

"WRESTLING WITH THE TANIWHA": AN ANALYSIS OF TWO MAORI LANGUAGE TEXTS AND THEIR ENGAGEMENT WITH WESTERN LEGAL CONCEPTS

*Māmari Stephens**

Māori people have wrestled with the taniwha of the Western legal tradition since its official arrival in the early 19th century.¹ Legal history reveals Māori people have been far from passive victims of this taniwha. Clues about the nature of the engagement between Māori thinking and Western notions of law can also be found in the Māori language itself. In particular, this paper argues that the Māori language has been developing a special terminology or vocabulary with a special purpose, pertaining to Western legal concepts ("legal Māori terminology"). The nature and extent of that terminology warrants further exploration.²

S'inscrivant dans le mouvement plus général de résistance contre le processus de colonisation, les vives critiques exprimées dès le XIXe siècle, par le peuple maori à l'encontre des préceptes de la tradition légale occidentale, lesquels ont souvent été perçus comme une manifestation 'diabolique' (taniwha en maori), sont un phénomène ancien.

* Te Rarawa, Lecturer, Faculty of Law Victoria University of Wellington, coordinator and research partner in the Legal Māori Project. My thanks go to Professor Tony Angelo and Professor Paul Nation for their assistance and feedback in the preparation of this paper. Any inaccuracies or defects, are, of course, my own. Ka rere atu taku mihi mahana ki a kōrua.

1 In this sense the term taniwha refers to a formidable and fabulous water denizen, often a guardian figure, but also an adversary – perhaps a relative of Leviathan?

2 Obviously using the term "legal terminology" to refer to Western legal concepts invites the supposition that only Western ideas are "legal" ideas. Ultimately "legal terminology" in Māori is that terminology pertaining to Māori law as well as to Western law. For the purpose of this paper, however, the term "legal Māori terminology" has a narrower application, largely to avoid clumsy phrases such as "terminology in the Māori language pertaining to Western legal concepts".

Comme l'auteur nous le rappelle, l'histoire du droit néo-zélandais établi sans conteste, que ce mouvement de résistance a été méthodiquement organisé principalement à travers les traductions en maori des concepts juridiques de la common law permettant ainsi l'émergence et le développement d'une terminologie juridique ("legal Māori terminology") spécialement adaptée aux concepts maoris.

I INTRODUCTION

The existence of a legal Māori terminology is important, not least because of a widespread presumption that there is no such terminology. Anecdotally, it appears Māori speaking practitioners who wish to engage in such discourse often "make up" their terminology, in the absence of a commonly known legal Māori terminology.³ Students who submit their assignments in the Māori language at the Law Faculty at Victoria University are expected to provide their own terminology to ensure the marker can understand the language used, again on the presumption that there is no shared terminology available.⁴ However, the fact that there is no widely disseminated legal Māori terminology does not mean that no such terminology exists. There are quite literally thousands and thousands of pages of publicly available and printed Māori language documents discussing, translating and interpreting Western legal concepts.⁵ Most of this material derives from the 19th century, but a significant amount of it is contemporary. To illustrate this point, some examples of relevant 19th century printed documents include:⁶

- dozens of Acts and Bills that were translated into Māori in the 19th century in whole or in part;
- hundreds of Crown-Māori agreements, most of which are written in Māori and many of which remain almost unknown, and the Māori language text unexamined;⁷
- *Nga Korero Paremete*, the collected Māori translations of the speeches of Māori members of Parliament;
- The Māori Kōtāhitanga Parliament proceedings of the 1890s;

3 Chief Judge Joe Williams, Māori Land Court, personal communication December 2006, Alex Hope, partner, Till Henderson Law personal communication 27 November 2007.

4 http://www.victoria.ac.nz/law/documentation/student_downloads/Te%20Reo%20Maori%20Process.pdf.

5 For useful discussion on the presence and use of the Māori language in government and Parliament see Phil Parkinson "Strangers in the House": The Maori Language in Government and the Maori Language in Parliament 1840-1900 – [2001] VUWLR 45; (2001) 32 VUWLR 865.

6 All this material is currently available from the Alexander Turnbull Library and the National Archives. These items are described in Parkinson, P and Griffith P, *Books in Māori, 1815-1900: an annotated bibliography* (Reed, Auckland, 2004).

7 The information for these statements comes from RP Boast "Recognising Multi-Textualism: Rethinking New Zealand's Legal History" (2006) 37 VUWLR 547-582.

- *Te Kahiti o Niu Tireni: I taia i runga i te Mana o te Kawanatanga* (1865-1872) The official government organ to communicate with Māori from 1865;
- even Anglican Synod proceedings, from the Waiapu Diocese which provide examples of legal language from Canon Law.

Contemporary sources are nowhere near as extensive, but include Government websites (many of which now contain significant amounts of Māori language material explaining legislation and procedures), Māori Affairs select committee proceedings, and printed transcripts of Māori Land Court proceedings carried out in Māori. Buried in all that text, historical or contemporary, is a legal Māori terminology waiting to be collated and examined. The nature of that terminology and its engagement with Western legal concepts remains largely unexplored.

A To Identify and Explore Legal Māori Terminology

There are a number of reasons to identify and explore legal Māori terminology. An obvious reason is a pedagogical one. If a legal terminology can be identified suitable for modern use, learners of the language can concentrate their efforts on learning those terms in order to achieve proficiency in discourse about Western law, within the common legal system in any number of given contexts in the Māori language.⁸ The lack of a widely disseminated legal Māori terminology may discourage others from speaking the Māori language when discussing or writing about legal issues. Furthermore there is no guarantee that other speakers will understand those who use the Māori language to discuss matters pertaining to the common legal system.⁹

The identification and examination of legal Māori terminology can also give us a tool of analysis with which to identify the nature of change in the Māori lexicon in a specific subject area. If, for example there was an identifiable legal Māori terminology in existence in 1873 to do with (what was then called) Native land law, how might that terminology have changed by 2008 in the same subject? What types of terms are used? Borrowings? Neologisms? Are new meanings added to familiar words? Has the proportion of technical terms to non-technical terms changed significantly? Has Māori developed more technicality in this regard?¹⁰ If there has been a change, what might have precipitated that change?

8 TM Chung and P Nation "Technical vocabulary in specialised texts" (2003) Vol 15, No 2 Reading in a Foreign Language 103, 114.

9 The term "common legal system" is here used to denote the legal system utilised by and applicable to all New Zealanders, excluding reference to a Māori system of laws.

10 Increasing technicality in the lexicon of te reo Māori has already been identified as problematic in the science and mathematics field. Such comments have been made without specific lexical analysis however. See G Stewart "Science in the Māori Medium Curriculum: Assessment of policy outcomes in Pūtaiao education" 2007 Conference presentation before the Philosophy of Education Society of Australasia. See also G Stewart *Kaupapa Māori Science* (Unpublished EdD Thesis, University of Waikato, 2007).

A third reason to investigate legal Māori terminology and its development is the insight into New Zealand legal history that such study will provide. In a very real sense New Zealand legal history is a bilingual legal history. Māori engagement with the Crown and government at central and provincial level was, as it is today, substantial, ongoing and documented. In the 19th century debates and challenges about Western law and its impact on Māori took place in Māori and the formalisation of relationships between Māori and the Crown took place in Māori. How did the Māori speaking officials and the Māori with whom they negotiated conceptualise the ideas they were dealing with? How might that conceptualisation have changed over time, and how might the language they used reflect that change? What was the vocabulary they used? The study of legal Māori terminology can serve, in part at least, to answer some of those questions.

To illustrate what information might be derived from the identification and study of legal Māori terminology the second part of this paper describes a small study looking at vocabulary differences in two short texts from two different centuries. This type of study, borrowing from the disciplines of applied linguistics, terminological study and lexicography, may be a useful starting point not only in ascertaining Māori engagement with Western legal concepts, but also for analysing long term language shift as demonstrated in the development of legal Māori terminology.

B Some Context

Despite the bestowal of the rank of "official language" upon Māori by the passage of the 1987 Māori Language Act, the use of Māori in any legal context is usually rare. Outside of the Māori Land Court and the Waitangi Tribunal, the use of the Māori language in the New Zealand courts can still provide a cause for headlines.¹¹ In the 17th century, the following observation was made about the necessity to exclude the use of ordinary English in the law courts of England:¹²

... it was not thought fit nor convenient, to publish either those or any of the statutes enacted in those days in the vulgar tongue, lest the unlearned by bare reading without right understanding might suck out errors, and trusting in their conceit, might endamage themselves, and sometimes fall into destruction.

The famous jurist Sir Edward Coke was here defending the earlier use of arcane 'Law French' centuries after ordinary French had died out in common parlance in England. Perhaps a similar reluctance exists today in accepting the use of Māori language to describe and denote Western legal concepts. The business and drama of law is carried out almost exclusively in the English language, although proceedings in the Māori Land Court may frequently be carried out in the Māori language if the judge speaks Māori. The Māori language has been described by Chief Judge Joe Williams as an "ordinary" language of that Court.¹³ Māori may also be heard before the Waitangi Tribunal,

11 Edward Gay "Iti asks for evidence at trial to be given in Maori" *New Zealand Herald* Wednesday March 05, 2008.

12 3 Co Rep xl (Butterworths, London, 1826).

13 Personal communication, December 2006.

particularly in the provision of claimant evidence. Whether such evidence is then subject to analysis and examination very much depends on the Māori speaking skills of counsel and individual tribunal members.

Of course Coke's reference to "the vulgar tongue" merely reflected the fact that English was, by the 14th and 15th centuries, the language of common parlance in England. Māori cannot be said to be the language of common parlance throughout New Zealand, notwithstanding its legal status. Arguably it cannot even be said to be the ordinary language of the Māori. The 2006 survey *He Tirohanga ki te reo Māori* indicates that significantly less than a quarter of all adult Māori are proficient in reading, writing, speaking or listening to, Māori.¹⁴ These figures represent a significant improvement on previous figures and recent growth give cause for great hope. But it cannot yet be said that Māori is, in any way, safe as the mother tongue of future generations.

One obvious way to seek to ensure the future of any language is to ensure that it is spoken in as many domains as possible, and to that end in recent years there has been a number of Māori language dictionaries published in an attempt to disseminate vocabulary and to give learners the necessary linguistic tools for independent language learning. There has been considerable work done in developing new words to include in the Māori lexicon for use in modern life, often under the auspices of Te Taurawhiri i te reo Māori (The Māori Language Commission), the Ministry of Education and Te Puni Kōkiri (the Ministry for Māori Development) and within academia.¹⁵ Much work, for example, has been done in creating new terms in the study of the sciences and mathematics. But it may be possible to argue that, where new terms are coined *ad hoc* and too rapidly the new terminology can impede learning objectives rather than enhance them.¹⁶ However, analysing terms that *already* exist in the target language may be a useful way to measure change in that language and how that language copes with concepts generated elsewhere.

With language revitalisation in mind, work has (only) just begun at the Legal Māori Project, based at the Law Faculty of Victoria University of Wellington, on compiling a corpus of historical and contemporary texts written in the Māori language that are either legal instruments, translated

14 Te Puni Kōkiri *Te Tirohanga ki te Reo Māori the Māori Language Survey Fact Sheet* July 2007.

15 See for example *Te Reo Pangarau: a Maori language Dictionary of Mathematics* (Ministry of Education, Wellington, 2004). Other specialist dictionaries include a business dictionary: *Taking care of Business: Business terms in Aotearoa, He Papakupu Pakihi: English-Maori Business Directory* (Aotahi, Te Kuiti, 2005).

16 A 2007 report on the pass rates of Māori-medium students sitting NCEA examinations and assessment in te reo Māori has shown that ¾ of students being assessed in te reo Māori did not achieve the required standard. In view of this result (albeit derived from a small sample of 1317 Māori language exam scripts), questions are now being asked about the te reo Māori science lexicon that has been developed and whether the resources used in developing the lexicon could have been better utilised. See G Stewart "Science in the Māori Medium Curriculum: Assessment of policy outcomes in Pūtaiao education" 2007 Conference presentation before the Philosophy of Education Society of Australasia.

versions of legal instruments or can be identified as "legal Māori texts" in some other way. From this corpus researchers at the Legal Māori Project will identify a legal Māori lexicon that will be based on robust frequency data. This lexicon will comprise a legal Māori terminology that will be the basis of a legal Māori dictionary.¹⁷

Of course, Māori has a sophisticated terminology to describe traditional Māori legal concepts, usually referred to in English as "customary concepts".¹⁸ Much recent work has been done on analysing Māori customary concepts and how those concepts have been expressed in the common legal system.¹⁹ As Professor Richard Benton has observed:²⁰

The words themselves have not sprung spontaneously from the earth or sky. Many have long histories, and are the product of centuries of refinement and transformation, much of which has taken place in far distant lands. Their etymology and the lexicographical framework in which it is embedded give us a guide to the intellectual history of Māori social and legal thought.

Of course the same is also true of terms used within the English language to denote concepts indigenous to, or adopted by, the Western legal tradition. Such terms cannot fit immediately or easily into a Māori language context, or at least, that is the common assumption. As yet, little appears to have been written about how the Māori language expresses Western legal concepts. However evidence that the Māori language has been engaging with Western legal concepts dates from at least as early as 1820 when the Lord's Prayer (with its ideas of "kingdom" and "trespasses") was translated and disseminated in Māori along with the first written Māori grammar.²¹

I believe an enquiry into this engagement would be a fruitful one. If words, as Professor Benton states, and the "etymology and the lexicographical framework" in which they appear, guide us to an understanding of the intellectual history of Māori social and legal thought, perhaps a study of words

17 The Legal Māori Project was established at the Law Faculty of Victoria University in early 2008.

18 Customary Māori legal concepts have been investigated by the FRST funded work undertaken by Te Mātāhauāriki Institute based at Waikato University in developing *Te Mātāpunenga* which has collated the historical uses and meanings of selected terms and concepts from Maori customary law.

19 See for example Dr Nin Tomas *Key Concepts of Tikanga Maori (Maori Custom Law) and their use as Regulators of Human Relationships to Natural Resources in Tai Tokerau, Past and Present* (Unpublished PhD thesis, University of Auckland, 2006). See also publications of Te Matahauariki Research Institute <http://lianz.waikato.ac.nz/publications-internal.htm>.

20 "Lexicography, Law and Transformation of New Zealand Jurisprudence" paper presented at the International Invitational Symposium on Concepts in Polynesian Customary Law' sponsored by Te Mātāhauariki Institute, University of Waikato 12 October 2004, page 6.

21 Thomas Kendall Samuel Lee *A Grammar and Vocabulary of the Language of New Zealand* (London Missionary Society, London, 1820). Text available at <http://www.nzetc.org/tm/scholarly/tei-KenGramm.html>.

specifically imbued with meaning related to the common legal system might tell us a great deal about the relationship between Māori and that system.

II THE IDENTIFICATION OF LEGAL MĀORI TERMS

To support the argument that the Māori language has a terminology of western legal concepts that should be researched and developed, the next part of this paper will examine, in a very limited way, the nature and development of what may be identified as some examples of legal Māori terminology. This part of the paper shows that it is possible (although problematic) to identify legal Māori terminology, and some analysis of how those words have developed can be shown to at least raise further interesting questions that warrant further study.

Prior to the arrival of Pākehā the Māori language had no terms to denote Western legal concepts, although some of the existing legal terms in Māori may well have been co-opted fairly quickly to express such concepts. How has the lexicon of Māori adapted to these concepts? I recently undertook a small, statistically invalid study in order to begin working out how to identify legal Māori terminology, to investigate the nature of such terminology, and how that terminology appears to have been created over the past 134 years. I borrowed some ideas from the study of terminology within the field of applied linguistics in the design of this study. The study of terminology is a fairly recent branch of linguistic study as is the discipline of legal linguistics or the specific study of legal language.²²

A The Texts

In 1873 the Maori language newspaper *Te Waka Maori o Niu Tirani* published an explanation and summary of the new Native Land Act 1873. "He Whakamaramatanga i te Ture Whenua Maori 1873" ("Text A") was published in Vol 19, No 16 at page 140. Text A is 439 words in length.

Land Information New Zealand (LINZ) currently publishes, on its website, a Māori language explanation of current Māori land law.²³ "He aha te whenua Māori?" ("Text B") is 496 words in length.

Both pieces sought to explain to a general Māori speaking audience the intricacies of Māori land law. For the purpose of my study I took a page of Māori language text from each publication in order to identify and extract from those excerpts the terms used in Māori to describe essentially western legal concepts (see Appendices A and B). Obviously these are short texts, therefore any data to be derived from them can only be suggestive, and in no way conclusive.

22 Heikki Mattila *Comparative Legal Linguistics* (Ashgate, Aldershot, England, 2006) 6.

23 <http://www.linz.govt.nz/core/titlesandrecords/maorilandinfo/whatismaorilandmaori/index.html> (date of last access 9 May 2008).

B A Methodology

It is difficult to discuss the creation of legal terminology without first being clear about how to identify and recognise that terminology.

At its base, terminology, or technical vocabulary is vocabulary for a special purpose that forms part of a system of subject knowledge.²⁴ Such terminology might have special characteristics that mark it out from the general vocabulary of a natural language. Those special characteristics might include the shape of the word, how it fits into a sentence or specialised meanings accruing to a word in context. Methods of identifying technical vocabulary include:²⁵

1. enabling specialists in a given area (by way of textbooks perhaps or some other medium) to identify the technical terms in that area;
2. using a technical dictionary compiled by specialists as the reference for determining the technicality of terms;
3. using computer software to identify terms that occur frequently in specialist technical texts.

New Zealand does not have a comprehensive legal Māori dictionary to assist with the identification of Māori legal terminology. The Ngata English-Māori and *Te Matatiki* dictionaries contain a number of legal terms, and Te Taurawhiri-i-te-reo Māori disseminated a list of (largely procedural) Māori words and phrases as a translation aid in 1988. Parliamentary translators use their own glossary of legal terms to translate speeches for Parliament when required. None of these lists is comprehensive and few speakers may be aware that such lists exist at all. The *New Zealand Legal Words and Phrases* database run by LexisNexis provides links to cases and statutes dealing with a limited number of Māori concepts, but not with Māori interpretations of Western legal concepts.

In the absence of access to specialists and an existing legal Māori dictionary the Legal Māori Project will employ method 3 identified above, by compiling a corpus of legal Māori texts, from which lists of frequent terms will be generated to determine the basis of a legal Māori lexicon. However, frequency lists will only tell part of the story. Much legal terminology is, notwithstanding its specialised usage, designed to refer, after all, to all aspects of daily life. Unlike an anatomy or a mathematics text that contains "strictly" specialist terms with a special purpose; much legal language also contains words from ordinary language, the meanings of which are precisely defined

24 TM Chung, P Nation "Identifying technical vocabulary" (2004) 32 System 251, 252. In this paper "terminology" and "technical vocabulary" are terms used interchangeably to describe the same type of vocabulary.

25 See generally TM Chung, P Nation "Identifying technical vocabulary" (2004) 32 System 251-263. Note the labels "terminology" and "technical vocabulary" are interchangeable in this paper.

or even divergent from that common language.²⁶ In short, much legal terminology may be indistinguishable from a general vocabulary.

In 2004 Chung and Nation of the School of Linguistics and Applied Language Studies at Victoria University of Wellington developed another method of identifying technical vocabulary that may be useful identifying legal Māori vocabulary. They developed a rating scale to determine the relative technicality of terms. The basic idea behind rating system is to ask whether a given word has a meaning that would be considered "technical", depending on the specialist subject area. The focus is on the nature of the relationship between the meaning and the subject. If there is a close relationship, the words can be considered technical. Conversely, if there is no relationship or merely a weak one the word can be considered non-technical.²⁷

One of the difficulties in trying to ascertain the technicality of terms associated with Western law is that it can be difficult to see such law as a "technical" area at all. Concepts of Western law pervade the lives of those of us who live in the Western milieu. At certain levels that language of law can be very complex and incomprehensible to non-lawyers. On the other hand many terms that refer and belong only to the subject of law are well known in the public arena, belying the technicality of such terms. In short, just because many people might understand a term does not mean it cannot be technical. However, while many people may have an understanding of the technical meaning of a legal term, few lay people would have the full understanding of such a term.

C A Rating Scale

In order to be able to identify legal Maori vocabulary and track the changes that might have occurred in each text I adapted a rating scale to be applied to Texts A and B, borrowing heavily from Chung and Nation's work. Further research will reveal amendments that may need to be made to this scale but it can provide a starting point for exploration of legal Māori terminology. In order to determine which of the words (if any) in both texts could be considered technical legal terms, each word in each text was rated according to the rating scale set out below.

Category One: This category contains words with no particular relationship with Western legal concepts. These words are mainly function words, including pronouns, tense markers etc, and are independent of the subject matter at hand. (*te, nga, ratou, (the (singular)); the (plural), them*)

Category Two: This category contains content words and phrases that have at least one meaning that minimally related to Western legal concepts. Such words and phrases may be used in a context that involves discussion of Western legal matters but would not need independent explanation. These words would not need to be described in a legal glossary or legal dictionary. (*timata, hoatu, tamariki, mate, whakarerekē, begin, give, children, death, die, change*)

26 Mattila, above n 22, 113.

27 TM Chung, P Nation "Identifying technical vocabulary" (2004) 32 System 251, 253.

Category Three: This category contains words and phrases that have at least one meaning that is closely related to Western legal concepts. Words may have some restriction of usage. Specific phrases included in this category have at least one meaning is strongly related to Western legal concepts often when each unit in the phrase is expressed in a particular order. These words and phrases would need to have an entry in a glossary of legal terms to ensure the technical meanings of such words and phrases are appropriately understood in context. (*wāhi, hoko, tika, whenua Māori*, share, sell, fair, Māori land)

Category Four: This category contains words and phrases that have *only* one meaning, and that meaning is specific and peculiar to Western legal concepts. These words and phrases may be generally known but even in a general context the meaning of the word or phrase will be specific to Western legal concepts. Words in this category would need to be recorded in a legal glossary to ensure their legal meaning is appropriately understood in context. Phrases in this category require a specific order and would probably need to be recorded in a legal glossary with each unit of the phrase in that order to ensure their legal meaning is appropriately understood in context. (*Ture, Karaati Karauna, Te Kooti Whenua Māori, whenua Māori korehere, law, Crown Grant, The Māori (Native) Land Court, freehold Māori land.*)

D Problems in Applying the Scale

One immediate issue that arose in the application of the rating scale was the whether it is appropriate to apply the scale to an historical text, where the rater may only be likely to understand a technical word in terms of modern understandings of what a technical legal term may be. As the rater, I also did not have enough information to know if some terms would be exclusively technical (and therefore Category 4 terms) or not. When in doubt about its exclusive use I placed such terms in Category 3. As we gather more data about the language in such historical texts it will be possible to be surer about the rating of such terms, but there remains a danger of interpreting texts anachronistically. There may be ways of refining the rating scale to control for this risk, but it is outside the scope of this paper to have considered this issue further.

One of the important characteristics of Māori is the importance of the phrase.²⁸ I made a number of attempts at applying the rating scale on different, widely spaced occasions to Texts A and B, each time finding that I rated the texts slightly differently on each occasion. This discovery was problematic as in order for a rating scale to be successful, it must be able to be applied consistently, and it must be possible to train others to apply the scale. I came to realise however that one of the main reasons for the inconsistency in my own application of the rating scale was my own inconsistency in dealing with phrases, particularly in regard to noun modifiers and prepositional

28 See Winifred Bauer *The Reed Reference Grammar of Māori* (Reed, Auckland, 1997) 1.3.4. Bruce Biggs *Let's learn Maori: a Guide to the Study of the Māori Language* (Rev ed, AH and AW Reed, Wellington, 1973).

phrases. On earlier applications of the scale I rated words differently, without full regard for the placement of the word within a phrase and the relationship of that word to the other words in the phrase.

One difficulty I encountered was in trying to determine, for example, if the word "whenua" (land, placenta) could, on its own, be considered a technical term, to mean "land as defined within land legislation" or some other such technical meaning. I concluded eventually that the term *whenua* as used in both texts was not technical *if* the term occurred alone. I would not need to consult a legal dictionary if I were to come across the term *whenua* in a text. On the other hand, if I saw the noun phrase "*whenua Māori*" ("*Māori land*") I might need to consult a dictionary or a specialist, as "*whenua Māori*" has a specific legal meaning pertaining to the Māori land legislation in addition to a more general meaning.

Text B includes the following phrase: "*whakamāramatanga a-ture*". This is a noun phrase including the noun ("*whakamāramatanga*") and a modifying noun phrase ("*ā-ture*").²⁹ In combination the complete phrase can be translated as "legal definition" or "legal explanation". "*Whakamāramatanga*" alone is not a technical term and would be rated as Category 2. The modifying noun phrase "*a-ture*", which contains a Category 4 word (*ture* – [Western] law), derives its meaning in conjunction with the noun. In conjunction the phrase can only have a meaning connected to Western legal concepts, and this phrase would not be used to communicate any other non-legal meaning. Therefore all elements of this phrase must be categorised as Category 4; they cannot be rated separately.

However, most phrases are not so intimately joined as that example, and perhaps the greatest problem in applying the rating scale was in determining when all words of a phrase should be rated together, or determining when all words of a phrase could be "disaggregated" and rated separately. Some noun phrases only had particular technical meaning in a particular combination.

For example, Text B also includes the following phrase: "*whenua Māori korehere*". Literally this phrase means Māori land that is unencumbered. "*Korehere*" can be translated in English as "freehold". The English term "freehold" is a technical term in its own right, and does not require the word "land" to impart that technical meaning. In the Māori phrase however, neither "*whenua*" (land), "*Māori*", nor "*korehere*" (unencumbered, unbound) have technical meanings in and of themselves. In combination, however, the phrase is an exclusively technical one and all components of the phrase have to be categorised accordingly in Category 4, as the phrase is really only used in a technical sense to mean "freehold Māori land".

Obviously not all phrases including a Category 4 word would require a Category 4 rating to be given to all constituents of the phrase. Some phrases can be broken up and each constituent rated

29 It is not clear if *-ā-* is a preposition, but it performs a linking function between the noun and the modifying noun. (See Bauer, *ibid*, 20.1.11).

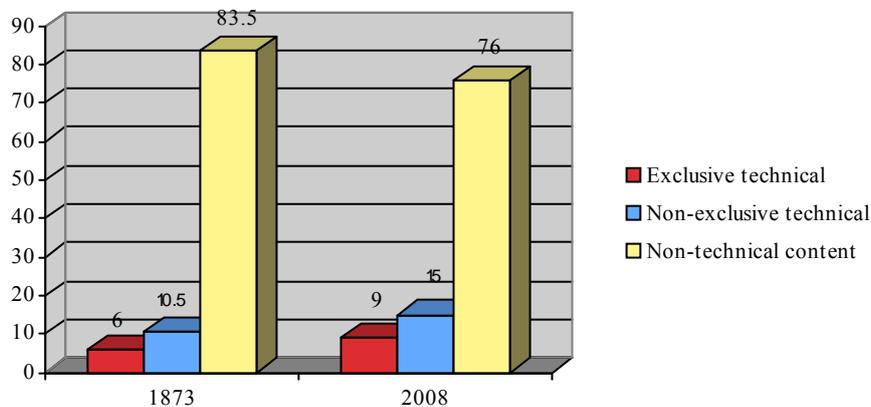
separately. The noun phrase "ture hou" from Text A has a technical noun (ture, law) and a modifier (hou, new). This phrase ("new law") would not require explanation in a legal dictionary so each constituent of that phrase can be rated separately. "Ture" would remain in Category 4, while "hou" is a Category 2 word.

In view of the above it appears at this stage, and without yet being repeated in any other studies, that technicality in Māori can be bestowed within individual words but also by the creation of particular phrases that have technical meaning although the individual constituents of those phrases may not, on their own, have a specific technical meaning. Of course, there are individual words that can be identified as technical, but the importance of the phrase cannot be underestimated. In view of this characteristic the rating scale, as adapted from Chung and Nation's work, also took the construction of technical phrases into account.

E Application of the Scale

Figure 1 shows the raw percentages of words that comprised terms within both texts I identified as belonging to Categories 2-4. All words and phrases were categorised according to the rating scale and then the total number of words used to comprise each term in each category was counted up and expressed as a percentage of the total number of words in each text (thereby controlling for the length of each text).

Figure 1: Technical Ratings

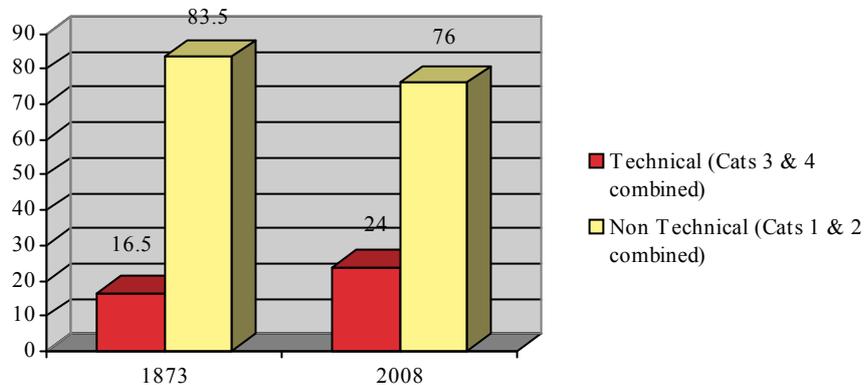


In the first instance it is useful to note that there were terms that could be identified as exclusively technical (Category 4) in Text A and in Text B. As can be seen there was an increase between the texts in the use of exclusive technical terms, an increase also in the occurrence of non-

exclusive technical terms (Category 3) and a corresponding decrease in the use of non-technical content words (Categories 2 and 1 combined). Of course the numbers are too small to be statistically significant but suggest that further explorations of texts in this way may yield some interesting and significant results.

Figure 2 shows the overall comparison between the occurrence of "non-technical terms" (Categories 1 & 2 combined) and technical terms (Categories 3 & 4 combined). As can be seen an increase overall from 16.5-24% can be seen in the overall use of technical terms from the 1873 text to the 2008 text.

Figure 2: Overall Technicality



F Conclusion

The study suggests a method for identifying technical vocabulary in Māori that relies on a system of rating words and phrases in regard to the connections of those words and phrases with technical "Western" legal meaning. The rating scale proposed in this paper requires further development to alleviate potential issues. Nevertheless the application of the scale to two Māori language texts widely separated in time, but dealing with similar content suggests some avenues for future research. It seems based on this very small and non-representative sample that there has been some increase in the percentage of technical terminology used across the two pieces of text. The later piece showed that there are now more Māori terms in use that are mainly used with an identifiable legal meaning, even if that meaning is not the only meaning available.

It would be interesting if these results could be repeated using much larger text samples. If such a result could be repeated then relevant questions arise that might deserve some further investigation. In particular, what might have motivated such change in the technicality of language, if such change can indeed be demonstrated to be significant? What effect does context have? Text B

was taken from a Government services website, and does not necessarily reflect reader demand for the language. What might this difference in context mean for the language, and of course for the concepts themselves?

III THE ORIGIN AND DEVELOPMENT OF LEGAL MĀORI TERMS

"Technicality" alone is one question, and identifying such terminology can give a useful basis for further questions about the nature and distribution of such terminology. I also decided to re-examine the texts looking this time for *how* the individual terms themselves were created. Ascertaining the distribution and total occurrences of different types of terms only tells part of the picture.

Once I had categorised terms for their "technicality" according to the rating scale I also categorised those terms according to how they had been formed or co-opted to communicate legal meaning. Mattila described three main ways of ascribing legal meaning:³⁰

1. a word already in existence in ordinary, everyday language or in another specialised context is given a new specialised or broader meaning;
2. a neologism in the ordinary language is created; or
3. a word is borrowed from a foreign language.

A A Further Rating Exercise

The individual terms originally identified as Category 3 and 4 were placed into a further three categories:

Category A: Pre-existing words and phrases given new technical meaning ("Old form, new meaning") An example of this category in the 1873 piece was the use of the ordinary word "whakarite" to denote "[Court] order". A further example in the 1873 text was the use of "whakatūturu" to denote the idea of "binding" or formalising an agreement in the Court. These words and phrases did not contain any borrowed word.

Category B: New words or new fixed combinations of words given new technical meaning ("New form, new meaning") Some examples of this category of term in Text A were the titles such as "Te Kooti Whenua Māori" (The Native Land Court), and "Te Ture Whenua Māori" (The Native Land Act) as fixed combinations of words, with technical meaning, that did not exist pre-colonisation. Some phrases in this category appear to have fixed meanings in the text, but more evidence would be required to confirm if this really was the case. Some of the terms in Text B were not formal titles, but included particular legal categories under Māori land legislation, for example "whenua Māori korehere" (freehold Māori land). These words are separately ordinary but fixed in

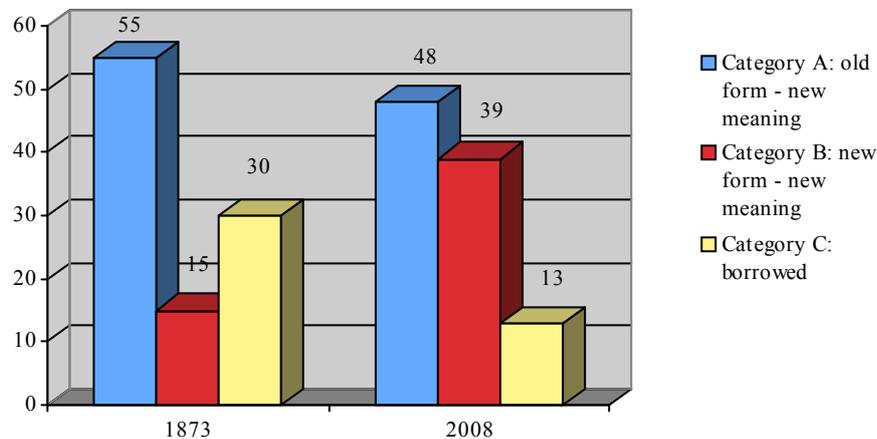
30 Mattila, above n 22, 113.

this combination create an exclusive technical term that did not exist pre-colonisation. These words and phrases could include words that were well-established borrowings (such as "kooti").

Category C: Words or phrases borrowed from other languages ("borrowed"). Text A gives us many examples, one of the most instructive being "Karauna karaati" (Crown Grant). Text B also utilised common borrowings also present in the 1873 text such as "Karauna" (Crown), "Kooti" (Court) and of course the term "ture" (law, derived from the Hebrew term *Torah*) which imported the Western idea of written law; initially the religious laws taught by missionaries, later to include laws disseminated and created by the Governor, and later, Parliament.³¹ These words and phrases contained only borrowed elements.

Text A contained a total of 33 individual terms (not repeated) that were rated either in Category 3 or Category 4. These terms were formed more often by adding new legal technical meanings to pre-existing words and phrases, or by borrowing words and phrases direct from English (usually). Text B contained a total of 31 individual terms. Again, giving new meanings to old forms was the most common way of expressing legal meaning, but the role of borrowed terms has shrunk markedly. Only 4 separate borrowed terms feature in Text B in 2008, whereas 10 separate borrowed terms are used in Text A. Figure 3 shows that, at least as between Texts A and B, there has been some significant change in how terms are given legal meaning.

Figure 3: Term Creation (%)



³¹ Metge in *Māori Customs and Values in New Zealand Law* (New Zealand Law Commission, Wellington, 2001) Study Paper 9, 15 n 93.

B Tracking Changes

The legal terminology in the 1873 text appears less formal than in the 2008 text. In some respect this aspect is likely to have been influenced by a lack of categorisation in the relevant legislation. By 2008 the English terms such as "owner", "Māori Land", "General Land", and "Customary Land" were all specifically defined in Te Ture Whenua Māori 1993 and appear to be reflected directly in the Māori language description of those categories in Text B. Arguably this level of categorisation had not yet occurred in the 1873 legislation.

The declining use of borrowings probably reflects language policy (particularly in Te Taura Whiri i te Reo Māori) since the early 1990s, whereby borrowed terms are eschewed in favour of terms that utilise traditional words instead.³² Bearing that in mind, some examples of change in terminology are provided below.

1 "Karauna Karaati"/"Whakahei Ātanga Karaati"

An example of the change in emphasis can be seen by the terms used in each text to denote the concept "Crown Grant". In Text A the term was "Karauna Karaati", a borrowed term (Category C). In Text B the term used was "Whakahei Ātanga Karauna" (Category B). I found it very difficult to determine a translation for this later term, as the term does not appear to be commonly known. Whakahei is a verbal form "to grant" while ātanga has been used in recent years to mean a type of "interface" which may be the intended meaning here. It is beyond the scope of this paper but it might be interesting to question why such a form is being used and whether it is in common usage.

2 "Pukapuka whai taketanga"/"ingoa"

In Text A the term used to describe the concept of "title" to land was expressed by "Pukapuka whai taketanga" (Category B), or 'writing/paper establishing authority'. In Text B this idea was rendered simply as "ingoa" (Category A). "Ingoa" is used commonly to mean "name" or "title", but is less known to include the technical meaning of "title to land". The word "ingoa" does not impart the same level of technical meaning that the 1873 term does. There seems to be an inconsistency between the use of a highly specialised phrase "Whakahei Ātanga Karauna" to denote "Crown Grant" and "ingoa" to denote [land] title.

3 "Whenua Māori"

While the title of the 1873 Act refers to Native Land, the term "whenua Māori" does not occur again in Text A, except in the term "te Kooti Whenua Māori", again probably reflecting the existing law that provided for less categorisation of Māori land as compared to the current regime. The phrase "ngā whenua a ngā Māori" does occur ("the lands of the Māori") as does "te Māori nāna te

32 See R Harlow "Covert Attitudes to Māori" in *International Journal of Society and Language* (2005) 133, 136 ff.

whenua" the Māori who owns the land". These constructions also suggest the proposition that the phrase "whenua Māori" as a complete and concrete legal category of land is less commonly understood in 1873 than in 2008. In Text B other categories of land are added that stem directly from the current Ture Whenua Māori 1993, including:

- Whenua Māori korehere – freehold Māori Land
- Whenua Māori tuku iho – customary Māori land
- Whenua whānui – General land (land not owned by Māori for the purpose of the legislation)

4 "Rangatira"

Of some note also is the common use of the traditional word "rangatira" to denote landowners and ownership. Rangatira is a traditional term used to denote chiefliness, high status, aristocracy, even high leadership. The term does not appear in the 1873 text, suggesting that Text A seems to rely on showing ownership of land through the use of possessive constructions. In Text B the following terms appear:

- Rangatiratanga: ownership (of Māori land)
- Rangatiratanga tuku iho whenua: ownership of Customary Māori Land
- Rangatira Māori: Māori owners (of Māori land)

It is probable that the use of the term "rangatira" in these senses again reflect the English language of Te Ture Whenua Māori/The Māori Land Act 1993. The Act defines "owners" at s170, and it is likely that the usual Māori grammatical constructions used to denote ownership has been deemed to be insufficient at least by the drafters of the website to carry the legal definition. It is beyond the scope of this paper, but it would be useful to explore that presumption further. What, for example, are the implications of setting aside a grammatical construction expressing specific ownership in favour of the non-traditional use of a traditional term to express specific ownership? To what extent do these usages reflect common and contemporary understanding of the legal ideas of land ownership?

C Conclusion

As the texts used in the study set out in this paper are unrepresentative and much more work needs to be done to be confident of any suggested trends the above points are merely observations. Nevertheless, particularly when both texts were rated a second time to determine how such terms were formed some more insights could be gained. Particularly, it appeared that, unsurprisingly, the use of borrowings has markedly decreased, but the use of "fixed" new phrases with new meanings has increased, possibly at the expense of the use of more traditional expressions, as was suggested by the use of "rangatira" to express the idea of ownership, rather than the use of a possessive

structure to impart the same idea. Again, further research is needed to determine if what has been suggested in this study is actually borne out in other texts.

IV OVERALL CONCLUSION

This paper puts forward the proposition that te reo Māori has developed, over the years since colonisation began, a legal Māori terminology. The sheer amount of Māori language material stored in archival documents that use the Māori language to describe and critique Western law alone makes this proposition viable. The study in this paper is under-developed, nevertheless it suggests, at the very least, some avenues for further exploration of the Māori language to identify and glean a better understanding of that terminology. The study also usefully shows some of the potential difficulties that such research may encounter. Ultimately research into the development of a legal Māori terminology, will lead to greater understanding of the nature of the engagement between the Māori people and the common legal system. The work to be carried out by the Legal Māori Project at the Law Faculty of Victoria University in collating and analysing legal Māori texts and a legal Māori vocabulary deriving from those texts will be a useful and robust data source for such an exploration.

APPENDIX A: TEXT A³³

HE WHAKAMARAMATANGA I TE TURE WHENUA MAORI, 1873.

(HE MEA TUHI NA TE ROIA.)

HE Ture hou tenei mo nga whenua a nga Maori, hei te tuatahi o nga ra o Hanuere i tera tau te mana ai. I taua ra ka mate katoa nga Ture tawhito, a ka timata ai te tikanga hou o te mahi i roto i te Kooti Whenua Maori.

Te take i whakaturia ai te ture hou he mea kua kite te Kawanatanga i runga i etahi meatanga i tuhituhia ai nga ingoa o nga tangata i roto i nga Karauna karaati kua hokoa te whenua i muri e aua tangata kua puritia nga moni ma ratou anake, kaore i hoatu etahi ki etahi atu tangata e tika ana kia i hoatu ma ratou etahi. Tetahi take kei nga mea kua tuhituhia nga ingoa o nga tangata ki roto ki te Karauna karaati, no te matenga o tetahi o ratou kua riro atu tona wahi ki etahi tangata kua tuhituhia ano hoki o ratou ingoa ki roto ki taua karaati—a kaore rawa he wahi i riro i nga tamariki o te tangata kua mate ra.

Na, e ki ana te Ture hou, ki te mate tetahi tangata me riro i ona tamariki te wahi o to ratou matua ka mate ra; e ki ana hoki te ture hou, me tuhituhi ki roto ki te pukapuka whai taketanga ki te whenua nga ingoa katoa o nga tangata katoa e whai tikanga ana ki te whenua. Na, e kore tenei e taea te hoko i te whenua i muri i te tuara o te tangata, a ka whi-whi katoa nga tangata, tena tangata me tena tangata, ki nga moni e tika aua mana o te utu o te whenua.

I te takiwa e takoto ake nei e kore te tangata Maori e tuku pukapuka here mo tona whenua i runga i te ruritanga (ara he mokete, he aha atu) ;

33 *Te Waka Maori o Niu Tirani* vol 19, no 16, page 140. Note: no macrons in the original text.

engari ma te Kooti e whakarite kia ruritia te whenua, a ma te Maori nana te whenua e utu te ruritanga ki a te Kuini ki tetahi wahi whenua hei whakarite mo te moni.

Kei nga hokonga whenua mo nga riihitanga whenua katoa ka haere te Maori raua ko te Pakeha ki te aroaro o te Kooti, mo ka rite ta raua korero, a ma te Kooti e whakatuturu ta raua korero (mehemea i tika) i te ra e whiti ana i te aroaro o nga tangata katoa. Te tikanga o tenei he mea kia kore e mahia hunatia te mahi.

Ko tenei ka ata whakaatu au ki a koutou nga wahi i roto i taua Ture.

[English version] AN EXPOSITION OF "THE NATIVE LAND ACT, 1873."

(By A LEGAL GENTLEMAN.) This is a new law about the land belonging to the Natives; and it will come into force on the first of January in the next year. On that day all the old law will be dead, and the new system of doing business in the Native Land Court will be begun.

The reason of the new law is, that the Government has ascertained that in many cases where the names of men have been written in the Crown grants, these men have afterwards sold the land and kept the money, giving none of the money to others who ought to have had some of it. Another reason is, that where the names of men have been written in the Crown grant, when one of them dies the other men whose names were also written in the grant got the dead man's share, and the children of the dead man got nothing.

Now the new law says that the children of any Native who dies will get the share of their parent.

And also the new law says that the name of every man who has any claim to land shall be written in the title. So that no land can be sold behind anyone's back, and every man will be able to get his proper share of the money paid for the land.

In future, no Native will have to give any writing over his land for survey, but the Court will order the survey to be made, and the Native can pay the Queen for the survey by giving her land instead of money.

In all cases of sale of land or lease of land, the Native and European, when they have made the bargain, must go to the Court; and the Court will bind the bargain (if it be a fair one) in the day time and in public before all men. This is to avoid all secret transactions.

I will now explain the different parts of the Act more fully to you.

APPENDIX B: TEXT B³⁴**He aha te whenua Māori?**

Kua takatūria te whakamohio i roto i te wahanga nei hei āwhina i a koe kia marama ai koe ki te tikanga o te kupu, whenua Māori. Heoi ano, he mahi pōauau, he mea hangarau te whakamārama i nga kupu nei, na reira hīnei tetahi whakamāramatanga i raro i te ture, mau.

Kei raro atu nei, kei te Tunga o te Whenua te whakamāramatanga a-ture. Ki te hiahia koe kia whakamāramatia atu te tunga o te whenua, me whakapā atu ki tetahi e ngaio ana ki te whenua.

Ki te kore koe e tino mōhio mehemea he whenua Māori te whenua kei te ketungia e koe, me whakapā atu ki Te Kooti Whenua Māori a-Rohe, e tika ana, kia tirohia ai e rātou. Whenua Māori: He whakamāramatanga a-ture - Tekione 129 (ss 1&2) Te Ture Whenua 1993.

I Pēhea te Whenua i Noho ai hei Whenua Māori Korehere (mai i tona tunga Whenua Māori Tuku Iho)

E rua nga huarahi i noho ai te whenua hei whenua Māori korehere:

- Tuatahi, i waiho e te Karauna he whenua ki te taha mo te Māori mai i te whenua Māori tuku iho i hokonatia ra ki te Karauna, hei nohanga mo tauwi i Aotearoa. I whakaheia ki ētahi Māori takitahi he Whakaheia ātanga Karauna mo te rangatiratanga o aua momo whenua
- Tuarua, i tūhuratiā e Te Kooti Whenua Māori te rangatiratanga o te whenua Māori i tuku iho kaore ano i wehenga, a, ka whakatūria (piki atu) ki te 10 nga Māori ki roto hei pupuru rangatiratanga o te whenua.

Na Te Kooti Whenua Māori te rangatiratanga o te whenua i whakamana, a, na te Karauna te ingoa i whakaheia.

Te Koronga

Na te hiahia o te Karauna ki te neke i ta te Māori tikanga o te rangatiratanga tuku iho whenua, ki ta Tauwi tikanga o te rangatiratanga, koira te take i puta ake ai te ko rongo mo tēnei mahi. I peneitia tēnei kia tino mōhioia ai (e te tangata o tauwi e whai tirohanga ana) kei a wai te rangatiratanga o te whenua. A, na ēnei mahi, ka pakari mai te hunga e hiahia ana ki te hoko whenua i te mea, e mahi ana rātou i te taha o nga rangatira no rātou te whenua, e ai ana ki te ture.

I te rangi nei, 1.5 miriona heketea o te whenua Māori kei te toe, ara, te toenga o aua Whakaheia ātanga Karauna i te tīmatanga kaore ano te rangatiratanga kia hokona ki te hunga tauwi, kaore ano rānei kia takahuria e ona rangatira Māori hei whenua whānui i raro o te Karauna.

Te tono ki a Toi tu te Whenua

Whakawhiwhia ai e Tekione 129 te huhua o nga momo tunga whenua rerekē. Ki te tirohanga a Toi tu te Whenua, ma te rehitatanga anake o tetahi Whakatau a Te Kooti Whenua Māori e taea ai te whakarerekē i te tunga o te whenua mai i te whenua Māori korehere ki te whenua whānui.

34 <http://www.linz.govt.nz/core/titlesandrecords/maorilandinfo/whatismaorilandmaori/index.html>

Note: macrons in the original text.

What is Maori Land?

The information in this section has been prepared to help you understand what the term "Maori land" means. Defining Maori land, however, is complex and technical and requires a legal definition.

The legal definition is stated below under Status of Land. If you require an interpretation of the status of your land we suggest you contact a land professional.

If you are unsure about whether the land you are researching is Maori land or not, contact the appropriate Maori Land Court District to check.

Maori land: A legal definition - Section 129 (ss 1&2) Te Ture Whenua Maori Act 1993**How Land Became Maori Freehold Land (from its Maori Customary Land status)**

Maori freehold land came into being in two ways:

- Firstly, the Crown set aside land for Maori from the Maori customary land that it purchased for the settlement of New Zealand. Specific Maori individuals were granted Crown Grants for joint ownership of such land;
- Secondly, the Maori Land Court investigated ownership of Maori customary land that had not been alienated and appointed (up to) ten Maori individuals into joint ownership. Ownership of the land was confirmed by the Maori Land Court and title was granted by the Crown.

The Purpose

The purpose of this activity was that the Crown wished to move from the Maori practice of joint customary ownership to the European practice of individual ownership. The reason for this was to make land ownership more certain (from a settler perspective) and this provided confidence that prospective purchasers were dealing with the legal owners of the land.

The 1.3 million hectares of Maori land that remain today are the remainder of those original Crown Grants that have not been sold to non-Maori ownership or have not been converted to general land by its Maori owners.

Application to LINZ

Section 129 provides for a number of different types of status of land. From a LINZ point of view, the status of land will only change from Maori freehold land to general land upon registration of an Order of the Maori Land Court.

