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Burdens of Belonging:

INDIGENEITY AND THE RE-FOUNDING OF AOTEAROA NEW ZEALAND

IN THE LATE SUMMER OF 1994 Māori along the Whanganui River and from elsewhere gathered for the first hearing of a claim they had brought to the Waitangi Tribunal. The claim sought recognition of the unextinguished 'customary and common law rights and title' of Whanganui Māori to the lands and waters of and alongside the river.[1] The claim, which was lodged with the Tribunal in 1990, was not the first time local iwi had come together to seek recognition of their rights to the river — one of the longest in New Zealand — and its environs, and nor was it the last.[2] For the Māori claimants, the Waitangi Tribunal hearings, which were held over four non-consecutive weeks in 1994 at local marae, a motor inn and a town hall, were only the most recent instance of a long legal battle for their rights.

The Waitangi Tribunal is a commission of inquiry constituted in 1975 to hear Māori claims of breach to the Treaty of Waitangi and develop Treaty 'principles' by which the rights and responsibilities of Māori and the Crown can be assessed. In 1985, the Tribunal had finally been awarded retrospective jurisdiction to inquire into claims going back to the Treaty's signing in 1840, as well as an increased budget for research and more tribunal members. Only in the early 1990s was the Tribunal beginning in earnest to inquire into 'historical' claims. The claim to the Whanganui River presented the Tribunal with new issues and the opportunity to rethink extant native or 'customary' title definitions, particularly concerning waterways.

In the report that it issued in 1999 containing its findings and recommendations, the Tribunal addresses an audience much broader than the claimants and legal practitioners: it invokes the nation itself. In recommending that the Whanganui iwi's authority over the river should be recognized, the Tribunal explains that what really matters is not 'possessions' but, 'how we relate to, and respect the mana of, each other and the environment'. Only then, the report continues, will New Zealand society 'understand the contribution that Māori thinking can make to a better society, and . . . develop a philosophy of law that is more in tune with the Pacific way'.[3]

In this article, I examine how it is that a specific and local claim to a river by Whanganui Māori came to have such significance, in the Tribunal's account, for the nation-at-large. The significance, as the foregoing quote attests, is not financial or economic but rather philosophical, moral and political: by coming to understand the real import of this claim, the Tribunal report suggests, New Zealand society will be re-founded in terms of indigeneity. These terms, as the report puts it, are those of respect for each other's mana (the moral), appreciation for Māori thinking (the philosophical) and a re-orientation of national cultural practice to the 'Pacific way' (the political).[4]

The argument that the Tribunal puts forth might be considered postcolonial; although it is a kind of postcoloniality specific to settler states where indigenous people do not achieve sovereign independence and the settlers do not go 'home'. There is no event of decolonization. In the Tribunal's report, the recognition of distinct Māori authority over the river does not disclose formally distinct sovereignty for the tribes who live along its banks; rather, it rephrases Māori thinking as a 'contribution' to state formation and, as we shall see, the making of a 'partnership' between Māori and the Crown. It may well be necessary, politically and methodologically, therefore, to recognize that there is an ongoing process of colonization at work in the territorial space of New Zealand, as Peter Gibbons and the editors of this special issue argue.[5] The uncertainty — is such re-imagining postcolonial, or is it just another instance of cultural colonization? — draws attention to the peculiar predicament of contemporary settler states such as New Zealand. What is clear is that what I call re-founding is not a political condition that is oriented to a horizon of sovereign autonomy for Māori. Rather, it is a condition in which political and affective expressions of belonging to a multicultural society are most at issue.

I make two arguments in examining the proposition that the Tribunal report uses the Whanganui inquiry to imagine the re-founding of Aoteaora New Zealand. The first is historical. I demonstrate how important the shift in legal discourse concerning the definition of native title is, from the Native Land Court's 1938 description of native title as 'state-like' rights, to the Tribunal's reworking of the doctrine as expressing the feelings and deep connection of belonging to a local place. The second argument is more critical. I ask what the burden of this new imaginary — the re-founding of the settler state in terms of indigeneity — is on Māori claimants themselves. How do their submissions and claims become the basis for imagining a re-founding? Do expectations, in this instance, that their expressions of belonging to the river will also frame national belonging, affect what it is they are to say?

The Waitangi Tribunal and the Whanganui River Inquiry

Although the Whanganui River claim presented the Waitangi Tribunal with new issues to consider, and a platform for arguing for the re-founding of Aotearoa New Zealand, the report issued in 1999 concurs with the claimants' submissions that, for them, the demand for the recognition of their rights was old. Moreover, the longevity of the claim and its repeated assertions in a number of legal and political forums was evidence for the Tribunal of the depth of Māori attachment to the river. Even more interestingly, that depth of attachment was also evidence, for the Tribunal and for the claimant lawyers, of the connection between the river claim of the Whanganui Māori and the broader history of New Zealand. As claimant counsel's opening submissions in 1994 explained, the claim was 'almost as old as the history of New Zealand. The petitions to Government, protests, and litigation from the end of last century through the barren middle years of the twentieth century and into the present day indicated the bonds between the people of the Whanganui and their River and their grief.'[6]

The claim of Te Iwi o Whanganui (the Whanganui tribe) to the Whanganui River was not the first tribal claim based on historical wrongs that the Tribunal had heard, nor was it the first claim to a river. It was, however, particularly complex, legally, culturally and politically. By the time the hearings about the river finally began, the Tribunal's increased operating budget and historical research capacity could actually be put to the test.

Asserting that the tribe's unextinguished 'customary and common law rights and title to the lands and waters, fisheries and other taonga of the Whanganui River' had been repeatedly 'denied', the statement of claim lodged with the Tribunal demanded restoration of the tribe's 'tino rangatiratanga' over the river and 'full customary entitlements' as well as various forms of compensation and 'the restoration of the River to its full strength'.[7] The claim to the Tribunal over the entirety of the river presented a somewhat different proposition from earlier legal actions when Whanganui leaders had sought recognition of their customary rights to the river*bed* in a legal language more usually used for customary land claims, as I discuss shortly. In the claim to the Waitangi Tribunal, the tribe argued that the river was an indivisible whole, not just the sum of its constituent parts.

Indeed, in a cultural argument that was particularly influential on the Tribunal, the claimants explained that the wholeness of the river was greater than its parts. As one of the claimants, Atawhai (Archie) Taiaroa, stated in his submission to the Waitangi Tribunal, 'What we are talking about here is the river in its wholeness, Te Mana, Te Mauri, Te Ihi, Te Tapu, Te Wehi. Its waters, its fish, its bed, its water life, its tributaries and *the tino rangatiratanga of the iwi of Whanganui over the river held by them since first occupation, never ever relinquished and repeatedly asserted*.'[8] The river, as Taiaroa and others demonstrated, was a life-giving force, and it was also sacred to Whanganui Māori. It was, in fact, a 'tupuna awa', or ancestral river.

The Whanganui River is also of substantial economic and touristic interest to the New Zealand state and public. For much of the twentieth century, the river was considered one of the most scenic in the country. Then, in 1971, water from the river began to be diverted to the Tongariro power project, a hydroelectric scheme in which canals, aqueducts and dams take waters from rivers and lakes in the central North Island to two major power stations.[9] Although the diversion is subject to a 'flow management plan', in the 1980s the Whanganui tribe, along with a number of environmental organizations and the Department of Conservation, began to raise concerns about the deleterious effects of reduced water levels on aquatic life, birds and flora along the river's banks. The tribe demanded that it be formally consulted about the flow management plan, although to little avail. It also protested details of a proposal to turn much of the region into a national park that would include a considerable length of the river. In 1986 the recently established Whanganui River Reserves Trust demanded co-management rights over the park and $4 million in compensation. Neither of these demands were met in full when, at the end of that year, the Labour government gazetted the national park. (In a later amendment to legislation, the park board was to have 'regard to the spiritual, historical, and cultural significance' of the river to iwi and to seek advice from the reconstituted Whanganui River Māori Trust Board on matters pertaining to these issues.)[10]

Of great concern to the claimants was that the sacredness of the river was being degraded by resource extraction and development. Although the spiritual interest of Whanganui Māori in the river was acknowledged in such legislation, the language of sacredness and spirituality disturbed Crown lawyers and historians working for the Crown Law Office. Such language, they suggested, dehistoricized the political efforts of Whanganui Māori. In particular, they noted that a claim to a special spiritual relationship to the river had not been a feature of the earlier legal cases and they questioned, therefore, how 'long' the claim was, since a variety of legal rights over the river had been claimed at different historical moments. Crown lawyers also argued that New Zealand law could not recognize a spiritual relationship as a property right.[11] The Tribunal, however, asserted that it would pay attention, as a matter of legal principle, to the ways in which the claimants themselves expressed their attachment to the river. 'To get inside the Māori world,' the report explains, 'one must set aside preconceived notions of State-like territories and concepts of private ownership or rights.'[12] By so doing, the Tribunal sought to change not just legal definitions but the *way* that law was being framed and what law might disclose normatively. In order to understand why the Tribunal report is so concerned to 'set aside' notions of private property and 'state-like' rights, we need to examine the longer case history relating to the Whanganui River.

State-like rights

Whanganui claimants to the Tribunal argued that their claim went back over a century. They described the determined petitioning efforts on the part of several leaders complaining of the loss of fishing weirs, the use of the river by a steamer company, the extraction of gravel and other issues which began in 1873. The legal case history, however, starts in 1938 when members of the tribe sought recognition of their rights over the river in the Native Land Court. A series of legal cases in higher courts and a commission of inquiry ensued, continuing until 1962. In that year, the Court of Appeal found against the claim of Whanganui Māori. In particular, it argued that Māori tribes' customary or native title rights to waterways could not be recognized as such since adjoining lands had been sold.[13]

The 1938 case was initiated by Titi Tihu, grandson of Te Kere, the prophet, tohunga and key supporter of the King movement. Tihu himself was recognized as holding special powers in relation to the river. He pursued the claim for rights to the river through its winding passage in higher courts until the Court of Appeal's 1962 decision following which, with his nephew Hikaia Amohia, he sought recognition of the tribe's river rights through political means. Neither of these claim leaders lived to see the Waitangi Tribunal visit the river: Tihu died in 1988 when he was probably over 100 years old; Amohia died in 1992.

The 1938 claim to the Native Land Court sought recognition of the tribe's ownership of the river*bed*, 'from the tidal limit at Raorikia to its junction with the Whakapapa River', rather than the whole of the river.[14] The claim to the riverbed followed English common law practice in which the bed is separated from the waters; but the claimants further argued that they held a unique customary interest in the bed, based on take tupuna (ancestral right). Customary rights, however,

had more commonly been applied to land rather than to waterways, and so the court, which actually upheld the claimants' case, parsed the river claim in terms of customary territorial rights.

According to the definition of unextinguished customary title, the court explained, 'every foot of land in New Zealand, at the time of the Treaty of Waitangi, apart from such as may have been alienated, belonged to some Māori tribe or hapu. The boundaries of the land of each tribe or hapu were well defined and the members of that tribe or hapu had the exclusive right in common to everything within those boundaries including rivers and lakes.'[15] Rivers and lakes were treated by the Native Land Court as geographical features occurring within 'well defined' territorial (i.e. landed) boundaries. A claim to a riverbed was, therefore, quite appropriate in a legal context in which a river was considered by the court as land that happened to have water running over it.

Treating the claim to customary interest in the river in terms of territorial right, moreover, had some distinct consequences for how political authority was imagined. The court's definition of customary title likened tribal territory to that of a mini-state: measurable and well-defined boundaries that marked out a tribe's 'exclusive right in common'. That authority had been misrecognized as a public resource and thoroughfare, the court argued, by the Crown and European inhabitants of the region who had, 'indiscriminately . . . destroyed or done away with' the eel weirs and fishing traps of the 'natives' in extracting gravel from the river and using it for steamship travel. Yet the tribe's customary right to the river had never been explicitly extinguished, the court asserted, and, in fact, may have been guaranteed by the Treaty of Waitangi.[16]

Although the court's decision was somewhat unexpected, and potentially even quite radical, its recognition of extant customary title was limited given that the vast majority of Māori lands had been alienated by 1938. What little customary 'land' was left might, in fact, have only been that underneath rivers and lakes. Any political consequences of recognizing tribal authority in state-like terms were also limited. In the longer narrative accompanying the judicial decision, the court emphasized that Māori tribes now posed little real political threat to the settler state. Remaining tribal sovereignty was a historical artefact and not a substantive challenge to the Crown's right to rule. In language coloured by not a little nostalgia for 'the Māori-as-he-was', the court explained that these 'unfortunate' people had thus far been unable to protect their own rights 'owing to their want of unity and the absence of a powerful and influential leader'. The court had therefore stepped in as protector of the rights of the remaining Māori inhabitants of the river valley.[17]

The commensuration of Māori customary title with that of a state undermined tribal political power. While, in an abstract sense, such authority might be *like* that of the state, in reality, the court argued, tribal entities had not been strong enough to withstand the encroaching settler nation-state. In the court's assessment, the Whanganui tribe's incapacity to defend its rights in a state-like manner only further demonstrated that the court needed to adopt a paternal role as protector and defender of Māori interests. The award of customary title, in this instance, might act as a check on actual state power: paternal institutions such as the Native Land Court could recognize customary title in order to protect the remnants of tribal authority.

In the later cases, judges further narrowed the scope of Māori tribes' power to practical and material considerations. This had distinct implications for *how* claimants could demonstrate their rights. According to Judge Pritchard of the Māori Appellate Court, who reheard evidentiary issues in 1958, the ancestral traditions that witnesses had presented to the court were merely ambient 'background' in which one might come to understand 'the general and cosmogonic [sic] conceptions which the ancient Māori had towards his property'. The court, he argued, viewed 'the claims made to it for inclusion in a title to be tied more to the foundations of practical realism rather than to those of mere symbolism'.[18] Even the lawyers working for the Māori claimants emphasized the material nature of the claim to the river as a modern and customary property right, rather than one deriving from 'ancient' and 'cosmogenic' sources.

Native title as a legal expression of belonging

The doctrine of 'customary' or 'native title' defines a kind of property right peculiar to settler colonial contexts. In present-day legal theory it is often explained as a doctrine that recognizes the prior occupation and use of lands and resources by indigenous people that are now part of Crown domain or federal estate as a consequence of colonization. As the 1938 Native Land Court explained, native title rights are usually considered to be inalienable property rights that can only be transferred to, or extinguished by, the state. In order to be privately alienated such property must be transformed into freehold title (one of the main purposes behind the creation of the Native Land Court).

However, the Tribunal's finding that Whanganui Māori had title to the river in its entirety was quite different from those previous legal decisions on the river in which courts had investigated Māori interest in the river*bed*. Persuaded by the evidence and arguments of the Whanganui claimants and their lawyers, the Tribunal argued that the river was an indivisible entity that was also inextricable from Whanganui iwi as a people. The Tribunal found, in other words, that the river and local Māori belonged to each other.

The finding drew on a new emphasis in the doctrine of native title as this legal right had been redefined in New Zealand and in other settler states over the previous two decades. Notably, the doctrine now emphasizes belonging, often expressed in terms of the demonstrated 'attachment' of native title claimants to lands and resources.[19] As the Waitangi Tribunal's report on the river claim explains in respect of this kind of attachment, 'the lands of the people . . . are defined not by boundaries but by relationships. The identifiable lands of a group of Māori people are the lands of their history, the places where their tupuna are buried, all those lands that they could occupy or defend, or on which they could keep their fires alight.'[20]

Native title rights give expression, in other words, to a notion and practice of indigeneity as belonging to local place. The doctrine has been critical to further defining how authentic indigeneity can be determined. In this case, the Whanganui claimants had to, and did, make the Tribunal understand the profundity of their belonging: that, as a people, their indigenous being—past, future and present—was inextricable from the river itself. However, although the doctrine can be a potent

realization of the distinct rights of indigenous people, it has also de-legitimated some indigenous groups' claims to their indigeneity if their 'attachment' is found to be inconsistent or discontinuous, or if it has been otherwise extinguished.[21] Expressing belonging can expose the vulnerability of indigenous claimants to their recognition as indigenous by others.

The doctrine of native title, as currently recognized, has political consequences too. Considered as a burden on Crown domain, recognition of native title rights acknowledges overlapping authorities — that of the state in the name of the Crown and that of individual tribal entities. The doctrine does not demand constitutional transformation, although Aboriginal Canadians' rights have been given broad constitutional recognition.[22] But the increasing salience of the doctrine, and particularly the shift in emphasis to belonging and away from state-like, territorially-bound rights, suggests an interesting change in how political authority, particularly in New Zealand, is being conceived. The Tribunal's report on the river claim is important not only in terms of how it recognized Whanganui Māori's claim to belonging to the river but also as a document that theorizes belonging for a larger political constituency.

Moreover, the shift in the native title rubric to an emphasis on belonging has consequence for *how* claimants can evidence their claims, as well as for *what* claims can include. In the penultimate section of this article, I show how native title-as-belonging privileges the performative aspect of language. A demonstration of native title is successful when claimants' utterances actually *do* something. Indeed, to be really successful, claimants' utterances need to impress on the audience (both the immediate audience of the Tribunal or judge and a broader public, such as consumers of Tribunal reports or of television or radio programs that air the hearings) the force of the attachment being claimed, something to which Archie Taiaroa himself drew attention. What the Whanganui claimants needed to *emphasize* was that their 'repeated assertions' of authority in regards to the river actually bore the force of their belonging to it. The stronger the emphasis, the greater the likelihood they could persuade the Tribunal that they had 'never ever relinquished' their 'tino rangatiratanga'.

Ko au te awa, ko te awa ko au

Claimant witnesses in the Whanganui River inquiry expressed their belonging to the river in three, intertwined, modes: personal, ancestral and spiritual. Each of the modes was important but, just as Taiaroa and other leaders argued that the river was an indivisible entitity that was greater than the sum of its parts, it was the narrative and performative interplay between the modes that persuaded the Tribunal of the Whanganui tribe's indigenous belonging and hence of their overarching native title right to the river.

All the claimant witnesses who spoke, or made submissions, referred to the river in personal terms. Many expressions — such as that the claimants did not own the river but, rather, were owned by it — bound individual personhood to the physical entity of the river. One waiata that particularly struck Tribunal members — one of the 'Tribunal's enduring memories' as the report puts it — was a performance of this well-known proverb:[23]

E rere kau mai te awa nui nei
mai te kahui maunga ki Tangaroa
ko au te awa
ko te awa ko au

The river flows
from the mountains to the sea
I am the river
the river is me.

Whanganui people often use a version of the proverb, or at least the phrase 'ko au te awa/ko te awa ko au' in their mihi (introductions). It is a simple phrase, but one that produces meaning through its rhetorical structure to great effect: the chiasmus (inverted parallelism), where 'au' and 'awa' switch positions in each of the parallel clauses, performs syntactically the ontological meaning, that the personal subject and the river are mutually constituting though distinct parts of a whole. Chiasmus, and other kinds of parallelism, is common to many ritual languages; it is frequently used in biblical scripture in particular.[24]

The co-constitution of river and personhood, signified in the crossed structure of chiasmus, is narratively expressed in one of the foundational traditions of the Whanganui iwi, 'te taura whiri a Hine Ngakau', or the plaited rope of Hine Ngakau. Several claimants discussed the tradition which refers to the geneaological relationships and obligations between hapu along the river who trace their descent from one of three children of the eponymous tribal ancestor Atihaunui who arrived from Hawaiiki on the waka Aotea. The three children are associated with different parts of the river: Hine Ngakau at the top, Tama Upoko in the middle reaches and Tupoho at the lower end. After relating the significance of this tradition, the Tribunal report makes special note of the interdependency between the hapu and the absence of inter-group rivalry that, it opines, have made other inquiries more difficult to investigate.[25]

Relationships between hapu along the river extend outward, for example to hapu such as Ngati Rangi who are more closely associated with the mountain region but who, nonetheless, consider themselves and are recognized as belonging to the river and its people. As one Ngati Rangi elder, Matiu Mareikura, explained to the Tribunal in the first week of the 1994 hearings, the maintenance of relationships between the various hapu is a matter of health and well-being for all. 'It is ultimately important to have those inter-hapu, inter-whanau, inter-tribal links and relationships. They are important for our well-being because it's not good for Ngati Rangi to be okay and Ngati Tupoho not to be. It's no good for Hinengakau to be okay when Tamaupoko is not okay. It's important that we all know this. We need one another for strength, we need one another to be able to hold ourselves together as a people, as a tribe. Without that, we become individuals.'[26]

Mareikura layers parallel structures to make his point. Three of the sentences begin with a version of the construction, 'It is important'; two clauses are introduced by 'it's not good'; and the penultimate sentence consists of two clauses that begin 'we need one another'. The repetition adds emphasis and signifies political and affective structures of relation between different groups. Another set of relationships is also, if less emphatically, marked in this passage. Like many

speakers of New Zealand English, Mareikura mixes English and Māori words, even producing new compounds ('inter-hapu, inter-whanau') that demonstrate quite clearly the inter-dependency between the two languages. Mareikura, however, marks the limits of interdependency between Māori and Pākehā, concluding the paragraph by reminding his audience of a long history of struggle and re-asserting the need for tribal unity against an oppressive force: 'That wasn't what the old people wanted us to do. They wanted us always first to hold together for "divided we fall, and, united we stand"'.

Mareikura's submission is also notable for the way he weaves the life of the river and the life of the people together in chains of cause and effect. Not only is the river a place of belonging, but it is forcefully represented as an ancestor itself, a 'tupuna awa' as I mentioned above. Likening the river to an umbilical cord, Mareikura argues that the illness of individual Whanganui Māori, and the tribe as a whole, is in direct relationship to the health of the river. He blames the pollution of the river, as well as the inability of Māori to secure loans for farming earlier in the century, on the depletion of Māori population along the river and the migration of young people to towns and cities.[27]

The ancestral bond between the river and its people is frequently expressed as sacred and the obligations that the bond entail as spiritual. As such, the bond and its obligations are beyond the grasp of ordinary language. In English-language submissions, such as that of Taiaroa's that I quoted above, Māori terms are usually used to denote the spirituality of the river marking a special conceptual, if not in these moments syntactical, authority of Māori language. The sacred traditions and practices of belonging to the river, known as the maramatanga, are esoteric, and the claimants and Trust Board were careful to maintain the secrecy of this knowledge.[28] Presentations to the Tribunal hearing that concerned the maramatanga were kept off the public record; and the nature of this knowledge is, according the Trust Board's website, not up for negotiation or comment in the settlement of the claim that is, still, in process with the government's Office of Treaty Settlements.[29]

The burdens of belonging

If Whanganui Māori claimants demonstrated to the Waitangi Tribunal that they and their river were bound together, they also showed — however inadvertently — that they belonged to that larger imagined community, the nation. The doubling of expressions of belonging — to local place and national community — is common to most of the claimant submissions that I have read or listened to or watched. Sometimes a third constituency is claimed: a global or transnational network of indigenous people. And sometimes a national audience is explicitly invoked in a way that distinguishes a Māori from a non-Māori public, either in attempts to evoke sympathy for what Māori people have suffered, or to show how Māori communities have resisted encroachment on their lands and waters, or to assert the survival of a Māori will despite colonization. Those depictions of Māori agency, addressed to a non-Māori audience, are further complicated by the unwitting revelations of interdependency between Māori and non-Māori, such as that I pointed out in the syntactical organization of Matiu Mareikura's speech. If Whanganui Māori are inextricably bound to the river, and the river to them, they

are also bound to the majority non-Māori nation. To put this another way, they are always already a part of that nation.

The philosophical, moral and political context that the Waitangi Tribunal operates in, and which it has tried to mould in some key ways, is thus very different from that in which the 1938 Native Land Court worked. Whereas the court defined territorial boundaries in the aftermath of war, the Waitangi Tribunal assumes that the territorial boundaries of the nation are quite firm. In this sense, the country imagined in Waitangi Tribunal reports is, already, a settled one. It is what goes on within those exterior boundaries that is the Tribunal's main concern and, in particular, how the relationships between different groups who call Aotearoa New Zealand 'home' can best be understood and managed. The Tribunal's framing principle for inter-group management is 'partnership', a term that connotes a social order based in friendship rather than conflict. In the context of minority rights claims, such a 'partnership' cannot but be unequal, and one of the Tribunal's driving purposes is, of course, to make findings and recommendations for settlements that will provide Māori claimants with a greater equality of opportunity.

The Tribunal is also, however, deeply committed to recognizing and even encouraging cultural difference. The Tribunal values difference. And it does so for two reasons. First, it values the cultural difference of Māori claimants because such difference demonstrates that Māori have survived as a people, despite colonization. Second, it values the difference of Māori as 'first people' who are more autochthonous than the majority culture of second- or third-comers. Both of these differences, the difference of having survived and the difference of being first, are associated with being 'indigenous'.

But what is the Tribunal to do with that difference — indigeneity? Since it is a national, public institution, the Tribunal has responsibilities to the national public as well as to specific Māori claimant groups. What it has done, I have been arguing, is to posit indigenous difference as the basis for re-founding the nation. To recall the statement I quoted at the beginning of this article, the Tribunal wants the national public to 'understand the contribution that Māori thinking can make to a better society, and […] develop a philosophy of law that is more in tune with the Pacific way'. Thus, the Tribunal argues that difference can be valued not only in its own terms (or in its own place, on a marae for instance) but also in much broader, *national*, terms. Those are terms that, geographically speaking, reorient the nation away from the (post)imperial metropole and back to its regional location, a re-orientation that cannot but acknowledge the 'Pacific way' and Polynesian society, broadly understood. Yet the statement, postcolonial in intention and effect, conceals a profound irony. In the reorientation from colony to postcolony, Māori, who as claimants to *the* law of the land cannot anticipate sovereign independence from the extant nation-state, must 'contribute' to their own reparation.

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NOTES

1 Statement of claim, reprinted in Waitangi Tribunal, *The Whanganui River Report: Wai 167*, Wellington, 1999, appendix 1, p.350.

2 The Tribunal heard the claim to the river under urgency. The claim to land in the broader Whanganui region was slated for after the river hearings, and the land claims were not brought into the district inquiry process until 2007. At the time of writing, the report for the land claims has not been issued.

3 Waitangi Tribunal, p.xix.

4 For a longer, comparative discussion of 're-founding' see, Miranda Johnson, 'Struggling over the past: decolonization and the problem of history in settler societies', PhD thesis, University of Chicago, 2008.

5 Peter Gibbons, 'Cultural colonization and national identity', *New Zealand Journal of History,* 36, 1 (2002), pp.5–17.

6 'Opening Submissions of Counsel for Claimants', document A77, para 1.1, Whanganui River Inquiry Hearings, Wai 167, Waitangi Tribunal archive, Wellington.

7 'Statement of Claim, Te Iwi o Whanganui', document 1.1, Whanganui River Inquiry Hearings, Wai 167, Waitangi Tribunal archive.

8 Brief of evidence of Archie Te Atawhai Taiaroa, document B8, Wai 167, Waitangi Tribunal archive. Emphasis in original.

9 The project now provides about 4% of the country's total electricity. Genesis Energy. http://www.genesisenergy.co.nz/genesis/index.cfm?125A7AB6-16C3-D74B-FDE0-BA48691C950B (accessed 12 May 2010).

10 *National Parks Act*, S. 30 (2) (1980).

11 'Synopsis of Closing Submissions of Counsel for the Crown', document D19, paras 118–119, Whanganui River Inquiry Hearings, Wai 167, Waitangi Tribunal archive.

12 Waitangi Tribunal, p.79.

13 For a discussion of the case history see Waitangi Tribunal, ch. 7; also David Young, *Woven by Water: Histories From the Whanganui River,* Wellington, 1998.

14 Whanganui River, Investigation of Title to its Bed, Proceedings in Māori Land Court, 3 November 1938.

15 ibid.

16 ibid.

17 ibid.

18 Record of addresses, submissions and evidence: in the Māori Appellate Court, in the matter of an Order of the Court of Appeal of New Zealand, 7 December 1956, findings sent to Court of Appeal, 6 June 1958, p.2.

19 Giselle Byrnes and David Ritter, 'Antipodean Settler Societies and their Complexities: the Waitangi Process in New Zealand and Native Title and the Stolen Generations in Australia', *Journal of Commonwealth & Comparative Politics*, 46, 1, February 2008 , pp.54–78.

20 Waitangi Tribunal, p.35.

21 As was the case for the Yorta Yorta in southeastern Australia whose native title attachment was deemed by the presiding judge to have been 'washed away' by the 'tide of history'. See *The Members of the Yorta Yorta Aboriginal Community v the State of Victoria & Ors*, 1606 (1998).

22 Section 35 of the 1982 Canadian Constitution Act recognizes the 'existing aboriginal and treaty rights of the aboriginal peoples of Canada'.

23 ibid.

24 James J. Fox, '"Our Ancestors Spoke in Pairs": Rotinese views of language, dialect and code', in Richard Bauman and Joel Sherzer, eds, *Explorations in the Ethnography of Speaking*, London, 1974, pp.65–85.

25 Waitangi Tribunal, p.3.

26 Matiu Mareikura submission, document B11, Wai 167, Waitangi Tribunal archive.

27 ibid.

28 See Karen Sinclair, *Prophetic Histories: The People of the Maramatanga*, Wellington, 2002.

29 Whanganui River Māori Trust Board, http://www.wrmtb.co.nz/pages/process.html (accessed 15 May 2010).