

Treaty constitutionalism (which invents a nationwide entity called Maori) and whakapapa (or iwi) constitutionalism which asserts that the rights inhere in kin-based groups. Maori constitutionalists 'put the Treaty at the absolute centre' (p.313) using religious language of covenant, and hold that the relationship is between Maori and Pakeha as well as, or instead of, Maori and the Crown. An explicit and salutary example is the Anglican Church, and the ideology relies on a good deal of mythmaking around the 1835 northern Declaration of Independence, by which an entity called Maori is held to have constituted or declared itself a nation. Jock Brookfield is likewise tough-minded. He is not shy about asserting that 'objective moral judgements may properly be made' (p.353) and there are at least limits to cultural relativism. At what point might outsiders step in and declare that 'custom' is wrong? He effectively disposes, too, of some of the more romantic and ill-conceived notions espoused by some legal scholars, including other contributors, about the 'validity' of 'tradition' and the persistence of autonomy. David Williams argues in a concluding chapter that legal pluralism and unique, Treaty-based, relationships have yet to emerge. The contrast between his views and those of Brookfield is most instructive. However, while a recitation of past wrongs may be essential in explaining how we got to the present, Williams does not offer much in the way of suggestion of how the desired legal pluralism might be developed.

While many of the contributions provide very useful and coherent expositions of their particular subjects, I think it is time for the more informed and frank debate which some chapters undertake. Terms are often deployed loosely in public discussion. What do we mean by *mana motuhake* or *tino rangatiratanga*? Durie identifies *tino rangatiratanga* on a pan-Maori basis as 'the right of Maori people to organise as whanau, communities, interest groups, and political parties' (p.10). This, however, is nothing other than what any group might expect in a pluralist and democratic society. Although Durie distinguishes between *iwi* rights and those of 'a more generic Maori community to seek control and authority through other means' (p.10) the real question in both cases is, control and authority over what; based on what; and exercised by whom? Taken as a whole this book provides much information and a considerable range of perspectives. Hopefully the discussion will continue with the necessary rigor.

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The Waitangi Tribunal: Te Roopu Whakamana i te Tiriti o Waitangi. Edited by Janine Hayward and Nicola R. Whéen. Bridget Williams Books, Wellington, 2004. 296 pp. NZ price: \$49.95. ISBN 1-877242-32-2.

THE WAITANGI TRIBUNAL, established in 1975 to hear Maori claims against the Crown under the Treaty of Waitangi, with its unique jurisdiction to investigate claims and make recommendations, lies at the heart of Treaty settlement processes. *The Waitangi Tribunal: Te Roopu Whakamana i te Tiriti o Waitangi* differs from other Treaty of Waitangi publications in that rather than focussing on a broad overview of the Treaty or subject-specific analysis, it concentrates on the Waitangi Tribunal, outlining the history of the Tribunal; reports on lands, fisheries, the environment and commerce; process, evidence and research issues; and making international comparisons. The book reviews the Tribunal's place and takes a critical look at its role in reshaping Maori society and identity. The conclusion reflects on the organization's future and the contribution it makes to developing notions of reparatory and distributive justice.

While this approach is refreshing, at least partly because it is unique, it is not entirely successful on all fronts. Chapter one overviews the history of the Tribunal, outlining

the way in which its status has varied according to different political climates. It is one of the better chapters in the book. Chapter two outlines Tribunal processes, powers and limitations, but is much less useful than Claudia Orange's more comprehensive *An Illustrated History of the Treaty of Waitangi* (2004). Chapter three, which looks at the principles of the Treaty, rightly acknowledges the contentious nature of interpreting the Treaty this way and does a more than reasonable job of noting the key moments and findings, including the Motunui-Waitara, Kaituna, Manukau and other Tribunal reports and the landmark SOE Lands Case of 1987. However, it does less well in getting to grips with key issues, such as why the Tribunal shifted from interpreting kawanatanga as something less than sovereignty before the 1987 Lands case to saying that sovereignty had been ceded to the Crown in 1840 (after the 1987 case). Jane Kelsey, 'Treaty Justice in the 1980s', in Paul Spoonley et al. (eds), *Nga Take: Ethnic Relations and Racism in Aotearoa/New Zealand* (1991) remains the best analysis of the principles. There is a need for an updated version — this chapter is not it. Chapter four looks at the way the Tribunal examines history and different kinds of historical evidence, such as oral history, archival records and manuscripts. While informative, the treatment is much lighter than Giselle Byrnes's excellent *The Waitangi Tribunal and New Zealand History* (2004), which will be the standard work on this issue for some time.

The several essays on Tribunal reports in Part Two, organised thematically, are the real meat of the book. The chapter on lands reports by Tom Bennion is sharp, succinct and insightful, covering the implications of Tribunal reports from Waiheke and Orakei, through Ngai Tahu, Muriwhenua, Taranaki, Ngati Awa, Public Works and the Maori Land Court. The chapters that follow: Stephanie Milroy — fisheries; Nicola Wheen and Jacinta Ruru — the environment; Deborah Edmunds — contemporary commercial issues; and John Dawson — remedies; are of similar quality. A few key points are missed here and there. Dawson, for instance, rightly acknowledges the influence that the writing of the *Turangi Township Remedies Report* (1998) had on securing an agreement between Ngati Turangitukua and the Crown. However, he neglects to mention the pressure the then Minister of Treaty Settlements Douglas Graham exerted on the Tribunal when he stated that should the Tribunal make too large a binding order for the return of State-owned enterprises then the Crown might re-legislate its powers. That statement (made several times) had a significant impact on the way the Tribunal handled remedies claims, one that is too important to overlook.

Following chapters comparing the Tribunal with land claims processes in Canada and Australia are also good, although, again, occasionally gloss over some key comparisons. The section on the British Columbia Treaty Commission (BCTC), for example, makes the helpful point that whereas the Tribunal is government funded, 80% of the BCTC operational budget is in the form of advance loans to First Nations, which must be paid back — seemingly an advantage to Maori. Elsewhere the chapter passes over another important comparison. It highlights that First Nations appoint two of the four commissioners on the BCTC, and that the chair is appointed by consensus between the Canadian Federal Government, the British Columbia Provincial Government and First Nations, but does not directly compare this with the Tribunal, which is solely appointed by the Crown — something distinctly better for Maori.

The criticisms I have made are minor considerations and quite typical of multiple-authored books on the Treaty. The central focus on the Tribunal rather than the Treaty adds much needed clarity that will be useful to a wide audience.

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