

Treaty of Waitangi Settlements

By Nicola Wheen and Janine Hayward, eds.

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Reviewed by Martin Fisher

In the past few years the number of negotiated Treaty settlements in Aotearoa/New Zealand has increased considerably, but there is still a lack of understanding amongst the general public and even in academic circles about the Treaty settlement process. Janine Hayward and Nicola Wheen's *Treaty of Waitangi Settlements* attempts to address this gap in the literature and the book provides a solid base from which further research into Treaty settlements might follow. The edited volume boasts an impressive array of practitioners and academics involved in the Treaty settlement process including Māori claimants, negotiators, advisors as well as Crown officials and advisors. This book investigates the historical, legal and procedural context for negotiations; the mechanisms of settlements such as land as well as its financial and commercial dimensions; the importance of apologies by the Crown; the 1992 commercial fisheries settlement and the 2010 Waikato River settlement; representation issues; and post-settlement implications and outcomes. There are occasional inaccurate statements such as in the introduction where it is noted that Ngai Tahu settlements predate Waikato-Tainui's when they do not. Another criticism that can be made of the book is the strange way in which the editors have organized the volume. It is split into three parts: the context, the settlements themselves and post-settlements but many of the chapters are in unsuitable sections.

Treaty of Waitangi Settlements begins with a contextualization of the history of Māori negotiation with the Crown, the peoples and institutions that participate in the process and the legal context of settlements. Michael Belgrave's 'Negotiations and Settlements' provides the historical context for Treaty settlements by examining the various negotiated settlements that preceded the modern Treaty settlement process beginning with the signing of the Treaty of Waitangi. These negotiations are significant because they reveal the pattern of Crown dominance that has ensued since the 1860s in nearly all negotiations. The 'Treaty Settlement Process' by Dean Cowie is a particularly practical and useful chapter that sets out the peoples and institutions that make up the Treaty settlement process. Cowie's content is helpful to counter the common misconception amongst the New Zealand public and even some academics that the Waitangi Tribunal conducts Treaty settlement negotiations. This misconception is addressed by detailing the primary role of the Office of Treaty Settlements (OTS) and the Crown Forestry Rental Trust in negotiations and the secondary role of other Departments such as the Department of Conservation. Though he packs a lot into one chapter, Cowie neglects to mention the important role of other Departments such as the Treasury and the Crown Law Office as well as the Department of Prime Minister and Cabinet.

Baden Vertongen's 'Legal Challenges to the Treaty Settlement Process' analyses the legal context of negotiations and the legal options for Māori in advancing their own negotiations or opposing the negotiations of other Māori groups. He shows how both the Courts and the Waitangi Tribunal can provide some possibilities for legal challenges to the Crown control of the process. Like Vertongen's chapter, Robert Joseph's 'Unsettling Treaty Settlements: Contemporary Māori Identity and Representation Challenges' is similarly concerned with the Crown's dominance in the Treaty settlement process. Joseph also explores some of the legal challenges to the process and the ways in which the Crown imposes its own preference for

negotiating partners in ‘large natural groupings’ and the structure of post-settlement governance identities for settling Māori groups. Joseph’s chapter on representation should be in the context section rather than in the post-settlements section since Joseph’s chapter is more associated with issues preceding the negotiations.

Following on from the contextual examinations of the settlement process are two chapters that focus on some of the products of negotiations. Namely, financial and commercial dimensions and historical apologies by the Crown which are rightly in the second section, entitled ‘Treaty Settlements.’ Damian Stone’s chapter details the mechanisms and forms of financial and commercial redress such as the Right of First Refusal process, and the use of Crown properties as well as Crown Forest Land and rentals. Stone’s chapter is a welcome addition to the literature as there has been little written on this important aspect of Treaty settlement negotiations but at times the general nature of his chapter results in an oversimplification of facts. He contends that the financial redress under the Waikato-Tainui and Ngai Tahu settlements were identical because they were both valued at \$170 million but their values were financially different. Waikato-Tainui’s settlement was worth \$170 million in December 1994 dollars while Ngai Tahu’s was worth \$170 million in October 1996 dollars. Waikato-Tainui’s 1994 settlement would have been worth nearly \$180 million in October 1996 dollars.

Maureen Hickey’s chapter on ‘Apologies in Treaty Settlements’ looks at the process of Crown apologies to claimant groups that is integral to every settlement that has been signed in New Zealand. The emphasis which Hickey places on the importance of the apology to settling groups is reflected in the experiences of nearly every negotiation process but a discussion of the ‘Historical Account’ which always accompanies Apologies by the Crown would have been helpful. The debates between Crown and Māori negotiators and advisors can reveal important and diverse historiographical strands around the impacts and effects of the colonization process in Aotearoa/New Zealand.

The chapter on the 1992 Fisheries settlement by Margaret Mutu and the recent 2010 Waikato River settlement by Linda Te Aho are the only two case-studies of specific negotiated settlements and they rightly belong in the ‘Treaty Settlements’ section. The two chapters on the effects of Treaty settlements on Māori communities by Michael Stevens and Paerau Warbrick address the issue in very different ways but both contribute much to the nearly non-existent literature on the topic. Both chapters also address the post-settlement phase of negotiations rather than the ‘Treaty Settlements’ section in which they’ve been placed. Michael Stevens’ ‘Settlements and Taonga: A Ngai Tahu Commentary’ evaluates some of the provisions of the Ngai Tahu settlement, notably the return of pounamu (greenstone) and the Crown Titi Islands. It also assesses the compensation under a separate contemporary settlement, the *Waitutu Block Settlement Act 1997*, for beneficiaries of the 1905 *South Island Landless Native Act* of which most but not all beneficiaries were affiliated with Ngai Tahu. Stevens shows how Ngai Tahu have used their settlement to establish and entrench their control and ownership of pounamu and formalize their mutton-birding practices with the co-operation of DoC. The Waitutu Block Settlement has presented some more difficult problems for beneficiaries as conservation issues have been heated at a local level but even there slow progress is being achieved. With the number of settlements increasing, more investigations of the practical products of settlements such as those studied by Stevens are needed. Paerau Warbrick’s ‘O ratou whenua: Land and Estate Settlements’ attempts to understand the effects of settlements in a much different manner than Stevens or any other author in *Treaty of Waitangi Settlements*. Negotiations in and of themselves involve the elites of both the Crown

and Māori groups and as Warbrick rightly points out, ‘at all stages of the settlement process, ordinary Māori and their opinions are seldom heard outside of their communities’ (p.96). Warbrick provides a fictional take, ‘a personal view of settlement’, from the vantage point of an unemployed 58 year old male Ngati Awa divorcee with adult children who lives in Auckland that is both refreshing and illuminating.

Maria Bargh and Mai Chen’s chapters on post-settlement issues should have been combined with Stevens and Warbrick’s chapters that are more focused on the post-settlement phase rather than the settlements section into which they’ve been put. Bargh’s chapter, ‘The Post-settlement World (So far)’ is an excellent analysis not only of the impacts of settlements but also of the diverging expectations of Māori and the Crown and the different levels of bargaining power that the two sides have. Assessing the impact of Treaty settlements is still a very difficult endeavour and Bargh has provided a good spring-board to begin the debate over the relative merits of advances in economic development in relation to cultural and social development. The true impacts of settlements will truly not be known for at least a generation. Chen explores the wider debates that will emerge out of the ‘post-settlement’ phase: issues regarding the implementation of settlements; the on-going debates over constitutional arrangements; and the future of OTS, the Māori Land Court and the Waitangi Tribunal.

Despite issues with the organization of the book and some small inaccuracies and generalizations, overall *Treaty of Waitangi Settlements* is a good introduction to the topic of negotiations in Aotearoa/New Zealand. With the Ministry of Culture & Heritage’s ‘Telling the stories of Treaty Settlements’ project and some scholarly works using OTS and iwi archives on the horizon it may just be the tip of the iceberg.