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# Behind the smoke and mirrors of the Treaty of Waitangi claims settlement process in New Zealand: no prospect for justice and reconciliation for Māori without constitutional transformation

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## ABSTRACT

Governments in New Zealand have legislated a large number of settlements extinguishing many hundreds of claims taken by Māori against the Crown for breaches of the country's founding document, Te Tiriti o Waitangi. They portray settlements as a great success for Māori and the Crown. Māori disagree. Settlements are government-determined and imposed on Māori using a smoke and mirrors approach that masks successive governments' true intentions: to claw back Māori legal rights; to extinguish all claims; and to maintain White control over Māori. In short, to uphold the Doctrine of Discovery in further breach of Te Tiriti o Waitangi. Māori claimants and negotiators report being enticed into the process by false promises only to become traumatised and disenfranchised. Yet many take a pragmatic stance and sign settlements, making the best they can out of a bad deal that goes nowhere near compensating for their actual loss. They know that despite what legislation may say, the settlements are not full, not fair and not final and that, like all previous settlements, they will be revisited. They also know that unless fundamental changes are made to the constitutional makeup of the country, there is no prospect of justice and reconciliation for Māori.

## ARTICLE HISTORY

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Te Tiriti o Waitangi; treaty claims settlements; Doctrine of Discovery; extinguishing Māori rights; constitutional transformation

## Introduction

Over the past four decades, three United Nations Special Rapporteurs on indigenous rights have issued reports, in 1988, 2006 and 2011, on the urgent need for New Zealand to bring an end to human rights violations against Māori in New Zealand (Daes 1988; Stavenhagen 2006; Anaya 2011; Bargh 2012, 170–171). They were followed in 2014 by the United Nations Human Rights Council criticising the ongoing racism and discrimination against Māori (United Nations General Assembly 2014). In 2017, the United Nations Committee for the Elimination of Racial Discrimination reminded the New Zealand government of its obligation to recognise the fundamental right of Māori to self-determination and to engage with Māori on the need for constitutional transformation to entrench the

human and treaty rights of Māori. In 2018, a similar recommendation was made by the United Nations Committee on Economic, Social and Cultural Rights. The United Nations has provided support for Māori because although New Zealand endorsed the 2007 United Nations Declaration on the Rights of Indigenous Peoples (United Nations 2007) in 2010, it continues to violate Māori treaty and human rights.

As such, New Zealand governments most often ignore such international criticism. Where they do respond, they disingenuously assert that they are carrying out their obligations. In doing so, they often refer to more than 60 Treaty of Waitangi claims settlements that they have legislated in the past two decades to settle Māori claims against the Crown for violation of their treaty rights. Despite the same United Nations human rights bodies criticising this process as well and recommending that governments reach agreement with Māori on how claims are to be settled, each government has ignored them. Instead, they flood local media with reports of the success of their settlements, to the point that many assume that Māori accept and are happy with them. Yet Māori report – to this author and to others – being subjected to ongoing injustice and trauma in the process as the divide-and-rule approach taken by the government tears their communities apart. Their negotiators report being bullied into accepting government-determined settlements.

Māori enter into the settlement process in the hope of achieving the justice and reconciliation they have been pursuing for more than 170 years. They seek the restoration of their lands, territories and resources and formal recognition of their mana (power and authority, including sovereignty). Government rhetoric bolsters that hope with its talk of restoring the honour of the Crown and resolving historical injustices. But claimants are unaware of the true intent of the government's process: it was not designed to achieve justice or reconciliation. It was instead designed to legislatively remove legal and treaty rights. It is a clear breach of the country's founding constitutional document, the Treaty of Waitangi, and of the United Nations Declaration on the Rights of Indigenous Peoples.

In this paper, I will outline the background to Māori claims against the Crown for violations of the Treaty of Waitangi and the process successive governments have imposed over the past two decades to extinguish those claims. I then draw on Māori experiences of the process as recorded in government archives and a number of interviews conducted with claimants and negotiators from around New Zealand. An understanding of the true intent of the process helps to explain not only the dogged determination of successive governments to avoid taking a restorative justice approach but also why Māori find the process so traumatising. I will also briefly mention the work Māori have been carrying out to relieve themselves of the ongoing human rights violations and abuses through constitutional transformation.

## Treaty of Waitangi claims against the Crown

Te Tiriti o Waitangi of 1840 is a treaty between the heads of two sovereign nations, Māori rangatira (leaders) and the British Crown. It is an agreement which acknowledges the 1835 declaration of Māori sovereignty, He Whakaputanga o te Rangatiratanga o Nu Tireni. It sets out the conditions for British immigration to New Zealand. It promises to stop those already here in 1840 ignoring the laws set down by the rangatira. This had become a significant problem, especially for those rangatira responsible for the largest immigrant

community who were living at Kororāreka (Russell). The behaviour of the British there had been so barbaric and uncivilised that it had led to the settlement being dubbed the Hell-hole of the Pacific. The agreement seeks to remedy that situation by formalising the delegation to Queen Victoria of *kāwanatanga*, the responsibility for and governance over the two thousand lawless British subjects residing amongst Māori at the time as well as those still to come. It is a treaty of peace and friendship that guaranteed that Queen Victoria would recognise and uphold *tino rangatiratanga*, Māori power and authority which includes Māori sovereignty (Mutu 2010).<sup>1</sup> It was written in the Māori language and signed by more than 500 Māori leaders.

To this day, Māori continue to rely on this treaty in all their dealings with the British Crown. The Crown for its part, however, has never ensured that either it or its subjects living in New Zealand adhered to it. Furthermore, British immigrants, including Queen Victoria's representative, drafted a document in English which claimed that Māori had ceded sovereignty to the British Crown. They called this the Treaty of Waitangi and used it to fraudulently claim New Zealand as their own. They falsely claimed it was the translation of the original Māori language treaty (Mutu 2010; Mikaere 2011, 123–146). Māori have always rejected these claims (Waitangi Tribunal 2014).

When Māori would not relinquish control and attempts to seize lands and resources using chicanery had limited success, British immigrants invaded Māori territories, raping, pillaging and confiscating our lands. Furthermore, rather than establishing an institution to regulate and control their own behaviour as had been agreed, they established a Westminster-styled parliament in order to wrest power and control from Māori. Having decimated Māori through warfare and introduced diseases, they imposed a regime of White supremacy in the name of the Crown. The colonists then pursued a White New Zealand policy, actively encouraging the stigmatisation of being Māori and outlawing Māori language, culture and practices. The combination of all the negative effects of colonisation has led to inevitable poor socio-economic outcomes which burden Māori to this day (Mutu 2017, 92).

Brutal attempts to suppress and assimilate Māori failed, breeding instead deep and growing anger and resentment. By the 1970s, Māori had resorted to protest in the streets demanding an end to the confiscation of Māori land. In an attempt to remove the increasingly embarrassing protests from public and international view, the government established the Waitangi Tribunal, a permanent commission of inquiry set up to inquire into Crown breaches of 'the principles' of the Treaty of Waitangi<sup>2</sup> and to make recommendations to the Crown for the removal of the prejudice caused. Since its establishment in 1975, Māori have taken more than 2500 claims to the Tribunal seeking:

- return of stolen lands, waters, seas, fisheries, airways, minerals, and other resources
- protection of the natural environment from desecration and unsustainable development
- restoration and recognition of our language and culture
- equitable access to commercial opportunities and to government resources and services including education, health, housing, and social welfare
- recognition and upholding of our *mana* and sovereignty (Mutu 2017, 94).

Despite the legislative and administrative constraints the Tribunal operates under, including being severely underfunded for most of its existence, it has issued more than 120

reports upholding many hundreds of the claims against the Crown. Among its many recommendations addressing each of the issues brought before it has been the return of lands and other resources taken from Māori. Its recommendations aim to reverse the damage done by colonisation. Most of its reports rewrite the country's history to record the gross deception and unlawful conduct of the Crown in its relationship with Māori and the multiplicity of ongoing atrocities that are still being committed against Māori by the Crown.

While some Whites have supported the Tribunal, it has raised the ire of many others, including a number of White historians. They attacked the Tribunal, calling for it to be abolished. Large sections of the White population have strongly amnesic tendencies about the atrocities committed as they illegally seized control of huge tracts of Māori land (Mutu 2011, 42). As a result, successive governments have shown disdain and disrespect for the Tribunal's reports and recommendations, ignoring many of them, despite the fact that the Tribunal is a Crown-appointed judicial body. Instead, they threatened the Tribunal that they would downgrade its powers or abolish it if it ever used its legal powers to make recommendations that are binding on the Crown (Hamer 2004, 7), a serious breach of the Rule of Law.

### Settling Te Tiriti o Waitangi claims against the Crown

The power of the Tribunal to make binding recommendations was the catalyst for the treaty claims settlement process. In the mid-1980s, the government introduced legislation transferring Crown lands to state-owned enterprises, effectively putting them out of reach of Māori claimants. In the famous 'Lands case', *New Zealand Maori Council v Attorney-General* 1987, the Court of Appeal directed the Crown to prepare safeguards to ensure that the transfer of lands was consistent with treaty principles (Miller et al. 2010, 230). The Crown reached an out of court agreement with the Māori Council that resulted in memorials being placed on the titles of all state-owned enterprise lands, noting the land was subject to resumption on the recommendation of the Waitangi Tribunal and could be resumed by the Crown and returned to Māori. Once the Tribunal finalised its recommendations they would be binding on the Crown. The same conditions were then applied to Crown forest lands. Additionally, compensation was to be paid for the trees in the forests that had been sold to timber companies. These amendments were introduced as the Treaty of Waitangi (State Enterprise) Act 1988 and the Crown Forest Assets Act 1989. The Tribunal could now order the restoration of Crown land to Māori. For the first time, Māori had legal rights to recover their lands that the courts could uphold (McDowell, [forthcoming](#)).

In 1990, a newly appointed Minister in Charge of Treaty of Waitangi Negotiations, Douglas Graham, was horrified by the implications of the Lands case and its accompanying legislation. It threatened the foundation upon which the Crown asserted its claim to sovereignty, the illegitimate international law formulated in Europe in the fifteenth and sixteenth centuries that is currently known as the Doctrine of Discovery (Miller et al. 2010, 1). The Doctrine derives from the debunked myth of European superiority over other cultures, religions and races of the world that resulted in edicts to 'invade, capture, vanquish and subdue' indigenous peoples and '... to take away all their possessions and property' (Miller et al. 2010; United Nations Economic and Social Council 2010).

Any threat to the Crown's claim to sovereignty had to be removed. And so the minister set about removing the threat, demonstrating the powerlessness of courts in New Zealand to restrict Parliament's behaviour (Miller et al. 2010, 246). He boldly expressed the view that treaty claims were political issues, not legal issues, and only the Crown as the supreme and sovereign authority could decide whether and how to deal with them, not the courts and not Māori (Graham 1997, 41).

This attitude can be seen in the claim made by the Privy Council in 1941 in the case *Hoani Te Heuheu Tukino v Aotea Maori Land Board* that the treaty has no legal status unless it is specifically incorporated into New Zealand law. British colonists have always assiduously avoided including the treaty in New Zealand law in order to maintain White supremacy.<sup>3</sup> Graham's view perpetuated this attitude. His view was that treaty claims against the Crown could not be allowed to have any basis in law because that would give Māori access to the courts in disputes with the Crown and weaken the Crown's ability to dictate to Māori. Rather treaty claims had to be restricted to the realm of politics where Māori are powerless and are at the whim and mercy of White politicians. This, of course, all flies in the face of the fact that the treaty, Te Tiriti o Waitangi, is the country's founding document. Yet Graham couldn't simply repeal the legislation. That would reopen the Lands case. So, without consultation with Māori, he instigated a policy that aimed to shut down claimants' access to the legal remedies available in the Tribunal and send them instead into direct negotiations with the government (McDowell, forthcoming).

The minister's own written account, *Trick or Treaty?* (Graham 1997) and private Cabinet papers and memoranda of the early 1990s reveal the government's true and specific intent in embarking its 'treaty claims settlement process': To unpick the legal rights won by Māori in the Lands case, to extinguish all historical claims and to preserve White control over Māori lives, lands and resources. A far more accurate term for this is a 'treaty claims extinguishment process'. The papers show that if claimants remained in the Tribunal seeking binding recommendations, they would face uncertainties and costly delays as the Crown fought to stop them recovering potentially large tracts of their lands along with compensation (McDowell, forthcoming). The few who have been able to persist with this route have been fighting through the Tribunal and the courts for more than 30 years for binding recommendations (Mutu et al. 2017). To date, no one has succeeded although the Court of Appeal recently ordered the Tribunal to make binding recommendations for two sets of claimants (*Attorney-General v Haronga* 2017).

The same account and Cabinet papers also reveal that the alternative process, direct negotiations, would have little or nothing to do with negotiating, let alone reaching an agreement with claimants on an appropriate resolution of the claims which the word 'settlement' implies. Instead, direct negotiations with the Crown would be unilaterally determined by the Crown and have no statutory framework within which they would be conducted, thus achieving Graham's aim of leaving Māori at the mercy of White politicians and bureaucrats if they wanted to settle their claims. An arbitrary fiscal constraint of one billion dollars over 10 years was imposed. It would cover all so-called settlements and ensure that direct negotiations would deliver far less than is available through binding recommendations. It was claimed that this process would offer certainty and be faster. To entice Māori into direct negotiations the Crown published a list of motivations and objectives in 'settling' treaty claims which provided claimants with some hope. They were:

- To achieve positive, harmonious and peaceful race relations
- To acknowledge and resolve historical injustices
- To restore the honour of the Crown
- To remove the sense of grievance felt by Māori
- To improve the social and economic status of Māori
- To assure claimants and the New Zealand public that the settlements would be fair, full and final (Office of Treaty Settlements 1994).

The reality of direct negotiations for Māori from the 1990s to the present day is that none of these have been achieved. The Crown does not openly refer to the true intent of its 'settlements' but actions confirm that it has not changed. They have steadfastly refused to deviate from their aim of extinguishing Māori rights and claims as expeditiously and as cheaply as possible. Numerous attempts by Māori to have governments reach agreement with them on the policy have all failed (McDowell, *forthcoming*). The Crown decides what it is prepared to pay as a 'quid pro quo' for Māori giving up their legal rights (McDowell, *forthcoming*). The threat to indivisible Crown sovereignty is being incrementally removed as each 'settlement' is legislated. As such, there is no prospect for justice and reconciliation for Māori while the Doctrine of Discovery continues to live in New Zealand (Miller et al. 2010, 246; Erueti 2017, 15).

### Māori experiences of the treaty claims settlement process

Governments report these 'settlements' as a great success for the Crown and for Māori (Finlayson 2014). While this may be true, at least in the short term for the Crown, it is demonstrably false in respect of Māori. Ongoing protest about the settlements process, reports from the Waitangi Tribunal (Waitangi Tribunal 2000, 2004, 2005, 2007a, 2007b, 2010) and recommendations from United Nations bodies that the government reach agreement with Māori about it, all send a clear message: 'settlements' have been disastrous for Māori. Yet the voices of Māori are drowned out as the media is flooded with government reports of treaty claims settlement activity. Māori media does report negative comments and protest that often accompanies the required signing ceremonies when they take place on marae (communal meeting places)<sup>4</sup> but like their mainly Māori audiences they are marginalised.

The voices of Māori are also lost in the literature that largely assumes that Māori accept the process and the 'settlements' reached (see, for example, Belgrave 2012, 47; Cowie 2012, 64; Wheen and Haywood 2012, 21; Boast and 2016, 99; Fisher 2016, 125). Academics, especially legal scholars, have been highly critical of the process throughout its existence (see, for example, Mikaere 1997; Coxhead 2002; Rumbles 2002; Miller et al. 2010, chapter 9; Coyle 2011; Mutu 2011; Bargh 2012; Joseph 2012; Vertongen 2012; Chen 2012; Jones 2016; Te Aho 2017). Few discuss the experiences, views and analyses of Māori involved in and affected by the process.<sup>5</sup> Yet the information is available in submissions made about individual settlements to parliamentary select committees and from the claimants and negotiators themselves. Māori culture is still primarily an oral culture and we carefully maintain and freely share detailed oral accounts of atrocities committed against us. And so it has been with the treaty claims settlements. The author, who is a claimant and a chief negotiator, has conducted interviews with 118 other claimants and negotiators around the

country between 2015 and 2017. These have revealed many reasons for the Māori antipathy towards this loathed policy and process.

While some groups have been able to reach 'settlements' within a relatively short period of five years, others have taken more than 30 years. There remain many hundreds of claims still to be settled. Some have been in the process for many years, unable to reach settlement. For many others, the government simply refuses to consider a settlement and usually extinguishes their claims as part of neighbouring groups' 'settlements' without any consultation (Vertongen 2012). While each group has its own story, there are many common themes that have emerged across the country.

First and foremost, claimants do want their claims settled. So, of course, does the government but Māori want them settled in accordance with Te Tiriti o Waitangi, that is, fully and fairly, and to restore what was taken, including their power and authority (Bargh 2012, 166). They do not want a settlement that goes nowhere near fully compensating them for their actual loss and results in worsening socio-economic conditions (Bargh 2012, 175–176). The chasm that exists in terms of Māori and Crown expectations of these settlements means that for Māori, existing 'settlements' are not full, not fair and, in contradiction to the pronouncements of governments, not final. They will be revisited, in the same way that 'full and final' settlements of the past have all been revisited (Belgrave 2012, 31). For those who have accepted settlements, it has been a pragmatic stance to accept, in the short term, the limited nature of Crown 'settlements' with the expectation that in the long-term broader change may still occur or be forced by *iwi* (Bargh 2012, 169).

Many aspects of the settlement policy and process are perverse and the impact they have on Māori has been described as a 'form of contortion' (Te Aho 2017, 105). Neither the process nor the settlement legislation addresses the cause of the treaty breaches and ongoing atrocities, that is, colonisation and the ongoing lawlessness of settlers and governments. The attitudes and behaviour of governments which led to the breaches simply carry on as if nothing has changed.

In dictating the process, only White cultural precepts are permitted for key steps in the process, forcing claimants to work within a framework not of their making (Te Aho 2017). This includes determining who holds the mandate to negotiate, the negotiations process, how deeds of settlement are written, how the claimant community ratifies the deed and how legislation for the settlement is written. The following examples demonstrate why Māori find this so offensive.

- The prescribed mandating process is very expensive and divisive and has been repeatedly criticised by the Tribunal (Waitangi Tribunal 2000, 2004, 2005, 2007a, 2007b, 2010). Claimant negotiators report almost without exception that the divisions and conflict within claimant groups arising from the settlement process are the most distressing and harmful aspect. Many consider it will take several generations to repair the damage.
- Negotiations must be conducted confidentially, a requirement which is an anathema for Māori who demand openness and honesty in all dealings. Negotiators are put under enormous pressure and sometimes subjected to abuse from their own people when they maintain government-imposed confidentiality. But negotiators report that there is no negotiation, the Crown dictates (Coxhead 2002; Office of Treaty Settlements 2002, 51–53; Mutu et al. 2017, 286).



- Deeds of settlement are lengthy, dense, legal documents which obscure numerous undisclosed conditions imposed by public servants.
- Public servants will not allow claimants to draft their own deeds of settlement and vilify those who do (Mutu et al. 2017, 295).
- Ratification is conducted by postal vote instead of the usual Māori decision-making process of open gatherings. A key determiner of lack of support in Māori cultural terms is refusal to participate and yet low voter turnout for ratification is ignored.
- Public servants conducting the negotiations fully exploit the gross inequality between the Crown with its endless resources and the material poverty of claimants, often running claimants into the ground financially to facilitate the imposition of a 'settlement' (Tuuta 2003).
- Negotiators frequently report being bullied by public servants and Crown agents and many report having settled under duress. As a result, a number of negotiators have refused to accept the Crown's apology that is included in each deed of settlement. For them, it is meaningless.
- And international standards New Zealand has endorsed, such as the United Nations Declaration on the Rights of Indigenous Peoples, which sets aside the Doctrine of Discovery (Miller et al. 2010), are banned from both negotiations and settlements (Jones 2016, 87–114; Mutu et al. 2017, 190, 289–299).

### Government misrepresentations

Details of numerous other instances of Crown perfidy emerged from the oral accounts. Many claimants and negotiators talked about public servants and ministers misrepresenting facts in order to push settlements through. Each claimant group has its own specific examples of this but again, there was a number that surfaced across several or all settlement negotiations. Describing the process as 'all smoke and mirrors' is common. The following lists just some of the misrepresentations.

- Public servants assert, when challenged to adhere to Te Tiriti o Waitangi in negotiations, that only the Doctrine of Discovery can apply to its so-called treaty claims 'settlements' and that the matter cannot be discussed.<sup>6</sup>
- Public servants assert, when challenged about removing Māori treaty and legal rights to their lands and natural resources, including their unextinguished native title, that it is a legal requirement of treaty claims 'settlements' to identify all such rights and then remove them using the legal mechanism of extinguishment. Furthermore, they assert, it cannot be discussed. However, many claimants and negotiators reported that there had been no mention of this requirement in their negotiations and they were unaware that it has been included in their deed of settlement.
- Public servants identify the geographic area which a claimant group owned before the Crown stole it, and then list all claims filed with the Waitangi Tribunal within that area, regardless of whether they are claims of the claimant group or of others who do not belong to that group. They then write legislation which annihilates every claim and prevents claimants from ever pursuing them again. When negotiators demand that claims not belonging to them be removed, public servants refuse to do so asserting that it is a

legal requirement of ‘settlements’ and cannot be discussed. Most claims being extinguished are not addressed and many claimants who lodged the claims are not consulted about the so-called settlement of their claims. Vehement objection from disenfranchised claimants falls on deaf ears and because the ‘settlement’ process has no statutory framework, legal action taken to stop this behaviour has failed on many occasions (Vertongen 2012).

- Public servants and ministers tell claimants wishing to exercise their legal right to seek binding recommendations through the Tribunal that they cannot do so, flagrantly ignoring the directions of the Supreme Court (2012) and the Court of Appeal (1987, 2017). They also tell negotiators that if the claimants want any land restored to them they must pay for them and at full market rates.
- Many settlements involve hard-won co-management arrangements for lands and resources the government refuses to relinquish. However, co-management turns out to be an advisory role only: ministers and public servants retain appointment and decision-making powers (Miller et al. 2010, 236; Te Aho 2017, 104).
- The historical accounts that appear in deeds of settlement are what public servants will allow and often misrepresent the true history of atrocities committed against Māori in the name of the Crown. Public servants assert that any implication that the Crown or its agents acted illegally or unlawfully must be removed. As a result, some groups publish their own historical accounts (e.g. Mutu et al. 2017, 195–250). Much but by no means all of the Crown’s illegal and unlawful behaviour is recorded in the reports of the Waitangi Tribunal. Negotiators report being taken aback when public servants assert that the reports of the Tribunal cannot be discussed. This does not make sense to them because the Tribunal is part of the Crown.

### Finding a solution – constitutional transformation

It has been clear to Māori for a long time that the prospect of justice and reconciliation is unachievable under the current constitutional arrangements that were created in the absence of Māori consent and vested unfettered power in Parliament allowing the Executive, which is more commonly known as Cabinet, to ‘rule by administrative fiat’ (Miller et al. 2010, 208; Mikaere 2011, chapter 6; Te Aho 2017, 104). Māori have continually questioned the legitimacy of the New Zealand state (Mikaere 2011, chapter 6; Erueti 2017, 16) and debated the need for constitutional reform for many decades (Bargh 2012, 180). In 2010, an independent working group on constitutional transformation was established by National Iwi Chairs Forum.<sup>7</sup> Its terms of reference were ‘to develop and implement a model for an inclusive Constitution for Aotearoa based on tikanga and kawa,<sup>8</sup> He Whakaputanga o te Rangatiratanga o Niu Tirenī of 1835, Te Tiriti o Waitangi of 1840, and other indigenous human rights instruments which enjoy a wide degree of international recognition’ (Jackson and Mutu 2016). Its 2016 report recommended consideration of six indicative models. Each provides Māori and the Crown the independent exercise of their power and authority in their ‘different spheres of influence’, with Māori making decisions for Māori in the ‘rangatiratanga sphere’ and the Crown making decisions for its people in the ‘kāwanatanga sphere’. Where Māori and the Crown work together they will do so as equals in the ‘relational sphere’ where the Tiriti relationship will operate. The report

notes that the relational sphere is 'where a conciliatory and consensual democracy would be most needed' (Jackson and Mutu 2016, 9). The report was the result of extensive consultation and has received widespread support from Māori and from a number of non-Māori. Not unexpectedly it has been subjected to strident attacks from those still clinging to the Doctrine of Discovery and its outlawed White New Zealand policy. In the meantime, the United Nations Committees for the Elimination of Racial Discrimination (2017) and United Nations Committee on Economic, Social and Cultural Rights (2018) have both recommended to the government that it engage with Māori to discuss the report.

## Conclusion

The Waitangi Tribunal repeatedly urges the Crown to restore its honour in settling claims. Yet none of the claimants and negotiators considered that the government had acted honourably. Almost all were unaware of governments' true intentions. While some were unaware of their legal rights, especially in respect of binding recommendations, most were unaware of the extent of their rights that are extinguished by the settlement legislation. A number of factors mitigate against settlements being final, despite government assertions to the contrary and legislation asserting that they are final. It includes the fact that most of the breaches of Te Tiriti o Waitangi committed in the name of the Crown are not addressed by settlements and the government's reliance on misrepresentation to reach settlements raises questions of fraud. Māori have signalled repeatedly and in a myriad of ways their opposition to a process the Crown asserts is the only option available to them but which they had no part in determining. Such fundamental flaws in the process have ensured that there has been no reconciliation between Māori and the Crown. And it is unlikely to be achieved without fundamental changes to the constitutional arrangements in New Zealand that return to the first law, tikanga, and the constitutional documents of 1835 and 1840, He Whakaputanga o te Rangatiratanga o Nu Tireni and Te Tiriti o Waitangi.

## Notes

1. Mana and tino rangatiratanga both refer to absolute power and authority derived from the gods. They both encompass the notion of supreme authority in the meaning of the English word sovereignty, but have a far broader meaning. Tino rangatiratanga is the exercise of mana. It was tino rangatiratanga that was referred to in Te Tiriti o Waitangi.
2. The 'principles' of the Treaty of Waitangi attempt to by-pass the original treaty. The 1975 Treaty of Waitangi Act, which established the Waitangi Tribunal, gives the Tribunal the impossible task of reconciling 'the Treaty in the Maori language' (the valid Treaty) and 'the Treaty in the English language' (the fraudulent document) and coming up with a set of 'principles' against which to make recommendations. As a Crown body the Tribunal (wrongly) assumed – without inquiring – that the Crown claim to sovereignty was legitimate. The 'principles' it arrived at were based on this with the result that all its recommendations fall well short of upholding hapū and iwi sovereignty. Once the Tribunal did inquire, it found that Māori had not ceded sovereignty (Waitangi Tribunal 2014). See also Mutu (2010) and Mikaere (2011).
3. There are a number of references in legislation to 'the principles of the Treaty of Waitangi'. However these principles have been defined unilaterally by Pākehā, perpetuate the false claim that Māori ceded sovereignty and bear no resemblance to Te Tiriti o Waitangi (Mikaere 2011).

4. Many signings take place in parliament buildings rather than in the territories of the settling group. This is often done to avoid protestors.
5. Published accounts of Māori experiences, views and analyses are available for only a few groups: for Waikato-Tainui, Robert Mahuta (1995, 2001) and Nanaia Mahuta (2001); for Māori protest against the policy, Gardiner (1996); for Ngāi Tahu, O'Regan, Palmer, and Langton (2006); for Ngāti Awa, Te Uri o Hau, Te Atiawa, Ngāti Tama and Rangitāne o Manawatū, Tuuta (2003); for Ngāti Kahu, Mutu (2005) and Mutu et al. (2017); for Ngāti Koroki Kahukura, Te Aho (2017). McDowell (2016) discusses Māori submissions on the claims settlements to parliamentary Select Committees.
6. A number of claimants reported being told this (and also that they did not know what the Doctrine of Discovery was). Ex-public servants who have worked in the Office of Treaty Settlements confirm that this is the response to be given to these challenges.
7. National Iwi Chairs Forum was established in 2005 to share the experiences and expertise of iwi (nations) and to pursue major issues affecting Māori.
8. Māori law is known as tikanga in some parts of the country and as kawa in other parts.

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