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By Which Standards?

HISTORY AND THE WAITANGI TRIBUNAL: A REPLY

Revisionism is a healthy historiographical process, and no one,
not even revisionists, should be exempt from it.
John Lewis Gaddis, *We Now Know: Rethinking the Cold War,* 1997

IF HISTORY IS, in Pieter Geyl's terms, 'an argument without end', and revisionism is indeed as healthy as John Lewis Gaddis suggests, then the debate over the work of the Waitangi Tribunal signals the field is in good heart. I am grateful to Jim McAloon for taking the time to read my work and engage with the main arguments advanced in *The Waitangi Tribunal and New Zealand History.*[1] His essay is well-argued and his criticisms clear. While we do not disagree on certain fundamental assumptions — that the work of the Tribunal is highly valuable in effecting Treaty settlements and advancing New Zealand historical scholarship and that the Tribunal is in the business of history-writing — McAloon and I part company on matters of interpretation. I suspect, too, that we have different ideas on the uses to which the past might be put and the limitations placed on historical discourse when it is constrained by, in this context, legal, statutory and judicial procedure.

McAloon has three main criticisms of my analysis. First, he takes issue with the observation that the Tribunal writes 'presentist' history, the idea that the Tribunal views the past in the light of present concerns, agendas and frames of reference. Second, McAloon challenges the assertion that law and history are at variance with each other; that 'because lawyers want certainty and historians deal in nuance . . . the approach of one is therefore inimical to the other'. Finally, he tackles the argument concerning the 'paradox of Maori agency', which McAloon describes as the idea that 'Maori are cast as victims, and settlers or the Crown (the terms are conflated) as villains'. On this last point McAloon identifies 'a perspective . . . which is overly concerned with simplistic binarisms and grievance rather than co-operation and interaction'. In sum, McAloon's analysis is centred on the issues of presentism, subjectivity and standards: my reply will therefore be addressed to these and related questions.

Two further points warrant mention. First, it is curious that McAloon does not significantly challenge or engage with the description of the Tribunal's work as 'liberation history'. While he acknowledges that Tribunal history is politically charged and 'liberation history' may well be an appropriate way to describe this form of history writing, he does not seriously debate this aspect of the work. 'Liberation history' is a particular type of counterfactual history; it is an historical narrative where the primary objective is to 'liberate' the subjects

of that narrative from perceived injustice, inequality or marginalization. While a counterfactual historical narrative considers what might have been, as well as 'what really happened' in the past, liberation history takes this one step further to construct an entire world centred on the theme of liberation. Liberation history is therefore a particular kind of postcolonial political narrative driven by present-based concerns. However, the term 'liberation history' does not *necessarily* imply ahistorism; a link McAloon is quick to make. No historian would take issue with the suggestion that history written from a position of strong political commitment is by definition ahistorical. McAloon rightly offers the examples of 'women's history, labour history, or environmental history — or even, two generations ago, "New Zealand history"', as fields of enquiry whose political objectives are transparent.

Second, McAloon overlooks the extent to which ideas of postcolonialism are a fundamental feature of my study, one that may well have added weight to his own argument about what the tribunal's history writing means and how its histories should be read. A postcolonial analysis also makes sense of the Tribunal's foregrounding of issues around tino rangatiratanga in the (especially later) reports. It is worth noting that while there are references to Maori sovereignty in a number of Tribunal reports, especially from 1996 onwards, the particular relationship between Maori sovereignty and Crown sovereignty is not examined in any detail. In other words, while the *ideal* of Maori sovereignty is proposed, its translation into reality is never fully explored. There is, therefore, a gulf in the Tribunal reports between ideas and reality which needs to be addressed. This is where it helps to think about the Tribunal and its narratives in a postcolonial context; its emphasis on presentism and alternate counterfactual visions of the past make sense when the work of the Tribunal is seen in these terms. Two further points also demand clarification. First, it is important to acknowledge that 'the Tribunal' is a collective of individuals and there are therefore differences (some subtle, some not so subtle) between the published Tribunal reports. While McAloon refers to the Tribunal as a singular entity, it needs to be recognized there are many tribunals: 'the Tribunal' exists only as an umbrella institution and single corporate author. In addition, it ought to be noted that my study considered reports from the late 1980s through to (but not including) 2000. A number of significant historical reports have appeared since then, including *Rekohu* (2001), *Te Whanganui a Tara* (2003), *Mohaka ki Ahuriri* (2004), *Te Raupatu o Tauranga Moana* (2004) and *Kaipara* (2006).[2]

It is tempting to simply refute each of the points raised by McAloon, finding evidence in the Tribunal reports to support an alternative case. But that would be both tedious and churlish. Instead, my reply will address the question at the heart of McAloon's critique: by which standards should we judge the past? By extension, it will also ask if historians should judge the past at all. These are the most interesting and more important problems at the centre of this exchange, for they cut to the core of the ethical dilemmas facing all historians and authors (such as the Tribunal) engaged in history writing. Moreover, these are topics through which McAloon and I may find some concord, or at least, a way forward. In any case, focusing on the issue of standards raises the vexed question of whether historians ought to make value judgments, and wider

issues of professional ethics. Shifting the discussion from the particular to the general broadens the debate, and increases its relevance to, and resonance with, other fields of historical inquiry. But, first, McAloon's criticisms need to be addressed.

Reading the past from the present inevitably raises the spectre of presentism. Fortunately, McAloon concedes, as do most historians I think, that all history exhibits some degree of presentism, in that the questions put to the past are shaped by the conditions and the context of the present. Subjectivity and context must therefore be factored into any historical interpretation. While a neutral or wholly objective position from which to view past events, actions, decisions and individuals may be philosophically desirable, it is *actually* impossible. However, when present (or contemporary) issues become the overriding imperatives in an historical inquiry, then the 'product', the historical narrative, will be distorted by this present-based focus. Presentism thus arises when history is written to meet the needs of the present rather than for its own sake. As I have argued elsewhere, the charge of presentism directed at the Tribunal can be largely explained by the limitations imposed on it by its governing legislation, the Treaty of Waitangi Act 1975. Indeed, many of the flaws and weaknesses of the Tribunal reports can be resolved, or at least better understood, with reference to the Tribunal's statutory jurisdiction, as well as to international jurisprudence and to established judicial procedure. Put simply, the Tribunal's present-based approach to the past is in large part determined by the need to establish current prejudice. For if Maori making claims to the Tribunal are not prejudiced by historical actions, the Tribunal cannot find in their favour. The Tribunal is thus obliged by statute not only to find fault in the past, but to also advise on practical remedies for the future.

Most historians now at least tacitly acknowledge presentist tendencies in their historical narratives, on the basis that complete objectivity is, in Peter Novick's terms, 'a noble dream'.[3] This includes the work of New Zealand historians. In 1979 Keith Sinclair argued for a 'practical history' which (unwittingly perhaps) invoked presentism when he suggested that, 'a true historical attitude involve[s] studying past events for their own sake, and not for *our* sakes; seeing the past in its own terms and not in relation to our own society. New Zealanders have never accepted this argument . . . [and have] always regarded history as having a practical purpose in their contemporary society.'[4] After all, every historical judgment is an admission of the historian's interests, values and assumptions and is, therefore, inherently subjective.[5] Objectivity may well be the 'holy grail' of historical inquiry, but like the grail it too is a mythical end-point and the interest is in the quest itself. Nearly all historians reject the non-perspectival view of truth (that there is one absolute Truth) and dispute the assertion that the facts 'speak for themselves'. Like Keith Jenkins, Chris Lorenz has argued that the historian's view of any past event is always a function of or determined by his or her understanding of the event in its context.[6] Similarly, as Robert Berkhofer has pointed out: 'The problem with historical facts, as with histories themselves, is that they are constructions and interpretations of the past. Evidence is not fact until given meaning in accordance with some framework or perspective.'[7]

The 'death of objectivity' and the acknowledgment of presentism highlights deeper philosophical problems. One of these is the culturally specific nature of 'orthodox' historical inquiry. Hayden White has recently reminded us that while all cultures conceive of some sort of relationship between the present and the past, it was the West who posited 'a radical gap between the two and sought to bridge this gap by creation of a special "science" or "discipline" called "history"'.[8] White demonstrates how, for most of its evolution, the discipline of history was effectively translated for and applied to present purposes. He argues that, over time, two distinct notions of the past emerged: 'the historical past', defined as 'the terrain of professional historians who study the past for its own sake, and 'the practical past', where history is 'a storehouse of memory, ideals, examples, [and] events worthy of remembrance'.[9] This disjunction, White suggests, was essential for history to establish its credentials and be seen, especially in the nineteenth century, as a real 'scientific' discipline.[10] Here in New Zealand, McAloon rightly concludes that 'to not judge the past by the standards of the present should not be a euphemism for simply perpetuating the dominant discourses of the past'. Yet surely there exists a balance between uncontrolled relativism on the one hand, and 'scientistic' empiricism on the other?

The Tribunal itself has wrestled with the challenge of presentism and its associated pitfalls in its most recent historical reports. In *Rekohu*, for instance, the Tribunal made its presentist focus quite clear, arguing for the ongoing connections between past and present: 'The Treaty was breached, the breach was serious, the impact continues, and compensation should be provided to assist Maori rehabilitation.'[11] The Rekohu tribunal drew a clear connection between past dispossession and present-day economic disadvantage, pointing out: 'The prejudice for today is that Moriori now lack the land base that they *should have had* [my emphasis] and their people are dispersed. That land base is now necessary for the social, cultural, and economic development of Moriori.'[12] Accordingly, this tribunal advised that: 'Compensation should . . . be directed to Moriori cultural re-establishment and the social, economic, and cultural development of the people. Also, a significant Moriori land base on Rekohu appears to be a necessary long-term goal.'[13] Two years later in *Te Whanganui a Tara*, that tribunal again emphasized the past-present continuum. 'Given our conclusion that the 1839 deed was invalid', the Te Whanganui a Tara tribunal agreed, 'we believe that it is the descendants of those Maori present in 1840 who should benefit from the settlement of Treaty claims relating to the tenths'.[14]

The Tribunal particularly addressed the problem of presentism in *Tauranga*, where, in making its recommendations, this tribunal declared its intention to 'discuss the prejudice arising from these breaches and recommend how it can be remedied by the Crown'.[15] Here the Tauranga tribunal made a clear connection between past and present. It continued: 'In doing this, we do not mean to suggest that the prejudice suffered by Tauranga Maori as a result of the raupatu has not continued to be felt until the present. In our view, it clearly has.'[16] The Tauranga tribunal was patently aware of presentist tendencies. 'Assessing prejudice by modern legal criteria may be useful when dealing

with some contemporary claims that involve quantifiable losses of property experienced by individuals', it noted, 'but this approach is not helpful when assessing the historical effects of Crown actions upon hapu'.[17] Compensation, this tribunal argued, ought to address present disadvantage: 'We consider that a generous and expeditious remedy is required for Tauranga Maori for the prejudice suffered by them as a result of Crown laws, actions, and omissions. Such reparation is necessary not only to restore the honour of the Crown in its relationship with Tauranga Maori but also to establish an economic base from which Tauranga hapu can pursue their future aspirations.'[18] In other words, present reparation would address both past and present injustices, given that historical injustice is almost always bequeathed to subsequent generations. This statement also expressed the Tribunal's faith in the redemptive power of liberal democracy and the transformative potential of claimants 'engaging' not only with the liberal democratic state but the market economy. Interestingly, this tribunal also liberally speculated in 'what if' counterfactuals, adding that '[i]f the breaches of the Treaty had been confined to the taking of the 50,000-acre confiscated block, the extent of the Crown's culpability would have been relatively limited'.[19]

In *Mohaka*, the Tribunal was even more careful. In discussing the 'amalgamation' of Maori and Pakeha through intermarriage, it cautioned against the temptation to over-generalize: 'We have to be careful not to read a sociological trend into one or two examples.'[20] The Mohaka tribunal struggled with these issues in considering the relationship between historical acts of dispossession on the one hand and current social and economic problems on the other.[21] This tribunal concluded: 'there are immense difficulties in establishing a direct causal relationship between, on the one hand, land loss, and on the other, poverty, social dislocation, poor health, and low educational attainment. However, there is, *ipso facto*, a connection between land loss and poverty in cases where insufficient land has been retained for subsistence and insufficient income is available from intermittent part-time work to make up the deficit.'[22] In *Mohaka*, too, this tribunal declared that 'the grievances from within living memory have their roots in the confiscation itself, and any separation between "historical" and "living memory" claims would be artificial. That said, however, there remain certain matters which will require specific redress.'[23]

In its most recent historical report, *Kaipara*, the Tribunal again expressed the dangers of presentism, arguing, 'we cannot simply impose our contemporary views in judgment of the past. There is ample evidence that most Pakeha officials and settlers genuinely believed that Maori would benefit from the influence of British culture that was being opened up for them through colonisation.'[24] Here the Tribunal was particularly sensitive to ahistorical tendencies. When discussing the idea of a multi-hapu Ngati Whatua 'alliance', for instance, the Kaipara tribunal concluded: 'It is therefore inaccurate to take this modern meaning of Ngati Whatua and project it back to the seventeenth century or earlier, as the ethnographer Stephenson Percy Smith and others following him have done.'[25] Suffice it say, therefore, that the Tribunal itself is now well aware of presentist tendencies and interpretations.

McAloon's second thread of criticism centres on the tensions between law

and history. I have been careful to avoid describing the work of historians and lawyers in boldly oppositional terms and have deliberately shied away from stating how, in absolute terms, they use and perceive history: rather, I have emphasized the philosophical differences and similarities between the two disciplines. In very general terms, however, while lawyers can be seen as advocates who must present their argument in the most persuasive manner, historians must read their sources critically but according to context. Above all, historians have a responsibility to context: they weigh up the evidence carefully and draw their conclusions from that evidence, but it is contextually determined. In other words, while a legal approach usually employs a textual method of analysis, historians think contextually, giving weight to the wider events, personalities and policies contemporary to the issue in question. In the Treaty claims process, however, law and the legal method appear to limit or circumscribe history much more than historical method restrains the law. One example of this is the emphasis in the Tribunal process on finding fault and liability. It would be fair to say that most historians do not typically engage in the making of moral judgments: yet in investigations where the central issue is guilt or innocence, history simply becomes fodder for legal arguments. As Richard Evans (and, yes, even Henry Rousso) have warned, the utilization of history in this capacity can lead to the exploitation of historical method in redressing past wrongs.[26] It can also lead to the oversimplification of historical characters as either 'victims' or 'villains'. While legal process dominates, history will be always be the handmaiden to the law; serving at the table, but never taking a seat.

McAloon's third major point of contention is around the idea of 'Maori agency' and the evidence of agency in past and present contexts. Interestingly, the most recent published Tribunal reports have embraced the notion of Maori agency with considerable enthusiasm. In *Tauranga*, for instance, the Tribunal described how Tauranga Maori welcomed traders into their communities and how, by the end of the 1830s, 'Tauranga Maori were still actively trading pigs and potatoes.'[27] It wrote of how, in the early 1860s, Tauranga Maori were successfully cultivating wheat, maize and kumara, clearly taking advantage of new economic prospects.[28] Although this report noted that Tauranga Maori were eager to take up new agricultural and economic opportunities, it concluded that 'this enthusiasm did not bring about an improvement in Maori living conditions'.[29] The report included ample evidence of Maori resistance and agency: for instance, it detailed how Tauranga Maori actively resisted the encroachment of surveyors in laying out the confiscated block, from 1866, through a series of protest strategies.[30] This was especially emphasized in this report, to the point that the Tauranga tribunal described the protest of Tauranga Maori as one that 'has endured for more than 100 years', evidenced in the chapter title 'Continuing Struggle, 1886–2003'.[31] In *Kaipara*, however, the Tribunal was more cautious, balancing Crown culpability with Maori agency: 'The Crown land acquisitions in southern Kaipara before 1865 were not excessive, in that the areas purchased were largely determined by the rangatira involved, who were actively encouraging Pakeha settlement.'[32] That tribunal concluded: '[i]t is too simple to blame the Crown for the debt and poverty that

occurred after lands were sold. The rangatira were active participants in the sale process.'[33]

As noted above, McAloon's critique of my work turns on the question of standards; the measures with which we assess and judge past events, actions and decisions. Specifically, he asks: what standards ought we to apply? Those of the past — or those of the present (bearing in mind that in each case there are 'multiple' standards to consider)? McAloon's criticisms are unfortunately based on the assumption that my argument is predicated on two distinct sets of standards: one in the past and one in the present. Fortunately, as McAloon points out, there were in fact many 'standards' (shared 'standards' being different from individual 'opinions'), or collectively held views which individuals shared. The central question surely is: what was the *dominant* mode of thinking and knowing? And is it possible to identify dominant collective beliefs, or were ideas and assumptions always contingent on location, speaker and immediate context? While absolute relativists might wish to argue for the latter, it is now indisputable that there were shared attitudes and opinions in the past, and that it is possible to exhume these from extant historical evidence.[34] Moreover, embedded in this question regarding which standards to use in judging the past, are two further questions that require unbundling and teasing out. First, should historians *judge* the past? Is it the duty of the historian (either in an individual or collective capacity) to evaluate past actions, events and decisions of historical characters on the basis of certain moral, ethical and value codes? Second, if the answer is in the affirmative, then how should good historical inquiry be conducted? In other words, how ought this to be done?

Keith Sinclair, who James Belich once curiously dubbed 'the doyen of post-colonial historians' of New Zealand,[35] wrestled with these questions in the late 1970s, asking: 'Does commitment — the kind of commitment involved in choosing, say, to study one's national history, New Zealand history — necessarily involve inbuilt value judgements, which will then be inflicted by the present on the past, thus rebuilding it in our image?'[36] Sinclair answered in the negative, concluding that 'New Zealanders in general do not want anything from the past . . . . When we study our ancestors, our motive is usually in part curiosity. An impartial study of, say, the Anglo–Maori wars or of Sir Harry Atkinson helps us to see our past, and then ourselves, more plainly and clearly. It frees us from pseudo-history and pop-history — in short, from fictions arising from ignorance, self-interest or vanity.'[37] Hurrah for empiricism! As Belich himself noted some 20 years later while bemoaning the lack of theoretical rigor in New Zealand historical scholarship, 'justifiable doubts about macro-theory do not justify extreme empiricism'.[38]

The Tribunal has made some comments on the 'lens' of standards through which the past ought to be seen. In general, the Tribunal refers to two 'layers' of standards: those denoting broad inter-cultural differences of interpretation and understanding, such as between Maori and the Crown; and those signifying intra-cultural variation. This latter is more sensitive to regional and tribal differences, as well as the conditions of historical specificity. For example, in *Rekohu* the Tribunal observed: 'We consider that Moriori were prejudiced by the fact that the criteria set by the Crown . . . . An indication of the then law is

that custom was not then seen as sacrosanct in law but was to be disregarded where it was repugnant to humanity. The Treaty envisaged the application of British law where that was called for, and it was called for on this occasion.'[39] The Rekohu tribunal continued in this vein, arguing that 'had the proper criteria been applied, Moriori would have received more land and that the awards were unjust as a result'.[40] Thus the Tribunal invoked the first 'layer' of standards. The *Rekohu* report also appealed to the second when it referred to the standard of 'cultural ethics' which existed in the Chatham Islands, describing this as a system of understanding 'whereby those on the home base have priority'.[41] Here this tribunal considered the question of whether Moriori could in fact claim Treaty rights, stating: 'It was claimed that Moriori have no Treaty rights since the Treaty does not refer to them. We find that they are as much Treaty beneficiaries as any other Maori. (Incidentally, the Treaty does not refer to Maori — it refers to the native people.)'[42] *Rekohu* thus considered Moriori to have a whole distinct set of cultural values and practices, referring to 'the rule of peace, which might also be seen as the rule of law, to an unprecedented level in early New Zealand'.[43] In this report, the Tribunal also discussed the 'Chathams way', arguing that '[m]any mainland laws can make no sense there'.[44] Indeed, in *Rekohu,* the Tribunal even questioned which standards *ought to have* applied, arguing that 'the appointment of Pakeha judges to determine the nature of Maori custom had the predicable effect of distorting customary values . . . . [The judges] saw custom in simplistic terms and not as reflecting a society's understanding of right and wrong, good and bad, and proper and improper conduct. They also saw custom in static terms, when in fact it is hugely dynamic.'[45] Here the Tribunal saw standards as relative and approximate, concluding that: 'Once again, it was for Maori to determine the matter, according to values and principles both passed to them by their forebears and more recently adopted from missionary teachings; for custom is no more than that which people generally accept as proper at different points in time.'[46]

Other reports have addressed the issue of (multiple) standards. In *Te Whanganui a Tara*, the Tribunal argued: 'By insisting that the price to be paid by the New Zealand Company to Maori for 67,000 acres in the Port Nicholson block should be based on the assessed value of the land at the time of the invalid 1839 deed of purchase of the block, the Crown failed to protect the Treaty rights of Maori to sell their land at a price freely agreed upon by them'.[47] Here the Tribunal criticized the hegemonic position adopted by the Crown in the sale and purchase; the Crown was thus setting its own (highly problematic) standards. In *Tauranga*, when commenting on the war in the Waikato and the role of Tauranga Maori in this conflict, the Tribunal noted: 'It is clear that, by the time the Crown's forces advanced into the Waikato in 1863, English and colonial law had not been systematically applied to Tauranga, and so to a large extent customary law prevailed'.[48] Again, the issue of standards comes into focus, with the Tribunal arguing that the introduction of Crown authority was conducted in a piecemeal fashion rather than imposed in all areas simultaneously. In *Mohaka*, too, the Tribunal acknowledged that different standards co-existed, noting that 'since plural legal systems, with native

customary law operating alongside English law, were or had been common in most British colonies, such as North America before the revolution and in Britain's tropical African and Asian colonies'.[49] But it went on to describe how British colonists in New Zealand were determined on destroying communal tenure and aimed to assimilate Maori into one common legal code.[50]

In *Kaipara*, the question of standards again emerged as a major issue. In this report the Tribunal observed how both the claimants and the Crown agreed that since 1840 most of the Ngati Whatua land in the southern Kaipara region had been alienated and that Ngati Whatua had suffered poverty and deprivation as a result. The differences between the claimants and the Crown lay in their respective interpretations of the historical evidence. As the *Kaipara* report details: 'In concluding submissions for the Crown, counsel referred to "the complexity of the task of reconstructing history and of judging values and actions of the past". Crown counsel rejected as "unsustainable" the claimants' views of Kaipara Maori history as an "account of 'consistent betrayal' by the Crown" which breached the Treaty and of "the Native Land Court regime" as "the equivalent of land confiscation".'[51] Consequently, the Crown emphasized the role of human contingency and actions taken according to individual standards, concluding that '[a]ny conclusions by the tribunal about the Crown's failure to actively protect Maori interests must bear in mind historical context which has been elaborated in the evidence before it, and needs to be tempered by an assessment of the actions and choices made by Kaipara Maori'.[52] In reply, claimant counsel criticized Crown counsel's emphasis on historical context and the failure to have any regard for 'the cultural imperatives which underlay Ngati Whatua's actions throughout the period covered by the claim'.[53] The Tribunal itself criticized the lack of emphasis placed on the broader historical context.[54]

All of this edges back towards the question: should historians judge the past? Critical opinion on this topic shifted significantly over the latter half of the twentieth century. It was only 50 years ago that Herbert Butterfield railed against historians, and by implication their historical narratives, declaring judgments on the past. Butterfield argued that the making of moral judgments on human actions (and inactions) was 'alien' to serious historical inquiry. History, according to Butterfield, ought to 'describe' and 'stand impartial', and carried a strong sense of moral righteousness; in his now outdated opinion, the value of history was that it could 'show us that all our judgments are merely relative to time and circumstance'.[55]

It might seem obvious that the writing of history necessarily involves engaging with absolutes and so the making of moral judgments is unavoidable. Yet most historians do not discuss this aspect of their professional work overtly. If it is true that objectivity is dead, then there is no complete escape from moral and value judgments, since we live in a world saturated with moral and value judgments. Arthur Marwick made a similar observation in *The Nature of History*, but he warned that moral and value judgments should be used only cautiously and in moderation.[56] More recently, John Lewis Gaddis has argued that since we are 'moral animals' and that no society operates without some sense of what is right and what is wrong, then historians cannot avoid thinking

in moral and value-laden terms.[57] The question for Gaddis thus becomes how to do this in a responsible manner, to which he concludes that we should 'accept the historian's engagement with the morality of his or her time, but distinguish that engagement explicitly from the morality of the individual, or the age, the historian is writing about',[58] a conclusion which seems eminently sensible. Richard J. Evans is resolute on this point, arguing that '[h]istorians are simply not trained to make moral judgments or findings of guilt and innocence; they have no expertise in these things'.[59] Evans makes the point in his *In Defense of History*, where he argues that history can still achieve its purpose without 'the transient moral vocabulary of the society the historian is living in'.[60] He suggests that if moral judgments are indeed unavoidable, then they are 'best articulated historically',[61] which seems to be a gentle plea for letting the facts (rather dubiously) speak for themselves. Yet more recently, James Cracraft has pointed out that to admit that moral values inform historical writing 'would be to deny their fully academic (read, scientific) character and thereby inflict on our work . . . a proportional loss of authority, credibility, and respectability'.[62] Cracraft argues that such an admission would be to admit that 'history's dominant scientific paradigm, dominant since well before Butterfield's time, has shifted'.[63] In Cracraft's terms, objectivity is simply 'a means of distinguishing between the historian's own self and the subject/s of his or her research, a method of recognizing that just as all time is not now and all place is not here, so all humanity is not me'.[64] Hence, moral judgments (and the values behind them) remain implicit in historical inquiry.

Historians usually steer away from making explicit moral judgments in their work. What is more, those historians who hold an overly structural or strongly deterministic view of the past do not consider it appropriate to blame individuals for actions that they could not prevent — or those actions that we (in the present) cannot fully understand because we are not privy (and never can be) to all the historical conditions and contextualising forces. Other historians argue that because earlier societies had different moral codes from our own it seems patently unfair, if not 'naturally' unjust, to hold them to contemporary standards. Others simply remain ambivalent.

McAloon's call to distinguish between the moralities (presumed to be variable, but distinct) of *then*, and those of *now*, and to objectify the former and repress the latter, is therefore timely. However, this approach assumes that an evidentiary basis existed from which we can 'read' the morality of the past, as well as recognition of moral relativism; in other words, the idea that today's morality cannot be the same as in the past, and that the morality of 'ours' is not and cannot be the same as 'theirs'. This may not be (or have been) the case. It is more likely that most historians are not moral relativists; certainly the Tribunal as an historical author does not exhibit such tendencies, a point underscored by the legal strictures placed upon its view of history. It is true that while there was 'one' historical past, in a collective sense, there were also many 'pasts' or interpretations of that collective entity. Certainly, any examination of historical records — published and unpublished — would reveal variations in the 'moral climate'. So as well as differing from the present, they would differ from their contemporaries. As Richard Vann has reminded us: 'In any

complex culture there is no reason to think there was much more consensus about what moral values were and how to apply them than there is in our own. Even so, some deeds of historical agents, when judged by the standards of the time, were blameworthy (or praiseworthy) and historians need not fear anachronism in evaluating them as such.'[65] Vann also argues (after Isaiah Berlin) that events themselves are charged with a sort of value judgment by those who participated in them; so much so that later descriptions of those events necessarily engage with these values.[66] He argues that historians cannot avoid making some moral evaluations. If historians do not do this, he asks, then who will? The great challenge facing historians is to resolve the tensions between our ideas of historicism (that the past really *is* a foreign country), and moral judgments and evaluations that exist and are seen to be the products of the twenty-first century. If we argue that we ought to always suspend judgment because further information might appear, or that we do not know enough to make moral judgments, then this would not only be suffocating, but paralysing. All judgments are provisional in the sense that every interpretation runs the risk of being overturned by successive inquirers with access to new information, and to later generations, who will undoubtedly know more than we will about the past (and our present for that matter). Our judgments of the past must therefore be made on the (implicit) understanding that they may be challenged or undermined at some point in the future.

As noted above, standards and morals are separate entities. We may define morality, in its broadest sense, as the normative code of behaviour of any society ('morals' being quite different from 'mores'). To qualify as morality, a code must have some kind of rationale; according to the philosopher Samuel Fleischacker, it 'must aim at some good and make some attempt at explaining how, and why, it attempts to realize that good; otherwise, we call it an etiquette, a custom, a game, or a folkway'.[67] Fleischacker's basic definition is that all moral codes are not directed at harming other human beings as members of a society. Other scholars have identified a 'universal moral code' which, they argue, denotes the minimum requirements for what constitutes 'morality'.[68] The idea that a universal code of moral values has always existed (indeed is as old as human history itself) is a powerful one. However, this idea has come under attack by sceptics. There is an equally long tradition among practitioners of all disciplines (and from across cultures), of ideas of mutual care and reciprocity that appear to be indispensable to and part of human existence.[69] This is not to suggest that there is one universal moral code, or appreciation of morality, but simply to point out that there exists a thing called 'morality' to which historians must be attentive.

So what, it might be asked, is the alternative? We might, for instance, adopt Robert Berkhofer's solution. Berkhofer's plea that historians be tirelessly self-reflexive in their work and sensitive not only to the substance and method of their work, but to the rhetoric, genre, politics and ethics is hugely admirable.[70] Certainly his call to highlight the ethical dimension of historical narratives and for historians to clearly position their own voice is long overdue. However, taken to the extreme, a continuous interrogation of the self (the historian), the reader and the text might seem gratuitous and even indulgent. Self-awareness

and attention to subjectivity are vital, but too much emphasis on self-critique may be stifling.

On the other hand, Richard Vann argues for what he calls 'strong evaluations'; he maintains that historians ought to be moral commentators and they should assert this role — but at the same time, they should be aware that their judgments are always merely provisional.[71] As Vann points out, 'all morals are values, to someone at least, but not all values are morals', and he notes that the term 'value judgment' carries less baggage and has fewer negative connotations than 'moral judgment'.[72] But there is a difference between a factual judgment and a value judgment. Facts exists, certain things *did* happen in the past, yet these 'happenings' do not have historical meaning unless they are shaped by values; in other words, to present a history of facts, devoid of values, would be of little critical value and would be, in the final analysis, extremely dull.

An enormous amount of historical material on the history of Maori–Crown relationships has been revealed and created by Treaty historians and others working in the modern Treaty claims and settlement process; research that, if unpublished, will remain buried in evidence presented before the Tribunal and stacked on shelves that will never see the light of day.[73] Although this research is conducted with particular questions in mind, and is infused by the 'agenda' of the Treaty of Waitangi and its principles, this is the field where arguably some of the most exciting and dynamic research in New Zealand historical scholarship is currently being undertaken. It is worth pointing out here, too, that a published Tribunal report is merely a distillation of a vast amount of research, combined with the Tribunal's interpretation of this evidence in relation to the issues of the claim. Tribunal history thus warrants further investigation and serious scholarly inquiry. After all, the operations of the Tribunal and its rich published texts offer the historian a microcosm of how and why history 'works' in a modern liberal democracy. The 'big questions' with which all historians grapple, including objectivity, subjectivity, perspective, advocacy, bias and presentism are all to be found, in varying degrees, in the Tribunal's work. In addition to their breadth and depth and their long-term historical value, the published Tribunal reports are important in the present as they are connected (even indirectly) with effecting Treaty settlements. They are therefore immensely powerful texts — regardless of whether the history contained in the reports is entirely 'true' or 'accurate'.

At the beginning of this article, reference was made to the 'healthy process' of historical revisionism from which no one is entirely immune or exempt: certainly the present debate over Tribunal history bears this out. It was also noted that all historical interpretations and conclusions must be provisional; for later analyses will inevitably highlight new (and often improved) perspectives and interpretations. This is not to suggest that history is or should still be seen as an old-fashioned progressive chronology, or in Dipesh Chakrabarty's terms a 'transition narrative',[74] but simply to acknowledge the role of subjectivity in history-writing and the powerful role of the 'historical present'. While there were dominant and commonly held ideas and standards in the nineteenth century, there were also alternative 'standards' whose closer definition relied

principally upon context, circumstance and local conditions. The 'standards' of the past are therefore multiple. Indeed, this is no different from our own present, where there are numerous standards applied to the past. Many people believe, for instance, that colonization was a process confined to the nineteenth century, and that, by extension, we should forget the past and move ahead as 'one people'. There are others who are deeply unsettled and feel threatened by any revision of New Zealand history, having been raised on the comfortable myth that New Zealand can still boast 'the best race relations in the world'. On the contrary, the work of the Waitangi Tribunal, along with other agencies in the Treaty claims process, reminds us that colonization continues in many forms and guises.[75] We therefore need to adopt an ongoing vigil over policies and practices that marginalize on the basis of race or any other difference. Given these qualifications, the present historical moment, as with this current discussion, will be best remembered as a sincere but not entirely successful attempt to reconcile ourselves to a difficult and painful history.

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NOTES

1 Giselle Byrnes, *The Waitangi Tribunal and New Zealand History*, Melbourne, 2004. I am grateful to the editors of the *New Zealand Journal of History* for the opportunity to respond to McAloon's criticisms.

2 Waitangi Tribunal, *Rekohu: A Report on Moriori and Ngati Mutunga Claims in the Chatham Islands*, WAI 64, Wellington, 2001; Waitangi Tribunal, *Te Whanganui a Tara me ona takiwa: Report on the Wellington District*, WAI 145, Wellington, 2003; Waitangi Tribunal, *The Mohaka ki Ahuriri Report*, WAI 201, Wellington, 2004; Waitangi Tribunal, *Te Raupatu o Tauranga Moana: Report on the Tauranga Confiscation Claims*, WAI 215, Wellington, 2004; Waitangi Tribunal, *The Kaipara Report*, WAI 674, Wellington, 2006.

3 Peter Novick, *That Noble Dream: The 'Objectivity' Profession and the American Historical Profession*, Cambridge, 1988.

4 Keith Sinclair, 'History in New Zealand', in John A. Moses, ed., *Historical Disciplines and Culture in Australasia: An Assessment*, Queensland, 1979, p.28.

5 C. Behan McCullagh, 'What Do Historians Argue About?', *History and Theory*, 43, 1 (2004), p.19.

6 Chris Lenz, 'Historical Knowledge and Historical Reality: A Plea for "Internal Realism"', in Brian Fay, Philip Pomper and Richard T. Vann, eds, *History and Theory: Contemporary Readings*, Malden, Mass., 1998, p.350. See also Robert Berkhofer, Jnr, *Beyond the Great Story: History as Text and Discourse*, Cambridge, Mass., 1995, and Keith Jenkins, ed., *The Postmodern History Reader*, London, 1997.

7 Berkhofer, *Beyond the Great Story,* p.53.

8 Hayden White, 'The Public Relevance of Historical Studies: A Reply to Dirk Moses', *History and Theory*, 44, 3 (2005), p.334.

9 ibid.

10 ibid., p.335. White goes on to identify what he calls 'the bifurcation of historical consciousness', where 'on the one hand, there is a distinct loss of interest among ordinary cultivated persons in the work of professional historians, and, on the other, we have a simultaneous resurgence of interest in "practical" historiography: witness literature, postmodernist historical novels, historical biography, the History Channel, docudramas, historical metafictions, the heritage industry, the "collective memory" scam, and so on'.

11 Waitangi Tribunal, *Rekohu*, p.71.

12 ibid., p.285.

13 ibid., p.286.

14 Waitangi Tribunal, *Te Whanganui a Tara*, p.489. In this report, the Tribunal commented: 'We consider that it would be inappropriate for us to suggest that an attempt should be made retrospectively to deem Ngati Toa to have been beneficiaries of the Wellington tenths. The Tribunal considers that the appropriate remedy is for the Crown to compensate Ngati Toa for their exclusion from the beneficial ownership of the tenths reserves in the Port Nicholson block.' ibid., p.490.

15 Waitangi Tribunal, *Tauranga*, p.399. In his dissenting opinion in *Tauranga*, Tribunal member Michael Bassett identified presentism in the Tribunal's work, arguing that the majority opinion was flawed 'from a misreading of the initial purpose of the Treaty and from a misguided attempt to visit on the past many mid-twentieth-century ideas about governance. The small three-clause document that constitutes the Treaty was not intended by the British Crown as requiring the erection of an all-powerful, regulatory, State apparatus that would govern every detail of Maori–Pakeha interaction.' ibid., p.416. Bassett's opinions may not have been shared by other Waitangi Tribunal members, yet his comments on the Tauranga findings are particularly strong and unnecessarily vitriolic. 'Visiting the nineteenth century with 1960s and 1970s notions of the State's all-encompassing social responsibilities, and with some people's inflating [sic] views about the Crown's Treaty obligations, makes for bad history and indicated poor historical judgment.' ibid., p.417.

16 ibid., p.401.

17 ibid., p.402.

18 ibid., p.409.

19 ibid., p.399. Though the dissenting member of the Tauranga Tribunal, Michael Bassett, argued that by their own actions, Tauranga Maori put their homes and lives at risk; that is, they were not passive victims of Crown aggression, but courted danger and thus risked retribution when they engaged in the Waikato war. ibid., pp.414–15.

20 ibid., p.642.
21 ibid., p.679.
22 ibid., p.679. This Tribunal went on: 'Whether there was a more specific link between Maori depopulation and the methods of land alienation, including the operations of the Native Land Court, is more problematic.' ibid., p.680.
23 ibid., p.701.
24 Waitangi Tribunal, *Kaipara,* p.316. Dissenting Tribunal member Michael Bassett alleged presentism in the Tribunal's findings in the Kaipara claim, claiming: 'Legislating history will always be a murky business.' See 'Minority opinion', ibid., p.361.
25 ibid., p.331. See also ibid., pp.342, 343.
26 Richard J. Evans, 'History, Memory, and the Law: The Historian as Expert Witness', in *History and Theory*, 41, 3 (2002), pp.326–45; Henry Rousso, *The Haunting Past: History, Memory, and Justice in Contemporary France*, trans. Ralph Schoolcraft, Philadelphia, 2002.
27 Waitangi Tribunal, *Tauranga*, p.51.
28 ibid., p.55.
29 ibid., p.56.
30 ibid., pp.243, 251, 256, 257.
31 ibid., p.367.
32 Waitangi Tribunal, *Kaipara*, p.317. The Kaipara tribunal continued: 'Ngati Whatua participated enthusiastically in the emerging colonial economy following the establishment of Auckland as the capital in 1840, and they willingly sold land to the Crown to encourage Pakeha settlement in southern Kaipara.' ibid., p.320.
33 ibid., p.333.
34 James Belich's groundbreaking study of the New Zealand wars and his analysis of 'one-sided' evidence is one such example in this particular field, and there are others, such as the work of Alan Ward, Richard Hill and Michael Belgrave. See James Belich, *The New Zealand Wars and the Victorian Interpretation of Racial Conflict*, Auckland, 1986; Alan Ward, *A Show of Justice: Racial 'Amalgamation' in Nineteenth Century New Zealand,* second edition, Auckland, 1995; Richard Hill, *State Authority, Indigenous Autonomy: Maori-Crown Relations in New Zealand/Aotearoa*, Wellington, 2004; Michael Belgrave, *Historical Frictions: Maori Claims and Reinvented Histories*, Auckland, 2005.
35 Cited in James Belich, 'Colonization and History in New Zealand', in Robin W. Winks, ed., *The Oxford History of the British Empire, Volume V, Historiography*, Oxford, 1999, p.187. Thanks to Caroline Daley for bringing this article to my attention.
36 Keith Sinclair, 'History in New Zealand', in John A. Moses, ed., *Historical Disciplines and Culture in Australasia: An Assessment*, Queensland, 1979, p.233.
37 Sinclair, 'History in New Zealand', p.233. Although curiously, this comment appears to contradict Sinclair's earlier statements (in the same article) regarding the merits of 'practical history'.
38 Belich, 'Colonization and History in New Zealand', p.192.
39 Waitangi Tribunal, *Rekohu*, p.6.
40 ibid., p.7.
41 ibid., p.8.
42 ibid., p.12.
43 ibid., p.13.
44 ibid., p.13.
45 ibid., p.172.
46 ibid., p.173.
47 Waitangi Tribunal, *Te Whanganui a Tar*a, p.480.
48 Waitangi Tribunal, *Tauranga*, p.62.
49 Waitangi Tribunal, *Mohaka*, p.24.
50 ibid.
51 Waitangi Tribunal, *Kaipara*, pp.313–14.
52 ibid.
53 Cited, ibid., pp.313–14.
54 ibid., pp.414–15.
55 Herbert Butterfield, *History and Human Relations*, London, 1951; Herbert Butterfield, *The Whig Interpretation of History*, New York, first published 1931, this edition 1965.

56 Arthur Marwick, *The Nature of History*, 2nd ed., London, 1981.
57 John Lewis Gaddis, *The Landscape of History: How Historians Map the Past*, New York, 2002, pp.112–23.
58 ibid., p.128.
59 Richard J. Evans, 'History, Memory and the Law', p.330.
60 Richard J. Evans, *In Defense of History*, New York, 2000, pp.43, 45.
61 ibid., pp.43, 45.
62 James Cracraft, 'Implicit Morality', *History and Theory*, 43, 4 (2004), p.38.
63 ibid., p.38.
64 ibid., p.39.
65 Richard T. Vann, 'Historians and Moral Evaluations', *History and Theory*, 43, 4 (2004), p.25.
66 Vann points out that this 'automatic' or 'semi-conscious' evaluation is the antithesis of determinism and inevitability. ibid., p.11.
67 Samuel Fleischacker, *The Ethics of Culture*, Ithaca, New York, 1994, pp.ix–x, 17–20.
68 See, for instance, Jonathan Glover, *Humanity: A Moral History of the Twentieth Century*, New Haven, 2000.
69 See especially Sissela Bok, *Common Values*, Columbia, MO, 1995.
70 Berkhofer, *Beyond the Great Story,* pp.ix, 243, 248–49.
71 Vann, 'Historians and Moral Evaluations', pp.3–30.
72 ibid., p.4.
73 An excellent summary can be found in Michael Belgrave's *Historical Frictions*.
74 See further Dipesh Chakrabarty, *Provincializing Europe: Postcolonial Thought and Historical Difference*, Princeton, 2000.
75 This argument is made in Peter Gibbons, 'Cultural Colonization and National Identity', *New Zealand Journal of History*, 36, 1 (2002), pp.5–15.