

PETER ADDS
BRIGITTE BÖNISCH-BREDNICH
RICHARD S. HILL
GRAEME WHIMP (Eds.)

Reconciliation, Representation and ‘Biculturalism’ Indigeneity in Aotearoa New Zealand

INTERCULTURAL STUDIES 4



Universitätsverlag
WINTER
Heidelberg



INTERCULTURAL STUDIES
Schriftenreihe des Zentrums
für Interkulturelle Studien (ZIS)

Band 4

Herausgegeben von
DILEK DIZDAR · ANTON ESCHER
ALFRED HORNUNG · DIETER LAMPING
Zentrum für Interkulturelle Studien (ZIS)
Interdisziplinäre Forschungsplattform
der Johannes Gutenberg-Universität Mainz



Reconciliation, Representation and Indigeneity

‘Biculturalism’
in Aotearoa New Zealand

Edited by

PETER ADDS

BRIGITTE BÖNISCH-BREDNICH

RICHARD S. HILL

GRAEME WHIMP

Universitätsverlag
WINTER
Heidelberg

Bibliografische Information der Deutschen Nationalbibliothek
Die Deutsche Nationalbibliothek verzeichnet diese Publikation
in der Deutschen Nationalbibliografie;
detaillierte bibliografische Daten sind im Internet
über <http://dnb.d-nb.de> abrufbar.

UMSCHLAGBILD

Cover photograph:
Minister of Treaty Negotiations Christopher Finlayson
and visiting party welcomed on to Puatahi Marae near Warkworth
with a *wero*, a challenge, in 2010.
Photographer Dean Purcell. *The New Zealand Herald/newspix.co.nz*.

ISBN 978-3-8253-6619-3

Dieses Werk einschließlich aller seiner Teile ist urheberrechtlich geschützt. Jede
Verwertung außerhalb der engen Grenzen des Urheberrechtsgesetzes ist ohne
Zustimmung des Verlages unzulässig und strafbar. Das gilt insbesondere für
Vervielfältigungen, Übersetzungen, Mikroverfilmungen und die Einspeicherung
und Verarbeitung in elektronischen Systemen.

© 2016 Universitätsverlag Winter GmbH Heidelberg

Imprimé en Allemagne · Printed in Germany
Druck: Memminger MedienCentrum, 87700 Memmingen

Gedruckt auf umweltfreundlichem, chlorfrei gebleichtem
und alterungsbeständigem Papier

Den Verlag erreichen Sie im Internet unter:
www.winter-verlag.de

CONTENTS

| | |
|--|-----|
| Being in Aotearoa New Zealand Academic approaches to reconciliation, representation and Indigeneity <i>Brigitte Bönisch-Brednich and Graeme Whimp</i> | 7 |
| ENGAGED SCHOLARSHIP AND TREATY CLAIMS | |
| New Zealand’s Treaty of Waitangi reconciliation processes A Māori Treaty educator’s perspective <i>Peter Addis</i> | 19 |
| <i>Ki wīwī, ki wāwā</i> : Normalising the Māori language <i>Rawinia Higgins</i> | 25 |
| Recognising Māori legal traditions in reconciliation Issues of theory and research methodology <i>Carwyn Jones</i> | 39 |
| Intergenerational investments or selling ancestors? Māori perspectives of privatising New Zealand electricity-generating assets <i>Marama Muru-Lanning</i> | 49 |
| REFLECTING ON NEGOTIATIONS | |
| Settling historical Māori claims under the Treaty of Waitangi An assessment of the first twenty-five years, 1989–2014 <i>Richard S. Hill</i> | 65 |
| Reconciliation and resolution The Office of Treaty Settlements and the Treaty of Waitangi claims process in Aotearoa New Zealand <i>Therese Crocker</i> | 81 |
| Negotiations for reconciliation How they can exacerbate division as well as promote reconciliation <i>Richard Boast</i> | 95 |
| Waikato-Tainui and Ngāi Tahu’s Treaty-settlement negotiations with the Crown <i>Martin Fisher</i> | 111 |

REFLECTING ON MODES OF ENGAGEMENT

| | |
|---|-----|
| Forty years on A personal view of the history of the Waitangi Tribunal, 1975–2015 <i>Barry Rigby</i> | 129 |
| Mock fighting and performed reconciliation Some examples from Māori and Tahitian custom <i>Alex Frame and Paul Meredith</i> | 137 |
| <i>Mana whenua</i> and the ownership of nature Challenges to the co-governance of natural resources in Aotearoa New Zealand <i>Tanja Rother</i> | 151 |
| <i>Pōwhiri</i> for the ancestors Representation of Indigeneity and reconciliation in a Māori ritual <i>Andrea Blätter and Tanja Schubert-McArthur</i> | 167 |
| Two peoples? Demographic changes from first contact to the 21 st century <i>Robert Didham and Paul Callister</i> | 183 |
| The Treaty of Waitangi Te Tiriti o Waitangi | 203 |
| Biographical notes | 207 |
| Glossary | 211 |
| Index | 215 |

*Maranga mai
Te iwi ohoake ra
Tauīwi tahuri mai e.*

Māori people rise and be vigilant
Tauīwi (Pākehā and others)
The time is now to face each other.¹

Being in Aotearoa New Zealand

Academic approaches to reconciliation, representation and Indigeneity

Brigitte Bönisch-Brednich and Graeme Whimp

This book offers an up-to-date analysis of the reconciliation process between Māori and the Crown by leading and emerging scholars in the field. It is the first attempt to explore the links between contemporary politics, the notion of activist research and historical and anthropological analysis. It is also an attempt to open the discussion to different ontologies of reconciliation: historical analysis, anthropological exploration, memoir-style reflections by academic Treaty workers and, most importantly, Māori views and voices.

The argument this collection is based upon is that reconciliation processes are neither easily accessible nor transparent in legal decisions and law-making. Its research and political efforts are led by Indigenous scholars, by legal and other academics, but also by communities, tribes, engaged Pākehā, settlers and immigrants of European descent and national and regional institutions. Processes of negotiation are tangibly represented by ritual old and new, by open and media-related debates and by semi-public and state-related fora such as the Waitangi Tribunal.

Aotearoa New Zealand is often viewed as the most advanced country in the world when it comes to reconciliation processes between the state and its colonised Indigenous people. The fact that these contributions are written by scholars who are all engaged in such processes is testament to this alone. Despite all that has been achieved, however, the processes need to be critically evaluated (see HILL/BÖNISCH-BREDNICH 2004). Representations can be convincing on the surface, but they may obscure the existing power imbalance between the negotiating parties. Power over the symbolic representation of such reconciliation processes often means that agency is metaphorical while the law is inherently and persistently white. Reconciliation, however, can and often does lead to creative and enduring solutions in sharing power and joining energies to protect natural treasures and national heritage. By reflecting on the emergence of creative law-making, of new forms of trust and guardianship, scholars can help by analysing and discovering pathways parallel to the discourse of ownership and loss, of compensation and retribution.

¹ We are grateful to Barry Rigby for drawing our attention to this *waiata* by Monita Delamere; he discusses it further in his chapter in this volume.

This book is divided into three sections offering guidance to the ongoing debates on how to engage Aotearoa with New Zealand. The first section discusses activist scholarship and Māori activism. Nearly all senior Māori academics are also involved in claims for compensation, supporting their tribes or sitting on national panels of influence, such as the Waitangi Tribunal, or legal power, such as the High Court. Peter Addis, Marama Muru-Lanning and Rawinia Higgins all offer very different case studies on the way that *kaupapa Māori*, Māori research methodology, yields results that engage with and challenge western scholarship and its ethnocentric knowledge production (G. H. SMITH 1997; L. T. SMITH 2012).

The second section contains a robust historical and political analysis of Treaty negotiations since the Māori renaissance of the 1980s. Most Treaty claims have now been settled, and Aotearoa New Zealand is entering an emerging historic-present phase: the post-settlement era. Dialogue between Māori and the Crown will increasingly be based on the history of these recompensation processes and their durability for the future. Richard Boast, Therese Crocker and Martin Fisher all offer long-term analyses of those processes and showcase very different arenas in which these negotiations took place and in which they are still performed.

The final section on modes of engagement explores the representations of such processes. Political drama, public ritual and place-based arrangement of guardianship are all part of the new political landscape in a post-settlement state. Richard Hill sketches some of the dramatic performances at tribunal hearings in which the recitation of oral history, the active listening of the tribunal members, and the landscape of the *marae*, meeting place, merge into a field of encounter unique to Aotearoa. The proceedings of parliament are a far cry from these decentred hearings held where the injustices were once played out and where the repercussions are still deeply felt. Tanja Rother offers deep insights into one such landscape in discussing new forms of co-management and co-governance of Ōhiwa Harbour. Her research demonstrates that such arrangements are possible even where ownership and rights are contested and may well remain so. For more ethnographic analysis on such co-management agreements see MURU-LANNING (2010; 2012). On the other hand, as Marama Muru-Lanning (2012: 130) rightly points out, “the co-governance structure is an inherently western model with appointed representatives making formal statutory decisions on behalf of the various groups”.

Andrea Blätter and Tanja Schubert-McArthur present an anthropological analysis of the recently designed tradition of repatriation ceremonies at Te Papa Tongarewa, the national museum. Repatriation of Māori human remains by museums all over the world is an important part of the decolonisation of bodily remains, achieving reconciliation by negotiating with a cosmopolitan museum network that increasingly acknowledges Indigenous rights and *tikanga Māori*, Māori custom. In rituals such as these, cooperation gains a new vitality and bonds are created by reciprocity rather than commerce. Such tangible and potentially healing rituals accompany and represent emerging legal and other arrangements. By accepting Māori protocol and abiding by it, white dominance is temporarily subjugated to Indigenous control. Such moments are precious, albeit short; nonetheless, they offer a vulnerable but sustainable platform for

the drama of reconciliation that might well survive criticism, controversial agendas and future challenges.

Academic approaches

For most Māori students and staff, the heart and centre of a university in Aotearoa New Zealand is now the *marae*. Māori students are encouraged to see the *marae* as their home away from home, graduation ceremonies for Indigenous students are held there, and all new staff members are welcomed onto the *marae*. As Peter Addis et al. (2011: 542) write, “in the context of postcolonial New Zealand, *marae* have become one of the last bastions of Māori culture in which the Māori way of doing things (*tikanga Māori*) prevails”. The conference that inspired this book and sealed a friendship with scholars from Johannes Gutenberg University of Mainz was held at the Victoria University *marae*. That *marae* is also the locus of the often-dramatic enactments of reconciliation processes which are happening and which have been happening since it was built in 1986. If we would write the history of Aotearoa New Zealand, it would be a constant to and fro between parliament, the many *marae* in the South and North Islands, and the road between the far north and parliament again, the road that is now the historical pathway of *hikoī*, protest marches (HARRIS 2004).

Research on the process of reconciliation is bound to these locations and emerged from the Māori renaissance, but such exploring of the past is also an academic project. Academic analysis is a crucial part of recognition of past injustices; research is driving and setting the foundations for reconciliation before and parallel to legal negotiations. The Waitangi Tribunal has not only led to the dramatic hearings of past suffering, injustices and claims, its historians, anthropologists and other scholars have also created a research base on colonisation and its long-lasting impact on the people of Aotearoa. This research has reshaped the way in which the country views itself; scholarship is at the heart of healing by uncovering the injuries and injustices. Scholarship, then, has become a topic in itself that needs to be reflected upon. We have to ask how scholars ‘do’ reconciliation, we have to interrogate the ways in which academics create such representations and how they do this while being true to the shifting meanings and frameworks of biculturalism. It has been pointed out by scholars involved in these processes of rethinking Aotearoa New Zealand that only Māori have to be bicultural, as they have no choice (see FABISH 2014: 23/24); Pākehā, however, do have a choice: they can live a monocultural life, sometimes engage with Māori culture in often ephemeral contact zones, and they can also actively attempt to understand biculturalism and seek a space where they can make meaningful and lasting contributions.

The same applies to scholarship on Aotearoa New Zealand. Most academics lead their lives without commitment to biculturalism on any meaningful level; this is the result of academic disciplines that acknowledge only western scholarship and are, essentially, engaged in yet another wave of colonisation. What counts as research is now dominated by the English language, by a narrow seam of so-called international journals owned and controlled by US and British publishing houses and focused on research subjects and topics that are of ‘international interest’, meaning the interests of

the predominantly English-speaking circles of hegemonic scholarship. Concentrating on Aotearoa New Zealand, then, outside that approved canon, is brave and somewhat hazardous. In pursuing this course, scholars are resisting the tightening grip of a neoliberal and neocolonial publishing paradigm but risking criticism from political circles for potentially not getting it right. The authors who submitted their chapters to this project are such people. They are courageous; they are committed not only to research on reconciliation, but are also bucking the trend of academic neocolonisation.

Such courage is reflected in the different modes in which scholarly endeavours are presented here. This book offers a range of academic genres that directly reflect a variety of scholarly approaches characterised by academic rigour in its broadest sense. All research on biculturalism and reconciliation is political by definition. The scholarship presented here has a history of only a few decades and is still emerging. We read here from the first generation involved with the beginnings of the Waitangi Tribunal and the Office of Treaty Settlements; such reflections from scholars who were and still are directly involved in the research, deliberation and writing of claims are founded in deep personal experience and conviction.

The senior Māori scholars in this volume come from that environment and, while their research is based in academia, it is also always activist scholarship. Their deep and lasting affiliations with their *iwi*, tribes, and *hapū*, sub-tribes, for them are part of what it means to be a university scholar. Indeed, for them this is not a choice or a divide, it is what their scholarship should be and must be. Some of the chapters in this volume have been performed orally from *marae* to courtrooms; Māori, and most of their Indigenous colleagues all over the world, are orators as well as writers. These contributions carry the *mana*, prestige, of the *marae* from which they come, and take us back to be the audience as well as the reader, to venture into places where western scholarship seldom goes. Listen while you read, listen and you will sense the audience around you responding to what is said.

Other scholars present chapters that are proposals for research in the planning stages that will be completed in the near future. Such projects are part and parcel of the Aotearoa New Zealand scholarship of reconciliation; this is a field still opening up, a field in which new and urgent research topics constantly present themselves. This country is changing fast; it is in the grip of neoliberal politics and the commodification of the natural environment and its resources, of rituals, arts and knowledge. Māori participation, resistance and appropriation in the face of such rapid changes underpin this book; these chapters offer glimpses of the present and future of *kaupapa Māori* research and its considerable potential to challenge the dominant epistemologies of western academic frameworks. While Jo Smith (2007: 67; 77) highlights the importance a constant unsettling of such hegemonic frameworks of knowledge production, Carwyn Jones in this volume demonstrates the value of Indigenous frameworks for scholarly inquiry.

Other chapters are based on recent PhD research, work that has been carried out by young scholars, some of them Pākehā, who engage with biculturalism and its politics and by doing so shift the ground upon which they can work and contribute academically to the project of reconciliation. In these chapters we encounter the scholarship of those who are finding the spaces, carving out the places where they can make important and

welcome contributions to this field while respecting and articulating their positionality and “white privilege” (FABISH 2014: 46). These spaces offer us rich scholarship on the structure of reconciliation processes, the working and reworking of Crown politics during negotiations, and, most importantly of all, the enduring embeddedness of colonial hegemony within these processes (HILL 2009). They remind us over and over again that, in order to ‘do’ reconciliation, Māori have to speak the language of the coloniser, have to accept the constitutional framework of a British New Zealand, and have to accept being named and partitioned into claimant groups that do not necessarily reflect the lively messiness of *iwi* and *hapū* affiliations and the malleable boundaries of the past.

One of the themes of such scholarship is to become involved in the actual drama, the enactments, the performances and the stages on which reconciliation is actually played out. By adopting the perspective and focusing on the analysis of specific rituals that are shaped and re-staged for emerging purposes and new needs, we realise the power that historical and contemporary anthropology exert in analysing political ritual in the place and history of a settler nation. As Waitangi Tribunal hearings take place in the *rohe*, the territory, of the claimant, on the ground of the *marae* where claimants live and breathe historical grievance, they offer powerful opportunities for speaking and acting. Such place-bound hearings are truly empowering: *te reo Māori* is spoken and sung; politicians and Waitangi Tribunal members are compelled to listen and have a rare opportunity to experience the ritual power of true grievances performed and embodied. Such hearings will not be forgotten by any who attend (see FRAME/MEREDITH 2005: 152). The *marae* is at the heart of such events of reconciliation, whether they take place in the *rohe*, on the campus or in the midst of Te Papa Tongarewa, the national museum.

Researching and writing reconciliation

These themes and our authors have been chosen because they reflect the scholarship that illuminates and sometime helps to form the processes of reconciliation. The book offers a selection of the contributions made by academics to the shaping of Aotearoa New Zealand. We have invited leading scholars, senior researchers from public institutions and young emerging scholars to take us to those places. When Marama Muru-Lanning takes us to power stations in the Waikato and the Canterbury Plains, she is interrogating the huge implications arising from privatisation of state-owned industries and asking who owns resources that were previously viewed as a common good. The commodification of such resources creates new debates on ownership, on confiscation and on the forced engagement with private ownership in neoliberal regimes (BARGH 2007).

When Tanja Rother takes us to Ōhiwa Harbour, she examines one of the *kaitiaki*, co-governance, projects undertaken in Aotearoa New Zealand; she asks what politics and which kinds of ownership models emerge when the Department of Conservation, regional councils, local *iwi* and *hapū* and environmentalists come together to protect and future-proof a natural jewel such as the Ōhiwa Harbour. When Therese Crocker and Martin Fisher discuss the claimant process and the structure of claims dealt with by the

Waitangi Tribunal and the Office of Treaty Settlements, they explore the structure of Crown-*iwi* engagement and an emerging Crown acknowledgment that settlement will result in the forging of sustainable relationships. However uncomfortable such negotiations might have been and may become, the relationships formed therein, the settlements signed, the sincere apologies given and received are leading Aotearoa New Zealand into the post-settlement era in which Māori will have a stronger voice than in the past.

Post-settlement politics are a product of the reconciliation process, where the present is shaped by the past, but the past is acknowledged as one of colonial oppression, grievances and, more recently, reconciliation. Peter Addis and Barry Rigby both demonstrate that this has to mean that all people in Aotearoa New Zealand must be educated about the Treaty of Waitangi and about the colonial history of New Zealand. The still-widespread ignorance, the lack of formal education, a biased media and a lack of informed public debate are ongoing problems hindering a deeper acceptance of reconciliation by New Zealand society (ABEL 1997). Equally difficult is the issue of working with the concept of biculturalism and its everyday implications. Rawinia Higgins here offers a significant analysis of the real meaning of bilingualism. Discussing *te reo Māori* as a *taonga*, a lived and living treasure, she reveals the many meanings bilingualism can have and should have. She argues that it is only if *te reo* is learned and spoken by all in Aotearoa New Zealand that it will survive and thrive. This is a significant shift, a shift that opens up possibilities of participation that could not be envisaged without reconciliation.

As fraught as the politics of reconciliation have sometimes been, it must be recognised that negotiating settlement involves compromise and means that wrongs can never fully be righted. This is perhaps the leading theme of this book and the basis of all related and fully reflexive research. Richard Boast, Barry Rigby, Richard Hill and Robert Didham and Paul Callister all offer reflections and analysis on the processes that have reshaped Aotearoa New Zealand over the last four decades. Richard Hill works through modes of engagement from his personal involvement at political, tribunal and academic levels, as does Richard Boast. Both scholars, historian and lawyer, are fully aware of the shortfalls of these settlements yet are cautiously optimistic. While the systems are imperfect, and the outcomes constituted by layers of hard-fought compromises, they have, nonetheless, reshaped the future and set the standard for new modes of relationship that have become the guiding principles in political discourse. These chapters can also be read as mnemonic narratives of the reconciliation process.

Similar narratives among Māori are analysed by Carwyn Jones: using *kaupapa Māori*, he examines the ways in which *pūrakau*, stories, and their performance can reveal an alternative legal framework that is based on Māori ontology; in this way he is taking us into the performative spaces of reconciliation. These performances are powerful and evocative events that reveal the place of narrative, ritual and law for Māori living in a settler society. Rituals are at the heart of relationships; they create and sustain new modes of engagement, and bring to life the inevitable challenges to and renegotiations of power (KERTZER 1988). Performed negotiation, as Alex Frame and Paul Meredith argue in this volume, is always presenting itself as an offer to enter a new relationship, a coming together of parties in the controlled yet unsettling space of ritual,

and a “modification of a traditional Maori encounter” (MURU-LANNING 2012: 131). We see this at play in Andrea Blätter’s and Tanja Schubert-McArthur’s reading of the *pōwhiri* at Te Papa Tongarewa, a hybrid ritual part welcome, part *tangi*, funeral rite, specifically designed for the return of human remains from overseas museums. Rituals reconfigured provide a mode of engagement in which such solemn repatriation is enacted on the terms of and within the ritual framework of Māori, and on their ground.

Such ritual agency and ownership is all the more important because all Treaty-settlement negotiations are initially shaped by the parameters set by the Crown (J. SMITH 2007: 75). Power here is never truly shared; negotiations are always preconfigured on the terms of the New Zealand government. The chapters of this book, however, make visible the spaces opening up in the process of reconciliation and the possibilities developed in the vulnerable sphere of biculturalism.

Appended to those chapters in order to provide background and context are the original English and Māori versions of the Treaty. For readers who would appreciate more background and insights into the original 1840 Treaty documents and to learn more about the differences between the Māori and English versions, we recommend consulting the website of the Waitangi Tribunal at <http://www.justice.govt.nz/tribunals/waitangi-tribunal/treaty-of-waitangi>. As is clear from many of the contributions to this book, considerable debate surrounds the Treaty today, particularly in relation to conflicts among and differing perspectives on the concepts and interpretations of *kawanatanga*, *tino rangatiratanga*, government and sovereignty in these documents.

Conventions

Because contributors come from a variety of disciplines and fields, we have retained their own referencing and other conventions rather than imposing a single, uniform format. Some common conventions of current Aotearoa New Zealand academic practice, such as non-italicisation of Māori words, have been put aside in this case to accommodate a wider audience. Māori terms are generally glossed on first appearance within the text of chapters and, in some cases, dealt with in more depth or accompanied by references to more extensive discussions. In addition, there is a glossary of Māori terms used in the chapters; we must emphasise that those glosses are simply the everyday equivalents of the terms and, inevitably, cannot communicate fully their nuance and complexity.

Acknowledgments

The idea for this book emerged from two conferences, the first at the Center for Intercultural Studies (ZIS) at Johannes Gutenberg University of Mainz in Germany, the second on the *marae* at Victoria University of Wellington in Aotearoa New Zealand. Both institutions were wonderful hosts, facilitating great academic discussions and the making of lasting friendships. Instrumental in facilitating the conference and this book was Professor Anton Escher, the director of ZIS. His ability in forging connections and

and planning future academic joint ventures made this project possible. A special thank you must go to Heike C. Spickermann, the academic manager of ZIS; without her persistence, her organising talent and sheer perseverance we would not have the book in hand today.

Another thank you goes to the co-hosts of the Wellington conference, Peter Adds and Richard Hill and their colleagues at Te Kawa a Māui and the Stout Research Centre for New Zealand Studies. Both conferences were conceived and organised by Gerd Becker; without him these now firmly established connections would not have been made. Tanja Schubert-McArthur was also a vital part of our team, hosting the scholars from Mainz at Victoria University. We are grateful to all the authors who agreed to the publication of their contributions; some of them came to the project at a much later date and had to meet a tight timeframe.

Tanja Rother undertook the facilitation of all communications with authors, gently pushing us along towards the finishing line. On our part Graeme Whimp edited the manuscripts into a book; without such diligence and *Akribie*, meticulous precision, this would not have met the publisher's standards. A big thank you also goes to Rolf W. Brednich for indexing this volume with such care and commitment. Another thank you goes to Gill Blomgren who skilfully formatted the book for forwarding to the publisher. And last, we want again to thank our two colleagues and co-editors, Peter Adds and Richard Hill. Three of us co-hosted the Wellington conference, we planned the book, had some robust discussions, and are still friends; that has to count for something.

References

- ABEL, S. (1997): *Shaping the News: Waitangi Day on Television*. Auckland: Auckland University Press.
- ADDS, P., M. HALL, R. HIGGINS, and T. R. HIGGINS (2011): Ask the Posts of Our House: Using Cultural Spaces to Encourage Quality Learning in Higher Education. *Teaching in Higher Education* 16(5): 541–551.
- BARGH, M. (2007): *Resistance: An Indigenous Response to Neoliberalism*. Wellington: Huia.
- FABISH, R. (2014): *Black Rainbow: Stories of Māori and Pākehā Working across Difference*. Unpublished PhD Thesis. Victoria University of Wellington.
- FRAME, A. and P. MEREDITH (2005): Performance and Māori Customary Legal Process. *Journal of the Polynesian Society* 114(2): 135–155.
- HARRIS, A. (2004): *Hikoi: Forty Years of Māori Protest*. Wellington: Huia.
- HILL, R. S. (2009): *Māori and the State: Crown-Māori Relations in New Zealand/Aotearoa 1950–2000*. Wellington: Victoria University Press.
- HILL, R. S. and B. BÖNISCH-BREDNICH (2004): Fitting Aotearoa into New Zealand: Bicultural Politics and Realities. In M. BERG and B. SCHÄFER (Eds.): *How Societies Try to Right the Wrongs of the Past*. Cambridge: Cambridge University Press.
- KERTZER, D. I. (1988): *Ritual, Politics and Power*. New Haven: Yale University Press.
- MCCORMACK, F. (2012): Indigeneity as Process: Māori Claims and Neoliberalism. *Social Identities: Journal for the Study of Race, Nation and Culture* 18(4): 417–434.
- MURU-LANNING, M. (2010): *Tupuna Awa and Te Awa Tupuna: An Anthropological Study of Competing Discourses and Claims of Ownership to the Waikato River*. Unpublished PhD Thesis. University of Auckland.

- MURU-LANNING, M. (2012): The Key Actors of Waikato River Co-Governance: Situational Analysis at Work. *AlierNative: An International Journal of Indigenous Peoples* 8(2): 128–136.
- SMITH, G. H. (1997): *The Development of Kaupapa Maori: Theory and Praxis*. Unpublished PhD Thesis. University of Auckland.
- SMITH, J. (2007): Post-cultural Hospitality: Settler-Native-Migrant Encounters. *Arena* 28: 65–86.
- SMITH, L. T. (2012): *Decolonizing Methodologies: Research and Indigenous Peoples*. (2nd Ed.) London: Zed Books.

ENGAGED SCHOLARSHIP AND TREATY CLAIMS

New Zealand's Treaty of Waitangi reconciliation processes

A Māori Treaty educator's perspective

Peter Addis

Despite the fact that the Treaty of Waitangi and Treaty settlements are often characterised as one of the most, if not the most, important sociopolitical issues confronting New Zealand, the Treaty, its history and current reconciliation processes are not well understood by the majority of New Zealanders. Indeed, some say they have become an issue simply because they are not well understood. We can blame a lack of understanding on both a long history of neglect of the teaching of the Treaty of Waitangi in the New Zealand school system and the failure of successive governments to adequately address Māori Treaty concerns.

It is still actually possible in New Zealand to progress through the entire education system and learn nothing about the Treaty of Waitangi and our colonial history, much less Māori history. From my experiences as a 'Treaty trainer', it is apparent that only a relatively small percentage of our schools and teachers provide good coverage of the Treaty. At best, the coverage is 'patchy', and the little that is done seems to focus on inaccurate Crown interpretations of the English version of the Treaty documents and associated pro-Crown histories; it is almost as if the eight Māori language versions of the Treaty and the Māori interpretations of those histories do not exist. Today, teachers have the option of including Treaty of Waitangi modules in the social studies and history curricula in years nine and ten at high school as an example to demonstrate a particular theme in the curriculum framework. They tend, however, not to, probably because the teachers themselves do not understand the issues adequately. They too, for the most part, are products of the same education system. Some people, including some teachers, are so confused and frustrated by their lack of understanding of the Treaty, and in particular prolonged Māori activism in relation to it, that they claim to suffer from overexposure to it and will even argue 'Treaty fatigue' as a way to avoid any engagement with the issues.

It seems that many New Zealanders develop their views about the Treaty and settlements from exposure to mostly negative media coverage of particular issues. Consequently, New Zealanders do at least gain a superficial realisation that the Māori people went through some sort of 'unpleasant' colonial experience, similar to the experiences of many of the other Indigenous peoples in the world. Probably for the same reasons, however, a peculiar view has developed among many who declare Māori colonial experiences to have been significantly less severe than those of other colonised peoples. Moreover, it is sometimes reasoned, Māori should be grateful for the treatment they received from the British, as opposed to any other potential colonising empire. Māori response to this typically points to the current disproportionately poor socioeconomic and other disparities that they suffer. As with other colonised Indigenous people, these have their origins in the colonial history of our country and, in our case, the failure of the Crown to honour the Treaty and its subsequent ongoing

institutionalised racism. Māori have complained relentlessly about these issues since the Treaty was first dishonoured.

By 1900, the tribes had lost most of their land and had sunk to a demographic low point. While population recovery was recorded from the beginning of the 20th century, Māori held a low profile, living in their rural 'homelands'. They contributed greatly to the country's effort in the Second World War (as in the First) and, when it was over, the remnants of the Māori Battalion returned to a New Zealand that still had deeply embedded institutionalised racism. For the most part, the soldiers returned to their rural homelands, where Māori continued to be 'out of sight - out of mind'. Their virtual invisibility allowed the New Zealand government to make the outrageous claim that New Zealand was the one place on the planet where racial harmony prevailed. This view of New Zealand in the world was promoted both within and without our national boundaries. As New Zealanders, many of us actually believed this to be true, so successful was the indoctrination through the 1950s and 1960s.

By the 1950s, the demographics of New Zealand started to change quite dramatically. As New Zealand became more industrialised, like other western countries, Māori began to move into the cities to take up the new work opportunities. As a population, Māori changed very rapidly from one that was predominantly rural to one that suddenly became highly urbanised by the early 1960s. Housing in urban situations became a sensitive Māori problem and Māori mostly ended up living in the new housing estates that were being built in most cities. At this point, the social stability that had existed in Māori families in rural situations started to break down as different parts of the families moved to different cities. Inevitably, many of the social problems with which we are all too familiar in Māori communities today started to appear in the early 1960s. Many families ran into trouble with drugs and alcohol and a new generation of Māori children were born in urban situations. Often these children had never met the rest of the family because they were living in other cities and because they had also been removed from their tribal land estates. They now also had parents who were often in trouble with drugs and alcohol. Those children reacted to these new circumstances in a variety of ways; some of them created new social groupings of their own in the form of gangs.

By 1970, however, a phenomenon often called the Māori renaissance had begun: a vast revival and assertion of Māori culture, and a related flourishing of Māori political activism. Activist groups attained a very high profile in the media and were prominent in blaming the New Zealand establishment, and the government in particular, for what they considered to be the ills of Māoridom at that time. At the same time, the Māori gangs, often modelled on gangs in other parts of the world, arose. Many of them were antisocial, and often violent – with much of the violence turned inwards on other gangs and Māori women. Middle Pākehā New Zealand could not understand how Māori gangs could have developed in the country with the best race relations in the world. Nor could those same people understand how radical Māori activism had developed. Paranoia developed in New Zealand around the possibility that the gangs and the Māori activists could potentially team up and that the gangs could become a paramilitary front for the activist movement. Most notably, the Māori activist movement was very successful in re-politicising the Treaty of Waitangi, which by then had dropped out of the sight and

the political consciousness of the nation. For many New Zealanders, it suddenly became apparent that perhaps New Zealand did have some racial issues on its own doorstep, and they might even be serious issues. Māori had become frustrated and had no forum in which to vent their issues.

The government finally reacted to the newly perceived racial pressure in 1975 by passing the Treaty of Waitangi Act that created the Waitangi Tribunal. This became the first judicial body, a commission of inquiry, which allowed Māori to litigate with the government over perceived breaches of the Treaty of Waitangi. It did hear some early cases in the late 1970s and made recommendations to the government about possible redress. Governments of the time, however, were not inclined to act on the tribunal's recommendations. As a result, the tribunal gained a reputation in the Māori communities as 'a toothless tiger' that promised a lot but delivered little.

By 1983, the tribunal had issued a report on the Motunui claim, a Taranaki issue. The report was overwhelmingly in support of the Māori claimants, but the government intended to do little about it. By 1984, however, the National-led government in power at the time was in trouble because one of its MPs regularly crossed the floor in parliamentary debates and votes. Because the National party had only a small majority, the prime minister, Robert Muldoon, decided to call a snap election. Most probably in the hope of acquiring some Māori votes, Muldoon decided to accept the findings of the tribunal in respect of the Motunui claim. This sudden change of position in respect of the tribunal represented a turning point in the way that Māori perceived it. This was compounded after Muldoon lost the election and David Lange's Labour party swept into power and, in 1985, amended the Treaty of Waitangi Act to allow the tribunal to hear claims dating back to 1840. The amendment also increased the membership of the tribunal and an avalanche of claims flooded in because virtually every Māori family, and every tribe, had suffered some breach of the Treaty in the past. Today, there are several thousand claims waiting to be heard by the tribunal.

When it was established in 1975, the Waitangi Tribunal was the only forum that Māori people had available in which to air grievances over Treaty issues at the time. While one might have thought that the ordinary courts of law would have been available, the unfortunate reality was that the Treaty of Waitangi had been excluded from New Zealand jurisprudence because of a legal decision taken in 1877 by James Prendergast, New Zealand's top judge at the time. Through the application of some rather circular, if not outrageous, logic, he declared the Treaty to be a 'nullity' in law. This precedent meant that Māori were unable to use the Treaty in any form of claim or defence in legal situations. In this context, the establishment of the Waitangi Tribunal was a moment of some significance for Māori.

It took until 1986 for the Treaty to reappear in the ordinary courts after a landmark decision concerning an appeal in the High Court from a Māori man, Tom Te Weehi, who had been convicted in the District Court of taking undersized shellfish from a beach in Christchurch. Te Weehi appealed his conviction in the High Court, arguing that he had been exercising what he described as a Māori customary fishing right. It happened that the 1983 Fisheries Act had in it a clause, section 88(2), which declared that nothing in the act would affect any Māori fishing rights. By then, there were various pieces of legislation in New Zealand that had similar wording. Often, the

wording referred to the Treaty of Waitangi or the principles of the Treaty of Waitangi, and sometimes the spirit of the Treaty of Waitangi. Wording like this had been added to legislation since the 1970s as a way to appease the Māori activist movement. At the time, the government probably thought that it would not amount to much but, in 1986, it came back with a vengeance in this court case. Te Weehi won the case using an aboriginal-rights, rather than a Treaty, argument because the Treaty of Waitangi was not actually mentioned in the legislation. Te Weehi's lawyers, however, skilfully argued that, where the Treaty of Waitangi was mentioned in legislation, it should have full effect in the courts of law in New Zealand and the judge agreed. The case established a new legal precedent that got the Treaty back into the courts.

Once Māori had the ability to return to court to litigate over Treaty matters, it did not take long for significant cases to emerge. Perhaps the most famous of these occurred in the following year, 1987, when the government was in the throes of trying to create the state-owned enterprises. The SOEs, as they became known, were part of a neoliberal government agenda to privatise state assets. Each SOE would become a private company in which the government would retain a 51 percent shareholding, and each SOE would own assets that formerly belonged to the Crown. However, the New Zealand Māori Council injuncted the Minister of State-Owned Enterprises from proceeding with the establishment of the companies. The council argued that, in the event of a successful Māori claim, the assets now owned by the companies would not be available to Māori claimants as a result of a successful Treaty claim since private assets were not available for Treaty settlements. The case ended up in New Zealand's top court at the time, the Court of Appeal, and Lord Cooke, who was New Zealand's most senior judge, referred to the Treaty in his findings in the case. In the judgment, he said that the Treaty was a partnership between the Crown and Māori; the two partners, he said, had a duty to act reasonably towards each other and in the utmost good faith as well. Furthermore, because the Crown was now acting as the government in New Zealand, it had a duty to 'actively' protect Māori interests. This meant that it could not passively allow things to happen to the Māori people. When the judgment appeared, it was a profoundly influential document for both the judiciary and the government and, since it came out, we have indeed tended to characterise the Treaty in terms of the idea of partnership.

Since the 1990s, there have been a number of high-profile, high-value Treaty settlements with various tribes around the country. They have involved hundreds of millions of dollars of cash and assets and have had the unfortunate effect of producing some resentment in the non-Māori part of the population. So much resentment and jealousy about the settlements occurred that, at one point, the government even declared that the process would be contained within a 'fiscal envelope' of one billion dollars. The 'fiscal cap', as it became known, was hugely unpopular with Māori, but the Crown persisted with it, claiming that the public of New Zealand had to be happy with the Treaty-settlement process. For many Māori claimants at that time, the fiscal envelope drove home the reality that the Treaty-settlements process was not actually about justice and fairness; the government could not afford these things. This raised the issue that, if the process was not about justice, what was it about and how much money was needed to make the process durable? While Māori now have a long history of reliance on the