

Reviews (Books)

The Land is our History: Indigeneity, Law, and the Settler State. By Miranda Johnson. Oxford University Press, New York, 2016. 233pp. NZ price: \$39.99. ISBN: 9780190600068.

IN 2011 THE NATIONAL GOVERNMENT, in concert with coalition partners including the Māori Party, fulfilled its promise to repeal the odious Foreshore and Seabed Act. In the tradition of many earlier processes of rights definition and possible compensation for indigenous groups across the Anglo settler states, the new legislation, the Marine and Coastal Area (Takutai Moana) Act, set very high standards for proof of ancestral connection mixed in with continued occupation and use of the marine area throughout the colonization period from 1840 to the present. The process put in place represents an example of history repeating itself, and is reflected in the court cases and commissions of inquiry regarding indigenous claims in Australia, Canada and New Zealand examined in Miranda Johnson's *The Land is our History: Indigeneity, Law, and the Settler State*. In *The Land is our History* Johnson shows how from the 1960s onwards indigenous people in each country began to have their oral evidence accepted in court. This both spurred the advancement of efforts at the recovery of land and increased political control, but also restricted those efforts because of many of the judges' findings about the nature and form of 'authentic indigeneity'.

Johnson begins her story in 1963 with the Yolngu people's 'bark petitions' which demanded an inquiry into the ownership of their lands in response to a plan to mine bauxite in the Gove Peninsula in remote north-eastern Australia. She quickly finds a common thread linking much of the development of modern land claims across all three jurisdictions: massive natural resource projects. Just as in Australia, Canada was also marked by increasing petitions and protest in response to mining projects and pipelines that would cut across wide swathes of First Nations and Inuit territory. In both countries, indigenous people began to assert their rights and status as first peoples or as 'citizens plus'. This served to both support and challenge the state's increasing desire for historical legitimacy. To the state, indigenous people provided an ancient history that was a part of the story of its national modern development, but to indigenous groups their own histories were co-opted and hijacked by the state to continue the process of colonization.

Some of the most important legal cases regarding indigenous rights in Australia, Canada and New Zealand are explored, including *Milirrpum v. Nabalco Pty. Ltd.* and the Commonwealth of Australia (the 'Gove land rights'), the *Calder and Re Paulette* caveat cases in Canada, and *NZMC v. Attorney General* (the 'lands case'). What separates Johnson's analysis from the dozens of other commentaries on these important cases is her focus on the wider historical context, breaking down the background and role of participants from the indigenous claimants, the claimant and Crown lawyers, to the judges, the media and wider third-party, non-indigenous interests. She also finds some stark limits to what were at the time viewed as ground-breaking legal victories for indigenous groups across the different jurisdictions. While courts in Canada and Australia began to allow indigenous, often oral, evidence into court proceedings, the most valuable proof for these judges came from only those indigenous people who could prove continuing traditional practices such as food-gathering in a completely unaltered state despite the wide-ranging effects of colonization. This static view of

history resulted in the undermining of any modern takes on indigeneity, and limited the political advancement available to indigenous people. In the 'Gove land rights' case, Justice Blackburn allowed the admission of Aboriginal testimony into the court, but he completely rejected the property rights of the Yolngu people. Despite all of the evidence which showed their long-term connections to the land, he concluded in his judgment that 'it seems easier, on the evidence, to say that the clan belongs to the land than that the land belongs to the clan' (p.51).

Following on from the court cases, some of Johnson's best work then focuses on the history of commissions of inquiry in all three countries and how the range of indigenous evidence increased even further. She compares the Canadian Indian Claims Commission (1969–1976) and Mackenzie Valley Pipeline Inquiry (1974–1976), the Aboriginal Land Rights Commission in Australia (1973–1974) and the Waitangi Tribunal process and finds a common thread between them which developed the idea of a new social contract. Her final chapter takes an extended look at the Tribunal's Whanganui River hearings (1994–1995) and 1999 report. Johnson lays out the Crown and claimant arguments in each hearing and finds similar claims across each jurisdiction, as well as the responses from the Crown in defence of its own record of colonization. Showing the progression from 'the Gove land rights case', the Whanganui proverb 'ko au te awa, ko te awa ko au' (I am the river and the river is me) was not seen as a limit on Whanganui iwi and hapū property rights to the river and led to a ground-breaking settlement.

Overall this is an excellent book but there are some minor issues. In her extended background to the Waitangi Tribunal process she completely skips over the result of the 'lands case' in New Zealand, the binding powers provided to the Tribunal for the return of state-owned enterprise lands, and Crown forest rentals and land via the Treaty of Waitangi (State Enterprises) Act 1988 and the Crown Forests Assets Act 1989. Her discussion of the Whanganui river settlement that was the product of the Tribunal's Whanganui River Report was far too brief. But this is nit-picking. More work is needed like it, especially the unpacking of individual Waitangi Tribunal hearings. With district inquiries winding up and urgent and kaupapa inquiries increasing, the time is right to begin to explore the background and context to Tribunal hearings while many of the key participants are still with us.

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The Treaty on the Ground: Where we are Headed, and Why it Matters. Edited by Rachael Bell, Margaret Kawharu, Kerry Taylor, Michael Belgrave and Peter Meihana. Massey University Press, Auckland, 2017. 328pp. NZ price: \$39.99. ISBN: 9780994130051.

THE PUBLICATION OF THIS BOOK provides a timely and necessary opportunity to re-examine the Māori–Crown relationship in action in contemporary Aotearoa New Zealand, and to give insight into how our Treaty partnership will progress in the future. This book takes stock of where we have been. It provides interesting and diverse examples of the impact of the Treaty on the ground from a range of fresh