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Mana, Whānau and Full and Final Settlement

A thesis presented in partial fulfilment of the requirements
for the degree of Master of Philosophy in Māori Studies at
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Matiu Tai Ratima

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Abstract

A study is presented which describes and critiques the process of the settlement of Māori claims with respect to Crown acts or omissions which breach the principles of the Treaty of Waitangi. Attention has been focused on the rights of whānau and hapū within the process of direct negotiation, and an unsuccessful attempt by the Whakatōhea iwi of the Eastern Bay of Plenty to negotiate a settlement of their claims has been considered as a case study of direct negotiation. The views of seven participants involved in Whakatōhea's negotiations have been used to gain insight into the process and to help identify some key obstacles to Treaty settlement. Finally, the positions adopted by the Crown and various Māori groups, with regard to the obstacles identified, are discussed and some suggestions have been made which might provide a focus for future discussion on the subject of direct negotiation.

He Mihi

Ko Makeo te maunga
 Ko Waiaua te awa
 Ko Waiaua te marae
 Ko te Whakatōhea te iwi
 Tēnā koutou katoa

Kei te mihi, kei te tangi. Kei te tangi ki a rātou mā kua takahia te ara ki mua i a tātou katoa. Koutou kua whetūrangitia, ngā kāwai rangatira o Te Whakatōhea, otirā ngā mate o tēnā marae, o tēnā marae, o tēnā kāinga, o tēnā kāinga. Haere koutou, waiho tō koutou ōhaki, kia puritia ngā taonga tuku iho i a koutou. Arā ko te reo me ōna tikanga, ko te Tiriti o Waitangi, ko te aroha ano hoki hei herenga mā tātou. Haere koutou, haere atu rā.

Ki a tātou te hunga ora kei te mihi. Ki ōku rangatira whakaarahi tēnā koutou. Nā koutou au i poipoi i kaha wēpū i ngā wā e tika ana. Nō reira, e kore e mutu ngā mihi ki a koutou. Ki te kore koutou, kua kore ēnei whakaaro ōku i puta ki te ao mārama. Tēnā koutou.

Heoi anō, me mihi ki a Whakatōhea whānui. Ki tōku whānau (te whānau-ā-Mokomoko), ki ōku hapū, ki tōku iwi. Tēnā koutou, tēnā koutou, tēnā koutou katoa. Koutou i whakaāe kia wānangahia ngā kaupapa, koutou i whaiwāhi kia āwhinatia, kia tautokohia tēnei kaupapa ka ora ka puta. Ko tāku e manako nei, ka puta he hua i tēnei mahi rangahau, hei painga, hei oranga mō tātou katoa.

Kia ora mai tātou katoa.

Matiu Ratima

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CHAPTER 1

INTRODUCTION

Broadly stated the aim of *Mana, Whānau and Full and Final Settlement* is to identify and consider some of the problems involving the direct negotiation of Māori claims.¹

Three themes dominate the thesis, they are: the dynamics of iwi, hapū and whānau relations, the dynamic relationship between Māori and the Crown, and the politics of Treaty settlement negotiation. The latter provides a focus for developing insights into the first and second themes. This thesis is not a comprehensive history of settlement negotiation, although it does consider important historical matters. Instead the primary concern is the resolution of tensions between the two dimensions of settlement negotiation: relations between the Māori groups, and relations between Māori and the Crown.

Since 1989, there have been two major tribal settlements and a pan-tribal settlement of all Māori commercial fishing claims. The government's preference for settling claims by direct negotiation has been prompted by the recommendations of the Tribunal, the orders of the Court and the rising level of legal and constitutional significance the Treaty has achieved. The later has come about through the interplay between the Courts and the Tribunal, which has often effected the incorporation of the Treaty into municipal law. The Crown has reacted to a flurry of legal judgements and recommendations by enforcing, through direct negotiation, the treaty as a political agreement.

¹ This aim is further broken down into four key goals which are described in the chapter 2 (the research methodology).

Direct negotiation has been a new phase in the Māori / Crown relationship. This phase has presented tribes with an opportunity to re-establish themselves economically, and with that the chance to make a far greater contribution to the social, cultural and economic life of the nation. Of particular significance is the recognition that settlements restore a sense of dignity to tribes - to finally have their grievances acknowledged publicly after almost 160 years of denial. However, some Māori have rejected the process through which these benefits are to be achieved. First, because what is being offered offends their sense of justice, and second because the process is not seen as being based on the Treaty principle of partnership. Instead it reflects one party's (the Crown's) narrow interpretation of Treaty principles. At times Māori have been accused of being unrealistic, while in exchange the government have been charged with being more concerned with acceptability to the broader electorate than with bringing justice to Māori. This thesis will consider these issues by placing Treaty settlement negotiations within their proper context as a small, albeit significant part of the Māori Crown relationship under the Treaty.

The thesis is structured as follows: Chapter 1 - Introduction. Chapter 2 - Methodology. The methodology includes a working definition of three key principles to Māori centered research methodologies: mana, tapu, and māramatanga. A consideration of the facets of a 'kaupapa Māori' or a Māori centered approach to research and a description and an evaluation of the methods of *Mana*, *whānau* and *Full and Final Settlement* as a Māori centered approach.

Chapter 3 - The Iwi / Hapū / Whānau Structure. This chapter will describe and compare 'classic' and modern models of iwi, hapū and whānau in order to demonstrate the dynamic nature of Māori society and the dynamic shift that has occurred towards the larger aggregation of iwi and the impact this has had on the rights of hapū and whānau.

Chapter 4 - Māori and the Crown. Chapter four will consider the dynamic relationship between iwi, hapū and whānau and the Crown. In particular how that relationship has developed since the Treaty was signed, the effect that Treaty principles developed by the courts, the Waitangi Tribunal, and successive governments since 1975, have had on the relationship, the relationship and current Treaty settlement policy, and the need for a comprehensive Treaty policy to clarify ambiguities over Māori / Crown relations.

Chapter 5 - The Whakatōhea Settlement Negotiations. A case study of the direct negotiation of claims concerning Whakatōhea iwi of the Eastern Bay of Plenty. This chapter provides background to the claims concerning Whakatōhea and an analysis of the settlement negotiation drawing on the views of the seven participants in the study (as described in the research methodology chapter).

Finally, chapter 6 contains the conclusions to the thesis, summarizes the issues identified as obstacles to the settlement and proposes some solutions for the benefit of both the settlement process and the relationship between Māori and the Crown.

CHAPTER 2

METHODOLOGY

2.1 INTRODUCTION

This study seeks to locate the process of Treaty of Waitangi settlement negotiation within the experiences of hapū and whānau.

A number of underlying assumptions provide the foundations for a generic 'kaupapa Māori' approach to research. The first assumption is that although the realities of Māori people are multiple and diverse, a Māori world view does exist and may be represented by principles which are rooted in a common and distinctive geneological, cosmological, historical and geographical life experience. Traditional Māori knowledge, language and culture are central to these principles. Kaupapa Māori research embraces these principles.

Second, kaupapa Māori research is responsive to these principles, and they include the concepts of mana, tapu, and māramatanga and their underlying values and beliefs.²

Third, while research methodologies appropriate to Māori may originate from western research methodologies, their underlying assumptions may be challenged, particularly when their application has been problematic for Māori communities.

The position taken here is informed by an emerging body of scholarship by Māori and non-Māori researchers and academics concerning issues for research

² See Bishop, R. and Glynn, T., (1992) "He Kanohi Kitea: conducting and evaluating educational research", in *NZJES*, Vol. 27, No. 2, p.129. See also Tomlins-Jahnke, H., (1996) *Whaia Te Iti Kahurangi: Contemporary Perspectives of Māori Woman Educators*, thesis in Education at Massey University, p. 29.

which involves Māori people.³ Many of the key issues raised in their work will be revisited to justify the methodology.

It is anticipated that this study will contribute to the theoretical discussion on 'kaupapa Māori' research methodologies. But more important through the development of a framework for conceptualising Treaty settlement, it should help to develop a better understanding of the Treaty settlement process, the relationship between Māori and the Crown and the relationship between whānau, hapū and iwi.

The role of the writer as a participant observer is an important part of the hapū and whānau experience which will be contextualised within a theoretical position which embraces a Māori world view.

The principal aim of this chapter is to explore a generic kaupapa Māori approach to Māori research and to describe how a methodology based on this approach was applied to this study.

Principles of Kaupapa Māori Research

³ For example see Tomlins-Jahnke, H., (1996), *ibid*, Stokes, E, (1985) *Maori Research and Development*, National Research Advisory Council, Wellington, p. 3, Te Awekotuku, Ngahuia, (1991) *He Tikanga Whakaaro: Research Ethics in the Māori Community*, Manatu Maori: Ministry of Maori Affairs, Durie, Arohia, (1992) *Whaia Te Ara Tika: Research methodologies and Māori.*, Unpublished paper, Seminar on Māori Research, July 1992, Massey University, Smith, L.T.,(1985) *Te Rapunga ki Te Ao Marama*, paper presented to the education Department, University of Auckland, p. 90, Bishop and Glynn (1992), *ibid*.

Mana, tapu, and māramatanga are very general terms. Their specific meanings depend on the context within which they are applied. The following is an explanation of what is meant by these terms within the context of Māori research.

Mana

Mana is often translated as authority and control.⁴ The principle of mana within Māori research evokes notions of empowerment, self determination, authority and control. Empowerment requires a clearer understanding of the relationship between researcher and respondent. Whereas in the past the researcher may have operated in a relatively autonomous and independent fashion, the notion of mana and empowerment anticipates a shift in control and power towards the subject. Research which does not enhance the standing or the knowledge of respondents does not empower them. More likely it diminishes them. Similarly, self determination means a greater emphasis on control of research so that respondents have a sense of ownership, a capacity to influence the design of the project and a voice in decisions regarding the uses to which the research will be applied..⁵ Another important dimension of the recognition of mana in Māori research is that authority and control are a collective function and not the prerogative of an individual. In other words, mana rests more comfortably with a whānau, a hapū, a community, rather than with a chairman, a secretary, or a scholar. While a leader may be considered to represent their interests, it is the group which holds the authority.

⁴ See Marsden, Maori, in King, Micheal, (1992) *Te Ao Hurihuri: Aspects of Māoritanga*, Reed: Auckland, p. 119, and Pere, Rose, (1982) *Ako: Concepts and learning in the Māori tradition*, Victoria University, p. 32

⁵ This interpretation of the principle of mana reflects the need for the research process to be an empowering experience for Māori see Bishop and Glynn (1992), p. 282

Tapu

In terms of Māori knowledge 'tapu' and its counterpart 'noa' respectively refer to knowledge which is restricted and controlled, or unrestricted and open to public access. Both types of knowledge have a spiritual as well as a physical dimension.⁶ Knowledge which requires protection may be subject to restricted access. The implication of these two types of knowledge is that while knowledge respondents consider 'noa' is likely to be easily accessible, on the other hand, where respondents consider that knowledge is 'tapu' they will be likely to exercise guardianship over it and there may be access obligations placed upon the researcher, or alternatively the researcher may be denied access to the most tapu forms of knowledge. Researchers should be aware that the western ideal of the 'democratisation' of knowledge is not always compatible with Māori views of intellectual property.⁷

Māramatanga

Māramatanga has many meanings including clarity, understanding, and enlightenment.⁸ For the researcher it means ensuring that the transfer of knowledge is relevant to the target. Research findings which fail to illuminate, will make limited contributions to understanding. In order to provide illumination for Māori audiences, it is necessary to use the idiom if not the language of the group. Māramatanga emphasizes interpretation of Māori data in Māori terms and not forcing it to fit into prescribed academic styles. The

⁶ See Rangihau, John in King, Micheal, (1992) *Te Ao Hurihuri: Aspects of Māoritanga*, Reed: Auckland, p. 12 and Stokes, Evelyn, (1985), *ibid*, p.6

⁷ Stokes, Evelyn, (1985), p.6

⁸ See Williams, H.W., (1971) *Dictionary of the Māori Language*, Seventh Edition, GP Publications: Wellington, p. 180

principle of *māramatanga* also requires a Māori researcher to be able to present information to the Māori community in an intelligible way.⁹

Table 2.1 summarises the principles of kaupapa Māori research.

Table 2.1: Principles of Kaupapa Māori Research

Principles	Meanings	Implications
Mana	Self determination	Empowerment
	Control	Co-operative process
	Authority	Power to effect change
Tapu	Protection of knowledge	Gaurdianship
		Access Obligations
Māramatanga	Clarity	Clear to respondents
	Understanding	Interpret Māori data in Māori
	Enlightenment	terms

2.2 CONTEXT

Some scholars have taken the position that research involving Māori should be conducted by Māori.¹⁰ This position reflects a lack of confidence in non-Māori approaches to inquiry and the need for an appropriate Māori methodology. However, there are those who have argued that there is a place for non-Māori researchers where those researchers can demonstrate bicultural competency and where the methodology is empowering and ensures benefits accrue to those being researched as well as those doing the research.¹¹ This section will explore

⁹ *ibid*, p.11.

¹⁰ See Marsden in King (1992), p. 118, Tomlins-Jahnke (1997), p.29, and Smith, L. T., (1995) *Re-centering Kaupapa Māori Research*, paper presented at Te Matawhānui conference, Department of Māori Studies, Massey University, p. 1

¹¹ See Bishop and Glynn (1992), p. 282 and Stokes (1985), p. 9, see also the 1998 Millenium lecture

the notion of 'kaupapa māori' research, research 'by Māori, for Māori, with Māori'¹², examine why the 'kaupapa Māori' approach has developed, and consider its' application to this study.

The phrase 'by Māori, for Māori, with Māori' has been coined by Māori academics to describe 'kaupapa Māori' research.¹³ As might be expected where a diverse people are concerned, there are varying interpretations as to what 'kaupapa Māori' means. The first and probably the most contentious issue is whether only Māori researchers should undertake research involving Māori. As Māori Marsden has said:

The route through abstract interpretation is dead, objectivity is arid abstraction and not the same as the taste of reality.¹⁴

Marsden has argued in favour of a subjective descriptive approach to research involving a Māori view of the world. He suggests that research should be conducted 'by Māori' about Māori because '... (with few exceptions) those who are a part of the cultural milieu of tribal life are best suited to capturing the essence of it'.¹⁵ On the other hand Stokes has said that the term 'Māori researcher' does not denote the racial origin of the researcher.¹⁶ Under certain conditions this term may include non-Māori who research Māori kaupapa (subjects). She has suggested that it is not enough for researchers to be Māori in terms of whakapapa (genealogically) but that researchers should be able to demonstrate competency in te reo me ōna tikanga (a command of the language

¹² Smith, L. T., (1995), p. 1

¹³ *ibid.*

¹⁴ Marsden in King (1992), p. 118

¹⁵ Marsden in King (1992), *ibid.*

¹⁶ Stokes (1985), p.9

and an understanding of Māori cultural practices). Moreover, Stokes suggests that it could be advantageous to non-Māori researchers who can demonstrate Māori cultural competency. Russell Bishop concurred on this point and went further to say that this is especially true where those non-Māori researchers bring specialised skills to the research process which might otherwise be lacking.¹⁷ However, it is problematic to assume that the relationship between researcher and researched is the same for non-Māori researchers as it is for Māori.¹⁸ Māori are differentiated according to iwi, hapū and whānau links. So, while Māori people may be suspicious of a non-Māori researcher they may be more suspicious of Māori from another iwi. For this reason there may be certain sensitive subjects (such as tribal histories or other tribal specific knowledge) where non-Māori researchers are more likely to be granted access to participants and information. The fact that almost all published tribal histories have been written by non-Māori¹⁹ tends to confirm the point. Where Māori authors have taken to writing histories they have tended to choose either their own tribes or broader pan-tribal histories, suggesting that researchers of Māori kaupapa may be differentiated by those they research.²⁰

Monty Soutar has developed a comprehensive framework for conceptualising the ways researchers of Māori histories are differentiated.²¹ He has assessed a number of researchers of Ngati Porou histories using this framework. Criteria used include factors such as age, gender, bi-cultural competency, iwi, hapū and

¹⁷ Bishop, Russell, "Initiating Empowering Research", *NZJES*, no.2, p. 6

¹⁸ Tomlins-Jahnke, Huia, (1996), p. 29

¹⁹ *Tainui, Tuhoe, Te Arawa, The Greenstone Island and Whakatohea of Opotiki* are all examples of major tribal histories written by non-Māori.

²⁰ For example Sir Apirana Ngata wrote extensively about his own tribal history (Ngati Porou) while Sir Peter Buck (Te Rangihiroa) wrote *The coming of the Maori*, a pan tribal history of the arrival of the Māori in Aotearoa.

²¹ Soutar, Monty, (1996) "A Framework For Analysing Written Iwi Histories" in *He Pukenga Kōrero*, Kōanga (Spring), Volume 2, Number 1, p. 47

whānau affiliations and competency as a researcher. All of these criteria have implications for access to information, accountability of the researcher to the research participants (the owners of the knowledge from a Māori perspective) and the overall quality of the research.

Kaupapa Māori research need not always be done by Māori. Instead, kaupapa Māori research may be about the researcher (Māori or non-Māori) having the necessary skills to interpret the Māori situation and to incorporate the principles of mana, tapu, and māramatanga.

Underscoring questions of who should conduct research are the issues of access and accountability. What is becoming apparent in research involving Māori is the need for researchers to remain accountable to Māori research participants. Accountability is also important for the second facet of 'kaupapa Māori' - 'for Māori'. Research which is 'for Māori', as opposed to research which is not, implies research which is centred on Māori. It may be distinguished by two questions. First, does the research question and methodology represent research which is relevant to the participants themselves? Second, do benefits from the research accrue to the participants and not just to the researcher(s)? Bishop and Glynn have described a history of research involving Māori - where few of the researchers are themselves Māori - characterised by trivialisation and the undervaluing of Māori knowledge.²² These characteristics may be seen as typical of a research process which interprets Māori knowledge from a non-Māori paradigm (value position). Such research assumes human societies can be objectively studied from a 'neutral' or value free position. In the international

²² Russell Bishop and Ted Glynn, (1992) *He Kanohi Kitea: conducting and evaluating educational research* in *New Zealand Journal of Educational Studies*, Vol. 27, No.2, p. 126

fields of education and the social sciences, this approach is known as the 'scientific' or positivist paradigm.²³ It has been increasingly rejected by social scientists as it does not account for the fact that social reality is defined by societies' human members who then orientate themselves towards the reality so defined.²⁴ In other words, an objective or value free position is unattainable as all human beings orientate themselves towards their own societies and this effects the way they observe the societies of others.

The new direction gaining preference in the field of social science research is an interpretive approach, recognising that society is 'not an "independant system" but a structure constituted and maintained through the routine interpretive activities of it members'.²⁵ Effectively this alternative approach replaces 'the scientific notions of exploration, prediction and control with interpretive notions of understanding, meaning and action'.²⁶

In referring to the ongoing theoretical debate over the positivist and interpretive paradigms Linda Smith found that '... criticisms raised by Māori locate the theoretical debates of the wider world within a New Zealand context'.²⁷ In the broader sense of research methodologies the emergance of 'kaupapa Māori' research is connected to this theoretical debate. The issues for those who support qualitative or 'interpretive' studies, critical theory and feminist theory are compatible with contemporary 'kaupapa Māori' research methodologies. What the former three have in common with 'kaupapa Māori' is that they have

²³ Carr, W., and Kemmis, S., (1983), *Becoming Critical: knowing through action research*, Deakin University, Victoria, p.85.

²⁴ *ibid.*

²⁵ *ibid.*

²⁶ *ibid.*, p.83

²⁷ Smith, Linda Tuhiwai, (1985), p. 47

emerged from mainstream methods of enquiry, they question the value positions of traditional western methodologies and they accommodate an alternative value position. Māori researchers have begun to adopt Māori centred methods of qualitative research, critical theory, and feminist theory as alternatives to mainstream methods of enquiry. For example, Huia Tomlins-Jahnke used the unstructured or semi-structured interview - a technique popular amongst qualitative and feminist researchers - as the key instrument for gathering data for her study of the experience of Māori women educators.²⁸ This method allows the participant (interviewee) to tell of their experiences in their own words, providing for researchers an 'antidote' to the history of women being denied a voice. Māori researchers may adopt such methods for similar reasons. In addition Māori entry into quantitative research has been valuable in redefining sampling methodologies,²⁹ constructing appropriate analytical frameworks,³⁰ and converting Māori values and beliefs into measurable indicators.³¹

One debilitating effect of the western scientific tradition of research involving Māori has been that the outputs are descriptive (telling Māori what they already know, while expanding on the western knowledge base). While providing tangible benefits to the individual researcher(s) and their research community (for example: graduate and post graduate qualifications and publications), it has been relatively ineffective in terms of changing the realities of the respondents. Research of this ilk which appears to take from Māori and benefit the non-Māori knowledge base and research community has become known as 'hit and run'

²⁸ Tomlins-Jahnke, Huia, (1996), p. 44

²⁹ Fitzgerald, E., et.al., (1996) Whaihua Tatau in HPK, Māori Studies, Massey University, Palmerston North, Vol 2, No 1, p. 34

³⁰ Durie et.al., (1995) Te Hoe Nuku Roa Framework: A Māori Identity Measure in *JPS*, Polynesian Society (Inc.), Auckland, Vol 104, No. 4, p. 461

³¹ Durie, M., and Kingi, Te K., (1997) A Framework for Measuring Māori Mental Health Outcomes, Department of Māori Studies, Massey University, pp. 29 - 33

research.³² It has made some Māori suspicious of researchers in general and reluctant to co-operate.

Furthermore, it may be that the expectations of higher learning institutions are so well entrenched that many researchers find it difficult to balance the needs of those being researched with the institutional requirements for scholarship. For example, in a society that values individualistic competition, researchers are often expected to satisfy requirements for a diploma, a masters, or a PhD perhaps at the expense of hapless and passive respondents. Ranginui Walker has said that it may not be until postgraduate research is undertaken that this element of self-interest is diminished and a balance between self interest and social concern may be struck which may determine the social utility of the research.³³

Bishop and Glynn, have responded to the question of balancing self interest and social concern by insisting that methodology be empowering for participants. Empowerment in the research context means that the research process and outcomes provide benefits for the participants and these benefits effect a positive change in the lived realities of the participants.

The communities own knowledge ought to be increased by sharing information it has helped to collect. The community should thus be empowered by the research process.³⁴

If research is going to be empowering for Māori then research questions and methodologies need to be relevant to them and the information generated needs

³² Tomlins-Jahnke, Huia, (1996), p. 38

³³ Walker, Ranginui, (1978) *A Consumer View On Research*, Paper delivered to the Ministerial Conference on Educational Research April 1978, p. 1.

³⁴ Russell Bishop and Ted Glynn, (1992), p. 131.

to be shared in a way that provides obvious and tangible benefits to those who helped generate that information. Such an approach may provide a balance between a researchers' self interest and their genuine social concern and enable the researcher to say their research is 'for Māori'.

Having considered definitions of 'by Māori', and 'for Māori' the third prerequisite for kaupapa Māori research is 'with Māori'. The term 'with Māori' may be seen as a critical response to the 'scientific' research of the past which was carried out 'on' Māori. Where research is carried out 'on' Māori the terminology casts Māori in the disempowered role of the passive research subjects, and implies little influence or control over the research process and few rights to the information gathered. Where research is conducted 'with' Māori, the participants become active in the research process, implying a degree of control and the possibility of negotiation over the research aims, objectives, and processes and greater rights to the information generated.

Table 2.2 contains a summary of the facets, meaning and implications of kaupapa Māori research.

Table 2.2: Kaupapa Māori Research Framework

Facets	Meaning	Implications
'by Māori'	Researchers possess skills relevant to Māori understandings and realities	Bi-cultural competence Research skills Acceptability to respondents
'for Māori'	Relevant to Māori Beneficial to Māori	Research questions and methodologies meaningful Information shared
'with Māori'	Māori are 'participants' not 'subjects'	Greater degree of control, negotiation and rights to information

Table 2.2 provides the basis for furthering Smiths' definition of kaupapa Māori as by Māori, for Māori, and with Māori.³⁵ It draws issues from a body of Māori and non-Māori scholarship and reflects the concerns of those involved in research with Māori communities. It is broad enough to guide a range of varying Māori research contexts, and also provides a framework for developing an understanding of kaupapa Māori research.

The following quotation from Evelyn Stokes reinforces the principles of good research involving Māori: the research should arise from the needs of the people; Māori should be highly involved in the research process; and benefits should accrue to the respondents themselves. She also provides a warning to beware of research which may be passed off as indigenous, without satisfying these requirements.

A re-thinking of aspirations is required. Exploring ways in which non-eurocentric cultural frameworks may be admitted and given status in research methodologies. The phrase "indigenisation of research" must be treated with suspicion. Imported theoretical models designed in and for another cultural situation are not always the best starting point. If

³⁵ Smith, L.T., (1995), p. 1

indigenisation is to mean anything, then the research should arise out of the needs of Māori people. There must be a high degree of Māori involvement and the results must be feed back in such a way that benefit accrues to Māori people themselves.³⁶

The above discourse has described a generic approach to Māori research, considering some key principles including mana, tapu, and māramatanga (table 1). The concepts and their underlying values provide an ideological justification for conditions placed on Māori research by the three facets of kaupapa Māori (table 2). In other words, the principle of mana (empowerment of respondents) justifies facet 2, the need for research to be relevant and beneficial to Māori; the principle of tapu (protection and guardianship of knowledge) justifies facet 3, the need for respondents to have greater control over the research process and rights to information; and the principle of māramatanga (clarity of research processes and outputs) justifies facet 1, the need for researchers to have skills relevant to Māori understandings and realities. What follows is an assessment of *Mana, Whānau and Full and Final Settlement* against the framework outlined in table 2.2.

Facet 1 - 'by Māori'

Kaupapa Māori research requires researchers who are bi-culturally competent, skilled researchers and acceptable to the respondents. It is important to observe that the researcher (myself) in *Mana, Whānau and Full and Final Settlement* is of Māori descent, and has credibility in tikanga (Māori culture) and te reo. Since this study depends upon the co-operation of participants who are of Whakatōhea descent, it is also an important consideration that the researcher is a member of

³⁶ Stokes, Evelyn, (1985), p.19

Whakatōhea who is active in the affairs of the iwi, who is familiar with and accepted by the respondents as an appropriate person to conduct research amongst Whakatōhea people and that the researcher has the support of iwi kaumātua (tribal elders).

Facet 2 - 'for Māori'

The two requirements of the 'for Māori' facet are that research questions and methodologies be meaningful to respondents and benefits accrue to them. For the first requirement it may be important that respondents are involved from the onset in the process of developing the research question and methodology. The research question for this study emerged (over 2 - 3 years) as the culmination of a number of informal and formal discussions with kaumātua and key people and attendance at whānau, hapū and iwi hui. The question developed from the researchers perception of a need within Whakatōhea. The second requirement is that information be shared so as to provide benefits to the respondents. To ensure dissemination of information a hui was held on a Whakatōhea marae, where the research findings were presented, summaries of the research findings were sent to the Whakatōhea Trust Board and to all the participants. Copies of the thesis were made accessible to Whakatōhea people through the Trust Board and local libraries.

Facet 3 - 'with Māori'

Facet three requires a greater degree of control and negotiation over the research process and rights to the research outputs. The semi-structured interview technique (detailed below) was chosen as a research method because it allows for some control by the interviewee. The participants were encouraged to discuss concerns of importance to them, in their own words. All participants received

transcribed copies of their interviews and had the opportunity to provide feedback on the transcript, the interview, or any part of the research process. Upon completion of the research all the original data generated by the participants was returned to them, in recognition of their intellectual property rights (see below).

In summary, a methodology is presented that meets the researchers perceived requirements of kaupapa Māori research. Facet 1 is satisfied by a researcher who is both bi-culturally competent and acceptable to the respondents. Facet 2 is met by the research question having developed from the researchers perception of a need within Whakatōhea. Finally, in response to facet 3, the research methodology is cognisant of the respondents intellectual property rights (as they are likely to see them).

2.3 INTELLECTUAL PROPERTY RIGHTS

It should be observed that many Māori have repeatedly expressed concern that intellectual property rights (IPR) practices do not provide adequate protection of their cultural and intellectual property.³⁷ The Mataatua Declaration on Cultural and Intellectual Property Rights of Indigenous Peoples 1993³⁸ may be considered a statement of the Māori position, declaring the indigenous peoples of the world to be the exclusive owners of their cultural and intellectual property. This declaration emphasises the need for recognition of collective and enduring ownership of cultural property and is particularly significant to this study as Whakatōhea is a constituent group of the Mataatua tribal confederation.

³⁷ See *Intellectual Property Law Reform Bill*, Māori consultation Paper, Business Policy Division, Ministry of Commerce, 1994.

³⁸ Mana Tangata, *Draft Declaration on the Rights of Indigenous Peoples*, Te Puni Kokiri.,1993.

Therefore, in accordance with the recommendations of the Declaration, the researcher sought consent on three levels. First the collective consent of the Mokomoko whānau, then the consent of Whakatōhea iwi (through the Trust Board as their representatives) and finally the individual consent of participants. Had this support not been forthcoming the study could not have proceeded. Whakatōhea was also given the opportunity to participate in the supervision and evaluation of the thesis. A Trust Board member and kaumatua agreed to take on a supervisory role.

Furthermore, because they were the owners of the information, the raw data generated in the course of the study (transcripts) were returned to the participants.

2.3 AIMS

The principle aim of the study was to develop an understanding of the dynamics of whānau hapū and iwi relationships, as they apply to the settlement of Treaty of Waitangi claims. The aim was divided into the following key goals:

Goals

1. To identify the characteristics of the dynamic whānau hapū and iwi structures relevant to the Treaty settlement process, with particular reference to the Mokomoko whānau and the Whakatōhea Treaty Settlement negotiations.

2. To identify the key political influences which shape the Māori / Crown relationship in relation to the settlement process, using the Whakatōhea negotiations as a case study.
3. To describe the perspectives of a range of Whakatōhea people with regard to the Whakatōhea Treaty Settlement process.
4. To identify the obstacles to reaching settlements and to consider some solutions to the problems of Treaty Settlement negotiation with a view to accommodating the rights of whānau, hapū and iwi.

In achieving these four goals the study has utilised four key research techniques: literature review, hui attendance, key person interviews, and oral history analysis.

2.4 METHODS

2.4.1 Literature Review

The literature was organised under the headings: research methodologies, the nature of whānau, hapū and iwi, Crown settlement policy, Tribunal reports and related material, Whakatōhea Raupatu and the Mokomoko whānau.

Rather than write the literature review up as a separate chapter, the literature has been analysed throughout the thesis under the relevant chapter and section headings. The material on research methodologies appears in this chapter. The literature on whānau, hapū and iwi is in chapter 3 (Whānau-Hapū-Iwi Structure). Crown settlement policy is covered in chapter 4 (Māori and the

Crown). The Tribunal reports and related material are referred to throughout the thesis but more so in chapters 3 and 4. Chapter 5 (The Whakatohea Settlement Negotiations) draws on material concerning the Whakatōhea raupatu and the Mokomoko whānau to provide a background to the claims. Table 2.3 summarises the location of the literature within the thesis.

Table 2.3: Location of Literature

Material	Chapter / Section
Whānau, hapū and iwi	Chapter 3
Crown settlement policy	Chapter 4: section 1
Tribunal reports and related material	Chapter 3 Chapter 4: section 2 , and throughout thesis
Whakatōhea raupatu and the Mokomoko whānau.	Chapter 5: section 1

2.4.2 Hui Attendance

Kanohi kitea (the need to be seen in person) is an important part of the research process involving Māori. It required regular attendance at relevant whānau, hapū, and iwi hui essential to the distillation of key issues and developments, the exchange of ideas and views and the identification of major priorities for the Mokomoko whānau, hapū and iwi of Whakatōhea. Observations made during hui were useful in understanding the interaction between whānau, hapū, iwi, and other groups, points of conflict and concurrence, and decision making protocols. A schedule which summarises hui attendance is included in appendix A.

2.4.3 Interviews

Seven key informants were interviewed to gain their opinions. They included members of the Whakatōhea tribe, Mokomoko whānau, tribal negotiators and Crown negotiators involved in Whakatōhea Treaty Settlement.

Recruitment

Participants were drawn from three pools:

- (i) Mokomoko whānau members,
- (ii) members of Whakatōhea who were not Mokomoko whānau,
- (iii) and Crown representatives involved in the settlement negotiation process.

Participants were selected on the basis of their availability, their involvement in the affairs of the Mokomoko whānau, Whakatōhea iwi and in the settlement process.

Due to the contentious nature of the subject material, one potential participant declined to be interviewed. Another agreed to talk to the researcher but declined having the conversation recorded and would not allow any disclosed information to be quoted. In total seven of the nine people approached agreed to be interviewed and gave consent for interview material to be used in the thesis.

A deliberate effort was made to gain a balance of opinions on the issues involving settlement. Of the seven interviewed, two were Mokomoko whānau members, two were current Trust Board members, two were members of Te Tawharau o Te Whakatōhea, three were previously members of the Whakatōhea Raupatu Negotiation Committee, and one was a Crown negotiator. None of the aforementioned categories are mutually exclusive. One of the Mokomoko whānau members interviewed was also a member of Te Tawharau. The two trust board members were also on the raupatu committee. Together the participants provide a reasonable sample of a wide range of individual opinions of settlement issues.

Procedures Involving Participants

All participants were sent an overview of the research aims and interview format and advised that participants for the project would be recruited in the near future. They were then contacted by telephone to further explain the project and an invitation to meet with the researcher for an interview was extended. If the participant agreed to an interview then at the meeting the study was explained in greater detail, and an information sheet and a written consent form (see appendices B and C) were presented.

Each participant was then formally interviewed at a convenient place and time. Interviews were between one and two hours long to generate an optimum amount of data without being too intrusive. Interviews followed an unstructured interview format. The interview schedule (see appendix D) focused on the understandings (of the participants) about Whakatōhea tribal structures, the Mokomoko whānau claim, the Whakatōhea Deed of Settlement, Leadership

and Mandate issues, the Māori / Crown relationship and Crown structures. Subject to consent, interviews were audio tape recorded. A transcribed copy of each participants own audio taped interview was returned for information and to provide an opportunity for feedback on the transcript, the interview or any other part of the research process. At the conclusion of the study, respondents were sent a summary report of the overall findings and conclusions.

All participants were informed verbally and in written form (see consent form) of the right to decline taking part in the study, the right to withdraw from participating at any time and the right to decline from answering any questions they consider to be inappropriate or sensitive.

If participants chose to withdraw they had the right to the information they have given up to the point of that withdrawal. In fact none of the participants withdrew.

Interview Schedule

The interviews were unstructured or semi-structured, a technique preferred by researchers seeking to empower participants because it allows for greater opportunity for clarification and discussion.³⁹ Rather than specific yes / no type questions designed to generate data for quantitative analysis, the unstructured interview was based on open-ended questions intended to generate interpretive accounts. A number of open-ended questions were presented to the participants based on four themes: Whakatōhea entities - their forms and functions within the settlement context; leadership issues for Whakatōhea; the relationship between

³⁹ Reinharz, (1992) *Feminist Methods in Social Research*, Oxford University Press: New York, p.18

Whakatōhea and the Crown with respect to treaty settlement; and the Crown's proposed Deed of Settlement (see appendix D for the interview schedule).

2.5 CONSENT

Informed Consent.

The issues to be researched were contentious and the researcher could have been seen to be the advocate of a particular viewpoint. To minimise this risk, consent from whānau and iwi - as well as individual respondents - was sought and a degree of objectivity maintained by ensuring that a range of perspectives was heard.

There are three levels of consent relevant to this study:

- (i) The individual consent of the participants formally interviewed.

For the purposes of this study "individual informed consent" refers to the consent of participants who were fully aware of what was required from them should they have chosen to participate, their rights during the interview and what was to be done with the information they generated. Written informed consent was sought from all participants personally before formal interviews began. However, had it been the wish of one or more of the participants to take part in the project on the basis of verbal consent (none did), the researcher would have recorded the date of that consent on the consent form (see consent form appendix C). This provision is an appreciation of the Māori convention that oral consent is as valid as written consent.

(ii) The group consent of the Mokomoko whānau.

Initially many kaumātua had already verbally expressed their support through personal communications. The researcher then attended a Mokomoko whānau hui (22 Feb 1998 at Opotiki) to present a summary of the proposed research and requested a further acknowledgment of support from the whānau hui. In the event, the study was strongly supported by the whānau. However, had whānau support not been forthcoming the study could not have proceeded.

(iii) The group consent of Whakatōhea.

A letter was sent to the Whakatōhea Trust Board containing a summary of the research and personal contact was then made with the Board secretary to arrange a time to make a presentation to the Board and request a formal expression of support.⁴⁰ Following the presentation at a full Trust Board meeting on Saturday the 21st of February 1998, Ranginui Walker moved a motion that the board support the study and the motion was passed by a unanimous vote. Had this iwi consent not been forthcoming the study would not have been able to proceed.

2.6 CONFIDENTIALITY

Due to the potentially controversial nature of much of the material, it was agreed that the participants should remain anonymous. Any information which may have led to the identification of the participants was excluded from the analysis

⁴⁰ Whakatohea Trust Board meeting, Whakatohea Trust Board Building, Opotiki, Saturday 21 February 1998

and final report. All raw data generated from interviews were confidential and were only used by the researcher in the study analysis and for publication purposes. Where consent for tape recording interviews had been obtained, respondents were advised that the recording would cease at any time during the interview if they so wished.

Because some respondents may not have wished other whānau / iwi members to know their personal views, every effort was made to avoid embarrassment to the participants and / or their families in the analysis and final report.

Information generated during the research took three forms: hand written notes, audio taped interviews and transcripts, analysis of the material and the final thesis. Throughout the course of the study all information was held in locked storage. Only the researcher, and supervisors had access to the information. Where information was to be excluded on grounds of confidentiality from the analysis and final thesis (as indicated by the participants) only the researcher had access.

The participants names were replaced with letters to protect their identities. Participants A, E and F were all former negotiators for Whakatōhea. Participant B was a representative of the Crown. Participant D was a Mokomoko whānau member. Participant G was a member of Te Tawharau o Te Whakatōhea.⁴¹ And participant C was both a member of Mokomoko whānau and Te Tawharau.

⁴¹ A political lobby group of Whakatōhea descendants

2.7 ANALYSIS AND WRITING UP

Oral history analysis was applied to the interview data similar to the method used by Huia Jahnke and adapted from Sue Middleton's analysis of the life histories of a group of feminist educators.⁴² Once the interviews were transcribed they were analysed in two stages. First, I read through each transcript penciling into the margin common themes as they emerged from the discourse. I analysed the data gathered through hui attendance in the same way. Then all the themes were organised into four colour coded categories. Second, copies of the transcripts and hui notes were cut according to the colour coded categories. Several times there were sections of the texts coded with more than one colour. These were photocopied as the need arose and stapled to the appropriate file. There was a file for every category. Each category formed the theme of a section of the analysis in chapter 5.

2.8 CONCLUSION

This chapter has outlined a qualitative methodology which embraces principles of kaupapa Māori including mana, tapu, and māramatanga. The methodology adopts a three dimensional framework for kaupapa māori research by Māori, for Māori, and with Māori. The framework has been applied to develop an understanding of the Treaty settlement process, in particular the whānau, hapū and iwi experience of the process, Crown policy, and the interaction between Māori and the Crown. Chapter 3 will consider the iwi / hapū / whānau structure and chapter 4 will examine the relationship between Māori and the Crown.

⁴² See Tomlins-Jahnke, H., (1996), p. 55, see also Middleton, Sue, (1988) *Researching Feminist Educational Life Histories*, in *Women and Education in Aoteroa*, Allen & Unwin, Wellington, pp. 134 - 136

CHAPTER 3

IWI-HAPŪ-WHĀNAU STRUCTURE

Iwi, hapū, and whānau are the cornerstones of Māori societal organisation, they represent categories of bi-lateral descent (i.e. from a male or female) groups. Waka (ancestral canoe), in the context of kinship, is a broader term which refers to a set of ancestors (usually kin) who were the first migrants believed to have arrived in Aotearoa (New Zealand) on the same vessel, and all of their descendants. The writer of this thesis for example is descended from the Mataatua waka. However, this chapter will focus on the narrower terms iwi, hapū and whānau, as these three provide the basis on which Māori form corporate groups to attend to the business of Māori development and Treaty settlement negotiation.

The word 'iwi' means bones or people, 'hapū' means pregnancy, and 'whānau' is to give birth.⁴³ These terms emphasise the importance of whakapapa (genealogical connection) to Māori social structure and follow a logical sequence of people, pregnancy and birth.⁴⁴ The 'iwi' being considered the largest grouping, the 'hapū', an intermediate grouping, and the 'whānau' being the smallest unit. While the root principle of the iwi-hapū-whānau structure is descent from a common ancestor, commonly held values, practices and customs, a tradition of political alliance at particular times, and a collective interest in ancestral lands and resources are important to the cohesion and ultimate survival of these groups. A comprehensive study of the iwi-hapū-whānau structure would need to take into account the dynamic nature of Māori society, as

⁴³ Buck, Sir Peter (1987) *The Coming of the Māori*, p. 333

⁴⁴ Metge, Joan (1995) *New Growth From Old: The Whānau in the Modern World*, p.37

contemporary studies have shown that the meanings of the terms 'iwi', 'hapū' and 'whānau' vary according to time and place, and the cultural and theoretical background of those who provide and record information.⁴⁵ This chapter will focus the discussion on contemporary features of the iwi-hapū-whānau structure, particularly those relevant to Treaty settlement negotiation - membership, leadership and representation, mandate, and values. However, to illustrate these contemporary features, consideration will first be given to a 'classic' (pre European contact) model of the iwi-hapū-whānau and the theoretical basis of the written sources through which this model has been constructed. Finally, some implications, of the contemporary features of iwi-hapū-whānau structure, for the Treaty settlement process will be considered.

MODELLING THE 'CLASSIC' IWI, HAPŪ, AND WHĀNAU

Early models of Māori social organisation are based on the work of Elsdon Best (a pākehā and an early New Zealand ethnologist), Sir Peter Buck (a Māori physician and a self-taught anthropologist), and Raymond Firth (also pākehā and an economist and anthropologist). While their accounts of the forms and functions of the 'classic'⁴⁶ or 18th century iwi, hapū, and whānau provided a wealth of information, underpinning their work are the assumptions that Māori society was static, and that the whānau, hapū and iwi structure was hierarchical and segmented.

⁴⁵ See Metge, Joan (1995) *New Growth From Old: The Whānau in the Modern World*, chapter 2, see also Ballara, Angela (1998) *Iwi*, chapters 1 & 2

⁴⁶ Following a precedent set by Joan Metge (1995), pp. 35 - 36 I use the term classic to refer to the late 18th early 19th century, before European contact had a major effect on Māori society. This leave the term traditional free to be applied to patterns of social organisation handed down from generation to generation.

The following contribution from Best describes whānau and hapū as segments or categories and sub-categories of iwi:

The tribal organization of the Māori included three different groups - the tribe (*iwi*), the clan (*hapū*), and the family group (*whānau*). True family as we know it, did not exist among the Māori. The clan or subtribe was composed of a number of family groups and the sum of the clans (*hapū*) formed the tribe.⁴⁷

Buck's account also suggests a segmented view of the iwi-hapū-whānau structure:

The smallest social unit is the biological family, which the Māori termed *whanau*, derived from *whanau*, to give birth. With each generation the numbers of families increased and reached such numbers that the restricted term of *whanau* could no longer be applied to the group. The term *hapu* (pregnancy) was used to denote this expanded family group for it expressed the idea of birth from common ancestors and thus stressed the blood tie which united the families for the purpose of co-operation . . . the original *hapu* expanded into a number of *hapu*, but, as as numbers were important in the frequent wars . . . the *hapu* still recognised their common blood decent . . . The term *iwi* (bone) was brought into current use to include all the *hapu* descended from common ancestors . . . Some sub-tribes remained restricted in numbers or even disappeared through ill fortune in war and other sub-tribes expanded so much that they assumed the status of a tribe and split into subtribes. Hence the decendants of an original pair of ancestors became, in time, grouped into a number of tribes, each with it's own sub-tribes.⁴⁸

⁴⁷ Best, Elsdon (1924) *The Māori as he was*, p. 96

⁴⁸ Buck, Sir Peter (1987) *The Coming of the Māori*, pp. 333 - 334

Buck accounts for the disappearance of established hapū and iwi and the appearance of new hapū and iwi as the consequence of misfortune in war and the expansion of numbers with each succeeding generation. His use of the words 'current use' when talking about the meaning of iwi as tribe suggest he doesn't think the word had a static meaning.

Firth, coming at the issue from an economic perspective saw the dwelling hut as the centerpiece for understanding Māori social structure. He observed the self-reliant nature of whānau and hapū and the importance of blood ties to Māori society.

The concrete point of focus, of which a number in aggregation formed the village, was the dwelling hut, occupied by a specific group of people. . . Such a group was called a *whanau*. The *whanau* was a social unit of the utmost importance. It had great cohesion, since its members were few and ranged only through three or four generations and were bound together by the closest ties of kinship. . . The *whanau* functioned as the unit for ordinary social and economic affairs . . . each whanau was fairly self reliant . . . as a rule it managed its own affairs without interference, except in such cases which came within the sphere of village or tribal policy.⁴⁹

Twentieth century scholarship has challenged some of the previously accepted work of Best, Buck and Firth not by questioning the integrity of their observations, but by questioning some of the underlying assumptions which characterised tribal society as segmented, hierarchical and static.⁵⁰ Angela Ballara, for example, in discussing the evolving discourse on classic Māori society

⁴⁹ Firth, Raymond(1959) *Economics of the New Zealand Māori*, pp. 110 - 111

⁵⁰ See Best, Elsdon (1924) *The Māori as he was*, p. 96, see also Howe, K.R. cited in Ballara, Angella(1998) *Iwi*, p. 19

said that some writers had assumed that tribes were functioning political units from soon after the lifetime of the eponymous ancestor until the present day:

From the mid 19th century it was commonly believed that any tribe existing then had been a political unit occupying and defending a continuous territory inside a known tribal boundary. A tribe's people were believed to be divided into segmented sections or sub-groups (hapū), known in English as 'sub-tribes', suggesting a hierarchical and structural subordination to the main political unit, the tribe.⁵¹

According to this generally accepted model of iwi-hapū-whānau structure the whānau and hapū were subordinate to the iwi, the hapū were considered the segmented groups which make up the iwi, and in turn whānau were subdivisions of hapū.⁵² This segmented hierarchical model of Māori society, lent credibility to the Pākehā interpretation of the ariki as paramount chief who was thought to have a unilateral power to issue binding decrees upon an entire iwi. Early settlers often found collective Māori ownership frustrating. If iwi was the greatest common denominator then the chief of the iwi (the ariki) was the person to negotiate with to buy land.

However, late twentieth century scholarship has emphasised the role of the hapū as the more effective independent corporate grouping.⁵³ Given the abundance of evidence of inter tribal warfare, and hapū based co-operation in peace time enterprise, and given the apparent lack of evidence to show how iwi functioned as a corporate body (except on rare occasions like tribal war or large scale

⁵¹ Ballara, Angela (1998) *Iwi*, p.18

⁵² *ibid*, p. 20

⁵³ Crocker, Therese (1993) *Iwi or Hapū?*, p. 4, see also Ballara, Angela (1998) *Iwi*, p. 19

festivity), the classic hapū has come to be increasingly recognised as the military, daily and corporate identity and the classic iwi as an ideological, territorial and political entity.⁵⁴ The revised understanding of hapū as self reliant and independent raised questions about the assumptions of a hierarchical iwi-hapū-whānau structure with the ariki at the apex. Tribal hierarchy and the role of the ariki is further discussed below (Leadership and Representation).

In her study of modern whānau, Joan Metge devised a model of what she termed the 'classic' (or late eighteenth century) whānau based upon the points of convergence of accounts from Best, Firth, and Buck. Her model included four criteria of the 'classic' whānau:

- A family group usually comprising three generations: an older man and his wife, some or all of their descendants and in-married spouses, or some variant (such as several brothers with their wives and families) representing a stage in a domestic cycle.
- A domestic group occupying a common set of buildings (sleeping house or houses, cookhouse and storage stages) standing alone or occupying a defined sub-division of a village.
- A social and economic unit responsible for the management of daily domestic life, production and consumption.
- The lowest tier in a three-tiered system of socio-political groups defined by descent from common ancestors traced through links with both sexes, the middle tier consisting of hapū and the highest of iwi.⁵⁵

⁵⁴ Crocker, Therese (1993) *Iwi or Hapū?*, p. 4

⁵⁵ Metge, Joan (1995) *New Growth From Old: The Whānau in the Modern World*, p.35

The two most relevant points to this discourse are the first and the third. The first point raises the issue of membership. According to Metge, defining whānau as descent groups, and including non-descendants as members is problematic.⁵⁶ How Metge resolves the apparent tension surrounding whānau membership and non-descent members is outlined in detail in the section on modern iwi, hapū and whānau membership. Essentially, she says that when Māori use the word 'whānau' it takes on different meanings depending on the context. The appropriate meaning is usually obvious to others who are familiar with Māori cultural contexts, but may not be so obvious to those who are not. Metge's third criteria also describes the primary function of the classic whānau as a social and economic unit responsible for food production (cultivation, hunting, fishing, and gathering) and the management of daily life (child care, education, and healthcare).

In keeping with the notion of segmentation based on lines of descent, an important feature of early models of the iwi-hapū-whānau is Sir Peter Buck's description of the way this structure regenerated itself: whānau might expand until big enough to be considered hapū, and hapū expand still further into a number of hapū and eventually become an iwi.⁵⁷ On the other hand, Erik Schwimmer's article on hapū raised questions about Buck's generally accepted account of development through expansion. Schwimmer postulated that hapū developed, not just through expansion, but through a process of fusions and fissions with other hapū. He concluded that 'There may be some interest in a model of hapū membership that starts from a nucleus of local residents linked by descent to a common ancestor, but which admits in addition some other

⁵⁶ *ibid*, p. 37

⁵⁷ Buck, Sir Peter (1987) *The Coming of the Māori*, pp. 334 - 335

specifiable classes of associates'.⁵⁸ Joan Metges' model for whānau membership (below) provides a solution to the question: how do non-descendants fit into a descent based social structure?

The theoretical basis of Best, Firth and Buck's model originates in the British 'structuralist' school of anthropological thought which aims to explain social groups by revealing their inner structure (as opposed to the 'functionalist' school which seeks to explain social groups by examining their function).⁵⁹ In her discussion of the theoretical background to anthropological studies of tribal societies, Angela Ballara wrote that structuralists 'had a tendency to regard social structure (the ideal plan of relationships within the polity) as the same thing as social organisation (the way society actually organised its affairs)'.⁶⁰

This distinction between the 'ideal' and the 'actual' is a significant one. Both Metge and Ballara have emphasised the distinction by referring to Roger M. Keesings work, which elucidates the difference between the 'cultural category' (a set of persons conceptually grouped for a cultural purpose) and the corporate group (a set of actual human beings who act together as if a single legal entity to hold or defend a territory through war, treaties and contracts, or to exploit their resources through collective labour).⁶¹

Membership

If this distinction is applied to Māori social relationships, a more fluid understanding of iwi, hapū, and whānau becomes clearer. Iwi, hapū and

⁵⁸ Schwimmer, Erik (1990) The Māori Hapū: a Generative Model, in *JPS* 99(3) 1990, p. 299

⁵⁹ Ballara, Angela (1998) *Iwi*, pp. 25 - 26

⁶⁰ *ibid*, p. 26

⁶¹ Metge, Joan (1995) *New Growth From Old: The Whānau in the Modern World*, p. 47 and Ballara, Angela (1998) *Iwi*, p. 31

whānau are not exclusive categories of persons forming effective units of Māori society. Whānau members might affiliate to two or more hapū and hapū might affiliate to two or more iwi. The meaning of whānau and hapū membership might also be extended within certain contexts to include non-descendants.

In considering Māori social structure and economic organisation, Firth discussed the possibility of individuals within a hapū who, being the product of a marriage between one parent of stranger hapū A and one parent of resident hapū B, inherit membership rights in both hapū.⁶² This right of membership in the stranger hapū A fades with each generation unless they go back to hapū A from time to time and keep up the connection by residence. As Firth points out 'Kinship is a matter of sociological reality, and is not to be defined simply by rule of theory'.⁶³

Firth also observed that an in-married spouse from stranger hapū A, not being a member of hapū B, had no rights in land or resources although their children would inherit rights through their parent of hapū B.⁶⁴ In effect, while in married spouses generally enjoyed all the duties and privileges of whānau and hapū membership, theirs was a type of restricted membership which did not extend to rights of property or the right to take up leadership positions within the whānau or hapū.⁶⁵ Te Ture Whenua Māori Land Act 1993 seems to have leant towards the classical understanding of hapū and whānau land rights in its provisions for spouses. Section 109(2) of the act allows for the succession of title to Māori freehold land upon death to a spouse, but the spouse can only receive 'an interest for life or until remarriage'.

⁶² Firth, Raymond(1959) Economics of the New Zealand Māori, p. 114

⁶³ *ibid.*

⁶⁴ *ibid.*, p. 125

⁶⁵ Metge (1995), p. 64

Just as a single individual might have had genealogical connections (and potential membership rights) to two or more hapū or whānau, so could a single whānau or hapū have similar connections to two or more iwi.

One example of such a hapū is Ūpokorehe of Whakatōhea. Located on western Whakatōhea territory at Ohiwa, although now usually considered a hapū of Whakatōhea, this hapū have whakapapa connections to Tuhoe, Ngāti Awa and Whakatōhea tribes (as well as origins (which predate Mataatua) with the original tāngata whenua of Ohiwa: Te Hapū Oneone).⁶⁶ Often this type of hapū were strategically positioned, providing a buffer between two (or more) iwi who might otherwise be engaged in bitter boundary disputes. The allegiances of such a hapū could and did shift from time to time depending on the contemporary state of relations with neighbouring hapū. This example illustrates the fluid nature of the classic iwi-hapū-whānau social organisation.

Leadership and Representation

Rangatira was the term applied to people of chiefly status, but the senior ranking rangatira was known as ariki. Primogeniture was highly regarded especially the aho ariki, the consistent line of descent through the first born (ariki could be male or female).⁶⁷ The chief's high birth alone did not assure their mana. The mana of the chief was integrated with the strength of the people. The chief was the

⁶⁶ Whakatohea source, Tuiringa Mokomoko 18 Oct 1998, see also A.C. Lyall(1979) Whakatohea of Opotiki, p. 68

⁶⁷ Firth, p.132 Although Firth has said first born sons were generally preferred for leadership roles Māori oral histories record a number of female ariki who have taken on leadership roles not least of whom two examples would include Princess Te Puea and Te Arikinui Te Atairangiāhau the current Māori Queen both of Tainui.

human symbol of that mana and it could either be enhanced or diminished depending on the successful administration of peaceful enterprise at home and military campaigns abroad.⁶⁸

While Buck and Firth tended to emphasise the 'power' Ariki had over their tribes⁶⁹, Angela Ballara has concluded that although there were chiefs who were paramount in their communities, they were not 'the apex of a structured hierarchy of institutionalised tribal authority'.⁷⁰ Her contention was that Māori developed tribal hierarchies and tribal authority as a response to the advent of Europeans who were buying land and negotiating with Māori in ways that promoted the recognition of paramount chiefs and hierarchical tribes.⁷¹ Ballara concluded that generally early 19th century Māori chiefs (hapū leaders) were 'first amongst equals' and that the role of the 'paramount chief' was to express the wish of the entire tribe or to represent a tribal voice, not to rule over the people.⁷² Ballara produced evidence to demonstrate the ways hapū acted as independent political and economic units in war and peace time.⁷³

Ballara's hypothesis is supported by the fact that the rangatira who signed the treaty did so on behalf of hapū not iwi.⁷⁴ Nor was the term Ariki mentioned in the Declaration of Independence. Rangatira who signed the declaration did so on behalf of 'nga hapu'.⁷⁵

⁶⁸ Buck, p. 346

⁶⁹ *ibid*, see also Firth, p. 132

⁷⁰ Ballara, p. 264

⁷¹ *ibid*, p.279

⁷² *ibid*, p. 265

⁷³ *ibid*, pp. 293 - 295, 325

⁷⁴ Treaty of Waitangi, Māori text in Claudia Orange

⁷⁵ Declaration of Independence, in Claudia Orange

Mandate

Influential chiefs even did not arbitrarily order the people to adopt any course of action . . . They would propose a line of action and the people would discuss it. Some might approve of it and follow him, while others might refuse to do so, in which case he had no power to coerce them'.⁷⁶

Although rangatira were revered and respected by their people, according to Best they had no power to make unilateral and binding decisions which effected the people without their consent. Best also identified the power of public opinion as a 'corrective and preventive power of great utility'.⁷⁷ This suggests a mechanism to make leaders accountable to their people. The key to this mechanism was the interdependent relationship between the chiefs and their followers. Whānau would discuss all matters pertaining to them, whānau would then attend meetings of the hapū to discuss hapū matters and make appropriate arrangements. Finally, all the hapū would meet to discuss and arrange matters concerning iwi.⁷⁸ Of course this was probably the ideal rather than the actual Māori socio-political mandating process. However, what made this mandating process work was the relationship between the chiefs and their people. Unlike the monarchs of old England, who could mobilise an army of full time soldiers at a moments notice to crush an uprising, a chiefs mana rested on the ability of the people to provide on one hand, a collective labour force for production and on the other, a military force for defence or attack. The same people were both the warriors and the gardeners, so if a chief's behavior failed to meet with the

⁷⁶ Best, Elsdon (1924) *The Māori as he was*, p. 98

⁷⁷ Best, Elsdon (1924) *The Māori as he was*, p. 96

⁷⁸ *ibid*, p. 97

approval of the people, Māori individuals, whānau and entire hapū could simply withdraw their support without fear of retribution. An example of a chief who acted without sufficient mandate was Te Teira of Te Atiawa. Part of a minority of Te Atiawa who supported land sale to the Crown, offered to sell 600 acres at Waitara to Governor Thomas Gore Browne in 1859. The sale was vetoed by Wiremu Kingi (the senior chief of Te Atiawa) who represented the anti land selling majority of the tribe. The governor, although aware of Kingi's actions, decided to accept the offer and so began the civil war in Taranaki.⁷⁹

Values

The origins of values which characterised classic Māori society may be traced back to cosmological accounts of creation, the feats of the gods and the fabled accounts of the deeds of the ancestors. Like these stories the values expressed through them have both worldly and ethereal meanings and implications. Of particular significance to Treaty settlement negotiation are mana and utu.

Mana has several meanings. The two of importance here are control and authority⁸⁰, and dignity or honour.⁸¹ The Waitangi Tribunal have said that mana and rangatiratanga are closely related.⁸² The mana of a rangatira is connected to the mana of the people they represent. The greater the mana of the whānau, hapū or iwi the greater the political authority of the rangatira, both at home within the tribal rohe and abroad when representing the people at inter iwi gatherings. However, mana has much more personal and spiritual connotations.

⁷⁹ Belich, James (1998) *The New Zealand Wars*, Penguin Books: Auckland, p. 76

⁸⁰ Durie, Mason (1998), p. 2

⁸¹ Ngata, H.M. (1993), p. 97

⁸² Waitangi Tribunal, (1987) Orakei Report, Brooker and Friend Ltd: Wellington, p. 186

While mana was used to describe 'all sovereign power and authority' in the Declaration of Independence, its use was carefully avoided in the Māori version of the Treaty as no chief would ever have consider ceding it.⁸³

Utu is the principle of reciprocity. It includes the need to return warfare, injury, death and damage with comparable evils, as well as the need to return good deeds with acts of kindness. Of particular relevance to treaty settlements, the principle of utu means an appropriate gift can make amends for an injustice suffered.⁸⁴ While these values have been modified over time in response to Pākehā concepts and Christian morality, they remain core principles of iwi-hapū-whānau affairs.

THE MODERN IWI, HAPŪ AND WHĀNAU

The dynamic nature of the iwi-hapū-whānau structure is evident when consideration is given to the nature and extent of transformation this structure has gone through in response to a changing environment. In the 1996 census out of the 579,714 people who said they had some Māori ancestry, 74 % could affiliate to at least one iwi. Only 19 % could not identify an iwi to which they affiliate.⁸⁵ While the form of traditional iwi, hapū and whānau groups has remained (iwi, hapū and whānau are still descent groups forming the basis of Māori social structure), the primary functions of these groups have undergone considerable modification and new forms of 'iwi' and 'whānau' have emerged. Catalysts for

⁸³ *ibid.*

⁸⁴ Metge, Joan (1995) *New Growth From Old: The Whānau in the Modern World*, p. 100

⁸⁵ Statistics New Zealand, (1998) *Iwi Volume 2, 1996 Census of population and dwellings*, Wellington, p. 319

change have included population expansion and environmental change, but the greatest factor has been the impact of European settlement and the introduction of new technology, cultural concepts, religion, literacy, the effects of encountering a people who were ignorant of Māori custom and scornful of their ways, hunger for land, participation in the cash nexus and the philosophy of individualism.

Of particular significance to this study is the shift towards the larger aggregation of iwi. The classic iwi was less corporate entity than territorial and political entity. It provided a basis for alliance between independent corporate hapū in times of peace and war. Today corporate iwi are a reality and have adopted legal identities as trust boards (Māori Trust Boards Act 1955), Runanga (eg. Te Runanga o Ngāti Porou Act 1987) or Incorporated Societies (for example: Te Runanga o Raukawa Inc). Trust boards act as trustees for identified beneficiaries, and manage their collective assets. Runanga provide a body for the governance of iwi, at least as it pertains to social and economic development.

Formation of corporate iwi bodies is, in part, due to Crown policy in dealing with Māori. For example, the appointment of the first Ngai Tahu Trust Board in 1928 was more about the governments need to have a single entity with whom a claim could be negotiated, than the need for South Island iwi to have adequate representation.⁸⁶ However, prior to that, as early as the 1860s, Māori had already made efforts to form their own iwi based corporate bodies known as runanga. Chiefs were attempting to unify independent hapū and arrest the erosion of chiefly authority.⁸⁷ Pan-iwi corporate bodies like Kotahitanga and the

⁸⁶ Ballara (1998), p 316

⁸⁷ Ballara (1998), p. 296

Waikato based Kingitanga were also emerging with common purposes such as the retention of land and the restoration of the authority of the chiefs.⁸⁸

Another more modern example of Crown policy encouraging the formation of corporate iwi bodies is the iwi development movement post 1984 when the 4th labour government began to concentrate its Māori policy on iwi development. This policy development came about for two reasons. First, in recognition of a fact that Māori had always know but successive governments had been slow to realise, that Māori were not one homogenous group who would be likely to think feel and act the same way⁸⁹ and the pan-Māori policies of the past were deficient in this respect. Second, economies of scale made it uneconomic to maintain administrative and representative bodies at the level of hapū or whānau. Government policy began to support tribal development and increasingly iwi were considered the best vehicle for resource allocation and preferred providers of education, health, and welfare.⁹⁰

Corporate hapū continue to function through hapū committees, administering hapū assets, managing rural based hapū marae, and providing a political voice for those iwi members still living in the tribal area and those who are able to return for important hui. Hapū provide the basis for representation on tribal trust boards and runanga.⁹¹ In 1947 half of the Māori applicants to the electoral roll did not state their 'tribe', while only 10% did not state their hapū.⁹² Tribe had become a formal category that they might or might not wish (or be able) to refer

⁸⁸ Walker, Ranginui (1990) *Ka whawhai tonu mātou*, pp. 112, 149

⁸⁹ Rangihau, John (1975) *Being Māori*, in M. King, *Te Ao Hurihuri: The World Moves On*, Hick Smith and Sons, Wellington, pp.221 - 233

⁹⁰ Durie, Mason, (1998) *Te Mana, Te Kāwanatanga*, p. 95

⁹¹ For example, the Whakatohea Trust Board has 14 members: the chair, the secretary (elected by the board) and two representatives from each of the six hapū (elected by their respective hapū).

⁹² Ballara (1998), p. 282

to. On the other hand, hapū had remained a source of identity. In the later 20th century, the effects of urban migration lead to the larger and smaller groupings (iwi and whānau) being more important to urban dwelling Māori, who had become more cut off from rural based hapū.⁹³ Urban marae built during this period were usually iwi, waka or 'ngā hau e whā' (pan-iwi) based. Table 3.1 illustrates the rapid pace of urbanisation which began before World War II.

Table 3.1: Māori Urbanisation⁹⁴

Year	% of Māori Population Urban Dwellers
1945	25%
1966	56%
1976	75%
1981	80%

Between 1945 and 1976 the ratio of rural Māori (mostly living in their own tribal rohe) to urban dwelling Māori (mostly living in someone else's tribal rohe) had reversed itself.

Alienation from traditional iwi-hapū-whānau support structures, exposure to Pākehā cultural ideas and the need to participate in the market economy has lead to some major modifications to the way the words 'whānau' and 'iwi' are understood.

⁹³ ibid.

⁹⁴ Adapted from Metge, p. 22

One such modification is the formation of new kinds of 'whānau' and 'iwi', which are not based on a descent core: 'In this context the model of whānau, that is the values and obligations which underlie whakapapa-based groups, are transported into non-whakapapa-based groups. The term whānau is used to express members' commitment to one another and perhaps to a shared purpose'.⁹⁵ 'Non-whakapapa-based' or kaupapa-based whānau organisations provide educational, cultural and social support services to Māori who have limited or no access to traditional support providers (iwi, hapū and whānau). Te Kohanga Reo and Kura Kaupapa Māori are examples of Māori language, educational and cultural support providers. Urban Māori Authorities (UMAs), for example, Te Whānau a Waipareia Trust, provide support including health, educational, social and corporate services.

The emergence of kaupapa-based whānau, demonstrates the dynamic and diverse nature of Māori society, constantly adapting to a changing environment and the significance of a Māori identity as opposed to a tribal identity. However, it can not be assumed that these kaupapa-based whānau will share the views of iwi and hapū groups. Conflict has arisen between groups representing traditional iwi and those representing urban Māori, the UMAs, over the allocation of fisheries settlement assets, culminating in a High Court action filed by Te Runanga o Te Upoko o Te Ika Association (Inc) & Ors - a group representing UMAs - against the Treaty of Waitangi Fisheries Commission & Ors - a group representing traditional iwi. Following a fisheries settlement between Māori and the Crown in 1992, the Treaty of Waitangi Fisheries Commission (Te Ohu Kaimoana) proposed a tribal-based system for the allocation of resources

⁹⁵ Ratima, Mihi et.al.(1996) Oranga Whānau, p. 8

(even though the settlement had been intended for 'all Māori').⁹⁶ The UMAs sought a wider interpretation of the word 'iwi' as people, so they might be included in any future scheme of asset allocation. Judge Paterson's decision hung on two questions: did the Māori Fisheries Act 1989 (as amended by the Treaty of Waitangi (Fisheries Claims) Settlement Act 1993) require assets held by the Commission to be allocated solely to 'iwi' and / or bodies representing 'iwi'?; and does 'iwi' (in the context of the Act) mean only traditional Māori tribes.⁹⁷ Having considered a wide range of evidence from Māori and non-Māori 'experts' Judge Paterson answered yes to both questions and UMAs were effectively excluded. However, he did say:

'... while the UMAs are not themselves part of the allocation mechanism, many if not all their Māori members are beneficiaries. The challenge for the Commission is to produce a scheme of allocation to 'iwi' which will ensure the benefits are able to be secured by all the beneficiaries of the settlement.'⁹⁸

It is doubtful that the Commission, dominated by tribal representatives will be able to produce such a scheme. The judge also said that based on the evidence:

... if iwi is used in a wider sense of collective persons showing common characteristics and purposes, and being an integral part of the Māori social order, then UMAs are iwi. If iwi requires a whakapapa base then UMAs are not iwi.⁹⁹

⁹⁶ Durie, Mason, (1998) *Te Mana, Te Kāwanatanga*, p. 159

⁹⁷ Facsimilie copy, Reserved Decision of Paterson J, High Court Auckland, 4 August 1998, p. 82

⁹⁸ *ibid.*

⁹⁹ *ibid.*

Iwi, in the context of the Act, meant traditional iwi. However, Justice Paterson had taken note, the word iwi has more than one meaning. In fact it has several. These meanings vary according to the context and the time period where the word appears. His task was to determine which meaning applied to the Act. He justified his conclusion by saying:

... as a general principle the commercial fishing rights which were guaranteed to Māori under the Treaty ... were passed by blood or kinship links from one generation to another. It follows that those entitled to benefit in the Māori fisheries settlement are the successors of those tribes which held the communal fishing rights at the time of the Treaty. This may not have universal application because of some of the changes in Māori society in the interim period but it is the starting point.¹⁰⁰

The last sentence is likely to be a reflection of the Waitangi Tribunals earlier findings in their Te Whānau o Waipareira Report 1998 (Wai 414). According to the Tribunal, where social and welfare services to Māori communities are concerned, the Crown has an obligation to consult with all Māori, tangata whenua and non-tangata whenua (UMAs), whose rangatiratanga is likely to be effected by policies, funding and delivery of these services.¹⁰¹ Rather than adopting the wider sense of the word 'iwi' to include the UMAs, the Tribunal recommended 'iwi' be replaced by 'Māori' in the phrase 'iwi social service provider' (sect 396, Children, Young Persons and Their Families Act 1989), to prevent discrimination against non-tangata whenua providers of social services to Māori.¹⁰²

¹⁰⁰ *ibid.*, p. 70

¹⁰¹ Te Whānau o Waipareira Report, Waitangi Tribunal 1998, GP Publications, Wellington, p. 237

¹⁰² *ibid.*, p. 236

While the High Court and Tribunal findings emerge from two very different contexts, both accept the integral role that these new formations of whānau and iwi (UMAs) play in contemporary Māori social organisation. Urban Māori Authorities function in similar ways to traditional iwi. They are corporate entities who have taken on legal identities, manage assets on behalf of, give a political voice to, and provide social services for Māori beneficiaries, who for whatever reason, have limited or no access to traditional iwi. UMAs are a new feature of Māori social organisation, adding to an ever growing list of meanings for terms like whānau and iwi.

Joan Metge has given ten meanings for whānau and said that more meanings were constantly emerging.¹⁰³ That is the nature of dynamic Māori society. In her study of modern whānau Metge identified some of the major differences between the 18th century whānau Best, Buck and Firth had studied and those whānau studied by functional anthropologists (Winiata, Hohepa, Kawharu and herself) in the 1950s and 1960s:

They were generally larger; they comprise more than one household; they did not function as production units; and their members co-operated not on a daily basis but from time to time and on special occasions. In these respects they were more like the 18th century hapū than the 18th century whānau.¹⁰⁴

Whānau had been integrated into the centralised market economy. Their primary function of collective production for survival had been replaced by the

¹⁰³ Metge, pp. 51 - 56

¹⁰⁴ Metge (1995), p. 40

need to find work individually for income. Opportunities for co-operative activity had become limited. Often individuals or branches of the whānau had to leave home in search of work in the cities. Whānau had been effected by Pākehā ideas and laws about family life and housing, and the appropriate number of occupants in a household.

Membership

In discussing contemporary whānau membership, Metge described a difference in definitions of whānau membership between older and younger people she interviewed. Older respondents tended to regard only the descendants of one grand parent, their children and grandchildren, and not the in-married spouses or adopted children, as true whānau members. They defined the whānau as a descent group. Younger respondents, on the other hand, more often included spouses and adopted children as whānau members in addition to the descendants. To them whānau was an extended family.¹⁰⁵ Metge felt that to make the distinction between the whānau descent group and the extended family whānau was important because:

Under certain circumstances and for certain purposes they (Māori) identify one person as foundation ancestor, recognise only his or her descendants as 'real' or 'full' members of the whānau and restrict (or try to restrict) key roles as front persons for the whānau to these descendants, explicitly excluding the spouses or adopted children who do not share that descent.¹⁰⁶

¹⁰⁵ *ibid.*, p. 63

¹⁰⁶ *ibid.*, p. 64

Making the distinction was important because Māori make it. Restriction of the rights or membership of non-descendants is a traditional practice reflecting the belief that outsiders derive their primary rights from their own whānau group. However, rather than prioritise one definition of whānau over the other, Metge preferred to hold the two meanings in tension. One taking precedence over the other depending on the issue. Whānau as a descent group comes to the fore when the issue is group property deriving from and ancestors, representation, and hapū or iwi relations. Whānau as extended family is to be emphasised when the issue is mutual support, child raising, and hui organisation.

The distinction between descendant and non-descendant membership and rights is an important and sometimes controversial issue for modern hapū. At the annual general meeting of Ngai Tama hapū (of Whakatōhea), 5 April 1998, one of the key items on the agenda was the election of trustees to administer land holdings collectively held by the hapū. A debate ensued between two groups of hapū members. One group argued that non-Whakatōhea in-married spouses should have the right to vote in the elections, the other group against. Those in favour of in-married spouses having the right to vote eventually won and the spouses were given the right to vote in the election. Whether this decision demonstrates a movement towards the opening up of whānau, hapū, and iwi group membership rights, remains to be seen.

Iwi membership, and in particular beneficiary rights to iwi assets, are much more jealously guarded. To be a recognised beneficiary of a tribal group, individual iwi members must be registered with tribal trusts or runanga. In-married spouses and adopted children often participate fully in tribal and hapū life (it is not unheard of for them to take on roles of responsibility such as secretaries or

treasurers of hapū-based marae committee). However, and notwithstanding that iwi registration lists are generally incomplete and often compiled with a broad yard stick, registration sometimes requires a proof of whakapapa descent from an ancestor who is a tribal member (usually two or three generations back). Thus in-married spouses and adopted children rights of membership may be limited.

Leadership and Representation

As discussed above, contemporary hapū continue to provide the basis for tribal representation (through trust boards and runanga, and more recently through quasi negotiating committees set up to negotiate the settlement of claims with the Crown), while individual hapū committees continue to manage hapū marae and collective assets. While the authority of traditional chiefs has been diminished¹⁰⁷, tribal organisation has survived through the efforts of whānau who have stayed in the tribal rohe (district) and maintained an interest in the preservation of tribal lands, history, language and culture. On the other hand, urban dwelling Māori, many of whom have become isolated from iwi and hapū over time, have sought to have their concerns represented through UMAs. Urban Māori are not the only ones who have felt isolated from iwi and hapū representative groups. Like the classic hapū and iwi, many modern hapū and iwi representative groups continue to be dominated by elderly males¹⁰⁸ (not unlike non-Māori representative groups, for example: city and district councils). Modern New Zealand society has a greater emphasis on equality between males and females and the need to

¹⁰⁷ Kawharu, I.H. () Rangatiratanga and Sovereignty, p. 12

¹⁰⁸ Department of Communication, Presbyterian Church of Aotearoa (1994) *Te Wero!: Foundation Documents Challenge Government Policies*, p. 11

represent the concerns of its youthful members. Consequently, many female and youthful tribal and hapū members feel alienated from their representative bodies. Disenchanted Tribal members have set up their own bodies which are often in conflict with traditional hapū and iwi representation. Negotiation of settlements at the iwi level, while preferred by the Crown, can often be problematic when individual whānau and hapū feel they have claims which are quite distinct from the rest of the iwi and only they have the right to negotiate the settlement of those claims.

Groups which have raised concerns in this context have included whānau groups (for example: the Mokomoko whānau), hapū groups (Ngati Ira for example), iwi groups (eg. Te Tawharau o Te Whakatōhea) and even pan-tribal groups (eg. Kohuiarau).

Mandate

Mandate and accountability of iwi and hapū representative groups are problematic issues. Iwi representatives to tribal trust boards are usually elected (or in some cases selected) at the hapū level during hapū hui, to represent the hapū on iwi trust boards or runanga. Elections are held once every three years and unlike their predecessors (the chiefs of the classic period) hapū and iwi representatives are not subject to the same type of interdependent relationship with the people. They no longer require the demonstrated support of the people in order to continue to function as representatives, at least not until the next round of elections. However, hapū are consulted and required to give directions to iwi representatives on issues concerning the iwi (e.g. whether or not to accept a settlement offer). Most if not all of these hapū consultation rounds are held in the tribal rohe at hapū marae and this is a problem for hapū members living out

of the district. Major decisions may also be made at hui-a-iwi (tribal hui), also difficult for members living away from the rohe. Alternatively, postal ballots sent out to all registered tribal members give a more accurate reflection of the will of the people. However, it is difficult for those who live outside the rohe and are unable to attend key hui, to make informed decisions by postal ballot.

Tribal trust boards set up under the Trust Boards Act 1956 often come under criticism, usually from younger tribal members, as they are ultimately accountable not to iwi or hapū but to the Minister of Māori Affairs, an agent of the Crown. Recently some trust boards (especially those preparing to accept settlement quantum, e.g. Kai Tahu and Tainui) have reconstituted themselves as runanga with their own legal identities. These newly formed Runanga are no longer accountable to the Crown (and no longer protected from legal liability by the Crown) and they are subject to less restrictions on how they may invest, dispose of or otherwise exploit their resources. Another bone of contention for Māori on the tino rangatiratanga trail is that only the Māori Land Court, another Crown appendage, can ratify the mandate of tribal representatives chosen by hapū to negotiate the settlement of Treaty of Waitangi claims.¹⁰⁹

Values

The values of mana and utu are discussed above (at the end of the section on modelling the classic iwi, hapū, and whānau). Two meanings given for mana were control and authority, and dignity or honour. Treaty settlement negotiation, and the broader objective of Māori development, are all about mana Māori or the ability for Māori to exercise control and authority over their own

¹⁰⁹ Mandate is further discussed in chapter 4.

affairs. For the Crown, the second meaning of mana is of primary importance. Having accepted that they have committed wrongful acts against Māori, including invading their homes and confiscating and alienating their lands through judicial means, the Crown are now concerned with making amends and therefore restoring the dignity and the honour of the Crown.

For Māori utu is the correct mechanism through which amends can be made for an injustice suffered. Utu allows for the transgressor to give a gift or for two parties to come together and make mutually beneficial arrangements to recognise mana Māori and restore the honour of the Crown.

Mana and utu will be further examined within the context of the Whakatōhea Treaty settlement negotiation in chapter 4.

Table 3.2 compares some of the features of the classic and contemporary models of iwi hapū and whānau.

Table 3.2: Classic and Contemporary Models of Iwi, Hapū and Whānau

	Classic Model		Contemporary Model	
	Form	Function	Form	Function
Whānau	3 - 4 generations occupying same dwelling or small group of dwellings	Small scale food production Child rearing	Dispersed subsets of solo parent + children or two parent + children households	Income generation Child rearing
Hapū	Cluster of related whānau occupying traditional hapū territory	Large scale economic production and military operations	Cultural category - all the members of a cluster of related whānau linked by descent to a common ancestor	Vehicle for political identity, unity and action Forum for whānau and individual concerns Consultation for tribal affairs Administration of collective hapū assets
Iwi	Cultural category - all members of related hapū descended from a common ancestor and usually occupying traditional tribal territory	Vehicle for the political unification of related hapū in times of need	Cultural category Corporate grouping	Vehicle for unification Administration of tribal assets Governments preferred vehicle for negotiation and allocation of resources

CONCLUSION

Māori society is dynamic, fluid, and simultaneously hierarchical and democratic. Over time traditional iwi, hapū and whānau corporate groups have developed in response to changing needs. Perhaps the most significant change has been the

shift from the independence of whānau and hapū towards the larger aggregation of iwi. This shift occurred at the expense of whānau and hapū rangatiratanga. Also, new forms of kaupapa-based 'whānau' and 'iwi' have emerged within a new urban environment of isolation from traditional whakapapa-based groups.

While the two terms hierarchical and democratic seem juxtaposed, this review has shown that iwi, hapū and whānau show respect for chiefly authority (given certain conditions), but the power of the people to choose their own course and to form their own corporate groups to get there should not be underestimated.

Actual practice will vary from place to place, as will acceptable situations for Treaty claims. The various groups within Whakatōhea have yet to reach a consensus on the correct pathway to settlement, if a consensus is attainable. However, the primary function of all groups remains the advancement of their members, as well as their collective advancement, and Treaty settlement negotiation is a small but significant part of that function. There is evidence to suggest that some tribal representative bodies have conducted treaty settlement negotiations in a way that alienated several groups of beneficiaries, the most significant ones being hapū and whānau. Chapter 4 will examine the relationship between the Crown and iwi, hapū and whānau. Chapter 5 will consider the Whakatōhea settlement negotiation as a case study. Finally chapter 6 will draw conclusions about the settlement process and consider some ways it might be improved.

CHAPTER 4

MĀORI AND THE CROWN

The Treaty of Waitangi is central to the relationship between Māori and the Crown. It set the conditions for the coexistence of rangatiratanga (the authority of the chiefs) and Crown sovereignty. Four key themes which illustrate the Māori / Crown relationship will provide the focus for this chapter. They are: the historical relationship based on the Treaty; Treaty principles as they have been developed by the courts, the Waitangi Tribunal, and successive governments; current Treaty settlement policy; and the need for a comprehensive Treaty policy for the further development of the nation.

The Declaration of Independence was signed by 34 Northland chiefs in 1835 at a meeting called by the British Resident James Busby. At the time Māori and the British Crown were no strangers. Some seventy years had passed since Cook's first voyages of 'discovery' and British naval and commercial vessels had begun exploiting the country's resources prior to 1800.¹¹⁰ Because many Māori people thought of Britain as the most powerful nation in the world, they were persuaded, by Busby, without too much difficulty to sign the Declaration asking, among other things, for King William the IV 'to be the parent of their infant state'.¹¹¹

Although the declaration was initially only signed by some northern chiefs it is significant for three reasons. First, it was a statement of the rangatiratanga of the

¹¹⁰ Orange, Claudia, (1990) *The Treaty of Waitangi*, p. 6

¹¹¹ *ibid*, p. 21

tangata whenua (indigenous people) over their country, declaring Nu Tirene (New Zealand) independent.

‘KO MATOU, ko nga tino Rangatira o nga iwi o NU TIRENE i raro mai o Haurake, . . . Ka whakaputa i te rangatiratanga o to matou wenua; a ka meatia ka whakaputaia e matou he wenua rangatira. . . .’ (English version: ‘We the hereditary chiefs and heads of the tribes of the Northern parts of New Zealand . . . declare the independence of our country, which is hereby constituted and declared to be an independent state. . .’).¹¹²

And declaring their mana over the newly constituted state, to the exclusion of foreign powers.

Ko te Kingitanga, ko te mana i te wenua o te whakaminenga o Nu Tirene, ka meatia nei kei nga tino rangatira anake i to matou huihuinga; a ka mea hoki e kore e tukua e matou te whakarite ture ki tetahi hunga ke atu, me tetahi Kawanatanga hoki kia meatia i te wenua o te wakaminenga o Nu Tirene, ko nga tangata anake e meatia nei e matou, e wakarite ana ki te ritenga o o matou ture e meatia nei e matou i to matou huihuinga. (All sovereign power and authority within the territories of the United Tribes of New Zealand is hereby declared to reside entirely and exclusively in the hereditary chiefs and heads of tribes in their collective capacity, who also declare that they will not permit any legislative authority separate from themselves in their collective capacity to exist, nor any function of government to be exercised within the said territories, unless by persons appointed by them, and acting under the authority of laws regularly enacted by them in Congress assembled).¹¹³

¹¹² The Declaration of Independence, clause 1

¹¹³ The Declaration of Independence, clause 2

Second, it established a Confederation of chiefs (on paper at least) as a move towards the unification of independent hapū into a single Māori nation or single body politic. Third, of particular significance, in recognising the Declaration, the British Crown had acknowledged that the tangata whenua were the sovereign people of New Zealand. Māori sovereignty would need to be 'qualified or nullified' if the British were to intervene in Aotearoa / New Zealand.¹¹⁴

So the Declaration set the conditions for the New Zealand to enter the modern world as a Māori nation state.

However, despite the initial British reluctance to become involved in the government of Niu Tirene, by early 1838, the Colonial Office received three significant documents prompting a decisive British response. First, a report from William Hobson (then the commander of the British Warship HMS Rattlesnake, sent to New Zealand to protect British settlers when tribal fighting began in the Bay of Islands in 1837). Hobson's report recommended that 'factories' be established under British jurisdiction. These could be confirmed by treaties with the chiefs and could provide protection for British settlers in times of war and restraint of frontier lawlessness (amongst British nationals).¹¹⁵ Second, Busby's report which contained exaggerated descriptions of the 'miserable' state of the Māori people due in part to European impact. Busby appealed for a humanitarian intervention and recommended a British protectorate with the Crown administering affairs in trust for all inhabitants.¹¹⁶ Third, a petition inspired by the CMS and supported by the Wesleyan missionary society was

¹¹⁴ Orange, Claudia, (1987), p. 21

¹¹⁵ *ibid.*, p. 24

¹¹⁶ *ibid.*, p. 25

signed by over 200 British settlers. The petition expressed concern over the apparent usurpation of power in New Zealand by the frenchman Baron de Theirry and sought British intervention.¹¹⁷ By late 1838 the Colonial Office policy on intervention in New Zealand had changed. Motivated by a desire to protect and control their own subjects, to protect Māori interests, and to secure a strategic advantage in New Zealand over other foreign powers, annexation became the objective.

First signed on the 5th of February 1840 at Busby's residence in Waitangi, the Treaty was hastily drawn up the day before, first in English, by William Hobson (the Lieutenant Governor) and Busby, then just as hastily translated into Māori that same day by William Williams and his son Edward.¹¹⁸ Both versions have a preamble, three articles and a postscript.

The preamble provides some important clues as to the need for protection of Māori interests. In the first article of the English version Māori ceded sovereignty to the Crown, but in the Māori version only 'kāwanatanga' or governorship is ceded to the Crown.¹¹⁹

The second article (English version) includes the guarantee to Māori of

...the full, exclusive, and undisturbed possession of their Lands and Estates, Forests, Fisheries and other properties which they may collectively or individually possess, so long as it is their wish and desire to retain the same in their possession.¹²⁰

¹¹⁷ *ibid.*, p. 23-24

¹¹⁸ *ibid.*, pp. 37 - 39

¹¹⁹ see article 1 Māori and English versions

¹²⁰ Treaty of Waitangi, article 2, English version

The Māori version of the second article extends that guarantee to include ‘te tino Rangatiratanga o o ratou wenua o ratou kainga me o ratou taonga katoa’.¹²¹ This phrase has been translated by Sir Hugh Kawharu as ‘the unqualified exercise of their chieftainship over their lands over their villages over their treasures all’.¹²² ‘Tino rangatiratanga’ (‘the unqualified exercise of their chieftainship’) is much more powerful than mere possession. It meant to the chiefs complete control according to Māori custom. While the English version guaranteed rights to material possessions, the use of the word ‘taonga’ in the Māori vernacular refers to valuables both tangible and intangible (for example, language, forms of knowledge, customs and so on). The second part of the second article is the Crown’s pre-emption clause giving the Crown an exclusive right to purchase Māori land. This right of pre-emption conflicts with the first part of the second article (Māori version), the guarantee of ‘unqualified exercise of their chieftainship’. It would not have been understood by Māori as an exclusive right because the term ‘hokonga’ used in the Māori version means to purchase, but implies no exclusive right.¹²³ Furthermore, pre-emption also conflicts with the third article which bestowed upon Māori ‘all the Rights and Privileges of British subjects’.¹²⁴ Presumably that would include the right to sell your land to whoever you choose. Table 4.1 summarises the main differences between the provisions of the two versions.

¹²¹ Treaty of Waitangi, ko te tuarua, Māori version

¹²² Kawharu, I.H., (1989) Waitangi, pp. 319 - 320

¹²³ Orange, Claudia, (1987), p. 42

¹²⁴ Treaty of Waitangi, article the third, English version

Table 4.1 Treaty of Waitangi: Differences Between Māori and English Versions

	Māori Version	English Version
Preamble	-	-
Article 1	Tribes cede 'kāwanatanga' or governorship	Tribes cede sovereignty
Article 2	Crown guarantee 'tino rangatiratanga' or exclusive control over all 'taonga' or valuables tangible and intangible	Crown guarantee possession of material properties
	Crown right to purchase	Crown right of pre-emption
Article 3	Māori individuals are promised citizenship rights	Crown bestows 'Rights and Privileges of British Subjects'

Contradictions between articles and inconsistencies between the English and Māori versions continue to cause confusion and conflict over the meaning of the Treaty provisions. In response to the need for clarification, since 1975 some principles underlying the two Treaty versions have been developed by the Waitangi Tribunal, the Courts and the 4th Labour government. These principles have sought to represent the 'wairua' or spirit of the Treaty and to that end they have integrated the meanings of both versions.¹²⁵

The central principle of the Treaty (and the relationship between Māori and Crown) is the exchange of the guarantee of rangatiratanga to Māori for the cession of sovereignty to the Crown. In recent times, attitudes to the question of

¹²⁵ The principles of the treaty are considered in the following section

balance between rangatiratanga and sovereignty have ranged from demands for exclusive 'Māori sovereignty'¹²⁶ to firm assertions of the absolute sovereignty of the Crown.¹²⁷ Between these two extreme positions is the view that the Treaty prescribed the conditions for a parallel power structure united as a single nation state.

In the Turangi Township Report 1995 the Tribunal have said:

It was a basic object of the Treaty that two people would live in one country. That, in our view, is also a principle fundamental to our perception of the Treaty's terms. The Treaty extinguished Māori sovereignty and established that of the Crown. In doing so it substituted a charter or a covenant in Māori eyes for a continuing relationship between the Crown and Māori people, based upon their pledges to one another. It is this that lays the foundation for the concept of partnership.¹²⁸

The relationship between Māori and the Crown have often been reflected in the attitudes and varying levels of commitment shown towards the Treaty. Initially, when the Treaty was being drawn up, Māori had not been involved. However, the Crown was fully committed to promoting it amongst Māori and so sure of themselves that Hobson declared British sovereignty over Aotearoa and Te Waipounamu on the 21st of May 1840 even before all of the chiefs signatures had been collected in October.¹²⁹ Later, as the reality of alienation of land and the denial of rangatiratanga set in Māori more frequently referred to the Treaty as a

¹²⁶ Awatere, Donna, (198?) *Māori Sovereignty*, Broadsheet

¹²⁷ Scott, Stuart (1995) *Treaty of Waitangi: The Road to Anarchy*, see preface

¹²⁸ Waitangi Tribunal, *Turangi Township Report 1995*, Brookers Ltd: Wellington, p. 289

¹²⁹ Durie, Mason (1998) *Te Mana, Te Kāwanatanga*, p. 177

source of rights. By then the Crown and Courts had become less interested in the Treaty.

In modern times the advent of the Waitangi Tribunal and a number of successful court actions against the Crown have seen a more serious attempt by Treaty partners to understand the mutual obligations they have to one another under the Treaty of Waitangi. Mason Durie has distinguished three chronological phases in the relationship between Māori and the Crown based on their attitudes (and the attitudes of the courts) towards the Treaty. First, 1840 - 1859 is characterised by co-operation and mutual benefit. Second, 1860 - 1974 is dominated by division and disparity. Third, 1975 - 1997 reflects a spirit of negotiation and restitution. The attitudes of the tribes, Parliament and the courts during these phases are summarised in Table 4.2.

Table 4.2: Relationships Between Māori and the Crown concerning the Treaty of Waitangi¹³⁰

	Tribes	Parliament	Courts
1840 - 1859 Co-operation and mutual benefit	Relative indifference to the Treaty did not prevent full participation in the economy.	No specific reference to the Treaty and no Māori MPs. But high levels of interaction with Māori.	Symonds case affirmed the importance of the Treaty and its binding implications on the Crown.
1860 - 1974 Division and disparity	Loss of land and power lead to an increasing emphasis on the Treaty as a source of rights.	Dismissive attitude to the Treaty and to Māori property rights.	Prendergast: 'Treaty is a simple nullity'. Privy Council: the treaty recognisable only if it is in municipal law
1975 - Negotiation and restitution	Treaty the basis for positive Māori development	Variable recognition of relevance of the Treaty to modern New Zealand. Settlement of claims commences.	Support for Treaty when incorporated in the law. Treaty also used as an aid to interpret the law.

Key Court Decisions

In the period from 1840 - 1859 high levels of co-operation and mutual benefit between Māori and Pākehā were enjoyed. During this time there was an initial enthusiasm in the courts to uphold native land rights and Treaty was considered binding on the Crown. The case of *R v Symonds* in 1847 tested the validity of individual settlers to purchases of Māori land when the Crown had secured a right of pre-emption under the Treaty. Justice Chapman found that native land rights were to be upheld and that the treaty itself was simply a declaration of the law the court had applied in making its judgement.

¹³⁰ Durie, Mason (1998), p. 178

... in solemnly guaranteeing the Native title, and in securing what is called the Queen's preemptive right, the Treaty of Waitangi, confirmed by the charter of the Colony, does not assert in doctrine or practice anything new or unsettled.¹³¹

During the period 1860 - 1974, division and disparity were caused by the swelling numbers of British immigrants, their hunger for land, and civil war over land and sovereignty. (demographic changes) In this period vast tracks of Māori land were alienated through confiscation (under the Suppression of Rebellion Act 1863 and the New Zealand Settlement Act 1863), individualisation of land title (by the Native Land Court) making land retention difficult, and the failure to make adequate provision for Māori self-reliance. Against this historical setting came Chief Justice Prendergast's infamous 1877 judgement that the Treaty was a 'simple nullity'.¹³² The case concerned a block of land at Porirua which had been gifted by Ngati Toa to the Anglican church (through Bishop Selwyn) in 1850 to build a school. The school was never built and in 1877 Wi Parata sought a declaration from the Supreme Court for the return of the land to Ngati Toa. Prendergast, who dismissed the case on the grounds that it had no legal basis, found that the native right of occupation could not be transferred into a legal right, as the Treaty had guaranteed, because no Māori body politic had existed to make the cession of sovereignty possible. His decision set a precedent followed by the courts until 1987.

However, in 1938 a small but significant reprieve was gained when the government sought to extract a debt of 23 000 pounds incurred by the Egmont

¹³¹ *R v Symonds* (1847) NZPCC, p. 390

¹³² *Wi Parata v The Bishop of Wellington* (1877) 3 NZ Jur (NS) SC 72

box company from Ngati Tuwharetoa land owners. The Paramount chief Te Heuheu Tukino took the matter to court where he also alleged that the Crown had acquired forests worth 1.3 million pounds for only 77 000 pounds. Few of Te Heuheu's challenges based on the Treaty were answered and the judge found that the Treaty could not be considered unless it were part of the municipal law.¹³³ Unsatisfied Te Heuheu sought leave to have the case heard by the Privy Council where a similar ruling was made:

'It is well settled that any rights purported to be conferred by such a Treaty of cession cannot be enforced by the courts, except so far as they have been incorporated in municipal law'.¹³⁴

In so far as the Privy Council had not rejected the Treaty outright (as Prendergast had), but in fact allowed for the possibility that it could have effect within the law, this was a significant change.

The third period from 1975 - 1997 has been characterised by a spirit of negotiation and restitution. The Waitangi Tribunal was established under the Treaty of Waitangi Act 1975 and it provided for Māori a much needed forum for the airing of grievances concerning Crown breaches of the principles of the Treaty. A forum that the courts, restricted to considering the Treaty only where it was part of the law, had been unable to provide. Although the Tribunal's power to make recommendations is non-binding on the Crown (except with regard to state enterprise assets and some Crown forests), a significant number of recommendations have been accepted. As a direct result of Tribunal reports state

¹³³ Durie, Mason (1998), p. 181

¹³⁴ *Hoani Te Heuheu Tukino v Aotea District Maori Land Board* [1942] AC 308 (Privy Council) cited in Durie, Mason (1997), p. 181

departments have undergone restructuring, land and cash has been transferred to Māori claimants as reparation for past injustice, and the Crown has increasingly opted for direct negotiation of Māori claims. These developments have both influenced and been influenced by some key court decisions during the period.

In *New Zealand Māori Council v Attorney-General* (1987)¹³⁵ the New Zealand Māori Council (NZMC) successfully applied to stop the transfer of Crown lands that were (or might in the future be) subject to Māori claims.¹³⁶ In 1986 the State Owned Enterprises bill was introduced designed to facilitate the transfer of 3 million hectares to Landcorp and 880 000 hectares to Forestcorp who could dispose of them with few restraints.¹³⁷ However, in response to Māori concerns that the bill was contrary to the principles of the Treaty amendments were made including the addition of section 9 which stated that 'Nothing in this act shall permit the Crown to act in a manner that is inconsistent with the principles of the Treaty of Waitangi'. The Treaty had been incorporated into the law and the court had no hesitation in upholding this provision. They ordered the Crown to negotiate mutually agreeable arrangements with the NZMC to protect Māori interests in Crown lands pending claims, before the transfer of land to State Owned Enterprises could resume. The outcome was the State Owned Enterprises Act 1988 containing safeguards and arrangements including memorial titles. A memorial title warned the purchaser that the land could be resumed by the Crown subject to a Waitangi Tribunal recommendation, and compensation would be paid by the Crown.¹³⁸

¹³⁵ *New Zealand Māori Council v Attorney-General* [1987] 1 NZLR 641 (Court of Appeal)

¹³⁶ Waitangi Tribunal (1997) *National Overview*, GP Publications, VII, p. 477

¹³⁷ Durie, Mason (1997), p.182

¹³⁸ *ibid*, p. 184

While generally the court can only uphold Treaty principles where they have been incorporated by an act of parliament, there have been at least two exceptions. *Huakina Development Trust v Waikato Valley Authority*, 1987, and *New Zealand Māori Council v Attorney-General*, 1990, are both cases where the Treaty has been used as an aid to interpret laws which do not contain a reference to the Treaty.

In the first case, a Tainui group sought to contest a planning tribunals decisions in connection with the Waikato river. In his findings Justice Chilwel said the Treaty was 'a part of the fabric of New Zealand society' and that in accordance with the principles of statutory interpretation 'It follows that it is part of the context of legislation that impinges upon its principles is to be interpreted when it is proper . . .'.¹³⁹ In the second case, the Crown, who had been preparing to sell off FM radio frequencies to private interests without making provision for Māori access, became the target of another court action by the NZMC. Justice Heron ruled that the guarantee of taonga (article 2 of the Treaty) did include the Māori language and that the Crown ought to take steps to actively protect it. The Treaty had again been applied to an act (the Radiocommunications Act 1989) which contained no direct reference to the Treaty.

Throughout the three phases of history the Courts and the Crown have shown wavering levels of commitment to the Treaty. On the other hand, the tribes increasingly referred to the Treaty as a source of protection of the rangatiratanga it had guaranteed. Māori never gave up hope that Treaty partnership would be honoured. Deputations were sent (by the Kingitanga) to England to appeal to the

¹³⁹ Durie, Mason (1998), p. 182

Queen, when Māori were repeatedly excluded from the settler government. A Māori Parliament was set up to create legislation, and the Kotahitanga movement of the 1890s hoped to secure legislative recognition and allow full Māori participation in the functions of the state as equals of the Pākehā.¹⁴⁰ All these moves by the tribes represent a comprehensive effort to secure the autonomy guaranteed under the Treaty.

Although eventually Māori representation in Parliament did come about in the form of four Māori seats, few Māori were satisfied when on a pro rata basis there should have been at least fifteen.¹⁴¹

One of the greatest obstacles to having Māori demands for rangatiratanga recognised by the Crown has been the lack of a single, unified and representative Māori body politic. This does not mean (as Prendergast thought) that Māori had no laws or systems of authority. Māori had a localised tribal orientated system, as opposed to a centralised Westminster form of government. The independence of iwi, hapū and even perhaps whānau was so strong that even the great pan-tribal movements of the Kingitanga (of the Waikato) and Kotahitanga (of the Northern tribes) which pursued the same objective of rangatiratanga, were unable to work in concert.¹⁴²

In recent times the three bodies which have come closest to providing a representative political voice for Māori are the Māori Women's Welfare League (MWWL), the New Zealand Māori Council (NZMC) and Māori Congress.

¹⁴⁰ Walker, R.J., (1990), *Ka Whawhai Tonu Matou*, Penguin, Auckland, pp. 165 - 169

¹⁴¹ Durie, Mason (1998), p. 97

¹⁴² Walker, R.J., (1990) p. 170 - 171

Congress represents a restatement of the parallel power sharing philosophies of the original kotahitanga parliaments. The New Zealand Māori council and the MWWL grew out of the Māori War Effort Organisation (1939 - 1945)¹⁴³ which had achieved an unprecedented level of co-operative enterprise amongst Māori communities throughout the country (organised entirely on tribal lines). Mindful of past experience, Congress has taken a stand apart attitude towards partnership with the Crown. Not wanting to take anything for granted they have insisted on remaining independent from the Crown (self-funded). Partnership between Congress and the Crown must proceed on the basis of contract.¹⁴⁴

The first contract of this nature was entered into by the Crown and Congress to form the Crown-Congress Joint Working Party (CCJWP). The working parties task was to facilitate the disposal of surplus railway lands without compromising pending Māori land claims. Although the CCJWP was only a temporary arrangement (now abandoned), it effected the disposal of many hectares of railway surplus lands through a consensual approach and without compromising Māori Treaty rights.¹⁴⁵ Furthermore, it provided a model for Māori / Crown relations consistent with the principle of partnership which avoided the costly and adversarial contexts of the Courts and the Waitangi Tribunal.

While the CCJWP created an opportunity for the elevation of rangatiratanga to a status which had some semblance to shared decision making (all be it restricted to the narrow context of disposal of railway surplus lands) demands for shared

¹⁴³Kawharu, H., (1996) *Rangatiratanga and Sovereignty*, p. 14

¹⁴⁴ibid, p. 15

¹⁴⁵Durie, Mason (1993), *Te Maungarongo*, unpublished typescript, p. 20

decision making based on a Māori parliament have been rejected in recent times by the Crown.¹⁴⁶

However, the Crown has provided limited support for rangatiratanga where it's agenda has been compatible with contemporary state agendas. In the 1980s the 4th Labour government, in response New Zealand's failing economy, introduced an agenda of liberal economic reforms. An example of these economic reforms was the transfer of Crown assets to SOEs, where they could be easily disposed of (already discussed above). The objective was (and still is) to achieve a 'free market' economy by minimising the role of the state.¹⁴⁷ It became policy to devolve certain areas previously considered state responsibility to private and commercial interests. In this context iwi increasingly became the preferred providers of education, healthcare, and trade training to Māori. While many Māori groups welcomed devolution as an opportunity to seize back from the Crown a measure of rangatiratanga, others saw the Crown's privatisation policy as a means for the Crown to shirk its responsibilities to Māori under the Treaty.¹⁴⁸

Privatisation as a policy is also connected with New Zealand involvement in the international General Agreement on Trade and Tariffs. Without substantial public awareness New Zealand became a party to the GATT. Its objective is to create one 'seamless' international market with no barriers to the flow of goods, services and capital. It has been argued that in practice it creates an environment where transnational (or multi-national) companies can set up operations in any

¹⁴⁶Presbyterian Church of Aotearoa New Zealand, (1994), *Te Wero!*, Department of Communication, p. 17, see also a television report on Jenny Shipley's Waitangi day address in Wellington, One Network News, February 5 1999.

¹⁴⁷Kelsey, Jane, (1993), *Rolling Back the State*, Bridget Williams Books, Wellington, pp. 7 - 12

¹⁴⁸Presbyterian Church of Aotearoa New Zealand, (1994), p. 16

country in the world where they can get the cheapest product (usually the country with the lowest minimum wage) for export and increase their profits.¹⁴⁹ Under the GATT transnational companies can expect to carry out their business unhindered by state regulations (which often protect the interests of workers and smaller locally owned businesses).

In New Zealand Māori have protested that the GATT, entered into without Māori consultation, conflicts with the Crown's obligations and Māori rights under the Treaty. Of particular concern is the threat of taonga (guaranteed in article 2 of the Treaty) passing into the hands of private interests. Taonga may include; land, forests, fisheries, and waterways; access to resources through customary rights and the availability of these resources for return as compensation; and control over indigenous forms of intellectual property, for example, medicinal plants, waiata, whakairo, moko design and so on.¹⁵⁰

One particular part of the GATT, its proposals for the deregulation of Trade Related Intellectual Property Rights (TRIPS), has been said to conflict with the Mataatua Declaration on the Intellectual Property Rights of Indigenous Peoples which states:

... that Indigenous Peoples of the world have the right to self determination, and in exercising that right must be recognised as exclusive owners of their culture and intellectual property.¹⁵¹

¹⁴⁹ibid.

¹⁵⁰ibid.

¹⁵¹The Mataatua Declaration on Cultural and Intellectual Property Rights of Indigenous Peoples June 1993, in Te Puni Kokiri, *Mana Tangata: Draft Declaration on the Rights of Indigenous Peoples 1993 Background and Discussion on Key Issues*, p. 51

Since New Zealand became a party to the GATT, the Multi-lateral Agreement on Investment (MAI), an agreement based on the GATT and focused on the deregulation of investment, has been quashed in response to an international collaborative opposition.¹⁵² However, global deregulation is far from off the agenda as New Zealand prepares to host the 1999 Australasian Pacific Economic Co-operation (APEC) summit in Auckland.

In fact, deregulation and devolution have become an important part of the context of an evolving relationship between Māori and the Crown. So much so that in 1993 Mason Durie identified a new trend in the relationship between Māori and the Crown was that Māori were being moved further away from the government and towards relationships with private interests. He gave two examples; first, the settlement of Māori commercial fishing claims in 1992 (which produced a partnership arrangement between Māori (Te Ohu Kaimoana) and Brierly Investments Limited); and second a failed arrangement between the Crown, Ngati Porou and Tasman Forestry (a subsidiary of Fletcher Challenge).¹⁵³

This trend is consistent with current government policy and the new relationships formed as a result may provide benefits for Māori groups, the Crown and the private interests concerned. However, some Māori are only too conscious of the fact that little by little the Crown may be devolving their responsibilities to other parties who may not have the same obligations and duties toward Māori that Treaty partnership requires.

Principles of the Treaty

¹⁵²<http://www.web.net/~bcmainot/updates.htm>

¹⁵³Durie, Mason (1993) *Te Maungarongo: In Search of Consensus*, Massey University, p. 15

An oft quoted principle of the Treaty is the principle of partnership. As discussed earlier, partnership is based on the exchange of sovereignty for the protection of rangatiratanga embodied in the Treaty. Principles provide an essential tool for interpreting the Treaty provisions given the inconsistencies between the two versions. As the Tribunal have reiterated in quoting Lord McNair on bilingual treaties ' . . . in absence of provision to the contrary neither text is superior to the other'.¹⁵⁴ This section will consider those principles as developed by the Court of Appeal, the Waitangi Tribunal and the 4th Labour government.

Principles emerging from the Courts are backed by the power of legal sanction. Up until 1987 the Courts had remained silent on the Treaty as it was accepted that they could not uphold it unless it was incorporated into municipal law. When in 1986 the State Owned Enterprises bill was amended in response to Māori concerns to include under section 9 the words 'Nothing in this act shall permit the Crown to act in a manner that is inconsistent with the principles of the Treaty of Waitangi', the courts were empowered to make a judgement. It was alleged by the NZMC that the transfer of Crown lands to SOEs was a breach of the principles of the Treaty. The court was at liberty to decide what these principles were in order to see if they had been breached. The following is a summary of the principles developed by the Court of Appeal in its ruling on the SOE case.¹⁵⁵ These principles, backed by legal sanction, are considered the most authoritative statement of Treaty principles.¹⁵⁶

¹⁵⁴ Motunui Report cited in Sorrenson, M.P.K., (1989) Towards a radical Reinterpretation of New Zealand History: The Role of the Waitangi Tribunal, in Kawharu, I.H. (ed.), *Waitangi: Māori and Pākehā Perspectives of the Treaty of Waitangi*, p. 162

¹⁵⁵ *New Zealand Māori Council v Attorney-General* [1987] 1 NZLR 641 (Court of Appeal)

¹⁵⁶ National Overview, p.?

- (1) Exchange - the acquisition of sovereignty in exchange for the protection of rangatiratanga
- (2) Good faith - the Treaty partnership imposes on the partners a duty to act reasonably and in good faith. The principle of good faith is 'infinitely more than a formality' and 'If a breach of the duty is demonstrated at any time, the duty of the court will be to insist that it be honoured'.¹⁵⁷ Māori also have a duty of loyalty to the Queen, full acceptance of her government and ministers, and reasonable co-operation.
- (3) Freedom of the Crown to govern - the treaty does not authorise unreasonable restrictions on the Crown to govern the country.
- (4) Active protection - the Crown has a duty to actively protect the Māori people in the use of their lands and waterways to the fullest extent practicable.
- (5) Remedy - the Crown has a duty to remedy past breaches of the Treaty. If the Waitangi Tribunal finds grounds for redress then the Crown should grant at least some form of reparation.
- (6) Rangatiratanga - Māori have the right to exercise rangatiratanga over their resources and taonga. They also have the right to enjoy all the rights and privileges of citizenship.

¹⁵⁷Waitangi Tribunal, National Overview, p. 667

(7) Consultation - the principle of good faith and reasonable conduct towards the other partner places the onus on the Crown, when acting, to make an informed decision. However, the court did not go as far as to say that consultation was always a requirement.

While the Court of Appeal's principles emerged from a single court case, the Waitangi Tribunals principles have been developed through their hearing and report writing process since 1975. The Tribunals reports before 1987 clearly influenced the Court of Appeal's principles and reciprocally the principles emerging from the Tribunal since 1987 have often reflected the Court of Appeals findings. However, where the courts are restricted to narrow interpretations based on legal doctrine, the Tribunal, which is not a court of law, has had the freedom to consider both Māori and colonial concepts of law and justice and to conduct hearings according to tikanga. Chief Judge Eddie Durie has said

In considering the accommodation of Māori in the law, the Tribunal was faced with various options, including legal pluralism, and the division of legal services to provide separate units for Māori. It chose instead what might be described as a single jural order with bicultural capabilities as the best option most expressive of the Treaty and best suited to the New Zealand milieu.¹⁵⁸

The following is a summary of the Waitangi Tribunal's principles of the Treaty of Waitangi.

¹⁵⁸ Durie, E.T., (1990), *The Role of the Waitangi Tribunal and the Development of a Bicultural Jurisprudence*, in NZULR, Vol.14, No.1, p. 63

- (1) Partnership and good faith - the interests recognised in the Treaty - the protection of the rangatiratanga of Māori people and the right of the Crown to govern - give rise to a partnership.¹⁵⁹
- (2) Exchange - the exchange of the right to make laws for the obligation to protect Māori interests.¹⁶⁰
- (3) Active protection - the Crown guarantee to Māori of all their possessions and taonga extends to active protection not just passive permission. The Crown are required to take steps to ensure the protection of taonga.¹⁶¹
- (4) Compromise - the needs of Māori must be balanced against the needs of the wider community.¹⁶² However, the mana to propose an effective settlement dependant upon a compromise rests in claimant tribes and not with the Tribunal.¹⁶³
- (5) Consultation - the Crown has a duty to consult with Māori, especially when its actions may impinge upon the rangatiratanga guaranteed in the Treaty.¹⁶⁴
- (6) Crown responsibility - the Crown cannot evade it's responsibilities by conferring authority on an independent body unless that body's jurisdiction is consistent with the Crowns Treaty obligations.¹⁶⁵

¹⁵⁹Waitangi Tribunal, (1989) Manukau Report, second edition, p. 70

¹⁶⁰Waitangi Tribunal, Motunui Report, p. 52

¹⁶¹Waitangi Tribunal, (1989) Manukau Report, p. 70

¹⁶²Waitangi Tribunal, Motunui Report, p. 52

¹⁶³Waitangi Tribunal, Orakei Report 1987, p. 135

¹⁶⁴Waitangi Tribunal, Ngawha Geothermal Resources Report, pp. 101 - 102

¹⁶⁵ibid, p. 73

- (7) Development - the Treaty can be adapted to meet new circumstances. It was never intended to fossilise the status quo. Instead it provides a foundation for future growth and development.¹⁶⁶
- (8) Tino rangatiratana - more than just possession, the guarantee to Māori of their tino rangatiratanga includes the management of resources and other taonga according to Māori cultural preferences.¹⁶⁷
- (9) Taonga - includes all valued resources and intangible cultural assets.¹⁶⁸
- (10) Options - Māori individuals have the right to develop along customary lines with a traditional base or to assimilate to the ways of the Pākehā, or to walk in both worlds. But, the choice must not be forced.¹⁶⁹

While the Waitangi Tribunal has said that tino rangatiratanga includes not only possession of taonga but also the right to control those taonga in a fashion similar to the exercise of local government, they have not supported demands from Māori for tino rangatiratanga as an expression of self determination and independent Māori sovereignty, separate from Crown sovereignty.¹⁷⁰ It is likely that given the impractical implications of recognition of Māori sovereignty, the Tribunal have been restrained by their act, which requires them to develop 'practical solutions'. This finding was consistent with the governments position

¹⁶⁶Waitangi Tribunal, Motunui Report, p. 52, see also Manukau Report, p. 51

¹⁶⁷ibid, p. 51

¹⁶⁸ibid, p. 50

¹⁶⁹Waitangi Tribunal, Muriwhenua fishing report, p. 195

¹⁷⁰Tainui refusal to be labeled agents of the Crown, Moutoa Gardens, Tuhoë eviction notices to farmers in the Urewera, Ohiwa Occupation,

that Māori people are not entitled to self-determination, a position unsuccessfully defended at the international forum of the United Nations. During the eleventh sitting of the UN working group on the Draft United Nations Declaration on the Rights of Indigenous Peoples the New Zealand governments delegation were the only representatives who opposed the right of indigenous peoples to self determination, even though the American, Canadian and Australian governments had all signaled their support.¹⁷¹

Art 3 of the Draft Declaration on the Rights of Indigenous Peoples 1993 states:

Indigenous peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.¹⁷²

The most comprehensive statement of the principles of the Treaty produced by the government to date was released in 1989.¹⁷³ The following is an explanation of those principles.

First, was the Kāwanantanga principle or the principle of government. This principle reaffirms the Crowns right to pass legislation and to govern the country. Second, the Rangatiratanga principle established the Crowns commitment to allowing Māori to control their own resources and interests. Third, the principle of Equality was meant to provide an assurance to all New Zealanders that they will be treated fairly and equally and under the same

¹⁷¹Presbyterian Church of Aotearoa New Zealand, (1994), p. 17

¹⁷² Te Puni Kōkiri, Mana Tangata Draft Declaration on the Rights of Indigenous Peoples 1993, p. 20

¹⁷³Treaty of Waitangi Policy Unit, (1989) Principles for Crown Action on the Treaty of Waitangi

system of law. (This principle may also be seen as a rejection of Māori calls for a separate system of justice). Fourth, the principle of Co-operation recognised that if the resolution of outstanding grievances was to be achieved, then Māori, the government and all New Zealanders needed to work together. Finally the principle of Redress acknowledged that the government accepted responsibility for providing an effective process for the resolution of Māori claims under the Treaty of Waitangi.

Table 4.3 contains a summary of the key principles of the Treaty which have emerged from the Court of Appeal, the Waitangi Tribunal and the Labour government in 1989.

Table 4.3: Principles of the Treaty of Waitangi

Principle	Treaty Article	Source	Implications
Partnership / Good Faith / Co-operation	Exchange of sovereignty (Art 1 English version) for protection of rangatiratanga (Art 2 Māori version)	Court of Appeal	Both parties have fiduciary duties to one another
		Waitangi Tribunal	Ongoing relationship
		Government	Parties must work together
Consultation	As above	Court of Appeal Waitangi Tribunal	Crown duty to consult Māori Especially when Crown actions may compromise rangatiratanga
Kāwanatanga	Art 1	Court of Appeal Government	Crown right to govern unrestricted in interests of all NZers
Crown Responsibility	Art 2	Waitangi Tribunal	Crown cannot devolve its responsibilities to a body outside of jurisdiction of Crown's Treaty obligations
Rangatiratanga	Art 2 Māori version	Court of Appeal Government	Māori right to retain and control tangible and intangible valuables in accordance with tikanga
		Waitangi Tribunal	Māori right to Self management
Taonga	Art 2 Māori version	Waitangi Tribunal	Taonga includes valued resources and intangible cultural assets
Active Protection	Art 2 Māori version	Court of Appeal Waitangi Tribunal	Crown must take steps to protect Māori interests
Development	Art 2	Waitangi Tribunal	Treaty can adapt to new circumstances Not to freeze the status quo
Options	Art 2 and 3	Waitangi Tribunal	Individual choice to develop Māori world, Pākehā world or bicultural
Redress	-	Court of Appeal Waitangi Tribunal Government	Crown must make some form of reparation where the Waitangi Tribunal has found it to be due
Compromise	-	Waitangi Tribunal	Interests of Māori to be balanced with interests of wider community

To date there has been no general agreement as to what might constitute a comprehensive set of Treaty principles. As the Treaty is considered a living document, new principles are constantly emerging from it and existing ones are being modified or extended upon in response to changing circumstances. Therefore, it may not be advantageous (or even possible) for a comprehensive set of principles to be formed. Although the Court of Appeals principles were broad, they emerged within the narrow context of a single court case. Even the Waitangi Tribunal whose experience spans almost 25 years and includes nearly 60 reports has only considered a limited range of cases (mostly historical) and not yet speculated on principles relevant to others.¹⁷⁴ As they have said in their Orakei Report:

'... we are not attempting to lay down a definitive and exclusive set of criteria by which claims should be assessed. We believe however that the following criteria are relevant to a consideration of the present claim'.¹⁷⁵

The Labour governments principles released in 1989 are generally consistent with the Court of Appeal and the Waitangi Tribunal principles. However, they seem to have been all but abandoned by the Crown within current government policy for claim settlement.

Treaty Claims Settlement Process

The four avenues for Māori groups pursuing claims against the Crown are the courts, the Waitangi Tribunal, mediation, or direct negotiation. In the past the courts have been severely limited in their ability to provide support for Māori

¹⁷⁴Waitangi Tribunal, National Overview, p. 475

¹⁷⁵Waitangi Tribunal, Orakei Report, p. 207

claims as they are restricted to only making judgements based on the Treaty where it has been incorporated into municipal law by an act of Parliament (the exceptions have been discussed earlier). On the other hand, the Waitangi Tribunal has a much broader mandate to report on claims based on Crown actions or omissions in breach of the principles of the Treaty. Mediation is an option seldom used where the Tribunal (with the consent of both parties) may act as or appoint an independent mediator to settle a disputed claim. The fourth avenue - direct negotiation - has in recent times become the option preferred by the Crown and an increasing number of iwi claimants. This section will consider the Māori / Crown relationship within the context of the three most frequently used options (the Waitangi Tribunal, the courts and direct negotiation) for the settlement of Treaty of Waitangi claims.

Waitangi Tribunal

The Treaty of Waitangi Act 1975 has been described as the governments 'reluctant indulgence' of the Minister of Māori Affairs Matiu Rata.¹⁷⁶ The act set up the Waitangi Tribunal with a mandate to inquire into Crown breaches of Treaty principles occurring from the date the act became law (1975 on). This set scene for the 4th Labour government to restore the Treaty to centrality in 1985 by making the Tribunal's jurisdiction retrospective to 1840 with an amendment to the act, opening a floodgate on historical claims which the Tribunal is currently under resourced to deal with.

The Tribunal's powers are limited to making non-binding recommendations to the Crown except for 'clawback' regulations (temporary arrangements intended

¹⁷⁶James, Colin, (1993) *New Territory: The Transformation of New Zealand Society 1984 - 1992*, Bridget Williams Books, p. 124

to be removed once Māori claims have been settled) in the 1988 SOE Act and the Crown Forest Assets Act 1989. Under the SOE act any Crown land transferred to a SOE has a memorial attached to its title. The Tribunal can issue a binding order for the return of any land with a memorial title regardless of who owns the land and the Crown must buy it back at the market price. Under the Crown Forest Assets Act 1989 the Crown must return Crown forest land subject to a Waitangi Tribunal finding in favour of the claimants. Any forestry returns are further subject to cutting licenses granted under the Act, for which the Crown must also pay compensation to the claimants under the formula set out in the Act.¹⁷⁷

The Tribunal's powers have been reigned in to prevent them from making a recommendation that private land be returned to claimants. The Treaty of Waitangi Act was amended to disallow such a recommendation following the Tribunal's Te Roroa Report. The report recommended the return of a private farm and put the Crown in the embarrassing and awkward position of having to pay an outrageous price for the farm to the reluctant owner.¹⁷⁸

Claims before the Tribunal fall into three general categories; historical claims; contemporary claims; and conceptual claims. Historical claims are mainly land claims concerning alienation by confiscation, dubious purchase, or individualisation of title through the Māori Land Court. Historical claims may be divided into major or ancillary claims. Major claims concern entire tribes, tribal districts or groups of related tribes and ancillary claims are claims specific to a certain group or individual. Ancillary claims will usually be attached to major claims from within the tribal rohe for a single hearing. Contemporary

¹⁷⁷ Ministerial Planning Group, (1991) Ka Awatea, p. 89

¹⁷⁸ Durie, Mason (1998), p. 130

claims include social and cultural issues as well as government process, for example, Māori language, resource management, and immigration. Conceptual claims include Māori interests in the use and development of natural resources: rivers, lakes, foreshores, minerals, geothermal resources and forests.¹⁷⁹

The Tribunal's energies are currently absorbed in historical claims (only a subset of all claims). While the Tribunal has completed inquiries into some of the contemporary and conceptual claims (Te Reo Māori Report, Ngawha Geothermal Resources Report and so on), new claims are constantly emerging with changing circumstances. Unlike historical claims they are not a part of a finite set. Instead they are future based and will depend on the future conduct of the Treaty partners in continuing to fulfil their obligations to one another. A future without contemporary or conceptual claims is not inconceivable, but will require a strong ongoing partnership between Māori and the Crown, consistent with the principles of the Treaty.

Apparently oblivious to the nature of contemporary or conceptual claims, ACT MP Derek Quigley sponsored a bill before parliament in 1998 designed to set a deadline for all claims:

Its (the bills) objectives are to provide a time frame and a context within which to reach full and final settlement of all claims to the Waitangi Tribunal . . . [all claims] would have to be lodged by January 1, year 2000. After that, the Tribunal would have a further five years to complete its inquiries and make its findings and recommendations. The Crown would then have a further

¹⁷⁹Durie, E.T., (1995), p. 8

five years to act on the recommendations. All settlements would be full, final and not subject to revisiting.¹⁸⁰

Effectively the Bills' advocates sought to confine the claims settlement process (and the Treaty with it) to the past, failing to recognise the Treaty as a basis for future development. While the bill was unsuccessful, the lack of commitment demonstrated in making such proposals raised alarm amongst those who saw the Treaty as something more than a historical agreement. Furthermore, the bill made no provision for the resources needed to meet the deadlines. No mention was made of improving claimant access to finance for researching their claims or increasing the Tribunal's budget. Nor was there any recognition that the Treaty was not about the past but about New Zealand's future development.

Currently, government funding policy is causing concern for Māori with claims before the Tribunal. Questions have been raised about the adequacy of the Tribunal's resources as the flood of claims has increased faster than claims can be cleared. In 1995 out of 451 registered claims only 45 had been reported on.¹⁸¹ The 'bottleneck' of claims means some claimants have already waited several years, even decades and still not had their claims heard. Complaints were acknowledged by the Ministerial Planning Group in 1991¹⁸² about apparent inequities between Crown funding of the Office of Treaty Settlements (OTS, responsible for researching and preparing the Crown's defense against a claim) and Crown funding of the Tribunal (responsible for researching claims and / or assisting claimants to research their own claims). Those fears were aggravated

¹⁸⁰ ACT Parliamentary Office, *Treaty of Waitangi (Final Settlement of Claims) Bill*, ACT e-mail press release Wednesday 22 Jul 1998, from: act@parliament.govt.nz

¹⁸¹ Durie, E.T., (1995), p. 14

¹⁸² Ministerial Planning Group, (1991) *Ka Awatea*, p. 92

when in 1995 the OTS budget was 8.2 million dollars compared with the Tribunal's 3.7 million.¹⁸³

In 1991 the *Ka Awatea* report revealed Māori concerns over disparities between the Tribunal and other Crown agencies like the OTS and Crown Law extend beyond funding. Claimants have said that they see the OTS and Crown Law acting as judge above the Tribunal. Not only do they help prepare the Crown's case against claimants but, they also have a second opportunity to weaken the Tribunal's findings in their role as advisers to the Crown in developing its position on the Tribunal's recommendations.¹⁸⁴ *Ka Awatea* also expressed the claimant view that the

Waitangi Tribunal can't be considered independent when it is part of the Justice Department and that the Tribunal should be independent of all departments like Law Commission and the Human Rights Commission. They should be able to employ their own staff and be accountable to Minister of Māori Affairs and not the Minister of Justice. The report concluded with a recommended that an inquiry by the Minister of Māori Affairs into the structure and interrelationship of organisations involved in the claims process be held giving due considerations to those concerns.¹⁸⁵ Such an inquiry has yet to be undertaken.

However, despite the restrictions the Tribunal has made a remarkable contribution to how New Zealand sees itself as a country, to the mana of the Treaty, and to the mana of Māori people.

¹⁸³ Durie, Mason (1998), p. 189

¹⁸⁴ Ministerial Planning Group, (1991) *Ka Awatea*, p. 90

¹⁸⁵ Ministerial Planning Group, (1991) *Ka Awatea*, p. 92

In 1989, M.P.K. Sorenson wrote:

So long as the Tribunal retains its retrospective jurisdiction to 1840, it will continue to recover a hitherto largely submerged Māori history of the loss of resources and mana supposedly protected by the Treaty. The Tribunal's findings may not be palatable to many New Zealanders, but it would be perilous to ignore them.¹⁸⁶

The Tribunal's reports have contributed to a revision of New Zealand's heritage and the way New Zealanders see themselves. Where the courts are generally restricted to considering legal matters and colonial notions of law and justice, the Tribunal has had the flexibility to incorporate historical and anthropological opinion. Māori forms of evidence may also be considered (for example oral evidence delivered at the geographical location in question, and evidence given on a marae not necessarily given under oath) and Māori understandings of justice, fairness and ownership are often included in their analysis.¹⁸⁷

In having elevated Māori concepts of law and justice within their deliberations, the Tribunal has become the 'harbinger' of an emerging international bicultural jurisprudence. More importantly in the New Zealand context they have realised the partnership principle of the Treaty which is to accommodate the cultures of two peoples within one nation.

The interplay between the Tribunal process and the Courts has contributed to the reinstatement of the Treaty as a source of law.¹⁸⁸ As such Māori and the Crown

¹⁸⁶Sorenson, M.P.K., (1989) Towards a radical Reinterpretation of New Zealand History: The Role of the Waitangi Tribunal, in Kawharu, I.H. (ed.), *Waitangi: Māori and Pākehā Perspectives of the Treaty of Waitangi*, p. 177

¹⁸⁷Durie, Eddie (1990) *Bicultural Jurisprudence*, p. 10

¹⁸⁸Durie, Eddie (1990) *Bicultural Jurisprudence*, p. 81

have fiduciary responsibilities to one another. Māori have a duty to respect the Crown's right to govern the country and the Crown are obliged to protect Māori interests. However, as the Tribunal has shown in report after report, from soon after the Treaty was signed the latter has not always been the case.¹⁸⁹

Since 1985, Tribunal reports (or the threat of them) have led to negotiation between Crown and Māori, and a greater recognition of the rights of Māori as tangata whenua. Tribunal recommendations and then negotiations with the Crown have produced a 200 million dollar pan-Māori fisheries settlement, the transfer of lands and cash including railway surplus lands, and two major tribal settlements.¹⁹⁰ The Tribunal process has also impacted upon government legislation and policy. On January 31st 1995 it was reported that 43% of the Tribunal's recommendations had been fully implemented, no start had been made on 22%, and only 6% had been rejected outright with the rest being at least partially implemented.¹⁹¹

In making recommendations the Tribunal has avoided strict compensation in favour of tribal restoration. It is likely they have been guided by the preamble to the act which established them (Treaty of Waitangi Act 1975), stating that they should 'make recommendations on claims relating to the practical application of the principles of the Treaty', although they themselves have denied being restrained to 'practical' recommendations.¹⁹²

¹⁸⁹For example the Orakei Report, pp. 253 - 260

¹⁹⁰Durie, E.T., (1995), p. 15

¹⁹¹Durie, Mason (1998), p. 189

¹⁹²Waitangi Tribunal(1987), *Orakei Report*, p. 261

In the case of the Orakei claim filed by Joe Hawke and others on behalf of Ngati Whatua of Orakei, the Tribunal found that due to Crown actions and omissions the 700 acre Orakei block intended to be a tribal reserve was alienated from the tribe. The Native Land Act 1865 enabled the Native Land Court (NLC) to extinguish tribal title to Māori land upon the application of any one member of a tribe for ownership. Under this act the Crown (through the NLC) dispossessed all but thirteen members of Ngati Whatua of their tribal estate without their consent.¹⁹³

The Tribunal considered three options for reparation; return of the original block; full monetary compensation; and restoration of a tribal economic base.¹⁹⁴ They rejected the first option as much of the original land was now under public ownership and heavy use in the form of public parks and return would cause conflict. The second option was also considered unsuitable as so much time had passed that a just assessment including the value of the land, damages incurred through lost development opportunity and so on, would be difficult to calculate and highly subjective. Preferring the third option, as it presented the opportunity to 're-establish in a modern context an objective in the Treaty'¹⁹⁵ - the Crown's obligation to protect a tribal endowment. The Tribunal's recommendations included the return of a few discrete parcels of land, Ngati Whatua input into the management of the public parks within the area, and a 3 million dollar cash endowment to establish a tribal economic base (falling far short of the value of the lost resource).

¹⁹³Waitangi Tribunal(1987), *Orakei Report*, p. 254

¹⁹⁴Waitangi Tribunal(1987), *Orakei Report*, p. 263

¹⁹⁵ibid.

The Tribunal had applied the principle of compromise between the interests of Māori and the broader community. For some however, making recommendations based more on compromise than justice left the Tribunal open to criticism, especially given the position stated in article 21 of the United Nations Draft Declaration on the Rights of Indigenous Peoples that 'Indigenous peoples who have been deprived of their means of subsistence and development are entitled to just and fair compensation'.¹⁹⁶ The declaration also allows for flexibility if the return of lands is not possible. However, it maintains that compensation should be made on an equal basis with the alienated resource.

Indigenous peoples have the right to the restitution of the lands, territories and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, occupied, used or damaged without their free and informed consent. Where this is not possible, they have the right to just and fair compensation. Unless otherwise freely agreed upon by the peoples conquered, compensation shall take the form of lands, territories and resources equal in quality, size and legal status.¹⁹⁷

While from the point of view of claimants there are some inadequacies within the Tribunal's process, it has given Māori a forum to have their grievances recognised, their claims upheld and the mana of their rights under the Treaty revived. The Tribunal process has both directly and indirectly influenced the status of the Treaty within the courts and encouraged Treaty partners towards negotiation, with the most noteworthy developments following the 1987 SOE case.

¹⁹⁶ Te Puni Kōkiri, *Mana Tangata Draft Declaration on the Rights of Indigenous Peoples 1993*, p. 23

¹⁹⁷ Te Puni Kōkiri, *Mana Tangata Draft Declaration on the Rights of Indigenous Peoples 1993*, pp. 23 - 24

Courts

Although significant cases have already been discussed, it may be useful to reiterate the main outcomes of the SOE case already discussed and further court actions not yet considered to demonstrate a trend which has contributed to the governments current preference for direct negotiation.

The 1987 SOE case in the Court of Appeal produced a most significant finding with respect to the Māori / Crown relationship - that Māori and the Crown have duties and obligations to one another under the Treaty of a fiduciary nature.¹⁹⁸ The outcome of that case was that the Crown were ordered to negotiate with the NZMC to establish a system of memorial title to protect Māori interests in Crown land.

In September 1987 a high court injunction prohibited the Crown from issuing any further Individual Transferable Quota (ITQ) under the new Quota Management System (QMS) until Māori interests in the commercial fishing industry had been successfully negotiated by Māori and the Crown.¹⁹⁹ The Sealord deal was eventually reached a successful conclusion in 1992.

The Court of Appeal, in October 1989, considered the Tainui Coal case.²⁰⁰ They found that Tainui might have an interest in the coal resource within their tradition tribal catchment and issued an order that Tainui and the Crown should negotiate a mechanism to protect Tainui interests before state coal licences could be sold to private interests.²⁰¹ Tainui eventually chose to forgo any claim to the

¹⁹⁸Waitangi Tribunal(1997), *National Overview*, p.487

¹⁹⁹Durie, Mason, (1998), p. 154

²⁰⁰*Tainui Māori Trust Board v Attorney-General* [1989] 2 NZLR 513

²⁰¹Mahuta, Robert, (1995) Tainui a Case Study of Direct Negotiation, in *Treaty Settlements the Unfinished Business*, p. 78

coal as part of the terms of acceptance of the Crown's 170 million dollar settlement offer concluded in 1995.²⁰²

A trend was emerging of court decisions upholding the possibility of Māori Treaty rights forcing the Crown into negotiations it had not anticipated entering. Increasingly, the Treaty and the Māori rights it protected was becoming the greatest obstacle to the Crown's unfettered exercise of government. Their reaction was to make changes in their policy to take greater control of the claims settlement process.

Direct Negotiation

A public declaration of the government's concern that the Waitangi Tribunal and the courts were having too much say over the Treaty and Treaty claims came in 1990, when the acting Prime Minister (Geoffrey Palmer) signaled a change in Crown policy.

'It must be made clear that the roles of parliament the Government and the courts are understood and certain. It must be made clear that the Government will make the final decisions on Treaty issues.'²⁰³

His statement was accompanied in the same year by the release of an information booklet on the Crown's policy (adopted in 1989) for the direct negotiation of Treaty claims.²⁰⁴

²⁰²The Tainui settlement is discussed in greater detail later

²⁰³Palmer, Geoffrey, (1990) 'Treaty of Waitangi Issues Require Clarity, Certainty', *New Zealand Herald*, 2 January 1998

²⁰⁴Treaty of Waitangi Policy Unit, (1990) *The Direct Negotiation of Māori Claims*

Furthermore, as the Minister in charge of Treaty of Waitangi settlement negotiations has said, the Crown was eager to enter negotiations as they considered claimants had a 'sword of Damocles'. He meant that claimants could apply to the Tribunal to make mandatory orders for the return of assets pursuant to the SOE Act and the Crown Forests Assets Act. The risk for the Crown was that the Tribunal might make recommendations in excess of government contemplation.²⁰⁵

The information booklet released in 1990 entitled 'The Direct Negotiation of Māori Claims' outlined the government's new policy platform. It contained three main sections; a restatement of Labour's principles of the Treaty released in 1989; an outline of the structure and role of the Crown Task Force on Treaty of Waitangi Issues, and a summary of the proposed four step process to negotiating a claim.²⁰⁶

The role of Crown Task force includes developing the Crown's position findings contained within the Waitangi Tribunal's reports. The government then decides how to proceed and the Task force then has the job of ensuring the government's decisions are carried out. The Task force includes: the Cabinet Committee, a small group of senior cabinet members chaired by the Minister of Justice, their role is to oversee all government policy on Treaty of Waitangi issues; the Officials Standing Committee (formerly the Core Group), a group of officials from the major Crown agencies of Justice, Crown Law, Prime Ministers Department, Treasury and representatives of other agencies who may be invited to assist as required; and the Office of Treaty Settlements (formerly the Treaty of Waitangi

²⁰⁵Graham, Douglas (1997) *Trick or Treaty*, pp. 50 - 51

²⁰⁶Treaty of Waitangi Policy Unit, (1990) *The Direct Negotiation of Māori Claims*

Policy Unit) located within the department of Justice, they advise the Crown on Treaty issues, handle direct negotiations and the implementing of the Waitangi Tribunals recommendations. In addition the Treaty issues unit of Te Puni Kokiri has some input into policy development and the Māori Land Information Office (part of Terralink formerly the Department of Land and Survey Information) provide access to land information held by the Crown.

The four steps to negotiating a claim were: the initiation, either Treaty partner may initiate negotiations but both must agree to them and the claim in question must be accepted onto a negotiations register; a framework agreement, an agreement between parties as to what is up for negotiation, how negotiations should be structured, and what procedures for ratification should be adopted; an agreement in principle, more detailed negotiations to achieve agreement on some or all of the issues within the framework; and a detailed agreement, a final and detailed agreement (subject to ratification by both parties) on all the areas covered in the agreement in principle and agreement on how successful implementation were to be measured.

Although the Crown's new policy signified a positive development in the relationship between Māori and the Crown - a movement toward negotiation and restitution, there were aspects of the policy which were less than satisfactory to Māori. Perhaps the greatest criticism of the policy was that it had been set in place without Māori consultation.²⁰⁷ This is especially significant given the Waitangi Tribunal and the Court of Appeal findings that the principle of consultation (discussed earlier) imposes a duty on the Crown to consult with

²⁰⁷ Ministerial Planning Group, (1991) *Ka Awatea*, p. 90

Māori when taking an action which may impinge upon their rights (in this case developing a Treaty settlement policy). In failing to consult, the Crown risk the possibility of further claims that they have acted in breach of Treaty principles.

Another criticism of the negotiation policy was inequitable access to resources for arguing or negotiating claims. Claimants have argued that the Crown's resources should not exceed those of tribes.²⁰⁸ Robert Mahuta has said that in the Tainui experience inequity of resources was an obstacle to reaching settlement. For Tainui substantial financial support came from the people (in the form of pledges from marae communities) and they found that having to remind the Crown that it owed funding to cover Tainui negotiation costs gave an ambiguous meaning to partnership and good will.²⁰⁹ The current Crown policy on funding is to reimburse claimants the full costs incurred in negotiation to be deducted from the claimants settlement quantum once an agreement has been reached. Claimants have argued that because the Crown have acknowledge they are the party in the wrong (with respect to historical grievances) and given the current impoverished state of most claimant groups, that the Crown should pay the full costs incurred by claimants in negotiating settlements. A simple application of the principle of partnership and good faith (also discussed earlier) as developed by the Tribunal and the Court of Appeal - that parties must take the best possible care of one another, lends credence to this Māori claimant demand.

Furthermore the fiscal envelope policy has raised uncertainty as to exactly what is being settled. No part of the policy explicitly determined how the settlement

²⁰⁸Ministerial Planning Group, (1991) *Ka Awatea*, p. 91

²⁰⁹Mahuta, Robert (1995) Tainui a Case Study of Direct Negotiation, in McLay (ed.) *Treaty Settlements: The Unfinished Business*, p. 80

quantum (1 billion dollars) had been calculated. Was it supposed to reflect the need for tribal restoration, justice, or the demographic needs of iwi?

In spite of claimant concerns, the government proceeded with this negotiation policy and in accordance with it, successfully negotiated the comprehensive settlement of Māori commercial fishing claims.

Sealord Deal

At the same time that the Muriwhenua fishing claim was being heard at Te Hapua in 1986, the Ministry of Agriculture and Fisheries were preparing to issue commercial fishing quota (ITQ). Māori claimants, who felt the issue of quota without provision for Māori interests in the resource would contravene Treaty principles, appealed to Tribunal to intervene. The Tribunal issued a request to the Minister of Agriculture and Fisheries to withhold quota until Treaty partners could come to an understanding. That request was denied by the Minister and in September 1987 as the government prepared to issue more quota the Waitangi Tribunal issued a statement this would be contrary to the principles of the Treaty. Claimants successfully applied to the high court to have an injunction placed on the issue of quota in the Muriwhenua district. The following month in similar actions by separate Māori claimants the injunction was extended over the rest of the country.²¹⁰ Negotiations began in 1987, broke down in 1988, the resumed and eventually concluded in 1992. A 170 million dollar settlement agreement had

²¹⁰ Sorrenson, M.P.K., (1989) Towards a radical Reinterpretation of New Zealand History: The Role of the Waitangi Tribunal, in Kawharu, I.H. (ed.), *Waitangi: Māori and Pākehā Perspectives of the Treaty of Waitangi*, p. 174

been struck between eight powerful Māori and the Crown. It included a half share in the Sealord fishing company who held 26% of commercial fishing quota, (Brierly Investments Ltd owned the other half), 10% of commercial fishing quota, and 20% of any new quota to be allocated under the QMS. The cost was repeal of sect 88(2) of Fisheries Act 'nothing in this act shall effect any Māori fishing rights', the extinguishment of all Māori commercial fishing claims under common law (aboriginal title) and the Treaty, and acceptance of section 7 of Treaty of Waitangi (Fisheries claims) Settlement Act 1992 which striped the Waitangi Tribunal of its jurisdiction to hear Māori commercial fishing claims.²¹¹

The Sealord deal may be described as a comprehensive settlement in that it was an agreement between the Crown and a group representing all Māori. However, the assumption that a single group can assume a mandate to represent all Māori is problematic. As discussed in chapter 3, Māori mandate is hapū and iwi based and comprehensive Māori consent is at best difficult. In the case of the Sealord deal not all iwi were represented. Some had intentionally withdrawn their support but that did not stop the Crown and the remaining iwi reaching a settlement that was (at least as far as the Crown was concerned) binding on all Māori. This situation bears an unfortunate resemblance to the original signing of the Treaty where the rights of certain chiefs who refused to sign were usurped and the Crown assumed the Treaty to be binding on all Māori.²¹² From the Crowns point of view it was a simple matter of all or none.

Partly in response to Māori opposition to comprehensive settlements, since 1992 the Crown has moved away from them and towards tribal settlements, although

²¹¹ Sharp, Andrew, (1997) *Justice and the Māori*, second edition, p. 306

²¹² Durie, Mason, (1993) *Te Maungarongo*, p. 20

it is difficult to compare fish settlements with land settlements. In the two years following the Sealord deal the Crown had developed a new set of proposals for the settlement of Treaty claims known as the fiscal envelope.

Fiscal Envelope

Mason Durie has described the current claims settlement process as:

... a mix of pragmatism and principles, coupled with expediency and confused with the parallel need to consider ongoing Treaty relationships. As well, in current claims policy there is no real provision for the joint participation of the Crown and Māori in formulating policy rather than negotiating within the terms of policy preordained by the Crown.²¹³

In December 1994 the Crown released its fiscal envelope policy. Like the Sealord deal it sought durable, full and final settlement of historic claims. And like the Crown's previous claims policy it was developed behind closed doors, without Māori consultation. The policy met with vigorous and unanimous rejection, first at a hui called by Sir Hepi Te Heuheu at Hirangi marae and later at a series of national 'consultation' hui called by the Crown.²¹⁴ Māori rejection of the proposals were in response to the one billion dollar fiscal cap for all Māori Treaty claims, the Crown's non-negotiable refusal to consider the return of conservation estate lands and natural resources, and the ambiguous constitutional position of Māori people within the proposals. Although the Crown's 'proposals' had been unanimously rejected by Māori, by Oct 1996 three major tribal settlements (Ngai Tahu of the South Island, Tainui of Waikato, and Whakatōhea of Opotiki in the

²¹³ Durie, Mason, (1997) *Te Mana, Te Kāwanantanga*, p.208

²¹⁴This reaction at a series of hui is described in detail in Gardiner, W., (1995) *Return to Sender*

Eastern Bay of Plenty) had been negotiated within its parameters and the 'proposals' had essentially become policy.

The proposals included the Crown's position on; the principles of settlement; a fiscal envelope; the conservation estate; natural resources; land gifted to the Crown; the negotiation process; mandate; governance procedures; and the durability and finality of settlements.²¹⁵

There were seven settlement principles in the proposals: a Crown acknowledgment of historical injustices; the Crown will not create further injustices in resolving claims; a Crown duty to act in the interests of all New Zealanders; settlements must be fair, lasting, and remove the sense of grievance; equity between claimant groups; protection of Māori rights under article 3 of the Treaty (especially access to mainstream government programmes); and consideration of fiscal and economic constraints on the Crown.²¹⁶

Surprisingly, the settlement principles did not contain any reference to the Treaty principles developed by the Waitangi Tribunal, the Court of Appeal, or 1989 government principles. As a package the principles were better suited to provide reassurances for non-claimants rather than the protection of claimants' Treaty rights. The only reference to the Treaty was to article 3 and access to mainstream government programmes. The lack of protection of article 2 rights and the impression that the policy was based more on affordability, political expediency and the support of the electorate than on justice for Māori people, were major

²¹⁵Office of Treaty Settlements, (1995) *Crown Proposals for the Settlement of Treaty of Waitangi Claims: Detailed Proposals*, Department of Justice, Wellington

²¹⁶ *ibid.*, p. 6

causes for concern expressed at the Hirangi hui.²¹⁷ The conclusion reached there and at hui around the country was that the proposals were contrary to the principles of honour and good faith.²¹⁸

As Professor Alan Ward put it:

The Crown's honour and its Treaty obligations to Māori are presumably above mere electoral popularity, otherwise any action in breach of Treaty principles could be excused simply on the basis of having been driven by current electoral pressures or approved, by a vote of the parliamentary majority of the day.²¹⁹

In keeping with what the government felt was affordable and at least tolerable to the broader electorate, they proposed a settlement envelope of one billion dollars. The costs to be offset against the envelope included: the full cost of land and resources acquired for claims; the current market value of Crown assets transferred to claimants; compensation under the Crown Forest Assets Act 1989 and the Treaty of Waitangi (State Enterprises) Act; costs of land and resources banked for claimants (including holding costs); claimants research costs as reimbursed by the Crown; and the costs of the fisheries settlement (approximately 170 million dollars). The Crown were willing to concede responsibility for; their own negotiation costs; costs of preparing legislation to implement settlements; costs of Crown research and policy development; legal

²¹⁷ Durie, M.H., (1995) Proceedings of a Hui held at Hirangi Marae, Turangi, in McLay, Geoff, (ed.) *Treaty Settlements: The Unfinished Business*, p. 24

²¹⁸ Durie, M.H., (1998), p. 190

²¹⁹ Ward, Prof. Alan, (1997) *National Overview*, Waitangi Tribunal Rangahaua Whanui Series, GP Publications, Wellington, Vol.1, p. 3

aid and Waitangi Tribunal expenses; reimbursement of claimants required by the courts; and annuities paid under the Māori Trust Boards Act 1955.²²⁰

The 1 billion dollar cap was non-negotiable and the government gave no indication of how it had been calculated. Doug Graham stated the Crown's position in the following way:

Now while on the face of it there appears something unfair in the government once again holding most of the cards and having the ability to decide the value of any compensation, the fact is that these matters are political issues of considerable importance. Only the government can comprehend the total picture and only the government can decide how much can be afforded by the country.²²¹

Justified as a political decision the fiscal cap was based on affordability and an assumption that 1 billion dollars was a fair. While the true value of Māori losses is not known and any calculation would be highly subjective, one estimate of the total value of the losses of a single tribe (Whakatōhea of Opotiki), including confiscation, loss of lives, and lost development opportunities has come to just under 2.6 billion dollars.²²²

Also of concern to Māori was the ambiguous constitutional position they found themselves in, with respect to their relationship with the Crown, under the proposals. As far as the tribes were concerned, partnership depended on a co-

²²⁰Office of Treaty Settlements, (1995), p. 9

²²¹Graham, Douglas, (1997) *Trick or Treaty?*, Institute of Policy Studies, Victoria University, Wellington, p. 41

²²²Christensen, E.P, (1997) Appraisal and Value Assessment of the Raupatu for Ngai Tama, in *Reports to the Ngai Tama Hapu on the Whakatohea Deed of Settlement*, unpublished typescript Opape 1 February, p. 52

operative balance between the exercise of sovereignty and rangatiratanga. The omission of any reference to article 2 rights in the proposals seemed to indicate a lack of commitment to the protection of rangatiratanga, and therefore, a lack of commitment to Treaty partnership. The Hirangi hui described the development of detailed proposals for settling claims in absence of a comprehensive Treaty policy as 'putting the cart before the horse'. The hui recommended that the Crown take urgent steps towards developing a comprehensive policy which would clarify the constitutional position of Māori people under the Treaty and the Crown's commitment to the Treaty before proceeding with settlement negotiations.²²³

Similarly, Māori understandings of the article 2 guarantee of 'taonga' were largely ignored in the Crown's position on the conservation estate and natural resources - that apart from a few minor exceptions, neither would be up for negotiation as part of any settlement.

The Crown's position on the conservation estate was particularly difficult for the Ngai Tahu, Tuhoe and Whakatōhea tribes within whose tribal districts nearly all of the remaining Crown lands that might otherwise be subject to claim, lay in the conservation estate. Given the Crown's admission of guilt in confiscating tribal land (or in the Ngai Tahu case, failing to set aside promised reserves), the tribes could see no moral justification in the Crown retaining possession of the lands. A compromise was made in the form of co-management. Tribes were offered

²²³ Durie, M.H., (1995), pp. 25 - 26

representation on the conservation boards and co-management over tōpuni reserves.²²⁴

The proposals contained another compromise with respect to natural resources. Māori might have 'use and value' rights in natural resource of the kind they would have had in 1840 when the Treaty was signed.²²⁵ These rights did not extend to ownership. The response from the Hirangi hui was that 'use and value' rights were something less than tino rangatiratanga over taonga (guaranteed in article 2). In fact, the courts had established that Māori have an interest in natural resources and have never ruled out Māori ownership.²²⁶ Also in conflict with the Crowns position are the Tribunals findings in relation to the principle of development - that the Treaty can be adapted to meet new circumstances and was never intended to fossilise the status quo. In particular the Mohaka River Report found that the claimants, Ngati Pāhauwera, had never relinquished rangatiratanga over the river and therefore had an ownership interest in it.²²⁷

The hui also found that the Crowns reference to a hypothetical 1840 situation showed a lack of vision and acceptance of the Treaty as a foundation for future development. Doug Graham has publicly restated the Crowns position on natural resources this way:

²²⁴ Topuni reserves were first created by Ngai Tahu Māori and the Crown to place a status over certain Crown lands which have special traditional, historical or spiritual significance to tangata whenua. This status acknowledges Māori interest in lands as kaitiaki, it does not recognise ownership.

²²⁵ Office of Treaty Settlements, (1995), p. 19

²²⁶ Durie, M.H., (1995), pp. 22 - 23, this is an indirect reference to the Tainui Coal case *Tainui Māori Trust Board v Attorney-General*[1989] 2 NZLR 513

²²⁷ Waitangi Tribunal, (1992) *Mohaka River Report (Wai 119)*,

'... the Government does not accept that Māori have an interest akin to ownership in the rivers. The water is free from ownership by anybody.'²²⁸

While the adoption of the non-negotiable position by the Crown precluded any possibility of consultation on the issues, the restructuring of negotiation proceedings produced a more subtle reduction of the opportunities for consultation. This part of the proposals replaced the 4 step process introduced in 1990 - which included three phases for the development of a settlement agreement (a framework agreement, an agreement in principle and a detailed agreement) - with a 4 step process which contained only a single step to developing a draft deed of settlement and a requirement that claimants forgo any other avenue of seeking redress while negotiating. While the objective seems to have been to speed up the negotiation process, the result was less opportunity for negotiator and beneficiary input in the development of a deed of settlement. Ngai Tahu and Tainui both began their negotiations with the Crown under the 1990 negotiation policy (before the fiscal envelope). Consequently, both signed a heads of agreement with the Crown. Whakatōhea on the other hand, begun negotiations in 1995 (under the new 4 step process) and with the threat of MMP and political uncertainty, were moved directly to signing a draft deed of settlement on the 1st of October 1996 at Wellington. Whakatōhea negotiators had little input into the Deed, and many hapū felt they hadn't any input into.²²⁹

However, not all of the proposals were disappointing to Māori claimants. The prospect of entering direct negotiations and avoiding the expensive, often

²²⁸ Graham, D., (1999) 'Maori Land Payouts To Be Fast-Tracked', Dominion, 22 January, p. 2

²²⁹The Tainui and Ngai Tahu Settlements are discussed at the end of this section and the Whakatohea Settlement is discussed in the following chapter.

protracted, and adversarial processes of litigation and Waitangi Tribunal hearings had merit for both the Crown and Māori. While litigation and hearings tend to produce winners and losers, direct negotiation can produce mutual benefits for both parties.²³⁰ In particular the government's provisions for strengthening mandating procedures, and the way governance procedures could be developed to secure settlement resources for the tribes, were helpful.

Proposals concerning representation included an outline of current options for determining claimant representation, a proposed deed of mandate to strengthen the negotiation process, and an amendment to the Treaty of Waitangi Act 1975 to allow the Waitangi Tribunal to decline hearing claims not sponsored by an iwi or hapū.

An outline of current options for establishing representation included: a voluntary resolution by the claimants themselves; a referral to the MLC under section 30 of the Te Ture Whenua Māori Act 1993 to resolve any issue of modern representation (for example, a dispute over which body or association represents any Māori group for a specific matter). Also included were: a referral to the Māori Appellate Court under section 6A of the Treaty of Waitangi Act 1975 to determine which hapū or iwi has a customary interest in a particular area; and a legislated settlement (for example, the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992 which established Te Ohu Kaimoana (The Treaty of Waitangi Māori Fisheries Commission) to represent all Māori in matters concerning commercial fishing and the administration of fisheries settlement assets).

²³⁰Durie, M.H., (1993) *Te Maungarongo*, p. 17

To these options the Crown sought to add a deed of mandate for the appointment of tribal negotiators. A deed was to include: a definition of the claimant group; a description of the claim(s) to be negotiated; a definition of tribal boundaries where appropriate; the names of negotiators; the identities of the signatories to the deed of mandate; and a description as to how authority was obtained from the beneficiaries of the claim to authorise the representatives.

While these measures have been accepted as ways of providing greater assurance for the Crown and claimants of properly mandated negotiators, most Māori groups feel that the mandating of tribal representatives is a matter for Māori to decide and the prospect of interference from the Courts and the Crown is unwelcome. This sentiment was expressed at the Crown Forest Rentals Symposium in October 1998 at Wellington.²³¹ A lack of confidence in the Māori Land Court has also been expressed in their ability to make determinations on modern representation issues when their field of expertise is Māori land law.²³² Furthermore, the deed of mandate is an inflexible system. In the case of Whakatōhea, while negotiations were underway two negotiators vacated their positions. Both were replaced but neither of the replacements were officially written into the deed of mandate as that would have required beginning the mandating process all over again. Nor was there any provision for the removal of negotiators who for some other reason might no longer be fit.

²³¹Crown Forest Rental Trust (1998) a Summary Address in *Te Ara Marohirohi me te Tino me te Mano*, video cassette, 24 October Wellington

²³²Anonymous source, oral interview, Te Tawharau o Te Whakatohea, 5 April 1998, Opape marae

The Crowns justified their proposed amendment of the Treaty of Waitangi Act 1975 to allow the Tribunal to decline claims not sponsored by an iwi or hapū as a truer reflection of the Treaty's second article. Article two refers to 'the chiefs and tribes of New Zealand' in the English version and 'ki nga rangatira, ki nga hapu, ki nga tangata katoa' in the Māori version which reflected 'the collective nature of the mana of the iwi and of kaitiakitanga (authority and stewardship)'.²³³

Claimants however, opposed it as a reduction of the rights of individuals, smaller aggregations like whānau, and other non-whakapapa based groupings of Māori people.

Although this proposal was never acted on, the Crown have taken a hard line approach to not negotiating with small groups like whānau, and have been reluctant to negotiate with hapū. This Crown policy has been at least partially supported by the Waitangi Tribunal finding that common policy to be resolved with Crown should be negotiated at the iwi level or on a wider plane and that the Crown are not bound to inquire beyond that.²³⁴ On the other hand Sir Hugh Kawharu has argued for a greater emphasis on the smaller aggregations of hapū and whānau.²³⁵ Similarly, the Crown Forest Rental Trust Symposium has stressed that decision making by smaller groupings is sometimes preferable to bigger aggregations making decisions of behalf of those who have not been consulted. The Symposium also highlighted that not all settlements can be rolled into one single iwi or rohe settlement.²³⁶ As chapter 5 essentially shows, under the current government policy smaller groups like the Mokomoko whānau may have their autonomous rights seriously compromised by the assumption of the

²³³Office of Treaty Settlements, (1995), p. 37

²³⁴Waitangi Tribunal, (1992) Fisheries Settlement Report 1992, p. ?

²³⁵Kawharu, I.H., (1993) Mana and Sovereignty by 2040, p. ?

²³⁶Durie, M.H., (1998) *Te Ara Marohirohi me te Tino me te Mano*,

iwi authority to ratify tribal wide settlements on their behalf and not necessarily with whānau consent.

Proposals for governance procedures were designed to give the Crown assurance (before settlement resources were transferred) that: the correct claimant group had been precisely defined; the claimant group had a properly endorsed system of governance to manage the resource; and that there was an independent appeals process in place to protect minority interests against an oppressive majority and majority interests against an unreasonable minority. The last objective seems ironic given the potential for the marginalisation of whānau and hapū interests within the governments position on preferred negotiation with iwi.²³⁷ But overall, governance procedures were designed to ensure that settlement assets would be well taken care of, making the effect of the settlement lasting and durable.

The last section of the proposals was concerned with ensuring the durability and finality of settlements. To this end the Crown proposed: the removal of all memorials and the removal of the possibility of the compulsory return of Crown forestry licensed land within the area covered by the claim, and the removal of all other avenues of redress for historical claims including the Courts and the Waitangi Tribunal.

The government's eagerness to put the country back on the pathway to privatisation was evident in their proposals to dismantle the protective mechanisms for Māori interests under the SOE Act and Crown Forest Rentals

²³⁷Office of Treaty Settlements, (1995), p. 40

Act. But beyond that agenda, the Crown sought to remove all institutional protection to historical claims (including those unregistered or even those not yet contemplated) by removing the possibility of redress through the courts and the Waitangi Tribunal of all historical claims. Many protested they were being asked to settle grievances the full extent of which they were unaware as they hadn't been fully researched. Others were more pragmatic. Robert Mahuta, the head negotiator for Tainui has suggested, despite provisions within the deed itself declaring it 'fair, final, and durable'²³⁸, that durability will be subject to future audits of the benefits of the settlements. He considered that because the Tainui settlement quantum represented only 3% of the lost resource, the Crown offer could 'reasonably be viewed as an interim offer' subject to reassessment by future generations.²³⁹ Mahuta's view has credence given that so-called full and final settlements for historical grievances with the Crown were made in the 1920s and the 1940s. These settlements eventually lead to the annuities paid out under the Māori Trust Boards Act 1955 and today the descendants of those tipuna who signed 'full and final' settlement deals have effectively renegotiated settlements with the Crown.

However, in the final analysis the Crown Proposals for the Settlement of Treaty of Waitangi Claims was a framework for Treaty settlement. Although the framework was presented to Māori in the guise of proposals, it soon became apparent it was largely a 'fait accompli'. Disappointingly for Māori, it was less focused on establishing an ongoing partnership between Crown and Māori and more concerned with confining the Treaty to a chapter of our country's history.

²³⁸Waikato- Tainui Deed of Settlement, 15.2

²³⁹Mahuta, Robert, (1995) Tainui: A Case Study of Direct Negotiation, in McLay, Geoff, *Treaty Settlements: The Unfinished Business*, p. 82

A review of the current settlement policy is needed and it should be a co-operative effort between Māori and the Crown.

Before that happens the Treaty settlements process needs to be put in context. Settlements are only a narrow subset of the Māori / Crown relationship and ambiguities in that relationship lead to ambiguities in Treaty settlement policy.

The Hirangi hui and the Methodist and Presbyterian churches have called for a constitutional review to establish the status of the Treaty.²⁴⁰ While constitutional clarification would provide a guide to Māori / Crown relations as Treaty partners, it would also provide a context for the Treaty claims settlement process.

On the other hand, the proposals did offer Tribes a much needed opportunity for development. To date three tribes have negotiated settlements, two of which have been successfully concluded. They are Tainui and Ngai Tahu.

The Tainui Settlement

The Tainui settlement was finally concluded in may 1995 and signed by Te Arikinui Dame Te Atairangikahu and Rt. Hon. Jim Bolger. With a total value of 170 million dollars the settlement included the return of 15 439 hectares of Crown land within the Waikato rohe. Tainui became the new landlords to Waikato University, the Hamilton Police Station and the Hamilton Court Chambers subject to Tainui agreeing to lease these properties back to the Crown indefinitely at a market rate. In exchange Tainui acknowledged that the Crown had acted honourably and that all of their Raupatu claims (including claims to coal and

²⁴⁰Presbyterian Church of Aotearoa New Zealand, (1994), p. 23

natural resources, and excluding the Waikato river and the West Coast harbours) were unconditionally settled.²⁴¹

The Tainui raupatu claim concerned the confiscation of 486 439 hectares of land taken under the New Zealand Settlements Act 1863 following Governor Grey's invasion of the Waikato on the 12th of July that same year.

Over the years several attempts at redress have been made including two unsuccessful deputations to England to appeal for the Queens intervention. In 1927 the Sim Commission found that confiscations had been 'excessive' and some small compensation was offered but no land was returned. The Waikato position had always been 'I riro whenua atu, me hoki whenua mai', 'As land was taken, so should land be returned'.²⁴² In 1946 Princess Te Puea Herangi negotiated a 5000 pound annuity in perpetuity with Prime Minister Peter Fraser²⁴³ and in 1990 the labour government came up with a 9 million dollar offer but Tainui never lost sight of their goal of land for land.

The labour governments offer came in the wake of successful litigation against the Crown and the filing of a comprehensive claim with the Waitangi Tribunal including raupatu lands, the Waikato River and the West Coast harbours.

In 1989 an important Court of Appeal decision in favour of Tainui gave the tribe considerable leverage in their relationship with the government. In accordance with their privatisation strategy the government had determined to sell off the

²⁴¹Waikato-Tainui Deed of Settlement, 15.4

²⁴²Mahuta, Robert, (1995), pp. 72 - 73

²⁴³ *ibid*, p. 74

state owned coal operation. The Tainui claim would be affected. The Tainui Māori Trust Board filed an action which was upheld by the Court of Appeal who issued a statement instructing the Crown to negotiate a settlement:

... which recognised with regards coal that Tainui are entitled to the equivalent of a substantial portion but still considerably less than half of this particular resource could be suggested as falling within the spirit of the Treaty of Waitangi²⁴⁴

Negotiations over coal prompted negotiations for all Tainui raupatu claims and the labour governments 9 million dollar offer (2 weeks before an election) was rejected given that Tainui had estimated their base line loss at 12 billion dollars.

However negotiations continued with the newly elected national government in 1990 and reached a successful conclusion in 1995. At the time the settlement was reached the Tribunals inquiries into the raupatu claim were not complete and to date they have never been the subject of a report.

Robert Mahuta has emphasised that throughout negotiations with the Crown (including the deputations to England, Princess Te Puea's settlement with the Prime Minister, and the 1995 settlement), there were two key issues intimately related to the mana of Waikato - Tainui. The first was the need for the Crown to admit that its invasion of the Waikato and the subsequent confiscations were wrong. The second was 'I riro whenua atu, me hoki whenua mai', 'As land was taken, so land should be returned'.²⁴⁵ The sheer pressing need to get economic development underway and the difficult position the Crown were in of no longer

²⁴⁴ *ibid.*, p. 79

²⁴⁵ *ibid.*, p. 76

retaining possession of most of the land led Waikato leaders to compromise the second issue in exchange for the provision of a secure economic base for Waikato people.

Another example of the importance of mana for Tainui in their relationship with the Crown came when the Board refused to sign new contracts for the Mana and Maccess training programmes in 1988. The contracts required the Board to sign as an agent of Crown. Tainui felt this would compromise their article 2 rights to rangatiratanga and their position with respect to those they represented - the Tainui people. Rather than change the wording in the contracts to 'appointed authority' the government chose to withdraw all Mana and Maccess funding.²⁴⁶

While Tainui may have sometimes found the government to be lacking in its commitment to their rangatiratanga, the Crown did make a number of gestures in recognition of their mana in delivering the settlement.

First, the deed itself contained a full admission and apology to Tainui for the wrongful acts of invasion and confiscation (a first for New Zealand). Second, Queen Elizabeth the second herself delivered a public apology to Tainui and the settlement legislation which sealed the deal became the first piece of New Zealand legislation to bear the Monarchs signature.²⁴⁷ And third, the Crown returned to Tainui the deeds of title to a considerable amount of the land it still possessed within the tribal district (15 439 hectares). Thus there was a feeling that the settlement had been responsive to Tainui aspirations of land for land.

²⁴⁶ *ibid.*, p. 77

²⁴⁷ Durie, M.H., (1998), p. 195

Despite Mahuta's assertion that the Waikato Settlement was for Waikato and no one else and that other tribes should make up their own minds about settlements²⁴⁸, the Tainui settlement set a benchmark for all tribes. The Waikato-Tainui Deed specifically set the 170 million dollar value as representing 17% of the total amount set aside for settling historical Treaty claims,²⁴⁹ an indirect reference to the 1 billion dollar fiscal cap.

The 17% benchmark was further subject to a relativity clause²⁵⁰ that served a double purpose. First, it guaranteed to Tainui that if in the future the Crown were to increase its 1 billion dollar cap, Tainui would be entitled to an increased quantum 'top up' to ensure their settlement remained at 17% of the total government expenditure on historical claims. Second, if Parliament ever did pay out any further to Tainui they could rightly be expected to increase payments to other tribes. Such an expensive exercise was unlikely to happen. So the relativity clause was in the interests of durability and finality.

However, as stated earlier, Robert Mahuta's response to the Crown assertion that settlements are full and final was that concepts of durability and finality should be based on whether or not settlements produce a lasting and effective removal of the sense of grievance.

In opposition to the settlement were a number of the Waikato-Tainui beneficiaries encouraged by Eva Rickard a veteran activist for Māori rights. The beneficiaries claimed that the Trust Board (who were negotiating the claim) were

²⁴⁸Mahuta, Robert, (1995), p.85

²⁴⁹Waikato-Tainui Deed of Settlement, 16.1.3

²⁵⁰ibid, Attachment 9

not representative of hapū and that the Crown were dispossessing hapū a second time by investing their land rights in another body.²⁵¹

In spite of their protests a postal ballot was held and registered beneficiaries had until Friday 28th April 1995 to decide whether or not to ratify the draft deed of settlement. Although less than half of those who were eligible voted, 75% of those who did were in favour.²⁵²

But that is certainly not the end of historical claims for Tainui, as Shane Solomon has said 'The biggest and most expensive claim is yet to be settled - that is the river'.²⁵³

The Ngai Tahu Settlement

One week before the general election on the 5th of October 1996, Sir Tipene O'Regan and Charlie Croft signed the Ngai Tahu Heads of Agreement for Ngai Tahu and the Minister in charge of Treaty of Waitangi settlement negotiations the Hon. Doug Graham signed on behalf of the Crown. Like the Tainui settlement the quantum value was 170 million dollars. Unlike Tainui, the Ngai Tahu grievance did not involve raupatu lands as much of Te Waipounamu (the South Island) had been alienated through Crown purchase (some 14 million hectares). Although the pitiful prices the Crown paid for much of Te Waipounamu land might well have made a justifiable subject for a Treaty claim, the main concern was the Crown's failure to set aside the promised 3 million hectares as reserves for the tribe.

²⁵¹Durie, M.H., (1998), p. 197

²⁵²ibid.

²⁵³ibid, p. 196

In 1991 after more than two years of hearings, the Tribunal published their Ngai Tahu Report. It covered the 'Nine Tall Trees of Ngai Tahu' referring to the eight land transactions (Otakou, Kemp, Banks Peninsula, Murihiku, North Canterbury, Kaikoura, Arahura, and Rakiura) and the loss of mahinga kai.

The Tribunal found, emphasising the principle of active protection²⁵⁴ that in purchasing the Otakou block (500 000 acres sold for 2 400 pounds), the Crown had failed to ensure the maintenance of an economic base for Ngai Tahu. Similarly, the Tribunal found that the Kemp purchase, of about 20 million acres in the middle of Te Waipounamu with less than 6 500 acres set aside as reserves, demonstrated a lack of good faith²⁵⁵ towards Ngai Tahu. Though their findings recognised the severity of the injustice, they did not make specific recommendations, instead they recommended settlement through negotiation with the Crown.

As in the case of Tainui, the Crown had previously recognised these injustices by setting up a Ngai Tahu Māori Trust Board to receive a token settlement on behalf of the tribe. But these settlements were inadequate and failed to remove the sense of grievance.

Negotiations were often interrupted by walkouts, accusations of obstruction from both sides and litigation (filed against the Crown). However, the Crown had begun to prepare for settlement by purchasing South Island high country properties and investigating ways that Ngai Tahu could participate in the

²⁵⁴see table 4.3, p. 18

²⁵⁵see table 4.3, p. 18

management of the conservation estate and enjoy greater access to it.

Conservationists became alarmed that large tracts of South Island land were to be transferred to Ngai Tahu with possible harmful effects on environment.

Recreational groups (representing trampers, fishermen and hunters) expressed concern that their access might be restricted if Ngai Tahu were placed in charge.

Ngai Tahu response was to dismiss any suggestion that they were less sensitive to conservation issues than the Crown and to give assurances that access would be maintained.²⁵⁶

Included in the settlement was title to the farmable parts of the Elfin and Routeburn high country stations and title to the non-farmable parts that were to be leased back to the Minister of conservation at a token rental in perpetuity. Approximately one tenth of amount of land originally sold (1.83 million hectares) would be up for discussion before the settlement could be concluded. Ngai Tahu would be offered a first right of purchase at market prices, any surplus Crown lands in the South Island. Whenua hou (Codfish Island) would remain in the Crown's possession. However, Ngai Tahu were to receive the title to the Titi (Mutton Bird) islands, to be managed as a nature reserve, and subject to Ngai Tahu rights to take mutton birds as mahinga kai.

Mahinga kai were also recognised by awarding the tribe title to Rarotoka (Centre Island) and management rights to the adjacent reefs, title to 32 customary fishing areas and 30% of the harvest rights to five shell fish species. 78 original Māori placenames were also restored including Aoraki (Mt. Cook). However, in total

²⁵⁶Durie, Mason. (1998) Te Mana, p.201

only 630 hectares out of the 5 million hectares of the South Island conservation estate were earmarked for return and all of that was left open to public access.

Promised reserves, Mahinga kai and sea fisheries formed the basis of the Ngai Tahu claim setting it apart from the Tainui claim. But like Tainui, Ngai Tahu also received a relativity clause to guarantee that their settlement could also be topped up to 17% of the governments future expenditure on historical claims.

The Crown also made a number of gestures to Ngai Tahu (as they had to Tainui in recognition of their mana. Aoraki was symbolically returned to Ngai Tahu subject to Ngai Tahu offering it as a gift to the people of New Zealand. An official apology to the tribe for historical injustice, was delivered by Prime Minister Jenny Shipley at Onuku marae Akaroa, on Sunday 29th November 1998.²⁵⁷

Opposition to the settlement was along similar lines to those who had opposed the Tainui settlement - that Te Runanga o Ngai Tahu (TRONT) was not representative of all South Island iwi and hapū and for the Crown to invest the land interests in them was a dispossession of their rangatiratanga. Notably, the two female Ngai Tahu MPs Whetu Tirikatene-Sullivan and Sandra Lee were among the handful of parliamentarians opposed to the Ngai Tahu Settlement Bill designed to make the terms of the Ngai Tahu Deed binding on both parties. In an address to parliament on the 26 August 1998 Sandra Lee said 'The tragedy of this Bill is that it will not achieve the full and final settlement as desired by the

²⁵⁷Jenny Shipley (1998)*Text of PM's Apology*, Christchurch, Nov 1998 Scanned Text, tinorangatiratanga e-mail list

New Zealand public because it creates new grievances'.²⁵⁸ She then went on to refer to the Waitaha tribe (of the South Island) who had filed a claim separate from Ngai Tahu with the Waitangi Tribunal for much of the same South Island. Sir Tipene's response to the Waitaha claim was that Waitaha had not existed as a distinct tribal entity since the fourteenth century.²⁵⁹

Mike Harawira of the Waitaha tribe has said that 'This settlement is an example of an ill-conceived settlement model which vests ownership of resources, including wāhi tapu, in the hands of a corporate body which has no accountability to its members'.²⁶⁰

In addition, a 'super six' of top of the South Island iwi (including Ngati Tama, Ngati Apa, Te Atiawa, Ngati Kuia, Ngati Rarua and Rangitane) was formed in opposition to the bill and the Government's refusal to hear their claims before settling with Ngai Tahu. The iwi sought to contest a 1990 Māori Appellate Court decision that set northern Ngai Tahu boundaries and disallowed their claim to land now in the possession of Ngai Tahu.²⁶¹

Despite the opposition, the Ngai Tahu Deed of Settlement, signed on the 21st of Nov 1997, was made binding on Ngai Tahu and the Crown by the successful passage of the Ngai Tahu Settlement Bill through parliament on the 30th of September 1998.

²⁵⁸Sandra Lee (1998) *Report back Ngai Tahu Treaty Settlement Bill*, text of an address to parliament, tinorangatiranga e-mail list, 26 August 1998

²⁵⁹Durie, Mason, (1998) *Te Mana*, p. 203

²⁶⁰Harawira, Mike, (1998) *Te News*, e-mail communication from m.harawira@auckland.ac.nz, Aug 1998

²⁶¹*Iwi Form Super Six to Battle Government*, scanned Article, tinorangatiranga e-mail list, Blenheim, Sept 18 1998

Conclusion

This discussion has examined the relationship between Māori and the Crown reflected in the two parties attitudes towards the Treaty. While the Crown's commitment wavered, Māori have increasingly appealed to the Treaty as a source of protection of rangatiratanga. The three chronological phases of the historical Māori / Crown relationship demonstrated these attitudes. First, was a period of mutual support and co-operation during the early years of colonisation. Second, was a time of disparity and division as the settler population and land hunger grew, and the historical grievances originated during this phase. Third, came an era of restitution and negotiation that is currently ongoing.

It is during this era of restitution and negotiation that the Treaty principles developed by the Waitangi Tribunal, the Court of appeal (and to a lesser extent the labour government) have been emphasised as important to guiding relations between Māori and the Crown. However, the Crown has not always strictly observed them in the formulation and application of its Treaty settlement policy. This has led to conflict between the representatives of the larger aggregations of iwi and those who have advocated the independent rights of the smaller hapū and whānau. On the other hand the negotiation process has presented Māori people with a welcome alternative to seeking redress. Where the Courts and the Waitangi Tribunal process have proven costly, time consuming, and adversarial, direct negotiation has been comparatively fast, inexpensive, and produces mutual benefits. But above all it has offered the tribes a sorely needed opportunity for development by securing an economic base.

Given a series of successful litigation and Waitangi Tribunal recommendations direct negotiation also has appeal for the Crown. Determined to have greater

control over future settlements they hastily committed themselves to a negotiation policy. In their haste they failed to consider some broader issues such as the constitutional position of Māori people under the Treaty and the need for a comprehensive Treaty policy. Clarification of these two related issues would better inform a Treaty settlement policy. Without it the government may run the risk of creating grievances as quickly as it is settling them. The current policy certainly seems to be deficient in so far as it is more motivated by affordability, acceptability to the electorate, and finality than justice and the removal of the sense of grievance. The current process is certainly contrary to the principles of the Treaty in at least some respects, and in the future this very process might well be the subject of a claim before the Tribunal.

What is needed is for settlement policy to be put in its proper context. Historical settlements are no more than a narrow, all be it significant part of the relationship between Māori and the Crown. To view them as any more than that would be to consign the Treaty to history and deny its position as a foundation for future development.

The following chapter will examine the Whakatōhea Settlement as a case study of direct negotiation of a tribal Treaty claim.

CHAPTER 5

Kei roto te moana a Tairongo

Kei waho te moana a Toi

Ara te tapu o Muriwai, ko ngā kuri-ā-Whareī ki Tikirau

Tihei Mauri ora

5.0 The Whakatōhea Settlement Negotiations

Whakatōhea satisfied the Crown's requirements for admission to the negotiations register and entered direct negotiation with the Crown in 1996. With the threat of political uncertainty which might accompany MMP and an election only two weeks away, Claude Edwards (for Whakatōhea) and the Hon. Douglas Graham (the Minister in charge of Treaty settlement negotiations) signed a draft deed of settlement on the 1 of October 1996. However, soon after signing, the deed had become such a bone of contention, it was unlikely to be ratified by its intended beneficiaries. Two key concerns were expressed by dissenters to the draft deed: that its terms, conditions and the process through which it had been delivered to Whakatōhea were unacceptable; and that its acceptance as a draft offer from the Crown had not been properly authorised by the mandated Whakatōhea negotiators. In the event, opposition to the deed was substantial. A hui-ā-iwi voted 174 to 16 to reject the Crown's offer at Waiaua Marae in Opotiki (Saturday 26th July 1997)²⁶² and a poll of beneficiaries (conducted by the Whakatōhea Māori Trust board) returned 86% of the ballot against accepting the settlement offer (although the offer was never put to a full postal ballot).²⁶³ Despite the Crown agreeing to extend the timeframe for

²⁶²Sunday Star-Times, July 27, 1997

²⁶³Whakatōhea Raupatu Negotiation Committee Meeting Minutes, 6 Feb 1998

ratification (from 30 June 1997 to 31 March 1998)²⁶⁴, as the new deadline drew near it became apparent that Whakatōhea would not give consent. Eventually, it was agreed at a meeting between the Minister and four core negotiators that the Deed should be terminated from the 31st of March 1998.²⁶⁵

This chapter will examine the Whakatōhea settlement negotiations to illustrate issues of Treaty settlement negotiations. While the previous chapter has considered some general issues that challenge the negotiation process, this chapter will focus on specific impediments which arose for Whakatōhea and eventually led to the decision to terminate the deed of settlement. It is structured in two sections. First, a background on the Whakatōhea people and a description of the events that led to the four claims concerning Whakatōhea. And second, an analysis of the progression of settlement negotiations. There will be discussion on the main issues surrounding the negotiation process for Whakatōhea drawing on the views of seven participants who were involved in the negotiation process.

5.1 Background

5.1.1 Whakatōhea

While a complex analysis of Whakatōhea genealogy is beyond the scope of this discussion, it is necessary to make some general observations about who the Whakatōhea people are. For a detailed account of Whakatōhea Tribal history see A.C. Lyall's book *Whakatohea of Opotiki*.

²⁶⁴Graham, Douglas (1998), Letter to WRNC, 19 June 1997

²⁶⁵Graham, Douglas (1998), Letter to Claude Edwards, 17 March 1998

Along with many of the tribes of the Bay of Plenty, Whakatōhea trace their ancestry to the Mataatua waka, in particular to Muriwai (sister of Toroa the captain of Mataatua waka). However, Whakatōhea also derive more ancient origins from the Nukutere waka and the original eastern Bay of Plenty tangata whenua (said to have arrived from Hawaiki some seven generations before Mataatua). In particular the marriage of Tūtamure (descendant of Te Wakanui of the Nukutere waka) and Hineikauia (daughter of Muriwai). Through which all Whakatōhea people can trace their ancestry.²⁶⁶ Whakatōhea are closely aligned to Ngai Tai and Te Whānau-ā-Apanui on their eastern boundary, Ngati Awa to the west and Tuhoe further inland to the south.

There are six hapū of Whakatōhea. They are Ngai Tama Haua, Ngati Ruatakenga, Ngati Patumoana, Ngati Ngahere, Ngati Ira and Ūpokorehe. However, a register of Whakatōhea members recorded in 1874 relative to the creation of reserves out of confiscated lands, included a seventh hapū, Ngati Muriwai.²⁶⁷ It listed only 11 adult and 11 children members of Ngati Muriwai out of a total number of 690 members of Whakatōhea. An earlier census held in 1870 recorded only five hapū of Whakatōhea with no mention of Ngati Muriwai or Ūpokorehe hapū (45 members by the 1874 figures) with a total of 511 recorded tribal members.²⁶⁸ Census results showed 5 637 people affiliated to Whakatōhea in 1991 and in 1996 that figure had increased to 7 350,²⁶⁹ of whom 3 600 of those lived in the Bay of Plenty region at the time of the census.²⁷⁰

²⁶⁶ Oral source, Tairongo AmoAmo, 4 March 1997, Wellington

²⁶⁷ Lyall, A.C. (1979) Whakatohea of Opotiki, p. 197

²⁶⁸ Gilling (1994), p. 157

²⁶⁹ Statistics New Zealand (1998) Iwi Vol 1, pp. 17 -21

²⁷⁰ *ibid*, pp. 44 - 77

The Opotiki district lies toward the eastern end of the Bay of Plenty. Its fertile plains are bound by coastline to the north and rising hill country to the south becoming progressively more rugged further inland. Its geographical features together with its warm climate create an excellent environment for agriculture. The estuaries of the Ohiwa Harbour have a special historical, spiritual and cultural significance to Whakatōhea and are a traditional source of kaimoana. As are the Waiotahi and Waioeka rivers. The gorge formed by the Waioeka river provides the inland route to the East Coast.

The Whakatōhea tribal rohe was described before the 1920 Native Land Claims Commission as:

Commencing at Pakihi, at the mouth of the river along the seacoast to the Waiotahi stream to the mouth of the Ohiwa stream to Te Horo (a hill) and thence turning inland southwards to Puhikoko (a hill) by straight line to Pukemoremore (a hill) then to Mapouriki (a hill) at one time a fighting pa. Then descending to Waimana stream towards its source at Tautautahi (a hill) along the banks to the mouth of the Parau stream; then following Parau stream to tangata-e-wha (a hill) on to Kaharoa (an old settlement); . . . from Kaharoa to Pa-Harakeke, a ridge leading towards Maungapohatu to Maungatapere (a hill) descending into the Motu river to Kaitaura falls, a swingbridge at present stands there, to Peketutu (this is a rock in the Motu river that was an old crossing): leaving the river and up a ridge to Whakararonga (a hill); following along tops of hills till it reaches Tipi o Houmea (a peak descends towards Mokomoko (another hill) down till it crosses Takaputahi stream to Ngautepokotangata (a mountain) following a ridge to Kamakama (mountain, a resting place); along the ridge to Oroī (a trig station) then turning seawards to Te Rangi on the sea coast. (This was once an anchor on a canoe of Hauraki . . . Nukutere) It is a stone

visible on the sea coast at low tides); then along the sea coast to the mouth of the Opape stream, to Te Awahou stream to Tirohanga formerly a pa, and back to Pakihi.²⁷¹

Map 1



This map is taken from Mikaere 1991, pp. 6-7

²⁷¹ Cited in Mikaere (1991) Exploratory Report to the Waitangi Tribunal Being an Historic Account of the Confiscation of Land in the Opotiki District, pp. 3-4

However, this tribal boundary may be subject to the claims of neighbouring tribes in particular Ngati Awa and Tuhoe who together with Whakatōhea have traditionally enjoyed access to the important resources of the Ohiwa Harbour.

The Raupatu claim made 16 specific allegations against the Crown, centred on the invasion of Whakatōhea tribal lands in 1865 by government troops. These allegations included loss of life, confiscation of lands and property and the cultural social and economic deprivation Whakatōhea suffered as a consequence of the invasion.²⁷² Comprehensive accounts of events leading up to the invasion and the confiscations are available in two reports to the Tribunal. The first by Buddy Mikaere²⁷³ was an exploratory report and the second by Dr Bryan Gilling²⁷⁴ drew a number of conclusions in support of Whakatōhea claims. The following section will review the main sequence of events which led to breaches of the Treaty and reiterate some of the main findings from reports which helped to establish the validity of Whakatōhea claims paving the way to negotiations.

5.1.2 Events leading to the invasion

Whakatōhea Involvement in the New Zealand Wars

During the years preceding the 1865 invasion of the Opotiki district, Whakatōhea was a comparatively wealthy tribe. Its people had been trading with Europeans for two decades, owned their own flour mill and trading vessels and were

²⁷² See Wai 87 statement of claim Appendix

²⁷³ Mikaere (1991) Exploratory Report to the Waitangi Tribunal Being an Historic Account of the Confiscation of Land in the Opotiki District

²⁷⁴ Gilling, Dr. Bryan D., (1994) Te Raupatu o Te Whakatohea: The Confiscation of Whakatohea Land 1856-1866, Treaty of Waitangi Policy Unit, Department of Justice

producing enough of an agricultural surplus to make trips to Auckland for trade.²⁷⁵

Despite relative isolation, Whakatōhea became interested enough in the news of war in Taranaki to dispatch a 'correspondent' in 1861 to keep them up with events.²⁷⁶ However the correspondent never got further than the Waikato, from where he returned with a deputation sent by Wiremu Tamehana seeking support for the Kingitanga. But it was not until 1864 when the French Roman Catholic Priest, Father Gravel, delivered a letter to Whakatōhea from Tamehana seeking assistance with the war in Waikato, that Whakatōhea sent their first organised taua (war party).²⁷⁷

By 8 February [1864], galvanised by the arrival of a 100 strong taua from Ngati Porou, 250 Whakatohea left to attack Tauranga, leaving 70 to guard Opotiki. Within five days 200 were back, having been refused passage past Te Awa o Te Atua through Arawa territory. Thirty did, though, go on, led by Hori Te Tamaki of Ngati Horoai, Mokomoko of Ngati Patu, Te Iki of Ngati Rua and Kakarua of Ngai Tama.²⁷⁸

This force was joined in early 1864 at Matata, north of Whakatāne by contingents from Ngati Porou, Whānau-ā-Te Ehutu, Ngati Tawarere, Te Whānau-ā-Apanui, Ngati Awa, Ngati Pūkeko and Ngai-te-Rangihouhiri.²⁷⁹

The newly constituted taua (known as Tai Rāwhiti) was unsuccessful against Te Arawa and the Crown forces in getting through to the Waikato despite further

²⁷⁵ Gilling,(1994), p. 13

²⁷⁶ Mikaere,(1991), p. 8

²⁷⁷ Gilling,(1994), p. 22

²⁷⁸ *ibid*, pp. 22-23

²⁷⁹ Mikaere,(1991), p. 9

reinforcement from Tuhoe, Ngai Tama, Ngati Makino and Ngati Porou. During the running battle fought along the beach as the Tai Rāwhiti force retreated, the prominent Te Arawa chief Tohi te Ururangi was killed. In retribution for this killing, Ngapi, his widow shot and killed the only prisoner who had been taken in the battle, Te Aporotanga, a senior Whakatōhea chief. This killing was significant as Whakatōhea expected some form of justice from Crown over what they saw as an act of murder. When restitution was not forthcoming it had a hardening effect on the attitudes of Whakatōhea toward the government. It may also have had an effect on their attitude towards the Rev. Carl Sylvius Volkner, the resident Anglican missionary, whom some Whakatōhea had come to suspect was also a government spy.

Volkner's Killing

The killing of Volkner on the 2 March 1865 was to become the focal point for confiscation of Whakatōhea lands. Volkner an emissary of the Church Missionary Society (CMS) first arrived in Opotiki in 1861. By then there had been an Anglican presence in Opotiki since 1839 and Christianity had been introduced almost thirty years earlier. Volkner established a mission which he named Peria after the Macedonian town where the apostle Paul had established his mission (after Volkners death the church was renamed after Saint Stephen the martyr). Under Volkners influence a school was built and later a church in 1864.²⁸⁰

The Catholic missionary in Opotiki at the time was Father Garavel. Conflict between the two competing interests may have also been factor in the attitude of Whakatōhea towards Volkner. Garavel had been travelling between the Bay of

²⁸⁰ Saint Stephens church still stands, Church street, Opotiki

Plenty and the Waikato and Volkner accused him of being sympathetic to the 'rebels' and of carrying letters between Opotiki and the 'rebels'.²⁸¹ Garavel had in turn accused Volkner of being a spy. Garavel was transferred overseas by his superiors upon Governor Grey's request. When the popular Catholic priest disappeared, it was rumoured that he had been executed and that Volkner was somehow behind it.²⁸²

On Saturday the 25th of February 1865 the Hauhau religion was introduced to Opotiki with the arrival of Kereopa Te Rau and Patara Raukatauri, the emissaries of the Taranaki Prophet Te Ua Haumene, in the company of Wepiha Te Poono Apanui, a Ngati Awa chief.²⁸³ Expecting to find Volkner in Opotiki, they had intended to order him to leave. If he refused he was to be put to death.²⁸⁴

Garavel's accusation that Volkner was a government spy was later substantiated by the discovery of Volkner's letters to Governor Grey containing military intelligence, including a detailed plan of a pa site at Rangiaohia where the wife and daughters of Kereopa Te Rau were killed by Government troops. Although, there was no evidence that Whakatōhea or Kereopa knew of these letters, Whakatōhea were divided over whether Volkner should be handed over to Kereopa who had issued the command that he be killed.²⁸⁵

Volkner returned to Opotiki on the 1st of March, despite receiving warnings from a number of Whakatōhea sources. He was held captive overnight then on

²⁸¹ Gilling, (1994), p. 18

²⁸² *ibid*, p. 11

²⁸³ *ibid*, p. 38

²⁸⁴ *ibid*, p. 29

²⁸⁵ Howe, Earle, (1991), *Bring Me Justice*, Anglican Provincial Bicultural Education Unit, Auckland, Appendix 2

the 2nd (after a make shift trial where, amongst other things, he was accused of being a spy) he was hanged, decapitated, his blood drunk, and his eyes removed and eaten by Kereopa Te Rau.²⁸⁶

Invasion

Outrage was the reaction from Pākehā settlers and the Government at the news of Volkner's death (along with the killing of the half-caste James Fulloon and two Pākehā seamen at Whakatāne on 27 July 1865). Eventually it led to the dispatch of a military force which arrived in Opotiki on 8 September 1865.

Governor Grey had issued a Proclamation of Peace on 5 September 1865. It had two key objectives: to pardon all who had previously been involved in 'rebellion' against the Crown, excluding those who had committed murders (specifically mentioning, among others, the murderers of Volkner and Fulloon); and to notify the dispatch of troops to Opotiki.²⁸⁷

The expedition arrived by sea at Opotiki 8 September 1865. A combined force of over 500 commanded by Major Brassey with Major Charles Stapp his second in command, it included two companies of Taranaki Military Settlers, two of the Wanganui and Pātea Rangers, the Wanganui Yeomanry Cavalry and the Wanganui Native Contingent under Major Kemp and a Company of Men from the Waikato.

Major Von Tempsky and an advanced force of Pātea rangers made the first landing on sandhills across the river from Pakowhai. A short fight in sand hills ensued and the settlement was taken.

²⁸⁶ Mikaere,(1991), p. 17

²⁸⁷ *ibid*, pp. 18-21

Later, more fighting broke out at a pa site (Te Tarata) on the east bank of the Waioeka river. The pa was taken and the defenders fled into the Waioeka valley. Despite their instructions to apprehend Volkners murders, there is no evidence that the attacking force made any attempt to communicate with the Māori they encountered or to make any demand to have the murderers given over until after looting Opotiki and killing a number of Māori.²⁸⁸ It appeared that the whole of Whakatōhea iwi was assumed to be responsible.

Whakatōhea offered little resistance to the Government troops and by late October 1865 many Whakatōhea had surrendered including Mokomoko.²⁸⁹

The Mokomoko Trial

Mokomoko, Heremita Kahupaea (of Ngati Awa), Hakaraia Te Rahui (Ngati Awa), Paora Tai and Penetito were initially tried by court marshal, but the legality of which was later refuted and they were taken to Auckland to be tried by the Supreme Court on the 12 March 1866.

At no stage in the trial was the party responsible for Volkners execution ever identified as Whakatōhea. Witnesses never suggested that more Whakatōhea than those on trial were involved. One witness, the Rev. Samuel Grace could only positively identify Heremita as having accompanied the party which led Volkner to his death (he did not see the hanging) and could not place the others at the scene. Joseph Jahus placed Mokomoko at the scene and said he saw Mokomoko give a rope to others directly before Volkner was hanged. Wephia Te

²⁸⁸ Gilling,(1994), p. 75

²⁸⁹ *ibid*, p. 87

Poono Apanui, a Ngati Awa chief, also placed Mokomoko at the scene, but gave no testimony as to direct involvement in the actual killing. Wiremu Te Pahi on the other hand, placed Mokomoko some distance away from the scene at the time of the hanging. He did identify Heremita and Hakaraia as amongst those involved. Also, he stated that the prisoners (including Mokomoko) owned land at Ohiwa and he did not know if Wepiha would acquire it if they were killed.²⁹⁰ In the event, Wepiha was awarded land in March 1867 by the compensation court set up under the 1863 New Zealand Settlements Act. Whakatōhea were furious and asked the Crown agent why this had happened when Wepiha was acknowledged as the 'rebel' who had brought the Hauhau to Opotiki.²⁹¹

The testimony of the main prosecution witness, Jahus, was opposed by the defendants who said Jahus was never present,²⁹² implying that his statements about Mokomoko's complicity were a fabrication. There had also been a history of disputes between Mokomoko and Wepiha over the tribal boundary near the Maraetotara stream.²⁹³ Wepiha stood to gain land with the removal of Mokomoko and was hardly a disinterested witness.

The defendants were not allowed to speak in their own defence until the judgement had been made. Then Mokomoko declared his innocence and named Wepiha as a leader of the Hauhau and the one who had appealed to have Volkner given up to Kereopa to be killed.²⁹⁴ In his review of the evidence Dr Brian Gilling has said:

²⁹⁰ *ibid*, p. 56

²⁹¹ Mikaere,(1991), p. 28

²⁹² Gilling,(1994), p. 59

²⁹³ Mokomoko Our Tipuna: Te Wetenga o Nga Here o Te Wa, p. 9

²⁹⁴ Gilling,(1994), p. 57

The impression created was that the defendants were always going to be found guilty and that they were at best going to be permitted a token plea in mitigation of the sentence to be passed. All of the witnesses called were regarded as part of the case for the prosecution, an address by council for defence apparently being the only case for the defence heard - and that the judge did not even think worth recording.²⁹⁵

While Heremita reputedly admitted it was right that he should hang, Mokomoko went to the gallows maintaining his innocence 'Hei konei ra Pakeha ma, tēnei ahau e mate hara kore! Kahore i tika taku matenga.'²⁹⁶ (Farewell Pākehā. I die an innocent man. It is not right that I should die.) Mokomoko, Heremita Kahupaea and Hakaraia Te Rahui were hanged on the 17 May 1866 at Mount Eden Gaol.²⁹⁷

Confiscations

The Government treated the attempt to assist Waikato in 1864 and armed resistance to the Crown's invasion force in 1865 as rebellion in terms of the 1863 New Zealand Settlements Act. The confiscation area first declared on 18 January was amended on 1 September 1866 to:

All that land bounded by a line commencing at the mouth of the Waitahanui River, Bay of plenty, and running due south for a distance of twenty miles, thence to the summit of (Mount Edgecombe) Putanaki,[sic] thence by a straight line to a point eleven miles due south from the entrance of the Ohiwa Harbour, thence by a line running due east for twenty miles, thence by a line to the mouth of the Aparapara river, and thence following the coastline to the point of commencement at Waitahanui.²⁹⁸

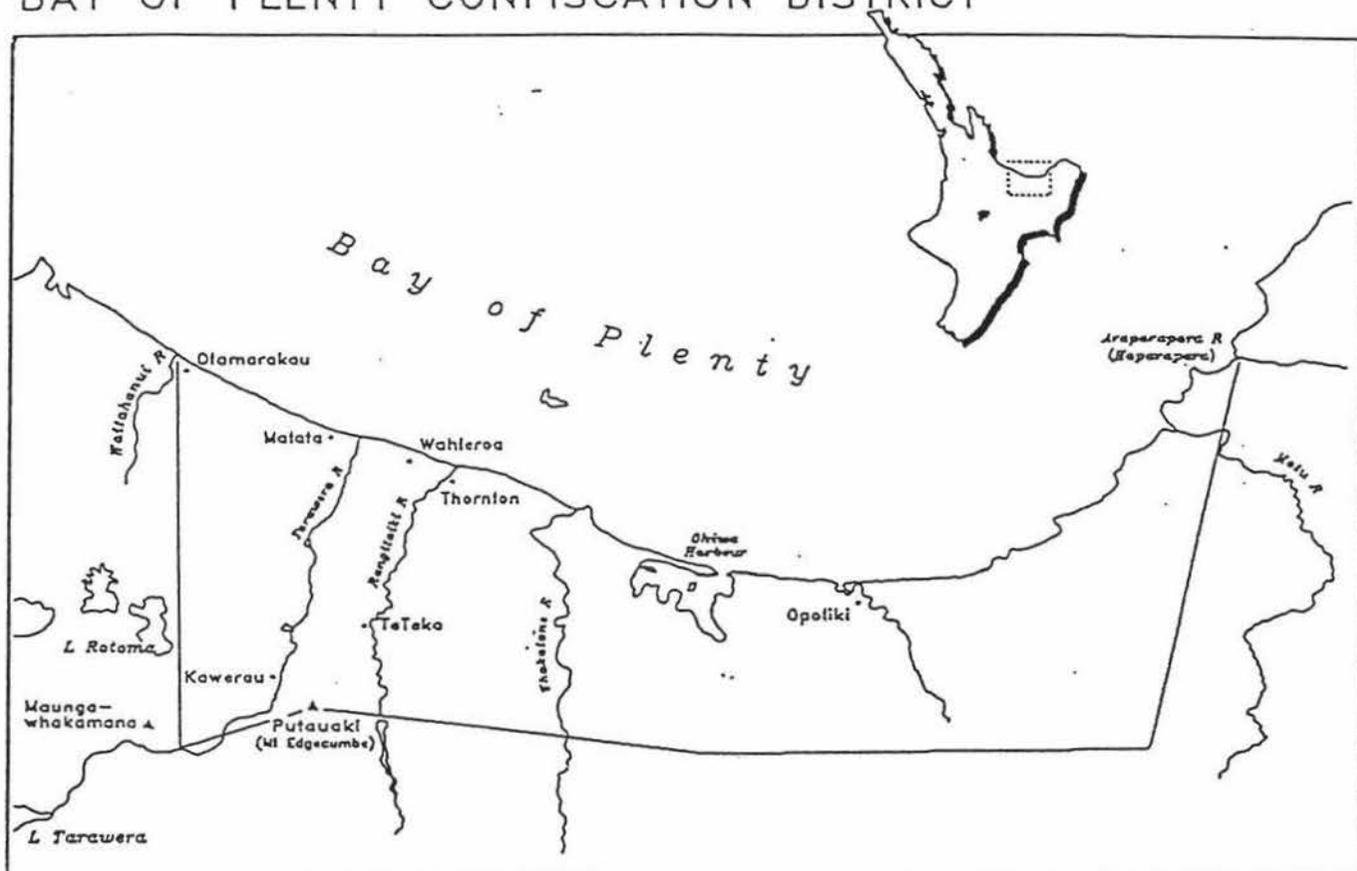
²⁹⁵ *ibid*, p. 60

²⁹⁶ Daily Southern Cross, 18 May 1866, p.4

²⁹⁷ Gilling,(1994), p. 61

²⁹⁸ Mikaere,(1991), pp. 24 - 25

BAY OF PLENTY CONFISCATION DISTRICT



This map is taken from Mikaere (1991), between pp. 25-26

This block (448 000 acres in total²⁹⁹) included Whakatōhea, Ngati Awa Tuhoe and some Te Arawa tribal lands. Over the following few years the Crown agent (also the surveyor) J. A. Wilson oversaw the return of a limited amount of marginal lands to Whakatōhea by way of Compensation court awards, out of Court settlements, and allocation of reserves.

Wilson established a reserve of 20 789 acres at Opape (previously Ngati Rua land) for all the hapū except Ūpokorehe to whom reserves at Hiwarau (1073 acres) and Hokianga (an island of 13 acres) were awarded.³⁰⁰ The Crown action of forcing so many hapū onto what had been the land of Ngati Rua effectively dispossessed all hapū as Ngati Rua no longer had full access to what had once belonged to them.

Grants of title to hapū land were given to individuals or groups of individuals expected to act as trustees, effectively alienating the land from hapū ownership.³⁰¹

After the return of some lands a total of 173, 000 acres of Whakatōhea land had been alienated, comprising about half of their total land and all of the flat useful land.³⁰² Much of this land was allocated to military settlers.

By 1867, the economic base of Whakatōhea had been devastated; their best lands alienated and their property had been plundered.

²⁹⁹ *ibid*, p. 52

³⁰⁰ *ibid*, p. 36

³⁰¹ *ibid*, p. 38

³⁰² *ibid*, p. 46

1920 Commission

Whakatōhea, like many other tribes who suffered confiscation, continued to petition the government for fair treatment. In 1920 the Native Land Claims commission found that although confiscation was justified, the fate suffered by Whakatōhea under the confiscation was 'heavier than their deserts'.³⁰³

The Commissions report³⁰⁴ found that the confiscation had been inappropriately justified at the time as retribution for the killings of Volkner and Fulloon. Such retribution, according to the Commission, should have been confined to punishment of the actual perpetrators. They also found that not enough consideration was given to the fact that the 'arch criminal', Kereopa, was of another tribe.³⁰⁵

Despite their finding in favour of the claimants their pleas remained unaddressed, but the 1920 report was referred to by the next Commission of inquiry in 1927 headed by Justice William A. Sim.

1927 Sim Commission³⁰⁶

The Sim Commission found that although Whakatōhea had been forgiven for any attempts to assist in the Waikato war in 1864 by the Proclamation of Peace, the confiscations could be justified as Whakatōhea was in rebellion in 1865 when they met the invasion force at Opotiki with resistance.³⁰⁷

³⁰³ *ibid.* p. 48

³⁰⁴ Reproduced in Mikaere pp. 41-48

³⁰⁵ Mikaere,(1991), p. 47

³⁰⁶ Sections relevant to Whakatōhea reproduced in Mikaere pp. 50-53

³⁰⁷ Gilling,(1994), p. 50

Like the previous Commission, the Sim Commission found that the confiscation was justified but excessive. They recommend a compensation payment of 300 pounds in perpetuity for the higher education of Whakatōhea children.³⁰⁸

Following protracted disputes as to an appropriate settlement amount, in 1946 the Finance Act (No.2) provided for a lump sum payment of twenty thousand pounds. It was described as being calculated on the value of excess lands confiscated, capitalised by 4%. This money was initially paid to the Native Trustee and in 1952 a sum of twenty thousand pounds plus six thousand pounds interest was transferred to the newly established Whakatōhea Trust Board.³⁰⁹

Gilling made a number of key conclusions which help substantiate Whakatōhea claims. He found that Whakatōhea had been a relatively wealthy tribe prior to the confiscation and that their involvement in the Waikato war could not have been considered a justification for confiscation since the Proclamation of Peace had forgiven all tribes for involvement in the Wars. Furthermore, Gilling concluded that although confiscation was held to be justifiable (by the two Commissions) in respect to the killing of Volkner, Whakatōhea involvement (as an iwi) cannot be established. In fact Gilling highlighted evidence to suggest two major hapū, Ngati Rua and Ngati Ira, may not have been involved and may have opposed the killing.³¹⁰ Instead there was evidence of involvement by individuals, many from other tribes (especially Kereopa and Wepiha). According to Gilling's interpretation of the evidence, if Mokokoko was at all

³⁰⁸ Mikaere,(1991), p. 53

³⁰⁹ *ibid*, p. 56

³¹⁰ Gilling,(1994), p. 177

involved in the killing of Volkner he was peripheral to it and he did not deserve his fate. In any case the killing of Volkner was a criminal matter and could not be a legal justification for confiscation. Confiscation had been made with a view to punishing tribe and not the culprits and the land taken was Whakatōhea's best, effectively destroying their economic base and leaving them all but destitute in their own tribal homeland.³¹¹

The preceding sequence of events provides the background to the four Whakatōhea claims. Wai 87, the Raupatu claim, already mentioned, was the major tribal claim filed by Claude Edwards on behalf of the people of Whakatōhea dated the 22 May 1989. The other three were ancillary claims. First, the Mokomoko whānau claim, Wai 203, registered by Tuiringa Mokomoko and dated 14 May 1991, sought a pardon or an acquittal for Mokomoko. As a result of negotiations between tribal representatives, the Mokomoko whānau and the Crown, a free pardon was delivered to the whānau on 15 June 1992 at Waiaua Marae by Her Excellency the Governor-General Catherine Tizard and the Minister of Justice the Hon. Douglas Graham. In 1994 a further statement of claim was filed by the same claimant with regard to Wai 203 seeking compensation for the execution of Mokomoko the loss of land, of mana, and an economic base. Second, Wai 339, the Hiwarau C claim, dated 17 December 1992 and amended 2 June 1993, also filed by Tuiringa Mokomoko on behalf of the trustees of the Hiwarau C block. Wai 339 is a land claim concerning a subdivision of the original Hiwarau grant (already mentioned). Third, Wai 558, the Ngati Ira claim, dated 9 June 1995, filed by John Kameta JP on behalf of Ngati Ira o Waioeka. This is a claim separate from Wai 87 for the return of land and/or

³¹¹ *ibid*, pp. 176-182

compensation for the land, property and lost economic opportunities of Ngati Ira hapū created by confiscation under the New Zealand Settlement Act 1863.

5.2 Settlement Negotiations

Discussions with the participants concerning the negotiation of a settlement for the above claims centred on two main issues. They were structure and process for Whakatōhea, and the Crown offer (the Deed of Settlement). The following analysis is set out under those headings; it provides some details to the negotiation process and a comparison of the views of the participants on the issues emerging from the process.

5.2.1 Structure and Process Issues for Whakatōhea

The issues discussed in this section include mandate and process issues as well as the roles of the five key groups involved at various stages of the negotiations of the claims (other than the Crown).³¹² Those groups were: ngā hapū o Te Whakatōhea, the Mokomoko whānau, the Whakatōhea Māori Trust Board, the Whakatōhea Raupatu Negotiating Committee, and Te Tawharau o Te Whakatōhea.

The Role of Hapū

In the interviews participant D emphasised an important distinction between hapū and whānau groups and the other three groups (Trust Board, Negotiation Committee, and Te Tawharau):

³¹² The Crown Task Force is discussed in Chapter 4

Firstly, as far as the hapū goes, I think there is two points I'd make about ah these names here [points to list] ngā hapū, Whakatōhea Trust board, Negotiating Committee, Te Tawharau and the Mokomoko whānau, is that I think there is really two distinctions I'd make between all of those groups. Firstly, one of them is more based in terms of whānaungatanga and the other are really vehicles for trying to achieve a particular gaol.³¹³

Generally the participants views converged on the understanding that hapū were central to the Whakatōhea tribal structure and should be the principle decision making bodies:

It's hapū who should be the cornerstone and decides what decisions they want to delegate, so they're to me they're the cornerstone, our benchmark . . . that we should always seek reference back to.³¹⁴

. . . ngā hapū o Te Whakatōhea. For me the hapū are the essence of Whakatōhea. That's where our whakapapa is, that's where our tikanga is, that's where our traditional structures are to be identified I mean notwithstanding the fact that over time, the hapū and iwi structures have been quite seriously eroded. The raupatu has played a critical role in that erosion process.³¹⁵

. . . well basically I think the hapū should be the controlling body . . for Māori. I see their role as being one of adherence . . ensuring that what we're doing is adhering to tikanga um to keep us in line, as well of course to share the wisdom of the old people, but apart from that hapū give a

³¹³ Participant D, p. 1

³¹⁴ Participant G, p. 1

³¹⁵ Participant F, p. 3

forum for their descendants to be able to have their say. Somewhere to be able to take their issues to . . . somewhere to, well to air those issues, a forum for discussing and debate.³¹⁶

However, not all participants agreed on what decisions ought to be made by hapū, in particular, whether the hapū or the WRNC should make the decision to put the Crown offer to a postal ballot. Participant G had this to say:

. . . they [the hapū] decide whether they delegate their authority to make those decisions to a postal ballot or to the Trust Board or to whatever but all decisions, . . . fundamental decisions should be made by hapū, any that they want to delegate that's up to them. Not to have what we had was . . . a negotiating committee deciding for hapū. . . It's hapū who should be the cornerstone and decides what decisions they want to delegate, . . . If they don't want a settlement to go to a postal vote then they decide, not having a quasi body of tribal representatives deciding that it goes to the postal ballot.³¹⁷

On the other hand participant E (a former negotiator) in said:

. . . it's for the people to decide, it's not for us as individuals. I mean this was the differences I had at the time trying to get through to people like [name removed] and a few of the others because they were opposed to a vote because people might vote yes. You know might vote in full favour of it. Well that's the peoples right and no one has the right to reject it outright just because you don't like it.³¹⁸

³¹⁶ Participant C, p. 1

³¹⁷ Participant G, p. 1

³¹⁸ Participant E, p. 3

The central question here was did the negotiation committee have a responsibility, once the Crown offer was made, to first seek the consent of hapū before seeking ratification from a beneficiary vote. Given the views expressed above by participants as to the importance of the authority of hapū, it is not unreasonable to expect a negotiating committee to be accountable to them if they are to be treated as the 'cornerstone' of Whakatōhea. In the event, no postal ballot was carried out, but this issue highlighted one of the many ambiguities in the negotiation process which emerged during the discussions.

Ngati Ira, like the Mokomoko whānau had their own claim which they fought to keep separate from a global settlement. However, unlike the Mokomoko whānau representation has been less of an issue as both the Trust Board and the Whakatōhea Raupatu Negotiation Committee include two representatives from each hapū.

Mokomoko Whānau

Tipuna Mokomoko went to his death proclaiming his innocence and his whānau have similarly always upheld it. Although the authorities at the time of the execution refused the requests of the whānau to have his body returned, finally in 1989, 123 years after he was wrongfully executed his body (along with the three other Ngati Awa tipuna who were all executed together) was exhumed, taken home and reinterred at Waiaua Marae on a hilltop overlooking the sea. On 15 June 1992 a pardon was received at Waiaua marae by the late kuia Te Wairemana Mokomoko (at the time the oldest living descendant).

Then on 17 March 1994 a further statement of claim was filed seeking that:

The Crown take appropriate action to compensate Te Whānau-ā-Mokomoko for [the] wrongful execution of Tipuna Mokomoko, the loss of their mana, the loss of their land, their [sic] economic base, and the loss of opportunity associated with the wrong-doing to our whānau.³¹⁹

The whānau had in 1986 developed a four phase plan at a hui in 1986. First, to locate tipuna Mokomoko (contemporary authorities had denied any knowledge of bodies being buried at Mt. Eden). Second, to bring Mokomoko home. Third, to clear his name from any wrong doing. And finally, to seek compensation for the wrong inflicted upon the whānau.³²⁰ The conviction of Mokomoko was used to justify the confiscation of land under which all Whakatōhea suffered.

However, the whānau chose to pursue their own separate claim from Whakatōhea, as only they had born the shame of being held responsible for all the losses of Whakatōhea and only they became ostracised by their own people.³²¹ Throughout the negotiation the whānau struggled to retain control of the claim as participant C observed:

... 'cause at the end of the day it was really up to our negotiators wether or not our claim was up for settlement and that's a sad thing.³²²

The whānau were alarmed that the Crown offer included the settlement of the Wai 203. Although the negotiators had arranged for the specific exclusion of compensation for the execution of Mokomoko from the terms of the deed which could be investigated by the Tribunal at a later date,³²³ they had acted without Mokomoko whānau consent.

³¹⁹ Mokomoko, Tuiringa, (1994) Statement of Claim Wai 203, 17 March, 5.2

³²⁰ Ratima, Te Warana (1997) Letter to Tau Henare, 8 July

³²¹ Mokomoko Our Tipuna: Te Wetenga o Nga Here o Te Wa, p. 13

³²² Participant C, p. 9

³²³ Graham, Douglas (1997) letter to Te Warana Ratima jnr, 24 Jun 1997

So the 1996 draft deed sought to extinguish all Whakatōhea historical grievances excluding compensation for execution of Mokomoko. It contained the following clause with regard to the meaning of 'all Whakatōhea claims':

... includes the claims made in the Wai 203 claim, dated 14 May 1991, made to the Waitangi Tribunal by Tuiringa Mokomoko on behalf of himself and of the members of the Mokomoko family of the Whakatōhea tribe, and the further statement of claim, dated 17 March 1994, by Tuiringa Mokomoko on behalf of himself and the members of the Mokomoko whānau of the Whakatōhea iwi (other than any claim for financial compensation for the execution of the Whakatōhea chief Mokomoko in 1866); ...³²⁴

The whānau were concerned that their claim as described above constituted much more than simple compensation for the execution. They began to seek representation in settlement negotiations:

We tried and we were in fact banished from the committee, even in 1994. Uncle Manny [Tuiringa] tries to get representation on the committee. It's not recognised. Uncle Manny and John Paki attend the meetings. They're welcome to stay but they have no voting rights. What the hell's the point of that? And then after that, a while later they got no speaking rights. What the hells the point of that, you know. So it becomes pointless to have a whānau presence there.³²⁵

Some participants clearly felt no one should represent the whānau claim other than the Whānau:

³²⁴ Whakatohea Draft Deed of Settlement, 1 October 1996, clause 2.3, p. 12

³²⁵ Participant D, p. 8

Participant:

I think hapū are the cornerstone for decisions that are hapū decisions, like raupatu is, is a, that claim is owned buy hapū at the moment. The Mokomoko grievance is owned by the Mokomoko whānau. Hapū are not the cornerstone for decisions about the Mokomoko grievance. So when I say hapū are the cornerstone, I mean they are the cornerstone for decisions that are relevant to hapū. Any other decisions like Hiwarau C, Mokomoko whānau are not hapū decisions to make.

Interviewer:

So the individuals or the family . .

Participant:

We need to listen to those people about what they want not tell them what they want or what's best for them.³²⁶

Comments by others suggested that they viewed a separate whānau claim as an obstacle to reaching a broader Whakatōhea settlement:

. . . you know Mokomoko has a case, that they now feel has not been settled properly, they have a right to feel like that and they're a bloody nuisance to Whakatōhea's case (Both laugh) there're rocking the boat a bit, but never mind there're Whakatōhea.³²⁷

Eventually, the whānau were given a voice on the negotiation committee along with Te Tawharau o Te Whakatōhea following a resolution of a meeting of the committee on 6 February 1998.³²⁸ At the same meeting a motion was passed that

³²⁶ Participant G. p.3

³²⁷ Participant A, p. 7

³²⁸ Whakatohea Raupatu Settlement Office, Church St. Opotiki

the claims Wai 203, Wai 339 and Wai 558 all be excluded from any future settlement.³²⁹

However, the Crown's position on negotiating with the whānau was clearly stated by the participant representing the Crown:

... we, listened to the Mokomoko whānau way back whenever it was, 91 or something and we tried to do something for the family. And we granted what most people would say was a most extraordinary thing a pardon after 130 years is what it was, but that was as far as the Crown was prepared to go. And it wasn't prepared to write out a cheque on the taxpayer to pay descendants of Mokomoko um and that hasn't changed, so there's not much point in me repeating it... I've tried to make it clear that we won't be doing that. Now if you say well your cutting off negotiations well yeah because there aren't any.³³⁰

Both Ngati Ira and the Mokomoko whānau have struggled to retain control of their claims within the 'iwi' orientated context of the Whakatōhea settlement negotiations. Their struggles highlight another ambiguity in the process. Who has the right to represent claims made at the level of hapū and whānau? The Whānau have, so far, with support from the iwi, successfully defended the right to settle their own claim. Not all iwi members see this as appropriate and some have felt the existence of independent claims has compromised iwi unity and the likelihood of successful iwi settlements. The Crown's iwi settlements policy, while preferable to the pan-Māori settlement policy of the past, has created conflict. Often the Crown is in the convenient position of being able to decline becoming involved in what it considers are internal matters for Whakatōhea. An

³²⁹ Resolution of a meeting of the Whakatōhea Raupatu Committee Negotiation held at the Raupatu Settlement Office, Church Street, 6 February 1998, minutes, p. 5

³³⁰ Participant B, p. 3

alternative view is that the problem lies not just with Whakatōhea (or any particular tribal group), but with the inadequacy of the Treaty settlement framework to recognise the tension between the rights of the smaller aggregations of whānau and hapū, and the rights of the larger aggregation of iwi.

Whakatōhea Trust Board

Within the settlement negotiations participants agreed the Trust Board initially played a minimal role:

Well I know at the beginning when our claim was first formed . . . It was done through the Trust Board. I know in the early stages most descendants of Whakatōhea expected that the Trust Board would be the body to take our claim. Mainly because they were the only mandated body in Whakatōhea to be able to do that. The only ones who had a mandate to act for their beneficiaries. So it was a big surprise when we found out that the Negotiation Committee had been formed and took it away from the Trust Board.³³¹

Well, for better or for worse, the people made the determination that the trust board was not to be the facilitator of this process . . . So at that time . . . , the Trust Board had had some involvement in as much as Claude was executive chairman of the Trust Board at that time, and that he had registered the claim³³²

However, when the Judge Hingston revoked the mandate of the WRNC,³³³ on the grounds that they had proven they could not work together, the Trust Board did make an attempt to take control of the settlement process. The only

³³¹ Participant C, p. 1

³³² F, p. 1

³³³ Special sitting of the Māori Land Court in Rotorua, 24 March 1998

participant interviewed after the Trust Boards attempt to become involved, had this to say:

The position of the Board and what [name removed] is trying to do, . . . I agree with [name removed] I think the board is the most logical body. But where I disagree . . . is the way [name removed] went about it. [name removed] just went in and put an add in the paper and said we're taking over. I said . . . you know you can't do that. As much as I agree . . . , there is a process. You have to have a poll of the people and then [name removed] went and the next thing I see this bloody vote thing [a ballot paper sent to all beneficiaries]. I said back . . . again you can't do that either until you get the Board to approve it. The Board has to meet and say yes we want to take it over yes we will have poll.³³⁴

These comments indicate a lack of shared understandings as to what constitutes an appropriately mandated course of action. It is this lack of common understanding that has aggravated the settlement process for Whakatōhea leading eventually to the disestablishment of the WRNC.

The Whakatōhea Raupatu Negotiating Committee

Following the election of two representatives for each hapū, the 14 members of the Negotiation Committee (Claims Manager Claude Edwards, Bishop Whakahuihui Vercoe (independent) and two members from each hapū) was mandated by order of the Māori Land Court, 2 February 1994.³³⁵

. . . the Trust Board was a Crown entity and so they [the people] wanted in the interests of the expression of mana motuhake and tino rangatiratanga, for the claim to remain in the control of

³³⁴ Participant E, p. 4

³³⁵ 69 Opotiki Minute Book 11 - 26

the people and therefor a committee would be established and mandated to facilitate the settlement process . . . It was an expression of the supremacy of the hapū because through that hapū process delegates were selected and then put forward as their representatives on this negotiating committee. With some advice it was recommended that the committee then seek a legal mandate under section 30 of Te Ture Whenua Māori Act which was a fairly recent Act at that time, and section 30 of Te Ture Whenua Māori was viewed as a section of the act that one, gave recognition to a body of people, but that enabled that body . . . to make it's own decisions.³³⁶

Participant views diverged over the role of the Māori Land Court in mandating bodies to represent Whakatōhea. Some were strongly opposed:

The Negotiating Committee, I don't support that because they get their mana from the Māori Land Court and I don't believe the Māori Land Court should have any role in our affairs because their expertise is with Māori Land.³³⁷

Others could see no alternative:

Interviewer:

A lot of the people are very anti the Māori Land Court having a say in, having the final say in mandating who representatives are.

Participant:

Well who's going to provide that, my [question] is well you give me an alternative. And they say well the hapū. Well who and what is the hapū. Who ultimately determines right now when you

³³⁶ Participant F, p. 5

³³⁷ Participant G, p. 1

have the hapū with several different competing bodies, and ultimately I think it falls back on the Crown to say here's the process.³³⁸

In any case, the Committee were unable to work together. Dr Ranginui Walker (a former negotiator for Whakatōhea) has attributed this to a series of unilateral actions taken by the Claims Manager,³³⁹ not least of which included the signing of the Deed of Settlement in October 1996 without the full consultation of the Negotiating Committee or a clear mandate from the hapū. The Committee had signed a Memorandum of Understanding with the Crown on the 11 September 1996 outlining a 40 million dollar settlement benchmarked against the Tainui claim. They fully expected to be involved in the negotiation of a Deed between Whakatōhea and the Crown but, according to Dr Walker this never took place. In reply Claude Edwards said:

I've been condemned for signing something that was black and white, but its not so . . . You've seen the letters from the Crown to say that they are ready to talk about certain matters. So in fact its a negotiable Deed.³⁴⁰

One participant had first hand knowledge of division amongst the committee:

We were always going to have that 10 - 4 split, I assumed, and in the end Claude wanted to do it by himself and so the other committee members the other eight or nine said well stuff you and

³³⁸ Participant E, p. 12

³³⁹ Walker, Ranginui, (1997) The Genesis of Direct Negotiation, The Fiscal Envelope, And Their Impact on Tribal Land Claims, in *He Pukenga Kōrero*, Raumati (Summer), Vol. 3, No. 1, pp. 16-17

³⁴⁰ Claude Edwards (1998) personal interview 22 Feb 1998, Whakatōhea Raupatu Settlement Negotiation Office.

they joined up with Tairongo and elected Tairongo as chairman. From that point on I supported Tairongo, I'm not saying I agreed with him but at the end of the day he had the majority.³⁴¹

This division eventually lead to a successful application to the Māori land Court under Te Ture Whenua Māori Act 1993 for an order to restraint both the Trust Board and a group described as 'Tairongo Amoamo and Ranginui Walker and others members who collectively meet under the name of Whakatōhea Raupatu Negotiating Committee' from negotiating with the Crown until a MLC hearing could establish who had a mandate to negotiate the claim.³⁴²

A hearing was convened on 29 January at Omarumutu Marae with Judge H.K. Hingston presiding. He decided to give the committee another chance and the case was adjourned 'with a view to ordering a rehearing if this committee doesn't get its act together'.³⁴³ The court left the option open for any party involved to call a rehearing and in fact several took up the invitation. Consequently, the MLC revoked the original order (2 February 1994) effectively removing the mandate and all negotiators from office. With reference to the advice given by a number of speakers at the hearing and a submission from Te Tawharau o Te Whakatōhea, Hingston recommended that 'the hapū have a good look at their situation and come up with their own solutions'.³⁴⁴

The WRNC had been a costly exercise with a negotiation bill of over 450 000 dollars,³⁴⁵ and little tangible benefit for Whakatōhea. It had become apparent

³⁴¹ Participant E, 4

³⁴² Māori Land Court order 28 November 1997, 1997 Cheif Judge's Minute Book 332

³⁴³ Māori Land Cout Hearing, 71 Opotiki Minute Book 320,

³⁴⁴ Māori Land Court Hearing, Rotorua, 72 Opotiki Minute Book 6

³⁴⁵ Some of which had been paid out by individual negotiators, but, most had been in advance by the Crown who intended to deduct this amount from the settlement quantum (see Whakatōhea Deed of Settlement p. 17 clause 9.3)

that Whakatōhea needed to develop a common understanding about mandating and processes for accountability to hapū, which negotiators could be bound to observe, before entering negotiations.

Te Tawharau

Te Tawharau o Te Whakatōhea are a group of Whakatōhea descendants who originally formed in opposition to the signing of the Deed of Settlement (October 1996). They do not represent any particular whānau or hapū group (other than themselves), but, they share the common concern that the Deed had been developed without the input of ngā hapū o Te Whakatōhea. One participant (who was not a Te Tawharau member) having just discussed the roles of the Trust Board and the Negotiating Committee in moving Whakatōhea towards a settlement, said this about Te Tawharau:

We're on the threshold, now if we can make the right decisions here and now then we might pass over into the land of opportunity. But if we make the wrong choice, then we might just pass over. So . . . , in comes the third entity and this third entity is really trying to get us to ask ourselves that sort of question: are we making the right decisions? Are we being led astray? Are we being pulled off track? Are we really in touch with the whānau and hapū still? Have we gone that far down the track that we've actually forgotten? And to me that's where Te Tawharau comes in. Te Tawharau is kind of like the rope that tries to tie us back to where we came from. It's that connection, it's the reminder that this is who we are, this is what we stood for and we are asking ourselves the question, when we're at the coalface of politics, at the coalface of the Crown, . . . do we still know what we're standing for? and I think Te Tawharau represents that. It's not a voice

it's actually a reminder of who we are, and it's trying to tie us back to the whānau and the hapū.³⁴⁶

Another participant who was a member of Te Tawharau said this:

... we have always only been there to tautoko hapū and as individuals it's provided us a forum . . . to air our concerns. . . , it's been a useful forum for trying to, well just a lobby group really. Information dissemination group, but we don't have any decision making powers. We simply identify what decisions hapū want to make and try and get the interested parties whether it's the negotiating committee or whatever to listen to those hapū decisions.³⁴⁷

When asked why Te Tawharau was opposed to the Deed, the participant replied:

The reason was that we went to Wellington [for the signing of the Deed], a lot of the people at the hui didn't understand the issues we were on about and they sort of had . . . a trust that the negotiators knew what they were doing. So . . . yeah blind faith and so from the night before the Deed was signed we knew we had failed and it was still going to be signed. We changed our kaupapa to informing people about the issues. Not focusing on personalities within the committee and who did what and allocating blame. But simply saying these are the issues, this is what's wrong with the deed of settlement, if you get the opportunity to vote, make an informed vote. So we were really turned into, our second goal turned us into a information education lobbying group. Ah, after about six months of lobbying and going to hui in Opotiki, holding our own hui around the motu in Rotorua, in Hamilton and so on. We realised that people really didn't want this Deed of Settlement and so our third goal was to terminate the Deed of Settlement again. So we went back to our first kaupapa and to put in place something better. To find a new

³⁴⁶ Participant D, p. 2

³⁴⁷ Participant G, p. 1

structure and a better process to make sure that if the deed of settlement was terminated we're not going to be faced with the same problems in the future with another settlement.³⁴⁸

Some participants were less than content with Te Tawharau's involvement in the negotiations as they felt the group were not being practical in their attitude toward the Crowns offer.

... well to me they're just a group of mainly younger people who've seen the whole process and quite understandably got hoha with the whole bloody thing, that's understandable. The only thing I guess I have a difference with is somewhere along the line. . . [I] agree it isn't fair. None of them are fair be it Tainui, Ngai Tahu, but some of us are yet to make a decision. I mean there is no where else to go. . . . There's only one place and that's . . . in the cabinet room. And it's not about L.A.W. either, because the Treaty isn't part of the L.A.W. It's about the will of the government to do something.³⁴⁹

I've got no problem with Te Tawharau either. But I feel somewhere along the line that theirs some immaturity there. Now that's my opinion for what it's worth. In the finish a settlement is . . . we must make a pragmatic decision. There is no such thing as a perfect settlement and yes it will create another grievance . . . unavoidable that when you settle you will create a grievance against someone somewhere. So now that kōrero to me is . . . not important. The thing is to try and make a settlement and move on.³⁵⁰

Following the signing of the Deed of settlement Te Tawharau mounted a major campaign to have the Deed of Settlement terminated. They made submissions to Māori Land Court hearings, WRNC meetings, hui-ā-hapū and hui-ā-iwi. Besides

³⁴⁸ Participant G, p. 2

³⁴⁹ Participant E, p. 7

³⁵⁰ Participant A, p. 7

the unfavourable terms of the Deed (discussed below) these submissions focused on issues of process and mandate.

Process and Mandate

As mentioned earlier some participants felt the Māori Land Court should not be involved in the negotiation process:

The MLC is not an appropriate body to use because number one their expertise is in Māori Land not in politics, which is what settlements are about and number two any court mechanism is not dynamic enough to cope with changing circumstances that happen throughout a settlement process. You know we've got people on that Māori Land Court order who are dead who have resigned yet they're still on the order and every time we want to change it we've got to go back to the court. It's not flexible enough whereas hapū decisions allow for those changing circumstances to take place.³⁵¹

Another contentious issue involving mandate was the extension of the original Raupatu settlement to a global settlement. Thereby including 'all claims of Whakatōhea relating to actions of the Crown which breach the principles, spirit and intent of the Treaty of Waitangi and which are unique to Whakatōhea the iwi' by the Amended Deed of Mandate.³⁵²

Participant:

The other aspect of our mandate was the deed of Mandate that was signed by Claude and John Delamere and again that was a very exclusive process. That Deed of mandate wasn't even passed by a negotiating committee meeting let alone . .

³⁵¹ Participant G, p. 1

³⁵² Amended Deed of Mandate, 7 June 1996

Interviewer:

Is that the Amended Deed of Mandate your talking about?

Participant:

Yeah, it wasn't passed by a meeting of the negotiators let alone a hui-ā-hapū or hui-ā-iwi. Just signed by two people which said that they were extending the mandate of the committee from Raupatu to global. That's a pretty big decision and . . . again the mandating process was exclusive. Ah, we're not going to get a Deed of Settlement or any settlement that is owned by the people until we have a process that is owned by the people.³⁵³

One of the negotiators interviewed said:

. . . well it [the global settlement offer] really came about 'cause at the end of the day that's all the Crown would offer us. And if you'll recall I was charged and so was the committee for that matter with getting basically the best settlement.³⁵⁴

Recital W in the Whakatōhea Draft Deed (drafted by the Crown) refers to the extension of mandate:

In February 1994, under the Te Ture Whenua Māori Act 1993 the Māori Land Court determined the most appropriate hapū representatives and other individuals to compromise the Whakatōhea Raupatu Negotiating Committee, which was to negotiate the claim on behalf of the Whakatōhea iwi. In 1995, the mandate of the claim negotiators was widened to include all Whakatōhea claims relating to the actions of the Crown which breached the principles of the Treaty of Waitangi.³⁵⁵

³⁵³ Participant G, p. 5

³⁵⁴ Participant F, p. 14

³⁵⁵ Whakatohea Draft Deed of Settlement, Recital W, p. 6

Presumably, the reference to the widening of mandate in 1995 is an incorrect reference to the Amended Deed of Mandate dated 7 June 1996. In any case, the Amended Deed extending the mandate was only signed by two of the negotiators. Of particular concern was one participant's view that:

... it wasn't passed by a meeting of the negotiators let alone a hui-ā-hapū or hui-ā-iwi. Just signed by two people which said that they were extending the mandate of the committee from Raupatu to global. That's a pretty big decision and ... again the mandating process was exclusive. ... Yeah we had huge mandating problems because the people weren't involved in making those decisions.³⁵⁶

The same participant felt that not only had Whakatōhea negotiators acted irresponsibly, but so had the Crown as they should be obligated to ensure that those they negotiated with had a proper mandate.

I wrote ... in and said 'did you require evidence from the Mokomoko whānau and Ngati Ira blah, blah, blah that they agree with this Deed of Mandate or these negotiators negotiating their claim' and he [the Minister] said that he didn't think he needed to. That's very irresponsible, you know and not just from a Māori point of view but from Pākehā. Because what happens is that once people have got that mandate. The Crown starts piling a lot of money into that group. So you've got a lot of money spent on false pretences.³⁵⁷

But perhaps the most important thing which contributed to the break down of the settlement process and the mandating problems Whakatōhea faced, was the

³⁵⁶ Participant G, p. 6

³⁵⁷ Participant G, p. 7

failure to plan the settlement process before electing representatives to enter into negotiations.

I think the process of deciding for me . . . , putting people on a committee is the last thing we [should] do. I think we've gotta set the whole thing up.

The structures . . . the process . . . to take us through to a settlement. If we get our heads in agreement now, how we want it to be ratified. Who we want to run the ratification process. Decide all those things now because there's nothing stopping us doing that now. And then we elect people as representatives. The way we did it was that we elected representatives and they then excluded us from all those important decisions. We wanted to make sure that we design the process. We put the right people in according to the process that we designed.³⁵⁸

5.2.2 The Deed

The Crown offer consisted of a 40 million dollar quantum including the value of 9 residential properties to be returned and Whakatōhea's negotiating costs. In addition, the non-fiscal elements of the settlement included an official apology, representation on the East Coast Conservation Board, statutory provisions for access to kiekie, totara, rongoa Māori and whale bone within the Whakatōhea Claim Area, the creation of Topuni Reserves (establishing a right of co-operative management - not ownership), and Deeds of recognition (not ownership) to 6 riverbeds within the Whakatōhea Claim area.³⁵⁹

In return Whakatōhea would have to: consent to the removal of all Memorials from the title of lands within the claim area and the removal of the Crown's obligation to impose Memorials on the titles to such land; agree to the removal of

³⁵⁸ Participant G, p. 5

³⁵⁹Whakatohea Draft Deed of Settlement

the right to take claims to the Courts and the Tribunal; acknowledge that the Crown has acted honourably and the settlement was full, final and durable and the Crown was released in respect of all the Whakatōhea claims.

One negotiator stated his view of the settlement offer this way:

There were some who believed that the Crown were never going to treat anything that we might talk about . . . seriously, that as far as the Crown was concerned this was it, and if we didn't like it well that's it gone. And that the only way to deal with this claim was, and to get the process right and a better outcome for Whakatōhea was to get rid of this offer and start again. My view was that was a very unwise thing to do, because it was the basis of an offer. It helped us to give some focus to things that were of concern to us so that we actually had something to deliberate about. Prior to that there was really nothing for hapū to consider because the process is such that the Crown held the cards and we actually needed to get a hold of their hand so that we could have a look at what cards they were holding.³⁶⁰

On the other hand participant D said:

. . . I like to think that whenever there's something like that on the table it's a starting point. It's a starting point for dialogue. Ah, but as I understand it's [the Deed] at the end of the dialogue. So the document in it's current form is not a good thing . . . if there was further dialogue beyond it I'd say it's a good thing 'cause it's still got that avenue open. But in it's current form in the way it stands, in the way it's been offered . . . I mean that has just as much to do with it as the actual contents itself.

³⁶⁰ Participant F, p. 10

Interviewer:

How do you see, in what way is it being offered?

Participant:

... there's conditions to it, like you take it now or your gonna wait at the end of the queue. Those sorts of comments [from the Minister] don't go well. If people are entering into an agreement. Ah, you should feel comfortable about entering into that agreement. You shouldn't feel pressured to come up with the right answer or an answer, or a response, you should be feeling, ... free in your thoughts and in your heart ... that's probably obvious, time restraints should be removed.³⁶¹

Another participant expressed concern about the settling of global claims:

... in essence it's not the money but what we're giving up for the money. You know we're being asked to give up claims which really are our insurance against the Crown. . . once we give up those global claims there's no real restrictions left on the Crown. No real mechanisms to hold the Crown accountable for decisions like privatisation and so on. . . Once Māori give up the right to claim there's no restrictions left on the Crown. And we saw that through the eighties with the privatisation of State Owned Enterprises and fisheries. The general public had no ability . . . to stop that process. But Māori did through their right to claim, [Māori] were able to restrict the . . . ability of the Crown to pursue those agendas. So once you give up that right to claim, that's well, we can't 'cause that's our insurance.

Interviewer:

What do you think would convince you to give up that right to claim?

³⁶¹ Participant D, p. 5

Participant:

Ah, if it was only a claim of our Raupatu settlement. I would never give up any other rights because . . . , you know our tipuna fought for those rights over our moana and our very being as Whakatōhea for centuries. They fought other Iwi . . . and they knew that it wasn't money that's important it's that mana, those rights that are important. Once you give up those rights they're gone forever you know.³⁶²

Another participant took a different view:

I've always been of the view that the settlement of the Whakatōhea claim can never be full and final, because that is not something and it doesn't matter whether the words full and final are written into a document like a Deed of Settlement. And even if written into any legislation to give legal effect to that document it doesn't matter. Because some time in the future other generations are going to say, well hey there's something not quite right here. That happened at that point in time, it happened because of a certain set of circumstances political, social, and economic, because it was what was able to be achieved at that time. However, since then we've moved on. We now have a different set of . . . circumstances, our . . . circumstances are different and hey, there were some anomalies back then, those anomalies have to be addressed now.³⁶³

Another, stated a more pragmatic view of the settlement:

It's forty million dollars we can do a lot with it. But on the other hand I'm not totally upset that we haven't got the money because we don't have a structure in place that could handle it. I mean I wouldn't trust any of the ones we've had there with it. Would you? [both laugh]. It'd be gone in

³⁶² Participant G, p. 5

³⁶³ Participant F, p. 3

a year and not because they're crooks. But they'd get fleeced by every con artist around. And so in some ways it's not totally a bad thing.³⁶⁴

Some participants considered the Crown's dictatorial approach to negotiation unsatisfactory:

... you know what really gets me sometimes is the Crown says "you fullas need to go and sort yourselves out" you know "Whakatōhea sort yourselves out" hapū and whānau and all that. Go away I don't want to have anything to do with you until you sort yourselves out. What the Crown's in the fortunate position of doing is to never getting itself in too much hot water. ... why? Because it controls everything. It says "Right, we won't talk about the DOC estate with you guys, now if any of your people have got a problem with that sort them out, I don't wanna hear about it", you know. So rather than them go and sort it out with their own, ... like these hunting clubs and ... Bird protection and all the rest. They rather make you have the problem and you sort it out with your lot ... So it keeps getting thrust back in our faces that we're the ones with the problem. When in fact we're not. They're just shifting all of their problems over to us.³⁶⁵

The conservation estate was one specific concern for Whakatōhea. The Crown was not prepared to negotiate the utilisation of conservation lands and waters in any substantial way although some concessions (listed above) had been made. Other specific concerns included the Crown's position on natural resources (which was to award Deeds of recognition to the rivers as opposed to ownership which Whakatōhea sought) and the lack of a relativity clause which both Tainui and Ngai Tahu had received but, had not been included in the Whakatōhea Deed. However, the most pressing concern for those with ancillary claims was

³⁶⁴ Participant E, p. 10

³⁶⁵ Participant D, p. 18

the effect a global settlement would have - that their claims would be settled without their consent. A participant who was a Mokomoko whānau member stated their opinion of the Deed as follows:

... all I can say about it is it's wrong. It's wrong in this simple reason. Now where a whānau, be it a whānau a hapū or an individual has suffered wrongly, has suffered dramatically, I can not go through a court and represent your interests without your consent. That's how Pākehās do it. I can not go and represent your interest. Nor can I get someone else to come along on your behalf without your consent. I can't do that, that's just wrong. Wether it be the natural laws of justice or whatever. It's wrong and on that basis that's the concern I have with this current offer, is that a group of people went to the Crown to negotiate something on our behalf without our consent.³⁶⁶

One positive outcome of the debate sparked off by the Deed was a level of interest and participation in Whakatōhea tribal affairs that had not been seen for many years.

I've, certainly in the last 10 years of my intimate involvement in Whakatōhea affairs have never seen ahi kaa roa (home pride) as active as it has been over the last few months. As they've come to grips with a whole raft of things really, and they've had to question you know the robustness of the structural arrangements with things as they are at the present time. ... and that it's I think also equally given Whakatōhea people outside an opportunity to actually rethink ... what it means to be Whakatōhea when you live in Wellington Auckland or some other part of the country and what are your connections.³⁶⁷

³⁶⁶ Participant D, p. 9

³⁶⁷ Participant F, p. 4

Eventually, opposition carried the day and the Deed was officially terminated by the Minister in Charge of Treaty Settlement Negotiations as of 31 March 1998. Some members of the Negotiation Committee (before it was disestablished) officially disowned the Deed as they had no opportunity to give it due consideration before it was signed.³⁶⁸ A hui-ā-iwi vote 174 - 16 in favour of rejecting it and a poll run by the Trust Board returned a result of 86% of beneficiaries against accepting the Deed.

Conclusion

During the course of settlement negotiations, the whānau and hapū of Whakatōhea have been witness to a power struggle which has operated on three levels. First, whānau and hapū have struggled to retain control of their own claims because the Crown defined settlement process favours iwi representative bodies. Second, internal difficulties with the Negotiation Committee further disrupted the process, and prevented a united and coherent voice from emerging. And third, dissatisfaction at the iwi-Crown level led eventually to a termination of the deed. The Raupatu claim itself has passed from the whānau and hapū (who originally suffered the grievance) to the Trust Board (who filed the claim on their behalf) to a Negotiation Committee (who were not sufficiently accountable to one another let alone to the whānau and hapū) and finally back to the whānau and hapū. In retrospect, the problems associated with mandate and process could have been avoided had there been an opportunity for the hapū to work together to develop a strategic plan based on a commonly agreed set of principles and procedures for settlement negotiation. With no clear direction set by the hapū, the Whakatōhea negotiators were adopting a pragmatic approach

³⁶⁸ Affidavit (prepared by Tairongo Amoamo) attachment to the Minutes of the Meeting of the Whakatohea Raupatu Negotiating Committee, Friday 6 February 1998, Whakatohea Raupatu Office, Church Street, Opotiki, 9.35 am

that appeared to bypass principles that were fundamental to hapū. Conflict was inevitable.

With the disestablishment of the WRNC and the termination of the Deed of Settlement Whakatōhea are now free to pursue their claims through a Tribunal hearing or to reinstate direct negotiations once they have made adequate preparations. For the time being, the hapū have assumed a greater level of control and are re-examining the claim, as well as the claim process. Ngati Rua hapū has already taken the initiative of calling a hui of its beneficiaries to discuss the development of protocols for the settlement of the claim. They have the Draft Deed of Settlement which may provide valuable information as to the Crown's negotiation position. For all the pragmatism, however, the question remains whether future negotiations will produce a better result. In comparison to other similar claims, 40 million dollars was, if not generous, then not insignificant. Moreover, it is not at all clear, whether future governments will adopt sympathetic approaches to Treaty Settlements.

On the one hand, hapū and whānau felt alienated from the process and the result. But on the other hand, a few tribal leaders had seized what appeared to be a time-limited opportunity to secure a much needed economic base for Whakatōhea.

The problem lay not so much with Tribal in-fighting, or hapū rivalry, as with the unilaterally imposed settlement framework and the Crown's implicit messages of urgency and tribal prioritisation. In that climate of haste and competition, Whakatōhea was not prepared to risk what seemed, at least to some, to be more fundamental principles upon which whānau, hapū and iwi relationships depended.

CHAPTER 6

CONCLUSIONS

Within the settlement negotiations there are two distinct processes at work: first the relations between Māori and Māori, and second the relations between Crown and Māori. The two processes present an equal challenge to Treaty settlements.

At the heart of Māori relations is the balance between the interests of whānau, hapū and iwi. Chapter 3 discussed a dynamic shift towards the dominance of the larger aggregation of iwi, occurring as a result of government policy. This shift occurred at the expense of the rangatiratanga of the smaller hapū and whānau units. In the case of Whakatōhea, the settlement process has floundered as those who took on the mantle of tribal leadership assumed a tribal unity that was untested and failed to appreciate the aspirations of whānau and hapū.

Contention surrounded the Whakatōhea Deed signed in October 1996. Of the many reasons why the Deed was rejected by the iwi, perhaps the most significant one was that hapū and whānau felt they had been denied a voice in the development of terms and conditions of the Deed. Furthermore they were given an ultimatum to ratify (or not ratify) a Deed that for the most part, offended their sense of justice.

Of significance is the question of mandate. Who has the authority to represent Māori in settlement negotiations and what is expected of them? Despite confusion surrounding their multifaceted adhoc approach, the Crown has positively contributed ideas about how mandate may be secured.

Notwithstanding that contribution, the shift towards iwi representation has seen prolonged disagreement, culminating in court action between groups of

Whakatōhea over the right to represent iwi and hapū. Ngati Ira hapū and Mokokoko whānau (each with their own ancillary claims) have repeatedly challenged the right of iwi negotiators to attempt to have a global settlement offer ratified by beneficiaries without their free consent. This begs the question, how far can mandated iwi representatives go before they are no longer considered accountable to their beneficiaries?

While hapū and whānau remain effective vehicles for Māori development, their ability to act independently and effectively within the settlement process has often been diminished. However, despite the objections of some Māori, iwi representation has been widely adopted (at least within the context of Treaty settlement negotiations). For Whakatōhea (and other iwi), the challenge is to develop and implement a system of iwi representation which reflects the aspirations of hapū and whānau. Such a system will recognise the pluralistic nature of tribal society and the ongoing rights of hapū and whānau to a measure of autonomy.

If the need to balance the interests of contemporary whānau, hapū and iwi is challenging then maintaining a balance between the interests of Māori and the Crown is equally as challenging.

Relations between Māori and the Crown, not always clear to either party, have been illuminated by the Government's Treaty settlement framework released in 1995. The framework has raised tension between Māori and the Crown by declaring certain areas non-negotiable (for example the conservation estate, rivers and lakes, geothermal resources, minerals and so on). In addition insistence upon time frames, and the imposition of a fiscal cap have been widely

rejected by Māori. And even though entry into directly negotiated settlements was fast tracked by a government policy change early in 1999, the underlying framework has not been significantly altered.

While the Crown has made it clear what was not up for negotiation, it is not always as clear to Māori just what is being settled. Given that the quantum are not meant to reflect the strict compensation for the value of the raupatu losses of iwi, what exactly is a quantum payment for? At various times the Crown speaks of the amount of land lost, the size of the tribe, and the need for the tribe to establish an economic base. It is never clear which of these the quantum is benchmarked to, or how a value was placed on any or all of them.

While many Māori claims sought to elevate rangatiratanga to a status equal to Crown sovereignty, the claim settlement process so far has simply endorsed the absolute nature of the sovereignty of the Crown. Settlement negotiations have been conducted entirely within the parameters of the Governments settlement framework, a framework developed without Māori consultation. Claimants have had to put aside many aspirations they may have had for the process, in order to get to the negotiation table.

Settlements are currently being negotiated without the advantage of a comprehensive Treaty of Waitangi policy. Whakatōhea (and other iwi) would benefit from such a policy as it would clarify the duties and obligations Māori and the Crown have with respect to one another. A comprehensive Treaty policy would crystallise the constitutional position of Māori, provide a guide to relations between Māori and the Crown and shed light on Treaty settlement policy. Moreover, rather than Māori rangatiratanga and Crown sovereignty

being necessarily pitted against each other, they would be more able to offer support to one another in the advancement of their respective goals.

Obstacles To Settlement

Throughout this thesis a number of obstacles to settlement have emerged. They include: conflicting understandings about the notion of durability and finality; ambiguities surrounding Māori mandating processes; the ambiguous constitutional position of Māori (under the Treaty); the lack of a comprehensive Treaty policy and the lack of Māori input into the governments current Treaty settlement framework (fiscal envelope policy); and the need for the tribal settlement process to accommodate the rights of hapū and whānau.

From the Crowns position, settlements must be full, final and durable. Once both parties have accepted a settlement and finalised by legislation, there can be no revisiting of or restaking of claim at any time in the future, regardless of changing circumstances. On the other hand, Māori feel that notions of durability and finality should be based on a settlement's ability to effectively remove the sense of grievance. The best interests of both parties would be served by the creation of a mechanism through which the tribe and the Crown could work together to conduct regular evaluations of the impact of the settlement on the tribe. Such a mechanism would have two functions. First, to provide an early warning system to indicate the risk of a settlement becoming ineffective. And second, to make recommendations to both parties as to a course of action to avoid that situation.

Whakatōhea rejected the Deed of Settlement and the process through which it had been delivered in favour of a process more accommodating of the rights of

hapū and whānau. The cost for making that decision may have been a loss of opportunity. However, at the heart of the decision to reject the Deed was the desire to have a team of properly mandated negotiators. If a tribe is to take control of the negotiation process then the hapū (at least of Whakatōhea) must work together to develop a commonly agreeable plan, detailing principles, procedures and desired outcomes for direct negotiation. Such a plan will be invaluable to both the tribal negotiators and the Crown in clarifying questions as to who has a proper mandate and what constitutes a properly mandated course of action.

Māori concerns that Treaty settlement negotiations (conducted within parameters determined by the Crown) have not reflected their status as Treaty partners have led to a call for constitutional reform with a view to reaffirming the Treaty as our nations founding document. If settlements are to have a lasting effect then there is a need for Treaty partnership to be a mandatory dimension to the decision making framework of the country. Without a constitution based on the Treaty, settlements will continue to provide economic opportunities for tribes, but, they will be based on political expediency and notions of affordability rather than justice. The Crown's insistence on the 'finality' of settlements indicates a view that settlements release them from obligation, rather than establish enduring and mutually beneficial relationships. What is needed is for Māori and Crown to initiate discussions and a debate within broader New Zealand society with respect to constitutional reform.

Some Māori have expressed opposition to the government's failure to develop a comprehensive Treaty policy before proceeding with the direct negotiation of claims. Māori are concerned that this demonstrates a lack of commitment on

behalf of the Crown to the Treaty and its broader implications. By only developing a policy for settling historical Treaty grievances, the Crown are restricting the Treaty to the past and failing to acknowledge its intention as a foundation for future development. The solution is for government to adopt a joint approach (between Māori and Crown) to developing a comprehensive policy including a joint approach to deciding priorities and strategies for resolving grievances.

There has been much criticism of the lack of opportunity for Māori input into the Treaty settlement framework. Never-the-less, the Crown have persisted with the policy largely unchanged since its introduction in 1995 and to date two major tribal groups have capitalised on the opportunity presented by entering direct negotiation in accordance with its policies. Notwithstanding that opportunity for development, a claim settlement policy based on Treaty principles of partnership, good faith and justice would be preferable to the current policy which seems more about political expedience and affordability. The former is much more likely to produce a lasting effective removal of the sense of grievance.

While many Māori would prefer negotiation of claims at the hapū or even whānau level, the Crowns preference, based largely on logistics, has been for negotiation at the iwi level. This has provided Māori with an opportunity for unification under the direction of tribal bodies and a greater potential to achieve the things that the smaller aggregations collectively aspire to. While essentially the iwi is the collective hapū, iwi-bodies have often taken on an identity of their own and have presented Māori with a new challenge. How to balance the rights of the tribe as a whole with the rights of whānau and hapū is the broader question. How to maintain a tribal structure which does not deny individual

hapū and whānau a right to independence yet enables the realisation of collective aspirations and maximises economies of scale is the challenge. Whakatōhea may have sacrificed opportunity for principle and chosen a tribal structure which emphasises the hapū. Each tribe must find it's own solution, develop it's own process and adopt a structure which best represents the balance between whānau, hapū and individual interests.

Appendix A

Hui Attendance Schedule

Date	Location	Type	Issues
?/10/96	Town Hall The Octagon Dunedin	Hui called by the WRNC	Dissemination of information on Crown offer to Whakatōhea beneficiaries
15/2/97	Whakatōhea Māori Trust Board Opotiki	Mokomoko whānau	Family Database
5/4/97	Whakatōhea Māori Trust Board Opotiki	Mokomoko whānau	Whānau claim and the Whakatōhea claim
9/7/97 – 10/7/97	Waiaua Marae Opotiki	Mokomoko whānau	Filming of Mokomoko documentary by Greenstone Pictures
24/7/97 10 am	Office of Treaty Settlements Wellington	Fact Finding	Status of the Mokomoko whānau claim within the Crown offer (Deed of Settlement)
24/7/97 2 pm	Parliament Buildings	Fact Finding	Seeking assistance of Minister of Māori Affairs to protect the whānau claim
26/7/97 10 am	Waiaua Marae Opotiki	Hui-ā-iwi	Ratification of the Deed
1/10/97	Ratima Homestead Lyons Rd Waimauku Auckland	Ratima whānau (branch of Mokomoko whānau)	Discussion of the writing of a screenplay for television on the Mokomoko story
6/12/97 10 am	Waiaua Marae Opotiki	Hui-ā-iwi	Injunction to restrain Trust Board and WRNC
11/12/97	Omarumutu Marae	Māori Land Court Conference	Clarify original MLC application for mandate of WRNC
17/1/98 9.25 am	Whakatōhea Māori Trust Board Opotiki	Mokomoko whānau	WAI 203 Whānau claim
17/1/98 11 am	Opape Marae	Ngai Tama Hapū	Disestablishment of WRNC
6/2/98	Raupatu Settlement Office Church St. Opotiki	Whakatōhea Raupatu Negotiation Committee	Financial Status of the Committee

Appendix B

KO TE MANA, KO TE WHĀNAU ME TE UTUNGA WHAKAMUTUNGA

The dynamics of whānau and iwi: a Case study of the Mokomoko whānau and the People of Whakatōhea

PEPA WHAKAMŌHIO

1. Mihi

Kei roto Te Moana a Tairongo, kei waho Te Moana a Toi,
Arā te tapu o Muriwai, ko ngā kuri a Whareī ki Tikirau.
Tihei Mauri Ora!

E _____ tēnā koe. Ka nui ngā mihi ki a koe i runga i ngā āhukatanga manaaki o te wā. Me ki he mihi whānui tēnei ki a tātou katoa ngā hapū me ngā whānau o Te Whakatōhea nui tonu, tēnā tātou katoa. Anei nā he kōrero māu hei whakamārama i te āhua o tēnei mahi rangahau.

2. Te Mahi Rangahau me ōna Whaingā

Mā tēnei tuhinga rangahau e āta titiro ki ngā whakaaro o ngā kaiwhakauru mō ngā tino take i waenga i ngā whānekeneketanga o te whānau, o te hapū, o te iwi i roto i ngā whiriwhiri whakatau i ngā Utunga Tiriti (Treaty Settlements).

E rua ngā whaingā matua o te mahi rangahau nei:

- (i) kia tirohia ngā whānekeneketanga i waenga i te whānau, te hapū me te iwi. Waihoki ki ēnei āhukatanga e pā ana ki a Whakatōhea hei tirohanga hohonu.
- (ii) kia mōhio ki te hiranga o te tono a te whānau Mokomoko (Wai 203) ki Te Whakaāetanga a Pukapuka a Whakatōhea (Deed of Settlement).

3. Ngā Kaiwhakauru

Anei te tono ki a koe kia uru mai ki te mahi rangahau nei. Mehemea ka whakaāe koe kia uru mai ki te mahi rangahau nei, mā tāua e whakarite he wā pai mō te uiuitanga. Kāore ngā uiuitanga e kumea roatia atu i te toru haora kia kore ai e whakaporeareatia e au. Mēnā e pai ana ki a koe ka hopukina āu kōrero mā te pūrere hopu reo mā te pūrere ataata rānei.

I whakawhiriwhiria ngā kaiwhakauru i runga i te āhua o tā rātou mahi i waenga i ngā whānekeneketanga o te whānau Mokomoko, te Whakatōhea me te Utunga Tiriti o te Karauna, i runga anō i te hiahia kia uru mai te taha wahine me te taha rangatahi kia ea ngā wāhi ki a rātou. Āhua tokowaru te rahī o te hunga whakauru kia whakangāwari ai te whakatutuki. Heoi anō rā, kei a koe te mana i ngā wā katoa kia:

- puta atu i te kaupapa rangahau nei.

- kaua e whakautua t/ētahi pātai.
- pātai mai mō tētahi wāhanga o te mahi rangahau ahakoa tēhea wāhanga.
- kōrero mai i runga i te māramatanga kāore tōu ingoa e whākina atu (tua atu i tou whakaāe).

4. Te Hopu Kōrero

Mehemea ka whakaāe koe, ka hopua tau uiuitanga mā te pūrere hopu reo, hopu whakaata rānei. Ka whakamanatia āu kōrero katoa. Kei a koe te mana ki te whakapokongia te pūrere hopu reo hopu whakaata rānei i ngā wā katoa. Mehemea ka puta atu koe i te kaupapa, kei a koe te mana kia whakahokia ngā kōrero katoa i mau i tau uiuitanga atu i tau putanga. A te mutunga o te kaupapa rangahau nei ka whakahokia ngā kōrero katoa i mau i tau uiuitanga ki a koe anō, arā ko ngā ripene me ngā kōrero-ā-tuhi.

5. Te Kairangahau me Ngā Kaiārahi

Ko Waiaua te awa, ko Makeo te maunga, ko Mokomoko te Tipuna, ko te Whakatōhea te iwi, ko Matiu Ratima tōku ingoa. I whānau mai, i tipu mai hoki i te Waipounamu, i Te Waka a Māui, nō reira me tuku mihi ki a Aoraki maunga nāna kē au i tiaki i ngā tau kua hipa. He ākonga ahau e whai ana i te tohu paerua i Te Whare Wānanga o Manawatū. He wāhanga tēnei rangahau hei whakatutuki i te tohu paerua o Te Whare Wānanga.

Ko Professor Mason Durie rātou ko Mr Tuiringa Mokomoko ko Mr David Butts aku kaiārahi mō tēnei mahi rangahau.

6. Te Wāhi Tuku Whakaaro

Mehemea he pātai, he whakaaro, he kōrero, he aha rānei tāhau tukua mai ki a:

Matiu Ratima
 Kaiawhina
 Waea: (06) 356 9099 extr. 7673
 Waea Whakaāhua: (06) 350 5634
 E-mail: M.T.Ratima@massey.ac.nz

Noho ora mai.

Matiu Ratima.

KO TE MANA, KO TE WHĀNAU ME TE UTUNGA WHAKAMUTUNGA

The dynamics of whānau and iwi: a Case study of the Mokomoko whānau and the People of Whakatōhea

INFORMATION SHEET

1. Mihi (Welcome)

Kei roto Te Moana a Tairongo, kei waho Te Moana a Toi,
Anā te tapu o Muriwai, ko ngā kurī a Whareī ki Tikirau.
Tihei Mauri Ora!

E _____ tēnā koe. Ka nui ngā mihi ki a koe i runga i ngā āhuatanga manaaki o te wā. Me ki he mihi whānui tēnei ki a tātou katoa ngā hapū me ngā whānau o Te Whakatōhea nui tonu, tēnā tātou katoa. This sheet is intended to provide you with some important information concerning this research project.

2. The Project and its Aims

This study will draw on participant stories, views and perspectives of the relationship between whānau, hapū and iwi, during the Whakatōhea Treaty settlement negotiations.

Their are two major aims:

- (i) To investigate the dynamic relationship between whānau, hapū and iwi, with particular reference to the Whakatōhea situation.
- (ii) To understand the significance of the Mokomoko whānau claim to the Whakatōhea Deed of Settlement.

3. The Need for Participants

The study can not proceed without willing participants. Therefore, the researcher respectfully invites you to take part in this research project. If you consent to taking part our next step shall be to arrange a mutually agreeable time when we can conduct a one on one interview. Interviews will take no longer than three hours, so as not to be too much of an inconvenience for participants. With your consent the interview will be recorded on audio and / or video tape.

Prospective candidates for interviews are chosen based on availability, the candidates' involvement in Mokomoko whānau, Whakatōhea and Crown Treaty settlement affairs and the need to provide a balance in terms of the ideas of youthful tribal members and female tribal members. All participants have the right at any time to:

- decline participation.
- refuse to answer one or more questions or to withdraw completely from the study.
- ask a question about any part of the study.

- give information on the understanding that your name will not be used without your consent.

4. Recording Interviews

With your consent your interview will be audio and/or video tape recorded. Any information you provide will be respected. You have the right to have recording devices turned off at any stage of the interview. If you withdraw from the project you have the right to any information you have given up to the point of that withdrawal. At the conclusion of the research all the information generated in your interview will be returned to you. This includes audio and video tape recordings and transcripts.

5. The Researcher and Supervisors

Ko Waiaua te awa, ko Makeo te maunga, ko Mokokoko te Tipuna, ko te Whakatōhea te iwi, ko Matiu Ratima tōku ingoa. I whānau mai, i tipu mai hoki i te Waipounamu, i Te Waka a Māui, nō reira me tuku mihi ki a Aoraki maunga nāna kē au i tiaki i ngā tau kua hipa. I am a student currently completing a Master of Philosophy degree at Massey University. This project will be submitted as a requirement to complete that degree.

Professor Mason Durie, Mr Tuiringa Mokokoko and Mr David Butts have agreed to be supervisors for the project.

6. Contact Address

If you have any questions, queries or thoughts you would like to contribute please contact the researcher :

Matiu Ratima
 Assistant Lecturer
 Phone: (06) 356 9099 extn. 7673
 Fax: (06) 350 5634
 E-mail: M.T.Ratima@massey.ac.nz

Noho ora mai

Matiu Ratima

Appendix C

MANA, WHĀNAU AND FULL AND FINAL SETTLEMENT

A Case Study of the Mokokoko Whānau and the People of Whakatōhea

CONSENT FORM

I have read the Information Sheet and have had the details explained to me. My questions have been answered to my satisfaction and I understand that I may ask further questions at any time.

I understand I have the right to withdraw from the study at any time and to decline to answer any particular questions.

I agree to provide information to the researcher on the understanding that my name will not be used without my permission. (*The information will only be used for this research and publications arising from this research project.*)

I agree / do not agree to the interview being audio / video taped.

I also understand that I have the right to ask for the audio / video tape to be turned off at any time during the interview.

I understand that if I withdraw, I have the right to the information I have provided.

I understand that all the information provided in my interview (originals, copies and transcripts) will be returned to me at the end of the study.

I agree to participate in this study under the conditions set out in the Information Sheet.

Signed: _____

Name: _____

Date: _____

Verbal Consent

Participant Name:

Date of Consent:

KO TE MANA, KO TE WHĀNAU ME TE UTUNGA WHAKAMUTUNGA

A Case Study of the Mokokoko Whānau and the People of Whakatōhea

PEPA WHAKAĀE

I pānui au i te Pepa Whakamōhio me te whakarongo hoki ki ngā whakamārama o te kairangahau mō tēnei mahi rangahau. I whakautua paitia aku pātai, ā, kei te mōhio au ka taea tonu e au te tuku pātai i ngā wā katoa.

Kei te mōhio au kei ahau te mana i ngā wā katoa, mēnā e pīrangī ana ahau ki te puta atu i te kaupapa nei, ki te karo rānei i t / ētahi pātai.

E whakaāe ana ahau ki te kōrero ki te kairangahau i runga i te māramatanga kāore e whākina tōku ingoa tua atu i taku whakaāe. (*Ka whakamahia ngā kōrero mō tēnei rangahau me ngā tuhinga anake ka puta mai i tēnei rangahau*).

Kei te whakaāe / whakakāo ahau kia hopungia ngā kōrero mā te pūrere hopu reo / pūrere hopu ataata.

Kei te mōhio anō hoki ahau kei ahau te mana whakapoko i te pūrere hopu reo / pūrere hopu ataata i ngā wā katoa.

Kei te mōhio au mehemea ka puta au i te kaupapa, kei ahau te mana mō ngā kōrero i mau i taku uiuitanga atu i taku putanga.

Kei te mōhio ahau a te mutunga o te kaupapa rangahau nei, ka whakahokia ngā kōrero katoa i mau i taku uiuitanga ki ahau anō.

Ka whakaāe ahau ki te uru atu ki tēnei mahi rangahau i raro i ngā tikanga i whakatakotoria i te Pepa Whakamōhio.

Hainatanga: _____

Ingoa: _____

Rā: _____

Whakaāe-a-waha

Kaiwhakauru:

Te Rā:

Appendix D

Interview Format

The following are some of the key issues that I would like to explore with you when we meet.

1 Tribal Structures

Here are some examples of structures operating within Whakatōhea:

Ngā Hapū,
Whakatōhea Trust Board,
Raupatu Negotiating Committee,
Te Tawharau o te Whakatōhea,
Mokomoko Whānau.

I am interested to learn about their roles within our Iwi.

2 The Deed of Settlement

Your views on the offer would be helpful in order to gain a wider understanding.

3 Rangatiratanga

What are some of the key issues concerning rangatiratanga / leadership that Whakatōhea face at present?

What processes ensure that rangatira have the appropriate mandate?

4 Whakatōhea and the Crown

Your views on the relationship between Whakatōhea and the Crown in terms of Treaty Settlement negotiations.

What role do the following Crown entities take in Treaty Settlement negotiations?

Office of Treaty Settlements,
Māori Land Court,
Cabinet,
Minister in Charge of Negotiations for Treaty of Waitangi Settlements.

Te Ara Whakawhiti Kōrero

Ko ngā tino kaupapa e whai ake nei e hiahia ana ahau kia wānangahia e tāua.

1 Ngā Rōpū-ā-iwi, ā-hapū, ā-whānau

Anei ētahi o ēnei tū rōpū o Te Whakatōhea:

Ngā Hapū,
Whakatōhea Trust Board,
Raupatu Negotiating Committee,
Te Tawharau o te Whakatōhea,
Mokomoko Whānau.

Kei au ētahi pātai e pā ana ki ngā mahi a ēnei rōpū i roto i Te Whakatōhea.

2 Te Whakaāetanga i Waenga i Te Whakatōhea me Te Karauna

He aha ōu whakaaro mō te Whakaāetanga i waenga i Te Whakatōhea me te Karauna (Deed of Settlement), koia hei whakawhānui i tāku mārama ki tēnei kaupapa.

3 Rangatiratanga

He aha ngā tino kaupapa e pā ana ki te rangatiratanga o Te Whakatōhea e wānangahia ana i tēnei wā?

Ki tōu whakaaro he aha te huarahi e tū ai tētahi o Te Whakatōhea hei rangatira?

4 Whakatōhea me te Karauna

He aha ōu whakaaro mō te noho tahi a Te Whakatōhea me te Karauna ki te whiriwhiri whakatau i ngā whakataunga Tiriti.

Ki tōu titiro kei te pēhea te mahi a ēnei rōpū o te Karauna?

Office of Treaty Settlements,
Māori Land Court,
Cabinet,
Minister in Charge of Negotiations for Treaty of Waitangi Settlements.

BIBLIOGRAPHY

- Baker, Heretaunga Pat, (1990), *The Strongest God*, Cape Catley Limited, Whatamonga Bay, Queen Charlotte Sound.
- Ballara, Angela, (1998), *Iwi: The Dynamics of Maori Tribal Organisation from c.1769 to c. 1945*, Victoria University Press, Wellington.
- Barlow, Cleve, (1991), *Tikanga Whakaaro Key: Concepts in Māori Culture*, Oxford University Press, Auckland.
- Belich, James, (1986), *The New Zealand Wars and the Victorian Interpretation of Racial Conflict*, Auckland University Press, Auckland.
- Best, Elsdon, (1952), *The Maori as he was*, Government Printer, Wellington.
- Binney, Judith; Basett, Judith; Olssen, Erik; Galloway, Tim, (1990), *The People and the Land*, Bridget Williams Books, Wellington.
- Bishop, R., and Glynn, T., (1992), 'He Kanohi Kitea: conducting and evaluating educational research', *New Zealand Journal of Educational Studies*, vol. 27, no. 2, pp.125-135.
- Buck, Sir Peter, (1958), *The Coming of the Maori*, Whitcombe and Tombs, Christchurch.
- Carr, W., and Kemmis, S., (1983), *Becoming Critical: knowing through action research*, Deakin University, Victoria (Australia).
- Clark, Paul, (1975), '*Hauhau*': *The Pai Marire Search for Maori Identity*, Auckland University Press, Auckland.
- Cox, Lindsay, (1993), *Kotahitanga: The Search for Māori Political Unity*, Oxford University Press, Auckland.
- Crocker, Therese, (1993), *Iwi or Hapū? The Imposition of a Static Structure on a Dynamic Society*, BA. Hons. Dissertation, Massey University, Palmerston North.

- Department of Māori Studies, Massey University, (1994) *Kia Pūmau Tonu*, Proceedings of the Hui Whakapūmau Māori Development Conference, August 1994.
- Durie, Arohia, (1992) *Whaia Te Ara Tika: Research methodologies and Māori*, Unpublished paper, Seminar on Māori Research, July 1992, Massey University.
- Durie, E. D.; Gordon, S.O, (1990), 'The role of the Waitangi Tribunal and the Development of a Bicultural Jurisprudence', *New Zealand Universities Law Review*, vol. 14, no. 1, pp. 62-81.
- Durie, M.H., (1998), *Te Oru Rangahau: Concluding Remarks*, unpublished paper presented at Te Oru Rangahau Conference, Department of Māori Studies, Massey University.
- Durie, M.H.; Kingi, Te K. R., (1997) *A Framework for Measuring Maori Mental Health Outcomes*, Te Pūmanawa Hauora, Department of Māori Studies, Massey University.
- Durie, M.H., (1996), *The Treaty of Waitangi Settlements: Implications for Māori Development*, unpublished conference notes.
- Durie, M.H., (1993), 'Te Maungarongo: in search of consensus', unpublished typescript, Department of Māori Studies, Massey University, Palmerston North.
- Durie, M.H., (1998), *Te Mana, Te Kāwanatanga: The Politics of Māori Self-Determination*, Oxford University Press, Auckland.
- Durie, M.H., et.al., (1995) Te Hoe Nuku Roa Framework: A Māori Identity Measure, *Journal of the Polynesian Society*, Polynesian Society (Inc.), Auckland, vol. 104, no. 4, pp. 461-470
- Firth, Raymond, (1929), *The Economics of the New Zealand Maori*, Government Printer, Wellington.

- Fitzgerald, E.; Durie, M.H.; Black, T.E.; Durie, A.E.; Christensen, I.S.; Taiapa, J.T., (1996) 'Whaihua Tatau', *He Pukenga Kōrero*, Māori Studies, Massey University, Palmerston North, vol. 2, no. 1, pp. 34-42.
- Gilling, Dr. Bryan D., (1994) *Te Raupatu o Te Whakatohea: The Confiscation of Whakatohea Land 1865 - 1866*, Commissioned by the Treaty of Waitangi Policy Unit, Department of Justice, Wellington.
- Graham, Douglas, (1997), *Trick or Treaty*, Institute of Policy Studies, Victoria University, Wellington.
- Hirini, Paul, (1997), 'He Whakaaro mō te Ariā Whanaungatanga: He Āta Rapu: Towards an understanding of Whanaungatanga' *He Pukenga Kōrero*, vol. 2, no. 2, pp. 43-50.
- Howe, Earle, (1991), *Bring Me Justice*, Anglican Provincial Bicultural Education Unit, Auckland.
- James, Colin, (1992), *New Territory: The Transformation of New Zealand 1984 - 92*, Bridget Williams Books, Wellington.
- Kawharu, I.H. (ed.), (1989), *Waitangi: Maori and Pakeha Perspectives of the Treaty of Waitangi*, Oxford University Press, Auckland.
- Kawharu, I.H., (1996), 'Rangatiratanga and Sovereignty by 2040', *He Pukenga Kōrero*, vol. 1, no.2, pp. 11-20.
- Kelsey, Jane, (1993), *Rolling Back the State*, Bridget Williams Books, Wellington.
- Leiman, Melvin M., (1993), *The Political Economy of Racism*, Pluto Press, London.
- Lester, J.D., (1996), *Writing Research Papers*, Harper Collins College Publishers, New York.
- Lyall, A.C., (1979), *Whakatohea of Opotiki*, A.H. and A.W. Reed, Wellington.

- Marsden, Māori, (1992), 'God, Man and the Universe: A Māori View', in Micheal King (ed.), *Te Ao Hurihuri: The World Moves On*, Hick Smith, Wellington.
- McLay, Geoff, (ed.) (1995), *Treaty Settlements: The Unfinished Business*. New Zealand Institute of Advanced Legal Studies, Wellington.
- Metge, Joan, (1995), *New Growth from Old: the Whānau in the Modern World*, Victoria University Press, Wellington.
- Middleton, Sue, (1988) *Women and Education in Aotearoa*, Allen & Unwin, Wellington.
- Mikaere, Buddy, (1991), Exploratory Report to the Waitangi Tribunal being an Historical Account of the Confiscation of Land in the Opotiki District, unpublished report, Waitangi Tribunal.
- Ngata, H. M., (1993), *English-Maori Dictionary*, Te Poutaki Kōrero, Te Whanganui-ā-Tara.
- Oliver, W. H., (1991), *Claims to the Waitangi Tribunal*, The Department of Justice, Wellington.
- Orange, Claudia, (1987), *The Treaty of Waitangi*, Allen & Unwin, Wellington.
- Presbyterian Church of Aotearoa, (1994), *Te Wero: Foundation Documents Challenge Government Policies*, Department of Communication.
- Ratima, M. M.; Allan, G.R.; Durie, M.H.; Edwards, W.J.; Gillies, A.; Kingi, Te K.; Waldon, J., (1996), *Oranga Whānau: Māori Health and Well-being, and Whānau*, Te Pūmanawa Hauora, Department of Māori Studies, Massey University.
- Richardson, John T.E., (1996), *Handbook of Qualitative Research: Methods for Psychology and the Social Sciences*, The British Psychological Society Books, United Kingdom.

- Royal, Te Ahukaramū Charles, (1992), *Te Haurapa*, Bridget Williams Books Limited, Wellington.
- Sharp, Andrew, (1997), *Justice and the Māori: The Philosophy and Practice of Māori Claims in New Zealand since the 1970s*, (2nd ed.), Oxford University Press, Auckland.
- Smith, Graham, (1995) 'Whakaoho Whanau New Formations of Whanau as an Innovative Intervention into Maori Cultural and Educational Crisis', *He Pukenga Kōrero*, vol.1, no.1, pp. 18-36.
- Smith, Linda, Tuhiwai, (1995) *Re-centering Kaupapa Māori Research*, paper presented at Te Matawhānui conference, Department of Māori Studies, Massey University.
- Statistics New Zealand, (1995), *Te Kanohi Hou o Aotearoa - Māori*, Hōngongoi 1995, Te Whanga-nui-ā-Tara.
- Statistics New Zealand, (1998), *Iwi: Volume 2*, Department of Statistics, Wellington.
- Stokes, Evelyn, (1985), *Maori Research and Development*, National Research Advisory Council, Wellington.
- Taiapa, Julia, (1995), 'Ta Te Whanau Ohanga: The Economics of the Whanau; Cultural Survival at Fiscal Expense', *He Pukenga Kōrero*, vol.1, no.1, pp. 10-18
- Te Awekotuku, Ngahuia, (1991), *He Tikanga Whakaaro: Research Ethics in the Māori Community*, Ministry of Māori Affairs, Wellington.
- Te Puni Kokiri, (1994), *Mana Tangata: Draft Declaration on the Rights of Indigenous Peoples 1993; Background and Discussion on Key Issues*, Ministry of Māori Development, Wellington.

- Temm, Paul, (1990) *The Waitangi Tribunal: The conscience of the nation*, Random Century, Auckland.
- Tomlins-Jahnke, H., (1996), *Whaia Te Iti Kahurangi: Contemporary Perspectives of Māori Woman Educators*, MEd. thesis, Massey University, Palmerston North.
- Tucker, Jane, (1994), *Māori Claims: How to research and write a report*, Waitangi Tribunal, Wellington.
- Waitangi Tribunal, (1998), *Te Whanau o Waipareira Report (Wai 414)*, GP Publications, Wellington.
- Walker, Ranginui, (1978), *A Consumer View On Research*, Unpublished paper delivered to the Ministerial Conference on Educational Research, April 1978.
- Walker, Ranginui, (1990), *Ka Whawhai Tonu Matou: Struggle Without End*, Penguin Books, Auckland.
- Walker, Ranginui, (1996), *Ngā Pepa a Ranginui: The Walker Papers*, Penguin Books, Auckland.
- Walker, Ranginui, (1997), 'The Genesis of Direct Negotiation, The Fiscal Envelope and Their Impact on Tribal Land Claim Settlements', *He Pukenga Kōrero*, vol. 3, no. 1, pp. 11 - 18.
- Ward, Alan, (1997), *National Overview*, Rangahaua Whānui Series, Waitangi Tribunal, Wellington.
- Webb, E. N., (1942), *A Policy of Land Confiscation: with special reference to the problems arising from it after the war in the Bay of Plenty*, MA. thesis, University of New Zealand.
- Were, Kevin, (no date) *Mokomoko Our Tipuna: Te Wetenga o Ngā Here o Te Wa*, Unpublished research report prepared for and on behalf of the Mokomoko family.