

OLIVIA KRAKOSKY

**MĀORI AND STATE BUILDING IN AOTEAROA NEW ZEALAND:
INFORMAL SETTLEMENTS OR POWERFUL POLITICAL ENTITIES?**

LLM RESEARCH PAPER

LAWS 548: Indigenous Land Issues

FACULTY OF LAW



2021

Abstract

When we consider what makes an ancient state, we look to the definition of an archaic state. And in Polynesia, according to archaeologists, only two societies fit that bill, Hawai'i and Tonga. However, this fails to recognise the complexities and strength of other Polynesian societies. This paper considers what makes an ancient state, and whether a broader definition is needed. It then analyses examples from Māoridom, both before British colonisation and after, concluding that while Māori societies might not have been states yet, they were well on their way before they were outgunned by a colonial power.

Word length

The text of this paper (excluding abstract, table of contents, footnotes and bibliography) comprises approximately 7659 words.

Contents

<i>I. Introduction</i>	4
<i>II. Early Polynesian societies</i>	6
<i>A. Chiefdoms</i>	6
<i>B. The role of agriculture</i>	7
<i>C. Militarisation of societies</i>	8
<i>III. Statehood</i>	9
<i>A. Archaic states</i>	9
1. <i>Hawai'i</i>	11
2. <i>Tonga</i>	11
3. <i>A Eurocentric approach?</i>	12
<i>B. Modern-day statehood: a broader definition?</i>	12
<i>C. New Zealand and statehood: the orthodox view</i>	15
<i>IV. Māori and state building in Aotearoa</i>	16
<i>A. Early settlement of Aotearoa</i>	17
1. <i>Initial colonisation</i>	17
2. <i>Resources and specialisation</i>	18
<i>B. Iwi and hapū</i>	19
1. <i>Ngāpuhi</i>	20
2. <i>Ngāti Toa and Te Rauparaha</i>	21
<i>C. Māori concept of statehood</i>	22
1. <i>He Whakaputanga/the Declaration of Independence</i>	23
2. <i>Te Tiriti o Waitangi/Treaty of Waitangi</i>	24
<i>D. Post-1840</i>	24
1. <i>Conflict</i>	24
2. <i>Te Kotahitanga</i>	25
3. <i>Kīngitanga</i>	26
<i>V. Conclusion</i>	28

I. Introduction¹

Humans have occupied Aotearoa New Zealand² since Polynesians settled between AD 1200 and 1300.³ It was one of the last parts of Polynesia, and the world, to be settled permanently. Māori, who are the indigenous people of Aotearoa, formed settlements throughout the country that grew to chiefdoms, largely based on kinship. While some societies in Polynesia were so politically powerful that they were “archaic states”, researchers do not consider this was the case with societies in Aotearoa. What existed instead, they argue, were various different chiefdoms until the signing of the Te Tiriti o Waitangi/Treaty of Waitangi in 1840, and the subsequent British colonisation.⁴ New Zealand is not considered to have been an independent state until it was self-governing, long after it was colonised. However, this orthodox view does not recognise the sovereignty or political power of indigenous Māori in Aotearoa.

Researchers claim that for societies to be archaic states, they need certain characteristics, including a stratified society, divine kings, delegated power and authority that was legitimised by religion, rule-making and enforcement of those rules, as well as a political economy to support the functions of the monarch and elite.⁵ They look mainly at archaeological evidence to determine the power of an ancient society, such as old burial grounds, tombs and temples, and apply a Eurocentric view of statehood to ancient societies. In Polynesia, researchers claim that only Hawai’i and Tonga had the relevant characteristics to have been archaic states because they looked the most like traditional European states.

This definition excludes societies that were influential but did not have the particular characteristics identified by archaeologists. It focuses on the form of the central polity, rather than the power and influence of it. A broader definition should be used, which could focus on what makes a state at international law today: population, territory, government (including influence, rules, compliance and enforcement), and relations with other states.⁶ In not recognising other settlements in Polynesia as states, researchers fail to acknowledge the

¹ I am not Māori but I imagine a better future for Māori in Aotearoa. My hope is that this paper can add to the literature of what makes a state and how ancient peoples fit into that concept.

² Aotearoa and New Zealand will be used interchangeably in this paper.

³ Robert J Hommon *The Ancient Hawaiian State: Origins of a Political Society* (Oxford University Press, Oxford, 2013) at 224.

⁴ Patrick Kirch *The Evolution of Polynesia Chiefdoms* (Cambridge University Press, Cambridge, 1984) at 37.

⁵ Hommon, above n 3, Kirch, above n 4.

⁶ Montevideo Convention on the Rights and Duties of States [Montevideo Convention], 165 LNTS 19 (entered into force 26 December 1934), art 1.

powerful political entities and complex structures that developed throughout Polynesia, including in Aotearoa.

This paper seeks to broaden the definition of statehood in the context of Aotearoa New Zealand. Recognising the power and status of pre-European Polynesian societies is significant in telling the stories of contemporary Pacific Island nations today. It provides legitimacy and longevity to the people who have inhabited islands in Polynesia for centuries and it recognises other societal organisations, which may not fit within a Eurocentric frame, as equally powerful.

First, this paper will outline what early Polynesian societies looked like, from initial migration and settlement through to chiefdoms and the importance researchers place on agriculture and warfare in this transformation. Second, it will consider what makes a state. It will look at the current definition of archaic state in the context of Polynesia, explain what makes a state at international law today, as a broader definition, and then outline the orthodox thinking on New Zealand's journey to statehood. Finally, the paper will analyse whether Māori societies in Aotearoa had state-like qualities at any point, using a wide definition of statehood. In particular, the paper will consider early Māori societies, the influence of iwi and hapū, constitutional documents and pan-Māori/unity movements after colonisation. Any one of these areas deserves a paper on its own but they have been used here as examples of the complexities and strength Māori societies demonstrate. This paper seeks to answer the questions: how powerful were Māori political entities and did Māori societies demonstrate state-like characteristics?

II. Early Polynesian societies

The Pacific Ocean was one of the last areas to be explored by humans. People migrated and settled in waves. 3000 years ago, humans headed eastwards from New Guinea and the Solomon Islands. Between 1100 and 800 BC voyagers spread to Fiji and West Polynesia, including Tonga and Samoa. Around 1000 years ago, people began to inhabit the central East Polynesian archipelagos, then moved on to Hawai'i, Rapa Nui (Easter Island) and finally Aotearoa New Zealand between AD 1200 and 1300 (figure 1).⁷

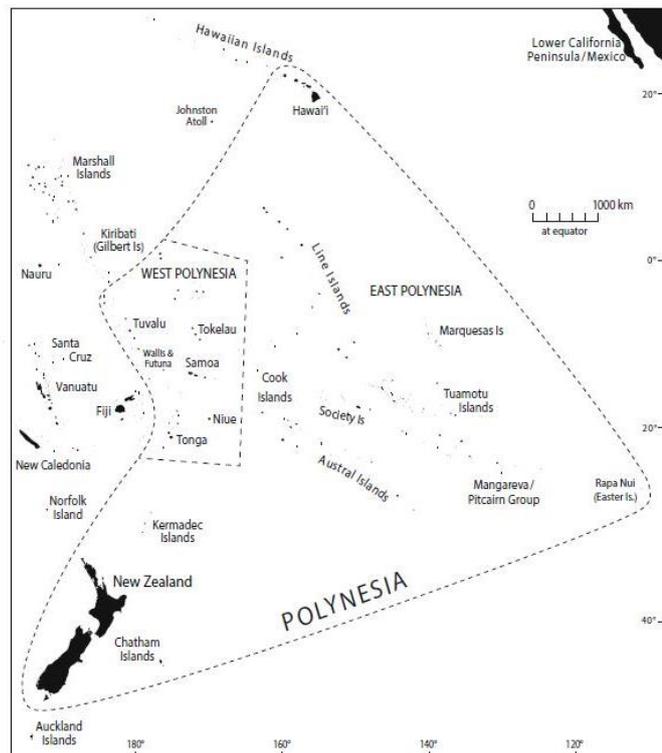


Fig. 1 Map of Polynesia showing the East Polynesian area including Aotearoa (New Zealand)

Researchers have found a shared common history in Polynesia, from Tonga, Samoa and Fiji, extending north to Hawai'i, south to Aotearoa and further east to Rapa Nui, through similar artefacts, cultures and language.⁸ The traditional narrative for Polynesia was that humans existed in informal settlements. Researchers now claim that some societies, particularly Hawai'i and Tonga, went from informal settlements to chiefdoms and then became powerful political entities, which researchers deem “archaic states”.

A. Chiefdoms

Researchers have found that most Polynesian societies were chiefdoms by the time of European contact in the eighteenth and nineteenth centuries.⁹ A chiefdom was a clan descended from a

⁷ NZ History “Encounters: - Pacific voyaging and discovery”

<<https://nzhistory.govt.nz/culture/encounters/polynesian-voyaging>>; Geoff Irwin “Story: Pacific migrations” Te Ara 8 February 2017 <<https://teara.govt.nz/en/pacific-migrations>>; Patrick Kirch *On the Road of the Winds: An Archaeological History of the Pacific Islands before European Contact, Revised and Expanded Edition* (University of California Press, California, 2017) at 211-212; Richard Walter, Hallie Buckley, Chris Jacomb and Elizabeth Matisoo-Smith “Mass Migration and the Polynesian Settlement of New Zealand” (2017) 30(4) *Journal of World Prehistory* 351 at 352.

⁸ Kirch. above n 7, at 187.

⁹ At 214.

common ancestor.¹⁰ Some had a few hundred people, some a few thousand. In chiefdoms, life tended to revolve around the production, distribution and consumption of food. Chiefdoms were characterised by strong social relationships, kinship ties, and political loyalty.¹¹

Leading researcher in this area, archaeologist Patrick Kirch, outlines several technological and social changes that transformed very early societies into chiefdoms, including rapid population growth after settlement with intensified agricultural and increased economic specialisation. Over time, there were changes in settlement patterns and societies developed specialised, ceremonial and public architecture. With growing populations, there was more socio-political and economic competition, which led to a need for militarisation. There was also increased stratification and differentiation in social status and rank.¹² Polynesian societies had different levels of development in each of these areas. Researchers consider the intensification of agriculture and later, militarisation because of increased competition, to be core transformative developments for early societies.

B. The role of agriculture

Early human societies were hunter-gatherers and foragers, whose connections were defined by kinship.¹³ Population growth led societies to expand and intensify agriculture. As this happened, there was a greater need for political organisation:¹⁴ "...the transition from a hunter gatherer economy to agricultural production was essential for the formation of chiefdoms and, subsequently, states as agriculture enabled and advanced central political organization."¹⁵ Some claim that research has yet to find a prehistoric society with centralised political organisation but no agricultural food production and intensification.¹⁶

Agriculture was not enough to create a centralised polity on its own, but it accelerated the process. Agriculture was a more settled means of food source than hunting and gathering. It enabled societies to grow and led to political organisation. Agriculture meant fixed settlement, rather than the nomadic lives of hunter-gatherers, which allowed for food storage. Food storage

¹⁰ Kirch, above n 4, at 31.

¹¹ At 29-30.

¹² At 13-15.

¹³ Michael Bang Petersen and Svend-Erik Skaaning "Ultimate Causes of State Formation: The Significance of Biogeography, Diffusion, and Neolithic Revolutions" (2010) 35(3) Historical Social Research (Köln) 200 at 202.

¹⁴ Hommon, above n 3, at 251-252.

¹⁵ Peterson and Skaaning, above n 13, at 203.

¹⁶ At 203.

required a division of labour and enabled taxation by a central polity.¹⁷ This also meant societies could manage risks, like bad crop years, and still survive. Beyond this, agriculture created community-wide collaboration through the need for more efficient production technology and infrastructure.¹⁸ All of this caused managerial problems, fuelled interaction and allowed leaders to emerge.¹⁹

Researchers claim that the intensification of production systems characterised “all Polynesian developmental sequences”²⁰ and agricultural development was a “critical aspect in the evolution of Polynesian chiefdoms”.²¹ However, there were constraints to the growth of agriculture in the Pacific Islands, because there was a limited amount of arable land.²² This meant more competition and, as a result, conflict.²³

C. Militarisation of societies

Warfare, due to increased competition, is central to the rise of complex societies and the emergence of archaic states. For example, conflict is recorded in early state formation in Peru and Mexico.²⁴ Warfare is significant in state development as it needs leadership from a centralised polity and there needs to be enough trust in chiefly elites for the power to be delegated to those leading battles; “applying force to usurp the power of rivals, to suppress revolts, and to partition and reunite polities appear to evidence a significant step toward state formation.”²⁵

With increased competition, militarisation transformed Polynesian political and economic systems.²⁶ War was a way to relieve population pressure by obtaining more land for agricultural expansion, as well as a way to gain more power and status by leaders.²⁷ Successful political

¹⁷ At 203.

¹⁸ At 203; Hommon, above n 3, at 232.

¹⁹ Peterson and Skaaning, above n 13, at 203-204.

²⁰ Kirch, above n 4, at 152.

²¹ At 152; Hommon, above n 314, at 252.

²² Kirch, above n 4, at 194.

²³ Hommon, above n 3, at 237.

²⁴ Geoffrey Clark, Phillip Parton, Christian Reepmeyer, Nivaleti Melekiola, David Burley “Conflict and State Development in Ancient Tonga: The Lapaha Earth Fort” (2018) 13(3) *Journal of island and coastal archaeology* 405 at 405.

²⁵ Hommon, above n 3, at 240 and 252.

²⁶ Kirch, above n 4, at 195; Hommon, above n 3, at 238-239.

²⁷ Kirch, above n 4, at 206.

leaders not only had to be chiefs, but also warriors.²⁸ Warfare in Polynesia was a way to preserve the *mana* [prestige, authority, influence] and status of chiefs, “as well as an opportunity for their rivals to usurp that same *mana* and status, and for *toa* [warrior] to achieve a position in society not open to them by birth.”²⁹ In Hawai’i, a successful “*moi’i*” [high chief] had to be both politician and warrior, maintaining his support base among his chiefly backers while successfully leading his followers against the forces of rival rules to maintain his *mana*.³⁰ In Hawai’i, each district chief yielded a degree of autonomy to the main chief, the *ali’i nui*, in return for benefits such as improved defence.³¹

These changes, from agricultural development and intensification, to increased competition, militarisation and warfare, turned chiefdoms into increasingly powerful societies in Polynesia.

III. Statehood

The “state” is a changing concept that does not have a single definition. Researchers and commentators focus on different characteristics depending on their field. In the context of early societies, most researchers focus on “archaic states”.

A. Archaic states

Archaeologists have applied their understanding of “archaic states” to societies in prehistoric Polynesia, where they claim that state-level societies were rare.³² Archaic states are primary states that emerged directly out of less complex social formations and not due to the influence of another society or state.³³ They are central organisations that exercise power over other organisations within their territory.³⁴ P D’Arcy highlights what distinguishes archaic states from chiefdoms, focusing on rule making:³⁵

The state is a differentiated set of institutions and personnel embodying centrality, in the sense that political relations radiate outward to cover a territorially demarcated area, over

²⁸ P D’Arcy “Warfare and State formation in Hawaii – The limits on violence as a means of political consolidation” (2003) 38(1) *The Journal of Pacific History* 29 at 43; Kirch, above n 4, at 196 and 205.

²⁹ Kirch, above n 4, at 197.

³⁰ D’Arcy, above n 28, at 43.

³¹ Kirch, above n 4, at 250.

³² Geoffrey Clark, Christian Reepmeyer, Nivaleti Melekiola “The rapid emergence of the archaic Tongan state: the royal tomb of Paepaeotelea” (2016) 90(352) *Antiquity* 1038 at 1038.

³³ Patrick Kirch *How Chiefs Became Kings: Divine Kingship and the Rise of Archaic States in Ancient Hawai’i* (1st ed, University of California Press, California, 2010) at 4.

³⁴ Peterson and Skaaning, above n 13, at 201.

³⁵ D’Arcy, above n 28, at 35.

which it claims a monopoly of binding and permanent rule-making, backed up by physical violence.

Kirch, as the leading researcher of archaic states in the Pacific, describes archaic states as sharing several critical characteristics, “including class-endogamous social strata, typically organized into at least three and often four administration levels, with divine kings at their apices.”³⁶ For Kirch, rule making is less important than:³⁷

- Kings who traced their origins to gods and were regarded as representatives of deities;
- Political economies that were centrally controlled by the king’s bureaucracy;
- A monarch whose status and power was legitimated by state cults involving a formalised temple system, overseen by full time priests;
- The monarch’s power being maintained by a monopoly of force through a full-time warrior cadre or standing army; and
- The monarch and his court having special residences, and enjoying privileges and luxuries supplied by full-time craftspersons.

Kirch claims that larger, more complex and highly stratified chieftainships had a degree of specialisation that tended to lead to more political organisation, rather than more isolated Pacific societies who remained structured around kinship and thus not as politically developed.³⁸ Kirch’s definition focuses on evidence of class stratification and monarchies because of archaeological findings, such as tombs and temples. The leaders he emphasises claimed to be descended from gods and this was how they legitimised their authority.³⁹

Researchers, including Kirch, claim two societies in Polynesia had these characteristics and were archaic states: Hawai’i and Tonga. Others were not as developed.

³⁶ Kirch, above n 33, at 2.

³⁷ At 6.

³⁸ Kirch, above n 4, at 29.

³⁹ Jennifer Thigpen “Review: How Chiefs became Kings: Divine Kingship and the Rise of Archaic States in Ancient Hawai’i” (2012) 81(2) *Pacific Historical Review* 292 at 292.

1. *Hawai'i*

Researchers view Hawai'i as a "model system" for an archaic state in Polynesia, and even as one that is "somehow special, apart" from other Polynesian societies.⁴⁰ In the late prehistoric period, the major islands were divided into independent chiefdoms,⁴¹ which emerged into three to four competing archaic states, each headed by a divine king, after two to three centuries.⁴² Researchers emphasise "economic modes of production [agricultural intensification], coercive capacity and ideological hegemony" as the key features of Hawai'i's political unification.⁴³ There was a cycle of conquest and expansion to neighbouring districts by military leader Kamehameha.⁴⁴ Kamehameha, became a political leader and was able to unite populations and maintain internal coherency and laws.⁴⁵ A social contract developed where the elite collected and redistributed tribute from the population. In exchange, the population expected chiefs to take care of them by providing food if there was ever a shortage.⁴⁶

By the time of European contact, Hawai'i likely consisted of a federal system under the leadership of Kamehameha.⁴⁷ Each leader of the different regions deliberately fragmented their land holdings and created independent administrative systems so they were not tempted to build an independent power base. Because the Hawai'i example is so clear it forms the basis of researchers definitions of what makes an archaic state.

2. *Tonga*

The other example most cited is Tonga, where, at the time of European contact, the society had class stratification and a formalised decision-making political system.⁴⁸ According to Kirch, Tonga is the only other society in Polynesia that could be an archaic state because of its "institution of divine kingship."⁴⁹ Gradual population growth and dense settlement developed over 1000-2000 years and led to more intense agricultural development and competition for arable land.⁵⁰ The basis of government was a complex, multi-layered kingship, where the elite

⁴⁰ Kirch, above n 33, at 4 and 11.

⁴¹ Kirch, above n 4, at 246.

⁴² Kirch, above n 33, at 2.

⁴³ D'Arcy, above n 28, at 31.

⁴⁴ Kirch, above n 4, at 254.

⁴⁵ D'Arcy, above n 28, at 31.

⁴⁶ Kirch, above n 4, at 260.

⁴⁷ D'Arcy, above n 28, at 47.

⁴⁸ Kirch above n 4, at 242.

⁴⁹ Kirch, above n 33, at 28.

⁵⁰ Kirch, above n 4, at 241.

class made and administered the rules governing the society. This major societal change is evidenced by large construction projects like temple complexes, as they show the power of the elite class who “commanded the vast human and material resources that derive from political centralisation...”⁵¹. In Tonga, the vast temple complex of “Paepaeotelea’s tomb” is an example.

Like Hawai’i, there was a period where Tonga expanded and took over neighbouring islands.⁵² Assimilation of these outer islands into the central Tongan political structure meant more tribute for the elite class, and increased the administrative burden on the central polity. This led to more bureaucratisation and a bigger central body.⁵³ Tonga also engaged with other Pacific societies through long-distance voyaging and an elaborate exchange network.⁵⁴

3. *A Eurocentric approach?*

The description of archaic states used by Kirch and others is similar to what was seen in the development of European states, where a king controlled the ruling class and maintained power through support from religious entities.⁵⁵ It does not take into account other forms of governance. Other factors that are important are the ability to delegate political power effectively,⁵⁶ and tribute, which not only assured the leader support, “it formed the material basis upon which the political aspirations of the chiefly class were realized.”⁵⁷ D’Arcy’s characteristic of “binding and permanent rule-making” is also focused on the power wielded, rather than the form the power took.⁵⁸

B. Modern-day statehood: a broader definition?

Most researchers in this area consider how an archaeologist would define a state as distinct from a chiefdom, without looking at other disciplines like public governance and international

⁵¹ Geoffrey Clark “Chiefly Tombs, Lineage History, and the Ancient Tongan State” (2016) 11(3) *Journal of Island and Coastal Archaeology* 326 at 332; and Clark et al, above n 322432, at 1051

⁵² Kirch, above n 4, at 242.

⁵³ At 226.

⁵⁴ Clark, above n 51, at 327; Kirch, above n 4, at 217.

⁵⁵ Joseph Kostiner “Premodern monarchies” *Britannica* <<https://www.britannica.com/topic/monarchy/Premodern-monarchies>>.

⁵⁶ Hommon, above n 3, at 253.

⁵⁷ Kirch, above n 4, at 38.

⁵⁸ D’Arcy, above n 28, at 35.

law. A broader definition could look at other features of statehood, focusing on the influence of a political entity, rather than just the form it takes.

The concept of the sovereign state as a positive legal entity has existed since the Treaty of Westphalia 1648.⁵⁹ The concept involves supreme authority being exercised within a territory, due to the legitimate use of physical force by that supreme authority.⁶⁰ There is a range of literature describing statehood and its parameters but few sources of primary international law.⁶¹ The most commonly used is the Montevideo Convention on the Rights and Duties of States 1933, which defines a state as requiring: a permanent population; a defined territory; government; and the capacity to enter into relations with the other states.⁶² While the Montevideo Convention has only 15 ratifications, it is widely accepted by the international community as law for establishing statehood.⁶³

The Montevideo criteria do not have strict definitions, indicating flexibility. For the first criteria, permanent population, both the size and the permanency of the population are debateable. It is generally accepted that there is not a minimum population size for a state to exist.⁶⁴ States have been recognised with populations as small as 11,000 or 1,600 people.⁶⁵ The people of Pitcairn Island have some rights of statehood, like self-determination and independence, but they number only 50 people.⁶⁶ Additionally, the permanency of the

⁵⁹ Peace Treaty between the Holy Roman Empire and the King of France and their respective allies (24 October 1648) [Treaty of Westphalia]; Catherine Blanchard “Evolution or Revolution? Evaluating the Territorial State-Based Regime of International Law in the Context of the Physical Disappearance of Territory Due to Climate Change and Sea-Level Rise” (2016) 53 *The Canadian Yearbook of International Law* 66 at 73.

⁶⁰ John Wilson “New Zealand Sovereignty: 1857, 1907, 1947, or 1987?” Parliamentary research paper, 28 Aug 2007.

⁶¹ Thomas D Grant “Defining Statehood: The Montevideo Convention and its Discontents” (1999) 37 *Colum J Transnat’l L* 403 at 413.

⁶² Montevideo Convention, above n 6, art 1.

⁶³ Montevideo Convention, above n 6; Grant, above n 61, at 546; David Harris *Cases and Materials on International Law* (Thomson Reuters, 7th ed, 2010) at 92; Abhimanyu George Jain “The 21st century Atlantis: the international law of statehood and climate change-induced loss of territory” (2014) 50(1) *Stan.J.Int’l L.* 1 at 17. A recent case that has cited the Montevideo Convention is *Chiragov v Armenia* (2016) 63 EHRR 9 (ECHR) at 482

⁶⁴ James R Crawford *Creation of States in International Law* (2nd ed, Oxford University Press, Oxford, 2006) at 92.

⁶⁵ Tuvalu has a population of just over 11,000: CIA “Tuvalu” *The World Factbook* <https://www.cia.gov/library/publications/the-world-factbook/geos/print_tv.html> ; Niue has a population of just over 1,600: CIA “Niue” *The World Factbook* <https://www.cia.gov/library/publications/the-world-factbook/geos/print_ne.html> .

⁶⁶ Pitcairn Islands have a population of around 50: CIA “Pitcairn Islands” *The World Factbook* <https://www.cia.gov/library/publications/the-world-factbook/geos/print_pc.html>; Susannah Willcox “Climate Change and Atoll Island States: Pursuing a ‘Family Resemblance’ Account of Statehood” (2017) 30(1) *LJIL* 117 at 125.

population has not always been essential for states. Entities without permanent populations have been recognised as having state-like characteristics, such as the Vatican City.⁶⁷ In addition, there are large proportions of populations of many states who are nomadic, or live abroad, without jeopardising the statehood of the home state.⁶⁸ For example, up to 100,000 Tibetans have lived in Northern India for the last 60 years,⁶⁹ and there are more Niuean people living in New Zealand as there are in Niue.⁷⁰

Connected to the population requirement, is the requirement for a defined territory.⁷¹ Territory is an important element as it is a source of security and economic resources, it facilitates the effective exercise of jurisdiction, through providing certainty and avoiding conflicts with other states, and it is a source of historical and cultural resources.⁷² The threshold for this requirement at international law is set low and it is almost impossible to define.⁷³ The law does not prescribe a territorial size limit⁷⁴ and microstates currently exist.⁷⁵

Commentators have interpreted the government criteria of the Montevideo Convention to mean some form of political organisation,⁷⁶ some governing power with respect to territory.⁷⁷ An entity is required to defend the state's interests and participate in international relations.⁷⁸ In ancient Polynesia, governance is evidence in examples of tribute, property ownership and rights, contracts, employment practices, payment practices, and law enforcement by the central

⁶⁷ Nathan Ross "Low-Lying States, Climate Change-Induced Relocation, and the Collective Right to Self-Determination" (PhD thesis, Victoria University of Wellington, 2019) at 146.

⁶⁸ Willcox, above n 66, at 124.

⁶⁹ Krishna N Das "Tibetans in exile struggle to see beyond Dalai Lama" (27 March 2019) Reuters <<https://www.reuters.com/article/us-china-tibet-india/tibetans-in-exile-struggle-to-see-beyond-dalai-lama-idUSKCN1R80ZP>>.

⁷⁰ Population of Niue, above n 65. There are 23,883 Niuean people in New Zealand: Stats NZ "2013 Census ethnic group profiles: Niuean" (2013) Stats NZ <http://archive.stats.govt.nz/Census/2013-census/profile-and-summary-reports/ethnic-profiles.aspx?request_value=24712&parent_id=24706&tabname=#24712>.

⁷¹ Montevideo Convention, above n 6, art 1.

⁷² Jain, above n 63, at 23.

⁷³ Willcox, above n 66, at 124.

⁷⁴ Crawford, above n 64, at 89.

⁷⁵ The Vatican City is 0.44km² and Monaco is 2km². CIA World Factbook "Country Comparison: Area" <<https://www.cia.gov/library/publications/the-world-factbook/rankorder/2147rank.html>>; Willcox, above n 66, at 124.

⁷⁶ Jenny Grote Stoutenburg "When do States Disappear? Thresholds of Effective Statehood and the Continued Recognition of "Deterritorialised Island States" in Michael B Gerrard and Gregory E Wannier (eds) *Threatened island nations: legal implications of rising seas and a changing climate* (Cambridge University Press, New York, 2013) 57 at 67.

⁷⁷ Crawford, above n 64, at 94.

⁷⁸ Stoutenburg, above n 76, at 68.

polity. As D’Arcy notes, government, and “binding and permanent rule-making”, as well as the ability to enforce those rules, is one of the fundamental characteristics of a state.⁷⁹

The criteria for relations with other states covers the range of external relations of a polity, including defence, trade, diplomatic representation, treaty making, overseas aid and migration, among others.⁸⁰ In Polynesia, there was a long distance exchange beyond geographic and political borders from Tonga to Samoa and Fiji especially. This involved goods, as well as marriage partnerships. In addition, Tongans would sail to Fiji to get timber of a size and scale for construction of large vessels. Creating these vessels could take up to seven years so there was also trade in services.⁸¹ For Aotearoa, we will also see that some Māori had relations with the British monarch, indicating state-to-state engagement.

It is fair to say that the Montevideo Convention criteria have been interpreted broadly and in applying this test to ancient Polynesia, we can see that several societies could have met the criteria. It is no surprise that Hawai’i and Tonga easily meet the criteria. Each had a permanent population and a defined territory. In both societies, kings controlled the government apparatus, and each had relations with other societies through trade and migration. The question is whether other societies met these criteria.

C. New Zealand and statehood: the orthodox view

The conventional view of New Zealand as a state is that it began on 6 February 1840 with the signing of the Te Tiriti o Waitangi/Treaty of Waitangi between the British Crown and Māori. Before then, New Zealand did not exist as a state and the societies that inhabited the islands were not politically sophisticated enough to be states. After the signing of the Treaty of Waitangi, New Zealand became a colony of Britain. In 1852, the United Kingdom Parliament passed the New Zealand Constitution Act, which provided for self-government and law making by a colonial polity based in New Zealand. Further power was passed from Britain to the New Zealand Parliament in 1857 and 1870. New Zealand changed from a colony to a dominion in 1907, and while that meant New Zealand was largely self-governing, there were still some laws that the New Zealand Parliament could not make.⁸²

⁷⁹ D’Arcy, above n 28, at 35.

⁸⁰ John Wilson “New Zealand Sovereignty: 1857, 1907, 1947, or 1987?” Parliamentary research paper, 28 Aug 2007.

⁸¹ Kirch, above n 4, at 238-239.

⁸² Wilson, above n 80.

New Zealand was able to gain full sovereignty from Britain in 1931 with the Statute of Westminster, but chose to maintain ties with the colonial power. In 1947, for various reasons, New Zealand enacted the Statute of Westminster, which meant New Zealand finally gained full sovereignty from Britain. In 1987, New Zealand revoked all British law that remained in effect.⁸³ In total, it took over 140 years for New Zealand to break enough colonial ties to Britain that it could have a fully independent legal system (some ties remain, including that New Zealand's Head of State is the Queen of England).

This conventional state building journey is framed in terms of New Zealand separating from colonial power Britain. However, it fails to recognise that Māori societies were influential political entities before British arrived in Aotearoa.

IV. *Māori and state building in Aotearoa*

The concept of the state has changed overtime, but at its core, it is a social organisation and social contract between a central polity and populations.⁸⁴ Kirch claims that, based on his evidence, Māori in New Zealand were a traditional, open society, but they did not form a state (or states) like Hawai'i and Tonga.⁸⁵ He argues that Māori lived in small kinship groupings and survived off hunting, rather than large-scale and intensified agriculture, and therefore could not have been archaic states.⁸⁶ However, this ignores the complexities and power of Māori societies in terms of rulemaking and enforcement.

Long before Europeans arrived, there was a complex system of law and authority in Aotearoa, a distinct Māori constitutionalism and political order, founded in tikanga.⁸⁷ Traditionally, tikanga set the parameters of Māori political and constitutional conduct, essentially "like a constitution."⁸⁸ It influenced political organisation and social interactions.⁸⁹ In traditional Māori society, iwi and hapū made their own decisions with power derived from mana (honour, authority, respect) and rangatiratanga (chieftainship), coded in tikanga.⁹⁰

⁸³ Wilson, above n 80.

⁸⁴ John Farrar "Early Conceptions of the State in New Zealand" (2010) 13-14 Yearbook of New Zealand Jurisprudence 51 at 52.

⁸⁵ At 37.

⁸⁶ Kirch, above n 7, at 240.

⁸⁷ Independent Working Group on Constitutional Transformation *He Whakaaro here Whakaumu mō Aotearoa: the Report of Matike Mai Aotearoa* (5 February 2016) at 36.

⁸⁸ At 43.

⁸⁹ At 41.

⁹⁰ Waitangi Tribunal *The Report on Stage 1 of the Te Paparahi o Te Raki Inquiry* (Wai 1040, 2014) at 100.

Despite not having a concept of “state” before the arrival of Europeans, or being united as one people, Māori societies were powerful groups who were strategic and politically minded, with laws governing their political and constitutional conduct.⁹¹

A. *Early settlement of Aotearoa*

The development of early settlements in Aotearoa shows the complexity of the societies that emerged. From initial Polynesian settlers, to the generations who came later, it is clear that Māori were developing complex and powerful polities. There was deliberate migration, rapid population growth and connected settlements across the country, and specialisation amongst the population for resource gathering.

1. *Initial colonisation*

The settlement of New Zealand was deliberate and mass migration was followed by a planned and well-executed colonisation.⁹² Researchers claim that:⁹³

For humans to survive economically, culturally, socially and reproductively, they must operate within the framework of a community. In modern and historical settings, where the basic unit of migration is the family or small groups of individuals, success is dependent upon the presence of established community support structures and frameworks.

The colonisation of Aotearoa had to be self-supporting. Units of migration from other parts of Polynesia had to be large enough to create viable communities, including with enough diversity to provide marriage partners of appropriate biological and social distance. It needed levels of connectivity to link the dispersed settler groups. And it was important that there were one or more central places to provide a diversity of services.⁹⁴ DNA evidence from human remains found at Wairau Bar, at the top of the South Island suggest the migrants were not all linked genetically, indicating diversity of migrants and their deliberate settlement intentions.⁹⁵ These factors imply high levels of central planning and management.⁹⁶

⁹¹ Farrar, above n 84, at 53.

⁹² Walter et al, above n 7, at 367; James Belich *Making Peoples: A History of the New Zealanders From Polynesian Settlement to the End of the Nineteenth Century* (2001 Penguin Books, Auckland) at 30-31 and 36.

⁹³ Walter et al, above n 7, at 367.

⁹⁴ At 368.

⁹⁵ At 370-371.

⁹⁶ At 368.

Once in Aotearoa, “the migrants adopted a systematic and coordinated strategy for the exploration of New Zealand”.⁹⁷ Settlers explored the country via rivers and coastlines, and established dispersed settlements. These settlements remained connected, with evidence of trading between them, including from far inland. For example, obsidian from the Mayor Island in Bay of Plenty in the North Island has been found in sites from this period on the Kermadec Islands, Norfolk Island, Chatham Islands, sub-Antarctic Auckland Island, Foveaux Strait and Stewart Island. This distribution shows an effective network that linked settler communities.⁹⁸

There was a high level of economic activity and trade in this early stage. Industrial resources throughout the islands can be dated to this phase, indicating there was a high level of economic activity. At Wairau Bar at the top of the South Island, artefacts found indicate the area was a hive of manufacture and export. There is evidence of direct contact with islands in tropical Polynesia and broader trading networks, through remains of shellfish species not found in New Zealand and human burial data.⁹⁹

All of these factors directly contrast Kirch’s claim that Māori societies were merely informal settlements prior to the arrival of Europeans. Polynesian migrants were methodical, planned, and exploratory, and they remained connected once they established communities around the country. Thus they were well into their statehood journey.

2. *Resources and specialisation*

Once in Aotearoa, Polynesian settlers explored new landscapes, modified their tropical subsistence lifestyles and learned to exploit the resources of a new environment.¹⁰⁰ While researchers insist that prehistoric societies require intensified agricultural production,¹⁰¹ historian James Belich argues that agriculture was not the defining factor in determining the development of groups: “wild foods, if sufficiently abundant and harvested, stored and transported efficiently, can also produce a surplus and a complex and impressive culture...”¹⁰²

⁹⁷ At 355.

⁹⁸ At 363.

⁹⁹ At 358-359.

¹⁰⁰ At 353.

¹⁰¹ Peterson and Skaaning, above n 13, at 203; Kirch, above n 7, at 240.

¹⁰² Belich, above n 92, at 64.

Aotearoa was rich in big game, namely moa and fur seals, and many early Māori societies focused on hunting these food sources, rather than agriculture.¹⁰³ But there was also evidence of horticulture, particularly in northern New Zealand where the climate was favourable.¹⁰⁴ Elsewhere, there was a broader subsistence economy, relying on fish and shellfish, and marine and terrestrial birds.¹⁰⁵ The earliest permanent residents of the top of the North Island, in the Hokianga and Bay of Islands, “lived in small, highly mobile groups, mainly in unfortified *kāinga* (villages), sustaining themselves by foraging, hunting large fauna, and cultivating introduced crops such as *kumara*.”¹⁰⁶

Belich argues that there was specialisation of individuals and separation of initial settlements into new groups, spreading across the country, depending on whether the environment was better for hunting or gardening. Settlements had different balances of hunting and gardening depending on climatic conditions, which explains specific regional variations.¹⁰⁷ The most hunting-oriented region was in the south, which was “bereft of gardens” but rich in stone (for tools) and game, and the earliest gardening-oriented area was around the East Cape in the north, which was “poor in game and stone but rich in gardening islands and marine resources”.¹⁰⁸

*B. Iwi and hapū*¹⁰⁹

After the period of initial settlement, exploration, expansion and rapid population growth, Māori transformed their economic, political and social organisation. Belich argues that this was a result of the extinction of big game.¹¹⁰ Whatever the cause, there was a period where Māori groups specialised, and developed and shared expertise. At this point, Māori settlements developed into influential political entities, *hapū* and later, *iwi*. These groups were grounded in a spiritual balance through *tikanga* concepts such as *whanaungatanga* (kinship), which provided the fundamental ordering principle for Māori societies. *Tikanga* encompassed not only their relationships with each other, but also with *whenua* (land) and *tūpuna* (ancestors).¹¹¹

¹⁰³ At 43.

¹⁰⁴ At 43; Walter et al, above n 7100, at 353.

¹⁰⁵ Walter et al, above n 7100, 353-354.

¹⁰⁶ Waitangi Tribunal, above n 90, at 30.

¹⁰⁷ Belich, above n 92, at 46-47.

¹⁰⁸ At 57.

¹⁰⁹ The author notes that *iwi* and *hapū* identities and histories are many and varied. They are complex polities. This paper includes summaries for the purposes of identifying state-like characteristics and in no is a comprehensive depiction of these groups, and many others could also have been mentioned.

¹¹⁰ Belich, above n 92, at 67.

¹¹¹ Waitangi Tribunal Report, above n 90, at 20.

1. *Ngāpuhi*

Ngāpuhi dominated the North Island by the 18th century through a confederation of many smaller hapū. Based primarily in the Bay of Islands, Ngāpuhi's influence extended around the Northland region.¹¹² While Ngāpuhi comprised over a hundred separate hapū, it was common for them to come together during times of war or other external threat.¹¹³ At the time of European arrival, the confederation that made up Ngāpuhi descended from the same ancestor, Rāhiri, who united prominent hapū in the region. Like Tonga and Hawai'i's prominent chiefs and kings, Rāhiri wielded significant influence in his region. His reputation was “forged from a combination of military exploits and diplomacy”.¹¹⁴ He used marriages to extend his influence and build alliances with different iwi and hapū.¹¹⁵ During Rāhiri's lifetime (around the late fifteenth century), larger groups of Māori communities, like Ngāpuhi, were beginning to emerge and “territorial relationships were becoming more important”.¹¹⁶

While daily life revolved around kinship, larger economic activities, defence and acquisition of territory from others, demanded larger groupings under coordinated leadership, just as we saw in the development of archaic states. The key political grouping here was the hapū, who, as a group, held rights over land and resources. One of the main responsibilities of hapū was “to coordinate community effort in activities such as hunting, horticulture, and building waka, pā, whare, or other communal property”. They also mediated disputes between their people, built consensus in group decision-making, and allocated land and resources.¹¹⁷ Hapū were led by rangatira (chiefs), who built relations with other hapū, much in the way that diplomats do today between states, and led their people in warfare.¹¹⁸ With this model, rangatira and their hapū had a “consensual relationship” where rangatira led through persuasion and effective management, not coercion, and they were not above the hapū.¹¹⁹ This would not fit Kirch's claim that you need an elite class and leader who see themselves above their people and descended from God,

¹¹² Claudia Orange “Northland region – First inhabitants: Māori” (1 May 2015) Te Ara – the Encyclopedia of New Zealand <<https://teara.govt.nz/en/northland-region/page-5>>.

¹¹³ Vincent O'Malley *The New Zealand Wars: Ngā Pakanga o Aotearoa* (2019 Bridget Williams Books) at 37.

¹¹⁴ At 28-29.

¹¹⁵ At 28.

¹¹⁶ At 30.

¹¹⁷ At 30.

¹¹⁸ At 30.

¹¹⁹ At 31.

in order for it to be an archaic state. However, it is no less powerful, and merely another model of governance.

Ngāpuhi was an influential grouping of hapū, with a defined territory, permanent population, government and relations with other state-like entities (other iwi). Arguably, they are a clear example of a Māori society having characteristics of a state. Ngāpuhi remained influential after the arrival of the British. In 1820, rangatira Hongi Hika travelled to London and met with King George IV, establishing an alliance with the British royal family.¹²⁰ They participated in trade and continued to travel overseas; an example of Māori becoming “increasingly conscious of themselves as people on a global stage.”¹²¹

2. *Ngāti Toa and Te Rauparaha*

In the nineteenth century, one of the most influential iwi in the country was Ngāti Toa, who covered territory in the lower North Island and upper South Island. Te Rauparaha was one of the iwi’s most prominent rangatira, known for his military prowess; he “rose to the leadership of Ngati Toa because of his aggressive defence of his tribe’s interests and his skill in battle.”¹²²

Around 1820 a number of tribal groups, led by Ngāti Toa, left their traditional lands in the Waikato and north Taranaki, and migrated south in what is one of the most significant events in Aotearoa’s history. The hiko (migration) led to battles with local hapū and displaced existing populations and reached west to the Chatham Islands, and even into Southland.¹²³ Ngāti Toa and allies were successful at battles and the victories boosted the mana of Te Rauparaha. Like, Rāhiri, Te Rauparaha was also astute at creating connections and alliances between iwi, largely through marriages. By 1840, Te Rauparaha and Ngāti Toa were well established on the Kāpiti Coast, and from there, they controlled extensive territories in both the North and South Islands through a “complex polity” of many different but connected groups.¹²⁴

The presence of the British in Aotearoa complicated matters for Ngāti Toa. Significantly, Ngāti Toa opposed the New Zealand Company (a British company formed to establish new colonies

¹²⁰ At 38; Waitangi Tribunal, above n 90, at 99.

¹²¹ Waitangi Tribunal, above n 90, at 106.

¹²² Steven Oliver, “Te Rauparaha” (1990) Ngati Toa Iwi <<https://www.ngatittoa.iwi.nz/runanga/treaty-information/te-rauparaha>>.

¹²³ Richard Boast “Ngati Toa Lands Research Project, Report One: 1800 to 1870” report to *Porirua ki Manawatū district inquiry* (Wai 2200, 2008) at 10.

¹²⁴ At 10.

in New Zealand) surveys in the upper South Island at Wairau. In 1843, there was an attempt by Nelson settlers to arrest Te Rauparaha and his nephew, Te Rangihaeata. This resulted in the first major conflict between Māori and British after the signing of the Treaty of Waitangi.¹²⁵ One researcher, Richard Boast, claims that the struggles between the British Crown and Māori were as much about power, law and sovereignty as about land acquisition.¹²⁶ Te Rauparaha's power was a threat to the British Crown establishing authority in New Zealand. While he was ultimately toppled, Te Rauparaha was a formidable leader who controlled a powerful central polity.

Boast raises the question as to whether, if left alone and without the complications of the British, the polity created by Te Rauparaha would have developed into a "true Polynesian kingdom".¹²⁷ While we will never know the answer to this, we do know that Ngāti Toa, under the leadership of Te Rauparaha, had significant political and economic interests, like that of a government. There is evidence of a "kind of tributary system".¹²⁸ They also had extensive trade networks with other iwi and Pākehā from their base on Kāpiti Island.¹²⁹ Ngāti Toa has been considered to be "Maoridom's first pan-tribal polity."¹³⁰

C. Māori concept of statehood

With the arrival of the British, Māori were exposed to new concepts through international contact. One concept was that of a "state" in the traditional Eurocentric sense of the word (as a central government) and the idea of a Māori state developed. The te reo texts of He Whakaputanga (the Declaration of Independence) in 1835 and Te Tiriti o Waitangi (the Treaty of Waitangi) in 1840 epitomised this idea. These would not have contributed to Māori societies being "archaic states", as Kirch outlines, as they came about from the influence of another state, but they are significant in reflecting the desire for Māori to have their statehood recognised.

¹²⁵ Dylan Owen "The Wairau Affray: A series of unfortunate events" (16 June 2020) National Library <<https://natlib.govt.nz/blog/posts/the-wairau-affray-a-series-of-unfortunate-events>>.

¹²⁶ Boast, above n 123, at 12.

¹²⁷ At 43.

¹²⁸ At 55.

¹²⁹ At 55-56.

¹³⁰ Belich, above n 92, at 205.

1. He Whakaputanga/the Declaration of Independence

In 1830 Ngāpuhi, using their relationship with the British monarch, appealed to King William IV for protection and friendship due to unruly British settlers and fear of the French.¹³¹ James Busby was appointed British Resident in New Zealand in 1831. The Waitangi Tribunal has recognised that at this time there was an understanding between Britain and Māori that “Britain would offer the chiefs protection from other powers and help establish New Zealand’s international status”.¹³² Busby did this by helping northern iwi unite under the banner of the United Tribes of New Zealand. As a first step, the United Tribes adopted a flag in 1834, so Māori ships could be recognised at international maritime law.¹³³ By 1835, Ngāpuhi had emerged into the world of international trade and politics with at least some of the attributes of statehood” as they had a name, a national flag, and their independence had been recognised by Britain.¹³⁴ Hapū and their rangatira met and worked together in pursuit of collective goals, as mentioned above. The northern tribes appeared as somewhat of a confederation.

In 1835, Busby assisted in drafting He Whakaputanga (Declaration of Independence), which over the next three years, was signed by 52 mostly northern rangatira.¹³⁵ He Wakaputanga declared the sovereignty of northern rangatira and the establishment of an independent state.¹³⁶ For the first time, it brought together rangatira from around the country.¹³⁷ It proposed Māori come together regularly in a Whakaminenga (assembly) to make joint decisions, with a clear concept of a Māori state.¹³⁸ Its intent was to provide for iwi and hapū to connect at a national level and for Māori and the Crown to make joint decisions.¹³⁹ The Whakaminenga never met as a group with the British, but gatherings of rangatira did take place.¹⁴⁰ He Wakaputanga is perhaps one of the most significant examples of Māori using the European concept of statehood.

¹³¹ Waitangi Tribunal, above n 90, at 112.

¹³² At 137.

¹³³ O’Malley, above n 113, at 40-41

¹³⁴ Waitangi Tribunal, above n 90, at 153.

¹³⁵ At 154; Independent Working Group, above n 87, at 44.

¹³⁶ Waitangi Tribunal, above n 90, at 160.

¹³⁷ At 166.

¹³⁸ Independent Working Group, above n 87, at 44.

¹³⁹ At 49.

¹⁴⁰ Waitangi Tribunal, above n 90, at 209 and 214.

2. *Te Tiriti o Waitangi/Treaty of Waitangi*

Despite He Wakaputanga, and without getting into the reasons why here, the English colonial office saw it necessary to enter into a formal treaty relationship with Māori.¹⁴¹ In 1840, Te Tiriti was signed by around 540 rangatira and the British Crown. The English version, the Treaty of Waitangi, was relied on by British colonists as reflecting the transferral of absolute sovereignty from Māori to the Crown.¹⁴² However, Te Tiriti was intended to create a partnership between the Crown and Māori, passing governance of British subjects to the Crown while Māori retained tino rangatiratanga (akin to sovereignty) and did not cede sovereignty.¹⁴³ Rangatira consented to Te Tiriti on this basis; that they were equal to the Governor and with different spheres of influence.¹⁴⁴

Today Te Tiriti is accepted to be a foundational document for New Zealand, and it guides the relationship between the Crown and Māori. However, it is not seen as having any independent legal status at domestic or international law. Presumably this was because Māori were not considered part of a sovereign nation with international legal personality at the time. If we are to accept the notion of this paper, that Māori did have state-like characteristics, then the legal status Te Tiriti, especially at international law, would need to be reconsidered.

D. *Post-1840*

Following the signing of Te Tiriti, the British arrived in droves, dispossessing Māori communities of land and disempowering iwi and hapū of their tino rangatiratanga. Iwi and hapū sought to assert their tino rangatiratanga, including through the New Zealand Wars and pan-Māori movements.¹⁴⁵

1. *Conflict*

The New Zealand Wars were a series of conflicts around the country, caused largely by the desire to control land. The conflicts covered most of the North Island and the top of the South Island from 1845 to 1872 (depending on the location).¹⁴⁶ Māori were successful at warfare,

¹⁴¹ Farrar, above n 84, at 53.

¹⁴² Waitangi Tribunal, above n 90, at 525 and 529.

¹⁴³ At 529.

¹⁴⁴ At 529.

¹⁴⁵ Paul Moon “‘A proud thing to have recorded’: The origins and commencement of national indigenous political representation in New Zealand through the 1867 ‘Maori Representation Act’” (2014) 16 *Journal of New Zealand Studies* 52 at 52.

¹⁴⁶ O’Malley, above n 113, at 9.

despite not having standing armies, as they were adept at leadership and military skill. Ultimately, the British forces were successful in overpowering Māori, but not because of superior methods. They simply outnumbered and outgunned Māori.¹⁴⁷ One particular strength of Māori warfare was the development of the pā system: “an innovative military method designed as an antidote to the British system, a form of counter-European warfare.”¹⁴⁸ This system was used successfully in many conflicts, including at Ōhaeawai,¹⁴⁹ Ruapekapeka,¹⁵⁰ Puketākauere,¹⁵¹ Gate Pā/Pukehinahina¹⁵² and others.

Another strength was the leadership of rangatira who used tikanga and rūnanga (tribal assemblies) between different hapū to debate and decide next steps. Given Māori did not have a formal military with command structures it was necessary to coordinate efforts between hapū.¹⁵³ This created effective alliances between groups who were led by strong rangatira. Some of these rangatira have almost legendary status in New Zealand today, such as Hone Heke and Kawiti of Ngāpuhi, Te Rauparaha of Ngāti Toa, Titokowaru on the West Coast, and Te Kooti on the East Coast, among others.

Māori military prowess is another indication that there were state-like qualities in Māori societies. Leaders needed a strong political economy to support their efforts. However, Māori were outgunned before they could develop a more permanent armed force.

2. *Te Kotahitanga*

Kotahitanga (unity) movements had the aim of unifying Māori on a non-tribal basis. Examples include the Untied Tribes of New Zealand and the Treaty of Waitangi, neither of which was focused on one iwi. There were also religious pan-Māori movements like Pai Mārire in the 1860s and Rātana in the 1920s.¹⁵⁴

In the 1890s, iwi leaders in the north and east of the North Island “believed that they needed to form some kind of confederation in order to regain control of their remaining territories and to

¹⁴⁷ James Belich “The New Zealand Wars and the Myth of Conquest” in Robert Borofsky ed *Remembrance of Pacific Pasts: An Invitation to Remake History* (Hawai’i, University of Hawaii Press 2000) 255 at 261.

¹⁴⁸ At 261.

¹⁴⁹ O’Malley, above n 113, at 50.

¹⁵⁰ At 54.

¹⁵¹ At 86-88.

¹⁵² At 137.

¹⁵³ At 19.

¹⁵⁴ Basil Keane “Kotahitanga – unity movements” (20 June 2021) Te Ara – the Encyclopaedia of New Zealand <<https://teara.govt.nz/en/kotahitanga-unity-movements>>.

slow land sales.”¹⁵⁵ The Kotahitanga Parliament emerged from discussions around how Māori could secure tino rangatiratanga, as promised in Te Tiriti.¹⁵⁶ It is a specific example of Māori desire to be seen as their own political entity. Te Kotahitanga brought back the idea of a pan-Māori confederation, like that envisaged in He Wakaputanga. It met between 1892 and 1902 in locations throughout the North Island, and it sought formal recognition of Māori autonomy and the right to represent Māori in its own institutional setting.¹⁵⁷

One of the early actions of Te Kotahitanga was presenting the native minister a draft Federated Māori Assembly Empowering Bill in 1863. The Bill asked for power over Māori to be delegated to Te Kotahitanga.¹⁵⁸ Another Bill was presented in 1894, the ‘Native Rights Bill’ that sought to “enable a Māori parliament to enact laws dealing with the ‘personal rights and with the lands and all other property of the aboriginal native inhabitants of New Zealand.’”¹⁵⁹ At the pinnacle of Te Kotahitanga, in the mid-1890s, over 1,000 attended and leaders claimed there were over 20,000 signatories to a declaration of allegiance.¹⁶⁰ Unsurprisingly, the bills failed in the colonial parliament and Te Kotahitanga recognised that they could not mount a challenge to the economic and military power of the colonial government.

Ultimately, the movement itself failed due to a split between those members who accepted a more moderate line that was acceptable to the colonial government, and those who did not.¹⁶¹ However, the movement demonstrates the desire of Māori to be an equal partner to the British Crown and shows Māori saw themselves as a polity that should govern their own people.

3. *Kīngitanga*

The last example we will consider of Māori statehood is one that still exists in the central North Island today, the Kīngitanga. Formed in the 1850s, the Kīngitanga responded to the need “for the establishment of a symbolic role similar to the English monarch due to the loss of land and

¹⁵⁵ O’Malley, above n 113, at 230.

¹⁵⁶ At 230.

¹⁵⁷ Miranda Johnson “Chiefly Women: Queen Victoria, Meri Mangakahia, and the Māori Parliament” in Sarah Carter and Maria Nugent *Mistress of everything: Queen Victoria in Indigenous worlds* (2016, Manchester University Press) 228 at 228.

¹⁵⁸ Angela Ballara “Hēnare Tomoana” Dictionary of New Zealand Biography <<https://teara.govt.nz/en/biographies/2t46/tomoana-henare>>.

¹⁵⁹ Johnson, above n 157, at 231.

¹⁶⁰ At 231.

¹⁶¹ Angela Ballara “Hāmiora 'Mangakāhia” Dictionary of New Zealand Biography <<https://teara.govt.nz/en/biographies/2m29/mangakahia-hamiora>>.

loss of mana by the chiefs.”¹⁶² It was a way for Māori to try to understand the European world.¹⁶³ Tamihana Te Rauparaha instigated the movement after he travelled to Britain and met with Queen Victoria in the early 1850s. For Māori, leaders had the mana, power and prestige of their societies, and British monarchs were seen as the most senior rank of chieftain and needed to be engaged at the same level.¹⁶⁴ The idea was that Māori should also have a monarch to engage on an equal footing to the British King. The idea for a Māori King did not gather broader momentum until 1856. Potatau Te Wherowhero, who descended from the founding canoes, was elected as the first Māori King in 1858.¹⁶⁵

The Crown has recognised the power and authority of the Kīngitanga in different ways. In the early days, the Crown felt threatened by the Kīngitanga as it thought it would bring a halt to European settlement and rival the Crown’s authority.¹⁶⁶ Waikato wars in 1863 were a result of this tension.¹⁶⁷ Following the final battle of these wars in 1864, the Māori King ruled an independent sovereign state in the centre of the North Island for 20 years, with no colonial presence.¹⁶⁸ In the late 1870s, the colonial government was forced into diplomatic negotiations with King Tāwhiao, “as if he was an independent monarch” in order to build the main trunk railway.¹⁶⁹ Tāwhiao travelled to England to petition the Queen for an independent Māori Parliament and enquire into land confiscations, and while he was refused an audience with the Queen, he did meet members of the British government.¹⁷⁰ The Kīngitanga also established their own Māori Parliament, the Kauhanganui or King’s Council, which met between 1890 and 1920. It operated with its own constitution and governance structures.¹⁷¹

The current Māori King is the seventh monarch. Today the Office of the Kīngitanga is a corporate entity, with a large asset base (over NZD\$1.2 billion). It engages with the

¹⁶² Farrar, above n 84, at 60

¹⁶³ Michael Belgrave “The kīngitanga movement: 160 years of Māori monarchy” (20 September 2018) The Conversation <<https://theconversation.com/the-kingitanga-movement-160-years-of-maori-monarchy-102029>>.

¹⁶⁴ Vincent O’Malley “Kingitanga and Crown: New Zealand’s Māori King movement and its relationship with the British monarchy” in Robert Aldrich and Cindy McCreery *European monarchies and overseas empires* (2016, Manchester University Press) 163 at 164.

¹⁶⁵ Farrar, above n 84, at 60

¹⁶⁶ O’Malley, above n 164, at 100.

¹⁶⁷ At 102.

¹⁶⁸ Belgrave, above n 163.

¹⁶⁹ Belgrave, above n 163.

¹⁷⁰ Farrar, above n 84, at 61; Belgrave, above n 163; O’Malley, above n 164, at 168.

¹⁷¹ Ministry for Culture and Heritage “The Treaty in Practice: Shared issues and approaches” NZ History <<https://nzhistory.govt.nz/politics/treaty/the-treaty-in-practice/shared-issues-and-approaches>>.

New Zealand government, for example, they have a formal relationship with the Department of Corrections through an Accord that recognises the objectives of the Kīngitanga to unify Māori under a single sovereign and to protect and preserve Māori sovereignty over their “lands, mountains, rivers, fisheries and taonga throughout Aotearoa.”¹⁷² The Accord’s purpose is to “develop and strengthen” the relationship between the Kīngitanga and the Department through facilitating “engagement and cooperation on matters of mutual interest and benefit.” It relates specifically to the health and well-being of Māori offenders, and formally sets up annual meetings between the Māori King and the Chief Executive of the Department.¹⁷³

The Kīngitanga has adapted over time but for our purposes, was once a completely autonomous region in Aotearoa, with many characteristics of a state.

V. *Conclusion*

This paper has sought to answer the questions: how powerful were Māori political entities and did Māori societies have state-like characteristics. Could Māori societies be considered states in their own right? The concept of a “state” is a tricky one to define. While archaeologists focus on what they consider important for an “archaic state”, there are other elements that are equally, or even more significant. Researchers like Kirch focus on class stratification with divine kings supported by political economies and religious apparatus. Others discuss the importance of rule making and enforcement. At international law, a state has four criteria, a permanent population, a defined territory, a government and international relations. The conception of statehood has evolved overtime and it is likely to continue to evolve. Recognising the power and influence of ancient societies, especially in Polynesia, and in this case Aotearoa, is important in realising and acknowledging the influence of Māori societies and people today.

It is clear that the orthodox view of New Zealand’s statehood is narrow and does not recognise the power and influence of Māori societies. Māori societies demonstrated a raft of state-like qualities. From initial migration and settlement in Aotearoa, there was evidence that this was a powerful, strategic and influential people. Following the establishment of settlements, there

¹⁷² Department of Corrections “Accord between the Kīngitanga and Corrections” <https://www.corrections.govt.nz/resources/strategic_reports/accord_between_the_kiingitanga_and_corrections>.

¹⁷³ Department of Corrections, above n 172.

was rapid population growth, intensification of resource collection (not just agriculture), and even militarisation, following a similar development path as other states.

This paper has considered clear examples of Māori societies with state-like qualities. From very early, Ngāpuhi operated as a confederation of hapū, almost like that of Kamehameha in Hawai'i. They had strong rangatira, or leaders, and had international relationships. Ngāti Toa and allies, led by Te Rauparaha, had a strong territory and population. Te Rauparaha also operated a form of government with social contract between him and his people. Leaders in both iwi were adept at inter-tribal diplomacy and forming alliances. While they clearly had state-like qualities, it is hard to argue that they were states in their own rights. However, at the time of British arrival both were strong polities, in the process of building their own states. Later there is evidence of Māori desires to be treated as an equal to the British, and to be internationally recognised as such, including through He Wakaputanga, Te Kotahitanga and the Kīngitanga. In all cases, most of the Montevideo criteria are met, except full recognition of state existence by other states.

So perhaps Māori societies were not quite states, yet. What is clear is they were much more than the traditional, open, informal settlements that Kirch claims them to have been. The definition of “archaic states” used by archaeologists is limited and Eurocentric. A broader definition of ancient states is needed, where the focus is not on the form of the state, but rather, the power and influence of a central polity. The alternative is that we dismiss the strength and complexities of societies and ignore their histories. For Aotearoa New Zealand, that means we risk diminishing the role Māori can and should play in Aotearoa today.

BIBLIOGRAPHY

I. PRIMARY SOURCES

Montevideo Convention on the Rights and Duties of States (Montevideo Convention), 165 LNTS 19 (entered into force 26 December 1934), art 1.

Peace Treaty between the Holy Roman Empire and the King of France and their respective allies (24 October 1648) [Treaty of Westphalia].

Chiragov v Armenia (2016) 63 EHRR 9 (ECHR).

II. SECONDARY SOURCES

A. Journal Articles

Blanchard, Catherine “Evolution or Revolution? Evaluating the Territorial State-Based Regime of International Law in the Context of the Physical Disappearance of Territory Due to Climate Change and Sea-Level Rise” (2016) 53 *The Canadian Yearbook of International Law* 66.

Clark, Geoffrey “Chiefly Tombs, Lineage History, and the Ancient Tongan State” (2016) 11(3) *Journal of Island and Coastal Archaeology* 326.

Clark, Geoffrey; Parton, Phillip; Reepmeyer, Christian; Melekiola, Nivaleti; Burley, David “Conflict and State Development in Ancient Tonga: The Lapaha Earth Fort” (2018) 13(3) *Journal of island and coastal archaeology* 405.

Clark, Geoffrey; Reepmeyer, Christian; Melekiola, Nivaleti “The rapid emergence of the archaic Tongan state: the royal tomb of Paepaeotelea” (2016) 90(352) *Antiquity* 1038.

D’Arcy, P “Warfare and State formation in Hawaii – The limits on violence as a means of political consolidation” (2003) 38(1) *The Journal of Pacific History* 29.

Farrar, John “Early Conceptions of the State in New Zealand” (2010) 13-14 *Yearbook of New Zealand Jurisprudence* 51.

Grant, Thomas D “Defining Statehood: The Montevideo Convention and its Discontents” (1999) 37 *Colum J Transnat’l L* 403.

Jain, Abhimanyu George “The 21st century Atlantis: the international law of statehood and climate change-induced loss of territory” (2014) 50(1) *Stan.J.Int’l L.* 1.

Paul Moon “‘A proud thing to have recorded’: The origins and commencement of national indigenous political representation in New Zealand through the 1867 ‘Maori Representation Act’” (2014) 16 *Journal of New Zealand Studies* 52.

Petersen, Michael Bang and Skaaning, Svend-Erik “Ultimate Causes of State Formation: The Significance of Biogeography, Diffusion, and Neolithic Revolutions” (2010) 35(3) *Historical Social Research* (Köln) 200.

Reilly, Michael “Review: How Chiefs Became Kings: divine kingship and the rise of archaic states in ancient Hawai’i” (2012) 47(2) *The Journal of Pacific History* 233.

Thigpen, Jennifer “Review: How Chiefs became Kings: Divine Kingship and the Rise of Arachic States in Ancient Hawai’i” (2012) 81(2) *Pacific Historical Review* 292.

Walter, Richard; Buckley, Hallie; Jacomb, Chris; and Matisoo-Smith, Elizabeth “Mass Migration and the Polynesian Settlement of New Zealand” (2017) 30(4) *Journal of World Prehistory* 351.

Willcox, Susannah “Climate Change and Atoll Island States: Pursuing a ‘Family Resemblance’ Account of Statehood” (2017) 30(1) *LJIL* 117.

B. Books and book chapters

Belich, James *Making Peoples: A History of the New Zealanders From Polynesian Settlement to the End of the Nineteenth Century* (2001 Penguin Books, Auckland).

Belich, James “The New Zealand Wars and the Myth of Conquest” in Robert Borofsky ed *Remembrance of Pacific Pasts: An Invitation to Remake History* (Hawai’i, University of Hawaii Press 2000) 255.

Crawford, James R *Creation of States in International Law* (2nd ed, Oxford University Press, Oxford, 2006).

Hommon, Robert J *The Ancient Hawaiian State: Origins of a Political Society* (Oxford University Press, Oxford, 2013).

Johnson, Miranda “Chiefly Women: Queen Victoria, Meri Mangakahia, and the Māori Parliament” in Sarah Carter and Maria Nugent *Mistress of everything: Queen Vicotria in Indigenous worlds* (2016, Manchester University Press) 228.

Kirch, Patrick *How Chiefs Became Kings: Divine Kingship and the Rise of Archaic States in Ancient Hawai'i* (1st ed, University of California Press, California, 2010).

Kirch, Patrick *On the Road of the Winds: An Archaeological History of the Pacific Islands before European Contact, Revised and Expanded Edition* (University of California Press, California, 2017).

Kirch, Patrick *The Evolution of Polynesia Chiefdoms* (Cambridge University Press, Cambridge, 1984).

O'Malley, Vincent "Kingitanga and Crown: New Zealand's Māori King movement and its relationship with the British monarchy" in Robert Aldrich and Cindy McCreery *European monarchies and overseas empires* (2016, Manchester University Press) 163.

O'Malley, Vincent *The New Zealand Wars: Ngā Pakanga o Aotearoa* (2019 Bridget Williams Books).

Stoutenburg, Jenny Grote "When do States Disappear? Thresholds of Effective Statehood and the Continued Recognition of "Deterritorialised Island States" in Michael B Gerrard and Gregory E Wannier (eds) *Threatened island nations: legal implications of rising seas and a changing climate* (Cambridge University Press, New York, 2013) 57.

C. Internet materials

Ballara, Angela "Hāmiora 'Mangakāhia" Dictionary of New Zealand Biography <<https://teara.govt.nz/en/biographies/2m29/mangakahia-hamiora>>.

Ballara, Angela "Hēnare Tomoana" Dictionary of New Zealand Biography <<https://teara.govt.nz/en/biographies/2t46/tomoana-henare>>.

Belgrave, Michael "The kīngitanga movement: 160 years of Māori monarchy" (20 September 2018) *The Conversation* <<https://theconversation.com/the-kingitanga-movement-160-years-of-maori-monarchy-102029>>.

CIA "Niue" *The World Factbook* < https://www.cia.gov/library/publications/the-world-factbook/geos/print_ne.html >.

CIA "Pitcairn Islands" *The World Factbook* <https://www.cia.gov/library/publications/the-world-factbook/geos/print_pc.html>.

CIA “Tuvalu” The World Factbook <https://www.cia.gov/library/publications/the-world-factbook/geos/print_tv.html>.

CIA World Factbook “Country Comparison: Area” <<https://www.cia.gov/library/publications/the-world-factbook/rankorder/2147rank.html>>.

Department of Corrections “Accord between the Kiingitanga and Corrections” <https://www.corrections.govt.nz/resources/strategic_reports/accord_between_the_kiingitanga_and_corcorrecti>.

Irwin, Geoff “Story: Pacific migrations” Te Ara 8 February 2017 <<https://teara.govt.nz/en/pacific-migrations>>.

Keane, Basil “Kotahitanga – unity movements” (20 June 2021) Te Ara – the Encyclopaedia of New Zealand <<https://teara.govt.nz/en/kotahitanga-unity-movements>>.

Kostiner, Joseph “Premodern monarchies” Britannica <<https://www.britannica.com/topic/monarchy/Premodern-monarchies>>.

Ministry for Culture and Heritage “The Treaty in Practice: Shared issues and approaches” NZ History <<https://nzhistory.govt.nz/politics/treaty/the-treaty-in-practice/shared-issues-and-approaches>>.

Oliver, Steven “Te Rauparaha” (1990) Ngati Toa Iwi <<https://www.ngatittoa.iwi.nz/runanga/treaty-information/te-rauparaha>>.

Orange, Claudia “Northland region – First inhabitants: Māori” (1 May 2015) Te Ara – the Encyclopedia of New Zealand <<https://teara.govt.nz/en/northland-region/page-5>>.

Dylan Owen “The Wairau Affray: A series of unfortunate events” (16 June 2020) National Library <<https://natlib.govt.nz/blog/posts/the-wairau-affray-a-series-of-unfortunate-events>>.

NZ History “Encounters: - Pacific voyaging and discovery” <<https://nzhistory.govt.nz/culture/encounters/polynesian-voyaging>>.

Stats NZ “2013 Census ethnic group profiles: Niuean” (2013) Stats NZ <http://archive.stats.govt.nz/Census/2013-census/profile-and-summary-reports/ethnic-profiles.aspx?request_value=24712&parent_id=24706&tabname=#24712>.

D. News articles

Das, Krishna N “Tibetans in exile struggle to see beyond Dalai Lama” (27 March 2019) Reuters <<https://www.reuters.com/article/us-china-tibet-india/tibetans-in-exile-struggle-to-see-beyond-dalai-lama-idUSKCN1R80ZP>>.

E. Waitangi Tribunal

Boast, Richard “Ngati Toa Lands Research Project, Report One: 1800 to 1870” report to *Porirua ki Manawatū district inquiry* (Wai 2200, 2008).

Waitangi Tribunal The Report on Stage 1 of the Te Paparahi o Te Raki Inquiry (Wai 1040, 2014).

F. Other

Independent Working Group on Constitutional Transformation *He Whakaaro here Whakaumu mō Aotearoa: the Report of Matike Mai Aotearoa* (5 February 2016).

Harris, David *Cases and Materials on International Law* (Thomson Reuters, 7th ed, 2010).

Ross, Nathan “Low-Lying States, Climate Change-Induced Relocation, and the Collective Right to Self-Determination” (PhD thesis, Victoria University of Wellington, 2019).

Wilson, John “New Zealand Sovereignty: 1857, 1907, 1947, or 1987?” Parliamentary research.