

Te Matapunenga: A Compendium of References to Concepts of Maori Customary Law

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**Te Mātāhauariki Institute
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Te Matapunenga:
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Conference of the Australian and New
Zealand Law and History Society
2001

THE IMPORTANCE OF WORDS: AN INTRODUCTION

BY ASSOCIATE PROF. RICHARD A. BENTON¹

1. Introduction

An important task for the Mātāhauariki Institute's Laws and Institutions research programme is building a substantial base of knowledge about Maori customary law.² This is an integral part of our search for ways in which the legal order of Aotearoa / New Zealand can reflect both in theory and in practice the values of its founding cultures. As a means to this end, a research team³ has begun to compile a major reference work, named Te Mātāpunenga, which will bring together and present in accessible form the historical uses and meanings of selected terms and concepts from Maori customary law.

Te Mātāpunenga will provide alphabetically listed, cross-referenced entries setting out these terms and concepts as they are recorded in traditional Maori accounts, and in historical records both written and oral. Modern interpretations of the words and ideas will also be noted where appropriate. The contexts for the cited uses of the terms and concepts will also be provided. Etymological information will be included in the entries, so that, wherever possible, links to words and traditions in other parts of Polynesia and Austronesian world of which Polynesia and Aotearoa are part, to be traced. Regional differences relating to customary law will also be noted, as will the manner in which customary concepts have been recognized or modified by the legislative and judicial branches of the New Zealand government since 1840. The citations will provide a guide to leading sources for further information under each topic. Work on the entries is linked closely to the Institute's programme of consultations and discussions with senior Maori scholars and leaders.

¹ Director, James Henare Māori Research Centre University of Auckland

² The purpose and direction of this programme is outlined in the first two issues (November 2000 and February 2001) of *Te Matahauariki*, the newsletter put out by the Institute These newsletters can be downloaded from the Institute's website: <http://www.lianz.waikato.ac.nz>.

³ The Laws and Institutions Programme is headed by Adjunct Professor M. J. A. Brown; the researchers directly involved in the Mātāpunenga project are A/Prof. Richard Benton (University of Auckland), Dr Alex Frame (Wellington), Tui Adams (Hamilton), Nena Benton (Ngaruawahia), and Manuka Henare (University of Auckland), with Paul Meredith as Research Fellow, along with Rewi Nankeville and Tonga Karena, postgraduate students at the University of Waikato.

A Maori legal system?

Our work presupposes that there has been such a thing as a Māori legal order, and that this order remains relevant to contemporary Aotearoa / New Zealand, so relevant in fact that it should be a central and conspicuous part of the national legal system. The existence of a Maori legal system was recognized at the highest level at the very beginning of the Colonial era. Lord John Russell wrote to Governor Hobson, 9 December 1840:

... [Maori] are not wanderers over an extended surface, in search of a precarious subsistence; nor tribes of hunters, or of herdsmen; but a people among whom the arts of government have made some progress: who have established by their own customs a division and appropriation of the soil ... with usages having the character and authority of law.⁴

These “usages” became peripheral to the revolutionary legal order established by successive colonial governments⁵, but a Maori legal order persisted nonetheless, sometimes apparently as part of the colonial system, and at other times quite independent of it. In 1860, for example, Judge Fenton noted in his report to Parliament on the Waikato Kingites that locally selected wardens had been very effective in controlling alcohol:

Waata Kukutai, the chief of the Kohanga farming establishment, was elected by the people as a warden, and now administers and enforces laws, *although he has received no government authority*. He has, I am informed, already succeeded in stopping the consumption of spirits.⁶

It is clear from conversations we have had with Māori leaders as part of our Pū Wānanga seminars, that a system of laws persisted well within living memory, in fact right up until the depopulation of the rural areas in the 1950s and sixties, in which Maori authority and tikanga combined with relevant parts of the new national legal system to provide a truly polyphyletic framework for the regulation of community life.

⁴ Russell to Hobson 9 December 1840. *Parliamentary Papers*, New Zealand, 1841, No. 311, p.24.

⁵ Cf. J. Brookfield We have not yet attempted to formulate a precise definition of “law”; such a definition would need to include not only “formal” law and the law originating or made explicit in the decisions of courts and other authorities, but also the informal laws manifested in extra-judicial negotiations, agreements and conventions. In his account of the famous case of *The People vs Harriet* (1819) Hendrik Hartog suggests that if you must have a definition of law, it could well be: “an area of conflict within which alternative social visions contended, bargained and survived”. Certainly, such a definition is compatible with the development of an inclusive legal order.

⁶ AJHR 1860, E1-C, quoted in Marten Hutt, *Maori and Alcohol: A History* (Wellington: Health Services Research Centre for ALAC, 1999), page 91 (emphasis added).

2. Why bother about the words?

As part of the process of establishing, broadening and deepening such a framework at the national level, we are seeking through Te Mātāpunenga to provide a guide to the meaning and evolution of Māori legal concepts. It will be a comprehensive work in a semiotic sense – a series of documented signposts to a wealth of information, from which the curious and discerning reader can acquire knowledge, and, in due course, understanding.

In his commentary on the work of the Chinese philosopher Chuang Tzu (a contemporary of Confucius), Kuang-Ming Wu notes that:

Words are the tools and trails of our discernment of life. They are an abstractive sieve which captures not only some general themes but clues to the pulsations of the real. They are useful because they constantly refer us back to the thick “mud” of existence where the dynamic of ambiguity persists in its own renewal.⁷

He goes on to point out that:

A writer works on things between the words, not directly on what is said explicitly; the reader discovers it only when he thinks it for himself.⁸

So Te Mātāpunenga looks at the words and phrases, displays their nuances and configurations, but ultimately the readers must discover the meanings for themselves.

In this respect it must be emphasized that this work is not one of recording the monuments of a lost world, or of describing an unchanging and unchangeable reality. In Act 3 of his play *Translations*⁹, set in Ulster but dealing with a state of affairs replicated right here in the Waikato, along with other outposts of Empire, Brian Friel has one of his characters remind us that:

... A – ... it is not the literal past, the ‘facts’ of history, that shape us, but images of the past, embodied in language. ... B – we must never cease renewing those images; because once we do, we fossilize.

Etymology of Māori legal and philosophical terms

Words are important. Maori culture has traditionally given great emphasis to the power of words, and Maori people too have for generations been painfully aware of the fate of those who have not mastered the words through which the colonial administrators and their successors exerted their control. As an old man reminded his grandson in a story published in Tū Tangata magazine in 1986:

⁷ *Chuang Tzu: World Philosopher at Play*, p.22

⁸ *Ibid.*, p.34.

⁹ London: Faber and Faber 1981

Silly Pakehas. Knowing nothing ‘bout words. Need the books to remember. And actions stronger than words, they reckon. Tito! Words got the power. So, e moko, kia tupato. Kia tupato. Careful, ay boy. Power of the word. Strong stuff.¹⁰

A study of the origin of Māori words and the stability and change in the meanings which they convey, tells us something, in fact, a great deal, about the history of the society’s legal and philosophical ideas, some of which are very ancient, and many of which have developed and changed over time – often, however, retaining a clearly discernable link with their source and original meaning. Language has most of the key features of a chaotic system: (1) there is an alternation between periods of stability and chaotic variability; (2) a tendency to return temporarily to ordered states; (3) processes are irreversible; (4) processes do not take place at regular intervals or for fixed periods of time; (5) processes cannot be predicted, but are explicable afterwards; (6) different factors influence outcomes in varying ways. The stories which the words tell, and the words themselves, thus may show amazing consistency over millennia, take off in directions which can be explained only in retrospect, or just disappear. The Discworld author Terry Pratchett has described this process beautifully. Like words,

... stories are important.

People think that stories are shaped by people. In fact, it’s the other way around.

Stories exist independently of their players. If you know that, the knowledge is power.

Stories, great flapping ribbons of shaped space-time, have been blowing and uncoiling around the universe since the beginning of time. And they have evolved. The weakest have died and the strongest have survived and they have grown fat on the retelling. ... stories, twisting and blowing through the darkness.

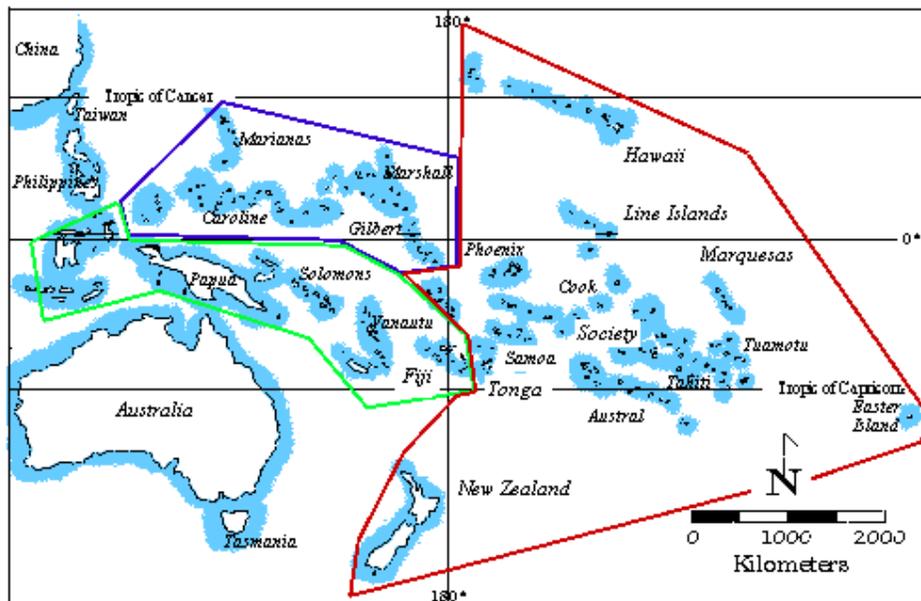
And their very existence overlays a faint but insistent pattern on the chaos that is history. Stories etch grooves deep enough for people to follow in the same way that water follows certain paths down a mountainside. And every time fresh actors tread the path of the story, the groove runs deeper.¹¹

Some of the key words in Māori legal discourse have originated in New Zealand, and over the last two centuries a great many terms have been added from or through Indo-European sources. The more “traditional” vocabulary, with which we are principally concerned in this project, has reached New Zealand through a series of voyages of exploration and discovery commenced four or five thousand years ago, when the “Austronesians” began migrating from southern China, re-establishing themselves in Taiwan and the Philippines, and spreading out from there to Indonesia, Malaysia and Madagascar in West, and moving East along the northern coast of New Guinea into Eastern Oceania, reaching Hawaii in the North, Aotearoa in the South, and Easter Island, and quite possibly Peru, in the East.

¹⁰ Anonymous, “Sticks and Stones” *Tu Tangata* Oct/Nov 1986, 62-64.

¹¹ *Witches Abroad*, London: Corgi Books, 1992, p.8

The journey to Aotearoa was accomplished in a dozen major steps (undoubtedly with many smaller ones in between). At each of these steps, a new language came into being, retaining much of the vocabulary (and probably even more of the fundamental ideas) of the previous stage, but also creating new words and changing some of the older ones, along with the ways of saying them and putting them together, partly in response to changing circumstances, and partly because it is the nature of chaotic systems to be dynamic rather than static. Each of these stages of linguistic development and change has left an inheritance for succeeding generations.



- Polynesia
- Micronesia
- Melanesia

**OCEANIA:
The Major Island Groups**

*April, 1997
Taylor Houston*

Step 1: “Proto-Austronesian”

The ancestral language of the Austronesians was spoken about five thousand years ago in the area along the southern Chinese coastline from which the invasion of the Pacific commenced. We can reconstruct many of its words by diligently examining the vocabularies of its contemporary descendents. Through systematic detective work, which includes studying patterns of sound and meaning, we can be fairly sure which words have been inherited from that original language, and which have arisen in later stages as the inheritors of this language lost touch with each other as they ventured

further afield.¹² Sometimes we have archeological evidence that can help us date the probable arrival of speakers of an Austronesian language in a new country, but this evidence is purely circumstantial until we can compare it with local tradition or the testimony, written or oral, of outside observers.

The words reconstructed for these “Proto-languages”, like the languages themselves, are thus virtual realities – the projections of the educated guesses of scholars trying to make sense of the data at their disposal. It is a convention in historical linguistics to place an asterisk before these reconstructed words (as against those for which there is written or oral evidence of their actual form and meaning). The terms included in this account are drawn from the lists of words selected for inclusion in Te Mātāpunenga. There are literally thousands of other words which Māori shares in common with at least its closest Austronesian relatives.¹³

The etymologies which follow are brief, but they are also suggestive that there is a history of ideas hidden within these external forms. At a later stage in the Mātāpunenga project we will be able to explore in greater detail, using comparative material from other contemporary Austronesian societies, how some fundamental Austronesian, Oceanic and Polynesian legal ideas have persisted, changed, disappeared or been revived as a new social order has evolved in Aotearoa.

Māori words that have come down to us from the “original Austronesian” language include:

Hara - *Violate tapu, intentionally or otherwise; sin, offence*, from ***salaq**, “wrong”

Mauri - *Life principle, thymos of man; metaphysical source of the emotions; a material symbol of the hidden principle protecting vitality, mana, fruitfulness, etc., of people, lands, forests, etc.*, from **ma-** (prefix denoting state) and ***undip** “life”, through Proto-Oceanic ***maqudi**, Proto-Polynesian ***maquri**, “alive, life”. (The connotation of “life principle” seems also to have originated at least by the Proto-Polynesian stage)

Patu - *Strike, beat, thrash, subdue; ill treat in any way; kill; weapon*. From ***patuk**, “strike together”, through Proto-Polynesian ***patu**, “Strike with a blow”, whence Proto-Tahitic ***patu**, “mallet or club”.

Tangi - *Weep, utter a plaintive cry, sing a dirge, weep over; mourn; lamentation, mourning, dirge*, from ***tangis**, “weep”

¹² For a succinct recent discussion of how the relationships of Austronesian languages have been determined, and different approaches to reconstructing the lexicon, see the introductory chapter to *The Lexicon of Proto Oceanic I. Material Culture*, ed. Malcolm Ross, Andrew Pawley and Meredith Osmond (Canberra: Research School of Pacific Studies, The Australian National University, 1998).

¹³ Most of the reconstructed forms in these lists are based on those suggested in the Pollex database maintained by the late Professor Bruce Biggs. Sometimes there is disagreement among scholars as to the most likely form of a word, especially in the early stages of the development of Austronesian languages, and in these cases I have generally chosen the form that looks closest to its Māori counterpart. The English definitions of Māori words are mostly drawn from Williams’ Dictionary of the Māori Language.

Whenua - *Land, country; ground; pacenta, afterbirth* from ***banua**, "settlement" through Proto-Polynesian ***fanua**, "land; placenta".

Step 2: Proto Malayo-Polynesian

The next major stage was the split between what were to become the Formosan languages (the languages of the indigenous people of Taiwan, not the Chinese immigrants of the last few hundred years) and the rest of the Austronesian family, probably by this stage firmly established in the Philippines, and spreading south and west towards what is now Indonesia. Words from this stage inherited by Māori include:

Aroha - *Love, yearning for an absent relative or friend; pity, compassion; affectionate regard; feel love or pity*, from ***herap**, "to like", through Proto-Polynesian ***alo-‘ofa**, "love, pity, compassion".

Atua - *Deity, supernatural being*, from ***‘atuan**, "deity".

Tangata - *Man, human being; serf, slave*, from ***[t]avu/mata**, "living person" through Proto-Polynesian ***tangata**, "man, humanity".

Step 3. Proto-Oceanic

A further critical point in the dispersal of Austronesian languages took place as Austronesian speakers began to spread out along the Northeast New Guinea towards the western Pacific. Māori words traceable to this period include:

Mana - *Authority, control; influence, prestige, power; psychic force; vested with effective authority*, from ***mana**, "Power, effectiveness, prestige".

Tapu - *Religio-social restriction; quality or condition of being subject to such restriction*, from ***tampu**, "sacred, forbidden", through Proto-Polynesian ***tapu**, "prohibited, under ritual restriction, taboo".

Tuakana - *Elder sibling (or other person of the same generation) of the same sex; senior line of descent*, from ***ngkangka**, "older sibling", combined with Proto-Eastern-Oceanic ***tuRa**,¹⁴ "same-sex sibling", through Proto-Polynesian ***tua-kana**, "elder sibling of same sex".

Wahine (plural **wāhine**) - *Female; wife; woman*, from ***fafine** (plural ***fäfine**) "woman, female" (probably ultimately derived from Proto-Austronesian ***bahi** "woman").

Whakamā - *Shame, abasement; shy, ashamed*, from ***maRa** "ashamed" (*whaka-* is a prefix denoting causation)

¹⁴ The capitalized "R" in this reconstructed word is not a typographical error; it indicates what is thought to have been an "r"-like sound articulated closer to the throat.

Step 4. Proto Eastern Oceanic

In the next stage, the original Oceanic language split into two major divisions, the emerging languages closer to the New Guinea homeland diverging from the dialects spoken by the people moving further eastward into the Pacific. Words derived from this period include:

Marae - *Enclosed space in front of a house, courtyard, village common*, from *mala'e "village, village green" through Proto-Polynesian *mala'e "Open, cleared space used as meeting-place or ceremonial place".

Noa - *Free from tapu or any other restriction; of no moment, ordinary*, from *noa "be common, worthless". (The specific connotation "free from tapu" seems to have been present by the time Proto-Central Eastern Polynesian, the mother-language of Hawaiian, Tahitian and Māori, developed - see Step 10, below).

Step 5. Proto Central Pacific

Further change took place as the Austronesian peoples moved further south towards Fiji and northeast into Micronesia. Words from this period include:

Whakahē - *Cause to go astray, mislead; find fault with, condemn*, from *fakasesē "lead astray".

Mātau *Know, understand*, from *mātau "clever, expert".

Step 6. Proto Fijiic

The last step before the development of the distinctively Polynesian family of languages familiar to most New Zealanders took place after Austronesian-speaking people started to settle the islands in the Fiji group, developing their own distinctive idiom which later evolved into the Fijian, Rotuman and Polynesian languages respectively. Words from this stage include:

Mahara - *Thought, memory; think about, bear in mind*, from *masala "be clever, know", via Tahitic *mahara "think, thought; remember"

Wehi - *Be afraid; terrible*, from *fesi "hate, dislike"

Step 7 Proto Polynesian

The immediate ancestor of all modern Polynesian languages probably developed during a relatively lengthy sojourn in one of the islands of the Fiji group, remembered

as Pūlotu in Western Polynesian tradition, and carried from there to Tonga before the scattering of the Polynesian peoples throughout the eastern Pacific. A large number of contemporary Māori words can be traced to this period. Among these are:

Ariki - *First-born male or female in a family of note hence, chief, priest; leader, from *‘ariki “chief”*

Some Slides from the Presentation

Etymology A/Prof. Richard Benton

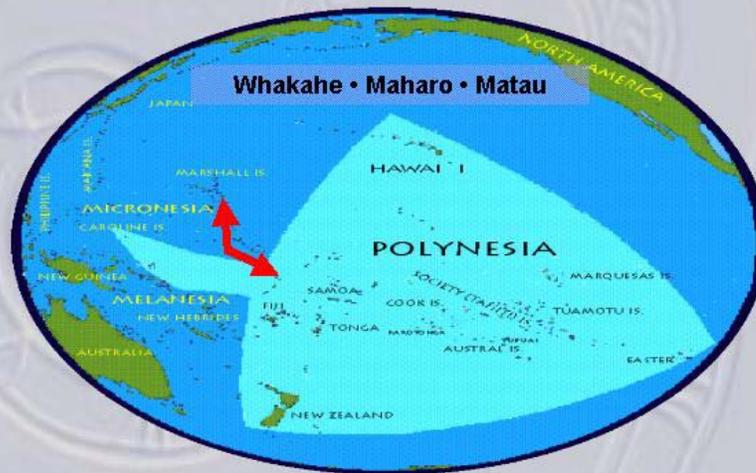
4. Proto Eastern Oceanic

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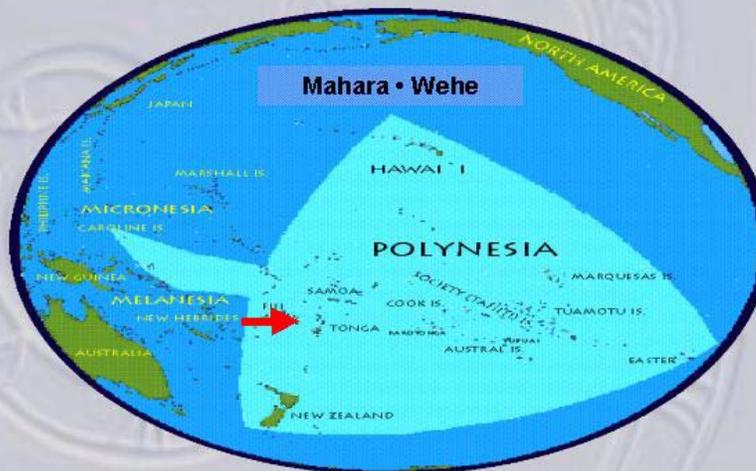
TE MATAHAUARIKI



5. Proto Central Pacific



6. Proto Fijiic



Hē .- *Wrong; erring, mistaken, perplexed, at a loss; error, mistake, fault.* from *sē “err” (probably in turn derived from the same root word as *whakahē* – see under Proto-Central Pacific, above).

Māori - *Normal, usual, ordinary; hence (after the arrival of non-Polynesian people) native, or belonging to New Zealand, Māori,* from *ma‘oli “true, real, genuine”.

Tāne . *Male human being; showing manly qualities; husband,* from *ta‘ane “male” (Note –the specifically human connotations in this word seem to have developed in Proto Central Eastern Polynesian – see Step 10, below).

Taonga – *Property, anything highly prized (including technical or theoretical knowledge),* from *ta(a)‘onga. “treasured possession, especially a garment”.

Take - *Root, stump; base; cause, reason, origin; subject of an argument, etc.* from *take, “Base, origin, source”.

Tohunga - *Skilled person; expert; priest,* from *tufunga “expert, priest”.

Tupuna - *Ancestor, grandparent,* from *tupuna “grandparent” (probably ultimately derived from Proto-Oceanic *timpu / *tumpu “kin two generations removed [grandparent, grandchild]” + -na “his/hers”).

Utu.- This word in Māori has meanings derived from several stages in its history. One set, *Return for anything; satisfaction, ransom, reward, price, reply,* is derived from the Proto-Polynesian stage: *utu “compensation, payment, return”. A second set of meanings, *Make response, whether by way of payment, blow, or answer, etc.,* and including the dimension of revenge, echoed also in Hawaiian, Tuamotuan, Rarotongan and Tahitian, derives from the Proto-Nuclear Polynesian additions to the scope of *utu to include also the notions of “revenge, vengeance”.

Whānau - *Be born; be giving birth; offspring, family group* a merger of two Proto-Polynesian words, *fānau “children, offspring”, and *fanau “have child, give birth, bear”, both ultimately derived from a Proto-Malayo-Polynesian word *panyaRu “give birth”.

Whanaunga - *Relative, blood relation,* and its derivative **Whanaungatanga** - *Kin-group solidarity; feeling of relationship,* from *fanaunga “a consanguineous kin group”. (See also the notes on whānau, above.)

Step 8 Proto Nuclear Polynesian

The next stage in the development of Māori probably took place on the island of Savai’i, in Samoa, during another lengthy period of stability following the initial settlement of a new land. It is at this stage that Tongan and Niuean diverge from what

were to become Samoan and the Eastern Polynesian languages. Words from this time are:

Hoko - *Exchange, barter, buy, sell; merchandise*, from ***soko**, “exchange, buy, sell”.

Kaumātua - *Adult, elder (man or woman); grow up, become adult* from ***kauma(a)tu(‘)a**. “elderly man” (cf. also Proto-Nuclear Polynesian ***kolomatu(‘)a** “elderly or wise person”, from which is derived Māori **koromatua**, *Chief*).

Manaaki - *Show respect or kindness to, entertain*, from ***mana-‘aki** “bestow mana on”.

Whāngai - *Feed; nourish, bring up (so, matua whāngai, foster-parent; tamaiti whāngai, foster-child)*, from ***fāngai** “To feed, provide food for” (probably derived in part from Proto-Polynesian ***fa‘a**. “to feed”)

Rāhui . n. *A mark to warn people against trespassing; used in the case of tapu, or for temporary protection of fruit, birds, or fish, etc.; the imposition of such a restriction; top protect by a rāhui*, from ***lafu** “prohibit”, through Proto-Eastern Polynesian ***rāfui** (the Samoan and Tokelauan uses of *lafu* express similar conservation-related concepts to the Marquesan [*‘ahui*], Rarotongan [*rä‘ui*] and Maori words derived from the Proto-Nuclear Polynesian term).

Round about this time, the Roman poet Horace pointed out that:

Caelum non animum mutant qui trans mare currunt.
(Those who cross the sea change skies but not their souls)

Thus we have a perennial philosophy of law and society carried from one island group to another, subject to evolutionary change constantly, and to chaotic changes at times, but, through the stories that shaped the people, persisting in large part through many changes of sea and sky.

Step 9. Proto Eastern Polynesian

After probably several hundred years of relative quiet in Samoa, voyages of exploration and settlement began into the further reaches of what is now regarded as Polynesia. At this stage, the Samoan group of Polynesian languages begin developing in their own way, while those of the explorers, based probably in the Society Islands to start with, follow a separate path. Words from this period include:

Pure - *A ceremony for removing tapu, and for other purificatory purposes*. This word is derived from Proto-Polynesian ***pule**. “have or exert authority”, but takes on ceremonial and prayer-related connotations in Eastern Polynesia.

Tika - *Straight, direct, keeping a direct course; just, fair, right, correct*, and the nominalized form **tikanga** - *Rule, plan, method; custom; meaning, purport; authority, control*, are ultimately derived from the Proto-Oceanic / Proto-Polynesian ***tika** “dart; throw a dart”, but **tika** takes on the meaning “straight, correct, right” in Eastern Polynesia

Tüpäpaku - *corpse* from ***tüpäpaku** “corpse, cadaver”.

Wairua - *Spirit; unsubstantial image, shadow*, from ***wai-rua** “spirit”.

Step 10. Proto Central-Eastern Polynesian

At some point, probably not very long after the settlement of Eastern Polynesia started in earnest, a group of Polynesians colonized Easter Island; those that remained in closer contact with each other after this event started to develop new words and features distinguishing their language from that developing in the furthest east. Māori words dating from this period include:

Kanga - *Curse, abuse, execrate; a curse*, from ***kanga** “to place a curse on someone”.

Kōrero - *Tell, say, speak, talk; conversation; story, narrative, discussion*, from ***kō-lelo** “talk” (probably derived in part from Proto-Polynesian ***alelo** “tongue”).

Matakite - *Second sight; seer, one who foresees an event; practise divination*, from ***matakite** “see into the future”. In Central Eastern Polynesian languages this meaning was added to what seems to have been the primary meaning of Proto-Polynesian ***matakite** “see clearly”, replacing the older Proto-Polynesian word ***kikite** “see into the future, second-sight”. In Māori, only the newer meaning of **matakite** has been retained.

Tauira - *Teacher, skilled person; pupil, particularly one under instruction by a tohunga*, from ***tauira** “student priest”.

Punaruia - *Having two wives; second wife*, from ***puna-rua** “having two spouses; polygamy”.

Rangatira - *Chief (male or female); wellborn, noble*, from ***langatila** “chief of secondary status”.

Teina - *Younger sibling of the same sex; cousin of the same sex in a younger branch of the family*, from ***teina**, “younger sibling or cousin of the same sex. Note that the alternative form of this word, **taina**, from which **teina** itself is undoubtedly derived, has a much longer history; it is derived from Proto-Polynesian ***tahina** (with the same meaning), which in turn derives from Proto-Central Pacific ***taji-na**. This way of classifying kinship is echoed (with varying terminology) in many Austronesian languages, going back at least to the Proto Malayo-Polynesian stage.

Whakapapa, *Genealogy, line of descent*, from ***fakapapa**, “genealogy, family tree”. Ultimately this word derives from Proto-Austronesian ***papan** “plank, board”, the meaning of which is also retained in Māori **papa**, and is reflected in the other meanings of **whakapapa**, such as *To lie flat; place in layers; recite in order* (which in turn can be seen to be reflected metaphorically in the idea of genealogy).

Step 11 Proto Tahitic

The last stage in the development of Māori outside Aotearoa occurred after contact with speakers of what became Hawaiian and Marquesan weakened, and their language began to develop separately from that spoken in Tahiti and the Tuamotus. This is the period up to about a millennium ago, before “Tahitic” split up into Tahitian, Tuamotuan, Rarotongan and Māori. (It is quite likely that some speakers of the Proto-Marquisic language also reached Aotearoa and contributed to the development of Māori, but the major influence at this point seems to have been from Proto-Tahitic speakers.) These words, the last to reach Aotearoa from outside for some centuries, include:

Hui - . *Congregate, come together, meet; assembly, group*, from ***hui**, “assemble, congregate”. Note that the other (and older) meaning of hui - *Put or add together* - comes directly from Proto-Polynesian ***fuhi** “bunch or cluster; tie in a bunch”.

Kotahi - The numeral one (used as an adjective or to indicate a quantity, but not in counting), from ***kotasi** “one”. (The “tahi” element in this word is derived from Proto Nuclear Polynesian ***tasi** “one”, which may in turn reflect Proto Eastern Oceanic ***tasa** “one”.)

Waka - *Crew of a canoe, tribe*. from ***waka** “a social grouping - clan, confederation”. This is a specialized meaning of a much older word, Proto-Austronesian ***wangka**, “boat”, which is also reflected in the other meanings of **waka** in Māori (*Canoe, vehicle, etc.*). It is also worth noting that extending the idea of a ship’s company to a larger political grouping is often found elsewhere in Austronesia; for example the primary administrative subdivision in the Philippines is called a *baranggay*, which literally means “the crew of a boat”.

Step 12 A – Te Reo Māori o Aotearoa: Old Words / New

Meanings

As settlement of Aotearoa proceeded, new ideas came to be expressed through existing words by adding new connotations, and sometimes radically altering their inherited meanings. A few such changes are:

Ahi kā/ahikāroa (literally “a [long]-burning fire”), *Title to land by occupation*.

Aituä - *Misfortune (especially a death); bad omen*, probably from Proto-Central Pacific ***anitu**, “spirit”, through Proto-Polynesian, ***aitu** “ghost, spirit of dead person”.

Hapū - in the sense of *Section of a large tribe, clan, secondary tribe*, from Proto Nuclear Polynesian PNP ***sapū** “pregnant” (with the inherited meaning also retained)

Hau - in the sense of *Vitality of man, vital essence of land and resources* (cf. **hau** *Wind*, from Proto-Polynesian ***sau** “wind, breeze”).

Kawa - this word is derived from Proto-Oceanic ***kawa**, which refers to the tree *Piper methysticum* and the drink (kava) made from it. In Proto-Nuclear Polynesian the connotation “sour tasting, bitter” (replacing an earlier word, ***kona**) had already been added. In Aotearoa the name was given to another member of the same plant family, *Macropiper excelsum*, and the ceremonial associations of the original “kawa” are reflected in the new meanings, *A class of karakia, or ceremonies in connection with a new house or canoe, the birth of a child, a battle, etc (& perform, effect through these ceremonies etc.)*.

Köhuru - *Murder, kill treacherously*. This term is thought to be related to a Hawaiian word ‘*öhulu* “to spear seals”, also derived ultimately from Proto-Polynesian ***sulu** “insert (as in weaving, thatching), pierce”.

Mäkutu - this is derived from a Proto-Fijiic word ***makutu**, which in most parts of Polynesia retains the original meanings of “diligent, industrious, conscientious”. It has its (usually malign) magical connotations only in Aotearoa.

Muru - the use of this word to denote a process of restorative justice appears to be unique to Māori; the connotations of the Proto-Polynesian form, ***mulu**, “wipe, rub, shed layers”, are also retained in Māori.

Ohäkī - *Dying speech*. This term is unique to Māori, but incorporates the Proto-Polynesian ***ofa** “greeting”.

Taiao - derived from Proto Nuclear Polynesian ***tai’ao** “early morning, dawn”, but in Maori this became extended and changed to indicate “the world”, and is now used also as the term for “environment”.

Step 12 B – Te Reo Māori o Aotearoa: New words for a New

World

New conditions also encourage people to be creative and create completely new words. Among the Māori words which appear to have developed in the Post-Polynesian, Pre-European contact period are:

Ihi - Power, authority, rank, essential force

Koha - Respect, regard; present, gift

Küpapa - Go stealthily; be neutral in a quarrel;(and later, in the Nineteenth Century) traitor to the Maori cause

Pakanga (from **paka** - quarrel) - Strife, dissension, hostility, war.

Pākehā - [Māori term of doubtful origin!]

Püremu - Adultery

Rohe - Boundary; enclose

Rünanga - Assembly, council

Tāhae - in the sense of thief, but in the sense of “evil omen”, cf. Rarotongan tā‘ae. “savage beast, horrible monster, dragon”

Tatau Pounamu (lit. Greenstone Door), A peace pact. both the words and the metaphor are locally generated

Tumu / Tümü - **tumu** (as origin, base, trunk) is Proto-Eastern Polynesian, but **tümü** as headland is encountered only in Māori. Note the idiom **tümü whakarae** - chief.

Whakawā - Accuse, bring a formal charge against; condemn; investigate, adjudicate on

Wana - Bud, shoot; ray of the sun; well grown, fine, conspicuous.

Step 12 C – Te Reo Māori o Aotearoa: New words from beyond

Austronesia

After a period of isolation from the outside world, Māori came into regular contact with visitors from overseas in the late 18th Century. Many hundreds of words from a variety of languages were incorporated into the Māori vocabulary. Early examples with legal ramifications included:

Kawanatanga - Governance, a nominalized form of **kawana**, from English *governor*, ultimately derived from Latin *gubernator*.

Marenatanga - Marriage This expression was adopted from English, to signify a new concept of this institution.

Ture - Law - From Hebrew *torah*

Step 12D – Te Reo Māori o Aotearoa: Global transmutations

Since the 1980s coining new Māori terminology has again become something of a growth industry, although, in contrast to the nineteenth century, when words from English and other languages were freely adopted and adapted to Māori needs, the Māori Language Commission prefers words generated from the language's Austronesian and autochthonous resources (that is, from those which can be traced back to some point within Stages 1 to Stage 12B inclusive, in the scheme outlined above). One such example is the word for this research project:

Mātāpunenga [noun] *Encyclopedia*. Coined by the Maori Language Commission from two “Stage 12B” words:

Mātā “Receptacle packed with preserved fish or birds, or fern root”, and

Punenga “clever, intelligent, always seeking and acquiring useful knowledge”

We think that this is an appropriate term for our compendium, which is intended to provide useful knowledge, both elaborated (as with the birds and fish, food from times of plenty), and basic (as with the fern root, emergency food for survival under adverse conditions).

3. Why make the effort?

A few years ago, Nikolai Todorov, then the Vice President of the Bulgarian Academy of Sciences, said:¹⁵

Keeping the peace in the region means that every minority has to be assimilated into the majority. It's a pity to say, but it's true.

Similar statements have been made in New Zealand, and such a view is echoed in the unease of many citizens (particularly those who feel that they are part of the “majority”) about change in what they perceive to be the natural order of things. The role of Te Mātāhauariki is to help inform the public consciousness about a variety of orders of things in relation to laws and institutions. This will help to make it possible for debate and decision-making to be based on sounder knowledge and better understanding of the issues involved, and how these have been dealt with, in principle and in practice, in other jurisdictions – especially that which evolved in the first millennium of human occupation in Aotearoa / New Zealand. The Mātāpunenga project is a contribution to this process, with immediate relevance to members of Maori communities, to students and scholars at all levels within New Zealand, to public officials at many levels of policy and decision-making, and judicial officers across the range of Courts and Tribunals. The compilation will also be of interest to international scholars seeking an understanding of Maori customary law.

We have stressed from the beginning of this project that Te Mātāpunenga will be primarily a descriptive work. It will not advocate any particular view as to any custom or its place in the legal system. Nevertheless, the work will aim at providing an

¹⁵ Statement made in 1986, quoted in Robert D Kaplan, “The Balkans: Europe's Third World”, *Atlantic Monthly* July 1989 [Vol 263, No. 1, pp. 16-22], p. 21

authoritative point of reference for those wishing to engage in the ongoing public discourse on the future shape of the legal system of our country. In doing so, it will also, we hope, contribute to a wideing of the public imagination, helping New Zealanders to make their minds “large, as the universe is large, so that there is room for paradoxes”¹⁶. For too long, Kiwi culture has been a victim of Boulatruelle’s mistake: “He believed in the straight line; an optical illusion which is respectable, but which ruins many men”¹⁷. The project also underlines another of Victor Hugo’s observations. For too long in New Zealand’s colonial and post-colonial history, it has been assumed in practice, if not in precept, that simply adding “Aotearoa” when referring to “New Zealand” is all that is really needed to make things right, along with a little money to line appropriate pockets. Couch this in appropriate rhetoric, and all will be well. Fortunately, this is not so:

The robbery of a people never becomes prescriptive. These lofty swindlers have no future. You cannot pick the mark out of a nation as you can out of a handkerchief.¹⁸

Te Mātāpunenga will provide some of the thread to reinforce the national mark.

¹⁶ Maxine Hong Kingston *The Woman Warrior: Memoirs of a Girlhood among Ghosts* [NY: Picador, 1981], p.31

¹⁷ Victor Hugo, *Les Miserables*, Jean Valjean Bk V Ch.1

¹⁸ *Ibid.*, Marius, Bk IV, Ch 1

SOURCING TE MATAPUNENGA: PRESENTATION

NOTES

BY PAUL MEREDITH¹

I want to briefly highlight and illustrate by way of interactive display some of the work we are doing with this Te Matapunenga project and in particular, some of the sources we are working through.

As researchers today we are somewhat more fortunate than our predecessors in that we can take advantage of the 'information age' and the ever increasing accessibility to material via electronic databases and the digitisation process. Probably nowhere is this more evident than with the collection of 19th Century and early 20th Maori Newspapers.² We do no longer have to trawl through reels of microfilm. Instead thanks to a digitisation project conducted by the Department of Computer Studies at the University of Waikato these historical newspapers can be *searched* (full text), *browsed* (by series) or accessed by *date* online.³

¹ Ngati Kaputuhi, Maniapoto and Pakeha. Paul is a Research Fellow of Te Matahauariki Institute.

² The newspaper collection consists of over 17,000 pages taken from 34 separate periodicals. It is based on "Niupepa 1842-1933", a microfiche collection produced by the *Alexander Turnbull Library*. 55% of the collection is written solely in Māori, 43% is bilingual and about 2% is written in English. There were three main types of niupepa published; government sponsored, Māori initiated, and religious.

³ Online at <http://www.nzdl.org/cgi-bin/niupepalibrary?a=p&p=about&c=niupepa&l=mi&nw=utf-8>

others to assist him. These men listen to the statements of the parties concerned, and of those who witnessed the offence of the person tried. It is for these twelve to consider whether the accusation is right or wrong; and if they think the case proved, then they refer it to the Judge, who alone will decide what penalty is due to the offence. As for the audience, they simply listen; they neither speak, nor do anything.

But with the Maori Runanga, all must assemble together, the small and the great, the husband, the wife, the old man, the old woman and the children, the knowing and the foolish, the thoughtful and the presumptuous: these all obtain admittance to the *Runanga Maori*, with all their thoughts and speeches: this woman gets up and has her talk, and that youth gets up and has his, and the headstrong carry off the debate, whilst the elder men sit still in silence, and so an erroneous decision is come to in the end.

titiro o te he o te tangata e whakawakia ana. Ma enei kotahi tekau ma rua e whakaaro i tika nga korero i he ranei, na, ka whakaaro ratou i tika tana he, katahi ka tukua ki te kaiwhakawa mana anake e whakarite utu mo te tangata i he. Ko ta te tokomaha, he whakarongo kau—ekore e wai kupu, ekore e aha.

Ta te maori, me hui katoa, te iti te rahi, te tane te wahine, te korobeke te rurubi me te tamariki, te mohio me te keare, te mea e ata whakaaro ana me te hikaka; e uru katoa ana ki nga *Runanga maori*, me o ratou whakaaro me o ratou korero; e whakatika ana tenei wahine me ana korero ano, e whakatika ana hoki tenei taitamariki me ana ano, riro ana nga tikanga korero i nga hikaka, noho hu ana nga kaumatua, a he noa iho te mutunga. Na wai tena kia huri nui nga kainga ki te whakarite i nga he? Na wai i mea ko te taitamariki hei kai

*Extract from 'The Native Runanga' in *Te Manuhiri Tuarangi and Maori Intelligencer*, No. 10, 1 August 1861, 10.

The newspapers continue to throw up significant references and their value to the historical ingredient of this work cannot be underestimated. As a simple illustration, we now know that the term Maoritanga was not a term coined by Sir James Carroll as generally assumed.⁴ Rather we see the term being employed as early as 1844.⁵

The Alexander Turnbull Library⁶ is also an important source whose material we are increasingly probing. Their ever growing electronic database, '*Tapuhi*' provides access to descriptions of the myriad of unpublished manuscripts, dairies, journals, picture collections⁷ and various correspondence held by this institution.⁸

Such works are important because of our deliberate decision to not solely rely on the popular works of those well known ethnographers such as Elsdon Best and Percy Smith but also make a concerted effort to seek out and incorporate where appropriate the writings and correspondence of their 'informants'. Thus for example we find held by the Turnbull, Major Ropata Wahawaha writing to Elsdon Best listing 28 different forms of Take Whenua or proprietary rights.⁹ There is also Ropata Ngarongomate

⁴ See Toon van Meijl, 'Historicising Maoritanga: colonial ethnography and the reification of Maori traditions.' *Journal of Polynesian Society*, Vol. 105, no. 3.

⁵ See Te Karere o Nui Tireni, Vol 3, July 1 1844, No 7, p. 33

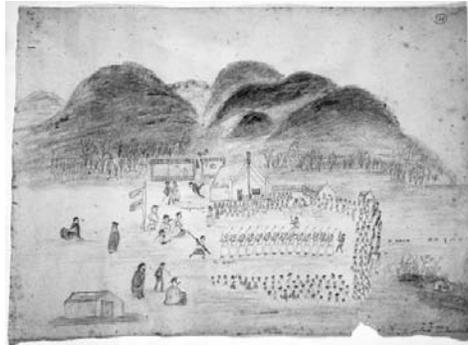
⁶ The Alexander Turnbull Library is the research library within the *National Library of New Zealand*. The Library supports research especially in the New Zealand and Pacific area.

⁷ The Alexander Turnbull Library also has an online database of heritage images. This is known as *Timeframes*

⁸ Tapuhi online at <http://tapuhi.natlib.govt.nz/>.

⁹ See MS-Papers-0072-39E, Alexander Turnbull Library - *War narrative of Rapata Wahawaha, MS including stories of Uenuku, Ruatapu and Paikea, introduction of Christianity on East Coast, etc, Mana and Take-whenua by Ropata Wahawaha*

writing to Arthur Atkinson a short manuscript entitled 'He Ture Maori' or Some Maori Law, giving accounts of laws mainly relating to the transference of land and property.¹⁰ There are also various pictorial representations of Maori institutions such as the following drawing of a 'muru' drawn by a Maori artist present at the incident.¹¹



It is one of four images that *illustrate* the structure and ritual of *muru*, Where Pakeha observers tended to see chaos and order, this Maori artist has reflected the cooperative and orderly aspects.

Further, we should also probably not undervalue the sourcing of potential material through personal associations. For example, a search of my grandmother's garage reveals a number of land deeds, diaries, Native Land Court Minutes, correspondence dating back to the 1880s where words that we are interested are used.¹² Our first inkling that Maoritanga was a term coined before 1920 was when Dame Evelyn Stokes provided us with a transcription of a hui at Te Kuiti in 1911 to discuss the term Maoritanga itself. This was amongst some Ormsby family (of the King Country) papers that she received from a family member.¹³

Indeed, the project has an important resource in the make up of its senior personnel. Whose collective experience and knowledge is available to the project. As a junior researcher I am able to draw on the immense knowledge of well known Maori scholars and scholars of Maori Studies such Dame Joan Metge, Dame Evelyn Stokes, Manuka Henare, Dr Richard Benton, Dr Alex Frame, Tui Adams, etc. They direct us *ihu hupe* or 'juniors' to useful works, share experiences, offer constructive criticism and throw new light on material gathered.

¹⁰ See MS-Papers-1187-209, Alexander Turnbull Library - *Miscellaneous Maori material* 1840-1884 . A draft transcription and translation of this document is available on our website at: <http://www.lianz.waikato.ac.nz/HE%20KOHINGA%20KORERO/Transcription%20of%20Ture%20Maori.htm>

¹¹ Reference Number: A-081-005. The record title is given as “[Artist unknown] :[Sketches of a Maori muru at Parawera; the co-respondents. Confronted by the injured husband and wife, while the giddy dance proceeds in front of the marae. Between 1860 and 1890?]”

¹² Much of this material is that of W.H. Grace, a Government Native Land Agent based at Kihikihi. He was the husband of my Great-great-great Grandmother, Makereti Hinewai Grace. This material is deposited in the Alexander Turnbull Library for preservation reasons and for wider accessibility by researchers.

¹³ These papers, including the transcription of the hui, can now be found in the Alexander Turnbull Library, reference, MS-Group-0937.

Like the Maori newspapers, much of this material is in the Maori language. If we are trying to get into the Maori mindset then obviously the language as the embodiment of the spiritual, mental and legal concepts of the Maori is an important vehicle. As a offshoot of this project (and we need to be wary of the many seductive byways) we also hope that by working with translators that we may be able to make such scholarship available to a wider (non-Maori speaking) audience.¹⁴ Obviously there are translation and intellectual and cultural property rights issues to address. However, one observation that I have made through the research to date is that a stated motivating factor for the numerous Maori who committed knowledge and thoughts to paper was the preservation of such knowledge for nga uri whakatupu kei te heke mai or future generations.

In part, this work will contribute to rediscovering and representing past scholarship and provide a 'bibliography' of recommended readings and references for those who are engaged in working through the place of *tikanga* in the legal framework of New Zealand.

An Illustration of a Potential Entry taken from our Database.

Title/s: Hohou te Rongo

Compiler: Paul Meredith, Alex Frame

Date: Feb 2001

Citation: John White in *The Maori Messenger: Te Karere Maori* Vol. 1, No. 3, March 1855

Quotation: "According to Maori usage the aggrieved should make concession, and propose peace; and should the aggressor have the hardihood to visit the injured party, his own life would be the penalty; hence the allusion, "you are mine" simply means, you are at my mercy, your life is at my disposal."

Translation: The Newspaper has translated this as:

E Kawana ka tika to mate. Nau i haere mai ka tika taka kia patua koe. I patua a Te Wherowhero, ko koe e Kawana te tuarua o nga tupapaku. Ka mutu te patu, ka oti nei te hohou te rongo. Nau i haere mai ki te whare, no reira koe i mate ai. Ehara i au i karangatia ai koe; nau i haere mai ki au, no reira koe i mate ai. I mea koe ka tika to haerenga mai.

Context: This is an account by John White of Governor Wynyard's conference with chiefs of Waikato over the killing of a Maori by a European. The Governor has come to ensure no further outbreak of violence will occur. The above is a footnote to the following statement by the father of the victim who the Governor and the chiefs have visited.

"Governor, your death is just; (alluding to the spear thrust into the earth, as figurative of a retributory victim for the murdered native) you came to me; it is right for me to kill you. Te Wherowhero was killed, and you O Governor are the second offering. Will you cease to kill, now that peace is made? You have come into the house hence your being killed. I did not call you; you came, so I will kill you."

The account first appeared in *The New Zealander*, February 1854.

Etymology: -

Comments: This would suggest that it is up to the victim to propose any resolution and that the place of the offender is to submit to the will of the injured party. It is very much the same as the Ifoga system.

¹⁴ The project is developing a useful relationship with the Translation Studies course of the Maori Department of the University of Waikato, providing them with selected material for translation.

TE PÜ WÄNANGA: SOME NOTES FROM THE SEMINARS AND CONSULTATIONS WITH MÄORI EXPERTS

BY NENA B.E. BENTON

1. Introduction

1.1 What is Te Pü Wänanga?

Te Pü Wänanga is a process that is designed to provide the Matahauriki researchers with a broadly based background and knowledge about Mäori customary law in its contemporary social context. The name of the process is derived from the terms *pü*, meaning, among other things, a skilled or wise person, and *wänanga*, referring to traditional knowledge and higher learning. Since its inception in 1999 as part of Te Mätähauriki research programme, more than a dozen experts -*tohunga* in the Mäori sense - have participated and more will take part over the next year.

1.2 Who are the experts?

In ancient Mäori society, the *tohunga* had a key position because of their expert knowledge in fields that were of vital importance to the community (as for example, in religion, education, canoe-building, agriculture, fishing, carving, and healing). The senior scholars and leaders consulted by the Mätähauriki research team also have specialized knowledge that we believe Aotearoa-New Zealand needs to tap into as it negotiates its way into the new century and beyond. An equally important quality of the Pü Wänanga consultants is the ability to relate their knowledge of Mäori society and culture to the modern world.

There is not enough time in this brief account to go into any detail about the scope of Te Pü Wänanga. Suffice it to say that the consultations and seminars have been a very effective way of ensuring that we heard the voices of recognized experts, that is, Mäori men and women whose knowledge is grounded in active participation in Mäori community life. The experts we have consulted were chosen not so much because of their formal learning (although almost all of them do enjoy formal recognition of such learning) as their knowledge and wisdom derived from their lived experience in the Mäori world.

1.3 *Te Pū Wānanga as an iterative, interactive process*

Te Pū Wānanga is an on-going conversation that covers a wide range of topics. The focus of the discussions varies with each expert's areas of specialization, personal interests, tribal affiliations, and other factors. The Pū Wānanga consultants form an expert panel to assist us in various aspects of our work. We discuss with them questions about the nature of Māori laws and institutional processes; they help us to understand the underlying principles, beliefs and values and to explore their relevance to modern life. It is our hope that our continuing conversations with the tohunga will provide fresh insights into how our jurisprudence system can draw more effectively upon the resources of the two founding cultures.

Our interactive discussions take the form of semi-structured conversations; conducted in an informal atmosphere to encourage a spontaneous flow of ideas in all directions. We study the past with an eye on the present and on the future. Although the participants have been supplied with a list of terms and concepts that Te Mātāhauariki is especially interested in, we have kept the conversation open-ended; in effect, the tohunga are free to decide the focus of the consultation or seminar. They have been invited by the research team to critique and help revise the Mātāpunenga list and to add to it whatever they think it should include. The list, far from limiting the conversation, is the starting point; it serves as a catalyst.

1.4 *The purpose: Why seek the experts?*

Te PūWānanga complements the other projects within Te Mātāhauariki, such as Te Mātāpunenga. The experts provide us with information and perspectives that throw important issues into sharper focus. What we learn from them extends and enhances the insights gained from written sources. In sharing with us their experiences and family histories along with their theoretical insights, they enrich our learning, by adding to our discussions that personal dimension that only people who have actually lived in functioning Māori communities are able to give. Thus, they help us to deepen our understanding of those concepts, beliefs and values that were of critical importance to the way people regulated their lives in pre-settlement times and which still have relevance now. The Pū Wānanga seminars and consultations give us the opportunity to discover the spiritual, philosophical and social underpinnings of Māori customary law as we explore new possibilities for the constitutional make-up of New Zealand.

Te Mātāhauariki will not be making any dogmatic pronouncements about how things should be done as a result of our consultations with Māori elders. Our goal is not so much to change actual legislation as to foster a change in the attitudes of those who administer the legislation and their readiness to look beyond just the black letter of the law. Tui Adams, a Māori elder who is a senior member of the research team, describes Te Pū Wānanga as an attempt to use oral history with a particular purpose: "we are stepping back in order to go forward"; we hope, with greater confidence and clarity of vision.

The participating tohunga are strategically positioned to give us the assistance and guidance we need. They have been gifted with a long life (the majority being in their 70s and 80s), their memory and knowledge of Māori culture and their reflections on

where to go from here span more than four generations, starting with the knowledge of their own mentors -- their own parents, grandparents and other elders -- and now, in their position as tohunga, kaumatua, parents and grandparents or great grandparents themselves, their younger look up to them for wisdom and advice.

The discussions held so far have provided a wealth of information about the nature and principles of Māori customary law and its application in practice. This paper will look at aspects of just a few concepts and how some of the tohunga who have discussed these with us have defined them or illustrated their operation and current relevance.

2. Māori Social Structure and Underlying Belief System

2.1. Belief in the divine origin of humanity

Bishop Manu Bennett stated in one of our seminars that to understand the nature of traditional Māori society, we need to start with the belief system from which the values spring.

There is a stark parallel between what the Māori believed in pre-settlement days and what the Jew believed in pre-Christian days – both people are ruled by theocracy. The Jews believed that Adam and Eve were created from the dust, the Māori believed that Rangī and Papa were the progenitors of mankind. In both cases, they had the belief that mankind had a divine origin, and unless we start from that, I think that a question of values, ethics, and morals will be hard to follow in the whole structure of Māori society...

Bishop Te Whakahuihui Vercoe endorsed this view: “it fascinates me that those old people were able to come up with such in-depth thinking of explaining their own creation, their own part of the universe and interpreting of what was the natural order.” Judge Brown noted that this is very hard for many contemporary Māori with a secular view to acknowledge or recognise. Bishop Bennett takes the view that history is not something that we can wipe out simply by refusing to accept it. “Not that I am a monarchist or a republican”, he says, but if the monarchy was part of the history right up until a republic came into being, there is no sense in pretending that it was not.

I don't see how we can get some context to this issue if we don't accept the history. And the history is God ruled the holy people and the spiritual side of Māori development was even more important than the material.

In the Pū Wānanga seminars we discover what the past can teach us. What principles and values were of critical importance and which ones still have relevance in the modern world where the choice is sometimes quite bewildering? It is important that we have informed discussions so that we can make the right choices. Our choices will depend partly on how we define our identity as New Zealanders and what our vision is for our country. What kind of development do we pursue, given our unique history

and our cultural, social and material resources? What means do we employ to achieve our goals? We also need to reflect on why we choose a particular course of action and not another in any given situation. When things go awry, we cannot wash our hands and put all the blame on our leaders because their authority comes from us. As the elders remind us, even in traditional Māori society, the chiefs did not have absolute power.

2.2. *Rangatiratanga through the people*

Bishop Bennett makes an interesting observation.

When you get to a place for the first time and you are about to go on to the *marae*, frequently the question is “Who are the *rangatira* here?” never, “*Who is the ariki?*”¹

There was a hierarchy in the old system, but as Bishop Vercoe points out, *rangatiratanga* came through the people. A *rangatira* as a political or military leader “could spring up in different ways”; this position was much less dependent on prescription than the position of *ariki*, which was determined primarily by birth (normally, being the most senior member of the most senior line), or even that of a *tohunga*, which also often was confined to certain families. He says that part of the responsibility of being *rangatira*, *ariki* or a *tohunga* is to see that society survived. The *rangatira* of old, like the *ariki*, and *tohunga* took responsibility for the group, and the seriousness with which they took this responsibility gave them the political power and authority that they had

One of my colleagues in Te Mātāhauariki, Alex Frame, noted that Polynesian cultures, especially as they have developed in Tahiti, Rarotonga and New Zealand, have an image that puts the bishops’ definition of the political dimensions of *rangatiratanga* in a wider social context:

[In Tahiti and Rarotonga] they have an image which they take obviously from what they know, which is the outrigger canoe. The way they see it is that the *ariki* is the mast, the outrigger is the *rangatira*, and the hull is the body of the people, *te kōpū tangata*...That is an image that you find right throughout [Eastern Polynesia]: the hull, the mast and the outrigger.

2. 3. *Social and religious connotations of customary law*

In traditional Māori society, the institution of *tapu* permeated the whole social order. Breaches of *tapu* affected not only the individuals concerned but also the group with whom they are linked. It was the responsibility of the *tohunga* to ensure that when infringements of *tapu* occurred the necessary purificatory rites were performed to restore the spiritual, emotional and physical balance within the social, environmental, and cosmic sphere.

¹Ko wai te ariki?

Tapu acted as a powerful corrective, underpinning and providing the sanctions for the customary legal system.

Tapu is a spiritual institution set up for political purposes, it is a form of control, and it controlled behaviour patterns, behaviour standards...The functionaries in that particular area seemed to be either the ariki or the tohunga. Generally nobody else used tapu...(Bishop Manu Bennett)

The *tohunga whakairo* (master carver), Dr. Paki Harrison, draws our attention to another important feature of *tapu* – its universality: “in the law of tapu, no one escapes”. So despite their political power and authority, members of the rangatira group were not above the law of tapu.

To have a better understanding of the institution processes and principles that provided the system of regulation and control in Māori communities -- when these were autonomous -- we need to understand the social structure in which they worked as well as the underlying philosophy and belief system. “In the absence of a codified system, custom became the rule,” as Bishop Bennett points out. He compares what the Māori belief system has done for Māori people with what the Old Testament has done for the Jews.

The old tohunga spoke just like the prophets. That’s the way rule came over...The fundamental thing here is that they believed what they were doing. They didn’t just think it...they were dedicated to it. They were absorbed by it and they became part of it ... that’s what belief does to you.

Dr. Harrison also talked about the socio-religious connotations of customary law and how tapu worked as a system of prohibitory controls in traditional Māori society:

If you want to delve into customary law and how it fits or how it could fit into modern society, you would have to go back and look into the deep philosophical basis of how these laws were created in the first place - under what circumstance and under what condition - because the law of tapu ... was a powerful instrument of keeping civil order on people who were volatile, highly volatile...This law had deeply religious connotations where total commitment and faith to the power of that spirituality ... played an enormous part in helping to maintain the disciplines required under those circumstances, so *these things were created for their time and they certainly worked for their time.* [Emphasis added]

Without understanding tapu and the social context in which it operated, there is no way one can fully understand how behaviour was regulated within Māori society.

The discussion with the bishops, and other elders also touched on how the norms of behaviour were established and other important matters such as the need for restoration when the law was broken. Bishop Bennett does not see any problem at all in “using the present system as a conveyance of Māori culture” How do you make the system work?

You don't need new laws. You need a Māori understanding of the present law, and you start with justice. The big thing in Pakeha minds is - you break the law, you are punished.

In the old days, the emphasis was on restoration: "If you break the law, you were restored, you patched it up and got hold of it with your lives" (Bishop Bennett). In our conversations with Dr. Meremere Penfold on Te Hapua, Northland, the same theme about righting the wrong and undoing the damage to community relations came through. Restoration of balance and harmony within the offender and in the relationship with the group was an important part of the resolution process.

3. The Nature of *Tikanga* and the Maintenance of Its Integrity

3.1. Tikanga: a definition

The director of Te Mātāhauariki, Judge Michael Brown, stresses "the importance of informing the debate" which he believes "we must have about our identity as a country and as New Zealanders". He points out the need for clarity in the concepts and phrases that we use. Some terms like tikanga and what it represents seems to be a moveable feast and some people, he suspects, are making up their own tikanga to suit their particular purposes.

Before defining what he understands by the term tikanga -- "doing things right, doing things the right way, and doing things for the right reasons" -- Bishop Bennett warned us that Māori words are sometimes made to do more work than they are meant to. This definition generated a lively discussion between the researchers and experts who made comparisons with related concepts such as *kawa* (the particular application of tikanga in certain important social settings), to try and define the boundaries of each concept more clearly.

3.2. *How is tikanga passed from one generation to the next?*

The question of socialization and culture transmission is important to us. So it is essential that we seek to be enlightened by the gurus of Māoridom whose authority to speak from experience of Māori life is recognized beyond their own family and iwi.

3.2.1 *Intergenerational transmission of tikanga: A long apprenticeship*

The expertise of our Māori consultants resulted from a long apprenticeship that fostered life long learning, making extensive use of both formal and informal methods. In the Māori world, socialization into the tohunga role started in early childhood with tasks given to the chosen apprentices to maximize their contact with adults who served as role models as they went about their important business. Sir John Turei said that he was picked out by Sir Apirana Ngata as a boy to go along with him

and other Māori leaders, “my job was to clean their shoes...and to make sure that I got hot water for their shave in the morning”.

Sir John Turei was 61 when he finally was admitted to the ranks of the kaumatua and other important people in his community to be a speaker in formal encounters with other groups. Until then he was in a supporting role, working in the background. Many an elder who had become key leaders in their communities would echo Sir John with their own experiences. Their willingness in their youth to do whatever needed to be done which would have included chopping firewood and carrying it to the kitchen, peeling vegetables for a hāngi prepared them for their future role as leaders, spokesmen of their people, and pillars of the marae. All that time that they were doing what might have seemed insignificant tasks, they were listening attentively to their elders or simply observing the comings and goings of marae life that they would have been too young to have an active role in but absorbing, albeit passively some of the time, the language and values, beliefs, details of whakapapa, family history and other important knowledge. These evolved, got refined with practice and passed on from one generation to the next by osmosis and also formally in some areas of expertise, such as higher learning in the philosophical and theoretical aspects of traditional knowledge, including applied arts such as carving or weaving, and all these happened in the context of Māori community life.

3.2.2 Socialization: Women as transmitters of tikanga

Dr. Pakariki Harrison recalled the influence that his great grandmother has had on him; she was “a very very powerful and strong advocate of whatever she believed to be the right thing”.

Sir John Turei also talked about the role of women in transmitting tikanga. Indeed they had a key role in socialization as the child’s first teachers. In his childhood, teaching and learning was predominantly by example. One learned to become a Māori simply by living in a Māori community. Even in certain areas of expertise where the transmission of knowledge normally proceeded much more formally, learning became a much more natural part of growing up if one had a grandmother to transmit valued knowledge.

On hearing Sir John talk about the role of women, Tui Adams was reminded of how his own mother and grandmother always made time to answer his questions from an early age.

I was brought up on a farm at home and my Dad was always away working and we never really got a lot of instruction from our Dad. He never really sat down with us and gave us any sort of instruction about anything much, and so it was our mother and more particularly my grandmother, that gave us instruction in day to day things ... But it was actually the old lady that taught us about worldly things I suppose, things outside of our immediate experience ...-and also about our relatives across the other side of the river, and up the river, and further down the river. It was our grandmother that taught us those things. It was also our grandmother who taught us the basic things about marae protocols, because we would follow her and do the things that she was doing...

3.3. *Maintaining the integrity of tikanga*

How is tikanga kept on the right track? What was the control factor? We asked the experts these questions and related ones on social cohesion.

3.3.1. *Guardians of tikanga: Complementarity of men's and women's roles*

Among the Tuhoe, women were “the most sacred of all things” and for emphasis, Sir John Turei repeated himself in Māori: “*tenei mea te wahine he whare tapu*”. He talked at great length about what women did not only to support the men but also to ensure that the integrity of *tikanga* was maintained.:

...they were the computers of our old people, the women, you saw our old people sitting at the paepae in the old days, you see a row of women sitting at the back and on the side, apart from the ones hei waiata but most of those women and around the side are the ones who are telling the *koroua* when he stands up to talk. That's what all those *kuia* [do]: “*that person who is talking there is from such and such a place, this is his genealogy, and so on, and so on*” ...Every time you hear the *koroua* walking up and down and you hear them stop and cough, somebody's *pressing the speaker to make his point without delay*³. And you know they are there all the time to provide them with the information, you don't have to keep it up here when we stand up because we can't tell our women, the role they play is so important.

There have been all kinds of pressures for change in Māori society. For example, urbanization has had a very direct effect on the social organization of many Māori communities. Although on balance, the impact of urbanization seemed to be quite positive for some communities, there were others in which the population movement and modernization have been more disruptive. Culture transmission between the generations has been broken. Focusing on how modernization has affected the role of women, particularly in relation to the maintenance of the integrity of *tikanga*, Sir John Turei, expressed with regret:

We are using our women in the wrong context. *it's good for them to show their knowledge*⁴ no that's good. Their real role has been lost, because of a changing environment. *I don't know about you but to me*⁵ – that's why those *koroua* were great orators, because those *kuia* were at the back giving them the information.

What elders who still take their traditional roles and the corresponding duties and responsibilities seriously are increasingly missing is the mutual support within the tribe that was so characteristic of the community in which they were brought up. There were always disagreements and a healthy tension that led to constructive change in Māori society - all these were an accepted part and parcel of community life along with the long established institutions and customary ways of dealing with

² E koro, no mea te tangata e kōrero mai ra, anei wana whakapapa, i haere mai i hea, te mea, te mea

³ Kua wareware te koroua – hoatu he korero, kia tere.

⁴ Kai te pai te whakaatu i ō rātau mātauranga, kai te pai katoa

⁵ Koira aku whakaaro, kare au e mōhio he pēhea wā koutou, engari ōku ...

serious conflict. But some of the elders believe that other values have actually undermined the complementarity of men's and women's roles in Māori society. Change is inevitable. How can adaptations be made so that the roles and relationships in the home, in the marae and in the wider community can be altered enabling people to respond creatively to the demands of the modern world without doing irreparable damage to the social fabric? There are no easy answers; but there are possibilities waiting to be explored.

3.3.2 *The importance of ceremonial*

Alex Frame makes a distinction between written and performance cultures that I find very helpful in understanding why ceremonial is so important. He points out how dramatic elements which are so effective in ceremonial cultures are taken for granted or discarded by Pakeha. Ceremonial is an effective way of overtly validating and thereby keeping custom on the right track.

For as long as Māori society remained cohesive, not even a prominent speaker could get away with overt attempts to subvert or distort traditional knowledge or practice. He would get pulled up by the *kuiā* sitting behind him on the paepae who were never slow to exercise their right or take the responsibility for preventing fraudulent claims. Dr. Frame agrees with Sir John Turei and other elders that the control factor for maintaining the integrity of tikanga is to keep it deeply rooted in the social context

4. Application of Customary Law in Practice

Dr. Harrison takes a cautious view of attempts to introduce ancient Māori values into modern law and thinking without taking into account the conditions under which they had originally worked. He is also concerned that some people assume that "something is right just because this is what they did in ancient times or not too ancient times". He maintains that it is important to know why something was done and how relevant the reasons still are.

... what you have to find is an area of comfort or compatibility with the situation which existed and which helped to promote and project these customs... But it seems to me to be a real difficult exercise, there are some things that we might be able to recreate if you like in order to help the law, and one such thing... which we use successfully, is the law of *rāhui*. (Dr. Harrison)

Dr. Harrison cites two good reasons for a *rāhui*. One reason, makes sense even to modern proponents of conservation would be to prevent the depletion of a resource; so the banning of fishing, for example, may be done to conserve the fish or shellfish in a certain area. A *rāhui* would also be placed on the area if someone drowned there.

When an offense was committed, how was the right relationship restored? This question stimulated the discussion of *muru* (which literally means to plunder). For as

long as Māori society remained intact, muru was an effective mechanism for correction and social control.

The custom of muru is something that seems to me to be a very very severe punishment which might be reintroduced in some way as a means of creating a new approach... Nobody would like anybody to go into their house and take away all their stereos, radios and television sets and everything by the family they have just robbed or pillaged. The law of muru was a very very effective law. (Dr. Harrison)

People were subjected to muru for a variety of reasons. Dr. Harrison notes that it was the victims (for example, the person whose spouse has committed marital infidelity and their people, for example) who went to the offender and the group of which they were a member. In the old days, pillage by the victims followed. A later adaptation of this, he says, is for the victims to make their feelings known to the people who committed the offence whereas in the past, for a very serious offence, their house might have been burnt down or their children taken away.

Because the law was enforced by the same parties who received the damages, as well as the judges of the amount, in the early part of the nineteenth century it had the general effect of turning personal property into an evanescent sort of thing, as illustrated in this example given by Frederick Edward Maning (no date, p.101-102):

... no man could say who would be the owner of his canoe or blanket in a month's time. Indeed, in that space of time, I once saw a nice coat, which a native had got from the captain of a trading schooner, and which was an article much coveted in those days, pass through the hands, and over the backs of six different owners, and return, considerably the worse for wear, to the original purchaser; and all these transfers had been made by legal process of *muru*.

Maning (p.105) observed that as it became easier for Māori to obtain for themselves the necessities and comforts of life the temptation to plunder proportionately decreased; no longer were there so many eager and observant eyes watching continually the owner of implements and other goods they desired "in hopes to pick a hole in his coat by which the muru might be legally brought to bear upon him." (Maning, p.108) What is significant is that one had to have a legitimate reason for muru: people did not just go stealing coveted goods whenever they felt like it.

Under the law of muru, the whole extended family or even tribe, not just individual members, may be punished for some wrong doing. So the whole group may be deprived of their most precious possessions, such as their land.

...muru is really the restoration of a wrong, you restore the right relationship...I think that once you have done the taua muru, that's it. Whether you got over compensated or under compensated, that's it, it's over, and I suppose it's connected with tikanga and kawa...(Bishop W. Vercoe)

In the old days, everything was thought in terms of the group, not the individual, says Bishop Bennett,

...so when a man broke the law or broke the custom, he broke the custom of the people and then the infringement of that was plain, he was not the only one guilty but his whole family and *whānau* was; his whole community were as guilty as he was, because they shouldn't have let him do it

This was most graphically illustrated in *ko te muru whakanui* (stripping to exalt), a kind of muru that would apply if some evil omen befell a chief. In such muru, only those living under the protection or influence and authority of the chief would be entitled to participate in the confiscation. That was the accepted process. The particular tribe with whom the chief was residing and whose responsibility it was to protect him suffered along with him and also lost their goods and landed possessions to the other tribes. The chief and his tribe would protect their own persons from blows but would make no attempt to control or stop the plunder and the confiscation of goods and chattels under their eyes even if they were stripped of everything they owned. The stripping was intended to exalt the importance of the chief. Without it, the influence of the chief would decline. The muru also served as a warning to the host tribe to take better care of the chief. (Cf. *Te Manakura - The Recorder*, February 1917, pp.13-14)

In some of the more isolated Māori communities, muru is an experience that is still well within the living memory of some people. One of the tohunga related how his mother had come home from shopping one day to find her furniture and other household goods being taken away by other people. Upon inquiring, she discovered that in her absence her pigs had gotten into the cemetery. For her neglect she was subjected to muru. One of her uncles managed to stop the proceedings before the house was completely bare, but there was no question of returning any of the goods that had already been removed. Later, neighbours helped in the disposal of the pigs.

5. Culture Transformation and the Search for Identity and Meaning in the Modern World

Most of the elders we consulted had grown up while links with an even earlier period were still strongly maintained through stories told by their own parents, grandparents and other community elders. That earlier period was a time when

...the tribal interest was paramount. The strength of the tribe had to be maintained and of course the strength of the tribe depended on its numbers and their ability to maintain the resources that they already owned... and protect them. (Dr. P. Harrison)

With the disappearance of the elders who have direct personal links with the ancestral way of life and world-view it will be more difficult to maintain the connections with this culture. The tohunga believe that unless a concerted effort is made to educate the young in their heritage culture they will not be equipped to deal effectively with the demands of modern life. The Pū Wānanga seminars have thus, as one of the

participating elders put it, been part of a process which they hope will enable them “to leave a legacy behind for our children, and our children’s children”.

This is not to be misconstrued as a call for cultural fundamentalism. The transmission of culture from one generation to the next is a creative process. In the evolution of customary law, how is the norm established? Bishop Bennett said that things are handed down through the whakapapa (ancestry) but the transmission between generations is not a completely passive process. The recipients use what comes down to them, live it and refine it as they go along.

Each generation leaves its imprint on it, and our generation and my generation and the generation before me got mixed up with Pakehas, and we have left our print on it, and that’s what makes it very meaningful to us today because we let Pakeha imprint as well as Māori. (Bishop Manu Bennett).

Dr. Paki Harrison laments the tendency in Māori society today to engage in what he calls “culture reinvention”:

I study a lot of ancient Māori history pertaining to...living tikanga and it’s my job as a tohunga whakairo that I should know these. Culture reinvention is something that is alive and well in our society today, and the usual answer you will get when you ask... “Who told you that?” is “Oh, my koro, or my kuia”, and of course, when you inquire further you find that the kuia is about 45 or 50, and you know they are people who have never been in contact, who have never seen the vestiges of the last of the Māori world - *te ao kōhatu*, we call it. I remember my great grandfather was fully tattooed and he was over 100 to 115 when he died...

Culture re-invention is not a substitute for good research.

Bishop Vercoe leaves us with a tantalizing question, recognizing the social dynamism of different cultures in constant contact, but also being realistic about what has actually happened:

When you look at it politically and socially, when the first Labour government came in, there was a dramatic change in the whole relationship between Māori and Pakeha. We actually identified ourselves as poor people, unemployed, and everybody swung in behind Savage...you got a new society. What happened? The war came in, we were diverted from the political advance into a survival mode and when the war ended the whole structure had changed. A lot of our people had moved into the cities...I think Māori...lost a lot in transition when our roots were dramatically pulled out, transplanted somewhere else.

In the wake of such changes, the bishop asks if we are now trying to find a new way of bringing the two races under the Treaty of Waitangi.

...it means that our children’s children will live in the society that is neither Māori nor Pakeha. I can’t envisage that in my life time, but it could happen in my mokopuna’s lifetime, that there is only one society, that New Zealanders will have actually carved out the principle of nationhood within themselves...I

am reluctant to think in terms of there being no Māori race...but I believe that we are developing three cultures.”

There are members of each group - Māori and Pakeha - who take an essentialist view of culture but there has also always been those others – on each side of the cultural divide -- who have been much less hesitant to cross over the boundary to discover and understand what lies on the other side, and have continued to explore and work towards some shared visions. The key to success in building bridges that lead to mutual cultural enrichment is a commitment to respect the right to uniqueness and self-determination and to learn how to celebrate diversity. The Pū Wānanga seminars give us the opportunity to contemplate how we define ourselves, building not only on those values that we share but also on our different experiences, world views and histories; capitalizing on diversity to develop the resilience and versatility that we urgently need to be able to maintain a position of strength in a globalizing world .

The elders who participate in Te Pū Wānanga have repeatedly stressed the importance of understanding the context in which Māori customary laws and institutions have evolved. In asking how procedures and behaviours were regulated in Māori society and in assessing the relevance of the old sanctions to our contemporary context, we have found ourselves engaged in a much broader quest, with the experts opening new doors of inquiry for us. We need to understand how closely interlinked the belief system is with social and material matters in Māori society and make a serious attempt to take our engagement with Māori culture beyond the blessing of our new embassies and trade missions to other countries by kaumatua. Both Treaty partners have a significant contribution to make towards shaping the future and achieving clarity about our identity as a nation and as New Zealanders in a rapidly changing, increasingly globalized and multi-cultural world. It is not sentimentality but disciplined creativity that will enable us to develop a truly New Zealand culture to take us into the 21st century and beyond.

GLOSSARY OF MĀORI TERMS

The meanings given are those of the terms as used in this paper.

ariki -- *paramount chief* usually (determined by seniority of descent from the tribe's founding ancestors)

iwi – *tribe or federation of tribes*

kaumātua -- *elder (male or female)*

koroua – *senior male relatives*

kuia – *female elders*

marae – *space outside the meeting house or other open area where formal encounters take place*

paepae – *the area where the orators are seated during a formal encounter (also refers to the orators as a group).*

rangatira – *the people who exercise chiefly authority over communal affairs*

te ao kōhātu – *the paleolithic world*

whakapapa – *genealogy or information arranged in the form of a genealogy*

whānau – *extended family*

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KAI-HAU – WORKING ON AN ENTRY FOR TE MATAPUNENGA

BY DR ALEX FRAME LL.D

Sir George Grey's *Ko nga Whakapepeha me nga Whakaahuareka a nga Tipuna o Aotearoa* (Proverbial and Popular sayings of the Ancestors of the New Zealand Race), Saul and Solomon & Co., Cape Town, 1857, contains a section headed 'The Proverbs of Te Paki' and the following explanation:

'The following treatise on New Zealand proverbs, in the native language, was drawn up in January and February, 1849, by a native, from the dictation of Te Paki, the chief of the Ngaungau tribe, and formerly the High Priest of the Waikato tribes...'¹

One of the 'sayings' so presented is the so-called 'Kai-hau curse'. Te Paki is reported as stating that a person aggrieved by the failure of the recipient of his gift (taonga) to make a suitable return might make the 'kaihau' invocation. 'He Kaihau te ingoa o taua makutu':

Te Taonga
E, te taonga
Nau ra e te taonga,
E kai ra koe i au,
E te taonga.²

The translation given in Grey is:

My valuables
O, my valuables
Come, come o my valuables,
Destroy this fellow for me,
O my valuables³

¹ Grey, *Ko Nga Whakapepeha*, p.101. The reference is to Wetere Te Paki described by C.O. Davis as 'te Rangatira o Te Ngaungau...he tino Tohunga Maori o mua' (*Maori Mementos* ..., Auckland, 1855, p. 23) and of whom the Rev. Ashwell observed in 1839:

'I found the greatest tohunga living at Rangiriri being taught to read by his son, a lad of twelve ... After two years of constant perseverance he learned to read the New Testament fluently. This popular old priest...was afterwards...baptized by Dr Maunsell by the name of Wesley (Wetere) and was my inseparable companion in all peace-making expeditions' (Ashwell Rev. B, *Recollections of a Waikato Missionary*, William Atkin, Auckland, 1878, pages 5 and 20.

Wetere Te Paki died a few months before Grey's departure from New Zealand at the end of his first term as Governor, on which occasion Wetere's son, Hone Wetere Te Paki (the 'lad of twelve' of 1839), presented to Grey on 22 December 1853 the important taonga Te Pirau (a pounamu tiki) and Kaukaumatua (a pounamu eardrop) (see Davis, *Maori Mementos*, p.23)

² The original text is found in Grey's Papers (Auckland Public Library, Grey Collection, Maori Manuscripts GNZ MMSS 58 at page 12, copy in ATL as MSY 2101). There, we learn also from a note in Grey's handwriting that the original notes of Te Paki's observations were:

'Written by Jowett a native of the Ngatihaua tribe in the first months of 1849, on the Waikato at Kaitotehe, at Pa Tukupoto'

The invocation is noted by Marcel Mauss in his 1925 study of gifts and exchange with this comment:

‘...taonga are asked to destroy the person who receives them ; and they have the power to do this if the law, and especially the obligation, about making a return gift is not observed.’⁴

What should *Te Matapunenga* do with this material? What should the card entry foreshadowed in the Institute’s description and guide for compilers contain?

1. How should it be attributed? Certainly not to Grey, although he has collected it in *Ko Nga Whakapepeha* (1857) which will be the reference. Should the attribution be to ‘Proverb’, ‘Te Paki’, ‘whakatauki’, or what?

2. It may be noticed that it does not directly disclose any substantive norm or rule of the ‘do not kill’ or ‘look after your neighbour’ type. It in fact takes the form of a procedure – just as one might today issue a writ, the invoker of Kai-hau is making a procedural move. Of course, it carries an implicit norm – namely that recipients of gifts are obligated to make a suitable return or suffer possible harm. Above all, it assumes the Maori theory of ‘hau’ by which objects, places and people can be animated by a force with both beneficent and threatening potential. For both these reasons, it is worthy of a place in the *Compendium*, and the contextual explanation might well include the explanations in this paragraph.

3. I have elsewhere suggested that Western jurisprudence has a structural analogue to the Maori theory of ‘hau’ in John Locke’s theory of ‘property’ in which the ‘suum’ of the appropriator is ‘injected’ into the appropriated object through the medium of labour expended on the object.⁵ An epistemological problem arises here: do either or both of these theories claim that *something is actually transferred* from persons to objects, or do they only ask us to treat matters *as if* there were such a transfer. To put the matter technically, are the theories based on *hypothesis*, or alternatively, on useful *fiction*?⁶ From the point of view of the effects on human behaviour, it might not make much difference – if I act *as if* God is judging my behaviour, does anything hang on whether such a God exists ‘in objective reality’? If in full working order, the Maori theory is a Minister of Finance’s dream – the rules of exchange and reciprocity are enforced by the ‘gifts’ themselves. No need for policemen, lawyers, judges, bailiffs, or prisons!

Now, I think that in this paragraph I have gone beyond *Te Matapunenga*’s legitimate job and into inquiries which are fascinating and which I and anyone else are free to pursue, but which are beyond the brief of the *Compendium* as conceived by the Institute.

Completing an entry for Kai-Hau will be challenging, and I hope in this short discussion to have shown some of the reasons for that, and perhaps also why my

³ Grey, p. 113. The translation of the penultimate line is loose and some explanation might be necessary to get from ‘e kai ra koe i au’ to ‘destroy this fellow for me’.

⁴ Marcel Mauss, *The Gift*, first published in 1925 and available in English translation by Ian Cunnison, Routledge and Kegan Paul, 1974. Actually, this part of Mauss’ text is poorly translated by Cunnison who readers *surtout* as ‘or rather’, creating an unnecessary ambiguity between ‘law’ and ‘obligation’. Mauss’ French was ‘C’est donc qu’ils contiennent en eux cette force, aux cas ou le droit, *surtout* l’obligation de rendre, ne serait pas observee’ – ‘if the law, and *especially* the obligation to return, is not observed.’ I have therefore amended the English translation accordingly.

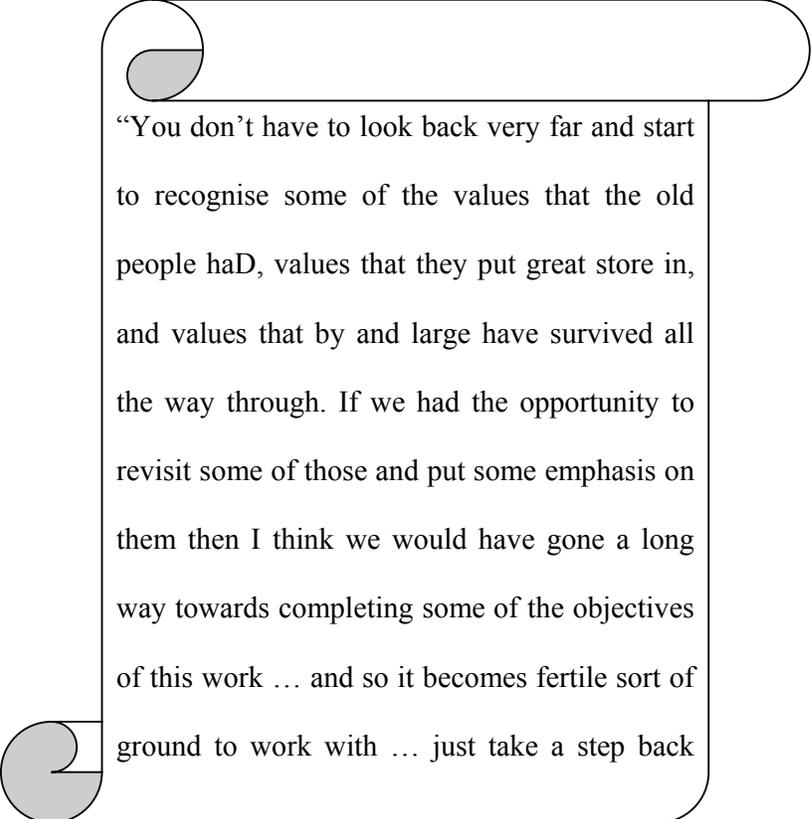
⁵ ‘Property and the Treaty of Waitangi: A Tragedy of the Commodities’, in *Property and the Constitution*, ed. Janet McLean, Hart Publishing, Oxford, 1999, Chapter 11

⁶ I have treated the question of ‘fictions’ and Hans Vaihinger’s useful distinctions between fiction, hypothesis, and dogma in ‘Fictions in the Thought of Sir John Salmond’, *Victoria University of Wellington Law Review*, Vol.30 (1999), p.159-175.

colleagues and I at Te Matahauariki look forward to stimulating work as the *Compendium* progresses.

**TE TIKANGA ME TE WAIRUA:
PLACING VALUE IN THE VALUES THAT
UNDERPIN MAORI CUSTOM**

TUI ADAMS *QSO*



“You don’t have to look back very far and start to recognise some of the values that the old people had, values that they put great store in, and values that by and large have survived all the way through. If we had the opportunity to revisit some of those and put some emphasis on them then I think we would have gone a long way towards completing some of the objectives of this work ... and so it becomes fertile sort of ground to work with ... just take a step back

Performing Law: Hakari and Muru

Dr Alex Frame
Paul Meredith

Paper presented to the
The New Zealand Historical Association
Conference 2001: From Local to Global
(Christchurch, 1-3 December 2001)

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Alex Frame and Paul Meredith
(Te Matahauariki Institute, Waikato University)

Our purpose in this short Paper is firstly to describe the Project under way at Te Matahauariki Institute, led by Judge Mick Brown at Waikato University, to compile a 'Compendium of References to Maori Customary Legal Concepts and Institutions' – more succinctly named in Maori 'Te Mātāpunenga'. Secondly, we propose to demonstrate the kind of work which the Project is generating by laying before you some work in progress under the two titles 'Muru' and 'Hakari' – we hope that this material will, even at this early stage, show the range of sources we are traversing and the form which we hope to give to the final product. Thirdly, and basing ourselves on the material we will have offered on 'Muru' and 'Hakari', we will draw attention to the significance of 'performance' in customary Maori legal transactions, and to the relevance this may have for the development in Aotearoa/New Zealand of a 'common law' which reflects the concepts and values of both our major founding cultures.

1. Te Mātāpunenga

The Mātāpunenga Project is aimed at providing a base of knowledge about Maori customary law from which to advance the Institute's study of ways in which our legal order can reflect the values of both of its major component cultures. As part of the Institute's Programme, the research team has set itself the task of compiling a reference work, named *Te Mātāpunenga*, which will bring together and present in accessible form the historical uses and meanings of selected terms and concepts of Maori customary law.

Te Mātāpunenga starts with an alphabetical list of 'titles' (see Appendix A for current list) under which will be ranged, in chronological order, a number of 'entries' each of which will set out a 'quotation' judged to have explanatory or insightful content in relation to the concept in question, together with a 'citation' as to the source of the quotation. In addition, 'context' will be provided so as to enable the circumstances of the quotation to be understood. It is intended that the research seek out explanations of the terms and concepts of Maori customary law as they are recorded in traditional Maori accounts, and in historical records both written and oral. Modern interpretations of the terms and concepts may also be noted, and in this respect, the research is linked to the Institute's ongoing 'Pu Wananga' programme of consultations and discussions with senior Maori scholars and leaders.

¹ The New Zealand Historical Association Conference 2001: From Local to Global (Christchurch, 1-3 December 2001)

Each title will begin with a 'preamble' which will provide an elementary literal translation of the term (based on Williams' Dictionary of the Maori Language or other authoritative source). Etymological information will also be included in the 'preamble', enabling links to words and traditions in other parts of Polynesia (and the Austronesian world) to be traced, where these are known. Regional differences relating to customary law may also be noted where possible. The citations will provide a guide to leading sources for further information under each topic.

It is envisaged that the 'end-users' of *Te Mātāpunenga* will be members of Maori communities, students and scholars at all levels within New Zealand, Government at many levels of policy and decision-making, and judicial officers across the range of Courts and Tribunals. It is also envisaged that the compilation will be of interest to international scholars seeking an understanding of Maori customary law.

Te Mātāpunenga will be primarily a descriptive work. It will not advocate any particular view as to any custom or its place in the legal system. Nevertheless, the work will aim at providing an authoritative point of reference for those wishing to engage in the ongoing public discourse on the future shape of the legal system of our country.

2. Muru and Hakari

In this section we provide some material from the present, incomplete, state of our work under the two titles, murū and hakari. We have made a selection of entries under each title.

Muru: Process in which a person or group is ceremonially 'stripped' of goods or other valuables to restore a balance claimed to have been disturbed by circumstances constituting a *take* (q.v.) or cause of action. Literal meanings for the word 'murū' given in Williams, *A Dictionary of the Maori Language* are: wipe, rub, rub off, pluck off (leaves), plunder, wipe out, forgive.

- a. A letter to the Governor's Newspaper, Te Karere o Nui Tirenī (sic), comments on a muru of Forsaith's (Te Potete) home in Kaipara suggesting that the victim must be present at a muru and that a concept of 'proportionality' is relevant:

"E hoa, ka tahi te mahi kino wakaharahara, me he mea, i reira ano a ia, kahore ra he kupu; tena ko tenei; kei te ngaro noa te tangata; puta mai ana te taua a - murua ana nga taonga. Ka he - engari, me i kite tona kanohi i te murunga he poka noa tenei ta ratou wakapaenga ki a te Potete, kahore ra he papa, i murua kautia ona taonga ..." ([*Translation by Te Matahauariki*] *Friend, what an abysmal affair. If he was there, then there would be no word; but in this case the person was absent; the party came and confiscated the goods. It was wrong, but if he was present at the confiscation (then?), their accusation against Forsaith is trivial, there is no basis, his property was just plundered.*) Te Karere o Nui Tirenī, Auckland, February 1, 1842, p.6.

- b. The missionary, Thomas Chapman, records a muru, noting that despite the determination by a third party that no compensation was necessary, the offender's relatives still make the offering of recompense:

"I then learn't that previously to our arrival at the meeting with Edward his friends had purchased of the flax trader here, and presented to the relations of the woman, articles of various kinds as payment for E.'s offence, tho' in Committee of the Chiefs it had been arranged that nothing should be either required or given. The relations of E. might have escaped - but this was not in agreement with their "old affections" - the tribe would have been scandalised as shabby innovators."

Thomas Chapman, Letters and Journals, Vol. 3, 1854 - 1869, Alexander Turnbull Library, Wellington, MS-Papers-QMS-0426, entry for March 14, 1855, p. 565

- c. The taua muru was specifically included by senior colonial officials among the customs that were to be suppressed with the advent of British Law. The 'Book of English Law' translated into Maori produced by Fenton on Governor Gore Browne's instructions in 1858 declared that:

"It is certain that the 'Taua Maori' is contrary to law ... The officers of justice should do their best to suppress and put an end to this bad custom."

The Laws of England; compiled and translated into the Maori language, by direction of His Excellency Colonel Thomas Gore Browne, CB, Governor of New Zealand, Auckland, 1858, p. 33.

- d. The 'Lords Prayer' in Maori states:

"Murua o matou hara, me matou hoki e muru nei i o te hunga e hara ana ki a matou" (Forgive us our trespasses as we forgive those who trespass against us)
Universally known among Maori

- e. In a minute book of the Resident Magistrate's Court, 1863-1873, the intentions of a taua bearing 'rakau' (weapons) are disputed. One side argues that these weapons were threatening, the other that they merely served the ceremonial function of a 'quarrelling party':

"... Ko te tino putake o to matou haere ki reira, he muru ... Kahore matou i hapai rakau hei patu i a ratou... Ko te hapai he hapai noa iho.... Mehemea i haere mai koe i runga i te tikanga o te muru, kua waiho atu nga rakau."
([Translation by Te Matahauariki] ... The main purpose of us going there was a muru... We did not take our weapons to assault them... Our taking them was just a matter of course... If you came according to the conventions of muru then you would have left aside the weapons.)
Court book recording charges and verdicts of Maori offenders in Taupo district 1863-1873, Alexander Turnbull Library, MS-Papers-0173-24.

- f. The Alexander Turnbull Library holds 6 sketches by an unknown Maori artist of a muru that took place at Parawera, Waikato, between 1860 and 1890. The cause for this muru was adultery and it included Ngati Raukawa, Ngati Haua and Ngati Koroki, being the relations of the claimant. The two pictures below show the ritualised and ordered nature of the affair:



Ref. A-081-002



Ref. A-081-003

Sketches of a Maori muru at Parawera; Appearance of a member of the Force. Between 1860 and 1890?, Alexander Turnbull Library, A-081-001 - 6

- g. A well known description of a muru which occurred near Opunake in 1873 is that of ‘A Taranaki Veteran’. That observer draws attention to the relationship between muru and the ‘public legitimation’ of marriage:

“the *muru* had dissolved the marriages of Kahui and Betty, of Aperama and Lydia, and had solemnised the marriage of Kahui and Lydia; she became his legal wife according to Maori custom...” ‘The Great Muru’, in the Journal of the Polynesian Society, Vol.28, 1919 pp.97-102

- h. Many Missionaries, explorers and commentators recorded the extent to which those subjected to the muru welcomed the event. The Maori approach appeared to consider it irrational to seek recompenses from those who had little ‘mana’ to offer. An editorial in a Maori periodical in 1917 emphasised the mana conferring aspect of the muru:

“Na ko taua tu Muru he whakanui mo te Rangatira. Me he mea hoki kaore e peneitia te mahi, ka whakataukitia. ‘E! to te kuri tona mate te ai he ahatanga.’ ([*Translation in the original*] *The effect of such muru or stripping would be to exalt or advance the importance of the chief; if he was not served this way, people would apply to him the proverb: “Alas the death of a dog, no notice be taken of it”...* ‘Ko te Muru Whakanui’ (Stripping to Exalt) in Te Manukura-Maori Recorder, February, 1917, Auckland, p. 13.

- i. The article also points out that muru did not necessarily have to result from an intentional act and could instead be sought for unintended happening. The article gives the example of a muru caused when Hongi Hika was nearly hit by a falling tree and asserts that the object of the muru was to caution the tribe to take proper care of the chief. The rule was that if any aitu befell a chief it was through the “*whakaarokore*” or negligence of the tribe:

“Ko te Muru Whakanui koia tenei. Me he mea ka pangia tetahi Rangatira e tetahi aitua- aitua ranei ki tona tinana tonu ake, aitua ranei ki ana tamariki, aitua ranei ki tana wahine, aitua ranei ki ona taonga i muri iho i te aituatanga ka tae te rongō ki etahi o nga Hapu o taua Rangatira, katahi ka whakatika mai aua Hapu ki te muru i nga taonga o taua Rangatira i pangia e te aitua ratou ko tetahi o ona hapu, ara ko te hapu i noho ai ia i te wa i pangia ia e te Aitua - ka murua katoatia. Ko taua Muru he mea mahi whakakite tonu i te tirohanga atu ano a taua Rangatira a ratou ko tona hapu. Heoi kaore e aha atu, nana ka muru i nga taonga, nana ka kotikoti i nga whenua - hei aha hoki? Heoti ano ta taua Rangatira ra ratou ko tona hapu e tiaki ko o ratou tinana ana ke kei pangia e te patu...” (*[Translation in the original] If some aitua (qv) or evil omen should happen to any chief to his own person, or children, or wife, or goods - as soon as intelligence thereof should reach the tribes related to, or under the mana or influence of such chief, those tribes would rise up and strip the chief, and also the tribe with whom he was residing, of all their goods and possessions; and this stripping would be done under the eyes of the chief and tribe, and they would raise no objection, even if they should deprive them of all their goods and landed possessions, and distribute them among themselves; and all that the chief and his tribe would protect, would be their own persons from blows...*) ‘Ko te Muru Whakanui’ (Stripping to Exalt) in Te Manukura-Maori Recorder, February, 1917, Auckland, p. 14.

- j. The author, referred to only as Rora, recalls an instance of adultery and the resulting attempt to muru her family. A Pakeha elder turned the taua muru back brandishing his gun and refusing to allow the ‘ceremonial party’ to cross the bridge. The family decided to take various belongings to the aggrieved group:

"Ka rite nga whakaaro o nga kaumatua, katahi matou ka haere me a matou taonga kite kainga o te ope i haeremai nei ki te whakawhiu i a matou mo te hara ... Whiti atu matou i te piriti, a tae atu ki to ratou marae, e karanga haere o matou whaea, me te taki haere atu o to matou tupuna... ka whakatakoto tana ... rakau whakairo ki te whenua, ka tahi matou katoa ka haere ki te whakatakoto i a matou taonga ...“ (*[Translation by Te Matahauariki] The elders were in agreement, and we went with our goods to the village of the group who came to punish us for the transgression ... We crossed the bridge reaching their marae, our women calling out and our elder ‘clearing the way’, he lays down his ceremonial staff on the ground and only then do we all go to lay out our goods.*) ‘Te Utu Hara’ by Rora in Te Ao Hou No.16, October 1956, p.22.

- k. Bruce Biggs comments on the effect of the muru in maintaining social cohesion:

“The taua, involving as it did all those who could possibly be interested, had the desirable effect of making public and memorable the event... the persistence of the custom of underlining the importance of any event by quarrelling and dissenting opinion is noticeable today, particularly with regard to the place at which a corpse should be buried.” Maori Marriage, Wellington, Reed for the Polynesian Society, 1970 [first published in 1960], p.52.

Biggs is not as convinced as Maning and Firth (above) as to the economic effect of muru in causing the circulation of goods. Biggs notes that muru served to

affirm the legal obligation and status of the marriage, noting non-recognition of the marriage would affect the inheritance and succession rights of the children.

- I. Not all commentators subscribe to the idea that *murū* automatically brought order to the parties affected. Angela Ballara, drawing primarily on the records of early explorers and Missionaries, argues that there were no supra-tribal authorities to appeal to in the case of inter-tribal fighting:

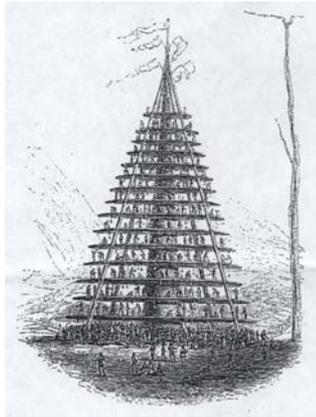
"*Taua murū* for the seizure of *utu* were not entirely effective if they are considered as an aid to social order. They involved direct contact between the interested parties, who were more likely to pursue their own desires than follow dictates of justice. The effectiveness of the system depended on the willingness of the respondent to pay *utu*, or to allow *utu* to be taken from him." Ballara, A. 'The role of warfare in Maori society in the early contact period' in Journal of the Polynesian Society, Dec 1 1976 vol. 85 no. 4, p.491.

- m. A leading modern authority on Maori Customary Law, now the Hon. Justice Eddie Taihakurei Durie of the High Court of New Zealand, makes the following statement about *murū*

"*Murū* (plunder) was a further device for the avoidance of war and involved the voluntary acceptance of plundering raids to appease misdemeanours... There are many instances where wrong was admitted and *murū* was allowed. *Murū* rarely involved a killing. It seems never to have involved the offer of hostages. The purpose was to prevent warfare not to provide a cause for more war. *Murū* enabled *utu* without further loss of *mana*. *Hapu* acceding to *murū* were sometimes claimed to have gained *mana*. *Hapu* acceding to *murū* were sometimes claimed to have gained *mana*. Native Land Court witnesses claimed land rights on the basis they had acceded to a *murū*, the *murū* party taking only that which could be carried away and thus effectively affirming the subject group's land entitlements'. Durie, E. Maori Custom Law, Unpublished, 2001, pp. 44-45.

Hakari A ceremonial feast at which presentations of food and other valuables are made to specified groups called together for the occasion. Literal meanings for the word 'hakari' given in Williams, *A Dictionary of the Maori Language* are: gift, present, entertainment, feast, high wooden framework on which food was placed at a feast (also known as a *potete*). It has been suggested that the word 'hakari' derives from the central Polynesian 'ha'ari' meaning coconut tree as in 'tumu ha'ari'. In Tahitian gifting ceremonies the gifts were attached to coconut trees. The word may have been transferred from that meaning to the high structures which were substituted for the coconut trees in Aotearoa where such trees have never grown.

- a. William Yate offers one of the earliest illustrations of a *hakari* and its associated stage:



Yate, W. An Account of New Zealand, London, Seeley and Burnside, 1835.

- b. The traveller, William Bambridge, describes a Nga Puhī hakari at Kerikeri in March 1843, in which the parties joined together for a ‘korero’ (talk fest) in which grievances were brought forward, rectified, and resolutions made. Bambridge gives a detailed description of the stage that was erected and notes some of the performative aspects surrounding the hakari:

“The scene was now one of great animation... At the time of my arrival, the party giving the feast was commencing their dancing, whilst the other party were stationed on the opposite hill in some degree of regularity with guns, spears & other various weapons ready to rush down to the stage as soon as the other party concluded their ceremony ...” William Bambridge Diaries, March 1843, Alexander Turnbull Library, Wellington, ref. MS-0129-0132, p. 21.

Bambridge captured the occasion in a sketch:



Hakari at Kerikeri, Alexander Turnbull Library, Wellington, ref. MS-0130-021

- c. In his journal entries for 21st and 22nd July 1845, the missionary Thomas Chapman, in characteristically disjointed language, describes a hakari at Puhirua, Rotorua district, given by Wiremu Hikairo, famed chief of the Ngāti Rangiwewehi people. Parties began arriving on the 18th July. The ‘main hakari’ itself was held on the 22nd. He notes the parties met together and dispersed on the 23rd of July without the least disturbance after receiving the ‘customary departing gift’:

"Scene animating in the extreme - all noise cheerfulness and motion and Hikairo indeed Master of the Ceremonies. I counted about 600 pigs and 500 bushels of kumeras besides potatoes, fish, pumpkins etc, etc. Amid all this in a retired part of the Pa, the Chiefs were speechifying thro' the

greater part of the day, Peace and their improvement the general topic ... A couple of hours cessation from all but dividing out the food into heaps according to Families nearly concluded the business of this Meeting, as tribes were respectively called to, themselves divided out into families, and this over, the feast was considered at an end." Thomas Chapman, Letters and Journals, Vol. 2, 1845-1853, Alexander Turnbull Library, Wellington, ref. MS-Papers-QMS-0426, p. 268-269.

- d. A well recorded hakari was the *paremata* or reciprocal feast given in May 1844 by Te Wherowhero of Waikato to Ngati Haua and other neighbouring tribes at Remuera, Auckland. Governor Fitzroy was present and it may be surmised that one effect was to emphasise the importance of Te Wherowhero in the eyes of Government. Up to 6000 people were estimated to have attended:

“Ka huia te wahine, me te tamariki, e ono pea mano. No Ngatipaoa 400, ko Pohepohe te rangatira. No Ngatiawa 200, ko Tupaea te Rangatira. No Waikato 800 ko te Wherowhero te Rangatira. No Ngatitemaoho 200 ko Wetere te Rangatira... Ka tae atu a te Kawana, me tana haere, ka paku te amo o tera! ka mutu te ngongoro, ka turia te ngarahu e toru mano nei, whiri ana te waewae. Ka mutu te harihari, ka noho ai mano ki raro ka rere nga Rangatira o tenei hapu o tenei hapu...’ (*[Translation by Te Matahauariki] Including women and children there were some six thousand attendees. There were 400 from Ngatipaoa, their chief being Pohepohe. 200 from Ngatiawa, Tupaea was their leader. There were 800 Waikato under Te Wherowhero. There were 200 Ngatitemaoho, led by Wetere...When the Governor and his entourage arrived, the gathering came to life and a dance was performed by 3000. When the song to pull the gathering together was completed, the crowd sat down and the chiefs of each hapu spoke in turn...*) Te Karere o Nui Tireni , Vol. 3 , No.6 , 1 June 1844, p.1.

Joseph Merrett recorded the event in a drawing titled “Maori Feast at Remuera” (1844) from which many copies have been made including the following :



National Library of Australia nla.pic-an8530327-v
Petherick, E. M. Maori meeting held at Remuera, Auckland, N.Z., May 14th, 1844. [19--?].
"Copied from the original in two sheets by Joseph Jenner Merrett". "Petherick Collection" -
Accession register. R7246.

A lithograph of the drawing is held in the Alexander Turnbull Library. The following is taken from notes to the picture printed with the original lithograph:

“A shed 400 yards long had been erected and was covered with blankets; and tents decorated with little flags dotted the ground. The provisions comprised 11,000 baskets of potatoes, 9000 sharks, 100 pigs and quantities of tea,

tobacco, and sugar. A thousand blankets had been provided as presents... 1600 natives danced the war dance. The assembling of so large a force near the infant capital caused some uneasiness among the settlers, but admirable order was maintained throughout.”

It was also recorded that excess food was sold to the local Europeans in attendance.

- e. In 1849, a hakari was held at Kororareka in the aftermath of the Northern Wars at which tribes who had fought on opposite sides were present. In a despatch to Earl Grey, 13 October 1849, Sir George Grey, who had personally attended the hakari, expressed his surprise at the assembling of such a large number of Maori, and that the former opponents had dispersed without the least disturbance:

“I am happy to be able to inform your Lordship that although the largest assemblage of natives I have yet seen met at Kororareka; and although these were composed of tribes previously hostile to each other, the whole feast passed off in the most friendly and gratifying manner; and that before I left the Bay of Islands, the great body of natives had dispersed in the most amicable manner, having apparently completely laid aside their mutual animosities”. British Parliamentary Papers (New Zealand), Vol. 6, despatch of 13 October 1849.

Cuthbert Clarke made a sketch of this hakari, capturing the scale of the event:



‘The stage erected to contain the food at the feast given by the native chiefs, Bay of Islands, September 1849,’ B-030-007, Alexander Turnbull Library.

Of this hakari the New Zealand Spectator reported:

“These ancient observances are however warmly cherished by the tribes of the northern districts, who look forward with much expectancy to their recurrence - by the chiefs for the purpose of settling matters of political importance...”
6/10/1849 from Southern Cross, 4 September 1849

- f. Government and Church sponsored Maori newspapers commented on the ‘*hakari Maori*’ as a waste of food, far too extravagant and a traditional practice that must be discarded. This is reflected in the following editorial:

“Ma te nui koia o te kai, ka aha? E pau ranei te tamepuru, te niho puta, te tini o te ika, me te nuinga o te taewa, o te aha. o te aha? Ehara tera i te mahi pai e rangi, he maumau. He aha koia nga hua o nga Hakari maori o mua? E hara oti

i nga kino katoa! te puremu, te ngangare, te tawa? ... He aha koia nga hua o te Hakari inainei? Ehara oti i te he! He matekai o muri iho, he rongotaima, he poamanatanga!" (*[Translation by Te Matahauariki] What is the point of excessive amounts of food or consuming copious amounts of fish, potatoes etc? It is not a good practice, friend, it is wastage. Where were the benefits in Maori feasts of the past? None, dispense with all that is bad! Adultery, quarrelling, What are the benefits of the hakari today? Nothing, do away with what is wrong. It merely leaves hunger, debt and impoverishment!*")
 'Ko Te Hakari' in Te Karere o Poneke, 24/9/1857, p. 2

See also 'Nga Hakari Maori' in Te Haeata Vol. 1, No. 2, Auckland, 2 May 1859, p.1 for another disapproving consideration of the hakari.

- g. The practice of hakari is defended in a letter dated April 12, 1873 to the Editor of the Maori newspaper, Te Waka o Niu Tirani. The author was responding to an earlier article by Hunia Te Ike o Matatera, of Whanganui, arguing among other things that Maori should abandon the holding of hakari:

"...kia mutu te mahi hakari o nga iwi Maori, ... notemea he mahi whakama, he mahi whakarawakore, whakapohara i te tangata. E hoa e Hunia te Ike, e tika ana tau kupu ki tau whakaaro, engari ki taku, e he ana. Ko te hakari e utua ana ano ki te hakari, ara ki te kai... ki taku titiro iho e mahi tikanga ana hoki hei oranga mo tatou, ara, i nga tikanga o te ture. Ko taua mahi ko te mahi hakari na nga tangata rangatira, kaore nga tutua e uru ki taua mahi." (*[Translation by Te Matahauariki] ... (you say) that Maori tribes should dispense with grand feasts ... because it is an embarrassing practice, a practice that impoverishes the people. Oh friend, Hunia te Ike, you are of the opinion that you are right but to me you are wrong. The hakari is a return for a hakari, that is, with food... To me it is, according to customary law, appropriate practice for our well-being. That practice, hakari, is one of chiefs and the commoner does not take part.*) Hapurona Tohikura, Te Waka Maori o Niu Tirani, Issue 9, No. 7, 14 Mei 1873, p. 53

- h. The Kai Tahu tohunga Teone Taare Tikao recounted the traditional practice of feasting and food exchange to the ethnographer, Herries Beattie:

"The people would send word of a proposed kaihaukai some weeks beforehand. The people from Kaiapoi might go to Rapaki carrying tuna (eel), kiore (rat), kauru (cabbage tree), kuri (dog), aruhe (fernroot), kumera [sic] (sweet potato) and so on, while the home people would prepare pipi or kuku (shellfish), shark, maraki (dried fish), and other sea products as a return gift. The food was not eaten at the time but was exchanged, and some of the Rapaki people would assist the Kaiapoians to carry the Kaiapoi share to that place to feast on. The stuff taken to Rapaki would be stored there until the carriers returned, and then would be enjoyed by all. In two or three years time Rapaki would carry food to a kaihaukai at Kaiapoi and bring back inland food in exchange. It was an act of courtesy to enable people to vary their foods a bit." Tikao, Teone Taare, Tikao talks: ka taoko tapu o te ao kohatu: treasures from the ancient world of the Maori / told by Teone Taare Tikao to Herries Beattie, Auckland, Penguin, 1990, pp. 130-131.

- i. In his work, Economics of the New Zealand Maori, first published in 1929, Raymond Firth devotes chapter 9 to "The Feast". He notes that European observers reactions to hakari seems to have been overly focused on the prodigious quantities of food amassed and consumed and the emotions aroused by this sight, rather than setting down any other information about these gatherings. Firth provides an interesting table of various hakari recorded. Firth distinguishes four kinds of feasts. First, those marking 'crises of life' such as birth, naming, tattooing, tangi. Secondly, those accompanying 'periodic events of economic or social importance' such as planting or opening a new whare. Thirdly, 'facilitating social cohesion' such as gathering allies, celebrating peace etc:

"The feast also played a valuable social role in promoting harmonious relations between them. Food had a very mellowing influence when it was a question of patching up tribal differences." Firth, R., Economics of the New Zealand Maori, 1959, 2nd ed, Govt. Printer, Wellington, p. 308.

The fourth was, 'economic feasts'. Firth notes the complexity of the event:

"This survey of the economic aspects of the native feast has brought out the extent to which it is bound up with other branches of activity, and emphasises the necessity of studying it not as an isolated phenomenon, but as one incident, albeit a striking one, in a series of related social events." p. 337

- j. The respected New Zealand anthropologist, Dame Joan Metge, in commenting on the marital customs of the Maori, shows how the form of hakari can be adapted to common ceremonies in modern life:

"When the wedding cake has been cut, pieces are distributed to guests and equal parts are given to the parents on each side for absent kin. In Northland, the bottom tier is reserved for the delightful 'flower ceremony'. From a central point on the marae, an elder 'calls' the names of the tribes and *hapu* represented among the guests, and at each call a member comes forward to claim, on behalf of the group named, a piece of cake ... Formerly, it is said, each claimant had to prove his right to represent his group by reciting his genealogy, and sometimes several contested the honour; but nowadays most claimants 'sing for the flower' ...".Metge, Joan. The Maoris of New Zealand. Routledge and Kegan Paul, London, 1967, p. 99.

- k. The contemporary New Zealand historian, Angela Ballara, lists and discusses a series of hakari in her 1998 work "Iwi", and comments that:

"This series of hui and hakari shows many common elements. There are obvious differences as time and contact with Europeans went on, and new occasions such as Christian festivals, adopted forms of rites of passage, new foods, new technology and new names for them were introduced. But a similar spirit and some common forms of organisation are also obvious. The work was done communally by hapu or clusters of hapu ... Reciprocity was taken for granted to such an extent that no thanks were rendered for gifts; the

recipients were incurring a new obligation.” Ballara, A. "Iwi: The Dynamics of Maori Tribal Organisation", Victoria University Press, 1998, p225

The first of Ballara's list involves a pre-European hakari in which a chief unable to provide sufficient food for a 'return' hakari insisted on giving land instead.

- l. In the Muriwhenua Land Report, the Waitangi Tribunal discussed the persistence of certain Maori customs, including hakari, and made reference to a feast in 1863 (see an Account of Meeting Held at Ahipara, May 1863, Grey Papers, Auckland Public Library). The Tribunal also makes a brief comparison with the feasting practices of First Nations in Canada:

“The resident magistrate’s determination to abolish the hakari has parallels with the Canadian authorities’ drive to ban the Indian potlatch, which was remarkably similar in structure and purpose. In both countries officials remarked despairingly on the extravagant displays and generous gifting of all that the people possessed, only to face poverty, penury, and starvation, they thought, next winter. In fact, the hakari was an insurance that, if crops failed locally or there was a war, full support must inevitably come from elsewhere, as honour would so require.” Waitangi Tribunal, Muriwhenua Land Report, Wai 45, 1997, Government Printer, pp. 195-197.

- m. The Gisborne Herald reported the official return of the Moutohora Quarry to the 3000 or so owners of Whakapaupakihi 2 Block and the subsequent celebrations:

“The owners, of Whakatohea and Te Aitanga o Mahaki descent, came from near and far to celebrate the occasion with an enormous hakari (feast) in a specially erected marquee at the Matawai School after an emotional ceremony at the quarry site.” ‘Quarry is returned to original owners’, Gisborne Herald, Tuesday, 10 April 2001

- n. At the marriage feast of Potatau and Ngawaero (c.1815) a visiting chief commented disparagingly on the absence from the fare of preserved birds. Overcome with embarrassment, Ngawaero sought to remedy this slight upon her name. She requested the assistance of her Raukawa and Maniapoto kinsmen to carve an elaborate vessel named Hao-whenua, to be filled with preserved birds and carried by eight men and presented at another hakari. When she presented it to the gathering, she led her people in the following composition, as a relish and also as a retort to those who passed disparaging (defamatory) remarks upon her honour. This patere, still sung today by Waikato/Maniapoto people, illustrates the adversarial use of food.

“E noho ana ano i te papatahi a taku koro
Whakarongo rua aku taringa
Ki te hiha tangi mai a Kukutai
Me aha koe i te awa, whakawhiti ki Puniu,
Te Pikitia i te pinakitanga ki Turata
Ko Te Arawi!

E kore au, e Kahu, e aro iho he kaitata;
 Waiho tonu i te huanui”
([Translation in the original]
I am sitting on the marae of my spouse
Mine ears hearing
The sneers of Kukutai
Regardless of the river I cross to Puniu,
Do not climb the slopes to Turata
To Te Arawai!
I will not turn aside, there is plenty of food;
Left by the roadside!)
 ‘He Patere na Ngawaero’ in He Waiata Onamata: Songs from the Past.
 Auckland, Aotearoa, NZ: Te Rangatira Trust; Wellington, NZ, Huia
 Publishers, 1998, pp.29-31.

3. Performing Law

We have found the work of Professor Bernard Hibbitts at the University of Pittsburgh School of Law to be the most helpful in opening up our thinking to the significance of the ‘performance aspect’ in non-literate law systems and, for our purposes, in Maori customary law². Hibbitts writes:

‘...the performative understanding of law differs profoundly from our own. In a writing culture than can physically separate contracts, judgments, and statutes from their proponents, we consider law to exist apart from, and indeed above, human individuals. This attitude is perhaps best captured in the aspirational phrase “a government of laws and not of men”. In performance cultures, however, laws and men are virtually coincident. Finding the law generally means finding someone who can perform or remember it.’³

Before Hibbitts, however, Johan Huizinga from his chair of history at Leyden in the 1930’s had noted the importance of the ‘play-element’ in law. An entire chapter of his illuminating study of ‘Homo Ludens: A Study of the Play Element in Culture’ is devoted to “Play and Law”:

‘That an affinity may exist between law and play becomes obvious to us as soon as we realize how much the actual practice of the law, in other words, a lawsuit, properly resembles a contest whatever the ideal foundations of the law may be.’⁴

Huizinga’s wide study led him to find at the roots of civilisation:

² Professor Bernard Hibbitt’s major work in this area is perhaps ‘“Coming to our Senses” : Communication and Legal Expression in Performance Cultures’ , Emory Law Journal , Vol.41 (1992), p.873. We make use also of Professor Hibbitts’ paper delivered in March 1996 to the ‘Performance Studies Conference’ at Northwestern University .

³ ‘Coming to Our Senses’ , at page 956.

⁴ Johan Huizinga , Homo Ludens , first published 1933 and in English 1949 , Temple Smith , London , 1970 , p.97.

‘a mental world in which the notion of decision by oracles, by the judgement of God, by ordeal, by sortilege (i.e. by play) and the notion of decision by judicial sentence, fuse in a single complex. Justice is made subservient – and quite sincerely – to the rules of the game’⁵

Should we be surprised at the persistence of the ‘play-element’ in our legal institutions? Huizinga thought not. He had :

‘gradually become convinced that civilisation is rooted in noble play and that, if it to unfold in full dignity and style, it cannot afford to neglect the play-element...’⁶

When Sir Henry Maine came to trace the origins and development of the legal system centred at Westminster, he noted the central importance of the ‘forms of action’ – the limited repertoire of forms in which a complaint could be presented to the King’s courts- and made the famous observation that:

‘substantive law has at first the look of being gradually secreted in the interstices of procedure’⁷

We come to two points with which to conclude our short Paper:

First, that this focus will cause us to look carefully at the place of the performance elements in Maori and Polynesian customary law. A celebrated hui two hundred years ago may have been the origin of constitutional consequences which persist today, and are recorded, taught, and ‘proved’ in a song by an influential chief on the occasion. The presentation of an important taonga, recorded in action and song, may state and record the ‘contractual’ relations between the parties. The carving on a meeting house may provide conclusive evidence as to customary rights. In each of these cases, it will be seen that, as Hibbitts suggests, ‘performance’ provides opportunity for social participation, preservation and verification of both facts and norms, and legitimation of relationships. Accordingly, when we look as we have today, at muru, or hakari, we may take a closer interest in the performance elements. We will understand George Steiner, who in his introduction to Huizinga’s book observes of hakari-like institutions in many cultures involving ceremonial presentations of food and gifts:

‘Even spectacular waste when encapsulated in a social ritual, in a framework of agreed, and reciprocally binding rules, can prove to be a civilising agency.’⁸

Secondly, if our hypothesis that Maori customary law is embedded in performance is correct, then we would expect a consequence for our Institute’s stated objective of exploring ways in which the legal system of Aotearoa/New Zealand might better reflect the values and institutions of both our major component cultures. Namely, that the maintenance, and indeed development, of opportunities for participation by performance in our legal system is likely to accord better with traditional Maori

⁵ Homo Ludens , page 100

⁶ at page 237

⁷ Sir Henry Maine , Early Law and Custom , p.389

⁸ Homo Ludens , page 11

methods than the reduction of law to technical verbal signals. For example, it ceases to be obvious that the removal of the pageantry and symbolism of legal process – much advanced in New Zealand and elsewhere on grounds of supposed ‘rationality’ – represents undiluted progress. Nor, from the perspective here discussed, is it self-evident that the modern fashion of legislative drafting – away from customary and poetic style and towards supposedly ‘plain English’ - will inevitably produce the most social cohesion. Finally, a question is raised whether the bureaucratisation of legal process may starve the performance tradition of the creative element on which it partly relies. The foregoing discussion pinpoints the diverging perspectives. The modern fashion assumes comprehensibility and demystification to be the primary requirements whereas the customary systems of both our major component cultures relied upon performance and inspiration – what Maori might call ihi and wehi - to a considerable extent. We do not suggest that exclusive reliance on either approach provides the whole answer, but rather that a balance might be found between them. Here, we are on the threshold of a major debate which must await another occasion.

END OF PAPER

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NOTES

Te Matapunenga: How does it “*Meta*”? Encountering Wider Epistemological Issues:

by Tonga Karena.

Paper presented for the 7th Joint Conference
“Preservation of Ancient Cultures
And The
Globalization Scenario”

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University Of Waikato
Hamilton, New Zealand
Te Whare Wananga o Waikato.

In coming to understand the wider epistemological considerations that are intricately involved in the research process for Te Matapunenga¹, I have taken a heuristic approach that has attempted to strand together the various insights from selected authors that have emerged through the course of my own investigations. The purpose of these investigations has been to aid in the conceptualisation, and articulation of a/some *Meta - theoretical* description(s) of some of the issues that are central to the overall design of Te Matapunenga. The scope of my investigations has covered two significant dimensions that will contribute to the development of an epistemological framework for Te Matapunenga. The first dimension will examine the juxtaposition of orality and literacy as two distinct mediums of language that have been important factors in the cultural/legal development of the Maori - where I have been able to identify various psycholinguistic factors inherent within each of the above. These factors play a significant role in influencing an individual/collectives decision making while also being obliged to conform to society's norms and conventions. The second dimension is concerned with translation theory - the extent to which ideological and political norms can impact on the decisions of the translator and therefore influence the process and finished product of the translation itself.

Te Matapunenga

The title of the proposed compendium originates from the word *punenga*, which means *clever, intelligent*, always seeking and acquiring *useful*² knowledge. The lexeme *Mātā* preceding the word *punenga* can mean a number of things when used with different words. Its primary meaning however is *Heap, layer up and/or Receptacle packed with...*³ and when used in conjunction with *Mātāwaka* for instance its intended meaning is the *gathered canoes* in reference to the people gathered at an event. It can be then construed that what is proposed for Te Mātāpunenga is a receptacle that is always seeking and acquiring useful knowledge. The useful knowledge in this case that is being sought is the customary law of the Maori.

What it is that is claimed to be custom and hence law in terms of the obligations and rights embedded in Maori socio – legal phenomena has been the background of research for Te Matahauariki. Whether the individual has been coerced into action by supernatural consequences, or his/her own social pressures - each relevant concept will be closely examined for its context in the wider socio – legal framework of the Maori. In so doing, we concentrated and decided upon a list of key terms to be arranged in alphabetic order in the published work as a general macro – structure to guide the entries. Each entry will attempt to convey the general meaning of the concept, the context of the document from where the entry was recorded, a citation of the source, a translation if the entry selected is written in Maori, and a short comment that discusses the concept at hand. The last

¹ This project is part of a wider research programme on Laws and Institutions for Aotearoa/New Zealand being undertaken by the Matahauariki institute, the University of Waikato and supported by a grant from the Foundation for Research, Science and Technology.

² I would note that the words *useful knowledge* for the meaning of *punenga* as important for any decisions in the future regarding its content.

³ Williams Dictionary, pp 185

component of written comments will be subject to editorial scrutiny ensuring that any overgeneralizations, misreading, and possible pitfalls encountered during the translation, and/or even the transcriptions are quickly eradicated.

Orality and Literacy

The introduction of the phonetic alphabet into the consciousness of the preliterate Maori would have had considerable effect on the religious *modus operandi* of the Maori. The full extent of which will not be discussed here however. Our major concern in this discourse is to verbalize some of the cognitive features that emerged through its penetration into the collective mentality of the Maori. Moreover, to at least gain a partial glimpse of the Maori conceptual response that would have occurred as a result of their interiorization of the phonetic alphabet.

Marshall McLuhan, a pre-eminent scholar wrote the seminal and pioneering work called: “*The Gutenberg Galaxy: The Making Of Typographic Man*” he, like others (Levi Strauss: 1962; Goody & Watt: 1963; Havelock: 1963; Ong: 1967) stimulated the intellectual interest in the subject of orality/literacy that has continued to this day. Notwithstanding its contemporary developments, these authors articulated a lot in the 1960’s that still has relevance today which in some ways are still ahead of their time. At the very least I would like to revisit some of their insights particularly, McLuhan and Walter Ong⁴, that will hopefully show some of the underlying issues confronting Maori and New Zealand as a whole, while trying to grapple with different epistemological systems.

In McLuhan’s introduction, he presents the underlying theme for the *Gutenberg Galaxy*:

“ That the abstracting or opening of closed societies is the work of the phonetic alphabet, and not of any other form of writing or technology, is one theme of *The Gutenberg Galaxy*. On the other hand, that closed societies are the product of speech, drum and ear technologies brings us at the opening of the electronic age to the sealing of the entire human family into a single global tribe. And this electronic revolution is only less confusing for men of open societies than the revolution of phonetic literacy, which stripped and streamlined the old tribal and closed societies.”⁵

He argues the point that until these technologies were invented “*the very instantaneous nature of co – existence among our technological instruments has created a crisis quite new in human history*”⁶ The obvious crisis that McLuhan refers to is discussed in the above quotation – which in short, describes a natural phenomenon currently affecting human evolution. Similarly for Ong these technological innovations opened up a whole new arena of interpreting cultural and religious history. Centring his discourse around the development of the sensorium and how “*Cultures vary greatly in their exploitation of the various senses and in the way in which they relate their conceptual apparatus to the various senses*”⁷ he suggests that the “*...present sensorium is dismayingly mixed and we*

⁴ Ong Walter “*The Presence of the Word Some Prolegomena for Cultural and Religious History*” (1967) by the same author: “*Orality and Literacy: The Technologizing of the Word*” (1982).

⁵ McLuhan pp 8.

⁶ Ibid pp 5.

⁷ Supra at n 4 pp 3.

*are hard put to understand it, but for the first time in history of mankind the possibility of some kind of understanding is opening up. This itself gives us a unique opportunity to become aware at a new depth the significance of the word.”*⁸

For Maori, not dissimilar to other cultures - the full realisation and extent of the impact the written word has had on his/her consciousness still remains obscure. The inevitable nostalgia that has arisen towards our oral roots is a natural consequence of writing and its cognitive impacts being subsumed within the Maori thinking faculties. The emphasis on the text and/or written word as an expression of thought isn't as crucial as other mediums of communication as Maire Tau explains:

“The thoughts of a community are not limited to the written word. Spatial layout of the marae, the village, one's body movements, the iconography of the community – all these represent forms of thought in a language that exceeds the text.”⁹

The irony of course that is embedded in all criticism of the written word and its associated cultures is that, it is the very technology of writing that brought about the critiquing of the word and culture(s) into existence. Ong is succinct when he says: “...*there is no way directly to refute a text. After absolutely total and devastating refutation it says exactly the same thing as before.*”¹⁰ He also says “...*Awareness of the succession of the media stages and wonder about the meaning of this succession are themselves product of the succession*”.¹¹

Of particular fascination also is McLuhan's view on the detribalising effects of literacy:

“No pictographic or ideogrammic or hieroglyphic mode of writing has the detribalising power of the phonetic alphabet. No other kind of writing save the phonetic has ever translated man out of the possessive world of total interdependence and interrelation that is the auditory network. From that magical resounding world of simultaneous relations that is the oral and acoustic space there is only one route to the freedom and independence of detribalised man. That route is via the phonetic alphabet, which lands men in varying degrees of dualistic schizophrenia.”¹²

In an abstract way it is sensible to believe that writing can create a clearer sense of the “Other” that also could be perceived as the “*dualistic schizophrenia*” that McLuhan refers to. This doesn't however preclude the existence of the ability to self-reflect in oral cultures; it instead proffers the idea, that until the advent of the phonetic alphabet, the sensorium of the oral man *situated* knowledge as opposed to *abstracted* knowledge. The abstraction of textualized knowledge into its many component parts as it has been classified today into its many different disciplines reflects the cascade effect of knowledge, beginning to accumulate, splinter, and polarize, characterising knowledge as the textual labyrinth as it is today. Olson supports this view when he says: “*Writing has an enormous advantage in that it allows the accumulation of texts that go far beyond the*

⁸ Supra at n 4 at pp 9.

⁹ Tau, Te Maire “*Matauranga Maori as an Epistemology*” in *Histories, Power and Loss: uses of the past: A New Zealand Commentary* (ed) Andrew Sharp & Paul McHugh 2001, p 69.

¹⁰ Ong Walter, “*Orality and Literacy: the technologizing of the word*” (1982)

¹¹ Supra at n 4 pp 17.

¹² McLuhan Marshall, “*The Gutenberg Galaxy: the making of typographic man*” (1962) p 22.

storage capacities of any knower”¹³ This essentially shaped the genre of literary criticism that, albeit distinguished the inherent autobiographic nature of the written word. Naturally, the constant criticism of each other’s thoughts and ideas throughout typographic history has seldom - had any peaceful response. As Goody suggests:

“The history of writing can hardly be dissociated from the history of censorship, either of the blatant kind exercised directly by the organs of power, or of the more insidious kind, self-censorship, when authors or publishers (whose interests may be opposed) themselves anticipate the wishes of outside forces, whether of their own patrons (if that kind of support or protection is needed) or of more general political pressures.”¹⁴

The emergence of the textualized Self that has slowly been pieced together through the cumulative power of the written word - has effectively swamped mans capacity to spatialize his identity according to his immediate environment. The freedom of thinking that came through the introduction of the phonetic alphabet is now viewed suspiciously, as the close association of both hegemony, and the written word, has endeavoured to modernize and glocalize the preliterate according to a preordained set of cultural beliefs. Hence, the opportunity cost of extending the senses, or of developing the faculties of one over another is far too ambiguous of a venture to be dismissive about. Similarly for those epistemological systems derived from a particular orientation of a specific sense - would react drastically when faced with this predicament. Ong describes these subliminal processes exceptionally well:

“When the exquisitely organized worlds of thought and speech (with their natural affinity for each other) are further ordered by reduction to segmentation, to spatial surface, the possibility of control and organization of the world represented through thought and word become overpowering”¹⁵

Although the scope of the research design for Te Matapunenga is to merely record the contributors explanations¹⁶ as to what constitutes customary law, the fact that a lot of the information to be used has been drawn from written sources implies that, to a certain extent, that the abstraction of Maori identity and his frameworks of law have already began to ferment within a literates consciousness. Whether Maori will begin to view themselves as a fixed textual personality confined to the margins of a page with its visible demarcations of time, space and identity will determine and challenge the capability of Maori to critically harmonize (as opposed to critically analyse) the wider implications of the written word.

Translation Theory

The evident step from oral consciousness to that of the literate isn’t necessarily a small one. As it has been shown the hiatus between these two dimensions is a vast one – with infinite possibilities of interpretation. Similarly enough, the transfer of the meaning of a

¹³ Olson David R, “*Literacy as metalinguistic activity*” in *Literacy and Orality* (ed) David R. Olson & Nancy Torrance (1991) pp 253.

¹⁴ Goody Jack, “*The Power of the Written Tradition*” (2000) pp 157.

¹⁵ Supra at n 4 pp 136.

¹⁶ That is, the views of the authors the material used to illustrate the various entries.

word from one culture to a completely different culture is also loaded with infinite possibilities of interpretation. It is enough to say, at this time that the current theoretical foundation for translation studies resides at a juncture where the two major disciplines of linguistics and cultural studies are seeking at least a conceptual amalgamation of sorts.¹⁷ Tymoczko has made optimal use of the metaphor of the telescope and the microscope in characterising the development of the two significant ideologies that has emerged in translation studies over the last decade. The microscope or the domain of linguistics (Baker: 1992; 2001) reveals the small-scale textual elements that are embedded in the word and sentence. The telescope or the cultural domain (Herman's: 1985; Lefevere: 1992; Toury: 1995; Chesterman: 1997; Robinson: 1997) focuses on the political and ideological constraints on the translator and the material being produced. She concludes that both disciplines must take a position of mutual reinforcement where they are "...acting as confirmation and substantiation of one's conclusions"¹⁸

Given this call for a convergence of existing research methodologies for Translation studies essentially shows how ambiguous an endeavour of devising a research tool that will always end up being eclectic, discursive, and *meta*autonomous as the parameters of language are perpetually in motion. None but George Steiner could have summarized the essential nature of language as he does:

"Each and every language construes the facticity of existential reality, of 'the given' (*les donnees immediates*) in its own specific way. Each and every window in the house of language opens on to a different landscape and temporality, to a different segmentation in the spectrum of perceived and classified experience. No language divides time and space as does any other...no language has identical taboos as any other...no language dreams precisely like any other."¹⁹

Realising the above compels one to discard any tendency towards prescriptivism, whereby methodologies are reified to the extent they either suffocate a language, by only promoting sterile linguistic dissection, or excessive usage of ones poetic license, where the translator himself has taken *author – ity*. The inclination to show clarity, transparency, and accountability at the vanguard of cross-cultural fertilization has many impulses - politics and power being centred at the nexus of these influences.

Douglas Robinson, the author of "*Translation and Empire: Post Colonial Theories Explained*" (1997) refers to Richard Jacquemond and how he hypothesized over the various power differentials that characterise the problems of translating. He quotes:

- (1) A dominated culture will invariably translate far more of a hegemonic culture than the latter will of the former;
- (2) When a hegemonic culture does translate works produced by the dominated culture, those works will be perceived and presented as difficult, mysterious, inscrutable, esoteric and in

¹⁷ Maria Tymoczko in "*Connecting the Two Infinite Orders Research Methods in Translation Studies*" in *Cross Cultural Transgressions Research Models in Translation Studies II Historical and Ideological Issues* (ed) Theo Hermans, (2002) St Jeromes Publishing.

¹⁸ Ibid at p 24.

¹⁹ Steiner George, "*What is Comparative Literature*" An Inaugural Lecture delivered before the University of Oxford on 11 October 1994 p 9 – 10.

- need of a small cadre of intellectuals to interpret them, while a dominated culture will translate a hegemonic culture's works accessibly for the masses;
- (3) A hegemonic culture will only translate those works by authors in a dominated culture that fit the former's preconceived notions of the latter;
 - (4) Authors in a dominated culture who dream of reaching a large audience will tend to write for translation into a hegemonic language, and this will require some degree of compliance with stereotypes."

Jacquemond's own theorizing across these power differentials has led him to posture the existence of a 'colonial moment' whereby the translator looks at the external forces guiding his/her decisions while translating. In the colonial moment he says that:

"...translators working into the dominated language-culture are servile mediators who integrate foreign objects without question; translators working in the other direction into the hegemonic language culture, appear authoritative who keep the other culture at a non-contaminating distance at the same time as they make it acceptably comprehensible"²⁰

As soon as the translator realises these type of pressures that are subliminally coercive is brought the translator to a post colonial moment where he/she is able distinguish between the political consequences of those decisions. Moreover, the translations will not be perceived as being produced in a vacuum, unaffected by space and time.

Conclusion

The research scope of Te Matapunenga will no doubt become duly affected by a lot of the theoretical issues that have been discussed above. The final decision for the selection of a meaning for a particular word, the structuring and possibly restructuring of sentences, the omission of particular words for translation *and* transcription purposes, are all decisions that are located at the micro-textual level. They will all definitely impact on the general macro-structure of the document depending on how each decision at the micro-level is decided. Conversely, decisions made at the macro-level, for instance the already selected list of terms has arbitrarily designated these as what constitutes the key elements of a general customary framework of law for Maori. Although the list is flexible in nature the starting and end point of the list will determine what will be included/excluded. Bridging the epistemological divide will require a dispassionate resolve that will help develop a state of awareness where the impacts of textualization, translation and globalization are seen as being part of a wider process of *metalanguage* expansion and therefore the expansion of *metacultures*.

²⁰ Robinson Douglas, "Translation and Empire Post Colonial Theories Explained" (1997) pp 36.

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