

**TREATY OF WAITANGI SETTLEMENT
PROCESS: NEW RELATIONSHIP
OR NEW MASK?**

**PAPER PRESENTED AT THE COMPR(OM)ISING
POST/COLONIALISM CONFERENCE
WOLLONGONG
10-13 FEBRUARY 1999**

**WAYNE RUMBLES
SCHOOL OF LAW
UNIVERSITY OF WAIKATO
PRIVATE BAG 3105
NEW ZEALAND
EMAIL: war1@waikato.ac.nz**

Treaty of Waitangi Settlement Process: New Relationship or New Mask?

The signing of the Treaty of Waitangi in 1840 between some of the Indigenous Maori leaders and the British Crown was to become the marker for the formation of the colonial state of New Zealand. There were two versions of the Treaty of Waitangi which were signed; one in Maori which most of the Maori leaders signed and one in English (Orange 1987 90). Neither version of the Treaty was a translation of the other (Ross 1997 p.136), the English version gave the crown sovereignty, however the Maori version only gave the Crown governance or *kawanatanga* while Maori maintained *tino rangatiratanga* or chieftainship, However these terms were understood, they envisioned a sharing of power (Durie 1998 pp.3,177, Willams 1989 p.79). Both versions of the treaty guaranteed the protection of Maori resource and land rights (Walker 1989 pp.263-264, Kelsey 1984). However soon after the signing, the Treaty was practically ignored, and what followed was the familiar colonial pattern of expropriation of land and cultural marginalisation of the indigenous people. Maori grievances over breaches of the treaty are, in the 1990s, being addressed through the Treaty of Waitangi negotiation process. This paper arises from a larger project that analyses the Treaty negotiation texts; which include policy documents from the Office of Treaty Settlements (OTS) and its predecessors, the settlements themselves and newspaper articles on the settlements. The Treaty settlements are being presented to Pakeha (non-Maori New Zealanders) and Maori as full and final settlements negotiated through a fair and reasonable process that extinguishes all historic Treaty grievances. This creates a story of reconciliation and reconstruction of a nation which restores the relationship between Maori and Pakeha. This seems to create a postcolonial national identity that recognises cultural difference within a unitary constitutional structure.

In Aotearoa/New Zealand this new relationship is being forged under the existing infrastructure, which is itself a product of colonialism based on a unitary sovereign; the Crown. My analysis of the Treaty Negotiation discourse will show that the Treaty settlements are a mask that hide the neo-colonial tactic of denying recognition of *tino rangatiratanga* (indigenous sovereignty guaranteed in the Treaty), in order to protect the construction of unitary Crown sovereignty, and therefore the hegemonic dominance of Pakeha. This is the danger of postcolonial discourse in white settler countries; to embrace diversity (albeit bicultural) without addressing the institutional and constitutional basis of colonial societies (and therefore their legitimacy); reinscribes the colonisation process. This allows the white public to feel a sense of conclusion to Maori historical claims without having to take responsibility for its own racism and ongoing colonial practices. A different way of looking at the Treaty of Waitangi Settlement process is presented and therefore generates the possibility of re-evaluation of the knowledge or truths produced by the discourse.

I suggest that the texts produced from the Treaty negotiation discourse can be viewed as postcolonial fiction (Mongia, 1996). By this I mean that the Treaty negotiation

discourse writes stories of our colonial past (in the form of historical grievances) and reconstructs them in a legal and official form. Therefore Treaty of Waitangi grievances no longer interfere with the lives of New Zealanders, while maintaining the integrity (and legitimacy) of the nation state. Postcolonialism in white settler countries is about the dominant culture defining itself in “non imperialist terms.”¹ However as Trees points out:

In countries such as Australia [and Aotearoa/New Zealand] where Aboriginal sovereignty, in forms appropriate to Aboriginal people, is not legally recognized, postcolonialism is not merely a fiction, but a linguistic manoeuvre on the part of some ‘white’ theorists who find this a comfortable zone that precludes the necessity for political action (1993, p265).

I would argue that the Treaty settlement discourse and its related practice are masks that excuse the white public from taking responsibility for its own racism and colonialism. The settlements are an attempt to reconstruct the nation so “Maori and the wider community shift their focus away from grievances towards growth and development.”(Office of Treaty Settlements (OTS) 1994 p50, Henare, & O’Regan 1997 pp 22-36). The settlement of treaty grievances is constructed as a healing for Maori and society as a whole and gives a sense of conclusion to Maori historical claims (Editor 1997).

The settlements are seen as beginnings; the source of a new relationship between Maori and the Crown (and hence all New Zealanders- I will discuss this particular manoeuvre soon). It is clearly stated in the apology clause that the settlements are to “begin the process of healing and enter a new age of co-operation with” Maori (Settlements: Waikato 1995 clause 3.6, Ngai Tahu 1997 clause 2.18, Whaktohea 1996 cl 5.7). This new relationship of Aotearoa/New Zealand’s postcolonial identity requires an end to historic grievances in order make a clean break with the colonial mistakes of the past. The new relationship is negotiated with the Crown, however it is not the same Crown that signed the Treaty of Waitangi; it is not the British Crown, it is now the New Zealand Crown. Even though the figurehead of the Crown is the same person Queen Elizabeth II, she is Queen in Aotearoa/New Zealand as the ‘Queen of New Zealand’ and not the Queen of England (Graham 1997 p.2). In this way the Treaty negotiations make a break from the imperial centre, England, and posit Aotearoa/New Zealand in the postcolonial realm (Bennett 1996), by reconstituting the relationship between a New Zealand Crown and Maori without grievances.²

Construction of the Past

The Treaty settlements included a version of the history of the Treaty breach (Settlements: preamble or background clauses), which include raupatu or land confiscation, appropriation of resources; illegal land deals; denial of recognition of Maori power structures; quashing of language and culture. It is important to be aware whose version of the past is included in the settlement documents, because the theories and ideas that the historian draws upon in constructing a history will

necessarily effect the way that participants interact with that history (Munslow, 1997 p 5).

The question, in other words, is not whether there is such a thing as an originally homogeneous [objective] past, and whether it would be possible to return to it, or even whether the past is unjustifiably idealised rather, the question is: who is mobilizing what in the articulation of the past, deploying what identities, identifications and representations, in the name of what political vision and goals. (Shohat 1996 p.331)

One of those political goals of the Crown is to settle historical claims, in order to reconstitute the national identity free of the past Treaty grievances; the post-colonial identity of Aotearoa/New Zealand. This new identity is to be achieved in such a way as to minimise the costs to the present generation but ensure finality of settlements while maintaining the existing legal and constitutional frameworks (Graham 1998 pp.9-10).

The construction of history is never an objective exercise, even in cases where the Treaty breach was not necessarily a strongly contested site.

Representing the past is an expression and a source of power. These representations may frame relationships of social inequality, and can be intimately related to structures of power and wealth. They contain ideological and hegemonic properties that represent historical and sectional interests (Bond & Gillian, 1994 p.1).

The construction of the past is a way for the state to mediate its relationship with the people, through a process to take its people back to their history, albeit it a painful history at times. If that history is constructed in such a way that it does not question the authority of the state then through this constructing process,

the state renews and establishes its authority as sovereign in the process of creating the identity of those it governs. The state thus discovers its legitimacy and is further empowered; by mediating the identity of its citizens, the state authorises itself (Lattas 1997 pp223-225).

That the New Zealand state is able to construct the past and therefore is able to control the present is evident in the case of Treaty settlements; by having the power to accept the existence and the extent of Treaty breaches, the Crown can determine to large degree the outcome of the settlements.

Which (and to what extent) Treaty breaches had occurred becomes very significant not only because this is what will be negotiated but also because it is this version of the historical breach which will become part of any legislation. Law represents a self-legitimising discourse, and creates a strong field of “truth”; therefore it establishes the version of history in the settlements as the “correct” version. In this way the Crown legitimises itself as the “truth-maker” behind the screen of law. The Crown version of the past is made part of law (at least in the case of major settlements), and therefore removes some of the power of that history to be a site of resistance. By reconstructing the past and presenting that version as truth through the self legitimating discursive field of law, means that people opposing that view of the past must then resist the whole legal system.

The inclusion of a version of the history of the Treaty breach and the subsequent attempts to gain redress can be seen as a way of publicly acknowledging the iwi's history (Solomon 1995 p.4). However the version that will be included in the Deed of Settlement and any subsequent legislation will be based on the Crown's assessment of the nature and extent of the Treaty breach(es) (OTS 1997 p.10). This may not be as significant in clear cut cases such as the Waikato raupatu/land confiscation, but as settlements become less clear cut there will be less consensus between the Maori claimant groups and the Crown (Office of the Minister 1997 p.2). It will therefore be the Crown's version of history that will be included in the legislation.

The histories included in the legislation will be sanitised versions that background much of the physical and cultural violence directed toward Maori. This version of history is very short, it tends to describe the breaches in legal terms and hides much of the physical and cultural violence directed toward Maori. This is especially true for Maori women, whose stories are silenced by the Treaty negotiation process which is primarily carried out by men. There are parallels between this silencing of Maori women by the settlement process (Rangiheuea 1995, Waerea-I-Te-Rangi Smith 1994 pp.2-4) and Aboriginal women's place in the Land claims process in Australia (Bird-Rose 1991). In the preamble of the Waikato Raupatu Claims Settlement Act 1995 the raupatu/confiscation of land is acknowledged as being unjust but the right to engage in that war is not questioned.³ The Act does not question the legitimacy of the Crown in quashing an expression of tino rangatiratanga. Where there is acknowledgement of the unjustness of sending forces into Waikato in the 'Apology by Crown', agency is diffused. The Crown apologises for the action of its representatives and advisers; in other words, the Crown can not have acted illegitimately because it is sovereign (see s6 of the Waikato Raupatu Claims Settlement Act).

This gives the impression that the process of colonisation was inevitable and a product of a past era. This allows Pakeha to distance themselves from those practices without acknowledging the continued violence of neo-colonialism within the very economic, political and legal framework under which we wish to (re)unite with Maori.

Apology as Sites of Fusion of Identity.

The construction of the postcolonial mask aims to achieve a "reconciliation with iwi or tribes for past wrongs of the Crown, removing the sense of grievance [and with it the challenge to the state] and enabling a new stage of the relationship between Crown and Maori" (OTS 1994 p.2). By constructing the settlements as sites of reconciliation, colonial guilt is removed from the shoulders of Pakeha. This removal of guilt is achieved by using the apology clause as a device to purge the past and create a bi-racial postcolonial identity for Aotearoa/New Zealand.

The settlements act as documents of exorcizement removing the heavy weight of our colonial past from both the white settlers (Pakeha) and Maori, in order to enter a new era in postcolonial relationship.(Shohat 1996 pp 323-328)⁴ This post-settlement;

(postcolonial) relationship is emphasised in the settlements by the standard apology clause by the Crown. The apology that appears in the Waikato settlement legislation, the Whakatohea and Ngai Tahu Deeds of Settlement (Waikato act s 4, Settlements: Waikato clause 3.6, Ngai Tahu clause 2.18, Whakatohea clause 5.7), can be seen as sites where the guilt created by revisionist histories, what McHugh calls “guilt ridden liberal Anglo-settler sentiment” (1996 pp.517-518), international criticism of the treatment of indigenous people and the continual protest and politicisation of Maori is used to forge the postcolonial identity for Aotearoa/New Zealand. In this way the apologies are a way to release Pakeha from guilt over our colonial past.

The apologies echo Povinelli’s analysis of the *Mabo* decision in Australia:

... state officials represent themselves and the nation as subjects shamed by past imperial, colonial and racist attitudes that are now understood as having, in their words, constituted the darkest aspect of the nation history and impaired its social and economic future. Multiculturalism is represented as the externalised political testament both to the nation’s aversion to its past misdeeds, and to its recovered good intentions (1998 p.581).

If we replace multiculturalism with bicultural post-colonialism the same can be said of the Treaty Negotiation discourse. Pakeha are a nation dealing with the guilt of a racist society, and the Treaty settlements are one way to release that guilt. The Deeds of Settlement name the Treaty breaches and gives a brief history of those breaches;⁵ this lays out the source of Pakeha guilt and then in a penstroke it is gone, with the standard apology clause:

Accordingly, the Crown seeks on behalf of all New Zealanders to atone for these acknowledged injustices, so far as that is now possible, and, with the [historical grievances] *finally settled as to the matters set out in the Deed of Settlement signed on [date] to begin the process of healing and enter a new age of co-operation with [iwi]* (Settlements).

The apology clause uses the word ‘atone’ in order to acknowledge Pakeha guilt for the (acknowledged) injustices. The apology clause assumes that the historical grievance is ‘finally settled’ and therefore the source of Pakeha guilt is also settled; this allows for the formation of a new postcolonial relationship between Maori and the Crown (and therefore all New Zealanders). It is in this way that the apology clause acts as a site of fusion of identity. Once a settlement is signed and ratified there are no longer any Treaty grievances; 21 September 1992 becomes the date of contact and this time we are an enlightened, postcolonial nation, and all this is achieved without any serious costs or losses to New Zealanders (non-Maori New Zealanders).⁶ By relegating colonial racist practices to the past, laying out those practices and apologising, we are able to enter a new age, without having to look at our present practices or institutions.

For both Maori and Pakeha the apology is a significant act; however for Pakeha it is an apology for the actions of our ancestors, for a past that we are no longer a part of. The use of official apology for injustices to indigenous people is not a strategy that is isolated to just Aotearoa/New Zealand, but has recently been used in Australia and Canada⁷. However, New Zealand is the only country that has made the apology to specific groups and incorporated it and its acceptance in legislation. The apology is a form of release from the past, a form of release that is to become law, to become truth.

Maori and Pakeha can then live together under a new relationship. In the words of Doug Graham, the Minister of Treaty settlements:

The goal is to restore the relationship so that all New Zealanders can face the future without looking back at the problems of the past (Graham 1997 p 94).

This ignores the reality that the settlements do not address tino rangatiratanga and are not freely entered into or negotiated.

Identity of the Parties

The Treaty Negotiations discourse and the settlements do not create this postcolonial identity uniformly; it is a process that takes one iwi\tribal claimant at a time and reconstitutes that relationship with the Crown. If, as I contend, one of the motives of these settlements is to protect Crown unitary sovereignty, then the way in which the identities of the parties are constructed in the discourse is vital to the maintenance of that fiction. The construction of these identities is schizophrenic. Identities need to be unifying while recognising cultural difference; the postcolonial nation. The maintenance of a unitary sovereign requires the continual construction of a cohesive national identity. This is achieved on the one hand by disembodiment of the Crown and on the other by embodying Maori (for general discussion see Mohanram 1997, Frankenberg 1997). Maori are given two bodies, one in the form of the coloniser for those who settle their Treaty grievances, and for those who do not settle, the body of the marginalised “Other.”

CROWN'S IDENTITY

The Crown is constructed as having a duty to act in the best interests of all New Zealanders (OTS 1994 p.6). This position is emphasised and strengthened by the fact that in the texts the crown is grammatically linked with “all New Zealanders”(OTS 1993, pp.15-23). The duty of the Crown to act in the interests of all New Zealanders requires the Crown's action to be restrained in the settlement of historical grievances. The Crown can not satisfy Maori demands for justice because it has to balance the needs of all New Zealanders. In settling claims with Maori the Crown should not create further injustices, so must protect the rights of the majority of New Zealanders (OTS 1994b p.6).

The interests of New Zealanders are further detailed as including public access and maintaining the quality of stewardship to common heritage properties and the freeing of restrictions placed on land and resources:

maintaining existing provisions for public access and quality of stewardship are a necessary condition of settlement involving any change to ‘*common heritage*’ properties. (emphasis added). (OTS 1994 7)

In the ministers press release on the Ngai Tahu Settlement it is made very clear that the public (all New Zealanders) maintain the same rights or improved rights after the settlement.

The public has for the first time legal access to and public use of 35,000 hectares of former pastoral leases which are entering the conservation estate and legal wander at will right over the associated farmed flatlands which will be owned by Ngai Tahu (Office of the Minister 1997 p.7).

The Crown's duty to act on behalf of all New Zealander's is constructed in terms of the Treaty of Waitangi. The Crown as Treaty partner has an obligation to act for the good of all New Zealanders, and it is the Treaty of Waitangi that "acknowledged the Crown's right to govern in the interests of all our citizens" (OTS 1994 p5).

In the texts the Crown is not a person, or a collection of persons. The Crown is disembodied and therefore can be seen as the Universal Subject;⁸ in this way the Crown can seem to represent the interests of all New Zealanders. (Te Kawa Maro, 1995) While no all Pakeha are convinced this is in their best interests. As Kelsey is quoted as saying:

the government does not speak for Maori and Pakeha. They claim to be protecting the interests of all New Zealanders in this. But the... Pakeha government [is] setting down the rules by which its relationship with Maori will be run. The government's propaganda says it is doing this on our behalf. Not only is that insulting to many Pakeha who see the scam for what it is, it is pure hypocrisy (Te Kawa Maro 1995).

Despite this the Crown under the guise of acting in the best interests of all New Zealander's becomes the subject of action in the Treaty Negotiations discourse quite simply because it is not tangible or visible and therefore can not be acted upon. The Crown as Universal Subject has other implications; it represents the political will of all its citizens and therefore can be seen to represents an infallible and universally just and fair principle.

This is reinforced in the discourse by the repeated linking of the Crown to words such as, good faith; fairness; honour, financial and legal accountability; reasonableness; consistency; morality; and rationality (see OTS documents). When OTS seeks Crown approval (through Cabinet) of a claimant's research; mandate; funding; organisational structure; Deed of Settlement; ratification; implementation structures; and implementation legislation (OTS 1997), they are seen as applying to a Universal Principle and not a collective of politicians with their own vested economic and political interest. By ignoring the discursal position of those that go to make up the Crown we ignore the power relationships and the way that those relationship are reflected in the policy of the Crown.

MAORI IDENTITY

This discussion of the construction of Maori identity by the Treaty Negotiation discourse is not meant to reflect how Maori view themselves; rather it is a critical

examination of the construction of Maori that is presented by the discourse to Pakeha. This identity is created not only by the policy documents but also by what is left out of the policy documents and by the surrounding press articles. The policy documents are read in this contextual environment.

The Treaty Settlements are seen as sites of great achievement for the Crown and for Maori (Bain 1995). Those Maori who settle, enter the postcolonial relationship with the Crown, and are therefore reconciled. Maori who settle grievances are seen as honourable and wishing to bring their people out of grievance mode and into development mode (Bell 1995, and apology clause of the Waikato Settlement).

The idea is the that calls for Maori sovereignty will subside as Treaty grievances are resolved, and Maori re-establish an economic base; “economic power leads to political power” (Young 1995). The Crown considers that the Treaty gives it the right to act for the common good, and this may, in a wide range of circumstances, allow the Crown to override Treaty Article II rights.⁹ In 1995 the then Prime Minister Jim, Bolger, clearly stated that there would be no negotiation of sovereignty or self-determination:

We can not negotiate the division of sovereignty between various groups of New Zealanders. That is not possible and won't happen.
Mr Bolger said talk of decolonisation simply distracted attention from the main issue of negotiating settlements (MacLennan 1995).

Those who oppose the settlements and/or who want to divide sovereignty are depicted as just radicals and the Treaty itself talks of partnership not secession; there can be only one sovereign (Editorial 1995). Therefore tino rangatiratanga rights are not negotiated in the settlements, nor are historical breaches of those rights included in the redress. Therefore the legitimacy of the Crown stays intact and unchallenged.

Removal of ethnicity

The word Maori occurs only once in the Direct negotiation Booklet; Maori are replaced by the ethnically neutral term ‘claimant group’ (OTS 1997). The DNB does refer to the Treaty of Waitangi, and it is obvious by the context that this booklet is about Maori, but by virtually removing¹⁰ all references to the ethnicity of the parties (even though they are universally known) backgrounds ‘otherness.’ The relationship between Maori and the Crown has a long history of subjugation and struggle for recognition, and therefore carries with it a history of imbalance of power (Walker 1990, Jackson 1995, Ward 1997 vol I). By using neutral ethnic markers for the parties, this power relationship is backgrounded in the text. This backgrounding or hiding of otherness serves two purposes. The first is that it helps support the idea that both parties are equal when it comes to the negotiating table. The texts achieve this by hiding the inherent power disparity between Maori claimants and the Crown. The parties who negotiate are the claimant’s representatives and OTS, the Crown’s representative; linguistically equal parties. However OTS is very much in control of the negotiation process, both in terms of policy creation and managing the process once the parties are in negotiations.

The second purpose of the backgrounding of ethnic difference, is that it has an assimilative quality which assists in the creation of the postcolonial identity; a unified nation recognising equal citizens, albeit different races. Some commentators have termed this integration; the idea that creating a climate of equal opportunity (but not necessarily equality of outcome) will allow both groups to “achieve harmonious ongoing interaction within a common unitary framework without the cultural maintenance and identity of either being threatened” (Verbitsky 1993 pp.22-36). This is echoed by Doug Graham’s words, “the Government believes that any rights to separate education systems or any other systems for Maori will have to be within the overall constitutional and social, economic and legal framework of New Zealand” (Graham 1998). That framework has been developed over the last 160 years and draws upon the much longer history of colonial New Zealand’s centre; imperial England. That framework is Pakeha; therefore the treaty settlement policy can be seen as assimilation in an another guise (Verbitsky 1993 p.33). The Treaty settlements seem to be another form of integration; a way of fusing society into a bi-racial nation under a unitary framework. Even though the aims of such a policy may be expressed as preservation of Maori cultural base. In the words of Moana Jackson:

... in practice one of the bedrock elements of Maoritanga [is] being whittled away: current administrative programmes can only make sense on Pakeha terms; one of the component parts [of the biracial society] does not retain its identity since the process of individualisation erodes the tribal basis of the Maori group. (1995 p.432)

This whittling away at the substance of the Maori group can be seen as part of the creation of a postcolonial national identity that does not address issues of the colonial framework. A postcolonial identity that does not address these issues contains an inherent tension between the recognition of difference and the maintenance of coherence and integrity of the nation state. This tension has been co-constructed with ideas that a nation must be cohesive, and allows the denial of “Otherness”. This tension is resolved in the Treaty Negotiation discourse by removing the Maoriness from Maori, both textually as explained and institutionally.

The rationalisation of Maori social relations is demanded both prior to the negotiations (mandate and governance policies) and after settlement (management structures to handle settlement proceeds) (OTS 1997). Therefore Maori who undertake the Treaty of Waitangi Settlement process are forced to take on forms of organisation that are based in the Western legal traditions (Jackson 1995).

This institutional de-ethnicising of Maori is continued through a process of structuring the management of settlements through corporate organisations. Although there is no direct requirement that a corporate structure be used, there is a list of requirements for the governance structure that needs to be met prior to any transfer of settlement. These requirements are justified in order for the Crown to be sure that “any assets or resources, which are to be transferred to a claimant group, will be managed and administered within a *proper* legal structure”(OTS 1994 p.13) Claimant negotiators will need to “demonstrate that a governance system exists to *handle* settlement proceeds”, because [t]he Crown has an interest in the outcomes of settlements. It wants them to extinguish the sense of grievance, not only for the current generation but also for the future(OTS 1994b p.44). The requirement of a proper legal structure

requires the governance of successful claimants to be in a form that is recognised by the legal system. Therefore this structure has to be in a form of the dominant culture.¹¹

OTS asserts its control over both these areas by controlling the funding.

Mikaere believes that the settlements have an underlying philosophy of assimilation, through the corporatisation of iwi, by awarding benefits to existing or specially created corporate entities (1997 pp.452-53). This form of assimilation, while less overt than past assimilation policies (Armatage 1995), can have a devastating effect on those cultures in which it is imposed.¹² The creation of these corporate entities allows Pakeha to see Maori in terms of their own culture, without having to accommodate counter-hegemonic tribal power structures. Thus OTS in implementation of the settlements deals with structures that they are familiar with, the trust boards and corporations. This corporate identity makes it easy for Pakeha to view Maori as part of New Zealand and to incorporate them into their world. However this corporate identity has also been critiqued as divisive for Maori:

The awarding of benefits under such settlements to corporate entities raises the possibility of iwi Maori being sharply divided, as a corporate elite prospers while the majority are still further marginalised

the class stratification of Maori will mean that future generations of Maori who seek justice under the Treaty will face their most trenchant opposition from those Maori for whom the settlement has brought power and prestige. It will be the Maori powerbrokers who will act as buffers between Maori claims for tino rangatiratanga (the right of Maori to govern themselves) and the Crown (Mikaere 1997 p.453, see also Smith 1995 p.39)

Therefore the corporatisation of iwi allows for national unity (in the marketplace) and at the same time acts as a divisive tool for Maori in order to maintain Crown unitary sovereignty and protect the finality of settlements.

Good Maori -Bad Maori Dichotomy

The divisive nature of the corporate identity is also reinforced by the surrounding discourse of the Treaty Negotiations which constructs a division between Maori; those who settle and those who oppose settlement or refuse to accept the Crown's offer.

Those Maori who enter into settlement with the Crown are given attributes that are to be admired; these are the reconstituted Maori, the postcolonial, post-settlement Maori. They may have the semblance of other but are constructed to help constitute a unified New Zealand identity. This unified national identity is supported by describing Maori who settle in terms that are admired in Pakeha culture and this helps Pakeha to see Maori in terms of their own culture and not outside it.

Maori who settle are portrayed as embracing the capitalist machine and are making a profit (NZPA 10 November 1997, Hubbard 1997, Berry 1997); these are to be held up as an example for other tribes (Bell 1995). Maori who settle are constructed as reasonable, sensible and realistic (NZPA 22 November 1997, Sunday Star Times 28

September 1997). By contrast, those that choose not to settle are unreasonable and unrealistic.

Mr Graham has offered \$40m to Whakatohea tribe in the Bay of Plenty to settle claims arising from the Crown's military invasion. The confiscated land today might be worth billions, says Mr Graham, "but there are only 8000 of them (in the tribe) and the idea that somehow they should get all that money is unrealistic (Hubbard 1997).

When Whakatohea rejected a \$40 million offer, they were depicted as not accepting a reasonable offer from the Crown (unreasonable), and therefore the Crown wishes to wash their hands of them; "they will have to try to renegotiate the settlement with another Government (NZPA 28 July 1997). The Whakatohea negotiating team was constructed as incompetent and unable to reach consensus on any issue (Knight 1997).

On the other hand Sir Robert Mahuta as the principal negotiator for the settled Waikato raupatu claim, is constructed as a person who has worked hard, educated himself with a master's degree from Oxford and most importantly, settled a Treaty grievance, thus moving Tainui out of grievance mode (*The Dominion* 3 June 1996, Knight 1997). This has been achieved through the Tainui Maaori Trust Board, Waikato Raupatu Lands Trust, Tainui Corporation Ltd, Tainui Development Ltd, Maaori Development Corporation Ltd. Tainui now have shareholdings in several international technology corporations, and own Raukura Waikato Fisheries Ltd (Hartstone Seafoods) (Tainui Maaori Trust Board 1997). Tainui also have a major interests in the Warriors and a proposed casino to be built in Hamilton. Thus good Maori operate in the globalised market through the concentration of capital in the corporate form. In other words good Maori reproduce the form of the coloniser.

The act of knighting (a truly imperial act) Sir Robert Mahuta can be seen as an expression of reconstituting Maori in terms of Pakeha culture but in the postcolonial fiction of difference in unity. This fiction is vividly illustrated by, Sir Robert [being] summoned to receive his knighthood in both the English and Maori languages (Knight 1997). The act of knighting Sir Robert is a strong message that to settle brings one into the fold of New Zealand, and meets with strong approval by the Pakeha world (*The Dominion* 3 June 1996). This is reinforced by Sir Tipene O'Regan being knighted in June 1994, after playing a key role in Maori fisheries negotiations a controversial pan-Maori resources settlement (O'Regan 1997 pp.25-26).

Groups that oppose settlements and try to protest against the ratification of settlements are often portrayed in the press as lacking authenticity or authority, as minority factions, activists or radical protesters (Anderson 1995).

Those Maori who question the sovereignty of the Crown, and therefore the settlements, because they do not address the relationship between Crown sovereignty and Maori tino rangatiratanga, are constructed as unreasonable and depicted as making absurd claims. Claims by "hot headed activists" can only harm Treaty Settlements by creating Pakeha backlash that will end the settlements (Editor 1997).

If this distinction between Maori who settle and those who do not, or who criticise the process, becomes internalised then it is seen as natural. Therefore Non-Maori may automatically see any Maori group that does not enter negotiations or that does not

settle once in the negotiations, in these terms. This puts pressure on Maori to settle because the settlements are political and require a certain amount of public support. If that support falls below a certain point the government will abandon the settlements. This distinction also hides the reality that the negotiations are extremely unbalanced, and weighted in the Crown's favour. This directs blame of failure onto Maori claimants or their representatives and away from the Government (Hubbard 1997).

Conclusion

In answer to the title question, *Treaty of Waitangi Settlement Process New Relationship or New Mask?* The Treaty Negotiations discourse is not about a new relationship; rather it is an old relationship, a relationship between coloniser and colonised. The Treaty Settlement process represents a mask that hides a process that forces Maori into negotiations where the Crown determines who will come to the negotiation table, what will be negotiated and how it will be negotiated. The whole discourse protects the construction of Crown unitary sovereignty and therefore displaces claims for recognition of tino rangatiratanga. However, as the Crown is constructed as the Universal Subject and the final arbitrator of all that is true, fair and just, the Crown frames Maori claims to exclude tino rangatiratanga. Part of the liberalist push to preserve the form but remove the content of indigenous cultures in an attempt to disguise the latent racism through a distorted use of Western liberalism. Trinh Minh-Ha exposes us to the colonial declaration: "I, not you, will give you freedom" (As cited in Trees 1993 p.266).

This is the danger of postcolonial discourse in white settler countries; to embrace diversity (albeit bicultural) without addressing the institutional and constitutional basis of the colonial societies (and therefore their legitimacy), re-inscribes the colonisation process.

Maori are expected to settle for less than 2% of the value of their claims, to agree to extinguish all historical grievances whether based on the Treaty or not and then state that the settlement is fair, full and final, and that the Crown has acted honourably and reasonably. The Treaty Settlement process is not fair and reasonable, and the Crown is acting to maintain its privileged position as the only sovereign. The Treaty Negotiation discourse is indicative of the Crown's unwillingness to enter into discussions about the very foundations which have supported Maori colonial oppression; the denial of te tino rangatiratanga.

My reading of the Treaty Negotiation discourse is necessarily partial. I am not trying to suggest that sovereignty or that the identity of the Crown, the nation, or Maori is constructed solely by the Treaty Negotiation discourse. These concepts are constructed and maintained by many discursive fields and their intersections. Nor do not claim that this reading is objective, or the only reading of the discourse. However it should be viewed as one possible reading of many. I sought to question the concept of sovereignty and identity as it is played out in the Treaty Negotiations discourse. It was the aim of this paper to usefully convey an analysis of the discourse that might resonate with others.

I have not produced any answers; rather I have produced a different way of looking at the question of the Treaty of Waitangi Settlement process. I do not suggest that we abandon the Treaty settlements, as they are a useful strategy in the attempt to deal with our past. However these settlements should not be viewed as full or final but as an interim measure to help recreate an economic base for Maori. Sovereignty is already diffused; the Crown shares power with supranational corporate bodies of who owe little or no allegiance to Aotearoa/New Zealand. Therefore the fiction of unitary Crown sovereignty is exposed. Perhaps all I am trying to say is that the discussion of Maori tino rangatiratanga needs to be on the negotiation table. Tino rangatiratanga should be negotiated and developed in a fair and equitable manner and not circumscribed by an unwillingness to deconstruct our colonial infrastructure and power relationships, which are based on a fiction of unitary sovereignty. Only then will we be able to create a postcolonial identity, an identity that will be sourced in the co-construction of te tino rangatiratanga and Crown sovereignty.

Bibliography

Armitage, Andrew, *Comparing the Policy of Aboriginal Assimilation* (Vancouver: UBC Press, 1995).

Bennett, Bruce, "'Nation' and Literary History: The Case of Australia" in *Post-Colonialism: Theory, Text and Context* Harish Trivedi and Meenakshi Mukherjee, (eds) (Shimla: Indian Institute of Advanced Study, 1996) .

Berg, Lawrence, "Reading (Post)Colonial History: Masculinity, 'Race' and Rebellious Natives in the Waikato, New Zealand 1863" (1998) 26 *Historical Geography* 26.

Biggs, G "Is there Indian Country in Alaska? Forty four Million acres in Legal Limbo" 64 *University of Colorado law review* 849.

Bird-Rose, Deborah, *Hidden Histories* (Canberra: Aboriginal Studies Press, 1991).

Bond, George Clement and Gillian, Angela, "Introduction" in *Social Construction of the Past* George Clement Bond and Angela Gillian, (eds) (London: Routledge, 1994) .

Durie, Mason, *Te Mana Te Kawanatanga: The Politics of Maori Self-Determination* (Auckland: Oxford University Press, 1998).

Frankenberg, Ruth, (ed) *Displacing Whiteness* (Durham: Duke University Press, 1997).

Graham, Douglas, *Trick or Treaty* (Wellington: Institute of Policy Studies, 1997).

— "The New Zealand Government's Policy" in *Recognising the Rights of Indigenous People* Alison Quentin-Baxter, (ed) (Wellington: Institute of Policy Studies, 1998) .

Jackson, Moana, "Justice and Political Power : Reasserting Maori Legal Process" in Hazlehurst, K. (ed) *Legal Pluralism and the Colonial Legacy* (1995)

Kelsey, Jane, "Legal Imperialism and the Colonization of Aotearoa" in *Tauwiwi: Racism and Ethnicity in New Zealand* P Spoonley, et al., (eds) (Palmerston North: The Dunmore Press Ltd, 1984) 20.

Lattas, Andrew, "Aborigines and Contemporary Australian Nationalism: Primordiality and the cultural politics of otherness" in *Race Matters* Gillian Cowlishaw and Barry

Morris, (eds) (Canberra: Aboriginal Studies Press, 1997) .

McHugh, P G, "Constitutional Voices" (1996) 26 *VUWLR* 499.

Mikaere, Annie, "Settlement of Treaty Claims: Full and Final, or Fatally Flawed" (1997) 17 (2) *NZULR* 425.

Mohanram, Radhika, "The Cartography of Bodies" a paper presented at Environmental Justice Conference, (Melbourne, 1-3 October 1997)

Mongia, Padmini, (ed) *Contemporary Postcolonial Theory* (London: Arnold, 1996).

Munslow, Alun, *Deconstructing History* (London: Routledge, 1997).

O'Regan, Sir Tipene, "Post Settlement Issues" a paper presented at The School of Maori and Pacific Development: Strategies for the Next Decade Conference, (Hamilton, 1997)

Office of the Minister in Charge of Treaty of Waitangi Negotiations, *Crown Settlement offer to Ngai Tahu: Press Release* (Wellington: 1997).

— *Treaty Settlements: Annual Policy Overview* (Wellington: 1997).

— *Treaty Settlements: Annual Review and Outlook* (Wellington: 1997).

Office of Treaty Settlements, *Crown Proposals for the Settlement of Treaty of Waitangi Claims: Detailed Proposals*. (Wellington: Office of Treaty Settlements, 1994).

— *Crown Proposals for the Settlement of Treaty of Waitangi Claims: Summary* (Wellington: Office of Treaty Settlements, 1994).

— *Report of Submissions: Crown Proposals for the Settlement of Treaty of Waitangi Claims* (Wellington: Office of Treaty Settlements, 1995).

— *Policy Papers for Crown Proposals for the Settlement of Treaty of Waitangi Claims* (Wellington: Office of Treaty Settlements, 1995).

— *Office of Treaty Settlements Briefing to the Incoming Government* (Wellington: Office of Treaty Settlements, 1996).

— *Report of Submissions: The Crown's Policy Proposals on Treaty Claims Involving Public Works Acquisitions*. (Wellington: Office of Treaty Settlements, 1996).

— *Direct Negotiations Process* (Wellington: Office of Treaty Settlements, 1997).

Orange, Claudia, *Treaty of Waitangi* (Wellington: Allen & Unwin, 1987)

Povinelli, Elizabeth, "The State of Shame" (1998) 24 (2) *Critical Inquiry*.

Rangiheuea, Tania, " The Role of Maori Women in Treaty Negotiations and Settlements in *Treaty Settlement: The Unfinished Business* Mclay Geoff (ed) (Wellington: Institute of Advanced Legal Studies, 1995). 105.

Ross, Ruth “Te Tiriti o Waitangi: Texts and Translations.” (1997) 6 *New Zealand Journal of History* 124.

Shohat, Ella, “Notes on the “Post-Colonial” in *Contemporary Postcolonial Theory*

Padmini Mongia, (ed) (London: Arnold, 1996) 321.

Waerea-I-Te-Rangi Smith, Cheryl, “The Treaty under Attack” a paper presented at NZARE Conference, (Christchurch, 1994)

Smith, Graham, “New Formations of Colonisation” in *The Fiscal Envelope: Economics, Politics and Colonisation* Leonie Pihama, (ed) (Auckland: Moko Productions, 1995) .

Solomon, Shane, *The Waikato Raupatu Claims Settlement Act* (New Zealand: 1995).

Tainui Maaori Trust Board, *1997: Annual Report* (Tainui Maaori Trust Board, 1997).

Te Kawa Maro, “Maori Sovereignty: The Lecture series of the Century” (Auckland University, July-August 1995)

The School of Maori and Pacific Development, “Post Settlement Issues” a paper presented at Strategies for the Next Decade: Sovereignty in Action, (Hamilton, November 1997)

Trees, Katheryn and Mudrooroo, “Postcolonialism: Yet another Colonial Strategy” (1993) 36 *SPAN* 264.

Verbitsky, Jane Elizabeth, “Models of Political Development in Maori Educational Policies” (DPhil Thesis, The University Auckland, 1993).

Walker, Ranginui, *Ka Whawhai Tonu Matou* (Auckland: Penguin Books, 1990).

Walker, Ranginui, “The Treaty of Waitangi as the Focus of Maori Protest” *Waitangi: Maori & Pakeha perspectives of the Treaty of Waitangi* I H Kawharu, (ed) (Auckland: Oxford University Press, 1989) 263.

Ward, Professor Alan, *The National Overview* (Wellington, Waitangi Tribunal, 25 March 1997).

Williams, David, “Te Tiriti o Waitangi- Unique Relationship between Crown and Tangata Whenua” in *Waitangi: Maori & Pakeha perspectives of the Treaty of Waitangi* I H Kawharu, (ed) (Auckland: Oxford University Press, 1989) 25.

SETTLEMENTS

Her Majesty the Queen and Waikato: Deed of Settlement (1995).

Her Majesty the Queen and Whakatohea: Deed of Settlement (Office of Treaty Settlements, 1996).

Te runanga o Ngai Tahu and Her Majesty the Queen: Deed of Settlement (Office of Treaty Settlements, 1997).

NEWSPAPER ARTICLES

“New Knight Mahuta’s Vision Praised” *The Dominion*, 3 June 1996, 2.

“Chance to Control Destiny” *The Sunday Star Times*, 28 September 1997, 6.
Anderson, Helene, “Tainui Clash Over Crown Land Deal” *NZ Herald*, 28 April 1995, 2.

Australian Associated Press, “Apologies are just Grandstanding” *NZ Herald*, 28 March 1997, B3.

Bain, Helen, “Queen puts Signature on Historic Land Deal” *The Dominion*, 4 November 1995, 1.

Bell, Cathie, “Tainui Celebrate Historic Treaty Settlement” *The Dominion*, 20 October 1995, 2.

Berry, Ruth and Betts, Marianne, “Ngai Tahu deal in Doubt” *Sunday Star Times*, 16 November 1997, 4.

Editor, “A significant Settlement” *The Dominion*, 25 September 1997, 6.

Editorial, “There is only one Sovereign” *The Dominion*, 16 May 1995, 6.

Field, Kingsley, “Put a Bob on Mahuta” *NZ Herald*, 27 April 1996, 1.

Hubbard, Anthony, “Counting the Cost of Alienation” *The Sunday Star Times*, 30 September 1997, 2.

Knight, Richard, “Whakatohea vote to reject \$40m Settlement Offer” *New Zealand Herald*, 12 September 1997, 4.

Knight, Richard, “Negotiator honoured in his time” *NZ Herald*, 21 May 1997, 15.

MacLennan, Catriona, "Fiscal Envelope Rethink Possible" *The Dominion*, 13 September 1995, 2.

Morgan, Jon, "Redress for Land Grabs" *The Dominion*, 14 January 1996, 9.

NZPA, "Joy as Treaty Deed signed Ngai Tahu Settles 148 Year Grievance" *The Dominion*, 22 November 1997, 1.

NZPA, "Iwi make \$2.5m on Crown Houses" *The Dominion*, 6 October 1997, 8.

NZPA, "Delamere says Full Tribe should Vote on Deal" *NZ Herald* 1997, 3.

Reuter, "Cheer, Jeers at Howard Apology" *NZ Herald*, 27 May 1997, B1.

¹ (Trees & Mudrooroo 1993) Trees questions the motive behind the postcolonial movement and suggest that it may be due to the "panoptic gaze of international communications highlighting human rights violations that provokes the need to develop a liberalist rhetoric." I agree with Trees that the concern for ethnic rights stemmed from the reality of sanctions imposed on South Africa from like nations, nations like New Zealand and Australia that criticised South African policies and yet practised oppressive policies toward their own indigenous people. This created tension, which rose through the 1970s and was displayed by the various land protests, marches and occupations. However it was not until the decision to allow the South African rugby team the Springbok to tour Aotearoa/New Zealand in 1981 that a large number of Pakeha stood beside Maori to protest against South African and more importantly question Aotearoa/New Zealand's own racism. The Protests and the ensuing riots pitted New Zealander against New Zealander in front of an International stage. No longer could the world be convinced that ours was a country of equality and harmonious race relations. For many including myself this was a turning point for the way we view ourselves, the nation and others.

² At least prior to 21 September 1992--this is the date that cabinet approved the general principles for the settlement of Treaty Claims-- and this is the cut off date for the so called historical claims which are the basis for the present settlements.

³ The Waikato war resulted from the establishment of the Kingitanga movement which aimed at stopping the sale of Maori land. There was a Maori notion of equality between the Maori monarch and the British Crown. This was both seen as a threat by the settlers to the unitary sovereignty of the British crown and an impediment to settler demands for land. Waikato were branded as 'rebels' and constructed as a risk to the settlement of Auckland and the lives of peaceable settlers. On 12 July 1863 the then governor ordered a pre-emptive strike against Waikato which started the 15 month long Waikato war. The solution to the Kingitanga problem was for armed settlers to reside on the confiscated land (over 1.2 million acres was confiscated). Any remaining land was to be sold to cover the costs of the war. (Berg 1998)

⁴ See Shohat for a discussion on the vagueness of the term post-colonial and how this collapses difference between so called post-colonial countries (1996 pp.323-328.). For a comparison of this post-colonial relations see the South African Promotion of National Unity and Reconciliation Act 1995, which sets up the Truth and Reconciliation Commission for an example of another society clearly stating these objectives . " ... [I]t is deemed necessary to establish the truth in relation to past events as well as the motives for and circumstances in which gross violations of human rights have occurred... pursuant of national unity, the well-being of all South African citizens and peace require reconciliation between the people of South Africa and the reconstitution of society." (preamble)

The Act sets up a semi-autonomous body to investigate, and document nature of past violations of human rights, including motives and perspective's of persons responsible. The Truth and reconciliation Commission.

⁵ The settlements also include a brief history of the iwi's past attempts to gain redress and the Crown's past attempts at redress if any. Although the Treaty breaches are often reported in the media, the attempts off iwi to gain redress (often for over 100 years) is down played or not reported at all. See for

example (Bain 4 November 1995, *The Sunday Star Times* 25 September 1997, NZPA 22 November 1997, Morgan, J. 14 January 1996)

⁶ This is mirrored in Australia when the then Labour Prime Minister trumpeted the historical reconciliation between Aboriginal and non-Aboriginal Australians and announced his government's intentions to use *Mabo* to establish "prosperous and remarkably harmonious multicultural society." According to Keating, this socially just new multicultural society could be painlessly achieved with no serious cost or losses to Australians.

⁷ On the 26 May 1997 Prime Minister John Howard gave a public personal apology to the Aboriginal people for the injustices of past generations, but then went on to say that Australian history was not one of imperialism and exploitation and racism. This apology was highly criticised because of this comment and because it did not come officially from the parliament (See Reuter 27 May 1997, Australian Associated Press 28 March 1997).

On 7 January the Canadian Indian Affairs Minister apologised to the First nations for decades of systematic assimilation, theft of lands, suppression of cultures and the physical and sexual abuse of native children. This apology was criticised as not coming from the Prime Minister, who was not even present when the apology was read out. This apology was "largely symbolic occasion, intended to proclaim a new partnership between Canadians and the country's first inhabitants (see Editor 8 January 1998).

⁸ I have borrowed the term Universal subject from the Mohanram, in her paper she uses the term to discuss disembodiment of whiteness or the European body. This discussion parallels with my reading of the Crowns identity (1998).

⁹ Article II rights center around the debate over sovereignty, shared power, land and resource rights.

¹⁰ A simple if crude example of this is found by counting the number of times the word Maori is used in the documents and dividing that number by the total number of pages of text (excluding the title pages). I counted any occurrence of the word Maori even if continued in the names of Acts or Institutions, such as Te Ture Whenua Maori Act 1993 and Maori Land Court. The results speak of progressive de-ethnicising in the texts. The results have been rounded up to two decimal places and the figures represent how many times the word Maori occur per page:

The Direct Negotiation of Maori Claims **2.26**

Crown Proposals for the Settlement of Treaty of Waitangi Claims **1.32**

Direct Negotiations booklet **0.07**

¹¹ Te Runanga o Ngai Tahu is the only independent Maori Structure to have legal personality, and this operates through a corporate structure.

¹² Mikaere compares the Alaskan Native Claims Settlement Act, settlements with Treaty of Waitangi settlements in Aotearoa/New Zealand. She points out the openly acknowledged philosophy of assimilation behind the corporatisation of indigenous Alaskans in the settlements, and suggests the same could be said for the settlements in Aotearoa/New Zealand. In Alaska the pan tribal state-wide settlement extinguished aboriginal title and customary rights in return for approximately \$1 billion and return of 10% of the land which was distributed to village and regional corporations (see Arnold 1976, Mikaere pp.428-437). In Alaska the corporatisation of indigenous groups was openly an act of assimilation (Mikaere p.453). These structures have now replaced tribes in terms of interaction with the state. Both regional and village Alaskan Native corporations are identified as tribes under federal statutes and have been judicially recognised as such (Biggs p. 862). Under ANCSA Regional or village corporations and village governments are defined as tribes at 25 U.S.C. 450b(e) (1988 & Supp. 11 1990) (Indian Self-Determination and Education Assistance Act) and 1603(d) (Indian Health Care Improvement Act). See *Cook Inlet Native Ass'n v. Bowen*, 810 F.2d 1471 (9th Cir. 1987) noting regional corporations are Indian tribes within the definition of 43U.S.C. 1602(g)

The corporations have taken it upon themselves to act as Alaskan Natives governing authority, defining and prioritising and advocating Indian public policy. Congress looks to the Corporations and the Alaskan Federation of Natives (which is dominated by the corporations) in matters that require consultation with the indigenous peoples. As Mikaere points out it is there are alarming parallels between the corporatisation of Alaskan natives and corporatisation of Maori iwi groups through the Treaty settlements.