

Kua Hinga te Ture: Tikanga Māori, Te Reo Māori and the Law

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Abstract—This article considers the connection between tikanga Māori and te reo Māori in the 19th century through the concept of rāhui. It compares several references to the tikanga Māori practice of rāhui in English language newspapers and te reo Māori niupepa during the 19th century. It argues that, during this period, tikanga Māori could not be fully understood through the English language. While the English language faced some difficulties in conveying the spiritual and relational depth of tikanga Māori, the most significant hurdle to communicating about rāhui in English was the authorial choice of English authors. These authors did not see tikanga Māori as law and their priorities proved a large barrier to the accurate portrayal of tikanga Māori into English.

Key words: “Tikanga Māori”, “Te Reo Māori”, “Rāhui”, “Niupepa Māori”, “Newspapers”

I INTRODUCTION

ET Durie asserted that: “There is as much a ‘Maori law’ as there is a ‘Maori’ language”.¹ I consider that Māori law *is* Māori language; the two are intertwined. In this article I argue that, during the 19th century, tikanga Māori was most effectively communicated through te reo Māori; and that this was largely because of the authorial choices of English-language writers.

This article, by way of textual analysis, will consider the connection between tikanga Māori and language through the concept of rāhui. As a tikanga Māori practice, rāhui temporarily

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1 ET Durie “Will the Settlers Settle? Cultural Conciliation and Law” (1996) 8 OLR 449 at 451.

prohibit specific human activity in a defined geographic area for a time, often utilised after a drowning or for conservation purposes.² Rāhui are becoming increasingly well-known outside Māori communities as procedures of Māori law. In 2019, following the explosion of Whakaari/White Island, a 130 km rāhui was imposed by Te Whānau-ā-Apanui across the Bay of Plenty coastline.³ Te Rūnanga o Toa Rangatira in June 2023 placed a prohibition on the taking of kaimoana, swimming and fishing in Tītahi Bay after a death on the water.⁴ Rāhui show Māori law in action, and non-Māori will often obey them as well. While these are modern examples, historical descriptions of rāhui can be examined to reveal the role of language in understanding rāhui as legal processes.

By way of a small selection of 19th century newspapers, the analysis of rāhui in this article provides evidence that, during this period, the full extent of Māori law failed to be understood through the English language. As this article will demonstrate, there are two reasons for this. The first is that the English legal language struggled to capture the depth and expression that provided Māori law with an additional source of power. By tapping into a spiritual and relational element, as well as incorporating terms embedded with historical and cultural context, te reo Māori imbued Māori law with a unique strength that the English language struggled to achieve. In contrast, the second reason contributing to discrepancies between English and Māori portrayals of rāhui was not one of language sufficiency, but language choice. This authorial choice reflected the values and priorities of English authors who did not see rāhui—or tikanga

2 Richard Benton, Alex Frame and Paul Meredith *Te Mātāpunenga: A Compendium of References to the Concepts and Institutions of Māori Customary Law* (Victoria University Press, Wellington, 2013) at 310.

3 Māni Dunlop and Te Aniwa Hurihanganui “What the rāhui in place after Whakaari erupted mean and why they are important” *RNZ* (online ed, Wellington, 12 December 2019).

4 Gianina Schwanecke “Rāhui in place following boatie death in Titahi Bay” *Stuff* (online ed, Wellington, 19 June 2023).

more generally—as a legitimate source of law. Even when the legally binding nature of rāhui could be adequately understood in the English language, the concepts of rāhui were less likely to be translated accurately due to underlying attitudes of English speakers in the 19th century.

This article demonstrates that te reo Māori texts in the 19th century provided Māori-speaking audiences with a different understanding of rāhui to English-only audiences, which resulted in the respective audiences holding different attitudes towards rāhui. There were fewer barriers to expressing Māori legal concepts in Māori, and when combined with the values and language choices of English authors, this meant te reo Māori was the most appropriate vehicle for communicating about rāhui in the 19th century.

This conclusion is one that stands true in the 19th and early 20th centuries, but perhaps not beyond that timeline. In a modern context, the nature of the audience and authors have changed, with Māori readers and writers more often using English than te reo Māori. As most Māori people today cannot understand te reo Māori, this analysis is restricted in its application to the 19th and early 20th centuries.

It is important to note that within tikanga Māori there is diversity between iwi and hapū. The performance and understanding of tikanga Māori will differ from one region to another.⁵ Being of Pākehā descent, my understanding is not specific to a particular rohe,⁶ but is built upon the teachings of academics throughout Aotearoa. I am of Scottish descent on my father's side and English on my mother's, with my interest in this area having been sparked by my studies in te reo Māori and

5 Hirini Moko Mead *Tikanga Māori: Living by Māori Values* (Huia Publishers, Wellington, 2016) at 15.

6 See generally Benton, Frame and Meredith, above n 2, at 339. A rohe is a territorial area of a particular iwi or hapū group.

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Following the methodology and a brief portrayal of the context of rāhui, the three substantive parts of this article analyse excerpts from 19th and early 20th century English and te reo Māori newspapers. Part II considers a bilingual piece from *Te Wananga*, which gives evidence to support the first part of my thesis: that the English legal language faced barriers in expressing Māori law with the same strength as te reo Māori. Part III looks at two English articles from *The Colonist* and the *Hawkes Bay Times*, upholding the second element of my thesis: that settler values and authorial choice had a significant impact on the translation of Māori law. Part IV analyses one English and one Māori piece from *The New Zealander* and *Puke ki Hikurangi*, demonstrating the conflicting views about rāhui that arose from communicating Māori law in English.

A Methodology

This research focused on a small selection of 19th and early 20th century English language newspapers and te reo Māori niupepa that discuss the tikanga Māori practice of rāhui. The niupepa were extremely important to Māori and became a key tool in the transmission of information. An East Coast trader recounted that: “The [Māori] believe anything that appears in the *Maori Messenger*; there is not a corner they do not read”.⁷ Māori used niupepa as a platform to share viewpoints and make announcements.⁸ Tā Tīmoti Kāretu argues that without 19th century print culture, much more of the lives and feelings of Māori ancestors would have been lost or controlled by a select

7 *Report of the Board of Enquiry into Native Affairs* (9 July 1856) appendix at 3 as referred to in Lachlan Paterson “Ngā Reo o ngā Niupepa: Māori language newspapers 1855-1863” (PhD Thesis, University of Otago, 2004) at 42.

8 Paterson, above n 6, at 3.

few.⁹ Māori language newspaper *Te Hokioi* saw its value “in carrying our opinions ... to the peoples of this world”.¹⁰ These papers printed voices that had not previously been recorded in a secular manner, making the collection highly valuable.

The niupepa Māori in this discussion were sourced from the “Papers Past” collection and the New Zealand Digital Library’s online database of the Alexander Turnbull Library collection, “Niupepa Collection 1842–1933”.¹¹ English newspapers were sourced from the “Papers Past” collection. These digital archives were searched using the term “rāhui” for Māori language texts, and “rāhui” along with English translations and similar words like “ban” and “prohibition” for English language texts. The selected texts include opinion pieces, public notices and other material.

I analyse each text by focusing on either key terms/phrases or themes that differentiate it from other articles. Due to its bilingual nature, I approach the text in Part II differently to single-language texts in this paper. I translate the original Māori text back into English, to aid comparison with the English text as written in the niupepa. I then draw out key terms that feature in the reo Māori text which are missing or translated differently in the English text, and these form the basis of the analysis. As the article was written in both English and te reo Māori, I can directly compare the two texts. By drawing out these key terms, the differences between the texts are revealed.

The analysis of English-only texts in Parts II and III focus on key themes as opposed to terms. As there is no translation for these pieces, focusing on themes allows a broader interpretation of the differences between the reo Māori and English texts. For

9 Timoti Kāretu “Maori Print Culture: The Newspapers” in Jenifer Curnow, Ngapare Hopa and Jane McRae (eds) *Rere atu, taku manu!: Discovering history language and politics in the Maori language newspapers* (Auckland University Press, Auckland, 2002) 1 at 15.

10 Paterson, above n 6, at 111.

11 Te Puna Mātauranga o Aotearoa | National Library of New Zealand “Papers Past” <<https://paperspast.natlib.govt.nz/>> [“Papers Past”]; and New Zealand Digital Library “niupepa: māori newspapers” <www.nzdl.org>.

the reo Māori-only piece in Part IV, I provide my own English translation. I focus my analysis of this piece on areas where the author inserted emotive emphasis, cultural context and references to law. These are aspects where it differs most notably from English texts. Additionally, there is focus on the author being a wahine Māori, as this is a very rare feature of rāhui announcements. Overall, I investigate elements of each text that differentiate it from others, with my specific focus depending on the language and structure of the individual text. The analysis of each text then considers why these differences might have arisen, along with their consequences.

If a text is from a Māori language only newspaper, the English translation and subsequent analysis is my own. I note the Māori language texts lack *tohutō*.¹² My analysis refers to these words as they appear in the *niupepa*; if the word lacks a *tohutō* in the text, I will not add one, though I will translate the text as if the *tohutō* was correctly placed.

B The context of tikanga Māori and rāhui

1 Introduction to tikanga Māori

Before colonisation by the British, Māori had established systems of law and government.¹³ They were governed by *tikanga Māori*, the first law of Aotearoa New Zealand.¹⁴ *Tikanga Māori* is not limited to Māori law; it is a way of life. As such, *tikanga Māori* and *Pākehā* law are not parallel or equivalent systems.¹⁵ There are a multitude of cultural precedents and habits that may not be considered “law” but are central to *tikanga Māori*.¹⁶ The

12 Tohutō are macrons symbolising long vowels in te reo Māori.

13 Linda Te Aho “Tikanga Māori, Historical Context and the Interface with Pākehā Law in Aotearoa/New Zealand” (2007) 10 Y B N Z Juris 10 at 10.

14 Ani Mikaere “Tikanga as the First Law of Aotearoa” (2007) 10 Y B N Z Juris 24 at 24.

15 Joseph Williams “Lex Aotearoa: An Heroic Attempt to Map the Māori Dimension in Modern New Zealand Law” (2013) 21 Waikato L Rev 1 at 3.

16 At 3.

extensive reach of tikanga Māori goes beyond what we might call law.¹⁷ Tikanga Māori is a vast and diverse system of social order. It is the Māori ethic, dictating correct behaviour and the right way of being.¹⁸

Tikanga encompasses the practices and values that inform good relationships between people, the land and the resources with which they interact.¹⁹ For Māori, the core values of tikanga provide essential guidance on how to act.²⁰ These values and practices permeate all aspects of Māori society, so finding a situation where tikanga Māori is not relevant becomes extremely difficult.²¹ Tikanga Māori is “the Māori way of doing all things”, from the sacred to the mundane.²² Rāhui are an example of a tikanga Māori legal practice that remains prominent in Aotearoa today.

2 Traditional rāhui in Aotearoa

The practice of rāhui embodies the values and principles of tikanga Māori. Rāhui are a means of social control and place restrictions or prohibitions on specific human activity in an area for a period of time.²³ These restrictions could take the form of temporarily prohibiting entry to an area or placing constraints on the collection of food and other resources.²⁴ Rāhui might be imposed to conserve such resources, to protect people from the

17 At 4.

18 Mead, above n 5, at 14.

19 At 8.

20 Moana Jackson “It’s Quite Simple Really” (2007) 10 Y B N Z Juris 32 at 32.

21 Mead, above n 5, at 13.

22 Joseph Williams and David Williams *He aha te tikanga Māori* (paper written and revised for the Law Commission’s Māori customary law project, November 1998) at 8.

23 Benton, Frame and Meredith, above n 2, at 310.

24 At 310.

tapu of death,²⁵ or as a political device used by iwi or hapū to affirm their mana²⁶ over a contested area.²⁷ While they may be observed differently today, rāhui remain a vital aspect of tikanga Māori.²⁸

The most common types of rāhui are those for drowning or conservation purposes.²⁹ Rāhui are imposed to restrict access to an area after a drowning takes place because the tapu of death affects land and/or water to a dangerous level.³⁰ The rāhui extends to food supplies within the area, which are also touched by the tapu of death.³¹ Rāhui may also be imposed for conservation purposes, with the intention being to restore the productivity and mauri³² of land and protect resources for future generations.³³ This form of rāhui might be used when species appear to be depleting or when food stocks need replenishing.³⁴

Like all tikanga Māori, the practice of rāhui varies between iwi and hapū, with rāhui taking different forms depending on the tikanga of each area.³⁵ It is possible, however, to make some

25 Tapu is to be sacred, under ritual restriction or prohibited: see generally Benton, Frame and Meredith, above n 2, at 404.

26 Mana is the source of Māori political authority and leadership, and relates to who is able to exercise certain rights: see generally Williams and Williams, above n 22, at 15.

27 Joseph Williams *He Aha Te Tikanga Māori* (unpublished paper for the Law Commission, 1998) at 14 as cited in Law Commission *Māori Custom and Values in New Zealand Law* (NZLC SP9, 2001) at 40.

28 Kimberley H Maxwell and Wally Penetito “How the use of rāhui for protecting taonga has evolved over time” (2007) 2 MAI Review at 2 as cited in Nicola Wheen and Jacinta Ruru “Providing for *Rāhui* in the Law of Aotearoa New Zealand” (2011) 120 JPS 169 at 170.

29 Mead, above n 5, at 153.

30 At 153.

31 Fiona McCormack “*Rāhui*: A Blunting of Teeth” (2011) 120 JPS 43 at 44.

32 Mauri is the life force of a being or entity: see generally Benton, Frame and Meredith, above n 2, at 239.

33 Hēmi Whaanga and Priscilla Wehi “Rāhui and conservation? Māori voices in the nineteenth century niupepa Māori” (2017) 47 J R Soc N Z 100 at 102.

34 McCormack, above n 31, at 44.

35 Mead, above n 5, at 15; and Benton, Frame and Meredith, above n 2, at 310.

general observations as to the nature of rāhui and how they frequently appear. Traditionally, rāhui were marked by pou or posts which pointed to where the rāhui was located.³⁶ These pou were often topped with plant fronds or garments and smeared with red ochre.³⁷ Modern instances of rāhui, like those mentioned on Whakaari/White Island and Tītahi Bay, are commonly marked by written signs.³⁸ To inform the community of rāhui today, local iwi and hapū will often publicise rāhui on their iwi website and social media pages, and it is common for news outlets, the Department of Conservation or regional councils to also broadcast information about rāhui.³⁹

While no centralised body administers or enforces tikanga, there is a strong incentive to abide because, if tikanga are not performed properly, misfortune may arrive on the offender and their kin group.⁴⁰ Holding an individual accountable to their own community is the most effective method for enforcing tikanga.⁴¹ Consistent with this approach, rāhui are often imposed via a collective decision by hapū or iwi, and nowadays by Māori councils or committees.⁴² Rāhui are imposed by people who have the mana, or authority, to do so. Māori leadership and political power is determined by mana, which can be obtained through whakapapa ties and personal achievement.⁴³

The way a rāhui is established determines the power of that rāhui. According to Best, to give a strict rāhui its “teeth”, a

36 Benton, Frame and Meredith, above n 2, at 310.

37 At 310.

38 Dunlop and Hurihanganui, above n 3.

39 See for example Aroha Mane “Rāhui notices across Te ika a Maui” *Te Ao Māori News* (online ed, Auckland, 2 January 2023).

40 Mead, above n 5, at 22.

41 Timoti Gallagher “Tikanga Māori Pre-1840” (21 September 2021) NZ Electronic Texts Collection: Te Kāhui Kura Māori <<https://webarchive.natlib.govt.nz>>.

42 Benton, Frame and Meredith, above n 2, at 311.

43 Williams and Williams, above n 22, at 15.

tohunga well versed in karakia could perform a turuki (a special type of incantation).⁴⁴ At this point, a stone might be added to the pou rāhui as a symbol containing the power of the rāhui.⁴⁵ When karakia are recited in setting up a rāhui, the atua⁴⁶ become involved and a supernatural element is added.⁴⁷ For routine matters, rangatira with sufficient mana could declare a rāhui without karakia.⁴⁸ The power of a rāhui depended greatly on the influence and mana of whoever imposed it. A rāhui proclaimed by a great chief would not be broken.⁴⁹

The offence of breaking a rāhui is called kairāmua, which literally means “eating the day before”.⁵⁰ There can be severe consequences for this offence, with offenders and their whānau experiencing utu in both physical and spiritual realms.⁵¹ The texts discussed in this article come from an era when breaching rāhui could be considered sufficient reason for war.⁵² Mead notes fear of the confrontation and violence that could follow a kairāmua as the most effective deterrent to breaching rāhui (or any kind of tapu).⁵³ Rāhui reinforced by karakia have the added element of spiritual consequences. It has been said that any person breaching rāhui could face spiritual sanction from Papatūānuku

44 Elsdon Best “Notes on the custom of rāhui, its application and manipulation, as also its supposed powers, its rites, invocations and superstitions” (1904) 13(2) JPS 83 at 85–86.

45 Benton, Frame and Meredith, above n 2, at 310.

46 See generally at 434. Atua are Māori deities, gods and divine beings.

47 McCormack, above n 31, at 44.

48 Benton, Frame and Meredith, above n 2, at 310.

49 Richard Taylor *Te Ika A Maui, or New Zealand and Its Inhabitants: Illustrating the Origin, Manners, Customs, Mythology, Religion, Rites, Songs, Proverbs, Fables, And Language of the Natives* (2nd ed, Wertheim and Macintosh, London, 1870) at 167.

50 Mead, above n 5, at 284.

51 At 284.

52 Benton, Frame and Meredith, above n 2, at 311.

53 Mead, above n 5, at 285.

and Tangaroa, the kaitiaki of rāhui.⁵⁴ At the time the selected texts were published, it was believed that if kairāmua were committed, an aituā would follow,⁵⁵ often in the form of family members dying until full utu⁵⁶ was made.⁵⁷ The utu that followed from kairāmua could traditionally be exacted not only on the individual offender, but on their entire collective.⁵⁸

3 Modern rāhui in Aotearoa

Rāhui today take a slightly different form to traditional rāhui. A key difference is the major reduction in the duration of rāhui, especially for those imposed after a drowning.⁵⁹ Where rāhui could once last several years, they are now observed for mere days or months.⁶⁰ This shortening is a result of difficulties in persuading the wider community to observe rāhui for longer periods, and to accommodate marine users like commercial fishers.⁶¹ This was the case with the rāhui following the Whakaari/White Island explosion, which lasted less than three weeks due to the loss suffered by local fishing and tourism providers.⁶²

A recent well-known example of a contemporary conservation rāhui was that imposed by Ngāti Whātua Ōrākei

54 “Proprietors of Parininihi Ki Waitotara Block v Horitamakiterangi Manuirirangi and Tongawhiti (Bob) Warwick Manuirirangi” (2004) 2 Maori LR 2 at 3.

55 An aituā is a disaster that was often thought to follow a violation of tapu: see generally Benton, Frame and Meredith, above n 2, at 39.

56 Utu is a complex term. Williams described it as the obligation to give, and the right to receive, constant reciprocity: Williams, above n 15, at 3. Utu generally refers to the maintenance of relationships through maintaining a state of balance (ea).

57 Mead, above n 5, at 284.

58 At 159.

59 McCormack, above n 31, at 46.

60 Mead, above n 5, at 160. See for example “Whakaari/White Island: Rāhui removed” RNZ (online ed, Wellington, 28 December 2019).

61 McCormack, above n 31, at 46.

62 RNZ, above n 60.

over the Waitematā Harbour. In September 2023 the local iwi placed restrictions on swimming, fishing, paddling and entering the water after a sinkhole caused wastewater to overflow into the harbour.⁶³ As kaitiaki of the rohe, Ngāti Whātua Ōrākei imposed the rāhui to enable the mauri of the Waitematā to recover and protect the safety of people who access the harbour.⁶⁴ Two months later, karakia were recited by Ngāti Whātua Ōrākei to lift the rāhui and remove the restrictions.⁶⁵ The restrictions were removed when both Watercare (the region's water utility and supplier) and Ngāti Whātua Ōrākei were confident the mauri of the Waitematā was sufficiently restored and the water quality was adequately improved.⁶⁶

While rāhui are rarely formally provided for in New Zealand legislation, they can be supported by legislation.⁶⁷ For example, Te Rāhui o Moremore currently has legislative support in the form of a temporary closure until 2025 under s 186A of the Fisheries Act 1996.⁶⁸ This rāhui prohibits the taking of any species of fish, aquatic life or seaweed in a defined area of Hawkes Bay and makes the rāhui enforceable under state law.⁶⁹ Despite some changes to their form, rāhui remain useful and are practiced today. While it is not entirely clear why many non-Māori consider themselves bound by rāhui today, they are often still honoured, perhaps due to their status as a traditional and sacred aspect of

63 Joseph Los'e "Raw sewage prompts rāhui on Waitematā Harbour" *Te Ao Māori News* (online ed, Auckland, 28 September 2023).

64 Los'e, above n 63.

65 Auckland Council "Rāhui on Waitematā Harbour lifted as water quality improves" (press release, 16 November 2023).

66 Auckland Council, above n 65.

67 McCormack, above n 31, at 46. Section 25(3)(e) of the Water Services Act 2021 is a rare exception.

68 Fisheries New Zealand "Customary fisheries management areas, rules, and maps" Ministry for Primary Industries <www.mpi.govt.nz>.

69 Fisheries New Zealand, above n 68.

tikanga Māori.⁷⁰ Alternatively, rāhui may be followed because people recognise them as inherently legitimate and useful, given they are imposed—as with most tikanga Māori—for practical reasons like conservation or honouring someone who has passed.⁷¹

4 *Rāhui elsewhere in Polynesia*

Across Polynesia, practices which very closely resemble rāhui are used for environmental management and to assert cultural authority.⁷² Variations of the term rāhui span the Pacific, with Hawai'i (*laahui*), Rarotonga (*raa'ui*), Easter Island (*rahui*), the Marquesas (*'ahui*) and Tahiti (*rahui'i*) having their own cognate forms.⁷³ The essential purposes of these rāhui-like practices, and the processes for establishing and lifting them, mirror those in Aotearoa, despite thousands of kilometres of separation.⁷⁴

Richard Boast uses rāhui as a case study for the phylogeny of law across the Pacific, as their repeated presence indicates they must have been observed as a social rule in ancestral Polynesia, with the legal practice deriving from archaeological Hawaiki (Tonga, Fiji and Sāmoa).⁷⁵ The widespread similarities in content, display and enforcement of rāhui reflect a traceable legal history throughout Polynesia.⁷⁶ The study of how rāhui were perceived by both Māori and Europeans in Aotearoa, as a result of the language they were communicated in, becomes important in

70 Mead, above n 5, at 159.

71 At 159.

72 RP Boast "The Laws of Hawaiki: Towards a Legal History of Pre-European Polynesia" (2022) 17 OLR 239 at 269.

73 Simon J Greenhill and Ross Clark "POLLEX-Online: The Polynesian Lexicon Project Online" (2011) 50 Ocean Linguist 551.

74 Boast, above n 72, at 273.

75 At 269.

76 At 276.

understanding what is increasingly recognised as an ancient body of Polynesian law.

Having set the context of tikanga Māori and rāhui, the following three parts look closely at excerpts from English language and te reo Māori newspapers in the 19th century. The excerpts are divided into three chapters owing to the conclusions that arise from each. From this collection of texts, the different understandings gained from publicising rāhui in English as opposed to te reo Māori during this time are demonstrated. The examples indicate that te reo Māori was the most appropriate medium through which to communicate about rāhui.

II BARRIERS IN A BILINGUAL ARTICLE

This first part focuses on one bilingual article and the disparities between its English and Māori versions. With its bilingual nature, the two texts can be compared with ease and the linguistic barriers to communicating about rāhui in English during the 19th century are starkly evident. The article indicates that the English language did not appropriately carry the full meaning of tikanga Māori during this time.

PANUITANGA

HE panuitanga tenei na matou i te whakataunga a te kaiwhakawa ratou ko taua Komiti mo tetahi hara i whakawakia ki Te Hauke i te 16 o nga ra o Oketopa, I te tau 1878. Ko te take o taua whakawa mo nga Tuna o Te Rotoakiwa i mahia pokanoatia e tetahi tangata i runga i te ture rahui o taua

Roto. E hara nei i te mea whakarite kia mahia taua Roto, whakataua ana e taua whakawa ko Renata Kawepo nga kai-tiaki mo taua Roto kei haere pokanua tetahi tangata ki taua Roto mahi ai, maua tangata e mau nei o ratou ingoa e whakarite kia mahia. ka haere ai te katoa ki te mahi. ki te whakahe tetahi i muri iho o tenei whakaotinga, ka hinga te ture ki a ia.

RENATA KAWEPO, ARIHI TE NAHU, TE WATENE HAPUKU,
RENATA PUKUTUTU.

Te Hauke, Oketopa 23, 1878.

NOTICE.

WE HEREBY give notice, that we have held a meeting at Te Hauke on the 16th of this month, in respect to some one having taken the Eels out of the Lake Roto-a-Kiwa, and we have appointed Renata Kawepo, Arihi Te Nahu, Watene Hapuku, and Renata Pukututu as guardians of that lake. Let not any one take fish out of that lake unless authorised by the abovenamed persons.

RENATA KAWEPO, ARIHI TE NAHU, TE WATENE HAPUKU,
RENATA PUKUTUTU.

Below is my translation of the original Māori text into English:

NOTICE

This is a notice on the decision of the judge and the committee for a crime heard in Te Hauke on the 16th day of October in the year 1878. The reason of that judgement was because eels of Lake Roto a Kiwa were used without authority by a person on top of the rāhui law of that lake. It is not as if it was allowed that this lake could be used in this way, as set down by the aforementioned judgment. Renata Kawepo, Arihi te Nahu, Watene Hapuku and Renata Pukututu are the kaitiaki for that lake lest a person goes without permission to that lake, we will catch the names of those preparing to work and all those going to work. In the future if someone disobeys this proclamation, the law will fall upon that person.

This first article is a bilingual piece from *Te Wananga*, a non-government niupepa published in Napier from 1874 to 1878.⁷⁷ The article in question, which concerned the taking of eels from Lake Roto-a-Kiwa, was published from Te Haukē as a notice in 1878. There are marked differences between te reo Māori and English versions of the text. The disparities in these translations indicate that tikanga Māori could not be communicated in English with the same ease as it could in te reo Māori, the more appropriate vehicle for tikanga in the 19th century. The use of emphatic te reo Māori terms like “pokanoa”, “hara” and “ka hinga te ture” contrasts with dull English language that lacks legal strength. As evidenced by the comparative lengths of the texts, the English text simply does not translate much of the Māori text. There is key information about the rāhui in the Māori text that the English text does not include. Each of the following paragraphs focus on a specific term/phrase in the reo Māori text which is either missing or carries different meaning in the English text.

There are two different audiences expected from the Māori and English language versions of this text. Māori speakers would place different expectations on themselves than English-only speakers, who would likely treat this as a notification but not a statement of law. It appears from the lack of consequences in the English text that no English-only speaker would have an expectation of a sanction for disobeying the rāhui.

A *Ture Rāhui*

In the reo Māori text, taking eels from the lake is clearly described as breaching a “ture rāhui”. This language explicitly describes the restriction (rāhui) placed on that lake as law (ture). The English text makes no such mentions. There is no acknowledgement of a rāhui, a law or even of a prohibition. The

77 Renata Kawepo and others “Panuitanga” *Te Wananga* (Hawkes Bay, 7 December 1878) at 619, accessed through “Papers Past”, above n 11.

much shorter English text merely sets out that someone has taken eels from the lake.

“Ture” is the general reo Māori term for law, encompassing English statute as well as the abstract concept of law and the legal system more broadly.⁷⁸ The term is a transliteration from the Hebrew “Torah” and was adopted by Māori to denote law in both religious and secular contexts.⁷⁹ The word “ture” serves as a contact point between tikanga Māori and the Western legal system. In contrast, by reading the English text alone it is hard to decipher what the person has done wrong by taking eels. There is no explanation as to why eels cannot be taken from this lake. Māori see the rāhui as law, but the English text is merely a notice to not take eels, without justification or any indication as to the law.

There is a strong sense of imagery created in the Māori text when describing a breach of rāhui as “i runga i te ture rahui o taua Roto”.⁸⁰ This loosely translates to “on top of the rāhui law of that lake”. This imports connotations of the offender trampling over the law, with no regard for the rāhui or the tapu nature of the lake.

The legally binding nature of rāhui is emphasised in the Māori text by the use of “te whakataunga o te [kaiwhakawa]”, meaning “the decision of the judge”.⁸¹ The description of the decision and its consequence creates an imposing atmosphere, emphasising that breaching the rāhui has clear legal implications. Warning of the potential of being tried before a judge acts as an effective deterrent from taking eels in the future and affirms that the rāhui is to be treated as law. Committing a kairāmua will have

78 Benton, Frame and Meredith, above n 2, at 462.

79 Benton, Frame and Meredith, above n 2, at 462.

80 Kawepo and others, above n 77.

81 At 619.

similar consequences to breaking English law, with the added risk of spiritual retaliation.

These strong connotations are not available in the English text which announces only “that we have held a meeting”.⁸² There is no judge, no decision and no legal ramifications. The possibility of a meeting being held for taking eels is barely a disincentive when compared to being tried in front of a judge.

1 *Hara*

The taking of eels out of Lake Roto-a-Kiwa constitutes a “hara” in the Māori text. In tikanga Māori, a hara is an offence.⁸³ Traditionally, the term referred to both deliberate and unintentional offences resulting from the violation of tapu.⁸⁴ Where social or spiritual relationships have been disrupted and put out of balance, a hara has been committed.⁸⁵ Following the introduction of Christianity and the spreading of colonisation, the meaning of hara was widened to include all kinds of violation of rules or deliberate breaking of the law.⁸⁶ Nineteenth century niupepa commonly used hara to mean “crime”.⁸⁷ Within this evolving definition, the connotations of a violation of tapu and relational imbalance remained.

There is no phrase denoting a crime or offence in the English notice. With its spiritual background, hara is a difficult term to translate into English. The English language faces further barriers in accurately holding the context relating to violation of tapu and the breakdown of social relationships that means so much more than just offence or crime. The meaning of hara is so heavily

82 At 619.

83 Māmari Stephens and Mary Boyce *He Papakupu Reo Ture: A Dictionary of Māori Legal Terms* (LexisNexis, Wellington, 2013) at 7.

84 Benton, Frame and Meredith, above n 2, at 74.

85 At 74.

86 At 74.

87 At 74.

dependent on this context and the term is embedded in a te ao Māori understanding of relationships. It loses strength when translated into another language that struggles to convey the full depth of its meaning—at least without additional effort, which 19th century English authors were unwilling to exert. To take the term “hara” out of the Māori linguistic universe was to deprive it of the context that gives it meaning.

To translate hara into English involves a significant number of words to set the context—words that English authors in the 19th century were reluctant to use. As a result, the understandings obtained from these two texts are inherently different. Where in English a person has merely taken eels, in Māori this person has dishonoured tapu and consequently injured the spiritual and physical balance of the world around them.

2 Pokanoa

The idea of “pokanoa” has an important presence in the Māori text. Pokanoa is another complex Māori concept which is often translated inaccurately. *He Papakupu Reo Ture* defines pokanoa as “unlawful, without authority”.⁸⁸ As in this article, it is commonly used in the phrases “mahi pokanoa” and “haere pokanoa”. Mahi pokanoa means to act in a disallowed way and haere pokanoa is ordinarily used to denote a trespass.⁸⁹

Pokanoa, especially when used in “mahi pokanoa”, is a very emphatic term with strong connotations of denunciation. For example, in 2015 the then-Minister for Māori Development, Te Ururoa Flavell, said about an appropriation of haka: “Ko tāku e kī nei he *mahi pokanoa* tēnei. He takatakahi nei te āhuatanga o ngā mea Māori”, meaning “I’m calling it *foolish*. It trivialises our

88 Stephens and Boyce, above n 83, at 56.

89 Te Karere TVNZ “Haka Corner: Ex-All Blacks’ pub venture and haka challenge an ‘insult’” (video, 31 August 2015) YouTube <www.youtube.com>; and Stephens and Boyce, above n 83, at 56.

culture.”⁹⁰ To act in a way that is pokanoa is to be more than just unlawful; it is to knowingly step out of place and act wholly inconsistently with the tikanga that should guide one’s behaviour.⁹¹ Pokanoa is also used in the te reo Māori term for discrimination, whakawā pokanoa (whakawā meaning judgement).⁹² To discriminate is to make a judgement that is prejudiced, indicating that an action which is pokanoa is entirely unjust in the circumstances.

These examples highlight the strong negative associations of pokanoa and the depth of denunciation in the reo Māori text. The actions of the eeler are not decried even vaguely similarly in the English text. The emphasis and denunciation in te reo Māori that is missing from the English text is exactly what gives tikanga Māori its efficacy.

B Ka hinga te ture ki i a ia

The final proclamation in the Māori text, “ka hinga te ture ki i a ia”, reaffirms that the rāhui comes with severe consequences.⁹³ Translated into English, it means “the law will fall upon that person” if they disobey the notice. The reo Māori takes a consequential approach, emphasising that there are resounding legal implications flowing from any breach. The idea of the law falling upon offenders is deeply threatening and a compelling deterrent from any “mahi pokanoa”.

In stark contrast, there is no indication of punishment or consequence of any kind in the English text. The final line, “let not anyone take fish out of that lake,” lacks the emphatic legal strength found in the reo Māori.⁹⁴ There is nothing in this line,

90 Te Karere TVNZ, above n 89 (emphasis added).

91 Stephens and Boyce, above n 83, at 56.

92 “Me whakamutu te whakawā poka noa a ngā tumuaki Pākehā ki ngā tumuaki Māori” *Te Ao Māori News* (online ed, Auckland, 28 July 2018).

93 Kawenata and others, above n .

94 Kawepo and others, above n 77.

nor the text as a whole, to deter people from taking fish in the future.

The actual wrongful act also differs between the texts. In English, the notice forbids taking fish from the lake, whereas in te reo Māori trespassing or going into the area without authority is said to be prohibited. These are two very different acts. A rāhui applies to the entirety of the space concerned, not merely to the action of taking fish inside that boundary.⁹⁵ This indicates an inherent misunderstanding of the English author as to the nature of a rāhui. The people are to not take fish, but the rāhui confers a wider obligation to stay out of the area as well.

C *Kaitiaki*

There is a limited similarity between the two texts in respect of the appointment of kaitiaki/guardians to protect the lake. While “kaitiaki” and “guardians” carry similar meanings, there is little resemblance between the two roles as they are described in each of the texts. According to the English text, the guardians can authorise people to take fish out of the lake. They are there to assist in allowing exceptions to the prohibition. According to the Māori text, the kaitiaki are there to catch the names of people, lest they trespass the lake. Their role is that of enforcement. They are tasked with ensuring people do not breach the rāhui. Again, the Māori text has a focus on legal enforcement that is entirely missing from the English text.

D *Conclusion*

This notice illustrates that tikanga Māori may at times be less compatible with expression in English than re reo Māori. The vast differences between the two texts indicate that a 19th century English language understanding of tikanga struggled to capture its entire meaning. Tikanga Māori gains legal strength when

95 Kawenata and others, above n 93.

expressed in te reo Māori, a language that is able to accurately convey spiritual context and emphatic denunciation. Terms like pokanoa and hara have an extensive history and meaning behind them that a translated English understanding during this period lost so much of. To accurately translate the meaning of reo Māori legal terms like these required knowledge of context and additional effort that English authors were unwilling to exert. Te reo Māori was able to accommodate the unique power of Māori law that, without this effort, English could not.

III AUTHORIAL CHOICES IN ENGLISH ARTICLES

Two English-only texts, from 1889 and 1874, illustrate the second element of my thesis: although the legal strength of rāhui could be translated, English authors often chose not to. Piece A was originally written in English, and piece B is an English translation of an original Māori text. The differences between these texts expose the ability of the English language to contain the legally binding nature of rāhui, if used to that effect by authors. In this part, I will examine these English texts to show that the different understandings of rāhui must not owe only to the nature of each language, but also to the clashing values and priorities of English authors in their authorial choices. Comparing pieces A and B—one with free authorial choice and the other constrained by conventions of translation—illustrates that it was the author and their choices, not the language itself, which determined the reader's understanding of rāhui.

A *Native Game*

NATIVE GAME.

AMONG the lessons which we might learn from the Maoris, there is one which relates to the preservation of native game. This was made manifest during the recent debate in the House on the Animals Protection Bill. Mr Monk reminded members of the days when the old chiefs, finding the seabirds on which the Maoris so largely subsisted were getting scarce, owing to the excessive slaughter, would step in with their authority to prevent the young birds from being killed for two or three years. This restriction was called the rahui, and the penalty for breaking it was death.

Mr Monk did not suggest, and of course we do not suggest, such a draconian penalty as this but the spirit of foresight and self-restraint which led the Maoris, despite the pangs of hunger and want, to pay such scrupulous regard to the preservation of native birds is worthy of all praise. Mr Parata pointed out during the discussion that the natives were much more particular in regard to close seasons than the Europeans. The Maoris, he said, did not commence to kill pigeons till September, but Europeans exposed these birds for sale during May and June. Some very thoughtful and forcible remarks on the subject were also made by Mr Taipua. In the days of their ancestors, he said, they had a very excellent system of protecting native birds. When Capt Cook came here he placed on record how his heart was delighted at the number of native game to be found in New Zealand, but since the advent of Europeans, the hon member sorrowfully added, the native birds had steadily diminished. They had been destroyed by the European rat, and now they were being destroyed wholesale by the use of poison.

In 1889, *The Colonist*, a daily Nelson paper, published a piece recalling the rāhui that were imposed “in the days of their ancestors”.⁹⁶ The article reminded its English audience of the value of rāhui for preserving native game and advocated for the continued use of similar practices.

The article sets out that “this restriction was called the rahui, and the penalty for breaking it was death”.⁹⁷ It ignores, or fails to understand, the nuanced utu that could follow a kairāmua. The punishment for breaking a rāhui was not always death, with consequences felt by the offender and their whānau in the spiritual as well as the physical realms.⁹⁸ Utu is subjective and highly dependent on context.⁹⁹ By stating that the penalty is death without context or explaining why that might be the case, the authorial choices limit what the reader can learn and understand about rāhui. The author has no interest in grasping this legal context of rāhui and its complex consequences. The

96 “Native Game” *The Colonist* (Nelson, 16 September 1889) at 4, accessed through “Papers Past”, above n 11.

97 “Native Game”, above n 96.

98 Mead, above n 5, at 159.

99 Tai Ahu, Rachael Hoare and Māmari Stephens “Utu: finding a balance for the legal Māori dictionary” (2010) 16 NZACL 19 at 20.

article goes on to denounce such a “draconian penalty” and assure readers it does not advocate for death, without understanding the circumstances that might lead to such a serious form of utu.

There is no reference to rāhui being part of the law, or any form of legal enforcement. The author mentions that the “spirit of foresight and self-restraint” which led Māori, “despite the pangs of hunger and want, to pay such scrupulous regard to the [preservation] of native birds is worthy of all praise”.¹⁰⁰

Anthropologist Bronisław Malinowski noted that many legal commentators assumed tribal societies operated at this lower level of instinctive obedience, and that “natives” obeyed rules spontaneously.¹⁰¹ Communities without definite machineries of enactment, administration and enforcement of law follow rules largely because of reciprocity.¹⁰² People follow law, even when bothersome, because they know they will benefit from the rules being obeyed by others.¹⁰³ While protecting the birds was the reason for the rāhui, Māori abided because that was the law. They knew that if rāhui were not followed by all, consequences would ensue. One is not ordinarily applauded for following the law in the way Māori are commended for their restraint in this piece.

In this publication rāhui are treated as an archaic thing of the past that, with modifications, could be utilised again to manage resources. It refers to the “days of the old chiefs” before European arrival, when Māori ancestors would impose restrictions on the killing of native game. Wistful language, lamenting that everything has since worsened, phrases rāhui

100 “Native Game”, above n 96.

101 Bronisław Malinowski *Crime and Custom in Savage Society* (Harcourt, Brace & Company, New York, 1926) at 14.

102 At 67.

103 At 68.

firmly as a thing of the past. This fails to recognise that at its time of publication in 1889, *rāhui* were still very much in place.

The English author is mourning a resource management technique that was in no sense bygone. Clearly *Pākehā* were not aware of *rāhui* or did not consider that they applied outside *Māori* communities. Again, it is emphasised that to *Pākehā*, *rāhui* were not law. They may have been hugely useful, but to an English author, and therefore their audience, following *rāhui* was a matter of personal choice and not legally binding.

B Protection of the Huia Bird

Protection of the Huia Bird.

[TRANSLATION.]

To the Editor of the Hawke's Bay Times.

FRIEND,—Do you send these words that they may be heard by our Maori and European friends. Friends do you hearken; for a long time past we have put up a mark of protection for the bird Huia, and this is the fourth year of that *rahui* (protection) having been up. The old men who put it up are Raniera Kopua and Hirini Manuwhiri, but the young and old people consented to that *rahui*; and the Europeans who saw, who heard, who knew, and looked at that Maori law—these are their names: John Sutherland, Thomas Cully, James Read, William Riverston, Robert Hatland, and Donald Hatland and others. The reason we put up a protection (*rahui*) for that bird, is that it might increase in numbers, as it only lays one egg in the season, and on that account we protect it. It is not a bird of much note (or fame or beauty), but because our ancestors made much of it (prized it highly), hence it is highly prized even to this day.

Do you hearken; in days of old the laws regarding a *rahui* were very strict, and death would come to that man who broke (or disregarded a *rahui*). It was like the law of the (European) Government, which does not allow birds to be killed in nine of the months of the year. If any man dares to kill (the Huia bird here) he will be made to pay £50, and such will be the law for any one who may disregard this *rahui* now. Enough are the words; this is sent on the authority of all the Maori *Komiti*, from

HETA MATUA

Porangahau, 18th June, 1874.

In 1874, the *Hawkes Bay Times* published the translation of a letter from Heta Matua.¹⁰⁴ The original Māori letter was not included in *Nga Hua o te Mohiotanga*, the reo Māori section of the *Hawkes Bay Times*, and could not be located. As a translation of Māori, this letter exhibits many differences to other English texts that were not first written in Māori. When translating a piece originally in Māori, the legal context shines significantly stronger than in texts like piece A, originally written in English. As conventions of translation limit the English author, their personal priorities are not as evident in the communication of this rāhui.

There are four key features of this text that are not evident in piece A and other texts originally written in English. First, this letter uses the term rāhui. It refers to “the fourth year of that rahui (protection) having been up”.¹⁰⁵ The rāhui is described as a “mark of protection” for the huia bird.

Importantly, it also refers to this rāhui as the law. It describes that “in the days of old the laws regarding rāhui were very strict ... it was like the law of the (European) Government ...”.¹⁰⁶ The legal connotations not seen in any other English piece are a key feature in this translation. This is evidence that the English language can hold the legal weight of rāhui. The letter sets out that this tikanga is legally binding and does so outside of te reo Māori.

Adding to the legal context of this rāhui, the letter presents detailed consequences for breaching the rāhui. Anyone who kills the huia bird will be fined £50: “such will be the law”.¹⁰⁷ Heta Matua intended there be repercussions for disregarding the rāhui and these are able to be translated into English along with another mention to the law.

104 Heta Matua “Protection of the Huia bird” *Hawkes Bay Times* (Pōrangahau, 21 July 1874) at 295.

105 At 295.

106 At 295.

107 At 295.

The specific reasons why the rāhui is placed on the huia bird are described. The huia bird only lays one egg per season, so rāhui are placed to increase numbers. The letter details that the huia “is not a bird of much note (or fame or beauty), but because our ancestors made much of it, hence it is highly prized even to this day”.¹⁰⁸ Huia feathers in particular were deeply tapu and worn on the head to symbolise mana.¹⁰⁹ Only high-ranking rangatira and their whānau wore huia feathers, because huia were the most sacred of all Tāne’s children.¹¹⁰

This letter illustrates that the legal elements of rāhui could be translated into English. They are not limited to an understanding in the Māori language. The English language could capture the meanings and legal strength of rāhui—it was the English authors who chose not to. Their values and priorities did not align with the enforcement of rāhui as a legal tool, so they did not communicate it to their readership as such. However, in this piece the author is constrained by the conventions of translation. Their authorial choice is limited, and as a translator they do not have the same scope as other English authors to insert their personal values. As a result, the text comes much closer to a correct understanding of rāhui. Māori legal concepts could be understood outside te reo Māori, if English authors allowed them. This letter, originally written in te reo Māori but translated into English, gives the rāhui significantly more legal value than texts that were first written in English.

C Conclusion

Māori wrote to niupepa about rāhui because they wanted them to be followed. Their intention was to inform readers of the law. As a result, they included the reasons why the rāhui was in place;

108 At 295.

109 Michael Szabo “Huia, The Sacred Bird” *New Zealand Geographic* (online ed, Auckland, October–December 1993).

110 Szabo, above n 109.

made it clear that following the rāhui was a legal obligation as opposed to a personal choice; and detailed what would happen if the rāhui were not followed. This is information people expect to know about laws that apply to them. Texts written first in English did not include these features, because the intention was not for the readers to abide by the rāhui like law. When an English author had free authorial choice, as in piece A, their values and priorities meant rāhui were not portrayed as law. When their personal choice was limited by translation conventions, as in piece B, authors could use the English language to communicate about rāhui accurately.

IV CONSEQUENCES OF COMMUNICATING IN ENGLISH

In this final part, one English and one Māori text illustrate the consequences of communicating about Māori law in English during the 19th century. The texts highlight the discrepancies between who rāhui were intended to be followed by, and who followed them in practice. The English author in piece A did not see rāhui as something they were bound by as non-Māori, whereas piece B is a reo Māori text which implicates all people as affected by rāhui. Highlighted through these pieces is the importance of communicating about Māori law through the Māori language, and the impact on a 19th century reader's understanding of the law when the vehicle is instead English.

A *An Expedition Overland*

At a little distance from Oraka, we came to a small lake about an acre in extent, in the middle of a swamp and which the natives said abounded with eels, and on the top of a little ridge just above, a rahui or mark to preserve the eels was erected; it was made of an old rusty musket barrel stuck in the ground, to which the stock was tied with a piece of flax, and a bunch of kawaho (reeds) tops stuck on like a plume of feathers. The natives always treat a rahu with much respect, considering it an act of great dishonesty to catch eels, or any other fish, to hunt pigs, snare ducks or parrots, or in fact destroy or in any way game of whatever kind which it is erected to preserve. So strictly is this rule carried out, that a short time ago—(and even now in some parts of

the island) the infringement of a rāhui would be considered quite a sufficient *casus belli* to give rise to a bloody war between two tribes. In pass- [sic] this rāhui, Symonds who was in advance of the rest of the party (his usual position), cut the Governor's initials on the stock of the musket. Just beyond this we had to pass the Waihou or Thames, which is here but insignificant creek, running in north-easterly direction.

This passage was written in the summer of 1849–50, when the Governor-in-chief of New Zealand, George Grey, embarked on an expedition from Auckland to Taranaki. Grey's secretary, GS Cooper, kept a journal of their travels, which in 1850 was published in Auckland's *The New Zealander* newspaper.¹¹¹ As they hiked across the North Island, this journal kept track of the novel and noteworthy sights they experienced.

One such sight was a rāhui to protect eels in a lake near Ōraka. On top of a ridge was "an old rusty musket barrel stuck in the ground, to which the stock was tied with a bunch of flax, and a bunch of kakaho (reed) tops stuck on like a plume of feathers".¹¹² The use of the musket instead of a traditional pou rāhui reflects the flexibility of tikanga and its ability to adapt to available resources. The attaching of flax and kākaho make evident that a rāhui is in place, despite the non-traditional musket. While this is one of few English texts to refer to a rāhui by its name, it does so more to demonstrate its novelty than to confer respect. The rāhui is documented alongside other curious but insignificant aspects of their travels, like what their diet consisted of.¹¹³ This sacred tikanga was considered by Cooper and his party not as something of legal consequence to themselves, but as an intriguing and peculiar aspect of "native" culture.

111 GS Cooper "Journal of an expedition overland from Auckland to Taranaki, by way of Rotorua, Taupo, and the West Coast undertaken in the summer of 1849-50, by His Excellency the Governor-in-Chief of New Zealand" *The New Zealander* (Auckland, 12 October 1850) at 3, accessed through "Papers Past", above n 11. The quoted passage is from this source.

112 Cooper, above n 111, at 3.

113 At 3.

Cooper documents that “natives always treat a rāhui with much respect, considering it an act of great dishonesty to ... destroy ... any game of whatever kind which it is erected to preserve”.¹¹⁴ He notes that Māori abide by rāhui in a manner akin to how people respond to law, with respect and courtesy. While, in Cooper’s view, “natives” treat rāhui *like* law, rāhui are not thought to apply to non-Māori in the same way. Cooper writes that a short time ago infringement of rāhui could justify bloody tribal warfare. However, the threat of war was “between two tribes”, so naturally this consequence could not apply to the English. Retribution for violations would only be enforced against Māori. An English settler, having read this text, would not have considered rāhui law that applied to them, but rather a charming or intriguing practice of the “natives”.

According to Cooper’s journal, rāhui apply to Māori, while English settlers watch on with admiration. When encountering this rāhui, a member of the English group carved the Governor’s initials into the musket. The rāhui—which also indicates the territory of the local hapū—is treated with disregard for its tapu nature and disrespect for the mana of those who erected it.

This documentation of the rāhui near Ōraka indicates the understanding of rāhui gained through 19th century English texts: rāhui apply only to restrict Māori and there are no legal ramifications for non-Māori who do not obey.

114 At 3.

B Panuitanga

PANUITANGA.

Ki nga wahine tapahi harakeke.

Ko te kainga o aku taane kei te Nama 1613 o Papawai, ko nga harakeke o etahi poraka o taua waahi, ko te rahui nei kaore i pa he naihi a te Pakeha, i rongo korero noa ahau kei te mahia nga harakeke o taua waahi, katahi au ka haere ki te titiro. Ko te mea tuatahi i kitea e au, koe te tiraha harakeke e takoto ana, kua maroke noa atu, ka ahu atu au ki nga putake harakeke, ka kite au i tenei tu tapahi harakeke, poro tonu ai i nga kamatamata o nga harakeke, ka waiho ano te waahi nui kia tu ana, tenei mahi me mutu, me mutu hoki te haere ki reira mahi harakeke ai, koi hamenetia te tangata haere pokanoa ki taua waahi mahi harakeke ai.

Horiana Takana Kiingi.

Below is my translation:

NOTICE.

To the women cutting flax.

The home of my men at number 1613 of Papawai, the flax of that place are things under absolute rāhui, although all the harakeke of some blocks of that place has been sold, the rāhui does not apply to the knives of the Pākehā, I just heard about the flax of that place being used, and then went to see. The first thing I saw, the bundled flax lying, dry, heaped up at the base of the plant. I saw this cut flax, cut off from the source, this big place left to stand abandoned, going there to gather flax must stop, beware lest the person be penalised for trespassing that place and using harakeke.

Horiana Takana Kiingi

Puke ki Hikurangi, the official niupepa of the Kotahitanga parliament, published in 1905 an announcement by Horiana Takana Kiingi about a rāhui in place protecting harakeke.¹¹⁵ To Māori, harakeke was the most important fibre plant.¹¹⁶ From harakeke comes woven baskets, clothing, fishing nets and a myriad of medicinal uses.¹¹⁷ Harakeke represent whānau, with

115 Horiana Takana Kiingi "Panuitanga" *Puke ki Hikurangi* (Wellington, 20 June 1905) at 5, accessed through "Papers Past", above n 11. The passage reproduced above is from this source.

116 Department of Conservation "Harakeke/flax" <www.doc.govt.nz>.

117 Department of Conservation, above n 116.

the centre shoot being tamariki, surrounded by parents and then tīpuna as the outside leaves.¹¹⁸ When leaves are removed from the plant, only the older outer leaves are taken, to protect the tamariki within.¹¹⁹

Kiingi writes out of frustration for the lack of obedience regarding rāhui. A rāhui was in place in Papawai, prohibiting entering the area and cutting harakeke. Kiingi notes that the rāhui does not pertain to the knife of the Pākehā.¹²⁰ Again, there is a rāhui in place that Pākehā are not aware of or are choosing to not follow. Pākehā knives are not affected by this ban on cutting flax because those who wield them do not think it applies to them.

The English disregard for the rāhui resulted in waste and a declining state of harakeke. When Kiingi went to see the relevant blocks, she was confronted by this waste first-hand. She saw flax lying dry and abandoned at the base of the plants. Kiingi is emotional in her bemoaning of this waste, given the importance of harakeke to Māori. An understanding of the esteem given to harakeke colours the entire context of the rāhui. Through te reo Māori, Kiingi provides this context in an expressive and poignant manner. By referring to the harakeke as abandoned and describing the brutal desertion of these drying plants, Kiingi passionately denounces the Pākehā knives.

This notice is specifically addressed to the *women* cutting flax.¹²¹ In doing so, Kiingi raises something not often talked about into the public arena. In te ao Māori, it is the women who cut

118 Te Ahukaramū Charles Royal “Harakeke plant” (24 September 2007) Te Ara – The Encyclopedia of New Zealand <teara.govt.nz>.

119 Department of Conservation, above n 116.

120 Kiingi, above n 115: “ko te rahui nei kaore i pa he naihi a te Pakeha”.

121 Kiingi, above n 115: “Ki nga wahine tapahi harakeke”.

and weave harakeke.¹²² Horiana is a female name, so presumably this notice was written by a wahine Māori. The cultural context concerning who in society is responsible for work regarding flax is reflected in the address. One possible reading of this piece indicates that to Horiana, it is not conceivable even in te ao Pākehā for anyone other than women to be cutting flax. This is a woman's job, so she writes to instruct the women who are not obeying the rāhui. It is likely that in Horiana's te ao Māori-based understanding, men—even Pākehā men—would never cut flax.

An alternative reading of this notice sees it not addressed to Pākehā women, but to wāhine Māori using Pākehā instruments. Kiingi criticises that the rāhui is not being applied to the knives of Pākehā, whether they be used by Māori or Pākehā. Rather than a complaint about Pākehā women cutting flax, it could be read as a complaint about new technology and the waste that arises from the Māori use of Pākehā knives. This new technology is causing wāhine Māori to ignore the rāhui and abuse the harakeke.

“Haere pokanoa” is again used in this text to mean “trespass”, warning people that they will be criminally summoned (hamenetia) if they enter this place to cut flax.¹²³ This text amalgamates the context-heavy reo Māori relating to the significance of harakeke, with the strict legal terms of “haere pokanoa” and “hamenetia”. This unique blending makes the announcement particularly forceful in te reo Māori. It gives parallel motivation for complying with the rāhui, firstly out of respect for the mana of harakeke, but failing this, because it is law.

In the following fortnight's edition of *Puke ki Hikurangi*, Kiingi made almost an identical announcement—with the exception of

122 Selena Shaw “Weaving Worlds: Raranga, whakapapa and mana wahine” (MDes Thesis, Victoria University of Wellington, 2021) at 11.

123 See above at 16.

the final sentence.¹²⁴ In this updated version, there is a monetary fine for disobeying the rāhui. Kiingi writes: “The going to this place and using flax must stop... men, women or children going here and cutting flax will be fined by me the money of 5 pounds”.¹²⁵ Although the announcement is still addressed to women, the fine is not limited in this way. While Kiingi still considers it is women who are cutting flax, now *anyone* entering the area and using the flax will be fined. This second announcement provides further legal strength to the initial notice, which only laid out a vague warning of being penalised.

For a wahine Māori to express this level of agency and impose a fine suggests Kiingi had the mana to do this. The year following these announcements, in 1906, a Horiana Kingi of Papawai was listed in *The Wairarapa Daily Times* as an unsecured creditor of £710 for the bankrupt Mr Izard.¹²⁶ This amounts to NZD\$34,156 today, a significant sum for a wahine to have lent a single debtor. Six years later, a Horiana Kingi, also of Papawai, was recounted as an immediate relative of “great Māori chieftain” Tamahau Mahupuku and attended the unveiling of a monument in his honour.¹²⁷ Mahupuku was a key member of the Kotahitanga Parliament, had strong relations with long-serving Premier Richard Seddon and was known for making generous financial contributions along with hosting enormous hui.¹²⁸ The *Puke ki Hikurangi* niupepa, in which the announcements by

124 Horiana Takana Kiingi “He Panui” *Puke ki Hikurangi* (Wellington, 7 July 1905) at 6, accessed through “Papers Past”, above n 11.

125 Kiingi, above n 124, at 6: “Me mutu hoki te haere ki reira mahi harakeke ai, ki te kitea e au te tangata, tane, wahine, tamariki rānei, e haere ana ki reira tapahi harakeke ai, ka painatia e au ki te moni e £5 pauna” (translated by author).

126 “A Greytown Bankruptcy” *Wairarapa Daily Times* (6 December 1906) at 2, accessed through “Papers Past”, above n 11.

127 “Great Maori Chieftain” *Taranaki Daily News* (31 March 1911) at 5, accessed through “Papers Past”, above n 11.

128 Angela Ballara “Story: Mahupuku, Hāmuera Tamahau” (1993) *Te Ara – The Encyclopedia of New Zealand* <teara.govt.nz>.

Horiana Kiingi are written, was first published by Mahupuku in 1897.¹²⁹ Given her apparent wealth and family status, it would appear that Kiingi was a wahine of immense mana, giving her the authority to issue announcements like these. This was an authority not bestowed on many women at the time.

C Conclusion

A different understanding was gained from communicating about rāhui in English as opposed to te reo Māori in the 19th century, and these texts are clear evidence of the consequences of those conflicting understandings. The English and Māori texts hold vastly different ideas of whom rāhui apply to and what consequences accompany them. From an understanding acquired through te reo Māori in piece B, rāhui applied to all and had definitive consequences. In contrast, the English-speaking author in piece A—and therefore their English-speaking audience—did not see rāhui as something by which they were bound. These two texts indicate that, for it to be fully understood, the most appropriate vehicle for Māori law in the 19th century was the Māori language.

V OVERALL CONCLUSION

The understanding of rāhui derived from these 19th century te reo Māori texts is drastically different from the understanding acquired through English media. This is for two reasons. First, as shown in Part II, English legal language failed to capture the depth and expression of tikanga that te reo Māori conveyed. Tikanga is values-based and leans heavily on a pre-existing understanding of cultural context and historical concepts. Māori law cannot be adequately understood as a standalone system; rather, it operates as part of a cultural paradigm.¹³⁰ Where

129 Ballara, above n 128.

130 Alex Frame *Grey & Iwikau: A Journey into Custom* (Victoria University Press, Wellington, 2002) at 25.

English law might reflect western social values, tikanga Māori embodies Māori social values. Without an awareness of te ao and te reo Māori, Pākehā readers did not fully understand Māori social values—and hence Māori legal concepts. Tikanga Māori therefore often lost crucial meaning when translated into English, as the meaning was difficult to divorce from its language of origin.

Secondly, and more significantly—though working in conjunction with the first reason—was the impact of the values and authorial choices of English authors. Part III showed that even when the expanse of tikanga Māori *could* be captured within the English language, the priorities of settler authors and audiences meant that, in practice, it was not. There is a legally binding element to tikanga that the English language is capable of expressing, but that authors chose not to incorporate. As seen in piece B of Part III, when the original text was written in te reo Māori, an accurate translation could grasp the authority of tikanga Māori. Texts that were first written in English could therefore also refer to this legal element, but they did not. This owed to settler attitudes, which were reinforced when English newspapers failed to recognise tikanga as law.

The English lack of obedience regarding rāhui had a cyclical nature, as demonstrated in Part IV. Newspapers did not advertise rāhui as being of legal significance because the English authors did not see them as such; English audiences did not regard rāhui as law because rāhui were not presented in this way through their primary source of information, the newspapers. Niupepa Māori made it clear that rāhui were law and came with legal consequences, hence a Māori readership treated rāhui as law. This resulted in vastly different understandings between English and Māori speakers regarding whether rāhui were legally binding and, if so, who they bound.

With the authorial choices of English-speakers as they stood in the 19th century, tikanga Māori needed to be positioned in the

unique linguistic universe of te reo Māori to be understood most effectively. While this conclusion is limited to the 19th and early 20th centuries, it may be appropriate to undertake a similar textual analysis with modern texts. The overwhelming predominance of English today means that authorial choice has shifted; often the author may be Māori but write in the English language. It would be interesting to consider whether this analysis holds into the 21st century despite that shift, or whether Māori law today can stand separate from te reo Māori.

