Learning from the 1991 law exams incident

Georgina Tuari Stewart (ORCID: 0000-0001-8832-2415)
georgina.stewart@aut.ac.nz
School of Education, Auckland University of Technology, Auckland, New Zealand

Abstract

This article revisits a moment in the recent history of education in Aotearoa New Zealand when te reo Māori as a language of the university came under intense scrutiny. The original incident took place in 1991 in Hamilton, Aotearoa New Zealand, when two students of Waikato Law School wrote answers in te reo Māori to an examination question relating to the Treaty of Waitangi. The students later laid a formal complaint about how their answers had been marked, which resulted in a report by the committee appointed to investigate. This useful report is part of a rich archive on this incident, and the Law School itself, in relation to the aspiration to provide a 'bicultural' legal education. This article revisits the 1991 exams incident through this textual corpus, focusing on discussions about te reo Māori as an academic language. The 1991 law exams incident is a useful example for illuminating wider questions relating to bicultural education in Aotearoa New Zealand.

Keywords

Biculturalism, Bilingualism, Indigenous legal education, Te reo Māori (the Māori language), Waikato Law School

Introduction

The national self-image of Aotearoa New Zealand rests on deeply-held ideals of egalitarianism and fairness, including pride in a reputation for having the 'best race relations' in the world. On one hand, the indigenous population of Māori fare relatively well, by comparison with indigenous peoples in similar Western countries (such as Australia, Canada, and the United States). Māori have the right to self-identify, and comprise around 15% of the national population. Te reo Māori (the Māori language) holds legal status as an official national language; there are a range of legal protections for Māori interests, and a more liberal approach to inter-ethnic mixing than in most other countries. On the other hand, Māori are concentrated in the lower bands of wealth, health, and home ownership, and are greatly under-represented in the professional classes. In recent decades, the ethnic wealth gap for Māori has rocketed, as mechanization of primary industries, and offshoring of manufacturing, have slashed the number of jobs in unskilled and manual labour.

Relationships between Māori and Pākehā (White New Zealanders of primarily British origin) have always been complex and somewhat contradictory. While Māori inequities in wealth and education remain entrenched, national acknowledgement of Māori rights in areas such as language continues to grow stronger (May, 2012). Schools played an important historical role

in disrupting Māori social structures and interrupting intergenerational transmission of te reo, and education has been given an important role in efforts to retain and revitalise Māori language and culture. This article revisits an incident from 1991, when two students of Waikato Law School wrote answers in te reo Māori to an examination question relating to the Treaty of Waitangi. Dissatisfied with how their answers were marked, they laid a formal complaint, and the university appointed a committee of inquiry (henceforward 'the committee') to investigate and produce a report (University of Waikato, 1993). This report, which is discussed in detail below, was written by a group of authoritative experts, including experts in te reo Māori, and makes a valuable reference text in relation to the questions raised by considering the place of te reo Māori in university education and the academy.

In addition to the report itself, accounts of the incident and its context appear in several articles by insider authors, both Māori (Mikaere, 1998; Milroy & Whiu, 2005) and Pākehā (Wilson, 1993). Two Masters theses were completed, one on theoretical questions related to the concept of a 'bicultural legal education' (Milroy, 1996), the other informed by an interview study of how the School was experienced by early Māori graduates (Papuni-Ball, 1996). These various texts refract a spectrum of angles on this incident, and the Law School itself, in relation to the aspiration to provide a 'bicultural' legal education. This article draws on this textual corpus to revisit this incident, focusing on discussions about te reo Māori as an academic language. The 1991 exams incident is a useful example from the history of te reo Māori in the university to shed light on the wider question of bicultural education in Aotearoa New Zealand, and to compare with contemporary approaches in schools.

The new Law School

The Waikato Law School opened in 1990 as the fifth Law School in Aotearoa New Zealand, and the first new one to open for 90 years. The rationale for this new Law School included three key objectives, one of which was biculturalism:

> First, to provide legal education that included the professional courses required by the Council of Legal Education, secondly, to provide an opportunity for a greater number of Maori students to qualify in law, and to develop a bicultural approach to legal education through the School's curriculum and research, and thirdly, to develop a curriculum that stressed the importance of studying law within its context. (Wilson, 2019, p. 622)

Prominent legal scholar and politician, Margaret Wilson, led the new School as its first Dean (1990 – 1999), and wrote several papers about various aspects of the School, including the notion of a bicultural legal education (Wilson, 1995, 1997). The new School was inaugurated at a time when neoliberalism was taking effect in tertiary education policy, and the previous government's commitment to providing it with establishment funding was rescinded, as a result of political changes following the 1990 national election (Wilson, 1993). As reflected in Wilson's writing about its early years, the bicultural question was only one – and not the first one – of a slew of difficult issues she faced in inaugurating the new Law School.

Biculturalism and Waikato Law School

The commitment to a **bicultural legal education** was undoubtedly the most innovative aspect of the new Law School, and meant 'that the Māori perspective had to be reflected in all aspects of the curriculum and the activities of the School' (Wilson, 1993, p. 4). But how did these commitments translate into practice? Wilson noted two major obstacles faced by the School in developing a bicultural legal education: first, lack of shared agreement of the meaning of this concept (see sub-section below); and second, the catastrophic withdrawal of state funding for such activities, which happened just weeks before the School was set to open for business.

Rangatahi Māori (Māori youth) who are successful at school are often encouraged by their whānau (extended family) to become lawyers, in order to help with their land claims and their people, given the dearth of Māori lawyers, and the over-representation of Māori caught up on the wrong side of the legal system in the police, courts and prisons of Aotearoa New Zealand (Papuni-Ball, 1996). Māori lawyers measure their success by their ability to use their legal knowledge to advance their own people, not (only) by the usual hallmarks of professional prestige (Papuni-Ball, 1996, p. 23). There were 23 Māori graduates at the School's first graduation in 1994 (Papuni-Ball, 1996), and the School maintained a healthy proportion of over 20% Māori students for some years (Mikaere, 1998), facts which suggest it was capturing a significant share of the total national Māori legal student cohort.

An interview study was undertaken in 1994 of early Māori student experiences at the School, and the empirical data was reported in a dissertation (Papuni-Ball, 1996) and several articles including Whiu (2001) and Milroy & Whiu (2005). This study of Māori graduates found that the explicit commitment to biculturalism and the Māori perspective was the major attraction and point of difference for them in choosing Waikato as their law school (Papuni-Ball, 1996). Leah Whiu, a postgraduate student of the School in its early years, recalls that she

> had anticipated a legal education that would actively and deliberately centre and normalise Māori whakaaro [thinking], aspirations, dreams, traditions and kaupapa [topics] [without] the usual, day-to-day, ignorant racism that generally permeates discussions relating to the Treaty of Waitangi and issues that are often loosely referred to as "Māori issues." (Whiu, 2001, p. 269)

The data collected from Māori students in the first cohorts about their time at the School showed that they were disappointed by what they actually experienced, summed up as 'the continuity of oppression stemming from this country's colonial history' (Papuni-Ball, 1996, p. 66). Actions taken by students (not only Māori students) in those early years included writing to the Dean to express their concerns about the lack of biculturalism in their programme, such as insufficient Māori content in the curriculum. Some students, however, felt that incorporating Māori content into the courses, and hiring more Māori staff, were 'just making the School more "Māori user-friendly"' (Papuni-Ball, 1996, p. 67). Major concerns expressed by the Māori student participants were as follows:

- There were only two Māori staff when the Law School opened, who were expected to cover all the Māori teaching functions;
- Māori students were often expected in class discussions to provide their classmates and lecturers with the 'Māori perspective' or 'Māori content';
- Māori staff and students were made to feel uncomfortable or unsafe in their classes by the above expectations, and by anti-Māori attitudes expressed by some non-Māori students; harmful effects that, ironically, were exacerbated by the bicultural emphasis;
- Māori students were expected to adapt to the structures and systems of a 'professional' legal education and there was little or no effort made to adapt the legal education to Māori. (Mikaere, 1998; Papuni-Ball, 1996)

What is 'biculturalism' for Māori and Pākehā?

In the context of Māori-Pākehā relations, 'biculturalism' is used by the state as a descriptor for policies that aim to take account of Māori needs across various social spheres, but particularly in education. The accepted historical timeline of Māori education policy is represented as a series of phases, beginning with and dominated by 'assimilation' whereby Māori were seen in deficit terms: expected to use the opportunities provided by education to renounce their own culture, language, and social norms, in favour of those of the British colonizers. Policies of assimilation remained in place for Māori in education until after World War II, when they gave way to 'integration' as recommended by the influential Hunn Report (1961).

The Hunn Report was a major stocktake of the state-Māori relationship, and a serious attempt to address what was called 'the Māori problem' – namely, that while the Māori population was rapidly increasing, Māori refused to (fully) assimilate to Pākehā norms and ways of life (Hill, 2009). As the Māori population rapidly urbanised in the post-WWII period, large numbers of Māori students entered Board or 'mainstream' schools (as opposed to Māori Schools that had previously provided for the rural Māori population), and the ethnic inequity became impossible to deny. Yet the gap yawned between Pākehā and Māori views of the 'problem' - as shown by the following critical comment:

> Integration was closely related to "multiculturalism," which was seen by Māori as a tactic by the State to quieten demands for their language and culture to be taught in schools, as well as to placate mainstream New Zealand and encourage tolerance and restraint (Milroy & Whiu, 2005, p. 176)

Leading Māori intellectual Ranginui Walker (Walker, 2004) expressed cynicism about the government's apolitical vision of multiculturalism; instead, he argued for **biculturalism** as being more appropriate for Māori and Pākehā, to reflect the partnership established by the Treaty of Waitangi.

> The term partnership itself needed further interpretation by the courts, who later made it abundantly clear that partnership did not mean an equal partnership, especially where material resources were concerned – the Crown still had the

> overriding power of rule... Partnership is now often used in conjunction with biculturalism, and treated as an element of biculturalism. The meanings both words take on depend on the context in which they are used. But Māori have found to date that the government has paid little more than lip service, if that, to the concept of partnership with Māori. (Milroy & Whiu, 2005, p. 179)

From a Māori perspective, the problem with the Pākehā view on biculturalism, such as represented in the writings of Wilson (1993), is that it wants the partnership to begin now, on the current terms resulting from 200-odd years of colonizing oppression and unfair dealings.

This view is supported by the pervasive amnesia concerning accurate histories of the creation of New Zealand in Aotearoa, which the prominent national business tycoon, Sir Robert (Bob) Jones, famously displayed in his 'Māori Gratitude Day' proposal mooted in February 2018, through his column in the National Business Review magazine (The Spinoff, 2018). Jones proposed that, instead of Waitangi Day (a national holiday commemorating the 1840 signing of the Treaty of Waitangi, through which the British Crown claimed legitimacy to establish sovereignty over Aotearoa) it would make more sense to have a day when Māori expressed their appreciation to Pākehā, calling for 'a public holiday when Māori bring us breakfast in bed or weed our gardens, wash and polish our cars and so on, out of gratitude for existing' (The Spinoff, 2018, unpaginated). With these suggestions, Jones betrays his extreme 'them-and-us' attitude to Māori, apparently identifying himself and others of his ilk with the Pākehā colonizers of the early 1800s. Jones expressed surprise at the outrage his column caused, and responded that it was intended only as satire. But the point is that such opinions, despite seldom being publicly expressed in such crude terms, are fairly typical of 'mainstream' Pākehā thinking, promulgated by the distorted versions of national history that have been taught in schools for many generations.

In the face of such problematic and widespread Pākehā views, many, if not most, Māori people working in education have become in turn disillusioned with the notion of biculturalism – seeing it as just as flawed as previous policy notions of multiculturalism, taha Māori, and talk of 'partnership' that never translates into power-sharing. As Wilson noted, developing a 'bicultural legal education' was an unfair assignment, given the lack of clarity about what such an objective actually entailed.

Te reo Māori and Waikato Law School

With the benefit of hindsight, Wilson's writings about those early years show that she underestimated the gap between her own understandings and expectations of 'biculturalism' and those of Māori. This observation is hardly an indictment of Wilson, since her expressed views are consistent with, or better-informed than, prevailing Pākehā attitudes on these matters (Moewaka Barnes, Taiapa, Borell, & McCreanor, 2013). But the gap is revealed in her comment that the students who wrote answers in Māori 'interpreted [biculturalism] as bilingualism' (1993, p. 22), which seems to reflect the belief that 'biculturalism without te reo' is possible. Whiu clarified the Māori view: 'For Māori, te reo Māori is an integral component of who we are and as such it cannot be separated from any consideration of biculturalism'

(2001, p. 285). Emphasising the point, Whiu gave her article a bilingual title, including the phrase ‘ānei te huarahi hei wero i a tātou’ (2001, p. 265) – refering to a ‘challenging path before all of us’ (my translation), which echoed the view expressed by Wilson (1993) about the challenges of biculturalism.

Māori students identified that the School failed to provide an educational environment in which ‘the use of te reo Māori (the Māori language) [was] promoted and actively supported by staff’ (Milroy & Whiu, 2005, p. 201). One former student in the study described her negative experiences of writing her assignments in te reo. She felt unsupported when lecturers discouraged her from writing in te reo by saying ‘it might not be easy, it might not be a good idea’ (Milroy & Whiu, 2005, p. 205). On several occasions, her assignments written in te reo were either returned very late, or not returned at all, denying her the benefit of feedback on her work. Another student, who could have written her assignments in te reo, explained why she had never done so ‘because she had seen how difficult it was for others who did’ (p. 205). So there had been some use of te reo as an academic language medium in the School, before the exams incident.

Commenting on the expectation of being able to use te reo Māori, one student complained that ‘everything has been given to me in Pākehā [English]. Why didn’t [the Law School] give me questions in my test in te reo?’ (p. 205). This student went on to reflect on the complex epistemological burden of academic writing in te reo Māori:

> I would look at [the question] from a Māori perspective, and I couldn’t hear the question in te reo ... then I got locked into the taha [side] Māori side of it, I couldn’t come out of it and then I’d look at it from a Māori perspective and over time, I have really felt bashed about by that. And I feel like they haven’t respected me, they haven’t respected my mahi [efforts]. (Milroy & Whiu, 2005, p. 205)

Concerning its obligations to te reo Māori, the report referred to the words used in the Charter of the University, recognising that ‘Māori customs and values are expressed in the ordinary life of the University’ (University of Waikato, 1993, p. 21). The committee commented:

> We find this assertion very difficult to reconcile with any position falling short of a general recognition that the Māori have the right to use their reo in official communications with the University, at least in those communications which are as serious and central to the University’s core as examinations. (University of Waikato, 1993, p. 21)

The committee considered that in its Charter the University had stated its intent ‘to accept the whole of tikanga Māori as one of the bases of its life as a community of scholars and teachers’ (p. 21). Their conclusion was unequivocal:

> Te reo Māori is central. It is not, in our view, something about which the University, having undertaken the commitment, can take or leave, or an obligation it can put off honouring until it sees its way clear to doing so. (p. 21)

Criticism of the Law School's attempts to develop a bicultural approach came

> most loudly from some Māori [which was] not surprising since there were unrealistic but understandable expectations of what the Law School could achieve within the first year. (Wilson, 1993, p. 22)

Wilson noted the irony that the students' protest was directed against 'the one University and Law School in New Zealand that has seriously attempted to redress the injustices inflicted on Māori' (p. 22). The committee reflected this same irony in its comment in relation to the attitude towards using te reo at the university: 'From those to whom much is given, much is asked' (University of Waikato, 1993, p. 21). They meant that the Law School needed to honour the trust the students had placed in them by writing their answers in te reo as of right.

The 1991 exams incident

The research conducted among the first cohorts of Māori graduates revealed that they felt short-changed by their experience of studying at Waikato Law School, in contrast with the expectations that had been raised, and which had inspired them to enrol there. This general sense of dissatisfaction undoubtedly impacted on what happened in late 1991, when two students wrote examination answers in te reo Māori, without prior approval, to questions relating to the Treaty of Waitangi. It was a stunning legal test of the 'bicultural' education their School claimed to be providing. It catalysed an intense debate about the role of te reo Māori in the university, which showcased the gap between Māori and Pākehā understandings of what a 'bicultural legal education' might mean in practice.

The aftermath of the incident highlighted the School's lack of preparedness for such an eventuality. The findings of the inquiry recommended that the University develop further policy on the use of te reo Māori in assessment, but the resulting policy was critiqued:

> The policy was unacceptable to Māori because it was a policy which protected the University and did little to promote the use of Māori language in the institution. The policy was a mechanism to assist the lecturers to mark the exams submitted in Māori. It was the lecturers who needed a translator to translate the exams if they could not read Māori. Despite our two students articulating this flaw in the policy to the University, they were totally ignored. The reply was that the University simply could not see what the problem was. (Papuni-Ball, 1996, pp. 41-42)

This debate centres on the key business of a university - teaching, learning and assessment. In the exams incident, the students used the element of surprise, 'weaponising' te reo Māori in a novel way while 'using the time-honoured student tactics of confrontation and challenge' (Wilson, 1993, p. 23). It seems reasonable to suppose that in 1991, such an incident would have been poorly dealt with by almost any university department in the country, apart from Māori Studies departments. The University's considered response as reported above, therefore, is far more telling. The University could not 'see' the problem, which points to a problematic (and

arguably widespread) incomprehension by Pākehā of Māori views on such matters, which is important to consider in the context of a discussion of 'bicultural' university education.

How the University managed the answers written in te reo

The committee's report (University of Waikato, 1993) gives a detailed account of what happened to the exam scripts written in te reo. They were discussed: by staff within the Law School; between the Law School and Professor Tīmoti Karetu (then head of the Māori Department); at central levels of the School and University; and with the external academics (assessors and advisors) involved in the Law School's academic quality systems. Wilson, as Chief Examiner, took responsibility for managing the scripts, once they came to her attention. From the report's account of the convoluted process that ensued, two key points emerge about the language aspects of the incident, discussed in more depth below:

- The Law School ruled out the involvement of its only Māori-speaking academic staff member qualified to assist with marking exam answers written in te reo Māori.
- The Law School arranged for a literal translation of the exam answers written in te reo Māori, and these translations were then treated as the 'real' answers.

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The committee found that Wilson acted correctly in ruling out the involvement of her only academic staff member who had both the subject expertise and language expertise to read with understanding, and therefore be able fairly to mark the answers written in te reo. Wilson sought to spare her staff member from having 'to shoulder the department's problems in this way' (University of Waikato, 1993, p. 25), and perhaps also considered that person too involved, as the personal adviser of the students concerned. The report describes Wilson's assessment as 'cautious' but finds that the Academic Committee, which formally excluded this option, 'acted in accordance with sound academic judgment and practice' (p. 25).

The point of stressing the decision to exclude the insider-expert is that, with hindsight and in accordance with Kaupapa Māori principles (Smith, 2003), it seems a puzzling decision to take; one at odds with Māori 'common-sense' philosophy. Considering the large number of people with whom these exam scripts were discussed, to exclude the one person who could have helped seems short-sighted. Asking the best qualified person to be part of the discussion seems more constructive in anyone's terms; and it is not clear why an academic should feel burdened by being obliged to treat such discussions as privileged and confidential. Of course, it is highly unfair to look back and make judgements of historical actors, especially on the basis of ethical frameworks such as Kaupapa Māori, which have developed in the intervening years. But this point and the next are intertwined: Wilson and others who managed the answers in Māori clearly failed to appreciate the complexity of issues, linguistic and semantic, involved in 'translating' the students' answers.

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The report includes a detailed section (pp. 17-30) on how the two answers written in te reo were marked. It begins by considering the question of 'whether the translation adequately represented (to an examiner who was not a speaker of Māori) what the students had written' (p. 17). The translations, first completed by Professor Karetu, and later by another external person, were done by people who had no inside knowledge of the te reo lexicon of legal language that was being developed within the School – by these students, and others. Naturally, reference to the Māori staff member of the School would have quickly clarified this vital language point, and undoubtedly would have improved the quality and outcomes of the marking process. The report appends a list of examples (pp. 49-50) where the translations inadequately expressed the student's intended answer, noting:

> This is all part of a quite remarkable story, as yet incomplete, of how a group of students, who were still at an early stage in their legal education, committed themselves to the cause of making te reo Māori a viable vehicle of legal argument. But to a literal translator, the words would appear something of which little could be made but meaningless and ungrammatical nonsense, as indeed they did to Professor Karetu. (University of Waikato, 1993, p. 18)

Professor Karetu began to read the answers written in te reo,

> and then declined to proceed further... He considered that, whatever type of translation he was called upon to offer, "a disservice would be done to the students"... His view, which appears in his brief, was that it would have been better if a lawyer with a command of Māori language and the topic did the job, since the scripts would need to be translated and interpreted. He said he conveyed that view to Professor Wilson, along with the names of several people he thought could do the job.' (University of Waikato, 1993, p. 24)

Professor Karetu was eventually asked to provide a 'literal translation' of the answers written in te reo, with as little interpretation as possible, and those translations were then marked by the Law School as if they were the students' 'official' or 'real' answers. The committee had 'serious difficulty' (p. 24) in accepting the adequacy of this course of action, given Karetu's advice, noted above. Furthermore, the University failed to arrange for discussion and documentation to take place alongside the translation process. This was the main point on which the committee concluded that the University had omitted to take appropriate action, saying:

> We have decided that the University acted in accordance with sound academic judgment, and with the provisions of its charter and treaty obligations, in all respects save one. That was the decision of the Academic Committee to require that the two questions in Māori be translated, not necessarily by a person with legal training, the translation to take the form of a literal translation without interpretative comments. We consider that either some other way of dealing with the problem

> should have been chosen, or that at the very least some provision should have been made to deal with the events that have in fact happened, that is, [that] although the translation has been marked, there is still doubt whether the mark reflects the true worth of the answer as written. (University of Waikato, 1993, p. 42)

There were a range of attitudes towards te reo Māori on display in the discussions. The Māori perspective, as outlined above, considered the right to use te reo Māori absolutely central. The views of Wilson as reported by the committee and expressed in her published papers, especially Wilson (1993), are useful to represent the 'mainstream' or Pākehā national opinion. This is not to vilify Wilson the person, but to use her paper to inform this one, hence enabling Wilson's scholarship to serve Māori research purposes, by helping trace the gaps in comprehension between the two viewpoints, Māori vs. Pākehā.

Initially, the School considered not marking the answers written in te reo at all, based on 'a previously established general policy that only the language of instruction could be used in examinations' (p. 38). In her original memorandum to the Academic Committee, Wilson referred to the answers written in te reo as 'creating a precedent' and noted 'problems which might arise if many students offered answers in Māori' (p. 27). The incident was discussed by the Academic Committee a few weeks after the exam, and the non-marking option was ruled out at that meeting: the Committee accepted their obligations to te reo Māori. Reviewing these discussions, the report commented that 'making a decision solely to deter other Māori students from using their own language in the future' (p. 27) would go against the university's Treaty obligations.

> It follows that, whatever force the general "expectation" that examinations must be written in the language of instruction may still have, it could not apply in this case. Nor do we consider that the students broke any rule of the University in answering in Māori, or acted improperly in doing so, though we consider they knew that it was an unusual thing to do and was probably not contemplated in the law school. (University of Waikato, 1993, p. 22)

The University articulated its reasons for preferring a 'literal translation' in terms of ideas about knowledge, which are central in the whole enterprise of academic writing in te reo. This view was represented by then Vice Chancellor, Wilf Malcolm:

> I am tentatively of the view that the quality of professional translation skills is what is of prior importance. Indeed too much emphasis on the need for subject competence in the translator may call into question the objectivity of the translation process and thereby undermine the credibility of the assessment process. (University of Waikato, 1993, p. 26)

The report predicted that this opinion would be important to consider in future discussions about policy for writing in te reo at university, but noted that it depended on:

> the assumption that the skilled translator is in a position to give an "objective" version of the answer which will have an "objective" meaning in the mind of [a] monolingual examiner. (p. 26)

Swayed by this notion of the 'objective' nature of translation, the University proceeded with the 'literal translation' option, despite Karetu's advice that to do so would unfairly disadvantage the students. Belief in the objectivity of translation goes along with the idea of language as a code, associated with notions that meanings are stable, and that anything that can be expressed in one language can adequately be expressed in any other language (Malmkjær, 2010). This view, putting all its faith in the 'skill' of the translation, also disregards the demands created by the specialist lexicon of an academic discipline. In these senses, the University viewed the 'literal translations' as the 'real' answers. It was a clear example of powerful Pākehā systems blithely disregarding the nuances of the cross-cultural encounter with Māori.

> [W]e do not think any University Committee, with Professor Karetu's professional opinion before it, could reasonably regard such a process as more "objective" than one in which a translator with knowledge also of the subject matter, ventures a "translation" along with comments on the interpretative possibilities of the words actually used by the students, and the possible reference they may have to well-known English legal terminology. (University of Waikato, 1993, p. 26)

The report delves into the language and knowledge questions relevant to academic writing in te reo in comments worth quoting at length:

> Of course, students who elect to answer a question in Māori must inevitably take some risk. Their proficiency in the language may not be sufficient to make the points as effectively as they would have made them in English. That is a risk these students took, and we did not understand them to argue that they should be given more than their written answers deserved, simply because they were written in Māori. There is, too, a rather more complex risk. There may be no established or easily recognisable way in which a technical subject can be discussed in Māori. At that point, they will have to use the language available as best they can. Perhaps they will do well at that, showing a deep understanding of the subject and its relationship to their culture; if so, we would be surprised if additional credit could not then be given. Alternatively, they may make a poor job of it, giving rise to the suspicion that they do not really understand the concepts they are trying to develop in Māori. That could be taken into account against them. (University of Waikato, 1993, p. 22)

This statement elegantly summarises the key epistemological question relating to academic writing in te reo. The 'more complex risk' of academic writing in te reo relates to the binary nature of bilingualism and biculturalism. Bilingualism theory holds that high levels of balanced bi-literacy give a person a cognitive edge over monolinguals, increasing their potential for lateral thinking and their understanding of the difference between the world of language and the real world. Conversely, the concept of 'semilingualism' (or, perhaps preferably, 'semi-literacy') has relevance in describing the complex realities of attempts to retain te reo Māori as a living language, while maintaining awareness of the pitfalls of this concept, which has been

criticised as pejorative and ill-defined (Lucchini, 2009). Today, the vast majority of speakers of te reo Māori are second-language learners, but there is an ideological tendency to regard te reo Māori as their 'first' language, in the sense of 'heritage' language. Following the path of 'immersion,' many Māori-medium school programmes restrict the provision of English-literacy education, which disregards the risk of producing graduates with limited literacy in either language (May & Hill, 2005). Debates about te reo Māori in school programmes tend to obscure these nuanced 'complex risks' behind simple rules such as 'kōrero Māori anake' (speak Māori only) that seem to see language competence, i.e. literacy, as a matter of quantity, not quality.

Conclusion: learning about biculturalism through te reo Māori

This research has capitalised on the rich archive of the 1991 exams incident, in particular the report (University of Waikato, 1993), a unique text that authoritatively addresses the questions involved in using te reo Māori as a language medium of the university. To revisit this incident honours the original intent of the students who wrote exam answers in te reo, courageously taking risky direct action, motivated by their commitment to furthering the cause of te reo Māori in the university. This research also pays respect to the aspirations of the Waikato Law School to provide a bicultural legal education. From its inception the School attempted the 'making of a new legal education' (Wilson, 1993, p. 1) that included a bicultural commitment, no matter how plagued by gaps in understanding and severe practical difficulties the vision remained. Without the School's commitment to biculturalism, the exams incident would likely not have occurred. This implication was acknowledged in the report in terms of the 'trust' the students had placed in the University to 'honour its own charter' (p. 20).

> That the University should have been a recipient of that trust, of that koha [gift] by way of contribution to its life, was a fitting testament to what it had built up. Such a thing might not have happened elsewhere. (University of Waikato, 1993, p. 20)

Thus the committee reversed the yardstick of Wilson's judgment: instead of seeing the students' action as a 'campaign against' the Law School (Wilson, 1993, p. 22), they styled it as an expression of 'trust in' the Law School, to mark the answers written in te reo with 'all due care, so that, as far as possible, the students suffered no disadvantage from the use of the Māori language' (University of Waikato, 1993, p. 21). Wilson concluded her synoptic account of the inquiry into the incident by observing 'it is difficult to see what has been achieved by the whole process' (Wilson, 1993, p. 23) but this article has underlined the value of the report's commentary in the ongoing debate over the status of te reo as an academic language, still relevant today (2019). Wilson acknowledged that the 'positive side of the incident was that it raised the issue for debate and discussion' (p. 24), while the negative side was the time and energy lost in the process.

The incident at the centre of this story took place in 1991, four years after Te Reo Māori was made an official national language (New Zealand Legislation, 1987). It was a time when some universities were just beginning to run Māori-medium courses, particularly in initial teacher education, in response to the rapid growth of Māori-medium schooling. In subsequent years,

the universities would be increasingly challenged to accommodate the arrival of Māori-medium school graduates, and take heed of the growing demand for the right to use te reo Māori in public institutions such as schools and universities (May, 2012). As is always the case with political activism, therefore, in the case of the 1991 exams incident, the timing was everything.

The 1991 exams incident marks a turning point in the history of te reo Māori in the university. At the start of the story, older attitudes based on Eurocentric notions were still in evidence, but did not prevail in the eventual outcome. Despite the overt claims to bicultural practice, the Law School acted to limit the agency of two central Māori actors in the story: the staff member who could have helped, but was excluded; and the Māori language expert who was obliged to translate the answers, against his better judgment. The University tried to take the higher epistemological ground by arguing in terms of 'objectivitity' and 'standards of assessment,' but the committee's deliberations gave the lie to their shallow arguments. The students exercised their language rights, which were eventually upheld in the outcome of the inquiry. The University was held to account for the words of its Charter.

The history of this incident underlines the entanglement of te reo Māori in any claims to biculturalism between Māori and Pākehā. Within a decade of the students' action in Hamilton, the first doctoral thesis written in te reo would be completed in Palmerston North (Black, 2000). By another decade later, all the universities in the country would adopt a fairly standard te reo policy on the right of students to submit any assessment in te reo – often with conditions, such as advising the course lecturer at the start of the semester, or restricting the right to students with 'sufficient fluency' in te reo. Such practices are routinely shared and discussed in the small national university committees, which makes it reasonable to assume that the 1991 law exams incident would have been of great benefit in discussions around the relevant meeting tables during the years that followed. Through such processes of debate and discussion, we learn as a country about biculturalism and the place of te reo Māori in our national culture. Only through learning from such events, with all the grief and pain involved for the central actors, can we grow, and grow up, as a bicultural and multicultural society.

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