



THE TREATY ON THE GROUND

*Where we are headed,
and why it matters*

Edited by Rachael Bell, Margaret Kawharu,
Kerry Taylor, Michael Belgrave & Peter Meihana

THE COALFACE REALITY OF HONOURING THE TREATY OF WAITANGI IN TODAY'S LAW, LOCAL GOVERNMENT, EDUCATION, HEALTH, SOCIAL SERVICES AND MORE.

It's 175 years since the signing of the Treaty of Waitangi. At times they've been years of conflict and bitterness, but there have also been remarkable gains, and positive changes that have made New Zealand a distinct nation. This book takes stock of where we've been, where we are headed, and why it matters.

Written by some of the country's leading scholars and experts in the field, it examines the impact of the Treaty on everything from resource management to school governance.

Its focus is the application of the Treaty from the viewpoint of practitioners — the people who are walking and talking it in their jobs, communities or everyday lives — and it vividly tracks the ups and downs of bringing the spirit and principles of the Treaty to fruition.

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INTRODUCTION

THE TREATY AT THE COALFACE

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In 1940, as Pākehā New Zealand set out to celebrate the 100th anniversary of the Treaty of Waitangi — or more particularly, perhaps, a century of formal British settlement — Sir Āpirana Ngata famously described the misgivings of those on the other side of the settlement coin: ‘I don’t know of any year that the Māori people approached with so much misgiving as the New Zealand centennial year. In retrospect, what did the Māori see — lands gone, the powers of the chiefs humbled in the dust, Māori culture scattered, broken . . . What remains of all the fine things said then?’¹

In 1972, as an increasingly contested and problematic view of the Treaty began to permeate Pākehā society, historian Ruth Ross, in a groundbreaking appraisal of the Treaty text, attacked the ‘woolly-mindedness’ that had allowed it to become all things to all people: ‘To each one of us — the politician in Parliament, the kaumatua on the marae, Nga Tamatoa in the city, the teacher in the classroom, the preacher in the pulpit — the Treaty of Waitangi says whatever we want it to say. It is a symbol, of Pakeha self-righteousness, of Maori disillusionment . . . To persist in postulating that this was a “sacred compact” is sheer hypocrisy.’²

Yet despite the concerns of Ngata and Ross, the Treaty has grown dramatically in importance in New Zealand society, and in ways that perhaps they could not have foreseen more than 75 and 40 years ago. As the basis now for redressing grievances such as Ngata identified, and the subject — through a wealth of publications, investigations, reports and theses — of the deep critical analysis that Ross had desired, the Treaty sits at the heart of not only Crown–Māori relations, but also of government, public and institutional life. It serves as our

founding document, certainly, but also as a guide to the present and a potential blueprint for the future.

As Ngata's comments suggest, anniversaries are times for reevaluation, and in 2015 the 175th anniversary of the Treaty signings provided a timely framework in which to ask ourselves about the place of the Treaty in New Zealand today, and the future we might envision for it in the 25 years leading to its bicentennial. To this end, the W. H. Oliver Humanities Research Academy at Massey University joined with researchers and curators from the Auckland War Memorial Museum Tāmaki Paenga Hira to convene a conference, at the museum, that would draw on current ideas and experiences of the Treaty and bring them together. Our team — a conscious mix of Māori, Pākehā, male, female, provincial and metropolitan — hoped to reflect this same diversity in our conference presenters.

As discussions progressed, it became clear that our collective goal was that of capturing practical experience — gathering together views of the Treaty 'on the ground', to borrow a phrase from Ross's article above, from those who encountered and applied it in their everyday lives: 'practitioners' who, through their jobs or their tribal or community affiliations, or through decisions made from a personal perspective, walk the Treaty talk. In a committee replete with historians, we did, of course, want to give historical context to the Treaty, but only in as much as it assisted its location in the present day, to show the Treaty as a contemporary force rather than to perpetuate a notion of it as a primarily historical document whose application lay in the past.

We set our time frame from the end of World War II to give recognition to the very significant changes that have taken place in Māori demography from that period, and state responses to them. Our conference title, *The Treaty on the Ground: Dialogue and Difference, Crisis and Response*, captured, we hoped, the great sense of turmoil, challenge and agency that accompanied debates surrounding the Treaty, and Māori rights generally, from the late 1960s on. As we settled on a format — two days of invited speakers, followed by a one-day 'all-comers' colloquium for new and emerging researchers — we began to shoulder-tap possible presenters from as broad a field of experience as we could draw.

Their responses were inspiring, the diversity of their experiences remarkable. Along with the academic disciplines of law, history, anthropology, sociology, social policy, education, town and environmental planning, geography and art history, we had represented among the contributors Waitangi Tribunal

members, a former Tribunal registrar, a former Chief Crown Negotiator, and people who had been research managers or worked as staff at the Office of Treaty Settlements. On the other side of the table were many who had researched, represented and negotiated on behalf of their iwi in the Tribunal process, and continued to serve on the trusts and governance entities formed following settlement.

From within the public sector were long-serving managers and departmental heads who had navigated the choppy waters of economic reform during the 1980s and 1990s, and challenged many of the assumptions inherent in what had been, in themselves, challenging times. There was a wide range of experience within commissions — State Services, Law, Families and Māori Language — along with those who had served as their chief executives or commissioners. In local government, there were those employed by councils and those who led them.

There were Treaty educators who worked in the wider community and, among the contributors and attendees alike, a wealth of experience in the voluntary sector to draw on from time spent on community and iwi committees, advocacy groups, community development projects and marae. Where we had, rather ambitiously perhaps, divided the time in each conference session equally between presentations and audience discussion, those time slots were easily filled with conversations that continued out into the foyers during breaks.

Although only a proportion of the conference papers have gone on to form the chapters of this book (and a discussion of the conference itself is provided by Margaret Kawharu's overview 'Reflections on The Treaty on the Ground'), three themes emerged from the conference, evident at first within the presentations and then within the chapters as they evolved, which I have selected and drawn together here as a basis for consideration of the volume as a whole.

Presenters were invited to attend as speakers, and they were located within broadly chronological frameworks, but the direction of their papers or arguments was not prescribed by the organising team, nor were their papers pre-read or their content in any way vetted. That these three themes occurred repeatedly across the conference, were mirrored in the views of the colloquium speakers, and also survived the commitment to paper to form significant arguments within the chapters, suggests patterns of common experiences over time, and grounds for a

deeper consideration of their role in relation to the Treaty in the future.

The first theme concerned the framing of the conference title: Dialogue and Difference, Crisis and Response, to which Aroha Harris, only the second speaker in, remarked 'Crisis? What crisis?' More particular, perhaps, was the question 'Whose crisis?' In framing that title, we had been referring to the crisis in interpretation of the Treaty that occurred in the early 1970s as groups such as the Maori Organisation on Human Rights and Ngā Tamatoa used the protest methods of youth counterculture — placards, occupations, high-profile media-orientated events, among others — to bring attention to the history of dispossession justified under the Treaty, despite the acritical and celebratory role it held within mainstream (for which, read 'Pākehā') society: in other words, the hypocrisy referred to by Ross. The outcome was deeply unsettling. Conferences were held, papers were written, and newspapers were awash with articles: 'Embarrassment at Waitangi: Bitter Maori Clash with Minister';³ 'What Nga Tamatoa Wants: Let's Head off Racial Strife Urge the Young Warriors'.⁴ It was the beginning of a gradual infiltration of an alternative perspective into Pākehā consciousness, the emergence of a problematic view of land acquisition and, as it evolved over the course of the decade, of colonisation itself.

To hear the Treaty described as such, however, was no blunt revelation — no 'crisis' — for Māori. The protest methods may have been novel, perhaps, and the language and terms not yet in place to describe the new situations and racism that urban Māori faced, but the issues surrounding the Treaty, for Māori communities, were tragically familiar — as old as the Treaty itself. And that was Harris's point. Māori would always think, behave and view the world as Māori, even if part of that had come to include operating under a legacy of Crown control and misdealings. If challenges to the place of the Treaty in the early 1970s had led to a crisis of identity for Pākehā, the crisis was theirs alone.

It was very salutary, for behind Harris's critique and our wording were a raft of attitudes and practices that assumed dominance (hegemony) over other groups, the implications of which surface again and again in the chapters of this book: practices which, through their own assumption of 'normality', place alternative worldviews as marginal and therefore optional; practices which from before the instigation of formal colonisation have expected Māori to contribute, sacrifice and fall into line on the one hand, and to assimilate and accept what the state believes is best for them on the other; practices which throughout the annals of government have referred to a 'Māori problem'.

Margaret Kawharu's chapter discusses the ways in which 'invisible and unquestioned' privilege is likely to be perceived least by those who benefit from it the most. The majority of other chapters in this book refer to this notion of privilege also, either in the broad overviews of social and governmental change provided by Michael Belgrave and Kim Workman, or in the specific case studies of institutions and organisations, such as those by April Bennett, Biddy Livesey, Cybèle Locke and Richard Green. Each of these case studies — of the Resource Management Act, local government planning documents, the history of the trade union movement, and school boards of trustees, respectively — shows the ways in which Māori must negotiate and persist in order to break existing assumptions and to create any deep or meaningful institutional change.

While the 1988 report *Puao-te-Ata-Tu* is recognised throughout the volume for articulating assumptions of Pākehā cultural superiority that frame *te ao Māori*, the Māori worldview, as 'exotic', the long-term commitment or efficacy of the changes it initiated within government is constantly questioned. Shifts in policy may have affected change from above, but shifts in the attitudes of staff and administrators charged with applying the Treaty 'on the ground' are shown to have taken significantly longer.

Government policy also forms the second recurrent theme: that of the neoliberal reforms, their potential and their consequences. As Massey University history professor Michael Belgrave explains in his broad overview of the Treaty in the post-war period, the determination of Lange's Fourth Labour Government to dismantle the economic apparatus and state-centred approaches of previous governments in favour of devolution and market orientation offered both threats and opportunities from Māori perspectives. As pathways to gaining greater access to resources previously withheld through state paternalism, and as a means of increasing the willingness of government to recognise the Treaty, if only as a justification for broader government policy, the reforms held appeal. But this was balanced by the greater exposure of traditional Māori resources to private interests, particularly through the State Owned Enterprises Act of 1986, and the collapse of employment security as the impact of the corporatisation of state services was felt.

Kim Workman, serving as a district manager in Maori Affairs, recalls the impact in 1986 of the loss of hundreds of jobs in forestry, railways and public works:

an increase in suicides, crime and family violence among the unemployed, and increased work fatalities among those now operating under private contractors. For Workman and Belgrave, and for April Bennett also, in her consideration of the Resource Management Act, the checks and balances have been dominated by a contradictory reluctance by the state, or local government in the case of resource management, to release sufficient control to realise the true autonomy and self-determination for Māori that may have mitigated some of these effects.

Rather, the expectation has been for consultation and services to be provided within an environment of limited funding and constant compromise, one in which innovations tend to be structured in ways that do not seriously threaten institutional control. Environmental management remains within the firm grip of local authorities, and, as Workman, Belgrave and Cybèle Locke all note, Māori economic and social disparity has become more, rather than less, entrenched under these reforms, which Locke describes as having ‘pushed many New Zealand families into poverty’.

For those involved in the settlement process, neoliberal ideologies have both dominated and dictated the settlement structure, forcing Māori, as Margaret Kawharu observes — here citing Maria Bargh — ‘down a neo-liberal economic path’ and into further assimilation. It is, Kawharu notes, a reality of operating within a political economic climate ‘fundamentally shaped by non-Māori interests’, as evident in the legislation, for example, concerning trust law, company law and the requirement for governance entities to meet Crown criteria.

The third theme concerns Pākehā engagement with Treaty conversations, and the willingness of individuals to be part of cementing the Treaty in national life. A point strongly apparent within the conference, the colloquium and also this volume is that, despite what it has achieved, and irrespective of the level of potential it has reached thus far, the relationship between Māori and the Crown, when framed in the public mind by the Tribunal, still allows Pākehā and other non-Māori outside of government and the public service to remain disengaged from the Treaty conversation, to see it as someone else’s — if not problem, then at least concern.

This can be viewed partly as an outcome of the negotiation processes, in which the scrutiny of evidence occurs behind closed doors; therefore, the general public may feel in the position — neither ‘agreeable, nor useful’ as Kawharu

again suggests — of having been excluded from a ‘significant transformative process’ in their own country. But the Treaty is not just ‘between’ Crown and Māori. The Treaty is an ongoing conversation, of New Zealandness, of Aotearoa tanga, of Crown–Māori relations, at one level, but also within the bureaucratic, institutional, commercial, communal and familial workings of the nation.

In Richard Green’s research, in which he traces staff and trustees within predominantly Pākehā schools as they grapple with personal and institutional barriers toward affording the Treaty a central place in their teaching environment, the issue is specifically identified as an inter-generational one. While the negative experiences of one generation of Māori at school may impact upon the next, so, too, might we consider the way in which the Pākehā values that dominate society are transmitted generationally, as assumptions commensurate with the positions of privilege discussed earlier.

Māori have been living the Treaty for generations; the state, within its limits, for decades. A clear signal from the conference and from this volume is that if recognition of the Treaty is to progress fully into national life — if we are to genuinely, as a nation, walk the Treaty talk — then Pākehā, too, must come to this conversation, not just within their school or workplace, but as beneficiaries also, at a personal level, of the Treaty legacy. Damian Skinner’s chapter, a reflection of the decolonising of his professional and private lives, is an examination of arresting hegemonic assumptions: the conscious and sustained attempt to ensure te ao Māori as integral and legitimate a place within his everyday practices as his Pākehā views. If, as April Bennett has said, Māori can walk a dual path between two worlds on a daily basis, why, then, cannot, and should not, Pākehā?

Te Kawehau Hoskins, in a sensitive account of Tribunal hearings on her marae, suggests the opportunities for all if, through a relaxing of the quest for autonomy by Māori and a giving up of ‘powerful political and social orientation[s] to unity and sameness’ on the part of Pākehā, we were to momentarily leave ‘far-off goals’ aside and attune ourselves to the intensity of the present and the deeper potentials of intercultural encounters.

In as much, then, as this book is an evaluation of participation, it is also an evaluation of potential — run through with pathways to build and improve Māori–Crown relations and Māori–Pākehā relations, and calls for Pākehā

to step forward and step up, to engage with the Treaty as central to their communities and their daily lives. The book moves broadly through five sections. It starts by way of introduction with a chapter by David Williams of the University of Auckland, which explores the oft-assumed relationship between the Treaty and the English Magna Carta, the 800th anniversary of which coincided in 2015 with the Treaty's 175th anniversary. Williams argues that, although popular notions of Magna Carta as a symbol for the 'principles of legality and good government' have led to its conflation with the Treaty in New Zealand, this tendency for such acritical comparisons has all but faded away as the constitutional status of the Treaty has become increasingly assured.

This is followed by a set of three chapters that give historical context to the later discussions: Michael Belgrave's broad overview of the post-war period, Cybèle Locke's discussion of the sometimes contested relationship between Māori aspirations and the New Zealand trade union movement, and Peter Meihana's analysis of resistance to the Treaty across the nineteenth and twentieth centuries and in the current day. Meihana shows that, despite significant shifts in perceptions of the Treaty to now include Māori in a meaningful way, ideas persist that seek to contain the Treaty within a nineteenth-century context.

From here we move to a discussion on the settling of historic claims, including Crown processes and the ways in which some iwi have approached settlement. It begins with an overview by lawyer and former Chief Crown Negotiator Michael Dreaver, outlining the development of the Waitangi Tribunal over five stages and assessing its current position. This is followed by two chapters of commentary, one by Te Kawehau Hoskins, as discussed above, and the other by the members of the former Kurahaupō ki te Waipounamu Trust, the legal entity established to settle the claims of three northern South Island iwi. Written with Peter Meihana, this chapter highlights some of the motivating factors that drove Kurahaupō in the settlement process, and shows that, while relationships with the Crown were important, addressing relationships with other iwi were equally so.

In the fourth section, the focus moves to the public service. Here the overview is provided by Kim Workman, whose extended career has spanned many of the changes in government attitude and policy that frame this volume, enabling him to describe both the bureaucratic context in which decisions were made and their impact 'on the ground' among the communities in which he worked.

While the case studies by April Bennett, Biddy Livesey and Richard Green, discussed earlier, point largely to a deficit of engagement with the Treaty in

institutional practice — by concentrating on the what, where and when of policy, as Livesey describes it, rather than the who or why — the fifth chapter in this set, by Edwina Merito and Liz Cotton of Tāmaki Paenga Hira Auckland War Memorial Museum, offers an example of a sustained institutional attempt to change protocol concerning the care and recording of, and access to, taonga within the museum to incorporate Māori understandings and perspectives.

The fifth and concluding section offers the personal reflections of two individuals intimately involved in Treaty practice. As curator of Applied Art and Design at Tāmaki Paenga Hira, Damian Skinner's account of integrating the Treaty into his everyday activities offers a clear challenge to Pākehā that goes beyond tokenism to genuinely addressing the current hegemony and the impact of the constant imposition of non-Māori values on Māori lives. The clarity and eloquence of Margaret Kawharu's chapter belies the complexity of the issues, as, drawing on the conference presentations as a framework, she maps not only some of the challenges for Māori generally, but also those for tangata whenua in a large and rapidly expanding metropolis particularly. Both chapters are engaging, both are challenging, and both clearly show how in 'rethinking normal', as Kawharu terms it, the Treaty 'belongs to not only our history' but also our 'contemporary life'.

This is a volume of many voices, of wide-ranging opinions, of different styles and varying perspectives. Collectively, it represents many decades spent at the Treaty coalface. Clearly, in encouraging contributors to record their experiences, their opinions remain their own and not those of the editorial team. We thank the contributors for their chapters and for the many hours spent committing their thoughts to paper.

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- 1 <http://www.ngataonga.org.nz/blog/nz-history/sir-apirana-ngatas-speech-at-the-centennial-of-the-treaty-of-waitangi-1940/>.
 - 2 Ruth Ross, 'Te Tiriti o Waitangi: Texts and Translations', *New Zealand Journal of History* 6:2 (1972), 129–54, at 154.
 - 3 Claude Coumbe, 'Embarrassment at Waitangi: Bitter Maori Clash with Minister', *Sunday Herald*, 6 February 1972.
 - 4 Jack Leigh, 'What Nga Tamatoa Wants: Let's Head Off Racial Strife Urge the Young Warriors', *Auckland Star*, 5 February 1972.