

TAHE; TĪKANGA AND ABORTION

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*I te urunga o te rā,
tutū ana te puku.
Ringihia kau ana e au, kia tau ai.
Maringi noa ngā roimata.
Ka mōhio nei au,
ki te kuku ana te pōuri, pūkatokato ana a roto,
kia ngaro au i ahau.*

*Each day, come the rising of the sun, my stomach churns over.
I let it pour forth, so that my wairua may be settled.
Tears flow constantly.
But I know that if my sadness were to be repressed,
I would be riven to endless desolation,
losing myself inside of me.*

I INTRODUCTION

The Contraception, Sterilisation, and Abortion Act 1977 was enacted by the thirty-eighth New Zealand Parliament, when there were more Members of Parliament named “Bill” than there were women.¹ In 2020, the fifty-second New Zealand Parliament removed abortion from the Crimes Act 1961.²

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1 (16 December 1977) 416 NZPD 5337.

2 Abortion Legislation Act 2020, which came into force on 24 March 2020. Before the passage of the Abortion Legislation Act, the starting point was any person seeking an abortion in New Zealand was committing a crime under s 182 of the Crimes Act. They would have to rely on a defence set out in s 187A to avoid criminal sanction, which required a person to obtain a referral by their doctor to two medical specialists, who would confirm that the continuation of the pregnancy would result in serious danger to their life, or physical or mental health. The Abortion Legislation Act 2020 allows people to choose to have an abortion without restrictions if they are no more than 20 weeks pregnant.

Proportionately, wāhine Māori accounted for approximately one quarter of the total number of abortions in Aotearoa New Zealand in 2013.³ There is also evidence indicating that particular regions with large Māori populations suffer from inequitable access to abortion services. The Abortion Supervisory Committee noted in its annual report that there was only one public abortion service provider for the greater Auckland region, and none in the Counties Manukau district.⁴

At the end of 2019, I had an abortion.⁵ As a feminist and a young woman studying law in Aotearoa, I once held an unwavering belief that if I ever found myself in a predicament where I had an unwanted pregnancy, I would choose to have an abortion. Of course, when it actually played out, my abortion placed me in a position of severe distress and instability. Looking back, I believe that the core of my struggle was reconciling my decision to have an abortion with my developing cultural identity as a young wāhine Māori.

After making my decision to have an abortion, I sought guidance from some of my whānau members about practising a whēnua ki te whēnua tikanga ritual.⁶ I was challenged by some of my kuia who implored that having an abortion would breach my obligations of whakapapa, especially because I am currently the only living child and the only living mokopuna on both sides of my whānau. This experience made it apparent to me that I faced additional stigma in getting an abortion as a wāhine Māori as a result of a potential breach of my cultural beliefs and identity. My whānau strongly encouraged me to continue with my pregnancy, with the option to whāngai to a close relative if I did not want the child. In the end, I reconciled my decision to have an abortion by engaging in a whēnua ki te whēnua ritual.

3 Linda Holloway, Patricia Allan and Tangimoana Habib *Report of the Abortion Supervisory Committee 2013* (Abortion Supervisory Committee, 2013) at 18.

4 Linda Holloway, Tangimoana Habib and Carolyn McIlraith *Report of the Abortion Supervisory Committee 2017* (Abortion Supervisory Committee, 2017) at 5.

5 I have decided to include this information in my article because in doing so, I position myself explicitly in the work as a young woman who has undertaken an abortion surgery in New Zealand. I also choose to use personal pronouns throughout this article (us, our and we) to position myself as tangata whenua, in order to reject notions of objective and neutral research. This approach is similar to that of Leonie E Pihama “Tihei Mauri Ora: Honouring Our Voices. Mana Wāhine as a Kaupapa Māori Theoretical Framework” (PhD Thesis, University of Auckland, 2001) at 26–27 and Linda Tuhiwai Smith *Decolonizing Methodologies Research and Indigenous Peoples* (University of Otago Press, Dunedin, 1999).

6 A ritual where human remains are returned to the land through burial.

In this article, I explore the kaupapa of abortion under a tikanga Māori framework. I begin the work of uprooting some of the colonial philosophies that have embedded themselves in te ao Māori, and which impose a further layer of stigma and trauma on wāhine Māori who navigate decisions about abortion. I argue that it is necessary to re-determine the way our tikanga can inform our abortion practices as wāhine Māori, and develop the abortion process in a way that supports all wāhine on a cultural, social and psychological level.

II RECLAIMING TIKANGA FOR WĀHINE MĀORI

Tikanga may be understood as Māori principles that are used for determining justice, in the same way that law is used in te ao Pākehā. Mason Durie refers to tikanga as “guides to moral behaviour”.⁷ Tikanga is adapted from, and is inextricably woven into, the religious ideals and everyday structure of te ao Māori. In a wider sense, tikanga can be defined as law, and kawa or kaupapa is the process of how tikanga is exercised.⁸

As our legal practitioners begin to incorporate our tikanga into New Zealand’s legal sphere, our pūkenga and practitioners are often asked to consider varying kawa, kaupapa and tikanga while addressing legal issues.⁹ While the incorporation of our tikanga into the Westminster system is a delicate task, I am passionate about our practitioners doing so because it allows us to turn to a tool that is ‘tried and true’. I love the way our tikanga can cause transformative change. I believe this ability stems from the malleable nature of tikanga, which disregards the rigidity of our Pākehā systems. Our tikanga is grounded but everchanging, it is founded upon critical values such as aroha, pono, tino rangatiratanga and manaakitanga. One of my mentors makes a relevant joke about Māori being “the elite”, and in this sense I think that sentiment is true — because our tikanga is based on practises that have existed for generations long before us, and they will be passed on to generations far beyond us. When we speak about our tikanga in legal spaces, we are reaching back to the practises of our tupuna and using those practises to inform our decision-making today. I remain in awe of our tupuna for their ability to produce viewpoints that were

7 Mason Durie *Tē Mana, Te Kāwanatanga: The Politics of Māori Self Determination* (Oxford University Press, Auckland, 1998) at 23.

8 Law Commission *The Taking into Account of Te Ao Māori in Relation to Reform of the Law of Succession* (NZLC MP6, 1996) at 16.

9 The most recent example of this can be seen in *Ellis v R* [2020] NZSC 89.

progressive and forward-reaching. They critiqued colonial concepts that were inherently racist, sexist (or any of the other ugly ‘ists’), and they enabled us now to reject outdated notions and make changes that can better the wellbeing of our people.

The dynamic between tikanga and the law can be seen in the work that is done by our Māori academics, who reclaim our practises in order to address modern day issues. For example, te reo Māori provides a powerful indication that prior to colonisation there was no hierarchy of sexes in te ao Māori, as both the personal pronouns (ia) and the possessive personal pronouns (tāna/tōna) are gender neutral. When early Western settlers arrived in Aotearoa, they brought with them their own understandings of the role and status of women, which largely differed from those held by tangata Māori.¹⁰ Through the re-shaping and re-telling of Māori creation stories, Pākehā men began to erode the mana of wāhine Māori.¹¹ Doctor Elizabeth Kerekere has discussed this impact in relation to reclaiming a space in te ao Māori for takatāpuhi — a traditional Māori term translated as an “intimate companion of the same sex”.¹²

For example, the role and status of wāhine Māori in te ao Māori is illustrated on the marae, where the division of roles is informed by the tikanga of tapu and noa. This can be observed throughout the process of a pōwhiri, where roles are assigned by gender.¹³ During the pōwhiri, once everyone is gathered inside a marae, tāne will usually seat themselves on the front benches and perform oratory roles such as whaikōrero. Wāhine usually seat themselves at the back and perform karanga, tangi, and waiata. This division occurs because, at this point of the pōwhiri, men are tapu and therefore qualified to perform oratory activities, and women are noa.¹⁴ The tikanga practice of

10 Kerensa Johnston “Māori Women Confront Discrimination: Using International Human Rights Law to Challenge Discriminatory Practices” (2005) 4 Indigenous LJ 19 at 38–39.

11 Ani Mikaere “Colonisation and the Imposition of Patriarchy: A Ngāti Raukawa Woman’s Perspective” in Leonie Pihama and others (eds) *Mana Wāhine Reader: A Collection of Writings 1999–2019* (vol 2, Te Kotahi Research Institute, Hamilton, 2019) 4 at 10–11.

12 Elizabeth Kerekere “Part of The Whānau: The Emergence of Takatāpuhi Identity – He Whāriki Takatāpuhi” (PhD Thesis, Victoria University of Wellington, 2017) at 160.

13 Anne Salmond *Hui: A Study of Maori Ceremonial Gatherings* (3rd ed, Reed Books, Auckland, 2004) at 126 and 127.

14 At 127. The practice of the tikanga of tapu and noa will vary depending on the kawa, as seen by the practice of East Coast iwi where women have been known to whaikōrero on the marae.

division of roles by sex in accordance with tapu and noa can be understood through the well-known whakataukī:

He wāhine, he whenua, e ngaro ai te tangata.
By women and land, men are lost.

Wāhine play a vital role in te ao Māori: without wāhine and without the whenua, humanity would be lost. In a pōwhiri, tāne sit at the front of a marae so that they may perish before any wāhine if the manuhiri turn out to be violent. Through this practice, we can begin to understand that the intentions behind the allocation of roles on a marae are directly linked to the preservation of wāhine Māori and the essential role that we fulfil. Unfortunately, contemporary Western perspectives have failed to understand the values that underpin this tikanga and have therefore misinterpreted it, some criticising the pōwhiri as being anti-feminist.¹⁵

It is vital that wāhine Māori are the ones to re-assert their roles in te ao Māori and regain our pre-colonial practices. Linda Tuhiwai Smith articulated this when she said:¹⁶

As Maori women, we have to be on alert for the possibility of one oppressive agency simply being replaced by another ... [o]ur struggle as Maori women is our own struggle. To lose control of that struggle is to lose control of our lives. We are not in a position therefore simply to endorse or graft on to the projects of white women. We have to develop according to the reality and logic of our struggles.

Many wāhine Māori have completed a great deal of work in order to re-discover and re-assert tikanga in relation to the roles of women, while challenging the psyche of the colonised man.¹⁷ I argue that similar work must be done in relation to the kaupapa of abortion. As with other tikanga concepts relating to wāhine Māori, by drawing together strands from traditional Māori practices such as whakataukī, pōwhiri, karakia, mōteatea, pūrakau and whakapapa, we can begin to re-determine the tikanga framework for abortion. In this way, it

¹⁵ Katherine Curchin “Pākehā Women and Māori Protocol: The Politics of Criticising Other Cultures” (2011) 46(3) Aust J Polit Sci 375 at 381–382.

¹⁶ Linda Tuhiwai Smith “Māori Women: Discourse, Projects and Mana Wahine” in Sue Middleton and Alison Jones (eds) *Women and Education in Aotearoa 2* (Auckland University Press, Auckland, 1997) 33 at 48.

¹⁷ At 47.

is possible to both understand the way in which we conceptualised abortion in a pre-colonial context, and how aspects of pre-colonial tikanga should inform contemporary practices around abortion.

III TIKANGA FRAMEWORK FOR ABORTION

The tikanga around abortion is contested. As I have explained above, perhaps due to the predominance of conservative Western thinking about abortion (well-illustrated by the now repealed provisions of the Crimes Act), some Māori believe that abortion breaches tikanga.¹⁸ Abortion is viewed negatively by contemporary mātauranga and tikanga due to its disruption of the spiritual element conferred at the conception of a new life.¹⁹

While I have heard the argument that abortion was not discussed by our tīpuna, I maintain that it may not have been necessary to articulate the practice of abortion in pre-colonial times as it was an embodied reality for iwi and hapū. Although more research must be undertaken in this area to determine the varying Māori constructs that existed in relation to abortion, some work has already been done to rediscover the pre-colonial tikanga of abortion by Dr Jade Le Grice.²⁰ She suggests there were known traditional Māori practices that were used to terminate pregnancies arising from deliberate breaches of tapu, such as applying exerted pressure to the abdomen and drinking rongoa made from roots of harakeke, which could cause a loss of pregnancy.²¹ There is also evidence in pūrakau which suggests that Maui was aborted by his mother.²² Māui is the son of Taranga, who is the wife of Makeatutara. Taranga sent her premature infant to sea after wrapping him in hair from her topknot (tikitiki). This is how Māui came to be known as Māui Tikitiki a Taranga.

Doctor Alison Green has also discussed the meaning of Te Māhoe, the name given by Te Atiawa kaumātua Sam Jackson, to the regional abortion services based at Wellington Hospital.²³ The māhoe tree drops seeds that release a chemical inhibitor. The inhibitor has the effect of only allowing the strongest

18 For a similar exploration of the impact colonisation has had on Māori women, and the role Māori women have in te ao Māori, see Johnston, above n 10.

19 See Tariana Turia's Notice of Motion (14 June 2009) 639 NZPD 9887.

20 Jade Sophia Le Grice "Māori and Reproduction, Sexuality Education, Maternity, and Abortion" (PhD Thesis, University of Auckland, 2014) at 35–36.

21 At 36.

22 AW Reed *Treasury of Maori Folklore* (AH & AW Reed, Wellington, 1963) at 118.

23 Te Whāriki Takapou "Submission to the Law Commission on Abortion and Māori" Te Whāriki Takapou <www.tewhariki.org.nz> at [4].

māhoe seed to flourish. In her submission on the Abortion Legislation Bill, Green referred to this name to frame abortion from a Māori perspective, where a wāhine may remove a pregnancy that has begun under suboptimal conditions in order to make way for another pregnancy to flourish in the future.

A Lament for Papaka Te Naeroa,²⁴ composed by Te Heuheu II Tukino from Ngāti Tuwharetoa, is also thought to contain a reference to abortion:²⁵

Taku wai whakatahetahe
Ki te kauhanga a riri;
He rīanga tai, he rutunga patu.

All in vain was my water offering
At the altar to smooth the way in battle;
The ocean was defied, when weapons were held on high.

The term whakatahetahe has been translated variously as abortion, the clearing of obstructions, and sacred food offered to atua. The term “tahe” can mean menses, abortion or flow.²⁶ In te reo Māori, the terms abortion and miscarriage are not distinguished from each other, and are both referred to by the terms tahe, whakatahe, materotanga, and taiki.²⁷ In the Lament for Papaka Te Naeroa, wai whakatahetahe refers to the use of tahe as an offering to atua to ensure protection and success in battle. Interpreted this way, this mōteatea illustrates that in pre-colonial times, it was understood that menstrual blood, miscarriage, or abortion remains could be used as a medium to connect to atua. This speaks to the inherent mana of wāhine and their reproductive bodies, and allows us to understand how wāhine Māori may have informed their decisions surrounding concepts of pregnancy, fertility and abortion.²⁸

24 Papaka Te Naeroa is the younger brother of Mananui Te Heuheu, Ngāti Tuwharetoa. Mananui wrote this lament for his brother some time during his life, before he passed on in 1846.

25 AT Ngata and Pei Te Hurinui Jones *Ngā Mōteatea The Songs: Part One* (Auckland University Press, Auckland, 2004) at 284–285.

26 Herbert W Williams *A Dictionary of the Maori Language* (7th ed, GP Publications, Wellington 1971) at 358.

27 Le Grice, above n 20, at 35 and John C Moorfield “Te Aka Online Māori Dictionary” (2003) Māori Dictionary <www.maoridictionary.co.nz>.

28 An interesting point for further research and consideration would be tikanga approaches to wāhine who suffer from infertility issues.

However, the meaning of tahe is not fixed. While in the Lament for Papaka Te Naeroa, it is used to describe an offering to atua, in a waiata aroha from Ngai Te Rangī, it is used as a metaphor for love:²⁹

He aroha noa ake
Ki a Te Rewarewa rā,
Nāna tōku aro

I huawaere iho,
I pākaru mai ai, ē,
E te tahe i ahau.

Oh, how I long
For Te Rewarewa now afar off,
He who all my charms
Did fully discover,
And caused to pour forth
The tahe from me.

In this waiata, the writer seeks to describe the overwhelming love that they had for Te Rewarewa. Tahe is used to express this love.

Drawing these threads together, it seems that, in tikanga, the concept of tahe is wide and significant. Tahe had inherent spiritual properties that could ensure protection in battle and could be used as a form of offering or communication to atua. It was also used to express the attraction or bond between lovers. Both of these uses reflect the importance of tahe in te ao Māori. I argue that in a contemporary context, the concept of tahe is wide and significant enough to encapsulate the contemporary practice of abortion.³⁰

Reclaiming and developing the tikanga of abortion is important for wāhine Māori who may face additional stigma when seeking to terminate a pregnancy. Beyond this, a deeper understanding of the tikanga around abortion is necessary to ensure that wāhine Māori have access to culturally specific treatment that takes into account the complexities of varying tikanga

29 AT Ngata and Pei Te Hurinui Jones *Ngā Mōteatea The Songs: Part Two* (Auckland University Press, Auckland, 2005) at 228–229.

30 Dr Jade Lee Grice has also expressed this viewpoint in her mahi, above n 20, at 35–36.

obligations.³¹ Throughout my abortion process I felt that there was a severe lack of information and culturally appropriate services to help me navigate the varying tikanga perspectives held by my whānau members. In my case, I was grateful to have the option of taking my remains home with me after the surgery so that I could have them buried on my urupā. But for many wāhine Māori, the cultural value of such practices has been lost due to a lack of conversation surrounding tikanga and abortion practice in Aotearoa.

IV CONCLUSION

Wāhine Māori who face the decision of having an abortion must navigate multiple layers of oppression and stigma. Through a simple feminist lens, the decision to continue a pregnancy is a pregnant person's choice alone. However, there are other considerations for tangata Māori, who must exercise tino rangatiratanga in their decision-making process.³² For me personally, making the decision to have an abortion was not difficult. The difficulty I had was in the process of healing and restoring my whare tangata and holding onto all of the things that make me a wāhine Māori — my whakapapa, my ability to create life, and my connection to Papatūānuku as tangata whenua.

The recent changes in abortion legislation have alleviated the outdated processes that people were required to follow to avoid criminal sanction on account of their abortion. Now, it is necessary to re-determine the way tikanga can inform our abortion practices and develop the abortion process in a way that supports all tangata Māori who can become pregnant on a cultural, social and psychological level. However, more evidence-based research needs to be undertaken to fully understand and reclaim the different tikanga that may be adopted by iwi and hapū in relation to abortion practices.

³¹ See the Code of Health and Disability Services Consumers' Rights Regulations 1996, which state that every consumer has the right to be provided with services that take into account the needs, values and beliefs of different cultural, religious, social and ethnic groups, including the needs, values, and beliefs of Māori.

³² It is well recorded that Article 2 of Te Tiriti o Waitangi guarantees the exercise of tino rangatiratanga. I think the best illustration of this concept can be understood by looking to the tino rangatiratanga flag itself, which is a powerful symbol of Māori self-determination. The black (Te Korekore) represents Ranginui, the sky father and divine male element. The red (Te Whei Ao) represents Papatūānuku, the earth mother and divine female element. The white (Te Ao Mārama) koru between them represents the divine child, and regeneration within Te Ao Mārama, being the physical world of light. This symbol represents balance between genders, and generations, and all that is connected to us through whakapapa.