

THE UTTERANCE, THE BODY AND THE LAW:
SEEKING AN APPROACH TO CONCRETIZING THE SACREDNESS
OF MAORI LANGUAGE

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ABSTRACT

In what possible ways does the sacredness of a language have application in an everyday, concrete sense – in a contemporary context? If we want to discuss the sacredness of language, can we conceptualise such sacrality in anything other than an abstracted form? I will consider some places where a proposed sacredness of the Maori language might come to bear, and will particularly question its usage within the process of the law. My primary aim in this article is to conceive of ways, however hypothetical, by which the sacredness within Maori language might be removed from its current role of discursive entity and into the active life of the speaker. Thus Maori language, even in its colonized form, may once more take its own place within the spheres of the practical and the sacred at the same time.

INTRODUCTION

This article deals with the issue of whether or not one may experience the sacred elements of Maori language within its contemporary usage in New Zealand society and I raise the topic particularly because of my experience of working on the legal processing of claims before the Waitangi Tribunal. Reflecting on this experience has caused me to ponder on the perception of many New Zealand policy makers and writers of legislation that te reo Maori is a language covalent with English and capable of apparently effortless and transparent translation of meaning. Without reproducing the existing and extensive arguments about the complexity of the art/act of translation, nor those arguments which deal with the creation of cultural worlds through language and the theoretical analysis of language as a system of meaning, I would like to direct readers' attention to the idea of the sacrality of language. In particular,

I wish to consider the sacredness of language as embodied by the speaker in their expression of certain sacred words.

Before doing so, it becomes necessary to note however, that there are social and political elements at work which can stifle usages of such words as 'sacred' and 'spiritual' in academic contexts. One of these, the New Age Movement, which is a recent, relatively young but nevertheless extremely efficient progeny of colonization (Linda Smith 1999:102), has made it rather difficult for many of us to conceive of language as a spiritual event without sounding irrational. Rationalistic discourse about the theoretical use of language, although vastly different in its audience and aims to New Age discourses (which appropriate Indigenous Knowledges to romanticized Western formulaic storylines), has, in my own opinion, unintentionally colluded with the New Age Movement to ensure that words such as 'sacred', whenever uttered, are attended with some degree of intellectual distancing – frequently making them a topic of analysis and explanation rather than of embodied experience. Perhaps this discomfort is due also to such words' complicity with mainstream churches; regardless, when the words which accompany the notion of sacred are submerged then so, arguably, is the notion itself. and yet it is this notion of the 'sacred' within language which is the topic of this article.¹ I am mostly anxious to find a place for the sacred to slip back into, in this case, the academic sphere of language analysis, but in an embodied and experiential sense. Hence this article serves a dual role: it challenges orthodox, colonized (and therefore rationalistic) discourses around language, and it also seeks to concretize this unmentionable 'sacred'.

In an attempt to explicate the sacred realm of the contemporary experience of language in New Zealand society, I have chosen *mauri* as a starting point to consider my central suggestion that language is a sacred entity. Where some may prefer – validly, I might add – to continue in the vein of describing the sacredness of language in abstracted academic terms, in this article I instead choose to apply this element of language to the contemporary process of the law in the context of two linguistic phenomena: first, the act of legal translation, and second the act of hearings, in both cases with regard to the Waitangi Tribunal. The intention of this article is also to reflect on the natural cohabitation of *whakapapa* and the body, the body and language, and of *whakapapa* and language. I propose that the Maori language is just as capable of representing a colonizing discourse as the colonizing language itself and so I contemplate how language used in a hearing might affect the body and hence the *whakapapa* of the speaker, and how we can conceive of the sacredness of language as having a place in current, colonized times.

ASPECTS OF SACREDNESS IN MAORI BELIEF AND PRACTICE

Mauri

The concept of mauri defies exact definition, and perhaps it is only right that this is so, for as I later argue, its form constantly changes, and the essentialist practice of describing it tightly by definition could be inappropriate. Many writers have described its emergence within all that exists, while acknowledging its changeability, but in a loose sense mauri can be taken to refer to 'life-force' and is associated with an element of sacredness. Mauri can also be described as originating from physical aspiration; hence it is often referred to in the same breath as the Maori word for sneeze, in the following tauparapara:

Tihei mauri ora

I sneezed and therefore I live

It is totally by design that the above tauparapara is often invoked to begin a formalised speech. By introducing the notion of mauri, what follows within the oratory is demarcated as something quite sacred. It arguably also sets the scene for as great a focus on the emergence of the words themselves – their utterance – as their strict meaning. It is as if the speaker is putting the listener on notice that the sound of the sneeze can propel itself into the world of life. The sneeze claims further prominence in the breath of life of Tane. Tane was said to have breathed life into Hine-ahu-one with his hau, or breath. Hineahuone then sneezed, thus affirming the life given to her (Robinson 2005: 38).² Mauri may then be concomitant with life, and its mention in the above tauparapara reminds the speaker and their audience of the living dimension.³

Mead (2003: 54) emphasizes the necessity of the link between life and mauri. He argues that mauri enables the physiological processes of the body to take place and also invigorates the human personality. Spontaneity, creativity, vibrancy – these are all aspects of the human condition dependent on mauri. Mauri innervates the body and the personality; when mauri departs, the body is dead. The mauri may depart over time, indicating that the body is physically dead but not 'dead' in a traditional, cultural sense; the continued acknowledgement of the tupapaku in the tangihanga process might affirm this aspect of some extant life.⁴ Moreover, traditional Maori were extremely familiar with the belief that one's mauri could be adversely affected by makutu. Walker (2004: 67), for instance, talks about tohunga who were specialists at 'casting spells' to make people sick, perhaps resulting in at least a state of ill-health or even death. Thus those who were trained in whare maire were taught the

practice of influencing the mauri of an object or a person through uttering 'spells'. Similarly the late tohunga Hohepa Kereopa reminds us that language has its own mauri:

... people have forgotten that karakia have their own mauri The mauri gives karakia its impact. Because if I just say the words of a karakia without any mauri, then it has no impact. (Moon 2003: 87)

Very similar, and perhaps identical, to the phenomenon of mauri is that of hau. The distinction between the two is difficult to articulate but deserves attention, particularly as the two terms are often used interchangeably. As with mauri, hau vitalizes (Salmond 1997: 176) and its use within the phrase hau ora places greater emphasis on the infusion of life into the body – as with Hineahuone, for instance. It is not locatable in any part of the body but moves throughout (Best 2005 [1924]: 51); it can also move outside the body whilst shifting constantly throughout it. Like mauri, hau departs the body at death. Salmond (1997: 510), however, argues that hau is protected by mauri, and that the wairua, another term often used in conjunction with mauri, protects the body. Marsden (2003: 44) believes that mauri-ora and hau-ora are one and the same and may be used interchangeably. Often hau-ora is a phrase used in conjunction with the notion of 'health', particularly in contemporary times, whereas mauri, while indicating the health status of a person, cannot be reduced to that usage.⁵

We begin to recognize that the phenomena behind the terms are interdependent and may not remain static *within* the terms themselves. This is not surprising when we consider that mauri was traditionally said to be inherent to creation; given the vastness of nature, we can expect mauri to wear diverse masks. Mauri resides in fish, rocks and mountains and a mauri, or talisman (Papakura 1938: 221), naturally enough, contained mauri. According to Best (2005[1924]: 32) wairua, instead, was '...that which leaves the body at death', suggesting that it is wairua alone that departs. This view challenges Mead's description of the action of mauri at death: it appears that the phenomenon of mauri can assume various guises, reflecting itself in the different names attributed to it by different writers.⁶

One very real manifestation of mauri occurs when the names of Io are mentioned. Generally the name Io is believed to be so sacred that, like the Jewish name for the Supreme spirit, it is never articulated lightly (Cowan 1930: 55). Whenever the various names of Io were mentioned, the context in which they were placed likewise possessed mauri. Thus the various states of Te Kore, or

that period of creation which valued nothingness, were imbued with mauri simply by virtue of their association, and simultaneous development, with Io (Robinson 2005: 297):

Ko te Kore	The void without anything
Te Kore-te-whiwhia	The void without understanding
Te Kore-te-kerekere	The void without identification
Te Kore-te-tauamaua	The void without time or space limits
Te Kore-te-matua	The void without origin

These states of being are placed alongside Io to indicate his link with Kore (ibid: 298)

Io-mata-moe	Io the Slumbering One
Io-kore-te-whiwhia	Io the One Without
Io-mata-ngaro	Io of the Unseen Face
Io-roa	Io the Eternal One
Io-matua-kore	Io the Parentless One

We may then associate mauri with constant *becoming*. The above depiction of the states of Te Kore illustrates the constant movement of Io through various stages. With this evident dynamism it would be a mistake to imagine that mauri suddenly ceases to move; indeed, it is the constant flux of mauri that both moves outwards from the names of Io and additionally gives us the ability to perceive that Io has these names from the outset.

How one perceives mauri also needs to be addressed as it is likely that all senses were brought to bear in detecting the presence of mauri. While there is a scarcity of literature dealing with modes of sensation or perception in the traditional Maori world, a belief in the presence of mauri would (one conjectures) probably have been sensed through various faculties⁷ – through the appearance of tohu (signs), through matakite (second sight), as well as touch, smell and sight. With the emergence of mauri in all, diverse phenomena, and the description of mauri through multiple discourses and terms, it is to be expected that mauri may be perceptible in flashes or certain instances. Where and when mauri reveals itself are examples of when one may traditionally be able to perceive it, but attempts to hold it within one's perception prove futile.

Whakapapa

This is a concept also important to any discussion of the sacredness of Maori language. In a banal sense, whakapapa can be defined as genealogy, or taxonomy, through which Maori made sense of the world. Whakapapa here is a tool through which Maori could see links between the phenomena of the natural world and thus work a form of science into a 'database' (Williams 2001:16). In relation to the flora and fauna classification system, Maori were apparently adept at structuring the natural world so that there was a consistent explanation for its existence (ibid). Similarly, the names of people comprised whakapapa and were rote learned so that they could be passed on to forthcoming generations. This rendition of whakapapa considers that whakapapa is a creation of mankind and that it is a useful mechanism for survival; generally speaking, names are placed in particular orders by those knowledgeable in genealogy.

Some writers, however, allude to a precursor to human intervention, by acknowledging the eternal event of mauri. Marsden and Henare (1992) tacitly refer to the necessity for the presence of mauri so that whakapapa can exist, and the converse. They state that Tūa Uri – the energy which makes up the universe – is the location of genealogical creation (ibid:14), and that creation and mauri are interdependent (ibid:9). Mauri itself had originated in Te Po (Marsden 2003:181) and may precede whakapapa. It is safe to assume, however, that both enliven each other, for if to possess mauri is to be alive, then this requires the belief and practice of whakapapa. In fact, it may be erroneous to suggest that a linear sequence of events exists in relation to whakapapa and mauri, for it is through whakapapa that mauri can be infused into the natural world.⁸ What remains important is the interdependence of each event; mauri is said to bind the body and the spirit together (Barlow 1991:83), for instance, and thus ensures that life continues.

*The body in a state of flux*⁹

Where the body is bound to spirit, mauri as a changing, vital source ensures that the body itself is constantly in a state of change. As already mentioned, innervation of the physiological functions of the body occurred through the vibrant existence of mauri, which also ensures the spiritual change of the body. For John Rangihau (1992:190), for instance, being Tuhoe before being Maori is as much a matter of spiritual diversity as of localized knowledge. In this light the idea that a group of people can shift form according to the territory that they are currently located in is one that is particularly relevant for

Maori. As complex as the notion is, for the Western world, that Maori are totally constructed by all that surrounds them, for Maori any assertion that an individual, and groups, are uniformly the same regardless of their location is equally disconcerting.

Maori would also assert that the body is meant to retain its changeability in order to protect the integrity of its whakapapa and the mauri. Often this occurred to glean knowledge; Hinetitama for example was one who became Hinenuitepo, the goddess of death, and thus became knowledgeable about that aspect. Maui was another who encouraged discovery (Walker 1992:174) and this he achieved by changing form on occasion, thus gaining experience about forms and states of being (Mika 2005: 48).

Additionally, the mauri of the body, or indeed of other objects, may be sensitive to a context. It is widely accepted in Maori belief, for instance, that a person can fall sick if in a place that has not been 'cleansed'.¹⁰ Physical manifestations abound; a tupapaku could become extremely heavy if about to be moved to a particular location; the movement of a mauri (talisman) from one location to another can alter its function without any other intervention; the wrong recitation of whakapapa can make young members of a whanau sick, and so on. While land is *physically* significant, it is therefore also *spiritually* vital, as it allows the full expression of the link between mauri and whakapapa. The interplay between the objects around the body and the body itself, again vitalized by mauri, means that the body is in a constant state of change.

A state of flux is therefore vital to the integrity of mauri and thus of the body. The practice of naming a newborn was also one that protected this state of change of the body. Naming through reference to whakapapa was a careful exercise but also a joyful one. Specific occurrences surrounding a birth, considered alongside the whakapapa of the newborn, would assist the hapu with names. The child might be given a host of names to allow it to link and align their being to particular locations. Throughout life, that same person might be known by one of those names within an area; the name could change as the territory changed. Care had to be taken when naming a newborn, though: bestowing too many names from various sides of the family on a child could create confusion, reflecting itself eventually in the child's behaviour (Moon 2003: 95). The individual mauri of each name would conflict unless the child were named appropriately.

Naming and reference still show flashes of these traditional beliefs. One would still be careful to call someone else by a name which was suitable for a par-

ticular location, even though the person may bear a number of names. Care had also to be taken when reciting whakawai, or translating ancestral sayings, where behind the words lay the mana of a number of authors, who immediately connected to the mana of particular lakes, mountains, and other whenua (Seed-Pihama 2004: 50).

The connection between mauri of the body and of words

For Maori the metaphysical dimension to words is evident. Royal (2006: 5), a Maori writer, considers that the sacred realm generally was linked to mana. Mana was ubiquitous, and was responsible for such magnificent feats as projecting one's voice over a vast distance. From this account mana appears similar to mauri, but perhaps more directly related to human agency; one's *ability*, or indeed *permission*, to speak could therefore originate from the presence of mana. Many writers refer to mauri when discussing sacredness generally. Tuhoe tohunga, Hohepa Kereopa, as previously mentioned has alluded to the importance of mauri in karakia and indigenous people often speak of language being sacred within consciously sacred contexts. In other words the scene is set, frequently through ceremony, to make language sacred. Integrity is all important in the uttering of words in these contexts; a prayer offered by a Navajo tribal member, contemplating the necessity to always speak the truth, would not only ensure a moral outcome of an action but would also ensure that the words being uttered were protected (Abram 1996: 70). Prayer or incantation for indigenous people, then, could ensure the outcome of a desired effect. Maori believed that words had to be uttered with respect, so that the environment did not take offence, and the kauwae runga ensured that the integrity of karakia was retained through cautious invocation. Te Matarohanga, the tohunga and informant who documented the activities of the kauwae runga, posited that tohunga could assist learning through invocations that ensured the taught information was accepted and retained by the student. Students and tohunga had to utter these karakia with care, however – forgetting their sequence, omitting necessary words from them, could have disastrous consequences. Tikao, of Kai Tahu, was one such tohunga who cautioned against forgetting parts of karakia. He recounted an instance where another tohunga forgot the words to a karakia and died shortly thereafter (Beattie 1990: 93). Closely related was the act of korero tipuna, the act of talking about one's ancestors, which was considered a sacred act (ibid: 74). Those participating in these discussions would not eat until the discussions were finished.

However, words may still be sacred even though not used in so-called sacred situations. Tikao for instance had already described a stand of trees at Akaroa

being inhabited by the name and hence the spirit of a woman, enabling it to speak (Beattie 1990; 89-90). And within the very words used in everyday speech, sound played a huge part in ensuring the presence of the environment. Raerino (2000:1) states that words directly reflect an aural relationship with nature:

Kai roto i ngā kupu me ngā momo kōrero, waiata, haka me ngā karakia a te Māori ngā oro o te taiao. Ko ngā oro nei hai tūhono i te ao tangata, ki te ao o te wao. Ko ngā momo oro hai tūhono i te ao kikokiko ki te ao wairua, te ira tangata ki te ira atua.

Within words and the diversity of talk, songs, performance and prayers of the Maori, resides the sounds of the world around us. These sounds link man to the world of the environment. These sorts of sounds connect the bodily realm to the spiritual realm, the intrinsic humanness to the intrinsic godliness. (own trans)

The link that he emphasizes is the continual presence of the environment by the utterance of the word.

Words possess human-like qualities and Raerino refers to them as having a *whakapapa*. He comments on the interplay between the word *kupu*¹¹ and the various states of being which Maori adhere to in their beliefs, such as *tapu*. Immediately the 'ku' component of the word 'kupu' links the sound and the meaning of a word (ibid: 39), such that the two are interdependent. Thus the sacredness of this word is seen immediately in its components, which are traditionally seen as so interrelated that they are indivisible. The creation of the universe by Io was another phenomenon which displayed the inherent power of words: Io spoke what was considered to be a holy word to advance the light so that balance could prevail (Robinson 2005: 23). This 'word' was in fact a collection of words which could nevertheless have more impact by being considered in their totality as one phrase – or word.

Although the more pedestrian form of speech is often described as *noa*, this does not necessarily remove it from the realm of sacredness. Sometimes, for instance, older generations preferred to remain silent, deciding not to ask questions, because the moment was not an appropriate one to be speaking, although the questions asked were ordinary and seemingly *noa*. Cheryl Smith (2007: 70) remarks that even the act of asking a question, while appearing to be a hallmark of curiosity and intelligence, could disrupt the flow of activity. She believes that older generations regarded the act of questioning as interrupting

the learning process, where observation was paramount. How it interrupts the learning process deserves attention. If the act of speaking was sacred, if words themselves were imbued with mauri, then it was unwise to speak at inappropriate times. Such a belief still exists in modern times amongst Maori, where to speak across someone is not just discourteous but also has potential consequences for the disrupter, particularly in the regions of whaikorero but also in everyday situations.¹²

To draw some parallels with western philosophical traditions of language, both pre-colonial Maori and pre-Aristotlean Greek societies remarked prolifically on the metaphysical nature of language. Plato announced that there was a corresponding Form ‘... wherever we have several things all called by the same name’ (Bostock 1994: 15). The Phaedrus reiterates Plato’s earlier assertion that we knew what the Forms really were in previous lives and that only an everyday sense of what they are now remains. For Plato, we are left with language which describes this dimmer sense. That we can talk about them at all is proof that our souls have witnessed them in their true sense and that we have some knowledge of them. Despite modifying his views to a certain extent, in particular those which formed inherent contradictions, Plato did hold fast to the belief that the Form gave meaning to a general word (Bostock 1994: 23). Plato further argued that a universal property, its *archetype*, gave an object its unique structure and condition (Tarnas 1991: 6). This particular Platonic theory prompted some colourful debate around language, where a critic of Plato stated: ‘I see particular horses, but not horseness’, to which Plato retorted: ‘That is because you have eyes but no intelligence’ (ibid: 8). It is at this point that I see a divergence in the beliefs of pre-Aristotlean Greek ideas and those of indigenous peoples: there is more than *one* mechanism that renders objects sacred in indigenous societies. Heidegger refers to the unconcealment of Being (Clark 2002: 23); sacredness may undertake a similar motion, or else it may move in the spiral shape reflected in nature, but it is likely to emanate from many different sources in the seen and unseen environment. Sacredness may not be attributable to one specific essence but may manifest itself through an interplay of a number of realms. Certainly much of Maori belief in their creation stories reflects the constant chaos of change. The Io explanations of creation, for example, demonstrate a constant folding over of states of nature such that they all created the universe and could not be isolated into their specific mechanisms.

In the subsequent section of this article, I turn to a consideration of these notions of sacred language within the specific example of the Waitangi Tribunal.

THE WAITANGI TRIBUNAL – BODY AND WORDS

In a Maori world the body is sensitive to both the words it utters and the words directed towards it. The body being imbued with mauri, words are also infused with mauri, and it comes as no surprise that Maori perceived a relationship between wellbeing and words. Traditionally, waiata Maori assisted healing through their ability to align the energy of the body with the spiritual (Browne 2005: 4), and a word being uttered would possess inherent sacred significance. If Maori are truly holistic, placing as great an emphasis on the spiritual realm as on the physical and social aspects of the body, then what of the impact of legal discourse, the instrumentality of the words used in a legal process, on the mauri of the body described above? If what Broekman (1986: 376) maintains – that the ‘...existential dimension of the human individual is excluded’ – is true, then there is a likelihood that the words brought into being during the process of a hearing, for instance, impact spiritually on the delicate thread of whakapapa also. My own interest in the discourse of law, its instrumentality and thereafter its impact on the Maori body first became apparent when I was representing clients in the Waitangi Tribunal context. I was mainly involved in the writing component of submissions but occasionally appeared in the actual hearings. At different stages of the hearing process I saw opportunities where the integrity of the mauri of the word, and, if Browne cited above is correct, then also the integrity of the body, could be affected throughout these various stages.

‘Whenua’ and ‘land’ – a disparity of presencing

While I undertook this role I witnessed what could possibly have been a deeper phenomenon than just general client disillusionment with the Waitangi Tribunal process. By this I mean that those of us immersed in this situation, particularly as lawyers, automatically saw the obvious: that the Waitangi Tribunal grappled with the disparities between the cultural meaning of concepts and terminology, and the lack of meaningful fit evidently upset our clients. In a similarly superficial way we also witnessed the defence of the Crown and thus the indignation of our clients at the Crown’s responses. However, these situations always benefit from a more profound critical analysis, and at all stages of a legal process one might be able to identify possibly even more primal effects of language. The stages of preparing for a hearing generally are many; one of the basic steps which occurs early on involves the need to familiarise oneself with the relevant statutes. During the foreshore and seabed controversy, I assisted my colleagues with the writing up of submissions, and recall being bogged down in the minutiae of the provisions of the Maori Land Act 1993. At

some late point I glanced at the title of the Act and saw its Maori equivalent – *Te Ture Whenua Maori Act 1993*. I then remembered the other meaning of *whenua*¹³ – afterbirth – and began to think about not so much the meaning of Maori words but their inherent worth. I began to suspect that, although a shell of meaning can be transmitted through translation, the sacred manifestation of the word *whenua* was not done justice in its supposed equivalent of ‘land’. Hence I began to wonder if land and *whenua* shared nothing in common, since *whenua* required the sensation of its everchanging power and ‘being’ as part of the word.

I mention ‘being’ because at about this time also I had begun to read some of Heidegger’s work. He maintains that ‘Language is the house of Being’. Intriguingly he also wrote simply that ‘Language speaks’ (Heidegger 2001: 191).¹⁴ In giving language the power to speak itself, he effectively disrupts the notion that language is created by man, a dominant belief which he laments as emerging from the crisis imposed by technology (Clark, 2002: 12), where language is never brought to us really as language but merely as a self-realising ‘... rational-logical explanation’ (Heidegger 2001: 191).¹⁵ In speaking, according to Heidegger, we are bringing to completion that which speaks – language (ibid). Further, language continues to speak even after the physical act of speech is past; speaking ‘... gathers the ways in which it persists as well as that which persists by it – its persistence, its presencing’ (ibid: 192). Thus the presence of speaking endures even after the physical act of speaking has taken place.

Although the words that Heidegger refers to are spoken ones (and the significance of orality in legal discourse is something I discuss later), he does allow insight into language at its origin. Heidegger maintains that that which is the most purely spoken is the poetic (ibid).¹⁶ The word in poetry reaches out; poetry brings us nearer to language in the sense of naming, which, in turn, enables us to call – ‘calling brings closer what it calls’ (ibid: 196). When we call through the voice of poetry, we are not merely bringing forth what is being called to ‘... set it down in closest proximity to what is present, to find a place for it there’ (ibid); on the contrary, ‘...the call has already gone out to what it calls ... Into the distance in which what is called remains, still absent’ (ibid). The call of poetry does not force what it calls away from the distance, because the calling keeps it there.

There is no doubt that this concept is difficult to grasp, but it is a vital one to much of Heidegger’s writings. We are not able to control the nearness or distance of language; instead language gives itself to us to speak. It seems that language can simultaneously be close and remote, even though poetry calls it

near. Heidegger puts to rest the dominant discourse of language as constantly being nearby for our constant use. He also resists the notion of language as being statically positioned – contained, measured and born of logic. But what is the significance of Heidegger's arguments for the word 'whenua' in the context of law? 'Whenua' calls into being a much greater presence than 'land'. Its context is metaphorical; immediately it answers to the call of the whakapapa of the person writing or uttering it, although it cannot be controlled. It is not a special word in this regard; other Maori words are brought into being through a metaphorical utterance, although *mauri* may be that element which enables language to speak to us before we even utter the words. Thus the word *whenua*, moving outward from a context of metaphor and given fluidity through its whakapapa with the writer and the speaker, reaches out to the recipient, whether they are reading or hearing the word.

A further aspect of Heidegger's calling is the ability of the presencing of the word to constantly shift. He states: 'The calling calls into itself and therefore always here and there – here into presence, there into absence' (ibid: 196). The presencing of 'whenua' may also move in and out of perception – again, not for human consumption. Like knowledge itself, which Maori traditionally viewed as manifesting itself in the form of a spiral such as the *koru*, the presencing of the word 'whenua' may reveal and conceal itself instantaneously, even in this same form as the *koru*. The calling of the word will bring forth the presencing of the word but not into permanent nearness and, hence, use. The focus on use, according to Heidegger, is part of the technological age; it reflects itself in the very use of the word 'nature', which focuses on fecundity and birth, on constant productivity, rather than its earlier 'physis' which referred to the 'presencing' of what-is-merely-present' (Wolcher 2004: 264). Even in the word *nature* there is inherently imbued in its origin a belief that nature can be created, and accordingly adapted for use by humankind.

Seemingly the word 'whenua' escapes an English equivalent – not simply because of its apparent reference to a number of simultaneous objects, such as land and afterbirth, but also because of what it *is*.

THE HEARING PROCESS

Having talked to the clients throughout the preparation phase, and analysed the relevant statutes, the hearing may now take place. Generally, much of the investigation into legal discourse reveals the complicity of state power with language so that the body is caught up within a sphere of legal absolutism; within a hearing, meaning is standardised so that the subject's perception of

the world is transformed (Broekman 1986:376).¹⁷ Hearings require actors, in the form of the subjects, lawyers, judges, and juries; the narratives that they encourage make the relations between the actors concrete and spectacular (Umphrey 1999: 412). In the Waitangi Tribunal context, despite the informal appearance and the inquisitorial nature of its brief, there still exist these actors with, of course, the addition of those aspects of Maori culture that are the point of grievance. Within these actors resides the ability to gaze and to hear; a 'hearing' provides a forum for the recitation to be listened to. The Waitangi Tribunal hearing is evidence of the importance of the uttered word, and all participants in the process are in some way or other affected by the standardising of the stories. Audiences to these narratives now have a careful and logical body of stories to consume (ibid: 397). Differing from a Maori situation of *tikanga* where a Maori audience would share *whakapapa* to the Maori participant, and would therefore share a spiritual as well as a physical connection, the subject before the Waitangi Tribunal is engaged in a world of spectacle.

Shalleck (1993:1733) considers directly the impact on the client of the legal process, and argues that the construction of a client occurs in the exercise of law, primarily in two stages. Firstly the client is stripped of individual identity; they are therefore completely removed from their social situation. This is an important step because it also replaces the context in which their case arose with the confines of the law. Their identities are then replaced with legal discourse and considerations. They are basically defined by the courts, a phenomenon reminiscent of Foucault's (1989) analysis of the body in relation to the medical profession. Furthermore, if we allow Shalleck's argument, then the discourse which replaces their identities is more than tutelary (Schneider 1996: 38); it is '...instinct with coercion and demands acquiescence' (ibid). With the movement of the everyday, social context to the legal gaze, the translation of natural language into the language of the law also occurs (Broekman 1986: 370), in which the subject is a '... moment of the institution' (ibid) and merely a bearer of legal rights and duties.

The 'moment of the institution' reveals itself for Maori in the giving of evidence. Generally when Maori seem to be speaking *about* *whenua*, *ika*, *takutai moana* and so on, they are actually also speaking *to* them in the sense that the words they use to refer to them are always linked by their bodily *whakapapa* to the physical manifestation of the words. They are arguably always calling the physical manifestation into existence every time they utter the word which talks *to* it. However, in the hearing process, the relationship of the witness to the sacred aspect being questioned about becomes defined at that moment as a product of observation, at which point the language that the witness responds with forces

the witness apart from the sacred aspect being asked about. The witness then does not talk *to* the phenomenon but *about* it. As well as being a product of the identity discourse provided by the law, additionally they are forced into a relationship where their response to the questioning lawyer is tightened. This process is ensured through what Broekman (1986:374) describes as a jurificated world. In the context of the Waitangi Tribunal hearing the relationship of the witness to the hitherto sacred aspect referred to becomes objectified – inherent to the concept of the jurificated world but through the route of language. It is as if the ‘moment of the institution’ is a frozen snapshot, facilitated by the uptake and use of the language of law.

HUMAN AGENCY: PROTECTING THE MAURI FROM INSTRUMENTAL LEGAL DISCOURSE

Foucault maintains that discourses actually *construct* social entities and realities (Fairclough 1992:3–4). If this is so, then we need to consider how Maori might protect their own mauri from the instrumental nature of the language of law. Price (1999:593) considers the possibility of mastering particular discourse as a means of addressing this problem – at least as a way of protecting socio-political interests. This approach is reminiscent of the push for Maori to become lawyers in recent years, ostensibly to tackle the tangible difficulties that Maori were facing in the courts. A further, and possibly related, reason for this drive was the education of Maori so that they could master and subvert the language of law for the use of their people. Where a positive outcome would ensue, the language would be seen to be neutrally malleable to the wielder. The immortal words of Ngata:

E tipu e rea, Mo nga ra o tou ao, Ko to ringa ki nga rakau a te Pakeha,
Hei ara mo to tinana, Ko to ngakau ki nga taonga a o tipuna Maori,
Hei tikitiki mo to mahuna, A ko to wairua ko to Atua, Nana nei nga
mea katoa

Grow up and thrive for the days destined to you. Your hands to the tools of the Pakeha to provide physical sustenance. Your heart to the treasures of your ancestors as a diadem for your brow. Your soul to God to whom all things belong. (Trans: Keelan, (n.d))

are a reminder to many Maori that the language of law, amongst many other aspects of Western education, could be grasped by Maori whilst they maintain an essentially Maori identity.

Maori have seemingly upturned the language of law in a number of ways: through the admission of Maori knowledge into the courts; by conducting hearings in Maori; by providing a Maori expert voice in cultural reports, and so on. Debate continues on whether these methods of resistance are sufficient. I would add to any voices of caution by saying that these measures are merely surface, that the admission of Maori knowledge into courts does very little to ensure that the inherent mauri of the Maori subject is protected. In a hearing situation, conducting a cross examination of a Maori defendant in the Maori language achieves the same outcome as a process conducted in English, because the language resorted to is still instrumental and designed to compel the defendant to form a desired response.

REMOVING TREATY ISSUES FROM THE WAITANGI TRIBUNAL

As well as highlighting the need for a separate justice system, in his report *Moana Jackson* (1988) was illustrating the innate shortcomings of the court system, with particular emphasis on the criminal court process. The criminal process has been called into question in its inappropriateness for dealing with Maori, due to its overwhelmingly Western approach to the regulation of behaviour. The Waitangi Tribunal is heralded by many as being far more 'Maori-friendly' than, say, the District Court or even the Family Court. Often its agreeability is attributed to the fact that hearings can occur on the marae (and they are thus subject to the local *kawa* and *tikanga*), that Maori language is used freely, and that the Treaty of Waitangi is referred to without jurisdictional issues, and so on. The outcomes prompted by the Waitangi Tribunal may even be beneficial by some measures, although opinion is sharply divided on its ability to deliver equitable outcomes for Maori in terms of the return of their resources.

However, the Waitangi Tribunal may also need to be examined in the light of Jackson's report, especially in relation to its quite uncritical use of legal discourse in its proceedings. The question of whether a Tribunal, by virtue of its very name, can exist without legal discourse is an interesting one to consider; the Tribunal may inherently cease to be if there were no lawyers and judges present. If we devoid the Tribunal of its jurificated language, though, then language may once again be allowed to flow freely in the ways in which we traditionally anticipated mauri would allow them to. Even the uttering of words might not take precedence in such a forum: Frame and Meredith (2004: 8) for instance discuss the example of the meeting of the tribes at Pukawa in 1856 to consider the Kingitanga. Citing Cowan, Frame and Meredith state:

Each of the ropes representing these sacred mountains of the tribes was hauled taut and staked down, leaving Tongariro mountain in the middle, supported and stayed by all these tribal cords, and above floated the flag. Thus was the union of the tribes demonstrated.

Frame and Meredith continue by explaining that this event illustrates the way in which constitutional agreements were arrived at by ‘performance cultures’ (ibid). I would add that this symbolic arrangement also managed to avoid the use of instrumental, legal language altogether. This is not to say that language should not be used in contexts where it becomes necessary – after all, speech is the food of chiefs (ko te kai a te rangatira he korero) – but it would have to be used with some awareness that each word is alive and not merely something for denotation.

Of course Jackson’s reproach of the criminal justice system rests tacitly upon the premise that Maori do not need anything from the Crown in that context. However, the Waitangi Tribunal operates on the idea that Maori require, and may be rightfully entitled to, resources back from the Crown. Thus the Crown is always complicit in the proceedings as the process of having the resources returned must always involve them. How ready the Crown would be to accept that language must be acknowledged as living and not resting solely in the rigidity of legal discourse remains to be seen – the Crown has a hard enough job accepting that Article Two of the Treaty of Waitangi guarantees a separate justice system, let alone acknowledging that a phenomenological approach to language must also compel this move! However, if the Crown and Maori were to consider a move towards another, non-legal means of discussing the return of resources then one of the elements galvanizing this move must be the fundamental, deep philosophical difference of phenomenological versus juridical approaches to the nature and meaning of language. With the repositioning of language as a sacred phenomenon, Maori are much more likely to retain the kind of freedom that their language necessitates.

CONCLUSION

Without a doubt, a phenomenological approach to language would still involve denotation; however it would also accommodate the recognition that language is foremost a sacred entity, inseparable from the body. It is this interrelationship which makes the body so receptive to the words directed toward it or about it. Western law, on the other hand, is a foremost inheritor of the dominant idea that language is an instrument of precision and in that sense the body is not predominantly seen to be primordially or fundamentally sensitive

to the words directed at it. In the context of the theory I have considered here, the uncritical practice of translation, while important in law, could only occur with the awareness that language is a sacred event. Judicial forums, including the Waitangi Tribunal, inherently non-Maori in their forum and view of language, need to be challenged in their approaches to purifying language.

What has until now remained unspoken can indeed speak itself, as Heidegger maintains. How could we possibly write these assertions so that they are applied in an everyday context? If we consider the limitlessness of a sacred realm while theorizing we might be starting to get somewhere; I insist that that which dominant discourse tells us we should not contemplate is precisely the thing that we should be contemplating. In some cases there may be traditional strictures around bodies of knowledge which prevent this from occurring, but I am alluding more to a creative process of reflection that does not emphasise the recollection of traditional facts or the recounting of inductive knowledge. In other words, entertaining extraordinary theories around apparently self-evident phenomena, such as language, liberates us from colonization and disturbs any illusions of the authentic that we entertain. We are then able to normalise that which has, through colonized times, been made abnormal: that which lies on the outer, in the sky, in the dark or beyond the veil.

NOTES

- 1 I am loathe to suggest a translation for 'sacred' into Maori, simply because the meaning attributed to the word 'sacred' might not have existed in traditional Maori times. This is not to say that the hallmarks of a sacred state were not present, as I go on to suggest with my analysis of maori. Some writers often equate 'tapu' with 'sacred'; however, I am aware that much of the true meaning of Maori words has been lost, and I cannot willingly commit to this translation.

While it may be easy to equate these two terms, 'sacred' derives from Latin *sacrare* or *holy*, and thus springs from an entirely other etymological origin to 'tapu'. Although the task of translators might be to find the most symmetrical term which can be best understood, one of the drawbacks of their work is the eventual loss, and perhaps distortion, of the original meaning of the word deriving particularly from the colonized group. I have provided rough translations throughout this article but remain aware that to do so is to perhaps engage in a problematic task: that of dragging a colonizing world over into a colonized one (particularly if we do agree that language is a sacred phenomenon), thereby contributing to a colonizing practice. Indeed, a similar theme is the dominant feature of this article.

- 2 While it is suggested that Tane created Hineahuone, Papatuanuku (Earth Mother), the father of Tane, was one atua who enabled her creation to occur by indicating the location of human essence in her body (Pihama 2001:17). The input of the female element into the creation of Hineahuone is often overlooked.
- 3 I have also heard some speakers exclaim 'tihei mauri mate' at tangihanga, which could be an additional reminder that the dead also possess mauri. The daughter of Hinenuitepo and Tane, although retaining the mauri of her parents, became Hinenuitepo, who has become known as the Goddess of Death; thus it is reasonable to believe that Hinenuitepo retained the original mauri of her former persona, and continues to share it with the dead.
- 4 Of course no-one can be too sure of exactly *when* mauri departs the body, although some tohunga may be able to perceive this event. This uncertainty has been alluded to by Morioka (1995, n.p) in relation to the Japanese aversion to organ donation, where some Japanese differ from the West about when a person is 'dead'. The pursuit to try and isolate the point at which the soul departs the body has resulted in some bizarre experiments: see Roach (2004:173), for instance, who recounts the weighing of six patients before and after death. Dr Duncan MacDougall, who made observations, noted that the weight loss of each patient after death amounted to three-quarters of an ounce.
- 5 Marsden (2003: 440) explains that mauri-ora and hau-ora are synonymous in relation to animate objects. Only mauri (without the adjective 'ora) can be used in reference to inanimate objects.
- 6 It is worthwhile to keep in mind that Best's writings are often challenged by other authors: see for instance Simpson (1997) who argues that Best's European preconceptions immediately flavoured his preference for the Io stories.
- 7 Marsden and Henare (1992:9) mention the incapacity of the 'sense perception' to apprehend the rhythmical patterns of energy, of which mauri is a part.
- 8 Here, there is a similarity between Maori belief and Russell's (1961) recitation of Heraclitus' mystic tradition: *'All things come out of the one, and the one out of all things.'*(p.59). Whether the 'one' is God, or a God-type figure, is a matter of much controversy amongst Maori.
- 9 Again, Russell provides a summation of Heraclitus' flux, which I will draw on: *'We step and do not step into the same rivers: we are, and are not'* is perhaps the best-known saying of Heraclitus, along with *'The sun is new every day'*. Both

aphorisms express Heraclitus' belief that, although permanence appears to exist, nevertheless it is the *process* which is permanent and not the *substance* (Russell 1961: 64). Thus Heraclitus' central fire is always changing but exists always. In a similar way, I argue that the body is never the same, through its innervation by mauri.

- 10 Whakapure or whakanoa are the Maori terms for the process of cleansing.
- 11 Kupu can be translated as *word*.
- 12 Implicating the practice of research, prospective informants may be reluctant to speak, where they formerly indicated they might. This would explain the often frustrating attempts of researchers to access information in oral interviews, where questions are ignored and the words are allowed to emerge without the prompting of questions.
- 13 Aspects of the sacredness of this particular word might originate from its dual meaning, although this inference is somewhat different from the application of Heidegger's theory of the 'calling' of words to the word *whenua*, which I discuss presently. Note, however, that Heidegger's Fourfold immediately infers an involvement of all the Four, even when only one of the Four is mentioned – they are together in a 'simple oneness' (Heidegger 2001: 147). In a more linguistic fashion, Lubberda (n.d:2) refers to monosemic and polysemic language – the former being the linear derivative of science and the latter possessing non-linear, metaphorical depth where words contain a number of meanings.
- 14 Interestingly, Hohepa Kereopa claims that we cannot even take for granted that language is a human possession. He states: 'There are different types of Te Reo [language] So when you go to talk to the pipis or you go to talk to the trees, you have a transformation in the type of Te Reo you use. You need that so the pipis or the trees can understand you.' (Moon 2003: 134)
- 15 Language as a tool, as a means of designating what is useful and what is good and just, is a belief which can be traced back to Aristotle. Aristotle (1988:3) advocated for an approach to language which demarcates us from our animal counterparts; he asserted that language in the form of speech could only be possible because humans are unique. For Aristotle, language introduced humans to the world of choice and political communication. In so doing it provided humans with a power to indicate what was harmful and what would be beneficial to the group (Chilton 2004: 5). The speaking of language would evolve so that political functions could be performed. Other later philosophers, such as Locke,

placed ideational significance on language, so that it was merely an expression of the content-bearing mental state of the speaker at the time (Lycan 2000: 78). As famous as he was for his maxim that the mind is initially a *tabula rasa*, it is hardly surprising that Locke should locate the significance of language solely in the mental, since his maxim presumed the mind's pride of place in acquiring knowledge also. At this stage English was quickly moving towards becoming standardized through such phenomena as the advent of the King James Bible (Fennell 2001: 137), and was losing its variability.

An echo of Aristotle's instrumentalist philosophy of language continued through until the present day. Further attempts at the construct of language as a tool of meaning – language as a meaningful utterance or expression of words – emerged with the Verificationists in the 1930s.

Verificationism was driven by the logical positivists, who believed that the sentence being uttered must make a difference to future experience (Lycan 2000:118) and that its meaning could be divined according to whether one could find a set of experiences to verify it. The sentence could hence be said to be either true or false. Although analytically true sentences were true because of the meaning of the words, most sentences were not accorded this privilege and were open to the kind of scrutiny afforded by verificationism.

- 16 Heidegger states, however, that prose is not the opposite of poetry (Heidegger, 2001: 205). Pure prose is as poetic as poetry (ibid: x). Albert Hofstadter, in his introduction to Heidegger's *Poetry, Language and Thought*, attributes the dichotomy between the two terms of poetry and prose to a lack of equivalence in English for the verb *dichten*, which Heidegger uses. *Dichten* is freely and liberally translated as *the writing of poetry*.. Hofstadter equates *dichten* with the thoughtful composition of poetry or other literature (ibid). The verb *dichten*, does not sit comfortably with a notion of mere representation within language; it instead '...bids to come the entire fourfold of earth and sky, mortals and divinities ...' (ibid). The thoughtful writer must speak of the fourfold while recounting what he or she sees or hears.
- 17 Legal language focuses on the precision of words, which has led to some advocating that the legislature, the judiciary and the legal profession use less complex forms of it (Crystal 1987: 386). We could argue that the objectivity, even the complexity, of legal language is a necessity, but would still have to contend with Heidegger's belief that man does not have dominion over language.

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