

The Treaty of Waitangi in New Zealand's Law and Constitution. By Matthew S.R. Palmer. Victoria University Press, Wellington, 2009. 477pp. NZ price: \$50.00. ISBN 978-0-86473-579-9.

MATTHEW PALMER'S PUBLIC LAW CAREER has entailed extensive consideration of the role and place of the Treaty of Waitangi in both our law and society. Here he seeks to build on that experience and analysis to evaluate not only the Treaty's past and present, but also to propose ways in which it can be given continued relevance into the future.

Palmer's intention is to take a 'realistic', 'anti-theoretical' approach with regard to our constitutional status, regarding it as 'the reality of public power — who exercises it, when and how'. As its title foreshadows, the book is, then, limited to the exercise of that public power within the political and legal systems. No other perspectives on the Treaty or its place and role in New Zealand are really considered and certainly none are developed. For instance, the book's 30-page historical survey will add little insight for those already conversant with 1840s events and makes no attempt to use it as anything more than context. Hopefully the Waitangi Tribunal's impending Northland Inquiry will round out the existing accounts which are essentially at least a quarter-century old. Palmer's point, though, is to understand the past's influence on the present and, if we wish, reject it so as to make different choices for the future. He concludes that there was in 1840 no common Crown–Māori understanding of the future interaction between the British power to govern and the continued authority of rangatira.

Palmer's legal analysis confirms the document as a valid international Treaty. The point is largely academic: subsequent case law and the flow of New Zealand history have, he believes, actually confirmed the post-Treaty evolution of Crown sovereignty as 'a fact of raw political power'.

Helpfully for his review of Crown policy and institutions, Palmer had access to official documents, including Cabinet papers of all governments, enabling him to assert the almost complete invisibility of the Treaty until the Lange government's advent. An appendix contains Cabinet statements about the meaning of the Treaty, but reflecting the government-centred, presentist nature of this book, it contains nothing prior to 1986, thereby omitting, say, the 1940s centennial or the mid-twentieth-century 'settlements', or even the 1970s and 1980s creation of the Waitangi Tribunal and the current Treaty claims process.

Historians will also be aware that whether Cabinet itself uttered statements, courts up to the Privy Council considered and ruled on the Treaty and its legal status and application throughout the later nineteenth century. Likewise, many political debates of the 1860s also mentioned it, from Responsible Government to land confiscations to Carroll, Ngata *et al.* in the early twentieth century. The Lange government did not rediscover the Treaty and many non-Wellington segments of our community never lost sight of it.

Palmer hopes that the Treaty can now be incorporated into our law and society, providing a foundation for healthy relationships between not only the Crown and Māori, but also other New Zealanders. Achieving his goals would require some highly visible changes. For instance, Te Puni Kokiri, currently largely sidelined and ineffectual in dealing with the rest of the government, would become a Cabinet portfolio for Crown–Māori Relationships supported by a small taskforce of senior, experienced public servants. The Waitangi Tribunal is, he thinks, exhausting its institutional capital. His flagship proposal, a Treaty of Waitangi Court to imbue the Treaty with legal and not merely moral force, would be composed of selected High Court judges and Waitangi Tribunal members to provide breadth of expertise and legal and political credibility. This court, though, would still only issue recommendations, essentially replacing the Waitangi Tribunal's jurisdiction on contemporary Treaty claims. The general courts would have to give binding rulings on contemporary cases about whether Crown and Māori are abiding by the Treaty. The replacement's point is therefore a little obscure.

A strange omission is any discussion of the current Treaty claim settlement process, which surely is for most New Zealanders the public face of the Treaty and its implementation. Palmer does include a few examples of the process in action, but these are used to demonstrate something more esoteric, for example, the Ngai Tahu settlement legislation is seen as an exemplar of the relationship between the Treaty and parliament, for instance. Surely the creation of such a state-sanctioned, funded and dominated programme of claim registration, investigation and settlement against itself generates some constitutional issues!

Although wishing to give the Treaty enduring significance, Palmer stands within a tradition that seeks to fine tune the existing constitutional framework. Others advocate more radical solutions, ranging from relegation of the Treaty to historical curiosity, through to the implementation of a fully equal, dual system far beyond mere 'Māori input'. However, the Treaty genie has been out of the bottle for a generation, Māori are playing a larger role in New Zealand society than they have for 150 years, and Palmer's work provides a detailed, thoughtful contribution to the consideration of many of the associated issues, albeit from the perspective of an academic public lawyer and central government bureaucrat.

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Tarara: Croats and Māori in New Zealand: Memory, Belonging, Identity. By Senka Božić-Vrbanić. Otago University Press, Dunedin, 2008. 268 pp. NZ price: \$49.95. ISBN 978-1-877372-09-4.

SENKA BOŽIĆ-VRBANIĆ'S BEAUTIFULLY PRESENTED ETHNOGRAPHY is an attempt to cast new light on the relationships between Croats and Māori on the gumfields of the Far North between the years 1880 and 1950, and to trace the emergence of 'a particular Māori-Croatian identity'. The book begins with two haunting images. The first shows the deserted ruins of Podbiokovlje, the author's home village in Croatia, where hundreds of people left for New Zealand; the second shows an abandoned gumfield at Lake Ohia, the apocalyptic landscape strewn with blackened stumps and debris. In a powerful piece of writing, Božić-Vrbanić describes her feelings as she stands in both these places. An 'emptiness' overwhelms her in the small Dalmatian village as she contemplates the task of writing the story of two localities that are connected to aspects of her own biography and to the historical intersections of two empires, the British and Austro-Hungarian. The challenge she confronts is one that will be familiar to most historians, even though the questions she asks flow from anthropologist James Clifford's reflections on the 'field'. How do we approach the fragments and silences of the past? How can we discover something about the lives of the participants in these distant encounters?

In the preliminary phase of her research, Božić-Vrbanić trawled laboriously through contemporary newspapers and official records to get some sense of the ways that Māori and Croats were represented in the colony. She visited local museums, read local histories and travel books, and wrestled purposefully with the 'statistical tapestry' uncovered by earlier work on Croats in New Zealand. Most importantly, however, she sought to retrieve the 'subjugated knowledge' that survives locally in both Dalmatia and the Far North. The author interviewed descendants and worked through a swathe of materials, including the correspondence of gumdiggers, personal diaries, church records, poems and objects. This impressive evidential base is linked closely to a formidable theoretical framework. Božić-Vrbanić draws incisively on Michel Foucault, Sara Ahmed, Ernesto Laclau and Chantal Mouffe, and — especially — Slavoj Žižek on fantasy and nationalism. The application of theory to historical evidence is exemplary. Moreover, the sheer depth and intensity of the author's analysis deserves the highest praise. The stunning collection of