Te Whare Wānanga
o Awanuiārangi

A PEDAGOGY OF TREATY SETTLEMENT FOR WAIKATO

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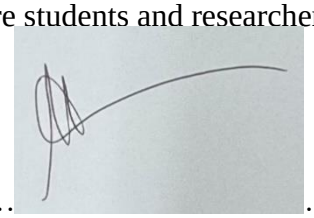
Declaration

To the best of my knowledge, this thesis contains no material previously published by any other person except where due acknowledgment has been made. This thesis contains no material that I have submitted towards the award of any other degree or diploma, within any other university or institution. The findings and opinions in this thesis are my own and are not necessarily those of Te Whare Wānanga o Awanuiārangi. This thesis is stored in the library of Te Whare Wānanga o Awanuiārangi. It is therefore available for future students and researchers to read and reference.

Shane Solomon….  …….. **Date:** 06.01.2025

Contents

PROLOGUE - THE PATH TO RESOLVING RAUPATU

After a long day of intense negotiations at Hopuhopu, a palpable sense of expectation hung in the air. Evening approached, and the final pieces of a historic agreement seemed within reach. Officials from Waikato-Tainui and the Crown moved deliberately between meeting rooms at Manu Koorero, meticulously working through the finer details of what would become the first Treaty of Waitangi settlement of the 20th century. While the full magnitude of the moment was not yet apparent, the ‘old people’ present reflected quiet resilience and steadfast faith that the Crown's historic confiscation of Waikato lands would finally be addressed.

Under the leadership of Rt Hon. Jim Bolger, the National Government faced the monumental task of resolving long-standing historical grievances. The momentum for direct negotiations had been set in motion by the 1989 Court of Appeal ruling on the proposed sale of CoalCorp, which was opposed by Sir Robert Mahuta and the Tainui Māori Trust Board. Their court injunction against the government’s sale of the state-owned enterprise intensified the drive for a more direct resolution, laying the groundwork for these landmark negotiations.

This thesis explores both the broader context and the personal experiences of the author, who played an active role in the Waikato Raupatu Treaty Claims and Settlement process. It reflects on the National Government's development of a Treaty negotiation framework—referred to as the "fiscal envelope"—and examines the political dynamics, innovative policies, and legal strategies that addressed and resolved raupatu (land confiscations). The author offers a descriptive analysis grounded in lived experience, navigating the fragile relationships and heightened expectations within Waikato while maintaining hope that unity of purpose could achieve the impossible. Key personalities and their defining characteristics are illuminated, providing insight into the interplay of relationships, timing, political leadership, tribal support, and the agency of the Kiingitanga movement, all of which converged to achieve a positive outcome.

The negotiations, though contentious, represented a significant step forward. Sir Robert Mahuta, Waikato's lead negotiator, was unwavering in his commitment to fulfilling his people's long-held aspiration to resolve the Raupatu claim. This grievance stemmed from the Crown’s confiscation of 1.2 million hectares of Waikato lands under the New

Zealand Settlements Act of 1863. Motivating Sir Robert's leadership approach was his belief in the struggle of his tuupuna that inspired and galvanized action under the mantle of the Kiingitanga. Sir Robert stated: *"Ko ngaa taumata kei mua i oo taatou aroaro. Tuuria tomokia ko te whaariki"* (Let the challenges of the future confront and inspire us). This vision was central to his strategy, grounding his resolve in both the aspirations of his tuupuna and the opportunities he sought to create for future generations.

On the other side, Hon. Sir Douglas Graham, the first minister appointed to oversee Treaty negotiations, faced the formidable challenge of finding a resolution that upheld justice while maintaining the confidence of the wider New Zealand public.

Waikato consistently argued that the land confiscation was not only illegal but also unjust and excessive. Their guiding principle was encapsulated in the koorero tuku iho: *"I riro whenua atu, me hoki whenua mai; ko te moni hei utu moo te hara"* (As land was taken, so shall it be returned, for money is no recompense for the sin committed). Sir Robert drew strength from this principle in all his interactions—with Waikato, the Crown, local and tribal leaders—as he worked tirelessly to right the wrongs of the past. Ultimately, the Crown acknowledged that its actions in confiscating Waikato lands had been unjust and a breach of the Treaty of Waitangi.

The penultimate moment at Hopuhopu was marked by a critical impasse. Late into the night, Sir Robert and Sir Doug took what would later be remembered as "the long walk" around the Hopuhopu grounds. The nature of their discussion remains known only through its outcome: a bespoke mechanism to guarantee the agreement, which became known as the relativity clause—a provision that would ensure the settlement's enduring fairness.

The final authority to endorse the agreement rested with the Maaori Queen, Te Arikinui Te Atairangikaahu. Briefed late in the evening, her ancestral lineage—from Pootatau, Taawhiao, Mahuta, Te Rata, to her father Korokii—imbued her with unequivocal authority in both the physical and spiritual realms. With her mandate, the agreement was sealed.

Early hours the following morning, a solemn moment brought all those present—Waikato-Tainui representatives, Crown officials, and Sir Doug—to Taupiri. There,

they paid homage in karakia to the tuupuna who had endured the injustices of raupatu, ensuring that their descendants could look forward to a prosperous and abundant future.

This pivotal chapter in New Zealand's history reflects the enduring resilience of Waikato, the strength of unity, faith, and leadership to seek the resolution of raupatu. Sir Robert’s vision and determination continue to resonate, reminding us that while challenges may confront us, they can also inspire us to build a better future for the next generation of mokopuna.

Rire rire rire hau
Pai Maarire

Hon Nanaia Mahuta
Waikato-Maniapoto.

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To my wife Pareaute Moana Herangi Panapa Solomon. Without her insistence and persistence, I would never have undertaken this journey.

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"*Mahia te mahi, hei paiinga mo te iwi*" - Pai Maarire.

ABSTRACT

My thesis considers the Treaty negotiations between Waikato and the Crown from the viewpoint of Waikato iwi. The research examined the pedagogy developed by Waikato over several generations to conduct the negotiations and reach a Treaty settlement between itself and the Crown. My position in the research is that of an insider; that is, I am a descendant of Waikato iwi, and I was involved as a researcher, then a legal adviser, and then a lawyer for the iwi through the negotiation and settlement process.

Others have assumed that the Crown set the Treaty negotiation agenda and the rules of the engagement for reaching settlement, but that was only partly true. To gain a fuller picture, the research examined the issue of "full and final" settlement in the context of justice-based reparation instead of a rights-based approach. The research then asked how this generation might empower the next generation of Waikato people to maintain "full and final" as their bottom-line requirement of the Crown.

Using a Waikatotanga and Kiingitanga methodological approach, I reviewed the literature on Treaty settlements in Aotearoa, the experience of Waikato through the negotiation and settlement process, the leadership of Sir Robert Mahuta, and the case study of the Ngaai Tahu Settlement. Next, nine Waikato descendants who were involved—directly or indirectly—in the negotiations and settlement process were interviewed, and the interviews were thematically analysed through my methodological lens.

Taken together, key findings were the emergence of a Waikato iwi pedagogy of settlement founded upon tuupuna aspirations and actions, leadership by Kiingitanga monarchs, the decisive and informed leadership of Sir Robert Mahuta, and the relationship built between Waikato iwi and Ministers of the Crown that aided operationalising the iwi pedagogy.

This longitudinal reflection on the Waikato Raupatu Claims Settlement records the courage and tenacity of what Waikato achieved over many generations and does not include the Crown's experiences of that journey. Rather, the research is a testimony to the work ethic and personal sacrifice of the Principal Negotiator, Sir Robert Mahuta, as

well as the iwi, hapuu and whaanau of Waikato, and the participants whose puuraakau continue their tuupuna legacy of ‘Mahia te mahi, hei paainga mo te iwi’.

Key Terms: Crown; Confiscation; Iwi; Justice; Rights; Settlement; Treaty; Tribe; Waikato

CHAPTER ONE – INTRODUCTION

Background

In July 1863, the government forces crossed the Mangataawhiri Stream, invading Waikato, waging war, and labelling Waikato rebels. In addition, 1.2 million acres of Waikato lands were confiscated by proclamation under the New Zealand Settlements Act 1863. Waikato had fled their lands under the onslaught of colonial hostilities seeking refuge in the King Country (Tainui Maori Trust Board, 1995).

Over subsequent generations and under the leadership of the Kiingitanga, Waikato sought resolution of their grievance under the principle of:

> *I riro whenua atu me hoki whenua mai*
> *As land was taken land should be returned.*
>
> *Ko te moni hei utu mo te hara*
> *The money is recognition of the Crown's wrong.*
> (Tainui Maori Trust Board, 1995)

On 16 March 1987, Robert Te Kotahi Mahuta on behalf of Waikato Tainui, the Tainui Maaori Trust Board and Ngaa Marae Toopu filed a claim to the Waitangi Tribunal for the 1.2 million acres of lands confiscated, the Waikato River, and the West Coast Harbours (Tainui Maori Trust Board, 1995).

In 1989, the Crown was preparing to sell the coal mining licences in the Waikato, owned by the State-owned enterprise known as the Coal Corporation. Waikato opposed the sale on the basis that their Raupatu claim was unresolved. They sought an urgent injunction in the Court of Appeal and were successful in their appeal. Consequently, both the Crown and Waikato - the tribe - began direct negotiations, which concluded in a Deed of Settlement being signed on 22 May 1995[1](Tainui Maori Trust Board, 1995).

That Settlement only resolved the land component of the 1987 Wai 30 Claim. In 2008, a Deed of Settlement was signed, settling the Waikato River component. As of 2024,

[1] *Deed of Settlement between the Crown and Waikato-Tainui, 1995*.

the West Coast harbours component of the Wai 30 Claim remains unsettled (Waikato-Tainui, 2019).

The purpose of this study was to examine the strategies Waikato brought to the negotiations and how they also responded to the Crown's own strategy. The purpose was also to explain to future generations (and the current generation) the intentions behind the negotiations and, in the end, the Settlement itself. The study provided a means of measuring how effectively those intentions were realised and to consider where the tribe is today, almost 30 years on and a generation since Settlement.

Positionality

My story is important in identifying my position in the research, not just for telling my story but also to explain the uniqueness and significance of this research. Its efficacy is as a piece of scholarly writing that is written in the first person, and with a tribal voice. Directly through the experiences of an 'actor' in the research topic, not by an outside observer and commentator, or even by a tribal observer and commentator, but by a subject of that inquiry. That is not to detract from the importance of an external inquiry as Waikato often invited this observation from visiting international scholars. However, a generation on since the signing of the Raupatu Lands Deed of Settlement, it is time to hear the voice of Waikato whilst the voice is present.

It has been nearly thirty years since I started work with my iwi, Waikato. I remember that day distinctly and the times leading up to it. I had graduated with a law degree from the University of Auckland in 1988. My first position was as the in-house solicitor for the Official Assignee in the Hamilton office. The work involved the incorporation of companies, incorporated societies and trusts, as well as the dissolution of those entities. 1988 would be remembered for the year the global stock market crashed after the 1980s years of excess. That meant I became very busy liquidating companies, paying outstanding creditors, and representing the Official Assignee in the High Court.

My first entrée into the world of Raupatu was in 1989 when Professor James Ritchie turned up at my office in Anglesea Street, Hamilton, with his affidavit that needed to be sworn before a lawyer. He had heard there was a young Maaori lawyer with Waikato affiliations working in Hamilton. I suspect it was Uncle Binga Haggie or Dermott

O’Shea (of the Ngaaruawaahia family law firm O’Shea’s) who referred James to me. The affidavit, as it turned out, was to be filed in the Court of Appeal to oppose the sale of coal mining licenses from the state-owned entity Coalcorp on the basis that Waikato’s Raupatu Treaty of Waitangi claim was unresolved. When attesting an affidavit, my concern was not about the document's content but that I was attesting the signature of the person making the affidavit.

Later on, my friend (and flatmate) and classmate from law school, Mathilda Urhle, who was a lawyer in private practice opposite my office in Anglesea Street, attested to a number of affidavits of tribal members at Waahi Paa for the same Court of Appeal action. Back then, I never heard how that court case went. Being young and single, I headed off to the United Kingdom on my OE, blissfully ignorant of the affairs of the tribe and returned two years later in my late twenties, ready to settle down.

Binga Haggie heard I was back from overseas and asked if I was interested in working for the Tainui Maaori Trust Board. I had no idea who they were and had only recollections of their offices in the Grants Building in Ngaaruawaahia when I was growing up. I then received a phone call from Myrtle Te Maru, who was the personal assistant to the Director of the Centre for Maaori Studies and Research at the University of Waikato, a gentleman by the name of Robert Te Kotahi Mahuta. Myrtle Te Maru wanted to know if I was available for an interview with Mr Mahuta that Thursday at 3pm in his office in A Block where the Centre for Māori Studies and Research was located. I agreed to the interview and went along on Thursday at 3pm to meet Mr Mahuta.

It was April 1992, and I recall climbing the main stairs in the building called the A-Block and the dappled light from the stained-glass windows in the stairwell. I recall meeting Myrtle and being shown to Robert Mahuta’s office. He asked me where I went to law school and what I did in London. He asked me if my grandfather was Te Hira and my father was Ringa. He asked if I had played for Tuurangawaewae Rugby League and I said yes to the first two questions and no to the last, responding I played rugby for the Ngaaruawaahia Rugby Club.

Robert Mahuta said I was hired and to let Myrtle know on my way out. I wasn’t quite sure what I had been hired for. As it transpired, I was hired as a research assistant at the

Centre for Maaori Studies and Research and, therefore, a staff member of the University of Waikato. Myrtle asked me if I knew how to use a computer. I lied and said yes, and she showed me to my office, which was down the end of the corridor on Level One of 'A Block', overlooking the entrance to the University Library. Hence, my first steps on a journey that has lasted thirty years. To quote Charles Dickens from his 1895 novel *'A tale of two cities'*:

> It has been the best of times and the worst of times it was the age of wisdom, it was the age of foolishness, it was the epoch of belief, it was the epoch of incredulity, it was the season of light, it was the season of darkness, it was the spring of hope, it was the winter of despair, we had everything before us… (Dickens, 2003, p. 5).

My role and responsibilities grew, as did everyone's. Participants in the negotiations had roles that adapted to change to meet the needs required as the negotiations advanced. We all had to be agile and adaptive. I quickly found my position title changed from research assistant to legal researcher and then to legal adviser. Consequently, over a few months, I found myself in the maelstrom of the tribes' direct negotiations. I also found myself blessed by being amidst the many characters of the tribe who gave total commitment and sacrifice to the kaupapa.

I have quoted Charles Dickens above, one of my favourite authors, but I must quote a man far more important to influencing and continuing to do so in my life and my contribution to Waikato. That man is the late Sir Robert Te Kotahi Mahuta:

> In one sense all that we have to offer future generations is the past. Containing as it does the hopes, the spirit and determination of the people, their constant example, both of virtue and of error. But what a treasure chest that really is. That is brightness enough to guide the way ahead. (R. T. Mahuta, 2000)

Aim of research

My research aimed to describe what took place in the direct negotiations leading up to the 1995 Raupatu Settlement. It was to provide an account of how we approached those negotiations, why we did certain things and the intentions behind our actions. This is to ensure that the Waikato story is told but, more importantly, explained so that future generations, if needed, can take account and advantage of the legacy laid down by what

we did 30 years ago. It was also to emphasize our own way of resolving the grievance over many generations and how, at a certain point of time and because of certain circumstances, it allowed us to advance resolution for the time being. I have described that as the pedagogy of our Settlement, but pedagogy in terms of our cultural context and our mana motuhake is more than mere process.

Significance of research

My research is significant for several reasons. Firstly, the research gave voice – an uninterrupted voice – to Waikato's journey of redress through the 1990s negotiations. The research allows our testimony to be privileged.

Secondly, my research provided an opportunity for the inside observations and critique of the Settlement process from an iwi who was one of the first to settle early. In this sense the research provides a longitudinal lens on the pros and cons for another iwi yet to settle.

Thirdly, it is proposed that the research will create new knowledge simply by the writer's positionality. The Waikato Settlements have been studied and commented on, but this is the first time, to the writer's knowledge, that an iwi actor involved in those negotiations and not an outsider has written a thesis on the Settlement. It is submitted that would be novel and transformative in itself.

My first review of the topic literature found none that investigated the cumulative effect of Crown policies, practices, and procedures eroding the contractual intentions and ethical undertakings exchanged between the Crown and Waikato.

Most of the material I reviewed referred to the development of Treaty Settlement processes and the impact of that process on the final negotiated product, but not on the consequences a generation after settlement. This is understandable since much of the material focuses on the then and now and provides commentary on the formative years of policy development. In fact, there is no commentary on the effects of the current processes that impact on the redress of 1995 or the preservation of the "excluded claims" of Wai 30. I suspect those "solemn" arrangements have been denied in

subsequent policy development, and the Crown has operated according to its Treaty principle of governing on behalf of the wider public.

Fourthly, I hope my research will contribute to building a new maatauranga or body of knowledge based on our iwi's collective experiences of the Settlement (and post-settlement) processes. Lastly from an international Indigenous context, I hope that my research can assist the settlement or reconciliation journeys of other Indigenous peoples.

Research questions

My research topic evolved since my original thinking and constant re-examination of the 'and what' question. My original focus was to ask whether the "full and final" provision of the Waikato-Raupatu Claims Settlement Act 1995 (and the Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010) was still intact or had subsequent Crown policies, practices and procedures rendered the provision unenforceable, null and void. My other focus was to ask whether the Settlement of a Waitangi Treaty claim is considered full, final, and enforceable, or is it a "legal fiction" regardless of the intentions of the parties to the agreement.

Despite this starting assumption, it has been almost 30 years since the Crown and Waikato concluded their direct negotiations with the signing of a Deed of Settlement on 22 May 1995 and the passage of the Waikato Raupatu Claims Settlement Act 1995. In the subsequent years, a range of Crown actions and omissions - it is submitted - have breached the contractual intentions of the 1995 Settlement and, therefore, the "full" and, importantly, the "finality" of the agreement.

Therefore, my research questions changed to first, examine the question of "full and final" in the context of justice-based reparation as opposed to a rights-based approach. In this regard, I asked whether the sense - if not the reality of justice – has remained intact. My second question asked when will reparation be fulfilled and how does this generation endow and empower the next generation of Waikato people to achieve "full and final" as their bottom-line requirement of the Crown?

Ethical approach

Historically, research on Indigenous peoples has been a hegemonic tool of colonisation. Indigenous people fought back and resisted, and in response, they developed their own research methodologies grounded in their own cultural values and principles (L. T. Smith, 2021). Research, correctly and ethically done, can lead to empowerment. However, we have effectively used outsiders to assist with our research.

Part of the methodology to undertake kaupapa Maaori research has included a set of arguments, principles, and frameworks that relate to the purpose, ethics, analyses, and outcomes of research (L. T. Smith, 2021). My research was conducted at the behest of the Waikato community being researched. I am a member of that community, and, importantly, I am in the story. The research was conducted through a tribally owned and controlled institution for research and learning—the Waikato-Tainui College for Research and Development—which has its own set of research ethics. My Ethics Application to undertake this research for my Professional Doctorate degree was approved by Te Whare Waananga o Awanuiaarangi (see Appendices).

There was a risk that only one side of the story would be told, so the methods had to be inclusive of a diversity of stories within the story. I conducted one interview with a critic of the Settlement whose voice has legitimacy and purpose. Interviews followed familiar protocols of karakia and mihi. Sharing kai. This did not happen in all the interviews. For example, one participant said, ‘Let’s just get into it’. The interviews were semi-structured, and it was up to the participants to disclose or not disclose what they wanted to say in response to my questions. However, all participants were more than comfortable to respond. How long or short the interview was up to the participant to decide. Te reo Maaori was encouraged if that was favoured by the participant; however, the interviews were done mainly in English.

Familiarity played a large part in the interaction, and therefore, trust in myself and the purpose of the interviews were important factors in building each participant’s puuraakau, or story of the Settlement.

Looking back, it is interesting to note that since undertaking my doctoral studies the mood of society today with regard to race relations in Aotearoa New Zealand has

changed. The political agenda of some political parties reasserts the colonial hangover that plagues our race relations with systemic and institutional racism in the areas of health, child welfare, policing, and the justice system (Mikaere, 2011). But even more so, the colonial hangover is part of the psyche of sections of our nation's citizenry. For example, the hegemonic response to Maaori wanting to remove statues commemorating past aggression, violence and oppression. Some Paakehaa take the hegemonic position that Maaori who want to remove colonial statues are an affront to their cultural history or their Paakehaa 'taonga tuku iho'. Despite it being 2024, Maaori still live within the shadow of cultural, social, political, and economic inequity. The pallor of Social Darwinism consciously and unconsciously clouds the state of Maaori well-being through government policies, institutions, and entities. Even more so following the 2023 parliamentary elections and a coalition government with an agenda that will undo at least 50 years of hard-won wins by Maaori. I make this comment on the basis that Kaupapa Maaori research should be 'transformative' (Mahuika, 2015; G. H. Smith & Webber, 2019). My research questions and, importantly, my research findings, were not designed to affirm a negative or default position regarding the Waikato Settlement. Instead, my intention was that my research would contribute to transforming our lives by documenting our pedagogy or our political truth.

The research provided the framework of what Waikato considered it was negotiating, what it agreed to settle on (and importantly what it did not agree it was settling on). As well, the research foregrounded the foundational principles of negotiation and the tikanga approach that Waikato took in its engagement with the Crown. Others have their own story of those times, their recollections, and their own experiences. This is but one view. What is important is the opportunity to tell the story. It is not to dismiss the observations of those non-tribal members who have provided an external narrative and analysis, and which provides another platform for inquiry. They should be welcomed into the greater commentary, and in fact, many were invited by our tribe to do so. But in those instances, it was at the tribe's invitation.

But this would be the first time that the story has been told by an 'actor' in the negotiations who is Waikato and not an outsider. It is submitted that would be transformative in itself.

It has been a generation since the promulgation of the Waikato Raupatu Claims Settlement Act 1995, the intentions of those negotiations, and the resultant Agreements, Deeds, and Settlement legislation. Sir Robert was adamant that Waikato, the first tribe to settle, must and, more so, was obligated to share our experiences of Settlement negotiations and post-settlement, both the good and the bad.

How that obligation is manifested and discharged is, in part, through the development of a Maaori pedagogical frame that Maaori can insert into the Treaty Settlement negotiation agenda. The negotiation agenda is not static and never ends. In this instance, it was a Waikato pedagogical framework.

Limitations

Originally, I considered that critical to the analysis of the Waikato Settlement was the thinking and experiences of the Crown. However, other researchers had interviewed the then Prime Minister, James Bolger, the Treaty of Waitangi Negotiations Minister, Douglas Graham, and senior Crown officials. I have not used these interviews as the Crown has been able to tell its story unfettered and this now should be exclusively our voice and our story.

I submit that the international literature review requires more work and a wider scope, and I hope that another Indigenous researcher will address this area of research in the future. What will be required, I propose, is an analysis of the constitutional and legal frameworks of selected colonising nations and their relationships with Indigenous peoples to distil and compare settlement or reconciliation pedagogies.

Chapter Overview

Chapter One introduces my research topic, its significance in terms of existing research in the field of Treaty negotiations and settlements between Maaori and the Crown, and the new knowledge I propose to contribute to the field. I also describe my positionality regarding the topic and the ethical matters associated with my research. The chapter sets out the overarching research questions which were 1) to examine whether a full and final settlement with the Crown had been achieved and, 2) to propose

how future generations of Waikato people might maintain the terms of their settlement with the Crown in future negotiations.

The overall aim of the research was to document the pedagogy of settlement that Waikato developed over many years. The pedagogy was imbued with the principles of Waikato tikanga over decades of injustice, confiscation, tribal impoverishment, and the struggle by the Kiingitanga and Waikato leaders to call the Crown to account in order to settle its breaches of the Treaty of Waitangi.

Chapter Two sets out the Kaupapa Māori methodology or more particularly the Waikato-tanga (Waikatotanga) and Kiingitanga methodological approach that provided the tikanga for my research. Next, the kawa or methods used to gather research data were described. Methods included literature reviews of peer-reviewed published articles and reports, a comparative case study, a review of the leadership of Sir Robert Te Kotahi Mahuta, my own puuraakau, and the puuraakau of nine Waikato members who were directly involved or involved through a member of their whaanau in the negotiations and settlement.

Chapter Three examines Treaty of Waitangi Settlements in Aotearoa as described by various authors, including the Crown's ad hoc development of the Settlement process and subsequent policies. The chapter describes early and modern Treaty settlements and follows the Waikato negotiations and the non-negotiable principle of 'i riro whenua atu, me hoki whenua mai', which underpinned the pedagogical approach of the tribe. As well, the issue of justice-based versus rights-based redress was discussed, the Waikato apology and mix of legal, political and historical imperatives were examined, and the 'full and final' assertion of settlements in terms of tangible and intangible elements of redress were explored.

Chapter Four analyses the puuraakau of nine Waikato tribal members who were involved directly or indirectly through other whaanau members in the negotiations and the Waikato Raupatu Claims Settlement Act 1995 (1995 Raupatu Settlement). The tribal members were interviewed by me about their experiences of the negotiations and settlement of the Raupatu claim. Their puuraakau were inductively analysed and six themes emerged which were: 1) I riro whenua atu, me hoki whenua mai; 2) tikanga and wairuatanga; 3) Mahi tahi and commitment to kaupapa; 4) the Kiingitanga; 5)

Kaumaatua and kuia; and 6) Equitable benefits, the hapuu versus the iwi settlement model; and tribal corporatisation.

Chapter Five is my own puuraakau of the raupatu, the land that was unjustly taken from Waikato, the quest over several generations of Waikato and Kiingitanga leaders for justice, and my own experience of the 1990s negotiations and the settlement process that culminated in the May 1995 Raupatu Settlement legislation. As well, I discuss the negotiations for the Waikato River Settlement and the issue of breaches of the Settlement.

Chapter Six describes my experience of Sir Robert Mahuta's leadership of Waikato through the negotiations and the 1995 Raupatu Settlement legislation. I drew on material from Waikato's own archive to complement the material from Paul Diamond's interview with Sir Robert in the month before he passed away. In this chapter, I propose that Sir Robert's style of leadership drew upon his whakapapa, his relationship with the Kiingitanga, his personal style, his experience of leadership on the Coalcorp case, and as a negotiator on the pan-tribal fisheries settlement. His time at Oxford University and the Centre for Maaori Research and Development at the University of Waikato supported his personal maxim of being well-prepared, of research underpinning development, and of maintaining a close and accountable relationship with the peoples of Waikato, with key tribal leaders, and international and local experts and researchers from Aotearoa New Zealand.

Chapter Seven is a comparative case study of the Ngaai Tahu Treaty Settlement. I write that it wasn't until much later that I realised the many similarities and some differences between the pedagogy of Sir Tipene O'Regan and Sir Robert, and the similarities and differences of the respective Treaty settlements. The comparative study confirmed my thinking that it was Waikato and Ngaai Tahu iwi that drove their respective settlements, not the Crown. Further, the leadership pedagogies of Sir Tipene and Sir Robert shared similarities in that both leaders had prior experience negotiating with the Crown; however, they took different pathways to get to the settlement of their raupatu grievances. Waikato opted for direct negotiation and Ngaai Tahu for a claim to the Waitangi Tribunal. I discuss the strengths and weaknesses associated with each pathway.

Chapter Eight brings together the threads of my research to describe the Waikato pedagogy of the 1995 Raupatu Settlement and the tribe's experience of that pedagogy. The caveat of the Waikato pedagogy is that some elements such as 'I riro whenua atu, me hoki whenua mai', Waikatotanga, Kiingitanga, values such as manaakitanga, whanaungatanga, kaitiakitanga, and the significance of kaumatua and kuia are enduring, while other elements such as our decision to enter direct negotiation with the Crown was a response to a particular set of circumstances and time. There were issues that were revealed during the 1995 Raupatu Settlement and the later negotiations for the Waikato River and the literature that I reviewed which, I submit, are associated with maintaining the 'full and final' aspect of the 1995 Raupatu Settlement that require attention.

Chapter Nine

A short chapter, Chapter Nine recaps the story of the principles evident in the pedagogy of Treaty Settlement developed by Waikato and Kiingitanga leaders over the long journey to seek reparation for the wrongful taking of Waikato lands by the Crown. The story of the Waikato Treaty Settlement is ongoing. What I have written is relevant for those of us who were part of the 1995 Raupatu Settlement, but the story has not finished. Future generations of Waikato will add to our pedagogical approach and will, I hope, find comfort and strength in the work we have already done. "*Mahia te mahi, hei paiinga mo te iwi"* Pai Maarire.

CHAPTER TWO - METHODOLOGY

> "Action research is translating theory into practice, and where there is no research, there is no development; where there is development, there must be research."
> (Mahuta as cited in Diamond, 2003, pp. 132–133)

Introduction

As noted previously, my research topic evolved and changed from an examination of whether the "full and final" provision settlements were intact, to an examination of justice-based reparation and the ability of future generations of Waikato to maintain full and final" as their bottom-line requirement of the Crown, as opposed to the Crown's' requirement of iwi and Maaori. To consider the efficacy of these questions requires an examination of contexts and of times.

I quote Sir Robert at the outset of describing my methodology and methods because the translation of theory into research action (or praxis) and iwi-led development reminds me of my original intent which was that I wanted my research to contribute to iwi and Maaori mana motuhake and, hopefully, the worthiness of its utility. I also need to acknowledge the raupatu itself and my wairua grounding in terms of my methodology through the tikanga and kawa of Waikato, the Kiingitanga and the whakataukii of King Taawhiao.

> *Maaku anoo e hanga I tooku nei whare. Ko ngaa pou o roto, he maahoe, he paatate, ko te taahuuhuu he hiinau. Me whakatupu ki te hua o te rengarenga, me whakapakari ki te hua o te kawariki.*
>
> *I shall fashion my own house. The pillars inside will be of maahoe and paatate and the ridgepole of hiinau. Those who inhabit the House will be raised on rengarenga and nurtured on kawariki.*
>
> (Waikato Tainui Group Holdings, 2025)

The whakataukii of King Taaawhiao underpinned the Waikatotanga and, in particular, the Kiingitanga methodological approach of my thesis. It is a Kaupapa Māori methodological approach in a general sense, but more importantly, it is Te Kaupapa o

Waikato and Te Kaupapa o te Kiingitanga. As such, the whakataukii speaks to the long-held tribal principle of Waikato which is to determine our own pathway forward, and to be guided by the lessons from our ancestors. Having done readings through this Professional Doctorate journey on 'methodology' and being privileged to receive the koorero of Kaupapa Māori research experts and formal and informal conversations with my cohort, the topic has taken on its own evolution. My topic will examine the methodology of Treaty Settlements – or as Distinguished Professor Graham Smith more concisely referred to it - the "Pedagogy of Settlement" (personal communication, 9 July 2020).

The perspective of the revised topic is to examine whose worldview set the agenda, the stage for the Treaty of Waitangi Settlements, and how Waikato developed our own pedagogy in the negotiations, and what that strategy was. Why is this important? It is often assumed that the negotiation process is conceived and designed by governments to achieve their own agenda, and not necessarily that of Maaori. The 'full and final' aspect of the original research question will be included in the revised topic as part of answering this research question as the pedagogy of Settlement, it is proposed, goes to the post Settlement phase – in other words, it is not time defined. What also needs to be included alongside the narrow point of the contractual law is how the methodology of Treaty Settlements was designed in the first place, by whom and were iwi and Maaori participants in the design process? Or did the colonising epistemology become the definer of how Treaty Settlements would be negotiated. Did the outcome of the negotiated Settlement consider an Iwi or a Maaori pedagogy? Specifically, for Waikato, the development of the pedagogy was driven by Waikatotanga and the Kiingitanga which began in 1863 with the invasion of Waikato lands by colonial troops.

Why a Kaupapa Māori approach?

Because the research topic is about a specific approach to Treaty Settlement negotiations, it is submitted that a Kaupapa Maaori methodology – and more specifically, a bricolage of a Waikato and Kiingitanga methodological approach was the only appropriate tool to use to address my research topic. Personally, I could not have written this thesis without regard to my positionality and relationality to the research topic, my whakapapa to the Kiingitanga, and to my participants. In other words, I could not ignore the obvious, nor could it ignore me. Also, and notably out of

respect for my participants, the process was imbued with wairua – and wairua was a dominant theme through the participant interviews.

To provide further context as to the validity of the approach taken required some definitional understanding. I sought a methodology that supported a systematic investigation to establish facts and reach new conclusions about the Waikato Raupatu Settlement process. The goal of Māori and Indigenous methodologies is to ensure that research on Māori and Indigenous issues is carried out in a respectful, ethical, correct, sympathetic, useful, and beneficial fashion and from the point of view of Māori and Indigenous peoples (Porsanger, 2018). Linda Tuhiwai Smith agrees that Kaupapa Māori research is open-ended, ethical and accountable BUT she adds that our research approaches come from whaanau, hapuu and iwi themselves (Denzin et al., 2008). My research approach comes out of the knowledges and experiences of our iwi and the hapuu and communities of Waikato over many generations. Lee-Morgan (2008) describes Kaupapa Maori as a body of knowledge that has always been integral to the development of Maori epistemological and ontological constructions of the world, and is underpinned in a political context by the notion of tino rangatiratanga and theoretical positioning.

Distinguished Professor Graham Smith builds upon Lee-Morgan's notion that Kaupapa Maaori research is political, adding that we Maaori and Indigenous researchers and scholars need to create a research landscape built on our politics of truth (lecture notes, March 2019). I draw upon the thinking of all these Maaori and Indigenous scholars who have contributed to the development of new Maaori and Indigenous knowledges and, as well, to the contributions their research has made to positive cultural and political transformations.

I undertook this research from the position of a tribal member who, with many others, was engaged in political and cultural transformation through the Raupatu Settlement. There was only one lens through which the research could be viewed. That lens – this study's methodological approach - was founded on a coalescence of our ancestors struggles for mana motuhake, the leadership of the Kiingitanga, the tikanga and kawa of Waikato and the puuraakau of the participants that grounded the research in a Kaupapa Maaori space. My research topic is about the expression and application of mana motuhake in a Treaty Settlement context which I submit for Waikato is

underscored by the Kiingitanga crest Te Paki o Matariki, representing the establishment of the movement on equal footing and legitimacy as iwi and Maaori to the English monarchy relationship.

Another aspect of the methodology I could not avoid was putting myself in the 'story' as I am inextricably tied to the research topic. To that extent the thesis is written in the first person. I have introduced myself in Chapter One in the section on Positionality, claiming my whakapapa and my experiences and observations of the Settlement process. To this end, I have included my own puuraakau or foundational story in the body of this thesis.

The methodological journey that Lee took as part of her doctoral journey and her response to puuraakau as being Maaori "myths and legends" has valid utility and her comment that puuraakau can "be constructed in various forms, contexts and media to better understand the experiences of our lives as Maaori – including the research context' (Lee, 2009, p. 1), was what I was looking for. The Puuraakau methodological approach as described by Lee is the process of decolonising methodologies and the adoption and implementation of our own methodologies as a reclamation of 'story telling'. Lee references Professor Linda Tuhiwai Smith and First Nations scholar Archibald. (I found Archibald's Coyote is reminiscent of Maui – our own trickster.) However, Professor

Professor Linda Tuhiwai Smith cautions against describing Kaupapa Maaori methodologies such as the Puuraakau methodology as mere storytelling because if we do so, then we are at risk of engagement in 'new acts of colonisation' (Denzin et al., 2008, p. 97). This notwithstanding, I submit that my participants maintained their own wairua which kept themselves safe as well as providing safety for the interviewee (me) and their intentions for their puuraakau. Lee suggests a bricolage or a multi-methods approach as illustrated by the various methods employed by Māori and Indigenous scholars. The bricolage approach appealed as it provided a deeper 'treasure chest' to draw from methodologically and at the level of methods.

I found it useful to think of my Kaupapa Maaori methodological approach as a bricolage that engaged the values and principles of our Waikato ancestors or tuupuna, the values

of the Kiingitanga as represented in the coat-of-arms known as Te Paki o Matariki, and the tikanga and kawa, including puuraakau, of our Waikato iwi.

I also found it helpful to describe my research methods as a bricolage that involved literature reviews, participant interviews, an examination of leadership, and a case study. Taken together, that treasure chest provided sufficient qualitative information, I submit, to answer my research questions.

A problem I faced is that the storyline is now thirty years old, and many of the key actors have passed. It was enjoyable, therefore, to interview my participants, many of whom were closely related to key people involved in the Raupatu Settlement who are no longer with us. Participants talked with humility, deep respect, and at times humour, for the work that they did, or their mother, father, uncle, or auntie did, all of which contributed to the 1995 Settlement.

The wealth and depth of knowledge contained within the humility of our people and the resilience My obligation or sense of reciprocity for the privilege of being part of this tribal journey and the return on the investment made in me by our kaumaatua and kuia and tribal leadership is to enable their stories to be told (and through them the stories of our ancestors) for our future generations of the puuraakau upholds and directs our tribal pride and mana motuhake. As well, our puuraakau are our legacy and contributions to the continuing development of our people – as the late Sir Robert Mahuta said, ‘It is better to have nothing than be nothing (personal communication, n.d.)’.

Fortunately, by design and not by accident, Sir Robert Mahuta, the principal negotiator for Waikato and due to his scholarly discipline, saw the need to record everything and everyone. I was part of that process and recall, as I recount in my positionality, a fresh-faced young lawyer straight out of law school witnessing the affidavits of tribal members which were filed in the Court of Appeal action against the Attorney General in 1989 defending our claim to settle the Raupatu. Throughout subsequent years, several interviews (indeed a great many) had been recorded and transcribed and more recently digitised.

In 2013, the Waikato-Tainui College for Research and Development undertook the project to interview and record people from both Waikato and the Crown involved in the Settlement negotiations. Those semi-structured interviews were all video recorded and conducted through individual or group scenarios. Consent forms were signed by participants, including the use of the interviews for whatever purpose assisted in telling the story and added to the maatauranga, scholarship, and knowledge creation of the College and, therefore, the iwi. The interviews followed the Colleges' own standards of ethics. What I hope is relevant here is that all except two of those interviews were conducted by me.

Over November and December 2019, more interviews were conducted as part of a new College project commemorating twenty-five years of Waikato's Settlement, and like the 2013 interviews, these were semi-structured. A collective interview was done with all remaining Tainui Maaori Trust Board members who had been part of the Board during the negotiations. This interview was done at a lunch held to acknowledge the twenty-five years of Settlement and the contribution of the members of the Board. It was an opportunity given to the members who had not been asked to tell their story since Settlement. What they shared was rich and will provide many lessons for our future generations. In addition, a number of panel discussions were held in commemoration of the Settlement negotiations and also the thirty years of tribal development since 1995. Those interviews and panel discussions utilised the medium of digital storytelling as a method.

I followed the same protocols for my own research as was used for previous interviews conducted for the Waikato-Tainui College for Research and Development's research project. The College has within its Trust Deed provision for Taonga Tuku Iho (Clause 2) which includes taonga in its broadest sense from te reo, artistic works, carvings, manuscripts and so forth. For my thesis research, I suggest that taonga also includes puuraakau of participants developed through the research process.
Clause 2 includes:

> 2.1(iii) property relating to the history of Waikato-Tainui, including whakapapa, Treaty of Waitangi claims research, research relating to the Kiingitanga, and events of importance to Waikato-Tainui – and;

> 2.1(xi) archives, including sound, photographic, and cinematographic archives of Waikato-Tainui.[2]

The Trust Deed also sets out protocols for how such taonga will be treated, preserved, protected, and 'revered'. My thesis research aims to recognise and elevate Waikato Maaori from compliant participants in Treaty Settlement negotiations to conscious and deliberate strategists. This is a Kaupapa Maaori and more particularly a Kaupapa o Waikato and Kaupapa o Te Kiingitanga approach to the Settlement negotiations and outcomes. The lessons learned can guide future Settlement negotiations for Waikato iwi, and I hope I will make a small contribution to other iwi and other Indigenous peoples engaged in settlement and reconciliation processes with their governments.

As with the Settlement itself, where redress was prescribed as "collective loss, collective benefit," the interviews were designed to be inclusive and focused not just on individual stories but also on the collective story. This was evident in the koorero of the Trust Board members who spoke of their own experiences but also spoke to the collective experience. Distinguished Professor Graham Smith's (1997) Kaupapa Maaori Principle 6 has been foundational to my research approach over the past thirty years and resonates with the approach of the Waikato-Tainui College for Research and Development.

> Kaupapa: The Principle of Collective Philosophy. The 'Kaupapa' refers to the collective vision, aspiration and purpose of Maaori communities. Larger than the topic of the research alone. The research topic or intervention systems therefore are considered to be an incremental and vital contribution to the overall 'Kaupapa' (Smith, 1997, p. 388).

A final comment on Kaupapa Māori is that the interviews I conducted for my thesis research were undertaken with Maaori, by Maaori and on a kaupapa that is intrinsically tied to the mamae that only Maaori can adequately articulate. What more legitimacy is required? It is submitted what we as researchers must do is act ethically and with tikanga according to our individual and collective values. The aspect of

[2] (*Deed of Charitable Trust of Waikato Endowed College Trust - Third Amending Deed*, 2019)

whanaungatanga was evident in the interview process as I, the interviewer, was responsible for honouring my participants and their whaanau.

My research methodology attempted to follow Waikato principles in answering the research questions. I was conscious that the research is about rangatiratanga and mana motuhake, not only in terms of the topic but also in the way the topic was researched and will be delivered. My Waikato methodological approach was determined by the political and cultural aspirations, including cultural repatriation, through telling our own story after a silence of some 30 years. As I have noted, the pedagogy that has emerged out of the research is one that decolonises the Waikato negotiations and exposed our own Settlement processes. It is research that involves many actors and ultimately the collective. I was conscious of the generational impact which is the transformative change…our telling of our Raupatu story or part of the story.

Last, the tribe has maintained an archive since 1946 when Princess Te Puea achieved Settlement with the Labour Government, and the Tainui Maaori Trust Board was established. The archives include written documents such as letters and other correspondence, board meetings and minutes, internal memoranda, financial records, strategic plans, Court proceedings, and communication with Crown and officials. In addition, a visual record (still photos and video) has been established in digitised form. I was humbled and privileged to have had access to Sir Robert's personal archive. Being part of the period of assembling the negotiation archive, I was able to identify relevant archives that answered the research questions. For me, the archive was imbued with 'tapu' and the greatest respect is therefore accorded to those voices and the images that are from times past.

Methods

Literature reviews

Several literature reviews were required to gather relevant data (see Chapters Three and Four). The rationale for the reviews was to understand current research on or related to my topic, and identify literature gaps.

The free and open-access Google Scholar search engine, the ProQuest database, and Google were used to locate and retrieve peer-reviewed, published articles, E-Books, and reports from credible websites. As well, the Raupatu Document Bank at the University of Waikato Library, the tribes own Raupatu document files, and Sir Robert's private papers provided an additional rich body of literature, as did Waitangi Tribunal reports, Aotearoa and international case law, law journals, newspaper articles, and Crown policy papers.

Literature searches were conducted over the period 1975 (Treaty of Waitangi Act 1975) to 2022 using a combination of English and reo Maaori search terms: Maaori; Waikato; Tainui; Indigenous; Treaty; Indian; Inuit; Native; "New Zealand"; "First Nations"; "early Treaty of Waitangi Settlements"; "modern Treaty of Waitangi Settlements"; "international treaty Settlements", "reconciliation"; "Raupatu negotiations"; "Treaty of Waitangi jurisprudence"; "Settlement tikanga"; "justice and rights of Treaty Settlements"; "Crown apology"; and "Settlement methodology".

Articles and reports were retrieved, and the article abstracts, book reviews, and executive summaries of reports were reviewed to decide which documents would be downloaded and reviewed or discarded, depending on relevancy. The literature reviews are not as comprehensive as I would have liked because I was limited to using free, open-access search engines and databases. Nonetheless, I was confident that nothing had been written about a Maaori or a Waikato pedagogical approach to Treaty settlements.

There is a body of international literature about Indigenous Settlements (Borrows, 2006), however, though there are many similarities, there are many differences, the obvious being that Aotearoa New Zealand grievances stem from a breach of the Treaty of Waitangi. For the purposes of my research, I have focussed on the aspect of the apology as given by various government or parliamentary administrations to Indigenous peoples, in particular in Canada (Lightfoot, 2010, 2015; Lightfoot & MacDonald, 2017) and Australia (Edwards, 2010; Thompson, 2009).

The international literature review requires more work and a wider scope, and I hope that this will be an area of research addressed by another Indigenous research in the future. What will be required, I propose, is an analysis of the Constitutional and legal

framework of selected colonising nations and the relationship with the Indigenous peoples they colonized.

Participant interviews

My decision to interview tribal members who had been directly or indirectly involved in the negotiation and settlement process was because their stories or their puuraakau about the Raupatu Settlement had not been part of any research publication. As well, I thought that their information would speak directly to the issue of 'experience' of how Waikato settled their Raupatu claim and the likely durability of the settlement for Waikato.

My preferred method for this research was the kanohi ki te kanohi interview, which allowed the participants to tell their stories. Our people have used this method for decades, being interviewed by foreign anthropologists and educators, participating in tribal research, and providing affidavits at many Court and Waitangi Tribunal hearings.

Potential participants were contacted by me, knowing already that they or their whaanau member had been part of the Waikato negotiation and settlement process. My method was to record the interview at a venue of the participants' choice. The interview questions were provided to the participant before the interview. Interviews were conducted at cafés, at their house or my house, and beside the Waikato awa. Before conducting the interview, I sought their consent. I also asked if they wanted to remain anonymous. All participants insisted that they be identified and that this was an opportunity for them to give their story or in some cases the stories of others who had passed. They all signed the required consent form. I informed them that I would provide them with a transcript of the interview and a recording of the interview. They were also informed that they could withdraw their consent and their information at any time prior to my submitting my final thesis. Participants were provided an electronic copy of their transcribed interviews. No amendments were made and none of the participants withdrew their consent.

The research questions were for participant interviews were:

1. What role did you play in the negotiations – optional if you want to remain anonymous?

2. What do you recall about the negotiations?
3. What stood out for you most?
4. Can you describe the leadership at the time?
5. What do you consider was the Tikanga if any the Tribe used during the negotiations?
6. How would you describe the leadership of the Crown?
7. Describe your understanding of the opposition from both Maaori and Paakehaa to the negotiations?
8. Did you think we achieved the best Settlement at the time given the circumstances?
9. What is your view of the Settlement process today? Could we have done things differently?

Inevitably, the interviews took on their own organic process and the participants answered the questions, and, in the process, they gave more layered and nuanced responses which resulted in richer koorero. I observed how people told their story through their demeanour, their pride and nostalgia. Though this is rather subjective and based on my own interpretation, nonetheless, understanding their stories involved an appreciation of how they told their stories and not just what they said.

There was a risk that only one side of the story would be told so the method must be inclusive of a diversity of stories within the story. One interview was with a critic of the Settlement whose voice has legitimacy and purpose. Interviews followed familiar protocols of karakia and mihi. Sharing kai. This did not happen in all of the interviews for reason for example the participant said, ‘let’s just get into it’. The interviews were semi-structured, and it was up to the participants to disclose or not disclose what they wanted. However, all participants were more than comfortable to share. How long or short the interview was left to the participant. Te reo Maaori was encouraged if that was favoured by the participant, however the interviews were done mainly in English.

I was very mindful of the potential for trauma, particularly when participants spoke of family members involved in the negotiations who were no longer present. In a sense, they found it important they spoke of their family members and also for me, who worked closely with them, to be part of that koorero. One participant noted that on the

day we did the interview, it was the tenth anniversary of her mother's passing. Her mother had been a critical part of the Waikato administrative team.

Each transcription of the interview was provided to the participant for amendment and approval. The participants agreed ownership of any recordings will form part of the Waikato Endowed College under the College's Taonga Tuku Iho provisions. A koha was offered to participants. I coded the interviews to find common themes which are discussed in Chapter Six.

The research was supervised by practitioners of Kaupapa Maaori to ensure a high standard of ethics was maintained.

Comparative Case Study

I undertook one case study which involved comparing the similarities and differences experienced by Waikato and Ngaai Tahu through their Treaty settlement processes with the Crown. Ngaai Tahu was chosen because Sir Robert Mahuta and Sir Tipene O'Regan had previously worked together as negotiators on what became the Treaty of Waitangi (Fisheries Claim) Settlement Act 1992. As well, Sir Tipene was a negotiator for the Ngaai Tahu Claim to the Waitangi Tribunal that was partly settled in 1996, and I count myself a friend of Sir Tipene.

The choice of the comparative case study method was useful to help dispel the notion of one grand narrative of, in this instance, Treaty settlements. What emerged from the comparison was the opportunity to develop a more granular pedagogy of raupatu that identified the unique circumstances that contributed to a Waikato-specific pedagogy of settlement. Last, my research privileges the voices of Maaori and Indigenous Treaty settlement experts.

Summary

To summarise, my methodological approach originates in Kaupapa Māori but in this instance the approach is customised to the values and principles of Waikato, the Kiingitanga, and Puuraakau. Given the research questions, the methodological approach had to be capable of incorporating the long history of Waikato and Kiingitanga leaders and monarchs working to re-establish mana motuhake, guided by

the principle of ‘I riro whenua atu me hoki whenua mai’. Likewise, the methods were chosen to provide a full account – from published literature of the historical and contemporary Treaty settlement process in Aotearoa, rights-based and justice-based approaches to settlements, and the settlement process as it applied to Waikato. Nine participants were interviewed to provide information about the experiences of key tribal members and their whaanau of the settlement. Last, the comparative case study from the perspective of one of the Ngaai Tahu negotiators was important for understanding the circumstance-specific factors that contributed to a Waikato pedagogy of settlement.

CHAPTER THREE – TREATY SETTLEMENTS IN AOTEAROA

Introduction

The publications by Graham (1997), King (1977) and McCan (2001) provided me with a historical context of Waikato's 1995 Settlement. Their publications provide a rich narrative of post-colonial contact, adaptation to the new settlers, the development of a post-Treaty economy in the 1850s, the establishment of the Kiingitanga in 1858, and the Raupatu of 1863. The publications traverse the years of the 'pursuit of redress' and the early years of negotiations. The literature recounts how the Settlement process developed ad hoc (Fisher, 2016), the Crown's development of a template for Settlements based on the Waikato negotiations and the formulation of Settlement policy over subsequent years (Crocker, 2014), and the insistence of the inclusion of a "full and final" clause in all Settlements (Bielski, 2016; Williams, 1994).

I have also relied on Fisher's (2015) doctoral thesis that describes the negotiations of both Waikato and Ngaai Tahu in the 1990s, the Crown's approach that adopted a kawanatanga position, and the approach of both iwi which was to adopt a rangatiratanga position. The view espoused by the author is that because of the different approaches by the Crown and iwi, different motivations dictated the approach to the negotiations and the outcomes particularly when negotiating the wording of the apology. The apology I believe is more than saying sorry but also putting right the public record. Waikato's insistence on an apology as part to the negotiation is tied to the notion of reconciliation, restoration, and reparative justice; not just to restore the honour of the Crown but also where possible the relationship between the Crown and iwi (Crocker, 2014; Fisher, 2015; Hickey, 2006). Another aspect of the literature reviewed was the reminder that reconciliatory redress may add to post-Settlement injustices if iwi are not vigilant in the post-Settlement environment (Gibbs, 2005).

Also central to the post-Settlement era was the Crown's role in redefining iwi as corporate entities (Lashley, 2000; Muru-Lanning, 2011) and the replacement of the Crown with a 'brown bureaucracy'. Fisher (2016) wrote an article published in the *Journal of New Zealand Studies* specifically about the Waikato negotiations and our non-negotiable principle of 'I riro whenua atu me hoki whenua mai'. This was fundamental to my research as it will be argued as a foundational pillar in the pedagogy

of the Waikato negotiations, similar to the foundational pillar of Te Mana o te Awa in the Waikato River negotiations.

This chapter considers the pedagogical framework of Settlement seen through the experience of Waikato. What currency does this provide as a tool of education and importantly, how might a pedagogical framework contribute to an understanding of the Settlement process in Aotearoa New Zealand? How might this assist other iwi and global Indigenous communities seeking resolution of their own claims? The chapter also examines how might such a framework hold the parties accountable as new social, environmental and economic challenges result from government policy that potentially erodes the efficacy of settlements. This, in itself, begs the question of when a 'full and final' settlement is no longer full and final.

Early Treaty of Waitangi Settlements

Though modern Treaty Settlements are relatively recent, Treaty settlements are not new. Since the signing of the Treaty of Waitangi on February 6th, 1840, and the 1877 decision of the Supreme Court in *Wi Parata v Bishop of Wellington*[3] stating the Treaty was a nullity (Tate, 2004), Maaori have protested and sought resolution to acts, practices and omissions of the Crown that were contrary to the letter and intent of the Treaty. In the 1920s and 1930s, a number of Royal Commissions were established to hear and adjudicate Maaori grievances. For example, the 1921 Native Land Claims Commission recommended monetary compensation for Ngaai Tahu, and the 1927 Sim Commission inquired into the grievances of Waikato, Bay of Plenty, and Taranaki Maaori (Hill, 2023).

Both Commissions were limited by their terms of reference and the quantum of compensation that could be paid. The only available redress was monetary. By the 1940s the Crown was codifying Settlements through legislation, the first being the Ngaai Tahu Claim Settlement Act, 1944 and the Taranaki Maori Claims Settlement New Zealand, 1944, followed two years later by the Waikato-Maniapoto Maori Claims Settlement Act, 1946. Those Settlements provided monetary redress as compensation. They were also considered final as set out in the Long Title section 1 of Waikato's 1946

[3] *Wi Parata v Bishop of Wellington* (1877) 3 NZ Jur (NS) SC 72.

legislation “to effect a Final Settlement of certain Claims relating to the Confiscation of Maori Lands in the Waikato District and provide for the Control and Administration of the Moneys granted as Compensation” (Waikato-Maniapoto Maori Claims Settlement Act, 1946, p. 172).

Waikato never considered the 1946 settlement as “Final’ (McCan, 2001). Given their state as a people at the time Waikato felt they had no option but to accept, even though the redress provided did not see the return of any lands as per Kiingi Taawhiao’s edict “I riro whenua atu me hoki whenua mai.” Notably in 1948 petitions were made by individual tribal members disputing the “finality” construct (McCan, 2001).

Over time, it became apparent that those Settlements were not enduring, as the amounts paid in perpetuity were not inflation-indexed and became meaningless as compensation and redress. By the 1970s, the annual payment was of such insignificant value that the Tainui Maaori Trust Board capitalised the annuity to purchase a farm to provide an alternative source of income. This became a critical and well-kept confidence in the Waikato direct negotiations of the 1990s as Crown officials conducted a simple exercise of inflation-indexing the 1946 redress sum which amounted to a shortfall of millions of dollars in value. This gave the impetus for the Crown to consider re-opening the 1946 Settlement again, more so than the retrospective enabler of the 1985 amendment legislation or the 1989 Court of Appeal decision.

During the 1970s there was visible and growing Maaori agitation, notably a Te Reo Maaori petition to Parliament (Walker, 2004), Whina Cooper’s land march, Bastion Point and Raglan Golf course occupations (Crocker, 2016; Harris, 2004).

By the 1980s, the Settlement payments received by Waikato were worthless. At the same time, the political mood and climate related to an emerging Treaty jurisprudence were forming (Bidois, 2013). This resulted in the amendment of the Treaty of Waitangi Act 1975 in 1985, which allowed the Waitangi Tribunal to inquire into claims dating from 1840 when the Treaty was first signed (Treaty of Waitangi Amendment Act, 1985). Waikato, as a consequence, filed its statement of claim to the Tribunal in March 1987 (Waikato Tainui, n.d.). As well, during the 1980s there were significant judgements from the judiciary, the seminal case being *New Zealand Maori Council* v *Attorney General* [1987] 1 NZLR 641, (1987) 6 NZAR 353 that resulted in the

principles of the Treaty (Crown Law, 2019). No other case since the Supreme Court decision in *Wi Parata* had taken Treaty jurisprudence to a new level.

The formative years of Treaty jurisprudence and the shift in race relations within New Zealand in the period 1970 to 1990 was an important contributor to the development of Treaty jurisprudence. One of the factors propelling the change in race relations was the relocation of Maaori from rural to urban communities and a more educated professional (Crocker, 2016) and from assimilation to bi-culturalism (Bidois, 2013).

For Waikato, the seminal case was the 1989 Court of Appeal decision in *Tainui Maaori Trust Board* v *Attorney General* [1989] 2 NZLR 513 where the Judge Robin Cooke (who also presided in the 1987 New Zealand Maaori Council case*)* found the Crown was in breach of the Treaty principles by putting up for sale the coal mining licenses of the State-Owned Enterprise, Coal Corporation (R. Mahuta, 1995b). This led to Waikato and the Labour Government entering the unchartered territory of direct negotiations. McCan (2001), in his book *Whatiwhatihoe* recounts these events as they applied to Waikato from the 1970s through to 1994. Fisher (2016) also examines this period in Waikato history and this was helpful for my research because of its reliance on primary sources. While Treaty Settlements are not a recent phenomenon, grievances arising out of the Treaty began almost as soon as the ink on the parchment had dried.

My literature research did not include an examination of the history of the Treaty of Waitangi which has been commentated upon in depth by others. Instead, the focus is on what does the Treaty look like for Aotearoa New Zealand going forward, and how did the last thirty-odd years of Settlement reframe that history. The key point in relation to my research is that past Settlements have been deemed “final” and, like the Waikato Settlement of 1946, but were reopened and settled again some fifty-plus years later. Of importance is why they were re-opened by both the Crown and Waikato and McCan (2001) discussed this in detail as he had direct access to Waikato tribal members intimately involved in this process as well as the Settlement negotiations. Mahuta (1995) is much clearer and, as a primary source his text is unquestionable.

Modern Treaty of Waitangi Settlements from 1992

Crown policy in the early 1990s appeared to arbitrarily put a stake in the ground to distinguish between historical claims and contemporary claims (Te Aho, 2017). The distinction was the ability to claim for a breach of the Treaty for Crown actions or omissions from 1840 or contemporary breaches of the Treaty. That premise had no logical foundation as a breach of the Treaty, and the Crown's legal and fiduciary responsibility is a breach, no matter when it occurred.

The date that makes that distinction is 23 September 1992 which was the date that the Crown and iwi settled the Treaty claim to commercial fisheries under the management regime of the Quota Management System. That Settlement appeared to provide some context to the Waikato 1995 Settlement as the total value of the pan-tribal 1992 Settlement was $170 million – the exact figure of the redress value of the Waikato 1995 Raupatu Settlement. But also, importantly for my research, the 1992 Settlement was considered 'full and final'. The genesis of that claim and eventual Settlement came from the need to manage and conserve the practices of commercial fisheries, ensuring fish stocks were not over-exploited to the extent that fisheries stocks became unsustainable. The claim and breach related to Article II of the Treaty of Waitangi (Treaty of Waitangi (Fisheries Claims) Settlement Act, 1992).

The result of this Settlement was the transfer of ten percent of the Quota Management System (QMS), a 50 percent shareholding in the Brierley-owned company called Sealord, and $18 million plus a twenty percent allocation of new species brought into the QMS. The total value was $170 million (New Zealand Government, 2014). Further research into the issue of the $170 million threshold established through the Sealord's Settlement and not the 1995 Waikato Raupatu Settlement is required. There was and continues to be a degree of blame and accusation that the Waikato Settlement capped the potential redress value for subsequent Settlements. If the perception or the reality of this view occupies the mind, it is suggested that further research by Waikato may afford the opportunity to set the record straight.

Comparing early Crown Settlement policies with current policy (O'Sullivan, 2008) and tracing the evolution over thirty years can provide a measurement tool or lens to assess whether the 1995 Settlement has endured. The study by Crocker (2014) and her later

thesis publication (2016) and extensive use of and reliance on government policy papers contributed to the assessment of durability. The Waitangi Tribunal 2616 Inquiry (April 2019) on conflicting government policies investigated the phenomenon of redress under negotiation having an influence on claims yet to be settled. That phenomenon, depending on the outcome of the inquiry, suggests the modern Settlement process creates new and contemporary injustices and breaches.

I have taken the opportunity to explore the policy development of a Treaty Settlement process from Waikato's perspective. Like McCan (2001), Fisher (2016) had direct access to tribal members and tribal archival records. Fisher's focus on Waikato's negotiations traversed the issue of the 'how' of the Settlement negotiations but not the 'why'. My research focused on the 'why' through interviews of key people involved in those negotiations to gain pertinent insight. Fisher also had direct access to Crown officials and documentation. Using Fisher's research and Crocker's thesis analysis of policy development post-1995 has assisted me to investigate the premise that policy change and new policy undermined the integrity and the durability of the Waikato 1995 and 2010 Settlements.

An important opportunity to be explored under this theme was the understanding of the Ngaai Tahu negotiations and their response to the final Settlement clause in their 1996 comprehensive Settlement. Fisher (2017) provides insight into the importance of the Ngaai Tahu Settlement negotiations. The similarities between the Settlement negotiations of Waikato and Ngaai Tahu, both of whom were at the lead of modern Treaty Settlements and both experienced the ad hoc process of policy development. Importantly, both were interacting with the primary Crown actors (the Minister and officials) and both engaged with the Crown over what the intention of Settlement should be. Over the years, the post-settlement wins and woes of both iwi have been compared, more in terms of who was faring better or who was faring worse. I argue this is simplistic, lazy, and racist rhetoric and does not compare apples with apples. What is more important to compare was whether both Settlements have endured under subsequent government actions and omissions.

As an example, Waikato were affected in two ways following the introduction of the Foreshore and Seabed Act 2004 passed by Prime Minister Helen Clark's Government. Firstly, Waikato had to establish customary title by iwi and hapuu proving continuous

and contiguous connection with the foreshore and adjoining and abutting land occupation and ownership. For Waikato, the customary relationship had been broken by the Raupatu and through no fault of their own and so they could not evidence continuous and contiguous connection. Secondly, the argument of dominion by the tribe to the Harbours (including the foreshore and seabed) could not be negotiated through the Waikato 1995 claims of its four West Coast Harbours as the available redress had simply been taken away.

Similarly, the 2012 public float of shares in the State power generators, it is submitted, contravened the Waikato River Deed of Settlement, 2009 Dispositions clause (12.27). Under that Settlement, both parties agreed that the issue of "ownership" of water was not the subject of negotiation. However, if in the future, a proprietary interest was created in freshwater resources and there was commodification either directly or indirectly, there needed to be more than a conversation between Waikato and the Crown. The Waitangi Tribunal Inquiry 2357 in 2012 was tied directly to rights in and over water under Article Two of the Treaty of Waitangi. The Tribunal found that there was foundation for Maaori to claim that the sale of shares in the power generator was a breach of the Treaty of Waitangi and accordingly recommended a halt to the sale of shares if the ability of the Crown to provide redress was not delivered (Fisher, 2015; McCan, 2001; Ruru, 2012; Waitangi Tribunal, 2012). Again, the available redress had simply been taken away.

Similarly, the current Freshwater Management proposals (October 2019) (Ministry for the Environment, 2019) by the Crown disrupted the Waikato River Settlement by suggesting a new regime of water management and regulation without having a conversation with Waikato, as part of co-management set by the Waikato River Settlement. In addition, Waikato were invited into the conversation via the public submissions process as a member of the public (Article Three of the Treaty of Waitangi), despite the reaffirmation of their Article Two rights and interests under the 2008 Settlement.

More recently, the Crown proposed a reform of the Resource Management Act 1991 (RMA) and the Three Waters policies (Te Tari Taiwhenua - Department of Internal Affairs, 2024). The RMA reform occurred with the passage of the Natural and Built Environment Act 2023 and the Spatial Planning Act 2023 (Ministry for the

Environment, 2025). Waikato were concerned with the impacts of both Acts on the Settlements, and in particular the Vision and Strategy for the Waikato River that was established by the Waikato River Authority. The Crown's policy makers had no regard to potential erosion of the Settlements, instead focusing on achieving the government's policy agenda. Waikato iwi had to protest and voice their objection and, yet again, provide a solution for the Crown undertaking in writing as part of the Kiingitanga Accord (Settlement redress) that the Settlements would not be prejudiced. Issues such as these underscore the importance for iwi who have settled or are yet to settle to remain vigilant.

One factor that drove the Waikato 1990s negotiations was process. It is submitted that Waikato had both an advantage and disadvantage in being one of two iwi to first engage in the process and equally the novelty of the journey with the Crown (Fisher, 2015). What was clear in the engagement was the power imbalance, whether this was intentional or as noted above, a product of ad hoc process and policy development, nevertheless it was the reality. What was also clear for the iwi was that the Crown's policies for settlement of raupatu had not changed since 1863, nor could they rebut the Crown's policies.

Rather, the Crown prescribed the rules of engagement and set the agenda; however, Waikato influenced that engagement by negotiating on its own terms and in its own way. The driver of the Crown's imperatives was to start with what was politically expedient and were subject to persuading Cabinet of the cost-benefit outcomes of achieving a Settlement with Waikato. In addition, the Crown was cautious not to set a precedent and to avoid the domino effect that would impact their wider political agenda. Around that time, it appeared that the Crown realised that defining the Treaty of Waitangi relationship between itself and iwi and the response to historical Maaori claims of Treaty breaches was influenced by the Waitangi Tribunal and the judiciary. The Crown sought to reassert their constitutional control of the process and to govern, as evident in the passage of the amendment of the Treaty of Waitangi Act in 1985. Running alongside this was their need to resolve historical Treaty grievances, contrary to the privatisation policy of state-owned assets and the sale of those assets to retrieve the country from alleged bankruptcy (Crocker, 2016). As a result, avenues for Maaori Settlement redress were limited which arguably created a new breach of the Treaty. As

Crocker highlighted, the Waitangi Tribunal could make recommendations, but it remained the Crown's prerogative to adopt or reject those recommendations. Waikato understood they had the option of pursuing their claim through the Waitangi Tribunal which, following the limited success of the 1985 Manukau Harbour Claim (Waitangi Tribunal, 1985) and the influence the recommendations had on the later 1991 Resource Management Act, may have proved productive. They also understood that they might be better placed taking the more direct path of face-to-face negotiations to explore the 'what' and the 'how' of a potential settlement. Waikato chose the direct negotiation route (Crocker, 2016).

In 1988, the Crown established the Treaty of Waitangi Policy Unit (TOWPU) to provide advice on the Crown's response to and, importantly, a clarification of what settlement policy was (Crocker, 2016). In 1989, the TOWPU published its approach to the settlement of Treaty breaches of *"the principles of Crown action"*. Those principles were described as:

- The Principle of Kawanatanga
- The Principle of Rangatiratanga
- The Principle of Equality
- The Principle of Cooperation
- The Principle of Redress

  (Palmer, 1989, p. 338)

Unlike the Crown's policy development of the late 1980s and early 1990s, Waikato's position began with the pre-Raupatu engagement of Taawhiao and Governor Grey in 1860 where the relationship was on an equal footing, respectful and rangatira ki te rangatira between the settler government and Kiingitanga (McCan, 2001). The history of the search for redress for breaches of the Treaty included the journeys of the Kiingitanga monarchs Taawhiao, Mahuta and then Te Rata to England to put their cases for redress to the British monarchy, the membership of Mahuta on New Zealand's Legislative Council and the emergence of the leadership of Princess Te Puea. What is discernible is that the engagement of Waikato with the British monarchy and then the Crown in New Zealand was more than transactional but was an acknowledgement of each other's mana, albeit implicit rather than explicit (McCan, 2001).

McCan (2001) and Parsonson (1972) provide more than an observer view of the historical and the modern Treaty Settlement negotiations processes that carried Kiingitanga values of rangimarie, whakapono, whakaiti, and tika me aroha across almost seven generations. The pepeha and whakataukii of Kiingitanga leadership has sustained Waikato and in respect of this research, the statement made by an elder of Waikato to Sir Robert Mahuta that it was better to have nothing than to be nothing. Waikato's tenacity and patience over generations meant it was not prone to pressure to take what was being offered if it didn't feel that justice had been or would likely be achieved. This was evident in the offer made by the Labour Government and delivered by the Hon Richard Prebble in 1989 to the Waikato negotiator, Sir Robert Mahuta. It was a week before the general elections and the Crown gave an ultimatum to Waikato of a take it or leave it settlement offer of $9 million (R. Mahuta, 1995b). Mahuta responded to the offer by stating, as I recall him often recounting, "I know where I will be this time next week, I am not sure where you will be" (personal communication). A week later, the national elections saw the replacement of the Labour government with a National government.

The proposition is that the Crown internally were very cautious in their approach as the greatest risk to the process failing was from within and not from Waikato (Crocker, 2016). The Treaty was not incorporated as part of domestic law and, therefore, could only be included within a legislative framework through regulation and policy. Croker's thesis was useful in that she directly referenced Officials Committee Reports to Cabinet Policy Committee during the late 1980s. The sources describe the embryonic development and need for Treaty Settlement policy once the "floodgates" to historical Treaty gates were opened. Croker's thesis was also interesting as she identified the personal agendas of certain Ministers (Geoffrey Palmer and Koro Wetere) to address Treaty breach as a matter of justice. This led to the dilemma of what that voice would sound like and how it would or could accurately articulate the intentions of the Treaty given the differing interpretation between the English and Maaori versions of the document. The Treaty of Waitangi Act 1975 gave no guidance to the Crown and the only source that could provide direction on Treaty principles were the findings of the Waitangi Tribunal. Palmer and Wetere were also intent on threading the Treaty through all government departments and to have any government issue, decision or initiative considered against a Treaty impact. This included all new legislation introduced into

the House at the policy approval stage. Croker focussed on the formative stage of Treaty policy development resulting in unforeseen consequences from what she termed a "significant departure from business as usual". Such consequences were not only fiscal but importantly resulted in a major shift in the constitutional playing field of race relations in Aotearoa New Zealand.

As discussed above, as Ministers Palmer and Wetere were giving a voice to the Treaty, their Ministerial colleagues were developing the State-Owned Enterprises framework that saw government departments and, more importantly, government-owned assets corporatised with a dual focus of generating profits and potential privatisation (Crocker, 2016). The outcome for Maaori would be the removal of millions of hectares of land from the redress table and hence the 1987 Court of Appeal litigation brought by the New Zealand Maaori Council.[4]

I propose that the previous decade of social disruption centred on the Treaty and Maaori rights of dominion over their taonga guaranteed under Article II was a catalyst for the development and establishment of a Treaty Settlements regime. Part of the evolution of that regime was the Settlement negotiations between Waikato and the Crown (Crocker, 2016; Fisher, 2014), where policy development was in part a response for accommodating those specific negotiations. Although Waikato were engaged in direct negotiation, they had no intention to set a template for or prejudice the Settlement negotiations of other iwi. But in terms of my research topic, I submit the pedagogy of Settlement as expressed by Waikato influenced future policy regarding the terms of engagement through rangatira ki te rangatira, and an insistence that Waikatotanga was observed significantly in the engagement. What is clear is that the Crown and Waikato intended to achieve an honourable, fair, and just outcome in the circumstances.

Lastly, the Waikato narrative is nearly thirty years old. The 1995 Settlement did not settle all of Waikato's claims, something that Waikato shared with Ngaai Tahu who were also unable to settle all aspects of their claim. The final chapter, the West Coast harbours, is going through the mandating process. Those negotiations in terms of process and Crown objective are vastly different to the 1990 Raupatu and the 2000 Waikato River negotiations. Those negotiations are not on an equal footing, with the

[4] *New Zealand Māori Council v Attorney General* [1987] 1 NZLR 641 (*Lands* case).

Crown controlling the engagement and shaping an outcome that meets its objectives and not necessarily that of iwi. I believe that what will progress the last part of the settlement is for the West Coast iwi and hapuu to negotiate their own claims to the harbours, supported by Waikato under the banner of collective loss requiring collective benefit.

Justice-based versus rights-based redress

It is submitted that both approaches are viewed as mutually exclusive, and the researched literature approaches the theme from that position (Fisher, 2015). It reflects the inherent nature and psyche of negotiation which is to focus on what is on the table and disregard what is not. The answer to that question defined the motivation of the Waikato and the Crown in those negotiations. It also reflected the understanding of what your status at the negotiation table was. Were the negotiations conducted on a level playing field, and were the parties negotiating within a Treaty relationship, or was it more akin to a contractual relationship where a breach has occurred and a remedy is required?

The article written by Gibbs (2006) addresses the notion of whether justice is enforceable, particularly when parties have different understandings of justice. The question for Waikato was whether Treaty Settlements were enforceable and if so, how would enforcement happen? The Waitangi Tribunal could make recommendations to governments but could not enforce the adoption of recommendations. Fisher (2015) also examined the enforceability of Settlements in terms of balancing rangatiratanga and kawanatanga.

When considering the strengths and weaknesses of a rights-based approach to Treaty settlements, Gibbs (2006) questions whether the outcomes of the Treaty Settlement process can be called ‘justice’, particularly if the notion of justice is associated with the restoration of mana, and reconciliation. Commentary is made on the role of the Treaty itself as a shared standard of justice between the Crown and Maaori, but also that the Treaty can constrain the delivery of justice in the Settlement process.

In the context of Treaty settlements, the matter of reparative justice arises. For Waikato, the right to reparative justice was sourced in the tribe's principle of "I riro whenua atu me hoki whenua mai".

Further, the development and implementation of a pedagogy of settlement that was underpinned by the tribe's principles of mana motuhake and rangatiratanga was what was required to remove themselves from the Crown's paternalism. Waikato expressly and explicitly required the dissolution of the Tainui Maaori Trust Board as part of the 1995 Settlement outcomes in order to remove the Crown from their governance structure and ensure the post-Settlement structures were accountable and responsive to the tribal constituency and not to the Minister of Maaori Affairs.

One of the fishhooks associated with post-settlement governance entities is for iwi to manifest the reality of mana motuhake rather than reinventing the oppressor and renaming it Maaori governance (Bidois, 2017; Joseph, 2014). For example, the management and custodianship of Treaty assets by corporate post-settlement iwi entities suggests the need for caution when seeking reparative justice This is particularly so in terms of the requirement by the Crown to adopt post-settlement entities designed by the Crown and a condition of settlement. This notwithstanding, Waikato and Ngaai Tahu determined their own post-settlement governance entities (Fisher, 2015) but were constrained by the Crown's limited options for a legal entity. The outcome for both iwi, it is submitted, was the alterity of the 'Treaty Settlement Tribe' and 'the' Tribe. At its best, the Treaty Settlement tribal entity embodied a limited form of rangatiratanga, while the wellbeing of the tribe was dependent upon kawanatanga. Optimistically, the Treaty Settlement tribe could be said to more closely represent a justice-based approach to settlement (Article Two), leaving the tribe to struggle with a rights-based approach to iwi development (Article Three).

The Role of the Apology

The 1995 negotiation for Waikato was not only about seeking redress or justice; instead, the tribe sought recognition – through the public record – that the raupatu was unjust and the harm needed to be resolved and redressed. The non-negotiables for Waikato were the return of Crown-owned lands and the apology. The simplicity of the Waikato position seemed incongruent to what the Crown considered its guilt or at least its

culpability. The negotiation of what was included was difficult for both Waikato and the Crown as the apology of the Settlement was, in reality, a form of redress determined by 'I riro whenua atu me hoki whenua mai'. What has not been acknowledged was the humility of the people in receiving the apology. The apology was simple and straightforward, and the delivery of the apology was significant, especially alongside the return of Korotangi (the ancestral stone bird that travelled with Tainui during the migration) and the Royal Assent by Queen Elizabeth.

In the public eye, the apology was not viewed as reparation or redress, but more so an exoneration of the tribe who had been cast as the villain and unfairly, if not incorrectly, labelled rebels. It was also intended to set the public record straight in that regard. Crocker (2014) examined the role of the Crown and the significance of a public apology in the direct negotiation Treaty Settlement process. In particular, the role of the apology as a tool or mechanism that contributed to public history. Crocker wrote about the evolution and subsequent development of the concept of an apology in an Aotearoa New Zealand setting. The notion of an apology was first proposed in the development of the Waikato Settlement. Crocker also discussed the provision of the historical account and the apology within the constraints of the legal process. For Waikato, the negotiations over the Crown apology were intense. The Crown Law Office scrutinised each word to ensure the Crown was not exposed to legal liability.

Fisher (2015) approached the issue of the apology by way of a three-way comparative analysis of the first Settlements of the modern era of Treaty Settlements. The three comparators were Waikato-Tainui, Ngaai Tahu, and the Crown itself as legitimate parties to the negotiated compact, and the negotiation process were examined from each of the party's perspectives. The key argument explored by Fisher was the different approaches taken by iwi and the Crown shaped the negotiations, including the fact of apologies. The Crown adopted a kawanatanga position and iwi adopted the rangatiratanga position. The view espoused by the author is that because of the positions taken, different motivations and outcomes informed the negotiations. For example, the different positions led to tensions through the drafting of the apologies in terms of what the Crown, through the Crown Law Office, was prepared to acknowledge. Fisher notes the irony of the tension over the Treaty interpretations which arose as a result of the stark difference between the English and Maaori versions of the Treaty.

Solomon and Mahuta (1995) considered the return of land as a non-negotiable foundational principle of the 1995 Waikato-Tainui Settlement negotiations. This highlighted the early policy development around reserving and protecting Crown lands as potential Settlement redress. It also considered the scope of what categories of Crown-owned lands could and were politically compatible for the offer of return and, importantly, those lands that wouldn't be returned such as the Department of Conversation estate. Solomon and Mahuta (Waikato Raupatu Lands Trust, November 1995) described the Waikato-led construction of the unique tribal land tenure category – the Te Wherowhero title - established to hold tribal lands in perpetuity that were returned through the settlement.

Gains aside, redress was negotiated on an uneven playing field where the sovereignty of the Crown trumped the rangatiratanga of iwi. Lightfoot (2015) provided a comparative analysis of the settlement and restoration processes involving Indigenous peoples in Canada and in Aotearoa New Zealand. Lightfoot noted that the apology featured highly in the reparation landscape of each country but noted the paradox which was that neither country supported the United Nations Declaration of Rights of Indigenous People in 2007, although both countries signed the Declaration some years later.

The literature does raise a new concept around the limitations of reconciliation and repairing the past, which is worthy of examination. The premise is that the States retain the right to govern, and settlements (including the apology) are conditional upon that right. For Waikato, this was the first time the Crown had made an apology for its past actions. Significantly, if not symbolically, the Settlement legislation recorded the apology and despite convention, the royal seal was signed by Queen Elizabeth II herself. Subsequent settlements have adopted the apology as part of a settlement template format, whether or not iwi wanted an apology. The Waikato Apology was at the insistence of Waikato and was tabled at the very first negotiation meeting between the Crown and Waikato at the very rural and isolated setting of Te Maika. One of the kuia who had been part of one of the Waikato negotiating teams communicated to the Crown team that what was important for Waikato was for the Crown to say sorry. The giving of an apology became par for the course, normalised and institutionalised in statutory preambles and other symbolic legislation such as apologies (Murphy, 2020).

By transactional, I mean the apology was part of the Settlement template tick-box for the Crown which, from an iwi perspective, diluted the sincerity of the Crown's apology.

Fisher (2015) noted the reluctance of the Crown to return land from the Department of Conversation estate as part of the 1995 Settlement. According to Fisher, returning land from the Conservation estate was politically a stretch too far for the greater New Zealand public. This, I submit, was perhaps the only dent to the apology, particularly since recent Settlements with other iwi now include the return of Conservation lands. Fisher suggested that there is a danger that an apology from the Crown may be understood by them public as re-fabrication of history that implies that iwi have exaggerated the impact of breaches. However, the 1983 Tainui Report (Egan & Mahuta, 1983) disagrees with Fisher in this regard, and an analysis of the wording of the apology indicates that it is a simple statement of fact without flourish. From Waikato's perspective, the wording of the apology was designed to acknowledge the Crown's wrongdoing and, importantly, Waikato's contribution to the nation as an outcome of the confiscation of land. For example, the value of the 1.2 million acres of confiscated lands in 1995 terms was $12 billion, and some of that land was taken into the Department of Conservation estate which was in effect for the benefit of the nation.

The apology to Waikato was drafted by Waikato and Crown historians, but final editing was under the control of Crown Law, though Waikato's legal advisers were quite forceful in ensuring that Crown Law did not dilute what Waikato considered important. However, as is the nature of negotiations, there were compromises on both sides. It is submitted that the apology to Waikato was both genuine and full.

Another innovation of the process was the postal referendum. Waikato determined for itself that acceptance of the Crown's final offer should be decided by each tribal member aged eighteen years or older and registered on the Tainui Maaori Trust Board beneficiary roll. The postal referendum did not include the Wai 30 claimant who was Sir Robert, on behalf of the Tainui Maaori Trust Board, Ngaa Marae Toopu and Waikato Tainui.

A postal referendum information package ("The Tainui Red Book") was posted to 11600 eligible tribal members on 3 April 1995 (Tainui Maori Trust Board, 1995). The

apology was referenced as part of the redress of atonement and explained in the Tainui Red Book:

> The Crown will publicly apologise to Waikato for sending Imperial Forces across the Mangataawhiri and for the loss of life, the devastation of property, the confiscation of lands which followed, and for the effects of Raupatu on Waikato.
>
> Waikato is seeking that the apology be made by Her Majesty Queen Elizabeth II during her visit to New Zealand in November 1995.
>
> The Crown will also say that:
>
> - its actions breached the Treaty of Waitangi
> - recognition of the grievance is justified and overdue
> - Waikato raupatu lands have contributed to the development of New Zealand
> - this Settlement does not affect the Treaty of Waitangi or any of its Articles.
>
> (Tainui Maori Trust Board, 1995, pp. 8–9)

From an iwi and Maaori perspective, an apology might be associated with the framework of take – utu – ea, wherein the utu component is valued as compensation, reciprocity, or in some circumstances, revenge (Mead, 2016). As well, the apology would need to take into account the value of rangimarie as described in the principles of Kiingitanga as an outcome of an apology.

Lightfoot (2015) investigated what is meant by an authentic apology and what an apology is expected to achieve. Again, from an iwi and a Maaori perspective, it is important that the offended benefits but not the offender. Lightfoot identified three categories for discerning the authenticity of an apology as non-apology, quasi-apology, and authentic apology. Lightfoot compared apologies in Australia, Canada, and Aotearoa New Zealand and concluded that the New Zealand Apology, in both content and delivery, met the authentic category. An authentic apology must be full and comprehensive, acknowledge the wrong and the consequent harm, and commit to resetting the relationship going forward. What was not a requirement of Lightfoot's apology was for governments to ensure they forever prevent the circumstances that created harm.

As it happened, Waikato tribal members were given the choice to accept the Crown's apology or not. Significantly, it was their apology and so it was their right to accept or reject. Some tribal members might not have cared about the apology, but for others, the apology was the dealbreaker and the only reason they agreed to the Settlement.

The Waikato Apology of 1995

- Acknowledges the Crown acted unjustly and in breach of the Treaty and unfairly labelled Waikato rebels; and
- The Crown expresses its profound regret and apologises unreservedly; and
- The Crown's actions were wrongful and the impact on Waikato has been ongoing; and
- By way of redress the Crown will return Crown lands to Waikato; and
- The Crown recognises that the confiscated lands have contributed to the wealth and development of New Zealand; and
- The Crown seeks to atone for the injustices and begin the process of healing by entering into a new age of co-operation.
  (Waikato Raupatu Claims Settlement Act 1995)

It was noted that a key function of the apology was to put on the public record that Waikato were unfairly labelled rebels. So, has the apology achieved this? Tupper (2014) posits the restoration or repositioning of the Indigenous and coloniser equilibrium of power can be achieved through peace education. The government has recently announced a policy to introduce into the New Zealand school curriculum the historical truth of colonial Aotearoa. As Prime Minister Ardern introduced the Policy she announced, "The curriculum changes we are making will reset a national framework so all learners and ākonga are aware of key aspects of New Zealand history and how they have influenced and shaped the nation (New Zealand Government, 2019).

Full and Final as a Legal Construct

The assertion and insertion of "Full and Final" as part of an agreement to settle a Treaty grievance first became reincorporated into the vocabulary of "modern" Settlements through the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992. This then became the standard undertaking and acknowledgment given by each claimant of

Settlement. This continued and continues as part of Settlement Deed templates. I turn now to examine how might justice-based redress be achieved as a 'full and final' measure of enduring settlement or whether the intention of the assertion and insertion into the template was to oust the jurisdiction of the judiciary to enquire into the matter of a civil arrangement between two parties. Bielski's (2016) dissertation tracked the development of the full and final construct from the 1992 Fisheries Settlement to more recent Settlements. What is useful to consider for the Waikato pedagogy was the interpretation and commentary of the legal construct and the distinction between historical and contemporary claims. The cut-off date was arbitrarily decided as 21 September 1992 for historical claims and contemporary claims were after 21 September 1992. Additionally, in Bielski's view, is the contemporaneous introduction of the "fiscal envelope" concept in 1994 that capped the value of all Treaty Settlement redress at $1 billion. This supports the premise of my research, one of which was finality was not tied to justice but to a fiscal imperative. In other words, to ensure the most cost-effective means of saying sorry for the Crown.

There are two legal propositions from which to view the question of whether the "full and final" component is a legal reality or a legal fiction. The first proposition examines non-compliance by the Crown of what has been settled with iwi claimants in a contemporary or modern Treaty Settlement. This includes maintaining the integrity of the apology and Crown acknowledgements, and ensuring the redress provided (both commercial and cultural) is not prejudicially impacted by subsequent actions or omissions of the Crown as noted above through subsequent legislative reforms. This will be a legal argument that resurrects the Treaty breach. How this will be argued will be, it is submitted, important in terms of Treaty Settlement processes under what is arbitrarily demarcated by the 1992 date between historical and contemporary claims and Settlement. The premise is how to categorise a modern Treaty Settlement as a contemporary breach of the Treaty or is it a continuation and perpetuation of an original historical breach? To illustrate by way of example, if the Waikato mamae settled in 1995 is re-examined given the effects of the 1863 raupatu are ongoing, is this a historical or a contemporary breach by the Crown? The answer to whether the claim is an old mamae or a new one offers potential and opportunity to begin a new discourse of Treaty jurisprudence and potentially disrupt the Treaty Settlement processes that have evolved over the past thirty years. Looked at positively, this may provide

opportunity for the development of new Treaty knowledge. However, to date not one iwi has challenged the Crown through the Waitangi Tribunal or the Courts that their Settlement is coming apart. Further, if the Crown is to legitimately renege on its part of a Treaty Settlement, it can do so through enacting legislation to achieve this outcome. The example here was the Seabed and Foreshore Act 2004. So, with such an unfettered right of parliamentary sovereignty, there is no guarantee that the Crown's commitment to full and final will continue. The risk increases with the passage of time, and the actions of the current coalition government are proving this to be true.

The second proposition is to consider there is a breach of contract as opposed to a Treaty breach. This approach would require the Treaty of Waitangi to be considered as law and not just a document at the highest level of constitutional arrangement (Borrows, 2006). The contract breach must be, it is submitted, confined within the four corners of the contract, and where possible, the intentions of the parties must be clear. What would be a novel approach as part of contract law principles is the competence of the contracting parties to contract. Did the Crown and Iwi have the same status and, therefore, the capability and capacity of contracting parties, and did they come to contracting negotiations as equals? In any regard, both Waikato and the Crown were arguably equally represented and advised by legal Counsel, but as I have stated previously, the playing field was uneven because the Crown asserted its sovereign right to govern (kawanatanga). The other aspect for consideration is the generational tenor of the agreement in so much as the parties at point of contracting were not simply the Crown and Waikato as at 22 May 1995. Rather, they were future government administrations and future tribal members. Borrows (2006) considers the premise of generational capacity of contracting parties by the nature of promises made – in the Waikato context, the promise of the Crown not to reoffend against the tribe, and to restore the Treaty relationship. For Waikato, the promise was to remove the reality and sense of grievance by withdrawing its legal right to pursue the Raupatu claim through the Waikato Tribunal and the Courts and acknowledge the restoration of the Crown's honour.

Those promises should not be arbitrarily and unilaterally reinterpreted by either party, as to do so would constitute a breach of contract and fundamentally a breach of the relationship. Where the parties end up disputing the interpretation, for example the

meaning of disposition of water rights under the Waikato River Settlement and current Crown freshwater management proposals, resolution of the dispute is a matter of law.

Borrows (2006) observes, and perhaps this is another avenue of exploration, that if corporations and individuals have the capacity to contract, why not States and Indigenous peoples? Borrows (2006) considers the Treaty of Waitangi a contract, with the Crown and settler citizenry as one party, and iwi, hapuu and Maaori the other party. Accordingly, the Treaty parties have respective rights, and therefore, they have the same rights to sue and reversibly, to be sued.

My opinion is that the Treaty is a high-order constitutional document that resets the Indigenous pre-Settlement sovereign nation statehood and modern-day Settlements which are agreements of contrition, reconciliation and compensation. Comparing the terms of a Treaty Settlement with the three elements that constitute a contractual relationship i.e. the offer, the acceptance and the provision, the Waikato Settlements for Raupatu and for the Waikato River might be considered as follows:

The offer is the Crown's desire to acknowledge its wrongdoing and to make recompense through Settlement. The acceptance is Waikato's agreement to settle. The provisional component is the redress that includes the apology and Crown acknowledgements, the return of Crown-owned lands to Waikato, and cash to the total value of $170 million.

It is suggested that there is a wide-sweeping definition of redress as an element of legal consideration. It is not a static one-off payment or compensation but a lasting and enduring investment in reconciling the tribe's relationship with the Crown. Redress should not be measured solely by the fiscal and commercial aspects of redress but also by the intangible characterisation of the Crown apology and acknowledgements.

Summary

To conclude, the concept that a Crown apology is to reach closure of long-held generational grievances and provide for a reconciled future between Iwi, Maaori, and the Crown remains inconclusive (Gibbs, 2006). The Waikato-Tainui Settlement was seen as the initiator of a new policy direction wherein reconciliation was the goal but

what was required – and partly achieved - was something more tangible than monetary and physical redress. Overall, the research and associated settlement literature indicates the evolving nature of the Settlement process, but also a lessening in innovation. This is evidenced in so much as Settlement policy takes a generic templated approach and application, a concern by the Crown to manage settlements within the constraints of public attitudes to Maaori, and a weakening in terms of a commitment to provide public education about the impact of Crown legislation and policy.

CHAPTER FOUR – VOICES OF RAUPATU

Introduction

What follows are the stories or puuraakau of nine participants. I wanted to include their voices as much as possible because the research question examines our Settlement pedagogy, and this can only be answered by the collective voice. So, in effect, this Chapter has been co-authored with my participants. I have tried to use as much of their 'voice' as possible with minimal editing to ensure the integrity of their puuraakau.

As noted in Chapter Two, my preferred interview method was kanohi ki te kanohi which allowed the participants to tell their stories. The method was to record the interview at a venue of their choice. All participants insisted that they be identified and that this was an opportunity for them to give their story or in some cases the story of others who had since passed away.

The majority of the interviews were conducted at the Waikato - Tainui College for Research and Development (i.e. the Endowed College). The interviews were analysed using an inductive method which produced several key common themes. I have organised the information from the participant interviews according to those themes.

Theme 1 – I riro whenua atu, me hoki whenua mai

This was the dominant theme in all the interviews. It was non-negotiable in the settlement process in that if the land-for-land principle was not part of the negotiation, then there could be no negotiation and no settlement. It would have been senseless and pointless to negotiate with the Crown if land-for-land was not 'on the table'. This follows as previously noted, Taawhiao's edict that land should be returned. It also continues and ends what Te Puea started in terms of the 1946 Settlement to the extent that land was not part of redress at the time however the return of lands formed the thrust of the 1995 negotiations and allow the Tribe to conclude a land for land Settlement. What the opportunity is for the future, is that other Crown lands could also be returned under the right of first refusal mechanism. This mechanism only applies to lands the Crown owned in 1995. Any subsequent Crown lands acquired after 1995, is a challenge for future generations to pursue.

All participants were very clear about the principle that underpinned the negotiations, and they were very clear that it was the major motivating reason for the negotiations. The other aspect was how it took the Crown a while to actually understand that concept but also understand how important that fundamental principle was to the iwi and therefore to the outcome of the negotiations. Each participant had their own nuanced view of how the principle was brought to the negotiation table and how it was given expression.

Robert's koorero reinforced the importance of the land being returned, the only difference that he expressed was that it should have gone to the hapuu opposed to the Iwi collective. But nevertheless, the foundational principle was as strong in his koorero as in the other interviews. He even comments that *"...the Crown still has more land than we do and that can't be right, it can't be a Settlement".* So therefore, he also recognises the opportunity for future engagements in negotiations to ensure return of lands still in Crown ownership in the future.

The other aspects of I riro whenua atu, me hoki whenua mai in the 1995 Settlement was that it provided the opportunity for the tribe to actually start building an economic base and then purchase land back. This is evident in Jeff's puuraakau as well as Tom's. Relevant to the negotiations was how they came about, and this is in reference to the State-Owned Enterprises Act and the sale of Coal Corporation in the 1980s. This is spoken to in the koorero of John, Tom, Erina and Ngahuia where they talk about the Raupatu and the Court of Appeal case of 1989 and travelling to Wellington for the hearing, putting in the submission to the Waitangi Tribunal, and all of those legal actions that gave the tribe the opportunity to take their claim to the next level. So, critical to the resolution and the initiation of the negotiations, was as I have stated previously the engagement of the judiciary into the argument between ourselves and the Crown.

Timi provides a further timeline in terms of the 1984 train and hiikoi to Waitangi protesting the loss of lands around the motu but in particular for Waikato, the train trip was to put forward our own Raupatu on the Waitangi Treaty Grounds in 1984. That train trip and hiikoi was led by Sir Robert and John Te Maru. Timi also recounts his experiences of the Coal Corporation case and travelling down to Wellington with Sir Robert and James Ritchie by car, to meet up with the Tainui express train that was

following behind them. He remembers sitting in the Court room with the kaumatua in the front row and remembers how sympathetic the Judge was to our cause. Importantly, Timi remembers the time of early engagement with the Crown and he names Prime Minister Muldoon, Jeffery Palmer, and other Ministers. My understanding was James McIntyre was one of the Ministers Sir Robert directly engaged with. Timi remembers the filing of the Statement of Claim to the Waitangi Tribunal once the Tribunal was given its retrospective powers to look back to grievances since 1840. Timi's was the only puuraakau that provides that point of reference as it is actively part of Timi's recollections. As Timi says *"...so in 1985, what was his name from up north"* and understand that Timi is referring to Matiu Rata MP, "introduced a bill or act that allowed the Waitangi Tribunal to look at claims going back to 1840 to breaches of the Treaty so that was 1985 and that gave the Trust Board an opportunity to actually reopen the Raupatu grievance, and I think we filed our statement claim in 1987. Sir Robert Mahuta on behalf of the Tainui Maaori Trust Board, Ngaa Marae Toopu and Waikato Tainui filed a statement of claim to the Tribunal to the 1.2 million acres of Raupatu land, the Waikato River, the four West Coast Harbours. It was the Fisheries claim that allowed us to enter into that engagement with the Crown.

Timi also provides a deeper analysis of the Raupatu story and the concept of I riro whenua atu me hoki whenua mai, where he talks about the history of the land wars on a personal level, and how it had involved his tupuna or great great great grandfather as one of the warriors at the battle of Rangiriri and also talks about growing up and how the Raupatu was never spoken about and his reasons why. In his view, the story or the history of Raupatu was squashed at the time because of the influence of Christianity and the various religious sects that had become part of Waikato marae life. Timi's puuraakau is important because he talks about the ongoing taking by the Crown of Maaori-owned land, particularly in Raahui Pookeka or Huntly, and that is referred to in his recounting of the establishment of the Huntly Power Station and taking of lands under the Public Works Act. So, in a sense Raupatu continued from 1863 right up to these contemporary times of Timi's where he saw the disruption to his local community, in particular the marae. So, in a sense the impact of the Raupatu was not just what happened in 1863 but what occurred throughout subsequent years and the ongoing cannibalism by the Crown of our whenua, and therefore our people.

Another dimension to ‘I riro whenua atu, me hoki whenua mai’, is how we were committed to it to the extent that it not only became a part of our lives but also affected our lives positively, and detrimentally. Rangimarie talks about her mother and her commitment to the Raupatu, and how she was prepared to sacrifice herself for the kaupapa. It is important to highlight it here because ‘I riro whenua atu, me hoki whenua mai’ were more than words.

Ngahuia also adds a further perspective in terms of the research that was involved in the Raupatu negotiations and the claim:

> *As a famous whakataukii of Tainui says ‘I riro whenua atu, me hoki whenua mai’, as land was taken let it be given back, as land is all connected in a way that manawa tried to bring together again - a body, the tinana that had been really dissected.*

As Tom comments:

> *I think it goes back to ‘I riro whenua atu, me hoki whenua mai’, for more than 130 years the tribe has always sought redress as a result of Raupatu. It was always felt that as land was taken, land should be returned and that was the essence of the claim.*

Tom acknowledges that this has always been part of the tribe’s search for redress, and it was important to acknowledge that. Tom also provides a practical account of how we prepared in the negotiations for a land-for-land debate. We established a specialist unit to actually talk directly with the Crown about the return of lands, the process for that to occur, and the valuation of those Crown lands. The difficult part was identifying what lands the Crown had as they were not sure what they held. It is therefore important to continue to acknowledge the theme of ‘I riro whenua atu, me hoki whenua mai’, as being a first principle in negotiations and the mainstay of our pedagogy. So, without that we could never have had a pedagogy to negotiate successfully the resolution that was sought.

Theme 2 – Tikanga and wairuatanga

All the participants spoke of tikanga and wairuatanga whether expressly or implicitly. However, it was clear that this was a dominant theme, much like Theme One as part of

their recollection of what guided us through the negotiations. This theme is closely tied to Theme 5 - Kaumaatua and Kuia, who provided the protective korowai for the negotiations, both the land negotiation of 1995, the River Settlement of 2008. Erina talks about her commitment to the kaupapa. Regarding the River Settlement negotiations, she says *"…it's about our river, the tikanga and all that side of things".* Rangimarie refers to the Raupatu and 'I riro whenua atu, me hoki whenua mai' as having their own tikanga:

> *…it is a guiding principle for us, it is a tikanga, I just don't know how to describe it. For us, it was a tikanga because it was a tongikura the way Taawhiao described. It is a tongikura in a literal term that became the guiding tikanga for the tribe, that was our war cry. It was simple 'I riro whenua atu, me hoki whenua mai', eight words. You know that it has mana in it.*

She also talks about other guiding principles and mentions one specifically: *"If you can't deliver something, then something is not right."* She also remembers the Waikato River negotiations and remembers gathering of people down at the Point at Ngaaruawaahia where the Waikato and the Waipa Rivers meet and mentions a crowd of 100 people and her memory of that night and that gathering was the sound of a pounamu hitting the water. Te Arikinui had picked up a pounamu and thrown it into the water and that was the part of what she understands was the tikanga. Her other recollection of tikanga as part of the process, was on the day of the signing and how Sir Robert was supposed to have signed the Deed of Settlement but the Trust Board the night before had decided it should be Te Arikinui. Rangimarie describes this as a tikanga of mana:

> *Again, as to tikanga, he, Sir Robert knew where the mana was to go back to Crown to Crown, rangatira to rangatira. So that is why Dame Te Ata signed the Deed of Settlement alongside the Prime Minister, Sir Jim Bolger.*

She also recalls a major part of the tikanga was karakia and Pai Maarie. She enjoyed when we had to do things, and the people would come and do karakia with us. She recalls also the tikanga, the mana, te kupu, *"…when Sir Robert called a hui all he needed to say was such and such a time, such and such a place and the people would come and even Te Arikinui when she called a hui, specially, the people would come."*

As Rangimarie described it:

> *…there is no going to the marae for permission or go through a tikanga process whether or not it can be held. Tikanga dictated that the kaahui – the chiefly family - spoke and the people would do what needed to be done. We didn't contest it, and we didn't take it to court.*

Again, she reaffirms the close connection between the theme of tikanga and Theme Five - Kaumatua and Kuia. Having the old people perform their role in terms of tikanga, and here she references Te Winika and how the old people would go to the museum to make things tika and also going up Taupiri Maunga when we had an important event the following day or we had just finished an important event that day. She recounts her theories of wairua tiaki when she was in Tuurangawaewae house.

Ngahuia acknowledged the role tikanga played in her observations from the sideline watching the negotiation team and the tribe: *"I thought to myself, well you know that tikanga is not only at the marae, Tikanga can be everywhere. It is the most inner link to our Tuupuna, to our Te Ao Maaori".*

Tom's koorero around the return of Korotangi was quite special. The carved bird that accompanied Tainui waka on its journey to Aotearoa had been lost to the tribe through those turbulent years of Raupatu and had been given to the Dominion Museum in Wellington. The tribe had been seeking the return of Korotangi for many years before Settlement. This was led in the main by kaumaatua Henare Tuwhangai. Tom refers to the return of Korotangi as: *"One of the many strands to an outcome. As every one of those strands had their faces in long-standing history, they were an essential part of our tikanga".*

Speaking about the return of Korotangi, Korotangi which had its own special tikanga. It seemed the Museum staff wanted to present Korotangi to the tribe, but Sir Robert had insisted that it be presented by the Minister of Treaty Negotiations, Sir Douglas Graham, representing the Crown. I think there was also an unsaid part of that tikanga that there was an expectation that Korotangi would be returned to the Museum, however, we resisted under the leadership of Te Arikinui and insisted that the bird remain with the tribe and tikanga prevailed.

Mamae talks about the hiikoi by train down to the third reading of the Bill of the Settlement legislation. She recalls that the way we acted was based on our wairua. *"The principles of everything we did as Waikato was, you know, there was nothing said but the mana and the wairua was there".*

She recalls on the return journey on the train going through Rangiriri and Whangamarino in Pokeno that she felt the mana and the wairua in the train and she cried. She talks about the impact of travelling through the Mangatawhiri: *"It took me back to the impact of 1863, to those swamps. It was a most frightening experience at Pokeno, but the mana and presence of those people was strong, so very strong".* She said it took her weeks to shake off the wairua: *"My experience of the wairua and tikanga was so strong."* She adds:

> *When I first became part of the negotiation team, I had no idea about tikanga, I had no idea about wairuatanga despite the fact I went to a Maaori boarding school. The boarding school was not about making us Maaori, it was about making us Paakehaa. So, I was very green in the realm of the spiritual presence of Te Ao Maaori and especially of Waikatotanga. It's not that I grew to understand the importance of tikanga and wairuatanga and its role in the tribe in a general sense, but more importantly, I had a feel for it that could not be explained. You just knew that this was tikanga or that this was wairuatanga and just felt the presence. I had felt the presence of my grandfather Te Hira guiding me through this process.*

Erina carries the theme through her koorero: *"It's not about material things. It's about our river. The tikanga and all that side of things."*

I remember in the early stages of the negotiations, about 1992, I went on a road trip with Pumi Taituha. The purpose of our travel was that Sir Robert wanted Pumi to give me a koorero around some of our spiritual sites, our waahi tapu, so that I would be prepared, and to know what I was negotiating for, and that experience was so unique. The richness of his koorero was incredible and that is context I think, that put me into the wairua of what we were doing. I eventually understood it for myself but being new to the process, and new in a sense to the tribe, it was a good education. So that is one of the fondest and most important memories I have of those times was the willingness of the kaumatua to share their maatauranga, their knowledge, to ensure that the kaupapa

remained true and safe. Likewise, I remember talking with Aunty Ina, Aunty Iti and Aunty Mere and they too would talk to me, tell me stories about Raupatu, about their families, the history of the generations. They gave in a generous way and that is a privilege that cannot not be underestimated. I do remember the Pai Maarie at every important hui, at the start of the Tainui Maaori Trust Board meetings, at Ngaa Marae Toopu. So again, there was, I guess, and this is my personal reflection, that through osmosis your own sense of tikanga and wairuatanga was activated. Part of my tikanga was based on humility that the old people taught me. Often, I would be growled for being a bit arrogant in my responses to some of our tribal members who opposed the Settlement. It was a matter of understanding that our tikanga represented our identity in those negotiations and not just with the Crown but with other Iwi and with our own people. Again, what we brought to the negotiation table was a solid tikanga and wairuatanga base. A platform from which we could spring from and be quite clear that we were doing the right thing, but importantly doing the right thing in the right way. I do believe that the tikanga and wairuatanga guided us, protected us, and set the direction and the tone of the negotiations. The Crown did have their Iwi Advisor, in this instance, it was an important gentlemen from Tuuwharetoa, Tom Winitana was part of the fledgling team back in the early days, and he guided the Crown but more importantly he supported our approach, and whether it was deliberate or not, he guided the Crown into our way of doing things, in establishing as a bottom line that the negotiations were kanohi ki te kanohi and rangatira ki te rangatira. And upon reflection, I remember that Sir Robert would ask that the Crown officials be dismissed from the room when he talked with the Minister.

The tikanga and wairuatanga as I have mentioned, was closely connected to Theme Five - Kaumaatua and Kuia. It was their wisdom that guided me personally but also their humour, mischief, and their joy to know that something was moving on the kaupapa. So, I always will appreciate that, not just our pedagogy but as part of our DNA as Jeff describes it. Ngahuia refers to as our whakapapa. Part of the ongoing pedagogy is to recount those times with the old people now that I am becoming a kaumaatua and I too must pass on my knowledge, so that the present and future generations can also appreciate the value of that knowledge, of that wisdom, and of that commitment.

It was interesting during those times that as the negotiations started to build momentum and we engaged Paakehaa consultants, for example, the law firm Rudd Watt and Stone at the time who were unfamiliar with the Maaori clientele but importantly unfamiliar with our kaupapa and how we had to guide them through our tikanga, and how that changed their thinking and importantly their advice accordingly so that what we ended up with in both the Deed of Settlement and the Settlement Legislation was what we wanted, particularly in the Preamble and the Apology. They learned a lot about manaakitanga and also, they felt our pain, our mamae and to this day we maintain our personal friendships with those consultants.

In conclusion, I don't think we would have achieved what we had achieved and how we had achieved it without the guidance of our tikanga and wairuatanga and achieving the outcome with dignity. Of course at times the negotiations were heated and fractious, but it was never undignified or personal. Maintaining relationships was always critical. I believe it was our tikanga, wairuatanga and Waikatotanga that allowed the Crown to restore its honour, and I think that is the greatest gift we could give to the Crown.

Theme 3 – Mahi Tahi and commitment to the kaupapa

All the participants spoke of mahi tahi during the period of the negotiations. They spoke of their own specific roles but also the roles of others, indicating clearly that there was a collective push and effort by the ringawera to achieve the outcome. For many, this was not about doing a job but about fulfilling a destiny. A lot can be drawn from the koorero that Sir Robert's leadership and work commitment to the kaupapa drove the staff to achieve the outcome. This I guess, in terms of the pedagogy, was something that has always been present within the psyche of the iwi as evidenced by Te Puea and the establishment of Tuurangawaewae Marae, and the roles that many of the families played and continue to play as the ringawera of the marae. This is but one tribal example. So, hard work and sacrifice is nothing new to Waikato and it definitely, from what I experienced during the negotiations, is what kept the fuel tank full, and what drove us. And behind that drive was the constant question 'would you die for Raupatu?' In a sense, the amount of effort put into the mahi became normalised, so working 24/7 through the years of the negotiations was your life, and there was no questioning that it could be done differently. So with respect to the Crown and its officials, this was also more than a nine-to-five, and I acknowledge that the Crown officials worked long hours

as well, but the price of not achieving an outcome was far heavier for the negotiation team than it would have been for the Crown and the officials. This was not about meeting a Crown policy objective. For Waikato, this was about achieving justice and reclaiming our tribal estates and all the depth of what that meant to us.

Mamae speaks of all her roles during the negotiation. What stands out about her koorero is that she was fulfilling a kaupapa, and not just a task. She mentions the enthusiasm and commitment of the kaupapa of one of her team members. She also speaks about the purpose of what she did, for example, initiating the marae training programme, and the wide scope which was the succession plan after Settlement for the marae and the rangatahi to carry forward the opportunities. All of the participants spoke similarly that it was not about their job, was it but about the purpose of the role and what was to be achieved through that mahi. Mamae speaks of the wairua of the mahi: *"…but for me the whole idea of working along Sir Robert and working alongside the Trust Board, it was a privilege."*

John's puuraakau concerns the mahi undertaken by the Tainui Maaori Trust Board in the mid to late 1980s and early 1990s. The purpose of that mahi was connected to tribal development. John was fortunate enough to be around those evolutionary and revolutionary times when the Trust Board under the leadership of Sir Robert was becoming forceful in its pursuit to uplift the social, economic, cultural and political standing of the tribe. He in particular acknowledges the work of the Centre (for Māori Studies and Research) as essential to both the tribe's development and the pursuit to settle the Raupatu grievance. He considers the duality of the approach so that regardless of whether Settlement was achieved or not, the tribe's development and future prosperity was a major focus of the Tainui Maaori Trust Board. He acknowledges the importance of the Centre and how it positioned itself uniquely within the University and on the global Indigenous stage by inviting international academics and scholars to participate in our tribal development research. This pedagogy of research and development underscored Sir Robert's own philosophy that you must do your homework, and you must be sure of what your argument is to support your position, but ultimately you must ensure that you run the arguments at the end of the day. So, John talks of the many scholars and academics who were invited to participate in our Treaty negotiation preparation. That allowed the tribe, and importantly the tribal

negotiations, to provide evidence of the impact of Raupatu and that it was not an act that people suffered a century ago, but an act that continues to impact the health and wellbeing of the tribe at all levels.

The duality of the approach mentioned in John's koorero is supported by Tom's puuraakau:

> *I think from my knowledge, I think it was prior to 1990 and I think two things really happened. First of all, there was a Treaty claim, and second, there was the High Court action. If I had to speculate, I would say it was High Court action that actually had more influence than the Treaty claim but understanding that the strategy at the time was that there needs to be a dual approach.*

Tom also supports the important role that the Centre played:

> *Well I think back in those days the real horsepower for the claim build-up came largely from an intellectual ability out of the Centre for Maaori Studies and Research.*

Tom also gives a unique perspective in terms of what drove the mahi:

> *This was never about the money; it was about restoring the mana of the people and I think that's the incredible thing, you know, and the privilege to be part of it. That's why we did what we did.*

Ngahuia also provides a unique perspective as an outsider looking in. In particular, her views on the role of the Centre for Maaori Studies and Research and her descriptive account of the engine room and the manawa:

> *I was in Maaori Studies at the University of Waikato and straight across from us was the Centre for Maaori Studies and Research, or as I viewed it, it was the 'engine room' from which the claims were solidified.*

She considered the role and work of the Centre for Maaori Studies and Research was central to the achievement of the Settlement 1995:

> *I believed, in my view, that was where the crux of the claim discussions and eventually wining of Raupatu was forged through the hard work, and doing the work through endless nights.*

In reference to the Centre for Maaori Studies and Research she speaks to the collaboration between Sir Robert and Dr Ngapare Hopa:

> *With two heads together, both from Waikato, Te Kotahi and Pare, they could forge ahead for iwi Maaori. I think really those leaders set the claims back on the pathway and that helped many of our iwi claims to be recognised [by the Crown]. If other iwi think otherwise, that is their own point of view, but I think you know that 'engine room' as I have always called it up at the centre, that paved the way for many iwi to piggyback off, and why not, that's what life is all about. People who take on certain issues, find ways forward, find solutions, and of course, other people take on the models that suit their particular issues best.*

I submit that Ngahuia's comments respond to my research question in that our pedagogy has already assisted other iwi and Maaori achieve their settlements. Her koorero also identifies the roles of certain individuals at the Centre and how that contributed to the Settlement conversation not just between the Crown and iwi, but between iwi and the wider community. For example, her reference to Professor James Ritchie and Dr Barbara Harrison and the roles they both performed. She also supported the Indigenous global community involvement that John and Tom have referred to as being an important part of the Centre's objectives, and how it became part of business-as-usual at the Centre.

She continues her descriptive commentary of the Centre and the role and tasks that are performed and in particular the individuals and their commitment to working late into the night and describing this as the Manawa. *"This is that Manawa that I am talking about, beating late at night till 10pm. I do recall Pare [Ngapare] did say they would stay later".* I particularly liked her description of the mahi and of the Centre:

> *When we look at all those different issues the engine and the Manawa at the University has awakened, we see whakapapa in action, whakapapa in a sense that when your heart beats, it keeps you alive, when your heart keeps you alive, it could be your own heart, or it could be the Manawa of the iwi, the Manawa of the motu. If you don't have that toto or that whakapapa pumping, then where is your iwi, where is your hapuu, and where is your whaanau?*

Rangimarie brings another perspective and importantly the perspective and role that her mother Joyce Paekau had and how committed, dedicated and purposeful she was to the

kaupapa. She talks about the staff from the Tainui Maaori Trust Board and the times they worked at the Grants building in Ngaaruawaahia:

> *My mother's story is about full commitment and that meant doing whatever needed to be done, I don't think the word is sacrifice because we weren't sacrificed in the process of it all. Bubs would say something, or Wi would say something or the Board asked us to do something, and mum would just drop everything to get it done and lots of times that meant dropping what you wanted to get done as kids. But again, that word sacrifice is the right word and from that I learnt to be resilient, and in particular for the iwi.*

Rangimarie is generous in sharing the memories of her mother and the impact upon her family:

> *I remember the wananga with mum and there were hard times with the Settlement and things were getting stressful and she would come home and kind of offload to my dad whom I love. I would sit and listen to them talk about the stories and things our people have sacrificed for years and how she observed the commitment and dedication, the loyalty to the kaupapa, and she would cry about it some nights… or she'd park it as she knew there was a job to be done, and she'd just get on and do it.*

She further comments on the team approach that the Tainui Maaori Trust Board staff took at the time, and it was not just about the work, but the collective and shared lives connected by the mahi and the kaupapa and the commitment. Her own recollection about the mahi she did for the Trust Board as a rangatahi is important in terms of the consultation process that the Board engaged in with the tribe at the time and how heavy that was. She carries on with the theme of commitment:

> *What stood out for me the most? The commitment, the dedication, the loyalty, the attitude to do whatever needs to be done whenever and with whatever. It was done with true grit and determination. They all made that commitment, they knew that it was going to take them out, but that was a small sacrifice is what she taught me, given what Raupatu did to our people.*

Timi provides his own unique perspective in a different timeframe. He recalls becoming involved through the construction of the Huntly Power Site and what that meant in the bigger scheme of things.

> *But that was a journey I suppose from the 1970s to about 1983, and through that journey many of us became involved with the development of change and that development has had a major impact on all of us.*

He speaks of his time on the Tainui Maaori Trust Board and the roles he was given for tribal development in health and education. He also talks to the role of Centre for Maaori Studies and Research and specifically the function that the international academic scholars played in the tribal research and development arena.

> *So I just want to remind ourselves that during the time of the changes that were taking place, remember that Taawhiao said 'My friends will come from all corners of the world' and if I remember correctly they came from all different parts of the world. So, we just trying to go to the experts and those who came to write the Tainui Report … so it was a privilege to be a part of the movement and the support of those who came from across the world to come and help and put together the programmes of the Tainui report.*

Erina talks of the commitment of her own Aunt and Uncle: *"She never told you straight, she'd always say some round about story, and you would be like what is she actually saying … that's how I felt".* In reference to her Aunt, Erina says: *"She'd stop everything for a cause so that was the model I guess, or kind of what I grew up seeing, her and John's commitment to the cause, and I guess I admired that and maybe that had more of an influence on me than probably what I thought".* She also gives her own unique perspective immediately post-Settlement. *"So, at the time Sir Robert had started pulling together a graduate team".* In respect to herself, she comments: *"I guess it just was always a privilege, that's how I've always felt, I never felt it was a burden or something like that. It was always just an honour to be able to support and serve and I thought it was a privilege".* She describes her mahi as being an honour and a privilege and a sense of responsibility and obligation passed down from her Aunt who had groomed her and further *"…but once I was in, I was in. This is not a job, once you're in yeah and when you boil it down, it's about love, love for our awa, love for our people … I would drop everything for this mahi".* In terms of the succession plan having previously commented upon, her recollections were of the young graduate team, and she notes that many have gone on to positions of influence and decision making within the tribe and also within the wider community.

Jeff gives another perspective, and his koorero is from a hard-nose commercial context. Jeff was immediately post-Settlement but I think it is important that his koorero is told as it continues the Settlement journey and the pedagogy of what the Settlement strategy was and still is. He was obviously strongly influenced by Sir Robert (like myself) and Sir Robert's vision and he was also driven by the pepeha 'I riro whenua atu, me hoki whenua mai' which he still holds onto 30 years on. He looks to the future mahi that the tribe needs to focus on, and that there needs to be vision and that there needs to be strategic thinking around where we go in the future to build a sustainable economy. Jeff's view is not just about making money, but about making money so that ultimately, 'I riro whenua atu, me hoki whenua mai' can be achieved through our own efforts as a result of the opportunity the Settlement provided us.

I found Robert's puuraakau unique in the sense that he has always been consistent in his message regarding pre-Settlement and post Settlement. That has always been around his preference that the Settlement should have been between the Crown and hapuu, as opposed to the Crown and iwi. And his consistent argument about the social trickle-down of the benefits of Settlement to the grass roots of tribal membership.

Theme 4 – Kiingitanga

Although not all participants talked about the Kiingitanga, I believe it was implicit in all the koorero. I submit that Kiingitanga was the cause of Raupatu, and the reason given for Raupatu. The invasion was the government's response to the Kiingitanga which they labelled as a rebellion against Queen Victoria which it definitely was not. The Kiingitanga was a replicate of what iwi saw as another form of confederation. I recall that the Kiingitanga and of course the leadership was the main stay of our commitment, our mahi and our dedication to resolve the grievance. Kiingitanga has always been at the forefront in the search for redress. For the individuals involved in those negotiations in the claim there was a level of personal obligation to support the Kiingitanga in order to forge a path towards Settlement.

I knew Sir Robert was key to that relationship as he was, in his own words, his sister's shield and he took the brunt of most of the criticism from within the tribe but also from the motu. There was a degree of wairua that enveloped the role of the Kiingitanga and guided our way forward, not only pointing towards the direction we had to take, but

how we conducted ourselves and it was always with mana, and it was always with a degree of humility. Behind that was a strong will to drive the negotiations to a conclusion that would benefit the tribe.

A lot of the koorero that engendered around the Kiingitanga, and the Settlement occurred at poukai and there was always debate, both pro-Settlement and anti-Settlement. Ngaa Marae Toopu were also key to that expression of Kiingitanga, and they provided support and debate during the negotiations.

Erina recalls the time during the river negotiations when Te Ata passed and how she felt anger towards the Crown for not progressing the Settlement at a greater pace so that Te Ata could witness the Settlement of the Waikato River claim.

Timi refers to the leadership of the Kiingitanga at the time and I have made mention of that in a previous analysis of the theme of leadership:

> *I think also, the Kiingitanga was given expression of personality due to how Dame Te Ata led, not only Waikato, but also the motu and the many contributions over her time as Ariki and the number of international relationships she had established. So, in a sense, the Kiingitanga socialized the Settlement negotiations and the grievance with non-Maori society as a result of her network. How she did it was very effective with her grace and humility and her strong sense of rangatiratanga. She could bring on board the rest of the New Zealand public much more so than the Crown could.*

As already noted, Timi acknowledges the leadership of Te Arikinui Atairangikaahu and her Uncle Tumate Mahuta. Rangimarie comments about her mother: *"I watched her go through her different roles, and she was committed and passionate to the Kiingitanga."*

Kiingitanga was central to everyone's lives, even if it was not part of the mahi as illustrated by Rangimarie's koorero: *"We had a karakia, then Uncle John speaks and then Bubs (Sir Robert) speaks and then they start talking Kiingitanga".* Coming through quite strongly is the whaanau and whakapapa connections to the Kiingitanga. Rangimarie talks about the birth of her mother and the presence of King Koroki deciding the name of the new child.

Ngahuia describes the Kiingitanga as being 'the glue' and I recall many times during that time where we refer to the Kiingitanga providing the glue that unified the people during the negotiations.

Tom's koorero was about Taawhiao and his edict of 'I riro whenua atu, me hoki whenua mai' and the leadership of the Kiingitanga formed our Terms of Reference having regard to Taawhiao's principle. Of course, Tom, as already mentioned, talks about the longstanding whaanau relationships with the Kiingitanga and the support of whaanau over the generations.

The role of the Kiingitanga cannot be understated and underestimated in achieving the Settlement in 1995. It was the personal touch of Te Arikinui which drove me in my mahi and also gave me some logic to what we were personally giving up in order to achieve that outcome. It was also the Kiingitanga and again Te Arikinui's own personality that formed a relationship with the Crown at the time that this needed to be done. The Kiingitanga under Te Arikinui brought the Waikato people together. It affirmed the importance of kaumaatua and kuia and the role of the other iwi of the Tainui Waka and opened an opportunity to advance the claim as expeditiously as possible. This was best illustrated, I believe, by Queen Elizabeth giving the royal assent to the Settlement legislation and also meeting with Te Arikinui in Wellington to have a private conversation about, I suspect, the apology. So, it is very powerful role that the Kiingitanga played, and without it there could be no pedagogy, no kaupapa, and no tikanga. So, everything centered on the Kiingitanga at the time. Even the development of Te Wherowhero title for Hopuhopu and Te Rapa which were the two ex-Defence properties returned prior to the 1995 Settlement, placing those lands under the name and mana of Pootatau Te Wherowhero to replicate and to reaffirm the practice of tuku (gifting) that people of the past gave to Kiingitanga over their lands.

Theme 5 - Kaumaatua and Kuia

The important role that the Kaumaatua and Kuia played during the negotiations is told through the koorero of the participants. It is clear that the Kaumaatua had a significant contribution to make as part of the negotiation pedagogy. They provided direction and wisdom, and counsel and protection to the negotiating team. The original engagement with Crown officials was strategically planned by Sir Robert to have two Kuia present

and to hold the discussion in the isolated community at Tapuwae, Te Maika, on the West Coast. This approach was not expected by the Crown and certainly shook their view of the party they were negotiating with. Their counsel was present but were silent. Most of the Kaumaatua and Kuia I recall, provided the korowai of protection, and they all had a long connection with the Raupatu and with the Tainui Maaori Trust Board. Many of the Kaumaatua and Kuia had immediate whaanau that were members of the original Tainui Maaori Trust Board, or their own children were part of the current Tainui Maaori Trust Board. They were experienced at recounting our history, especially about sites of significance and waahi tapu which gave the kaupapa and the Raupatu a physical presence so that the Crown officials and their counsel could see the landforms and the natural landscape of the rohe (tribal boundary, tribal estate) that Waikato referred to in our research to support our claim.

I speak of that relationship with the kaumaatua in my own puuraakau but suffice to say here that through those years of negotiation, the people I associated with most were over 65, and being relatively young myself, it was a strange relationship but one I cherished. It was their understanding of tikanga which was inherent and their clarity about wairua that helped us, in a sense, to cleanse ourselves of any raru or heaviness that the negotiations with the Crown presented. They also helped us to deal with the heaviness of the negotiations, and deal with our own people and their criticism and opposition to what we were doing in the negotiations.

The kaumaatua and kuia were also fundamental in protecting Te Arikinui, surrounding her from the negativity that often came with the negotiations. I remember those stand-up characters and their bravery, and their courage, and the lifelong sacrifice they made to the Raupatu kaupapa. So, I repeat, their contribution can never be valued in monetary terms but in cultural terms their contribution was priceless. They had their own personalities, and they had wit and mischief and humor which made at times was what was required to calm troubled waters. You knew you could rely on them to carry the burden of the tikanga and ensure what we were doing, we were doing it in the right way. They were Sir Robert's A team, people like me who were part of the Advisory group, we were the B team, and together we were one fine team.

We relied on the Kaumaatua and Kuia in the technical drafting of the Heads of Agreements, the Deed of Settlements and the legislation, particularly Nanny Ina Te

Uira who drafted the Maaori version of the Crown preamble to the Act and the Apology. It was not just her ability to provide the Waikato reo Maaori version, but also to put behind those words the history and meaning of the mamae of Raupatu.

Jeff talks about Uncle Binga and Uncle Hare and the important roles they played, not only as Tainui Maaori Trust Board members, but also as Kaumaatua in the wisdom and experiences they brought to the negotiation.

Erina also recounts the role of the Kaumaatua:

> *Oh yeah, JH and Iti during the Settlement process; they kept us safe. They were our… I wouldn't call them our back up, they were our front, they were the front row - actually. So, there was the likes of Nanny Iti Rawiri, John Haunui and Poka Nepia. Poka in particular he was always there and then he'd call in, there was a van of them, these Nannies and the Koroua that protected the river team, and they were valued.*

Timi refers to *"…the journey with the Kaumaatua was actually outstanding and it was so good to be part of the changes that took place during those times with the Tainui Maaori Trust Board"* during the time in the 1980s when the Trust Board was starting to gear itself up to take on the challenges of government policy and the developments that were starting to impact on the tribe and the tribal whenua and the wai. He notes in his puuraakau:

> *The memories I have are of those Kaumaatua times. Not many were educated in a Western sense, but they were certainly educated about the river, about our communities and the lands that surrounded the tribe in those days.*

Rangimarie also talks of the Kaumaatua, who were members of the Tainui Maaori Trust Board and their unique characteristics and personalities, which gave strength to the negotiations and to the Negotiator and his team.

Ngahuia reinforces not only the role of our Kaumaatua but also the importance of the kinship ties those members had:

> *I look at it as the resistance of your tuupuna, of your own whaanau. One of them which was my and your own tuupuna, one of them which was my father-in-law and all his tuupuna, to stand up and be counted in the way all of you [are] their*

'uri whakaheke' their mokopuna that picked up the reigns and carried on and are still picking up the reigns and carrying on. That's resilience. Never say die.

Tom's koorero connects with Korotangi the sacred bird:

I first became aware of it in my younger days because every year or so Kaumaatua from Waikato and from Tainui would go to Wellington, and they would have a karakia at the Dominion Museum for Korotangi and that was back then. Well, when I went, it was largely led by Henare Tuwhangai, and it was there that I learnt about Korotangi, how significant it was. During the Settlement process on quite a few occasions it was raised by the old people about Korotangi.

To summarise, the Kaumaatua and Kuia keep hold of the pedagogy. They crafted it, so they were critical regarding our strategy and our engagement with the Crown. We would not do anything until they had considered and provided their own counsel on what was necessary and what needed to be done next in our roles as negotiator and the negotiating team. They certainly were a great comfort to those outsiders that were a part of our team, particularly legal counsel Denese Henare from Ngaati Hine. She relied heavily upon the likes of Nanny Iti Rawiri, Nanny Mere Taka and Nanny Ina Te Uira as did Dr Anne Parsonson who was our historian. Ann also had kinship ties back to Kiingitanga through her Uncle Ces Badley, Te Arikinui's Private Secretary. As I have already mentioned, without this cohort of wisdom and experience we would not have achieved what we did, nor would we have reached our goal and maintained our spiritual and physical wellbeing. So, the greatest asset in our pedagogical approach were the Kaumaatua and Kuia and therefore by extension and in reality, the people.

Theme 6 – Equitable benefits, hapuu versus iwi Settlement model, and tribal corporatisation

The final themes gleaned from the puuraakau of participants are equity of benefits, the hapuu versus iwi model, and the corporatisation of the tribe. These themes were raised by two of the participants. However, they are significant in terms of how the pedagogy was developed over time and also the final decisions made upon Settlement.

Both Robert and Mamae talk about the lack of equity in the distribution of benefits to tribal members under Settlement. They saw no trickle-down effect occurring, and that

means that tribal members are no better off after Settlement than they were before Settlement.

I recall Sir Robert often saying in the consultation hui that this generation will not benefit from the Settlements, but the next generation will (as cited in Te Puni Kōkiri - Ministry of Māori Development, 2015). So, I believe it was a clear strategy that we will not as the present generation see the full benefit of Settlements as marae, as communities, and as individual tribal members. It will be our mokopuna that will benefit, and that was clearly his strategy. The opportunities that the Settlement offered in 1995 will be built upon and will generate an asset base that could be used to start addressing the economic, social and cultural needs of the tribe to allow us to grow, prosper and survive.

Robert himself thought about his own initiative in response to the lack of benefit to tribal members after Settlement. For several years, he refused to pay rent in a house that was returned as part of the Settlement. This highlights one of the important aspects of Settlements and that is trying to balance the immediate social needs of our people at the same time as trying to grow the asset base and the economic and commercial opportunities for future generations. That was going to cause conflict and tension and was in foremost in the mind of Sir Robert.

Largely, the highly public economic misfortunes of Waikato Tainui post-Settlement was a consequence of trying to meet both the immediate social needs of tribal members, and the aspiration to develop a strong economic base for the future. It also highlights the inherent racism of the wider community who wanted to see iwi fail. In 2000, the tribe declared a write-down of $40m in the value of its investments. There was a witch hunt against Sir Robert by the National Business Review newspaper that alleged the incompetent financial acumen of iwi and the investments they had made in, for example, the New Zealand Warriors Rugby League team (Van Meijl, 2003). However, at the same time that year, Air New Zealand and the Bank of New Zealand had posted billion-dollar losses and the New Zealand public did not bat an eye, even though the taxpayer bailed them out and there was no witch hunt (Wilson, 2010).

In the scheme of things, the value of the loss that the tribe endured at the time was minimal, but it was a consequence of the market process because valuations are

cyclical—they can go up and they can go down. It was mainly due to the lack of confidence by our banking institutions that they did not see iwi as having the commercial prowess to be successful.

Another theme that came through quite strongly in Robert's puuraakau, was the return of Settlement lands to the iwi collective as opposed to the hapuu where the lands were located. That became evident with the return of Hopuhopu, and the challenge in the Maaori Land Court by the hapuu of Ngaati Whawhaakia and also Ngaati Wairere in terms of Te Rapa (Fisher, 2016).

Sir Robert's pedagogy about ensuring that benefits were collective was based on his view of equity. The whole tribe suffered the Raupatu, and he believed there was a collective loss, so addressing Raupatu would require collective benefits. And adding to that, it is by fortune that some of the hapuu have Crown-owned land within their rohe boundaries, but the negotiations were funded and supported and mandated by the whole iwi and not by a few hapuu. That is not to say that the hapuu argument is not valid, and it should be recognised that their contribution to the Settlement outcome has been their own lands to the collective, and perhaps that needs to be recorded as part of our history going forward. It did at the time cause huge division amongst families and tribal membership. In the end, the Maaori Land Court ruled in favor of the collective, and as part of our pedagogy going forward, we must consider the collective responsibility of engaging at the marae and hapu level and management of some of the Settlement assets as a possibility (Te Aho, 2006).

The last theme was solely Robert's puuraakau and his concern about the corporatisation of the iwi or tribal identity. Of course, the tribe has many roles and functions and therefore adopts multiple identities to perform those roles and functions. Whakapapa should never be corporatised or commodified and therefore, the tribal identity should not be changed by Settlement. In fact, we should ensure it is protected as much as we can. What was necessary from the negotiations and the requirement of the Crown was that the transfer of a Settlement redress required the establishment of corporate entities, hence the establishment of the Waikato Raupatu Lands Trust, the Land Holding Trust, and the Land Acquisition Trust (Waikato Raupatu Claims Settlement Act 1995). The Land Holding Trust was to receive the Settlement properties, and the Land Acquisition

was to receive the monetary compensation to purchase lands. Having achieved that, the Crown had fulfilled its obligations and could walk away from the Settlement.

The tribe eventually corporatised itself under the Waikato Raupatu Lands Trust and its commercial entities (Waikato-Tainui, 2025). It was up to the tribe to decide the form of entities for its social development and the decision was made by most marae to replace the Tainui Maaori Trust Board with Te Kauhanganui.

In a sense, we adapt and adopt as part of our own development process, but we need to understand and be aware of the dangers of corporatization and commodification. We adopted some of the tools of the coloniser and adapted them to our needs. We do not stop, stand still, frozen in time. Instead, we take what we can to strengthen our kaupapa and to ensure the ongoing durability of our tribe and our tribe's prosperity. There is the law and there is lore. They cannot be mixed, but they can coexist and give strength to whatever the outcome is that we seek.

Summary

I said that our pedagogy has always been deliberate, has always been consistent, and has always been purposeful and has remained unchanged since 1863 when the Raupatu and the consequences of the Raupatu occurred. This has been the pedagogy that Waikato have carried through the generations. It has been adapted and activated depending on the circumstances that began with the delegations to the United Kingdom,[5] representation in the House of Representatives, the petitions through the Sim Commission, and Te Puea's[6] activism and engagement with the Crown in the eventual Settlement in 1946 (Manatū Taonga: Ministry for Culture and Heritage, 2024). The active role of the Tainui Maaori Trust Board in developing the social and economic resilience of the tribe, in particular the provision of the Education scholarships, and becoming involved in government policymaking and seizing the opportunity with the retrospective jurisdiction of the Waitangi Tribunal in 1985 (Manatū Taonga: Ministry for Culture and Heritage, 2024). Setting aside the opportunity to be able to make a

[5] In 1884 Tawhiao led a delegation to England to petition to Queen Victoria regarding Te Tiriti breaches. He was unsuccessful and referred back to the NZ Government (Consedine, 2018).

[6] For further information on Te Puea refer to King, M. (1977). *Te Puea – A Life*.

Treaty claim to the Waitangi Tribunal and, instead, litigating through the Court system and an emerging Treaty of Waitangi jurisprudence.

So it is, I submit, these themes that formed the basis of our approach during the negotiations. These themes guided how we conducted ourselves and what we could rely upon and draw strength from through the negotiations. The themes shaped the agenda that we set with the Crown and not the agenda the Crown set with us. The themes also guided our interpersonal relationships with the Crown team, Waikato tribal members, and the motu. The process changed from transactional to being transformative, especially when Sir Robert insisted that the negotiations be rangatira ki te rangatira, and he only dealt with the Minister and not the officials. It also guided both the Tainui advisors and the Crown officials and their interpersonal relationships and the advice that they provided to the Principals, and how they executed the instructions of their Principals and the teams conducted themselves.

The role of the kaumaatua as mentioned was crucial, and I will always be grateful for their presence. They are to me, the true heroes of the negotiations. Also critical was the necessity of having strong and clear leadership. A leadership that was decisive and courageous but also accountable. Sir Robert never took for granted his mandate and would test it every year at the tribal Annual General Meeting which was strongly attended by tribal members. Underscoring his leadership, in fact underpinning the whole process at all levels of the kaupapa, was the Kiingitanga and the leadership of Dame Te Atairangikaahu. The negotiations were not easy they were hard. Not in terms of the negotiations themselves once the Crown accepted our principle ‘I riro whenua atu, me hoki whenua mai’, but in terms of doing our research, preparing ourselves, ensuring that when we engaged, we achieved the outcome we wanted. It was hard in terms of the consultation rounds which took up your life as a member of the team, a member of the Tainui Maaori Trust Board, and as staff. But it was also an honor to engage with our people, and debate with them how we should proceed, advise them of the progress to date, and adapt to take on board their criticism rather than walk away from it.

There were many consultation hui with non-tribal members, with non-Maaori and with the general public and communities in the Waikato region. This was perhaps the key strategy in achieving a level of understanding of what we were trying to achieve, and

why. I think a flaw in the Crown's process was that they did not have a public relations strategy to engage with their constituency and explain what the Settlement process was about and importantly what it was not about. For example, only Crown lands would be sought for return and that did not affect or encroach upon private property and private ownership.

There was also the role that inevitably and inescapably tikanga and wairuatanga played and that speaks for itself. It was so important to get that right. To ensure the kaupapa was protected as well as oneself, and at the end of the day, one drew on one's own whaanau and kinship ties. Everyone was connected in some shape or form through whakapapa of blood and whakapapa of kaupapa. Taken together, that was the matrix that Sir Robert brought to the negotiations. It was something inherited but something that was built upon and again as I have mentioned before, adapted to the circumstance of the time. The opportunities that presented before the window of opportunity closed.

In response to the research question, I believe we drove these negotiations, call it strategy, call it pedagogy or call it our tikanga but it was our determination to be self-determining. It was our mana motuhake that drove us and the process, and not the Crown telling us how it should be. We could have walked away from the negotiations and waited for another generation, but the circumstances and the opportunities presented themselves and we seized these. It was timely to engage and to resolve the Raupatu to the extent that it could be resolved in those times. Those negotiations also provided the future scope of resolution by reserving the claim to the Waikato River and the West Coast Harbours for future discussions and negotiations. So, the pedagogy continues to this day and will conclude with the resolution of the West Coast Harbour claim by tribal members of this generation.

I would like to acknowledge the participants and their puuraakau. The honesty and enthusiasm with which they shared their stories has added to the research question by allowing the Waikato voice to speak and tell its own story, and as Ngahuia says, the pedagogy adopted by Waikato has already allowed other tribes to follow in their own individual negotiations and Settlements with the Crown. Through the different puuraakau, this research acknowledges those who are no longer with us, and the significant contribution everyone gave as a collective, as an iwi, as hapuu, as marae and as whaanau to the 1995 Settlement.

CHAPTER FIVE – SHANE SOLOMON'S PUURAAKAU

Introduction

These times were magic. Telling the story is difficult because it never ends, but telling the story is helped by the stories of others. That was one of the objectives of my research. My positionality (Chapter One) speaks to my initiation into the world of tribal Treaty Settlement negotiations, so I will pick up my story from there.

Figure 1

Robert Te Kotahi Mahuta.

I write my puuraakau from my personal involvement in the negotiations of the 1992 Sealord's Settlement, the Waikato Raupatu Claims Settlement Act 1995, and the Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010. My focus is what happened during the negotiations, and my perspective on why we should ensure our 1995 Settlement remains intact.

Background to the Waikato Raupatu Claims Settlement Act 1995

For me the starting point is the 1987 Statement of Claim (Wai 30). The Waikato Raupatu claim was defined by section 88 of the 1995 Settlement Act as being:

1. at common law (including common law relating to aboriginal title or customary law); or
2. from a fiduciary duty; or
3. by or under legislation and
4. relates to the Waikato River

   (Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010 No 24 (as at 24 December 2024), Public Act – New Zealand Legislation, 2010)

This definition is important because our Advisor, Ms Denese Henare, insisted that the meaning of raupatu included "rights" in the broadest possible definition – that was one of her "fishhooks" and with the recent recognition of tikanga as a legitimate code of law by the judiciary, it does appear that raupatu is a right that is enshrined in customary law (tikanga), in the Treaty of Waitangi, and in common law and in legislation.

Important also were the findings and recommendations from the Manukau Harbour Claim Inquiry (Waitangi Tribunal, 1985) which preceded the filing of the Wai 30 Statement of Claim, but which set the path for the 1995 Settlement. That Manukau Harbour claim was championed by the late Dame Nganeko Minhinnick, the Trustees and kaimahi of the Huakina Development Trust, and the marae and people of Te Puuaha ki Manukau (supported by the people of Waikato-Tainui and the Tainui Maaori Trust Board).

Like many of the hapuu of Waikato, the peoples from Manukau, Te Ākitai, Ngaati Tamaoho and Ngaati Te Ata were forced off their lands, labelled rebels, and suffered confiscation. The Manukau Harbour claim was about the disconnection of the people of Manukau and Waikato from the harbour as a resource of fisheries, kai moana, enjoyment of the lands and waters and the activities on and in the Manukau Harbour and associated lands. Claimants alleged that the confiscation had led to the tribal demise of the Waikato-Tainui confederation of tribes and the Crown had failed to recognise the claimants' Treaty rights through the acts and omissions of the Crown (Wai 8 Statement of Claim) (Waitangi Tribunal, 1985).

At the time of the claim hearing, I was a third-year law student enrolled in a paper taught by David Williams. We students followed the hearing as a case study. Little did I know at the time that I would become part of that tribal journey. Though the Tribunal could not enquire into the Treaty breaches prior to 1975, nonetheless the Tribunal felt it "…still necessary to consider them" (para 6.2).

The Tribunal's general findings for Wai 8 were that:

> The Treaty of Waitangi affirmed protection to the tribes in the use, ownership and enjoyment of their lands and fisheries. (para 8.3)
>
> In the Manukau the tribal enjoyment of the lands and fisheries has been and continues to be severely prejudiced by compulsory acquisitions, land developments, industrial developments, reclamations, waste discharges, zonings, commercial fishing and the denial of traditional harbour access (para 6.3).
>
> The omission of the Crown to provide a protection against these things is contrary to the principles of the Treaty of Waitangi (para 6.4).
>
> The act of omission began last century with policies that led to war and the confiscation of tribal territories (Waitangi Tribunal, 1985, p. 74).

The importance of the Manukau Harbour claim is Waikato could reference the Waitangi Tribunal's report that incorporated the decision into the Deed of Settlement:

> 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 earlier 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. (Waitangi Tribunal, 1985, p. 17)

It is submitted that the Tribunal's findings clearly reinforced the later Crown Acknowledgements of Treaty Breach in the 1995 Settlement and the specific reservation of the raupatu argument to the Excluded Claims, which were applicable to the Manukau Harbour as one of four West Coast Harbours.

Another point to make is the status of the claimants to Wai 30 and the role and the legal legitimacy of the Tainui Maaori Trust Board and Ngaa Marae Toopu, particularly as the Excluded Claims to the West Coast Harbours are still unresolved. The Waitangi Tribunal was advised in the Manukau Claim (Wai 8) that:

> Under the mantle of the Kiingitanga represented in Te Arikinui Dame Te Atairangikaahu and her council of elders and advisors, tribal administration is entrusted to two bodies in tandem:
>
> The Tainui Maaori Trust Board which administers the assets of the people, and Ngaa Marae Toopu – a body representing a collective voice for 120 Marae (Waitangi Tribunal, 1985, p. 12).

The Tainui Maaori Trust Board was established pursuant to the Waikato-Maniapoto Maaori Claims Act 1946 (Waikato-Maniapoto Maori Claims Settlement Act, 1946). The establishment of the Board and its role in Tainui is summarised thus:

> The history of the Tainui Maaori Trust Board is tied to the history of the Kiingitanga and its subsequent confiscations of productive Waikato lands. It is therefore not surprising that the Board supports the Kiingitanga and the Tainui iwi which were united under its mantle. Attempting to get redress from the government for the wrongful invasion and confiscation of Waikato lands has been a long-protracted effort. (Annual Report 1993 Tainui Maori Trust Board as cited in Tainui Maori Trust Board, 1995, p. 6)

In March 1995 registered Waikato tribal members were invited to vote (referendum) on the disestablishment of the Tainui Māori Trust Board and the establishment of the new Te Kauhanganui. The Tainui Maaori Trust Board Postal Referendum Package March 1995 (the Referendum)(Tainui Maori Trust Board, 1995) is relevant for three reasons. Firstly, the Referendum provides the historical context leading up to the Crown breach that resulted in the 1995 Raupatu Settlement, and the origins of the Tainui Maaori Trust Board. Secondly, it is part of the contractual understanding that the people had of the offer and the basis of their acceptance of the Heads of Agreement to conclude a Deed of Settlement. Thirdly, it is an example of the precedence-setting for "mandate" that was not designed or driven by the Crown but by Waikato iwi. On this last point, the Crown did not consider that tribal members needed to vote on acceptance or otherwise

of the Crown offer and that it was sufficient for the registered claimants to make the decision. However, Sir Robert felt it necessary that tribal members make that decision. This was a significant innovation in our pedagogy. It is also testament to Sir Robert's philosophy of 'bringing the people along with you' that characterised his leadership.

The Postal Referendum also served two other purposes. It reconnected tribal members who for whatever reason could or had not previously participated in tribal affairs. And it provided an account of the tribal history for tribal members who were unfamiliar with such history. Not surprising since the story of raupatu had been silent over several generations.

What I also remember about the postal referendum was the mahi tahi of staff to mail out the voting forms. This was managed by Joyce Paekau (Personal Assistant to the Tainui Maaori Trust Board) and all staff turned up on a Saturday morning, working through to the early hours of Sunday. Stuffing 18000 envelopes can be mind-numbing but we all pulled together to ensure the packages were ready to go to the Post Office on Monday.

Ngaa Marae Toopu is an unconstituted entity set up in 1975 under the patronage of Te Arikinui. The entity comprises 120 marae of the Tainui Waka Confederation. Its remit was to uphold the tikanga of the Kiingitanga and the Tainui Waka (Tainui Maori Trust Board, 1995). Ngaa Marae Toopu was a significant forum to debate the pros and cons of the raupatu negotiations and eventually the settlement. One recalls the passion of discussion, the heated exchanges, the robust arguments, the accusations of "selling out", and the words of support to carry on. Each hui was packed and in a building the size of Kimiora, that meant a lot of people and a lot of interest in the kaupapa. Each view and position was respected. In an age where social media did not exist, the only way to be involved was to be physically present.

Figure 2

Tuurangawaewae House, Ngaaruawaahia,

Prelude To Negotiations – 1970-1989

The purpose of this section is to recognise the mahi that led to the opportunity for Waikato to re-open the 1946 Settlement. “From 1972 onwards, the Board began to reorganise, but it was not until 1987 that the intention to pursue the Raupatu Settlement became public, sharp and clear – the Board began in earnest to prepare its strategy for Settlement” (Tainui Maaori Trust Board, 1993).

During the 1970s there emerged a hotbed of protest by Maaori around the impotency of the Treaty of Waitangi. Groups such as Ngaa Tamatoa began to agitate and proclaimed the “Treaty is a fraud.” Whina Cooper and her supporters marched from the top of the North Island to Wellington to petition the loss of Maaori lands and Ngaati Whatua occupied their traditional whenua at Bastion Point. Closer to home, Eva Rickard had begun her successful campaign on the return of Raglan Golf Course to Tainui-a-Whiro, and was arrested for her efforts during the 1978 occupation of the Golf Course (Walker, 2004).

A significant event at that time was the establishment of the Waitangi Tribunal in 1975 through the efforts of Matiu Rata MP and supported by fellow MP Koro Wetere. The Tribunal provided a quasi-legal forum to inquire into Crown actions or omissions that breached the provisions of the Treaty of Waitangi. However, the Tribunal's jurisdiction was initially confined to breaches from 1975 onwards and did not have jurisdiction to consider breaches back to 1840 (New Zealand Government, 2018; Waitangi Tribunal, 2025). The Tainui Maaori Trust Board supported the passage of the Treaty of Waitangi Act 1975. That same year, the Crown returned Taupiri Maunga in recognition of the Board's support of the work required to establish the Waitangi Tribunal. In 1985, Koro Wetere MP for Western Maaori, was able to introduce legislation retrospectively extending the jurisdiction of the Tribunal back to 1840 (E-Tangata, 2018). This enabled the Tainui Maaori Trust Board to file the 1987 Statement of Claim with the Tribunal for the 1863 Raupatu and land confiscation (Waikato-Tainui, 2019). It is submitted that the Courts became more interested in developing Treaty jurisprudence as Maaori turned to the Courts to protect their rights under the Treaty (Walker, 2004).

In the mid-1980s, the fourth Labour Government entered a program of commercialising government departments and ministries under the State-Owned Enterprises Act 1986. This legislation allowed Crown assets and land to be transferred out of Crown ownership and, therefore, unavailable for redress to Maaori if recommended by the Tribunal (Walker, 2004).

The mid to late 1980s marked a dramatic watershed of Treaty jurisprudence and the development of case law incorporating the Treaty of Waitangi into the legal landscape after decades of the legal precedent *Wi Parata v Bishop of Wellington*[7] deeming "the Treaty a nullity". The New Zealand Maaori Council lodged proceedings in the Court of Appeal challenging the State-Owned Enterprises Act (29 June 1987), and the Court ruled in favour of the Council (Walker, 2004). The importance of the Court of Appeal judgment was the statement of Treaty Principles and, significantly, the terms of the Treaty which "…calls for an assessment of the relationship the parties hoped to

[7] *Wi Parata v The Bishop of Wellington* (1877) 3 NZ Jur (NS) SC 72.

create."[8] In 2024, these Principles are under attack by the current coalition Government (New Zealand Government, 2025).

Another development at the time was the introduction of the quota management system for fisheries introduced in 1986 which effectively did away with statutory recognition of Maaori customary fishing rights under s88 of the Fisheries Act. Subsequent litigation ensued, resulting in negotiations between the Crown and Maaori over commercial fisheries. The outcome was an interim Settlement in 1989 that established the Maaori Fisheries Commission, 10% of fish species in the Quota Management System, and $10 million (Walker, 2004). Waikato and Ngaai Tahu led and funded the process and Waikato provided staff from the Centre for Maaori Studies and Research as part of the support team for the four Maaori Negotiators – Sir Graham Latimer, Matiu Rata, Sir Tipene O'Regan and Sir Robert Mahuta. Numerous consultations were held with iwi and Maaori around the motu to reach a consensus on what a final settlement redress package would look like. A final Settlement was reached in September 1992 with a redress package that included:

1. A 50% stake in one of the country's largest fishing companies called Sealord
2. 20% of all new fish species brought into the Quota Management System, and
3. Fishing regulations for cultural or customary purposes.
   (Treaty of Waitangi (Fisheries Claims) Settlement Act, 1992)

I became Sir Roberts's representative in the last week of those negotiations when he had a heart attack in Australia and was hospitalized. On Sir Robert's behalf, I ended up agreeing to the Settlement with the other Negotiators...that was scary.

The third major event was the Tainui Maaori Trust Board's Court of Appeal proceedings to stop the sale of coal mining licenses in 1989,[9] a gamble taken as the majority view at that time was that we would lose. Sir Robert was a strong believer in being well-prepared before you go into battle and he was an astute strategist. He engaged two young Paakehaa scholars, Paul McHugh and Benedict Kingsbury; one was based at Cambridge University and the other at Oxford University. They were handed a bundle of papers by Sir Robert and asked to provide their assessment of the chances

[8] *New Zealand Maaori Council v Attorney General* (1987) 641, p. 16

[9] *Tainui Maori Trust Board v Attorney-General* (1989) 2 NZLR 513.

of success. Based on their responses, the Board brought them to New Zealand, and with their input, the negotiation strategy began to take shape. The legal advisers were Sir David Baragwanath, Dame Sian Elias, and Denese Henare. The tribal support was significant, and a train called the Tainui Express was chartered to transport tribal members to Wellington for the hearing. The environment was set and the landscape ready and open to take Maaori grievances to the next level.

The Fisheries negotiations, the interim Settlement and the final Settlement attested to what was achievable despite the complexities, the multiple agendas, and the personalities involved in a pan-Maaori Settlement. The Fisheries Settlement provided direct experience for the Waikato negotiations as the Principal Negotiator, Legal Counsel and the support team were heavily involved in the process and outcome.

It is my view that the development of Treaty jurisprudence in the 1980s through the Waitangi Tribunal, our advocacy for new legislation, and our work in the Courts was the leverage we needed to consider the pathway to direct negotiations with the Crown.

In 1990, a "take it or leave it" offer was made by the Labour Government, which had resisted genuine engagement or a commitment to negotiate. The offer of a $20 million package was made just before the general elections and was rejected by Waikato. The climate leading up to the Raupatu negotiations was very different from the climate back in the 1940s (R. Mahuta, 1995b). The legal status of the Treaty or the constitutional fabric was a part of more liberally and literally defined and applied to Crown and iwi relationships in the latter part of the twentieth century.

Figure 3

Coalcorp Case in Wellington.

Early Negotiations – 1990-1994

Once the new Minister, Hon Douglas Graham, was appointed it was hoped the negotiations that had broken down under Labour would restart. It was an opportunity to reset the rules of engagement and recommit to achieving a mutually acceptable outcome (Diamond, 2003). At that time, the Crown was building its infrastructure to engage in the Settlement process by resourcing through the Ministry of Justice, the Treaty of Waitangi Policy Unit (TOWPU), later known as the Office of Treaty Settlements (OTS), developing much-needed policy, and recruiting the right skill set. Waikato were also building their resources.

Waikato had an advantage in the solid foundation of support that had remained unchanged since 1858, the Kiingitanga, and the people. The protection and guidance of Kaumaatua and Kuia remained constant right up to the day the Deed was signed. The Principal Negotiator relied heavily on their support. There were many kaumatua and kuia, but there were two Kuia who Sir Robert called "the Negotiators" – Nanny Iti Rawiri and Nanny Mere Taka. And many others such as Uncle Nelson, Uncle Sati, Uncle Dora and support from Waahi Pa and Tuurangawaewae Marae.

Figure 4

Nanny Iti Rawiri and Nanny Mere Taka.

Meetings between the Minister and the Principal Negotiator and the respective officials and advisers were scheduled monthly. There were three main points of negotiation that needed to be addressed.

The first was purely operational but was critical to maintaining a level playing field and uncompromised engagement. That was the Crown resourcing the costs to the Board of negotiating. This was done on a six-month cost accrual basis, so the negotiating team had to cover their costs for six months and then get reimbursed. That was difficult when the Board had to fund the negotiations and pay advisors as well as carry on with its business-as-usual. It is important to take time at this juncture to speak of the "sacrifices" that Waikato people, the Negotiator, and the team made to the kaupapa. This consideration should inform the development of any Treaty policy today. The Board often operated in debt because it did not have access to the puutea we have today. Every cent was attached to a purpose and an outcome, and frugality was one of our key performance indicators. Sacrifice was another key performance indicator. This was not about working the odd weekend since there was always some sort of mahi related to the kaupapa every weekend once the negotiations began. Real sacrifice involved staff

having to supplement their wages from external sources, and staff contributing their fees from external Board memberships to cover other staff wages.

> I was rewarded beyond expectation in being part of a Kaupapa that transcends merely doing a job, because anyone can do a job and be committed to a Kaupapa comfortably if they are well paid and have accessibility to resources. I never regarded my role in the story was about the privilege of being involved but in that the people invested in me and now it is my time to make the return on their investment back to them by telling the story or at least my version and protecting the agreement of 1995 for future generations through telling the story, what they take from it is up to them (Solomon, S. (2015). [Unpublished diary]).

The point is that sacrifices were made along the way to signing the Raupatu Settlement Deed on 22nd May 1995. Sacrifices had been made over many generations, even to the extent of not being able to talk openly about Raupatu. The sacrifice was literal and total, and it is important to remember the many ringawera and dedicated kaumaatua and kuia who passed whilst serving the kaupapa.

The second was understanding what lands the Crown owned in the raupatu area and where those lands were. This was a significant issue and source of frustration considering that the Waikato platform was "I riro whenua atu me hoki whenua mai—as land was taken, so land should be returned." The third was the protection mechanism to ensure that whilst negotiations were ongoing, there would be no sale of Crown owned land.

The problem with the negotiations which persisted through to 1994 and up to the signing of the Heads of Agreement was trying to identify what the Crown owned, as many of the properties did not have a Certificate of Title. The disappointment during this period was that Crown entities continued to dispose of land that had become surplus, and they justified such transactions on the grounds that private sales were required for the economic recovery of the country despite the landbank mechanism that had been developed in 1992 (Fisher, 2016).

In practice, this meant that when a Crown entity declared property surplus and, therefore, for sale on the private market, they had to first notify iwi. Iwi would then select which properties they wanted to land-bank for redress in a future Settlement. Land they didn't select for land-banking was then cleared for sale on the open market.

A major reason if not the primary reason the negotiations broke down in 1990 with the Labour Government was the refusal of Cabinet to put in place a land-bank arrangement with Waikato, despite advice from the Office of Treaty Settlements. For Waikato, all surplus lands were to be land-banked. Some sales were made with the Crown entity knowing full well that Waikato required all Crown-owned lands to be available for Settlement, yet they were doing deals with private purchasers to circumvent the arrangement.

The frustration is evident in the words of the Principal Negotiator Robert Mahuta in a letter he wrote to Crown officials:

> Given the current state of confusion, maybe all housing stock should go into the land-bank before we are pestered to make decisions based on scanty information…As you can see from the tenor of this note, I came out of my meeting with the Minister feeling somewhat annoyed that matters have not really progressed very far. If the Crown has no intention to settle with Waikato, then perhaps that needs to be said so that we can all reassess our positions. We are incurring too much time, energy and costs on non-fruitful endeavours.[10]

The Centre for Maaori Studies and Research worked closely with the Department of Survey and Land Information (DOSLI) to search land records to ensure Crown lands were identified and put onto a register for land-banking. It cannot be underestimated the frustration for Waikato which, at times, led to questioning the goodwill of the Crown in the negotiations. Rick Barnaby was very helpful in this process as a Crown official, as was Wayne Taitoko for Waikato.

Another source of frustration was the refusal to return the largest holding of the Crown estate which were lands under the Department of Conservation management, some

[10] Mahuta to ToWPU official 4, 21 June 1993, RC Vol 31, Box 12, W-T archives.

55,000 acres (Fisher, 2016). It is important to take some time to examine what occurred during the negotiations regarding the Department of Conservation estate. In light of recent Settlements (Tuuhoe) it may be timely to revisit the gifting of 1995 Raupatu lands and request that these be returned to Waikato.

Of all the lands in Crown ownership, Waikato wanted the return of the Department of Conservation lands. However, the Department wanted to retain Crown ownership. Several options were put by Waikato, one being co-management. The Centre for Maaori Studies and Research had researched Uluru National Park (Kakadu) in the Northern Territories, Australia. The Centre proposed a model of co-management (and used that Settlement as a precedent for the Preamble in Waikato's Settlement legislation). Another option was transferring ownership to Waikato with a peppercorn lease back to the Crown. Sir Robert saw in this arrangement not only some formal relationship codified in legislation with the return of the whenua, but also work and training opportunities for tribal members, applying Waikato's own conservation values and working collaboratively with the Department. That option would put to rest the bogeyman that Waikato could not manage, let alone own these lands, and that public access would be restricted. The Minister's officials supported this arrangement; however, the Director General refused any arrangement of co-management or ownership of the Department of Conservation lands by Waikato. Cabinet agreed with the Minister and so those 55,000 acres of Department of Conservation lands were not returned (Fisher, 2016).

This was a symptom of a colonial hangover and the ever-present paternalistic racism. The many public consultations and presentations undertaken by the Waikato team with Paakehaa audiences provided a forum for racist comments such as "why don't you go back to where you came from", and reflected some of the public attitude of the day. What was lost was the opportunity for the Crown, on behalf of all New Zealanders, to put right and atone for the unjust actions of the nation perpetrated against the Kiingitanga and Waikato. The only concession the Crown made was to provide a Right of First Refusal, and a seat on the Waikato Conservancy Board (Fisher, 2016). From Waikato's perspective those were insignificant compared to the compromise the tribe made by "Waikato-Tainui in exercising their mana and as a gift will through the Settlement give up their claim to that land and forgo further redress in respect of that

claim."[11] Throughout the many consultation hui the possible non-return of these lands was always a source of discontent and had the potential to destroy the deal between the tribe and the Crown:

> The 22nd of May 1995 will always be etched in my memory with many emotions experienced sitting on the Marae as the gentle rain fell, hope, pride, gratitude, joy, sorrow. But watching the signing that day I could not help but look at the Hakarimata Ranges that proudly filled the background and feel a sense of hollowness and loss for what could have been if Cabinet had taken that extra step of courage. With today's Settlements including the Conservation Estate as Settlement redress, already commented on earlier, there could be a potential remedy for any current or future Crown breach of 1995.[12]

Heads of Agreement

Two significant events occurred in the months preceding the signing of the Heads of Agreement. On Saturday 10 September 1994, Waikato Executive members and Legal Counsel met with the Minister for Treaty Settlements to discuss progress. A year before the Negotiator and advisors had met with the Crown and the Minister accepted the bottom-line of Waikato's starting position which was land-based redress. At the meeting the Minister put forward his view which was, as noted by Sir Robert:

- The Crown was seeking a full and final Settlement.
- That the lands available for return had shrunk from:
    - 1.2 million acres
    - 163,000 acres
    - 90,000 acres
    - 35,000 acres

[11] (*Heads of Agreement between the Crown and Waikato-Tainui in Respect of the Waikato-Tainui Raupatu Lands Claim*, 1994, p. 9)14/04/2025 22:07:00

[12] Solomon, S. (n.d.). [Personal paper].

- Whatever lands the Crown finally decided to return would be deducted from their fiscal cap and the difference would be set aside in cash to provide a land purchase fund.[13]

Sir Robert's diary notes the Tainui Maaori Trust Board's letter of response to the Crown's offer "landing like a bombshell on the Minister's desk, and it seemed likely that the Government would not accept the Board's position on a full and final Settlement". In addition, because of the Board's response the fiscal cap "which was being devised by the Crown is now no longer tenable."

The second event tied to the Minister's offer of 10 September 1994 was the fiscal cap or fiscal envelope, which the Treasury had been working on whilst progressing negotiations with Waikato. The fiscal envelope was a Treasury tool to limit the extent of the country's liability to provide redress for all Claims, including the 1992 Fisheries (Sealord) Settlement. A capped figure of $1 billion was unilaterally imposed without any consultation with Maaori (Mutu, 2019). In discussions with Crown officials, the Waikato team were advised that this was to ensure certainty, consistency and fairness between claimants.

Waikato had always vocalised the reasonableness of the redress it was seeking, presenting at 100-plus consultation hui with tribal members and non-tribal and non-Maaori audiences that its intention was not to bankrupt the nation. However, the timing of the policy being launched in the latter part of 1994 could not have been worse. The tribe had been in negotiations in some form or other with the Crown since 1989, and those negotiations intensified from 1993 onwards. Both sides committed time and resources, which became costlier as a potential offer began to take shape. As well, vociferous opposition was beginning to emerge from tribal members and other iwi opposed[14] to the compromises they considered that Treaty Settlement represented. Waikato never concurred with or agreed to the Fiscal Envelope policy and wording to this effect is recorded in the Heads of Agreement: "that knowledge of the Crown's

[13] Mahuta, R. (1994). [Unpublished diary].

[14] A national hui was called by Tuuwharetoa Paramount Chief Sir Hei Te Heu Heu held at Hirangi marae a month after Waikato signed the Heads of Agreement. The hui unanimously rejected the Policy as an affront to Rangatiratanga and Treaty Partnership (Durie, 1995). The opposition continued throughout 1995 with Maaori responding through the occupation of the Moutoa Gardens by disillusioned, disaffected and disappointed Maaori (Ministry for Culture and Heritage, 2021).

proposed policy for settling natural resource claims does not reflect acceptance of that policy by Waikato-Tainui" (para. 7.1.v).[15]

Over the next few months, the negotiations continued, and consultation hui were held with marae and tribal members. By November 1994, the details of a proposed offer became more specific, and during December, the pace of negotiation accelerated. The negotiation teams worked tirelessly. The "Full and Final" issue was still an issue, and the Waikato Settlement was the largest settlement relative to other settlements. Waikato, throughout the negotiations, never accepted "full and final". Tainui Maaori Trust Board members, including the Principal Negotiator, did not accept the concept of "full and final" at any point in the negotiations; even accepting such wording in the Settlement Agreements was token acceptance:

> It's not really a full and final Settlement because there are lands in the Waikato the Crown wants to hold onto. (Umu McLean)
>
> Maybe the next generation might have a Maatauranga and re-open negotiations. (Julie Wade)
>
> We might be better concentrating on Ko te moni hei utu mo te hara and we give our offspring the opportunity to deal with the first part. We are putting a mechanism in place for them to finish. It is not full and final. (Rovina Maniapoto-Anderson)
>
> This is full Settlement that the Crown is offering. As far as we are concerned it is not final. We need to explain to the Crown that they must find an appropriate preamble. It is not full and final. (Carmen Kirkwood, Tainui Maaori Trust Board meeting, 23 November, 1994).

On Wednesday 21 December 1994,[16] a hui-a-iwi was held at Tuurangawaewae Marae. It was a very hot day and as well as the weight of the heat of the day, the weight of anticipation on how the day would end and what direction the voice of the people would

[15] (*Heads of Agreement between the Crown and Waikato-Tainui in Respect of the Waikato-Tainui Raupatu Lands Claim*, 1994, p. 8).

[16] Date that Heads of Agreement was signed (*Heads of Agreement between the Crown and Waikato-Tainui in Respect of the Waikato-Tainui Raupatu Lands Claim*, 1994).

take was palpable. The floor of Kimiora was packed with tribal members, some in favour and others in opposition to the settling of the Claim. The hui received presentations from the Minister in Charge of Treaty Negotiations, the Hon Douglas Graham, on behalf of the Crown, and Legal Adviser Denese Henare on behalf of the Waikato negotiating team.

Following the presentation, a secret ballot was taken, and it was resolved by a two-thirds majority that: "The Principal Negotiator Robert Mahuta receive the mandate to sign the Heads of Agreement once he is satisfied with the Crown's offer."[17]

I recall the absolute faith tribal members had in the Principal Negotiator to achieve an outcome, and that faith was reinforced by members of the Tainui Maaori Trust Board and Ngaa Marae Toopu. Of course, the critics of the negotiations had reasons for their position but nothing would change the position of the majority.

The Minister for Treaty Negotiations and his officials departed to Hopuhopu before the vote commenced, and the Waikato team joined them at 3pm to advise the result of the vote and to continue to negotiate to find out if a Heads of Agreement could be achieved that night. Present but inconspicuous during the hours that followed was Te Arikinui Dame Te Atairangikaahu. I recall that at 11pm we were preparing ourselves to sign the Heads of Agreement. Te Arikinui was in the side kitchen of Manu Koorero, washing teacups. The Minister's Press Secretary walked past, noticed Te Arikinui, and with the best of intention said, "Excuse me, tea lady, they are about to sign. Would you like to join us?" I leave it there….

Much of the detail of the proposed Settlement package, as presented to the hui by the Minister and Waikato's Counsel Denese Henare earlier, had been accepted. However, the Crown and Waikato negotiators disagreed with the relativity provision.[18]

Hopuhopu was the perfect place to achieve an agreement, and it was now or never. Located equidistant between Ngaaruawaahia (Tuurangawaewae Marae) and Huntly

[17] (*Heads of Agreement between the Crown and Waikato-Tainui in Respect of the Waikato-Tainui Raupatu Lands Claim*, 1994).
[18] For further explanation refer to Waikato-Tainui article "*Waikato-Tainui Receive Relativity Payment"* (2022).

(Waahi Pa) alongside the Waikato River, and under the shadow of the Hakarimata Range and Taupiri Maunga, the scene was set.

It is important to consider what happened between the time the parties departed Tuurangawaewae Marae and the time at which the Heads of Agreement was signed. What was important were the discussions around the final substance of the redress, the relativity provision, and the good faith intentions of both parties. The Minister and his officials communicated with Wellington (the Prime Minister and the Minister for Finance Rt Hon Bill Birch). This was a time when cell phone communications were erratic; hence, there was some apprehension on the part of the Treasury and Crown Law officials about staying connected. To aid connection, the Wellington Crown officials were given office space to work out of. The Waikato team had the end office nicknamed the "Bunker" which was appropriate given Hopuhopu was an old army base, and as a reference to Winston Churchill's operations room during World War II. Last minute details were worked through separately by each team who would meet together in Manu Koorero and then retreat to their respective rooms for further work.

Each word of the Heads of Agreement document was vigorously negotiated, particularly the word "Background" and the phrase "Crown Acknowledgements". Denese Henare had been pivotal in the word-smithing of Agreement documents and as well, she carried the onerous task of delivering on tribal expectations to set right the public record. She insisted that reference to Article II of the Treaty of Waitangi be included (later the full Treaty wording was included in the Deed of Settlement and the legislation).

During consultation hui with tribal members and conversations with Kaumaatua and Kuia such as Iti Rawiri, Ina Te Uira and Mere Taka, what was important was correcting the public record, not simply the matters of land and cash redress. For context, Crown officials were extremely risk-averse to exposing the Crown to potential legal liability. So, it was with some credit and, of course, testimony to the courage of the Minister and the Crown that it was acknowledged in the Heads of Agreement:[19] "that the Tainui

[19] (*Heads of Agreement between the Crown and Waikato-Tainui in Respect of the Waikato-Tainui Raupatu Lands Claim*, 1994).

people of the Waikato never rebelled but were attacked by British troops in direct violation of Article II of the Treaty of Waitangi" (para. E).

Also acknowledged was the ongoing impact of the effects of raupatu from 1863 to the present day (para. G).

The affirmation of "I riro whenua atu me hoki whenua mai (as land was taken so land should be returned)" and "ko te moni hei utu mo te hara (the money is the acknowledgement by the Crown of their Crime)" (para. I) were non-negotiable and redress was sought since the time of Taawhiao. Since 1989, the quantum of Crown lands was declining, and what was available for redress was at least halved. The Crown also agreed on what would be included in the Deed of Settlement, specifically, that the grievance of Waikato was justified, that there would be a public apology, that the Raupatu of $12 billion had contributed to New Zealand's economy, and the 1995 Settlement would not affect the Treaty or the ongoing relationship between the Crown and the tribe.

It was widely known that what sealed the deal that night was acceptance by the Crown of the relativity mechanism:

> Accordingly, the redress represents 17% of the value of the redress set aside by the Government for historical claims under the Treaty of Waitangi including the existing settlement of the fisheries claims (and approximately 20% of the redress for all claims excluding the said fisheries claims). (para. 7.2)

The Principal Negotiator had always promoted the position that the Raupatu Settlement would be, by value, the largest Settlement. Many times, and in front of different audiences, it was said that Waikato was taking a risk by "being the first cab off the rank" and, therefore, it should maintain its position as the largest Settlement in relation to other Settlements. The Crown did not necessarily disagree but its problem was how to maintain equity relative to future settlements.

Brett Shepherd of Ngaati Maru was a financial advisor at Fay Richwhite and was engaged to provide financial and economic advice for the tribe. Brett provided advice on the formula and how the mechanism would work. The actual formula was worked

out and agreed upon during the drafting of the Deed of Settlement. At around 5 o'clock that evening, the Principal Negotiator organised for Denese Henare, Waikato Executive member Tom Moke, and I to meet with Brett Shepard outside the decommissioned Meremere Power Site to discuss a formula and wording that translated the Waikato proposed Settlement redress value into the "Relativity" component. The Waikato team returned to Hopuhopu with the proposed wording for paragraph 7.2.

Later that night the Principal Negotiator and the Minister went for a walk around the grounds of Hopuhopu without their advisers and officials, each smoking a cigar. The private conversation that occurred could only be retold by the men but as I understood it, what occurred was that they agreed on the outstanding points. Those were the interest provision (attachment "A") and paragraph 7.2.

In his book *Trick or Treaty* Sir Douglas Graham (1997) recounts that the final agreement was negotiated around retaining the Conservation Estate, coal reserves and exclusion of the River, and estuaries.[20] The Minister contacted the Prime Minister and the Minister of Finance, and the go-ahead was given to sign the Heads of Agreement with the last-minute rewording.

Members of the Tainui Maaori Trust Board, staff, advisers and Kaumaatua and Kuia and the Minister and his team had waited all day and most of the night for the agreement to be signed. After years of litigation, negotiations, consultations, commitment, and sacrifice added to the generations who sought resolution, a step closer to a historical moment in New Zealand history was about to occur.

Two copies of the Heads of Agreement had been printed off with amendments and at 10.30pm that night everyone gathered in Manu Koorero under a huge black and white photo of Princess Te Puea. Before all those present Douglas Arthur Montrose Graham and Robert Te Kotahi Mahuta signed the Agreement. As a token to mark the occasion the Minister was presented a waka huia carved by local carvers.

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[20] See page 73.

Figure 5

Te Puea.

Photo credit: Te Kirihaehae Te Puea Herangi. Evening post (Newspaper. 1865-2002): Photographic negatives and prints of the Evening Post newspaper. Ref: PAColl-7796-05. Alexander Turnbull Library, Wellington, New Zealand. /records/22769443

The atmosphere was heavy with joy, sadness, accomplishment and relief. It was appropriate to head to Taupiri Maunga for karakia, and accompanied by the Crown team.

At the foot of the Uruupa in a dark and still night, people gave acknowledgment through personal reflection and the incantation of the Pai Maarire. In comparison to the much public coverage of the Deed of Settlement signing, the Heads of Agreement was signed in the intimacy and privacy and with honour and respect. It was understood and accepted that the Heads of Agreement was legally non-binding and that what was important was less about what was agreed and more about how it was agreed.

Figure 6

Principal Negotiator and Minister signing the Heads of Agreement.

Photo credit: Manatū Taonga: Ministry for Culture and Heritage. (2025). *Chapter 1: The Signing* [Web page]. Te Tai: Treaty Settlement Stories; Ministry for Culture and Heritage Te Manatū Taonga. https://teara.govt.nz/en/te-tai/waikato-tainui-raupatu-1

Sometime has been spent explaining the background of the Heads of Agreement. The intention is to illustrate what were the compromises of negotiation, and therefore what may become the undoing of "full and final". Considering the relativity clause still has another generational cycle to run. There were three sections in the Agreement that

were important, if not remarkable to read. These are also the sections that the tribe should monitor closely:

1. Full and Final
2. Relativity
3. Land Quantum (including Right of First Refusal)

Any compromise or breach of the intent of 1995 will make "Full and Final", a legal fiction.

Figure 7

The Minister, Te Arikinui and Principal Negotiator following the signing of the Heads of Agreement.

Deed of Settlement

Signing the Heads of Agreement opened the door to Settlement. The Heads of Agreement set a six-month timeframe for a Deed of Settlement to be agreed and executed. From the Waikato negotiating team's perspective this meant more work and engagement with tribal members. The logistics and planning of such an exercise should never be underestimated. Planning and resourcing began a decade earlier with the

preparation and advocacy of the Manukau claim, the research and preparations in support of the Raupatu argument, the filing of the 1987 Wai 30 Claim, the State-Owned Enterprises Act, the Fisheries claim and litigation (including the preparation of affidavits and the journey of unity and resolve on the Tainui Express).

Negotiations recommenced with earnest in January 1995. The basis of Settlement had been agreed in the Heads of Agreement, so what was now required was the detail to give effect to Agreement. This required more resourcing by the Crown and new members were added to the Crown team, a historian was enlisted to assist with writing the Apology and Historical background.

The Trust Board engaged Dr Ann Parsonson to help write the Waikato version of the Apology and the Historical background. (Ann was the niece of Ces and Joan Badley. Ces was Te Arikinui's private secretary. Ann completed her PhD in 1972 on the Raupatu) (Solomon, 1995). The Board also engaged the services of the valuation firm Seagers (Chris Seager) and the commercial arm of the law firm Rudd Watts and Stone (Peter Rowe, Simon Herbert, Gerard Browne) to negotiate the values of the lands tagged for return and the respective leases back to the government agencies, departments and other entities. A contract for services was entered into with Fay Richwhite to secure further services from Brett Shepherd to negotiate the relativity provisions and formula. The Waikato team split in two with Tom Moke and Niwa Nuri focussing on the commercial aspects of the negotiations around land values and leases with our respective advisers myself, Denese Henare and Ann Parsonson. We were guided by Nanny Ina Te Uira who was focussed on the Apology, Background, Historical account and Crown acknowledgements. John and Myrtle Te Maru with Lady Raiha Mahuta, Joyce Paekau and Board staff maintained the research from the Centre for Maaori Studies and Research on behalf of the Board. At the same time, consultation hui and public presentations continued (by the date of signing the Deed of Settlement there had been 94 such hui and presentations on the Crown offer).

The negotiations increased from early January to the start of May 1995. What kept the momentum going was constant checking from the Board, from Ngaa Marae Toopu, and from Poukai attendees to ensure that the path taken remained tika. What also kept the negotiating team going was dedication to the kaupapa. In the words of Sir Robert, as already mentioned, "you would die for Raupatu" (R. Mahuta, personal communication,

n.d.). Preparations for a postal ballot were under way, there was no legal obligation to hold a vote, but the Principal Negotiator felt it important that the people decide on the acceptance or otherwise of the Settlement. Crown Law advised that the claimants to Wai 30 had authority to accept the terms of a Settlement offer. Fortunately, the Trust Board had always maintained a tribal register for distribution purposes and for election of Board members. The roll would be used to gauge the view of tribal members on accepting or otherwise a Settlement. Of the voting packages sent out, 937 were returned for incorrect addresses or the recipient was deceased. 700 of those were redirected and sent out again. Members had until Friday 28th of April 1995 to vote. The returning officer was the Registrar of the Maaori Land Court. By 5pm that day the returning officer had received 4680 voting forms. Of those votes 3029 voted to accept Settlement, 1608 were against and 43 were invalid.[21] The adoption by Waikato to hold a democratic vote of individual tribal members was not required by the Crown nor was it intended to set a precedent for all subsequent Settlements (Solomon, 1995).

As negotiations progress towards a Deed of Settlement, we still had to deal with the cross-claim of the Hauraki Maaori Trust Board. In early May 1994, the Hauraki Maaori Trust Board declared they had an interest in Maramaarua Forest and, therefore, a competing claim under their Wai 373 claim (Solomon, 1995). They threatened injunctive proceedings to stop the signing of the Deed of Settlement if their interests and competing claim was not accommodated.

Earlier in 1992 the Tainui Maaori Trust Board had commissioned the Centre for Maaori Studies and Research to prepare a report for the Crown Forest Rental Trust on the rights and interests of Waikato in the Maramaarua and Onewhero Forests.[22] As part of writing those reports, many hui were held with Marae and Hapuu associated with the lands where the State forests were located. As part of the Report several interview hui were held at various marae with tribal members having their koorero recorded around Waikato ahi kaa of those lands, despite the disruption of Raupatu.

[21] Tainui Maaori Trust Board (1995, May 1). Meeting Minutes. Waikato-Tainui Archives.

[22] Tainui Maori Trust Board. (1993). *Tainui Claims to Onewhero and Maramarua* Forests: *Research report commissioned by the Crown Forestry Rental Trust on behalf of the claimants* (55pp Wai 686 A1, Hauraki inquiry).

The reports recommended that the forests are on Waikato whenua, subject to the Wai 30 claim, and therefore Part 3 of the Crown Forests Assets Act 1989 should apply. Moreover the reports recommended that Waikato was entitled to the return of the forest lands (not the trees) and accumulated and future rentals from the Crown forestry licenses.

A delegation from the Hauraki Maaori Trust Board met with the Tainui Maaori Trust Board, acknowledging the powerful kinship ties of the waka allegiance. The meeting considered how the competing interest could be reconciled. In a diary note I wrote at the time to Sir Robert, I advised:

> I believe this impasse could have been resolved if it was dealt with by rangatira ki te rangatira. We misread the tikanga and the whanaungatanga as our compass to guide a path to resolution. We were too caught up in the transactional nature of a Treaty Settlement process, one iwi in the Waitangi Tribunal lane, the other in the direct negotiation lane, one waiting to have their claim heard and the other waiting to have their claim settled. Added to the mix was the friction created by the 1992 Maaori Fisheries Settlement around the inshore allocation model where Hauraki advocated a coastline position and Waikato supported a coastline plus population model.[23]

The decision was left to the Crown and Waikato to resolve, resulting in clause 17.3 of the Deed. Both the Crown and Waikato acknowledged the competing claim of the Hauraki Maaori Trust Board (Deed of Settlement between the Crown and Waikato-Tainui, 1995). The resolution process was a determination of respective rights and interests in the lands by an appropriate authority or by agreement between Hauraki and Waikato (Bennion, 2006). If, by a determination or agreement, the lands were deemed to be Hauraki, then the memorials over the land would remain, and the property and the accumulated rentals would not transfer to Waikato. A determination had to be made either way within five years of the promulgation of the Settlement legislation. Despite efforts to organise hui between the Boards and Hauraki and Waikato kaumatua, the iwi never met to try and resolve the mana whenua status of Maramaarua Forest. Therefore,

[23] Solomon, S. (n.d.). [Personal paper].

the five years lapsed and in 2000 the then Minister, Hon Margaret Wilson, instructed her officials to send a cheque to Waikato for the balance of the redress capital – the sum of $16 million.

Though it is out of sequence I will take a moment to look at the Hauraki and Waikato engagement since the 1995 Settlement. The Waitangi Tribunal released its report into the Hauraki Inquiry in 2006[24] and Hauraki in its many guises as a Trust Board or through tribal configurations such as Ngaati Maru have attempted to stop Waikato in its negotiations of the 1995 Wai 30 claims, specifically the Waikato River Settlement.

In 2008, Hauraki tribal members Paul Majurey and David Taipari sought a last-minute injunction and an urgent hearing before the Waitangi Tribunal. The basis of their opposition was reliance on the Waitangi Tribunal report that they had interests within the Waikato Raupatu boundary extending as far west as the Waikato River and including the Whangamarino wetlands.

The Tribunal declined the application to hold an urgent hearing. However, on the instructions of the Co-Negotiators, Lady Mahuta and Tukoroirangi Morgan, I met with Hauraki representatives Paul Majurey and David Taipari to find an amicable resolution that recognised the respective interests of both iwi. There were several informal meetings, mainly between myself and Paul Majurey, on how a "collateral" agreement could be drafted that satisfied the requirements of Hauraki, who were yet to engage in negotiations with the Crown and Waikato, hoping to settle the Waikato River claim later that year.

The night before the signing of the Deed of Settlement, Paul Majurey and David Taipari came to Hopuhopu where last minute negotiations were taking place between Crown officials and Waikato advisers. They spoke with me, seeking assurance that their interests would not be compromised by the Settlement. At the time, I was preoccupied with protecting and preserving Waikato's Treaty and rangatiratanga rights as part of the Waikato River negotiations. This notwithstanding, I gave them an assurance that

[24] Note: There are three volumes titled: *The Hauraki Report* (Waitangi Tribunal, 2006).

Waikato would find a mechanism to protect their interest whatever those were before Settlement legislation was introduced into Parliament.

At a subsequent meeting Waikato, Hauraki and Crown officials drafted an agreement between Marutuuaahu and Waikato,[25] based on the map produced by Hauraki at the Hauraki Waitangi Tribunal Inquiry. The intent of the agreement was to give Marutuuaahu support to the Waikato River Settlement between Waikato and the Crown. "The Marutuuaahu Iwi of Ngāti Maru, Ngaati Whanaunga, Ngāti Tamateraa and Ngāti Pāoa tautoko Waikato-Tainui in achieving a just and empowering Settlement of their Waikato River claims (s.E)" Another aim was to set up a framework based on the Waikato Korowai concept as an expression of whanaungatanga between and amongst iwi in relation to the Waikato River and its catchment. "Both the Agreement in Principle and Deed reflect the Waikato-Tainui aspiration for the Korowai concept which includes among other things, whanaungatanga" (s.C).

The Framework would provide for a discussion between the Crown and Waikato on how best to accommodate Marutuuaahu's interests in the post-settlement co-management arrangements.

For the purposes of reaching agreement on these matters the decision was that "Waikato-Tainui and the Marutuuaahu Iwi shall be guided by their kaumatua in respect to their Tainui Waka whanaungatanga and tikanga" (p.4). The Framework Agreement was signed as a tripartite arrangement between the Crown, Waikato-Tainui and Marutuuaahu on 25 September 2008.

I believe the Framework Agreement is an important example of answering the research question as part of our Settlement Pedagogy, which was finding a pathway to dispute resolution in terms of a cross-claim based on whanaungatanga and tikanga, something the Crown could not achieve.

Returning now to 1995 and the postal referendum, marae listed as beneficiary marae also signed a Kawenata accepting and endorsing the signing of the Deed. By 21 May

[25] (*Waikato-Tainui and Her Majesty the Queen in Right of New Zealand and the Marutuuaahu Iwi. Agreed Framework in Relation to Areas of Shared Customary Interests and the Waikato River Deed of Settlement*, 2008).

1995, 55 Marae had gone through the mandating procedure, and four Marae refused to sign. Those marae were Tahunakaitoto, Te Kauri, Poihakeena and Tauhei.[26] They did not think they were part of the Raupatu or they disagreed with the "collective loss – collective benefit" component of the Settlement. Te Koopua marae withdrew and today all except Tahuna are beneficiary marae.

At the 1 May 1995 Board meeting the following resolutions were passed;

> THAT the Tainui Maaori Trust Board based on the results of the referendum RECEIVE the results of the postal referendum.
>
> THAT the Tainui Maaori Trust Board based on the results of the referendum the two thirds of voting registered beneficiaries support the Waikato Raupatu Claim Negotiations being concluded acceptance of the Crown's offer by signing the Deed of Settlement.
>
> THAT the Tainui Maaori Trust Board based on the results of the referendum: RECOGNISE that the referendum result is a fair reflection of the will of the tribe and is consistent with the expressions of support demonstrated at:
>
> - The hui-a-iwi held at Tuurangawaewae Marae on 21 December 1994.
> - The 19 Poukai held since 1 January 1995.
> - The 50 Raupatu consultation hui and meetings held throughout the country since 1 January 1995.
>
> THAT the Tainui Maaori Trust Board based on the results of the referendum: SUPPORT the Waikato Raupatu Claim Negotiations being concluded through acceptance of the Crown's offer by signing the Deed of Settlement provided that:
>
> The Deed of Settlement is to the satisfaction of the Principal Negotiator, RT Mahuta.

[26] See *Waikato-Tainui Deed of Settlement, 1995* (fifth schedule).

That another hui is convened on 14 May 1995.

THAT the Tainui Maaori Trust Board based on the results of the referendum: MANDATES Te Arikinui Dame Te Atairangikaahu to sign a Deed of Settlement on behalf of Waikato once the Principal Negotiator has indicated his satisfaction with the Deed of Settlement and the hui of 14 May 1995 has been held.[27]

There was discussion around the last resolution by Board members as to whether the Queen should sign. Some members felt it was beneath her "Te Arikinui should stay on that heavenly pedestal and not be brought down to this level of being soiled by what is going on. We should protect her against these things." Whilst others felt she should sign: "Te Arikinui knows what she has to do. It does not matter how much we feel or are afraid for her. She has been picked to do it…she has got to do it even if she did not want to do it" …" Kiingitanga has redress for Raupatu, Mahuta joined Parliament, Te Rata received the same treatment as Taawhiao, Koroki had Te Puea and Pei Te Hurinui Jones to fight Raupatu battles. Today we have Te Arikinui. The yes or no is in her hands…"[28]

On the day of Settlement, Te Arikinui signed the Settlement.

On Sunday 21 May 1995 a special meeting of the Board was held at Hopuhopu. The night before the Principal Negotiator, the Minister and their respective teams spent five hours finalising the wording of the Deed, and then the Deed was sent for printing (Diamond, 2003). Though preparations were already underway at Tuurangawaewae Marae for the following days signing ceremony this was an important meeting for the Board's final mandating before the signing. There was also a need for the Board to pass several recommendations as there was a risk to mandate following a legal challenge in the High Court several days earlier to the Board's processes.

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27 Tainui Maaori Trust Board (1995). 'Resolution'. In *Minutes of Tainui Trust Board meeting 1 May 1995*. Waikato-Tainui Archives.

28 As above.

Opposition

The challenge came from 12 tribal members who tried to prevent the signing of the Settlement.[29] The proceedings were dismissed by Justice Hammond. The effect of the case, however, was to publicly expose irregularities in accordance with the Maaori Trust Boards Act arising out of the Board elections held in 1993. On Wednesday 7 May 1993, the Board Secretary had received a letter from the Minister of Maaori Affairs enquiring into the 1993 Board elections. A full report was sent to the Chief Executive Officer of Te Puni Kookiri on Wednesday 10 May 1993.

Because of the High Court case, the Crown through Crown Law, the Minister of Maaori Affairs and Te Puni Kookiri declared two Board member appointments invalid and instructed fresh elections be held. As there was no mechanism available under the Act, the two positions would remain vacant until fresh elections were held. The reasons for the invalidations were outlined in the Crown's submissions to the High Court.

1. One member was not registered on the Roll of Beneficiaries.
2. One member was not registered on the Roll of Beneficiaries.

Crown Law raised the validity of any resolutions passed at the Special Board meeting on 20 December to sign the Heads of Agreement and endorse the mandate of the Principal Negotiator. Other grounds were alleged for stopping the Deed of Settlement related to consultation processes and the inclusivity of tribal members. However, the Court found that the Board had gone above and beyond what was required. We did not dismiss the role of "opposition" and the validity of their contribution to the discourse. Their opposition was valid, but there was no alternative or solution to the opportunity the proposed Settlement offered. Staying in the shade of "grievance" is effortless, while finding a resolution to the grievance and taking an informed risk is harder. That's why it was important for us to leave a challenge to future generations to continue the fight and to leave them something to fight for.

Again, several Recommendations were made (set out in full so that there is a record of the decision-making and the intention at the time). The first recommendation is

[29] Bid to stop Tainui deal fails. (1995, May). *Te Maori News, May 1995, v.4, n.9,* 3.

significant in that the Head of the Movement and the Kaahui Ariki concludes the negotiations by signing the Deed. This signifies the efforts of her predecessors to resolve the wrong and vindicate the reputation of Waikato. It also reflects the mana and prestige of the event and that such an event on such a scale had never been seen before.

> THAT Te Arikinui Dame Te Atairangikaahu... conclude the Waikato-Tainui Raupatu Claim Negotiations by *her* signing on behalf of Waikato-Tainui a Deed of Settlement the general terms of which have been explained at this special meeting and after incorporating terms satisfactory to the Board's Principal Negotiator, Robert Te Kotahi Mahuta to deal with any outstanding issues (Waikato-Tainui Deed of Settlement, 1995, pp.33, Section 26).

The following two Recommendations are significant as they recognise the need for Waikato to have a vehicle to give expression to its own mana motuhake. The Board felt that with Settlement it was time to move away from the paternalism of the Maaori Trust Boards Act 1957 and assert its own rangatiratanga. The final Deed of Settlement[30] contained a provision for the creation of two Trusts, the Land Acquisition Trust clauses 9 and 26, and the Land Holding Trust. (Settlement Legislation provided for the dissolution of the Board section 28).[31] These would be considered by today's Settlement process as Post-Settlement Governance Entities. However, the replacement governance structure was by Waikato's design and request and not policy-imposed:

> THAT the Tainui Maaori Trust Board approves the essential terms of the Land Acquisition Trust and the Waikato Raupatu Lands Trust as explained to the meeting and the transfer of the Settlement properties to that Trust on behalf of Waikato-Tainui and that the Tainui Maaori Trust Board agrees to act as the Raupatu Lands Trustee to hold the Settlement assets on an interim basis.
>
> THAT the Tainui Maaori Trust Board recognises the need for a new tribal organisation to hold and manage the Settlement properties and decide on the distribution of benefits. Noting the contents of Appendices IV, V, VI and VII as set out in the Postal Referendum Booklet of March 1995 and resolving, in

[30] *Deed of Settlement between the Crown and Waikato-Tainui, 1995*

[31] Waikato Raupatu Claims Settlement Act 1995 (s.28)

conjunction with Ngaa Marae Toopu to set up a process for agreeing the final management of the Settlement properties.[32]

The final Recommendation is a significant but necessary compromise by the Principal Negotiator discontinuing the relevant parts of Wai 30 (except aspects relevant to the excluded claims) and to instruct Counsel to implement that clause.

Before the meeting ended at 11am, the Principal Negotiator asked Board members to ensure they were at Tuurangawaewae Marae by 8.30 the next morning – and announced to everyone's surprise and jubilation that the Crown was returning the sacred Bird Korotangi. This is more descriptively detailed in Tom Moke's puuraakau. The day concluded with midnight karakia at Taupiri Maunga.

Figure 8

The Return Home of Korotangi

[32] Tainui Maaori Trust Board (1995). *Minutes of Tainui Trust Board meeting 21 May 1995.* Waikato-Tainui Archives.

22 May 1995 – Day of Settlement

The morning began with a dew mist. Thousands of tribal members had gathered and quickly took their seats. Board members and the Waikato negotiating team were escorted to seating in the front row by marae Ringawera. Protestors were outside on River Road at the main gate awaiting the Crown party, and they were vocal in their protestations and staunch in their defiance. Greenery adorned Maahinaarangi. Final preparations were being carried out to prepare the space on the marae atea for the signing. Ariki and tuupuna portraits were carefully placed, the forecourt was swept for the last time, and then the sun came out.

Figure 9

Prime Minister James Bolger, the Minister in Charge of Treaty Negotiations, Douglas Graham, Labour MP and Tainui member Koro Wetere and Te Arikinui's son Tuuheitia.

At 10am, the Crown party assembled at the front gate. Waikato, old and young, lined up for the poowhiri and haka. The call of many kaikaaranga sounded and was responded to. The Crown advanced onto the marae, heads bowed, escorted by Te Arikinui's son Tuuheitia—a very different advance than in 1863.

The party was led by Prime Minister James Bolger, the Minister in Charge of Treaty Negotiations, Douglas Graham, Labour MP and Tainui member Koro Wetere, and Office of Treaty Settlements Kaumaatua Tom Winitana. The Minister carried the Korotangi, the fabled taonga of the Tainui canoe, and large numbers of birds began to descend upon the rafters of Maahinaarangi and sing. Tribal members present were unaware of the return of Korotangi and the sounds of poowhiri grew in crescendo, the wailing of mamae and the exalted joy of the occasion as Korotangi came home.

The formality of whaikoorero began with the exchange of acknowledgments of the significance of the Kaupapa o te Ra and the events of the past and the promise for the future.

Figure 10

Tuurangawaewae paepae on 22 May 1995.

The time came for the signing of the Deed of Settlement and Te Arikinui Dame Te Atairangikaahu and Prime Minister James Bolger signed on behalf of Waikato and the Government representing the Crown (Sir Robert witnessed the Prime Minister's signature and Sir Graham witnessed Te Arikinui's signature) - restoring the honour of

the Crown, recognising the legitimacy of the grievance and setting a path to reconciliation. Again, a chorus of birdsong broke from the rafters of Maahinaarangi.

Figure 11

Te Arikinui me te Whare Kaahui Ariki.

The moment the signing was complete, the marae atea burst into haka with rangatahi from local kura, kaumaatua, and kuia and tribal members joining in. Everyone who was there that day (including non-tribal and non-Maaori) will have their own recollections and emotions, whether in support of the signing or against. Some marae and iwi members did not agree with signing the Agreement at Tuurangawaewae. One such leader was Tuaiwa Hautai Rickard from Whaingaroa, who spent the day in mourning.

All one can comment on a generation later is that despite the rough road of negotiation coupled with the development of Crown policy ‘on the hoof’ as the negotiations progressed, the objective of both parties was to achieve a sustainable outcome agreed in good faith and with best intentions. That was the contract and that was the compact that was agreed.

Figure 12

Marae Atea after signing of Deed of Settlement (featuring Ata Poutapu and Nanny Mitai).

Figure 13

Marae Atea after signing of Deed of Settlement.

Settlement Legislation 1995

Appended is *The Waikato Raupatu Claims Settlement Act – Users Guide to The Act as at 28 October 1995* (Solomon, 1995). This document was written by myself for the purposes of explaining to a hui-a-iwi of tribal members held at Hopuhopu on 28 October 1995 what the provisions of the Settlement Act meant. This document has value in several ways:

1. It was written with a fresh memory, in fact written before the Act was promulgated and Royal Assent given on the 3rd of November 1995 by Queen Elizabeth II.
2. It explains the intention of each section of the Act and what it means and what is the effect or outcome and how that provision was negotiated.
3. It is written in plain language so that all tribal members (or anyone else) can understand.
4. It is a primary source.

Though Settlement was signed it required legislation to give effect to the provisions of the Deed. After the Team had recovered from the party held in the old Gymnasium at Hopuhopu the night of the signing it was back to the grindstone. Waikato were to participate in the drafting of the Bill – something that has never happened before, only Parliamentary drafters write legislation. The first Draft of the Settlement was scheduled for introduction into Parliament in July.

Again, the familiar chokehold of frustration revisited the negotiations. Though the Deed made explicit reference to rangatira rights (Clause 2.5) it was questioned by the Crown whether it could be included in the Legislation because of the uncertainty of what it means and how are those rights defined. Fisher (2016) in his article "I riro whenua atu me hoki whenua mai: The return of land and the Waikato-Tainui Raupatu Settlement" also makes comment. The Crown's logic is a repeat of the lack of logic used by the Director General of Conservation to withhold transferring the ownership of the Conservation Estate. In any case, the Waikato Raupatu Claims Settlement Act 1995 included the words 'rangatira rights' in the Preamble.

The importance to Waikato in referencing the words 'rangatira rights' is that Denese Henare was unequivocal about adding in rangatira rights as Waikato never signed the Treaty. Pootatau found no need to as he had signed the Declaration of Independence five years earlier (Orange, 2020). What our intention was back then was to acknowledge our inherent rangatira rights that supported Kiingitanga, Waikato's own authority within a customary rights context pre-existing the Treaty of Waitangi and Parliamentary Sovereignty.

The combined thinking of Sir Robert from his tribal world view and experiences (and his prophetic whakapapa) and Denese Henare's sharply honed legal acumen and intellect, particularly on Treaty/Maaori issues was formidable. Sir Robert throughout the negotiations, maintained opposition to "full and final". Henare consciously looked for the opportunity to leave "fish hooks" for the future to re-open the Settlement. The insertion of the words "rangatira rights" was one such fish hook and a massive achievement. Our rangatira rights are inherent, bestowed through whakapapa, not through Treaty or at Parliament's leisure. This was the approach applied during the Waikato River negotiations where in the Deed of Settlement[33] and final Settlement legislation[34] Waikato inserted many clauses that only Waikato could define, specifically Mana Whakahaere, Mana o te Awa and Te Ture Whaimana.

I leave how best the "fish hook" can be used by future generations. Suffice it to say that our intention a generation ago was to codify (not define) the legitimacy of our (Waikato-specific) rangatiratanga to protect and revisit the 1995 Settlement when required. How future generations, indeed the current generation, give effect to what we knew and what the Crown has now acknowledged is the peach waiting to be picked.

Another matter of legislative drafting that required further negotiation was placing lands to be returned in a customary title through recognition and codification of such status under the Settlement legislation. This is tied to the above discussion on rangatira rights which would require some delegation by the Crown of Sovereignty and the residual Crown interest – in practice creating an "Allodium" title but more commonly

[33] *Deed of Settlement between the Crown and Waikato-Tainui in relation to the Waikato River, 17 December 2009.*

[34] Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010.

described as Customary title based on Customary rights, so that these rights continue to exist despite the Crown's assumption of Sovereignty. Henare was concerned that even if lands were returned as Settlement redress there is always the potential the lands could be taken in the future by administrative processes such as the Public Works Act. The only time that this has occurred since Settlement was the taking of lands at Te Rapa – the Base to build a round-about (Fisher, 2016). The interesting aspect of this example was that the lands were in Te Wherowhero Title, and the tribe and the Custodial Trustees had to consent to the taking of land which was, small in quantum and was accompanied by a land swap to maintain the land quantum. The other issue was that it provided an advantage to Waikato as the roundabout that was built provided access to the tribally owned retail mall called "The Base".

Pursuing a customary title arrangement was to ensure when Waikato talked about the tribal estate – it is literally a tribal estate and not subject to any underlying Crown proprietary interest latent or active. To give effect and expression to this is through Te Wherowhero Title. The first lands placed in this Title were Hopuhopu and Te Rapa returned prior to Settlement as a sign of good faith (Hopuhopu) and on account (Te Rapa) (Fisher, 2016). What the proposed legislation (Waikato Raupatu Claims Settlement Act 1995) would do would exempt Maaori Land Court jurisdiction over Settlement lands (s. 22) and create the Title's own statutory basis under the Settlement legislation (ss. 19 and 21).

It was the intention that the land tenure, specifically tribal tenure, be as it was in 1863;

> What is being sought there is the nature of the "ownership" back in 1863-65. There should be no confusion that we are seeking the lands to be returned in the state they were in back then – i.e. the University lands to be returned with no improvements. The "ownership" issue relates to the vesting of lands under the Kiingitanga, thus the compulsory taking of those lands by the Crown. It also relates to the tribal interest in the lands. Prior to the wars and confiscations lands vested in Te Wherowhero (subsequently reaffirmed through the years). The confiscations removed lands away from the Kiingitanga and therefore the Tribe. Today, the return of the lands must benefit all the Tribe who suffered, not just those who are fortunate enough to

> have Crown-owned lands left to settle the grievance. The majority are not so fortunate. (S. Solomon, personal communication to D. Henare, April 9, 1995)

Again, a "fish hook" for future generations to consider the worth of pursuing.

On Wednesday, 30 August 1995, the Select Committee heard submissions on the Waikato Raupatu Claims Settlement Bill 1995 (Fisher, 2016). The submitters were heard at the Glenview Tavern in Hamilton. Twenty-nine submitters were heard by the Committee. Thirteen of the submitters were Waikato tribal members in opposition to the Bill and therefore the Settlement – the majority were party to the May High Court proceedings. Three were Hauraki iwi members whose main submission was to contest the return of Maramaarua Forest as part of the Waikato Settlement Redress and advocate Hauraki's interest in the claim area as far as Whangamarino. Thirteen were Paakehaa who opposed the Bill and most of those were farmers. There were no consequential changes to the Bill from the submission and Select Committee process.

The third reading of the Bill was October 19 1995. The Hansard Report[35] recorded the unanimous support of Parliament for the Bill (New Zealand Parliament, 1995). What was clear is that the Government and parliamentarians acknowledged the goodwill, good faith and mana of Waikato.

What was impressive about the final reading of the Bill was how the tribe mobilised itself with military stratagem and organisation to get itself to Wellington. It had been done before in 1989 with the "Tainui Express" heading to the Coalcorp Court of Appeal case,[36] but nevertheless the logistics were impressive. Mamae's puuraakau provides detail on that journey. Included are some recollections of passengers on the train to and from Wellington, to capture their thoughts and feelings. It is also important to have the words speak for themselves to today's tribal members so that the optimism is not lost. And in particular, for any Crown official anonymously crafting policy in an office on

[35] Vol. 551.

[36] This was a train service (R. Mahuta, 1995b).

The Terrace, Wellington, that will impact upon Waikato's Treaty and rangatira rights, you can't write policy in a vacuum.

Figure 14

Hui a Iwi.

The following poem (author unknown)[37] it is submitted, reflects the mood of the passengers on the Tainui Express.

> *I visualise the barrack walls, and the hilltop home, at Pukekawa over one hundred and sixty years ago and I weep…*
>
> *For the man, for his vision*
> *Ko Pootatau te tangata*
>
> *Building another Auckland, in another time*
> *And now his descendants' journey down the island in the late spring dark*
>
> *Gathering the memories of generations gone, healing the gaping holes of bigotry and greed*
>
> *That so destroyed that aged warrior's dreams*

[37] Tainui Maaori Trust Board Archives October 1995

Dreams of prosperity and peace of wealth and wonderment for all who came upon these shores

But the invaders wanted more…
And so, the insanity began

Healing now, healing now, six generations later
Each mile a triumph as we move into the night

Knowing the dawn will bring more than the sun
But celebration, yes, a true

Beginning…

Pootatau, Taawhiao, Mahuta, Te Rata, Koroki, Te Puea…
We fly on the wings of your vision

We move on the current of your tears, your tears…
We sing in the faith of your passion

We weep in the knowing it is almost, almost, done…

Last year someone found a little Lady Tekoteko on a storage shelf in the British Museum…
Her face was moist with hope, with grief, with longing…

Tonight, this train will pass the place from which she was torn one hundred and thirty-two years ago

Though her House was destroyed, her soul is still there

So now think of her
And this, this magic.

Figure 15

Figure 16

Figure 17

Figure 18

What needs to be reiterated is that the Crown/Government/Parliament back on the 19th of October 1995 were truly genuine in the apology and the acknowledgements and the reconciliation and mending of the relationship with Waikato and entering a new age. The question now, is that still the case, not demonstrated by words but by action because our Pedagogy as mentioned has its own continuum.

There was one final step before the Settlement was complete and that was the Royal Assent.

Queen Elizabeth II was due in the country. Te Arikinui was scheduled to have an audience with Queen Elizabeth II at Government House in Wellington on 3 November 1995. What transpired that day was Queen Elizabeth, despite Parliamentary protocol, signed her name giving Royal Assent to the Waikato Raupatu Claims Settlement Act 1995. The two Queens then retreated to have a private meeting. It is unclear what was discussed between them, but the rumour and speculation have been that Queen Elizabeth apologised for the wrongdoing of her ancestors. Whatever transpired in their conversation is a matter between them. The "magic" is that the descendants of Queen Victoria and King Pootatau closed the circle to the grievance at the level of Sovereign to Sovereign and Rangatira ki Rangatira. The irony, if not the poignancy, is that after trips by Ariki to London to seek an audience with the British Monarch,[38] the British Monarch, in the end, came to Aotearoa

It is submitted that any erosion of the 1995 Agreement demeans the integrity of the signatures on the Waikato Raupatu Claims Settlement Act 1995 that gave the Royal Assent. It is understood that this is the only time Queen Elizabeth has signed in person the Royal Assent to any legislation in the Commonwealth, including the United Kingdom (Waikato-Tainui, 2015; Diamond, 2003).

Breaches of the Deed - Tikanga and Policy – the ongoing relationship

> I have always contemplated over the years how we ever managed to achieve Settlement, not just in 1995 but also 2008 with the resolution of the Waikato River claim. I have been in the privileged position of having experienced directly three negotiated Settlements with very distinct and specific approaches to the negotiation conversation. The first was the Maaori Fisheries Settlement 1992. That Settlement was distinct because that involved one conversation, but many voices in the conversation as this was a pan Iwi/Maaori Settlement. With

[38] Maaori leaders were twice refused an audience with Queen Victoria (R. Mahuta, 1995b; Orange, 2020).

> respect to current leadership in Maaoridom today, it was a very different type of Rangatira back then. These leaders were "Giants". And their life experiences were totally different to the experiences of today's "leaders" merely because they grew up and lived in another era where the Treaty was viewed as a "nullity". The progress they made and the efforts they put into elevating the Treaty from a mere nullity to a "living document" we can never be grateful enough for. It's how we now advocate our Treaty and rangatiratanga rights.[39]

The journey of the 1995 Waikato Raupatu Settlement is set out above. The tikanga of redress of the grievance had been set six generations prior by Taawhiao and carried by successive generations and tribal leadership. As already noted, Waikato were lucky that it had strong and visible support from Te Arikinui, Ngaa Marae Toopu, the Trust Board and kaumatua and kuia. Whether they are classified as tikanga, kawa or guiding principles, the approach to the negotiations were:

1. Negotiations are political not legal – it was the Decision of the Court of Appeal that forced the Crown's hand to enter negotiations, not an act of altruism by the Crown; and
2. Political engagement is always rangatira ki te rangatira; and
3. Bottom lines are clear and articulated – "I riro whenua atu, me hoki whenua mai", "Collective loss collective benefit" and "It is better to have nothing than be nothing."

Waikato drew from the tikanga of the past but also developed tikanga and kawa specific to the negotiations as the negotiations progressed. Because the negotiations were direct and only between Waikato and the Crown, the prevailing tikanga was Waikato. Where possible the Principal Negotiator and the team were accompanied by kaumatua. Richard Hill, historian for TOWPU, recalls his first meeting with Waikato in 1989 where Nanny Iti Rawiri and Nanny Mere Taka took the lead and asked the Crown what the difference was between these negotiations and previous negotiations (Hill, 2013). Karakia opened and closed each meeting, whether at Principals level or officials and adviser's engagement. There would be times when the parties disagreed, but everyone should be

[39] Solomon, S. (2018). [Personal paper].

treated with respect. The Waikato team was conscious that we carried and upheld the mana of the Kiingitanga and the tribe and must conduct ourselves accordingly. Sir Robert set the standard. I recall him as the most well-dressed Negotiator; consequently, I had to follow suit, so half my income was spent on my wardrobe. The non-Waikato team members were very conscious of how we carried ourselves and upheld the mana of the tribe. Exercising tikanga was how we gave expression to Treaty and rangatiratanga rights through the Settlement process.

One constant throughout the negotiations, in terms of tikanga that exercised the Waikato team's minds, was whether the Settlement could bind future generations through a "fair, final and durable" proclamation when that statement of fact could only be tested by the progress of time and the actions or omissions of the parties? That issue was the substance of my second research question

The maxim "I riro whenua atu, me hoki whenua mai" was a guiding tikanga and a directive from the past to the extent that any compromise of it would see Waikato walk away from the negotiation table. The only guarantee was that the lands that were not returned would always be subject to a first right, and at the appropriate time, it would be up to the tribe to activate.

Another tikanga of the Settlement, it is submitted, was the reservation of the excluded claims and the preservation of those claims "…the Settlement will not affect the Excluded Claims (including the claims to the Waikato River, the West Coast Harbours and the Wairoa and Waiuku blocks) or any remedies which Waikato-Tainui wish to pursue in respect thereof…" as it preserved and kept intact the "whakapapa" of the 1987 Wai 30 Statement of Claim.

The Relativity provision in clause 16 of the Deed is a tikanga term as it was not just a mechanism to maintain Waikato's relativity against other Settlements but also an undertaking given by the Crown to Waikato to get Waikato's signature on the Deed and the undertaking given by the Principal Negotiator to the Iwi to achieve a mandate to accept the Settlement.

At the heart of the Settlement tikanga were the Preamble, the Apology, and the Crown Acknowledgments, which would render the Crown's explicit intention and promises hollow if a breach of the Settlement occurred.

Waikato River Negotiations

The third negotiation and Settlement for the Waikato River occurred over the period 2008-2010. Like the land component of Wai 30, direct negotiations were exclusively between the Crown and the tribe. In 1999, after the Tribe successfully injuncted the Crown's reform of Electricity Corporation New Zealand, Minister Graham invited the Principal Negotiator to begin negotiations on the Waikato River. Little progress was made on the negotiations due to several reasons, and a lack of willingness was not one. The negotiations were picked up under a Labour Government with a new Minister in Charge of Treaty Negotiations, Margaret Wilson, and new Waikato negotiators who were Lady Raiha Mahuta and Tukoroirangi Morgan (Waikato-Tainui, 2015). The Claim was not a negotiation of proprietary interests, but co-management and the health and well-being of Waikato river became the focus. Later in the negotiations, other river iwi became involved; therefore, tikanga applied at an intra-iwi level. It is submitted that the special status and relationship of the tribe with its Tuupuna Awa was the context of the Settlement tikanga of those negotiations[40]. At the heart of the negotiations were Te Mana o Te Awa, Te Manawhakahaere, and Te Ture Whaimana. Since this was a co-management Settlement, the disposition provision reserved the right of the Tribe to revisit the question of "ownership".[41]

It is the writer's view that these provisions of the Deed are Settlement tikanga in that their integrity depends on the acknowledgment by Waikato that the Crown acted "honourably and reasonably in relation to the Settlement" and the acceptance by Waikato at the time that this would always remain so. What impacts the tikanga of these Settlements is the application of Crown policy at the time and subsequently.

[40] *Deed of Settlement between the Crown and Waikato-Tainui in Relation to the Waikato River, 2009*

[41] (Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010, s.64)

As commented upon already, the Fisheries Settlement was for the Crown to respond to the series of decisions of the Court and to find a redress package that iwi and Maaori would accept. The Court did not indicate the basis upon which redress would be allocated.

The 1995 Raupatu Settlement was unique. Policy was in the formative stages at the end of the 1980s and the start of the 1990s and it was not clear what the issues the Crown needed to address through policy. What was clear was that policy must be fiscally doable and sellable to the New Zealand public, considering the state of the economy at the time. Also, in a formative stage was the infrastructure the Crown needed to begin the negotiation and Settlement process (Treaty of Waitangi Policy Unit or TOWPU established in 1989). The policies that tested the negotiations were the full and final reference, the fiscal envelope provision, natural resources (minerals), the land banking process or lack thereof, availability of the conservation estate for redress, and the inclusion of rangatiratanga rights.

Fairly, the progressive development of policy and processes was both an advantage and a disadvantage. By the time of the Waikato River negotiations and Settlement, fifteen years of growth in the Treaty policy and Settlement industry had set in place a uniform template for negotiating and settling claims. But the real test of the durability of Settlements would be the development and imposition of post-settlement policies.

The first major policy and legislative change after 1995 that impacted the agreement was the reform of the Electricity Corporation of New Zealand into a State-owned enterprise in 1999.[42] Waikato felt this would impact a) the Crown's ability to protect the tribe's claim to the Waikato River without the necessary Crown undertakings and b) the range of options to provide redress.

The second legislative change was the Foreshore and Seabed Act 2004,[43] which expressly vested the legal and beneficial ownership of the foreshore and seabed in the Crown. Wai 30 included the foreshore of the West coast harbours. In addition, to claim a customary interest in a harbour required proof of an unbroken and contiguous

[42] (Electricity Industry Reform Act 1998 No 88, 1998)

[43] (Foreshore and Seabed Act 2004 No 93 (as at 01 April 2011), 2004)

connection to a harbour and that, of course, was broken by the Raupatu. So, Waikato suffered twice the loss of other tribes.

The third action of the Crown was the 2012 Tamaki Collective Deed of Settlement[44] which provided redress to non-Waikato claimants in breach of the 1995 Deed of Settlement by transferring right of first refusal properties to the Collective and setting aside Manukau Harbour for future negotiation with the Tamaki Collective, despite the 1995 Excluded claims.

The fourth action was the public share float of the State-owned power generation companies. It is submitted that the action was in contravention of the s64 disposition provision of the Waikato River Settlement legislation. The development of a freshwater policy and a water allocation regime disregarded Te Ture Whaimana and co-management arrangements and contravened the disposition provision.[45]

The fifth action was the treatment of Settlement redress that undermined the integrity and the intention of the 1995 relativity clause and the intention, if not the meaning of that provision. Two notable matters stood out at the 2012 Arbitration hearing on the relativity clause.

1. Witness evidence was provided by people not involved in the 1995 Settlement; therefore, evidence on what was intended by the relativity provision and how it was calculated was hearsay at best. Unfortunately, the Tribe did not call as witnesses the members of the 1995 negotiating team who were party to that discourse. To have a memorandum to the Principal Negotiator from the Board Secretary read out by Waikato's legal counsel whilst the said Board Secretary was present also highlights whether we practiced our own tikanga.
2. There appeared to be a retrospective application of current policy to the agreement and intentions of the 1995 Deed of Settlement.

[44] *Ngā Mana Whenua o Tāmaki Makaurau and the Crown Collective Redress Deed, 2012*

[45] The New Zealand Maori Council and Others v The Attorney-General and Others (SC 98/2012) [2013] NZSC 6 (Supreme Court of New Zealand, 2013).

> "As part of the Waikato team I could not investigate the future and assess how the Crown would develop Policy on categories of Settlement redress values, nor could I or did I as a Tribal member when I voted for Settlement in the postal referendum."[46]

The sixth action was Crown policy enabling Hauraki claimants to have interests in the 1995 Waikato redress (Pare Hauraki Collective Redress Bill, Parts 1 and 2).

The seventh action is the large natural grouping policy developed under the Labour government.[47] Minister Little had asked Waikato to be given the mandate of 94 Wai claim claimants over and above our Wai 30 excluded claims. Those claims were non-Raupatu claims and outside the Raupatu boundary. It doesn't seem legal or right that puutea built on the redress from 1995 would be used to support non-Waikato claims and claimants to negotiate and achieve Settlement. That approach takes time and resources away from resolution of the Wai 30 excluded claims. Moreover, that approach cut across the tikanga of the 1995 Settlement, Wai 30, and seven generations of the mamae of Raupatu. The mandate given to the Negotiator was for Wai 30 and not for another claim, and the kaupapa in that regard was the Waikato Raupatu. This approach either demonstrates the arrogance or ignorance of the Crown and a disregard for the mana of 94 claimant groups and Waikato. This was a bizarre process. The rationale defies logic and probably has a tenuous legal foundation. At least with the "fiscal envelope" and Seabed and Foreshore legislation, one could understand the logic of those policies and legislation despite opposition. From my perspective it smacked of laziness on behalf of officials and an unappreciation by the Minister of tikanga. His engagement with Ngaapuhi must have at least indicated to him how mandate goes to the heart of tribal identity and the personal attachment tribes have to their mamae and our pain. To insist that a mandate process requires engaging with non-Waikato and non-Raupatu claimants and their claims is, to reference the Huakina Development Trust position in the 1985 Manukau Harbour Tribunal Inquiry, a "Mixing of the waters."[48]

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[46] Solomon, S. (2008). [Personal paper].

[47] As noted in: *Ka tika ā muri, ka tika ā mua - Healing the past, building a future: A guide to Treaty of Waitangi Claims and Negotiations with the Crown* (New Zealand Government, 2018).

[48] See page 57 and 90 of the *Manukau Report* (Waitangi Tribunal, 1985).

Can Waikato fulfil the Crown's request? Legally, we can't. The Rules of Te Whakakitenga o Waikato[49] only allow the Trustee of the Waikato Raupatu Lands Trust to have a remit over the Raupatu (excluded claims) and non-Raupatu claims of Waikato. It is my submission that that is an infringement of tikanga and of law under the Incorporated Societies Act 1908 (repealed in 2022) and the 1995 Settlement legislation.

The final example that I refer to (though there are many others) is the current Coalition government's anti-Maori policies that undo at least 50 years of Maori progress and race relations. These policies are odious because of the real impact on Maaori, affecting our health and well-being at all levels. It is a home invasion of every Maaori household that renders us as second-class citizens.

This was an outcome I thought I would never see happen. But all the signs were there. In 1993, voters in New Zealand approved a referendum replacing its single-member plurality or 'first-past-the-post' electoral system with a proportional representation (PR) system known as Mixed-Member Proportional or MMP. The referendum, in which MMP received 54 percent of the vote, was preceded by a non-binding referendum held in 1992 where roughly 85 percent of voters rejected first-past-the-post (Roberts, 2020). This inevitably meant coalition governments would be formed except during the 2019 elections when Labour had a clear mandate to form a government on its own.

The 2023 nationwide elections saw the emergence of a coalition government of National, New Zealand First and Act. The parties to the coalition then began horse trading hard-won Maaori development priorities. The outcome has been a collapse of what Maaori (and Aotearoa/New Zealand) had formed in terms of real transformative change over the last 50 years. The parties agreed to "upholding the principles of liberal democracy including equal citizenship, parliamentary Sovereignty, the rule of law and property rights especially with respect to interpreting the Treaty of Waitangi" and "The Coalition Government will defend the principle that New Zealanders are equal before the law, with the same rights and obligations, and with the guarantee of the privileges

[49] https://waikatotainui.com/about-us/governance/

and responsibilities of equal citizenship in New Zealand" (*Coalition Agreement - New Zealand National Party and New Zealand First*, 2023, pp. 9–10).

The following is taken from the Hobson Pledge e-Newsletter dated 24.11.2023.[50]

NZ First and National

1. Abolish the Maaori Health Authority.
2. Commit that the name of New Zealand will not change unless a referendum is conducted.
3. Ensure all public service departments have their primary name in English, except for those specifically related to Maaori.
4. Require the public service departments and Crown Entities to communicate primarily in English.
5. …will not advance policies that seek to ascribe different rights and responsibilities to New Zealanders on the basis of their race or ancestry.
6. Commitment to remove co-governance from the delivery of public services.
7. It is the Government's expectation that public services should be prioritised on the basis of need, not race.
8. Restore the right to a local referendum on the establishment or ongoing use of Maaori wards, including requiring a referendum on any wards established without referendum at the next Local Body elections.
9. Stop all work on He Puapua.
10. The Coalition Government does not recognise the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) as having any binding legal effect on New Zealand.
11. Amend section 58 of the Marine and Coastal Area Act to make clear Parliament's original intent.
12. Conduct a comprehensive review of all legislation that includes "The Principles of the Treaty of Waitangi" and replace all such references with specific words relating to the relevance and application of the Treaty or repeal the references.

[50] https://www.hobsonspledge.nz/newsletter?page=4

Act and National

1. Restore balance to the history curriculum.
2. Examine the Maaori and Pacific Admission Scheme (MAPAS).
3. Immediately issue stop-work notices on Three Waters (with assets returned to council ownership).
4. Uphold the principles of liberal democracy, including equal citizenship and parliamentary Sovereignty.
5. Ensure government contracts are awarded based on value, without racial discrimination.
6. Issue a Cabinet Office circular to all central government organisations that it is the Government's expectation that public services should be prioritised on the basis of need, not race, within the first six months of Government.
7. Repeal the Canterbury Regional Council (Ngaai Tahu Representation) Act 2022.
8. Introduce a Treaty Principles Bill based on existing ACT policy and support it to a Select Committee as soon as practicable.' (Hobson Pledge e- newsletter 24/11/2023)
9. Additional policies found in the National and Act arrangement are;
10. Update the Crown Minerals Act 1991 to clarify its role as promoting the use of Crown minerals.
11. Replace the National Policy Statement for Freshwater 2020 to rebalance Te Mana o te Wai to better reflect the interests of all water users.
12. Improve the cost-effectiveness of the school lunch programme.
13. Examine the Māori and Pacific Admission Scheme (MAPAS) and Otago equivalent to determine if they are delivering desired outcomes.
14. Additional policies found in the National and New Zealand First arrangement are;
15. Replace the Resource Management Act 1991 with new resource management laws premised on the enjoyment of property rights as a guiding principle.
16. Liberalise genetic engineering laws.
17. Replace the National Policy Statement for Freshwater Management 2020 to allow district councils more flexibility in how they meet environmental limits and seek advice on how to exempt councils from obligations under the National Policy Statement for Freshwater Management 2020 as soon as practicable.

18. Update the Crown Minerals Act 1991 to clarify its role as promoting the use of Crown minerals.
19. Replace the National Policy Statement for Freshwater 2020 to rebalance Te Mana o te Wai to better reflect the interests of all water users.
20. Repeal the ban on offshore oil and gas exploration.
21. Law and Order.

It is submitted that the above examples (there are others) are actions and omissions of the Crown that will test whether the 1995 Settlement is enduring. The regrettable conclusion is that the intention regarding the word and spirit of the 1995 Settlement is that the Crown, represented by the Coalition government, will compromise the Settlement.

The policy dictates that were applied in 1995 are accepted as the informed compromise and concession of negotiations; however, any policy and legislation post-1995 unilaterally applied by the Crown is outside the scope of the Agreement and, therefore, null and void.

Essential to our Settlement pedagogy is protecting those negotiations, and we must be vigilant and active in that role.

Summary

There is no doubt that the signing of the Deed of Settlement in 1995 was done with the honour, respect, and mana of the occasion and the parties to the agreement. What my research sought to do was take the reader back to the time of the negotiations and describe what was happening for the tribe and for the government. I also sought to describe what motivated the Tainui Maaori Trust Board and the National Government to settle the long outstanding grievance shouldered by Waikato.

Figure 19

Negotiations team – 22 May 1995, Tuurangawaewae Marae.

My research sought to emphasise the uniqueness of the Waikato negotiations. Those negotiations set the precedent and are responsible for current Treaty policy and processes today. Whatever mistakes or compromises were made in 1995 were done so without the benefit of hindsight or the learnings from another Settlement. Both Waikato and the Crown negotiating teams were in the advantageous and disadvantageous position of tilling new soil. Each took tentative steps in the initial engagement. Those steps turned into bold and courageous strides as the impossible became possible.

For both parties, the rules of the game were developed as the negotiations progressed. However, in the absence of "rules", each had their own set of guiding principles. For Waikato it was to fulfil Taawhiao's edict, "I riro whenua atu me hoki whenua mai" which was missing from the 1946 Settlement. As well, Waikato wanted to put right the public record that Waikato fought in defence of their lands and the people were not rebels. For the Crown, it was to restore their honour and resolve long standing grievances as directed by the judiciary in the most fiscally prudent and efficient manner possible. And to do more than put a band-aid over the sore.

To also explain the inevitable friction of the non-negotiables, the policy calls made by Crown officials and public servants and what is submitted can be called Settlement tikanga, or the tikanga that determined how Waikato engaged in the negotiation process, how the team carried and protected the kaupapa, and the mana of the people. Also, the tikanga of courage, making the hard call despite the popular mood of Maaori protestations at the time. Lastly, the tikanga of the protective Korowai of Te Arikinui and the Kaumaatua and Kuia.

Figure 20

Tainui Maaori Trust Board and Staff on the steps of Parliament after the third and final reading of the Bill. 19 October 1995.

Government actions, omissions, policies and legislation continue to disregard and ignore, or at best, reinterpret the agreement of 1995. In that regard, there is a clear affront to the Settlement tikanga and the mana of Waikato.

My research offers no set of rules to deal with the Coalition government, merely context which is so important for the next generation of tribal intellectuals to create their own solutions and pedagogy for their era. What occurred in 1995 – imperfect as it was – was a continuation of the process that began in 1863. What the current generation must do

is build on the opportunity and break from the stranglehold of oppression to give expression to mana motuhake and protect the intent of the 1995 Settlement. The future generation must look at innovative ways to continue the journey. There is a much deeper narrative to be revealed that takes the transactional nature of contract breach to the myth of nationhood, the Crown's honour, and the mirage of partnership.

Important is the mana of the people, both individually and collectively. This frames the difference between the contracting parties: the mana of one is through whakapapa, and the mana of the other is won through a three-year election cycle. The conversation was always doomed to be at cross purposes and compromise was inevitable and accepted. What was negotiated was the mamae of Waikato through the Apology and the Crown Acknowledgements.

The next Chapter is the story of Sir Robert who influenced the pedagogy for Waikato. My research would be incomplete without proper acknowledgment of his role.

CHAPTER SIX - THE PEDAGOGY OF LEADERSHIP – SIR ROBERT MAHUTA

Introduction

In terms of this research, it is important to reiterate that pedagogy is cast in the context of how we did things, how we negotiated the Raupatu Settlement, and why we did what we did. This Chapter examines the 'Pedagogy' of Leadership, specifically that of Sir Robert Mahuta. His favourite karaoke song was 'I did it my way'.

I have, in my Master of Business Administration Research Project (2013), made a comment on leadership in a theoretical sense with reference to Sir Robert's leadership characteristics. But in this particular commentary it is more the personal observations and recollections that I described, in part, in my own puuraakau (Chapter Five).

I need to caveat at this point if it is not evident by now that I idolized the man and was in awe of him, but my objective is to describe the man and his leadership through his actions and relationships and his contribution to the pedagogy of the 1995 Raupatu Settlement. In the scheme of things, I only knew the man for a short while – just under a decade from 1992 to his death in 2001. But every minute of those ten years was connected to Sir Robert, his vision, the raupatu, and in a way, it still is. It is a position also shared by my participants in their puuraakau.

As outlined in Chapter One, my first encounter with Sir Robert was an interview with him at the Centre for Maaori Studies and Research at Waikato University. It would have been late March 1992 and Sir Robert sat behind his desk reading papers. He extinguished his cigarette and gave me a wide grin. He asked me about my whakapapa - principally my grandfather and my father, where I did my law degree, and there was some banter about Tuurangawaewae and Taniwharau Rugby League clubs which mostly went over the top of my head. From memory, that was the extent of the interview. He asked if I could start straight away, if I had my own transport and to go and see his assistant Myrtle in the office next door to arrange a contract.

What impressed me most about my first meeting with Sir Robert was how unimpressive he was. He was not a man of huge physical stature who demanded or commanded a

room, but there was certainly an innate physical strength that spoke of his being no stranger to hard labour. There was a force of presence and of power, and later, I would understand the words of De Gaulle he often quoted. I did get a sense that he was an important person by the way Uncle Binga spoke about him with awe and respect. Little did I know after that brief 15-minute encounter that I had been in the presence of one of the most influential leaders of Waikato and indeed Maaoridom of modern times, and his destiny and full legacy were still to be realised. Over the past 30 years, thinking about that interview, it struck me what a strange encounter that was. In retrospect, it was an interview based on tribal affiliation, a kinship link – belonging to a community, a matrix of generational servitude and familiarity. Of whakapapa. Or maybe he was simply doing his friend Binga a favour by giving 'the nephew' a job. What I recall of Sir Robert was that he was always looking to the future, searching for young educated tribal members who had gone out into the world and experienced it and would bring their unique 'toolkit' home to work for the tribe. I hope the reason for my engagement was the latter, but whatever the reason, my fate was sealed.

The early days with Sir Robert were mainly spent at two locations—the Centre for Maaori Studies and Research at Waikato University, and Tuurangawaewae House, Ngaaruawaahia where the offices of the Tainui Maaori Trust Board were located. With the return of Hopuhopu and Te Rapa the Centre relocated from the University to Hopuhopu alongside the Trust Board's administration in 1994.

Upon reflection, Sir Robert seemed to organise his interactions with people according to their roles and functions and what part of his life they intersected. Certainly, as part of his wider strategy, he appeared to consider how other people might contribute to the end goal of tribal development and the resolution of raupatu. For the purposes of my research, I have organised those interactions into the following groups:

- Pedagogy of the tribe – Waikato and Kiingitanga, Tainui Maaori Trust Board (the members and staff), and Ngaa Marae Toopu.
- Pedagogy of the people – Kaumaatua and Kuia, Marae, Huntly, Waahi Pa, Taniwharau Rugby League Club, Tuurangawaewae, Coal mines, Freezing Works.
- Pedagogy of academia and research – Auckland University, CMSR, Waikato University, Oxford, fellow academics, international scholars.

- Pedagogy of the motu – Tuuwharetoa, Whanganui, Muriwhenua, New Zealand Maaori Council, Maaori Congress, Hui Taumata, Sealord Settlement.
- Pedagogy of government – Politicians – Robert Muldoon, Duncan McIntyre, Matiu Rata, Koro Wetere, Richard Prebble, Doug Kidd, James Bolger, Douglas Graham.
- Pedagogy of the future – Young Maaori graduates.

This chapter on the Pedagogy of leadership and more accurately the pedagogy of Sir Robert's leadership, is worthy of time spent in consideration of the overall research topic. More so, without an analysis of that leadership, and at the minimum a critical and objective deference to it, there is nothing to tell, no learnings to be had, and no sign-posts to follow. Though each part of the raupatu journey is separate and has its own purpose, it is the sum of all parts that make the whole. The art, the science the intellectual firepower to examine how this was done was what drove Sir Robert. He would be the first to acknowledge that there was the Waikato and the Kiingitanga leadership before him that chipped away through each generation to get to a particular point in time when the circumstances were right to achieve the 1995 Raupatu Settlement.

In a paper Sir Robert Mahuta provided to a New Zealand Law Society conference in Wellington just prior[51] to the signing of the Settlement, he made the following comments on the tribe's organic and systematic approach to Settlement:

> The organisers of this conference suggested that I speak on the topic, Tainui: A Case Study of Direct Negotiation. To understand the topic requires the telling of a tale that began many years ago. Direct negotiations are a recent but significant part of this tale; and, I might add, the tale has not ended! (p.157)
>
> Thus began the current round of negotiations to settle the Raupatu land claim. Negotiations have been part and parcel of the search by Tainui for redress throughout the years since the grievance occurred. Over that time Tainui has been at war, sought peace, negotiated through various tribal leaders, sent deputations direct to England, been the subject of a Royal Commission, had a

[51] 9-10 February, 1995

> full and final Settlement, re-opened the claim, accessed the court system, filed a claim with the Waitangi Tribunal, and re-entered negotiations. (p.168)
>
> Throughout this time, Tainui had begun to rebuild an economic base from the ashes of war and land confiscation. Faith in itself and the visions of Taawhiao have seen Tainui persevere in its endeavours to develop and not concentrate exclusively on redress. This has been an important part of the process over the past 130 years. The statistics of today reveal the crisis which faces the tribe and requires the acceleration of the development strategy at an urgent pace. (R. Mahuta, 1995a, p. 168)

I believe that statement described Sir Robert's mission in life and what can be described as his leadership style and motivation. This is not an academic analysis of leadership. Instead, it is a testimonial to what was observed and to understand why and what happened in response to my second research question about reparation and empowering the next generation of Waikato people to achieve 'full and final' as their bottom-line requirement of the Crown.

I cannot stress how important this is in terms of the modern Treaty Settlements from 1992 to the present. My conclusion would be that 'leadership' and 'rangatiratanga'—however expressed—are of a time and particular circumstances. It follows that I am of the strong belief that the pedagogy of leadership is the key ingredient in Treaty settlements. Treaty settlements as a Eurocentric concept are viewed by the Crown as purely transactional with some symbolic window-dressing, and from experience, it is a bottom-line budgetary exercise based on a business case cost-benefit analysis. Though, to be fair, there was a degree of good intentions, particularly on the part of the Treaty Settlements Minister, Doug Graham, Prime Minister Jim Bolger, and Minister of Finance, Bill Birch.

However, goodwill was negated by the introduction of the Fiscal Envelope designed to cap the value of Settlements at $1 billion. For Waikato, as I have previously mentioned, settlements transcend time. In our view settlements exist along a continuum that can adapt and change without changing the kaupapa of 'I riro whenua atu me hoki whenua mai – as land was taken so land must be returned'. This extends from the puuraakau of Hoturoa through to Te Wherowhero, from Taawhiao, from Princess Te Puea and down

the line of the Kiingitanga. Hence, there is a continuum that has no finality and by its very nature and for Waikato iwi, ‘full and final’ is therefore nonsense.

More recently, the politics of the Coalition government discussed in the previous Chapter continue the illusion of parliamentary supremacy and threaten existing and future Treaty settlements on a scale not seen since the Foreshore and Seabed Act 2004.

These distinctive leadership approaches inform two very different pedagogies which underpin the relationship between the Crown and iwi, despite rhetoric to the contrary. That relationship is irreconcilable until the Treaty, tikanga-a-iwi, and customary rights become the norm and are tethered to our constitutional arrangements. Anything less is unconstitutional.

The leadership of the Kiingitanga and the implementation and action of Sir Robert Mahuta’s leadership style and negotiation strategy defined and identified what was ‘the best deal in town’ at the time. Recalling the days when he was a Board member as recounted by Diamond (2003), Sir Robert said:

> We younger leaders had confrontations with Pei Te Hurinui Jones and the old Tainui Maaori Trust Board because they reminded us of what Te Puea had said and what she had agreed with Fraser. To them, what we were trying to do was counter Te Puea’s agreement. I said ‘no, no, no that was during her time, this is our time and we’ve got to do it another way, there must be another way to do it. We could sense there was a sea change in attitudes towards these grievances. We weren’t well received by Pei Te Hurinui. He actually never accepted our reforms of the Trust Board, right up to the day he died. (p.123-124)

This position taken by Sir Robert underscores the pedagogy of settlement for Waikato as has already been described and that is the enduring generational context that was brought to the direct negotiations and again the illusory context of finality held by the Crown but rejected by Waikato.

This chapter examines ‘leadership’ as a Waikato pedagogy that cannot be replicated as it has its source in whakapapa and rangatiratanga and our own unique experiences of colonisation. Leadership is also quiet and personal to the individual. A question I would

sometimes ask myself during those negotiations and more so during the tribe's transition after it had settled was – would you die for this? I believe this was a question we all asked ourselves. Re-reading Sir Robert's interview with Paul Diamond (2003) he said: "Raupatu was a cause, in a sense, worth dying for, and if I was going to put out, then I wanted to do it for something that was worth dying for. I was afraid of nothing after that" (p.142).

I submit that Sir Robert took the literal route. He passed away 23 years ago at the relatively young age of 61, only six years after signing the 1995 Raupatu Settlement and a month after his interview with Paul Diamond. By the time I graduate, having completed this research, I will be 61. From my observations over the years, you give to raupatu, but it also takes.

Sir Robert's leadership and why he did what he did can be answered by the words of the man in the interview with Diamond. However, I think that is only half the story. How we perceive ourselves is often not how others perceive us. Sometimes we have an undercooked or an overcooked version because we are uncomfortable about extolling our virtues or owning our flaws publicly. Sir Robert had an unmistakable style as a negotiator which if one were to use a psychological analogy, he would be described as having multiple personalities. There was a mix of skills necessary to achieve what was required, including a high sense of political astuteness, both generally and tribally, and the ability to read the room. What I remember most about Sir Robert was that I probably did not know him. He was certainly a paradox. I saw glimpses of the man – but not the whole man. He often quoted Charles De Gaulle as he told Diamond (2003)

> The quote I used from Charles De Gaulle in the 1999 annual report for the Tainui Maaori Trust Board and Te Kauhanganui, 'There can be now power without mystery,' I think, encapsulates a lot of what mana means to us. It's that whole spirit of whakaiti within Kiingitanga that I'm talking about – being very humble. There can still be strength in humility, it doesn't have to be arrogant. But you can sense it's there. It's a sort of steel fist within a velvet glove (p. 141).

Another view Sir Robert had on power and more reflective of the tone of the man was "…the secret of power is not to accumulate it but give it away" (Diamond, 2003, p. 126).

I remember many hui with the Tainui Maaori Trust Board, and poukai, and hui-a-motu, and meetings with the Crown where Sir Robert would sit silently listening to the koorero, sometimes shutting his eyes and nodding occasionally. He seemed present but also filtering the koorero through a metaphysical lens. He remained a mystery, an enigma and a paradox to me.

Pedagogy of the motu

Sir Roberts' leadership was partly defined by his peers, and more so when a different age of the rangatira came to the fore in the 1980s due to the political, social and judicial changes in Aotearoa New Zealand. My recollections were that Sir Robert associated with rangatira such as Matiu Rata, Tipene O'Regan and Sir Graham Latimer (Fisheries Negotiators), Apirana Mahuika, Archie Taiaroa, Kara Puketapu, Manu Paul, Toby Curtis, Eddie and Mason Durie, Tamati Reedy, Ngatata Love, Georgina Te Heu Heu, Naida Glavish and many others. Below that tier of rangatira were a whole lot of younger practitioners within iwi and predominantly the legal fraternity who were also making their contribution to the emerging leadership discourse. The years of investment (and ironically loss) by successive Maaori leadership was about to make its first return on that singular and focused collective voice calling for rangatiratanga and mana motuhake. Also, the successive years of individual sacrifice and self-investment by a cadre of individuals who wanted to have a voice and control over their lives after years of assimilationist policy both subtle and direct became more adept at navigating the Court rooms and the halls of Parliament, particularly during engagement on the State-Owned Enterprises Act 1986.

At this time, the main focus for Maaoridom was the settlement of the commercial fisheries led by the Fisheries Negotiators, Matiu Rata (Muriwhenua), Sir Tipene O'Regan (Kai Tahu), Sir Graham Latimer (Te Tai Tokerau) and Sir Robert Mahuta (Waikato). This example is what I directly experienced and can speak of from my 'insider' position. What I admired about those negotiators is that they all had 'skin in the game', meaning they had made personal sacrifices to progress the kaupapa despite the uncertainty of an outcome and despite the huge odds they faced.

There was a dynamic that defined the intercourse between the negotiators. Matiu Rata and Sir Robert were very close and had their own alliance (Sir Robert assisting with

Matiu Rata's Muriwhenua Claim), often meeting separately to agree the strategy they would engage with the other two negotiators. Sir Graham Latimer was very much the 'poster boy' of the negotiations who appealed to the politicians and the big players of the fishing industry. Sir Tipene O'Regan was more on the outer, bringing a distinctive Ngaai Tahu position front and centre to the negotiations that did not resonate with the other negotiators; however, they were unanimous in 'landing the fish' before they carved it up. Taken together, they were formidable.

Sir Robert certainly had a significant role amongst the other three Negotiators. He set the strategy having had the benefit of our Waikato Raupatu negotiation with the Crown running parallel to the Fisheries pan-tribal negotiations. He also had the benefit of a wide Motu network that traversed tribal, political and economic development. They saw the need to be inclusive of a decision Maaori would make about their Treaty rights and this was my first glimpse of research in action as he took a roadshow on behalf of the negotiators to the Motu to talk to the people on their marae, informing them of the Fisheries claim and the Settlement. This was an extensive consultation drive, and he used the Centre for Maaori Studies and Research to provide administrative support and analysis of the consultation feedback.

Another example of his extensive network was his role on the Maaori Advisory Board to the Department of Maaori Affairs who in Sir Roberts view were the advisers and policy makers of Maaori development during the 1980s. He would report back to the Centre about the key development issues and how they could be addressed (Diamond, 2003). He recounted his interaction with other Maaori during the Hui Taumata in 1984 as being the start of a network where Maaori saw Maaori development intertwined with greater recognition of a Treaty jurisprudence within the New Zealand's political landscape. One initiative that came out of the Hui Taumata was the Maaori Development Corporation which was launched in 1987 (Waitangi Tribunal, 1993). During the 1970s and 1980s there was a powerful momentum for change in Maaori society. An influential factor was concern over the growing socio-economic gap between Maaori and Paakehaa. The need for an accelerated drive to improve the economic position of the Maaori people was becoming urgent.

The Hui Taumata (Maaori Economic Summit Conference) in October 1984 was convened by the Minister of Maaori Affairs, the Hon. Koro Wetere, to address the

issues. The hui discussed the proposal for a development bank and recommended "as a matter of urgency, a professional study of the needs, role and means of creating a Maaori Development Bank" (Waitangi Tribunal, 1993, p. 7).

As a result, the Maaori Development Commission was established and reported in February 1986 in favour of a development bank, incorporating the commercial activities of the Maaori Trustee and Maaori land development funds, together with additional support from the Crown. *The Maaori Development Corporation Report* also states:

> On 1 July 1987 the Ministers of Finance and Maaori Affairs released a press statement launching the new Maaori Development Corporation (MDC) and a trust fund of $10 million held by the Poutama Trust, to work in parallel with the MDC. The Corporation would have a paid-up capital of $24 million and authorised capital of $50 million. The government was to contribute $13 million of the paid-up capital, and the Maaori Trustee's contribution was $7 million. Fletcher Challenge and Brierley Investments were to contribute $2 million each. (Waitangi Tribunal, 1993, p. 15)

Sir Robert became a Board Member of MDC (later Chair) and also a Maaori Fisheries Commissioner. The Tainui Maaori Trust Board and Taharoa C (a Maaori Land Incorporation located on the west coast operating a significant iron ore extraction enterprise) later bought shareholding in MDC (Waitangi Tribunal, 1993).

It was during the early 1990s I recall the interconnection between Maaori development aspirations and Treaty rights that only iwi and Maaori could assert, and the hand Sir Robert had in it not only for Waikato but also for the nation. The number of hui I attended during those times exemplified – at least for me – that I was witnessing an age of giants as in legendary and powerful entities. This collective of men and women were united under the principle of kotahitanga and were driven by an unrelenting commitment to kaupapa and to seeking justice. In the words of Sir Robert:

> There are certain principles that remain constant through time, it doesn't matter what happens as long as you can recognise those principles and interpret them at each generation, then I think you don't get lost. (Diamond, 2003, pp. 139–140)

Talking to the principle of rangatiratanga, Sir Robert said:

> Rangatiratanga is enmeshed with whakapapa, but it must be accompanied by performance. A rangatira, is to a large extent, quite humble in the way that he carries and deports himself within the tribe. You cannot afford to be arrogant otherwise you're dead, and you've always got to have the good of the tribe at heart, in whatever you do. (Diamond, 2003, pp. 140–141)

There were a number of hui held on a range of kaupapa including Land Corporation, Fisheries, Aquaculture, Crown Forestry, Tourism, Broadcasting and a whole raft of industry opportunities. The shift again from my observations was the intersection between grievance resolution, rights recognition and Maaori economic restoration. There was in the late 1980s and early 1990s the coalescence of pan tribal and pan Maaori entities such as the Maaori Development Corporation, the Maaori Fisheries Commission, Te Ohu Kai Moana, and the Crown Forest Rental Trust. These entities added to and enhanced the economic development objectives of established organisations such as the Federation of Maaori Authorities, the New Zealand Maaori Council, Maaori Congress and the Maaori Women's Welfare League as well as the various Maaori land incorporations and iwi authorities. It is my opinion that Sir Robert's work through the 1980s built on his academic and action research though the Centre for Maaori Studies at the University of Waikato, and his mahi with the economic and social challenges of his own iwi which accelerated the establishment of a Tiriti Settlement space. The Maaori economy was an underdeveloped and untapped resource and potential contributor to the New Zealand economy, much as it had been since the 1840s. This was at a time when the New Zealand economy, as already mentioned, was going through economic pain. Maaori traditional sectors of employment such as mining and the primary sector were closing down, adding to the social inequities experienced by Maaori. This was very much a generalised sense of the state-of-play at that time but provides the context for what Waikato built upon using its already established settlement pedagogy with tribal development at the fore as described in John Te Maru's puuraakau. Spurred on by the need to rise from the 'ashes' of raupatu, they took advantage of the opening window of Treaty breach resolution. With that came the perfect storm for Waikato to play its cards and Sir Robert had engineered that outcome and the game was afoot. As Sir Robert opined to Diamond about settling the Raupatu "By that time with Raupatu heating up, the old people threw their challenge at me –

you've got to resolve this Raupatu issue, we cannot go on with it hanging over our heads all the time" (Diamond, 2003, p. 132).

What is not appreciated is that Sir Robert was not only a leader within his iwi but also within Maaoridom and that his strategic brilliance included the establishment and maintenance of a strong network of Maaori leaders - particularly during the 1984 Hui Taumata and in preparation to challenge the Crown's assumptions about and attempts to deal with the so-called 'Maaori problem' and the Treaty of Waitangi (Diamond, 2003).

Pedagogy of the tribe

The wellbeing of the Waikato tribe was core to Sir Robert's purpose, and core to the tribe's purpose was Kiingitanga. My view is that the following words of Sir Robert describes his relationship to both:

> When I was growing up, I had two sets of uncles. One was the older lot, the kaumatua, basically Koroki's uncles. Like Tonga and the others who played leadership roles in the Tribe.
>
> Below them were my younger uncles who played football and worked in the mines, but who were all uneducated. They worked hard and they loved life. They were the ones who actually taught me the day-to-day skills of life, what it meant to be poor and to cope with poverty.
>
> One of the reasons why the Kiingitanga was set up was to hold the land – it was critical to the whole movement. But after the land wars this thing called Raupatu – the confiscation occurred…I remember hearing my older uncles saying that as land was taken so land should be returned. Don't talk about money. (Diamond, 2003, p. 115)

Without question Sir Robert's leadership was defined and qualified by his relationship with his sister Te Arikinui Dame Te Atairangikaahu. Regarding the Settlement, that relationship was the symbiotic leadership between sister and brother that brought the tribe to Settlement:

> Te Ata's certainly the ceremonial leader of the movement and I'm the fixer, that's all. I don't look for anything more than that. I don't want any recognition. I am not comfortable in that symbolic setting. That's why Te Ata signed the Deed of Settlement. The land was confiscated from our old people who attempted to preserve it by uniting under Te Wherowhero. We are all descendants of Te Wherowhero and Taawhiao but in different degrees, but she is the only direct descendant. (Diamond, 2003, p. 120)

Sir Robert in private conversations would describe himself as her shield, her protector and his job was to take the 'hits'. During the period leading into Settlement, particularly towards the end of negotiations when the 1984 Fiscal Envelope policy was introduced, criticism turned to threats. Sir Robert not only protected the tribe and the tribe's position, but he also protected his sister and by extension the Kiingitanga. Sometimes I got the impression Sir Robert was a scrapper, whether it was intellectually or philosophically, and he enjoyed the challenge and certainly the debate. What gave him strength for the challenge - over and above his conviction - were his friendships back on the marae and in the Taniwharau Rugby League clubrooms.

At another level it was the old people who protected and guided him. He took counsel and comfort from them, particularly drawing on their tikanga and wairua. And their mamae "…. in relation to their lost lands akin to those of orphans…" as is described in the Apology (Waikato Raupatu Claims Settlement Act 1995, Part 1).

The Pedagogy of Research – Centre for Maaori Studies and Research

In those early days, particularly at the Centre, I observed how Sir Robert surrounded himself with an eclectic group of individuals. The Centre for Maaori Studies and Research had been established in 1972 alongside the Faculty of Maaori Studies at the University of Waikato.

There was the larger-than-life, flamboyant Professor James Ritchie, a legend in his own right within the world of academia, particularly in the field of childhood psychology research with his wife Professor Jane Ritchie. Professor James Ritchie's connection to Maaoridom – including an association with Princess Te Puea – went well back to his

youth. James and Jane co-published the book titled *Becoming Bi-cultural* (1992). Professor James Ritchie was also Deputy Director of the Centre for Māori Studies and Research. Sir Robert and Professor James Ritchie appeared to have a unique and special bond beyond academic collegiality. James also had a close relationship with Te Arikinui Dame Te Atairangikaahu as a confidant, an adviser, speech-writer and a friend. He was the Paakehaa face of the tribe fronting our public relations with the non-Maaori community. Isla Nottingham was also a senior researcher alongside James.

Dr Ngapare Hopa (Ngaati Waitakere) was part of the Centre staff. She was formidable in many ways and her mind was razor-sharp. She certainly exemplified waahine toa. Dr Hopa was the first Maaori woman to earn the degree of Doctor of Philosophy from the University of Oxford in 1977.[52] She became a senior researcher at the Centre for Maaori Studies and Research after Sir Robert asked her to return home from the United States and assist with the research required to advance the claim and prepare for the Coalcorp case filed with the Court of Appeal. In an interview with Sir Robert, he recounted his reaching out to her to return home from the United States and her teaching position at a Community College in California to assist with the research and strategy for the claim:

> She agreed to come home and was a great help prior to the case (Coalcorp). We eventually fell out over it and that was one of the saddest things about it all. She was from Waikato, and it was only logical she be part of the process. (Sarich, 1995)

In 1993, she moved to another position within the University and continued her role on the Waitangi Tribunal. I had first seen Dr Hopa and Sir Robert co-present a paper on establishing an Endowment College for the tribe in 1988 at a lecture at the University of Waikato. It was clear Sir Robert respected her scholastic achievements and prowess as a Waikato academic who had an international reputation and interest in Indigenous peoples. Dr Hopa later became the manager of the Endowed College in the early 2000s alongside Ted Douglas. Like many Maaori academics of their generation Dr Hopa and Sir Robert shared humble beginnings on their respective journeys through academia.

[52] (Royal Society Te Apaarangi, 2025)

Also at the Centre were John and Myrtle Te Maru (Ngaati Hauaa and Ngaati Maahanga) who kept grassroots issues to the front and centre. Later, John's role extended to become the Board Secretary of the Tainui Maaori Trust Board and alongside Sir Robert's dual role as Director of the Centre and a Trust Board member, John's dual roles brought the relationship of the University and the tribe closer together.

Myrtle was a key backroom contributor to the Settlement through her position as Sir Robert's Executive Assistant and senior administrator of the Centre. Her dedication as a tribal member and University employee ensured the highest level of quality assurance and professionalism was reflected in the Centre's work. She was ruthless with the editorial pen. There was no demarcation between her personal and professional relationship with 'the Boss' and her loyalty to Sir Robert was total. Not only was there loyalty to Sir Robert as a person, but also for what he represented and his mahi as negotiator. We all felt that way to the extent that the man and the kaupapa were indistinguishable. Helen de Barry was Myrtle's assistant who kept the internal administration of the Centre on track. Without these two women organizing us and our mahi the workload would have been much heavier, and our focus distracted.

Wayne Taitoko (Ngaati Paretekawa) was a postgraduate student who alongside me was a research assistant. Wayne and I were the 'heavy lifters' who carried the files, the overhead projector, the bags, the tables and chairs for presentations, and we were also unofficial chauffeurs. Our main role was research of the Crown land titles and facilitating the internal and external consultation hui. There were several postgraduate students who on occasion helped out – Kim Barclay Kerr, Nanaia Mahuta and Michelle Nathan.

The Centre for Maaori Studies and Research was a shining light that attracted a number of international scholars who attended as Fulbright Scholars. One of those was Dr Barbara Harrison who hailed from the United States and had worked with the Indigenous communities of North America. Her background was education, particularly with the Indigenous peoples of Alaska. She had come over as a visiting fellow and ended up living at Waahi Pa and eventually buying a house in Huntly Raahui Pookeka and becoming a New Zealand resident. Her North American experience was critical as a comparative analysis of Indigenous Settlements and the reconciliation experiences of nation states and Indigenous peoples. It was apparent that despite the

significant cash quantum of redress, the social, economic, cultural and political outcomes for the recipient communities for settlement and reconciliation were not the answer to their oppression.

Four days after the Waikato Settlement was signed, Dr Harrison wrote a paper dated 26 May 1995 that indicated that restructuring of the tribal governance entity was at the forefront of post-settlement priorities. Dr Harrison's report identified some key elements to be learned from the ANSCA (Alaska Claims Settlement Act 1971) experience that the tribe needed to be mindful of in constructing its post-Settlement profile. The paper was also an example of cutting-edge research coming out of the Centre at that time:

> There are many problems with the ANSCA. The major problem is that it was a structure imposed by Congress that left little room for self-determination by Native Alaskans. Fortunately for Waikato, the recent Settlement has not imposed post-Settlement structures and tribal leaders now have the opportunity to make the link between economic and social development that has been missing in the Alaskan situation. Looking back on the years I lived in Alaska native communities (1975-1982), I believe that ANSCA was actually contributing to increasing "social impairment. In one very stable, very isolated community of about 200 people where I lived for two years, factions within the community were fighting for control of the village corporation. One corporation manager was fired, another one hired, then the second manager was fired, and the first one re-hired; all within a period of a few weeks. (Harrison, 1995, p.2)

This international approach would possibly have stemmed from Sir Robert's time at Wolfson College in Oxford, and if not, then his time at Wolfson College was definitely an influence. I would also suggest that a significant influence would have been the tongi of Taawhiao: "My friends will come from the four corners of the world."

Another visiting scholar was Dr Paul Egan from Australia who co-authored: *The Tainui Report – a survey of human and natural resources* (1983)[53] with Sir Robert and in collaboration with the Department of Maaori Affairs, the University's Centre for Population Studies (Ted Douglas), and the people and marae of Waikato.

[53] See reference list.

> The report is based on a survey which assessed the resources this canoe federation possesses in its people, its land and other assets, so that a comprehensive plan could be proposed to develop these resources socially, economically and culturally. The first issue was to establish how well the Tainui people have fared in respect of the overall development of New Zealand. This necessitated a comparison between Maaori and Paakehaa development and the present and future position of New Zealand within the world economic community. (Egan & Mahuta, 1983, p. 6)

At the time the report was written, New Zealand was in an economic recession and the pointed end of the determinants of the recession were having a major impact on Waikato in particular, and Maaori in general. The authors continued:

> Concern about this situation has been expressed by people from all points along the social and political spectrum. There is concern about the decrease in opportunities for young people and the effects on them of the increasing periods of time they remain unemployed. Essential welfare programmes are threatened by a government attempting to cut spending in an effort to reduce deficits. Everyone is affected by inflation, but it is noticeable that some sectors of the community suffers less than others as their wages and property values rise. Those with no property and relatively fixed incomes, or no income at all, find their standard of living and self-image eroded by rapid increases in prices. (Egan & Mahuta, 1983, p. 8)

Their concern and the relevance of the report today is discussed in this chapter with regard to the importance of an iwi-centric settlement pedagogy. What the report highlights about Sir Robert's leadership and his research philosophy was:

1. that one must always do one's homework
2. that researching the people must be by the people and for the people
3. that Tainui can use the skills and experiences of others, and
4. that we can always learn from the past – as I have submitted, the report still has relevance today as it did 40 years ago.

The report also focusses on the development push of the iwi at the time as described by John Te Maru but also formed the evidential basis of the ongoing trauma suffered by Waikato as a result of the Raupatu, thus underpinning the need for the Crown Apology.

Several other scholars visited the Centre for Māori Development and Research to do research on aspects of tribal development (for example Professor Ray Barnhardt on education, and Dr Nick Flanders on Fisheries), all contributing to the arsenal required for pre-Settlement negotiations and post-Settlement implementation. Dr Paul McCan wrote the seminal book titled *Whatiwhatihoe: The Waikato Raupatu Claim* (2001)[54] which provided a history of the Kiingitanga, the search for redress, and the early days of negotiations. As already mentioned, this research picks up the story where *Whatiwhatihoe* ends.

These were Sir Robert's community of intelligentsia. It was clear that Sir Robert had found his intellectual tuurangawaewae in the halls of the University and those minds that resided there, including Drs Bruce Biggs and Hugh Kawharu. Sir Robert's recollections of Oxford and its centuries-old traditions of intellectual debate and examination seemed a space he naturally and comfortably could occupy. A concept continued into the Waikato Endowed Colleges as extensions of the Centre for Maaori Studies and Research. The Endowed Colleges are an example of Sir Robert's leadership and vision for the future.

I have summarised a Paper co-authored by Sir Robert's daughter, the Rt. Hon Nanaia Mahuta, Tuti Cooper, and I that we wrote in July 2016 titled *Vision of Sir Robert Mahuta*. I do this simply but importantly because Sir Robert always considered the Colleges would be an enduring legacy of the Settlement and that it was part of the Settlement redress. To quote him "The tribe's wealth is between its ears" and Sir Robert's expectation was that the Colleges would produce the next cadre of leadership (Waikato-Tainui Annual Report, 2019, p. 27).

A Summary Paper on The Vision of Sir Robert Mahuta

The following is a summary of Sir Robert's vision for the Waikato Endowed Colleges. In his mind, the Endowed Colleges were a legacy of the 1995 Settlement.

> *Maaku anoo hei hanga i tooku nei whare*
> *Ko ngaa pou o roto he maahoe,*

[54] McCan, D. (2001). *Whatiwhatihoe: The Waikato raupatu claim.* Huia Publishers.

he paatete, ko te taahuhu he hiinau
Ngaa tamaariki o roto
Me whakatupu ki te hua o te rengarenga
Me whakapakari ki te hua o te kawariki.
(Naa Kiingi Taawhiao)

My intention behind paraphrasing the paper is to explain Sir Robert's vision to those who want to understand the purpose of the Endowed Colleges. The information for the paper was gleaned from Sir Robert's private papers and the Waikato-Tainui Deed of Settlement, 22 May 1995. So, his own words speak to this part of the research. Sir Robert often talked about the Colleges providing intellectual firepower for the tribe and a continuous flow of Waikato leadership to take the tribe through the next 100 years. Before the Waikato College for Research and Development was established, Sir Robert shared this ethos with a group of young graduates he had gathered to work on various aspects of Waikato tribal development. These graduates were to replicate what would be the future, which was the student body of the Endowed Colleges. The concept of the Endowed Colleges was taken from Sir Robert's experiences as a postgraduate student at Wolfson College, Oxford University. He often spoke with admiration of his time at Oxford, the similarities with the whare waananga, and how he could gain insight into English culture, history, and colonial expansionism that became part of our reality as a tribe. He said:

> The concept of an Endowed College is based upon the time-honoured tradition which began with the medieval sequestered colleges….the Oxford and Cambridge University systems, each College within the system is a community complete with its own standards of entry, academic focus, ceremonial life, personalised tutorial method of instruction, and values of collegiality. The ancient whare waananga of traditional Maaori society shared many of these characteristics. The concept is thus by no means alien. (R. T. Mahuta, 1990)

Sir Robert's Oxford experience showed how such a College could operate in terms of influencing government policy. He recalled that depending on which United Kingdom government was in power would, in turn, decide which of the Colleges - Cambridge or Oxford - would be used to 'think-tank' policy and problem-solve development issues facing the United Kingdom. It was clear to him that if it were a Labour-led government,

then Oxford University would be approached. However, Cambridge University would be approached if it were a Conservative government. His idea was that an Endowed College would be open to any New Zealand government that ruled and that we would provide the necessary policy development, particularly around natural resources and Maaori social, economic, and cultural policies.

It had always been his desire that the tribe should be looking outside the window and not in the mirror, and he wanted that reflected in both the student and academic body at the Endowed Colleges. In that regard, he considered that the student body would be one-third Waikato, one-third Maaori and other New Zealand students, and one-third international (Indigenous) students. For Sir Robert, the student composition would internationalize the thinking required and globalise solutions in a world in which we were increasingly a part. Further, Sir Robert believed the residential component of the Colleges was critical to their success. He considered that the students should be in-house, be it for a month, a year, or however long, so that they could interact with each other, toss ideas around, and use their cross-discipline approach to find innovative solutions to any social and economic, environmental, and cultural circumstances that were occurring at a particular point in time.

Endowed Colleges

As has already been commented on, the Colleges were part of the redress of the 22 May 1995 Waikato-Tainui Deed of Settlement (First Schedule), and that was how it was described in the referendum package that was sent to voters for the acceptance or otherwise of the negotiators' Settlement. The Waikato Raupatu Claims Settlement Act 1995 clearly expresses the commitment to creating two Endowed Colleges, one in Waikato and another in Tamaki Makaurau. The First Schedule of the Deed states that provisions relating to the Colleges observe that:[55]

(A) Endowed Colleges

(i) Erecting or funding the erection of or giving assistance to the funding of the erection of a college at each of Waikato University and Auckland

[55] *Deed of Settlement between the Crown and Waikato-Tainui, 1995*.

University to be known as Endowed Colleges with residential facilities for students and staff and all necessary facilities including libraries to enable the Endowed Colleges to fulfil their intended function to provide for the education of post-graduate students (whether or not members of Waikato-Tainui) in all forms of higher learning;

(ii) Providing all or such part as is not provided by grants, subsidies and student fees of the costs of maintenance and running the Endowed Colleges as places of higher learning.

The operational costs of the Colleges were for the most part to be carried by the tribe, but that should not have stopped other private institutions or government institutions from making investments in them. The Colleges would be the primary source of Waikato tribal research and development:

> The symbols evident in the College[56] crest and immersed in the architecture of the College accentuate the importance of our tribal domain, natural heritage and resources, traditional Waikato-Tainui Whare Waananga, Maatauranga Maaori, Pai Maarire, Kiingitanga and Raupatu history. These are the Pillars or Pou that offer a point of difference in the type of learning environment offered at the College. The College motto "Ake, Ake, Ake" is an adaptation of Rewi Maniapoto's saying "Ka whawhai tonu maatou ake, ake, ake" and is intended to inspire the relentless commitment to the pursuit of knowledge to sustain the tribe. Sir Robert is often reflected on the 'traditions' infused at Oxford, saying that "it is no wonder the Paakehaa were such good fighters when they had a heritage like that to protect." (Diamond, 2003, p.129)
>
> In some ways, our symbols, crest and the architecture of the College reflects our heritage created over many centuries as well – that is rich in history and learnings for our future. Like in the English/Oxford setting, our learning environment is infused with the enduring presence of our heritage.

[56] Only one College was built which was the Waikato-Tainui College for Research and Development at Hopuhopu

Principles and funding of the Colleges

It is interesting to note that the University of New Zealand was established on the Pirongia and Taupiri Endowments taken under the Raupatu. Interestingly, the same occurred with Whakatohea, who also made an Endowment through the confiscation of their lands, funding the establishment of the University of New Zealand.[57] The University of New Zealand is now known as Auckland University. So, in essence the University system of New Zealand was established on the back of Raupatu.

The 1995 Raupatu Settlement contributed $20 million to establishing and building the Waikato Endowed College.[58] Likewise, the Waikato River Settlement 2008 made a $20 million endowment to the Endowed Colleges.[59]

Research

Building on the work and role that the Centre for Maaori Studies and Research at Waikato University had played, the Endowed College had a good framework for its operation and approach. Describing Sir Robert's work, the authors from the Centre wrote:

> At the same time, he also set about modernising the Tainui Maaori Trust Board, forging for it, first of all, a sound economic base by capitalising its government drip-fed annuity, to buy productive farms and give the Board control of its own affairs, then instituting a programme of research directed at tribal development.

Sir Robert determined that every opportunity for the tribe would be based on the premise that there should be 'no research without development' and 'no development without research'. It was clear to him that whatever research was required had a tangible and positive impact on Waikato, and on Maaori and Indigenous people's development.

> This was the action research model that he then began to apply to everything he did. Before management theory began to pattern tribal

[57] L. T. Smith (1996); Auckland University College Reserves Act 1885

[58] (Te Manatū Taonga New Zealand Ministry for Culture and Heritage, 2025)

[59] (*Deed of Settlement between the Crown and Waikato-Tainui in Relation to the Waikato River: Summary of the Historical Background to the Waikato-Tainui River Claim.*, 2009)

> development, Bob was onto it, and everyone could learn. As noted by Diamond (2003), he was directed by Tainui to become a member of the Board of Maaori Affairs, the advisory panel that virtually made policy for the Department of Maaori Affairs.

Sir Robert always challenged the status quo just as he did in the Settlement negotiations. He did that knowing that the research had been done, was complete, thorough and importantly he could rely on it when he argued his position. He had a strong work ethic but also encouraged others to perform at their best.

Prior to Settlement Sir Robert organised and ran the Marae Training Program at Hopuhopu. Those sessions were run one Saturday a month from 1994 to 1996. Each of the marae that would become beneficiary marae of the Settlement put forward a rangatahi to represent them and the different topics taught were designed to prepare marae to manage the post-Settlement phase of development. The Colleges and the Marae Training were designed to ensure a tribal succession plan to carry on the development of the tribe successfully achieved in the 1850s until Raupatu disrupted that development and entrepreneurial enterprise. (A more targeted and immediate strategy followed Settlement with the recruitment of young Tainui University graduates to implement the Tribe's next stage of development.)

Sir Robert was a great mentor and he initiated a doctoral scholarship programme[60] that he ran as part of the Centre for Maaori Studies and Research and with the Tainui Maaori Trust Board in pursuit of postgraduate education and excellence. Sir Robert also insisted that on the Faculty at the Waikato College for Research and Development would be kaumaatua who would sit alongside the students to guide and advise them in a tikanga Maaori way and add that perspective to the solution-solving approach. He had begun to put kaumaatua and kuia into the residential arm of the college to build a cohort of kaumaatua alongside the cohort of graduate students so that the knowledge of maatauranga Maaori, tikanga Maaori and Western higher education could be fused. In response to criticisms about the College being elite, I recall Sir Robert's response which

[60] Tumate Mahuta Memorial Waikato Raupatu Postgraduate Scholarship.

was ‘Well, it is better to be elite than mediocre’ (R. Mahuta, personal communication, n.d.).

Sir Robert aimed for a higher level of scholastic achievement while also ensuring that achievement could be shared as part of the tribe’s development and contribute to the welfare of the people. It is my observation that Sir Robert used his ability to whaikoorero, both speaking and listening, to engage in what became his ‘Language of Settlement’, a somewhat secret code the Crown could not understand but Waikato people could. He was a Master orator and I can only surmise he was in the cohort of orators such as Henare Tuwhangai and Pumi Taituha.

Conclusion of paper

There are several references to the ‘Vision of Sir Robert Mahuta’ interwoven throughout the infrastructure of the tribe. It would be erroneous and misleading to imply that Sir Robert’s vision was absolute and captured succinctly in any one place.

The legacy left by Te Puea, Te Ata and their ancestors before them, the tongi of Taawhiao - all provided a compass alongside the traditional knowledge of Tainui Whare Waananga and an intergenerational commitment to the Kiingitanga to uphold and aspire to Mana Maaori Motuhake. Sir Robert's vision was derived from this insight and the more pragmatic realities of his life experience. He would always inspire the collective will to overcome any challenge by saying, as already noted, ‘I would rather have nothing than be nothing.’ This level of self-belief underpinned his thirst for knowledge as tools to chisel a future for the tribe.

Sir Robert had a strong work ethic and believed that ‘doing your homework’ was an obligation to the pursuit of excellence in everything that he did. He created a strong sense of purpose which affected or infected everyone who crossed his path. He was driven and very aware that strong leadership required very specific actions and responsibilities. He was a man of his time and his enduring vision for the tribe passes now to the next generation.

The Pedagogy of Settlement

This section examines Waikato's pedagogy of Settlement and reinforces previous commentary that the iwi did not react to the Crown' Settlement pedagogy but brought its own pedagogy to the table and importantly the Waikato way of doing things. Since European Settlement Waikato had taken these new ways and new technologies and adopted them to their own development purposes (the early trading economy of 1840s-1850s). To an extent Waikato set the terms of engagement. Sir Robert was clear from the outset that he did not negotiate with officials but directly with the Minister, rangatira ki te rangatira. The first meeting in 1989 was held at Tapuwae a small, isolated settlement at the southern end of Kaawhia Harbour.

The Pedagogy Of The People

Personally, the pedagogy was about people. It was not about processes and paradigms. It was centred in the Iwi, the Hapuu, Marae and Whaanau. It was executed by the leadership and protected by the Kaumaatua. It was about the koorero in the homes, Huntly mines and the Affco Freezing works, the rugby league club rooms and on the Marae. It was about mana and tikanga. It was organic, spiritual and mystical.

It had evolved through the generations and had now found its space and time. As Robert Mahuta said in his interview with Paul Diamond (2003) that as soon as the Court of Appeal decision on Coal Corporation was delivered: "The old people insisted if the time was right for Raupatu to strike, to go for it. – I don't know why they seemed to have that instinct, that it was right" (p.135).

Within this pedagogy were layers of pedagogy.

The Pedagogy Of Leadership

The leadership of the Waikato iwi can be traced back to Hoturoa and down through subsequent years and leaders. Te Wherowhero provided leadership over the tribe during the colonial settlement period and the years preceding the raupatu saw Waikato flourish economically and socially. The Tainui Maaori Trust Board Annual Report 1993 provides a context of these times that they and others referred to as the 'Golden Age':

> Just as the first members of the Tainui canoe had adapted to the challenges of the new land, so too were European technology, crops and ideas selectively incorporated into Maaori society. Flour mills were built, and pigs, potatoes, maize, and other foodstuffs were raised. Maaori-owned canoes, coastal vessels, and trading ships transported many tons of agricultural goods to Auckland and Maaori-grown produce was exported to Australia and America. (Tainui Maaori Trust Board, 1993, p. 4)

Early settler accounts record that:

> That from a distance of nearly a hundred miles, the natives supply the markets of Auckland with the produce of their industry, brought partly by land carriage, partly by small coasting craft. In the course of the year 1852, 1792 canoes entered the harbour of Auckland, bringing to market by this means alone 200 tons of potatoes, 1400 baskets of onions, 1700 baskets of maize, 1200 baskets of peaches, 1200 tons of firewood, 45 tons of fish and 1300 pigs, besides flax, poultry and vegetables.... our path lay across a wide plain, and our eyes were gladdened on all sides by peaceful industry. For miles we saw one great wheat field. The blade was just showing, of a vivid green, and all along the way were peach trees in full blossom. Carts were driven to and from the mill by their native owners, the women sat under the trees sewing flour bags and babies swarmed around... We little dreamed that in 10 years the peaceful industry of the whole district would cease, and the land become a desert through our unhappy war (Firth, 1929, p. 460).

During the 1850s, New Zealand's colonial government framework was beginning to take place with the introduction of the New Zealand Constitution Act 1852, which effectively excluded Maori political participation (Walker, 2004). Coupled with an increasing settler community appetite for land and the rapid alienation of Maaori communally "owned" lands to the new immigrants, pressure began to be applied to Waikato-Tainui's social, economic, and cultural autonomy and resilience.

Te Wherowhero opposed the sale of lands, and so it was inevitable that friction between Maaori and Europeans would ignite discord, which resulted in an invasion and war within the Waikato tribal boundary and later wholesale land confiscation of the tribal estate by the colonial troops acting for the government.

The supposed catalyst for these actions by the colonial government was said to be the establishment of the Kiingitanga which the government alleged was a sign of rebellion by Waikato against the authority of Queen Victoria. Although the quest to find a King began in 1848 it was not until 1858, after several chiefs had declined the role, that Pootatau Te Wherowhero, the paramount chief of Waikato, was selected (McCan, 2001).

In 1860, Taawhiao was installed as the second Maaori King upon the death of his father Pootatau Te Wherowhero. Taawhiao brought the tribe together and upheld the mana of the iwi by opposing the alienation of land from Maaori communal ownership to the settlers. The response by the colonial government was to visit death and destruction (the Raupatu) upon the tribe with the invasion of imperial forces in 1863 and the confiscation of 1.2 million acres of the tribal estate. Taawhiao sought refuge for his people in the King Country and remained there for a number of years. The confiscation of land had a crippling impact upon the tribe, not only then but for following generations. In 1884, King Taawhiao led a deputation to England to seek an audience with Queen Victoria to address the grievance of raupatu. He was twice refused an audience and returned home (Mahuta, 1995).

Throughout the following years, Waikato-Tainui leaders continued to seek justice for the raupatu. King Mahuta, eldest son of Taawhiao, served on the Legislative Council from 1903 to 1910 to progress Waikato issues, but little progress was made. King Te Rata, eldest son of Mahuta, followed his grandfather's footsteps and journeyed to London in 1913 to meet the English King to resolve raupatu. Te Rata was the first of the Māori Kings to meet the British monarchy but he was directed to take the matter up with the New Zealand government (Ballara, 1998; Walker, 2004).

A 1926 Royal Commission - the Sim Commission - was formed to inquire into the land confiscations taken under the New Zealand Settlements Act 1863. For Waikato, this meant a sum of 3000 pounds was offered as compensation but declined by Waikato because a monetary Settlement would not restore the loss of lands taken. Instead, Waikato people adhered to the principle "I riro whenua atu, me hoki whenua mai – as the land was taken, so land should be returned." (Manatū Taonga: Ministry for Culture and Heritage, 2024). "Ko te moni hei utu mo te hara – the money is acknowledgement of the crime" (Diamond, 2003, p. 114).

Further discussion between the government and the tribe continued during the 1930s and 1940s, with an interruption in those discussions caused by World War II. Discussions resumed in 1946. The government settled with the South Island iwi in March 1946 and a month later with Waikato. The final offer negotiated by Princess Te Puea was 6000 pounds a year for fifty years and 5000 pounds in perpetuity thereafter (King, 1977).

The 1946 Settlement also established the Tainui Maaori Trust Board which began to administer the Settlement (King, 1977). King Koroki, attended the opening of the first meeting, offered the following words:

> Greetings my grandfathers. I greet you all the spokespeople of the tribe. The canoe has now been launched. However, it is important that the canoe returns to shore also. You all are the anchors of this precious canoe. These are my words. I must also pay respect to the government, to parliament, and to the people because this issue has been so long in conflict. At last, the dust has settled. And discussion is over. What you all have said is good. This is a great day for the people. Karena, you were correct. Therefore, be strong and bold. Do what is right. Go in peace. Paddle our canoe. Do the work (Mahuta, 1995, p.165).

By the 1970s, the Settlement annuity had become 'valueless' because it had not been inflation-adjusted. The Board asked that the annuity be consolidated (10 years) so that it could buy a farm as an investment with a return higher than the annual annuity. The Board also considered revisiting 1946 and re-opening the Settlement that Te Puea had achieved (Tainui Maari Trust Board, 1995). There was division amongst the Board members, particularly Pei Te Hurinui Jones, who, alongside Tumate Mahuta, had advised and negotiated that Settlement (Diamond, 2003). This notwithstanding, the Board and Waikato leadership began to set in motion the steps towards the 1995 Settlement.

The Kiingitanga was central to the Settlement, underscored by the role of kaitiaki in the movement Waikato continued to hold. Taawhiao had developed the blueprint for the negotiations by his saying, 'I riro whenua atu me hoki whenua mai.' The point can be made here that Waikato Maaori have, as part of the history of Kiingitanga, adopted and

adapted aspects of Western models of governance, imbuing those models with our own distinctive Waikato-tanga. In doing so, we have maintained its enduring relevance today, even as it has evolved to meet contemporary needs and issues.

As has already been commented upon, the seed of thought for these negotiations began back in the early 1970s with the Tainui Maaori Trust Board re-considering the longevity of the 1946 Settlement and its diminished value. At the same time, the government began to look more to the Board for assistance in dealing with Waikato, particularly on major infrastructure issues such as the Kapuni Gas Line and Huntly Power Station. In the 1980s, the iwi began to challenge the government, negotiating the return of Taupiri Maunga and filing a claim for the bed of the Waikato River in the Maaori Land Court (Mahuta, 1995). It was clear that Waikato were gearing up to put their case yet again.

The leadership of the negotiations lay squarely on the shoulders of Robert Mahuta. He was destined for the position. The Crown negotiator was not. What made him destined as the Minister to conclude the Settlement was the leadership of Robert Mahuta, who guided him and the Crown through the negotiation process. A Te Tiriti iwi negotiator brings with him or her a whole range of skills and experiences. For Robert Mahuta, it was a lifetime of skills and experiences from birth, his adoption by King Korokii, and his final year at the Waikato Endowed College. My pedagogy of Settlement is my experience with Robert Mahuta. To that extent, I honour his pedagogy and his epistemology respectfully. Where possible, I want to put him and his words into this part of the analysis. To me, Sir Robert personifies the pedagogy of leadership.

In a previous research project (Solomon, 2012), I wrote about leadership in terms of leadership theory as described by Katene. Katene (2010) theorised three types of leadership:

> … bureaucratic (transactional), traditional, (feudal/prince) and charismatic/hero (transformer). The first type – bureaucratic – is about having the legal authority or belief in the 'legality' of patterns of normative rules and the right of those with authority under such rules to issue commands. The traditional type is based on the sanctity of traditional authority and the legitimacy of the status of those exercising authority under them. The charismatic type rests on devotion to the exceptional heroism or exemplary character of an individual person (p. 1).

Sir Robert had all three leadership types, but he also had whakapapa that tied him to an ancient realm, to the old ones. He relied heavily on his kaumaatua, particularly Pumi Taituha, a tohunga. There were always conversations going on in his head, and you knew not to interrupt.

Dissecting the three leadership characteristics, bureaucratic leadership relates to Sir Robert's membership of the Tainui Maaori Trust Board and, more specifically, his leadership of the Board. In Board meetings, he had an autocratic style. That meant he wasn't challenged, and he never conceded. And when it came to matters of raupatu, he made decisions, and the Board followed him because they had faith and trust in him. There was regular attendance by kuia and kaumaatua, who often sat silently and listened and, on occasion, would speak in support of him. Also, he himself was mindful of this responsibility. He had a plan and no one and nothing was going to stop him.

In his own words:

> I had become solidly entrenched in the first tiers of tribal leadership. I was becoming the most dominant voice on the Board, and whatever I said went, and so they just agreed with it there was no dissension. By that time, with raupatu heating up, the old people threw their challenge at me – you got to resolve this raupatu issue; we cannot go on with it hanging over our heads all the time. (Diamond, 2003, p. 132)

There were other characteristics that made him a natural leader for the Board. He was a decisive decision-maker and took huge risks, for example building Kimiora at Tuurangawaewae. At a hui Dame Te Atairangikaahu asked him to lead the project. He agreed. He told Diamond (2003) that he said, "I'll have a go, but if we do it, we do it my way and no other" (p.125). Funding the build required a loan from the Bank, underwritten by the Board.

During the negotiations, he would do things on the Board that would cause me to think "Bob, can you do that? I am not sure the Board has that power?" But he just did it, and I just shut my mouth. Sir Robert recounted his decision to Diamond to build Kimiora. "Building Kimiora really established my own position within the tribe, as someone who would lead" (Diamond, 2003, p. 127).

Though the building of Kimiora was one example of many where Sir Robert took the autocratic pathway, it was also an example of him including the people. Repaying the debt required a massive fundraising drive, which was achieved in a year. He believed that the power to decide should always be with the people.

This was a 'truism' that Sir Robert brought to the Settlement by giving the final say to accept or reject the Settlement back to the people even though he and the Board could have made that decision. As mentioned, the Crown adopted the pedagogy of a postal referendum with every subsequent Te Tiriti Settlement.

There were other aspects of his leadership that were relevant to our pedagogy, such as doing the homework, being prepared, and getting into the mind of the oppressor. In my opinion, these related to his academic background and his strategic ability. He told Diamond (2003) "So we decided to negotiate, the Crown got a hold of us. We were ready. We had done our homework. We were ahead of the Crown negotiators" (p.134). Again, emphasizing the importance of doing the homework, Sir Robert told Diamond, "Anything is possible, providing you set your mind to it, do your homework, and just plug away at it" (p.142).

Everything we did was disciplined. There was no room for error. Everything we argued, we had to win. If we weren't sure we could win, then we would not engage. Sir Robert could be abrasive where necessary but always maintained his mana and the mana of others.

> Forget about fighting personalities. The thing is to get into people's minds and argue on that level. You can persuade them over to your point of view…Discussions with people need to be kept open-ended all the time, so that in the end, they come to their own self-realisation of whatever choice they make. But you can't let people think you're jamming bloody homilies down their throats all the time. My career has been a process of learning how to get into people's heads, how to think, where they are coming from. (Diamond, 2003, p. 141)

His epistemology was that research must be justified by its outcome, and that outcome was development. He got that epistemology from his time in the army and the Huntly coal mines.

> When I was first appointed Director of the Centre for Maaori Studies at Waikato University in 1972, I had a long argument with the University about what the definition of research was. So, I just went my own way, with many at the University looking down their noses at what I was doing, regarding it as being non-academic work. Action research is translating theory into practice, and where there is no research there is no development, where there is development there must be research. (Diamond, 2003, p. 132)

This was drilled into us as kaimahi of the Centre, and drilled into members of the Board, and the negotiations team. What was also drilled into us all was his work ethic – driven and relentless. We had no life apart from the kaupapa. But his leadership style embraced this, so he led by example and by sacrifice.

Conclusion

The last time I spoke with Sir Robert was the afternoon before he died. I had gone to the hospital to see him and report on the outcome of a meeting of the Tribal Executive. He had spoken previously with Dame Te Ata to appoint me as her representative on the Executive in his place - temporarily whilst he spent time in the hospital. I was to cast a vote on his behalf. I thought the temporary appointment would be for no more than a week. With hindsight I think Sir Robert knew it would be longer. The relevant point here is that Sir Robert had the tribe's welfare even on his deathbed.

The same commitment and sacrifice can be said of Lady Mahuta, who, as part of the Waikato Awa Settlement, wanted to sign the first Joint Management Agreement with Waikato District Council. By the time Waikato District Council had gotten over itself debating the phantoms of co-management, something which was not up for debate as it was a statutory requirement. They signed the Agreement, and I took it to her on her deathbed. She was happy it had been done and smiled but was too tired to sign. She passed away doing the mahi for her husband's tribe.

These are very personal recollections, and the back story is even more informative, which I may add to Sir Robert’s treasure chest one day. Meanwhile, it is testimony to the pedagogy of his leadership.

CHAPTER SEVEN – NGAAI TAHU CASE STUDY

Introduction

This chapter is short but important. It is a comparative study of another Settlement, the Ngaai Tahu Settlement. I was reluctant at first to do a comparative study of another iwi and their Settlement based on the fact that I am an outsider, and my observations could be inaccurate or really just an opinion. It is their story, and only they can tell their story.

I left this chapter to the last to give me time to search for literature from Ngaai Tahu themselves about their process, and their experience of the negotiations, and came across the book chapter co-authored by Sir Tipene O'Regan with Drs Lisa Palmer and Marcia Langton. The chapter is titled "Keeping the fires burning: Grievance and aspiration in the Ngaai Tahu Settlement" (O'Regan et al., 2006, pp. 44–65) in the edited book titled: *Settling with Indigenous people: Modern treaty and agreement-making.*

Knowing Sir Tipene personally, and if I may say a friend, I was more than comfortable to use that material as the Ngaai Tahu story, and knowing as we all do that Sir Tipene was front and centre in the negotiation and Settlement of the Ngaai Tahu claim. It is also my admiration of Sir Tipene and importantly, the admiration of the relationship he and Sir Robert shared at the time, not only on our separate Treaty negotiations but also when they were part of the Sealord's negotiation that was settled in 1992.[61]

Having read the book chapter, it took me by surprise at the similarity of the processes, and also the similarity of what I call our pedagogy of Settlements and what Sir Tipene calls the culture of their Settlement. I, therefore, felt compelled that both stories be shared in light of the experiences of those times as both iwi held the unique position of being the only major iwi to reach Settlement under the new government policies of Treaty Settlements in the 1990s.

I considered other case studies and thought, "No, it will be like comparing apples with oranges." As mentioned already, the only true comparator was the Ngaai Tahu experience of Settlement. Therefore, I structured this chapter according to the format of the Ngaai Tahu book chapter. I have drawn out similarities that both tribes

[61] (Waitangi Tribunal Report, 1992)

independently experienced in our negotiations with the Crown. I have also highlighted the differences in our processes and outcomes.

History of grievance

Like Waikato, Ngaai Tahi had been seeking redress for many generations. They lodged their first claim in 1849, and as the chapter reports, "it has been accumulating in size, grievance, and intensity ever since" (O'Regan, 2003 as cited in O'Regan et al., 2006, p. 44). Like Waikato and the establishment of the Waitangi Tribunal under the Rowling Labour Government in 1975, the retrospective power to enquire into grievances dating back to 1840 enabled both tribes to seize the opportunity to file their claims. As the co-authors wrote, "the largest Settlements achieved in the first decade of the new policy were with the Tainui on the North Island, and Ngaai Tahu for compensation packages of $170m" (King, 2003 as cited in O'Regan et al., 2006, p. 45).

The key difference then emerges when the authors refer to Ngaai Tahu being the first tribe to settle in light of a historical report of the Waitangi Tribunal with its recommendations.[62] Waikato lodged a claim with the Waitangi Tribunal (Wai 30), but it never went through that process and went straight into direct negotiations due to litigation. Ngaai Tahu, therefore, had the benefit of putting on the public record its history and the breach of the Treaty that it had endured because of the acts and omissions of the Crown. That is something that they should treasure and is a taonga for future generations to read and understand their history. With Ngaai Tahu, most of the lands were lost through the sale of lands to the Crown of approximately 34.5 million acres[63] and;

> Under the terms of the Treaty, it was agreed that if Maaori landowners sold all their estate to the Crown, the Crown would return lands which were 'reserved from the transaction' and offered back to the Tribe under the ongoing protection of the Crown (O'Regan et al., 2006, p. 46).

Ngaai Tahu asserted that the Crown had failed to honour that part of the arrangement. All of this was done at the beginning of 1844, but within the context of the musket wars

[62] Refer to *The Ngai Tahu Report 1991* (Waitangi Tribunal, 1991).

[63] (Waitangi Tribunal, 1991, p. xvi)

and the invasions by Northern tribes into Ngaai Tahu, so they were seeking protection for themselves and their lands from such intrusion (O'Regan et al., 2006; Waitangi Tribunal, 1991). For Waikato, our history is different in that the incursion that fell upon us was by the Crown forces invading Waikato territory, waging a war, and confiscating our tribal estate of 1.2 million acres.

Like Waikato, Ngaai Tahu also understood that in the two decades before Settlement, there was the political and legal opportunity to advance the resolution of their grievances. As I have said previously in my research, Settlements are based on particular circumstances at a particular time, and that is the opportunity, as I believe it and humbly submit, that both tribes saw and developed their strategies on Settlement with the Crown.

Another similarity was Ngaai Tahu also had a member in the House of Representatives[64] whose "main business was the Ngaai Tahu claims," similar to our strategy of sending Kingi Mahuta into the House of Representatives in the early part of the twentieth century. Towards the end of the 19th century, Ngaai Tahu, Waikato and all tribes were affected by the change in status of the Treaty with the finding of the Courts in *Wi Parata v Bishop of Wellington*[65] where the Treaty was declared, "a mere nullity" (O'Regan et al., 2006).

A common characteristic was that the tribal collective was the dominant social structure for both tribes. O'Regan (2003) writes "the strength of the Ngaai Tahu lies in the tribal collectivity. Their rights are 'not race rights; they are kinship rights. They are based on descent'" (as cited in O'Regan et al., 2006, p. 47). This is similar to the collective nature - the tribalism - that we negotiated on with the Crown, and how redress benefits are to be shared by the collective. It also underscores basis of our Te Wherowhero title where it is mentioned the Settlement lands would be placed under the ownership of the first Maaori King Te Wherowhero for the benefit of tribal members.[66] Restoring collective

[64] Hori Kerei Taiaroa in the House of Representatives member for Southern Maaori in the early 1870s.

[65] *Wi Parata v Bishop of Wellington* (1877) 3 NZ Jur (NS) SC 72.

[66] Refer to *Deed of Settlement between the Crown and Waikato-Tainui, 1995*

ownership or guardianship protected under the mantle of the Kiingitanga meant that the tribal estate could not be individualized and therefore subject to alienation.

Like Waikato, the authors noted that Ngaai Tahu agitated within and outside of Parliament to have their grievance addressed and settled over a span of 100 years (O'Regan et al., 2006). Like Waikato, both tribes entered the judicial process as the political process was slow in responding, if responding at all, and a number of significant Court cases were heard and decided. Ngaai Tahu were certainly lucky to have *Te Weehi v Regional Fisheries Officers*[67]

> …that legal recognition of the Ngaai Tahu Tribe first occurred. This case was argued and won by Te Weehi, a Maaori fisher, on the basis of his customary right to take fish from Ngaai Tahu coastal waters given that he had permission from the Ngaai Tahu traditional owners of the area to do so. This recognition of Ngaai Tahu law and custom and effectively Ngaai Tahu jurisdiction was the first recognition of a tribe in New Zealand case law (O'Regan et al., 2006, p. 48).

For Waikato, our case would have been our Court of Appeal litigation against the sale of Coal Corporation lands for coal mining licenses in the raupatu boundary. This was the first time the Court recognized the justification of our grievance and our right to assert our authority over our tribal estate (Diamond, 2003).

I found the sub-heading "Playing Pākehā politics" (O'Regan, T., Palmer, L., Langton, M., 2006) very interesting in that the thinking behind Ngaai Tahu's approach was also very similar, maybe even identical to the thinking and the assumptions that Waikato made at the same time. Armed with its Waitangi Tribunal reports,[68] Ngaai Tahu were in the perfect position to leverage the Settlement of their claim. *The 1995 Ancillary Claims report* noted the Crown had acted "unconscionably" and therefore Ngaai Tahu were entitled to a substantial redress (Waitangi Tribunal, 1995, p. xvi). A point of difference is that Ngaai Tahu sought to have their Trust Board replaced by a structure of their own choice and making prior to the negotiations (Waitangi Tribunal, 1991).

[67] *Te Weehi v Regional Fisheries Officer* (1986) NZLR 682.

[68] The Ngai Tahu Report 1991 (WAI 27); The Ngai Tahu Ancillary Claims Report 1995.

For Waikato, we delayed that reconstitution of the Tainui Maaori Trust Board till after Settlement. I think there are several reasons why the iwi landed upon this decision. I think the common interest was that iwi did not want to be subject to Crown authority and the paternalism of the Maaori Trust Boards Act 1955.

Consultation with iwi

In the chapter section headed "Ngaai Tahu Negotiating Team" the authors note that there were six Principal negotiators including Sir Tipene O'Regan and that there were B and C teams that provided legal and technical advice to the negotiators (O'Regan et al., 2006). In the case of Waikato, we had one Negotiator. Our Principal Negotiator was Sir Robert on behalf of the Tainui Maaori Trust Board, Ngaa Marae Toopu and tribal members of Waikato Tainui. We also interestingly had named our secondary team of advisors, the B and C team. As I have already mentioned, the A team was the Kaumaatua and Kuia. Like Ngaai Tahu, getting into negotiations was expensive, and you were faced with the endless resources of the Crown, who could engage expert advice from a whole range of legal firms and public servants. I don't know how much it cost Waikato leading into the negotiations, I'm not sure it was anywhere near $20m that Ngaai Tahu spent (O'Regan et al., 2006), but we did have to mortgage our farms to raise a fighting fund.

Citing O'Regan (2003) O'Regan et al. (2006) noted:

> Just as crucial to the negotiation process was the support of the Ngaai Tahu collective. Throughout Ngaai Tahu, negotiators made certain that they had a firm mandate by *Te Runanga o Ngaai Tahu* to proceed. In part this was achieved through the continual process of feedback through consultation 'taking the collective with you. I made sure all the time I had my mandate. I just did nothing but do a drive all over the island to see our people.' (p.50)

Again, the Ngaai Tahu approach reflected the position of Waikato who also undertook extensive consultation on the marae and poukai with the people. Even travelling to meet our tribal members who lived away from the rohe, in Wellington, Christchurch and Dunedin so that we could as Sir Tipene said "take the collective with us". We also had a parallel process of consulting with non-Maaori in the non-Maaori community in the Waikato, so they understood what the claim was about. This is clearly described in the

puuraakau of Rangimarie[69] Mahuta. Also, at every Annual General Meeting, Sir Robert would propose a resolution seeking affirmation of his mandate and his continued role as Negotiator. This was always successful. So, like Ngaai Tahu and like Sir Tipene, both leaders understood the power of the collective and both understood their responsibilities and accountabilities.

Another important similarity was having the support of Kaumaatua. As the Ngaai Tahu authors wrote, "the tacit support of *Kaumaatua (elders)* was critical throughout the negotiations process"(O'Regan et al., 2006, p. 50). Our Puuraakau talk clearly of the same support during our negotiations. So, our pedagogies in that regard were identical.

Negotiations with Crown

Under the chapter subheading titled "The Negotiations", the authors wrote that Ngaai Tahu had difficulty in their negotiations because the Crown disengaged for a three year period (O'Regan et al., 2006). For Waikato, once the Crown had accepted our bottom line 'I riro whenua atu, me hoki whenua mai', it cleared the pathway towards a final Settlement. The authors also referred to the quantum loss of Ngaai Tahu being $20 billion[70] and that that loss should be acknowledged by the Crown. Waikato also sought acknowledgement of the loss in the current day value. We quantified the average Waikato acre multiplied by $1.2m and came up with our figure of $12 billion.[71] Although the rohe was much smaller than the Ngaai Tahu rohe, the value of Waikato land was much higher. That has turned out to be problematic because it has been difficult to purchase Waikato land and restore the tribal estate due to the high value of the land. However, what we did achieve was the Crown's acknowledgement of the loss, and the value of that loss. With the redress for Waikato, not all Crown-owned lands were returned. There were approximately 90,000 acres of Crown properties identified at the time of negotiations. Half of those 90,000 acres was the Department of Conservation estate (Tainui Maori Trust Board, 1995).[72] I speak to this in my own puuraakau - but just to confirm, we shared a similar process with Ngaai Tahu and the

[69] See Chapter Four.

[70] See also *Deed of Settlement between the Crown and Te Rūnanga o Ngaī Tahu, 1997, s2*.

[71] Refer to *Deed of Settlement between the Crown and Waikato-Tainui, 1995.*

[72] Refer to *Raupatu Settlement: Postal Referendum Information Package, 1995*.

Crown wherein they retained for example, the Department of Conservation estate, they retained the hospitals, the schools, certain other properties such as police safe houses and other properties. Hence our first right of refusal if the Crown were to declare surplus any of their properties in the future, they would have to offer those properties to the tribe. With the Department of Conservation estate like Mount Aoraki for Ngaai Tahu, we gifted back the Department of Conservation estate to the nation but retained the first right over the land.[73] We told the Crown that the price or the value of any sale of the Department of Conservation estate would be at nil value as it was not considered commercial. This is yet to be tested.

Like Ngaai Tahu, we saw the strategic value of the first right portfolios and established an internal unit to monitor any sales of State-owned lands and properties and develop a strategy to purchase in bulk lands as they came up or set aside funding for that purpose. Unfortunately, over time, there have been instances where the Crown has breached the first right of refusal requirement, resulting in further leverage for Waikato in the post-Settlement dealings with the Crown. Further similarities were described in the section of the chapter article titled "Negotiating Te Ruunanga o Ngaai Tahu Act 1996" (O'Regan et al., 2006). The significant point of difference, however, is that we settled and then introduced legislation to give effect to the Settlement.[74] The authors of the chapter indicate that the negotiators - in particular Sir Tipene - "had demanded the passing of this Act before proceeding further with the Settlement process" (O'Regan et al., 2006, p. 52).

Settlements

I have noted in my research that Settlements for Waikato were of circumstances and of a particular time. It would be interesting to know whether Sir Tipene also reached the same conclusion, he states "…a key element of all Treaty making in circumstances and the politics of the time tends to determine the circumstances under which the agreement will take place" (O'Regan, 2003 as cited in O'Regan et al., 2006, p. 53). I submit we are saying the same thing because it requires both the right circumstances and therefore the right timing to make the political call. Like Sir Tipene, a critical circumstance was

[73] Refer to *Deed of Settlement between the Crown and Waikato-Tainui, 1995, s.16.3*

[74] Te Runanga o Ngai Tahu Act 1996.

for the National government to be more than willing to achieve Settlement for their own purposes.

The fate that befell Sir Tipene was also the fate that befell Sir Robert, which was that they were vilified as sellouts and kuupapa. I recall a list of the ten most wanted Maaori for crimes against Maaori and at the top of that list were Sir Robert and Sir Tipene, followed closely by Sir Graham Latimer. I recall also that Sir Robert brushed off that criticism as part of the 'theatre of Settlement'. I'm sure Sir Tipene also had the fortitude and the experience to see it for what it was too. So again, there was that visionary leadership that both men demonstrated and exercised and the commitment and sacrifice they were prepared to give.

For Waikato, it was important that we had a hand in the drafting of our legislation, in particular the preamble, the apology, and the Crown acknowledgments so that we were satisfied that the public record had been corrected and the truth had been told. Ngaai Tahu took a similar approach, but I am unclear whether they also participated in their drafting. Another surprising parallel was that both tribes leveraged Settlement with the Crown through litigation. Both brought an injunction against the sale of Coal Corporation; Waikato in 1989,[75] and Ngaai Tahu in 2006.[76]

So again, I submit there is a common theme here: a double strategy of negotiation and litigation, despite the Crown saying that they would not negotiate and litigate at the same time. In that sense, it was about timing and circumstance. For Waikato, it was to get the negotiation ball rolling, and for Ngaai Tahu, it was to get the negotiation ball re-engaged with the Crown.

The chapter continues the analysis of the Treaty of Waitangi (Fisheries Claims) Settlement negotiations and the Act 1992. I had already mentioned in Sir Robert's story and in my own puuraakau, Waikato's involvement in those negotiations which stemmed from the introduction of a quota management system and litigation under section 88 of the Fisheries Act 1996 by Maaori defending their customary fisheries. In any case, the point I would like to make in a comparative sense is that again Settlements

[75] *Tainui Maori Trust Board v Attorney-General* (1989) 2 NZLR 513;

[76] As discussed in O'Regan et al. (2006).

are a matter of politics propelled by legal principles. As the Ngaai Tahu article states, "Similarly, politics, not legal principles was the driving factor in the *Treaty of Waitangi (Fisheries Claims) Settlement Act* 1992 (NZ)"(O'Regan et al., 2006, p. 53). As I have previously noted, Sir Robert and Sir Tipene were two of four Maaori negotiators that negotiated and concluded the pan-Settlement of the Maaori Fisheries claim through the Crown facilitating the purchase of Sealords, one of this country's largest commercial fishing companies.

Outcomes and innovation

In that section of the article, the redress that was achieved by Ngaai Tahu under its Settlement is set out. I won't go into the details of that redress but just to highlight two important factors. Firstly, the difference between Ngaai Tahu redress and Waikato redress is Ngaai Tahu received in the main a monetary Settlement. Waikato received a land for land Settlement with some cash. The second point is that both tribes were able to secure interest over the Settlement values. For Waikato it was a five year period from the date of the Heads of Agreement in 1994. A period of five years until the last Crown property was transferred. The other interesting factor is that both tribes achieved relativity. Waikato in 1994, with its Heads of Agreement,[77] and a decade later Ngaai Tahu with its Deed of Settlement.[78] Noteworthy is that the Crown has not offered any other tribe a relativity provision.

In terms of process, both tribes conducted a postal referendum of individual tribal members to accept or reject the Settlement offer. The Crown did not see the requirement for Waikato to hold a postal referendum as it was of the view that the Wai Claimants Sir Robert, Tainui Maaori Trust Board and, Ngaa Marae Toopu could sign the Settlement. However, as part of Sir Robert's position on inclusivity, accountability and transparency he insisted that a postal referendum be conducted.

[77] *Heads of Agreement between the Crown and Waikato-Tainui in respect of the Waikato-Tainui Raupatu Lands Claim, 21 December 1994.*

[78] *Deed of Settlement between the Crown and Te Rūnanga o Ngaī Tahu, 21 November 1997.*

Governance

The next section of the article addressed "Ngaai Tahu Governing Structures". I have already made my comment on this. Both Ngaai Tahu and Waikato deemed the Maaori Trust Board's Act paternalistic and an overhang of a colonial government. Both having now an asset base of a quarter of a billion dollars. It was not necessary for them to be accountable to the Minister of Maaori Affairs but to be accountable to their own people. As a result, Ngaai Tahu had already prior to Settlement established it's Runanga and Waikato post Settlement after a three-year period of consultation and a postal referendum established its final governance structure Te Kauhanganui in 1998. Ngaai Tahu structure is based on a Ruunanga model and Waikato structure is based on the Marae model. Within those governance structures are subsidiary entities. Ngaai Tahu establishing Ngaai Tahu Corporation Ltd as its commercial arm and Ngaai Tahu Development Ltd for want of a better descriptor its social arm (O'Regan et al., 2006). Likewise, Waikato Tainui established Tainui Corporation for its commercial objectives and Tainui Development Ltd to meet the needs of the social objectives or imperatives of the tribe. What has happened over the past 30 years is that both tribes' balance sheets have increased beyond a billion dollars. So, it has taken at least one generation to grow the opportunity from the $170 million Settlement to over a billion dollars.

The next heading in the article is "Economic Governance and Innovation." I will not spend too much time on this as each tribe is entitled to its own pathway. I think it's not necessary to compare the tribes in this regard, and though we have similar imperatives and objectives for our people we also have different ways of achieving this and of course different resources that we are able to draw upon. What I think is the main common feature of both tribes is the investment in their human capital, which both tribes hold as a priority. This is evident in the establishment of the Waikato-Tainui Endowed College,[79] which was part of the Settlement redress of 1995 to grow postgraduate students into a cadre of leadership that will lead Waikato over the next 100 years. Sir Robert always noted that if there was any legacy of the Settlement of 1995, it was the Endowed Colleges.

[79] For more information go to: https://waikatotainui.com/

Cultural redress

The next section of O'Regan et al., (2006) article was "Cultural Redress" and protecting taonga or cultural treasures through the Settlement process. The similarities in terms of Ngaai Tahu and Waikato are probably achieved more so with the Waikato River Settlement. Ngaai Tahu was a comprehensive Settlement, whereas Waikato had reserved outstanding claims to be resolved in the future, one of which was the Waikato River. Resulting in the co-management and co-governance of the Waikato River by including acknowledgments of cultural sites. I must acknowledge the work of Ngaai Tahu in that this provided Waikato a precedent to draw upon in the redress under the Waikato River Settlement.

Challenges for the future

The section on challenges for the future opens with the quote from Sir Tipene O'Regan. I will set this out in full because for me, it echoes the sentiments of Sir Robert after our Settlement. "The great problem at the end of the day is human capital… We need to be invaded every generation otherwise we forget how to defend ourselves" (O'Regan, 2003 as cited in O'Regan et al., 2006, p. 62). For Sir Robert, his words were, "we need to leave the future generations challenges that they can rise to." Sir Tipene O'Regan's words in the article were:

> [The question is] how do you move a whole culture out of grievance mode and into some sort of forward dream aspiration? When the tribe starts to think that it's got to own itself, that it's got to run its own programs and do its own things independently of the state, then it can really start to function: then it can deal with the state - but it's got to get together with the state on terms of equality. And it can only do that, when it is not going cap in hand to it continually. (O'Regan, 2003 as cited in O'Regan et al., 2006, p. 62)

As I said, those were very much the sentiments of Sir Robert about Waikato's future.

I have already noted their vision of building human capital, and this for Waikato was through the Endowed Colleges where we can really start to address the social and economic policies that impact our people through dedicated research so that the outcome of development is driven by our needs and not a State agenda. An issue that

the article refers to around the human capital of Ngaai Tahu is that the newly educated who received tribal scholarships move away from the tribal structure to live and work. In that respect, the Waikato position has always been that get educated, go outside the tribe, see the world, learn from it and bring back what you learn to the tribe. It also comments on those who still remain working within the tribal structure who do not feel under resourced particularly in the area of the Resource Management Act and the probability of burn out.

The article is honest about the trickle-down benefit noting that only a few tribal members receive and benefit from a direct income from tribal initiatives. Ngaai Tahu's solution was to establish the Ngaai Tahu Whaanau Company, which loaned capital to communities within the tribe rather than to individuals. For Waikato, at some point, it must consider decentralizing its operations and devolving that mahi, that work, and related budget to marae so that the communities can start building their own independent economic base. There is a danger, in my view, particularly with respect to Waikato, of building a brown bureaucracy, and it becomes apparent that you spend more money on the bureaucracy than the dividends that you provide to marae and tribal members. But these are challenges that all iwi face in the post-Settlement era as the demands and tensions between building the economic base and providing adequate levels of social return collide. Noting also that Settlements do not diminish the obligation of the Crown under Article 3 of the Treaty to support the development needs of tribal members who are also New Zealand citizens.

The conclusion of the article once again echoes the journey of both iwi. It describes the process of negotiation undertaken by Ngaai Tahu as an Indigenous approach which I agree with as the approach taken by Waikato was an iwi-centric approach built up over many generations, and with a foresight to seize the opportunity of Settlement at their respective times. There are always going to be challenges but with the benefit of a longitudinal lens we can plan our political, social, cultural and economic development using a pedagogy that will foster and maintain our own mana motuhake and our own rangatiratanga.

CHAPTER EIGHT – KEY FINDINGS AND DISCUSSION

Introduction

This Chapter presents the research findings. My assessment was based on how the research addressed my research questions which were:

1. What is "full and final" in the context of justice-based reparation as opposed to a rights-based approach, and has the reality of justice remained intact?
2. When will reparation be fulfilled and how does this generation endow and empower the next generation of Waikato people to achieve "full and final" as their requirement of the Crown?

I have combined the various threads of my research—the literature reviews, the methodology, the participant interviews, my own puuraakau, Sir Robert's leadership, and the Ngaai Tahu case study.

The term 'pedagogy' is often associated with the field of education, the delivery of knowledge, curricula, and teacher-student relationships. In terms of this research and the research questions, I have used the term 'pedagogy' to describe the development of the Waikato iwi-specific approach to the settlement of our raupatu claim against the Crown. I considered using the term 'strategy' but decided the term was a dis-service to the tribal commitment and sacrifice that took place over many generations. The term strategy was too simplistic, and the negotiations were more than a whiteboard exercise to draw up a battle plan or carry out a SWOT (Strength, Weakness, Opportunity, Threats) analysis. Instead, the pedagogy was a nuanced, multi-layered, and multi-generational process enveloped in Waikato culture, which is the combination of Waikatotanga and our tikanga and kawa and Kiingitanga. The Waikato pedagogical approach had a metaphysical presence, and for me personally, it was also a spiritual journey.

Pedagogy was a term suggested to me by one of my supervisors, and it took me some time to understand what that might involve in terms of Treaty negotiations and settlement. I considered the values, the principles, whakapapa, whanaungatanga, tikanga, wairuatanga, Kiingitanga and the themes captured from the participant

interviews as the curriculum in response to social, political, cultural circumstances of Waikato.

In terms of my research imparting knowledge, the point of developing a Waikato pedagogical approach was, in the first instance, to create a body of knowledge for Waikato iwi and hapu to consider in terms of our Settlements and our relationship with the Crown. It is for other iwi and Indigenous communities to decide whether the Waikato pedagogy of Settlement has utility for them.

My task now is to draw from the literature and from our own Waikato historical and contemporary experiences of negotiations and settlements to tell the story of what we did and why we did it. Others have told the story of the raupatu, the raft of injustices experienced by Waikato, and the tenacity and determination of the Waikato and Kiingitanga leaders to achieve justice from the Crown. However, those stories had not been told by a Waikato tribal member who was part of the more recent negotiations and settlements with the Crown.

The objective of my doctoral research was for Waikato to tell its story. The aim was to provide current and future generations of Waikato tribal members with new knowledge that they can use to hold the Crown to maintain the spirit and the substance of the 1995 Raupatu Settlement.

I wanted to keep my research straightforward and familiar to my Waikato audience. Therefore, the methodological approach I used was Kaupapa Maaori, and customised to the values and principles of Waikatotanga and the Kiingitanga. The values and principles of Kaupapa Maaori had been activated by Waikato leaders and by leaders of the Kiingitanga and trialled and adopted by the people of Waikato from 1863 when raupatu occurred. More recently, Kaupapa Maaori was utilised by Waikato researchers who were part of the Centre for Maaori Development and Research, and then again by the Waikato teams up until 1995, when the Settlement was achieved.

Using my methodological approach, I undertook several literature reviews of Treaty of Waitangi Settlements and the events leading up to the 1995 Raupatu Settlement. I also reviewed documents about Sir Robert's leadership through the Settlement, and I compared the settlements that Waikato and Ngaai Tahu achieved with the Crown.

The literature reviews support and validate Waikato's pedagogical approach. The literature was not specific on Settlement pedagogy but provided a narrative that Waikato set its own agenda in its own way to achieve what it considered necessary.

The case study comparative analysis with the Ngaai Tahu negotiations proved invaluable as I had not appreciated at the time how closely aligned our respective journeys were. The comparison also proved that iwi exercised control during the Settlement process and could walk away from the negotiation table if we were dissatisfied with the direction of the negotiations. Indeed, Ngaai Tahu ceased engagement with the Crown for two years. Waikato often threatened to do so which prompted a terse letter from Sir Robert to the Minister to get the negotiations back on track. Waikato's mana motuhake was never up for negotiation.

Last, I interviewed nine tribal members involved or had whaanau members involved in the negotiations and the Settlement. Their participant interviews reinforced the 'why' of Waikato's approach to the negotiations and described how participant and whaanau experiences contributed to the development of the Waikato pedagogy of settlement. The common themes they described were:

1. *'I riro whenua atu, me hoki whenua mai'* or the principle of land-for-land which was Taawhiao's edict. The principle was non-negotiable and was not part of the tribe's negotiation with the Crown;
2. Tikanga and wairuatanga
3. Mahitahi and commitment to the kaupapa
4. Kiingitanga
5. Kaumaatua and kuia
6. Equitable benefits, a hapuu versus iwi Settlement model, and tribal corporatisation.

Alongside their puuraakau I included my own puuraakau that drew upon documents from the tribe's archives, some of which I authored and co-authored. In this regard, I was aware of my potential bias, but my research is a record of Waikato's experiences of Settlement, and my observations and experiences were a part of those times.

Findings

I organised the literature into two categories, the distinguishing element of which was 'why' things were done (humanity), and the second category was 'how' things were done (infrastructure). The first category is the 'Humanity of Settlement', which is redress - recognizing justice, human rights, honour, and mana. The second category is what I call the `Infrastructure of Settlement'. What I mean by that is the tools, framework, and processes that were put in place to support the Crown's Settlement process, including its various departments and ministries. Put simply, the infrastructure is the pipes and roads required to carry the Crown's negotiations and implementation of Settlements. I include the Heads of Agreement, the Deeds of Settlement and Settlement legislation and their component parts in this category.

Waikato was focused on the 'why' of the negotiations. The 'how' was the means to an end, although no less important as it articulated the 'why' by giving effect to Waikato's intentions. Uppermost for Waikato was providing humanity to the Settlement process as part of Waikato's pedagogy. This ties directly to Waikato's intergenerational search for justice from raupatu that was powerfully captured by McCan (2001).

The Apology (and Preamble and Crown Acknowledgments), though part of the 'infrastructure,' were central to Waikato's pedagogy and more important than the financial redress. I relied on the description by Fisher (2015) of the negotiations of Waikato and Ngaai Tahu with the Crown in the 1990s. The Crown adopted the Kawanatanga position, whereas the iwi adopted the Rangatiratanga position.

My own view is the different approaches generated different motivations in terms of negotiating outcomes, particularly when negotiating the wording of the Apology. The Apology was more than saying sorry; for Waikato, the Apology was always about putting the public record right. Waikato's insistence on an apology was tied to the notion of justice-based reparation and reconciliation; not only to set right the public record about the injustices Waikato had experienced following raupatu but, where possible, setting right the relationship between the Crown and iwi (Crocker, 2014; Fisher, 2015; Hickey, 2006). I add here that reconciliatory redress can add to post-settlement injustices if iwi are not vigilant in the post-settlement environment (Gibbs, 2006; Joseph, 2001). Setting right the relationship between iwi and the Crown will be

a lengthy process, and in our experience of the Settlement, the issue and the process are constitutional and the Crown and Maaori will need to agree on who and how power and authority are exercised in Aotearoa New Zealand.

The ‘humanity of Settlement’ was set by the Apology which, as noted, was insisted upon by Waikato and was key to our pedagogy and very much part of the ‘organic’ process that we drove with the Crown. Unfortunately, the Apology became part of the ‘infrastructure’ for all subsequent iwi Settlements. The Crown used the Waikato and Ngaai Tahu Settlements as a template for subsequent iwi Settlements. That was never our intention.

The Apology played an important function in the durability of Waikato’s Settlement as it represented the principles of mana and honour which were key aspects of Waikato’s pedagogical approach. In this regard, Waikato’s pedagogy set the Settlement agenda. I assert that our pedagogy guided the Crown to a ‘humanity of Settlement’ through the Apology (and the Preamble and Crown Acknowledgements). Lightfoot (2015) confirmed this by an examination of the sincerity of Crown apologies in Australia, Aotearoa New Zealand, and Canada.

Lightfoot (2015) noted that the Apology featured highly in each country's reparation landscape but noted the paradox that neither country supported the United Nations Declaration on the Rights of Indigenous Peoples. Both countries eventually agreed to the Declaration, having reassured themselves that Crown sovereignty would not be disturbed. The ‘truth’ of the language of apologies and the ‘reach’ of Crown sovereignty will also require iwi vigilance post-Settlement.

I do not think it is necessary to consider where the Waikato Apology is placed on Lightfoot’s continuum of “authentic” apologies. What was critical for the Waikato pedagogy was that the Apology was non-negotiable with the Crown. Our position of rangatiratanga, mana, and honour demanded nothing less. However, whether that remains the case today is questionable.

Going deeper into the Waikato pedagogy of setting the negotiation agenda, the Raupatu Settlement 1995 was seen as the initiator of a new policy direction wherein justice-based reparation (and reconciliation) required something more tangible than monetary

and physical redress. Gibbs (2006) and Joseph (2005) wrote about the dual purpose of the apology; firstly to restore the honour of the Crown, and secondly to place on the public record the history of the raupatu grievances and why Settlements were necessary.

I am of the view, and with hindsight, that restoring the honour of the Crown became the 'why' of Settlement as indicated by the Crown's policy response to Waikato's pedagogy. The Crown's response elevated the humanity of Settlement beyond the transactional and personalised the Crown's position as a negotiation partner. This would not have happened if Waikato had not driven our pedagogical approach in the process the way we did. Participants talked about the influence of kaumatua and kuia on the negotiation and settlement processes. For kaumatua and kuia, the mana of Waikato and maintaining respect through the process was vital.

Certainly, the literature concurred that a fundamental principle of the Waikato pedagogy was 'I riro whenua atu, me hoki whenua mai' and was key to our justice-based humanity of Settlement, and will continue to be the key condition of negotiation and settlement. From a Waikato iwi and a Maaori perspective, land has its own mana and wairua and is in an enduring relationship with the people and the ancestors of that land. It follows then that cash settlements fail to recognise the inherent mana, the wairua, and the long relationships between people and their lands when raupatu has occurred. All nine participants talked about the importance of the land-for-land principle.

A key issue explored by Gibbs (2006) and Fisher (2017) was the premise that two cultures have different conceptions of justice and justice-based approaches to Treaty settlements. From the Waikato position, the approaches were evident regarding the Crown's Kawanatanga approach versus Waikato's Rangatiratanga approach to negotiations and the final settlement. That raised the question of the outcomes of the Treaty Settlement process and whether the outcomes can be described as 'just' and whether justice involves reconciliation or the recognition of mana. Commentary is made on the role of the Treaty itself as a shared standard of justice between the Crown and Maaori, but also that the Treaty itself can constrain the delivery of justice in the Settlement process.

The other issue is to ask whether justice is enforceable in the sense of a contractual relationship capable of enforcement post-Settlement. If reparative justice is about restoring the status and righting a wrong – as in the example of Waikato-Tainui "I riro whenua atu me hoki whenua mai", then one of the tests would be the Crown continuing to make land available to tribe, and this would include land from the Department of Conservation estate.

Fisher (2017) was fortunate to have access to interview participants, including myself, who were involved in both the Waikato and Ngaai Tahu negotiations but was limited by only being able to give his interpretation of those puuraakau. What was useful was his commentary on the building of the settlement infrastructure during those negotiations.

Part of Treaty settlements is the matter of establishing post-settlement governance entities. Do post-settlement entities manifest the reality of mana motuhake or do they reinvent the oppressor and rename it Maaori Governance (Bidois, 2017; Joseph, 2014). An examination of post-settlement entities may find that these are not just noble gestures of resolution of historical and contemporary State wrongs. Settlements might instead function as tools that perpetuate colonial oppression by requiring the management and custodianship of post-Settlement tribes through corporate and commodifying entities. This premise is magnified by the current processes and policies of requiring the adoption of a Crown-designed post-Settlement governance entity by iwi as a condition of Settlement. Waikato and Ngaai Tahu were fortunate in their respective Settlements to determine their own post-Settlement structures (Fisher, 2015). They were, however, constrained by what could be designed with the limited options of a legal entity creating, it is submitted, the alterity of the 'Treaty Settlement tribe' and 'the tribe'. This is an area of my topic that would require further research. The matter of corporatisation of the iwi was a key concern for Robert, one of the participants I interviewed.

The sole article used for the comparator case study Chapter 6 was *Keeping the Fires Burning: Grievance and Aspiration in the Ngai Tahu Settlement* (O'Regan et al., 2006). The importance of this article revealed to me how similar the path to settlement was for Waikato and Ngaai Tahu was. What I refer to as pedagogy, Ta Tipene O'Regan refers

to as ‘Culture’. The major point of difference between the Settlements was that Waikato was a land settlement and Ngaai Tahu was a cash settlement.

The one non-negotiable in the Settlement was that the land-for-land principle was not part of the negotiation with the Crown. It would have been pointless to negotiate with the Crown if land-for-land was not on the table. This follows as previously noted, Taawhiao’s edict that land should be returned. It also continues and ends what Te Puea started in terms of the 1946 Settlement to the extent that land was not part of redress at the time; however, the return of lands formed the thrust of the 1995 negotiations and allowed the tribe to conclude a land-for-land Settlement. What the opportunity is for the future, is that other Crown lands could also be returned under the right of first refusal mechanism. This mechanism only applies to lands the Crown owned in 1995. Any subsequent Crown lands acquired after 1995 are a challenge for future generations to pursue.

Robert’s koorero reinforced the importance of the land being returned, the only difference that he expressed was that it should have gone to the hapuu opposed to the iwi collective. But nevertheless, the foundational principle was as strong in his koorero as in the other interviews. The notion of sacrifice for the return of land was a common theme amongst participant puuraakau, my own puuraakau, and Sir Robert’s personal pedagogy of leadership.

Relevant to how the negotiations came about was Waikato’s responses to the State-Owned Enterprises Act and the sale of Coal Corporation in the 1980s and this featured in participant koorero of the raupatu and the Court of Appeal case of 1989 and travelling to Wellington for the hearing, putting in the submission to the Waitangi Tribunal and all of those legal actions that gave the opportunity to the tribe to take their claim to the next level. So critical to the resolution and the initiation of the negotiations was, as I have stated previously, the engagement of the judiciary into the argument between ourselves and the Crown.

One of the participants recalled his experience of the Coal Corporation case, sitting in the Court room with the kaumatua in the front row, and how sympathetic the Judge was to our cause. This was an example of how our pedagogy resulted from particular places and points in time. The same participant also recounted filing the statement of claim to

the Waitangi Tribunal immediately the Tribunal was given retrospective power to investigate grievances from 1840. That gave the Tainui Maaori Trust Board the opportunity to reopen the raupatu grievance and file the tribe's 1987 statement of claim to the Waitangi Tribunal for 1.2 million acres of raupatu land, the Waikato River, and the four West Coast harbours. However, the tribe's involvement in the Sealords Settlement allowed them to move into direct negotiations with the Crown.

Having kaumatua and kuia guiding the negotiation and settlement process, maintaining the tikanga and wairuatanga of Waikato, and having skilled negotiation teams that were well prepared and supported by the research was critical to the Waikato pedagogy, and our success. As I said in my puuraakau, without the wisdom and experience of kaumatua and kuia, we would not have achieved what we did. Our greatest asset in our pedagogical approach was the kaumaatua and kuia, and by extension, the people.

For many, they described their work for the settlement as their destiny. One participant said that hard work and sacrifice was nothing new to Waikato, and through the negotiations, that was what kept the metaphoric fuel tank full and was what drove everyone. Another participant recalled the long hours spent at the Centre for Maaori Studies and Research which was where work was done that was central to achieving settlement.

My own perspective was that we were often better prepared than the Crown. Unlike the Crown, many generations of our leadership had deeply debated the injustices of raupatu and how we could achieve redress. We were ready, and with Sir Robert's decisive leadership that was finely attuned to the tribe, the engagement with the Crown produced success.

For Waikato, maintaining Waikato values and principles through the negotiations and settlement was also key to our Waikato pedagogy. One of the participants spoke of how the Crown expected Sir Robert to sign the Deed of Settlement but Sir Robert knew the principle should be Crown to Crown, Rangatira to Rangatira which was why Dame Te Ata signed the Deed of Settlement alongside the Prime Minister, Sir James Bolger. Also recounted were the Waikato River negotiations and how Waikato people gathered at night at the place where the Waikato and the Waipa Rivers met. The participant recalled

the sound of a pounamu hitting the water when Dame Te Ata threw the pounamu into the river; another Waikato tikanga.

The pedagogy of Waikato and the Kiingitanga was inherent to the negotiation and settlement process. Participants thought that without the powerful role of Kiingitanga, there would have been no pedagogy. The Kiingitanga leadership was influential in setting the Terms of Reference for the negotiations, and Dame Te Ata was described as having contributed to socializing the negotiations amongst non-Maaori New Zealanders.

The themes of equitable benefits, hapuu versus iwi Settlement model, and the corporatisation of the tribe will require ongoing discussion amongst the tribe. Inequitable benefits debunked the theory of 'trickle down' benefits, and as well, there is a need to address the social needs of Waikato whilst growing the economic asset base for future generations. These were problems that were uppermost in the mind of Sir Robert, the solutions of which remain elusive.

The return of lands to hapuu rather than to iwi may require further consideration. Sir Robert's view was that loss was collective, so benefits should be collective. That position was supported by the Maaori Land Court, but some hapuu have within their boundaries land that is currently with the Crown and could be returned to hapuu.

To summarise key findings:

1. The Waikato Settlement pedagogy has remained consistent over the generations. Refining and defining the pedagogy will reflect changing times and circumstances. This notwithstanding, the pedagogical values and principles of Waikatotanga and Kiingitanga remain unchanged.

2. The 'war cry' of *I riro whenua atu, me hoki whenua mai* first espoused by Taawhiao was the foundation that drove the negotiation, and it was non-negotiable. Monetary redress was compensation for the 'sin', which was the injustice of raupatu. Waikato forced the Crown to the negotiation table and controlled the agenda from the outset as evidenced by refusing the first Crown offer of $10 million. Waikato engaged the next Government on its own terms, insisting that negotiation would only take place between

the Principal Negotiator, Sir Robert, and the Minister for Treaty of Waitangi Negotiations, Sir Douglas Graham.

3. The key common themes from participant interviews presented the experiences of nine members of Waikato who had themselves or their whaanau members had been involved in the negotiations and the final Settlement process.

4. Waikato negotiated the 1995 Raupatu Settlement legislation which was something unheard of before then.

5. Waikato designed the Settlement infrastructure which, although Waikato insisted that it not create a precedent; nevertheless, the Crown used the infrastructure and processes developed by Waikato as a template for other iwi settlements.

6. Waikato had leverage over the Crown in the later stages of the negotiations as evidenced by the inclusion of the Relativity clause.

7. Waikato engaged the highest level of intellectual research as part of its negotiation arsenal, and conducted the negotiations for Settlement under the mantle of the Kiingitanga.

Conclusion

It was the Settlement pedagogy and not Settlement policy that drove the Waikato negotiations. The term 'pedagogy' came to the fore as a tool for decolonisation. Ascribing that term to what Waikato did during and prior to the negotiations elevates the 'story' to a powerful narrative. Part of that pedagogy is the role of the storyteller to add to its authenticity. This provides a strong rationale to legitimate an iwi-centric approach to Treaty Settlements to guide current and future claimants allegations that the Crown's social, political and cultural policies breach the Treaty of Waitangi, therein adding to the Waikato settlement pedagogy of 30 years ago.

Each Settlement should claim their own pedagogy, and the excitement will be to examine what a collective pedagogical approach to Treaty Settlements would look like. What we did not have 30 years ago was the suite of Settlements and Settlement Legislation that we have now that embeds the Treaty of Waitangi into our political and

judicial landscape. I submit there is an unrealised and untested position of leverage that can be used to keep the Crown accountable. The Crown cannot insist on a ‘Full and Final’ settlement and walk away from their obligations. The reality is that it won’t be iwi who will breach their Settlements, instead it will be the Crown.

Did the findings respond to my research questions? The answer is yes, as Waikato had the steering wheel and built on its negotiation position, which had been established many generations before. The approach was multi-faceted and strongly grounded in Waikatotanga and Kiingitanga. My original thinking was that I would simply tell the story of what we did. When I looked at ‘how we did it’ and ‘why we did it’, then the research became much more profound. I believe this was inevitable given that the pedagogy of Waikato is part of the ongoing story of the raupatu.

The research achieved its purpose as a study of the people, by the people, and for the people. Waikato has taken back its story of the raupatu and can use this research to reinforce our 1995 Settlement, particularly in these divisive times, and no doubt future trials and tribulations.

CHAPTER NINE – CONCLUSION

I started this research journey with a sense of excitement. I was excited to get an insider's version of the Waikato story of the 1995 Treaty of Waitangi Settlement negotiations, which had not been done before regarding our Waikato Settlement.

My headspace at the time was retaliatory and vengeful, ready to demonise the oppressor, expose the coloniser, and 'stick it to the Crown'—not a good place to start, as I eventually realised. This was not a story of victimhood but of mana motuhake.

As I referred to in my 'positionality,' the quote from Dickens' novel A Tale of Two Cities speaks to the resilience, fortitude, generosity, and courage of the leaders and peoples of Waikato and, above all, their unity. Viewed in this light, my research is a story of Aroha—a story of love as the concept is understood by Waikato. It is also a story of time and place.

The research was not intended to be a historical account, even in a contemporary sense. The purpose of the research was to inform and provide the Waikato pedagogy of our 1995 Raupatu Settlement to guide the current generation and, importantly, our rangatahi who are our future leaders. Our pedagogy asserts Waikato mana motuhake through the long journey of seeking reparation for the wrongful punishment and taking of Waikato lands by the Crown.

Waikato had its own distinctive pedagogy for how we undertook the negotiations and eventual Settlement with the Crown. The Crown did not control the negotiations and the Settlement, even though it may have appeared that way to people who were not from Waikato.

The pedagogy of the 1995 Settlement had its origins in the leadership of Waikato and the Kiingitanga. It is for Waikato to monitor and maintain the 'full and final' aspect of the 1995 Settlement. The fact that there were similarities—and differences—between the settlement approaches of Waikato and Ngaai Tahu suggests that similarities and differences will also feature in the settlement processes of other iwi.

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GLOSSARY

Aotearoa = New Zealand
ahi kaa = continuous occupation on land through whakapapa
haka = perform
hapuu = subtribe
hiikoi = march
hoki = return
hui = meeting
iwi = tribe
kaahui = group
kaawanatanga = government
kai = food
kaikaaranga = caller (female)
kanohi ki te kanohi = face to face
karakia = prayer
kaumatua = elder (male)
kaupapa = topic
kaupapa o te ra = topics of the day
koorero = talk
korowai = cloak
kotahitanga = unity
kuia = elder (female)
kuupapa = collaborator, Māori who sided with Government
mamae = painful, sore
mana = prestige, authority
mana motuhake = self-determination, autonomy
manawa = heart
marae = place where gatherings are held
marae ataea = courtyard in front of wharenui
maatauranga = knowledge
mihi = greeting
Pai Maarie = chant
Poowhiri = welcome ceremony
puutea = sum of money
rangimaarie = peace
rangatiratanga = chieftainship
rangatira = high ranking chief
raupatu = confiscated
ringawera = kitchen worker
take – utu – ea = issue – compensate – be satisfied
tapu = sacred
te kupu = the word
te ao Maaori = the Maaori world
te reo Maaori = Maaori language
tika = correct
tikanga = correct procedure, custom
tinana = body
tongi = prophetic saying
tongikura = saying

tupuna = ancestor
tuurangawaewae = place to stand, marae in Ngaaruawaahia
waahine toa = strong/brave woman
wairua = spirit
wairua tiaki = guardian spirit
whaikoorero = welcome speeches
whakataukii = proverb
whanau = family
whenua = land

FIGURES:

APPENDICES

Appendix 1 – Ethics Committee Approval Letter

Appendix 2 – Supporting Documentation

A. Consent Form (Unsigned)
B. Participant Information Sheet
C. Semi-structured Interview Schedule
D. Letter of Support from Waikato Tainui College for Research and Development

Appendix 1. Ethics Committee Approval Letter

TE WHARE WĀNANGA O
AWANUIĀRANGI

10/12/2021 Student ID: 2192141

Shane Solomon
68 Great South Road
Taupiri 3721

Tēnā koe Shane,

Tēnā koe i roto i ngā tini āhuatanga o te wā.

Ethics Research Committee Application EC2021.35 Outcome: Approved

The Ethics Research Committee Chairperson has reconsidered your application and we are pleased to inform you that your ethics application has been approved. The committee commends you on your hard work to this point and wishes you well with your research.

Please ensure that you keep a copy of this letter on file and include the Ethics committee document reference number: EC2021.35 on any correspondence relating to your research. This includes documents for your participants or other parties. Please also enclose this letter of approval in the back of your completed thesis as an appendix.

If you have any queries regarding the outcome of your ethics application, please contact us on our freephone number 0508926264 or via e-mail ethics@wananga.ac.nz.

Nāku noa, nā

Shonelle Wana, BMM, MIS
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Appendix 2. Supporting Documentation

A. Consent Form (Unsigned Example)

THIS CONSENT FORM WILL BE HELD FOR A PERIOD OF FIVE (5) YEARS

I have read the Information Sheet and have had the details of study explained to me.

My questions have been answered to my satisfaction, and I understand that I may ask further questions at any time.

I agree/do not agree to the interview being audio taped.

I agree/do not agree to the interview being videotaped.

I agree to participate in this study under conditions set out in the Information Sheet but may withdraw my consent at any given time, up to four months after receiving my transcript.

Signature:_____ **Date:**_____

Full name - printed:_____

B. Participant Information Sheet

Teenaa koe. Thank you for showing an interest in this research. Please read this sheet carefully before deciding whether to participate. If you decide to participate, thank you. If you decide not to participate there will be no disadvantage to you and I thank you for considering the request.

What is the aim of the research?

The research is principally to complete my Professional Doctorate with Te Whare Wananga o Awanuiarangi. The thesis research is to identify the strategies of Waikato's engagement in the negotiations.

You may have been a member of the Waikato negotiation team or had a whanau member who was part of the team. You may have been an observer of the negotiations and settlement as a tribal member.

The aim of this study is to disrupt the assumption that the Crown and only the Crown dictates what the settlement negotiations and process, policy and approach will be when they engage with lwi in a Tiriti settlement negotiation. The Waikato experience of settlement negotiations provides a counter point to this assumption over a 132-year history of Tiriti breach resolution. Waikato has been quiet clear on what was required to atone for the war waged against the tribe resulting in loss of life and loss of land. Using this experience provides an opportunity with the research to future proof our iwi approach to the design of settlement negotiations by iwi for iwi that is respected and endorsed by the Crown.

There are two questions the research will aim to answer.

1. How do lwi strategise to influence government Tiriti settlement policy development both legal and fiscal?

2. How did Tikanga and Waikatotanga provide an Iwi-centric

   pedagogy to the settlement process?

A further aim of the research is, through your consent, to provide you with a digital recording of your interview so that you have a story to share with your whanau and particularly your mokopuna.

What are you being asked to do?

Should you agree to take part in this research you will be asked to take part in an interview at a location of your choice. The interview will take approximately one to three hours. The interview will be video recorded.

Will you be identified?

You will have the choice to be identified or remain anonymous. If you choose to remain anonymous pseudonyms will replace real names and all other distinguishing features will be removed (i.e. names of individual marae, organisations, places and people to protect anonymity). The interview will be treated with the strictest confidence and no findings which could identify any individual participant or any person referred to in the interview will be published.

What will happen to the information?

The information that is collected will be securely stored in such a way that only myself and my supervisor will be able to gain access to the information. In addition, the transcriber and video technician will sign a confidentiality agreement. Information obtained because of the research will be retained for at least five years in secure storage. You will also be provided with a digitised copy of your interview and a summary of the research findings.

What are your rights?

It is entirely your choice to participate and you do not have to take part in the study. As a voluntary participant you have the right to:

- Ask any question about the study at any time
- Decline to respond to any questions or ask that the video recording be turned off
- Withdraw from the research at any time within four months of receiving a copy of your transcript.

What if you have any questions?

If you have any questions either now or in the future feel free to contact myself (srsolomon47@gmail.com phone 0211864161) or my supervisor Mera Penehira (mera.penehira@wanaanga.ac.nz)

Ethics Committee Approval Statement

This project has been reviewed and approved by Te Whare Wānanga o Awanuiarangi Ethics Committee. If you have any concerns about the conduct of this research

C. Semi Structured Interview Schedule

Thank you for agreeing to participate in this research.

Background

If you agree to be identified, can you tell me about yourself (marae, hapuu, iwi affiliations etc.?)

Questions

1. What were your recollections of the Raupatu (land and river) negotiations?
2. Did you have a specific role in the negotiations and if so what was that role?
3. Did your family have a specific role in the negotiations?
4. How did you feel about the approach taken by the tribe to the negotiations?
5. Did you feel the negotiation strategy was informed by our tikanga and if so how?
6. How did you feel about the approach taken by the tribe to the negotiations?
7. How do you see the outcomes of the negotiations affecting your present life?
8. How do you see the outcomes of the negotiations affecting your future life?
9. In your view what role did Kiingitanga play?
10. How were our tikanga reflected in the negotiation process?
11. Do you think the settlement negotiations achieved [11]*/ riro whenua atu/ me hoki whenua mai -As land was taken so land should be returned".*
12. Do you feel the Crown genuinely apologised for the wrong done to Waikato?
13. Do you have a view on the settlements being full and final?
14. Twenty-five years on, what did you think has been achieved through the settlement
15. Is there anything else you wish to say or add?

D. Letter of Support Waikato Tainui College for Research and Development

WAIKATO-TAINUI
COLLEGE FOR RESEARCH AND DEVELOPMENT

24 September 2021

To whom it may concern,

RE: Shane Solomon Professional Doctorate Thesis

The Waikato Tainui College for Research and Development is aware of and fully supportive of Mr Solomon's' research proposal for his Professional Doctorate with TeWhore Wānanga o Awanuiarangi.

Kindest Regards,

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