

Keeping the Fires Burning: Grievance and Aspiration in the Ngāi Tahu Settlement

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Introduction

The Ngāi Tahu, comprising approximately 39,000 people, hold *rangatiratanga* (tribal authority) over 80 per cent of New Zealand's South Island, a place known to them as *Te Waipounamu* (The Greenstone Island).¹ The history of the Ngāi Tahu claim dates from 1848, following the decision of seven Ngāi Tahu chiefs to add their names to the document now known as the *Treaty of Waitangi* (*Treaty*) in 1840.² 'Our ancestor filed the first grievance in 1849, it has been accumulating in size, grievance and intensity ever since' (O'Regan 2003). Like Māori tribes elsewhere in New Zealand, the rights of Ngāi Tahu accorded in the Treaty were ignored by the Crown until the establishment of the Waitangi Tribunal (Tribunal) by the Rowling Labour Government in 1975 (King 2003, p 487). The Tribunal was set up to deliberate and make rulings on the alleged breaches of the Treaty that occurred from this date.

Little public notice was taken of its operations until 1985, when its powers were made retrospective to 1840 under s 6 of the *Treaty of Waitangi Act* [1975]. From this time, it became the focus of Māori resource claims against the Crown and the source of major settlements that would reinvigorate tribal activity over large parts of the country (King 2003, p 487).

King (2003, p 487) refers to the Tribunal's establishment and the extension of its powers as a 'revolution', that changed 'the face of New Zealand life in the 1980s and 1990s'. Williams (2004, p 163 *passim*) assesses the intent of the Treaty, a document written in both English and Māori, and notes that '[t]he moral legitimacy of the New Zealand Government's law-making power is to be found in the Treaty even if its political legitimacy lies in the orthodoxy of majoritarian rule' (2004, p 164). It is often said that the Treaty is New Zealand's founding document.

With the Tribunal authorised to consider claims extending back to 1840, the number of claims registered with the Tribunal grew from 'half a dozen in 1984 to almost 1000 by the end of the century' (King 2003, p 500).

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Notes

- 1 Migrating from the north island and amalgamating with the prior Māori migrants through warfare, intermarriage and political alliance, Ngāi Tahu chiefs asserted effective political control over much of the *Te Waipounamu* from the late 17th century (Evison 1993, p 4). During the Ngāi Tahu claim process, the Ngāi Tahu faced cross claims from outside groups and internal dissent (McHugh 2004, p 574). Neither of these issues are addressed in this paper.
- 2 For details of the *Treaty of Waitangi*, see ATNS Database at <<http://www.atns.net.au/biogs/A001253b.htm>>.
- 3 For details, see Ngāi Tahu Deed of Settlement (1998), ATNS Database at <<http://www.atns.net.au/biogs/A000661b.htm>>.
- 4 That is with evidence considered retrospectively to 1840.
- 5 This chapter is based largely on a series of seminars and interviews that Langton and Palmer conducted with O'Regan between 11 and 19 September 2003, although secondary source material is referred to where necessary. In order to convey the gist of these conversations, frequent use is made of extracts taken directly from the transcripts themselves.
- 6 This approach contrasts with models documented elsewhere (see Chapter 6 this volume; Aguis et al 2004; de Costa 2004).
- 7 'By the time of the findings of the Ngāi Tahu land claim by the Waitangi Tribunal in 1991, at least a dozen different commissions, inquiries, courts and tribunals had repeatedly established the veracity and justice of the Ngāi Tahu claim' (Te Rūnanga o Ngāi Tahu nd).
- 8 For a detailed entry on Hori Kerei Taiaroa, see Evison 2005.
- 9 Except for recommendations concerning the *Treaty of Waitangi (State Enterprises) Act* 1988 (NZ) and the *Crown Forests Act* 1989 (NZ).
- 10 For an overview of the political developments during this period, see Williams (2004); on legal developments, see Nettheim, Meyers & Craig (2002).
- 11 Undertaking work without any guarantee of being paid unless successful.
- 12 Other critical components of the Ngāi Tahu settlement which were dealt with separately were the *Ngāi Tahu (Pounamu Vesting) Act* 1997 (NZ), the vesting of Tutaepatu Lagoon (Woodend Lagoon) and the enactment of the *Te Rūnanga o Ngāi Tahu Act* 1996 (NZ).
- 13 Section 9 of the *Treaty of Waitangi (State Enterprise) Act* 1988 (NZ) provided that nothing in the Act permitted the Crown to act in a manner inconsistent with the principles of the *Treaty of Waitangi* (Nettheim, Meyers & Craig 2002, p 129).
- 14 However, Ngāi Tahu leaders also engaged in the complicated business of continually seeking legal and political leverage to enhance the tribe's position and the recognition of Ngāi Tahu rights. This process was often undercut by sub-tribes who ended up making project-specific agreements with proponents to proceed with a development. Often, this was in the best interests of sub-tribes, if not the principle tribe.
- 15 Under the terms of settlement, Ngāi Tahu had to purchase DSP assets within 12 months of settlement legislation being passed. At the time of settlement, the DSP pool was estimated to contain in excess of \$400 million of assets. Ngāi Tahu was allowed to use the cash compensation of \$170 million and any other money to buy DSP assets up to a total value of \$250 million. The range of these assets included: 55 commercial properties; 54 farms in the Ngāi Tahu *rohe* (tribal boundary) and certain Crown forestry assets in the *rohe*.
- 16 This approach, however, has also attracted criticism, from both parties within Ngāi Tahu itself and elsewhere in the Māori world, over what is seen as the unnecessary corporatisation of the tribe and the unnecessary involvement of the Crown in affirming the identity of the tribe (O'Regan 2003).
- 17 For more information, see Crown Settlement Offer 1998.
- 18 O'Regan had tried to negotiate an arrangement with the Crown for the creation and exchange of Treaty Bonds, in an effort to secure the bonds, or part of them, but in the end the Crown did not accept the arrangement. However, the model has promise for those looking for a settlements model outside specific lands (O'Regan 2003).

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- 19 The original Crown total settlement offer, later disclaimed, revolved around the notion that the total value of New Zealand's settlement claims would not exceed \$1 billion. This offer became known as the 'Fiscal Envelope'. 'The "benchmark" of Treaty settlements was set when Tainui accepted \$170 million to settle their claim' (Te Rūnanga o Ngāi Tahu nd).
- 20 Both of which operate under the Charter of Te Rūnanga o Ngāi Tahu (Te Rūnanga o Ngāi Tahu nd).
- 21 Counting these devices, the total Ngāi Tahu settlement was closer in value to \$300 million (O'Regan 2003).
- 22 For details of the Treaty of Waitangi Fisheries Settlement, see ATNS Database at <<http://www.atns.net.au/biogs/A001274b.htm>>.
- 23 'The Crown acknowledged that the settlement did not "diminish or in any way affect the Treaty of Waitangi or any of its Articles or the ongoing relationship between the crown and Ngāi Tahu ... or undermines any rights under the Treaty ..."' (Te Rūnanga o Ngāi Tahu nd).
- 24 Nevertheless, while the economic gains of ownership of *Pounamu* have not yet been significant, there have been considerable costs for the Ngāi Tahu in defending the Act. Mining companies have continually sought to have the Act overturned in their attempt to mine a resource valued in particular for its use as a fertiliser.
- 25 The Māori now make up 16 per cent of the New Zealand population of four million. A substantial proportion of Māori hold seats in parliament (as of 2003 there were approximately 18 Māori out of 90 seats). Ngāi Tahu make up approximately 5 per cent of the total Māori population.