October 2014 – Whiringa-ā-nuku 2014

Māori Law Review
A MONTHLY REVIEW OF LAW AFFECTING MĀORI

Special Issue – The Tūhoe-Crown Settlement

Editorial

Dr Carwyn Jones

This special issue of the Māori Law Review focuses on the settlement of Tūhoe's historic Treaty claims. This is a remarkable settlement in many ways.

First, there is the history of Tūhoe-Crown relations. As Dr Vincent O'Malley identifies in this issue, this is a history that has been marked by Tūhoe assertions of mana motuhake and often brutal Crown action directed at eroding Tūhoe autonomy. The Crown's military campaign and scorched earth tactics of the 1870s is perhaps the starkest illustration of the violence inflicted by the Crown. However, the subsequent confiscations and later land-takings along with the failure to implement the provisions of the 1896 agreement between Tūhoe and the Crown that would have recognised Tūhoe's internal autonomy, also undermined Tūhoe's self-determination. Through this settlement, the Crown and Tūhoe are confronting this history.

If it is significant that the Crown is facing up to its past interactions with Tūhoe, it is also significant that the conceptual foundation of this settlement has always been about giving expression to Te Mana Motuhake o Tūhoe into the future. A key aspect of the Waitangi Tribunal's Te Urewera inquiry was Tūhoe's constitutional claims. In her article Professor Rawinia Higgins points out that exercising self-determination need not be rendered as separatism. Te Whare Hou that Professor Higgins writes about provides the conceptual framework for a governance model based on Tūhoe whakapapa, land, and right to determine relationships between land and people. This concept is given physical expression in Te Kura Whare.

(Continued at p 3)

This issue may be cited as: (2014) October Māori LR

ISSN 1172-8434

Use this QR code to visit our website

Contents
(2014) October Māori LR

Special Issue – The Tūhoe-Crown Settlement

This print edition of the Māori Law Review is published 11 times each year starting with the February issue.

Disclaimer

(Continued from p 1)

The settlement also provides for innovative mechanisms for the governance of Te Urewera, which Dr Jacinta Ruru describes as “legally revolutionary here in Aotearoa New Zealand and on a world scale”. Te Urewera has been central to the Tūhoe claims and reaching agreement about the future of Te Urewera was always going to be vital to this settlement. Under the Te Urewera Act 2014, Te Urewera ceases to be a national park and is declared a legal entity in its own right. This is a truly ground-breaking aspect of the settlement.

Another highly innovative component of the settlement is the Social Services Management Plan that Māmari Stephens discusses. The Service Management Plan is the central part of the ‘Mana Motuhake redress’, which is expressly aimed at transforming the relationship between Tūhoe and the Crown and again reflects the fact that the exercise of mana motuhake is a fundamental aspect of Tūhoe identity. Many settlements include relationship instruments with various government departments, but the Service Management Plan is a major development, setting out a 40 year plan with a set of ambitious goals.

For these reasons, the Tūhoe settlement must be seen as an extremely important milestone in the settlement of historical Treaty claims. The Māori Law Review team is very pleased to be able to bring together this special issue of articles by authors who are so well-placed to be able to explore some of the most fascinating aspects of this hugly significant settlement.

Dr Carwyn Jones

Historical background

Dr Vincent O'Malley

Overview

Dr Vincent O'Malley provides a concise historical background of events lying behind the Tūhoe-Crown settlement.

Discussion

Behind the Tūhoe-Crown settlement is a long and tragic history of interactions with the Crown. The demand for mana motuhake, self-determination or autonomy, was central to the Tūhoe claim. It was a demand that echoed those of previous generations of Tūhoe leaders. Although Tūhoe leaders did not sign the Treaty of Waitangi in 1840, the Crown nevertheless assumed sovereignty over their territory (Waitangi Tribunal, *Te Urewera Pre-publication Report*, Wai 894 Part 1, Sec. 3.3).

Initially, though, things changed little on the ground. British sovereignty was little more than a legal fiction and the first government visitor to the Urewera district arrived 22 years after the Treaty was signed, in 1862. All that changed almost overnight. Repeated and brutal invasions of the Urewera district from the mid-1860s partly reflected its status as a place of sanctuary for Māori from elsewhere who were seeking to elude government forces (Judith Binney, *Encircled Lands: Te Urewera, 1820-1921*, p.68).

Kereopa Te Rau — convicted in 1871 for the murder of Opotiki missionary Carl Sylvius Völkner in March 1865 (and statutorily pardoned in 2014) — was one of those to be pursued. The Pai Marire faith he supported was officially condemned as a 'fanatical sect' in April 1865 and all 'loyal' subjects of the Crown encouraged to aid in its suppression. In September a government expeditionary force landed at Opotiki. Then, in December 1865, Crown forces launched an invasion via the Waikaremoana district, supposedly in pursuit of Pai Marire adherents fleeing the government attack on their former Turanga (Gisborne) stronghold at Waerenga-a-Hika. Entire settlements were laid waste and prisoners executed in cold blood (Waitangi Tribunal, *Te Urewera Pre-publication Report*, Part 2, Sec 6.5).

But it was the presence in the district of Te Kooti Arikirangi Te Turuki and his followers that resulted in the most protracted and devastating period of conflict. Most of the whakarau, as they became known, had been seized by the Crown and deported to the Chatham Islands in 1866 after being captured during the East Coast Wars. Some Tūhoe taken prisoner at Waikaremoana and elsewhere were among their number. They were held without trial as 'political offenders', enduring harsh conditions and brutal treatment while the government made arrangements to confiscate their lands back at home (Waitangi Tribunal, *Turanga Tangata, Turanga Whenua Report*, Wai 814, 2004 Vol. 1, Sec. 5.2). In July 1868 Te Kooti and his followers escaped and made their way back to the mainland. Seeking to travel peaceably inland, Te Kooti instead found himself hounded by government forces. He retaliated in November of that year, killing more than 50 people (both Māori and Pākehā) at the settlement of Matawhero, near Gisborne, before being granted sanctuary in the Urewera district the following year (Waitangi Tribunal, *Turanga Tangata, Turanga Whenua Report*, Vol. 1, Sec. 5.5).

Tūhoe were to suffer terribly for giving shelter to Te Kooti. Scorched earth tactics directed against them saw their homes and crops deliberately destroyed by colonial forces and their cattle and livestock plundered (Waitangi Tribunal, *Te Urewera Pre-publication Report*, Part 1, Sec. 5.5). Those not killed in the conflict would be starved into submission. Worn out by wave after wave of bloody invasion, in 1871 Tūhoe chiefs reached a crucial agreement with the government, promising to capture and hand over Te Kooti in return for a Crown undertaking to respect their internal autonomy. In this way, although Te Kooti managed to escape, making his way to the King Country in May 1872, Tūhoe's rohe potae or encircling boundary came into existence.

Local rangatira quickly established a new governing body for their district in the aftermath of the war. Te Whitu Tekau (the Seventy) declared its opposition to land sales, surveys, roads and other tools of colonisation that threatened to undermine Tūhoe independence. But Crown and private agents were already chipping away on the fringes, posing a serious challenge to Tūhoe land and autonomy. The confiscation of valuable lands in which the iwi claimed interests in the Bay of Plenty and further south at Waikaremoana was felt deeply, and the steady erosion of the rohe pōtae that the government had promised to protect in 1871 would have serious consequences for Tūhoe (Waitangi Tribunal, *Te Urewera Pre-publication Report*, Part 1, Sec. 4.5; Part 2, Sec. 7.5).

It may have been important to Tūhoe, but as far as the Crown was concerned, Native Minister Donald McLean's 1871 agreement with the tribe was no more than a temporary expedient at a time of war (Waitangi Tribunal, *Te Urewera Pre-publication Report*, Part 2, Sec. 8.3). Opening up the district to the rule of English law and land sales became a prime objective, especially as rumours circulated as to the existence of gold and other valuable minerals in the area. Setting aside the ring boundary was to be attempted in a number of different ways, including land purchases on the Urewera perimeter conducted with rival tribes, or secretive advances paid to needy individuals in the aftermath of the war that would later have to be repaid in land. For both Crown and private land buyers, indebtedness became a key tool in prising open the district (Waitangi Tribunal, *Te Urewera Pre-publication Report*, Part 2, Sec. 10.4). Forced surveys for which the tribes would nevertheless be required to cough up land in payment was one tactic used — while outright fraud was also employed in some circumstances, most notably with respect to lands at Waiohau that were subject to an illegal partition, resulting in the owners being evicted from their homes (Waitangi Tribunal, *Te Urewera Pre-publication Report*, Part 2, Sec. 11.5).

By the early 1890s the boundary had become not just smaller but also literally an encircling one as all of the lands on the edge of the district had either been confiscated, purchased or at least been pushed through the Native Land Court as a preliminary to sale. Colonisation became largely a matter of legal procedure rather than military might. The process of survey and title adjudication in which formerly communal and customary titles were replaced by legal ones empowering individuals to sell their piece of the tribal patrimony was one that many Tūhoe leaders had fought tirelessly to exclude from their district. But the relentless nature of government efforts to unlock the region to European settlement left Tūhoe deeply vulnerable to rifts and infighting prompted by land disputes (Judith Binney, *Encircled Lands: Te Urewera, 1820-1921*, p.329).

A series of disputed surveys in the early 1890s that threatened to spill over into open warfare served as the catalyst for a new agreement with the Crown. The Native Land Court would not be imposed on Tūhoe's remaining lands provided they agreed to an alternative title investigation process. At the same time, the internal autonomy of Tūhoe and other Urewera iwi would be protected so long as the ultimate authority of the Crown was recognised. This 1896 agreement thus gave Tūhoe's de facto 'home rule' legal standing (Waitangi Tribunal, *Te Urewera Pre-publication*

Report, Part 2, Sec. 9.5). Given the frequently declared insistence of local politicians and leaders on a unitary form of government, in New Zealand terms this appeared to be a hugely significant concession and other iwi leaders expressed considerable interest in the model.

Yet the ominous if cynical warnings of Opposition MPs as the Urewera District Native Reserve Act passed through Parliament ultimately proved correct. Although Premier Richard Seddon spoke of finally honouring the quarter-century-old compact, his opponents predicted that the new measure was no more than 'the thin end of the wedge' that would finally open the district to colonisation. Tūhoe leaders may have thought they were getting legally sanctioned self-government, but they were really just opening themselves up to a new form of entrapment (Judith Binney, *Encircled Lands: Te Urewera, 1820-1921*, p.404).

The Urewera Commission that began investigating land ownership in the area in the late 1890s soon proved more similar to the Native Land Court than anyone might originally have envisaged or feared. Under the 1896 legislation, it was to consist of five Tūhoe and two Pākehā commissioners. But an amendment passed in 1900 without consultation with the iwi disqualified any members who were personally interested in a case from deciding ownership. Consequently, many title orders were made by the Pākehā members. A second Urewera Commission established to hear more than 200 appeals had no Tūhoe representation on it. Tūhoe leaders complained that the titles that were issued failed to reflect their custom (Waitangi Tribunal, *Te Urewera Pre-publication Report*, Part 3, Sec. 13.4).

Repeated crop failures, famine and disease wreaked havoc on tiny communities, as many as one-fifth of the total population of around 1600 dying in one year alone (1898) (Judith Binney, *Encircled Lands: Te Urewera, 1820-1921*, p.629). It was in these desperate times that a great new Tūhoe prophet emerged. Rua Kenana claimed to be the successor that Te Kooti had much earlier prophesied. He set about building a thriving community at Maungapohatu. But Rua needed money to develop the area, and was willing to sell a limited amount of land to the government in order to get the capital he needed.

Crown officials expertly played Rua off against other tribal leaders, with the ultimate goal of overturning Tūhoe autonomy and opposition to land dealings. Tūhoe leaders had wanted the 1896 Act to include an outright ban on land sales. Instead, it reserved the right of purchasing solely to the Crown, with any purchases to be negotiated with the General Committee that was to be established under the legislation. Officials instead dragged their feet on convening the committee, while throughout manipulating tribal divisions engendered by the government's own actions (Waitangi Tribunal, *Te Urewera Pre-publication Report*, Part 3, Sec. 13.6)

A series of legislative amendments after 1896 incrementally undermined Urewera self-government. Then, in possibly the most cynical measure of all, in 1910 the government simply starting buying land interests directly from individuals, in direct contravention of its own laws (Waitangi Tribunal, *Te Urewera Pre-publication Report*, Part 3, Sec. 13.7). With

Rua no longer playing ball, in 1916 police raided his settlement at Maungapohatu on trumped up charges of sly-grogging, arresting the prophet and killing his son Toko (Waitangi Tribunal, *Te Urewera Pre-publication Report*, Part 4, Sec. 17.3). The result was that, by 1921, Tūhoe autonomy was all but finished.

Legislation passed the following year repealed the 1896 Act, doing away with any last legal vestiges of self-government and providing the basis for a further round of wholesale land purchasing. The Urewera Lands Act of 1921-22 formally abolished the General Committee and authorised an Urewera Consolidation Scheme premised on ensuring that the scattered individual interests the Crown had acquired across many blocks was translated into outright ownership to around half the district. Another 40,000 acres was lost due to demands that Tūhoe contribute land for roading. The lands were taken but most of the roads were never built (Waitangi Tribunal, *Te Urewera Pre-publication Report*, Part 3, Sec. 14.3).

Further lands were taken for survey costs, and Tūhoe were left with just 16% of the Urewera reserve (Tūhoe Claims Settlement Act 2014, s 8(9)). Much of this was unsuitable for farming or subject to restrictions as a result of various conservation measures. With inadequate lands to support a population that had started to recover, by the 1930s large numbers of Tūhoe began moving elsewhere in search of employment opportunities. Matters were not helped by the establishment of the Urewera National Park in 1954, which placed further kerbs on access to customary resources and hampered the ability to develop lands adjoining or enclosed by the Park. The result is that today nearly five-sixths of all Tūhoe live outside Te Urewera and of those who remain a significant proportion suffer from severe socio-economic deprivation (Tūhoe Claims Settlement Act 2014, s 8(11)).

Te Wharehou o Tūhoe: The house that ‘we’ built

Professor Rawinia Higgins

Overview

Professor Rawinia Higgins describes the building of new governance arrangements for Tūhoe along with the journey that saw the construction of a new house for Tūhoe.

Introduction

Last year I was invited to partake in the Constitutional Review series aired on Radio New Zealand and talk about the Tūhoe Treaty of Waitangi Settlement and more specifically the creation of Te Wharehou o Tūhoe (a new house for Tūhoe) (‘Debating the Constitution 3: Māori Aspirations’

from Constitutional Review, 28 April 2013. http://www.radionz.co.nz/national/programmes/constitutional-review).

The following is an adaptation of the address I gave as part of this. The building of Te Wharehou o Tūhoe under the name Te Uru Taumatua, as our Post Settlement Governance Entity (PSGE) is not just the figurative structure of a political governance entity but also the literal building of Te Kura Whare in Tāneatua to house the PSGE, and more importantly to house our kōrero (histories), our people and provide a shelter for Tūhoe future aspirations.

Discussion

Like the construction of any house, many people are often involved in different aspects of that house. Cumulative tales like the classic 'This is the house that Jack built' with its multiple stanzas highlights the different relationships that Jack had in order for him to build his house. Despite the tale continually referring to Jack as building the house, the substance of this tale shows that Jack didn't build the house by himself.

The construction of Te Wharehou o Tūhoe has involved, directly and indirectly, countless people. It is a cumulative tale that involves the relationships Tūhoe have had and continue to have with our own hapū, with other iwi and with the Crown. The Tūhoe Treaty of Waitangi Settlement is another stanza to Tūhoe history that will be added to this cumulative tale. However, it is one where many dreams and aspirations for Tūhoe will be realised and the prospect of a new and different future is enabled.

The historical injustices of the past that formed the basis of the Tūhoe Treaty of Waitangi Settlement are well documented and too extensive to discuss in this article. However, a snapshot of these historical events can be located on the whare hou's website (http://www.ngaituhoe.iwi.nz/our-history). (Ed. And see Vincent O'Malley's background to the Tūhoe-Crown settlement in this issue.)

When people think of Tūhoe there are many descriptions that come to mind. However, despite how we have been portrayed historically as rebellious or more recently as terrorists, the foundations of the whare hou (new house) have never changed. Te Urewera and Mana Motuhake continue to be an innate part of who we are as Tūhoe and provide the solid foundations from which Tūhoe were able to construct the whare hou. In negotiating the Tūhoe Treaty of Waitangi settlement Te Urewera and Mana Motuhake were 'bottom line' items. Te Kotahi a Tūhoe, as the mandated body established to manage the Tūhoe Treaty of Waitangi Settlement negotiations, were told fervently by Tūhoe not to bother with any settlement if these were not guaranteed. The negotiation of the settlement's quantum was the other bottom line that was included in Te Kotahi a Tūhoe's mandate.

The Treaty of Waitangi settlements process has been interesting for Tūhoe. For a long time, this fell under the raupatu claim of WAI 36 that was led by the Tūhoe Waikaremoana Trust Board.[1] Some dissatisfaction from other members of Tūhoe brought together Ngā Rauru o Ngā Pōtiki

as a collective to support other claims that fell outside of WAI 36. Fifteen Te Urewera Inquiry hearings were convened between 2003 and 2005 and provided the evidence of the extent of the historical grievances against the Crown before the Waitangi Tribunal. Many of these historical injustices are described as some of the worst committed during the colonial era and furthermore, were compounded by more than a century of continued failures to rectify these injustices.[2]

In an effort to coordinate and cooperate, these two claimant collectives came together and in November 2005[3] Te Kotahi a Tūhoe was formed as the mandated iwi authority to negotiate and settle Tūhoe raupatu claims with the Crown.[4] By October 2006 there were approximately 30 Tūhoe Treaty of Waitangi Claims under the negotiations. Alongside the negotiation of all Tūhoe claims, Te Kotahi a Tūhoe were also responsible for negotiating Tūhoe's interests in the Central North Island Settlement. The outcome of settling this aspect of Tūhoe claims saw Te Kotahi a Tūhoe create the Tūhoe Establishment Trust to establish a PSGE for Tūhoe that would lead to the consolidation of all Tūhoe authorities under the one roof.

Te Kotahi a Tūhoe gave the Tūhoe Establishment Trust a limited timeframe (2 years) from which to work towards building a Whare Hou for Tūhoe. Their role was to consult extensively with the hapū from Tūhoe as to what a new governance model would look like. Their focus was to establish the new Tūhoe Authority with the objective, 'he Waihanga i te Whare Kaha o Tūhoe' (to build a strong house for Tūhoe). At the time there were three entities that had some form of mandate from the iwi. The Tūhoe Waikaremoana Māori Trust Board (TWMTB), Te Kotahi a Tūhoe and the Tūhoe Fisheries Charitable Trust (TFCT).

The Tūhoe Establishment Trust ascertained that the iwi wanted to consolidate all their asset groups to service the people. This objective would lead to one administration of Tūhoe authorities and would better realise the enactment of Mana Motuhake. As the TWMTB and the TFCT both came under distinct legislation this required some negotiation to ensure that consolidation was achieved through the collective effort of shareholders, beneficiaries and the governance bodies of each of these entities. This was enabled primarily because as an iwi the collective interest to achieve Mana Motuhake was the ultimate goal.

Mana Motuhake is a concept that is used in different contexts and means different things to different people. Mana Motuhake is classically defined as autonomy or independence. For Tūhoe we feel it is interdependence, because despite being isolated within what was known as Te Urewera National Park, Tūhoe have always maintained and relied on relationships with others outside of Te Urewera. Tūhoe have been accused of promoting separatism and anarchy against the state but we are more philosophical than that. We know that what defines us as Tūhoe is our whakapapa, our land and our right to determine our relationships with the land and the people. The provisions of the Deed of Settlement relating to Mana Motuhake are about a working relationship between Tūhoe and the Crown over 40 years[5] to create better outcomes for Tūhoe in Te Urewera. In the press release relating to the Service Management Plan,

Christopher Finlayson stated "One of the goals of the SMP is to assist Tūhoe to build their capability to manage their own affairs as much as possible, while assisting the Crown in improving delivery of services in Te Urewera."[6] (Ed. See Māmari Stephens' article on the Service Management Plan in this issue.)

The realisation of Tūhoe Mana Motuhake is located in Te Urewera. Although philosophically Tūhoe have maintained their Mana Motuhake over Te Urewera, this has historically proven difficult to demonstrate while Te Urewera was still legally recognised as a National Park. As part of the settlement, Te Urewera now has its own legal identity and recognition of the philosophical belief that Tūhoe have held for generations. Te Urewera existed before the people and will continue to exist long after the people and that our role is to take care of it for future generations. This has been reflected in Te Urewera Act 2014. It recognises Tūhoe as the kaitiaki of Te Urewera and ensures that Tūhoe is enabled to fulfil this role as part of the Te Urewera Board. Tūhoe will chair this board, and eventually over time will transition to holding the majority of seats on this board. This is distinctly different from the role Tūhoe served when Te Urewera was a National Park. During the negotiations process there was a perception that the return of Te Urewera to Tūhoe would mean that Tūhoe would prohibit people from accessing Te Urewera. This is further from the truth.

Although the eventual legislative outcome of Te Urewera is one in which Tūhoe supports (particularly as Te Urewera is an integral part in the construction of the Whare Hou) there was a moment in the negotiations journey where this was momentarily jeopardised. On the eve of signing the Agreement in Principle with the Crown in 2010 Prime Minister John Key removed Te Urewera from the negotiation table. For many in the tribe this demonstrated yet again the Crown's undermining of Tūhoe Mana Motuhake. This action proved a challenging time for Te Kotahi a Tūhoe in forging ahead with the negotiations and potentially had set the settlement process back at square one. However, the desire to continue with the construction of Te Whare Hou, outweighed the emotional angst associated with the removal of Te Urewera at that time. Te Kotahi a Tūhoe continued to negotiate not only with the Crown (but also the iwi) and eventually saw Te Urewera returned to the negotiation table.

After a period of discontent and frustration, a significant turning point in the negotiation took place between Tūhoe and the Crown committing to a way forward. On 2 July 2011 a political compact between Tūhoe and the Crown was signed in Ruatāhuna, 'Nā Kōrero Ranatira ā Tūhoe me Te Karauna.'[7] In the compact, it states:

> Tatū mai ki tēnei wā, kua herea a Tūhoe me Te Karauna kia rite tētahi puretumu e whakatikaina ai nā tini hē i whakawhiua poka noatia ai a Tūhoe i roto i nā rau tau, otiia, ki tēnā whakatipurana ki tēnā whakatipurana. He wā momoho tēnei mā māua, mā Tūhoe me Te Karauna kia hīkoi, kia mahi tahi hoki kia kaua ai e tāmatemate te āhua ranatira, kia mau pū tonu ai te whakamanawatana o tāua tahi, kia ana whakamua ai anō te ora mō tāua tahi. E tika ana anō hoki, hai whāina pae tata mā tāua, kia whakaae tahi tāua ki ō tāua āheina mana, tēnā ki tō tēnā.

> Now, however Tūhoe and the Crown have committed themselves to achieving a just and honourable redress for the manifold wrongs inflicted on Tūhoe over centuries and many generations. It is timely, therefore, that we, Tūhoe and the Crown, resolve to walk and work together for our mutual honour, dignity, advantage and progress. And it is fitting that in furtherance of such resolve the Crown and Tūhoe should acknowledge their respective mana.[8]

The significance of this compact restored some faith in Tūhoe that the Crown was willing to acknowledge their mana and continue to work towards a settlement. Furthermore, the signatories to this document were the hapū of Tūhoe, rather than Te Kotahi a Tūhoe to give substance to the compact. The organisation of Tūhoe has always been hapū based, and within the respective taraipara (tribals),[9] issues that relate specifically to hapū are managed by these taraipara to ensure the protection and maintenance of Tūhoe Mana Motuhake, particularly over resources and boundaries.

The Tūhoe Establishment Trust continued to meet its objectives and set into place the Whare Hou. This included a pathway that led to the consolidation of the existing authorities, a representation framework and election process, consolidating the iwi register, work on infrastructure plans including buildings and locations, as well as establishing an investment committee that protected assets and prepared the finances for the transfer to the new Tūhoe authority. The outcome of this work saw the establishment of the governance body Te Uru Taumatua – Te Whare Hou o Tūhoe.

A significant project that Te Uru Taumatua undertook was not only the figurative establishment of Te Whare Hou, it was also the literal establishment of Te Kura Whare in Tāneatua. This award winning 'green' living building was a collaborative effort with architects, designers, engineers, builders and other contractors as well as Tūhoe people themselves. The materials for this building literally come from Te Urewera including the wood and the clay that were used to form the bricks that feature in the building. Clay was tested from all regions of Te Urewera and everyone from the tribe was invited to create these bricks. The opportunity to physically contribute to the creation of a Whare Hou, which serves as a headquarters for the tribe, allows the people to take ownership of the Whare through their participation in the literal creation of it.

While Te Kura Whare was being built, Te Kotahi a Tūhoe continued with negotiations and on 22 March 2013 they initialled the Deed of Settlement in Wellington. The signing of the Deed of Settlement occurred in June 2013. Over a thousand people came to this ceremony at Parliament buildings. In keeping with Tūhoe Mana Motuhake beliefs, Te Kotahi a Tūhoe as well as a member from each hapū of Tūhoe signed the Deed of Settlement. Tūhoe who also attended the ceremony were given copies to sign to further endorse the tribe's support for the Treaty of Waitangi settlement.

As the Te Urewera-Tūhoe Bill made its way through Parliament, Te Kura Whare was completed and opened in March 2014. The second reading

of the Bill took place on 7 May 2014 and the Committee of the whole House was held the following month. It was noted by parliamentarians that it was unusual for Treaty of Waitangi settlement legislation to have to come back for the Committee of the whole House, however, despite some minor debate; it progressed to its third and final reading on 24 of July 2014.

The final aspect of the creation of the Whare Hou occurred on the 22 August 2014 at Te Kura Whare in Tāneatua, when the Crown delivered its apology for the historical grievances inflicted on Tūhoe. From a Tūhoe perspective this was a different position to be placed in. People had not generally come to apologise to the iwi. However, it was decided that it should be viewed as a 'hohou i te rongo' (sealing of the peace) opportunity and with the return of specific taonga to the iwi by the Crown this would give significance to such an occasion. Tūhoe decided to reciprocate by returning the hapū flags that bore the Union Jack insignia that had been used at the various marae across Te Urewera to confirm this peace pact.

In his delivery, the Minister for Treaty of Waitangi Negotiations the Honourable Christopher Finlayson, concluded his speech by saying: 'Let these words guide our way to a greenstone door – tatau pounamu – which looks back on the past and closes it, which looks forward to the future and opens it.'[10] The building of Te Whare Hou o Tūhoe is analogous to this tatau pounamu and the future for Tūhoe looks prosperous as we open the door to the future opportunities that firmly recognise Te Mana Motuhake o Tūhoe and Te Urewera.

In returning to the reference of the cumulative tale of Jack and the house he built, and in writing the next stanza of Tūhoe's tale, we know that the Whare Hou was a combined and collaborative effort that began generations beforehand and its success can only be realised generations from now. What we do know is that this collective effort was premised on our fundamental and unwavering belief in Te Urewera and Mana Motuhake. Maintaining this drive was aided by statements used in early Tūhoe literature relating to the settlements process[11] such as 'Tātau Katoa, Tātau Ka Toa' (through our collective power we can succeed). Simple, effective and now realised so Tūhoe can say: Te Uru Taumatua - this is the house that 'we' built.

Notes

[1] This claim was lodged by James Te Wharehuia Milroy and Tamaroa Nikora (on behalf of Tūhoe). It was later managed by the Tūhoe Waikaremoana Trust Board.

[2] Te Kotahi a Tūhoe, 2006. The Voice of Ngāi Tūhoe – Mandate Pathways Towards Negotiation & Settlement p.5.

[3] Te Kotahi a Tūhoe, 2006. The Voice of Ngāi Tūhoe – Mandate Pathways Towards Negotiation & Settlement p.3.

[4] Tūhoe Establishment Trust, 2009. He Waihanga i te Whare Kaha o Tūhoe, p.6.

[5] As articulated in the Service Management Plan signed between Tūhoe and the Crown.

[6] http://www.beehive.govt.nz/release/social-service-management-plan-ngāi-tuhoe-agreed

[7] This political compact is bilingual and the Māori is written using a Tūhoe dialect and thus omits the 'g'. Interestingly the title provided for the English translation is still in te reo Māori but includes the 'g' i.e. 'Ngā Kōrero Rangatira ā Tūhoe me Te Karauna' and makes it distinctive from the Tūhoe version.

[8] *'Nā Kōrero Ranatira ā Tūhoe me Te Karauna – Ngā Kōrero Rangatira a Tūhoe me Te Karauna'* Political compact document signed by the hapū of Tūhoe and the Crown, 2nd July 2011, Ruatāhuna.

[9] The taraipara is a Tūhoe management system in which hapū located in particular parts of Te Urewera govern themselves and respond to issues related to their region. These are located in Waimana, Ruatoki, Ruatāhuna and Waikaremoana and are made up of representatives of the hapū located in their region. It is through these taraipara that representatives are selected on to the governance board of Te Uru Taumatua.

[10] Hon Christopher Finlayson, 22 August 2014, 'Address to Tuhoe-Crown Settlement Day in Taneatua' in http://www.beehive.govt.nz/speech/address-tuhoe-crown-settlement-day-taneatua

[11] In this case specifically in relation to the Tūhoe and CNI claims to Kāingaroa, 2009: Tūhoe Establishment Trust.

Tūhoe Claims Settlement Act 2014; Te Urewera report of the Waitangi Tribunal

Dr Carwyn Jones

Overview

Dr Carwyn Jones describes the main elements of both the Tūhoe Claims Settlement Act 2014 and the preceding inquiry and report of the Waitangi Tribunal into claims located in the Te Urewera inquiry district.

Discussion

Te Urewera report of the Waitangi Tribunal

The Urewera Tribunal was appointed in early 2002 and held 11 hearings of claimant evidence between November 2003 and April 2005 concerning 40 separate claims. Closing submissions by claimant and Crown counsel were presented at Ruatoki in June 2005.

The pre-publication version of the Urewera report is now available in four parts (*Te Urewera*, Wai 894, 2009-2012).

Part I of the report, released in April 2009, set out background to the claims in the inquiry and the history of the peoples of Te Urewera. It covered actions and omissions of the Crown in its dealing with the peoples of Te Urewera from 1840 until the armed conflict of 1869-1871. As Ngai Tūhoe were not signatories to the Treaty of Waitangi, they were not automatically bound by its terms, though, the Tribunal noted, the Crown's obligations to Ngai Tūhoe are not affected (*Te Urewera – Pre-publication*: Part 1, at p 132):

> Due to the failure of the Crown's emissaries to bring the Treaty to Te Urewera in 1840, the claimants' tipuna were not offered the chance to debate the terms of the Treaty or a relationship with the Crown, or to come to a decision on the matter. By British law, the Crown's sovereignty over the whole of New Zealand rested on its proclamations of May 1840, as gazetted in October 1840. In political terms, however, life continued unaltered in Te Urewera after October 1840. The Treaty took effect for the claimants' tipuna only as a unilateral set of promises made to them by the Crown.

Part II addressed a range of significant events and Crown actions, either within or related to the Urewera district, which occurred between the 1860s and the first half of the twentieth century. This included further armed conflict and land alienation.

Part II also provides an analysis of the Urewera District Native Reserve Act 1896, an important part of the context of Ngai Tūhoe's claims. That Act was the result of a negotiated agreement reached between the Crown and Māori leaders of the Urewera region and was designed to recognise real powers of self-government to be exercised by the peoples of Te Urewera. Consequently, the Urewera Tribunal's Presiding Officer suggested that "the Act embodied an arrangement unique in our history" (*Te Urewera – Pre-publication*: Part 2, Letter of Transmittal).

Perhaps the most remarkable aspect of the Urewera District Native Reserve Act was its intention to give effect to tino rangatiratanga or mana motuhake. Both Crown and claimant counsel before the Tribunal agreed that this was a clear objective of the Act (see *Te Urewera – Pre-publication*: Part 2, p 362). Unfortunately, the Act's promise of self-government for the peoples of Te Urewera was never realised. See the historical background provided by Dr Vincent O'Malley in this issue.

Part III of the Tribunal's report is primarily concerned with issues relating to Te Urewera National Park and the background of events that led to the establishment of the park. (See (2012) November Māori LR for further detail). The four chapters in Part III tell the story of the transformation from self-governing native reserve to national park. In his letter of transmittal, the inquiry's presiding officer, Judge Patrick Savage, identified four key themes that run through these chapters:

- The Crown's defeat of promised self-governance;
- The Crown's repeated broken promises;
- Extensive land loss; and

- The creation of a national park in Te Urewera which came to symbolise dispossession.

Part IV of the report was released on 20 December 2012 (see (2013) November Māori LR for further detail). It is concerned firstly with Rua Kenana and the police invasion of Maungapōhatu. The report then looks at land development schemes after the 1927 Urewera Consolidation schemes and restrictions on native timber milling. Part IV also addresses claims arising from the 1972 amalgamation of remaining Tūhoe lands.

Tūhoe Claims Settlement Act 2014

The Deed of Settlement of the historical claims of Tūhoe was signed on 4 June 2013. The Tūhoe Claims Settlement Act 2014 gives effect to a number of important aspects of the settlement, although two prominent components of the settlement are not included in this Act. Matters relating to the status and governance of Te Urewera were divided from the settlement Bill and enacted separately as Te Urewera Act 2014. See the article by Dr Jacinta Ruru on Te Urewera in this issue. The innovative 'Mana Motuhake redress' that is aimed at transforming the Tūhoe-Crown relationship is to be given effect through non-statutory mechanisms, primarily the Service Management Plan. See the article by Māmari Stephens on the Service Management Plan in this issue. For further detail on the settlement legislation see the article on settlement legislation before the House of Representatives in 2013 ((2013) December Māori LR).

The settlement provides for financial redress to the value of $170 million. This includes some value transferred under the 2008 Central North Island settlement. There are opportunities to purchase deferred selection properties and an exclusive right of first refusal over other Crown-owned properties.

The Act contains a series of acknowledgements of Crown actions that have breached the Treaty of Waitangi and its principles (s 9). The Crown apology addresses, in particular, indiscriminate raupatu, wrongful killings, and years of scorched earth warfare, denying Tūhoe the right of a self-governing Urewera Reserve by subverting the Urewera District Native Reserve Act 1896, for excluding Tūhoe from the establishment of Te Urewera National Park over their homelands, and for wrongly treating Lake Waikaremoana as Crown property for many years (s 10).

The Act provides for the transfer to Tūhoe of five cultural redress sites: Onīnī, Waikokopu, Te Tii (as a local purpose reserve), and Ngā Tī Whakaaweawe and Kōhanga Tāheke (the latter two sites are within the Central North Island Forests Land) (ss 23-26).

The Act also provides for a protocol with the Ministry of Primary Industries, a taonga tūturu protocol, for the Tūhoe trustees to be appointed as a fisheries advisory committee (ss 43-45), and for a Tūhoe member to be appointed to the Rangitāiki River Forum (established as part of the Ngāti Manawa and Ngāti Whare settlements) (s 50). The Act gives effect to the agreement recorded in the Deed of Settlement that there will be six official geographic name changes in accordance with determinations made by the New Zealand Geographic Board.

Te Urewera Act 2014

Dr Jacinta Ruru

Overview

Dr Jacinta Ruru sets out and comments on the main elements of Te Urewera Act 2014. The legislation both facilitates management of Te Urewera by a new Te Urewera Board and declares that Te Urewera is a legal entity. Te Urewera ceases to be a national park as a result of the Act.

Introduction

A new dawn for conservation management in Aotearoa New Zealand has arrived with the enactment of Te Urewera Act 2014. Te Urewera, named a national park in 1954 and most recently managed as Crown land by the Department of Conservation became Te Urewera on 27 July 2014: "a legal entity" with "all the rights, powers, duties, and liabilities of a legal person" (section 11(1)). Te Urewera Act is undoubtedly legally revolutionary here in Aotearoa New Zealand and on a world scale.

Discussion

Te Urewera Act 2014

Te Urewera Act makes clear that Te Urewera ceases to be vested in the Crown, ceases to be Crown land, and ceases to be a national park (s 12). Te Urewera is now freehold land (albeit inalienable except in accordance with Te Urewera Act, see s 13).

Te Urewera is now managed not by the Department of Conservation but by the new Te Urewera Board. This Board is responsible "to act on behalf of, and in the name of, Te Urewera" (s 17(a)). Te Urewera will still have a management plan like national parks in New Zealand. The Board, rather than the Department of Conservation, will approve these plans (s 18). For the first 3 years, the Board has an equal membership of Tūhoe and Crown appointed persons (4 persons each). Thereafter, the Board will increase by 1 and the ratio will change so that 6 persons are Tūhoe-appointed and 3 persons are Crown-appointed (s 21).

The Board, in contrast to nearly any other statutorily created body, including the Department of Conservation, is directed to reflect customary values and law. Section 18(2) states that the Board may "consider and give expression to "Tūhoetanga" and "Tūhoe concepts of management such as rāhui, tapu me noa, mana me mauri, and tohu".

Section 20 makes it clear that the Board "must consider and provide appropriately for the relationship of iwi and hapū and their culture and traditions with Te Urewera when making decisions" and that the purpose of this is to "recognise and reflect" Tūhoetanga and the Crown's responsibility under the Treaty of Waitangi (Te Tiriti o Waitangi).

The Act mandates that the Board must strive to make some decisions by unanimous agreement (such as the approval of Te Urewera

management plan) and some decisions by consensus (see ss 33 and 34).

The Board must work with the chief executive of Tūhoe Te Uru Taumatua and the Director-General of Conservation to develop an annual budget. Section 38(2) states that the chief executive and the Director-General "must contribute equally to the costs provided for in the budget, unless both agree to a different contribution".

All revenue received by the Board must be paid into a bank account of the Board and used for achieving the purpose of the Act (s 39(1)).

For taxation purposes, Te Urewera and the Board are deemed to be the same person (s 40(1)).

Similarly to national parks, work undertaken in Te Urewera does not require a resource consent under the Resource Management Act 1991 if that work is for the purpose of managing Te Urewera, is consistent with Te Urewera Act and its management plan, and does not have a significant adverse effect on the environment beyond the boundary of Te Urewera (s 43).

The chief executive of Tūhoe Te Uru Taumatua and the Director-General of Conservation are responsible for the operational management of Te Urewera (s 50) and must prepare an annual operational plan (s 53).

The Director-General and every other person who performs functions and exercises powers and duties under the Conservation Act 1987 has the powers that are necessary or expedient for the performance of the functions and exercise of the powers and duties under Te Urewera Act (s 52).

Te Urewera Act stipulates what activities are permitted in Te Urewera and what activities require authorisation and in what form (see s 55). The National Parks Act does something similar for national parks.

Section 58 of Te Urewera Act lists activities that require an activity permit. These include: taking any plant; disturbing or hunting any animal (other than sports fish); possessing dead protected wildlife for any cultural or other purpose; entering specially protected areas; making a road; establishing accommodation; farming; and recreational hunting. This is a comprehensive list and demonstrates that the tight rules for preserving national park land have been transported to Te Urewera.

Throughout Te Urewera Act the legislation is clear that Te Urewera may still be mined. Section 64(1) is one example of this where it states: "Despite anything in this Act, Te Urewera land is to be treated as if it were Crown land described in Schedule 4 of the Crown Minerals Act 1991" (see also s 56(b) where a mining activity authorised by the Crown Minerals Act can be undertaken without authorisation from the Board).

Section 3 of Te Urewera Act is so beautifully expressed that I have copied it in full here:

3 Background to this Act

Te Urewera

(1) Te Urewera is ancient and enduring, a fortress of nature, alive with history; its scenery is abundant with mystery, adventure, and remote beauty.

(2) Te Urewera is a place of spiritual value, with its own mana and mauri.

(3) Te Urewera has an identity in and of itself, inspiring people to commit to its care.

Te Urewera and Tūhoe

(4) For Tūhoe, Te Urewera is Te Manawa o te Ika a Māui; it is the heart of the great fish of Maui, its name being derived from Murakareke, the son of the ancestor Tūhoe.

(5) For Tūhoe, Te Urewera is their ewe whenua, their place of origin and return, their homeland.

(6) Te Urewera expresses and gives meaning to Tūhoe culture, language, customs, and identity. There Tūhoe hold mana by ahikāroa; they are tangata whenua and kaitiaki of Te Urewera.

Te Urewera and all New Zealanders

(7) Te Urewera is prized by other iwi and hapū who have acknowledged special associations with, and customary interests in, parts of Te Urewera.

(8) Te Urewera is also prized by all New Zealanders as a place of outstanding national value and intrinsic worth; it is treasured by all for the distinctive natural values of its vast and rugged primeval forest, and for the integrity of those values; for its indigenous ecological systems and biodiversity, its historical and cultural heritage, its scientific importance, and as a place for outdoor recreation and spiritual reflection.

Tūhoe and the Crown: shared views and intentions

(9) Tūhoe and the Crown share the view that Te Urewera should have legal recognition in its own right, with the responsibilities for its care and conservation set out in the law of New Zealand. To this end, Tūhoe and the Crown have together taken a unique approach, as set out in this Act, to protecting Te Urewera in a way that reflects New Zealand's culture and values.

(10) The Crown and Tūhoe intend this Act to contribute to resolving the grief of Tūhoe and to strengthening and maintaining the connection between Tūhoe and Te Urewera.

Comparative comments

Te Urewera Act is significant in a comparative domestic and international context.

First, Te Urewera Act marks for the first time in New Zealand's history the permanent removal of a national park from the national park legislation. It has been long-standing Crown policy that conservation land should not

be returned to iwi ownership. The creation of Te Urewera as its own entity has provided a win-win solution for Tūhoe and the Crown. The only other Treaty claims settlement that contemplates removal of land from the National Parks Act 1980 is the provision in the Ngāi Tahu Claims Settlement Act 1998 that provides that the Crown will vest the title of Aoraki/Mount Cook in Te Rūnanga o Ngāi Tahu for a period of 7 days. After 7 days, Ngāi Tahu will gift the mountain back to the nation as the centre piece of the Aoraki/Mount Cook National Park. Te Rūnanga o Ngāi Tahu have yet to action this temporary vesting.

Secondly, while there are similarities between Te Urewera Act and the National Parks Act (such as the requirement to have a management plan and ensure these lands are available for public use and enjoyment) the purpose for setting aside the land is subtly but importantly different. The National Parks Act is premised on preserving national parks in perpetuity "for their intrinsic worth and for the benefit, use, and enjoyment of the public," areas of New Zealand that contain scenery of such distinctive quality, ecological systems, or natural features so beautiful, unique, or scientifically important that their preservation is in the national interest (s 4). The National Parks Act does not recognise the importance of lands encased in national park boundaries as being culturally and spiritually important to iwi. The National Parks Act is a mono-cultural statute premising Western values for preserving land. Te Urewera Act demonstrates a new bi-cultural way of articulating the importance of national park lands for multiple reasons ranging from science to cultural. Section 4 of Te Urewera Act reads:

> **4 Purpose of this Act**
>
> The purpose of this Act is to establish and preserve in perpetuity a legal identity and protected status for Te Urewera for its intrinsic worth, its distinctive natural and cultural values, the integrity of those values, and for its national importance, and in particular to—
>
> (a) strengthen and maintain the connection between Tūhoe and Te Urewera; and
>
> (b) preserve as far as possible the natural features and beauty of Te Urewera, the integrity of its indigenous ecological systems and biodiversity, and its historical and cultural heritage; and
>
> (c) provide for Te Urewera as a place for public use and enjoyment, for recreation, learning, and spiritual reflection, and as an inspiration for all.

Third, Te Urewera Act will be of immense interest internationally for aspects concerning ownership, management and purpose. For example, the Canadian national park legislation clearly states that the Crown has "clear title to or an unencumbered right of ownership in the lands to be included in the park" (s 5(1)(a) of the Canada National Parks Act 2000).

In the late 19th century and early 20th century, at times, Canada forcibly removed Aboriginal groups from lands intended for national parks in order to assert clear title. In the 1970s, as Canada sought to create new national parks in the remote northern territories of Canada a new solution

to diluting the ownership issue was initiated. Canada introduced the novel legislative tool: the national park reserve label. The legal definition for a national park reserve is an area or a portion of an area proposed for a park that is subject to a claim in respect of Aboriginal rights that has been accepted for negotiation by the Government of Canada (see s 4(2) of the Canada National Parks Act 2000). The idea is that Canada can set land aside as a national park reserve and manage it as if it were a national park even if there is an accepted Aboriginal rights claim to the land in question. After negotiating with the relevant Aboriginal peoples, the Crown can confirm the land as a national park.

There are several instances in Canada's northern territories where Aboriginal peoples have acquiesced to the national parks and thus Crown ownership of these lands. But in the southern more populated provinces, the ownership issue is more contentious. No national park reserves in the south have been reclassified as national parks. In fact, national parks created since the 1970s in the south have not often even used this temporary national park reserve label. Ownership and management of many of the southern national parks remains heated.

Significance of the legislation for New Zealand

The comments by some of our Members of Parliament during the third reading of the Bill that became Te Urewera Act capture the importance of this statute. For example:

Catherine Delahunty (Green Party MP)

> "… It was never a park. That was a label imposed in the 1950s based on an old behaviour pattern since colonisation, and it has melted in the mist like all the other attempts to colonise the heart of the motu and the "children of the mist"..."

Hon Dr Nick Smith (Minister of Conservation)

> "… It is surprising for me, as a Minister of Conservation in the 1990s who was involved under the leadership of the Rt Hon Jim Bolger—who is in the House—in the huge debate that occurred around the provisions of the Ngāi Tahu settlement in respect of conservation land, how far this country and this Parliament have come when we now get to this Tūhoe settlement in respect of the treasured Te Urewera National Park. If you had told me 15 years ago that Parliament would almost unanimously be able to agree to this bill, I would have said "You're dreaming mate". It has been a real journey for New Zealand, iwi, and Parliament to get used to the idea that Māori are perfectly capable of conserving New Zealand treasures at least as well as Pākehā and departments of State…"

Hon Dr Pita Sharples (Minister of Māori Affairs)

> "… The settlement is a profound alternative to the human presumption of sovereignty over the natural world. It restores to Tūhoe their role as kaitiaki and it embodies their hopes of self-determination—Tūhoe autonomy for the 21st century, Tūhoe services for Tūhoe, benefit on Tūhoe terms, and Tūhoe living by Tūhoe traditions and Tūhoe aspirations…"

Concluding comment

My post-graduate thesis work (LLM completed in 2002 and PhD completed in 2012) argued for the reform of owning and managing national parks. As I concluded in my comparative PhD:

> "National park lands encase the lived homes of Indigenous peoples. Today, the law reflects a new societal goal that seeks to reconcile with Indigenous peoples for the past wrongs of taking their lands and denying them the very means to be true to themselves, their ancestors, and their grandchildren. National parks have the potential to play an instrumental role in committing to this reconciliation journey. National parks are symbolic of our national identity and our future, and the parks contain Crown lands that thus enable the Crown to lead in implementing a new way of thinking about owning and managing lands including national parks."

While I dreamed for radical legislative reform when writing my PhD, I did not know when I graduated that the horizon for change was so near. The enactment of Te Urewera Act makes me immensely proud to be a New Zealander.

A transforming dawn? The Service Management Plan

Māmari Stephens

Overview

Māmari Stephens examines Mana Motuhake redress in the Tūhoe-Crown settlement as expressed through a Service Management Plan to improve the social circumstances of the Tūhoe people.

Discussion

A momentous year, 2014 saw the passage of the Tūhoe Claims Settlement Act 2014 and Te Urewera Act 2014 as two very important components of the Treaty settlement between the Crown and Tūhoe.

Neither Act, however, includes one very important element set out in the deed of settlement: 'Mana Motuhake redress'. Most Treaty of Waitangi deeds of settlement include components of financial and commercial redress, and cultural redress, along with agreed historical accounts of injustices and Crown apologies and other elements.[1] The inclusion of Mana Motuhake redress is unique to the Tūhoe settlement, and is aimed at healing relationships (http://settlement.ngaituhoe.iwi.nz/deed-of-settlement/pou-tokomanawa-our-present-day/):

> Establishing principles which aim to transform a Tūhoe Crown Relationship to provide future earned benefits to Tūhoe and Te Urewera and provide a future of hope and potential for coming generations.

One of the most important parts of the Mana Motuhake redress is the innocuous, even boring-sounding Service Management Plan ("SMP"). The SMP warrants closer inspection not least because it may well prove to be a kind of watershed moment in New Zealand social history, and indeed, in welfare in particular. The SMP may be cause for both optimism and caution for other Māori collectives seeking better social outcomes from their relationship with the Crown.

What is the Service Management Plan?

As Te Rangimārie Williams identified, in a previous issue of the Māori Law Review, the Social Services Management Plan (SMP) is an agreement that has been developed between Ngai Tūhoe and a high-level task force of the Ministry of Social Development (see (2012) October Māori LR). A non-legally binding document, this agreement is a 'relationship instrument from the Crown'. It is available at http://nz01.terabyte.co.nz/ots/DocumentLibrary%5CTuhoeiDOSDocuments.pdf. It embodies a commitment by the Ministries of Education, Social Development, and Business, Innovation and Employment ("Parties") to work alongside Ngāi Tūhoe to improve the social circumstances of the Tūhoe people. It is important to note that the Parties to the SMP comprise only these ministry units; Ngāi Tūhoe is not a party or signatory to the agreement, but was involved in creating it (Social Service Taskforce Ngāi Tūhoe Service Management Plan (2012) 1).

The SMP was actually signed in 2012, based on the high level political compact signed between Tūhoe Rangatira and the Crown, 'Nā Kōrero Ranatira' signed in 2011, in which the Crown and Ngāi Tūhoe resolved to recognise both the mana of the Crown and the mana motuhake of Ngāi Tūhoe (reproduced in Social Service Taskforce Ngāi Tūhoe Service Management Plan (2012) 10). This agreement is included in the Mana Motuhake redress component of the deed of settlement, and paved the way for the negotiations and work done leading to the creation of the SMP. See Professor Rawinia Higgins' article in this issue.

One sentence from the opening pages of the SMP is particularly striking (Social Service Taskforce Ngāi Tūhoe Service Management Plan (2012) 2):

> This SMP has been entered into for the purpose of developing, implementing, expanding and renewing from time to time, a plan for **the transformation of the social circumstances of the people of Ngāi Tūhoe**. [Emphasis added]

Transformation of social circumstances is a powerful notion, which requires an extraordinary vehicle to guide its achievement. Indeed the SMP is very wide ranging, and envisages a plan for the next 40 years; affirming a number of high level relationships between Ngāi Tūhoe and the Parties. The SMP also affirms that the Parties will adhere to a set of principles. These principles include:

> The Crown acknowledges the Mana Motuhake of Ngāi Tūhoe.
>
> The parties and Tūhoe:
>
> - Are committed to establishing, maintaining and strengthening positive, co-operative and enduring relationships;
> - Will actively work together and use their shared knowledge and expertise to improve social outcomes for Tūhoe;
> - Will co-operate in partnership with a spirit of good faith, integrity, honesty, transparency and accountability putting the disengagement of the past behind them.
>
> The parties support the Ngāi Tūhoe vision of Tūhoetanga and mission for Mana Motuhake.

The language of the principles set out above is relatively clear because it is familiar; reminiscent of language that has developed over the past thirty years to articulate the principles of the Treaty of Waitangi. The Parties effectively accept an obligation of active co-operation and partnership based on the familiar notions such as good faith, honesty and integrity. The goals are also ambitious (Social Service Taskforce Ngāi Tūhoe Service Management Plan (2012) 6):

> All parties to this SMP support and undertake to **contribute to the best of their ability** to the following goals:
>
> - The aspiration of Tūhoe to manage their own affairs **to the maximum autonomy possible in the circumstances**;
> - That over the first five year phase of this SMP and all agreed subsequent phases, the housing, health, education training employment and family unity safety of Tūhoe will substantially increase according to the standard measures in place from time to time to validate such matters or such specific standards as the parties may agree;
> - That all parties recognise the importance of iwi, hapū and whānau in assisting in the achievement of these goals and undertake and agree to work with them and any appropriate facilitating and supporting programmes. The parties specifically acknowledge that at any time Tūhoe may seek to join Whānau Ora or any programme replacing or supplementing it.
> - That all parties to this SMP recognise that they represent to Tūhoe the united voice of the Crown and will where possible and necessary work in partnership both among themselves, and with Tūhoe, to achieve the aspirations and goals of Tūhoe.[emphasis added]

There are a couple of things to note about these stated goals. One is that the language is that of progressive realisation. For example, the Parties will ‘contribute’ to the stated goals ‘to the best of their ability’ including Tūhoe’s aspiration to manage their own affairs to the maximum autonomy possible in the circumstances. The Parties are not bound to contribute to achieving such a goal, the abilities of the Parties have to be considered. Nor must the Parties contribute to a fixed notion of Tūhoe

autonomy, but only to the maximum autonomy for Tūhoe that is possible in the circumstances. Of course the flexibility incorporated into these statements was a pragmatic necessity to facilitate the Parties' commitment. The following statement at the end of the primary document affirms that progressive realisation, rather than immediate and absolute realisation, of goals is paramount (Social Service Taskforce Ngāi Tūhoe Service Management Plan (2012) 8):

All parties and Tūhoe recognise that in order to achieve the shared outcomes, deliberate steps will be required from each party, including the allocation of appropriate resources. Each party and Tūhoe are committed to taking such steps on an ongoing basis, and will not adopt measures which would prejudice the achievement of the shared outcomes or progress already made without prior consultation.

In line with this progressive approach is the definition of 'Mana Motuhake' employed within the SMP (Social Service Taskforce Ngāi Tūhoe Service Management Plan (2012) 40 (Appendix 5)):

Mana Mouhake is defined within the terms of this agreement as: "Progressively enhancing Tūhoe's autonomy in decision making matched by its growth in infrastructure, capability and leadership in social service provision. This is balanced by the Crown's governance role under Te Tiriti O Waitangi. Through the Treaty Settlement practical steps will be taken for Tūhoe to manage their affairs within their core area of interest with the maximum autonomy possible in the circumstances.

The term 'Mana Motuhake' is also illuminated in the deed of settlement, and there are obvious correlations in progressive language between both explanations of Mana Motuhake (http://nz01.terabyte.co.nz/ots/DocumentLibrary/TuhoeDOS.pdf at p 153):

> 4.291 For the purposes of this deed, "**mana motuhake**":
>
> connotes the distinctiveness of autonomy, self sufficiency, self respect, self discipline, independence of judgement and decision making. It also connotes responsibility for wise and beneficial leadership, protecting the environment and therefore the resources of the community. Its life force is integrity.
>
> By cleaving to that ethos Tūhoe will pursue and enhance the autonomy of its people and its homeland, deciding how they will develop, including in respect of health, education, infrastructure, employment, capability and leadership.
>
> Whilst acknowledging the Crown's role in governance, Tūhoe also see and expect that by this settlement, practical steps will be taken to enable Tūhoe to manage their future with reasonably maximum autonomy, **that precept being their natural condition and aspiration**.

Appended to the primary instrument of the SMP is a series of sector chapters. These chapters contain the detailed 'work plans' for meeting the commitments made by the Parties, the District Health Boards and the Ministry of Health have made to Tūhoe (Social Service Taskforce Ngāi

Tūhoe Service Management Plan (2012) 40 (Appendix 5)). They are set out in the following order:

1. Business, Innovation and Employment;
2. Health;
3. Education; and
4. Social Development

Each chapter sets out:

- Shared purposes; (improved outcomes in housing, health, education and welfare)
- Agreed main priorities;
- A five year action plan with express priorities for action; and
- Guidelines for managing and upholding the relationship between Tūhoe and the Parties.

The Health half-way house

Interestingly, while the Ministry of Health is not a party to the SMP, Chapter Two adheres to the format above and is signed by the Chief Executives of the three District Health Boards (DHBs) who bear some responsibility within the tribal rohe of Tūhoe. These DHBs are also not parties to the SMP. They are also expressly excluded from being considered to be part of 'the Crown' within the primary SMP document (Social Service Taskforce Ngāi Tūhoe Service Management Plan (2012) 2 fn 2). The 'Health Chapter' is, we are told, to be considered a stand-alone document unaffected by either the rest of the SMP or the other chapters. The fact the Chief Executives of the DHBs have signed this chapter is to be read as 'an endorsement of their commitment to their statutory obligations' and as recognition of the DHBs' understanding that 'transformation of the social circumsances of the people of Ngāi Tūhoe will be efective only in partnership with improved housing, education, and social support.' (Social Service Taskforce Ngāi Tūhoe Service Management Plan (2012) 4.) It remains a little unclear then, what the status is of the health chapter under this 'instrument of relationship.'

A closer look: the Social Development chapter

Lacking the space to address all chapters here, I will just spend some brief time noting some important points in the Social Development chapter, as the direction of the chapter holds some important implications for the development of social policy in New Zealand.

The social development chapter is aimed at Tūhoe and the Ministry of Social Development (MSD) developing an initial five-year plan for:

> [D]riving forth an inclusive New Zealand where all Tūhoe people and Tūhoe communities are able to participate in the social and economic life of their communities to lead social development to achieve better futures for all New Zealanders.

The main tools by which the MSD's agencies (Work and Income, Child, Youth and Family, Family and Community Services) will seek to work alongside Tūhoe to achieve the goals of the Action Plan are:

- Developing *a welfare needs* analysis to discover 'what welfare is for Tūhoe,' with a view to shifting attitudes from benefit 'dependence' to community interdependence. Ultimately, the plan is aimed at the development of a Tūhoe Welfare System founded upon whānau and hapū responsibility.
- Labour market team and industry partnership advisors to work alongside Tūhoe to build up employment capacity, wealth generation and employment opportunity within the Tūhoe rohe.
- Devise and create dialogue and agreement in order to ensure the appropriate care of Tūhoe at-risk youth so such taiohi are safe from harm.

Observations

Poverty alleviation, current entitlements and Whānau Ora

There are two notable absences in the MSD chapter of the SMP. There is no mention whatsoever of the alleviation of poverty, ensuring for example, the sufficiency of state assistance where Tūhoe applicants are eligible for it. Much, surely, could be done to improve Tūhoe welfare merely by ensuring that Tūhoe beneficiaries are getting what they are currently entitled to by way of Work and Income assistance. Neither does this chapter make any mention of Whānau Ora, although the SMP itself does acknowledge that Tūhoe may seek to join Whānau Ora, or any programme 'replacing or supplementing it.' (Social Service Taskforce Ngāi Tūhoe Service Management Plan (2012) 6.) The presumption that Whānau Ora as at the time of signing the SMP plays no part in what the Parties understand to be Tūhoe's drive towards interdependent community welfare reveals that the Whānau Ora approach may not yet permeate social service planning by the Crown and by iwi within the context of the post-settlement era.

Citizenship and Rangatiratanga: a broader question

A further and broader observation can be made about the Social Development chapter of the SMP. To the extent that it accurately represents Tūhoe aspirations, this chapter shows another facet of the long-lived ongoing tension that has existed between all Māori collectives and the Crown, whereby Māori have sought decision-making power over their own futures, while at the same time seeking to access the benefits of shared citizenship, whereas the Crown has largely sought to stymie Māori development towards achieving that decision-making power.

On one hand Māori have sought to be included in mainstream New Zealand society without differentiation on the basis of race or culture. On the other hand, Māori have consistently sought recognition of rights accruing to all Māori by virtue of the Treaty of Waitangi. Such rights have included the rights (and duties) of common citizenship under Article III and the guarantee of tino rangatiratanga under Article II.

In social policy the tension between ideas of common citizenship and long-lived notions of rangatiratanga is particularly starkly observed because social laws and mechanisms are supposed to be universally applied, tribal and community affiliation notwithstanding. Yet in line with the notion that Māori have the right to control their own destinies Māori have been consistent in calling for greater control of resources and decision making over Māori families and whānau development. This consistent thread can be seen throughout the 20th century, and continues today. The early drafts of the Māori Social and Economic Advancement Bill of 1945, for example, were drafted by a Māori working party convened by Eruera Tirikatene and included substantial measures for Māori decisionmaking and a reconfiguring of the Native Affairs Department that were mainly rejected. Such pressure for Māori control over social policy began to re-emerge strongly in the public view in the 1970s and 1980s (R Hill (2004) *State Authority, Indigenous Autonomy: Crown-Maori Relations in New Zealand/Aotearoa 1900-1950* Wellington: Victoria University Press from p 210).

Similarly the Pūaoteatatū report of 1986 reiterated the call for Māori to have Māori control over decision-making for Māori social wellbeing (Ministerial Advisory Committee on a Māori Perspective for the Department of Social Welfare (1986) *Pūaoteatatū – Daybreak* Department of Social Welfare, Wellington):

> 78 As we travelled around the country, the most consistent call we heard was for Maori people to be given the resources to control their own programmes. We have responded to this in ways that do not discriminate against people of any culture while enabling Maori people to share and to control where applicable the allocation of resources in communities.

Despite this ongoing call for Māori to have such control, the Hon. Pita Sharples used a speech in 2010 to underscore his concerns of an increasing prevalence for Treaty settlements between iwi and the Crown to contain agreements on social provision, which in his view, despite the call of rangatiratanga, must remain a Crown responsibility (http://www.beehive.govt.nz/release/treaty-relationships-need-rebalancing-sharples (20 October 2010)):

> So I am extremely concerned about the development of social accords as instruments for settlement redress. I do not doubt the need for these accords. However, in my view that need is symptomatic of a failure of successive governments to provide for the social needs of iwi and Māori[.]
>
> The persistent disparities between Māori and non-Māori, and the failure of government to deliver services in ways that resonate with Māori communities are ongoing. And they seem, at least to me, to be requiring claimant groups to spend valuable negotiations capital, and claimant funding, on negotiating for assurances that government will do the basic job that taxpayers fund it to do.

This view encapsulates to an extent the conflict between the Māori drive to reclaim rangatiratanga while at the same time seeking to achieve social equality with other New Zealanders that can only be financed by

the State. No other body exists other than the State with the resources to advance the equal participation of Māori in New Zealand society, or indeed the survival of large numbers of Māori throughout the country in times of need and crisis.

One might identify that the Crown Parties to this SMP have agreed here in a limited sense to support the freedom of Tūhoe to work towards their own positive social outcomes.

One live question remains however, that can only be answered by those who now work on achieving the outcomes set out in this SMP. To what extent might this SMP merely represent the beginning of a devolution of responsibility to Tūhoe for the achievement of social well-being and social and economic participation, in the absence of sufficient resources to undertake necessary capacity building?

That question is outside the scope of this review, but deserves an answer in time.

Notes

[1] For Mana Motuhake redress see http://nz01.terabyte.co.nz/ots/DocumentLibrary/TuhoeDOS.pdf from p 153. For other 2014 deeds of settlement see for example Ngāruahine (http://nz01.terabyte.co.nz/ots/DocumentLibrary/Ngaruahine-DeedofSettlement.pdf) and Ngāti Kurī (http://nz01.terabyte.co.nz/ots/DocumentLibrary/NgatiKuriDeedofSettlement.pdf) and Te Ati Awa (http://nz01.terabyte.co.nz/ots/DocumentLibrary/TeAtiawa-DeedofSettlement(Final).pdf)