

A DISCURSIVE ANALYSIS OF RANGATIRATANGA IN A MĀORI FISHERIES CONTEXT

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Abstract

Rangatiratanga is a nodal discourse that subsumes a number of smaller discourses. This paper utilises critical discourse analysis to examine the emergent discourses of rangatiratanga within the context of Māori fisheries management. Three Tiriti o Waitangi translation texts and six Waitangi Tribunal texts relevant to fisheries were selected as the texts. The main conclusions are that there are multiple understandings of the discourses of rangatiratanga that allows for certain meanings and not others, and while the principles of the Treaty of Waitangi retain the *spirit* of the Treaty, the principles in fact limit and restrict the full authority of rangatiratanga that is guaranteed under the Treaty. It remains to be seen whether rangatiratanga that is provided in a Māori fisheries context allows for the myriad of understandings discussed in this paper.

Keywords

rangatiratanga, fisheries, Tiriti o Waitangi, critical discourse analysis

Introduction

Te Tiriti o Waitangi/Treaty of Waitangi is New Zealand's founding constitutional document (Jackson, 2010). It was signed on 6 February 1840 between the Queen of England's representative Captain William Hobson and

northern Māori chiefs, particularly those of the hapū of He Wakaminenga o Nu Tireni (the Confederation of the United Tribes of New Zealand). There are two versions of the Treaty: Māori language (Tiriti o Waitangi) and English language (Treaty of Waitangi), and both versions contain references to fisheries.

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In the second article of te Tiriti o Waitangi the word taonga is accepted as encompassing fisheries (Waitangi Tribunal, 1988, 1992), and within the second article of the Treaty of Waitangi, fisheries are specifically mentioned where Māori are guaranteed the “full exclusive and undisturbed possession of their Lands and Estates Forests Fisheries and other properties”.

Contained within te Tiriti o Waitangi is the term rangatiratanga. Arguably, rangatiratanga emerged in te Tiriti o Waitangi (Jackson, 2010). Rangatiratanga is utilised in the preamble and in Ko te Tuarua, the second article of te Tiriti o Waitangi. I acknowledge that rangatiratanga is utilised in He Wakaputanga o te Rangatiratanga o Nu Tireni (the Declaration of the Independence of New Zealand) and within scripture by the Protestant missionaries prior to 1840 (Ross, 2001). The usage of rangatiratanga in He Wakaputanga o te Rangatiratanga o Nu Tireni is important both historically and contemporarily to discussions of the Treaty (Jackson, 2010; M. Kawharu, 2008). Importantly Jackson (2010) outlines that “He Whakaputanga was a legal and constitutional precedent for Te Tiriti o Waitangi” (p. 16). The Waitangi Tribunal’s *Te Paparahi o te Raki (Northland) Inquiry* is currently examining He Wakaputanga, the relationship between He Wakaputanga and te Tiriti, and the context of the signing of te Tiriti. Following that examination, further light will be shed on the understandings of the relationships between He Wakaputanga and te Tiriti.

There is ongoing debate about the meaning of rangatiratanga (see for example: Biggs, 1989; Hill, 2009; Mikaere, 2010; Royal, 2007). Rangatiratanga has multiple meanings depending on, for example, the context of its use, its applications and the user. Rangatiratanga stems from the word rangatira with the suffix tanga added. Rangatira as a noun means “‘person of high rank, a chief’, as a verb ‘to be or become of high rank, ennobled’, as a qualifier ‘high ranking, noble’” (Biggs, 1989, p. 310). Mikaere

(2010) explains that rangatira is made up of the words ranga and tira; ranga from the word raranga meaning to weave and tira meaning a group. Royal (2007) describes tira as a “group of people convened for a particular purpose” (p. 9). Thus, as Mikaere (2010) outlines, the task of the rangatira is “to literally weave the people together” and “that survival is dependent upon the preservation of social cohesion through the maintenance of relationships” and this is “implicit in the term ‘rangatira’” (Mikaere, 2010, paragraph 7). Biggs (1989) explains that the suffix tanga “refers to the time, place, or occasion of the existence or assumption of the state indicated. Thus mānu ‘afloat’, mānutanga ‘the occasion of being afloat’, pakaru ‘broken’, pakarutanga ‘the occasion of being broken’” (p. 310).

Therefore to follow Biggs’ (1989) explanation, rangatiratanga can be viewed as the occasion of being noble, or high ranking. Royal (2007) contends that ranga-tira-tanga, is thus “the art of weaving groups together into a common purpose or vision” (p. 9). A further definition for rangatiratanga that is useful for this paper is from Mutu (2010):

[Rangatiratanga] is high-order leadership, the ability to keep the people together, that is an essential quality in a rangatira. The exercise of such leadership in order to maintain and enhance the mana of the people is rangatiratanga. Tino rangatiratanga is the exercise of paramount and spiritually sanctioned power and authority. It includes aspects of the English notions of ownership, status, influence, dignity, respect and sovereignty, and has strong spiritual connotations. (p. 26)

Rangatiratanga is a term that is unique to Aotearoa and it is also situated within a context for indigenous peoples’ struggles for self-determination internationally (Maaka & Fleras, 2005). For the purposes of this paper, I focus on the usage of rangatiratanga in the second article of te Tiriti o Waitangi, where it

TABLE 1 Translations of Te Tiriti o Waitangi Ko te Tuarua by Sir Āpirana Ngata, Sir Hugh Kawharu and Professor Margaret Mutu.

Te reo Māori version	Ngata (1963)	I. H. Kawharu (1989)	Mutu (2010)
“te tino rangatiratanga o ō rātou wenua ō rātou kāinga me ō rātou taonga katoa”	“the full possession of their lands, their homes and all their possessions” (Ngata, 1963, p. 7)	“the unqualified exercise of their chieftainship over their lands, villages and all their treasures” (I. H. Kawharu, 1989, p. 321)	“their paramount and ultimate power and authority over their lands, their villages and all their treasured possessions” (Mutu, 2010, p. 25)

is stated that the chiefs of He Whakaminenga are guaranteed

te tino rangatiratanga o ō rātou wenua ō rātou kāinga me ō rātou taonga katoa

The English translations of this segment of the second article of te Tiriti o Waitangi are provided in Table 1.

The corresponding English version of the second article of the Treaty of Waitangi states that the Queen of England

confirms and guarantees ... the full exclusive and undisturbed possession of their Lands and Estates Forests Fisheries and other properties which they may collectively or individually possess so long as it is their wish and desire to retain the same in their possession.

There are numerous debates over the differences in meanings between the second article of te Tiriti o Waitangi and the Treaty of Waitangi. Mutu (2010) explains that it “does not require a great fluency in Māori to establish that what was being said in Māori bore little resemblance to what was written in the document drafted in English” (p. 31).

The descriptions of rangatiratanga from the analysed Waitangi Tribunal texts are presented in Table 2. The Waitangi Tribunal provides a significant body of knowledge on treaty jurisprudence and treaty history (Byrnes, 2004; Hayward, 2004). The Waitangi Tribunal

investigates historical and contemporary Treaty of Waitangi injustices by the Crown against Māori.

Through utilising Fairclough’s (2005) version of critical discourse analysis, this paper will examine the multiple meanings and understandings of rangatiratanga through constructing rangatiratanga as a nodal discourse which subsumes a number of smaller discourses. Fairclough (2005) outlines that the emergence of discourse focuses on the analysis of new discourses and how these discourses have arisen over time, and furthermore investigates their emergence as new discourses or as potential blends of existing discourses. In order to examine the emergence of discourse, Fairclough (2005) proposes that a genealogical approach is required that “locates these discourses within the field of prior discourses and entails collection of historical series of texts and selection of key texts within these series” (p. 11). This paper will examine the emergent meanings of the discourses of rangatiratanga represented in key te Tiriti o Waitangi translation texts and relevant Waitangi Tribunal texts within a fisheries context.

There were three key te Tiriti o Waitangi translation texts and six Waitangi Tribunal texts relevant to fisheries that were analysed. The three Tiriti o Waitangi translation texts were Ngata (1963), I. H. Kawharu (1989) and Mutu (2010). The six Waitangi Tribunal texts that were analysed were the *Report of the Waitangi Tribunal on the Motunui-Waitara*

TABLE 2 Descriptions of rangatiratanga in six Waitangi Tribunal texts.

Report of the Waitangi Tribunal on the Motunui-Waitara Claim	Report of the Waitangi Tribunal on the Kaituna River Claim	Report of the Waitangi Tribunal on the Manukau Claim
“the highest chieftainship” or “the sovereignty of their lands” (Waitangi Tribunal, 1983, p. 51)	“all the power privileges and mana of a Chieftain ... or chieftainness” (I. H. Kawharu in Waitangi Tribunal, 1984, p. 13)	“full authority status and prestige with regard to their possessions and interests” (Waitangi Tribunal, 1985, p. 67)
Report of the Waitangi Tribunal on the Muriwhenua Fishing Claim	The Ngai Tahu Sea Fisheries Report	Report on the Crown’s Foreshore and Seabed Policy
<p>“full authority” (Waitangi Tribunal, 1988, p. 173)</p> <p>Outlines 3 elements</p> <ol style="list-style-type: none"> 1. Authority or control 2. Spiritual source 3. Authority over property and persons <p>“Tino rangatiratanga therefore refers not to a separate sovereignty but to tribal self management on lines similar to what we understand by local government” (Waitangi Tribunal, 1988, p. 187)</p>	<p>“rangatiratanga embraced protection not only of Maori land but of much more, including fisheries” (p. 269)</p> <p>“mana Maori” (p. 269)</p> <p>“tribal right of self-regulation or self management” (p. 271)</p>	<p>The definition of tino rangatiratanga “includes but is not confined to possession, ownership, authority, self-regulation, and autonomy” (p. 16)</p> <p>Iwi Māori exercised the authority of te tino rangatiratanga, under tikanga Māori. This authority included:</p> <ul style="list-style-type: none"> • A spiritual dimension • A physical dimension • A dimension of reciprocal guardianship • A dimension of use • Manaakitanga • Manuhiri

Claim (Waitangi Tribunal, 1983), the *Report of the Waitangi Tribunal on the Kaituna River Claim* (Waitangi Tribunal, 1984), the *Report of the Waitangi Tribunal on the Manukau Claim* (Waitangi Tribunal, 1985) (all pre-1987), the *Report of the Waitangi Tribunal on the Muriwhenua Fishing Claim* (Waitangi Tribunal, 1988), *The Ngai Tahu Sea Fisheries Report* (Waitangi Tribunal, 1992), and the *Report on the Crown’s Foreshore and Seabed Policy* (Waitangi Tribunal, 2004) (all post-1987). These Waitangi Tribunal texts were selected due to their relevance for fisheries.

The year 1987 is pivotal for Waitangi Tribunal understandings because of the outcomes of the “Lands case” which provided further clarification of the principles of the Treaty of Waitangi.

In that case their Honours found that the principles of the Treaty of Waitangi override everything else in the State-Owned Enterprises Act 1986. Emerging from the Lands case were the *The Treaty of Waitangi—Principles for Crown Action* (Palmer, 1989). The principles were the principle of government or kāwanatanga; the principle of self-management or rangatiratanga; the principle of equality; the principles of reasonable co-operation; and the principle of redress (Palmer, 1989).

Identification of discourses

Rangatiratanga is a nodal discourse that subsumes many other “smaller” discourses

(Fairclough, 2005). These smaller discourses of rangatiratanga allow as well as restrict the boundaries for their meanings and usage. The discourses that emerged from te Tiriti o Waitangi translation texts and Waitangi Tribunal texts were rangatiratanga as possession; rangatiratanga as chieftainship; rangatiratanga as trusteeship; rangatiratanga as authority; mana; area of rangatiratanga, mana whenua and mana moana; rangatiratanga and sovereignty; tikanga; rangatiratanga as self-management/tribal sovereignty; and rangatiratanga and governance. Additional discourses of rangatiratanga emerged from the Waitangi Tribunal texts following 1987 with the principles of the Treaty of Waitangi; these were principles of partnership, protection, mutual benefit, exchange, duty to consult, equity, and options and redress.

Rangatiratanga as possession

Ngata (1963) contends that tino rangatiratanga means “the full possession” (p. 7), and explains that it is quite clear and that the chiefly authority referred to in the second article means “the right of a Maori to his land, to his property, to his individual right to such possessions” (p. 8). Furthermore, Ngata (1963) insists that the “Queen did not do anything, to take away the rights of the Maori over his lands, instead she made the ownership permanent and truly established” (p. 8). According to Ngata (1963), the second article allowed for the “permanent establishment to the Maori of title to his land and his property [and] the giving of the right to the Queen to acquire Maori land” (p. 8). Ngata’s (1963) position is that while there is confusion over the second article about the authority of Māori, this was ceded forever in the first article by ceding sovereignty to the Queen of England. The ultimate power and authority that is discussed as tino rangatiratanga was ceded in the first article, by the term *kāwanatanga*. Ngata (1963) suggests that Māori signed the right for self-governance over in the

first article and consequently the debates that occur around the second article are “wishful thinking” (p. 8).

Contemporary writers argue against some elements of Ngata’s (1963) interpretation. Mutu (2010), for example, explains the first article of te Tiriti does not cede sovereignty. Instead the chiefs were agreeing for the Queen of England to take control of her subjects, Pākehā settlers, within the new colony. This is further guaranteed by the promise of tino rangatiratanga in the second article, where it is clear that the chiefs in fact retain their “sovereignty”. This distinction is also supported by Jackson (2010).

Rangatiratanga as chieftainship

The widely-used translation of I. H. Kawharu (1989) stated that rangatiratanga meant chieftainship, and that tino rangatiratanga is the unqualified exercise of chieftainship: “Tino’ has the connotation of ‘quintessential’” (p. 319). This unqualified exercise “would emphasize to a chief the Queen’s intention to give them complete control according to their customs” (p. 319). This is similarly supported by the *Report of the Waitangi Tribunal on the Motunui-Waitara Claim* where rangatiratanga is described as “the highest chieftainship” or “the sovereignty of their lands” (Waitangi Tribunal, 1983, p. 51). The *Report of the Waitangi Tribunal on the Kaituna River Claim* outlines that there is no exact equivalent in English of rangatiratanga. I. H. Kawharu, an advisor to the claim, explains that “the nearest one can get to ‘rangatiratanga’ in English is to say it means ‘all the powers, privileges and mana of a Chieftain’—or ‘chieftain-ness’ in the widest sense” (I. H. Kawharu in Waitangi Tribunal, 1984, p. 13).

The *Report of the Waitangi Tribunal on the Manukau Claim* explains “te tino rangatiratanga” is “something more than the ‘full exclusive and undisturbed possession’ guaranteed in the English text” (Waitangi Tribunal, 1985, p. 67). The definition this report utilised

was that te tino rangatiratanga translates literally as “the highest chieftainship” and this meant “full authority status and prestige with regard to their possessions and interests” (Waitangi Tribunal, 1985, p. 67).

Rangatiratanga as trusteeship

I. H. Kawharu (1989) outlined that the concept of rangatiratanga he purported as chieftainship, “has to be understood in the context of Maori social and political organization as at 1840 and that the accepted approximation today is ‘trusteeship’” (p. 319). A description by the New Zealand Māori Council (1983), although prior to I. H. Kawharu’s (1989) discussions, also outlined that rangatiratanga means much more than “possession”, explaining that the essence of rangatiratanga

is the working out of a moral contract between a leader, his people, and his god. It is a dynamic not static concept, emphasizing the reciprocity between the human, material and non-material worlds. In pragmatic terms, it means the wise administration of all the assets possessed by a group for that group’s benefit: in a word, trusteeship. And it was this trusteeship that was to be given protection, a trusteeship in whatever form the Maori deemed relevant. (New Zealand Māori Council, 1983, p. 5)

Furthermore, from the *Ngai Tahu Sea Fisheries Report* it added that trusteeship is “an extremely important element in rangatiratanga” (p. 100) due to the “need for the exercise of authority to recognise the spiritual source of taonga (and indeed of the authority itself) and the reason for stewardship as being the maintenance of the tribal base for succeeding generations. This implies a relationship between the rangatira as trustee and his or her kin group—the trustee’s beneficiaries” (p. 100).

Rangatiratanga as authority

Mutu (2010) translates tino rangatiratanga as “their [chiefs of the hapū] paramount and ultimate power and authority” (p. 25). The usage of rangatiratanga in the second article of te Tiriti o Waitangi is the “Queen’s formal recognition of the paramount power and authority of the rangatira throughout the country” (p. 26). Similarly to Mutu (2010), the *Report of the Waitangi Tribunal on the Manukau Claim* outlines that tino rangatiratanga is the “full authority status and prestige with regard to their possessions and interests” (Waitangi Tribunal, 1985, p. 67). The *Report of the Waitangi Tribunal on the Muriwhenua Fishing Claim* utilised “full authority” for tino rangatiratanga instead of the literal full chieftainship. The authority is “personified in chiefs but derives from the people. Maori understood ‘rangatiratanga’ to mean ‘authority’. Accordingly, when discussing the Treaty, Maori often substituted mana which includes authority but has also a more powerful meaning” (Waitangi Tribunal, 1988, p. 174).

The *Report of the Waitangi Tribunal on the Muriwhenua Fishing Claim* outlines that “te tino rangatiratanga o ō rātou taonga” is the “exclusive control of tribal taonga for the benefit of the tribe including those living and those yet to be born” (p. 181). The Tribunal explains three elements of rangatiratanga. The first is the importance of authority or control “because without it the tribal base is threatened socially, culturally, economically and spiritually” (p. 181). The second is that the carrying out of the authority must take into consideration the “spiritual source or taonga” (p. 181) as well as the spiritual source of the authority itself and “the reason for stewardship as being the maintenance of the tribal base for succeeding generations” (p. 181). The third element is that the authority was over property as well as members of the kinship group, and the access to the resources. The Ngai Tahu Sea Fisheries Tribunal added a fourth element, “being the

creation of the necessary conditions for the survival of the species [fisheries resources]” (p. 99). Furthermore,

in the Maori text [Tiriti o Waitangi] authority is represented in rangatira, or chiefs who led by virtue of their mana, or personal and spiritual prowess. It was usual for Maori to personalise authority in that way, so that the one word ‘mana’ applies to both temporal authority and personal attributes. (Waitangi Tribunal, 1988, p. 181)

The discourse of mana is described in further detail in the next subsection. Importantly the *Report on the Crown’s Foreshore and Seabed Policy* found that the

Treaty of Waitangi recognised, protected, and guaranteed te tino rangatiratanga over the foreshore and seabed as at 1840. The foreshore and sea were and are taonga for many hapū and iwi. Those taonga were the source of physical and spiritual sustenance. Māori communities had rights of use, management and control that equated to the full and exclusive possession promised in the English version of the Treaty ... in addition to rights and authority over whenua, Māori had a relationship with their taonga which involved guardianship, protection, and mutual nurturing. This is not liberal sentiment of the twenty-first century but a matter of historical fact. (Waitangi Tribunal, 2004, p. 28)

The Report on the Crown’s Foreshore and Seabed Policy concluded that the authority imbued in rangatiratanga, which was protected by the Treaty, included multiple aspects and more: “it was not merely a right to fish” (Waitangi Tribunal, 2004, p. 26).

Mana

Mana, like rangatiratanga is a complex term that has multiple meanings. Mutu (2010)

utilises a description of mana given to her by her kaumātua “as power and authority that is endowed by the gods to human beings to enable them to lead” (p. 26). Marsden (2003) outlines that mana “is divine authority and power bestowed upon a person” and that “mana enhances a person’s prestige giving him authority to lead, initiate, organise and regulate corporate communal expeditions and activities; to make decisions regarding social and political matters” (p. 40).

Metge (1995) further outlines other extensions of mana such as mana tupuna, mana atua and mana tangata. Jackson (2010), like I. H. Kawharu (1989), explains that while rangatiratanga emerged in the context of the Treaty, prior to this time, it was known as mana.

The concept of power which was developed in this land reflected the collective aspirations that were shared across Iwi and Hapu. The generic name given to the concept was mana, although it was specifically rendered in some Iwi and Hapu as mana motuhake, mana take-take or mana to rangapu. After 1840 it was also called tino rangatiratanga. It implied an independence that Dame Mira Szazy once defined as “the self determination” implicit in “the very essence of being, of law, of the eternal right to be, to live, to exist, to occupy the land”. (Jackson, 2010, p. 10)

Importantly, Ross (2001) points out that it “is difficult not to conclude that the omission of *mana* from the text of the Treaty of Waitangi was no accidental oversight” (p. 99, italics in original). Had Henry Williams applied the scriptural precedent of mana instead of kāwanatanga, in translating sovereignty, there would have been no doubt about what the chiefs were ceding. Furthermore, it is questionable whether the chiefs would have signed at all. Had Williams done so, it would have been clear that the chiefs were giving up their authority; that is, something completely antithetical to their value system (see discussions below regarding

interpretations of mana and sovereignty and the issue of what was ceded).

The *Report of the Waitangi Tribunal on the Motunui-Waitara Claim* states that “‘rangatiratanga’ and ‘mana’ are inextricably related. Rangatiratanga denotes the mana not only to possess what is yours, but to control and manage it in accordance with your own preferences” (Waitangi Tribunal, 1983, p. 51). The *Report of the Waitangi Tribunal on the Manukau Claim* builds on this understanding of the coupling of mana and rangatiratanga outlining that

in Maori terms the two words are really inseparable. In Williams Dictionary the first meaning given to “mana” is “authority of control” but even the examples cited for its use in that context incorporate the subsequent given meanings, “influence, prestige, power and psychic force”. As we see it, “rangatiratanga” denotes “authority”. “Mana” denotes the same thing but personalises the authority and ties it to status and dignity. The difficulty is that in Maori thinking “rangatiratanga” and “mana” are inseparable—you cannot have one without the other—but in European thinking “authority” is an impersonal concept and can stand apart from the personality to the lawmaker. The result is that “mana” is often left untranslated. (Waitangi Tribunal, 1985, p. 67)

To add to the complexities of understanding mana and thus rangatiratanga, in He Wakaputanga o te Rangatiratanga o Nu Tireni, James Busby used mana “to describe ‘all sovereign power and authority’” (Waitangi Tribunal, 1985, p. 67). The *Report of the Waitangi Tribunal on the Muriwhenua Fishing Claim* explains:

“Mana” is the more usual Maori word for “authority”. It is likely that Rev Henry Williams avoided using the word in the Treaty because of its particular connotations ... The missionaries were rarely keen on the word, for mana is said to have been inherited from heathen Maori gods. Nonetheless in debating

the Treaty in 1879, it was “mana” that Maori consistently used to describe that which they thought the Treaty had reserved. (Waitangi Tribunal, 1988, p. 181)

Area of rangatiratanga/mana whenua and mana moana

The *Report of the Waitangi Tribunal on the Muriwhenua Fishing Claim* states that “rangatiratanga covers the whole of tribal territories, whether at land or sea” (Waitangi Tribunal, 1988, p. 205) and that a chief held the mana and authority of that place. This was further described in the *Ngai Tahu Sea Fisheries Report* as mana whenua and mana moana. Mana whenua is determined as the “complete dominion over the land and foreshore” and mana moana as “complete dominion over ... such part of the sea” (Waitangi Tribunal, 1992, p. 100). Consent was required for outsiders to enter into the tribal lands or seas. Mana whenua and mana moana rights were exclusive and each tribe “has its own rangatiratanga which could be called tribal sovereignty” (Waitangi Tribunal, 1992, p. 100). Furthermore, the *Ngai Tahu Sea Fisheries Report* outlines that

in the context of the Treaty, rangatiratanga was to be exercised in a similar way to that of local bodies who may be said to have a form of limited self-government, which is of course subject always to the sovereignty of the Crown, that is, of the nation. (p. 100)

Rangatiratanga and sovereignty

An important discussion of these discourses of rangatiratanga hinges on whether sovereignty was ceded by the first article in the Treaty. A number of commentators agree that sovereignty was not ceded (Jackson, 2010; Mulholland & Tawhai, 2010; Mutu, 2010). Mutu (2010) outlines that quite often te tino rangatiratanga

is translated as Māori sovereignty. However, the term rangatiratanga, and mana accordingly, are not the same as an English version of sovereignty (Mutu, 2010). Mutu (2010) describes the distinction as such that

the English notion of sovereignty does refer to ultimate power and authority, but only that which derives from human sources and manifests itself in man-made rules and laws. It is therefore essentially different and much more restricted in its nature than mana and tino rangatiratanga. (p. 26)

In the *Report of the Waitangi Tribunal on the Kaituna River Claim*, I. H. Kawharu, who was a submitter to the claim, explained that at the time of the signing of the Treaty there were great debates about whether the Treaty should be signed, and the Māori signatories would not likely have paid much attention to the written texts. Their attention would have been on the oral arguments and ideas expressed verbally during this time. There would have been a great deal of faith put in the views of the missionaries. Although, as Jackson (2010) states, the chiefs were very aware of what they were signing. Furthermore, in the *Report of the Waitangi Tribunal on the Kaituna River Claim* it is outlined that in ceding kāwanatanga in the first article, the chiefs “would have known that by so doing they would be gaining ‘governance’, especially law and order for which the missionaries had long been pressing” (Waitangi Tribunal, 1984, p. 13). This is similarly echoed by Mutu (2010) and Jackson (2010).

However, the major problem of the first article, as aforementioned, is the term sovereignty. I. H. Kawharu explained in the *Report of the Waitangi Tribunal on the Kaituna River Claim* that sovereignty was

a system of power and authority (as would have been intended by the Colonial Office) that was wholly beyond the Maori experience, a network of institutions ultimately to comprise

a legislature, judiciary and executive, all the paraphernalia for governing a Crown Colony. (Waitangi Tribunal, 1984, pp. 13–14)

Furthermore, the Māori view could only be framed within their experience and culture, “what the Chiefs imagined they were ceding was that part of their mana and rangatiratanga that hitherto had enabled them to make war, exact retribution, consume or enslave their vanquished enemies and generally exercise power over life and death” (Waitangi Tribunal, 1984, p. 14). I. H. Kawharu explained that

it is totally against the run of evidence to imagine that they would wittingly have divested themselves of all their spiritually sanctioned powers—most of which powers indeed they wanted protected. They would have believed they were retaining their rangatiratanga intact apart from a licence to kill or inflict material hurt on others, retaining all their customary rights and duties as trustees for their tribal groups. (Waitangi Tribunal, 1984, p. 14)

Importantly I. H. Kawharu in this report outlined that

it is essential not to lose sight of the quid pro quo of the Treaty; that the collective surrender to the Crown of the power to govern was made primarily in return for the Crown’s protection of each Chief’s authority within his tribal domain. (Waitangi Tribunal, 1984, p. 14)

The stance the Waitangi Tribunal takes is that sovereignty was ceded in the first article to the Queen of England, and that rangatiratanga does not refer “to a separate sovereignty but to tribal self management on lines similar to what we understand by local government” (Waitangi Tribunal, 1988, p. 187).

Tikanga

The *Report on the Crown’s Foreshore and Seabed Policy* outlines that “Māori exercised

the authority of te tino rangatiratanga, under tikanga Māori” (p. 25). This authority included a spiritual dimension, a physical dimension, a dimension of reciprocal guardianship, a dimension of use, manaakitanga and manuhiri. The spiritual dimension includes, for example, the usage of karakia. This spiritual dimension is also referred to in a number of the other reports and is based on whakapapa. The physical dimension includes, for example, the practice of rāhui which would be enforced. Also, by utilising rāhui, “Māori communities made places and species tapu, preventing access and use. By their naming of places, their karakia and kōrero, and their rituals, the tangata whenua created and maintained whakapapa links with their particular foreshore and territorial waters” (Waitangi Tribunal, 2004, p. 25). The dimension of reciprocal guardianship is where tangata whenua were “the kaitiaki of the taonga, and cared for it in such a way as to ensure its survival for future generations” (Waitangi Tribunal, 2004, p. 25), and it in turn nurtured the tangata whenua, in a word—kaitiakitanga. The dimension of use, which is sometimes referred to as user rights under English law, meant that rangatira had rights to harvest fish, seabirds, travel over certain areas, and also restrict and exclude others from these practices. The dimension of manaakitanga, as I. H. Kawharu outlined, is where “sharing (through manaaki) and authority (mana) are applied concurrently” (p. 130). The element of hosting manuhiri refers to, for example, the various agreements made by Māori with manuhiri from across the seas, such as the squatting licenses for whalers granted by Ngāi Tahu (Waitangi Tribunal, 2004).

Rangatiratanga as self-management/tribal sovereignty

The *Report of the Waitangi Tribunal on the Muriwhenua Fishing Claim* concludes that sovereignty was ceded in the first article to the Queen of England, and that rangatiratanga does not refer “to a separate sovereignty but to

tribal self management on lines similar to what we understand by local government” (Waitangi Tribunal, 1988, p. 180).

Rangatiratanga and governance

The *Report of the Waitangi Tribunal on the Kaituna River Claim* contends that in ceding kāwanatanga in the first article, the Māori chiefs “would have known that by so doing they would be gaining ‘governance’, especially law and order for which the missionaries had long been pressing” (Waitangi Tribunal, 1984, p. 13) (this is similarly supported by Mutu, 2010, and Jackson, 2010, as previously discussed).

Additional discourses of rangatiratanga from principles of the Treaty of Waitangi

Hayward (1997) outlines that the “Treaty is a living document to be interpreted in a contemporary setting” and that new principles will constantly emerge and modify previous ones. Hayward (1997) further contends that “the provisions of the Treaty itself should not be supplanted by the principles emerging from it” (p. 476). Following the 1987 Lands case, the Waitangi Tribunal texts incorporate the principles of the Treaty of Waitangi, and add further understandings to their applicability. However, what has occurred is that the discourses of rangatiratanga have become blended within the principles of the Treaty of Waitangi. The Waitangi Tribunal operated on the assumption that sovereignty has been ceded through the signing of the Treaty, in the first article of both treaties. The overarching discourse is that of partnership which is blended within a number of the different principles. Rangatiratanga thus becomes viewed within this “principles of the Treaty of Waitangi” context and is subsequently undermined. See Table 3 for the principles of the Treaty of Waitangi in the different Waitangi Tribunal texts that were analysed.

Principle of partnership

The principle of partnership was discussed in the *Report of the Waitangi Tribunal on the Muriwhenua Fishing Claim* as a general principle emerging from the 1987 Lands case and was similarly utilised in *The Ngai Tahu Sea Fisheries Report* and the *Report on the Crown’s Foreshore and Seabed Policy*. The principle of partnership is based on the assumption that

Māori ceded sovereignty (English version) or kawanatanga (Māori version) to the Crown in article 1 of the Treaty, in exchange for the Crown’s protection of Māori tino rangatiratanga ... we defined the Crown’s duty in this respect as one actively to protect and give effect to property rights, management rights, Māori self-regulation, tikanga Māori, and the claimants’ relationship with their taonga. (Waitangi Tribunal, 2004, p. 130)

The principle of partnership was described as the principle of reciprocity and partnership in the *Report on the Crown’s Foreshore and Seabed Policy*:

The Crown’s exercise of kawanatanga has to be qualified by respect for tino rangatiratanga ... The nature of the relationship between the

Treaty partners is a reciprocal one, with obligations and mutual benefits flowing from it ... At the very least, the principle of partnership requires the Crown to make informed decisions on matters affecting Māori. (pp. 130–131)

Principle of protection

In the *Report of the Waitangi Tribunal on the Muriwhenua Fishing Claim* the principle of protection was applied. Lands and fisheries were protected for Māori in the English text and the tribal base for Māori was retained. This meant that “in the context of the overall scheme for settlement, the fiduciary undertaking of the Crown is much broader and amounts to an assurance that despite settlement Maori would survive and because of it they would also progress” (Waitangi Tribunal, 1988, p. 194). In terms of fisheries, the *Report of the Waitangi Tribunal on the Muriwhenua Fishing Claim* raised the point that the

Treaty both assured Maori survival and envisaged their advance, but to achieve that in Treaty terms, the Crown had not merely to protect those natural resources Maori might wish to retain, but to assure the retention of a sufficient share from which they could survive

TABLE 3 Treaty principles in three Waitangi Tribunal texts (post-1987).

Report of the Waitangi Tribunal on the Muriwhenua Fishing Claim	The Ngai Tahu Sea Fisheries Report	Report on the Crown’s Foreshore and Seabed Policy
The principle of protection	The principle of exchange*	The principle of active protection
The principle of mutual benefit	The principle of partnership	The principles of reciprocity and partnership
The principle of options	Duty to consult	The principles of equity and options
	The principle of mutual benefit	The principle of redress
	The principle of options	

* The principle of exchange in *The Ngai Tahu Sea Fisheries Report* incorporates the Crown obligation to actively protect Māori Treaty rights, the tribal right of self-regulation, the right of redress for past breaches, duty to consult, and the principle of partnership.

and profit, and the facility to fully exploit them. (p. 194)

The *Report on the Crown's Foreshore and Seabed Policy* also applied the principle of active protection and refers to the Crown's obligations to not passively protect Māori interests, but to actively protect.

Standards of honourable conduct, fair process, and recognition of each other's authority ... require the Crown and Māori to try to reach a negotiated agreement. This will not always be possible, but the attempt should be a meaningful one. (p. 133)

Furthermore,

the Crown's duty under the Treaty, therefore, was actively to protect and give effect to property rights, management rights, Māori self-regulation, tikanga Māori, and the claimants' relationship with their taonga; in other words, te tino rangatiratanga. (Waitangi Tribunal, 2004, p. 28)

Principle of mutual benefit

In the *Report of the Waitangi Tribunal on the Muriwhenua Fishing Claim* the principle of mutual benefit was applied. The Treaty envisaged that both parties would mutually benefit from its signing. Māori would gain access to new markets and technologies and non-Māori would gain cession of sovereignty and settlement rights. The *Report of the Waitangi Tribunal on the Muriwhenua Fishing Claim* states that "neither partner in our view can demand their own benefits if there is not also an adherence to reasonable state objectives of common benefit. It ought not to be forgotten that there were pledges on both sides" (p. 195).

The *Ngai Tahu Sea Fisheries Report* similarly applied this principle, with particular reference to sea fisheries, and explained that

it was envisaged from the outset that the resources of the sea would be shared ... It recognises that benefits should accrue to both Maori and non-Maori as the new economy develops but this should not occur at the expense of unreasonable restraints on Maori access to their sea fisheries. (Waitangi Tribunal, 1992, pp. 273–274)

Principle of exchange

In the *Ngai Tahu Sea Fisheries Report* (1992) the principle of exchange is used as an overarching principle, and is of "paramount importance" for discussions of the Treaty, and stresses the "compact" that the Treaty embodied (p. 269). The *Ngai Tahu Sea Fisheries Report* includes other principles that have been referred to separately in other reports, including the Crown obligation to actively protect Māori Treaty rights, the tribal right of self-regulation, the right of redress for past breaches, and the duty to consult. Furthermore, the concept of reciprocity is evident in the principle of exchange that is the ceding by Māori of sovereignty (first article) in exchange for the protection by the Crown of rangatiratanga for Māori (second article). The *Ngai Tahu Sea Fisheries Report* further outlines that "rangatiratanga embraced protection" and that the Crown's right to govern is limited by the need to respect and to "guarantee, Maori rangatiratanga—mana Maori—in terms of article 2" (p. 269). The Crown was to actively protect rangatiratanga and thus to actively protect Māori fisheries rights. Furthermore, this protection also included the protection of the right to develop fisheries.

The *Report of the Waitangi Tribunal on the Muriwhenua Fishing Claim* outlined that "the Treaty guaranteed tribal control of Maori matters, including the right to regulate access of tribal members and others to tribal resources" (p. 230). In this Tribunal's view, ceding sovereignty meant that the Crown could make laws for resource protection and conservation

but that it must do so in accordance with the principles of the second article.

Duty to consult

Emerging from these texts is the principle of consultation. The *Ngai Tahu Sea Fisheries Report* outlines the importance of consultation:

Environmental matters and, we would emphasise, measures of resource control as they affect Maori access to traditional food resources—mahinga kai—require consultation with the Maori people concerned. Given the express guarantee to Maori of sea fisheries, consultation by the Crown before imposing restrictions on access to or the taking by Maori of their sea fisheries is clearly necessary. Such matters plainly impinge on the rangatiratanga of tribes over their sea fisheries. (p. 272)

The principle as it applies to Māori is also restrictive on their authority in resource management issues. In other words, the Māori role is limited to being only a consulted party.

The principles of equity and options

The *Report of the Waitangi Tribunal on the Muriwhenua Fishing Claim* applied the principles of equity and options. It explained that the Treaty protects the collective Māori aspirations at tribal and hapū levels, in terms of tikanga and authority. At the same time it protects an individual Māori person's rights, as *British subjects*. Effectively, the Treaty gave options to enable Māori to develop from a customary base, to merge into a new world, or "to walk in two worlds [Māori and Pākehā]" (Waitangi Tribunal, 1988, p. 195). These ideas were similarly applied in the *Ngai Tahu Sea Fisheries Report* and the *Report on the Crown's Foreshore and Seabed Policy*.

Principle of redress

The *Report on the Crown's Foreshore and Seabed Policy* applied the principle of redress and outlined that the Crown has a duty to provide redress to claimants if there has been a breach of the principles of the Treaty of Waitangi.

Conclusion

There are multiple interconnections within and between each of the emergent discourses of rangatiratanga. Each of the different discourses named represent the nodal discourse of rangatiratanga in particular ways that allow for certain understandings and not for others. The introduction of the principles of the Treaty of Waitangi provide further explanation of the discourses of rangatiratanga, yet they also act to limit the definitions as well as introduce new concepts for understanding such as the discourse of consultation, recognised as the principle of the duty to consult. The principle of the duty to consult, while it recognises and outlines the role of the Crown to consult with Māori on issues such as resource management, also restricts the authority of Māori because their role is limited to being only consultative. The principles of the Treaty of Waitangi, while retaining the *spirit* of the Treaty, in fact limit and restrict the full authority that is guaranteed under the Treaty. Furthermore, the principles of the Treaty of Waitangi could be seen as detracting from the discourses of rangatiratanga. Thus, within the context of Māori fisheries management it remains to be seen whether rangatiratanga is truly provided for other than as "window dressing" (Waitangi Tribunal, 1988, p. 85).

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