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‘Not One More Bloody Acre’: Land Restitution and the Treaty of Waitangi Settlement Process in Aotearoa New Zealand

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Abstract: Te Tiriti o Waitangi, signed between Māori rangatira (chiefs) and the British Crown in 1840 guaranteed to Māori the ‘full, exclusive and undisturbed possession of their lands’. In the decades that followed, Māori were systematically dispossessed of all but a fraction of their land through a variety of mechanisms, including raupatu (confiscation), the individualisation of title, excessive Crown purchasing and the compulsory acquisition of land for public works. Māori, who have deep cultural and whakapapa (genealogical) connections to the land, were left culturally, materially and spiritually impoverished. Land loss has long been a central grievance for many Māori and the return of land has been a guiding motivation for whānau (extended family), hapū (sub-tribe) and iwi (tribe) seeking redress from the Crown. Since the 1990s, many groups have entered into negotiations to settle their historical grievances with the Crown and while land loss and the deep yearning for its return are central to many Māori claims, precious little land is typically returned to Māori through the settlement process. This paper seeks to critically examine the Treaty settlement process in light of land restitution policies enacted elsewhere and argues that one of the many flaws in the process is the paucity of land returned to Māori.

Keywords: Treaty of Waitangi; Māori land; primitive accumulation; treaty settlements

1. Introduction

Late on 5 August 2019, a cold mid-winters night when the temperature in the Tāmaki Makaurau suburb of Māngere fell to just 7 degrees Celsius, there was a rapid and dramatic increase in tension between the New Zealand Police and a group of local Māori and their supporters occupying ancestral land at Ihumātao [1]. The land, zoned for a proposed residential development, lies adjacent to the Ōtuataua Stonefields, a wāhi tapu (sacred site) for local Māori and an internationally significant archaeological site [2].¹

The land at Ihumātao was among 1,202,172 acres of fertile and largely flat land confiscated from Waikato Māori in 1863 [3] (pp. 16–17). The ostensible justification for confiscation was the suppression of ‘rebellion’ but in reality, the land was required to settle a rapidly growing Pākehā (European) population and kick-start New Zealand’s pastoral economy [4,5]. In total 1100 acres were taken by the Crown at Ihumātao, of which 840 acres were sold or granted to Pākehā settlers [3] (p. 17).² The land at

¹ The author has opted to use macrons, it should be noted that this is a matter of convention and is not general to all Māori, and indeed, many Māori of Tainui descent opt instead to use a double vowel, for example, Ihumātao would instead be rendered Ihumaatao.

² The remaining 260 acres were returned to Māori deemed not to have been engaged in rebellion.

Ihumātao remained in settler hands until 2016 when it was sold to Fletcher Construction Ltd, a \$9 billion construction behemoth and one of New Zealand's largest listed companies [6].

Representatives of various local iwi and hapū (tribes and sub-tribes) with whakapapa (genealogical) ties to the land have been occupying it since shortly after it was sold to Fletcher in 2016. Tensions increased on 23 July 2019 when Police and representatives of the Te Kawerau-ā-Maki Iwi Settlements Trust³ [7] served the occupiers with an eviction notice. Relations between land occupiers and Police have ebbed and flowed in the weeks since but appeared to be improving after New Zealand's Prime Minister, Jacinda Ardern, assured the occupiers that no development would begin on the land until a resolution could be reached [8].

Anxieties among protestors grew on 4 August, however, when a small number of otherwise unarmed Police were observed carrying assault rifles at Ihumātao [9,10]. On the evening of 5 August and following talks between Police and occupiers aimed at de-escalating tensions, the Police significantly increased their presence at Ihumātao to over 100 officers in 68 Police cars [11–13]. Mana whenua (those with authority over the land) and their supporters described being intimidated by Police [14,15]. Tensions between Police and those occupying the whenua (land) at Ihumātao have since subsided and the Police have significantly scaled back their presence [16]. However, the issue behind the occupation remains unresolved and those that remain on the land have vowed to stay until it is returned [17].

This paper is not specifically about Ihumātao, but the example of Ihumātao is emblematic of the struggle of Māori to have their land restored to them, a struggle that continues today, 179 years after Te Tiriti o Waitangi (the Treaty of Waitangi) guaranteed Māori the 'full exclusive and undisturbed possession' of their lands, estates, forests, fisheries and other properties [18]. This paper is about the ongoing fight by Māori for land and the recent restitution of (not much) land through the Treaty of Waitangi settlement process.

This paper begins with a brief summary of the alienation of Māori land in the nineteenth and twentieth centuries. It draws on Marx's theory of primitive accumulation to account for the systematic dispossession of Māori land as the basis of New Zealand's largely land-based capitalist economy. It briefly surveys Māori resistance to land loss and the establishment of the Waitangi Tribunal, a permanent commission of inquiry tasked with investigating Crown breaches of the Treaty of Waitangi. The main focus of this paper is the Treaty settlement process, underway since the early 1990s and through which more than 70 iwi and hapū groups from all around New Zealand have settled their historical claims against the Crown [19]. In this paper, it is argued that precious little land, much less productive land, is typically restored to Māori through the otherwise much fêted Treaty Settlement process and that this is both a major limitation and a source of ongoing grievance for many Māori, even after the settlement process formerly extinguishes their legal right to seek redress from the Crown. Moreover, the paucity of land involved in most Treaty settlements will likely leave many iwi and hapū groups, particularly smaller groups, in a marginal position in New Zealand's land-based capitalist economy.

2. Materials and Methods

This paper is a theoretically informed historical analysis based on the author's experience working as a Senior Historian with the Office of Treaty Settlements, part of New Zealand's Ministry of Justice. It draws on a range of primary data sets including Government publications, Court records and legal statutes, archival sources, newspapers and other media sources. It also makes use of secondary historical sources. This paper also draws on a recently flourishing Marxian literature on primitive accumulation in order to account for the alienation of Māori land in the nineteenth and twentieth centuries.

3. Primitive Accumulation and the Systematic Dispossession of Māori Land

In the closing pages of *Capital* volume one, Marx argues that the transition to the capitalist mode of production is achieved through violence, through various forms of 'conquest, enslavement, robbery,

³ The Crown recognised tribal authority for *one* of the iwi, hapū and whānau groups with recognised ties to the land.

murder' and 'force' [20] (p. 874). For Marx, capitalist social relations are not naturally occurring, nor are they common to all periods of human history: 'nature does not produce on the one hand owners of money and the means of production, and on the other hand men possessing nothing but their own labour power' [20] (p. 273). On the contrary, Marx contends, capitalist social relations are created in a crucible of violence and oppression. Primitive accumulation is the name Marx gives to the bloody processes by which lands and natural resources are 'suddenly and forcibly' torn from their original owners and inhabitants, privatised and incorporated into capital. In stripping peoples of their lands and productive resources, the processes of primitive accumulation have the twin effect of creating 'free, unprotected and rightless' proletarians on the one hand while simultaneously conquering the field for capitalist agriculture and incorporating the soil and other natural resources into capital on the other [20] (pp. 876, 895).

Primitive accumulation, then, describes the expropriation of the feudal or peasant producer from the soil. In chapters 27 and 28 of *Capital*, Marx details the expropriation of often long-settled crofters, cottagers and tenant farmers from their lands in Britain, the 'grossest acts of violence' necessary to drive the people from their lands, the enclosure of their resources hitherto held in common and the 'bloody legislation' enacted against the newly dispossessed [20] (pp. 889, 899). In Aotearoa, New Zealand, too, were all these methods of primitive accumulation required to separate Māori from their ancestral lands and to bring those lands into the cycle of capital accumulation. The methods varied but included war and *raupatu* (confiscation), the forced individualization of title, compulsory acquisition, excessive Crown and private purchasing and the seizure of land for defence or public works purposes [21–26].

For Marx, primitive accumulation was mostly a historical process, an initial wave of violent dispossession that would recede once the wheels of capital accumulation began to turn. As Marx put it, after this initial burst of 'conquest', 'robbery' and 'murder', direct extra-economic force might still be used, 'but only in exceptional cases' [20] (p. 899). In recent decades and in the context of the ceaseless commodification and marketization of everything and everywhere, a number of authors have shown that all the features of primitive accumulation that Marx details, the commodification and privatisation of land, the capture and enclosure of natural resources, the exclusion of indigenous populations, and the use of state violence in supporting these projects have remained stubbornly persistent features of capitalism in all stages of its historical development [4,27–31].

As noted briefly above, a flourishing literature has emerged recently that draws on Marx's theory of primitive accumulation to account for an impressive diversity of phenomena, including the privatisation of previously unowned, state-owned or communally-owned lands and natural resources, the suppression of rights to the commons, the colonial, neo-colonial and imperial accumulation of natural resources, the dispossession of women's bodies and ways of knowing [29]; the increasingly severe and seemingly irreversible degradation of land, air and water, and the dismantling of welfare states and the suppression of indigenous alternatives to capitalist production and consumption [30] (p. 145), [31] (p. 159), [32].

Among this flourishing literature, the work of political theorist Glen Coulthard (Yellowknives Dene) speaks closely to the experience of Māori. Coulthard seeks to reconstruct, reformulate or, indeed, 'indigenize' [33] Marx's theory of primitive accumulation [34]. Coulthard's reconstruction involves shifting focus from an emphasis on the *capital relation* to the *colonial relation* [35]. Where Marx argues that primitive accumulation dispossesses *and* proletarianizes non-capitalist populations, Coulthard instead, focusses on dispossession as an end in-and-of itself [34] (pp. 5–11), [35] (pp. 214–215).

For Coulthard, shifting the emphasis from proletarianization to dispossession reveals important insights into the relationship between indigenous peoples and the settler state [34] (p. 9), [35] (p. 214). First, it becomes increasingly difficult to sustain the erroneous assumption—comforting as it may be for settlers and their descendants—that colonial dispossession will 'somehow magically redeem itself', by bringing indigenous workers into the capitalist fold and setting them on the path toward 'civilisation' and 'development' [34] (p. 9), [35] (pp. 214–215). Secondly, focussing on the ongoing impacts of colonial dispossession is a more accurate way to understand the structural relationship

between indigenous people and the settler state; settler capitalism has depended more on indigenous people's lands than it has on their labour and, indeed, it has been the experience of dispossession, more than anything else, that has shaped and guided indigenous struggle against the state [34] (p. 11), [35] (p. 215). Similarly, for Patrick Wolfe, the dispossession of indigenous land is absolutely central to settler colonialism, 'whatever settlers may say—and they generally have a lot to say—the primary motive of settler colonialism] is access to territory. Territoriality is settler colonialism's specific, irreducible element [36].

Coulthard's work focusses on the experiences of indigenous peoples in Canada, but his insights are equally applicable in Aotearoa New Zealand where Māori land, not labour, was pivotal to capitalist development,⁴ and where the experience of dispossession, and the ongoing struggle to hold and regain land has been central to Māori struggle against the settler state. The following paragraphs briefly summarise the Māori experience of colonial dispossession as it played out over the nineteenth and twentieth centuries.

Resistance to land loss was weakest in Te Waipounamu (the South Island), where disease and the processes of colonisation had all but destroyed Ngāi Tahu (the principle South Island iwi) [37]. By the mid-1860s, the Crown had purchased almost all 34 million acres of Te Waipounamu [38] including through the 20,000,000-acre Canterbury purchase for £2000 in 1847 and the 7,000,000-acre Murihiku purchase of what is now Otago, Southland and Fiordland for £2,600 in 1853 [39]. The Crown had also purchased seven million acres in Te Ika-a-Maui (the North Island) including approximately 75 to 80 per cent of Wairarapa, 'at a wonderfully cheap rate' [40], as well as 50–55 per cent of Hawkes Bay, South Auckland and Kaipara and most of central Auckland and Wellington [38] (p. 8), [26] (p. 121). Increasing Māori opposition to settler encroachment in the North Island spilled over into war in Taranaki 1860 and in Waikato in 1863. That year, and in the midst of spiralling conflict between the Crown, settlers and many North Island Māori, the Crown passed legislation allowing it to confiscate lands for settlement from any Māori deemed to be engaged in rebellion [3,41]. The confiscations that followed netted for the Crown and settlers an additional 3,490,737-acres of Māori land at Waikato, Taranaki, Tauranga, the eastern Bay of Plenty and Mōhaka-Waikare [3], including some of the most fertile, flat and productive land in Aotearoa New Zealand [42]. The impact of confiscation on the Māori affected was devastating [43–45], but in terms of land lost, it paled in comparison to what followed—the Native Land Court and the legal purchase of Māori land 'at the barrel of the gun' [46].

The Native Land Court has been described as 'one of the most pernicious measures ever enacted by a settler community to get its hands on the estate of the native inhabitants' [47]. The Court was established through the Native Lands Act in 1865 and was designed to destroy communal Māori land tenure and facilitate Pākehā land buying [48]. The Court granted tenure of Māori land to individuals or to small numbers of owners. With few other economic opportunities available to Māori, many of these 'owners' were tempted into debt by a 'predatory horde' of land buyers, surveyors, land agents and money lenders that descended upon Māori as they attended Court proceedings [25] (pp. 185–186). Selling the land was, more often than not, the only available avenue out of debt, and in this way, Māori lost more land than they had to raupatu. 'Between 1861 and 1891 Maori land holdings in the North Island halved from 22 million to 11 million acres or from about 80 per cent to 40 percent' [48] (p. 256). It was, Ward contends, 'the sordid and demoralising system of land purchasing, not war and confiscation, that really brought the Maori people low' [25] (p. 267), [5] (pp. 20–21), [37] (p. 30).

Large-scale Crown purchasing of Māori land continued well into the twentieth century, even after it was known that Māori had very little land left, that their population was beginning to recover and that they wished to retain and produce from their remaining holdings [26] (p. 147), [38] (p. 8). Between 1890 and 1930, Māori lost an additional 7 million of their remaining 10 million acres, including

⁴ Indeed, Māori were not required as proletarian workers until the mid-twentieth century. Labour shortages during the Second World War brought increasing numbers of young Māori to the provincial towns and cities and, from 1961 onward, the relocation of Māori to urban centres became official Crown policy.

to compulsory sale. For Ward, given that this purchasing was against the wishes of Māori and that the Māori population was known to be recovering, Crown purchasing in this period is among the worst of its myriad breaches of Te Tiriti o Waitangi [26] (p.148). New Zealand's first Liberal Government (1891–1912) were among the most successful in parting Māori from their ancestral lands; indeed, they pursued the acquisition of Māori land with an aggressive vigour that belies their otherwise fêted status as reformers and progressives. During their years in office, the Liberals affected the purchase of 3.1 million acres of Māori land [4,5,49,50]. The conservative Reform administration that replaced the Liberals in 1912 also undertook a systematic programme of purchase and by 1930, a total of approximately 3.5 million more acres were lost to Māori—freehold Māori land diminished to just 3.6 million acres, much of it inaccessible backcountry and totally unsuitable for farming [26] (p. 159), [51]. Māori landholdings today, more than a quarter of a century after the first Treaty settlements, totals just 1.4 million hectares or approximately 5 per cent of Aotearoa New Zealand [52].

4. 'A Most Difficult and Critical Position': Māori Landlessness and Crown 'Compensation'

As noted briefly above, New Zealand's first Liberal administration were among the more successful in parting Māori from their lands. They were also highly successful at giving their actions an air of legitimacy by camouflaging their rapacity behind a veneer of benevolence [4] (pp. 102–108), [5] (pp. 22–24), [25,49] (pp. 78–98), [50]. To this end the Liberal's appointed a Royal Commission comprising MHR William Lee Rees and Member for Eastern Māori, James Carroll (Ngāti Kahungunu) to investigate existing 'native' land laws and purchasing processes [26] (pp.150–151), [53]. It was the first of a number of Crown commissions that would investigate the impact of land loss on Māori. The Rees Carroll Report of 1891 was 'utterly damning' of all that had happened since 1865 [26] (p. 150). The long-standing policy of individualisation of title drew particularly intense scrutiny. The Commissioners found that the policy had led to the rapid loss of vast areas of Māori land.

So soon as the title became vested in these individuals, Europeans commenced to deal with them by purchases, leases and mortgages. Vast areas were thus acquired by Europeans in many districts; and thousands of native people saw their lands which in reality belonged to them passing in many cases without their concurrence and against their will, into the hands of strangers [53] (p. *vii*).

In the Parliamentary debates that followed the release of the Commission's report, the former Premier, Sir Robert Stout, was moved to comment that the individualisation of title to communal Māori land had 'bit by bit' violated te Tiriti o Waitangi [54]. Despite these damning findings, the alienation of Māori land continued apace.

In 1906, 15 years after the Rees Carroll Commission, the Liberal Government appointed the former Premier, Sir Robert Stout, and Āpirana Ngata (Ngāti Porou), Member for Eastern Māori, to make an inventory of remaining Māori land holdings, assess how much Māori land remained idle and to explore ways in which such land might be brought into some form of productive capacity [21] (p. 226), [26] (p. 156), [55,56]. The Stout-Ngata Commission found Māori in a perilous position in New Zealand Society owing to the loss of so much land in the nineteenth century and to the lack of opportunity to develop what lands they had retained. Their report too, was 'utterly damning':

The Māori race is, in our opinion, in a most difficult and critical position. There is great pressure from European settlers to obtain their lands ... They [Māori] are looking to the future with no hope ... What is to become of the Maori people? Is the race to pass away entirely? The spectacle is presented to us of a people starving in the midst of plenty [57].

Again, such stark findings did little to quell the appetite for Māori Land; the recommendations of Stout and Ngata were overridden by the Liberal administration and the systematic acquisition of Māori land resumed [26] (p. 156).

As their land holdings continued to diminish, Māori continued to appeal to the Crown for help. Thousands of petitions flooded into the Native Affairs Committee 'praying' for some form of

relief: for the return of land; for monetary compensation; for the inclusion of additional interests into titles determined by the Native Land Court; for adjustments to the boundaries of particular blocks of land; or for changes to those named as successors on titles [58]. In 1920, an additional Crown Commission was established to look into some of the more egregious claims. The Jones Commission, headed by the Chief Judge of the Native Land Court, inquired into and reported on a number of petitions from Māori regarding lands in a number of locations around the country, including the Bay of Islands, the eastern Bay of Plenty, Taranaki, Waikato, Hawkes Bay, Aotea and Te Wai-o-Pounamu [59]. The Commission made a number of recommendations, including the return of some land, but the overwhelming majority of petitions, including those concerning indiscriminate confiscation, were, quite simply, ignored. Seemingly undeterred, Māori continued to petition the Crown for the return of their lands throughout the 1920s [60].

In October 1926, after a number of petitions from iwi affected by confiscation in Waikato, Taranaki, Urewera and the eastern Bay of Plenty, Māori Members of Parliament Sir Āpirana Ngata and Sir Māui Pōmare persuaded then Prime Minister Gordon Coates to establish a Royal Commission of Inquiry into the confiscations. Supreme Court Judge William Sim was appointed to head the Commission. When Sim Commission reported back in 1928, it found that the confiscations were, to varying degrees, excessive and unjust and in some cases, recommended compensation. For the 1,275,000 acres confiscated from Taranaki Māori, following what was described as an ‘unjust and unholy war’, the Commission recommended an annuity of £5000 [3] (p. 11).

In Waikato, the Commissioners concluded that local Māori were indeed ‘rebels’ and that their land was therefore ‘viable for confiscation’. They did, however, concede that the confiscations were excessive and that, at Ihumātao and Māngere, a ‘grave injustice was done’. For the 1,202,172 acres of high-rainfall, flat or rolling, prime agricultural land confiscated from the iwi and hapū of the Waikato, the Commission recommended an annuity of £3000 [3] (p. 15). With regard to the 49,750 acres confiscated from Tauranga Māori, the Commissioners found the Crown’s actions to be justified and the confiscation ‘not excessive’ [3] (p. 20). In the eastern Bay of Plenty, where 211,060 acres was confiscated from Ngāti Awa, Ngāi Tūhoe and Te Whakatōhea, the Commission again found that the Crown’s actions ‘did not exceed what was fair and just’, except in the case of Te Whakatōhea, where it was excessive, ‘but only to a small extent’ [3] (p. 22).

For the 143,870 acres confiscated from Te Whakatōhea, which included ‘all the flat and useful land’, the Commission recommended an annual payment of £300. A subsequent petition from the people of Te Whakatōhea summed up the tribe’s view of the Crown’s ‘generosity’:

What generous gentlemen those Commissioners were! What magnanimity! What liberality! 143,870 acres of the flat, fertile and alluvial lands in and around the township of Opotiki politically and scientifically filched from the Natives by the early administrators of this country—and the said liberal gentlemen recommended £300! What lavish prodigal generosity . . . It was political robbery from people who were defenceless; it was spoliation of a Native race [61].

‘Final Settlement’ of claims relating to the confiscation of Māori land was reached in the mid-1940s when legislation was enacted giving effect to the recommendations of the Sim Commission. Taranaki Māori received their £5000 annuity and an additional £300 for the ‘loss and destruction’ of certain ‘goods and chattels’ during the Crown’s invasion of the pacifist settlement of Parihaka [62]. The Crown would later concede that during the invasion of Parihaka in 1881, Crown troops committed a number of rapes, residents were wrongly and indefinitely detained, others were forcibly evicted, their homes and sacred buildings destroyed or desecrated, their heirlooms stolen, and their crops and livestock systematically destroyed [63]. By way of ‘Final Settlement’ for the loss of 1.2 million acres, Waikato-Tainui and Ngāti Maniapoto received an annuity of £5000, an additional one-off payment of £5000 and a further £1000 annuity for a duration of 45 years [64]. Having rejected the £300 initially offered, Whakatōhea received a one-off payment of £20,000 in final settlement for the confiscation of 143,870 acres [65].

5. The Waitangi Tribunal and the Contemporary Treaty Settlement Process

With such paltry compensation, it is hardly surprising that Māori continued to call for the return of their lands—the centrality of land to Māori identity and social, economic and spiritual wellbeing cannot be overstated [66]. During the 1960s and 1970s, and in an international context of increasingly vociferous protest against war and imperialism and for, among other things, indigenous rights, women's rights, and queer rights, Māori were involved in a number of high-profile protest actions aimed at the return of their ancestral lands [26] (pp 21–24, 25), [67–69]. Indeed, as Ronald Neizen has noted, in the 1960s and 1970s, indigenous peoples around the world, including Māori, became increasingly aware of the widespread, 'almost global nature of the crises they faced'. There was a significant expansion of resistance and a marked growth and development of indigenous people's organisations and networks of communication between them [70]. In 1975, the then Labour Government responded. Matiu Rata, the Minister of Māori Affairs introduced a bill to give Te Tiriti o Waitangi greater statutory force [26] (p. 26), [67] (p. 210). The Treaty of Waitangi Act 1975 established the Waitangi Tribunal, a permanent commission of inquiry tasked with inquiring into Crown breaches of Te Tiriti o Waitangi [26] (p.26), [71,72]. Rata had intended the Tribunal to have retrospective powers to inquire into and provide historical redress for Crown breaches going back to 1840, but, initially at least, the Tribunal was only given the power to deal with breaches of Te Tiriti subsequent to the Act [26] (p. 26), [69] (pp. 419–420).

Throughout the late 1970s and early 1980s Māori continued to protest. In January 1977, members and supporters of Tāmaki Makaurau iwi Ngāti Whātua-o-Ōrākei occupied Bastion Point to protect it from development, but 507 days later, they were forced from their ancestral lands by a combined force of Army and Police [69] (p. 439). Occupiers denounced the Crown's actions as a 'monstrous, barbaric and idiotic act' [69] (p. 422). In 1981, many Māori joined in often violent protests against the Springbok (South African Rugby Team) Tour of Aotearoa New Zealand, expressing hostility to racism, opposition to apartheid and solidarity with oppressed indigenous peoples. Protests at annual Waitangi Day celebrations increased in size and in clamour and in 1984, 3000–4000 people joined the Hikoi ki Waitangi, a protest march to Waitangi calling for te Tiriti to be honoured and for Māori to be compensated for historical injustices [69] (pp. 438–439).

In 1985, the Fourth Labour Government responded by giving the Tribunal retrospective powers [26] (pp. 28–31), [69] (p. 439). The Treaty of Waitangi Amendment Act 1985 gave the Tribunal the ability to hear claims dating back to 6 February 1840 [73]. The fourth Labour government also implemented a series of rapid and wide-ranging neoliberal reforms including transferring Crown lands to State-Owned Enterprises in preparation for corporatization and possible privatization [74]. Crown lands were effectively put beyond the reach of Māori claimants [67] (p. 211). The New Zealand Māori Council appealed the Crown's decision in what became known as the Lands case of 1987. The Court of Appeal found that the Crown's actions breached the principles of Te Tiriti o Waitangi and directed the Crown to ensure that the transfer of lands was consistent with Treaty principles. Memorials were placed upon the titles to all State-Owned Enterprise lands and Crown forest lands, noting that the land was subject to resumption. The Waitangi Tribunal was given binding powers to order the restoration of land to Māori [67] (p. 211). The implications were potentially far-reaching; Māori now had an avenue through which to seek legal remedies for the loss of land. The Crown responded by curtailing claimants' access to the remedies available in the Tribunal and pushing them instead into direct negotiations with the Crown [67] (p. 211), [75].

Between 1985, when the Tribunal was given retrospective powers and the deadline for submitting historical claims, in September 2008, the Tribunal received over 2,500 claims from Māori seeking, among other things, the return of land, waters, seas, fisheries, minerals and other resources, protection of the natural environment, recognition of egregious Crown actions and the restoration of Te Reo Māori and Tikanga Māori (Māori language and culture) [67] (p. 212). A very large number of the claims, in fact, the overwhelming majority of all claims, concern the loss of specific areas of land to the Crown [72] (p. 14). While land is clearly central to Māori grievances—the return of land and in particular, useable land—has not been as central to the settlement process. The Crown resolutely

refuses to return any land in private ownership, including land that was indiscriminately confiscated, such as that at Ihumātao, even as it acknowledges that such confiscations were ‘wrongful and unjust’. Instead, the Crown will only consider returning surplus Crown lands—or, in some cases, entering into co-governance arrangements over lands in the conservation estate. Indeed, Margaret Mutu has argued that the Treaty process is all about unpicking the legal rights won by Māori in the Lands case, extinguishing all historical claims and preserving Crown control over Māori lands and resources [67] (p. 212), [75] (p. 7).

The first Treaty Settlements between the Crown and Māori began in the early and mid-1990s. The first large-scale settlement concerned not the land but fisheries [26] (pp. 43–72). A few small-scale land based settlements followed, including the Kiore Whakakau Land Settlement 1992, the Hauai Claimants Settlement 1993 and the Waimakuku Whānau Claimants Agreement 1995 [76–78]. Moreover, in 1995, Waikato-Tainui reached a settlement with the Crown for the 1,202,172 acres of land confiscated in the 1860s. Waikato-Tainui sought the return of as much land as possible and in the end, received 29,803 acres, including the Onewhero and Maramarua forests, and land with Crown tenants such as the University of Waikato, the New Zealand Police, the Department of Corrections, the Ministry of Justice, the Waikato District Health Board, and Railcorp [26] (pp. 54–55)[44]. Much of the settlement land was subject to a leaseback arrangement whereby Waikato-Tainui collect rents from Crown agencies but are not able to develop or indeed ‘use’ the land. The Crown also retained the rights to any minerals subsequently discovered on the returned land. Expressing her opposition to the ‘sellout’ settlement, veteran Tainui activist Tuaiwa (Eva) Rickard argued:

When they’re saying they’ll give us 35,000-acres, they’re giving us 9 police stations, universities, research stations. Do we take all those buildings out and use the land? We can’t use that land [79]!

Ngāi Tahu, the principle South Island iwi, reached a settlement with the Crown in 1997. Ngāi Tahu lost approximately 34.5 million acres to the Crown through a series of large-scale purchases in the 1840s and 1850s. At the time of settlement, Ngāi Tahu’s losses were thought to have a value of ‘not less than \$20 billion’ [80]. For their enormous losses, Ngāi Tahu received cash compensation of \$170,000,000 and the right, should they choose to use it, to purchase from the Crown a range of properties, including high-country stations, Crown-owned farms and forests, police stations and Telecom properties. Aoraki Mt Cook, the highest peak in Aotearoa was vested in Te Rūnanga o Ngāi Tahu and was immediately gifted back to the Crown [26] (pp. 57–58), [75] (p. 2), [80,81]. These settlements, and the many that have followed, have also served to formally extinguish the rights of Māori to seek further redress or to make use of the mechanisms otherwise available through the Tribunal. Mutu notes that the Treaty settlement process aims to deliver to Māori ‘far less’ than would be available via the Tribunal’s binding recommendations and that, ‘[the Crown] have steadfastly refused to deviate from their aim of extinguishing Māori rights and claims as expeditiously and as cheaply as possible’ [67] (p. 213), [75] (p. 2). Treaty settlement policy, then, imposes ‘a punitive regime on Māori claimants’ and entrenches British Colonisation [75] (p. 2).

The types of redress mechanisms enacted in the Ngāi Tahu Deed of Settlement have been used in most subsequent settlements [82]. Typically, settling iwi receive cash quantum, and the right to purchase surplus Crown land at market prices. The Crown has set aside surplus properties in a series of ‘land banks’ for use in future settlements [82] (pp. 141–145). These properties include former police stations, railway worker’s cottages, hospitals, nurse’s hostels, rail yards, disused tennis courts, schools and at least one adventure playground [83]. Where the land is not immediately available, the settling group maybe offered the Right of First Refusal, that is, the first right to purchase Crown properties should they become available in the future (up to 50 years) [72] (p. 85). Many if not all settling iwi see land loss as among their key grievances and are driven by a desire to have land returned. As noted above, land is central to Māori identity, an inheritance from the past to be protected and enhanced for future generations [84]. That settlement typically involves Māori buying back land that the Crown acknowledges was taken in breach of Te Tiriti o Waitangi demonstrates the limitations to

the settlement process and indeed, settling groups typically receive just one to two per cent of their actual losses [84] (p. 105).

In addition to cash quantum and the ability to purchase back Crown lands, settling groups also receive ‘cultural redress’, that is, recognition of their interests in particular sites of spiritual or cultural significance. Cultural redress takes a variety of forms, including the statutory vesting of highly significant wāhi tapu and wāhi whakahirahira (sites of spiritual or cultural significance) and the statutory vesting and subsequent gifting back of sites of special significance, whereby highly significant lands are returned to Māori but then gifted back to all New Zealanders. More common are mechanisms that recognise claimant groups’ interests in a site of special significance but that retain the site in Crown ownership—possibly co-governed by the settling group. Included here are statutory vestings as reserve—whereby the settling group holds and administers the site as a reserve for all to use—overlay classifications, where a claimant group’s connections to Department of Conservation land are formally recognized, and statutory acknowledgements, where a settling group’s connections to sites of significance within the Crown estate are acknowledged and the group is given enhanced ability to participate in the consenting process to use, take from or defile the land in question [72] (p. 94).

Today, more than 75 groups have reached ‘full, fair and final’ settlements with the Crown. Settlements have ranged in scale from as little as \$43,931 for the Rotomā land block in 1996, to the \$170,000,000 paid to Waikato-Tainui in 1995 and Ngāi Tahu in 1997, \$90,000,000 to Ngāti Porou in 2011, \$168,000,000 to Ngāi Tūhoe in 2013, \$87,000,000 to Te Ātiawa in 2014, and \$93,000,000 for Ngāti Kahungunu ki Wairarapa Tāmaki nui-a-rua in 2018 [72] (p. 21). To date, the total value of settlements is a little over \$2.24 billion, paid out since 1993, a significant sum no doubt, but a mere drop in the bucket when compared to the total value of Māori losses or indeed to total government expenditure—estimated at \$1322 billion over the same period [85].

6. Conclusions

I riro whenua atu, me hoki whenua mai.

Land was taken, land must be returned. [84] (p. 106)

The ways in which Māori claims to land are addressed in Aotearoa New Zealand are often looked at as ‘best practice’ by indigenous peoples around the world [85] (p. 99). The many Treaty of Waitangi settlements that have been reached in recent decades have been seen by some as ‘dynamic and powerful steps towards economic independence’ for Māori, and an important means through which the centrality of lands and water to Māori identity and wellbeing are recognised [75] (p. 99), [86]. Critics, on the other hand, have argued that the Treaty settlement process is weighted too heavily in the Crown’s favour, that settlements fail to adequately compensate Māori for their enormous losses, that the settlement process enriches a Māori corporate elite while doing little or nothing to alleviate the material hardship of most Māori, that the various Crown processes that settling groups are forced through are divisive, and that the whole settlement process is a ‘smoke and mirrors approach’ that masks the Crown’s true intention to claw back Māori rights and maintain structural Pākehā control over Māori and their lands and other resources [67] (pp. 208–221), [68] (pp. 59–88), [84] (p. 99), [87,88].

In addition to these criticisms, the paucity of land involved in most settlements is a serious limitation to the settlement process, given that the return of land is a driving motivation of most groups engaged with the Crown. Furthermore, land was, is, and will long be central to New Zealand’s productive economy—New Zealand’s largest export earners being tourism, agriculture (in particular meat and dairy), forestry, and horticulture [89], all of which are entirely dependent on an abundance of land. Forestry land aside, much of the surplus Crown land that is available for settlement purposes—police stations, post-offices, former prison sites, schools, dwellings, and protected land in the Department of Conservation Estate [83], is wholly unsuitable for the kind of development that would orient it toward New Zealand’s most lucrative export industries.

Margaret Mutu, too, highlights the limitations of the Treaty settlement process with regard to the return of land and natural resources [75]. Department of Conservation (DOC) land, a third of all, land in Aotearoa New Zealand is mostly off limits to Treaty Settlements, where DOC land is included in redress, ongoing public access and recreation rights are guaranteed—curtailing the uses to which the land can be put. Crucially, privately owned land is also off limits, which dramatically impacts on the amount and quality of land available for redress [75] (p.10). That the Crown should steadfastly refuse to return privately owned land as compensation is perhaps surprising, given the central role played by the Crown in capturing lands for sale to private interests in the first place. However, the Crown's reluctance to return productive land to Māori is less noteworthy in the context of colonial dispossession theorised by Coulthard and detailed above. Colonisation, Coulthard argues, is a form of structured dispossession [34] (p. 6), the capture of territory from the indigenous population is the single, 'irreducible element' of the colonial project as a whole. 'Invasion', Wolfe notes, 'is a structure not an event [36] (p. 388). The true intent of the Crown in Aotearoa New Zealand, much like settler colonies elsewhere, is the preservation of settler domination over Māori lives, lands and resources [75] (p. 10). Lands and resources that, Coulthard notes, contradictorily provide the material and spiritual sustenance of indigenous societies on the one hand and the fundamental foundations for settler capitalism on the other [34] (p. 6). Understood in this way, the dispossession of Māori land is central to the ongoing colonial project in Aotearoa New Zealand, and as such, the settler state is hardly likely to willingly divest itself of its hard-won gains.

Primitive accumulation separates the producer from the means of production and in the case of Aotearoa New Zealand, land is the principle means of production. The mechanisms of primitive accumulation that stripped the land away from communal Māori ownership in the nineteenth and twentieth centuries were crucial in incorporating those lands into capital and kickstarting New Zealand's productive economy. Māori were largely excluded from the settler capitalist state, at least until large-scale urbanisation in the post-WW2 era. Māori have tirelessly advocated for the return of their lands and have secured some important victories, including the establishment of the Waitangi Tribunal in 1975, the extension of its powers in 1985, and the recognition of land as a 'taonga tuku iho of special significance to Māori' through the Te Ture Whenua (Māori Land Act) 1993 [84] (p. 106). The treaty settlement process that has developed since then has seen some \$2.24 billion allocated to Māori, yet the percentage of Māori-owned land has scarcely increased. Indeed, total Māori land holdings including freehold land and land in customary title have actually *decreased* over the last eight years [90], even as a number of large Treaty settlements have passed into law, including Ngāi Tūhoe, Ngāruahine, Te Ātiawa, Ngāti Kahungunu ki Wairarapa Tāmaki nui-a-rua, and Ngāti Tūwharetoa.

Today, Māori land holdings total slightly more than 1.4 million hectares or approximately five per cent of all land in Aotearoa New Zealand [91]. Given the centrality of land to New Zealand's productivist economy and the fact that Māori make up more than 15 per cent of the national population [91], and that the majority of Māori-owned land is unsuitable for production—it is likely many Māori will remain peripheral to New Zealand's capitalist economy even after their rights to legal recourse are formally extinguished. Moreover, given the importance of land to Māori identity and cultural, material and spiritual well-being, a Treaty settlement process that extinguishes Māori claims without adequately addressing the deep yearning of Māori for the return of their lands is unlikely to prove 'full, fair and final', particularly given that Māori were guaranteed the 'full, exclusive and undisturbed possession of their lands' under Te Tiriti o Waitangi.

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