'Contemporary Māori Governance: New Era or New Error?'

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Over View of Presentation

- Introduction
- Worldviews
- “Governance”
- “Māori”
- Tikanga-based Governance
- Tensions
- Summary
Mainstream World View
Traditional Maori World View - Different
Different World Views
Worldviews

• ‘Cultures pattern perceptions of reality into conceptualisations of what they perceive reality to be; of what is to be regarded as actual, probable, possible or impossible. These conceptualisations form what is termed the ‘world view’ of a culture. The World View is the central systematisation of conceptions of reality to which members of its culture assent and from which stems their value system. The world view lies at the very heart of the culture, touching, interacting with and strongly influencing every aspect of the culture.’

• Rev. Maori Marsden – Nga Puhi Tohunga
Governance

- How any organisation is run.
- Decisions about direction.
- Manage common affairs
- Art of steering societies and organisations
- How decisions are taken
- Includes processes, systems, controls used to safeguard and grow assets.
- Relationships and accountability: who has influence, who decides, and how decision-makers are held accountable
Good Governance Principles

• The principles of good governance apply to any organisation.
• The Institute for Governance (1999) principles for building sound institutions, based on observations of best practice, include:
  
  – Strong mechanisms to promote accountability;
  – The transparent flow of relevant information;
  – Separation of political control from day-to-day economic development and policy management.
  – Protection of shareholders’ rights of ownership and participation;
  – Equitable treatment of shareholders;
  – Recognition of stakeholders’ rights and the need to encourage their participation;
  – Timely and accurate disclosure of finances, performance, ownership, and other governance affairs;
  – Board responsibility for the effective monitoring of management, and the Board’s accountability for their decisions to shareholders.
Different Forms of Governance

• The OECD (1999) - no single worldwide model for best practice corporate governance due to differences in legal systems, institutional frameworks and cultural traditions.
Governance

- Governance includes structures, processes, norms, traditions and institutions and their application by group members and other interested parties.
“Māori”

- Omnibus term
- Natural
- First Peoples
- Tangata Maori
- Reality complex
- Tribal
Some Maori Values & Principles (Tikanga)

- **Whakapapa** – genealogy
- **Wairuatanga** - spirituality
- **Whanaungatanga** – inclusiveness, relationships
- **Mana**- prestige, influence, status
- **Tapu** – sacred, forbidden, set apart, holy
- **Utu** – reciprocity, balance
- **Rangatiratanga** - leadership
- **Kaitiakitanga** – stewardship
- **Kotahitanga** - unity
Te Ao Maori – Social Structure
Relationships

Atua - Gods

Tupuna-ancestors

Whenua land

Iwi-tribe

Mokopuna-grandchild

Papatuānuku

Hapu-subtribe

Tamariki-children

Whanau-family
Adaptation Tradition

- Hawaiki migration
- Settler contact
- Readjusted, repackaged in a less culturally damaging form
- Engaged in trade and commerce – local and international
- Governance adaptations
Post-Treaty Corporate Governance

- Trade – settlers dependent upon Maori farmers in Wellington, Nelson, Dunedin, Auckland
- Exports to Californian & Victorian goldfields
- 1856 – Maori controlled 97% Taranaki, 91% Auckland, 59% Wellington.
- Maori Economic Power
Waikato-Tainui Trade & Prosperity post-1840
Māori Early Entrepreneurs

Māori were “capable and competitive entrepreneurs who could grow produce and harvest commodities such as flax and timber on a large scale. In this context, the co-operative structure of internal tribal organisation and the system of mutual obligation implied by the custom of utu were distinct assets” (King, 2003, p. 127)
Māori Governance

- William Rees 1891 AJHR G4, at xviii:

  ‘When the colony was founded the Natives were already far advanced towards corporative existence. Every tribe was a quasi corporation. It needed only to reduce to law that old system of representative action practiced by the chiefs, and the very safest and easiest mode of corporate dealing could have been obtained. So simple a plan was treated with contempt. The tribal existence was dissolved into its component parts. The work which we have, with so much care, been doing amongst ourselves for centuries, namely the binding together of individuals in corporations, we deliberately undid in our government of the Maoris.’

Early success bolstered by demographic superiority, unfettered access to major resources – land, forests, fisheries and other taonga

William Lee Rees 1836-1912
Contemporary Maori Governance

• Contemporary Maori Economy: ‘Maori collectively owned assets and business produce $1.9 billion each year’ (TPK, NZEIR Report, 2003)

• Good governance vital!
Contemporary Māori Governance

- Local Government Politics eg RMA, tangata whenua representation, s. 33 Iwi Authority powers
- Local Government Act 2002 – Maori seats
- Maori Fisheries Act 2004, ss. 13, 21, 27, 28, 40, 130 – Mandated Iwi Organisations (MIOs)
- Foreshore & Seabed Act – ss. 33 – 43 – prospect of Maori group involvement in foreshore and seabed administration, governance and representation local level
Contemporary Māori Governance

• Maori Commercial Aquaculture Claims Settlement Act 2004, ss. 32, 33, 45 - Aquaculture consultation with Maori entity represents customary fishing interests in coastal marine areas – Subpart 4, Part 5 – recognition of ‘Iwi Aquaculture Organisations’ (IAO’s) ie. MIO’s from Maori Fisheries Act 2004, with a constitution authorising it to act on behalf of the iwi re aquaculture claims & settlement assets

• Waka Umanga (Maori Corporations) Bill 2007!

• Good governance vital!
Good Governance Complexities

- Board dynamics
- Mixed and evolving social, economic, cultural and political objectives;
- Long-term View – 25 year view or more
- Use of Māori words and media training
- Place of tikanga
- Cumbersome decision making
- Inadequate legal vehicles for collective organisation
- Rebuilding communities of interest or in some cases creating them anew;
- Dissipated membership and lack of clarity over who represents whom; representation generally
- Lack of clarity amongst vertical relationships between hapu and iwi;
- Appropriate dispute resolution fora and processes
- Managing relationships with external and internal Māori organisations eg inter- and intra-cross claims to tribal territory and resources
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Harvard Project Sustainable Indian Economic Development

• Useful parallels
• Successful tribal governance factors:
  – Cultural assimilation not a prerequisite for economic development
  – Cultural match – cohesive governance institutions, systems, traditions, practices that match traditional cultural systems that are effective
  – Tribal decision-makers are likely to make better choices than non-tribal decision-makers about future development of the tribal group
  – Separates functions of elected representatives (governance/politics) and business managers (management/business)
  – Depoliticised effective bureaucracy
  – Ability to settle disputes fairly - non-politicised dispute resolution fora and processes
Public Relations

- **Business Failure - Public Relations:** A significant number of businesses and organisations fail for a whole range of reasons. Poor governance can be a fundamental cause.

- Māori organisations have come under particular scrutiny. Ensuring that good governance is followed goes a long way to reducing the odds of failure and any negative fallout as a result.

- Media training, meeting confidentiality protocols
Cultural Match - Tikanga

• **Tikanga** principles may be put into practice in the board of a Māori organisation alongside governance principles.

• Tikanga, kawa and values that meet the aspirations of iwi, hapu and whanau often give direction to board work.

• Tikanga can fit alongside governance best practice.
Tikanga

• Many Māori organisations are explicitly driven by tikanga, kawa and values (for example in employment, tangihanga and cultural leave policies) that take into account the aspirations of whanau, hapu and iwi.

• Cultural considerations will sometimes take precedence over purely economic factors (for example building in close proximity to urupa or recovering debts from relatives).

• Challenging
Decision making

• **Involving owners in decision-making:** Boards of Māori organisations may be required to undertake a higher level of consultation, even in commercial decision-making, than in non-Māori business. For instance, a board may be expected (or required by law) to go back to owners on an investment decision for approval.
Decision making

• Reporting can be cumbersome and conflict can arise at board level if appropriate consultative processes are not followed. The additional delay and lost opportunities need to be balanced with any requirements to consult.

• Factors to be taken into account include consultative burnout (many Māori have been all hui'd out resulting in poor attendance levels) and commercial opportunities lost as a result of delays.

• A good board will find the appropriate balance.
Structural Challenges

- ‘Form follows function’, i.e.
- ‘Form (shape, structure) follows function (activity, purpose, objectives)’;
- Governance bodies need to be absolutely clear on their objectives (e.g. eco, soc. cult, pol. development?) before devoting time, money and energy to structural issues
Legal Vehicles - Basic OTS Design for Maori Governance Bodies

Runanga, made up of hapu representatives (policy makers)

Commercial arm

Social development arm

appointed advisors
ORGANISATIONAL STRUCTURE

LEGAL
- Custodial Trustees
  - Asset Protection

FUNCTION
- TE KAUGHANANUI TE ARATAURA
  - Representation
  - Executive

GOVERNANCE
- Settlement Act 1995 & Lands Trust Deed

OPERATIONAL
- Waikato Raupatu Lands Trust
- Waikato Raupatu Trustee Company
- Tainui Group Holdings
  - Administration
  - Management

Lands Trust Deed
Companies Act
Companies Act
Lake Taupo Forestry Trust
Structure

BENEFICIAL OWNERS
10,000

LAKE TAUPO FOREST TRUST
(11 Trustees)
Established Dec 1988

LAKE TAUPO CHARITABLE TRUST (LTCT)
Grants for charitable, community,
educational & cultural purposes.
Established 1997

LTFT HOLDINGS LIMITED
Established 2004

THE WEIGHBRIDGE COMPANY LIMITED

LAKE TAUPO FOREST MANAGEMENT LIMITED (LTFM)
Forestry advice
Established 2001

LAKE TAUPO LAND HOLDINGS LIMITED (LTFLH)
Lands holding company
Established 2003

OLD FORREST LUMBER CO. (Te Ngahere Ataahua) Limited

LAKE TAUPO INVESTMENT LIMITED (LTI)
Established 1998

LAKE TAUPO FUNDS LIMITED (LTF)
Investment advice and funds management
Established late 2002

LAKE TAUPO CAPITAL LIMITED (LTC)
Business advice
Merchant banking
Established late 2002
<table>
<thead>
<tr>
<th>Governance Model</th>
<th>Governance rules?</th>
<th>Suitable for use commercially?</th>
<th>Dispute Resolution addressed?</th>
<th>Case Study</th>
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<tbody>
<tr>
<td>Te Ture Whenua Māori Act 1993 - Maori Land Trusts &amp; Incorporations</td>
<td>Contained in the Act</td>
<td>Not particularly</td>
<td>Only recourse to the ordinary courts</td>
<td>Wairarapa Moana Trust, Incorporation</td>
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<td>Māori Trust Boards Act 1955</td>
<td>Contained in Act and Constitution of Trust Board</td>
<td>No</td>
<td>No, recourse to Minister required</td>
<td>Te Runanga o Ngāti Porou</td>
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<td>Incorporated Societies Act 1908</td>
<td>Contained in Act and Constitution of Society</td>
<td>Possibly</td>
<td>Only recourse to Registrar or courts</td>
<td>Te Kauhanganui o Waikato Inc</td>
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<tr>
<td>Companies Act 1993</td>
<td>Contained in Act and Constitution</td>
<td>Yes</td>
<td>Only recourse to courts</td>
<td>ANCSA; Tainui &amp; Ngai Tahu Corporation Ltd</td>
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<td>Co-operative Company</td>
<td>Contained in Constitution of the Co-operative</td>
<td>Yes</td>
<td>Possible in the Constitution</td>
<td>Arctic Co-operatives Ltd, Ngāti Pahauwera</td>
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<td>Private Legislation</td>
<td>Per Act</td>
<td>Probably</td>
<td>Possible Per Act</td>
<td>Te Runanga o Ngai Tahu</td>
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<tr>
<td>Charitable Trust</td>
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<td>Possible per Deed</td>
<td>Pouakani &amp; Turangitukua Trust</td>
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<tr>
<td>Common Law Trust</td>
<td>Per Deed</td>
<td>Possibly</td>
<td>Possible per Deed</td>
<td>Te Runanga o Ngāti Ruanui Trust</td>
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</table>
Representation

- Governance closely linked to representation
- Elected & appointed officials represent interests of constituency
- Legitimacy often determined by extent to which interests of constituency represented
Representation

• Customary representation – hapu, iwi or other organisation?
• Level – issues settled at the whanau, hapu, iwi, national representation level?
• Institutional representation – what bodies or associations should represent Maori?
• 58 ‘Iwi’ RIA’s, MIO’s
Dispute Resolution

• ‘If there is one thing a Native loves more than another it is a Court case, and if there were only Courts above Courts, and other Courts above them again which they can still carry their litigation, then it seems to them a matter of absolute enjoyment.’

• Wilford M.P., *Hansard*, 1912, p. 941
Waka Umanga

- Proposal that Government creates a new legal entity specifically shaped to meet the needs of Maori tribes and other groups that manage communally held assets
- Existing legal structures are inadequate to deal with the wide ranging social and economic operations of Maori tribal organisations in today’s world
- Reduce overall time and cost of forming a legal entity by providing a model with standards that ensure responsible and accountable governance, also reflect traditions and culture of individual tribes or groups.
Waka Umanga

- Recommends legislation to create an entity –Waka Umanga Act (vessel for a community undertaking) that would allow tribes to form their own waka umanga with a set of standard obligations but also enables tribes to develop the model so it fits their own culture, traditions and particular requirements.
- Tribal structures are formed by people themselves and not determined by the Treaty claims process.
- May also be responsible for companies or other bodies set up for commercial or charitable purposes.
Waka Umanga

- Tribes have the choice whether to adopt waka umanga Model
- Provide a fair and timely process to resolve formation disputes. No simple access to legal processes in order to resolve complex issues eg inevitable mandate challenges. Waka Umanga proposes that the Maori Land Court will have a role in helping groups to sort out these issues themselves
- Proposes a new register of Waka Umanga be established in the Companies Office to assist individual waka umanga to promote and maintain best practice and to provide training at a national level.
Mason Durie - Goals

- Māori have right to live as Māori
- Māori are citizens of the world
- Māori must enjoy a good standard of health and living

Mason Durie - strategies

- Māori centred pathways
- Māori added pathways
- Collaborative pathways

Governance Analogy– Steering a Boat or Waka

- Steering a waka
- Involved in decision-making
- Capacity
- Direction - where going, navigators
- Who is steering
- Rowing
- Guiding and how
Tangata Whenua
Tangata Tiriti – Not just one history or reality in New Zealand
Governance – Waka analogy – Great navigators – Become New Vikings of the Pacific!