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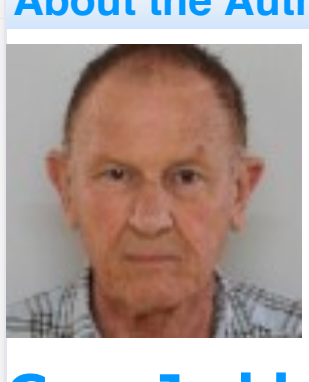

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Tikanga is not law

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By Gary Judd KC

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Tikanga is a collection of beliefs: it is not "law"

Introduction and Background

In the *Ellis* case [1], a majority of the New Zealand Supreme Court stated that tikanga was "the first law" of New Zealand. It is clear from the judgments of the majority that, if the Supreme Court's stance is confirmed in a case where such pronouncements are necessary for the judgment, tikanga will apply generally within the common law of New Zealand.[2]

This essay explains that the "tikanga" the judgment endorses cannot be the "first" law because it is not "law" at all.

Judges ought to apply "law" as the term is used in the judicial oath: "to well and truly serve His Majesty… according to law…; and I will do right to all manner of people after the laws and usages of New Zealand, without fear or favour, affection or ill will…."[3]

The "tikanga" the judgment endorses as "first law" is a set of beliefs, principles of a spiritual nature, a way of life ("the right Māori way of doing things"[4]). When beliefs result in people consistently behaving in a certain way, the behaviour may become customary. Then, in certain carefully confined circumstances, customs may attain the status of law.

If "tikanga" were confined in its meaning to customs which had attained the status of law, there would be no problem. Introducing a regime which would impose beliefs, principles of a spiritual nature, a way of life of some of our people, on the nation as a whole is a completely different proposition. Beliefs and principles of a spiritual nature are not law. The way of life of some is not part of the law of the land.

Tikanga came before the Supreme Court because the Court initiated a procedure which resulted in a Statement of Tikanga being prepared and placed before the Court. It is appended to the judgment.[5] The question is whether tikanga as described in the Statement can properly be regarded as "law."

The explanation that it cannot be so described requires consideration of the characteristics of the "law" referred to in the judicial oath, followed by consideration of the "tikanga" described in the Statement, to ascertain whether the latter can be regarded as "law" in the relevant sense.

The *Ellis* case background is succinctly described in the first two paragraphs of the judgment:

> [1] Mr Ellis was convicted of sexual offending against seven complainants in 1993. Two appeals to the Court of Appeal (in 1994 and 1999) were unsuccessful. On31 July 2019, this Court granted leave to appeal against the Court of Appeal decisions as well as an extension of time to do so. Mr Ellis died on 4 September 2019 before the appeal could be heard.
>
> [2] The Court held two hearings to determine whether the appeal should continue despite his death: one on 14 November 2019 and one on 25 June 2020. The June hearing concerned the relevance of tikanga Māori to the issue of the continuation of the appeal.

In her judgment, Glazebrook J explained how tikanga came to be raised.

> [33] This Court began hearing submissions on whether the appeal should proceed despite Mr Ellis' death on 14 November 2019. At that hearing, the Court raised the issue of the relevance of tikanga to the question of continuance. The hearing was therefore adjourned to allow counsel to prepare further submissions on this issue.
>
> [34] By way of minute dated 15 November 2019, the Court directed that submissions cover:
>
> (a) whether tikanga might be relevant to any aspect of the Court's decision on whether the appeal should continue;
>
> (b) if so, which aspects of tikanga; and
>
> (c) assuming tikanga is relevant, how tikanga should be taken into account.
>
> [35] Counsel for the parties conferred and agreed to convene a wānanga with tikanga experts to discuss the issues in the Court's minute. This was a process agreed between the parties and not one ordered by the Court.
>
> [36] The experts chosen by the parties for the wānanga had no connection to Mr Ellis or the complainants or to their respective whānau. They were simply invited to express independent expert views on the issues identified. The wānanga took place on 10 and 11 December 2019.
>
> [37] An agreed statement of facts pursuant to s 9 of the Evidence Act 2006 was filed following the wānanga. Appended to it was a statement of tikanga...

These words show that tikanga was before the Court because the Court raised it and asked the parties to make submissions. The parties went further. The Statement of Tikanga was prepared and the Court agreed to receive it.

The procedure by which the Statement came to be before the court had a number of unusual features. They include the Court's invitation, the collaboration between the Crown and the appellant, involvement of Māori lawyers and the Māori Law Society in the collaboration, and the Statement's being placed before the Court in an agreed form.

Everyone was on the same side. No one was there to challenge the prevailing views, contrary to what normally happens in an adversary system of justice. In this very important matter, there was no contradictor, no one to speak against, oppose or deny – no one to ensure there was a real contest between conflicting ideas and interests, no one to represent the wider public interest.

The Supreme Court did not seek to define the limits of the application of tikanga, but all the members of the Court agreed "that tikanga has been and will continue to be recognised in the development of the common law of Aotearoa/New Zealand in cases where it is relevant,"[6] adding:

> [21] The Court (by majority of Winkelmann CJ, Glazebrook and Williams JJ) holds that the colonial tests for incorporation of tikanga in the common law should no longer apply. Rather the relationship between tikanga and the common law will evolve contextually and as required on a case by case basis.
>
> [22] The majority judges accept that tikanga was the first law of Aotearoa/New Zealand and that it continues to shape and regulate the lives of Māori. In light of this, the courts must not exceed their function when engaging with tikanga. Care must be taken not to impair the operation of tikanga as a system of law and custom in its own right.
>
> [23] The majority judges comment that the appropriate method of ascertaining tikanga (where it is relevant) will depend on the circumstances of the particular case.

Paragraph [21] states that the Court majority held "that the colonial tests for incorporation of tikanga in the common law should no longer apply." That means the Court majority was purporting to change the law. Whether the law has been changed and the reasons the Court gave will be analysed in a separate essay.

As can be seen in paragraph [22], the majority also adopted the proposition that tikanga, as the first law, operated "as a system of law and custom in its own right."

The second proposition paragraph [22] advances is that "[tikanga] continues to shape and regulate the lives of Māori." As a bald statement, this is a preconceived and over-simplified claim. It suggests, without evidence other than the Statement of Tikanga, that all Māori cleave to tikanga as a shaper and regulator of their lives.

These are the two premises upon which the court majority concludes that "Care must be taken not to impair the operation of tikanga as a system of law and custom in its own right." As I will conclude, there is a grave danger that the incorrect claim that tikanga is a system of law and custom has the potential to impair the operation of tikanga as part of Māori culture, which is its only and proper place. Those who participated in the misguided exercise may come to regret it.

It may be observed of the first premise that it involves both a question of law (what is law?), and a question of fact or mixed law and fact: what is the "tikanga" the judgment speaks of; did/does tikanga operate as a system of law and custom in its own right?

The second premise is wholly a question of fact, assuming it is first established what tikanga is.

There was no proper consideration of either the law or the facts, as there might have been had there been a contradictor.

What is "law?"

There are several ways in which the term "law" is used. The usual way is described in I.i.1. of the entry in the *Oxford English Dictionary* (OED): "a. The body of rules, whether proceeding from formal enactment or from custom, which a particular state or community recognizes as binding on its members or subjects. (In this sense usually the law.) …." And I.i.2. "a. One of the individual rules which constitute the 'law' (sense I.i.1) of a state or polity…." With regard to custom, "proceeding from" indicates custom as a source of law, not law in itself.

Running through the descriptions and the illustrative quotations is the idea of a controlling authority, of laws being rules or commands which must be obeyed by all within the state or the community. If something is law or a law, compliance with it is not optional. Thus, e.g., I.i.3: "a. Laws regarded as obeyed or enforced; controlling influence of laws; the condition of society characterized by the observance of the laws."

This can be seen also from Merriam Webster's first sense: "a binding custom or practice of a community: a rule of conduct or action prescribed or formally recognized as binding or enforced by a controlling authority".

Before leaving dictionaries, it is also worth mentioning *OED*, Sense II.15 because it resonates with the Statement of Tikanga. It is: "What is or is considered right or proper; justice or correctness of conduct," but this usage is obsolete. The illustrative quotations span the years about 1175 to about 1500.

Much to the same effect as the *OED* definitions (apart from the obsolete Sense II.15), a legal scholar concludes an 11-page discussion of the definition of law: "Hence, law is a scheme of social control, backed and sanctioned by the power of the state, for the protection of social interests, by means of legal capacities and legal redress."[7]

It can thus be seen that beliefs, principles, a way of life are concepts of a different nature to law. It is possible for laws to be made to enforce or give effect to a belief or a principle or a way of life, but the beliefs, etc., are not themselves law.

A general description of the development of the rule of law given by Francis Fukuyama gives the "law" definitions a historical context. Fukuyama is Olivier Nomellini Senior Fellow at Stanford University's Freeman Spogli Institute for International Studies (FSI), and a faculty member of FSI's Center on Democracy, Development and the Rule of Law (CDDRL). He is also Director of Stanford's Masters in International Policy Program, and a honorary professor of Political Science.

His *Origins of Political Order: From Prehuman times to the French Revolution* is described by one reviewer as "a major achievement: it provides an overview of key strands of political evolution from prehistory onwards; it demonstrates that genes matter, ideas matter, and institutions matter in shaping political orders; and it manages to illuminate both questions of historical interpretation and problems of current policy."[8]

The following passage summarises the results of Fukuyama's research into the development of the rule of law and is particularly helpful when considering the place of tikanga.

> The Danes themselves are descended from the Vikings, a ferocious tribal people who conquered and pillaged much of Europe, from the Mediterranean all the way to Kiev in southern Ukraine. The Celtic peoples who first settled the British Isles, as well as the Romans who conquered them, and the Germanic barbarians who displaced the Romans, were all originally organized into tribes much like those that still exist in Afghanistan, central Iraq, and Papua New Guinea. So were the Chinese, Indians, Arabs, Africans, and virtually all other peoples on earth. They owed primary obligation not to a state but to kinfolk, they settled disputes not through courts but through a system of retributive justice, and they buried their dead on property held collectively by groups of kin. Over the course of time, however, these tribal societies developed political institutions. First and foremost was the centralized source of authority that held an effective monopoly of military power over a defined piece of territory—what we call a state. Peace was kept not by a rough balance of power between groups of kin but by the state's army and police, now a standing force that could also defend the community against neighboring tribes and states. Property came to be owned not by groups of kinfolk but by individuals, who increasingly won the right to buy and sell it at will. Their rights to that property were enforced not by kin but by courts and legal systems that had the power to settle disputes and compensate wrongs. In time, moreover, social rules were formalized as written laws rather than customs or informal traditions. These formal rules were used to organize the way that power was distributed in the system, regardless of the individuals who exercised power at any given time. Institutions, in other words, replaced individual leaders. Those legal systems were eventually accorded supreme authority over society, an authority that was seen to be superior to that of rulers who temporarily happened to command the state's armed forces and bureaucracy. This came to be known as the rule of law. Finally, certain societies not only limited the power of their states by forcing rulers to comply with written law; they also held them accountable to parliaments, assemblies, and other bodies representing a broader proportion of the population. Some degree of accountability was present in many traditional monarchies, but it was usually the product of informal consultation with a small body of elite advisers. Modern democracy was born when rulers acceded to formal rules limiting their power and subordinating their sovereignty to the will of the larger population as expressed through elections. The purpose of this book is to fill in some of the gaps of this historical amnesia, by giving an account of where basic political institutions came from in societies that now take them for granted. The three categories of institutions in question are the ones just described: 1. the state 2. the rule of law 3. accountable government.[9]

The rules within "[t]hose legal systems [which] were eventually accorded supreme authority over society, an authority that was seen to be superior to that of rulers who temporarily happened to command the state's armed forces and bureaucracy," are laws.

Fukuyama is describing aspects of the march of civilisation. Many will see parallels with New Zealand's history. At the time Europeans started to come to New Zealand, Māori were organised into tribes, disparate and frequently at war with each other, owing obligations not to a state but to kinship, and they settled disputes not through courts but through systems of retributive justice. Dame Sian Elias gives a vivid description of the subsistence of this state in some parts of New Zealand post-1840, at page 6 of the speech referenced in Endnote 10.

Māori did not have a written language, so customs and informal traditions, social rules, could not be formalized as written laws. They had not yet moved to develop political institutions. There was no centralized source of authority.

The Europeans came from a civilisation which had already moved to a stage where property was owned not by groups of kinfolk but by individuals, who had the right to buy and sell it at will. Europeans' rights to that property were enforced not by kin but by courts and legal systems that had the power to settle disputes and compensate for wrongs.

The English version of that system was recognised by the Treaty and came here either through the Treaty or by various legislative acts which followed it. Its arrival was reinforced by the 1841 establishment of the Supreme Court of New Zealand (the Court now called the High Court) and the appointment by the Queen of an English barrister to be New Zealand's first superior court judge, Chief Justice William (later Sir William) Martin.

The Supreme Court had all the jurisdiction the Courts of Queen's Bench, Common Pleas and Exchequer had in England, the equitable jurisdiction of the Lord Chancellor, and sundry other jurisdictions to put it essentially on par with the superior courts of England.[10]

Whilst theoretically law came to New Zealand through the Treaty or by various legislative acts which followed, practically in the lived-in world, it came through the establishment of the judiciary to apply and enforce the law. Law cannot exist without a judicial system in some form.

Tikanga does not qualify as law

The Supreme Court used the Statement of Tikanga as the source of its understanding of tikanga for the purpose of its pronouncements.

Following an Introduction and Overview, the Statement moves to discuss the "Nature of Tikanga." As we wish to measure what tikanga is, against what law is, to ascertain whether tikanga is law, I reproduce the full passage:

> **THE NATURE OF TIKANGA**
>
> *22.* Tikanga is the first law of Aotearoa. It is the law that grew from and is very much embedded in our whenua (land).
>
> *23.* Tikanga Māori came to the shores of Aotearoa with our Māori ancestors, starting with Kupe and those on board the waka (canoe) Matahourua. In some traditions, tikanga merged with that already present. Tikanga operated effectively for around a millennia before Pākēha arrived.
>
> *24.* Tikanga is the Māori "common law". It is a system of law that is used to provide predictability and are templates and frameworks to guide actions and outcomes.
>
> *25.* The term 'tika' means 'to be right'. Tikanga Māori therefore means the right Māori way of doing things. It is what Māori consider is just and correct.
>
> *26.* Tikanga Māori includes all of the values, standards, principles or norms that the Māori community subscribe to, to determine the appropriate conduct.
>
> *27.* Tikanga is therefore comprised of both practice and principle. That is, it includes both the rules (what you should and should not do) as well as the principles that inform the practical operation and manifestation of the rule.
>
> *28.* The customs or rules of tikanga are acknowledged when they are maintained by the people and are observed in fact.
>
> *29.* Tikanga principles, concepts, practices and values include (but are not limited to):
>
> (a) manaakitanga and whanaungatanga;
> (b) mana;
> (c) tapu;
> (d) utu;
> (e) noa and ea;
> (f) whakapapa; and
> (g) kaitiakitanga.
>
> *30.* These fundamental concepts are intertwined and cannot be defined in isolation or translated by a simple English word. They exist in an interconnected matrix. This will become evident in our description of the operation of these principles in the current context, below.
>
> *31.* The values and principles that underlie tikanga are common among Māori. They are universally accepted and are a constant. The practice and the manifestation of these principles in particular contexts can vary between different iwi, hapū and whanau.
>
> *32.* Tikanga has a flexible dimension to it. Like all law, it is not static and can evolve over time and adapt to new situations. Tikanga has, for example, developed as a consequence of European contact including the influence of Christianity. This can be clearly seen in the creation of faiths such as the Ringatū and Rātana churches.
>
> *33.* Importantly, however, when a new matter or issue arises for resolution, recourse is always had to the fundamental principles that underlie tikanga as well as drawing on historical precedent and how tikanga has been recognised in similar situations.
>
> *34.* Unlike legislation, tikanga is not compiled in a tidy collection of written books. Although there is increasing published material on tikanga, it is lived and exists as unwritten conventions.
>
> *35.* Knowledge of tikanga is passed down through sources such as: wānanga (institutions of learning), whaikōrero (oratory); karanga (call); waiata (songs); mōteatea (traditional chant or lament); whakapapa recitations (genealogy) whakatauākī (proverbial sayings) and pūrākau (stories). It is also learnt through exposure to its practice in everyday life.
>
> *36.* The foundational notions of tikanga are widely known. However, some tikanga might be tapu (sacred) and kept confined to certain expert people. For example, certain karakia (ritual incantations) would be only used by a small group of experts who have the appropriate training, expertise and standing.
>
> *37.* Given the nature of tikanga, being law that is comprised of principle and the custom and practice of people, we consider that the convening of this hui and forum of tikanga experts to be an appropriate way of determining the relevant tikanga that applies to an issue at hand.

The Statement's repeated assumption that tikanga is law begs the question. It is not "law" just because the authors of the Statement say so. They do not say why it is law. What they do say demonstrates it is not. One may perhaps detect the influence of the lawyers, wishing to elevate the status of tikanga, in the process by which the Statement was developed.

The meaning of words, determining what is embodied in the concept "law," is a matter of law which only the Court itself may determine. The Court cannot abdicate its decision-making responsibility and delegate it to some other body. This constitutional impropriety of abdication and delegation applies both to the law involved in the Statement of Tikanga and to the facts. This will be discussed in greater detail in a subsequent essay.

Paragraph 23 evokes spirituality when saying that "In some traditions, tikanga merged with that already present," which seems to be partly explained by paragraph 22's "[it] grew from and is very much embedded in our whenua (land)."

Paragraph 24 states that tikanga "is a system of law that is used to provide predictability and are [sic] templates and frameworks to guide actions and outcomes." Whilst law may provide predictability and guide actions and outcomes, that is not a description of law. It is necessary to look at the "system" to see whether the system is a legal system.

Paragraphs 25 and 26 are the kernel of the explanation of what tikanga is, so we can focus on them to see whether the system is a legal system.

Paragraph 25 tells us that "Tikanga Māori therefore means the right Māori way of doing things. It is what Māori consider is just and correct." A way of doing things, what some one or more people consider to be just and correct, does not constitute law, although laws could be made to enforce those ideas. The Anglican Church, the Catholic Church and non-Christian religions exhort their adherents to do things in Anglican way or the Catholic way or, say, the Islamic way, and consider certain things to be just and correct. In by-gone days, laws to prevent heresy existed in England. If a Catholic monarch ruled, professing Protestantism was heresy. If a Protestant monarch ruled, professing Catholicism was heresy.

People were burned at the stake for contravening laws which proscribed, as heresy, advocacy of what was not flavour of the day. Whilst the purported justification for these laws may have been a profound belief in the rightness of the way of life favoured by the ruling powers or what the ruling powers considered right and proper, it was not the existence of these beliefs which resulted in people being punished; it was contravention of laws and punishment following determination of guilt through a trial process.

Similarly, paragraph 26 tells us that "Tikanga Māori includes all of the values, standards, principles or norms that the Māori community subscribe to, to determine the appropriate conduct, but "values, standards, principles or norms" are not law, although laws could be made to reflect them.

The authors of the Statement make it clear that tikanga is for Māori, and Māori communities, and do not suggest it applies to anyone else. This is consistent with the spiritual origin of tikanga, that "it grew from and is very much embedded in our whenua (land)," and "merged with that already present."

What is portrayed in paragraphs 22-26 and those which follow (including paragraph 28's "Tikanga principles, concepts, practices and values," and the descriptions in paragraph 48 and following of the "concepts, principles and values … relevant to this case") concern the distinctive ideas, customs, social behaviour, and way of life of a people.

Culture in the relevant sense means "The distinctive ideas, customs, social behaviour, products, or way of life of a particular nation, society, people, or period" (OED). The Statement of Tikanga does not describe a system of law but a culture and paragraphs 35 and 36, quoted above, describe how the cultural heritage is handed down and preserved. Ideas and behaviour become distinctive because many individuals within the nation, society, people or period have the same ideas and behave in a similar way. A culture represents the *dominant* ideas. That a culture exists does not mean that everyone subscribes to the ideas, although authority figures and regimes, confident of their own infallibility, may suppress dissenting voices.

Whilst Māori had a culture in 1840 (and it still exists within Māori communities, albeit in modified form – see paragraph 32 of the Statement) a legal infrastructure did not exist. In 1839 James Busby had written:

> It is not, I fear, easy for one who has never lived beyond the supremacy of established laws, and the exercise of undisputed authority, to form a just conception of a state of things where neither law or authority has existence.[11]

Conclusion

The *Ellis* Supreme Court relied on the Statement of Tikanga which itself describes tikanga in a way which indicates that they are beliefs, and expressly as a way of doing things, values, standards, principles or norms. For convenience, I refer to them all together as beliefs.

Let it be clear: as New Zealand's Bill of Rights affirms, everyone has the right to freedom of thought, conscience, religion, and belief, including the right to adopt and to hold opinions without interference. Everyone also has the right to freedom of expression, including the freedom to seek, receive, and impart information and opinion of any kind in any form. Further, every person has the right to manifest that person's religion or belief in worship, observance, practice, teaching, either individually or in community with others, and either in public or in private.[12]

Therefore, anyone who subscribes to tikanga beliefs, and wishes to manifest them, is perfectly entitled to do so, without interference. Only when beliefs produce actions harmful to others do questions arise whether the law should intervene. The intervention, which then may occur, is not because of the beliefs but because of the harmful actions.

Just as there should be no interference with the adoption and holding of tikanga beliefs, so also there should be no interference with others' freedom of thought, conscience, religion, and belief. This latter interference may occur when people in positions of power seek to impose tikanga beliefs on those who do not hold them.

It is possible to evaluate the accuracy of a belief when it concerns something that can be observed in the world around us. In those cases, the question requires consideration of the evidence. As the evidence in support of a belief grows without contradictory evidence the probability of the belief being correct increases.

Tikanga is different. It has the hallmarks of religion and relies on mysticism and belief. The Statement of Tikanga notes the influence of the Christian religion on tikanga, after the European missionaries arrived.

As no one can demonstrate that the belief doctrines of the Christian religion, or a particular branch of it, or of some other religion versus Christianity are right or wrong, so it cannot be said that the doctrines of tikanga are right or wrong — only that where matters of belief are concerned, a person is entitled to their opinion about them and to hold it without interference.

The point is simply this: tikanga is not law because beliefs as such cannot be law. They can only be a purported justification for laws compelling action or forbidding action. For example, belief that homosexual acts between consenting adults are immoral and sinful produced laws prohibiting such acts and prescribing punishments for anyone committing such acts. I have already mentioned the heresy laws, as another example.

Beliefs, even if common to the entire population, are not law. However, beliefs may cause people to act in a certain way. Those actions may become customary and may even mature into customary law.

Where tikanga beliefs have been acted on, they may have given rise to customary behaviour and those customs might have matured into a species of customary law applicable for specific purposes, for example for determining who owns Māori land, but the Supreme Court went way beyond that by declaring that tikanga was first law.

Calling tikanga something which patently it is not, not only offends reason but undermines the value of what it actually is. Making a falsehood a fundamental part of the description of its nature is not a good way to ensure its survival. I suspect this will become apparent in the fullness of time.

This essay has mainly considered what is law and whether tikanga is law by reference to the Statement of Tikanga. My next essay on the subject will examine the Supreme Court's judgment to see whether any redemption is to be found in the reasons given for the summarized conclusions.

[1] Ellis v R [2022] NZSC 114, [19].

[2] Ibid., [117]-[127], per Glazebrook J, [168]-[183] per Winkelmann CJ, [257]-[273].

[3] Oaths and Declarations Act 1957, s 18. See Brennan CJ's speech on his swearing in as Australia's Chief Justice in 1995 for an explanation of the significance of the promises made by a judge when taking the oath of office, the oath of allegiance and the judicial oath. https://www.hcourt.gov.au/assets/publications/speeches/former-justices/brennanj/brennanj_swearing.htm.

[4] See paragraph 25 of the Statement of Tikanga, set out below.

[5] It commences at 106 of 126 in the linked electronic version.

[6] Ibid, [19].

[7] Willis, Hugh Evander, "A Definition of Law" (1926). Articles by Maurer Faculty. 1250. Virginia Law Review, Vol. 12, Issue 3, pp. 203-214. https://www.repository.law.indiana.edu/facpub/1250

[8] Dr Martin Hewson, review of The Origins of Political Order: From Prehuman Times to the French Revolution, (review no. 1261) https://reviews.history.ac.uk/review/1261 Date accessed: 17 July, 2023.

[9] Fukuyama, Francis. The Origins of Political Order: From Prehuman Times to the French Revolution (pp. 14-16). Profile. Kindle Edition.

[10] See PA Cornford's articles chronicling New Zealand's earliest courts: [1970] 4 NZULR 18 and 120. See also for a shorter description of the early development of New Zealand's legal system and descriptions about retention of Māori customs and traditions which do not suggest a legal system, ""Sailing in a new direction": the laws of England in New Zealand," a 2002 speech given by then Chief Justice, Dame Sian Elias at the Great Hall, Lincoln's Inn, England for the UK-NZ LINK Foundation.

[11] Quoted on page 3 of Elias, ""Sailing in a new direction": the laws of England in New Zealand." Immediately before the Busby words, Dame Sian had said: "The New Zealand to which they were sailing had been reluctantly acquired for the Crown the year before. The main consideration in the acquisition was the need to establish a legal order." It is not a little ironic that the Court over which she then presided as Chief Justice now claims that tikanga was "first law," thereby saying or at least implying that a legal order already existed.

[12] New Zealand Bill of Rights Act 1990, ss 13, 14 and 15.

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