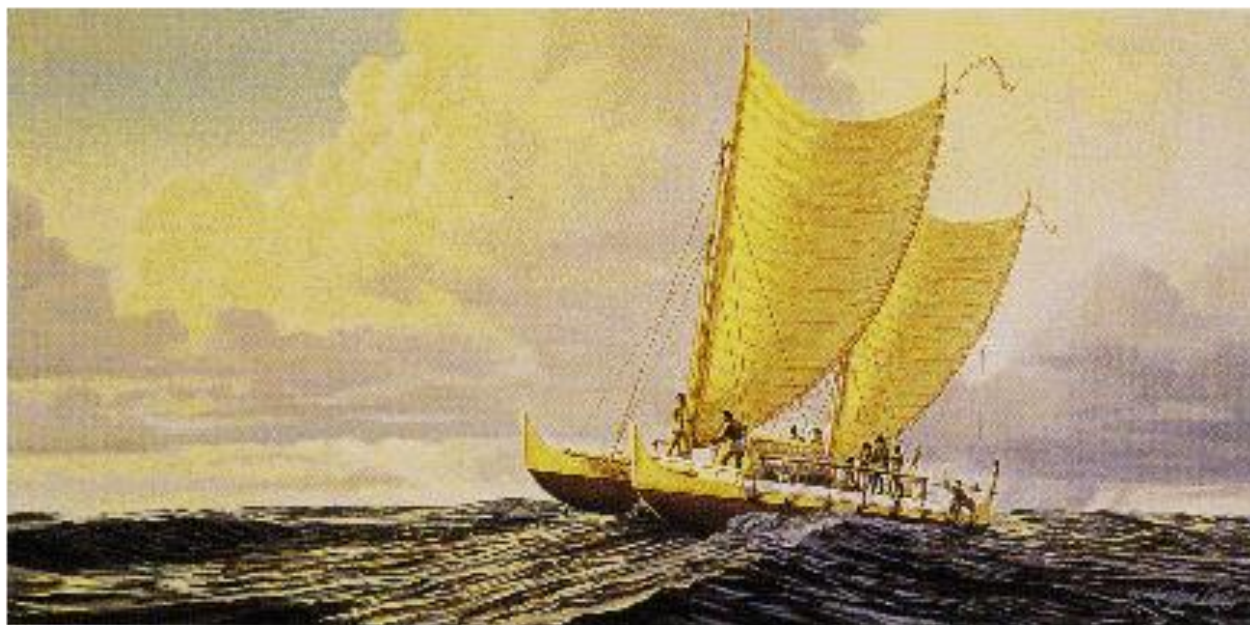


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# The Treaty of Waitangi and whānau, hapū and iwi wellbeing

Justice Joe Williams





# First Law of Aotearoa

## 1200-1840

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- Kupe's laws
- Adapted to new conditions
- A system of values and principles for the organisation and administration of kin communities



# Kupe's law

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- **Whanaungatanga** – centrality of kinship and careful attention to relationships
- **Mana** – principles of leadership and individual dignity
- **Tapu** – behavioural control and sacred/ profane divide
- **Utu** – reciprocity obligation
- **Kaitiakitanga** – obligation to care for one's own

Flexible and consensus based within a system that naturally defers to mana and collective will

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# Second Law of New Zealand 1840-1985

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- Central authority with unrelated officials dispensing its law
- Individual dignity and autonomy of subjects/ citizens
- Economic and some social relationships among people defined by contract
- Relationships with land and moveables defined through concept of property



# Cook and Kupe begin a 170 year collision

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- Whanaungatanga removed from economy, law and religion
- Hapu no longer controls resource allocation – central govt does
- hapu and whanau no longer social control mechanisms – police, courts and govt are



# Māori today

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- 95% of Māori offenders are in the mainstream system
- 55 % of people in prison are Māori
- Māori children are 60% of CYF removals
- 83 % of people under 20 in prison have been in CYF care



# Māori in the criminal justice system

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- Māori are...
  - 3 x more likely to be arrested
  - 3-4 x more likely to be charged
  - 11 x more likely to be remanded in custody
  - 4 x more likely to be convicted
  - 7 x more likely to be imprisoned.





# Yet whanaungatanga still lives

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And found voice in the 3<sup>rd</sup> Law of Aotearoa NZ post 1975

- ▶ TOWA, TWMA, RMA, CYPFA, CJAA
- ▶ Whanaungatanga is the great challenge of the Post Settlement era
- ▶ Govt can't do it; iwi can't do; but in partnership they may succeed

