

The Politics of History and Waikato-Tainui's Raupatu Treaty Settlement



TREATY OF WAITANGI SETTLEMENT negotiations are intended to address and resolve historical claims by Māori against the Crown, and are infused with a wide range of historical debates regarding the history of colonization in New Zealand. Waikato-Tainui was the first major iwi-level group to settle with the Crown, having signed a Heads of Agreement on 21 December 1994 and a Deed of Settlement on 22 May 1995, with legislation formalizing the agreement passing its final parliamentary reading in October 1995.¹ This article is not concerned with the financial aspects of the settlement, or which lands were specifically returned (and which lands were not returned). Instead it will focus on the formulation of the preamble to the settlement, or what today is generally referred to as a historical account.²

Waikato-Tainui's grievances related to the invasion and subsequent confiscation (and eventual return of some) of their lands in the 1860s, and the aftermath of the war. Although the negotiations stretched back to the 1860s, late-twentieth-century negotiations took place between 1989 and 1995. Early in the Waikato-Tainui negotiations it became clear that the Crown would need to go beyond purely monetary redress and even the return of land. An apology was necessary, along with a historical account of the relations between the Crown and Waikato-Tainui.³ Former Treaty Negotiations Minister Douglas Graham has commented that historical events needed to be put in 'their proper place – not forgotten but accepted.'⁴

State apologies have increased in prominence since the late twentieth century especially. Historians, political scientists, sociologists and lawyers have explored the development of apologies by the state in North America, Europe, Japan, Australia and New Zealand.⁵ While these works have explored the political and historical contexts of apologies by the state, the specific process of producing the historical account, and the players involved, have not been analysed. Some of these works have also largely focused on apologies at the state level rather than the iwi-level historical accounts and apologies that have marked the process in New Zealand.⁶ In addition, although there has been some commentary about the use of oral history within the Waitangi Tribunal process and the 'historical frictions' and alleged 'retrospective utopias' which have marked the Tribunal process, there has been little discussion regarding the formulation of history within the Treaty settlement process and its

importance to iwi such as Waikato-Tainui.⁷ Recently Maureen Hickey analysed the importance of Crown apologies in the general Treaty settlement process, but not the historical account. The emphasis which Hickey places on the importance of the apology to the settling group is reflected in the experiences of Waikato-Tainui negotiators and claimants in their own negotiations.⁸ Julie Bellingham's MA thesis analysed the development of historical accounts and apologies from a historiographical perspective, but it was limited in its use of Crown and Māori claimant sources.⁹ A particularly useful article regarding the 'politicization of the past' and the expressly political histories that emerge from Crown and Māori claimant settlement negotiations was co-authored by former Office of Treaty Settlements Historian Richard Hill, who also recently published a short paper on his role in the Waikato-Tainui negotiations.¹⁰

The confiscation of land that lay at the centre of Waikato-Tainui's historical claims was often discussed during the early phase of Waikato-Tainui's negotiations dating back to the first scoping discussion in 1989, and remained prominent throughout the negotiations with the National government in the early 1990s. By October 1994 it became fairly clear that a settlement would occur, and both the Crown and Waikato-Tainui began crafting what was referred to as a 'preamble' to the settlement agreement. The historical debates between Waikato-Tainui and the Crown addressed the different understandings of the origins of the war in the Waikato during the 1860s and the war's aftermath and effects through to the present day. These involved Waikato-Tainui chief negotiator Robert Mahuta and his legal advisors, Denese Henare and Shane Solomon, and Waikato-Tainui's historical advisor, Ann Parsonson. Officials at the Treaty of Waitangi Policy Unit/Office of Treaty Settlements (OTS),¹¹ the Crown Law Office (CLO) and Parliamentary Counsel were involved on the Crown side and were led by Minister of Treaty Negotiations Douglas Graham. Since the Waikato-Tainui preamble was the first of its kind in the Treaty settlement process, the negotiations were spread over three preambles that were produced for each phase of the negotiation: in the period before the signing of the Heads of Agreement from October to December 1994; before the signing of the Deed of Settlement in May 1995; and the first introduction of settlement legislation in July 1995. Each preamble was slightly different, but also shared some common sections and characteristics.

The historical account is meant to be as unbiased, unemotional and neutral as possible, but the process behind its formulation reveals a series of discussions occurring between the Crown and Waikato-Tainui. If Linda Smith is correct and the writing of 'history is mostly about power', then these debates reflected the assertion of Waikato-Tainui's rangatiratanga,

and the Crown's defence of its own sovereignty.¹² Through an investigation of Waikato-Tainui and Crown archives,¹³ this article reveals that Waikato-Tainui's understanding of their history with the Crown often differed from that of their Crown counterparts, and it is within these interactions that some sense of shared historical understanding was created. The compromise at the centre of the production of Waikato-Tainui preambles reflects the intensely political history that infuses the Treaty settlement process, but all histories are defined by politics – as each historian infuses his or her present context into analyses of the past.

The Preamble to the Heads of Agreement

In early October 1994, Cabinet approved a general mandate for Graham to develop a concrete offer for Waikato-Tainui negotiators. This provided the context for extended historical debates between Crown and Waikato negotiators regarding the wording of the preamble and the apology. The Crown sent Waikato-Tainui negotiators a draft of the proposed preamble in early October 1994 that was split into recitals denoted by a letter. The Crown's account took note of the tensions in the 1860s and that the Crown had acted in violation of the Treaty of Waitangi. The account stated that the New Zealand Settlements Act 1863 was used to 'wrongfully' confiscate 1.2 million acres of land in the Waikato. The preamble referred to the Waitangi Tribunal's 1985 Manukau Report, which found that the Crown's invasion of the Waikato was contrary to Article II of the Treaty of Waitangi. The Crown sought to recognize that the physical and economic impact of the raupatu 'both immediately and over time has been prejudicial to Waikato-Tainui and caused economic, social and cultural upheaval' and had contributed 'to the development of New Zealand.' Waikato-Tainui's negotiating principles of 'i riro whenua atu, me hoki whenua mai' (as land was taken, so land should be returned) were explicitly recognized.¹⁴ In essence, this did not differ much from the Crown position as far back as 1990.

The specific wording of the preamble would become a focal point of the negotiating process, and especially the terms used to describe the severity of Crown actions and effects. Internally the Crown was still struggling with the extent and nature of its recognition of wrong-doing. The Solicitor-General had reviewed the Crown's draft preamble and wondered what was 'meant by the contribution to the development of New Zealand' and 'by the contribution [of confiscated land] to the development of New Zealand. What is there that is relevant to the settlement?' A CLO official also had some trouble with that admission. Waikato-Tainui also sought to include the acknowledgment that the contribution of raupatu land to the development of New Zealand

was 'quantified at approximately \$6 billion.'¹⁵ Waikato-Tainui negotiators requested that an acknowledgment of the financial loss be included in the preamble because of the significant difference between the estimates of loss and the final quantum provided. For Waikato-Tainui it was important to note that land confiscation had enabled New Zealand to develop a valuable dairy economy, even if that dairy development had occurred decades after the initial confiscation.

Waikato-Tainui's first response to the Crown's proposed preamble included a number of important suggested changes. While the Crown's version recognized the Tribunal's 1985 Manukau Report that indirectly condemned the confiscation there was also added, 'It [the actions of the Crown] is also contrary to the Sovereign Status accorded Maaori under the Declaration of Independence.' Waikato-Tainui wanted the Crown to not only acknowledge the ongoing relationship between Waikato and the Crown in terms of the Treaty of Waitangi but also the 1835 'Declaration of Independence', He Whakaputanga o Niu Tirenī.¹⁶ The Declaration was signed largely by northern New Zealand rangatira ('chiefs'), but also by Tainui rangatira Te Wherowhero in 1839, 19 years before he was crowned the first Māori King.¹⁷ This was the first time the Declaration had come up during the negotiations, but Waikato-Tainui wanted to include it in order to place the signing of the Treaty of Waitangi the following year in historical context. The Declaration contained stronger references to sovereignty than the Treaty, and as a result perhaps it was unrealistic for the Crown to accept its inclusion, while being understandable from Waikato-Tainui's point of view.¹⁸

At draft recital E the Crown stated: 'The raupatu lands are estimated to total some 1.2 million acres (although some compensation in the form of land and cash was assigned to Māori in the Waikato through the compensation courts and other means).' Waikato-Tainui's version had more details and some more extended discussion of the merit of their claim in relation to other claims, and the process under which some lands were returned following confiscation: 'The raupatu lands total some 1,202,273 million acres. Compensation in the form of cash and lands was assigned to Maaori in the Waikato through the compensation courts and to those Waikato Maaori who fought on the side of the Crown. These lands were not returned under the tribal estate but became part of the individual tenure title system of the Crown.'¹⁹

At draft recital F the Crown held that 'the physical and economic effect of the raupatu both immediately and over time has caused economic, social, and cultural upheaval to Waikato-Tainui.' To Waikato-Tainui the word 'upheaval' was inadequate. They argued that 'decimation' was more suitable, and wanted to add that the 'effect of the War caused physical loss in terms of lives

terminated by the invading colonial forces of the Crown.’ They also wanted to refer to the compromise that had been reached by both sides as being made ‘especially on the part of Waikato-Tainui.’²⁰ The differences between Crown and Waikato-Tainui negotiators on these points were not really a matter of differing historical interpretations but of the inclusion of certain historical details. The inclusion of historical details in the end would play a key part in achieving reconciliation between the Crown and Waikato-Tainui claimants, as the support of Waikato-Tainui beneficiaries could often hinge on what kind of recognition had been achieved by their negotiators.

Graham himself was intimately involved in these negotiations in much the same way as Mahuta. After advice from his officials, Graham responded to Waikato-Tainui’s desired changes to the Crown’s first draft with his own suggestions. Graham refused to mention the Declaration of Independence, but acknowledged that ‘cash and lands were assigned to Maaori in the Waikato through the compensation courts but, it appears, to those Waikato Maaori who fought on the side of the Crown. These lands were not returned under the tribal estate but became part of the individual tenure title system of the Crown.’ It was also conceded that the effect of war went beyond upheaval and extended, as Waikato-Tainui had wanted, to ‘decimation’. Graham also noted in the Crown’s obligations that the grievances of Waikato-Tainui were ‘justified and that recognition of that fact is overdue’. Graham allowed for the inclusion that the raupatu land was estimated by ‘Waikato-Tainui to have a value today of approximately \$6 billion.’²¹

The Crown Law Office provided its own views on the Waikato-Tainui version of the preamble. One official did not approve of using the term ‘decimation’ rather than ‘upheaval’, presumably because of its literal meaning. In Section 3, in terms of good faith obligations, the CLO official wondered why the compromise of both sides had to be referred to as ‘especially on the part of Waikato-Tainui’. During these debates over historical issues, very recent issues could often also be tightly interconnected, such as the compromise Waikato-Tainui thought they were making in accepting the Crown’s proposed financial compensation and the return of only certain lands; for example, the exclusion of the conservation estate.²² The draft preamble returned to Waikato-Tainui at the end of October 1994 kept only those changes approved by Graham.²³

Crown officials then turned to a historian not affiliated with the government to seek additional help in composing a history that was not only acceptable to both Waikato-Tainui and Crown negotiators but also accurate. Academic historian James Belich was used as a consultant to review and comment on a draft of the preamble. The Crown had privately expressed

to Belich a hesitancy to use the word 'invasion' to describe the military incursion across the Mangatawhiri River and into the Waikato. To the CLO, the British acquired sovereignty in 1840 when the Treaty of Waitangi was signed, and thus the Crown could not invade itself. Admitting to the invasion of the Waikato would make the Crown liable to question its own sovereignty. Belich was blunt in his advice: 'I understand that there is some reluctance to use the term "invasion". While re-registering my firm opinion that this term is historically accurate, I acknowledge that "the Crown engaged in a war in Waikato" is legitimate. There is no shadow of doubt that military operations in the Waikato were initiated by the Crown.' The ongoing debate between Waikato-Tainui negotiators and the Crown, as well as within the Crown between Graham and the CLO, over whether to use the term upheaval or decimation to describe the result of confiscation on Waikato-Tainui was quickly resolved by Belich. "Decimation" literally means reduction by one-tenth; in common usage it seems to tend towards reduction by nine-tenths. Neither is accurate; "caused heavy economic, social, and cultural damage to Waikato-Tainui" may meet the case.' Belich concluded his historical advice with a recognition of the momentous nature of the negotiations: 'I would like to record my congratulations to your unit and minister for what will, in my view as a specialist in the field and as a New Zealand general historian, be a major step forward in NZ ethnic relations.'²⁴

When a third Crown draft of the preamble was sent to Waikato-Tainui negotiators at the end of November 1994, there were only cosmetic changes to the issues accepted for the second Crown draft at the end of October 1994. There remained recognition of the effect of the individual tenure title system on the dismantling of the tribal estate. In addition, Belich's recommendation for 'heavy economic, social and cultural damage' rather than 'upheaval' or 'decimation' was also accepted.²⁵

While there was general agreement on the preamble there were a number of historical details which Mahuta proposed to add. Mahuta sought to challenge the legal framework under which confiscation was first effected. During the late 1980s Waikato-Tainui negotiators had consistently questioned the legality of the confiscations. Crown officials maintained that the confiscation of land was legal, albeit unjust.²⁶ Waikato-Tainui requested that the word 'unlawfully' be added to the sentence 'large areas of land were [unlawfully rather than unjustly] confiscated by the Crown.' The Crown continued to hold to the view that the confiscation had been legal.²⁷ Mahuta also wanted to include the passages from the Manukau Report that condemned the invasion of the Waikato rather than solely a reference to the report, and Article II of the Treaty of Waitangi in English and Te Reo Māori.²⁸ The Crown accepted

the inclusion of Article II, although it rejected the inclusion of the passage from the Manukau Report because it seemed to point to the illegal nature of the confiscation. By the final version of the Heads of Agreement preamble, a statement from the Manukau Report was included: 'It can simply be said that from the contemporary record of Sir John Gorst in 1864, from the Report of the Royal Commission sixty years after that, and from historical research almost a century removed from the event, all sources agree that the Tainui people of the Waikato never rebelled but were attacked by British troops in direct violation of Article II of the Treaty of Waitangi.' The use of a Waitangi Tribunal report in the Waikato-Tainui preamble signified the historical authority that the Tribunal still held, despite Waikato-Tainui's choice to skip the Tribunal process and proceed directly to negotiations. While the legality of the confiscation was not questioned in the excerpt from the Manukau Report, the statement that 'Waikato never rebelled' pleased Waikato-Tainui negotiators.

Mahuta thought that the preamble was far too brief and wanted to provide a more detailed historical account by referring to the purpose of the Kīngitanga, the reason for invasion by the Crown and specific sites of atrocities, such as Rangiaowhia and Orakau:

The pivotal role which the King movement played in the attempt to preserve the tribal lands. The attacks that occurred by the colonial forces such as at Rangiaowhia. The troops attacked the unfortified village where a number of families were living. The people of the village hastily sought refuge in the whare near the Church. After a short volley of fire from both sides the whare were set alight. Those who came out to escape the flames were shot. Those who remained were burnt to death. The heavy casualty suffered by the people including women and children as people evacuated en masse the village of Orakau as it was surrounded by 1100 soldiers.²⁹

Mahuta also sought to exclude some historical details.³⁰ Strangely, although Waikato-Tainui advisors had previously requested that the effect of the individual tenure system and the process for the return of confiscated lands be specifically mentioned, by 9 December 1994 they requested their removal from the preamble. Waikato-Tainui wanted the statement deleted in its entirety so that this specific section of the preamble would refer only to the confiscation of land, and not to the process that followed.³¹ When another draft was produced on 13 December 1994 the section noted above was still in the preamble, but was italicized and in parentheses with a hand-written checkmark directly beside it. The copy of the draft belonged to the lead Treaty of Waitangi Policy Unit official. This official had met with Graham to discuss the preamble that day, and Graham may have indicated that the section should remain.³² It is unclear why Waikato-Tainui wanted to remove

those specific historical details. By the 15 December 1994 version of the Heads of Agreement, the reference was still included, and it would remain the same format for the final version of the preamble in the Heads of Agreement signed by Graham and Mahuta on 21 December 1994.³³

The Crown Law Office had objections to many of Mahuta's proposed changes. Mahuta had asked that the wording should include that the confiscation was unlawful, while the CLO reiterated the injustice of the act but that the confiscation was legal. Crown Law noted: 'The effects of such a concession [that the confiscation was unlawful] is that all that occurred subsequently is illegal and even though this is a without prejudice document I do not think the Crown should make a concession.'³⁴ The CLO argument in relation to the legality of confiscation was connected to the Crown's refusal to use the term 'invasion' to describe the war. Both concessions undermined the Crown's absolute sovereignty.

Crown Law also had concerns with many of the historical statements provided by Mahuta. The statement that 'Tainui never rebelled' raised 'a number of historical issues' for Crown Law, although specific reason for concern was not provided. The CLO official found that many of the historical statements requested by Mahuta were contradictory: '[The fact that Waikato were] labelled as rebels to justify confiscation – seems unnecessary given the Crown's admission that the confiscations were unjust (people can draw their own conclusions from that admission); did not wish to sell their lands – when? eg Waikato Chiefs sold land in the 1840s; role of King movement – relevance?; cause of confiscation – again, it is difficult to see the relevance especially in light of the Crown's admission.'³⁵ The CLO official also struggled to understand why the atrocities at Rangiaowhia and Orakau were singled out. A legal consultant for the Crown largely agreed with the CLO's comments on the changes to the preamble regarding the illegality of the settlement and that the Crown would probably object to that historical interpretation.³⁶ Some of Crown Law's comments were correct. Waikato-Tainui rangatira had sold land, but the role of the King Movement was to stop the land sales, and this was strongly connected to the reason for invasion and subsequent confiscation.³⁷ Mahuta was the (adopted) son of King Koroki and his sister was Te Arikiniui; the Waikato-Tainui negotiating team and the King Movement were strongly intertwined.³⁸ As for Rangiaowhia and Orakau, Waikato-Tainui negotiators wanted to include them as a tool of remembrance, but the Crown sought to keep the historical details to a minimum. Waikato-Tainui negotiators wanted to ensure that the murders of the elderly, women and children at Rangiaowhia and of wounded soldiers and women at Orakau were emphasized and specifically recognized by the Crown.³⁹

During a mid-December 1994 meeting the Crown stated that the preamble ‘should take a broad brush approach to historical matters ... and avoid detailed debate on historical points and interpretations.’ Waikato-Tainui negotiators were fairly resigned to accepting the finality of the settlement and tried to advance their own historical agenda on that point. ‘Denese [Henare] wanted to know if the settlement was full and final then why can’t we put what we like into it in respect to the historical facts?’ Waikato-Tainui financial advisor Brent Wheeler noted that the detail of the historical facts should not become a ‘slinging’ match. ‘It is not an issue of blame – it is an issue of factual statement and correction.’⁴⁰ This reflected some of the observations made by historian Julie Bellingham regarding the necessity of factually correct historical accounts and apologies.⁴¹ Many of Waikato-Tainui’s requested changes to the preamble were not included in the final Heads of Agreement that was signed by Mahuta and Graham on 21 December 1994.⁴² The description of the confiscation as ‘unlawful’ was not included, but there were many points of recognition of injustices perpetrated against Waikato-Tainui, including that the ‘War caused loss of life among Waikato-Tainui and the physical and economic effect of the raupatu both immediately and over time has caused heavy economic, social and cultural damage to Waikato-Tainui.’ The extract from the Manukau Report which stated that ‘the Tainui people of the Waikato never rebelled’ was also included, something Denese Henare was particularly concerned about.⁴³ A final aspect that Waikato negotiators did manage to have changed was the reference to the value of the land confiscated. It had been estimated at approximately \$6 billion in 1989 but in the intervening years it had doubled to \$12 billion as a result of inflation and increased land prices. The preamble in the Heads of Agreement would include the change to \$12 billion, a minor consolation, but a victory nonetheless.⁴⁴ While the first version of the preamble in the final Heads of Agreement was completed, there still remained the negotiation of the preamble for the Deed of Settlement and legislation.

The Preamble to the Deed of Settlement

To the dismay of Waikato-Tainui negotiators, in March 1995 the significant historical issues that had been negotiated for the preamble prior to the signing of the Heads of Agreement from October to December 1994 were again under negotiation. Waikato-Tainui beneficiaries reported to Waikato-Tainui negotiators that they were very concerned that the historical details should be correct and not watered down. Shane Solomon had:

concerns about the changes made in the recitals as these are matters that have been focused on by the old people in our consultations – such as the acknowledgments, the reference to not being rebels in the Manukau report, the principle of recognition of the ‘crime’ not a ‘wrong’ etc. These are matters of substance that should not now be re-negotiated in the DoS [Deed of Settlement]. There appears to be a significant watering down and a shift from the intention and purpose. I thought we (Waikato and the Crown) were to work co-operatively and not adversarially post HoA [Heads of Agreement]!⁴⁵

Historical debates were revived again in May 1995 as the opportunity to have a Deed of Settlement completed in time for the celebration of Te Arikinui's coronation, which occurred annually on 22 May, narrowed. Ann Parsonson began working intensively with Shane Solomon and Denese Henare to further develop a preamble for the final Deed of Settlement and the legislation. Parsonson's first draft addressed the issues in far too much detail for the Crown and made a number of points that the Crown refused to include in the preamble, such as the fact that Te Wherowhero signed the Declaration of Independence but not the Treaty of Waitangi. Parsonson canvassed the co-operation that had existed between the Waikato communities and Pākehā until 1856. Specifically Parsonson pointed to Governor Grey's request to Te Wherowhero to protect the nascent settlement of Auckland when it was perceived to be threatened by groups in the Tai Tokerau area in the 1840s, to counter-balance the old rationalizations that Waikato had been invaded because *it* threatened Auckland in the late 1850s and early 1860s. Parsonson also addressed the atrocities committed by imperial troops at Rangiaowhia and Orakau, a point that the Crown still refused to include in the preamble.⁴⁶ Shane Solomon thought Parsonson's preamble draft captured what had ‘happened’ but acknowledged that the ‘Crown will probably rebuke most of what she has written.’⁴⁷

In mid-May 1995 Denese Henare complained that the Crown draft of the historical preamble appeared to take no account of Parsonson's draft. The Crown's draft did not even take extracts from the preamble to the Heads of Agreement. The extract from the Treaty of Waitangi, for example, was provided only in English and therefore contained no reference to rangatiratanga. What was important to Henare was the nature and scope of the settlement and the basis of Te Wherowhero's title,⁴⁸ especially the pledges of land to the Kīngitanga. The OTS historian stated that the draft preamble was the result of a compromise between Parsonson's draft and that of Crown officials.⁴⁹ Henare wanted to include the section from the Manukau Report which stated that Waikato had not rebelled, but the Crown initially refused. In internal meetings Waikato negotiators referred repeatedly to the importance of stating that Waikato had never rebelled. The Crown was concerned that

this could be used later in court and recommended alternative wording, such as that Waikato-Tainui were 'unjustly labelled as rebels'. A Waikato advisor commented in a memorandum to Mahuta and other advisors, 'The 1863 [New Zealand Settlements] Act allowed the people of Waikato to be so labelled. They recognise this was unfair and unjust but the legal fact is that the Act has provided that this happened and it did. The Crown's view was that to insert that Waikato never rebelled would mean the Act was wrong and therefore the confiscations were wrong and this is what the Crown were trying to avoid being made explicit or inferred.'⁵⁰ The passage from the Manukau Report was eventually added to the preamble to the Deed of Settlement, as it had been included in the Heads of Agreement. In the end Henare's desire to have the pledges of land to the Kīngitanga was not in the preamble to the Deed of Settlement, but it would appear in some form in the preamble to the settlement legislation.⁵¹ While the preamble to the Deed of Settlement did not entirely meet their expectations, Solomon and Parsonson both believed that the preamble had come a long way since the original Crown draft that mentioned next to none of Waikato's historical concerns.⁵²

The preambles for the Heads of Agreement and the Deed of Settlement were very similar. They both stated that the 'Crown had engaged in a war against Māori in the Waikato, causing suffering to the people there', and that after the war large areas of land were 'unjustly' confiscated. Both versions also contained the reference to the Manukau Report which stated that 'the Tainui people of Waikato never rebelled' and that the war had caused a series of negative impacts, and they both explicitly recognized Waikato-Tainui's negotiations. But they also differed in a few ways. The preamble to the Heads of Agreement contained only Article II of the Treaty of Waitangi in Te Reo Māori and English, but the Deed of Settlement had the entire Treaty, including its own preamble. Unlike the Heads of Agreement, the Deed of Settlement's preamble included an extended discussion (for a document of such overall brevity) of the Sim Commission, especially the limits of its terms of reference. (The Sim Commission was a Royal Commission of Inquiry appointed in 1926 to investigate whether the confiscations of land following the wars of the 1860s were excessive, but it was instructed specifically not to determine whether they were unjust.⁵³) Waikato-Tainui negotiators had also sought a reference to the injustice done to those Waikato Māori both north and south of the Mangatawhiri River,⁵⁴ and it was included. The reference to the process of lands returned to individuals following the confiscation was completely removed from the preamble to the Deed of Settlement. The documents were nearly identical, with slightly more information in one section, the Sim Commission, and complete deletion of another section,

the process of the return of confiscated lands in the nineteenth century. The Heads of Agreement and Deed of Settlement preambles would then form the basis for the final preamble produced for the settlement legislation.

The Preamble to the Waikato Raupatu Claims Settlement Act 1995

Following the signing of the Deed of Settlement there was a slight lull in the negotiations regarding the historical account. Nonetheless the wording of a historical preamble to the legislation remained the subject of negotiation until the introduction of the Waikato Raupatu Claims Settlement Bill at the end of July 1995. The preamble to the settlement legislation was much longer than either of the first preambles and contained a number of headings: 'Kingiitanga', 'Confiscations of Waikato Land', 'Royal [Sim] Commission', 'Waitangi Tribunal', 'Court of Appeal', 'Negotiations with the Crown' and 'Settlement of Claims'. Waikato-Tainui requested the addition of the words 'invasion' and 'hostilities' to the heading that was titled 'Confiscations of Waikato Land'. After having fought against the inclusion of the word 'invasion' early in the negotiations over the historical account, the Crown now agreed to its inclusion in a heading within the preamble and in the apology. Henare and Parsonson's previous requests for further information regarding the purpose of the King Movement were also addressed in this final version of the preamble. While information was added regarding the Kīngitanga, the limits of the Sim Commission's terms of reference that were noted in the Deed of Settlement preamble were deleted. Waikato sought some greater detail regarding the Sim Commission's conclusions that the confiscations had been more than just excessive and that compensation was necessary, but the Crown hesitated to include details regarding the Sim Commission. The change to the reference to the Sim Commission would continue to frustrate Waikato-Tainui negotiators and advisors. Crown Law continued to lobby for changes as well. Both the Heads of Agreement and Deed of Settlement preambles had referred to the Crown 'unjustly' confiscating large areas of land, but Crown Law sought to change the reference to the confiscation of 'an excessive quantity of land'.⁵⁵ In the end 'unjustly' was accepted, but the explanation of the limits of the terms of reference of the Sim Commission continued to be excluded.

After extended negotiations over the preamble that would accompany the settlement legislation, agreement was finally reached between Waikato-Tainui and Crown negotiators. The next task was for the Parliamentary Counsel to prepare the document for introduction to Parliament. The compromise preamble had resulted from lengthy negotiations and the changes recommended by counsel did not sit well with Waikato-Tainui negotiators. In

the draft provided to counsel, recital F had the Crown ‘wrongfully’ confiscating approximately 1.2 million acres, but counsel wanted to have it changed again from ‘wrongfully’ to ‘an excessive quantity of land’. In a memorandum to Mahuta, Solomon wrote that ‘the new draft infers that the Crown did not act wrongfully and that the only injustice of the confiscations was the amount of lands that were taken, inferring there was a basis for *raupatu* in the first place. This is a complete aberration [sic] of the settlement.’ Additionally, the drafter focused excessively on the Sim Commission’s conclusions without noting the commission’s limits. Crown officials tried to assure Waikato-Tainui negotiators that the drafter was only following a set of parliamentary guidelines. Solomon countered that one had to ‘look at the unique nature of the circumstances surrounding this legislation.’ It was ‘not every day that the Crown settle[s] with Maaori on a grievance ... the impressions and statements made by the Crown (including the Minister) are not reflected in the Bill. In fact people received comfort from the Minister on issues such as acknowledgment that the Treaty was breached, there was a wrong, [that] the Crown wanted to atone without qualification. We ourselves negotiated on this basis and articulated in the consultation round to the people that this was the case.’ Waikato legal advisor Bill Patterson concurred with Solomon. ‘The reaction on the Waikato side is that these changes are not inadvertent nor merely stylistic but reflect a stubborn reaction on the Crown side against the “rewriting of history” even though the historians on both sides have been in substantial agreement.’ The complaints from the Waikato-Tainui negotiating team were so strong that Graham attended the Cabinet Legislation Committee and ensured the description of confiscations as unjust was reinserted into the preamble. Nonetheless Solomon believed that the allusion to the necessity of some kind of confiscation still remained.⁵⁶

Parsonson supported the use of the term ‘wrongfully’ to describe confiscation throughout. The Crown wanted to use the term ‘individuals who fought for the Kīngitanga’ to describe those Waikato who had fought against the Crown, but Parsonson claimed that it was inappropriate because it did not reflect the communal nature of sacrifice. Parsonson also made an extended comment regarding the view of the Sim Commission propounded by the drafter:

My main hope has always been that the ghost of the Sim Commission would be laid in the Preamble – in fact I had thought initially it could have been done much more directly by explaining that the Commission was limited in accordance with prevailing views at the time, both in its terms of reference and in its findings. To have an inadequate and poorly contextualised reference to [the] Sim [Commission] is worse than no mention at all – and I agree with Shane [Solomon] that if the ghost is in fact being allowed to walk again, we should simply back away.

One senses the disappointment that old historical arguments, long before settled with Crown negotiators, emerged again and again. 'I had thought the Crown would welcome the chance to explain why Sim had resulted in a settlement (in 1946) that could not be lasting – and hence why the Crown is making the present settlement. I thought this would give the Crown a chance to respond to possible criticism. Above all, it is important to Waikato that the Crown admit that although Sim represented some progress in acknowledgement of wrongs done at the time, it did not go nearly far enough.' Solomon was extremely tired after negotiating with officials over the preamble and recommended that Waikato-Tainui present a lengthy submission to the Select Committee regarding the preamble.⁵⁷

A number of submissions were made to the Māori Affairs Select Committee regarding the Waikato settlement, but this analysis will concentrate only on Waikato-Tainui's submissions, rather than those of the public. Waikato-Tainui believed that the inadequacy of the Sim Commission's term was not obvious enough in the preamble. The Crown countered in Select Committee that the Sim Commission's limitations were clearly present throughout the preamble, even if not specifically stated.⁵⁸ Since the Crown refused to revert the preamble to its pre-parliamentary drafting form regarding the limitations of the Sim Commission, Waikato-Tainui included an extended section on the changes it desired to the preamble in its submission to the Select Committee. Waikato provided a more detailed explanation as to why the Sim Commission's focus was so limited:

For instance, the Commission was instructed not to accept any argument that the confiscation legislation (the New Zealand Settlements Act and its amendments) was beyond the competence of the colonial parliament – an instruction which seems to reflect sensitivity to the debate on this point, inside and outside Parliament, in 1863–4. The imperial government had taken legal advice when considering the legislation in 1864, after a handful of leading colonists raised doubts as to parliament's power to legislate for the compulsory taking of Māori land. These men argued against the passing of the Settlements Act on the grounds that it violated the protection of Māori lands afforded by the Treaty of Waitangi and that Parliament should not deal with the lands of people who were unrepresented there.⁵⁹

Parsonson noted there was considerable debate between politicians and colonists on the government's ability to confiscate land in such a wide-ranging manner. Māori Affairs Minister John Luxton made a reference in his speech to Parliament during the Bill's first reading regarding these debates. He discussed the opposition of members of Parliament James Fitzgerald, William Swainson and Dr Daniel Pollen to the original confiscation legislation when it was introduced in 1863.⁶⁰ As Michael Allen has shown, Fitzgerald would become a strong supporter of more large-scale confiscation by the time he

was in office in 1865. It is not clear whether Luxton's officials were aware of Fitzgerald's support for the confiscation in 1865.⁶¹ In any case, Luxton's speech supported the submissions made by Waikato-Tainui regarding their concerns with the legislation's preamble. Graham was also in agreement with Waikato, as his speech to Parliament at the first reading of the legislation echoed the very points Waikato negotiators had recently been arguing with the Parliamentary Counsel.⁶²

The diverse viewpoints present in the many different drafts of the preambles to the Heads of Agreement, the Deed of Settlement and the legislation represented the series of different Waikato-Tainui and Crown interpretations of the history of war and confiscation in the Waikato. The preamble and the apology were in no way definitive histories of the war, confiscation and their aftermath, but they represented one attempt at some reconciliation. These historical debates indicate that the reconciliation process between Waikato-Tainui and the Crown was based on notions of compromise, but especially a recognition by the iwi that they would not achieve every detail desired.

W.H. Oliver, the Preamble to the Act and the Return of Confiscated Lands

The preamble in the Deed of Settlement signed on 22 May 1995 made no reference to the return of lands following confiscation. The preamble in the final legislation, much like the Heads of Agreement preamble, made a direct reference to the context and process of the return of some confiscated lands but with altered wording: '[T]he Crown subsequently paid small amounts of monetary compensation and returned, by Crown grants, but not under customary title and generally not to those who had fought for the Kingiitanga, approximately one-quarter of the land confiscated.'⁶³

Previously Waikato-Tainui had requested that the people to whom some of the original confiscated lands had been returned be referred to as 'those who had fought on the side of the Crown'. By the settlement legislation the Crown and Waikato-Tainui had compromised and now referred to lands being returned 'generally not to those who had fought for the Kiingiitanga' rather than just 'those who had fought on the side of the Crown'. The history of the return of lands would become a point of academic controversy.

The preamble produced in the legislation was scrutinized by historian W.H. Oliver not long after the legislation passed its third reading. Oliver's criticisms of the Crown's proposals for Treaty settlements earlier in 1995 had been in line with many of the criticisms made by wider Māoridom, such as the inadequate fiscal envelope and the lack of consultation with Māori. But his critique of the preamble to the legislation was different,⁶⁴ and focused

on three aspects. Firstly, he questioned whether the people actually pledged their authority to the King or conferred upon the Kīngitanga merely a veto to prevent further sales. This was a very complex question that he left only two sentences to address. Was the right to veto land sales not prominent evidence of authority – surely this was a form of mana whenua and a prominent aspect of authority in the Māori world? His second point was that the preamble stated that the Crown ‘initiated hostilities’. Oliver felt this implied that the Crown burst upon a ‘peaceful scene’ when the situation in Waikato was allegedly ‘disturbed’. While he attempted to qualify his criticism with the recognition that the Crown had failed to explore other possibilities and had over-reacted by crossing the Mangatawhiri, he seemed to miss the larger point about why the Waikato district was ‘disturbed’. He stated that ‘Kīngitanga Māori were not without a share in the responsibility for that.’ Julie Bellingham supported this statement. She commented that it was unjust that the Crown ‘has been put on trial and only its actions have been the subject of inquiry.’⁶⁵ Both Oliver and Bellingham neglected to note that the ‘disturbed’ state of the Waikato may have occurred because of the Crown’s forced disturbance in Taranaki, and its aggression towards the King Movement.⁶⁶

Oliver’s final criticism, the only critique upon which he expanded at length, focused on the statement that land had been ‘returned...*generally not* [Oliver’s italics] to those who had fought for the Kīngitanga’, which he believed was a ‘curious, even an evasive, phrase.’⁶⁷ He believed that without thorough research on the issue there should not have been any statement made at all. Bellingham again supported Oliver’s views and highlighted the Crown’s failure to reference the *Appendix to the Journal of the House of Representatives* official reports that suggested a considerable amount of land had been returned to individuals designated as ‘returned rebels’.⁶⁸ Originally Waikato-Tainui argued that the returned lands had been transferred to ‘those Waikato Māori who fought on the side of the Crown’. The reality was that some land had been returned to Māori individuals designated by the New Zealand Parliament as ‘returned rebels’. But there are two limits to that evidence. The first is the unilateral Crown control of the designation of ‘returned rebel’. It is unclear how Parliament arrived at those designations. Secondly, and more importantly, the returned lands were likely to be the least productive and profitable in the region.⁶⁹

Oliver did not seem to realize that the use of the phrase ‘generally not’ was a compromise between the parties. Waikato-Tainui originally wanted to refer to those to whom land was returned following confiscation as having fought entirely for the British. The Crown felt that some lands were returned to those who had opposed the Crown, as Oliver had in fact later advocated, and the

use of 'generally not' was the middle point between the parties. Historians from the OTS had wanted to reply to Oliver in *New Zealand Books*, but were prevented by their superiors who wanted the issue to pass without further comment.⁷⁰ The OTS historian who worked on the preamble and apology did comment later to Julie Bellingham that he considered Oliver's criticism unfair, and that Oliver 'showed no real appreciation of the type of document' that the settlement had produced.⁷¹ In many ways it prefigures Oliver's 'retrospective utopias' thesis: in his critique of the preamble to the Waikato-Tainui legislation he is attempting to uncover a form of history that he sees as corrupt because it serves a uniquely political end that distorts what actually happened.⁷²

Historians working for both claimants and the Crown were inevitably politicized by their craft – they had a certain goal in mind with the evidence they were presenting and the arguments they were making. But this tends to ignore the fact that even academic historians who are not subject to specific briefs have their own socio-economic and political imperatives. As E.H. Carr has noted, history 'is a continuous process of interaction between the historian and the facts, an unending dialogue between the present and the past.'⁷³ Richard Evans similarly commented that 'historians are always led by their present-day concerns.'⁷⁴ Miranda Johnson has explored the unease which Oliver (and Giselle Byrnes) had with 'the possibility of a deep connection between the past and the present', concluding that his 'concern that the past is being judged by the standards of the present reveals an anxiety that the past will not be distinguished from the present.' Acknowledging the existence of the deep connection between the past and the present is essential to understanding Treaty settlement processes and seems to be missing from the critiques of Oliver and others such as Byrnes.⁷⁵ History as an academic endeavour has always been heavily influenced by political ideologies and figures, something which historians' involvement in New Zealand's Treaty settlement process has demonstrated in many ways.

Conclusion

The debates that took place during Waikato-Tainui's negotiations revealed the very different historical interpretations of both the Crown and Waikato-Tainui. While OTS often led the negotiations, it was supported by the Crown Law Office, which consistently attempted to limit the Crown's legal liabilities. Waikato-Tainui, on the other hand, continually pressed the Crown to use more emotive terminology, and attempted to extend the boundaries of the historical interpretation of events. The Waikato-Tainui preambles were all products of compromise and reflected the contexts under which both the

Crown and Waikato-Tainui negotiated. Waikato-Tainui and the Crown's historical experiences imbued their positions, and the result was a highly political history. The activity of history writing in the Treaty claims sector is a distinctive type of New Zealand history that may have a more overt agenda than academic writing, but they both share a politicized atmosphere.

Although Waikato-Tainui failed to have specific mention of battles such as Rangiaowhia and Orakau placed into any of the preambles or apology, and they perceived that the reference to the Sim Commission was inadequate for the preamble to the Heads of Agreement and the settlement legislation, the statement that Waikato-Tainui never rebelled was included in every preamble, and there was explicit recognition of the pain and suffering that war and confiscation had wrought. The preambles represented debates over not only the history of their respective claims, but also the Crown's sovereignty and Waikato-Tainui rangatiratanga. The negotiations revealed the differing historical views that iwi negotiators and advisors held in contrast to Crown ministers and officials, but they ultimately revealed a shared sense of historical understanding. The discussions and disagreements could often focus on the use of specific terminology that could even question the Crown's own sovereignty. Waikato-Tainui negotiators and advisors pressed throughout their respective negotiations for recognition of the historical context in which their claims were settled. Although the Crown ultimately controlled the process through which the preambles were produced, there was a significant aspect of Waikato-Tainui agency in the changes that were achieved. Richard Boast has commented that historical accounts are 'inevitably lifeless, tedious to read and indeed to write.'⁷⁶ What the negotiation of Waikato-Tainui's preambles shows is that although historical accounts tend to have the most neutral tone and uncontroversial historical positions, the debates that occur between the Crown and claimants are far from lifeless. The preambles reflect both the intensely political nature of historical writing and the resolution of historical claims by Māori.

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NOTES

1 'Heads of Agreement between the Crown and Waikato-Tainui in respect of the Waikato-Tainui Raupatu Lands Claim', 21 December 1994; 'Waikato-Tainui Deed of Settlement', 22 May 1995: <https://www.govt.nz/treaty-settlement-documents/waikato-tainui-raupatu>; Waikato Raupatu Claims Settlement Act 1995.

2 As the Office of Treaty Settlements (OTS) states on its website: 'The historical account details the ways that the Crown breached the Treaty. The Crown and the claimant group must both agree on these. The Crown will acknowledge and apologise for the Treaty breaches and the impact they had on the claimant group.' <https://www.govt.nz/browse/history-culture-and-heritage/settling-historical-treaty-of-waitangi-claims/>

3 Maureen Hickey, 'Crown Apologies', in Nicola R. Wheen and Janine Hayward, eds, *Treaty of Waitangi Settlements*, Bridget Williams Books, Wellington, 2012, p.82.

4 Douglas Graham, *Trick of Treaty?*, Victoria University of Wellington, Wellington, 1997, p.74.

5 Roy L. Brooks, *When Sorry Isn't Enough: The Controversy Over Apologies and Reparations for Human Injustice*, New York University Press, New York, 1999; Charles S. Maier, 'Overcoming the Past? Narrative and Negotiation, Remembering and Reparation: Issues at the Interface of History and the Law', in John C. Torpey, ed., *Politics and the Past: On Repairing Historical Injustices*, Rowman & Littlefield, Lanham, 2003, pp.295–304; Nicholas Tavuchis, *Mea Culpa: A Sociology of Apology and Reconciliation*, Stanford University Press, Stanford, 1991.

6 Robert R. Weyeneth, 'The Power of Apology and the Process of Historical Reconciliation', *The Public Historian*, 23, 3 (Summer 2001), pp.9–38; Kenneth Minogue, 'Aborigines and Australian Apologetics', *Quadrant*, (September 1998), pp.11–20; Michael Cunningham, 'Prisoners of the Japanese and the Politics of Apology: A Battle Over History and Memory', *Journal of Contemporary History*, 39, 4 (2004), pp.561–74; Michael Cunningham, 'Saying Sorry: The Politics of Apology', *The Political Quarterly*, 70 (1999), pp.285–93; Elazar Barkan, *The Guilt of Nations: Restitution and Negotiating Historical Injustices*, Norton, New York, 2000; Melissa Nobles, *The Politics of Official Apologies*, Cambridge University Press, New York, 2008.

7 W.H. Oliver, *Claims to the Waitangi Tribunal*, Department of Justice, Wellington, 1991; Miranda Johnson, 'Honest Acts and Dangerous Supplements: Indigenous Oral History and Historical Practice in Settler Societies', *Postcolonial Studies*, 8, 3 (2005), pp.261–76; Michael Belgrave, *Historical Frictions: Māori Claims and Reinvented Histories*, Auckland University Press, Auckland, 2005; Jim McAloon, 'By Which Standards? History and the Waitangi Tribunal', *New Zealand Journal of History* (NZJH), 40, 2 (2006), pp.194–213; Giselle Byrnes, 'By Which Standards? History and the Waitangi Tribunal: A Reply', NZJH, 40, 2 (2006), pp.214–29; W.H. Oliver, 'A Reply To Jim McAloon', NZJH, 41, 1 (2007), pp.83–87.

8 Hickey, pp.69–84.

9 Julie Bellingham, 'The Office of Treaty Settlements and Treaty History: An Historiographical Study of the Historical Accounts, Acknowledgements and Apologies Written by the Crown, 1992 to 2003', MA thesis, Victoria University of Wellington, 2006.

10 Richard Hill and Brigitte Bonisch-Brednich, 'Politicizing the Past: Indigenous Scholarship and Crown-Māori Reparations Processes in New Zealand', *Social & Legal Studies*, 16, 2 (June 2007), pp.163–81; Richard Hill, 'Historical "Facts" and the Waikato Raupatu Claims Settlement Act 1995', Treaty of Waitangi Research Unit, Wellington, 2014.

11 Treaty of Waitangi Policy Unit (ToWPU) was restructured into OTS on 1 January 1995 a week and a half after the signing of Waikato-Tainui's Heads of Agreement.

12 Linda Tuhiwai Smith, *Decolonizing Methodologies: Research and Indigenous Peoples*, Otago University Press, Dunedin, 1999, p.34.

13 The Office of Treaty Settlements, based in Wellington, provided access to its archives. It will be referenced as the 'OTS archive'. These sources were supplemented by the collections held by the Waikato-Tainui College of Research and Development located at Hopuhopu near Ngaruawahia. They will be referenced as 'W-T archive'. Both the Crown and the Waikato-Tainui College of Research and Development required that I sign a confidentiality agreement before accessing their archives. In each agreement, both parties required that I send them a draft for comment and the Crown specifically requested anonymity for all of its officials. While their comments were useful and influenced certain aspects of this article, I have retained complete editorial control.

14 CAB (94) M 37/7; 'Draft Heads of Agreement', 12 October 1994: both TC 30 Vol.37, OTS archive.

15 CLO official 4 to ToWPU official 4, 17 October 1994, TC 30 Vol.37, OTS archive, p.5.

16 Tainui Māori Trust Board version of preamble, 26 October 1994, TC 30 Vol.38, OTS archive.

17 Claudia Orange, *Illustrated History of the Treaty of Waitangi*, Bridget Williams Books, Wellington, 2004, pp.13–16.

18 This issue persists throughout negotiations and Tribunal hearings, especially in light of the arguments made by some claimants in the Paparahi o te Raki hearings since 2010: Waitangi Tribunal, *He Whakaputanga me te Tiriti, The Declaration and the Treaty: The Report on Stage 1 of the Te Paparahi o Te Raki Inquiry*, Waitangi Tribunal, Wellington, 2014.

19 Tainui Māori Trust Board draft preamble, 26 October 1994, TC 30 Vol.38, OTS archive, pp.1–2, 5.

20 Tainui Māori Trust Board draft preamble, 26 October 1994, TC 30 Vol.38, OTS archive, pp.1–2, 5.

21 Graham notes on Heads of Agreement, 27 October 1994, TC 30 Vol.38, OTS archive.

22 CLO official 4 to ToWPU official 4, 31 October 1994, TC 30 Vol.38, OTS archive; Graham notes on Heads of Agreement, 27 October 1994, TC 30 Vol.38, OTS archive, pp.1–2, 5–6.

23 ToWPU official 4 to Robert Mahuta, 31 October 1994, RC1: RC December–August 1994, Box 32, W-T archive.

24 James Belich to ToWPU official 4, 1 November 1994, TC 30 Vol.39, OTS archive, pp.1–2.

25 'Draft Heads of Agreement', 29 November 1994, TC 30 Vol.40, OTS archive.

26 Frame to Henare, 1 March 1989, TC 30 Vol.3, OTS archive; Frame to Jeffries, 30 May 1989, TC 30 Vol.3, OTS archive; Meeting minutes of Tainui Māori Trust Board and the Crown scoping session, 8 June 1989, TC 30 Vol.3, OTS archive.

27 Michael Litchfield, 'The Confiscation of Māori Land', *Victoria University of Wellington Law Review*, 15, 4 (1985), pp.337–62.

28 Waitangi Tribunal, *Report of the Waitangi Tribunal on the Manukau Claim (Wai-8)*, Waitangi Tribunal, Wellington, 1985.

29 Mahuta to Peter Rowe, 7 December 1994, RC1, Correspondence Vol 37, December 1994, Box 15, W-T archive.

30 Mahuta to Rowe, 7 December 1994, RC1, Correspondence Vol.37, December 1994, Box 15, W-T archive; Rowe to ToWPU official 4, 9 December 1994, TC 30 Vol.41, OTS archive, p.1; James Belich, *The New Zealand Wars and the Victorian Interpretation of Racial Conflict*, Auckland University Press, Auckland, 1986, p.173.

31 Mahuta to Rowe, 7 December 1994, RC1, Correspondence Vol.37, December 1994, Box 15, W-T archive; Rowe to ToWPU official 4, 9 December 1994, TC 30 Vol.41, OTS archive, p.1.

32 Crown draft Heads of Agreement, 13 December 1994, TC 30 Vol.41, OTS archive.

- 33 Crown draft Heads of Agreement, 15 December 1994, TC 30 Vol.41, OTS archive.
- 34 CLO official 4 to ToWPU official 4, 9 December 1994, TC 30 Vol.41, OTS archive.
- 35 CLO official 4 to ToWPU official 4, 9 December 1994, TC 30 Vol.41, OTS archive.
- 36 CLO official 4 to ToWPU official 4, 9 December 1994, TC 30 Vol.41, OTS archive, p.2; Mark O'Regan to Thomas, 9 December 1994, TC 30 Vol.41, OTS archive, p.1.
- 37 David McCan, *Whatiwhatihoe: The Waikato Raupatu Claim*, Huia Publishers, Wellington, 2001, p.32; Danny Keenan, *Wars Without End*, Penguin Books, Auckland, 2009, pp.206–14; Belich, *The New Zealand Wars*, pp.78–79; Michael King, *Te Puea, a biography*, Hodder & Stoughton, Auckland, 1977, p.24.
- 38 Carmen Kirkwood, *Te Arikiniui and the Millennium of Waikato*, Turongo House, Ngaruawahia, 2001.
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- 41 Bellingham, p.72.
- 42 'Waikato-Tainui and Crown Heads of Agreement', 21 December 1994, TC30 Vol.42, OTS archive.
- 43 Henare to Mahuta, 19 December 1994, RC1, Correspondence Vol.37, December 1994, Box 15, W-T archive.
- 44 Te Maru to ToWPU official 4, 17 December 1994, TC 30 Vol.42, OTS archive.
- 45 Solomon, 'Deed of Settlement', March or April 1995, RC1, Correspondence Mar–Apr 1995, (SS) Box 35, W-T archive, p.7.
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- 47 Parsonson to Myrtle Te Maru, 1 May 1995, RC1, Correspondence May 1995, (SS) Box 37, W-T archive; Parsonson to Solomon, 2 May 1995, RC1, Correspondence Apr–May 1995, (SS) Box 36, W-T archive; Solomon to Te Maru, 3 May 1995, RC1, Correspondence May 1995, (SS) Box 38, W-T archive, p.3.
- 48 Potatau Te Wherowhero was crowned the first Māori King in 1858: Belich, *The New Zealand Wars* pp.78–79; Evelyn Stokes, *Wiremu Tamihana: Rangātira*, Huia Publishers, Wellington, 2002, pp.134–89; McCan, pp.25–58.
- 49 The OTS historian stated that 'We don't expect that either side will need to make any negotiations at this late stage.' To which Henare wrote on the fax: 'Too bad.'
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- 51 Henare to Solomon, 10 May 1995; OTS official 5 to Gerard Brown, 12 May 1995; both: RC1, Correspondence May 1995, (SS) Box 37, W-T archive.
- 52 Parsonson to Henare, 12 May 1995, RC1, Correspondence May 1995, (SS) Box 38, W-T archive; Solomon to Mahuta, 25 May 1995, RC1, Correspondence May 1995, Vol.40, Box 18, W-T archive.
- 53 Richard Hill, 'Enthroning justice above might? : The Sim Commission, Tainui and the Crown,' Treaty of Waitangi Policy Unit, 1989.
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- 56 Solomon to Mahuta, 18 July 1995 & Patterson to the Waikato Negotiating Team, 19 July 1995, RC1, Correspondence June–September 1995, Vol.41, Box 19, W-T archive, pp.1–2.

- 57 Parsonson to Henare, 19 July 1995 and Solomon to Patterson & Mahuta, 26 July 1995, RC1, Correspondence June–September 1995, (SS) Box 39, W-T archive, pp.4–6.
- 58 Unknown author, [?] August 1995, AAKW W5105 7812 22 Tainui: 1995 Pt.5, Archives New Zealand, Wellington.
- 59 ‘Waikato-Tainui Raupatu Claims Settlement Bill: Submissions on Behalf of Waikato-Tainui’, 25 August 1995, RC1, Correspondence June–September 1995, Vol.41, Box 19, W-T archive.
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- 61 Michael Allen, ‘Illusory Power? Metropole, Colony and Land Confiscation in New Zealand, 1863–1865’, in Richard Boast and Richard S. Hill, eds, *Raupatu: The Confiscation of Māori Land*, Victoria University Press, Wellington, 2009.
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- 63 Waikato Raupatu Claims Settlement Act 1995, Recital F.
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- 65 Bellingham, p.71.
- 66 Belich, *The New Zealand Wars*, pp.73–98; Keenan, pp.71–204.
- 67 W.H. Oliver, ‘Getting Facts on Your Side’, *New Zealand Books*, December 1995, p.15.
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- 69 Craig Innes and James Mitchell, ‘Alienation of Māori granted lands within Te Rohe Pōtae Parish extension, 1863–2011’, Wellington, 2013; *Appendix to the Journals of the House of Representatives*, ‘Further Papers Relative to Confiscated Lands’, 1873 Session I, C-04B.
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- 71 Bellingham, p.73.
- 72 W.H. Oliver, ‘The Future Behind Us: The Waitangi Tribunal’s Retrospective Utopia’, in Andrew Sharp and Paul McHugh, eds, *Histories, Power and Loss: Uses of the Past – A New Zealand Commentary*, Bridget Williams Books, Wellington, 2001; W.H. Oliver, *Looking for the Phoenix: A Memoir*, Bridget Williams Books, Wellington, 2002.
- 73 E.H. Carr and Richard Evans, *What is History?*, Palgrave, London, 2001, p.30.
- 74 Richard J. Evans, *In Defence of History*, Palgrave, London, 1997, p.230.
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