

Article

Making Sense of Indigenous ⇔ Colonial Encounters: New Zealand's Treaty of Waitangi in a Digital Age

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Abstract: This article explores how we interpret, write history, and make sense in a digital age. The study takes place at the intersection of three disciplines: Media and Communication Studies, Post-colonial Theory, and Law. This exploration is conducted in and through an examination of attempts to make sense of “official,” “legal” documents” that emerged out of indigenous ⇔ colonial encounters during the 19th century in New Zealand. Subsequently, this paper focuses on McKenzie’s seminal study of the New Zealand’s Treaty of Waitangi/*Te Tiriti o Waitangi*, and Jones and Hoskins’ study of The Second New Zealand Land Deed. These two studies are then interfaced with and considered in light of a recent governmental review of New Zealand’s ICT sector, infrastructure and markets. Here, the focus is on Regulating communications for the future: Review of the Telecommunications Act 2001, and the Telecommunications (New Regulatory Framework) Amendment Bill. This article finds that in a digital age—a world of deep fakes and total manipulability of mediated or recorded space—the hermeneut is required to enter and negotiate a (constrained) creative relationship: as an artisan, architect, or artist, with an interpretative context and/or medium.

Keywords: media and communication studies; postcolonial theory; law; space; interpretation; digital; treaty of Waitangi



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Introduction

This article seeks to explore how our digital environment, and associated disposition(s) of space, impact on interpretation, writing history, and how we make sense in the age of deep fakes and the “total manipulability of mediated or recorded space” (Hansen 2015, p. 11). This exploration is conducted (primarily) in and through an examination of attempts to make sense of “official,” “legal” documents” that emerged out of indigenous ⇔ colonial encounters during the 19th century in New Zealand. The argument that follows comprises six sections. The first introduces New Zealand’s *Treaty of Waitangi/Te Tiriti o Waitangi* (hereafter, “Treaty”) as a complex document of international significance. Sections 2 and 3 contend with McKenzie’s ([1986] 1999) seminal study of the Treaty, and Jones and Hoskins’ (2016) study of *The Second New Zealand Land Deed*; both address a fundamental disconnect between colonial and indigenous interpretation(s). In Section 4, the work of McKenzie, as with Jones and Hoskins, is analysed. Both studies are celebrated, but they are also shown to be symptomatic of our digital situation—it is (networked) computation that supplies the metaphor(s), makes these studies possible, and affords detachment from earlier modes of codifying and signifying. Section 5 presents a radical change in direction. The paper shifts to consider policy initiatives emerging from a recent governmental review of New Zealand’s ICT sector, infrastructure, and markets. The specific documents considered are the *Review of the Telecommunications Act 2001* (MBIE 2015), and the *Telecommunications (New Regulatory Framework) Amendment Bill* (MBIE 2018), (hereafter, both are referred to as the RCFTF). The RCFTF is used to substantiate claims made in the previous section regarding the “conditionedness” (Gadamer [1960] 1989) of McKenzie, and Jones and Hoskins. However, the RCFTF is also shown to be internally inconsistent on account of

being (partially) blinded to the impact(s) and effect(s) of new media. The RCFTF is very much a classic case of treating new technologies as mere tools, and the attendant pursuit of old goals when the new media impose new assumptions, parameters, and objectives. Section 6 works as something of a conclusion or coda, by bringing focus back to the Treaty.

Before proceeding, there are a few necessary caveats that warrant mention. Firstly, this study takes place at the intersection of three distinct fields—Media and Communication Studies, Postcolonial Theory, and Law. Consequently, the task of placing this article and relating its contribution back to any singular body of knowledge is fraught with difficulties. The modes of analysis employed here owe much to McLuhan, Postphenomenology and the rhetorical criticism of Iser. However, rather than dwelling on “connections”, it may be more expedient to flag several points of departure. One of the immediate points of departure is the contextual study of law. Of particular note is Boast’s (2011) agenda, setting work that looks to promote the New Philology in the New Zealand situation. Another point of departure is the emerging dialogue between Media and Communication Studies and Postcolonial Theory. This article could be said to bring the work of Shome (2016) and Werkmesiter (2016) into close contact with that of Kumar and Parameswaran (2018). According to Kumar and Parameswaran (2018, p. 354), “the long-term project of infusing communication and media studies with postcolonial theory’s vernacular has to be far more ambitious and rigorously self-reflexive.” Here, Shome (2016) and Werkmesiter (2016) are read as clarifying what “rigorously self-reflexive” can mean for this bid to study the impact(s) of media, or mediality or mediation or mediatization (hereafter, media).¹ Shome (2016, p. 245) asserts that: “Postcolonial studies have paid minimal attention [. . .] to the ways in which media cultures intersect in, and inform, many contemporary postcolonial *sensibilities*.” Werkmesiter (2016, p. 235) makes a similar claim: “how medial and (post)colonial practices are interwoven and in what ways media history and (post)colonial history are mutually dependent has not yet been asked systematically.” Here, questions and issues surrounding how media—our digital environment, culture, and technological surrounds—are interwoven with and inform (and fail to inform) our interpretative and sense-making activities, be they in relation to New Zealand’s Treaty or the fields of Postcolonial Theory or Law, which is the very focus of this work.

Secondly, questions may be asked about why this study uses the work of McKenzie ([1986] 1999). McKenzie’s seminal work on the Treaty was delivered in the Panizzi Lectures in 1983, the same year Apple released the Lisa computer. Understandings of the Treaty have (ostensibly) changed since his day. Furthermore, McKenzie’s study is grounded in orality/literacy studies, and this approach (more specifically, studies that have sought to use the orality/literacy dichotomy in either a simplistic or reductive fashion) has been subjected to sustained (if not also defective) criticism recently (e.g., Ballantyne 2002; Marvin 2013). Therefore, why does this paper retrieve him now? Put simply, it is because of his *pattern* of thought and his adequacy as an exemplar given how McKenzie regards indigenous \Leftrightarrow colonial encounters. According to McDonald and Suarez (2002, p. 8), McKenzie’s work on the Treaty has had “profound implications not only for New Zealand’s understanding of its national past, but also, more generally, for comprehending the social, cultural, and political history of colonial encounters.” McKenzie’s work was pioneering and needs to be regarded as seminal. However, and perhaps it is something of a consequence, his work shares the same fate as that of many pioneers; he was praised, celebrated, and cited (and now, forgotten), without necessarily being fully understood, e.g., Boast’s (2011) dismissal of McKenzie, via Ballantyne (2002), on ideological grounds. McKenzie’s fundamental insights apropos the significance of media had been absent from *all* Treaty discourses and relevant policy considerations until the work of Jones and Hoskins. Consequently, including McKenzie, and placing his work alongside Jones and Hoskins, affords a near-total national set of studies that have afforded media (as media) primacy in interpreting key documents that have emerged from indigenous \Leftrightarrow colonial encounters. Using the work of McKenzie can also reveal just how similar the two studies considered here are at the level of *pattern*. Both bodies of work, this article seeks to show, conformed to and are a symptom of the digital environment. Using these two studies, even if it is only as a jumping-off point, also

enables a much-needed shift in our focus away from the conventional Northern Hemispheric biases of both postcolonial discourse *and* law to the (developed) Global South.

Thirdly, there is a question of balance. This article affords a disproportionate amount of space to McKenzie. There are two main reasons for this. McKenzie provides a book-length study, where Jones and Hoskins' study takes the form of an article. It is also because McKenzie's work serves a double purpose: McKenzie serves as a necessary prelude to, and context for, the work of Jones and Hoskins and the RCFTE. While Jones and Hoskins do not *directly* address the Treaty, it (the Treaty) is never far from their mind. Their work is very much implicated in and entangled with the circuitries of interpretation with which McKenzie grapples, given that several of the "signatories" to the Treaty of Waitangi also drew their moko (facial tattoo) instead of "signing" (as it is conventionally understood).²

Finally, this article leans away from linear, epic, simplicity, and toward the digressive and provisional. In place of strong conclusions, this article traffics in the partial—partial "blindness" on the part of the studies used, only partial resuscitations of these studies are affected, and this paper can only gesture at the lineaments and contours of the challenges for interpretation posed by our digital situation. The sum of these things does, perhaps, place a heavier burden on the reader than is normally permitted (or, perhaps, this article is only partially successful).

1. New Zealand's Treaty of Waitangi/*Te Tiriti o Waitangi*

Why are we concerned with New Zealand's Treaty of Waitangi? According to a recent United Nations report by the Department of Economic and Social Affairs of the Secretariat (DESA), New Zealand Māori constitute less than 15% of the population of New Zealand, however account for 50% of the prison population. The unemployment rate for Māori is over twice as high as the national average. The household income of Māori families is only 70% of the national average. Māori life expectancy is nearly 10 years lower than that of non-Māori (DESA 2009, pp. 25–26). All of these issues, according to Stavenhagen (cited in DESA 2009, p. 26), are considered by Māori to be "the result of a trans-generational backlog of broken promises, economic marginalization, social exclusion and cultural discrimination," which, ultimately, originated in the Treaty of Waitangi and its history(s). This is (one of the reasons) why the Treaty matters.³ New Zealand's Treaty resides at the very heart of indigenous ⇌ colonial encounters and all subsequent inter-relations.

On an international stage, New Zealand's Treaty continues to be regarded as a document of "international significance" because "treaty-making with indigenous peoples in regions of colonial activity was a standard feature of British and French policy in the period" (Kingsbury 1989, pp. 121–22). The Treaty continues to play an important role, particularly since the 1980s, vis-a-vis activity concerning the position and plight of indigenous peoples around the world. Perhaps, once, the Treaty was held up as an ideal model and/or example of what good indigenous ⇌ colonial relations could look like. More recently, however, the Treaty is being used to interrogate the use and value of the *United Nations Declaration on the Rights of Indigenous People*. New Zealand, alongside other developed nations whose histories are imbricated in British and French colonial activity, has endorsed the declaration. Questions are now being asked as to whether Māori are afforded more or fewer rights under the Treaty than Article 26. This matter can, however, only receive mention here.

The "what-ness" of the Treaty of Waitangi, however, is anything but simple. Today, the Treaty is widely regarded as part of the fabric of New Zealand society (Toki 2011, p. 277). However, the weave is complex. New Zealand is said to have an unwritten constitution; there is no single document "to which we could point and say, 'this is our constitution'" (Sirota 2020, p. 1). However, the Treaty is often called New Zealand's "founding constitutional document" (Cheyne et al. 2004, p. 47).

It is conventional to begin talking about the Treaty as an agreement "signed" in 1840 between the British Crown and indigenous Māori. On closer inspection, any semblance of simplicity rapidly gives way to complexity. As a material artefact, the Treaty comprises nine documents. Additionally, although it is conventional to say it was "signed" by *all*

Māori in Waitangi on 6 February 1840, “it” was in fact “signed” at various locations in New Zealand by *some* Māori—most (but not all) of the then-Māori Chiefs throughout New Zealand representing North Island tribes (Iwi and Hapu)—over seven months.

At the level of collective myth-making—the stories a nation tells itself—the Treaty is said to be “complicated” because there are “two versions,” one in English and one in Māori:

In the English version, Māori cede the sovereignty of New Zealand to Britain; Māori give the Crown an exclusive right to buy lands they wish to sell, and, in return, are guaranteed full rights of ownership of their lands, forests, fisheries and other possessions, and Māori are given the rights and privileges of British subjects.

The Treaty in Māori was deemed to convey the meaning of the English version, but there are important differences. Most significantly, the word ‘sovereignty’ was translated as *kawanatanga* (governance). Some Māori believed they were giving up government over their lands but retaining the right to manage their own affairs. The English version guaranteed “undisturbed possession” of all their “properties”, but the Māori version guaranteed *tinō rangatiratanga* (full authority) over *taonga* (treasures, which may be intangible). ([Manatu Taonga \(Ministry for Culture and Heritage\)](#) n.d.)

At the level of legal effects, the Treaty is no less complex. The Treaty is conventionally talked about as a “legal” document in relation to jurisprudence, governance, international law, international relations, human rights, property rights and the settlement processes (known, pejoratively, as the “Treaty Industry”).⁴ However, the Treaty itself does not directly have force of law in New Zealand. Additionally, as [Sirota \(2020, p. 100\)](#) notes, “the significance of the Treaty, both as a matter of law and within the broader political culture, fluctuated over the years.” What appears to be the case is that the Treaty was “initially recognized by colonial authorities as a solemn event” but was “quickly dismissed and disparaged. Indeed, as late as the late 1960s, there was scepticism about the Treaty’s relevance” ([Sirota 2020, p. 102](#)). In many respects, the Treaty only came back in from the cold in the 1970s after a period of being (largely) ignored by the Crown.

It was during the 1970s that the difference between “two [printed] versions” became widely acknowledged. The important matter became not so much the words of the Treaty, but the *principles* the Treaty is/was said to express. Just over a decade after the New Zealand Parliament passed the [Treaty of Waitangi Act \(1975\)](#), which established the Waitangi Tribunal, [State-Owned Enterprises Act \(1986\)](#) made the Treaty “principles” a prominent feature of the entire legislative landscape. Section 9 of that act states: “Nothing in this Act shall permit the Crown to act in a manner that is inconsistent with the *principles* of the Treaty of Waitangi.” As Sir Robin Cooke notes in the case *New Zealand Māori Council v Attorney-General*, recourse to principles was intended to “resolve” the key differences between the two texts:

The principles of the Treaty are to be applied, not the literal words. As is well known, the English and Māori texts [. . .] do not necessarily convey precisely the same meaning [. . .] The differences between the texts and the shades of meaning do not matter for the purposes of this case. What matters is the spirit. This approach accords with the oral character of Māori tradition and culture. (Cooke 1987; cited in [Dawson 2015, p. 85](#))

Today, despite not having direct effect within New Zealand’s domestic law, the Treaty serves as a foundation for two types of legal rights: “One is customary or aboriginal title [and the other is] to have the Crown act consistently with, or at least to take some account of the “principles of the Treaty of Waitangi”, when an obligation to do so is imposed by statute ([Sirota 2020, p. 103](#)). As something of a consequence, the so-called “principles” of the Treaty of Waitangi, conventionally abridged and expressed in the form of the three Ps—partnership, participation, and protection—have become something of a mantra for

service delivery and ethical practice, particularly in the governmental sector (Hudson and Russell 2009). The document(s) itself, and by extension *how* exactly the principles are enacted in concrete situations, remains no less complex.

2. McKenzie and the Treaty of Waitangi

Donald F. McKenzie (b. 1931–d. 1999) was a Professor of Bibliography and Textual Criticism at the University of Oxford during the latter half of the 20th century. He has been recognized within the field of bibliography for having expanded the domain of the discipline to grapple with meaning: “if a medium in any sense effects a message, then Bibliography cannot exclude from its own proper concerns the relation between form, function and symbolic meaning” (McKenzie [1986] 1999, p. 10). Subsequently, McKenzie argues that physical bibliography, with its concerns with the signs that constitute the text and the materials on which they are recorded, must be regarded as the starting point for bibliographic studies. However, he argues that this focus alone cannot be taken as constitutive of the discipline because “it has no means for accounting for the processes, the technical and social dynamics, of transmission and reception” (McKenzie [1986] 1999, p. 16). Consequently, McKenzie proposed that Bibliography be renamed the Sociology of Texts, and this new discipline ought to accommodate everything that bibliographers are currently doing while also grappling with the material form of books and other texts—the “very dispositions of space itself”—as being expressive and significant (p. 17). McKenzie uses the Treaty of Waitangi as an ideal test case for the Sociology of Texts, an opportunity to test and extend the work of his peers (Harvey Graff, Elizabeth Eisenstein and Michael Clanchy) and to explore a range of inter-related concerns arising from the encounter between a literate European culture and a wholly oral, indigenous one.

Stripped of its multitudinous detail and seen solely at the level of organizational pattern or structure, McKenzie rediscovers the Treaty as a dialogic encounter *constituted* by the interface of two communications ecologies or systems: dialogue being used here in the sense of how Forest (1958) uses the term. According to Forest, dialogue seems to be, first of all, *mutual* creativeness. Dialogue is not merely the expression of a finished truth to be exchanged as goods in the marketplace; it is a joint-shaping, co-creation, and participation in a shared creativity rather than a communication of content and ideas.

McKenzie’s study unfolds from an examination of how the Treaty emerged out of a historic encounter between two completely different ways or modalities of being-in-the-world. According to McKenzie, Māori society at the time of the Treaty can best be characterized as “oral,” constituted and ordered by the technology of speech as environment. Early colonial society, by contrast, McKenzie presents as “literate” and under the spell of the phonetic alphabet and Gutenberg printing press; patterned in accordance with the parameters, assumptions, and/or frames of reference imposed by phonetic literacy and the printing press. Insofar as the kind of literacy McKenzie is talking about grows out of orality and involves the (lengthy) transition through several stages, it is also possible to say that McKenzie’s terms—orality and literacy—represent stages, phases or dispensations of technological development. Literacy is, therefore, a marker for a developmental phase that includes:

The reduction of speech to alphabetic forms, an ability to read and write them, a readiness to shift from memory to written record, to accept a signature as a sign of full comprehension and legal commitment, to surrender the relativities of time, place and person in an oral culture to the presumed fixities of the written or printed word. (p. 81)

Consequently, McKenzie concludes that the Treaty was most certainly understood differently in both Māori and the colonial European contexts. Māori, he argues, understood and attributed entirely different meanings to the Treaty than the literate colonials. For Māori, “the settlement [Treaty of Waitangi] was premised on the assumption that it was [. . .] an oral-aural occasion” (p. 113).

For the Māori present, the very form of public discourse and decision-making was *oral* and confirmed in the consensus not in the document [. . .] In signing the treaty, many chiefs would have made complementary oral conditions which were more important than (and certainly in their own way modified) the words on the page. For the non-literate, the document and its implications were meaningless. (p. 117)

The Treaty, as understood by Māori, was “a sacred covenant, one which is *tapu*, and with *mana* which places it above the law”, whereas the Treaty, as understood by the colonizing power, remains “caught in the mesh of documentary history and juridical process (p. 128). Where the literate colonials fixated on the printed text without due consideration of context(s), the oral Māori essentially treated context *as* text; the Treaty was the consensus arrived at through discussions. It was, therefore, something much more comprehensive and open than the base document, the text of the Treaty, or any one of its extant versions.

Another way of talking about McKenzie’s contribution would be to say that he pointed out that one of the difficulties with the “two versions” myths is that it, and the subsequent framings to which they lend themselves, is resolutely literate and it occludes (among other things) the entire process of codifying the Māori language(s). Williams (1989) provides a reasonably accurate diagnosis of the situation:

While oral transactions may have been more important at hui [meetings] in 1840, it is the written word which has come down to us today. In the workings of our legal system careful scrutiny of written formulations are paramount. [. . .] [E]ach Treaty document has a distinctively different general thrust. The Māori text predicates a sharing of power and authority in the governance of the country between Crown and Māori. The English text is about a transfer of power, leaving the Crown as sovereign and Māori as subjects. Much of the Treaty’s history has been bedevilled by the fact that Māori and Pākehā have been ‘talking past each other’. (pp. 79–80)

In William’s account, it is the *texts* that are afforded special status and priority of interpretation. Either we are talking about two texts in two written languages, or we are talking about a secondary text (e.g., one that outlines principles of the Treaty, that is used in place of or to interpret the “spirit” of the primary texts). In both instances, interpretation yields to and is realized in another text, e.g., a legal document, statute, or article. The Treaty remains, as McKenzie ([1986] 1999, p. 128) notes, “caught in the mesh of documentary history and juridical process.”

McKenzie’s study also considers understandings of the Treaty in his day (unlike today, he had only to deal with a relatively finite commentary). Here, he reveals how something of a reversal has taken place, one about which McKenzie himself is unaware, or simply does not comment, or explicitly labels as such. For many Māori, McKenzie notes, the Treaty has become the archetypal document, and that it stands as a symbol of betrayal. Conversely, McKenzie argues that for those working in the context of colonial institutions, the meaning of the Treaty has all but become completely opaque. The text of the Treaty has receded into the flux of context. This, he argues, is due to the “relegation of writing to the indeterminate and endlessly transforming processes of textual dissemination”, the rise of Saussurian linguistics, and some structuralist theories built on it (p. 33). The privileging of structures over script, McKenzie argues, displaces the older, text-based (read *content*), philological and diachronic study of language in favour of the synchronic—how people talk now. Furthermore, he asserts, the shift away from historical process “makes it easy to conclude that we cannot really presume to recover an authorial voice at all, or an intended meaning, from the written or printed records of it”. In short, “meaning is not what was meant, but what we now agree to infer” (pp. 33–34).

In view of his survey, McKenzie claims that the Treaty can only be seen as a “partial witness” to the occasion (of the encounter). This partial view, however, does not mean that the Treaty ought not to be regarded as a fraud, nor should the document(s) be regarded

as useless. Rather, he claims, the Treaty should be read as standing as an invitation to scholarship and ongoing dialogue, and the “spirit” of the text can be recovered, and through a better understanding of the conditions of orality and literacy:

That spirit is only recoverable if texts are regarded not simply as verbal constructs but as social products. Crucial to that development is Pakeha recognition of their own myth of literacy and recognition of the status of oral culture and spoken consensus. (p. 127)

McKenzie also argues that if we are to define more accurately the ways in which the Treaty might now be reconstructed, interpreted, and applied, then we need to completely destroy and do away with the myth that what took Europe over two millennia *had* been achieved in New Zealand in a mere twenty-five years.

Historians have too readily and optimistically affirmed extensive and high levels of Māori literacy in the early years of settlement, and the role of printing in establishing it. Protestant missionary faith in the power of the written word, and modern assumptions about the impact of the press in propagating it, are not self-evidently valid, and they too easily distort our understanding of the different and competitively powerful realities of societies whose cultures are still primarily oral. (pp. 109–10)

3. Jones and Hoskins on the Second New Zealand Land Deed

Jones and Hoskins (2016) ostensibly direct attention away from the Treaty and to the little-studied Second New Zealand Land Deed. Their focus is the meanings attributed to the *tā moko*, or facial tattoo, of a Māori leader, Hongi Hika, drawn/written on the Deed given that its interpretation has played (and continues to play) “a significant role in the earliest Indigenous–settler (Māori–Pakeha) relationships” in Aotearoa/New Zealand (p. 75). The question they ask is: “what might the inked representation of the *tā moko* signify to Hongi Hika and his people? Does it carry the same meaning as a signature on a land deed in a European context, where the owner sells an area of land to purchasers, into their independent ownership?” (pp. 75–76). Their question has immediate ramifications for our understandings of the Treaty of Waitangi (and, by extension, contexts beyond New Zealand), because the Treaty also carries similar “signatures.”

Jones and Hoskins make no reference to McKenzie. However, similarly to McKenzie, their exegesis is also presented as a “test case,” albeit for post-humanist research methods and the new materialism, as per Bennett (2010). The similarities between their projects does not end there. In order to wrestle with the meaning(s) of Hongi Hika’s *tā moko*, Jones and Hoskins contrast indigenous (Māori) and colonial/imperialists ontologies, or what they also call “incommensurable meaning systems” (p. 89). In effect, indigenous and colonial *ontologies* stand in place of orality and literacy. Colonial or imperial or “post-Enlightenment Western ontologies” are shown to regard material, including “objects such as tools and stones,” as “inanimate matter” (p. 79). By contrast, indigenous Māori ontologies are presented as relational and “took (and still takes) it for granted that objects could speak, act and have effects independently of human thought and will” (p. 77).

In Indigenous ontologies, all beings and things have particular qualities and capabilities by virtue of their taking form always and only in a *relational* context. The identity of ‘things’ in the world is not understood as discrete or independent, but emerges through, and as, relations with everything else. It is the relation, or connection. Not the thing itself, that is ontologically privileged in Indigenous Māori thought. (p. 80)

The former—post-Enlightenment Western ontologies—meshes/maps almost exactly with McKenzie’s (and others working with the orality/literacy dichotomy) account of literacy. The latter—indigenous (Māori) ontologies—maps equally well with McKenzie’s use of orality.⁵

On the basis of their contrast and comparison, Jones and Hoskins argue that, from a Māori perspective, it is untenable to see the tā moko as merely a signature, as the Colonial British had. Rather, Jones and Hoskins assert that it (tā moko) must be encountered and heard because it continues to *speak*:

Therefore, within an Indigenous ontological world, the tā moko on the land deed lives; its alive. It is not something old, inert, flat on a page, but something present, vibrant and lively. The tā moko is not merely an ink shape traced in a slide of paper, but a taonga, a sacred object holding Hongi Hika's presence, his mana, his authority and chiefly power, co-present with the mana of his ancestors. His face and its embodied authority is before us, it encounters us; we are face to face with Hongi Hika [. . .] These invitations by the tā moko assume and take seriously the idea that the object is animate and therefore always already in an active relationship with those who encounter it. In this sense, the object *acts*. The object speaks, it makes demands and it draws fourth from us a response. (p. 80)

Considering the tā moko in a new way enabled Jones and Hoskins to advance a radically different counter-narrative to those based on a "colonial" reading of the tā moko:

Here, in this object, for one of the first times in history, the mana (authority and identity) of a chief becomes embedded in paper; the tā moko signature announces the historical moment when Māori authority relations take a new form. By carefully placing his (written) face on a page of other important marks, Hongi Hika's authority enters the page, thereby bringing paper into the flows of Māori power [...] It pulls us *in*, in to a relationship with the flows of power represented here." (p. 88)

Hongi Hika's tā moko, and the ritual gift exchange of axes in return, brings *his* (understood as a collective term here) Pakeha onto *his* land, into *his* territory, into a relationship with Ngāpuhi, and gives them authority to be there, and the authority to use the plants of the land and the forests indefinitely or until their displacement by war [. . .] He [Hongi Hika] knew that the paper-and-ink language was the language that the European's understood their co-operation—indeed, their purchase of the land and thereby his purchase of them [...]—could be assured by the shared engagement with paper. (p. 89)

Their (new) counter-narrative re-asserts their problem—what are the meaning(s) we attribute to these marks on paper?—and retrieves ambiguity/polysemy. Hongi Hika's tā moko, Jones and Hoskins argue, has many possible meanings: "as his agreement that the Kerikeri land is sold for ever (the 'standard' view); as an artefact in the history of European land alienation and robbery; as the act of a naïve native leader going along with a peculiar European ritual that he did not fully understand; as the act of a shrewd Māori strategist recruiting 'his' Pakeha into his territory" (pp. 76–77).

4. Reflection

On the surface, McKenzie's study appears to affirm the two *versions* myth—one Treaty in English, and the other *printed* in Māori. On closer inspection, however, it is anything but. McKenzie is not talking about two versions. His account reveals the Treaty as an unfolding situation, evoked by a dialogic encounter between two modes of communication and being in the world. Subsequently, the Treaty document (*figure*) is to the Crown and literacy (*ground*) what the oral encounter and/or occasion (*figure*) was to the oral Māori (*ground*).⁶ Structurally, the matrix of relationships McKenzie presents is a four-part proportionate analogy (or metaphor). There is a singular Treaty event, but that event is inherently equivocal and cannot and can never be reduced to univocal utterance. The Treaty is open to *both* the interpretations of the Crown and Māori, *and* an ongoing dialogue that, in some measure, transcends or pushes beyond the contributions of either party without ever collapsing back into a new kind of univocal utterance (e.g., reducing the Treaty to an expression of "principles"). Jones and Hoskins, by contrast, present Hongi Hika's tā moko—

his mark on paper—as a *figure* against two *grounds* (indigenous and colonial ontologies). Structurally, the matrix of relationships is akin to irony. The Second New Zealand Land Deed is, therefore, inherently equivocal, and open to *either* the interpretations of the Crown or Māori, but there is always the possibility of “resolution.” Perhaps this is why Jones and Hoskins (2016, p. 89) offer up a somewhat anomalous claim at the conclusion of their study: “all we can do methodologically in the face of these complexities is to ‘be’, and remain engaged, and quietly and openly to forestall interpretation.” Resolution was not a possibility in the work of McKenzie. Rather, the Treaty was, and must continue to be, an invitation to dialogue. There will always be more to say, and an ethics that would keep the partners in dialogue is implied. Jones and Hoskin’s study, by contrast, is conducted in such a way that the spectre of closure is never far away, even if closure is undesirable.

Differences aside, the studies by McKenzie and that of Jones and Hoskins are marked by a unity of underlying pattern which is readily visible: their omissions and rhetorical gaps (Iser 1978) are brought to the fore. Neither study is characterized by a “rigorous self-reflexivity” (Kumar and Parameswaran 2018, p. 354). Both McKenzie, and Jones and Hoskins fail to consider the contingency of their “discoveries” on the communication(s) media environment of their day—how media, specifically, networked computation, impacts and effects/affects *their* respective studies and not just the “historical” objects/texts they explore. To develop this argument, I will, firstly, consider McKenzie’s work in the light of direction he gestures himself (but was, perhaps, unable to fully accomplish). McKenzie claimed that he sought to accomplish for the discipline (Bibliography) what he perceived McLuhan ([1964] 1994) did for Media Studies in *Understanding Media*.

McLuhan has been profoundly misread. What scores of critics and commentators have missed, and this includes McKenzie, is that he treated orality and literacy studies as a *symptom*. This is explicit in *The Gutenberg Galaxy* (which serves as a prelude for *Understanding Media*), where McLuhan (1962) places his work in touch with the leading lights of orality/literacy studies—Albert B. Lord and Milman Parry. Here, McLuhan argues that the work of Lord and Parry, and all the others that address themselves to the theme(s) of orality and literacy, which would include McKenzie (despite being published two decades after McLuhan’s claims, and might also extend to include works such as Towns (2016), ought to be regarded as “natural,” “appropriate,” “could only have been done,” and the “theme of all historians of art and science alike” *because* of the media environment of the 20th century.

That such a study of the divergent nature of oral and written social organization has not been carried out by historians long ago is rather hard to explain. Perhaps the reason for the omission is simply that the job could only be done when the two conflicting forms of written and oral experience were once again co-existent as they are today. (p. 1)

That print increasingly hypnotized the Western world is nowadays the theme of all historians of art and science alike, because we no longer live under the spell of the isolated visual sense. We have not yet begun to ask under what new spell we exist. In place of spell it may be more acceptable to say “assumptions” or “parameters” or “frame of reference.” (p. 183)

McLuhan (1962, p. 275) also differentiated his project from the works he designates as symptoms by explicitly identify his own work as a symptom: “And, as usual, when some previously opaque area becomes translucent, it is because we have moved into another phase from which we can contemplate the contours of the preceding situation with ease and clarity. It is this fact that makes it feasible to write *The Gutenberg Galaxy* at all.”

Material used to substantiate McLuhan’s argument is to be found practically everywhere in *The Gutenberg Galaxy* and *Understanding Media*, and it had been a persistent feature of his work since the early 1950s. The crux is that new electric forms, that had become ubiquitous in the 20th century, appear to have inaugurated a (decisive) break with our four-century preoccupation with print (that fixed attention on so limited an aspect of the media).⁷ According to McLuhan (1953), electric forms retrieved an awareness of nonverbal

communication and gesture, and the word became audible once more, in the 20th century. We need not look further than the Lumière brother's short films at the turn of the century (for the recovery of the silent language(s) of gesture), or the experiments of Marconi (for the recovery of the word spoken aloud) to substantiate his claims. Furthermore, around the same time as Heidegger was making claims for the ontological priority of technology in science (Ihde 2009, p. 35), McLuhan (1954) was claiming that the computer awakened the mind to detachment from its modes of codifying and signifying.⁸ Again, the claim is not radical to anyone with even the most limited experience or exposure to programming (and other binary systems). Together, the rapid succession of media—radio, movie, television, computer, and satellite—created a situation that enabled and facilitated a better grasp and understanding of the language of (media) forms, and made former environments, such as existing in the reign of the printing press, to be seen clearly. The new electric situation also effected a kind of cultural transparency, through making cultures in all phases of media development (including orality and/or those without what is conventionally understood as writing) coexistent and contrapuntal (McLuhan [1961] 2005).

Returning to McKenzie's study, in the light of McLuhan's diagnosis (above) and Iser's (1978) exhortation to attend to omissions and rhetorical gaps, it is apparent that McKenzie's work is "complicated." McKenzie's work clearly belongs to time when print is no longer constitutive in the way that it was prior to the arrival of radio, film television, computers, and satellite (or even the technologies of the industrial landscape). One of the effects of long periods of exposure and adaptation to the modes of phonetic literacy is not only hypnosis but also a predilection to regard all forms as a "neutral" environment. As McLuhan and Parker (1969, p. 78) note, for the literate "it is heresy to say that the impact of these forms is quite separate from anything they happen to be used to say or express." McKenzie's work is neither marked nor characterized by these features. In fact, as already noted, his bid to transform bibliography is anchored in treating the "very dispositions of space itself" as being expressive and significant. However, while McKenzie writes voluminously about literacy, he fails to consider *his position* (or the position of his audience) in relation to literacy and the technologies of literacy. He details how the constitutive positions or states of speech or print—orality or literacy—predisposed the colonials and Māori to think and act in certain ways. However, McKenzie has as little to say on how his work is patterned by the technological environment of his day as he does about the causes and origins of the colonial myths of literacy. He neither considers what might be the environmental foundations for his bias and preference for diachrony or for the emerging stress on synchronic approaches to the Treaty.

Despite having acknowledged that printing is merely a *phase*, via his reflections on the work of Hobbes, McKenzie does not consider if and when the dispensation of literacy ends, and what this means for his own work. On one hand, the very impulse for his entire project to transform bibliography into the *Sociology of Texts* is predicated on such a shift. McKenzie ([1986] 1999, p. 13) defines texts "to include verbal, visual, oral, and numeric data, in the forms of maps, prints, and music, of archives of recorded sound, of films, videos, and any computer-stored information, everything in fact from epigraphy to the latest forms of discography." However, on the other hand, McKenzie does not permit any of these new texts to operate as contexts in the same way as he presents speech and literacy at the time of the Treaty encounter. If there has been no significant change, that is to say, McKenzie writing under the dispensation of literacy, then why and how is it that he is somehow enlightened and freely able to see the myths of literacy in a way that the colonials were not? To approach the matter from another angle, McKenzie show us (again) that the phonetic alphabet—a seemingly a hospitable and reciprocal form for all cultures and languages—in actuality was a one-way track to the segmental maw (McLuhan 1959). The penetrative powers of Gutenberg technology invaded every level of thought and action, shaped patterns of association, impacted decision-making and, in New Zealand, junked the dynamic dialogue (and balance) between two mode/communication environments. However, McKenzie is somehow able to see that older dialogue again; his insight seems to offer testament that the

reign of phonetic literacy has ended. What privilege does he claim? If, as McKenzie argues, the media environment is in some sense causal and promotes different modes and ways of being in the world, then why was he not moved to consider the impact and effects of media environments on his study? What are we to make of his omission? What appears to be the case is that McKenzie remained partially blind to the extent to which his own work is symptomatic and patterned by the environment of his day.⁹

Jones and Hoskins' study also exhibits a same/similar pattern, and their work stands in the same/similar relation to indigenous and colonial ontologies as McKenzie does to orality and literacy. In brief, their work is clearly conducted from a (hybrid) vantage point that enables the two ontologies to be compared and contrasted, and their work is characterized by an awareness of the material ground of literacy and written documents that only came to the fore in the twentieth century:

The whole document is made of organic materials, paper and ink, with a wax seal. Being so viscerally material and textual, so materially-discursive, it provokes us in a multitude of ways. And, along with the object 'itself' and its contexts of representation, there is the intra-active encounter between us and it (let's say the 'us' is you, the reader, and the 'it' the object we have to imagine, reproduced in a one-dimensional printed copy here). (p. 83)

From their privileged vantage point, Jones and Hoskins are acutely aware of the limits of language:

These strange methodological suggestions remind us how radically difficult it is to speak *about* (this very phrase makes the separation, again!) matter's vibrancy. Again, we have to add, parenthetically for the moment, in case we forget, we are all speaking here in a language that contains and determines what we can think and say. (p. 85)

However, despite the methodological commitments of posthumanism to "reflexive epistemologies" (Hayles 1999, p. 288), they offer no (self-) reflection on the relationship(s) between matter/material and ontologies or how language equally enabled them—the services or advantages of containment and determination—to see and hear what they did. Perhaps, had they considered the impact(s) of media and the new digital language(s) on their own work (and the reception thereof), they might have noticed the extent that their description of Hongi Hika's inscription shares in the qualities, characteristics and behaviours of *all software*, QR codes, RFID tags and/or blockchain smart contracts. The digital situation appears to have enabled an experience and understanding of inscription that speaks and acts long after being "penned." Pathways to reflections of this kind are inherent in the methodological commitments the authors purport to hold. In *How We Became Posthuman: Virtual Bodies in Cybernetics, Literature, and Informatics*, Hayles (1999) claims that "the posthuman appears when computation rather than possessive individualism is taken as the ground of being, a move that allows posthuman to be seamless articulated with intelligent machines" (p. 34). Contemporary artists and poets, too, have been working to call attention to computational creativity. See, for example, Nick Monfort's computer-generated "novels" (<https://nickm.com>, accessed on 22 May 2021).

5. Regulating Communications for the Future

At this juncture, we need to change direction and move from works of interpretation to consider a recent governmental review of New Zealand's ICT infrastructure, as seen through the lens of *Regulating communications for the future: Review of the Telecommunications Act 2001*, and the subsequent Telecommunications (New Regulatory Framework) Amendment Bill (MBIE 2015, 2018). The reason for the move is that the RCFTF invites a substantial re-thinking of hermeneutic praxis and, by extension, has profound implications for policy makers and legal professionals.

The RCFTF was released by New Zealand's former Minister for Communications and Broadcasting, the Hon. Amy Adams, on 8 September 2015. The RCFTF is an utterly

unremarkable document. It shares many similarities with, and even appears to have been modelled on, similar documents currently circulating in OECD, and it is precisely this fact that makes it appropriate to use here. The stated purpose of the RCFTF was to examine the “underlying regulatory settings for communications markets” with a view to enabling “our [New Zealand’s] economy to grow, innovate and compete in a dynamic global environment” (p. 8). The context for the review is, on one hand, a growing awareness that New Zealand’s legislation and legislative apparatus are behind the times and out of touch with the new situation. Additionally, on the other hand, an awareness of the fact that the “new” communications and media environment are key agents of change:

Digital communications technologies are impacting almost every aspect of our lives. We rely on them for business, government, education, health and in our communities. The communications sector is a critical enabler of economic growth in the twenty-first century. (p. 8)

In the idiom of McKenzie, the RCFTF is built on the assumption that the very “dispositions of space” are significant, and the Crown acknowledges the power of our new media as agents of change in much the same way as McKenzie. However, the RCFTF goes further, insofar as it asserts that we can and should program our (media) environment by way of regulatory interventions in New Zealand’s ICT infrastructure and related markets.

Claims that the environment can and should be programmed are not unique to the RCFTF or documents of similar ilk. More recently, similar claims have also been made by one of the leading lights of Postphenomenology, Mark B. Hansen. Hansen’s (2015) project developed and grew out of his creative misreading of Whitehead, attended to atmospheric media, the “total manipulability of mediated or recorded space” (p. 11), and the complex entanglements of humans within networks of media technologies. His focus was data-gathering and computational sensing that operates “predominately, if not almost entirely, outside the scope of human modes of awareness (consciousness, attention, sense perception, etc.)” (p. 5). Hansen traces the movement from agent-centred perception to environmental sensibility, and he serves as herald of a fundamental transformation of subjectivity and human experience: “the self-propagating, self-escalating increase in non-perceptual sensible data generated by twenty-first-century media profoundly affects the economy of experience” (Hansen 2015, p. 8). On the basis of his work, he argues that we are compelled “to rethink the human as an inseparable part of a larger environmental sensory confound” (p. 15). Furthermore, he can be read as making the case that the phenomenological and hermeneutic projects are challenged precisely because “worldly temporalization happens beneath, if not in some sense *prior to*, the (temporal) experience of individual time consciousness:

The full permeation of media into the infra-empirical infrastructure underlying and informing our daily activity, we encounter a situation where technically modulated agencies will always already have activated micro temporal sensory affordances of the environments encompassing—and facilitating—our doings, well in advance of showing up, at a far higher level of organization, as “contents” of our consciousness.” (pp. 26–27)

Hansen asserts the ontological primacy of media. As in the RCFTF, Hansen argues that the task at hand is to program the environment. However, in contrast to the RCFTF, he suggests that we abandon utility and seek improvement of the total *human experience*: “Twenty-first-century media furnishes an unprecedented opportunity for us to reconceptualise our agency, to implicate our agency within the larger total situation of environmental gathering,” and that “we must fight to appropriate the fruits of our expanded sensory contact with worldly sensibility for non-instrumental purposes—for making our lives better” (Hansen’s 2015, p. 269).¹⁰

The co-incidence of the RCFTF and studies such as Hansen’s suggest that there may be cause to echo McLuhan’s (1962, p. 183) earlier claims apropos orality and literacy. Programming the environment, or leveraging the “total manipulability of mediated or recorded

space" (Hansen 2015, p. 11), for whatever ends—wealth creation, wealth redistribution, improving the human experience—is, nowadays, obsolesced (and therefore everywhere, because it works). It is a common theme both inside and outside academia. It is certainly the co-occurrence of the RCFTF and Hansen's "cutting-edge" discoveries (along with the myriad of other documents that might have been used here in place of the RCFTF) that makes this paper possible (McLuhan and McLuhan 2017, pp. 163–66). However, what does this mean for interpretation and making sense? Simply put, the answer is everything. Or, if not everything then at least it offers up a (provisional) answer to Kumar and Parameswaran's (2018, p. 355) question that focuses solely on *messages* and *content*: "How then do we create the optimal conditions of knowledge production and distribution that will be conducive to exporting our ideas beyond these pages—and the solipsistic echo-chambers of the postcolonial academic choir—to reach those broader constituencies that need to hear them?" What the RCFTF and Hansen's project reveal is that programming our environment, for whatever end, is mandatory. Any attempt to make sense of "official," "legal" documents that emerged out of indigenous ⇌ colonial encounters during the 19th century in New Zealand is not excluded from this mandate.

That said, however, the situation is far from simple. On the face of it, there are newfound freedoms—we can and should program our environment(s), not merely at the level of content, but at a level that extends to "micro temporal sensory affordances." Additionally, in so doing, we might (appear to) avoid accepting our environment(s) as fate. However, we must also acknowledge that our newfound freedoms are no less an effect or symptom. There is no outside of the digital surround of technically modulated agencies that "will always already" be active "well in advance of showing up, at a far higher level of organization, as 'contents' of our consciousness" (Hansen 2015, pp. 26–27).¹¹ Or, as (Gadamer [1960] 1989, p. 448) notes, "consciousness of being conditioned does not supersede our conditionedness."

6. Returning to the New Zealand Situation and the Treaty of Waitangi

We become our histories. Therefore, at this juncture, we need to pause, for one last time, in order to replay the argument and examine our predicament in light of the New Zealand situation and the Treaty of Waitangi.

According to the DESA (2009) report, cited in the Introduction, access to land is *the* issue in the wake of colonial encounter:

The biggest challenge faced by indigenous peoples and communities in relation to sustainable development is to ensure territorial security, legal recognition of ownership and control over customary land and resources, and the sustainable utilization of lands and other renewable resources for the cultural, economic and physical health and well-being of indigenous peoples. (p. 42)

Access and control to land, the report argues, is the issue, because the quality of life of indigenous peoples lags significantly behind the "general populations" of Australia, Canada, New Zealand, and the United States of America, when compared using the United Nations Development Programme's Human Development Index. If, however, we entertain the provocations offered in this paper, then access to and an ability to program our digital communications technologies, infrastructure, and markets must also be regarded as equally important. To assert the centrality and priority of mediation, this paper has argued that: *if* our media environments can inform different understandings of the Treaty of Waitangi (McKenzie [1986] 1999), and New Zealand's Second Land Deed (Jones and Hoskins 2016), and impact "almost every aspect of our lives," serve as a "critical enabler of economic growth in the twenty-first century" (MBIE 2015, 2018), and make "our lives better" (Hansen 2015) *then*, we must acknowledge that the digital situation can, has, and will continue to impact on the very processes and practices of interpretation and making sense of New Zealand's Treaty.

To evidence the argument, this paper has shown how McKenzie, and Jones and Hoskins, present media as impacting on the Crown and Māori as if they were fate. Neither the Crown nor Māori chose the technological environments of literacy or orality. Neither

the Crown nor Māori could extract themselves from the interpretative practices their respective ontologies bound them to in the face of Hongi Hika's inscription, his *tā moko*. The works of McKenzie, and Jones and Hoskins, were also read as demonstrating a capacity of digital media to impact interpretative practices. Both studies are similarly patterned and can, therefore, be regarded as symptomatic or conditioned. Their studies provide testament to the (hidden) power of the digital environment to impose its assumptions, both giving and taking away (as per the actions of metaphor). Both studies offer profound and new perceptions. However, neither study is internally consistent. Neither exhibits the kind of rigorous self-reflexivity implied (but not yet fully developed) by Kumar and Parameswaran (2018).

This paper has also sought to show that, in a digital age, programming is both mandatory *and* a symptom of our new situation. Under these conditions, the interpreter/hermeneut is displaced as an archaeologist and/or observer of essentially dead, or at least unchanging, artefacts. In place of uncovering and observing in a detached way that does not impact the evidence as found, the hermeneut is called to enter a (new) relationship with the interpretative context that is not dissimilar to that of artisan, architect and/or artist working with and within the constraints of a particular medium. As something of a consequence, history has assumed a new (creative) malleability, and the value of diachrony, a "historicized approach" and "historic sensibility" (Kumar and Parameswaran 2018, p. 348), at least as it has been conventionally conceived, can no longer be considered axiomatic. Can we, therefore, differentiate and judge between right-making and mere making under digital conditions? I think that in the New Zealand situation, in the light of the Treaty, we have to at least answer that we must try (with the proviso that right-making is, inherently, dialogic and self-correcting). Additionally, it is here, directing attempts to right-making, that McKenzie may be more relevant than ever. Working under conditions that are not dissimilar (if not analogous) to our present, McKenzie "discovered" the Treaty as a communicative event—as a formal beginning to and mandate for ongoing dialogue. Perhaps his discoveries can continue to guide by pushing us to consider and experiment with how the (digital) environment itself can (and/or should) be programmed to create and sustain dialogue, and discover and document the barriers and impediments along the way.

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Notes

- ¹ The four terms are used here for their looseness-of-fit. Looseness-of-fit is (arguably) a necessary feature of works at an intersection. Here, the four terms media/mediality/mediation/mediatization (hereafter, "media") are used to gesture in the direction of some basic commitments and assumptions about the inter-relations of thought, language and technology(s), and something of a basic acceptance/assumption that media and technology, particularly communication(s) technologies—writing, print, new electric forms and the digital (post-media) media—have a closer interior bond with human consciousness and noetic restructuring than is normally allowed for.
- ² While speculative, one of the reasons that Jones and Hoskins may have approached the Treaty obliquely is because it is nearly impossible to directly publish anything new about the Treaty, particularly if one is trying to say something new. In many respects, discourse about the Treaty has become paralyzed.
- ³ It is with some hesitation that the author gestures (again) at Māori disfunction. During the process of consultation with Māori, it became apparent that some had grown tired of yet another negative reference (in place of spring-boarding off the "positive", e.g., the profound grace of Māori in the face of "betrayal.") Perhaps the reader might simply note how the reference works as part of a

rhetorical strategy geared to make this article palatable for an international audience that are neither aware of nor concerned with the issues of a small, antipodean island in the South Pacific Ocean.

- 4 The term “Treaty Industry” refers to the institutional frameworks that surround and support the Treaty and their workings and processes (see Sirota 2020).
- 5 The move does, however, successfully purge the maligned spectre of technological determinism (and all reference to causal dynamics), which is often thought to be a feature of orality and literacy studies, from their work.
- 6 *Figure and ground* are used here in the same way as per McLuhan and McLuhan (1988).
- 7 Walter Ong is one of the most prominent and influential figures in Orality/Literacy studies. (Ong [1982] 2002) has noted just how new the approach/discipline was when it appeared in the middle of the twentieth century. Ong’s work has been critiqued on many grounds, but his observations about the *newness* of the discipline have not been called into question.
- 8 McLuhan’s treatment of the (networked) computation is all but completely overlooked. If developed, this matter would necessitate a near total revisioning of his legacy.
- 9 This does not take away from his achievements. McKenzie was the first to assert the primacy of mediation apropos the Treaty, and in so doing proposes a consideration of the colonisation process as inherently tied up with media, and specifically communication(s) technologies.
- 10 An avenue for future research might look to explore how the Treaty can (and should) supply the empty signifiers in the work of Hansen—“quality” of life—and the RCFTF—growth—with meaning(s).
- 11 “*Bababadalgharaghtakamminarronkonnbronttonnerronntuonnthunntrooarrhounawnskawntooohooordenenthurnuk*” is the first of the 100-letter thunder words found in *Finnegans Wake* (Joyce 1958, p. 1). Among other things, Joyce’s thunder words call attention to how poorly writing in phonetic scripts contends with simultaneity. In some ways, the clumsiness of this argument, particularly in relation to blowing both horns of a dilemma simultaneously (under digital conditions), is merely another monument to this problem.

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