

**THE WORKING GROUP FOR CONSTITUTIONAL
TRANSFORMATION.**

PRIMER NUMBER ONE.

*“Are we surviving or perishing through the operations of Parliament in these years
that are passing...”*

- Report of the Committee of Kahungunu, 1872.

*“Ehara taku mana i te mana hōu
He mana tawhito tonu taku mana...”*

- “Te Waiata mo Ruatāhuna”.

INTRODUCTION.

The independent Constitutional Transformation Working Group – Matike Mai Aotearoa - was established at a national hui that was held at HopuHopu in 2009.

It consists of members nominated by Iwi and Hapū and other organisations such as the National Urban Māori Authority. It also includes people chosen for their particular expertise in tikanga and constitutional matters.

Its Terms of Reference are –

“To work on developing a model for a constitution for our country based on our tikanga and fundamental values, He Whakaputanga o te Rangatiratanga o Niu Tirenī (the 1835 Declaration of Independence) and Te Tiriti o Waitangi”.

The Working Group first met in late 2010 and has spent the time since then undertaking research and developing its work programme.

Beginning in late April it will begin a series of hui throughout the country to meet and discuss constitutional change.

The hui are being organised in the following regions (with some times overlapping)

April/May: Kahungunu.

May: Te Tai Tokerau.

June: Tamaki Makaurau.

July: Te Tau Ihu/Ngai Tahu.

August/September: Mataatua, Te Tai Rawhiti.

September: Te Arawa.

October: Taranaki/Whanganui/Ratana.

November: Rangitane/Muaupoko/Raukawa/Ngati Toa/ Whanganui-a-Tara.

December: Tainui/Waikato/Hauraki.

Early 2013: National Hui.

This Primer is the first part of an information-sharing programme that the Working Group will produce. It raises a number of questions that are often asked about constitutional issues and explains the reasons why such discussion is needed now.

Later Primer will cover other issues that we hope will inform the debate and be of help to those who attend our hui.

We also hope that as broad a cross-section of people as possible will attend the hui and participate in the discussions. Haere mai, nau mai.

Moana Jackson,
Working Group Convenor.

Margaret Mutu.
Working Group Chair.

Some Preliminary Questions:

What is a constitution?

A constitution is the values and institutions that people choose to govern themselves.

What sorts of constitutions are there?

The most common are the constitutions that people develop whenever they form a group of some kind such as a sports club or marae committee.

Throughout history the most important have been those that a society as a whole develops so that it can govern itself collectively as a polity or nation.

Why have societies developed constitutions?

There are two main reasons.

Firstly, every society has realised that they can only maintain harmony and order if there are ideas and institutions to ensure that people can live peacefully together.

Secondly constitutions develop as a way of ensuring that the society can be politically independent and make its own decisions free of interference from others.

Are all constitutions the same then?

No.

Every constitution is unique to the people and culture who developed it.

How are they different?

Usually in the values people have about how and why they should govern themselves.

For example in Bolivia the prime law of their new constitution is the protection of Pachamama or the Earth Mother whereas many other older constitutions were built around values such as protecting property or the divine right of kings.

Do all these constitutions have any things in common at all?

Yes.

Firstly, every constitution is based around what may be called a *concept of power* or an idea about what constitutional authority is.

Secondly, every constitution also includes a *site of power*, that is the place or institution where the people actually make their governing decisions.

Thirdly, every society has declared that its constitutional power to make independent decisions was so important it could never be voluntarily ceded or given away.

For example nowhere in European history is there any evidence that say Britain ever voluntarily ceded, gave away or subordinated its authority to another polity.

What are these concepts and sites of power called?

Because they are also unique to the people and culture who developed them every society has defined them in their own way.

For example the Havasupai define their concept of power as “sumaaga” while in Hawaii people used the word “mana” which means an absolute independent authority.

In Europe the most common term for a concept of power was “sovereignty”.

The sites of power have different names too. For example in Britain it is Parliament, in the USA it is the Congress.

Did Iwi and Hapū have constitutions before 1840?

Yes.

Like every other society Iwi and Hapū knew that harmony and order could only be maintained if there were values and institutions that helped people live together.

Did Iwi and Hapū have a concept and site of power?

Yes.

For centuries the *concept of power* was called “mana,” although some Iwi and Hapū used the terms “mana taketake” or “mana motuhake” to define the absolute and independent authority to govern.

The *site of power* in each Iwi and Hapū was the institution of the rangatira, hence the later use of the term “rangatiratanga” to describe the absolute authority to govern.

Were they similar in any way to other concepts and sites of power?

Only in the sense that Iwi and Hapū also knew that constitutional power could never be voluntarily ceded or given away.

For example nowhere is there any evidence that say Ngāti Kahungunu ever ceded, gave away or subordinated its constitutional authority to another Iwi or Hapū.

Were there particular ways that Iwi and Hapū constitutions were unique?

Yes.

They developed out of history, tikanga and whakapapa to preserve the ability of each Iwi and Hapū to make its own independent decisions while preserving the interrelationships people had with each other.

In that sense they were like the kawa of the marae where Iwi and Hapū still independently govern affairs on the marae while forging interrelationships with visitors, except that before 1840 the “marae” was the whole country.

They were also like kawa because the fact that one marae would never subordinate its kawa to another reinforced the broader inalienable nature of mana and rangatiratanga.

When did this constitutional situation change?

The Crown believes it changed in 1840 when it says that Iwi and Hapū did agree to give away and subordinate their existing constitutional authority to its sovereignty.

Even though that claim was contrary to all human history (as well as our tikanga) it then established the constitutional system that it had brought from England.

So why has the Working Group been established?

There are a number of reasons.

Ever since people started coming here from somewhere else Iwi and Hapū have tried to find a constitutional arrangement that preserved their independence while seeking some sort of formal interrelationship with the Crown.

He Whakaputanga was perhaps the first such attempt. Te Tiriti o Waitangi was another, especially as Iwi and Hapū understood that it guaranteed their ongoing independence while allowing a new formal interrelationship with the Crown.

Many other debates have taken place since then, including a series of national hui called by Sir Hepi Te Heuheu in 1995 and 1996.

What does the Working Group hope to do?

The Working Group hopes to continue that debate, which is why its Terms of Reference seek a constitutional dialogue based on a different set of values as well as on tikanga, He Whakaputanga and Te Tiriti o Waitangi.

It hopes to initiate steps towards a different constitution that comes from this land and allows a proper place (a formal interrelationship) with everyone who lives here.

Is further information available?

Yes.

More Primers and meeting schedules will be distributed and published on the Group’s Facebook Page: [The Independent Constitutional Working Group – Aotearoa Matike Mai](#) and the web page: <http://www.converge.org.nz/pma/iwi.htm>

If anyone would like particular information or to meet with members of the Working Group please contact the Project Manager at Catherinedavis@hotmail.co.nz

