

BOOK REVIEW: *WAITANGI REVISITED*

*Hannah Northover**

Michael Belgrave, Merata Kawharu and David Williams (eds) Waitangi Revisited: Perspectives on the Treaty of Waitangi (Oxford University Press, Melbourne, 2005) (402 + xxi pages) NZ\$65.

Waitangi Revisited: Perspectives on the Treaty of Waitangi looks at Treaty issues 16 years after the publication of *Waitangi: Māori and Pākehā Perspectives of the Treaty of Waitangi*.¹⁴ The superficial differences between the two volumes are minimal. Both are handy paperbacks in serious Treaty colours. The most telling sign of the intervening years is the URL on the more recent edition. The disappearance of *Māori and Pākehā* from the title could be a response to some of the considerations addressed in Allen Bartley and Paul Spoonley's "Constructing a Workable Multiculturalism in a Bicultural Society",¹⁵ or, more likely, a move to clip a clunky title.

Both editions have glittering lists of contributors. The names Brookfield, Durie, Kawharu, McHugh, and Walker all reappear in this year's release. New contributors this time around include Wellington's Tom Bennion, Ani Mikaere of Te Wānanga o Raukawa, Auckland University's Margaret Mutu, and lawyer Maui Solomon. Both *Waitangi* and *Waitangi Revisited* are collections of highly topical and thought-provoking essays, mixing history with social, legal and political analysis. Contributions to the first edition, like Benedict Kingsbury's "The Treaty of Waitangi: some international law aspects", have become classics in their field.¹⁶ *Waitangi* remains a valuable contribution to Treaty literature and debate, but was ripe for revisiting; the subsequent decades have been long years for the Treaty.

During the 1990s, the cracking pace of progress envisaged by some had failed to eventuate, and momentum was lost. Perhaps the biggest and more general gains were succeeded by discrete change

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14 I H Kawharu (ed) *Waitangi: Māori and Pākehā Perspectives of the Treaty of Waitangi* (Oxford University Press, Auckland, 1989).

15 Allen Bartley and Paul Spoonley "Constructing a Workable Multiculturalism in a Bicultural Society" in Michael Belgrave, Merata Kawharu and David Williams (eds) *Waitangi Revisited: Perspectives on the Treaty of Waitangi* (Oxford University Press, Melbourne, 2005) 136.

16 Benedict Kingsbury "The Treaty of Waitangi: some international law aspects" in Kawharu, above n 1, 211.

in more diverse areas. Constitutional transformation has not occurred, but change is still very firmly on the agenda.

I have heard it said that it can be difficult to find cogent and lucid expressions of contrary opinions on Treaty issues because most with the knowledge and passion to write well on the Treaty share similar viewpoints. In *Waitangi Revisited*, attempts to provide different ideological perspectives seem relatively successful. Ani Mikaere and Andrew Sharp take solidly opposing views on the significance of tikanga in New Zealand's constitutional framework, just as David Williams and Jock Brookfield express divergent views on the place for tikanga in our legal system.¹⁷ Brookfield continues to develop his theories of legal system legitimation, notably addressing the relationship between postcolonialism and legitimation.¹⁸ Ranginui Walker also directly addresses "The Treaty of Waitangi in the Postcolonial Era", viewing the 1985 extension of Tribunal jurisdiction to 1840 as signalling the irrevocable launch of the Treaty into the postcolonial era.¹⁹ Walker's chronological record of the Tribunal is set in the contexts of government recognition of the Treaty since 1940 and of Foucault's ideas of a "return to knowledge" by the path of "local criticism".²⁰ Walker has some characteristically gorgeous sentences, saying of the early Tribunal: "Māori activists were not mollified by the government's paper tiger."²¹

Other contributors present pieces more akin to case studies, but illustrative of wider themes and relating to issues of significance. Such pieces include Paul Tapsell writing on the Treaty and Te Papa, Maui Solomon on the Tribunal Wai 262 claim to indigenous flora and fauna - *ō rātou taonga katoa*, and the hapū and community perspectives presented by Hugh Kawharu, Evelyn Tuuta and Margaret Mutu.²²

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- 17 Ani Mikaere "The Treaty of Waitangi and Recognition of Tikanga Māori" in Belgrave, Kawharu and Williams, above n 2, 330; Andrew Sharp "The Treaty in the real Life of the Constitution" *Waitangi Revisited* 308; David V Williams "Unique Treaty-Based Relationships Remain Elusive" in Belgrave, Kawharu and Williams, above n 2, 366; F M (Jock) Brookfield "Waitangi and the Legal Systems of Aotearoa New Zealand: Conflict and Change" in Belgrave, Kawharu and Williams, above n 2, 349.
- 18 Brookfield "Waitangi and the Legal Systems of Aotearoa New Zealand: Conflict and Change" in Belgrave, Kawharu and Williams, above n 2, 358-359
- 19 Ranginui Walker "The Treaty of Waitangi in the Postcolonial Era" in Belgrave, Kawharu and Williams, above n 2, 61.
- 20 Ranginui Walker "The Treaty of Waitangi in the Postcolonial Era" in Belgrave, Kawharu and Williams, above n 2, 57.
- 21 Ranginui Walker "The Treaty of Waitangi in the Postcolonial Era" in Belgrave, Kawharu and Williams, above n 2, 59.
- 22 Paul Tapsell "from the Sideline: Tikanga, Treaty Values and Te Papa" *Waitangi Revisited* 266; Maui Solomon "The Wai 262 Claim: A Claim by Māori to Indigenous Flora and Fauna: *Me o Rātou Taonga Katoa*" in Belgrave, Kawharu and Williams, above n 2, 213; I H Kawharu "Orakei" in Belgrave, Kawharu and Williams, above n 2, 151; Evelyn Tuuta "Feast or Famine: Customary Fisheries Management in a

Michael Belgrave's analysis of Waitangi tribunal historiography discusses the Tribunal's "presentism",²³ as Giselle Byrnes did prominently last year in *The Waitangi Tribunal and New Zealand History*.²⁴ The other contributions are no less deserving of mention - for example, Shane Jones's "Cornerstone of the Nation State", based on an interview with Paul Diamond. This paper's personal tone allows the presentation of Diamond's experiences and the way they have shaped his view of the Treaty to mix with his hopes for the future. Diamond began to see the Treaty of Waitangi as "one of the planks that will build the platform of Aotearoa in the future", adding the caveat "I don't think it's fair to say that it can be the exclusive plank."²⁵

Tom Bennion's "Lands Under the Sea: Foreshore and Seabed" is already dated, as Bennion anticipated, by the Hīkoi and the Foreshore and Seabed Act 2004, now in effect.²⁶ This is no criticism – the edition would have been incomplete without reference to the foreshore, and as movement on the issue continues, so will the scope for further comment.

In his foreword, Hugh Kawharu speaks of the "humility, patience and resolve" required from both Māori and Pākehā in the effort to meet necessary challenges like the need to communicate "Māori perspectives to a majority mono-cultural Pākehā audience in terms that will encourage a constructive response, perhaps even a joint enterprise."²⁷ *Waitangi Revisited* makes a valuable contribution to constructive discussion of Treaty issues by accommodating varied viewpoints, carefully expressed. It deserves to be read by a wide audience. The contributions in this collection reflect Treaty issues that are currently prominent, and likely to remain in contention until debate of this kind becomes more widespread.

Contemporary Tribal Society" in Belgrave, Kawharu and Williams, above n 2, 168; Margaret Mutu "Recovering Fagin's Ill-Gotten Gains: Settling Ngāti Kahu's Treaty of Waitangi Claims against the Crown" in Belgrave, Kawharu and Williams, above n 2, 187.

23 Michael Belgrave "The Tribunal and the Past: Taking a Roundabout Path to a New History" in Belgrave, Kawharu and Williams, above n 2, 35.

24 Giselle Byrnes *The Waitangi Tribunal and New Zealand History* (Oxford University Press, Melbourne, 2004).

25 Shane Jones "Cornerstone of the Nation State" in Belgrave, Kawharu and Williams, above n 2, 33.

26 Tom Bennion "Lands Under the Sea: Foreshore and Seabed" in Belgrave, Kawharu and Williams, above n 2, 233.

27 I H Kawharu "Foreword" in Belgrave, Kawharu and Williams, above n 2, v, vi.