

## Reviews

*Waitangi. Maori & Pakeha Perspectives of the Treaty of Waitangi.* Edited by I. H. Kawharu. Oxford University Press, Auckland, 1989. 329pp. NZ price: \$29.95.

THIS SET of essays reflects the legal and political preoccupations of specialists assessing implications of the Treaty for our understanding of the relationship between two cultures in New Zealand. The lawyers have a major say in this assessment, followed in Part II by authors whose case studies deal with particular claims made on the basis of the Waitangi Tribunal's rehabilitation of the status of the agreement of 1840. Essays by David Williams, Frederika Hackshaw and Benedict Kingsbury explore a broad and comparative framework of reference to other examples of British treaty-making as sources of aboriginal title, colonial law and international law derived from the multitude of compacts between indigenous societies and Crown custodians in the nineteenth century. The essential point in British constitutional law was that such treaties were not sanctioned by the British subjects. Even in New Zealand, Maori efforts to have the treaty accepted as the basis for common law rights under settler government were rejected and could not be enforced against the Crown until 1983. In the face of this long impasse over what was ceded to, or guaranteed by, the Crown, political power and the operation of civil courts devolved on the executive and judiciary of the Pakeha successor state. So it is not surprising that the ambiguities of a Maori-Crown agreement operating under a different constitution after 1852 have demanded so much attention. Two essays by F. M. Brookfield and P. G. McHugh question how far the legitimacy of the New Zealand constitution has been challenged by assertions of Maori 'sovereignty'. They emphasize, as part of that sovereignty, the protection of customary rights in common law which was given an immense lease of life by the Treaty of Waitangi (State Enterprises) Act of 1988. They examine the notion of Maori political sovereignty exercised not so much through traditional rangatiratanga, but through extra-parliamentary organizations. Inevitably, the terms of what was ceded or guaranteed in law come in for scrutiny by the lawyers, and it is useful to have a linguist's confirmation in Bruce Biggs's incisive essay for some, but not all, of the basis for claims in the (missionary) Maori text.

These are not pedantic linguistic or legal questions, though none of the legal authors, I think, follows the line of reasoning about Maori sovereignty so far as to examine the important political dilemma described more recently by Richard Mulgan. If a century of one-sided interpretation of a Maori-Crown compact is reversed, this does not dispose of the possibility of a conflict of rights under the constitution and in the civil courts and Parliament between Maori and Pakeha as citizens in a democracy and joint successors to the Crown estates.<sup>1</sup>

In his revision of an important article on the reinterpretation of New Zealand history necessitated by an examination of the Treaty, Keith Sorrenson is aware of the political, as well as the legal, content of this 'revolution' in the assessment of the sources of

sovereignty and claims in law for two cultures in a single state. Just how novel and far-reaching some of those claims are is illustrated in abundant detail in the studies provided by Waerete Norman, I. H. Kawharu, Tipene O'Regan, and M. H. Durie. Some of this analysis raises further points: it is not explained just how the Crown should enforce Maori rights in the Muriwhenua claim, bearing in mind that other titles (*mana whenua*) exist for the control and exploitation of fish stocks exercised legally by those of the Pakeha population whose fires of occupation have also been burning since 1840. Similarly, the evident restoration of the *mana* of the Ngati Whatua in the successful Orakei marae claim affords a place to stand in an urban society, but not the lost rural estates. How far does this solve the economic deprivation of rural Maori or the problems of rapid urbanization? Even more ominous, Ngai Tahu claims to much of the South Island leave open the political questions of compensation or participation in state enterprises (thoughtfully explored by O'Regan) which, in turn, beg the question that the 'Crown' does not have money of its own and is accountable to a political majority.

R.J. Walker explains how the Treaty has served as a focus for Maori protest and organization in the past and M. H. Durie points to the ways in which it may be used to restore political sovereignty in terms of social advancement. The 1988 Royal Commission had much to say about this imbalance between the two cultures, accepted uncritically in Durie's essay, which refers to 'various stresses and society pressures' (p. 287) to account for Maori social and economic status. Without an analysis of modern Maori family structure or the inhibitions of *whakamaa* (feeling humbled) recently explored by Metge,<sup>2</sup> many will find this off-hand explanation too vague to provide a basis for arguing that the Treaty is a charter for special group rights. There may well be a good case for Maori group participation in local government bodies, but it is not clear how far local government or state agencies are bound by Treaty principles to afford special representation. The Maori Council's proposal for a Senate with equal seats and two legislatures smacks of less laudable constitutional arrangements for separate ethnic representation and a division of business into Maori and Pakeha affairs (p. 297).

In many ways Durie's contribution highlights, as a good essay should, not just the legal background or the current victories, such as they are, against the Crown, but the perplexing political implications of the Treaty for the present generation of New Zealanders. It is to be hoped they will read this collection and its able introduction in order to clear the air and think about ways in which the partnership in development and citizenship, unequal though this has been, might be enlarged pragmatically in government and business, without attempting to force the issue before the electorate.

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*The People and the Land. Te Tangata me Te Whenua. An Illustrated History of New Zealand, 1820-1920.* By Judith Binney, Judith Bassett and Erik Olssen. Picture research by Moira Long and John Sullivan. Allen and Unwin, Wellington, 1990. 352pp. Price: \$59.95.

THE VISUAL impact of this large-format book is stunning. This is an illustrated history of the highest order. Roughly estimated there are over 350 photographs, paintings, sketches and maps, in colour and black and white, brought together from collections in

1. Richard Mulgan, *Maori, Pakeha and Democracy*, Auckland, 1989.
2. Joan Metge, *In and Out of Touch: Whakamaa in Cross Cultural Context*, Wellington, 1989.