipyard, seemingly to spite Patuone (Ballara 2010). Despite these challenges, three vessels were built in the yard, including the brig *Sir George Murray*, which sailed for Sydney in 1830.

The local colonial officials in Sydney Harbour impounded the *Sir George Murray*, as it was breaching British maritime navigation laws for failing to fly a flag of nationality and keeping a register of construction (Yarwood 2015). Of course, in 1830 there was no 'nation' to speak of in Western terms in relation to Aotearoa, as the Tiriti o Waitangi and subsequent establishment of the colony of New Zealand was then 15 years in the future. They had a cognisance problem. Public international law provides for a three-element doctrine as precondition to recognition of a state: state territory, state people and state power or government as an expression of effective and operating sovereignty (Lauterpacht 1944, 385).

At this stage of hearing the Patuone story many of you, like me, are probably recalling the classic Eddie Izzard comedic flag sketch:[1]

> 'We claim India for Britain.'
> 'You can't claim us, we live here, there's 500 million of us.'
> 'Do you have a flag? No flag, no country, you can't have one, that's the rules….'

Izzard's point of course is that such rules of recognition (and indeed the systems of colonising laws more broadly) are part of the legal traditions forced upon native peoples as they encounter invaders and settlers. Patuone's response to this problem was to cooperate, whilst asserting his authority in accordance with our own tikanga or customary laws. His first response to attempt to comply with Western conventions to hoist a woven harakeke kaitaka/flax cloak as a symbol of origin of the ship and its masters (Mulholland 2012). In our tribal law, rangatira or chiefs and their communities were often identified by their clothing, some of which could be heirlooms generations old – but this did not satisfy the New South Wales authorities.

The Sydney officials recognised the legal conundrum they were in, and were wary of both disrupting existing trading relationships and also offending the Māori chiefs who were central to them. However, the impasse resulted in the *Sir George Murray* being sold at auction to Thomas MacDonnell in January 1831, returning to Hokianga two months later (Ballara 2010).

Attempting to move past the previous year's events, in June 1831 Patuone issued a written declaration in his name and that of Taonui, a

fellow rangatira who had accompanied him to Sydney (McDonnell 1833):

> We the principal chiefs of Hokianga in the Island of New Zealand PATUONE and TAONUI … send greeting to say that Thomas MacDonnell, a resident and landowner in our country is the sole owner of the barque or vessel called the 'Sir George Murray', whereof the said Thomas MacDonnell now is the Master, that the said barque or vessel called the Sir George Murray built in OUR TERRITORIES of our timber.
>
> Be it known to all Men that the aforesaid barque or vessel is three hundred and ninety two 64/94 tons English measurement, has two decks and three masts, is built at Hokianga in OUR TERRITORIES, that her length from the fore part of the main stern post aloft is one hundred and nine English feet.
>
> Her breadth at the broadest part above the main wales is twenty eight feet eight inches, that she is built by Andrew Sommerhill, an Englishman, is barque rigged with a standing bowsprit, is square sterned, carvel built, has no galleries and a scroll figurehead, was launched on the second day of September 1930 as the principal Chiefs Patuone and Taonui do hereby certify that the several particulars set forth in the above description and measurement are true and correct, and we further certify that the aforesaid Thomas MacDonnell is entitled to all the privileges and immunities of a chief in Hokianga.

There are a number of interesting aspects to the declaration which primarily evidence an intention to bridge the gap between two legal systems to forge cooperation through trade. It serves as a clear statement of Patuone's mana or authority derived from his whakapapa lineage. It also affirms his personal talents and achievements, demonstrating that under his chiefly patronage, this relationship was forged and resulted in the first British style vessel built outside of the British empire – an impressive achievement. The language is instructive – 'principal chiefs' denoting their ranking in their own legal and political system, as well as the use of all caps. Whilst today we consider the use of all caps as conveying a somewhat aggressive tone, it is arguably used here as a signifier of importance and rank in relation to the chiefs, and denoting ownership and control in relation to the reference of 'OUR TERRITORIES.'

Patuone makes clear that McDonnell is in Hokianga pursuant to his patronage and the consequent cloak of protection that flows from such a relationship. The 50 or so British men who worked in the shipyard were vastly outnumbered by locals, yet subject to the protection of their patron

chiefs, in accordance with our laws. In his biography of Patuone, C.O. Davis remarked of this feat that 'Patuone conducted himself with that true honesty of purpose and urbanity of manner, that inevitably insured respect' (Davis 1876, 23). During that first visit to Sydney in 1826, Patuone had offered to leave his son as a guarantee for the safety of any traders or workers who returned with him to Hokianga (Davis 1876, 24). Again, this was a strategy common in his custom – securing rights, duties and obligations via human relationships – which could include marriage, adoption or slavery to cement connection.

## THE SIGNIFICANCE OF PATUONE'S 1830 VISIT TO SYDNEY

The *George Murray* incident also centred upon the need for a western-style flag as a signifier of nationhood, following the rejection of Patuone's harakeke kaitaka as a flag meeting the British maritime law requirements.

The issue was revived with the arrival of James Busby as British Resident in the Bay of Islands two years later, in 1833. Busby tasked missionary Henry Williams (who went on to draft the Declaration of Independence and translate the Treaty of Waitangi) with designing some options for a flag. Three designs were sent to New South Wales Governor Sir Richard Burke and returned to the Bay of Islands in early 1834, including the one reported to have been flown by the *George Murray* after its release from Sydney and return to Hokianga in 1831 (Davis 1876, 74).

A delegation including 24 rangatira/chiefs selected 'Te Kara' to represent them as the Confederation of United Tribes, the flag of the *George Murray* (Mulholland 2012). The spokesperson for the delegation was another of my tūpuna/ancestors, Moetara of Ngati Korokoro, who announced the choice, which was then celebrated with the raising of Te Kara on the *HMS Alligator* to a 21-gun salute, and its subsequent approval by King William IV as the official flag of the United Tribes of New Zealand (Davis 1876, 67).

Members of this group of chiefs signed He Whakaputanga, the Declaration of Independence, the following year whilst some were within the group of 13 chiefs who sent a letter to King William IV in 1831 petitioning him for protection against the encroaching French. These were the first significant constitutional encounters between the first peoples of Aotearoa and the British – with the Declaration serving as one of the first events of Māori nation-making in response to the encroaching colonial powers, as well as an unequivocal statement of chiefly authority and aspirations.

However, the legacy of Te Kara is broader than this, as it retains significance as potentially the first flag of international convenience in international maritime law (Yarwood 2015). Merchant ships have flown 'false flags' to avoid enemies since ancient times, but the issue underpinning Patuone's problem has no obvious precedent – the signalling of an unrecognised territory as a flag state, meaning the jurisdiction under whose laws a vessel is registered and licensed. The same flag also continues to hold currency as a symbol of Māori independence, sovereignty and resistance against the Crown, from that day to this.

Patuone's adventure is also a demonstration of entrepreneurship, agency and authority. He made agreements across cultures, spanning what we might conceptualise as both private and public law spheres – of commerce but also sovereignty and statehood. He was both cooperative and creative.

It is a reminder that we as tangata whenua/first peoples existed prior to the colonial expansion into our world, and that we had a system of values, principles, norms, practices, and mechanisms by which we organised our communities, responded to breaches and determined correct actions. We had law. We were not passive peoples to whom colonisation occurred. We were there before they came, we persist centuries later. As you say in Australia, always was, always will be.

So that was a long-winded way of saying I come to you today as an uri or descendent of the great chief Patuone, although I have not brought any timber, flax, gum, or hoes for trading as he may have.

Patuone has a connection to He Whakaputanga/the Declaration of Independence through the flag story prompted by his travels to Sydney, although unlike his teina/younger brother Nene, he was not one of its 34 signatories. He was however a signatory to Te Tiriti o Waitangi, the subsequent engagement with the British Crown, and used his high-ranking status to encourage others to sign what he and fellow prominent rangatira Hone Heke referred to as 'he kawenata hou'/a new covenant. Despite dissent and discontent amongst the gathered chiefs, Patuone was a pragmatist, seeing that by 1840, formal colonial expansion was inevitable, so he sought to make the best of the situation to secure protection for his people.

Both the Declaration of Independence and the Tiriti o Waitangi express the position of indigenous legal orderings – made from a position of numerical strength and dominance at the time they were signed. For the benefit of the local audience, I deliberately refer to te Tiriti rather than the Treaty, as all bar a very small number of rangatira or chiefs signed the document in te reo Māori – our own language, rather than the so-called English text which we refer to as the Treaty.

## HOBSON'S PLEDGE AND CROWN BENEVOLENCE

The title of my kōrero or talk references the mythology of Hobson's Pledge and Crown benevolence. This is particularly relevant in the current context, as I will come to explain. As many of you will know, the Tiriti was not negotiated – rather it was presented to chiefs and they either signed on behalf of their people, or they did not. In the most basic explanation, the three written articles allow the settlers to govern themselves, affirm Māori sovereignty over themselves and their property, and grant Māori the benefits of British citizenship.

What has since become known as Hobson's Pledge references the words attributed to the Crown representative Lieutenant Governor William Hobson at the signing that occurred at Waitangi on 6 February 1840. Hobson was reported by witness William Colenso to have declared 'he iwi tahi tātou'/'together we are a nation' as he shook the hand of each signatory to the Tiriti (Colenso 1890).

That was allegedly corrected at the time by prominent chief Hone Heke, who noted that a more appropriate phrasing was 'he iwi kotahi tātou' – or 'together we are one nation', which to Māori implies a different bargain, of one nation made of many (Wai 1040 2014, 363–4).

Colenso's recount occurred 50 years later and was not corroborated by any others present on 6 February 1840. Other witnesses observed significant discontent amongst the chiefs, and suspicion directed toward Hobson (Wai 1040 2014, 363–4).

Whether this happened or not, it conveniently established a mythology of Crown/Māori relations that has permeated our national consciousness and legal orderings, with Hobson's pledge held up as a unifying mantra for people from two worlds with one law. My late uncle, the great Māori jurist Dr Moana Jackson, calls this a 'myth-take', stemming from the primary fiction of Te Tiriti as a cession of sovereignty – as he rightly observed, no people in the history of humankind have voluntarily ceded sovereignty, and certainly not in the superior position Māori were to Pākehā in 1840 (Jackson 2019). This is a convenient lie told to suit colonial ideology and a narrative of Crown benevolence towards Māori.

Colenso's account in 1890 is also to be viewed in the context of the time – in the aftermath of the devastating Māori Wars and the invasion and dispossession of our lands, the suppression of our law and culture and the massive population decreases due to disease in addition to war. To reference another quote usually misattributed to Winston Churchill, 'history is written by the victors' (Phelan 2019). This account can be viewed as a deliberate reimagining of early encounters to soften the harsh realities of the brutalisation of Māori by the forces of colonisation.

## ONGOING HISTORIES OF RESISTANCE

The truth is that resistance was evident at the signing of the Tiriti, and consistently in the nearly 200 years since. The chiefs at Waitangi tested their understanding of what they were signing by asking about the term 'kawanatanga' which they were being asked to concede, subject to their retention of 'tino rangatiratanga.' Kawanatanga was not a Māori term – it was a transliteration of 'governorship.' The example provided to the chiefs was that of Pontius Pilate – the Governor of Judea with whom they were familiar from the Bible. The obvious understanding then was that the Queen of England would have delegated authority over the settlers – and all the chiefs knew that the real power in the Roman Empire sat with the emperor – who held what they would understand as mana or tino rangatiratanga – absolute chieftainship (Wai 1040 2014, 349–50). Giving further credence to the chiefs' understanding is the fact that in the earlier parent document, He Whakaputanga/the Declaration of Independence, Henry Williams used the term 'mana' to refer to sovereign power and authority, deriving from the land. No chief would voluntarily cede their mana, and in fact that was neither sought nor achieved through the signing of Te Tiriti o Waitangi (Walker 2004, 91–2).

Despite several of my own ancestors signing the Tiriti, there are many instances of tribal groupings who did not, and those stories are usually glossed over in the mists of time. Some walked away when the Crown refused to accept the signature of wāhine rangatira, or female chiefs, as British law did not recognise the legal personality of women until 1884 with the enactment of the Married Women's Property Act (Jackson 2019). Those stories are not widely known or shared, and neither are the pragmatic and reasoned motivations of the chiefs who did sign.

The relevance of this to our conference theme is that in order to weave together a legal future, we need to rectify the record of the past. Repairing obviously requires an acknowledgement that something is in need of repair.

## DESPAIR OR REPAIR?

There is a lot to despair about – in Aotearoa we have just voted in the most regressive, racist government of my lifetime – who are waging a war on Māori, the poor, the queer, and the 'woke left.' They have Te Tiriti in their sights, and they have declared an agenda to wind back 50 years of law and policy work and of Tiriti jurisprudence. It's hard not to be depressed and horrified by that. Their narratives have gained traction amongst a populace that is un-informed about our history, who have

been fed those convenient untruths to fit the colonial agenda and their position and status in our society.

This ignorance came to the fore in the global Covid pandemic in 2020, with the growth of the sovereign citizen and pseudo-law movements, and the civic unrest exemplified in the protests at the New Zealand Parliament in March of 2022. Of particular concern to me were not only the number of Māori engaged in these movements, but their appropriation and misuse of the 'Māori flags' – Te Kara and the tino rangatiratanga flags – often flown upside down by protestors, a traditional sign of distress. From their perspective these people were disaffected, marginalised and the targets of decades of exclusion – and here they were in an unholy alliance with alt-right global conspiracy theorists and Trump supporters.

This could be characterised as resistance, but it misrepresents and distorts Māori claims to sovereignty by prioritising individual rights, rather than collective wellbeing underpinned by our own values. Those global movements are not grounded in or informed by our own context and our specific history of colonisation and the forces and factors that have forged the settler/Māori relationship.

## GLIMMERS

There are however a number of glimmers – I learned about glimmers from TikTok. Glimmers are the counterpoint to triggers in psychological theory. Glimmers are the small things or micro moments that bring joy, hope and peace – cues to our nervous system to feel safe and calm (Dana 2018).

In Aotearoa the last government prescribed the teaching of New Zealand history in schools from 2023 – a strategy to correct the record, a necessary step in the process of repair and more broadly of decolonisation, including the decentering of Pākehā/non-Māori norms, voices, values and narratives. If that survives this current government, it will produce generations of young people who will not be ignorant of the stories written on our own lands.

The glimmers in the law can be seen on the bench. Our judiciary has strong leadership in the current Chief Justice and the Heads of Bench of the various courts. Chief Justice Dame Helen Winkelmann recently spoke of the work required to be done in a korero/talk 'Renovating the House of the Law' (Winkelmann 2019), while Chief District Court Judge Heemi Taumaunu has implemented the Te Ao Mārama work programme to shift the operating model of the District Courts to improve access to justice and promote better participation in court proceedings,

with better engagement with iwi Māori and accommodation of diverse culture and languages.[2]

The judicial appointment process in Aotearoa now requires candidates to have cultural knowledge, and once appointed, judges are required to undertake regular professional development training via the Institute of Judicial Studies, which in recent years has included extensive tikanga/Māori law training that I and my colleagues have taught into. Judicial benchbooks that guide court process and decision making are also increasingly including tikanga material and guidance as to how to engage with it.

Similarly, practicing lawyers are required to undertake annual continuing professional development – and these programmes can include upskilling in relation to Māori law and cultural practice.

These dynamics are already affecting our local jurisprudence in the senior courts, with cases such as *Ellis*[3] and *Takamore*[4] in recent years considering how Māori custom and practice is relevant to the common law of Aotearoa as one of the sources of law of our nation.

Those glimmers from the judiciary and profession have placed consequential pressure in the sphere of legal education where we are playing catch-up to some extent, as part of a global reckoning on the place of indigenous knowledge in education. I'm aware this is happening in Canada and Australia, and in the United Kingdom where there is a strong movement centred on inclusive education – to provide minority perspectives in teaching and learning.

In our sphere, a glimmer that has morphed into a beam of light (or a fast-approaching train depending on your perspective) is the pending overhaul of legal education as a result of the changes mandated by our accreditation body, the Council of Legal Education.[5] Of course the biggest shakeup to legal education in our history didn't come about by accident. It was the result of a campaign by a small group of Māori legal academics, led by Distinguished Professor Jacinta Ruru and assisted by the philanthropically funded 'Inspiring New Indigenous Legal Education for Our LLB Degree' research project (Ruru et al 2019). The Law Commission, headed by my former law school colleague Dr Amokura Kawharu as Tumuaki/President, helpfully came in alongside the project to commission a parallel Study Paper, 'He Poutama' exploring tikanga Māori as a jural system and considering its interaction with state law (Law Commission 2023). The resulting publication will provide a rich source of substantive content for the new curricula that are mandated from 2025. It is no coincidence that the convergence of these movements has been led by Māori lawyers, academics, and judges across their various spheres of influence – a phenomenon that would simply

not have been possible even two decades ago, due to both a lack of numbers and broader support within the profession and academy.

Several weeks ago, I saw a glimmer that made me both extremely proud and hopeful. The annual national survey of New Zealand's 9000 law students in 2023 showed that 85 per cent of them were looking forward to learning about tikanga Māori as part of their legal education.[6] If you had told me when I started law school 32 years ago that an overwhelming majority of law students would be supportive of learning Māori law, I would never have believed you. I was a student when the law student society t-shirt proclaimed: 'I didn't get in on the Māori quota.' When non-Māori students regularly vocally protested having to learn the minimum of content related to anything Māori, while Māori students rallied for the inclusion of our voices and our laws, via petitions, protests and sit-ins. When teachers not only vehemently resisted including Māori content but included overtly racist content – causing regular distress to us as students and our communities. As my indigenous brother Eddie Cubillo recently recounted here in this country, the law and law schools have never been safe spaces for indigenous peoples and our ways of knowing and being.[7]

To have moved so far in a generation is no small feat.

To summarise the new requirements which go live from 2025, the teaching and assessment of tikanga Māori will be required across all compulsory courses in any LLB taught in New Zealand – Legal System, Criminal Law, Public Law, Contract, Torts, Trusts, Land Law and Legal Ethics. In addition, there must be a separate standalone substantive course in Tikanga Māori.

As any indigenous academic will tell you, many people confuse this with the teaching of our engagement with settler state law. That is not what we are talking about here – we are being asked to share *our own* laws, *our own* values, norms, practices, and institutions that form a sui generis system that is not reliant upon settler law for legitimacy. This is the law that my ancestor Patuone lived with and by.

More than this, the new requirements go beyond content in terms of *what* is to be taught – and includes a reconsideration of *how, where and by whom* – an examination of pedagogical approaches of teaching, learning and assessment, such as a shift of venue for example – as no Māori law was ever taught using Langdellian or Socratic method in a university lecture theatre for two hours. All of this is to be done with meaningful community engagement in the development and delivery of tikanga Māori.

This is huge and I am equally excited and anxious about the prospect of honouring this opportunity. The *He Poutama* report I just mentioned is

the culmination of nearly three years' work into mapping and describing tikanga Māori as a normative jural system – under the leadership of Justice Christian Whata. *He Poutama* uses the metaphor of the wharenui, the traditional meeting house, to invite the reader/learner into the integrated immersive, physical, and spiritual space of Te Ao Māori – making a deliberate distinction from the objective, secular world of western law.

It traverses an enormous amount of ground in providing a blueprint for engagement with tikanga and also its interaction with settler state law, shifting from the spiritual and metaphysical to guidance in dealing with the incorporation of tikanga in statute, evidence, judicial review, dispute resolution, as well as its relevance as part of the common law of Aotearoa. In terms of broader capacity-building, the report provides advice on developing cultural capacity in the public sector, in processes and in engagement with expert advisory bodies.

In doing so, it does not present Māori law as a pre-contact anthropological artefact divorced from contemporary realities. It is quite simply a masterpiece of research underpinned by community voice and what I'll call AI – Ancestral Intelligence!

The choice of the poutama iconography is instructive – it is a traditional pattern representing the ascension to the heavens, the source of knowledge and improvement. The mode of representation is also significant – in tukutuku – a form of weaving that requires two parties to shuttle material from one side to another of a standing panel. As an art form it represents cooperation, trust, and creativity – all characteristics that are necessary to live together with our laws deriving from two different traditions – weaving a new and unique fabric from those two sources. The other common characteristic of tukutuku as an art-form is that the front of the panel that is usually displayed in a wharenui or meeting house looks beautiful, organized, deliberate. The back of the panel invariably hides mistakes, missteps, work arounds and loose ends tied off in odd places. The tukutuku method and metaphor represents the inevitable journey we will take in coming years to repair and re-indigenise, so that our graduates have a bijural, bicultural and bilingual foundation to be practitioners fit for purpose for modern day Aotearoa.

I do want to flag some of the risks that come with the opportunities presented by this shakeup. This involves the cognitive shifts needed to effectively decolonise and re-indigenise the law and its teaching.

There are of course practical challenges, including infrastructure, resourcing, and relationships. But in addition to those, are the shifts in thinking and the cultural humility required of our non-indigenous

colleagues, to accept that there are different ways of knowing, teaching, and learning law. Cultural humility involves an ongoing process of self-exploration and self-critique, with a willingness to learn from others to inform your teaching, learning, research, and engagement. This goes much deeper than cultural competence and requires you to be 'other-oriented' (Lekas 2020, 13). Sounds easy, but we all have at least *some* colleagues who will not come willingly. Indigenous peoples do this every day – walking in two worlds and navigating hazards in both.

In my school I've commissioned a Curriculum Review – to restructure our programme, all our course prescriptors, learning outcomes, assessment tools and our overall graduate attributes as part of the work necessary to make this transparent and explicit. We are undergoing professional development sessions to ensure we have a shared understanding of the tasks ahead of us.

There is a hearts and minds component to cultural change – we need our non-Māori colleagues on board. My experience thus far is that colleagues are overwhelmingly supportive of the change – but they are also anxious, fearful of making mistakes, and are looking to Māori colleagues for guidance, if not salvation. There is a common perception that we will save them and provide and present all the new content – which is both not possible and not the intention of the reforms. My Māori academic colleague Professor Jarrod Haar refers to this phenomenon as the 'cultural double shift' required of Māori workers – that we are required to do our own job and then also carry the load for our employers and colleagues to meet their responsibilities to Te Tiriti o Waitangi (Haar 2022). I call it my 'cultural sherpa' role – let me show you the ways of my people, as I lead you up the mountain, carrying all the baggage. The days of having money to fund whole staff cultural competence training at $5000 per person for a three-day workshop are long gone. But as I've just said, this is more than compliance with cultural competence training, this is a mind shift that should fundamentally change how we do business. More importantly I don't think we can, or should, let our non-Māori colleagues off the hook, and they should commit to undergo the same transformation and upskilling we will require of future students. Your key job as allies is to show humility and do the work to take some of the burden from your indigenous colleagues.

Unsurprisingly, the most significant concerns have come from iwi Māori/Māori people. Their concern is for the protection of our knowledge and our knowledge holders, with some saying we don't want newly minted lawyers to go off half-cocked to weaponise our tikanga against us. This risk was noted by Moana Jackson when he warned that we are taking something that comes from our whakapapa/genealogy and

placing it in an environment that came from somewhere else, where it can be damaged, and we can be made unsafe.

The key to making this work is effective mitigation of risk and good preparation.

Establishing relationships and trust with tribal peoples takes time – we are relational peoples – and taking a transactional approach will not fly, no matter how much money you offer for engagement. There is a concern about over-burdening iwi – who were neither asked nor consulted about being part of this movement – and frankly if they say no, we're a bit stuck, so there is a reliance on their aroha and manaakitanga/compassion and generosity to embrace this. This is not simply a case of contracting in expertise – any engagement and effort on the part of Māori communities must be appropriately acknowledged, remunerated, and be conducted on their terms.

I have a not-so-secret hope that the practical limits on the sharing of our experts means that a positive, though unintended consequence, will be the breakdown of the neoliberal competitive model of legal education, when we are forced to cooperate and share resources to make this work.

The opportunity represents our maturing as a legal system fit for purpose for the people of our place in the world – one that can give legitimacy to the nation state of Aotearoa and the recognition of the fundamental rights of Māori as tangata whenua/first peoples and the obligations of our Treaty partners. As Moana Jackson observed, imagining decolonisation is not about removal of colonial occupiers but imagining the cognitive shift necessary to acknowledge the ideas, values, and systems inherent in indigenous law. It is also about the *untelling* of the myths and lies of 'discovery' and 'cession.' We should all be here for that.

To come full circle, what would my ancestor Patuone think of the current glimmers and the opportunities they represent for our collective future? Well, he was sometimes criticised for his cooperation with Pākehā and his pragmatic approach to living together with them, saying in his old age: 'It is only in the time of my great great grandchildren that the dreams I have for my people will start to come to fruition.'[8]

Patuone's mokopuna/grandchildren were born 50 years ago – at the time of the Māori renaissance, the establishment of the Waitangi Tribunal and the dawn of our reconciliation process and our demands for the honouring of Te Tiriti.

I've no doubt he would tell us to keep lighting the fires, work together and stay sovereign.

Tēnā koutou.

## NOTES

1. See https://www.youtube.com/watch?v=UTduy7Qkvk8
2. See https://www.districtcourts.govt.nz/assets/Uploads/Te-Ao-Marama-/Te-Ao-Marama-Best-Practice-Framework-for-website.pdf. Retrieved 21 March 2024.
3. *Ellis v R* [2022] NZSC 114.
4. *Takamore v Clarke* [2012] NZSC 116.
5. https://nzcle.org.nz. Retrieved 21 March 2024.
6. https://www.stuff.co.nz/national/education/300922193/law-education-gets-pass-mark-but-students-want-fewer-exams-survey-finds. Retrieved 21 March 2024.
7. https://www.theguardian.com/australia-news/2023/sep/09/dr-eddie-cubillo-quits-university-of-melbourne-law-school-racism-speech-allegations. Retrieved 21 March 2024.
8. http://www.patuone.com. Retrieved 21 March 2024.

## REFERENCES

Ballara, Angela. 2010. *Eruera Maihi Patuone*. Dictionary of New Zealand Biography online.

Colenso, William. 1890 reprinted 1984. *The Authentic and Genuine History of the Signing of the Treaty of Waitangi*. Christchurch.

Dana, Deb. 2018. *The Polyvagal Theory in Therapy*. New York: W W Norton & Co.

Davis, C.O. 1876. *The Life and Times of Patuone: The Celebrated Ngapuhi Chief*. Early New Zealand Books online.

Haar, J., & Martin, W. J. 2022. He aronga takirua: Cultural double-shift of Māori scientists. *Human Relations*, **75**(6): 1001–1027.

Jackson, Moana. 2019. https://natlib.govt.nz/he-tohu/korero/interview-with-moana-jackson

Lauterpacht, L. 1944. Recognition of States in International Law. *The Yale Law Journal* **53**:3.

Lekas H.M, Pahl K, Fuller Lewis C. 2020. Rethinking Cultural Competence: Shifting to Cultural Humility. *Health Service Insights*. **13**.

McDonnell, Thomas. *1788–1864 Papers*. MS Papers-0703. https://natlib.govt.nz/records/23150295?search%5Bi%5D%5Bname_authority_id%5D=-85726&search%5Bpath%5D=items.

Mulholland, Malcolm. 2012.'Nga Haki: Māori and Flags' Te Ara, The Encyclopedia of New Zealand online.

New Zealand Law Commission 2023. *He Poutama: Study Paper 24*. Wellington.

Phelan, Matthew. 'The History of 'History is Written by the Victors' *Slate* 26 November 2019.

Ruru, Jacinta *et al*. 2021. *Inspiring National Indigenous Legal Education for Aotearoa New Zealand's Bachelor of Laws Degree*. Borrin Foundation. https://www.borrinfoundation.nz/wp-content/uploads/2020/08/Inspiring-National-Indigenous-Legal-Education-Phase-1-Report.pdf

Smith, Andrea. *The Revolution Will Not Be Funded*. Cambridge: South End Press.

Waitangi Tribunal. 2014. *The Declaration and the Treaty Wai1040*. Wellington. 9.3.3.

Walker, Ranginui. 2004. *Ka Whawhai Tonu Matou: Struggle Without End*. Auckland. 91–2.

Winkelmann, Dame Helen. 'Renovating the House of the Law' Keynote Speech to Te Hunga Roia Māori o Aotearoa 29 August 2019. https://www.courtsofnz.govt.nz/assets/7-Publications/1-Speeches-and-papers/thr.pdf

Yarwood, Vaughan. 'Flag Day: The Nation Gets An ID' Issue 132 *New Zealand Geographic*.