

serving conservative Prime Minister. Mary Boyd's overview chapter on New Zealand in the Pacific makes accessible much disparate material, as does Judith Binney in her fascinating and learned piece on the Maori prophetic tradition. Sir Keith Sinclair himself, in 'Hard Times, 1972-1989', provides an incisive commentary on the tumultuous Lange years, as well as displaying his obvious admiration and affection for one of New Zealand's 'forgotten' leaders, Norman Kirk.

Perhaps the most original of all the contributions, though, is that of Jeanine Graham, 'The Pioneers (1840-1870)'. More than an account of the first decades of European settlement, more than an account of the early history of photography in New Zealand, it is a fascinating discussion of the uses of visual evidence as an historical source. In her integration of narrative and theory, of written and visual evidence, Graham forcibly reminds us that this is an illustrated history, and that the illustrations no less than the text are there to be 'read', not as adjuncts to the story, but as central to it. There are more than 150 of these, chosen as Professor Sinclair says, to 'contribute significantly to one's understanding of New Zealand history'. There are pictures of leaders and of ordinary people, of signal events and of everyday life, of war, of sporting achievement, of Maori and of Pakeha, townscapes and landscapes, portraits, photographs, cartoons. Together they more than inform the text, they transform it.

This is a wonderful book, well written, well illustrated and well produced. It does not, of course, supersede the *Oxford History of New Zealand*, for that was never its purpose, but it stands beside it as an equally significant achievement.

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Justice and the Maori: Maori Claims in New Zealand Political Argument in the 1980s.
By Andrew Sharp. Oxford University Press, Auckland, 1990. 310 pp. NZ price: \$34.95.

THE TIME of writing of Dr Sharp's most important book was March 1989. It has only in minor respects been overtaken by events since then.

Justice and the Maori is directed to a wide readership that includes general readers, both local and overseas, for whose benefit Sharp summarizes the assured results of the work of revisionist historians that began substantially with Keith Sinclair's *The Origins of the Maori Wars* in 1957. Their work has established as the new orthodoxy a history of Pakeha injustice to the Maori, not least in the land confiscations that accompanied the wars of the 1860s and 1870s. Against the background of the new history, Sharp sets his account of the arguments of the present day: of the Maori (with important Pakeha support) for justice and of those Pakeha who argue either (against the evidence) that no injustice was done to the Maori or (against reason) that, if it was, nothing now need or should be done to redress it. At one extreme are the claims based on Maori sovereignty which, if successful, would leave the Pakeha an alien or at best a suppliant negotiator with newly dominant Maori. At the other extreme lies a concept of the sovereignty of the present

Pakeha dominated nation state that would deny any claim to even partial Maori autonomy and any redress of wrongs. In between come the reasoned arguments for settlement, compromise, principled adjustment.

Sharp's account of the arguments and of the accompanying tensions includes valuable discussion of the work of the Waitangi Tribunal (especially) and of the Court of Appeal in the judgments of the *Maori Council* case (*New Zealand Maori Council v Attorney-General* [1987] 1 New Zealand Law Reports 641). He shows the Tribunal on the one hand establishing, by its *findings*, breaches of the principles of the Treaty of Waitangi that should attract the doing of reparative or retrospective justice; and, on the other, by its *recommendations*, mixing prospective with retrospective justice. He sees the jurisprudence of the Tribunal, like that of the Court of Appeal, as a 'political jurisprudence concerned to reach and explain decisions in a way that would actually work' (p. 124). (Sharp demonstrates that the doing of full retrospective justice is impossible in New Zealand because too many of the conditions precedent for it — such as agreement as to what wrongs have been done, who has suffered them and by what rules the nature and quantum of reparation should be decided — are lacking.)

This political jurisprudence — which is also the jurisprudence of the wairua of the Treaty — is based in part on Parliament's implied distinction between the Treaty itself and the 'principles of the Treaty', found most notably in the governing references to those principles both in section 6 of the Treaty of Waitangi Act 1975 and also in section 9 of the State Owned Enterprises Act 1986. These principles have been construed and given effect judicially in the *Maori Council* case and since. Sharp argues that, in conditions of inevitable bi-cultural disagreement, justice for the Maori 'is something that can never be done but is something to be continually discovered and aimed for' (p.24; cf. p.285). The approximations of justice that are possible must in the end be decided by the organs of the sovereign state (pp. 25 and 286-7). Any satisfaction extreme Pakeha opinion may find in such a conclusion (the basis for which is discussed further below) will be greatly qualified by the author's warning that the state must in fact redress Maori grievances much more successfully than it has done, if its own legitimacy is not to be questioned.

I found Sharp's presentation and analysis of the arguments of the controversialists fair, lucid, comprehensive and very helpful, with little to be queried. Almost without exception, the difficulties and matters of sensitivity are dealt with frankly and fully. For example, Sharp comments in his discussion of the *Maori Council* case (in effect) that none of the judges in the Court of Appeal could say outright that it was not the Treaty that created the Crown's authority in New Zealand but the unilateral exercise of the royal prerogative by Hobson's proclamations of sovereignty of May 1840, because, '[t]hough this was undoubtedly the legal position, to state it would have been an affront to Maori belief' (p.277). (In essence, whether article 1 of the Treaty ceded sovereignty or *kawanatanga* is *legally* irrelevant because, whichever was ceded, it was sovereignty that the Crown successfully claimed.) Sharp rightly draws attention to the measure of reserve which the judges adopted in dealing with the relationship between the Treaty and the authority of the sovereign state.

Perhaps, however, he shows a not altogether dissimilar reserve in his treatment of the matter of the Moriori. We are told (p.112) that '[t]o the dismay of scholars as well as polemicists, many Pakeha letters to newspapers . . . spoke of the Maori genocide of the "Moriori" of the Chatham Islands'. But the apparent animus of some of the letter writers is the only cause for present dismay. It need not be an affront either to a fashionable

relativism or to Maori sensitivity to argue, on Michael King's account in *Moriori: a People Rediscovered* (1989), that, by the successful invasion of the Chathams in 1835-66 by Ngati Tama and Ngati Mutunga, the culture and customary law of the Maori superseded those of the Moriori. These were superseded in turn by the colonial culture and legal order gradually established in those Islands after their formal inclusion within New Zealand by the Letters Patent of April 1842. The Chathams happenings illustrate the truth Sharp takes from Hobbes' contemporary, Anthony Ascham (quoted on p.286), that 'no origin [of sovereign power] is innocent'.

Of course, in respect of mainland Aotearoa-New Zealand, the claim of Maori is that their occupation of a country empty of people was indeed 'innocent'; but, as Sharp indicates, what may be called the Ascham principle certainly applied within the Maori customary order: '[a]s the Maori could impugn the state's title to govern, so could the Pakeha speak of the sanguine origins of authority and property in pre-European times' (*ibid.*). That principle, widely stated, generally works both within any given legal or customary order and between such orders when one supersedes another. As Sharp implicitly shows, such a principle is foundation for the argument, surely correctly described and emphasized by him as 'not . . . culturally specific' (p.287), that cross cultural disagreements within a nation of mixed population like New Zealand can in the end (short of revolution) only be solved by the state's present organs of sovereignty. Sharp's reliance in part on a principle of the effective exercise of power, in large measure validated over time, as the basis of sovereignty, will displease some Maori radicals and their Pakeha allies (who, however, were they to achieve the revolutionary solutions to which their demands point, would in the end invoke the same principle). But that reliance is heavily countered by his insistence — after all, the theme of the book — that justice must still be vigorously pursued within the present order. This must be done by taking into account and applying other principles, in particular those of the Treaty as expounded in the political jurisprudence of Courts and Tribunals or worked out in negotiation and settlement.

There are a few minor criticisms of the book. The role of the legal system as an instrument of oppression of Maori has been bad in many respects but Jane Kelsey's 'historical essay' in *Tauīwi* (1984) is too poorly researched or extravagantly written for Sharp (p.282; cf. p.3) to refer to it, without serious qualification, as a detailed indictment of that role.¹ In a few matters, such as statutory and case citation, a legal editor could have been of help. The index is somewhat rudimentary: one will look for a better in the hoped-for second edition.

In *Justice and the Maori* Sharp addresses scholars in at least four disciplines, as well as general readers. A reviewer from one of them must save his position by allowing that specialists from the others may have criticisms to make. That said, for me there is little to detract from the merits of this scholarly, reasonable, eloquent and elegantly written book.

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¹ On which matter see most recently my 'Maori Rights and Two Radical Writers', *New Zealand Law Journal*, 1990, pp. 406-20.