THE TREATY AND THE TAX WORKING GROUP: *TIKANGA* OR TOKENISTIC GESTURES?

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ABSTRACT

This paper engages with the Māori perspectives in the Tax Working Group *Future of Tax* report. It is argued that a Māori worldview can contribute to a more equitable and sustainable tax system, and that engaging with Māori people and worldviews beyond tokenistic and obligatory gestures has the potential to alter/disrupt prevailing systems of public policy in subtle yet commanding ways. Two frameworks informed by Māori knowledge within the report are introduced and evaluated for their ability to inform and enhance policy development. One aspect of these frameworks is explored in detail and it is argued that while this can provide a profound shift in thinking, rights must be acknowledged and addressed to avoid tokenism. We conclude that achievement of genuine government–Māori partnership in policy development requires clear strategies that communicate to the public why Māori engagement in developing tax policy is not only an obligation on the government of New Zealand under the Treaty of Waitangi, but will result in positive outcomes for all New Zealanders.

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I INTRODUCTION

In 2017, the New Zealand government mandated the Tax Working Group Te Awheawhe Tāke ('TWG') to investigate and make recommendations on the 'structure, fairness and balance' of the country's tax system.[1] The TWG's *Future of Tax* report, which was released on 21 February 2019, made consistent references to the importance of incorporating Indigenous Māori perspectives on wellbeing and living standards.[2] In this article, we seek to do several things. We give an overview of two interrelated Māori-informed frameworks (He Ara Waiora, and a cascading model proposed by the TWG) that were developed through engagement with Māori beyond the TWG.[3] We then explore one aspect of these intersecting models — *kaitiakitanga* — in more detail, and argue that, without a clarification of rights prior to policy development, tokenism may result. Finally, we discuss and make two substantive points: (1) a Māori worldview can contribute to a more equitable and sustainable New Zealand tax system; and (2) engaging with Māori people and worldviews — beyond tokenistic and obligatory gestures — could transform existing systems of public policy development.

II HISTORICAL AND CONTEMPORARY CONTEXTS

The New Zealand government has an obligation to engage Māori in policy development. The most enduring and effective argument for this obligation has been through rights guaranteed by the Treaty of Waitangi ('the Treaty'). The Treaty, which was first signed at Waitangi on 6 February 1840, is an agreement between Māori and the British Crown that makes concrete promises to Māori regarding their rights.[4] The Crown breached and gradually ignored the Treaty over time, although more recently it has been incorporated into legislation based on a broad set of principles.[5] Other disputes over the Treaty regard interpretations — for example, the nuance between 'sovereignty' in the English version and '*kāwanatanga*' in the Māori version. Orange points out that *kāwanatanga* was unlikely to convey a precise definition of sovereignty to Māori readers.[6] In addition, the English translation of Article II confirms and guarantees Māori collective or individual possession over lands and estates, forests, fisheries and other properties, whereas the Māori version guarantees *rangatiratanga* (chieftanship) over their lands, villages, and all property and *taonga* (treasures), and omits the collective/individual distinction.[7]

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[1] 'Terms of Reference: Tax Working Group', *Tax Working Group* (Web Page, 8 March 2018) <https://taxworkinggroup.govt.nz/resources/terms-reference-tax-working-group>.

[2] Tax Working Group, New Zealand Government, *Future of Tax: Final Report — Volume I: Recommendations* (February 2019) <https://taxworkinggroup.govt.nz/resources/future-tax-final-report> ('TWG').

[3] Sacha McMeeking, Hamuera Kahi and Komene Kururangi, *He Ara Waiora: Recommendations for Advancement* (Report prepared for the Tax Working Group, November 2018) <https://taxworkinggroup.govt.nz/sites/default/files/2019-02/twg-bg-4066385-he-ara-waiora.pdf>.

[4] Claudia Orange, *The Treaty of Waitangi* (Bridget Williams Books, 2011).

[5] Ibid.

[6] Ibid.

[7] Ibid.

For Māori, '*rangatiratanga*' means more than possession, and better approximates to sovereignty than '*kāwanatanga*', which tends to imply authority in an abstract rather than concrete sense.[8] Orange notes that Governor Hobson (the Crown's Treaty signatory) and others stressed the benefits of the Treaty while playing down the effects of British sovereignty on *rangatiratanga* as self-determining authority.[9] Morgan Godfery explores the constitutional status of the Treaty and argues that it reaffirms Māori constitutional power through *rangatiratanga* and that it conferred a new power on the British settlers — *kāwanatanga*. When the empowering system is a Māori constitution with Māori law, the concept of '*mana*' in the pre-1840 constitutional system becomes '*rangatiratanga*' in the post-1840 system. This can now be conceptualised as a partnership in which *rangatiratanga* and *kāwanatanga* constitute separate sites of power.[10]

III MĀORI-INFORMED FRAMEWORKS

Two Māori-informed frameworks — He Ara Waiora (see Figure 1) and a cascading model (see Figure 2) — were proposed by the TWG. The He Ara Waiora framework presents a pathway towards wellbeing and is a reflection of *Te Ao Māori* (a Māori worldview), which draws on four *tikanga* (guiding principles, ethics or values).[11] These *tikanga* are seen to support the design of the Living Standards Framework being developed more broadly by the New Zealand Treasury.[12] He Ara Waiora is a draft framework, and while reports suggest that there is broad support among Māori involved in consultation around its development, more engagement and implementation is required to turn the good intent of He Ara Waiora's development into practical and measurable progress.[13] In part, this *tikanga* framework is seen as a meaningful and appropriate reflection of the commitments Māori and the Crown have made in the spirit of the Treaty. There are aspirations to extend the framework to all policy developments in New Zealand.[14] If implemented in a genuine and committed way, the framework could be world-leading in providing alternatives to reductive dominant development perspectives. Additionally, the framework could assist the New Zealand government in meeting its obligations to Māori through the Treaty and the *United Nations Declaration on the Rights of Indigenous Peoples* ('UNDRIP').[15]

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[8] Morgan Godfery, 'The Political Constitution: From Westminster to Waitangi' (2016) 68(2) *Political Science* 192.

[9] Orange (n 4).

[10] Godfery (n 8).

[11] McMeeking et al (n 3).

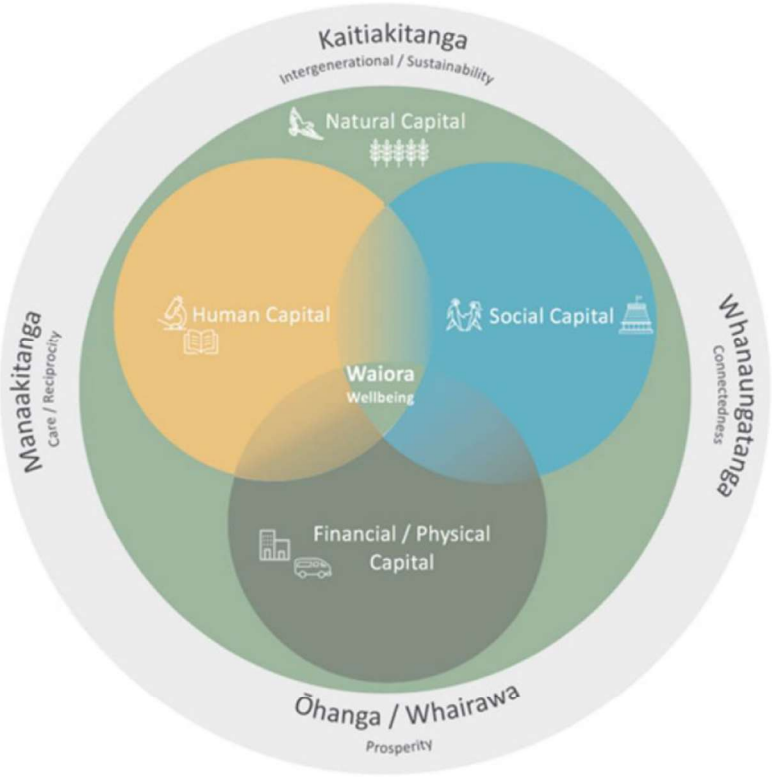
[12] 'Living Standards', *The Treasury* (Web Page, 4 December 2018) <https://treasury.govt.nz/information-and-services/nz-economy/living-standards>.

[13] McMeeking et al (n 3).

[14] Ibid.

[15] *United Nations Declaration on the Rights of Indigenous Peoples*, GA Res 61/295, UN Doc A/RES/61/295 (2 October 2007, adopted 13 September 2007).

Figure 1: He Ara Waiora — A Pathway towards Wellbeing[16]



The framework is centred on the concept of '*waiora*', a Māori expression of wellbeing.[17] This acknowledges that *wai* (water) is the source of all life. Here a moral imperative for wellbeing within the tax system could be 'all New Zealanders live a life they value, with specific recognition of Māori living the lives that Māori value and have reason to value'.[18]

The TWG report stressed that He Ara Waiora in conjunction with Treasury's Living Standards Framework can help New Zealand move towards greater systems-thinking that reflects an interconnected view of the world and resources, grounded in a uniquely Aotearoa New Zealand[19] perspective.[20] McMeeking et al point out that New Zealand values have been shaped by *tikanga* Māori, and while *tikanga* resides with Māori, the values that emerge have a resonance with contemporary New Zealand.[21] During consultation, the risks of tokenism, distorting *tikanga,* and the performance gap between aspirations and applications of values were raised. One approach proposed by Mānuka Henare to address these concerns is a model

[16] McMeeking et al (n 3) 6.

[17] TWG (n 2).

[18] Ibid 11. See also Amartya Sen, *Development as Freedom* (Oxford University Press, 1999).

[19] Here we deliberately use 'Aotearoa New Zealand' to assert the potential for more mature government–iwi relations.

[20] TWG (n 2).

[21] McMeeking et al (n 3).

designed to give 'cascading and tangible guidance to the purpose',[22] performance measures, and outcome elements of policy design. This model was also explored in detail with communities during the consultation period.[23]

Figure 2: Cascading *Tikanga* Implementation Model[24]

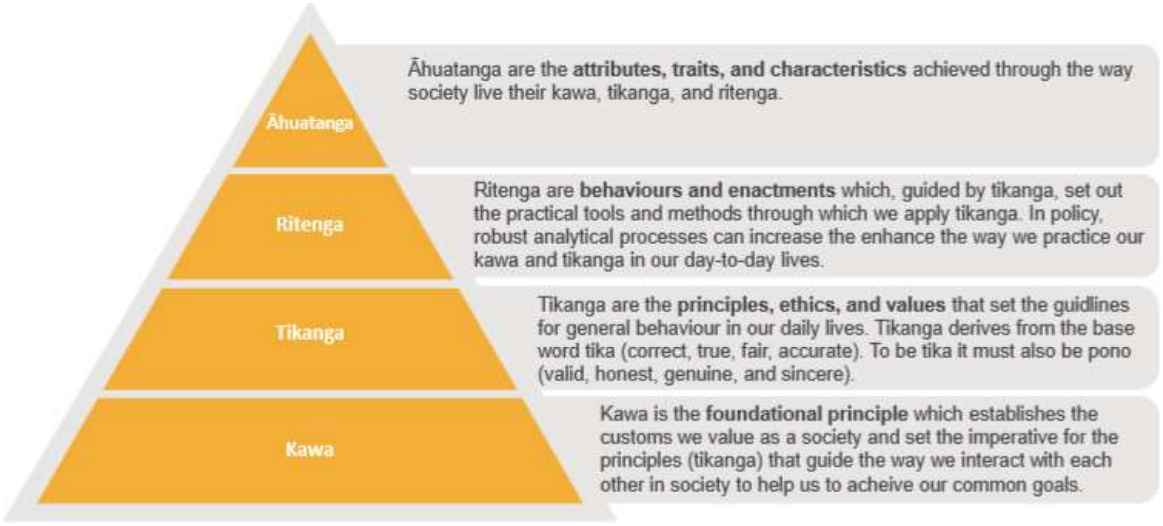


Figure 2 has been presented as a tool to overcome the identified shortcomings of He Ara Waiora. There are four elements to this model. First, *kawa* is the foundational principle and is driven by a moral imperative: 'New Zealanders live a life they value, including specifically Māori living the lives that Māori value'.[25] Second, *tikanga* are framing objectives that give effect to specific values; these objectives require discussion and consideration and should be informed by historical and contemporary practices. Third, *ritenga* are behaviour guidelines that give greater specificity to the objectives of *tikanga*. Finally, *āhuatanga* embody attributes and characteristics manifested in a suite of indicators to reflect *tikanga* and *ritenga* that are specific and measurable. He Ara Waiora represents a holistic framework based on Māori values and practices, whereas the cascading model provides a tangible way to operationalise these values into practical and measurable objectives and outcomes.

A *Kaitiakitanga, Freshwater and Tax*

Here we explore one *tikanga* — *kaitiakitanga* — in more depth, and consider its implications for policy development around freshwater and taxation. *Kaitiakitanga* can provide a profound shift in thinking about how nature, resource management and taxation intersect. However, without Treaty rights being upheld, implementing *kaitiakitanga* is near impossible. *Kaitiakitanga* is an obligation to maintain capital for current and future generations. The He Ara Waiora framework recognises that three forms of capital — human, social and

[22] Ibid 8.

[23] Ibid.

[24] Model proposed by Mānuka Henare: see TWG (n 2) 27.

[25] McMeeking et al (n 3) 9.

financial/physical — all function within natural capital. That's because land, water and all other resources nourish all living things. If natural capital is depleted, then all other capitals are irrelevant.[26]

Kaitiakitanga is an ancestral obligation to collectively sustain, guard, maintain, protect and enhance *mauri* (life being or force). An actor who carries this responsibility is called a *kaitiaki*, and the obligation of the *kaitiaki* is embodied in resource management practices. The relationship between the *kaitiaki* and the resource (for example, freshwater) is seen as reciprocal. Social, economic and political benefits are obtained through resources, but the resources must be cared for and even improved. *Kaitiaki* are genealogically linked to the resources and derive rights and responsibilities through *whakapapa* (a structured genealogical relationship between all things).

Take the health of a river as an example of a consideration under a *kaitiakitanga* approach. Poipoia Ltd suggest that a *kaitiakitanga* method driven by a Māori worldview would start by asking 'how does the river sound, smell and feel?' Quantitative assessments — like testing pH levels, clarity and turbidity[27] — may offer glimpses into a river's health, but they should also consider the deeper intersections of the *mauri* of the river. Poipoia Ltd suggest that pricing through a quota system may redistribute water access in an equitable fashion, but only after first addressing water quality and *mauri*.[28] This approach emphasises a further essential aspect of river *kaitiakitanga*; the relationships that exist between *mana whenua* (those with authority from the land) and the river.

An important question for us is, how can a particular price on a tradeable water allocation enable both an efficient allocation of water and maintain/improve the *mauri* of a body of water? Answering this type of question will not only benefit Māori rights and improve ancestral relationships with water, lakes and rivers, it will progress the environmental lifeways of the country and the economy. Therefore, under the *tikanga* of *kaitiakitanga*, water and waterways need to be maintained and improved over time in their own right — in addition to maintaining and enhancing social, human and financial/physical capitals — through recognising the intimately interrelated genealogical relations between these things.

There is a very real risk, however, that if we prioritise *kaitiakitanga* as an aspirational value, but cannot measure the wellbeing of the water as simply and directly as we can measure the financial wellbeing of, say, a farm or a water bottling company drawing from that water, then the more specific and measurable approach through assessing financial capital will be prioritised. Yet, it is our assertion that a *kaitiakitanga* approach can maintain the integrity of Māori ways of knowing and being while incorporating techno-scientific information.[29] This is

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[26] Although we agree with the sentiment, particularly expressing all other capitals within natural capital, we are sceptical about expressing the intimacy and complexity of nature and nature–human relations as natural capital.

[27] Poipoia Ltd, *Māori Perspectives on Environmental Taxes and Economic Tools* (Report prepared for the Tax Working Group, July 2018) 11 <https://taxworkinggroup.govt.nz/resources/twg-bg-4007811-maori-perspectives-on-environmental-taxes-and-economic-tools>, citing Gail Tipa and Laurel Teirney, *A Cultural Health Index for Streams and Waterways: A Tool for Nationwide Use* (Report prepared for the Ministry for the Environment, April 2006) <https://www.mfe.govt.nz/sites/default/files/cultural-health-index-for-streams-and-waterways-tech-report-apr06.pdf>.

[28] Poipoia Ltd (n 27).

[29] John Reid and Matthew Rout, 'Can Sustainability Auditing Be Indigenized?' (2018) 35(2) *Agriculture and Human Values* 283, 283.

because, when approaching any phenomenon from a Māori epistemological view, the approach will naturally be to try to understand connections and relationships between human and non-human others.

To elaborate, a Māori worldview, according to Reid and Rout, 'provides a broad moral framework, which avoids discrediting subjectivity and reducing socio-ecological systems to only their instrumental value'.[30] The authors further highlight that Māori ontologies are able to accommodate emotional and embodied Indigenous (subject/subjective) knowledge, as well as explicitly codified (object/objective) knowledge into their understanding of the socio-ecological family, while maintaining ontological integrity.[31] Accordingly, we see *tikanga* (like *kaitiakitanga*) as foundational to creating a more holistic, equitable and sustainable tax framework for New Zealand. The next question is: how can these *tikanga* be operationalised?

Kaitiakitanga empowers Māori to call for more meaningful inclusion in environmental decision-making, because 'the most appropriate way of exercising contemporary *kaitiakitanga* is through partnership, for example, partnership with central and local government and environmental agencies'.[32] This perspective would suggest a clear role for adhering to *kaitiakitanga* in freshwater and taxation policy. However, Te Maire Tau argues that the *Resource Management Act 1991* (NZ) has reduced the Treaty rights of Māori from ownership of water to stewardship.[33] This implies something less than full ownership, but as Tau points out, one cannot be a *kaitiaki* without ownership. As such, *rangatiratanga* is required to exercise *kaitiakitanga*, and we agree with this assessment.

In the discussion on freshwater, the TWG report emphasised the need to acknowledge and address Māori rights and interests in water in advance of employing tax instruments to manage water quality and allocation.[34] The TWG also suggested that if Māori rights and interests are addressed, then water tax instruments (for example, auctioned tradeable permits) are potential tools for improving efficiency of water use and ensuring a significant and sustainable long-term revenue source. Water is a *taonga*, and *rangatiratanga* over *taonga* is guaranteed for Māori in Article II of the Treaty. *Mana whenua* therefore have an underlying right (and obligation under *kaitiakitanga*) to freshwater governance in their regions.

Te Maire Tau gives a Ngāi Tūāhuriri (*hapū* of Ngāi Tahu) *mana whenua* perspective, which takes this argument further.[35] He argues that, as Māori ownership of water has been historically reduced, the Crown has created a default property right through consents to extract water for commercial purposes.[36] How the Crown is able to permit the extraction of water when it does

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[30] Ibid.

[31] See also Hazel Petrie, *Chiefs of Industry: Maori Tribal Enterprise in Early Colonial New Zealand* (Auckland University Press, 2013).

[32] Hauauru Rae and Michelle Thompson-Fawcett, 'Ngā Ura — Values' (2013) *Māori and Mining* 15, 16.

[33] Te Maire Tau, *Water Rights for Ngāi Tahu* (Canterbury University Press, 2017).

[34] TWG (n 2).

[35] Tau (n 33).

[36] The Waitangi Tribunal does not make any conclusions on whether water permits could be seen as a form of property rights, but notes that 'permits allow the use and control of water and therefore are analogous to the claimants' residual proprietary rights in the respective water bodies. They have been imposed over the top of those rights in disregard for them.' See Waitangi Tribunal, *WAI 2358 — Waitangi Tribunal Report 2019: The Stage 2 Report on the National Freshwater and Geothermal Resources Claims* (2019)

not own water is an important question to be addressed in negotiations prior to policy development. The Crown and regional councils are wrongly assuming they can issue consents to a resource they do not own, and this indirect property right discards the inherent ownership of water held by Ngāi Tūāhuriri, according to Tau. This breaches Article II of the Treaty, as water was never sold to the Crown and aboriginal title has never been extinguished through other means. The Crown's management of water through the *Resource Management Act 1991* is inconsistent with the Treaty.[37] The allocation of water through consents is a continued dispossession of Māori resources and any future taxation system that did not address this would be continuing colonial dispossession.

A further complication is that balancing rights and interests also includes bodies of water that have rights and interests themselves under New Zealand legislation — for example, the granting of legal personhood to the Whanganui *awa* (river).[38] Poipoia Ltd assert Te Mana o te Wai as the *kawa*, or foundational principle — that is, the first rights of the water are to the water itself.[39] Tau refers to this position as nebulous at best and not a sound basis for negotiating. We value the sentiment of Poipoia Ltd's position, who also assert the need to clarify Māori rights in addressing ecological crises, but we understand the pragmatism of Tau's position given the settler-colonial reality. Whatever the process and outcomes, it is clear that recognising the rights of water and the rights of Māori and *mana whenua* as *kaitiaki* are requirements in advance of designing a tax instrument. These require direct negotiation between *iwi* (large kinship groupings) or hapū and the Crown since, as it stands, *iwi* are not generally and effectively involved in the governance of freshwater, and mostly participate reactively in resource consenting processes.[40]

Whether or not *rangatiratanga* and *kaitiakitanga* over water is to be exercised through clear property rights or through co-governance is the next challenge for negotiations. As per all other policy decisions, any pricing mechanism for water requires the Treaty as a foundation, where *iwi* maintain their own *mana* over particular waterways and regional autonomy is respected in any management system, including governance arrangements.

B *Evaluating the Frameworks*

Several of the weaknesses of the draft frameworks are already identified in the TWG report and supporting evidence. These generally revolve around preserving the integrity of *tikanga* values in their application to policy, and include specific concerns around tokenism, the distortion of *tikanga,* and a performance gap. By tokenism, we mean symbolic gestures that

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<https://www.waitangitribunal.govt.nz/news/tribunal-releases-stage-2-report-on-freshwater-and-geothermal-resources>.

[37] Ibid 12.

[38] *Te Awa Tupua (Whanganui River Claims Settlement) Act 2017* (NZ) s 14.

[39] Te Mana o te Wai emerged through negotiations between Māori and the Crown around 2013 as an overarching idea for freshwater management. At this stage, its inclusion was understood to recognise that the health and *mauri* of the water, the environment and the people was seen by Māori as the primary outcome for managing water. The Crown's inclusion of this has since been subject to criticism as 'tokenism', in addition to being unclear, uncertain and inadequate, despite being a positive reform. See Waitangi Tribunal (n 36).

[40] Poipoia Ltd (n 27).

neither have substance nor display any sort of material change.[41] Examples of this include decorating New Zealand police cars in Māori language and motifs, while continuing to disproportionately target and incarcerate Māori people,[42] or giving a Māori name to the State agency responsible for disproportionately uplifting Māori children from their families.[43] *Tikanga* can be distorted as a result of tokenism when they are co-opted into existing practices for symbolic reasons, rather than informing practices in the first instance. Performance gaps between what is said and done manifest out of tokenism and distortion, when *tikanga* are positioned as aspirational values but displaced by conventional policy outcomes more typically measured by existing mechanisms. This displacement arises from the dissonance between *tikanga* values and the conventional design principles of a tax system.[44] Any dissonance could lead to trade-offs inconsistent with the aspirations and obligations under a *tikanga* framework.

All of these concerns were raised in engagement, the specific implication being that these frameworks would use Māori language and concepts, while maintaining conventional policy development practices, with progressive rhetoric being deployed as a means of hindering actual change. The concerns were addressed in part by developing the cascading model to provide tangible guidance to the purpose, performance measures and outcomes of policy design. Although it is yet to be fully established how this framework addresses those concerns in practice, its cascading nature outlines explicit steps for practical application, measurable performance outcomes and, thus, a better-defined basis for accountability.[45] In addition, Henare points out that *tikanga* are informed by historical and contemporary practices associated with villages, food gathering, gifting and other forms of distributing goods and community wellbeing. Any policy development needs to be cognisant of how *tikanga* are derived from particular practices across diverse contexts, if they are to avoid tokenism and distortion.

Having a clear framework for accountability and implementation, developed with authentic Māori participation, goes some way to addressing these concerns. The existence of such a framework asserts that the Māori terms within it are principles/imperatives, with specific framing objectives, tangible performance and behavioural expectations that can be measured, and indicators that can be applied to reflect performance and behaviours. Therefore, the Māori terms are moved out of the realm of esoteric and aspirational values, and become specific and measurable policy objectives and outcomes. As McMeeking et al conclude in their support for this approach, a *tikanga* approach ought to result in tangible changes in policy outcomes, the true measure of which is in whether or not it achieves greater fairness and better outcomes for all.

While these frameworks present useful ways to develop, implement and evaluate a tax system according to Māori custom, clarifying rights under the Treaty is a fundamental means through which to address these concerns. Well-defined rights will address the concerns of tokenism, distortion and performance gaps by providing more certainty and authority in policy

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[41] Anaru Eketone and Shayne Walker, 'Bicultural Practice: Beyond Mere Tokenism' in Kate van Heugten and Anita Gibbs (eds), *Social Work for Sociologists: Theory and Practice* (Palgrave Macmillan, 2015) 103, 119.

[42] Te Kuru o te Marama Dewes, 'Police Cop Flak for Māori-Designed Police Car', *Te Ao Māori News* (online, 13 September 2017) <https://teaomaori.news/police-cop-flak-maori-designed-police-car>.

[43] Oranga Tamariki, 'Babies and Children Entering Oranga Tamariki Care' (OIA Release, 28 June 2019).

[44] McMeeking et al (n 3) 7.

[45] Ibid 8.

development. Extracting Māori knowledge from communities of practice in symbolic ways, without respecting the rights of Māori guaranteed under the Treaty and the UNDRIP, is simply another form of colonial dispossession.

IV Towards More Equitable and Sustainable Taxation through Māori Engagement

A Māori worldview can contribute to a more equitable and sustainable New Zealand tax system and, as such, engaging with Māori people and worldviews beyond tokenistic and obligatory gestures has the potential to transform prevailing systems of policy development in subtle yet commanding ways. We assert that, for one, *kaitiakitanga* is fundamental to the development of any policy because of the temporal acknowledgement of interconnectedness across generations, and the obligations in the present that this creates. However, *kaitiakitanga* needs protection from tokenism and distortion as a practice derived from enduring traditions rather than an aspirational value made subservient to a more conventional and easily measurable goal, like GDP maximisation.

The TWG report was clear that, 'while there was a particular emphasis on fairness and equity for Māori, there was also recognition that incorporating values based analysis would deliver pervasive public benefit'.[46] This is in line with international developments around engaging with Indigenous and alternative perspectives to tackle the wicked problems of today.[47] Two key points emerge. First, engagement with Māori is not only about how the tax system can help Māori, but also about how Māori can help the tax system. Second, what is good for Māori is good for all of New Zealand — the economy, society and the environment. Indeed, the aspects of the worldview outlined see all of these as an intimately interrelated whole.

Kaitiakitanga is already present in a number of New Zealand resource management and governance systems (for example, the *Resource Management Act 1991* (NZ)). However, it is important to acknowledge the limitations of *kaitiakitanga* without *rangatiratanga*[48] or ownership and control being established, and that Māori practise *kaitiakitanga* within existing development needs. As the frameworks suggest, a Māori approach to wellbeing is holistic in nature. The strengths of the interrelated frameworks have been made clear throughout this article. Developing and implementing a *tikanga*-led framework in partnership with Māori will illustrate the government's commitment to principles of both the Treaty and the UNDRIP.

The strength of the He Ara Waiora framework is that it recognises the many and interrelated interests that Māori have across economic, environmental, social and cultural outcomes, in contrast to Māori interests being positioned as simply 'cultural'. The *tikanga*-based approach is a flexible but holistic analytical lens for exploring values in the policy design process. The cascading model provides transparency and consistency for the application of the *tikanga* framework, and overcomes some limitations identified through the initial Māori engagement process. These frameworks can apply an effective lens to policy development to create

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[46] McMeeking et al (n 3).

[47] See Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services, 'Nature's Dangerous Decline: "Unprecedented" Species Extinction Rates "Accelerating"' (Press Release, UN Environment Programme, 6 May 2019) <https://www.unenvironment.org/news-and-stories/press-release/natures-dangerous-decline-unprecedented-species-extinction-rates>.

[48] Tau (n 33) 10.

distinctive Māori and New Zealand values in determining and evaluating how to live our lives together. This not only provides a novel framework for determining, measuring and improving wellbeing, developed with grounded Indigenous knowledge(s), but can provide a tangible commitment to the UNDRIP and other normative obligations that settler-states have to Indigenous communities. However, Māori are not a homogenous whole with a unified 'hive mind'. Different *iwi*, *hapū* and *rūnanga* (groupings within *iwi*) around the country have different needs and aspirations. Any policy development driven by Treaty obligations must acknowledge these diverse requirements to ensure *rangatiratanga*.

Poipoia Ltd highlight the tendency for pricing mechanisms to dominate policy decisions. For example, the often implicit assumptions that come with calculative rationales can crowd out the more holistic and normative aims of *kaitiakitanga*. Safeguards against the reductive nature of pricing mechanisms will need to be explored, and made subservient to, or at least in partnership with, the rights-based approach of the *tikanga* framework. The seductive nature of pricing mechanisms to know 'the price of everything but the value of nothing'[49] needs to be put in check. Furthermore, engagement is costly. The Crown is better-resourced than Māori groups, which often consist of *whānau* volunteering their time. Sufficient resourcing is needed to support Māori in engagement around policy development if this engagement is to reach its full and equal potential. Governance structures between central or local government and *iwi* need to be as efficient as possible to maximise the use of resources. Finally, this framework is moving New Zealand forward in the maturity of its obligations under Te Tiriti (the Treaty) and the UNDRIP. This should not, however, be used as a way to inhibit further more radical and co-created constitutional reform and recognition of rights,[50] but as a step towards them.

Designing tax policy without committed engagement with Māori can have devastating consequences. Hooper and Kearins uncover the role that accounting techniques and taxation played in the dispossession of Māori land between 1840–59,[51] 1860–80[52] and 1885–1911.[53] The authors argue that taxation by pre-emption through the monopoly purchase of land by the State for substantial profit was effectively a capital gains tax on Māori and, because of a lack of formal representation, was taxation without representation. They also note examples of undervaluing Māori land, exploiting the State's monopsony position, extortionate transaction and valuation costs, and the use of local Land Boards as agents. In the 1880s, a 'dog tax' was introduced, which Māori saw as authoritarian and discriminatory.[54] It was aimed particularly at Māori because these communities tended to host large numbers of dogs. Many Māori refused

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[49] Oscar Wilde, *The Picture of Dorian Gray* (Wordsworth Classics, 1992 ed) 43.

[50] Margaret Mutu and Moana Jackson, 'He Whakaaro Here Whakaumu Mō Aotearoa: The Report of Matike Mai Aotearoa — The Independent Working Group on Constitutional Transformation' (Matike Mai Aotearoa, 2016) <https://researchspace.auckland.ac.nz/handle/2292/33496>.

[51] Keith Hooper and Kate Kearins, 'Substance but Not Form: Capital Taxation and Public Finance in New Zealand, 1840–1859' (2003) 8(2) *Accounting History* 101.

[52] Keith Hooper and Kate Kearins, 'Financing New Zealand 1860–1880: Maori Land and the Wealth Tax Effect' (2004) 9(2) *Accounting History* 87.

[53] Keith Hooper and Kate Kearins, 'The Walrus, Carpenter and Oysters: Liberal Reform, Hypocrisy and Expertocracy in Maori Land Loss in New Zealand 1885–1911' (2008) 19(8) *Critical Perspectives on Accounting* 1239.

[54] Atholl Anderson, Judith Binney and Aroha Harris, *Tangata Whenua* (Bridget Williams Books, 2016).

to pay this tax and the government responded with vigorous policing, including arrests and forced labour.

More recently, Te Maire Tau notes that, since 1958, council regulations have prohibited the sub-division of the Māori reserve land that stayed in Māori hands.[55] The combination of the *Town and Country Planning Act 1953* (NZ) and the *Māori Affairs Amendment Act 1967* (NZ) resulted in a mass migration by external design of Māori from rural land that they owned, to urban areas where they predominantly had to rent. The effect of the *Town and Country Planning Act* meant Māori land could be re-zoned as rural, and therefore only one house could be built on approximately 10 acres. Māori land was too small and dispersed to be commercially viable and too externally constrained for it to be residentially viable. These Acts also reduced the capital value of the land. The land then came under the *Ratings Act 1967* (NZ), which meant that councils could sell Māori land where rates were unpaid. Because of the commercial and residential unviability described above, rates were unable to be paid and land was lost. This had the dual effect of making cheap Māori reserve land available for the predominantly settler agricultural economy, and requiring Māori to move into cities to provide labour for the predominantly settler industrial economy.

Finally, water being allocated through consents has been demonstrated as a breach of the Treaty; if further allocations were established through the tax system without acknowledging Māori rights to water, this would represent a further colonial dispossession through taxation. These are just a few specific examples of the discriminatory effect of designing taxes without a recognition of rights, and without committed engagement with Māori.

To enable separate sites of power to work together in the contemporary context requires significant constitutional reform.[56] In the meantime, partnership and co-governance agreements are presented as interim arrangements.[57] Under the existing Treaty settlement process, national and local bodies are required to give consideration, to consult with or include Māori in the formulation, implementation or delivery of public policy.[58] Bargh outlines the following principles for engagement with Māori.[59] In *Wellington International Airport Limited and others v Air New Zealand,* McKay J established that consultation is 'meaningful only when parties are provided with sufficient information to enable them to make "intelligent and useful responses" and when it is undertaken with an open mind'.[60] The Waitangi Tribunal also outlines principles that

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[55] Te Maire Tau, 'Brief of Evidence of Rawiri Te Maire Tau for Te Rūnanga o Ngāi Tahu and Ngā Rūnanga' (Report No 2458/2821, 5 November 2015) <http://www.chchplan.ihp.govt.nz/wp-content/uploads/2015/07/2458-TRoNT-Ng%C4%81-R%C5%ABnanga-Evidence-of-Te-Maire-Tau-5-11-2015.pdf>.

[56] Ibid.

[57] Tau, *Water Rights for Ngāi Tahu* (n 33).

[58] Katharina Ruckstuhl, Michelle Thompson-Fawcett and Hauauru Rae, 'Māori and Mining: Indigenous Perspectives on Reconceptualising and Contextualising the Social Licence to Operate' (2014) 32(4) *Impact Assessment and Project Appraisal* 304.

[59] Maria Bargh, 'A Small Issue of Sovereignty' in Maria Bargh (ed), *Resistance: An Indigenous Response to Neoliberalism* (Huia, 2007) 133, 147.

[60] [1993] 1 NZLR 671, as cited in ibid 140.

> include that the Crown has a duty to consult as a way to demonstrate good faith; consultation must also involve a diverse range of Māori groups, provide sufficient time, preferably be face to face, and there must be an active protection of Māori rights.[61]

The TWG report noted the importance of including a more diverse range of voices in policy development, including greater engagement with Māori to be guided by the government's emerging model for Māori–Crown relations.[62] These all point towards the need to take the Treaty and Māori perspectives and rights seriously in tax and other policy development, well beyond tokenism, for a more sustainable and equitable future.

V CONCLUSION

This article has given a brief overview of how and why engagement with Māori and a Māori worldview, in the design and implementation of an equitable tax system, is not only good for Māori but is also good for New Zealand as a whole, including the country's environment. The Treaty and the obligations established to recognise and protect *rangatiratanga* and *taonga* were introduced and contextualised into a contemporary partnership and engagement context. We then explored two of the frameworks put forward in the TWG report and supporting evidence that were developed through engagement with Māori. Next, we introduced one *tikanga* in detail, *kaitiakitanga*, which is inherent to a Māori worldview of the tax system. But for *kaitiakitanga* to be practised effectively, rights need to be clarified first.

Māori perspectives can provide the necessary systems-thinking to tax policy in order to make that policy work for current and future generations, and for the environment.[63] The Māori worldview consists of a flexible ontology, which privileges rights and broad normative aspirations that centre relationships. This flexible ontology is able to incorporate techno-scientific detail in order to assert these rights, strive towards these aspirations and enhance these relationships. Māori are more than happy to share and develop this worldview in order to imagine and create more positive futures together. Again, however, we assert the importance of establishing *rangatiratanga* — that is, clear and well-defined rights — by honouring the Treaty, as necessary for the effective exercise of *kaitiakitanga.* Values can always be extracted from Māori communities and distorted in their symbolic gestures. But, with a cascading framework that introduces specific and measurable outcomes, and with well-defined rights, these practices can lead to a more equitable and sustainable framework, at least as far as the Treaty and its obligations are concerned.

While a Māori perspective on the development and implementation of an equitable tax system can have clear benefits with nuance and time, these benefits require effective communication. An example of ineffective communication is provided by the failure of the TWG to explain the benefits of a capital gains tax. This failure allowed opponents of a capital gains tax to fill the communication vacuum with misinformation. Further implementation of a Māori worldview in national governance faces similar challenges both from recalcitrant elements that reject well-established Treaty principles,[64] and media and mainstream commentary bias against

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[61] Bargh (n 59) 140.

[62] TWG (n 2) 103.

[63] McMeeking et al (n 3).

[64] See, for example, *Honour Hobson's Pledge* (Web Page) <https://www.hobsonspledge.nz>.

engagement with alternative perspectives.[65] Achievement of genuine government–*iwi* partnership requires clear and concise strategies that communicate to the public why Māori engagement in developing tax policy is not just an obligation on the Crown under the Treaty, it is a process that will bring positive outcomes for all New Zealanders.

[65] Tyron Love and Elspeth Tilley, 'Temporal Discourse and the News Media Representation of Indigenous–Non-Indigenous Relations: A Case Study from Aotearoa New Zealand' (2013) 149 *Media International Australia* 174.