“Towards a Positive Treaty Partnership in the Post-Settlement Era”

Treaty of Waitangi Settlements and Decolonisation in Aotearoa New Zealand

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Dedication

For Peter Tiki Johnston.

Kua hinga te tōtara i Te Waonui a Tāne

Thank you for all you taught me, most importantly about

integrity in the struggle for decolonisation.

Rest well

[1] Photo courtesy of Peter Matai Johnston

Acknowledgements

This thesis has been an interesting endeavour. In 2012 I decided I needed to up skill, moved home from Germany and enrolled at Massey University to complete my Bachelor of Arts (Hons) - with the support and tutelage of Veronica Tawhai, April Bennett, Suzy Killmister and Emily Beausoleil. The focus of my honours year was essentially on Treaty settlements being 'not very good.' This was accompanied with a little over two years at the Office of Treaty Settlements, and a transition from 'not very good' in my mind, to considering Treaty settlements to be 'not very good at all.' In 2014 I enrolled in my Master of Arts at Victoria University of Wellington and this new chapter of academic exploration of settlements has moved the process and its outcomes, in my opinion, to be 'quite poor indeed'. The reasoning for that opinion is set out in this thesis. This has been an important journey for me and one which was supported by many, though here I would like to thank just a few.

Thanks to Hannah McGregor, Leigh McNicholl, Adam Levy, Talei Pasikale, Sophie Chrisp and Megan Robins for encouraging and supporting me through my time at OTS, all you've done to inspire me, give me hope and make me laugh - at some times that were appropriate and at many times that were not!

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Abstract

Settlements of historical Treaty of Waitangi claims present a unique opportunity to provide redress to Māori for the past and ongoing grievances committed by the Crown, and through that redress and the accompanying focus on improved relations, to decolonise the relationship between the two. Despite this opportunity, there is a wide body of literature that suggests the outcomes of these settlements instead will perpetuate colonisation and uphold the political structures which allow for the on-going dispossession of Māori.

This thesis argues that existing Treaty settlement policy can be viewed as a continuation of the legacy of colonisation by stealth, entrenching the power of the colonial state while simultaneously offering redress and apologies for past grievances of the colonisation process which do not adequately challenge the underlying structures which give rise to those grievances. It is further argued, through the example of political rhetoric from the 2014 general election, that current political discourses support the implementation of colonising settlement policies and that those discourses reinforce notions of Western settler superiority.

This thesis explores a number of perspectives on settlements and decolonisation which support the claim that historical Treaty settlements perpetuate rather than challenge colonisation. I argue that the pressing concern emerging from the thesis is that the Crown can be to seen to be directing the Treaty relationship to a post-settlement world where the negotiated outcomes of Treaty settlements and the parties to them are the end point of colonisation and represent the future dynamic of the Crown-Māori relationship.

Chapter One: Introduction

In 2015, Waikato-Tainui celebrated 20 years since the signing of their historic Treaty of Waitangi settlement and an answer from the Crown to their long-held historical claims of abuse, neglect and prejudicial treatment by the Crown.[2] For the hapū, whānau and people of Waikato-Tainui this settlement signified a break from the grievances of a troubled past with the Crown, and opportunities for a stronger future in which the mana of Waikato-Tainui could be restored.[3] 20 years on from the Waikato-Tainui settlement, and with the background of the Crown being determined to settle all claims by 2017, it is timely to take stock of what settlements may be achieving and what the future of the Crown-Māori emerging from settlements may be.

Despite the positive story that this portrays, all is not well in Crown-Māori relations in Aotearoa[4] and Treaty settlements, while important, have arguably not had a meaningful impact in decolonising the relationship between Māori and the Crown and restoring the mana that has been usurped from Māori through nearly two centuries of grievances, breaches of the Treaty of Waitangi and colonisation by the Crown. The insistence by the Crown that settlements be considered a full and final resolution of historic Māori grievances, supported by the dominant discourse seen through the 2014 election campaign, articulates a vision for a post-settlement relationship with iwi that is premised on the terms of the relationship negotiated through these settlements. The impact of settlements on the relationship between the Crown and Māori in all fields is therefore very real, and a critical understanding of these impacts is pressing.

Moana Jackson, amongst many indigenous scholars, argues that colonisation is an on-going process, one where the impact of historical colonisation is still felt but also where the intention and actions of colonisation have never stopped.[5] This perspective is discussed

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[2] Waikato-Tainui (2015) "Waikato-Tainui commemorates 20 years of raupatu settlement" (April 30, 2015 - www.waikatotainui.com - accessed 10 June 2015)

[3] Robert Te Kotahi Mahuta (2001) "Afterword" in David McCan (2001) *Whatiwhatihoe* (Wellington, Huia Publishers)

[4] 'Aotearoa' is used throughout to refer to the country and to what the country may be in a decolonised future. 'New Zealand' throughout refers to the colonised state in which the Crown exercises unilateral sovereignty.

[5] Moana Jackson (2005) "The Face Behind the Law: The United Nations and the Rights of Indigenous Peoples" *Yearbook of New Zealand Jurisprudence* (Vol.8, No.2)

further in Chapter Three. As such, in this thesis I discuss the Crown as a colonial entity and New Zealand as a settler or colonial state without placing the onus on Māori (or other indigenous peoples in their respective nations) to demonstrate that their experience of colonisation is contemporary and enduring, a position which I argue is supported by my analysis of the Crown's actions in negotiating Treaty settlement and the political environment in which they are located.

This thesis considers the political rhetoric from the 2014 general election as a snapshot of the discourses operating in New Zealand politics surrounding Treaty settlements and the relationship between the Crown and Māori as a result of them. These discourses provide a valuable insight into how the language of colonisation continues to operate in New Zealand, and how this influences the outcomes of Treaty settlements as a perpetuation of colonisation. I focus on Treaty settlements primarily from within the political sciences and, as a result, the literature and frame for analysis in the thesis reflects the influence of political science more than other relevant disciplines. In Chapter Four I provide some direction for readers seeking more of a historical perspective on Treaty settlements and on Crown-Māori relations.

Treaty settlements are very much a moving target for academic analysis. While I have referred to the 20 years that have passed since the signing of the Waikato-Tainui raupatu settlement, it is important to note that settlement policy and a sense of relativity between settlement contents has been fluid over those 20 years, influenced by both changing governments and changes in the environment in which the Crown and local government operate. As a result, settlements have different opportunities and different limitations depending on which iwi is involved, and the year they were negotiated in. Common to all settlements though is a sense of how colonialism continues to manifest in these agreements. This thesis is as a result reflective of a certain period of time, informed by the past but unclear about the future - the commentary provided throughout the thesis on the future relationship between the Crown and Māori should be understood in this context.

My focus in this thesis is almost exclusively on the Crown's position in Treaty settlements, what its agenda may be and what outcomes can be expected given what I argue is a colonial approach to settling the historic grievances of Māori. This is not to say that Treaty

settlements are unilaterally imposed on Māori. While the agency of Māori in settlement negotiations and in the relationship that exists with the Crown as a result of, or in spite of, settlements is not actively addressed, Treaty settlements present a unique set of decisions that are and always will be for Māori to make. Rather, the thesis focuses on the agency of the Crown and Pākehā in seeking outcomes from Treaty settlements which can be seen as reinforcing the colonised patterns of power in New Zealand today.

This thesis is written against a backdrop of my having worked in Treaty settlement negotiations for the Office of Treaty Settlements from 2012 to 2014, and as a result having a close understanding of the processes at play in settlement negotiations as well as the political motivations driving the government of the day, including from the public and those parties considered to have an interest in the outcome of Treaty settlements. Some of the lessons learned from this period are discussed in more detail in Chapter Two, reflecting on both the value added to my ability to write this thesis with a critique of the Crown's approach to settlement negotiations as well as the way in which this work will have constructed my approach at the time to settlement negotiations and the Crown-Māori relationship.

In this thesis I argue that through the Treaty settlements process the Crown is embedding its colonisation of Māori in New Zealand by establishing settlement outcomes that support Crown priorities, where the self-determination of Māori is exercised as an auxiliary to the assumed sovereignty of the Crown with few opportunities for power sharing between the two. Throughout the thesis I explore the various ways the power dynamics of this relationship are entrenched through Treaty settlements with Crown-recognised iwi, and how the Crown through the process itself can be seen to be constructing iwi identity and iwi organisations to support the primary exercise of power in New Zealand by the colonial state.

This argument is supported by a broad body of literature, much of which is grounded in works by both Māori and North American indigenous political theorists who argue that the settlement of land claims and attempts by the state to pacify the claims of indigenous peoples for self-determination clearly show an intention on the part of colonial societies to perpetuate colonisation rather than to renegotiate the settler-indigene relationship. A number of these authors identify the 'dehumanising' view of indigenous peoples by settler

societies as a critical barrier to achieving justice and decolonisation in colonial states, as it is these views which have historically upheld the settler claim to a right to colonise and without abandonment of them, and a deconstruction of the societies built into these prejudiced views, then the best that can be achieved is an adjusted colonial experience.

In Chapter Two I describe how a decolonising methodology is adopted in this thesis which focuses on challenging assumed and privileged patterns of knowledge, the production of this knowledge, and its influence on our society and on ourselves. Through Chapters Two and Three I explore how epistemological colonisation has led to intellectual bias in the works of many Western political theorists which supports the essential premise of settler colonialism and instead position the works of a range of Māori and North American indigenous theorists to best demonstrate how employment of Treaty settlements in Aotearoa perpetuates colonisation and myths of colonial superiority in the on-going dispossession of Māori.

A brief history and overview of the elements of Treaty settlements is provided in Chapter Four, including a detailed analysis of Crown policy guiding the use of public conservation land in settlements and how the outcomes of this policy reflect the privileging of colonial values and knowledge as discussed in Chapters Two and Three. The impact of political rhetoric in influencing how settlements are characterised by policy which upholds Crown power and extends a colonised relationship between the Crown and Māori is discussed further in Chapter Six, through a critical discourse analysis of rhetoric in the 2014 New Zealand general election.

The analysis of this political rhetoric illustrates the way in which discourses on settlements from political figures in New Zealand have the effect of embedding the colonial power imbalance between the Crown and Māori through construction of Treaty settlements as a process which is responsive to the expectation of the settler majority that the Crown retains primacy in New Zealand and that the exercise of Māori autonomy does not undermine established colonial patterns of power. The predominant approach in these discourses is to limit the scope of settlements and Māori control over the process, and to lead Māori towards a post-settlement era where their historical grievances are disposed of and Māori participate fully in a single national identity and a single sovereign state, all which is

constructed by colonial society. However, Chapter Six also discusses a number of political perspectives which, although marginalised, express decolonising discourses relating to settlements and should be seen as a positive indication that the entire political establishment in New Zealand has not turned its back on a decolonised relationship between the Crown and Māori.

The thesis is, in essence, a critique of the way in which the Crown continues colonisation in Aotearoa through Treaty settlements and the role that political figures and Pākehā play in supporting this process through a dominant discourse which allows for limited and constrained Māori autonomy within an unchallenged colonial state. The conclusion of this thesis provides some brief thoughts on how to change this course, and draws on the previous chapters of the thesis in setting out ways in which the Crown and Pākehā can decolonise themselves in order to decolonise the Crown-Māori relationship.

Chapter Two: Methodology

Understanding the historical and contemporary nature of colonialism in Aotearoa is essential to understanding the state of political injustice for Māori. In this chapter I suggest that the colonisation that is still manifest in social, economic and political structures in New Zealand is accompanied by a colonisation of knowledge, which is grounded in myths of indigenous inferiority that have historically privileged Western knowledge and which continues to impact on how indigenous knowledge is perceived today. This idea is discussed further in Chapter Three. Colonisation of knowledge also privileges the colonial researcher, who has traditionally involved themselves in the research of all communities, promulgating research values that are reflective of privileged Western knowledge systems and which as a result can be, and have been, used to dispossess indigenous peoples. This chapter outlines some of the arguments against Pākehā research about Māori, and sets out a decolonising methodology that instead sees non-indigenous researchers focus on the colonial state and settler societies. I then discuss my methods of data analysis in this thesis, which underpin the research set out in Chapters Five and Six.

Decolonisation in this thesis seeks not only to challenge the privilege associated with non-indigenous power structures over indigenous peoples which have arisen through the process of decolonisation, but also to challenge the epistemological privilege of Western perspectives in research which through colonisation, past and contemporary, have marginalised indigenous knowledge and sought to position indigenous ways of knowing as inferior to those of the coloniser.

Decolonisation as practice and outcome

Linda Tuhiwai Smith writes that research and knowledge have been used by colonial powers as a tool in the subjugation of indigenous peoples, particularly in the legitimisation of colonial hegemonic superiority through using research to demonstrate some level of deficiency on the part of indigenous peoples.[6] Linda Smith argues that Western societies continue to use the globalisation of knowledge to reinforce a sense of Western cultural superiority over indigenous or non-Western cultures or knowledge.[7] Walter Mignolo also

[6] Linda Tuhiwai Smith (1999) *Decolonizing Methodologies* (Dunedin, University of Otago Press)
[7] Ibid.

describes the racial and geographical hierarchies of knowledge that still pervade epistemologies and societies following a long tradition of academic construction of Western hegemony, prioritising Western epistemology above that of indigenous peoples.[8] Russell Bishop argues that this colonial approach to research does more than merely entrench colonial power but also delegitimises, undervalues and belittles Māori knowledge and learning practices.[9] He suggests that as a result Pākehā researchers have been able to present an inferior view of Māori to themselves that has perpetuated myths of colonial superiority.[10]

Graham Hingangaroa Smith discusses the mistrust held by many Māori researchers and communities of the motivations which drive Pākehā research about Māori, and suggests that while Pākehā may have a role to play in kaupapa Māori research, this role is at the invitation of Māori and to serve Māori research needs.[11] Graham Smith suggests instead, referring to the work of Paolo Freire, that Pākehā researchers first focus on "freeing" themselves before they seek to "free" others.[12] We can interpret Graham Smith's comment here that Pākehā must first deconstruct their own privilege in research and in ensuring that constructed hierarchies of knowledge do not influence their work before purporting to find solutions or present problems in any research about Māori.

Russell Bishop has described five core concerns held by Māori relating to Pākehā undertaking Māori research: who initiates the research; who benefits from the research; who and what does the research seek to represent; how is the research legitimised; and who is the research accountable to.[13] Traditionally, the coloniser as researcher saw research initiated without consultation of the Māori research participants; for the benefit of the researcher or for benefits determined by the researcher; that validated the researcher's perception of their own cultural superiority and positioned the researcher as an expert on

[8] Walter D. Mignolo (2009) “Epistemic Disobedience, Independent Thought and De-Colonial Freedom” *Theory, Culture and Society,* (Vol.26, No.7-8)
[9] Russell Bishop (1998) "Freeing ourselves from neo-colonial domination in research: A Māori approach to creating knowledge" *International Journal of Qualitative Studies in Education* (Vol.11, No.2)
[10] Bishop (1998)
[11] Graham Hingangaroa Smith (2012) "Kaupapa Māori: The dangers of domestication" *New Zealand Journal of Educational Studies* (Vol.47, No.2)
[12] Ibid, pp18.
[13] Russell Bishop (2005) "Freeing ourselves from neo-colonial domination in research: A Kaupapa Māori approach to creating knowledge." in Denzin and Lincoln, eds. *The Sage Handbook of Qualitative Research* (Thousand Oaks, Sage Publishing)

Māori, but had no accountability to Māori. This approach simply embedded the on-going dispossession of Māori, as described by Linda Smith, Graham Smith and Bishop earlier in this chapter. As a result, Pākehā researchers, unless invited to participate or undertake research with Māori by Māori, and in those instances must be mindful of the concerns above, are better placed to undertake research that instead challenges the colonial privilege of the Pākehā and the Crown.

Given that this thesis will seek to understand Treaty settlements as a remedy to injustice with regard to their capacity to be decolonising of the Crown-Māori relationship, it is appropriate that the methodology of this thesis also be guided by principles of decolonisation in knowledge.

Tim McCreanor writes of non-Māori in Aotearoa (and non-Māori institutions by extension) as masking the impact of colonisation on Māori life through their discourses.[14] This attitude of ignorance to the impacts of colonisation on the contemporary and lived experience of Māori presents a huge challenge to decolonisation and political justice for Māori in Aotearoa: how can decolonisation be theorised when the hegemonic cultural identity does not acknowledge colonisation as an ongoing and very real factor in how social relations are defined in this country? More so, it speaks to a general acceptance of colonialism as a historical process without acknowledging that the contemporary effects of colonialism continue to structure Māori injustice and the social relations that perpetuate this. Moreover, this attitude ignores that Treaty settlements themselves and other Crown attempts to assuage Māori concerns over those social relations and enduring injustice may simply be an extension of colonisation in Aotearoa.

A decolonising methodology requires an in-depth understanding of the positioning of the author in relation to dominant power structures in a colonially structured society, in addition to the way in which the theoretical background and approach of the author may relate to colonised patterns of knowledge. Two recent graduates of Te Kawa a Māui at Victoria University of Wellington have undertaken leading work on decolonisation as Pākehā in the Aotearoa research context, Miki Seifert and Rachael Fabish.

[14] Tim McCreanor (2009) "Challenging and countering anti-Māori discourse: practices for colonisation", *Bicultural Issues,* (Vol.1, No.1)

Seifert[15] has undertaken important work on decolonising methodologies in the context of Māori and Pākehā in Aotearoa and her work has provided crucial insights into how my own research can contribute to decolonisation and consequently political justice in Aotearoa as well as providing guidelines as to how a non-Māori scholar may decolonise their research methodology to produce work which is consistent with and supportive of kaupapa Māori. Likewise, Fabish[16] has focused on addressing 'Pākehā paralysis'[17] in social science research in Aotearoa by advocating for a new way forward for non-Māori researchers to contribute to research with Māori without damaging Māori in the process or perpetuating colonial domination of knowledge in Māori research. Her 'kaupapa Pākehā' focuses on the way in which Pākehā or non-Māori can learn to be affected by their research and engagement with Māori and as a result move towards research that is decolonising in both its methodology and outcomes.[18] The work of both Seifert and Fabish have been instrumental in helping to define a space from which I could understand the approach that non-Māori researchers can take in working on matters which affect Māori and are about Māori.

'Kaupapa Pākehā' speaks to the role of non-Māori researchers in Māori research and provides a way forward for non-Māori in the face of 'Pākehā paralysis,' addressing the way in which Pākehā identity and colonial power constructs provide challenges and limitations to Māori development and research.[19] This approach suggests non-Māori researchers should focus on addressing matters of decolonisation and resultantly challenging the barriers to the legitimacy of a Māori perspective in research and society in Aotearoa. This aligns with the historical and contemporary problems of Pākehā researching Māori, and how this research has been part of the epistemological colonisation of Māori, that is discussed earlier in this chapter with reference to Bishop, Graham Smith and Linda Smith. The focus of non-Māori researchers on problematising Māori social and economic indicators reflects the continuation of colonised patterns of knowledge and ignores the wholesale dispossession that colonial structures in Aotearoa, including in research, have brought about for Māori.

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[15] Miki Seifert (2011) *He Rawe Tona Kakahu/She Wore a Becoming Dress: Performing the Hyphen*, (Victoria University of Wellington)
[16] Rachael Fabish (2014) *Black Rainbow: Stories of Māori and Pākehā working across difference*, (Victoria University of Wellington)
[17] Martin Tolich (2002) “Pākehā "Paralysis": Cultural Safety for Those Researching the General Population of Aotearoa” *Social Policy Journal of New Zealand* (Vol. 19)
[18] Fabish (2014)
[19] Fabish (2014)

Seifert and Fabish both suggest that this realignment towards Pākehā-centred research is where Pākehā can add value to Māori research and Māori research aspirations. This underlying methodology of decolonisation through reflection on the settler and the settler state, as well as the desired outcome of decolonisation in the Crown-Māori relationship, is the focus of this thesis.

Integral to a decolonising methodology is the deconstruction of hegemonic power structures and of knowledge systems. While my understanding of the research topic and of the implications will inevitably be coloured by my Pākehā cultural context[20], a decolonising approach to this research will acknowledge alternative understandings throughout and not present a hierarchy of knowledge systems with Pākehā knowledge at the apex as often occurs in Western research and literature on colonised societies.[21] Further, a decolonising methodology acknowledges that Western knowledge systems or analysis may be inappropriate for application in non-Western contexts and requires that non-Western knowledge systems therefore take the lead in the understanding of cultural contexts familiar to them. As such, Māori and North American indigenous theorists provide the basis of my analysis of Treaty settlements and the 2014 election rhetoric in being able to provide a perspective that is well-aligned to decolonisation and does not privilege colonial epistemology in the way that many Western theorists do.

This thesis does not position myself or any other Pākehā as an expert on Māori matters or provide solutions on questions of the Māori identity, which are only for Māori to address. This thesis aims to provide a critical analysis of those colonial structures which continue to dominate Aotearoa and perpetuate dispossession of Māori. This involves acknowledging my limits as a Pākehā researcher but also what I may contribute to decolonisation in Aotearoa, a space where my involvement (and the re-engagement of other Pākehā researchers and academics[22]) is of value.

McCreanor provides a very succinct view on the current domination of colonial social relations in Aotearoa and the goals of decolonisation: "The status quo is based on the economic, political, legislative and cultural privileging of Pākehā. Decolonisation requires

[20] McCreanor (2009)
[21] Seifert (2011)
[22] Fabish (2014)

the re-ordering of these debilitating arrangements. Existing provisions that target Māori are often superficial efforts to redress injustice and disparity."[23] McCreanor's view here speaks to the aim of the thesis: this research will attempt to identify the way in which the discourse around Treaty settlements, portrayed as an effort to redress injustice and disparity, limits this mechanism in decolonising social and power relations in Aotearoa and instead uphold the status quo.

Positionality

Decolonisation as a research methodology requires constant reflection on the position of the researcher with regard to social, economic, political and epistemological hierarchies of power.[24] It is important to note that from November 2012 I worked at the Office of Treaty Settlements (OTS) and at the time of starting this thesis was a senior analyst leading within OTS a number of iwi negotiations in Hauraki. This exposure to both Crown policy and processes and iwi responses is of value to this research and brings with it an intimate perspective on a world where balanced or extensive scrutiny is often absent.

This experience also brings a unique bias to my research, influenced by the way working within an organisation like OTS undoubtedly influences the way its employees perceive the world and the work they do, at least for the period of their employment. That influence changed over the time I worked at OTS and when I resigned I was sufficiently disillusioned with the Treaty settlements process and the approach to it taken by the Crown and OTS. Despite having the best of intentions, frustrations with how negotiations proceed and how that personally impacts on you as an individual and your work is, I think, unavoidable - as a result, it is difficult to see how decolonisation may occur outside of the Treaty settlements process while working within it. Despite this, without an understanding of how settlements work, and more importantly, how the Crown works, my analysis in this thesis would certainly be limited.

My experience in working in Treaty settlement negotiations and the engagement I had with iwi negotiators, particularly those from Hako, Ngāti Hei, Ngāti Porou ki Hauraki, Ngāti Rahiri Tumutumu and Ngāti Tara Tokanui, has definitively shaped my perspective on this process

[23] McCreanor (2009) pp19.
[24] Ibid, pp22.

and what those iwi seek through settlement towards decolonisation and to restore their rangatiratanga. Many of the policy messages I address in Chapter Four I have delivered in a negotiations context, and having heard first hand from iwi why those messages are unacceptable, mana diminishing, unjust or neo-colonial has provided much of my understanding of what some Māori seek in a Treaty settlement process and how they envisage a decolonised relationship with the Crown. I am immensely grateful to those iwi negotiators for their patience with me and willingness to teach, during my time at OTS and since moving to Hauraki.

This professional experience must also be viewed alongside my cultural one: it is important to reflect on the intrinsic bias of commenting on decolonisation and matters of justice for any non-hegemonic population from within the hegemonic population group. This bias of being a Pākehā researcher working on research that analyses part of the intersection between Māori and Pākehā cultural and political paradigms includes assumptions of hegemonic centrality; for example, that the question of justice for Māori must be understood in relation to the coloniser and that as a result a researcher from within the colonial hegemony has intrinsic value to Māori in doing this research.[25] Pākehā are also subject to carrying myths of Māori inferiority as a participant in the Pākehā cultural project, which not only reinforces the centering of the coloniser as discussed by Alison Jones but denigrates the Māori cultural paradigm and epistemology which may lead the researcher to entrenching colonial patterns of knowledge and power, no matter how good their intentions are.[26] This bias is not necessarily deliberately expressed in research by Pākehā but certainly reflects the paradigm from which they have been positioned and must be challenged by the researcher in presenting research that is balanced, critical and above all, decolonising.

This thesis has at its heart questions of decolonisation of the Crown-Māori relationship, questions of decolonisation of colonial epistemological dominance and questions of the decolonisation of self. That decolonisation must first start with an awareness of where I stand as a researcher, how I got there and how this influences the journey ahead.

[25] Alison Jones (2012) "Dangerous Liaisons: Pākehā, kaupapa Māori, and educational research" *New Zealand Journal of Educational Studies* (Vol.47, No.2)
[26] McCreanor (2012)

Critical Discourse Analysis

Theory

This thesis employs a Critical Discourse Analysis (CDA) of the rhetoric employed by political figures in the campaign period of the 2014 election. CDA differs from traditional discourse analysis in applying a layer that seeks positive change to be made to society from the analysis rather than simply seeking to understand or explain the discourse.[27] In the context of this thesis, that means not simply analysing the rhetoric in the 2014 campaign period for an understanding of how political figures discuss Treaty settlements but then applying this to a framework of justice in order to draw conclusions about how that rhetoric may contribute to political injustice for Māori - including how that analysis could contribute to a decolonisation of both knowledge and institutions in Aotearoa. Crucial to this is an understanding of how this political rhetoric reflects the power dynamics of political ideologies that govern social structures with regard to Treaty settlements.[28] CDA seeks to bring an awareness of these social constructions in order to allow societies to effect positive change.[29]

It is this focus on positive change through CDA that has motivated the use of this method in my thesis. Consequently, this thesis analyses the way in which the rhetoric from the 2014 campaign period can be understood within the theoretical framework of what political justice for Māori might look like and how Treaty settlements can contribute to this. The thesis then identifies the way in which the rhetoric of politicians on Treaty settlements influences the policy parameters for settlements and restricts the ability of these to act as a remedy to Māori injustice. Finally, the thesis identifies ways in which Treaty settlements could better address Māori injustice, firstly by altering the tone of the national discussion about Māori injustice, the Treaty of Waitangi and Treaty settlements themselves in both political and public arenas but also the ways in which the policy framework could be more responsive in applying measures more likely to bring about just outcomes for Māori and lead to a decolonisation of the relationship between Māori and the Crown.

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[27] Ruth Wodak (2001) "What CDA is about – a summary of its history, important concepts and its developments" in Wodak and Meyer, eds. (2001) *Methods of Critical Discourse Analysis*, (London, Sage Publications Ltd.)
[28] Ibid
[29] Ibid

In the opening chapter of *Methods of Critical Discourse Analysis* Ruth Wodak writes that:

> "CDA can be defined as being fundamentally interested in analysing opaque as well as transparent structural relationships of dominance, discrimination, power and control as manifested in language. In other words, CDA aims to investigate critically social inequality as it is expressed, constituted, legitimized, and so on, by language use (or in discourse). Most critical discourse analysts would thus endorse Habermas' claim that 'language is also a medium of domination and social force. It serves to legitimize relations of organized power. Insofar as the legitimizations of power relations ... are not articulated, ... language is also ideological' (Habermas, 1967: 259)."[30]

It is a useful method for interpreting the data in this research in highlighting patterns of discourse which may be considered colonised or colonising as well as integrating the theoretical framework of justice discussed in Chapter Three to identify elements of continuing injustice for Māori and to point to remedies to decolonise relations between Māori and the state in such a way that might lead to political justice for Māori. However, within a decolonising methodology it is important to note that Pākehā researchers employing CDA do not seek to use their analysis to pursue solutions to problems the researcher has created for Māori, but instead to apply the analysis in reflection of how discourse is used to reinforce constructed colonial domination.[31]

Jäger writes that "as 'agents' of 'knowledge (valid at a certain place at a certain time)' discourses exercise power. They are themselves a power factor by being apt to induce behaviour and (other) discourses. Thus, they contribute to the structuring of the power relations in a society."[32] As such, discourses contribute to the history of colonial power and dominance in Aotearoa, as well as the contemporary existence of colonisation, while other discourses contribute to the movement for decolonisation. CDA in this thesis assists in seeing the way in which the rhetoric of the 2014 election fits within relevant discourses and

[30] Wodak (2001) pp10
[31] Michael Meyer (2001) "Between theory, method and politics: positioning of the approaches to CDA" in Wodak and Meyer, eds. (2001) *Methods of Critical Discourse Analysis* (London, Sage Publications Ltd.)
[32] Siegfried Jäger (2001) "Discourse and knowledge: Theoretical and methodological aspects of critical discourse and dispositive analysis", in Ruth Wodak and Michael Meyer (eds), *Methods of Critical Discourse Analysis*, (London, Sage Publications Ltd.) pp37

how it therefore influences colonisation, decolonisation and the status of justice for Māori. Wodak further notes that "power is another concept which is central for CDA, as it often analyses the language use of those in power, who are responsible for the existence of inequalities"[33] - this thesis aims to explore the way in which political rhetoric contributes to or supports the perpetuation of colonialism in Aotearoa and the subsequent on-going dispossession of Māori.

Practice

Michael Meyer writes that "there is no typical CDA way of collecting data"[34] and goes on to describe data collection as an integrated process in the research rather than one which is stand alone and must be completed before analysis of the data begins; this results in a responsive method of data collection which adapts to the initial analysis of the dataset as it emerges.[35] So, where insufficient data may be generated at the stage of first analysis it may become necessary to adapt data collection criteria in order to better understand the research subject. Likewise some initial analysis of data may be useful in identifying patterns of discourse or themes within the discourse that should be explored further to understand the data but are not reflected in the original data collection key terms. Where both of these instances have occurred in the course of this research, they are expanded upon in greater detail at the beginning of Chapter Five, which covers the data collection process and results.

Norman Fairclough outlines the following analytical framework as an approach to undertaking critical discourse analysis:

1. Focus upon a social problem which has a semiotic aspect.

2. Identify obstacles to it being tackled, through analysis of:

    a) the network of practices it is located within

    b) the relationship of semiosis to other elements within the particular practice(s) concerned

[33] Wodak (2001) pp9
[34] Meyer (2001) pp23
[35] Meyer (2001)

c) the discourse (the semiosis itself; structural analysis: the order of discourse; interactional analysis; interdiscursive analysis; linguistic and semiotic analysis.)

3. Consider whether the social order (network of practices) in a sense 'needs' the problem.

4. Identify possible ways past the obstacles.

5. Reflect critically on the analysis (1–4).[36]

In the first step, it is important to accurately describe the research focus and discuss why it is a social problem, and for whom. This process is akin to the questions posed by Bishop around initiation, benefits, representation, legitimation and accountability:[37] throughout the research the researcher must constantly interrogate what the analysis is designed to achieve and why in determining if it is effective. Fairclough writes that as CDA is a methodology with 'emancipatory objectives', the social problems it aims to analyse are those affecting the socially excluded groups in our society such as those oppressed by gender or race relations.[38] In the case of Treaty settlements as a remedy to political injustice for Māori, two interconnected problems are examined: the first is that Māori are dispossessed through colonisation and the second is that the remedy of Treaty settlements to this colonisation may be insufficient, or as the analysis in this thesis will contend, that it leads to a perpetuation of colonisation rather than decolonisation.

In the second step, the discourse is explored in order to find obstacles to the problem being tackled. The analysis here includes both interdiscursive and linguistic elements in ascertaining how the discourse may present obstacles to the problem's resolution: the interdiscursive looks at the 'interactions' across the discourse (different conversations, speeches, media articles and policy papers for example) and how they interact to form a broader picture of the obstacle, while the linguistic explores how language and grammar are used within the discourse to serve particular social functions, including furthering the social

[36] Norman Fairclough (2001) "Critical discourse analysis as a method in social scientific research", in Wodak and Meyer, eds. (2001) *Methods of Critical Discourse Analysis*, (London, Sage Publications Ltd.) pp125.
[37] Bishop (2005)
[38] Fairclough (2001)

aims of the dominant discourse.[39] In the context of this thesis, this analysis will be looking across the assembled rhetoric from the 2014 election to explore how that rhetoric fits into a discourse which presents obstacles or remedies to Māori injustice through settlements.

The third step in conducting CDA is placing the problem in the wider context of the aims of the dominant discourse, to understand whether the obstacles created to resolving the problem are in fact a representation of the benefit that the problem brings in maintaining the hegemonic social order of the dominant discourse.[40]Jäger writes that "[t]he (dominating) discourses can be criticized and problematized; this is done by analysing them, by revealing their contradictions and nonexpression and/or the spectrum of what can be said and what can be done covered by them."[41] For example, this could be a question of whether perpetuating Māori political injustice has a benefit in maintaining the status quo for the dominant population in Aotearoa, and as such the obstacles presented in the discourse are constructed in order to prevent resolution of the problem. Put more bluntly, it would be a question of whether preventing decolonisation through the discourse has the effect of maintaining colonial hegemony and therefore is in the interests of the dominant Pākehā majority to do so.[42]

The fourth step is to use that analysis in moving from a negative critique of the discourse and how it may contribute to the problem to a positive view of what parts of the discourse or gaps in the discourse may be saying about overcoming the problem.[43] It may also be a demonstration of how the discourse could change to take positive steps towards remedying the problem rather than creating further obstacles. This emphasis on changing the discourse and creating a positive conversation about decolonisation and justice for Māori, not only in Treaty settlements but throughout the political discussion, will be the focus of Chapter Seven.

Finally, the effectiveness of the analysis in understanding the problem, the obstacles and the direction forward as well as whether it contributes to the wider aims of CDA in effecting

[39] Ibid
[40] Ibid
[41] Jäger (2001) pp34
[42] Wayne Rumbles (1999) "Treaty of Waitangi Settlements Process: New Relationship or New Mask?" *Paper presented at the Compr(om)ising Post/colonialism Conference* (University of Wollongong, Australia)
[43] Fairclough (2001)

positive social change for those outside the hegemony must be evaluated.[44] Beyond that, in this thesis it must also be asked if the analysis has integrated well with a wider decolonising methodology and contributed to the decolonising aims of the thesis as a result, not just in the decolonising knowledge but in contributing to meaningful decolonisation of social and political relations in Aotearoa. This includes a reflection in Chapter Seven on what approaches to the decolonisation of the Crown and Pākehā can be made to better contribute to a wider decolonisation of the Crown-Māori relationship.

These five steps in undertaking CDA set out above will provide the basis for the analysis in Chapter Six. Chapter Five discusses in greater detail how these steps relate directly to the research and to the context of Treaty settlements and political justice in Aotearoa.

Jäger writes that:

> "Any researcher conducting such an analysis must, moreover, see clearly that with his/her critique he/she is not situated outside the discourse he/she is analysing. If not, he/she places his/her own concept of discourse analysis in doubt. Apart from other critical aspects which discourse analysis also comprises, he/she can base his/her analysis on values and norms, laws and rights; he/she must not forget either that these are themselves the historical outcome of discourse, and that his/her possible bias is not based on truth, but represents a position that in turn is the result of a discursive process. Equipped with this position he/she is able to enter discursive contests and to defend or modify his/her position."[45]

This view is useful in seeing how my experiences working within Treaty settlements, discussed below, may influence my analysis of the discourses surrounding Treaty settlements.

[44] Ibid
[45] Jäger (2001) pp34

Chapter Three: Decolonisation and political justice

Justice and human dignity are inextricably connected. However the legacy of injustice, often presented as a form of justice or backed by political philosophy as seen in the rationale for Western imperialism, still provides barriers to the realisation of human dignity and self-determination for colonised peoples the world over and perpetuates myths of colonial superiority which continue the dispossession of indigenous peoples in settler societies.

The scholars discussed in this chapter are by no means an exhaustive list of the theorists operating in this space. The chapter does however provide an overview of the differences within academic traditions, as well as the similarities which span these, and aims to set out a framework for understanding decolonisation in political theory, addressing both epistemological and structural colonisation. This aligns with the way in which Western theorists contribute to epistemological colonisation as discussed in the previous chapter and explores how indigenous challenges to this and their application throughout this thesis are necessary to combat both the manifestation of colonisation in social, economic and political structures but also the colonisation of the mind.

The politics of difference and colonisation

The politics of difference literature has often been divided into the two schools of a politics of recognition and politics of distribution, each with their own proponents who see the focus on one or the other as necessary to explain the existence of structural injustice in modern societies as well as where the remedy to this injustice can be found. The politics of distribution focusses on material inequality as a barrier to justice, where maldistribution describes an unequal distribution of resources to different cultures or social groups, while the politics of recognition discusses how misrecognition or privileging one identity over another leads to injustice between that identity which is privileged and those which are not. Within this literature, the question of justice and injustice is often centred on the relationship between a cultural hegemony (a group which is culturally, economically and politically dominant) and a cultural non-hegemony (a group which is culturally, economically and politically excluded from equal participation as the hegemony). As such, it is a valuable branch of Western political philosophy through which to discuss the Crown-Māori

relationship, and to explore the inherent coloniality within the work of many of the associated scholars. While Charles Taylor, Iris Marion Young, Nancy Fraser and Will Kymlicka are by no means the only theorists working within the politics of difference, they present a useful overview of many of the arguments made from within this school as to the relationships between hegemonic and non-hegemonic populations.[46]

Charles Taylor is one of a prominent group of academics who centre the politics of recognition in their understanding of justice. Taylor argued that recognition was less a matter of justice and more a situation of core importance to our very humanity: that recognition by peers of one's identity and difference is centre to self-realisation as individuals and that misrecognition constituted a significant harm.[47]

Taylor purports to have moved past the politics of distribution, seeing our democratic age as having evolved beyond purely material-based considerations, where recognition requires specific attention in that it is more difficult to fulfil separately as justice than redistribution, and where the focus is not only on what can be achieved for resource wealth but rather the ostensibly more central issues of social identity.[48] His work revolves around two principles: for the individual to live in equal dignity with his peers, and for the individual to recognise the distinctiveness of his peers in order to have his own recognised. While not specifically identifying the realisation of these principles as a conception of justice, Taylor does suggest that in order to build just societies we must see that equal dignity and recognition of individual distinctiveness are firstly recognised.[49] Moreover, Taylor characterised misrecognition as the greatest injustice an individual or group can experience: without recognition of their distinctiveness, they exist without their identity, "imprison[ed] in a false, distorted, reduced mode of being."[50]

The work of Taylor has been critiqued on a number of levels but perhaps the most salient critique here is that offered by Glen Coulthard. Coulthard writes that Taylor's approach is

[46] The works of Axel Honneth, Jürgen Habermas, John Rawls, Amartya Sen and Ronald Dworkin have also contributed to my understanding of the politics of difference in this chapter and may be of interest for further reading.
[47] Charles Taylor (1994) *Multiculturalism and the Politics of Recognition,* (Princeton, Princeton University Press)
[48] Iris Marion Young (1997) "Unruly categories: a critique of Nancy Fraser's dual systems theory" *New Left Review*, I/222 March-April
[49] Taylor (1994)
[50] Taylor (1994) p25.

insufficient in that it would offer indigenous peoples only an affirmative approach to redressing injustice, through recognition of cultural rights and some elements of self-government, while doing little to address the generative structures of injustice within the colonial state.[51] He also identifies that Taylor's form of recognition at its core requires the 'granting' of recognition by the colonial state, and does not challenge the prejudicial base from which the colonial state can give that recognition which presupposes indigenous inferiority.[52]

Iris Marion Young also offers a critique of the politics of distribution, arguing that the focus of justice should move from distribution to a stronger focus on recognition, but that recognition itself can also not be seen as an effective or holistic remedy to structural injustice.[53] Young observed injustice as a phenomena influenced by the forces of both misrecognition and maldistribution in equal and co-dependent measure and saw the remedy to injustice as needing to be cognisant of both influences. Young's revised politics of difference, looking at both maldistribution and misrecognition, centred on what she describes as the five faces of oppression: exploitation, marginalisation, powerlessness, cultural imperialism, and violence.[54]

Exploitation is explained by Young through the normative lens of classical Marxism, seen as oppression through a "steady process of the transfer of the results of the labour of one social group to benefit another."[55] Marginalisation impacts those who are outside the hegemony and condemns them to an existence which is secondary to that experienced by those within the hegemonic group. The marginalised are excluded materially by their difference and have their dependence on the hegemony fostered by on-going exclusion from the independence necessary to assert their own material destiny. Those structurally marginalised in contemporary society reflect those who were historically actively marginalised: among them, women, children, racialised groups, and the disabled. The third face of oppression, powerlessness, is determined by the position of groups in a system of capitalist exploitation. Young characterises the non-professional classes as experiencing an

[51] Coulthard (2007)
[52] Ibid
[53] Iris Marion Young (2003) "Polity and Group Difference" in Matravers and Pike (2003) *Contemporary Debates in Political Philosophy* (New York, Routledge)
[54] Iris Marion Young (1990) *Justice and the Politics of Difference* (Princeton, Princeton University Press)
[55] Young (1990) p49.

additional form of oppression, powerlessness, where they sit at the bottom of a chain of exploitation and have no power over the profits from their labour. They are distinguished from the professional classes who are also exploited, but who exploit non-professionals in turn and so retain some power in a capitalist system.[56]

Cultural imperialism can be seen as "the universalization of a dominant group's experience and culture, and its establishment as the norm."[57] Further, cultural imperialism refers to the way in which other cultural identities are maligned, excluded, stereotyped and marked out in society as 'other'. Cultural imperialism as oppression for Young in particular refers to non-recognised cultural groups being both invisible and yet, paradoxically, marked in a stereotypical way by the dominant group. Young also writes that the construction of identity for the excluded or non-recognised group comes from the dominant group, with an end result that the members of the excluded group internalise their external positioning and reflect this in their societal engagement. Finally, Young refers to systemic violence as injustice by its very nature: that it is systemic. This violence is not only physical but includes intimidation, harassment and ridicule, and is characterised by its frequency, its targeted nature and its socialisation as acceptable or tolerable. Systemic violence also can contribute to or be the result of cultural imperialism.[58]

While Young argues that policies of affirmative action and challenges to the underlying structural barriers to inclusion are necessary to redress the effects of structural oppression on excluded social groups, she does not explicitly call for decolonisation as a specific outcome or address the role that the centring of the settler state, or the perpetuation of epistemological colonisation, plays in sustaining the structural oppression she seeks to undermine.

Nancy Fraser's conception of justice focuses on a 'parity of participation.' This participatory parity centres on the ability of group identities or members of group identities to participate equally as peers in social, economic and political life. Participatory parity is articulated through two streams, which must both be realised in order for justice to be achieved. Fraser writes, "First, the distribution of material resources must be such as to ensure participants'

[56] Young (1990)
[57] Young (1990) pp59.
[58] Young (1990)

independence and "voice." Second, the institutionalised cultural patterns of interpretation and evaluation express equal respect for all participants and ensure equal opportunity for achieving social esteem."[59]

Fraser explains injustice as the consequence of both maldistribution and misrecognition, a state of exclusion for social groups outside the hegemony based on both a lack of equal access to material resources in order to determine their own independent destiny as well as a lack of recognition of an independent or alternative cultural identity and the ability to engage independently and on equal terms with their peers within that identity.[60] Her understanding then of injustice is that both distribution and recognition are constrained for the affected group – and that in achieving justice for that group both redistribution and recognition should be at play.

Fraser divides recognition and redistribution into both affirmation and transformation where affirmation values differentiation between social groups and seeks to redress injustice by changing the relationship between society or governments and excluded groups to one where differences are valued and included while transformation seeks to remove any societal engagement with differentiation.[61] In earlier works, Fraser identifies the affirmative and transformative methods as mutually exclusive, with one requiring the recognition of differentiation and the other seeking to side line all recognition of differentiation entirely.[62] However, in later works, Fraser has moved to a position which acknowledges both the political reality of affirmation over transformation as well as the benefits that affirmative methods of redressing injustice may bring.[63]

However, this obscuring of the expression of indigenous difference is dangerous to recognition of indigenous peoples and should be seen as an area where the existing liberal bias of Fraser requires challenge, particularly in limiting her efficacy in describing just outcomes that meet the aspirations of indigenous peoples. This view maintains the

[59] Nancy Fraser (2001) "Recognition without ethics?" *Theory, culture & society* (Vol 18 No.2-3), pp29.
[60] Nancy Fraser (1995) "From Redistribution to Recognition? Dilemmas of Justice in a 'Post-Socialist' Age" *New Left Review I/212* (July-August, 1995)
[61] Nancy Fraser (1997) *Justice Interruptus: Critical Reflections on the "Post-Socialist" Condition* (New York, Routledge)
[62] Fraser (1995)
[63] Nancy Fraser and Axel Honneth (2003) *Redistribution or Recognition? A Political-Philosophical Exchange* (London, Verso)

epistemological assumption that Western theories of justice and liberal equality are without challenge while not reflecting that whitewashing difference is in itself a form of misrecognition and is not reflective of the outcomes sought by indigenous peoples. Coulthard discusses this emphasis on 'transcending culture' as undermining any cultural basis by which indigenous peoples might approach decolonised alternatives to the colonial state.[64]

In her work Fraser also fails to address two enduring elements of colonial dominance: the uncontested sovereignty of colonial states; and the appropriateness of colonial states as a model for governance in societies with both indigenous peoples and settler populations.[65] Despite acknowledging that not all contexts can be considered equally in her approach to multinational societies, Fraser continues to adopt a perspective within the politics of difference that maintains the coloniser and the colonial state in the centre and insufficiently challenges this epistemological dominance in attempting to rework social, political and economic relationships as way forward for justice.[66]

Will Kymlicka's work on justice has a strong focus on the accommodation of minority rights, particularly in achieving true equality for individuals in a liberal system where cultural bias is masked by hegemonic dominance.[67] While Kymlicka advocates for forms of accommodation which may give indigenous peoples and other national minorities (Kymlicka often refers to cultural minorities with shared values of Western liberalism for example, the Flemish and Walloons in Belgium) recognition of their difference through methods such as self-government, this accommodation sits within the political norms of Western liberalism and does not present a challenge to the grounds on which settler states govern indigenous peoples.[68]

Kymlicka outlines three core principles for ethnocultural justice: non-exclusion from the majority nation; integration within institutions while respecting cultural difference; and

[64] Glen S. Coulthard (2014) *Red Skin, White Masks* (Minneapolis, University of Minnesota Press) pp153.
[65] Coulthard (2014)
[66] Fraser and Honneth (2003)
[67] Will Kymlicka (1995) *Multicultural citizenship : a Liberal Theory of Minority Rights* (New York, Oxford University Press)
[68] Will Kymlicka (2004) "Justice and security in the accommodation of minority nationalism" in Stephen May, Tariq Modood, and Judith Squires, eds. (2004) *Ethnicity, Nationalism and Minority Rights* (New York, Cambridge University Press)

allowing for nation-building by minority cultures in order to establish and act as distinct social cultures.[69] He also defends affirmative measures which may seek to recognise and accommodate minority difference:

> "Granting special representation rights, land claims, or language rights to a minority need not, and often does not, put it in a position to dominate other groups. On the contrary, such rights can be seen as putting the various groups on a more equal footing, by reducing the extent to which the smaller is group is vulnerable to the larger."[70]

Finally, Kymlicka stresses that accommodation of minority rights is not inconsistent with the principles of liberalism, but does acknowledge that a conflict between liberalism and multiculturalism may arise where individual and group rights clash.[71] Despite seeking ways in which to best accommodate minority difference within existing state structures or existing liberal thought, Kymlicka does not challenge colonial political dominance or question colonial epistemological superiority in articulating the best manner in which to attain this accommodation. Like in the failings evident in Fraser's work, Kymlicka also places the sovereignty of the coloniser and the suitability of the colonial state in the centre and theorises ways in which to align indigenous claims with the goals of the state, without addressing the way in which those fundamental aspects of colonialism contributed to and maintain indigenous dispossession.

Indigenous perspectives on injustice and decolonisation

In the introduction to his 2014 text *Red Skin, White Masks*, Glen Coulthard argues that the politics of recognition "instead of ushering in an era of peaceful coexistence grounded on the ideal of reciprocity or mutual recognition... promises to reproduce the very configurations of colonialist, racist, patriarchal state power that Indigenous peoples' demands for recognition have historically sought to transcend."[72] There is an inevitable connection between colonial-privileged epistemology and the construction and maintenance of colonial-privileged societies. Coulthard's argument as such demands a

[69] Will Kymlicka (2002) *Contemporary Political Philosophy: An Introduction* (Oxford, Oxford University Press)
[70] Ibid, pp341.
[71] Kymlicka (2002)
[72] Coulthard (2014) pp3.

rejection of colonial-based literature and political theory to emancipate indigenous peoples and moves towards political theory based in the experiences and traditions of indigenous peoples as a counterpart for achieving true indigenous self-determination that is not dependent on the continued centring of the coloniser and colonial state.[73]

Much of the literature from indigenous authors on political justice focuses on the dispossessing effects of colonisation as giving rise to injustice, and consequently the centrality of decolonisation in achieving justice for indigenous peoples. Perhaps most importantly, indigenous scholars such as Moana Jackson, Annette Sykes, Jeff Corntassel, Taiaiake Alfred, Glen Coulthard and Manuhuia Barcham as members of indigenous communities experience the injustices facing indigenous peoples in a way that many Western theorists do not; providing a unique view of solutions to colonial injustice that prioritises lived indigenous experiences and indigenous alternatives to colonialism. These authors should again not be seen as a definitive representation of indigenous scholars but rather as a range of scholars whose work I have found particularly useful analysing the colonising impact of the Crown's approach, and the political discourse which supports it, to Treaty settlements in New Zealand.

In Aotearoa, Moana Jackson has argued for the ability of Māori to exercise true authority over their affairs, consistent with tikanga Māori, rather than the increasing but still subservient recognition of indigenous rights within a Pākehā or colonial system of legal pluralism.[74] Jackson also writes of the need for Māori to step away from seeing their identity and rangatiratanga defined by the Crown or in relation to the Crown as an institution of the colonial state.[75] Jackson, like Coulthard and Alfred (below) discusses the way in which attempts by the Crown to recognise the rights of Māori are not a step towards decolonisation but rather a step in a new direction of colonialism where Māori rights exist only within a framework constructed within the colonial state.[76] As such, Jackson identifies the ongoing dispossession of Māori in Aotearoa even through processes which appear designed to remove some elements of unbalance in the relationship between the Crown and Māori - of which Treaty settlements can be seen as one.

[73] Coulthard (2014)
[74] Jackson (1994)
[75] Jackson (2005)
[76] Jackson (1994)

Jackson goes further and places the actions of the Crown in the historical context which led to their power and defined their interactions with Māori, grounded in the myth of the sub-humanity of indigenous peoples, a sub-humanity by which the Crown justify the imposition of a single system of authority and the subjugation of Māori rights within this Pākehā system:

> "… James Cook sailed first of all into what is now Gisborne, and then moved around the coast to Whitianga in what he renamed Mercury Bay. There, he carved a mark into a tree and in his words 'displayed the colours of the King of England' and took possession of this land for their Majesties. I'm quite sure the tangata whenua of Ngāti Hei had no idea what he was doing, or even worried about what he was doing. But he brought, if you like, the legacy of the Valladolid debates to this country with the assumption that simply by discovering a sub-human land, fully human peoples could assume ownership and sovereignty over it."[77]

This method of using myths of indigenous inferiority to justify settler dominance is also reflected in the work of other scholars, for example Christine Helliwell and Barry Hindess who critique the premise of Western moral superiority as presented throughout many phases of Western philosophy as a construction reflecting Western values that is used to justify the dispossession of non-Western peoples.[78] Jackson cites these myths as the basis on which the Crown continues to deny full Māori rights to self-determination and the way in which Crown institutions attempt to construct Māori identity and redefine tikanga Māori.[79] In this way Jackson is describing a Western liberal system in which there is an inherent cultural bias in favour of the settler majority with its source in the history of dispossession of the indigenous people, justified by a colonial myth of sub-humanity.

Taiaiake Alfred and Jeff Corntassel characterise contemporary colonialism as a new era in injustice for indigenous peoples, one which is deceptive, assimilative, bureaucratic and accompanied by what they describe as the "politics of distraction,"[80] a term adopted from

[77] Moana Jackson (2007) "Journey from a Spanish Monastery to Whitianga" *Yearbook of New Zealand Jurisprudence,* (Vol.10) pp61
[78] Christine Helliwell and Barry Hindess (2002) "The Empire of Uniformity and the Government of Subject Peoples" *Cultural Values* (Vol 6, No. 1-2)
[79] Jackson (1994)
[80] Alfred and Corntassel (2005)

the work of Graham Hingangaroa Smith. In response to this, Alfred calls for a new-phase of self-realisation for indigenous peoples, particularly his own Kahnawake nation, based on a return to traditional practices and identity.[81] Beyond this focus on the need for indigenous peoples to embrace their traditional identity, Alfred and Corntassel also advocate for the replacement of all institutions of the colonial state on the grounds that they continue a history of dispossession of indigenous peoples and perpetuate colonisation. Amongst these institutions are those tasked with settling indigenous land claims in Canada, which both Alfred and Corntassel argue creates further colonial domination of indigenous peoples.[82]

Alfred and Corntassel also focus heavily, like Jackson and Barcham, on the way in which the colonial state uses the contemporary deprivation and poverty of indigenous peoples as a tool for their continued dispossession in maintaining indigenous peoples within the constructs of a colonial society.[83] Alongside this, Alfred describes self-government within colonial structures, the settlement of indigenous land claims and a focus on economic development as tools of the colonial state in both dividing indigenous communities as well as distracting from the more important matters of indigenous sovereignty and indigenous rights defined by the community and exercised without restraint.[84] In this vein Alfred also critiques the leadership of indigenous communities as becoming servants of the colonial state and leading their people into a neo-colonial future.[85] This view is echoed by scholars in Aotearoa, including Annette Sykes, who describes Māori leaders as becoming accessories to the Crown's neo-liberal agenda through veiling neo-liberal tribal structures in the discourse of indigenous rights while securing their own positions of power through collusion with the Crown, with Treaty settlements being one method through which the power of these leaders is established.[86] James Tully has also argued that indigenous elites acting within patriarchal structures created by colonial administrators serve to undermine indigenous traditions and constitutional forms, entrenching the sovereignty of the colonial state.[87]

[81] Alfred (2005)
[82] Alfred and Corntassel (2005)
[83] Ibid.
[84] Alfred (2005)
[85] Alfred (2011)
[86] Annette Sykes (2010), 'The Politics of the Brown Tables, the 2010 Bruce Jesson Lecture,' http://img.scoop.co.nz/media/pdfs/1011/Annette_Sykes_Lecture_2010.pdf (accessed 10 May 2015).
[87] James Tully (1996) "Strange Multiplicity" *The Good Society* (Vol 6. No.2)

The work of Manuhuia Barcham demonstrates the extent to which colonisation continues in Aotearoa today through the construction of 'legitimate' Māori identity by the Crown and the control of Māori authority within structures suitable to colonial power.[88] Ryan Walker and Barcham identify, as part of the dispossession of Māori through the control of their identity, a rejection of the group rights which characterise indigenous populations by settler societies in favour of liberal individual citizenship rights, in a way that seeks to break indigeneity and subsume Māori within a common national identity defined by the settler state.[89] This attack on Māori identity, on one level by determining who the Treaty partner is and on another by subsuming Māori into patterns of colonial national identity, undermines indigenous self-determination, perpetuates colonisation and limits political justice for Māori.

Barcham also focuses on the colonising impact of self-government for Māori in New Zealand in limiting the potential for just outcomes. Walker and Barcham argue that, given the level of Crown control maintained over self-government opportunities or the frameworks within which these opportunities must operate, the Crown instead enforces a system of 'state-determination' which limits Māori self-determination within colonial constructs.[90] Alfred also provides a view on the motivations of the settler state for limited self-government, arguing that these arrangements are offered because they are useless to the survival of indigenous peoples, and pose no threat to the establishment and exercise of colonial power within settler societies.[91] Barcham's critique here bears particular relevance to the arrangements emerging for iwi following settlement with the Crown in Aotearoa and will be addressed in greater detail in the following chapter.

Glen Coulthard responds to the politics of recognition in advocating for indigenous peoples to recognise themselves and their own sovereignty rather than seeking recognition and subsequently validation from the colonial state.[92] While acknowledging that Fraser suggests that recognition should be mutual between the two parties, his critique of the Western

[88] Manuhuia Barcham (2000) "(De)Constructing the Politics of Indigeneity" in Ivison, Patton and Sanders (2000) *Political Theory and the Rights of Indigenous Peoples* (Cambridge, Cambridge University Press)
[89] Ryan Walker and Manuhuia Barcham (2010) "Indigenous-inclusive citizenship: the city and social housing in Canada, New Zealand, and Australia" *Environment and Planning A* (Vol.42)
[90] Ibid, pp316
[91] Alfred (2005)
[92] Coulthard (2007)

liberal understanding of recognition (particular Taylor) is that this is firmly grounded in traditions of liberal pluralism which seek to reconcile indigenous nationhood with the colonial sovereignty of the state, rather than attributing value to that nationhood outside of the settler-indigene paradigm.[93] Coulthard's argument, much like those of Jackson, Alfred and Corntassel, is that the recognition of indigenous peoples' remains defined on colonial terms and within the context of domination.

Coulthard suggests that recognition without a foundational challenge to the colonial power which misrecognises indigenous peoples can only lead to justice in a colonial understanding, which does little to deconstruct the myths of Western superiority which underpin the dispossession of indigenous peoples.[94] This can be understood as the need for a questioning of colonial authority, sovereignty and societal construction in any meaningful conversation about decolonisation. Coulthard also suggests that aims to align indigenous claims for self-determination with colonial statehood remain colonising as long as those aims maintain a state that is built on and remains committed to the dispossession of indigenous peoples of their lands and of their self-determination.[95]

Coulthard also argues that decolonisation requires a critical engagement with the institutions of the nation-state so as to limit the validation of those institutions by engagement, or the reproduction of their structures in indigenous communities.[96] He suggests indigenous peoples should focus their efforts on constructing an alternative to institutions of the colonial state founded on the legal and political traditions of indigenous peoples themselves. As such, he argues for a rejection of the apparatus of the colonial state, which at its most fundamental level is premised on the exclusion of indigenous perspectives and indigenous realities, and a privileging instead of these alternatives to the settler state which position the experience of the indigene at the centre.[97]

Importantly, many of the themes of colonisation emerging from the work of the theorists discussed above can be seen throughout the rhetoric of the 2014 election with regard to Treaty settlements and influence much of the analysis of that rhetoric in Chapter Six. These

[93] Ibid
[94] Ibid
[95] Coulthard (2014)
[96] Ibid
[97] Ibid

theorists provide a valuable perspective on how colonial-dominated epistemology is intrinsically linked with the construction and maintenance of colonial states, as well as demonstrating epistemological paths of decolonisation.

Chapter Four: Crown Policy and Treaty settlements

The processes and policies supporting Treaty of Waitangi settlements could provide a number of avenues for decolonisation of the relationship between Māori and the Crown. Many political figures and Pākehā commentators, as seen in Chapter Six, would argue that the mechanisms available go some way towards achieving this, particularly as some of these mechanisms, such as Crown policy surrounding the use of conservation land in Treaty settlements, have been revised in recent years to better meet the aspirations of Māori in the settlements process. However, I argue that since the inception of the settlements process Crown policy has in many ways supported a perpetuation of colonisation in New Zealand, extending the colonial dominance of the Crown over Māori through settlement arrangements which require Māori to remain beholden to Crown processes and authority in the exercise of their own, reinforcing historical hierarchies of colonial superiority over indigenous peoples. Perhaps more concerning is the notable way in which the Crown can be seen to be choosing who its post-settlement Treaty partnership will be with by adopting a policy for negotiations that seemingly reflects only its own convenience while undermining the ability of Māori to participate in that relationship on the basis on their own identity and cultural constructions.

A brief overview of the history and framework of Treaty of Waitangi settlements

The history of Treaty settlements is largely inseparable from the history of interaction between Māori and the Crown, and considerable scholarship has been undertaken nationally and internationally, by indigenous and non-indigenous scholars alike, setting out what gave rise to the modern Treaty settlements process (as opposed to earlier settlements of indigenous claims) and the significance of those settlements. As noted in the introduction, this thesis is more a work of contemporary political science than of history and consequently I do not seek to offer a historical perspective on the development of Māori claims against the Crown under the Treaty of Waitangi or of the motivations for their settlement. Instead, I identify in a brief note below a number of texts which have been

useful for my understanding of the history of Treaty settlements and which may be of interest to any reader of this thesis.[98]

Māori claims against the Crown for breaches of the Treaty of Waitangi are longstanding; however only in recent history has the Crown been prepared to engage these claims meaningfully and comprehensively. Dissatisfaction in the 1960s and 1970s with the Crown's record of offering compensation for historical grievances, their approach to addressing outstanding grievances, and their contemporary actions which caused new grievances led to calls by Māori for a forum to hear claims against the Crown, and to take action on those claims.[99] As a result of this growing pressure from Māori, the Crown established the Waitangi Tribunal under the Treaty of Waitangi Act 1975 (the Act)for the purpose of hearing claims of Crown breaches of the Treaty of Waitangi and its principles and for providing recommendations for the remedy of such breaches. While initially covering claims of breaches of the Treaty of Waitangi from 1975 when the Act was passed, a 1985 amendment to the Act allowed for historical claims from the signing of the Treaty of Waitangi in 1840 to be lodged with the Waitangi Tribunal. Since the late 1980s, the Crown has set about settling historical Treaty of Waitangi claims by Māori, either following a report on the claim by the Waitangi Tribunal or in direct negotiations with the claimants on their claim. In 2006, a further amendment to the Treaty of Waitangi Act was introduced giving Māori up until 1 September 2008 to lodge historical claims with the Tribunal, being those relating to Crown actions up until 21 September 1992 (the date on which Cabinet agreed principles for the settlement of historical Treaty claims).[100] As noted in the introduction, contemporary Crown settlement policy has never been static and while some basic principles have been constant throughout, the details of that policy (reflective of its historical context and government of

[98] On the specific history leading to the Waikato-Tainui settlement, see David McCan (2001) *Whatiwhatihoe: The Waikato Raupatu Claim* (Wellington, Huia Publishers)
On the modern Treaty settlement process and the history of Crown-Māori relations, see Richard S. Hill (2009) *Māori and the State* (Wellington, Victoria University Press) and Claudia Orange (2011) *The Treaty of Waitangi* (Wellington, Bridget Williams Books)
On Crown-Māori interaction over grievances, see Alan Ward (1999) *An Unsettled History: Treaty Claims in New Zealand today* (Wellington, Bridget Williams Books)
For an overview of a range of perspectives on Treaty settlements, see Nicola R. Wheen and Janine Hayward, eds. (2012) *Treaty of Waitangi Settlements* (Wellington, Bridget Williams Books Limited)

[99] Office of Treaty Settlements (2012) *Ka tika a muri, ka tika a mua – Healing the Past, Building a Future*, (Wellington, Office of Treaty Settlements)
[100] Nicola R. Wheen and Janine Hayward (2012) "The Meaning of Treaty Settlements" in Wheen and Hayward, eds. (2012) *Treaty of Waitangi Settlements* (Wellington, Bridget Williams Books Limited)

the day) have led to differing outcomes in Treaty settlements over time. The following section portrays settlement policy that has applied to the overwhelming majority of modern settlements, if not all of them.

Whereas for most Māori, the Treaty settlements process is "premised upon notions of justice and redress,"[101]neither the Crown nor the Tribunal place settlements within a justice or decolonisation discourse; rather, settlements are made in reparation of breaches of the Treaty of Waitangi by the Crown and are located in the discourse of setting out a new relationship between the Crown and Māori, and allowing Māori to move 'from grievance mode to development mode.'[102] Both the direct negotiations process (now the predominant way through which Māori seek settlement) as well as the Waitangi Tribunal (guided by its terms of reference and statutory function) refer to breaches of the Treaty and restoring the Treaty relationship rather than grounding reparations in an attempt to remedy structural injustice or to challenge assumptions of colonial power in Aotearoa. Māori seek the restoration of their Treaty rights through settlements and the Tribunal hearing of their historic claims, as well as seek fair redress for those grievances perpetrated towards them by the Crown in an attempt to alleviate the prejudice caused by past Crown actions.[103] So while the Crown and Māori approaches to settlement have different motivations – the former positioning reparation as a token of regret over past actions and the latter positioning settlement as a path to meaningful change in the Crown-Māori relationship – the control of the process and outcomes of settlements by the Crown point to settlements as a new tool of colonialism rather than a reconfiguring of existing colonial praxis.

The Crown has concluded close to half of the historical settlements it anticipates entering into, ranging from small settlements limited to single iwi with a geographically contained rōhe to complex collective settlements covering the intertwined commercial forestry interests of Central North Island iwi and cultural interests of iwi in the tūpuna maunga of Tāmaki Makaurau. In 1992 the Treaty of Waitangi (Fisheries Claims) Settlement Act was passed, marking the end of negotiations for the first substantial settlement under the Act

[101] Bargh (2002) pp245.
[102] Office of Treaty Settlements (2012)
[103] Ema Maria Bargh (2002) *Re-Colonisation and Indigenous Resistance: Neoliberalism in the Pacific* (Australian National University)
Crown Forestry Rental Trust (2003)

and allocating commercial and customary interests in fisheries for Māori. Three years later in 1995 the Crown and Waikato-Tainui signed the Waikato-Tainui (Raupatu) settlement, the first major settlement redressing land confiscation and raupatu. Waikato-Tainui had two sites vested in the ancestor Pootatau Te Wherowhero, as well as receiving $170 million in financial redress and commercial properties, with claims relating to the Waikato River settled in 2010 and a number of iwi and hapū of Waikato-Tainui settling independently for non-raupatu claims since the 1995 Waikato-Tainui raupatu settlement. In 1998 the Crown settled with Ngāi Tahu, including the vesting of cultural lands throughout the South Island, $170 million in financial redress and commercial lands, and the vesting of pounamu, giving Ngāi Tahu effective control over the collection of pounamu from South Island sources and the right to grant all licenses for the use of pounamu in the South Island – an early example of natural resource governance returned to Māori through settlement.[104]

Most settlements under current settlement policy are separated by the Crown into three elements: historical redress, commercial redress and cultural redress.[105] The historical redress is comprised of an agreed historical account, Crown acknowledgements of Māori grievances (those which the Crown considers are breaches of the Treaty of Waitangi, and non-breach grievances) and a Crown apology. The commercial redress includes access to commercial assets through settlement as well as to future opportunities (for example, a right of first refusal over all surplus Crown property in a specified area) and the financial redress figure, or quantum, which the Crown assesses the value of a claim to be. Finally, there is cultural redress in recognition of the specific cultural values which Māori seek restored through settlement. This can be in the form of lands returned with specific wāhi tapu, endowments towards cultural revitalisation, and improved relationships with Crown agencies and local authorities. The Crown in both its deeds of settlement with Māori and the enacting legislation declares that the settlement is full and final, extinguishing the ability of Māori to seek further redress for historical grievances that occurred before 21 September 1992.[106]

[104] Meredith Gibbs (2000) "The Ngāi Tahu (Pounamu Vesting) Act 1997" *New Zealand Journal of Environmental Law* (Vol.4)
[105] Dean Cowie (2012) "The Treaty Settlement Process" in Wheen and Hayward, eds. (2012) *Treaty of Waitangi Settlements* (Wellington, Bridget Williams Books Limited)
[106] Office of Treaty Settlements (2012)

Treaty settlements to date[107] have each included financial and commercial redress aimed at providing reparation for part of the economic loss experienced by Māori as a result of Crown actions in breach of the Treaty of Waitangi.[108] However, as seen in the previous chapter, a number of theorists including Coulthard, Alfred and Jackson would note that without meaningful structural change to the colonial state, financial and commercial redress are merely a short term remedy to colonial injustice, with Alfred and Corntassel further suggesting that settlement of indigenous land claims is operationalised by the coloniser as a 'politics of distraction' from community resurgence and steps towards self-determination.[109]

The attempt to achieve greater recognition of Māori self-determination by the colonial state can be seen through the provision of cultural redress. However; since there are few, if any, circumstances where the presumption of colonial cultural superiority has been rescinded through settlements, it can be concluded that settlements are instead merely affirmative of Māori difference and again do not challenge or demand change from the structures of the colonial state which contribute to on-going Māori exclusion and dispossession.[110] Rather, the settlements process appears geared towards subsuming Māori within existing systems of colonial hegemony and structuring settled iwi in a way that is an extension of the Crown's culturally prejudiced exercise of power in New Zealand.

The "who" of Treaty settlements is also of note - with the Crown having a strong preference for negotiating with "large natural groups"[111], in effect iwi or groupings of iwi, a policy which has no set parameters but seems flexible as to who the Crown wishes to recognise as the Treaty partner in any given region.[112] Redress through settlement as a remedy to injustice are also limited to those Māori whose identity fits into the parameters that the Crown process has constructed Māori organisations as. The Crown's settlement framework means that groups such as Te Whānau o Waipareira Trust which represent non-iwi Māori may not see the benefits of settlement in the way that other Māori might, and may be precluded

[107] The few exceptions to this relate to shared cultural interests without a financial redress element such as the Ngā Mana Whenua o Tāmaki Makaurau settlement in 2012 or shared commercial interests without a cultural redress element such as the Central North Island Forests Land Collective settlement in 2008.
[108] Cowie (2012)
[109] Alfred and Corntassel (2005)
[110] Fraser (1995)
[111] Office of Treaty Settlements (2012)
[112] Malcolm Birdling (2004) "Healing the Past or Harming the Future? Large Natural Groupings and the Waitangi Settlement Process" *New Zealand Journal of Public and International Law* (Vol.2, No.2)

from participating in the Crown-Māori relationship into the future by the Crown continuation of its preference to view its Treaty obligations to Māori within an exclusive iwi paradigm.[113] This thesis also argues that the large natural group policy, or the Crown's preference with settling with some groups and not others, creates a "post-settlement world" in which some iwi, hapū and whānau are excluded from the Treaty relationship by virtue of their refusal to: accept the Crown's settlement terms; subsume their identity into that of another Māori group; or simply because they are seen as being in the too hard basket, either by resisting the Crown in one form or another or by being one Treaty partner too many for the Crown to comprehend working with. Malcolm Birdling argues that the Crown's motivation behind the large natural group policy is purely expedience, and notes that there is no evidence of the Crown ever considering whether large natural groups were either suitable or appropriate, and that minimal consultation with Māori on the policy was undertaken[114]

Despite the Waitangi Tribunal's finding that "the adoption of an exclusive iwi paradigm… is to deny that Māori can be Māori outside that paradigm and to deny Treaty rights to Māori who do not fit within it" the Crown maintains a policy of settling with large natural groups.[115] This policy has the potential to exclude and Māori groups who do not meet Crown requirements around identity and structure, and as a result to limit their Treaty rights and access to the Treaty relationship. Barcham argues that the Crown constructs Māori identity as it suits the Crown and relegates legitimate Māori cultural identity to those which are formed around traditional structures.[116] The impact of this policy, particularly when combined with the rhetoric discussed in Chapter Six, suggests that the Crown uses these constructions of Māori identity through settlement to find a willing and able Treaty partner that is content to work within the bounds of colonial power in New Zealand, and will attempt to consign those Māori who reject the exercise of this power and resist a contemporary reality without Māori sovereignty in the pre-settlement past. Barry Hindess identifies this effort to place non-Western peoples and cultures as part of the past within a wider attempt by colonisers to remove the legitimacy non-Western peoples in colonised

[113] Barcham (2000)
[114] Birdling (2004)
[115] Waitangi Tribunal (1998) *Te Whānau o Waipareira Report* (Wellington, GP Publications)
[116] Barcham (2000)

societies. [117] The significant concern here is that this approach may not be limited to the settlement realm, a space in which there are no agreed rules of engagement between other parties or a universally accepted conclusion of what settlement arrangements mean, and extend across how the Crown engages Māori in multiple spaces of Treaty related policy - including in future significant Crown-Māori conversations over water rights, constitutional change and the delivery of social services.

The entities that settlements establish to hold tribal assets (Post-Settlement Governance Entities, or PSGEs) have been subject to academic and community criticism in recent years. PSGEs are set up in accordance with Crown policy, which sets out the acceptable form of these entities and often requires Māori to move away from entities which have previously been established with broad support amongst the iwi and which reflect the particular tikanga of that iwi.[118] Crown PSGE policy has little room for difference between iwi. The deed of settlement will standardly set out the PSGE as a party to the settlement, alongside the Crown and the iwi, and will establish that settlement assets are to be transferred to the PSGE and any statutory instruments or relationship agreements set out by the settlement are relevant only to the participation of the PSGE.[119] This entity becomes the focal point of a settled iwi.

Like many other aspects of Treaty settlements however, PSGEs can also be viewed as a tool employed by the Crown to construct Māori organisation in a way that is consistent with Crown values and subservient to Crown power. Bargh for example has argued that the positioning of iwi PSGEs as a legal entity within the colonial legal system has the dual effect of putting them on par with other associations representing individuals in New Zealand (and individualising iwi identity in the process) while extending the authority the Crown has over the group by making the PSGE subject to taxation and in scope for legislation and government regulation.[120] PSGEs act on behalf of all beneficiaries of a settlement for the relevant group, and involve those beneficiaries in the ratification of the PSGE and the deed of settlement, as well as voters in the on-going governance of the entity. There is however significant contention that these entities insufficiently represent Māori, Māori forms of

[117] Barry Hindess (2007) "The Past is Another Culture" *International Political Sociology* (Vol 1, No. 4)
[118] Office of Treaty Settlements (2012)
[119] Ibid
[120] Bargh (2002)

representation and Māori decision-making and as such are not appropriate to manage the on-going Treaty relationship between the Crown and iwi.[121] This, when combined with the wider concern that PSGEs can be viewed as an attempt by the Crown to corporatise Māori governance and impose colonial legal and economic structures on Māori, suggests that settlement policy may be subordinating Māori within an extended colonial state instead of redressing historic and contemporary grievances, and supporting Māori self-determination.[122]

In the afterword of McCan's *Whatiwhatihoe: The Waikato Raupatu Claim*, Sir Robert Te Kotahi Mahuta outlined some of the ways in which Waikato-Tainui exercised their mana through determining the outcomes of their settlement with the Crown.[123] In doing so, Mahuta demonstrates that, despite the apparent intentions of the Crown discussed throughout this thesis, those iwi engaged in settlements can and do use them to lead to a more beneficial future for the iwi. He points to Waikato-Tainui choosing which Crown lands should be returned and which should stay with the Crown, and emphasised the need for recognition that those lands which were retained by the Crown were a gift from Waikato-Tainui and that the iwi remained mana whenua over them.[124] The settlement also removed the authority of the Māori Land Court over Waikato-Tainui lands (those associated with the settlement and settlement entity, vested in the ancestor Pootatau Te Wherowhero) which had done generations of damage to the iwi.[125] Finally, Mahuta writes that the settlement allowed Waikato-Tainui to disestablish the "government-imposed" Tainui Maaori Trust Board[126] and to establish the Kauhanganui to manage tribal assets in its place – the Kauhanganui is seen as a body that is representative of Waikato-Tainui marae and hapuu, and of their tikanga, and importantly, a body that is answerable to itself. [127]

[121] Bargh (2002) and Fiona McCormack (2012) "Indigeneity as process: Māori claims and neoliberalism" *Social Identities: Journal for the Study of Race, Nation and Culture* (Vol.18, No.4)
[122] Sykes (2006)
[123] Te reo Māori in this paragraph reflects the Waikato dialect and is different to other use of te reo throughout the thesis.
[124] Mahuta (2001)
[125] Ibid.
[126] For further information on the history of Crown involvement with Māori Trust Boards see Hill (2008)
[127] Ibid. pp331

Case study: Treaty settlements and public conservation land.

To illustrate the above concerns in greater detail it is useful to consider the restrictions on decolonisation presented by the application of Crown policy on the use of public conservation land in Treaty settlements and the involvement of Māori in conservation governance and management arrangements. Related to the discourse analysis in Chapter Six, this case study demonstrates the application of the colonising discourses discussed in that chapter to current settlement policy. This case study will explore these restrictions and the consequent impact of entrenching colonial power through an analysis of Crown policy relating to: land transferred which remains subject to conditions of the Reserves Act 1977 and the Conservation Act 1987; transfer of the requirement to pay for management of land according to the previous two points, and the requirement to provide for public access at a cost to the iwi; and the requirement that land be managed consistently with Crown conservation priorities with little scope for Māori conservation.

Overview of policy relating to use of public conservation land in Treaty settlements

The use of public conservation land (PCL) in Treaty settlements was set out in a 1994 government policy, preceding the first major land settlements of the 1990s. The policy stated, amongst other principles, that PCL was not readily available to settle the claims of Māori and that, where required to secure settlement, the transfer of PCL was to be restricted to small and discrete parcels of land, where the land had special significance to Māori.[128] Officials were also required to take into account whether the transfer of the land would have an adverse effect on the overall management of the conservation estate or whether it might place conservation values at risk.[129]

In seeking changes to this policy in 2009-2010, OTS and DOC officials noted that the Crown frequently made exceptions in negotiating Treaty settlements which undermined the intent of the policy.[130] In 2010 Cabinet agreed to amend the policy, rescinding clauses which said that PCL was not readily available for transfer in settlements and that any transfers would

[128] Office of Treaty Settlements (2010), *The Use of Public Conservation Land in Treaty Settlements*, (paper to the Cabinet Committee on Treaty of Waitangi negotiations - released under the Official Information Act 1982)
[129] Ibid.
[130] Ibid.

be limited to small and discrete parcels of land.[131] Despite the exceptions mentioned above, this policy was therefore in place for all settlements negotiated from 1994 until 2010, however a number of settlements, such as that for Ngāti Porou, saw negotiations pertaining to the transfer of PCL take place in the context of official advice suggesting a change to the policy which meant that by this time the restrictions of the policy had begun to ease.[132] While out of scope for this thesis, it is important to consider the impact of policy changes over time, and the level and form of redress offered from one negotiation to the next, in deciding whether settlements are creating disparities between Māori in how the Treaty relationship functions between different iwi and the Crown.

The changes to this policy agreed to by Cabinet in 2010 were intended to assist the Crown in reaching its 2014 deadline of concluding all historic Treaty settlements by expediting negotiations on the transfer of PCL which were often protracted given the need to seek exceptions to the agreed policy.[133] Those changes which are now key influencers in current policy on the use of PCL in Treaty settlements related to principles to guide the development of co-governance and co-management arrangements between DOC and iwi, and guidelines on the circumstances in which:

> "iwi might be offered title, either with or without conservation protection;
>
> the Crown would retain title but may offer (either at a higher or lower level) to share management and/or governance responsibilities with iwi;
>
> the Crown would agree to continue managing transferred land;
>
> iwi would take full responsibility for managing transferred land"[134]

The current policy sets out that settlements will as a matter of course include a range of redress instruments over PCL including: participation in the statutory governance and management of PCL; transfer of title; relationship instruments (where DOC engages with iwi

[131] Ibid.
[132] Office of Treaty Settlements and Department of Conservation (2010) *Ngāti Porou: Conservation Redress* (Report to Minister for Treaty of Waitangi Negotiations and Minister of Conservation - released under the Official Information Act 1982)
[133] Office of Treaty Settlements (2010), *The Use of Public Conservation Land in Treaty Settlements*
[134] Ibid, paragraph 8.

and iwi values on terms set out in a relationship agreement); a statutory recognition of iwi values relating to PCL or natural resources.[135]

The current policy sets out five categories of PCL which officials should consider in developing settlement redress: land with the highest conservation values, land with high conservation values, land with intermediate conservation values, high cultural value sites, and land with low conservation values.[136] While the details of how this land is categorised were withheld by OTS when asked by me for the policy to be released under the Official Information Act 1982, a simple analysis of existing settlements and other papers released by OTS in my request in 2014 to support this thesis gives an approximate portrayal of the circumstances in which the Crown will transfer PCL in settlement.

The highest public conservation values suggests that the Crown considers the land too important to transfer to Māori, as either the biodiversity or recreation values of a site may suggest that the public backlash is too high or that officials may not consider Māori capable of managing these values. Examples of this could be the Crown's refusal to vest Te Urewera in Ngāi Tūhoe, or the requirement that Ngāti Manuhiri gift Hauturu back to the Crown following a gifting from the Crown to iwi through settlement.[137] High conservation values suggests that land will generally be retained by the Crown but that co-governance or co-management may be considered, or that in exceptional circumstances the land may be transferred but co-governance or co-management between iwi and a public body will be required. An example of these may be the vesting of the tūpuna maunga in Auckland in Ngā Mana Whenua o Tāmaki Makaurau with a statutory requirement to co-manage the maunga with the Auckland Council.[138]

Intermediate conservation values suggest that the land may be transferred with some level of conservation protection; such as existing (or in some circumstances, increased) reserve status or a conservation covenant. Examples of this might be the transfer of Motuotau in

[135] Ibid, paragraph 29.
[136] Ibid, paragraph 41.
[137] Derek Cheng (2014) "Landmark Ngai Tūhoe settlement passes reading" (New Zealand Herald, July 24, 2014 - accessed 10 May 2015)
Ngati Manuhiri and the Crown (2011) *Deed of Settlement of Historical Claims* (https://www.govt.nz/treaty-settlement-documents/ngati-manuhiri/ - accessed 14 June 2015)
[138] Nga Mana Whenua o Tamaki Makaurau and the Crown (2012) *Nga Mana Whenua o Tamaki Makaurau Collective Redress Deed* (https://www.govt.nz/treaty-settlement-documents/tamaki-makaurau/ - accessed 14 June 2015)

Tauranga Moana to Ngāi te Rangi or a site at Elaine Bay to Ngāti Toa Rangatira.[139] The transfer of high cultural value sites will likely relate to discrete pā, urupā and other wāhi tapu, either with or without conservation protections. Finally, land with low conservation values may be transferred without conservation protections, allowing Māori to utilise the land as they wish without requirement to follow conservation practices set out in other legislation. However, where this land has existing third party interests granted then the settlement will transfer the land with these interests protected by an encumbrance such as an easement or lease.[140]

The above circumstances surrounding the transfer of PCL in Treaty settlements are analysed below.

Ongoing legislative and regulatory restrictions on Māori authority over land use

A high level reading of recent settlements shows that the majority of PCL is transferred through settlement subject to existing or elevated conservation protections, seen for example in the Ngāti Porou settlement in 2012.[141] This means that the management of the land is then subject to either the Reserves Act 1977 in the case of reserves transferred, or the Conservation Act 1987, where the land transferred is subject to a conservation covenant. These Acts set out the way in which Māori, as any other landholder who falls under the Act, must act with regard to the management of that land with little or no scope for an alternative arrangement reflective of the Treaty relationship or the need to decolonise Crown-Māori relations. As such the land retains over it the ultimate authority of the Crown and accordingly diminishes the authority of Māori over their land in what should be a renegotiated Treaty partnership between the Crown and the iwi. Aroha Mead describes the refusal of the Crown to meaningfully engage with Māori management of the conservation estate through Treaty settlements as "an issue of power and [...] an

[139] Ngai Te Rangi and Nga Potiki and the Crown (2013) *Deed of Settlement of Historical Claims* (https://www.govt.nz/treaty-settlement-documents/ngai-te-rangi-and-nga-potiki/ - accessed 14 June 2015) Ngati Toa Rangatira and the Crown (2012) *Deed of Settlement of Historical Claims* (https://www.govt.nz/treaty-settlement-documents/ngati-toa-rangatira/ - accessed 14 June 2015)
[140] Office of Treaty Settlements (2012)
[141] Ngati Porou and the Crown (2010) *Deed of Settlement of Historical Claims* (https://www.govt.nz/treaty-settlement-documents/ngati-porou/ - accessed 14 June 2015)

unwillingness to acknowledge the interconnectedness of conservation issues and Treaty settlement issues that is indicative of a broader view of Māori as sub-citizens."[142]

Mead's view alludes to a continuation of an insistence on colonial superiority on the part of the Crown, that is consistent with the perspectives of Jackson, Alfred, Corntassel and Coulthard discussed in Chapter Three, that the Crown alongside other settler governments has not abandoned its dehumanising view of indigenous peoples and extends this into the relationship between Māori and the Crown after settlement by setting the parameters in which Māori manage their land. And while the return of land itself in this process is of utmost importance, the lingering threat that the Crown may again confiscate ownership of the returned land if not managed according to the relevant legislative provisions suggests little more than contempt on the part of the Crown for Māori kaitiakitanga, conservation values or property rights.[143]

The authority of the Crown over PCL once transferred is also reflected in the need of the Minister of Conservation (and her officials) to approve reserve management plans and police conservation covenants, maintaining Crown authority over how the land is managed and which conservation values are prioritised; whether they relate to biodiversity, scenic or historic values (including how Māori should manage Māori heritage), recreation or tourism. The Minister of Conservation retains the authority to set a national conservation agenda, including how conservation applies to Māori and subsuming kaitiakitanga within a colonial paradigm of best practice in conservation.[144] This continues the cultural and political marginalisation of Māori in New Zealand and, given the centrality of land in indigenous identities, can be seen as an assault by the Crown on what it means to be Māori.[145]

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[142] Aroha Te Pareake Mead (2013) pp197.

[143] Office of the Minister of Conservation and Office of the Minister in Charge of Treaty of Waitangi Negotiations (year not stated) *Policies for the Use of Public Conservation Lands in Treaty Settlements* (Report to the Prime Minister - released by the Office of Treaty Settlements under the Official Information Act 1982) This document sets out an earlier discussion on the need to revise the 1994 policy on use of conservation land in Treaty settlements within the Fifth Labour Government (1999-2008). While this option is not set out in the current policy on PCL in Treaty settlements, the option raised with the former Labour government has not been ruled out and it is yet to be seen how the Crown would respond if iwi disregarded the relevant encumbrances of the management of land returned through settlement.

[144] Stan Stevens, ed. (2014) *Indigenous Peoples, National Parks, and Protected Areas : A New Paradigm Linking Conservation, Culture, and Rights.* (Tucson, Arizona, USA: University of Arizona Press)

[145] Ibid.

As a result of these arrangements, Māori inevitably find their relationship with indigenous flora and fauna and customary resource use continuing to be disrupted. Reserve management and conservation covenants immediately limit the activities which Māori may undertake on their land: whether this be the felling of native timbers, the collection of native flora or the harvesting of native birds. While there may be acknowledgement by both the Crown and Māori that these taonga require protection, the approach where the Crown sets the conservation agenda according to Western conservation principles (a 'hands off the kereru' approach rather than an acknowledgement of the importance of conservation in lived relationships between the people and the land[146]) is indicative of both a misrecognition of Māori values and a privileging of colonial hegemony in a hierarchy of how conservation operates in New Zealand.[147]

Whereas a decolonised relationship between the Crown and Māori would see Māori with ultimate authority over the management of lands returned through settlement, the existing arrangement is more like that described by Barcham, where Māori exercise delegated authority from the Crown rather than being enabled to exercise their own authority over the land in question.[148] This 'delegation' of Crown authority to Māori with the requirement that this is exercised within the parameters set by the Crown can be characterised as an extension of the Crown's neo-liberal agenda being implemented through Treaty settlements.[149]

The recent Ngāi Tūhoe settlement and the post-settlement arrangements surrounding ownership and management of Te Urewera demonstrate that there are opportunities for Māori self-determination through the Treaty settlements process, albeit exceptional ones. Despite refusal by the Crown to vest the title to Te Urewera in Tūhoe through settlement in 2010,[150] the final settlement arrangements vested Te Urewera in itself as a legal entity and established a board for governing Te Urewera, with authority in legislation to approve almost all matters pertaining to the park without the need for Ministerial approval. Importantly, three years after settlement date the membership of that board will change

[146] Mead (2013)
[147] This can be understood through the perspectives of both Moana Jackson and Nancy Fraser as discussed in the previous chapter.
[148] Walker and Barcham (2010)
[149] Bargh (2002)
[150] Cheng (2014)

from four members appointed by Tūhoe and four by the Crown, to six members appointed by Tūhoe and three by the Crown.[151] In effect, this will give Tūhoe control of nearly all decisions to be made with regard to Te Urewera - a rare occurrence in the experience of Māori in Treaty settlement negotiations over PCL.

Importantly, the on-going involvement of the Crown in the management arrangements for Te Urewera reflects a chance for equal partnership between Tūhoe and the Crown in the Tūhoe rōhe. Irrespective of any underlying agenda by the Crown in negotiating these arrangements, these are choices around partnership which Tūhoe leaders have decided and the people of Tūhoe have validated, and the ability to make these choices in what can be viewed as a highly constructed process by the Crown should not be undervalued. Despite the comparative decoloniality evident in the Te Urewera example, we must bear in mind that these arrangements are unique. For the vast majority of iwi whom the Crown has concluded settlements with, the concerns raised earlier in this chapter over the on-going influence of the Crown on iwi governance and management of PCL returned through settlement remain.

Several of the papers released by OTS in response to my request under the Official Information Act in 2014 show the success had by the negotiators for Ngāti Porou in negotiating more favourable terms for the transfer of certain conservation land in the Ngāti Porou settlement.[152] Like all aspects of settlement, the decision to accept the Crown's terms for the transfer and management of conservation land can only be made by those Māori affected. The crucial point here is that the Crown approaches settlements, and negotiates with Māori, with the intention of achieving settlement outcomes that ensure that Crown conservation values are protected and delegates responsibility for this to Māori, often without the financial support DOC enjoys in making them happen.

The burden of management: the transfer of costs of PCL and a neo-liberal agenda

As well as the exercise of delegated Crown authority by Māori over PCL following settlement demonstrating an entrenchment of colonial dominance, we can see this approach as being consistent with the neo-liberal goals of government in New Zealand through the

[151] Te Urewera Act 2014, New Zealand
[152] For example, in Office of Treaty Settlements and Department of Conservation (2010) *Ngāti Porou: Conservation Redress*

requirement that Māori become the financier for the Crown's conservation priorities. Where Bargh discusses cost and affordability as restrictions on what settlements may include, the same concepts can be seen in the conditions attached to the transfer of PCL to Māori through settlement, presenting a way for the Crown to preserve conservation values and public interests while transferring the burden of cost from the taxpayer to Māori.[153] This devolution of Crown responsibility and the need to fund those responsibilities is also consistent with the neo-liberal practices of successive governments since the 1980s. Further, cost to the Crown in providing conservation redress to Māori, including the costs of transferring PCL, forms an important consideration as to whether Māori should be transferred a particular parcel of land, or whether DOC can justify the cost of entering into a co-governance regime with iwi over that land.[154]

To illustrate this point, let us look at the some costs which may be transferred to Māori alongside title to a scenic reserve in settlement. The reserve management plan will likely require pest control, of both invasive predators such as possums, stoats and rats and noxious plant species including wilding pines. While this pest control should have been undertaken as standard practice by DOC, in many cases due to budget and resource limitations DOC is unable to adequately manage all land within the conservation estate and as such Māori are often returned land which is riddled with invasive species - we may contemplate whether there is a link between the land DOC is comfortable to see returned to Māori and the medium to low conservation values of PCL as discussed above. Consequently, Māori are expected to shoulder the costs of pest management on the reserve.

Most reserves also provide for public access, and while the public use of reserves varies from tens per year to tens of thousands, with both established boardwalks and dirt tracks, the principle remains the same, that DOC will provide for public enjoyment of public spaces. Upon transfer, Māori become responsible for public access. This includes both paying for the maintenance of existing tracks and access ways, viewing platforms, bridges and other public-friendly infrastructure but also securing themselves against potential litigation in the event that a member of the public is injured on some of the infrastructure that Māori maintain on the reserve for the public access they are required by law to provide for. Lastly,

[153] Bargh (2002)
[154] Office of Treaty Settlements (2010), *The Use of Public Conservation Land in Treaty Settlements*

the reserve management plan, and the standard terms of a conservation covenant set out that landowners are required to fence reserves, in order to protect the conservation values within. On a reserve which may be 200 hectares and have boundaries onto adjoining farmland extending kilometres, the costs imposed on Māori according to the Fencing Act 1978 (that owners on both sides of a boundary share the cost of a new fence) may be debilitating, particularly if the state of the existing fence or potential lack of fence as a result of budget and resource limitations of DOC are such that a new fence must be put in place.

The underlying point here is the conservation priorities of the Crown are standardly funded by the taxpayer, with buy-in from the taxpayer and with primary benefit being delivered to the taxpayer. The vesting of PCL in Treaty settlements transfers that financial burden from several million taxpayers to a recently-settled iwi, with the benefits of conservation efforts reflecting the Western conservation values of the Crown and its taxpayers, the benefit of public access continuing to be enjoyed by the taxpayer but with none of the cost now fielded by the taxpayer. As a result, the Crown positions Māori to act with delegated Crown authority to promote conservation on land transferred through settlement, limiting their ability to exercise their kaitiakitanga and customary management of that land, and ensuring that Māori will pay for the privilege of doing so. Coulthard suggests that the coloniser structurally determines the terms of that delegation to suit and reflect the interests of the coloniser.[155] As a result, I argue that current Crown policy on the use of public conservation land in Treaty settlements is demonstrative of an entrenchment of colonial power by the Crown with little regard for meaningfully restoring the mana and kaitiakitanga of Māori over these lands.

Conclusion

Treaty settlement policy, quite apart from any overt or discussed political intention, presents ample opportunity for the Crown to entrench colonial authority power in New Zealand over Māori, and even to position Māori organisations as vehicles through which to exercise that authority. As seen through this chapter, whether that relates to the groups with whom the Crown will recognise for settlement negotiations, post-settlement governance arrangements or the way in which Māori remain beholden to the colonially set conservation agenda, despite assertions of respect for Māori kaitiakitanga, the reality of

[155] Coulthard (2014)

settlements is that the struggle faced by Māori in operating in a decolonised relationship with the Crown remains very real and very much an uphill battle. However, it is misleading to suggest that there is no opportunity for self-determination in the context of conservation land returned through settlement, as seen in the Te Urewera example, or to suggest that Māori do not exercise agency in negotiating with the Crown the most favourable terms they can for the return and management of conservation land.

It is important to note that while Treaty settlements are signed and ratified by Māori, alongside the Crown, and Māori exercise choice in signing up to these agreements, in reality the choice presented is often a limited one. While Māori can reject, and have rejected, the specific terms of the settlement, should they seek a settlement again in future the terms on offer will likely reflect the policies which gave rise to the terms of the original offer, and without a significant change in the discourse identified in Chapter Six in the near future, it would appear that the policy environment for Treaty settlements will remain largely static. There is also no real recourse to an independent arbiter on what a settlement should include: the courts uphold Pākehā law, while the Waitangi Tribunal has its mandate and terms of reference set by statute and so will always be limited in how it may decolonise the Crown-Māori relationship (with some academics, such as Moana Jackson, arguing that the Tribunal acts as a tool of colonisation rather than against it[156]), and with Ministers of the Crown consistently showing they are comfortable disregarding recommendations of the Tribunal.[157] Annette Sykes has noted the damage that the Tribunal may be doing to Māori resistance through its ineffectiveness caused by Crown manipulation and the fact of the Tribunal being established by statute and its effectiveness controlled by Crown funding.[158] Without significant challenge to the implementation of Treaty settlements, it is possible the colonised relationship between the Crown and Māori will only be further entrenched.

[156] Jackson (1994)
[157] Margaret Mutu (2014) "Māori Issues" *Contemporary Pacific* (Vol. 26, No. 1)
Radio New Zealand (2014) "Disappointment at Finlayson's stance" (14 September 2014 - accessed 10 May 2015)
[158] Annette Sykes (2006) “Blunting the System: The Personal is the Political” in Maria Bargh, ed. (2007) *Resistance: An Indigenous Response to Neoliberalism* (Wellington, Huia Publishers)

Chapter Five: Data Collection

This chapter sets out the approach to data collection used in this research, how this relates to the Critical Discourse Analysis methods set out in Chapter Two, and provides an introduction to the data analysis undertaken in Chapter Six. The chapter also reflects on the limitations of this data set in supporting a robust analysis of discourses on Treaty settlements and their relationship with the opportunity for decolonisation in Aotearoa through the historical Treaty settlements process.

Appropriate and comprehensive methods of data collection are integral to ensuring the breadth and nuances of various fields of discourse are represented within critical discourse analysis (CDA). This chapter outlines the parameters for collection of data, the data collection period, data sources and the search terms used. This is followed by an overview of the approach to coding and analysis of the data, how the data relates to the CDA methods described in Chapter Two, an overview of the data collected throughout the election period alongside some limitations identified in the way data was collected and of the data set itself.

Research Design

Data collection parameters

The data for this thesis was collected from rhetoric by political figures and political parties in the 2014 general election period. This included media reporting of comments by political figures and political parties, political figure and political party press releases and political party policies. Political figures were defined as sitting Members of Parliament and those individuals who were in contention for an electorate or list seat (being individuals on the list of a registered party) and those registered political parties who stood candidates in either list or electorate seats in the 2014 general election. For example, rhetoric by Hon Christopher Finlayson (National candidate for Rongotai) and the National Party was in scope, whereas rhetoric by 1Law4All, a registered political party, was out of scope. Parties

which did not stand candidates (such as 1Law4All) were not able to contest the general election and are therefore not included in this study.[159]

Data collection period

The data collection period was defined as the regulated period of three months leading up to the date of the general election (20 September 2014) as per the Electoral Act 1993. In practice, this period was from 20 June to 19 September 2014. While the regulated period within the Electoral Act 1993 is intended to bring some regulation to the electoral spending by political candidates and parties, the duration of that period in the context of this research enabled a satisfactory lead in time to the election in which to collect the required data.[160] This period also provides a usual distinction between rhetoric which can be seen to be within a defined election period and general political rhetoric which occurs throughout a parliamentary term. In retrospect this period enabled sufficient data to be collected to undertake the proposed discourse analysis and included most, if not all, relevant rhetoric from political figures and parties pertaining to Treaty of Waitangi settlement policy to be contested in the 2014 general election. The first instances of rhetoric in this data set were comments made by Colin Craig on 23 June 2014.

Data sources

Comments were retrieved from media coverage of political debate (for the purposes of manageability this was limited to debates between political leaders, both the major and minor party debates, and candidate debates in the Māori electorates), media coverage of comments by political figure, party and Government press releases, and party policies relating to Treaty settlements.

During the two years I worked at the Office of Treaty Settlements (OTS) I had access to daily media summary reports provided by a media analysis company and my exposure to these reports has influenced the way in which I sought the data for this research project. As influenced by this experience, the media sources monitored included a range of national and regional newspapers online, national news magazines, television news, current affairs reports and radio news reports. After identifying a gap in the media reporting provided to

[159] Doug Laing (2014), "Party has no candidates but says it's influencing election" *Hawkes Bay Weekend*, (2 August 2014)
[160] Electoral Act 1993

OTS over my time working there I also monitored news articles through Rich Site Summary (RSS) feeds to a number of Māori-specific news sites, including Māori Television, Radio New Zealand Te Manu Korihi, WaateaNews.com and TangataWhenua.com. This approach became particularly important once it was clear that greater analysis and interrogation of some of the minor party comments on Treaty settlements and Treaty issues were emerging primarily through Māori news outlets.

Lastly, in order to capture a range of print advertisements released by political parties over the election period, examples of these were sourced from electionads.org.nz, a website that monitors election advertisements across general and local body elections. While it is likely that some local print advertisements are not captured by this as a data source, the advertisements taken for this project provide an indication of that type of material produced in the 2014 election and its presentation of the discourse on Treaty settlements and Māori justice.

Search terms

The key words or phrases monitored in the original data set included 'settlement', 'historical settlement', 'Treaty settlement', 'historical Treaty settlement' and 'Treaty of Waitangi settlement' in order to capture comments made directly in relation to Treaty settlements and Treaty settlement policy. This included the multiple references to 'post-settlement' throughout Labour and National policy and comments by political figures. Following the analysis of the original dataset, the collected articles, press releases and policies were then reviewed again according to secondary search terms. A supporting dataset was collected from the comments made by the same political figures and parties over this period that related more broadly to Crown-Māori relations or included one or more of the following key theme words/phrases which emerged from the analysis of the original dataset: equality; unity; one people; nation; one law for all; privilege; economic development; Māori development; regional development; and rights.

The importance of this secondary dataset to understanding the context within which Treaty settlements policy sits is explained in the following chapter on data analysis. The secondary data contributed to the grouping of a number of themes of rhetoric as well as leading to three new themes of rhetoric: discourses on privilege; discourses on Māori rights; and

discourses on unity. The change within the data collection method to incorporate this additional search terms is discussed below.

Coding and analysis

Once the rhetoric from the above data sources was collated according to the prescribed search terms, these were loaded into NVivo, a qualitative data analysis programme, in their entirety (being the whole article in which a specific comment on settlements was located, for example). These examples of rhetoric were then coded in NVivo according to a series of themes or 'nodes' such as Māori rights, deadlines and timeframes, and limitations.

The relevant rhetoric relating to that theme was then extracted and copied to a summary memo on the theme, where all the relevant rhetoric on that theme was located and then divided into three fields of discourse: the dominant discourse (including rhetoric supporting the status quo on settlements and from the dominant political parties (Labour and National) in New Zealand); marginalised discourse A (including rhetoric that challenged the status quo in a direction that could be seen as colonising or disenfranchising of Māori); and marginalised discourse B (including rhetoric that was seen as decolonising or empowering of Māori).

The rhetoric in these memos was then analysed as part of a critical discourse analysis which is the focus of Chapter Six.

Data collection and CDA

As mentioned in Chapter Two, there are instances within CDA where responsiveness in the data collection period to changes in the dataset on initial analysis may be worthwhile and beneficial to the overall research. Over the course of this research there were a number of alterations to the research parameters in response to the data collection process which were necessary to convey a greater richness of text in the data set. These are outlined below.

Firstly, the data collection period was initially planned to be a shorter period of six weeks leading up to the election on 20 September. This was designed to limit the amount of data collected to a manageable level within the time constraints and scope of this research project. It was anticipated that settlements and settlement policy would have played a

larger role in the 2014 election than what eventuated, particularly as 2014 was the last deadline set by the Government in the 2011 election. However, a number of early campaign launches by minor parties (the Conservative Party and ACT New Zealand) featuring policies relating explicitly to Treaty settlements and Māori justice and the corresponding responses from other political figures to these policies suggested that the election period should be monitored from this much earlier stage. As a result the data collection period was extended to align with the regulated period of the election (20 June to 19 September 2014).

The benefit of this was also seen later when viewed alongside a relative paucity of discourse from other political figures and parties later in the election period. This suggested that the longer data collection period adopted was necessary to support a richer data set relating to the rhetoric from political figures and parties in the lead up to the 2014 general election. As monitoring of media and political party sources had begun from June regardless it was not a major setback to data collection in extending the data collection period in the manner outlined above.

Secondly, initial analysis of the texts yielded a number of themes in the discourse which in turn suggested some secondary search terms which enabled me to garner a more comprehensive level of meaning from the texts when these secondary search terms were applied. This included analysis of texts in which the primary search terms were located as well as text where only the secondary search terms could be found. While this extended the research beyond rhetoric which engaged explicitly with Treaty settlements, it was able to include a wider discussion of Māori justice which showed more comprehensively the discourse in which Treaty settlements are located, and the location in other areas of Māori justice of colonised and colonising rhetoric from political figures during the election campaign.

Data collection overview

While the following chapter on data analysis will provide a more robust discussion of the rhetoric throughout the 2014 election period and the implications of this for settlements as a tool for decolonisation and Māori justice, I would like to present a brief overview here of the data collected.

The largest share of the rhetoric on Treaty settlements (including on those search terms within the secondary data set) came from 'marginalised discourse A', including from the ACT Party and the Conservative Party. This was followed by rhetoric from the 'dominant discourse', predominantly the Labour and National parties however supported also by a number of minor parties who support the status quo on Treaty of Waitangi settlements, and then by the 'marginalised discourse B' which included rhetoric almost exclusively from the Green Party and the MANA Movement.

Rhetoric on Treaty settlements and 'Māori privilege' could clearly be seen as a core tenet of the campaigns of parties within marginalised discourse A, with both the ACT and Conservative parties focused on this early in the campaign and maintaining this up until the election. For example, the 'One Law for All' policy could be seen consistently as one of the four priorities of the Conservative Party.

Within the dominant discourse, areas of contention in the rhetoric on settlements were few, limited to different positions on timeframes and deadlines for settlement. However, each perspective within the discourse espoused much of the same rhetoric on needing to complete settlements in order for the country to move forward. Broader contention in the discourses on deadlines came instead from each of the marginalised discourses, which provided challenges to the status quo.

The most popular themes in terms of rhetoric gathered were the discourses on unity (predominantly from the marginalised discourse A and the dominant discourse) and discourses on deadlines (in which each of the three fields of discourse provided extensive rhetoric, as discussed above). The least discussed theme in the election period was the deconstruction of colonial power, an area only addressed by rhetoric from within marginalised discourse B. The following chapter draws conclusions from what this means for decolonisation generally in the politics of Aotearoa and for how settlements may contribute to this.

While settlements were an important reference point for rhetoric on Māori matters, including on Māori justice and 'Māori privilege', in many cases settlements and settlement policy were not the primary focus of that rhetoric. For example, the discourses on privilege, discourses on rights and discourses on unity were constructed often with reference to

settlements (largely that settlements were acceptable, but many of the contingent parts of settlements were not) but were more broadly about the context within which settlements sit or the situations that settlements may contribute to.

Finally, Māori electorates and the Waitangi Tribunal featured more prominently as points of contention in the election period with positions against the status quo on what the policy on these institutions should be: here we saw the application of emphatic colonising rhetoric on the institutions themselves which no political figure or party seemed comfortable with applying to Treaty settlements. Rhetoric on these institutions was gathered as a point of comparison for the rhetoric on Treaty settlements but also to enable future research on how the rhetoric around these institutions may be seen as colonising or decolonising in Aotearoa.

This rhetoric also showed that settlements were often discussed broadly as having implications for a range of other policies, institutions or general political themes, including the Māori electorates and the Waitangi Tribunal but also extending to economic and regional development, national unity, Māori rights and 'Māori privilege'.

Limitations of the data set

A major limitation to this research is the analysis of rhetoric from only one election period. This has an impact of dehistoricising Treaty settlements and the evolution of the discourses that surround them. While I have made some attempts in Chapter Six to identity where there is a marked difference between rhetoric in the 2014 general election campaign and previous elections, it has not been possible in this thesis to more accurately place the 2014 election discourse in a historical context. Instead, the discourses identified in the 2014 general election provide a snapshot of the way in which the discourse at that particular point in time relates to the colonising impact of Treaty settlements. It also aligns with the period of personal experience I have in working in Treaty settlements, and as such benefits from a more intimate understanding of the political context surrounding Treaty settlements in 2014 than what I would have been able to apply to an analysis of discourse on Treaty settlements in any other election period. So while a historical comparison of discourses across a number of election campaigns relating to Treaty settlements would be of value, I

don't consider the fact that this thesis only considers the 2014 general election to particularly detriment the analysis provided, or the validity of the conclusions drawn.

Beyond this major limitation as discussed above, I would like to address two additional limitations I have perceived for this research project.

The first limitation relates to the reliance on the media in Aotearoa to portray the rhetoric emerging from political figures and political parties in the 2014 election accurately, comprehensively and without bias. There is a wide body of literature amongst New Zealand academics, both Māori and non-Māori, that point to the role that the media plays in constructing anti-Māori discourse and perpetuating ideas of Pākehā as the norm.[161] The implication of this is that the presentation of political rhetoric by the media can itself be contributing to anti-Māori discourse[162] and as a result the objectivity of the media in presenting each element of rhetoric must be interrogated. This could include choosing which rhetoric to report on and which to ignore, or presenting rhetoric in a context inconsistent with the one in which it was made. The power of the media to present political rhetoric in a way which suits their own construction of Crown-Māori relations should not be underestimated.[163]

While it is not possible to change the presentation of rhetoric by the media, throughout my data analysis I have extracted only the rhetoric which is presented as a direct quote from the political figure and sought the original source of the rhetoric, such as press releases and audio/video of interviews, where possible. Beyond this I have collected data directly from the websites of political parties to ensure that the rhetoric from untold stories, including those political party policies with which the media did not engage, is reflected in the broader picture of how rhetoric contributes to discourses which construct or deconstruct colonisation in Aotearoa. Additionally through this thesis I add my voice to the calls from many academics and commentators for the media to "to find the ways in which you can tell

[161] Angela Moewaka Barnes, Belinda Borell, Ken Taiapa, Jenny Rankine, Ray Nairn and Tim McCreanor (2012), "Anti-Māori themes in New Zealand journalism – toward alternative practice", *Pacific Journalism Review* (Vol. 18 No.1)
[162] Ibid
[163] Ibid

and read the news differently to represent Māori more fairly and our social order more honestly."[164]

The second key limitation to this research project is the restriction of data collection to the rhetoric from political figures and political leaders. Particularly in an election campaign where rhetoric on Treaty settlements, settlement policy and themes such as 'Māori privilege' was not widely debated or engaged on across the political environment, the commentary on this rhetoric by non-political figures becomes increasingly important. The rhetoric of non-political figures may also achieve wider recognition than some rhetoric from within the political environment. For example, comments by Sonny Tau, chair of Tūhoronuku (the Crown-recognised mandated entity to represent Ngāpuhi in settlement negotiations)[165] may have greater influence than the little-advertised Treaty settlements policy of the MANA Movement, which no longer has representation in Parliament.

In order to address this limitation, statements, analysis and rhetoric from Māori and non-Māori commentators on Treaty settlements, settlement policy and Māori justice are included in the analysis of the rhetoric and discourse from the 2014 election. A number of these commentators are also referenced in the analysis of whether or not existing Treaty settlement policy has the capacity to be decolonising and lead towards Māori justice in Chapter Four.

[164] Ibid, pp212
[165] Raniera (Sonny) Tau (2015), "Raniera Tau: This is the year of Ngāpuhi" *New Zealand Herald* (5 February 2015)

Chapter Six: Discourses on Treaty settlements in the 2014 general election

The political rhetoric emerging from the 2014 general election, some of it familiar and some of it adapted since previous elections to meet changes in settlement policy and outcomes, demonstrates a number of clear streams of discourse on Treaty settlements. This chapter will discuss that rhetoric in the context of three pervading streams of discourse: the dominant discourse; a marginalised discourse characterised by rhetoric that perpetuates colonial power (marginalised discourse A); and a marginalised discourse characterised by rhetoric that is decolonising (marginalised discourse B).

While the positioning of political parties and political figures within these discourses was largely static, there were a number of instances where a party or figure addressed settlements or matters concerning Māori from a different perspective. For example, while largely contributing to marginalised discourse B, the Green Party of Aotearoa New Zealand (the Greens) contributed to the marginalised discourse A with their policy that the conservation estate should not be viewed as an accessible source of land for settlements,[166] a policy which goes beyond the status quo on conservation land in limiting redress options for Māori in the negotiations process.[167] These divergences are noted throughout the chapter.

Themes in the rhetoric of the election period were often repeated across a number of discourses and demonstrate the range of perspectives that those discourses represent. For example, within each discourse there is rhetoric on the theme of Māori rights and on the theme of timeframes and deadlines.

This chapter will analyse the themes in the rhetoric of political figures in the 2014 general election individually, with the rhetoric from each discourse analysed in relation to the particular theme. In doing so we can draw conclusions about the connections between those discourses and understand the extent of the gap between them in leading to decolonising and politically just outcomes. Finally, this chapter provides some remarks on

[166] Green Party (2014) *Māori Issues policy* (August 2014, Green Party policy - accessed 13 May 2015)
[167] Office of Treaty Settlements (2010), *The Use of Public Conservation Land in Treaty Settlements*

the implications of that discourse for decolonisation in Aotearoa and political justice for Māori emerging from the Treaty settlements process.

Treaty settlements as a footnote in the wider story of Māori in the 2014 election

Before launching into the analysis on rhetoric and discourses from the 2014 election below, it is important to provide some explanatory notes on how the different layers of rhetoric from the election have been interpreted to construct wider discourses on those matters specific to Māori. Treaty settlements were not a significant area of debate amongst political figures in the 2014 election campaign. They were not particularly contested as they have been in previous elections nor were they the source of any major public ire as they have been in the past.[168] However, settlements were an important footnote in the broader pictures of election issues directly affecting Māori. Moreover, as rhetoric on settlements has become largely static in not deviating from years of the status quo, it is important to understand how the rest of that story impacts on the role of settlements in decolonising the relations between Māori and the Crown and in delivering political justice to Māori.

For example, while not commenting directly on this aspect of settlements, ACT leader Jamie Whyte critiqued the existence of co-governance and co-management agreements between iwi and local government as giving Māori rights that other New Zealanders do not benefit from.[169] Co-governance and co-management of natural resources with local government has become a standard element of negotiation in Treaty settlements and a feature of a number of recent settlements.[170] So while Dr Whyte did not state in the election campaign that he opposes these co-governance arrangements as part of settlements, his general view that these arrangements are unjust and inappropriately privilege Māori can nonetheless be read as contributing to a discourse that promotes limiting Māori participation in the governance of natural resources and as a result can be seen as providing barriers to decolonisation and political justice in Aotearoa.

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[168] Willie Jackson (2014) "It's Race-Card Time" (Waatea News, 1 August 2014 - accessed 12 May 2015)
[169] Jamie Whyte (2014) *Race has no place in the law* (26 July 2014, Speech to the Waikato Conference)
[170] Office of Treaty Settlements (2010) *Natural resource arrangements in previous and upcoming Treaty Settlements* (Report to the Minister for Treaty of Waitangi Negotiations, 19 Jun 2010 - released by the Office of Treaty Settlements under the Official Information Act 1982)

The themes of rhetoric emerging from the 2014 election campaign should also not be viewed in isolation. These are often interconnected, in the way as described above where Māori rights and Māori privilege were critiqued by Jamie Whyte which would have an anticipated effect in the application of settlement policy and its limitations, or where deadlines and timeframes relate to willing and able iwi participants in moving to a post-settlement era where we can move forward together as one nation. Different themes in the rhetoric contribute more wholly to a field of discourse which enables us to better understand what that discourse and the power associated with it means for decolonisation in Aotearoa.

One Law, One People, One New Zealand – discourses on unity

Rhetoric about a singular national identity, adopted by a singular national population within a single nation is not new in Aotearoa. It has featured in previous election campaigns[171] and is pervasive within much of the domestic media conversation.[172] It is not surprising then to see that rhetoric on the theme of one law for all, one nation and one New Zealand was pushed in the early stages of the election campaign as a core platform for a number of minor parties but also featured alongside Treaty settlement policies from within the dominant discourse.

Those parties and political figures who fall within marginalised discourse A were notable in relying on this rhetoric, painting any focus on rights or privilege for Māori (including delays to the prompt settlement of historic Treaty claims) as an attack on national unity and as ultimately detrimental to Māori as part of that singular nation. From within the dominant discourse a number of political figures and political parties expressed what might be characterised as a 'soft' view on unity, particularly in comparison to the rhetoric from within marginalised discourse A, addressing the future of that unity after settlements and to placate the view that the status quo on settlements may be empowering Māori beyond non-Māori in Aotearoa. This 'soft' rhetoric on unity is also discussed within the discourses on privilege section below.

[171] Don Brash (2004) *Nationhood* (27 January 2004, www.Scoop.co.nz - accessed 13 May 2015)
[172] Barnes et al (2012), McCreanor (2009)

The single critique of, and alternative to, this rhetoric from within marginalised discourse B was offered by Hon Te Ururoa Flavell, an example of where a political figure has represented themselves outside their usual discourse, moving here from the dominant discourse (where he sits with the government in advancing the status quo on Treaty settlements) to marginalised discourse B.

Dominant discourse on unity

Consistent rhetoric across the theme of unity, one law for all and one nation was not seen within the dominant discourse, however a number of different political voices were present. In particular it was the National Party, New Zealand First and United Future whose rhetoric was of note here.

New Zealand First in their Māori Affairs policy stressed that the Treaty of Waitangi should be uniting rather than divisive, and elsewhere in the election campaign raised an issue with the perceived separatist politics of the Māori Party and MANA Movement.[173] This policy also located Treaty settlements themselves within the collective national rights of all New Zealanders to a 'fair go' as opposed to an acknowledgement of Māori indigeneity or a responsibility on the Crown emerging from the Treaty of Waitangi itself.

"The Treaty should be a source of national pride and unity and not used to expand the separate rights of Māori or anyone else. Too often the Treaty now divides, polarizes and isolates us"

"New Zealand First believes in the concept of a fair go for all New Zealanders and this includes settling genuine historical grievances."

New Zealand First[174]

The emphasis on unity was continued by Rotorua candidate for the National Party, Todd McClay, when questioned on the comments made by ACT Party leader Jamie Whyte on

[173] One News (2014) "NZ First won't work with 'race-based' parties" *One News* (29 July 2014 - accessed 8 July 2015)
[174] New Zealand First (2014) *Policy: Māori Affairs* (3 July 2014, New Zealand First policy - accessed 13 May 2015)

Māori privilege. These comments did not relate directly to settlements however emphasise the commitment of National to upholding one law for all New Zealanders.

"National supports a fair and just legal system for all New Zealanders of any background or race... Every person has the right to a fair and public hearing by an independent and impartial court. Judges and juries should be neutral referees where no discrimination is upheld. Every person should be treated the same by our judicial system."

Todd McClay[175]

Minister for Treaty of Waitangi Negotiations, National list MP Christopher Finlayson, in releasing the National Party Māori Affairs and Treaty of Waitangi Negotiations policies noted the contribution settlements make to our national unity and our ability "to move forward as a nation."[176]

Marginalised discourse A on unity

Rhetoric on 'one law for all New Zealanders' was driven in the election campaign by Colin Craig, Jamie Whyte and their respective parties. The focus of their rhetoric was on challenging policies and arrangements which they perceived to give Māori rights ahead of other New Zealanders, such as the Māori electorates but also including a number of arrangements which are included in Treaty settlements as standard redress mechanisms. There was also a focus on 'the people of New Zealand' as a unified voice and on giving recourse to the 'people of New Zealand' on all matters, including those which are widely viewed as rights of Māori under Te Tiriti o Waitangi.

[on Treaty settlements] "We do need to do justice…we stand for putting things right... but I'm happy to be the person that stands for us being one nation…"

Colin Craig[177]

"I understand the founding vision that we should be one people with equal rights and privileges, as set out in the Treaty of Waitangi."

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[175] Todd McClay (2014) *Do Māori get special treatment? What the candidates say* (2 August 2014, Rotorua Daily Post)
[176] Christopher Finlayson (2014) *Treaty and Māori Affairs Policies Released* (12 September 2014, National Party press release)
[177] Colin Craig (2014) *Interview with Willie Jackson* (21 July 2014, Waatea News)

Colin Craig,[178]

"If we asked the people of New Zealand in a binding referendum whether or not the Waitangi Tribunal should be shut down, there would be one overwhelming answer, and that would be yes."

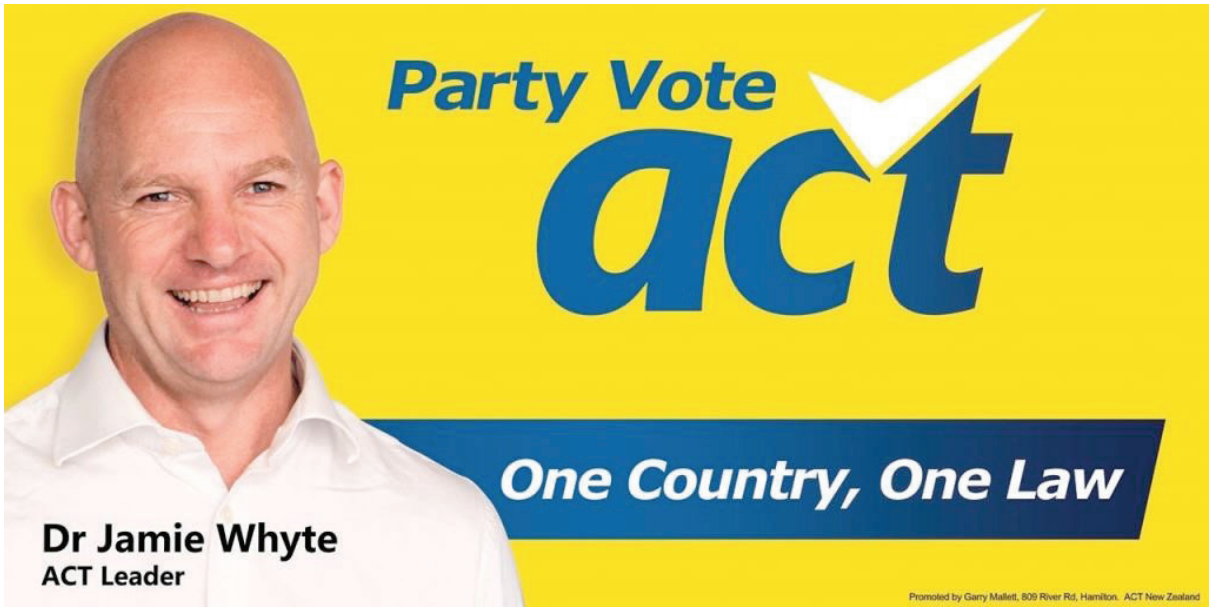
Colin Craig[179]

"Alas, the principle that the law should be impartial has never been fully embraced in New Zealand. Even today, after any number of equal rights movements, New Zealand law makes a citizen's rights depend on her race."

Jamie Whyte[180]

"[The Treaty of Waitangi] quite clearly gives Māori the same rights as all New Zealanders and promises no racial privilege or partnership. For that reason ACT opposes all legislation which gives a different legal status to Māori."

ACT Party[181]



ACT Party[182]

[178] Colin Craig (2014) *Colin Craig rejects 'race card' claims* (24 July 2014, 3 News)
[179] Colin Craig (2014) *Conservatives introduce Nelson candidate John Green, 81* (25 July 2014, Nelson Mail)
[180] Jamie Whyte (2014) *Race has no place in the law*
[181] ACT Party (2014) *Treaty of Waitangi and Race Relations policy* (September 2014, ACT Party policy)

Marginalised discourse B on unity

The only recorded instance of rhetoric on the theme of unity from marginalised discourse B occurred in a speech by Hon Te Ururoa Flavell to Parliament, in response to campaigning by Colin Craig on ending the Treaty settlements process, abolishing the Māori electorates and ensuring New Zealand had one law for all. Flavell's rhetoric echoes the concerns of a number of indigenous academics, particularly Taiaiake Alfred, on the damage that language on nationalism and being one people is doing to indigenous peoples through perpetuating colonisation.

"So we are where we should be, and we should not have to put up with the divisive rants of some. We have had over 170 years of attempts at assimilation, from various politicians and parties, and we continue to suffer from the consequences of those sorts of policies today. "

"The old assimilation policy is hidden behind a few new terms and slogans, such as "one law for all", or "we are all one people, we are all Kiwis", and even "some of my best friends are Māori." But the intention is the same, and we know all about that. In this day and age there is no place for political leaders who know nothing about our history and know nothing about us. There is no excuse for being ignorant and we, the people, will never ever tolerate policies that aim to take away from us, without our informed consent. That will not happen. Māori must make decisions about Māori representation."

Hon Te Ururoa Flavell[183]

Analysis

As the dominant discourse in the case of Treaty settlements seeks to preserve the status quo and uphold colonial hegemony, obscuring difference with discourses on national unity and one law for all New Zealanders can be seen as an attempt to 'fix' difference.[184] The marginalised discourse of the ACT and Conservative parties goes one step further in ignoring that difference entirely, let alone acknowledging that within the national identity and exercise of colonial power there is a distinct place for Māori, as advanced by the dominant

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[182] ACT Party (2014) *One Country, One Law* (2014, Election Advertisement)
[183] Te Ururoa Flavell (2014) *Māori must make decisions about Māori representation* (23 July 2014, www.scoop.co.nz - accessed 13 May 2015)
[184] Chris Barker and Dariusz Galasinski (2001) *Cultural studies and discourse analysis: a dialogue on language and identity* (London, Sage Publishing)

discourse. The construction on national unity here and the subsuming of Māori difference into Pākehā national identity is utilised for a specific purpose, being the preservation of colonial hegemonic power.[185] However, the impact of this is the "repudiation"[186] of one identity in favour of another and requires a "transformation of one's whole being."[187] Claudia Bell describes this sort of nationalism as "the politics that enables one culture to obliterate or assimilate another, through such processes as colonisation, genocide and immigration policies."[188]

Barnes suggests that this discourse on a singular national identity "serves to devalue ethnic diversity, representing it as endlessly problematic or trivial and to undermine serious debate about New Zealand society, especially in relation to Te Tiriti. It justifies and enacts Pākehā control of most important decisions, resources, and institutions and the ongoing assimilation of Māori and other 'minority' interests."[189] The rhetoric from both the dominant discourse and marginalised discourse A on unity also serves to construct a single national identity of 'New Zealanders' or 'Kiwis' that both subsumes Māori and excludes or demonises them when Māori are seen to be acting against the interests of 'one nation, one people'.[190] This discourse reinforces the appropriation of Māori identity by colonial society in an attempt to include Māori in a Pākehā-constructed national identity, while rejecting Māori claims for self-determination. This can be viewed as an Aotearoa-based expression of Craig Womack's view that "America loves Indian culture [but] America is much less enthusiastic about Indian land title."[191]

Flavell's response to Craig echoes Alfred who writes that "contemporary colonialism is deceptive because it cloaks its racist, assimilative and possessive intent in words that make hatred, cultural extermination, and stealing of land sound like technical aspects of the inevitable march of progress."[192] The importance of Flavell's singular response to the

[185] Ibid
[186] Ibid, pp125
[187] Ibid, pp37
[188] Claudia Bell (1996) *Inventing New Zealand: everyday myths of Pākehā identity* (Auckland, Penguin Books) pp8
[189] Barnes et al (2012) pp200
[190] Ibid
[191] Craig Womack (1999) *Red on Red: Native American Literary Separatism* (Minneapolis: University of Minnesota Press) pp11.
[192] Alfred (2011), 'Guest Editorial' *Canadian Journal of Native Education* (Vol. 34, No.1)

discourses on unity and one law, one people, one nation is its resistance of attempts to silence "Māori calls for political, economic and cultural recognition."[193]

Discourses on unity that promote a national identity run the risk of obscuring difference between Māori and non-Māori in Aotearoa in favour of a singular, Pākehā defined identity in which Treaty settlements are understood as returning resources and authority to Māori which are to be utilised within the existing colonised constructions of power in New Zealand.[194]

"We're moving at pace"[195] – discourses on deadlines and timeframes

The timing surrounding the Treaty settlement process has for years been a political point scoring exercise – National in opposition and in government have accused Labour of dragging their feet on settlements, Labour have accused National of unrealistic deadlines. Those perspectives which sit within marginalised discourse A have decried how the ongoing spectre of settlements is rending our national unity asunder while those perspectives within marginalised discourse B see a Crown imposed timeframe for settlement as constraining reconciliation and treating Māori with colonial contempt.

In 2014, the rhetoric around this theme differed little from that in past elections and the perspectives from each field of discourse were largely the same. Within the dominant discourse, both Labour and National renewed previous rhetoric on timeframes, with Labour setting a 2020 deadline for all settlements[196] and National extending their previous deadline to a 2017 aspirational timeframe for those iwi who are 'willing and able' to settle.

While the rhetoric from within marginalised discourse A acknowledged the necessity of settlements for New Zealand to move forward, both the ACT and Conservative parties focused on settlements as a process which should already be concluded and any extension as having a damaging effect on national unity. Rhetoric from the Green Party and the MANA Movement in marginalised discourse B focused on the need to remove timeframes that

[193] McCreanor (2009), pp18
[194] Coulthard (2007)
[195] Michael Fox (2014) *Waitangi Tribunal sets 2020 target* (1 July 2014, www.stuff.co.nz - accessed 13 May 2015)
[196] Radio New Zealand (2014) *Labour sets historical Treaty claim deadline* (17 August 2014, Radio New Zealand)

constrained how the process could achieve justice and to remove pressure from claimants who are negotiating their claims.

Both marginalised discourses A and B also had rhetoric around the timing and jurisdiction of the Waitangi Tribunal with regard to deadlines and timeframes for the lodging of claims: ACT policy was to limit the jurisdiction of the Tribunal to the hearing of historic claims only (those preceding 21 September 1992) and both the Green Party and MANA Movement advocating the removal of a limit for Māori to lodge historic claims.

The dominant discourse rhetoric on deadlines and timeframes is also connected to the rhetoric on post-settlement and willing and able, discussed later in the chapter.

Dominant discourse on deadlines and timeframes

Cutting across the dominant discourse and rhetoric from both the Labour and National parties on deadlines and timeframes is a clear message on 'getting settlements done.'

"Labour is committed to completing the historical Treaty settlement process by 2020 and providing mechanisms for progressing settlement where it has stalled."

Labour Party[197]

"National has a great record in Treaty settlements. We have significantly sped up the settling of historic Treaty settlements and are nearly there. By 2017, all willing iwi should have deeds of settlement."

National Party[198]

Treaty Negotiations Minister Chris Finlayson said [the Tribunal's 2020] target was "conservative". At current pace they would settle with all those "willing and able" by 2017. "It doesn't actually line up with what the Government is doing because we're moving at pace at the moment." However, other claims would take longer."

Hon Christopher Finlayson[199]

[197] Labour Party (2014) *Māori Development policy* (August 2014, Labour Party policy)
[198] National Party (2014) *Treaty of Waitangi Negotiations policy* (12 September 2014, National Party policy)
[199] Michael Fox (2014) *Waitangi Tribunal sets 2020 target*

Rhetoric from the National Party including accusing Labour of dragging their feet on Treaty settlements and neglecting Māori by not prioritising settlements on their agenda, as well as declaring that setting a "deadline" was disrespectful to iwi (despite having done the same in the 2008 and 2011 elections).[200] [201]

Treaty Negotiations Minister Chris Finlayson said Labour's deadline was out of touch with reality. He said to impose deadlines was insulting, saying he preferred aspirational goals and by 2017 all iwi that were willing, should have deeds of settlement, if this Government was re-elected.

Hon Christopher Finlayson[202]

Labour did not engage in the same level of criticism as their National counterparts however the message on needing to move past settlements was equally as prominent.

Marginalised discourse A on deadlines and timeframes

Colin Craig emphasised that the settlement of historical claims had gone on too long:

"I think that it's gone on far too long… our plan is to tidy everything up as straightaway as possible…we need to get it done and move forward… this is a governmental issue, it's one that hasn't been handled well… we need to get the settlements done and we need to move forward together…"

Colin Craig[203]

He also said that the delay in settlements being concluded was becoming a source of frustration for all New Zealanders:

"I think we should tidy it all up and put the thing to bed. Most New Zealanders are tired of it as an ongoing process. Look, coming up 40 years. That's a good length of time to be sitting there, naval gazing, and I think it will be what most New Zealanders would like to see done."

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[200] Radio New Zealand (2014) *Treaty deadline needs more resources - lawyers* (18 August 2014, Radio New Zealand)
[201] John Key (2008) *Māori Affairs, Treaty and Electoral Law policies released* (28 September 2008, National Party press release)
Marika Hill (2011) *Nats admit Treaty Settlements 'goal' will be missed* (18 September 2011, www.stuff.co.nz - accessed 13 May 2015)
[202] Radio New Zealand (2014) *Treaty deadline needs more resources - lawyers*
[203] Colin Craig (2014) *Interview with Willie Jackson*

Colin Craig[204]

The ACT Party was supportive of the National government's timeframes on settling existing historical claims however did make comments on restricting the jurisdiction of the Waitangi Tribunal only to historical claims and providing a deadline for the Waitangi Tribunal to report on existing historical claims before being wound up in its Treaty of Waitangi policy.[205]

Marginalised discourse B on deadlines and timeframes

The rhetoric from within marginalised discourse B focused on both the timeframes for completing settlements and on the deadline for the lodging of historic claims with the Waitangi Tribunal. Both of these elements argue for a rejection of deadlines and timeframes as constraints on the ability of Māori to participate in the settlements process and on that process leading to decolonisation.

"Widespread Māori support is needed for any deadline for lodging and settling claims, and if a deadline is set, there must be mutual agreement between Māori and the Crown."

Green Party[206]

"Restore the right of iwi and hapū to lodge historical claims with the Waitangi Tribunal, a right which was removed when a 1 September 2008 deadline was made law.

Abandon the Crown's 2017 deadline for finalising Treaty settlements and instead have them commit to resolving claims fairly and justly."

MANA Movement[207]

The MANA Movement also presented rhetoric on rejecting the time-centred limitation of a 'full-and-final' settlement, arguing instead for an ongoing settlement process which would see the Crown able to 'justly' settle Māori claims in a way unbound by time.

"Increase the value of settlements to iwi and hapū by introducing a graduated system of settlement rather than a one-off settlement package. This would replace the current "full-and-final" settlement system and would enable the Crown to justly settle claims over time."

[204] TV 3 (2014) *Minor Party Leaders' Debate* (9 August 2014, The Nation, TV 3)
[205] ACT Party (2014) *Treaty of Waitangi and Race Relations policy*
[206] Green Party (2014) *Te Tiriti o (Treaty of) Waitangi Policy* (September 2014, Green Party policy)
[207] MANA Movement (2014) *Treaty Settlements Policy* (2014, MANA Movement policy)

Analysis

The rhetoric in favour of deadlines and timeframes for historic Treaty settlements speaks to two outcomes: positioning control of the settlement process squarely in the hands of the Crown, and limiting the decolonising potential of settlements by constraining the time in which they can be negotiated and as a result limiting the ability of Māori to effectively prepare themselves for these negotiations.

The extent of the Crown's control over the settlement process and the limitations this presents to decolonisation have been addressed in Chapter Four and I will not dwell on them here. However the constraints of timeframes and deadlines and their relationship to other elements of the colonising discourse on Treaty settlements require more attention.

Deadlines and timeframes are not intrinsically a barrier to decolonisation; it is the motivations for these deadlines which bring them to bear as a constraint on decolonisation through the settlement process. Deadlines and timeframes are designed to speed historical settlements along in order to reach certain outcomes, and for the dominant discourse this is seen in other themes in the discourse addressed in this chapter: allowing New Zealand to move forward as a nation, achieving economic development for regional New Zealand and moving the Treaty relationship to a 'positive' post-settlement relationship. Each of these motivations present barriers to decolonisation which the discourse on deadlines and timeframes contribute to. The rhetoric from marginalised discourse A also contributes to this pacification of 'New Zealanders' as a homogenous and dominant national identity by calling for a swift end to settlement.

Contrary to this, the rhetoric from marginalised discourse B rejecting the deadlines of the status quo can be seen as providing opportunities for settlements to contribute to decolonisation by removing existing constraints from the process, and by arguing for a process in which the access of Māori to political justice is unfettered, such as removing the deadline on lodging historical claims before the Waitangi Tribunal.

[208] Ibid

"Settlement must include meaningful constitutional transformation"[209] – discourses on reconstruction of power

Decolonisation is a significant focus of this thesis and as such it is telling when considering the potential for Treaty settlements to be decolonising to see the limited role that rhetoric directly related to decolonisation played in the 2014 election. The reconstruction of power in the relationship between Māori and the Crown was addressed solely within marginalised discourse B, by both the Green Party and the MANA Movement however only as party policy and not within press releases from the parties or statements made by political figures.

While the language used by this discourse can be seen as some of the most important within the 2014 election with regard to steering settlements and the Crown-Māori relationship towards decolonisation, as the least prevalent theme of rhetoric on settlements from the election is indicative of the lack of commitment from the electorate and the political leadership in New Zealand to engage meaningfully with decoloniality in Aotearoa.

Marginalised discourse B on reconstruction of power

The theme on reconstructing power in the Crown-Māori relationship was addressed only in the Treaty Settlements and Te Tiriti (Treaty of) Waitangi policies of the MANA Movement and the Green Party respectively. In these policies we can see an intention from within marginalised discourse B to ensure Treaty settlements are effective in bringing comprehensive change to the power dynamics between the Crown and Māori, through making settlements the start of a process to fairly settle power between the two.

"Advocate for constitutional transformation … Begin a process to settle the way in which political and legal power is structured in Aotearoa New Zealand. Settlement must include meaningful constitutional transformation."

MANA Movement[210]

"Promote and support iwi, hapū and whānau claimants being allowed ample opportunity to consider any legislation for setting a timeframe for lodging and settling claims, and ensure

[209] Ibid
[210] Ibid

the government does not consider alternate mechanisms and resolution to proceeding with legislation in the absence of full hapū support."

Green Party[211]

Analysis

The literature supporting the rhetoric of marginalised discourse B in presenting settlements as part of a process of decolonisation in achieving that end is vast. This position challenges the Crown to go beyond the existing parameters of Treaty settlements and the arrangements created to delegate Māori authority within the structures of colonial power, and advance Māori interests in decolonising the power dynamic between the Treaty partners.[212]Acceptance of settlements by Māori in the context of these being a step towards decolonisation helps to assuage the concerns about accepting any limitations associated with the settlement the Crown is offering and to look beyond to the reclamation of their sovereignty and full exercise of their rangatiratanga.[213]

A commitment to this meaningful constitutional transformation is an acceptance of the need to 're-order' the 'economic, political, legislative and cultural privileging of Pākehā' in order to decolonise relations between the Crown and Māori in Aotearoa.[214] Importantly this rhetoric also introduces discourses on social change and as a result brings about a consciousness of this as a conversation we need to have in order to move towards a decolonised relationship, rather than obscuring this conversation in the language of nationalism and the new Treaty relationship of the post-settlement world.[215]

Likewise, the rhetoric of the Green Party in involving Māori in setting the deadlines and parameters of the Treaty settlement process are consistent with the messages from former Chief Judge of the Māori Land Court, Sir Eddie Durie, in transforming the Treaty settlement

[211] Green Party (2014) *Te Tiriti o (Treaty of) Waitangi Policy*
[212] Alfred and Corntassel (2005)
[213] Jackson (1994)
[214] McCreanor (2009)
[215] Barker and Galasinski (2001) and Barnes et al (2012)

process from yet another expression of colonial power and control to a genuine process of reconciliation owned by each of the Treaty partners.[216]

One cent in the dollar – discourses on limitations

In previous elections there has been a strong focus on how much land, wealth and authority over their own affairs was being returned to Māori through settlements.[217] This is also a common theme in media commentary, with a number of commentators arguing both that the country cannot afford to give away too much and that the Crown is being disingenuous in describing limits to settlement redress while bailing out financial institutions and supporting international yachting regattas.[218]

The 2014 election was not characterised by prevalent rhetoric on the limitations on settlements, either on limiting settlements more or limiting them less. The Labour Party and Ron Mark of New Zealand First from within the dominant discourse were accepting of the limitations associated with settlements within the status quo, though the lack of any substantive rhetoric on this theme is indicative of a 'business as usual' approach from within the dominant discourse. The ACT Party policy from within marginalised discourse A outlined an acceptance of limitations to settlements based on the requirement of ongoing support and goodwill from the general population while both the MANA Movement and the Green Party within marginalised discourse B described policies beyond the existing limitations in order to better effect justice for Māori including in redressing existing disparities. This also included a rejection of the status quo 'full and final' settlement model.

Interestingly, the Green Party Te Tiriti o Waitangi policy included a strong contradiction to the rest of their policy on settlements, which includes decolonising rhetoric on justice, rangatiratanga and kaitiakitanga, that said the Greens will "reject the use of the Conservation Estate as a cheap source of land for Treaty settlements." This particular policy

[216] Edward Taihakurei Durie (2013) "Land Claims, Treaty Claims and Self-determination" in Katene and Mulholland, eds. *Future Challenges for Māori He Kōrero Anamata* (Huia Publishers, Wellington)
[217] For example see Jon Stokes and Ruth Berry (2005) "Call for bigger Treaty settlements" *New Zealand Herald* (Wednesday 31 August, 2005 - accessed 6 July 2015)
Giselle Byrnes (2007) "Pride and Prejudice: The Treaty of Waitangi and the 2005 General Election" in Levine and Roberts (2007) *The Baubles of Office: The New Zealand General Election of 2005* (Wellington, Victoria University Press)
[218] Paerau Warbrick (2012) "O ratou whenua: Land and Estate Settlements" in Wheen and Hayward (2012) *Treaty of Waitangi Settlements* (Wellington, Bridget Williams Books Limited)

as a rejection of the status quo should be read within marginalised discourse A rather than marginalised discourse B.

Dominant discourse on limitations

The dominant discourse rhetoric on limitations in the 2014 election did not include any prominent commentary and was not particularly extensive. Comments by Ron Mark and David Cunliffe, and policy from the Labour Party, each demonstrate a commitment to the existing status quo on the limitations of settlements, in particular that these are now largely set and that the Crown has limits to what can be returned.

"The parameters and guidelines that stipulate how the settlement will be negotiated and the restrictions around what can and cannot be considered are pretty much determined by the Crown and these boundaries and acceptance of those conditions are, as with any settlement, pre- requisite for any movement forward.

Fundamental to the negotiations process is the requirement for the claimants to accept that negotiations cannot and will not include land in private ownership or land owned by any Territorial Authority unless that authority agrees, and that the process is not about compensation, it is about reconciliation."

Ron Mark[219]

"We can't return all that land or undo all the tragedies that happened but we can restore an honourable relationship between the Treaty partners and a government that I lead will continue to do that with vigour"

David Cunliffe, New Zealand Herald Hot Seat[220]

The notable absence of any rhetoric on limitations from the National government can be seen as dedication to a business as usual approach to settlements and comfort that limitations in settlements are no longer a contested part of New Zealand politics.

[219] Ron Mark (2014) *Settlement will open up many doors for Ngāti Kahungunu* (12 August 2008, Wairarapa Times Age)
[220] David Cunliffe (2014) *Interview with David Cunliffe* (21 August 2014, New Zealand Herald Hot Seat)

Marginalised discourse A on limitations

Marginalised discourse A was also notably restrained when it came to rhetoric on the limitations of Treaty settlements. The ACT Party policy on the Treaty of Waitangi identified both that the limitations were appropriate as nothing the Crown could offer would appropriately redress Māori grievances, and went further to say that the process was dependent on the goodwill of New Zealanders. The implication here is that should that goodwill be lost, perhaps by pushing settlements beyond the status quo, the redress of historical Māori grievances would no longer be tenable.

"The problems New Zealand faces today in respect of Treaty issues stem in good part from past majoritarian abuses at the expense of Māori. No parliamentary party is keener than ACT to see property rights respected in New Zealand. Māori claims should be properly settled where land was unlawfully taken or improperly compensated, and where we can identify the descendants of those who were wronged. New Zealanders sense of fair play demands no less.

However, it also needs to be recognised that no amount of money can undo past wrongs and that payments depend on the goodwill of citizens alive today who are entirely innocent of wrong-doing in the distant past. ACT is alert to the dangers that the grievance process poses to harmonious race relations and is determined that the process be a genuine redress of past wrongs and not become an industry for elite Māori."

ACT Party[221]

Perhaps the most notable rhetoric on limitations came from the Green Party, whose rhetoric throughout the election consistently could be seen as a challenge to the status quo of settlements and a step towards decolonising the Crown-Māori relationship. In calling for a rejection of the current Crown policy of using public conservation land as Treaty settlement cultural redress (as discussed in Chapter Four), the Green Party has both contradicted their policies of supporting Māori aspirations for kaitiakitanga and rangatiratanga and espoused rhetoric which is indicative of maintaining colonial control over conservation land and conservation priorities. In effect they have here said to Māori that they do not trust or fully respect their role as kaitiaki.

[221] ACT Party (2014) *Treaty of Waitangi and Race Relations policy*

"Reject the use of the Conservation Estate as a cheap source of land for Treaty settlements."

Green Party[222]

Marginalised discourse B on limitations

Rhetoric on limitations from within marginalised discourse B came from both the MANA Movement and the Green Party, who here focused on the need to ensure that settlements were both more equitable, rejecting the limitations of the full and final settlement model, and opposed further constraints on settlements.

"Undertake a review of the current Treaty settlement model to improve equity and justice for both the process and outcomes.

Promote and support the development of a diversity of models for restitution and nationally sustainable compensation over time (including rejection of the full and final settlement model)."

Green Party[223]

"Increase the value of settlements and prioritise the return of lands.

Increase the value of settlements to iwi and hapū by introducing a graduated system of settlement rather than a one-off settlement package. This would replace the current "full-and-final" settlement system and would enable the Crown to justly settle claims over time.

Prioritise the return of Crown owned lands including those held by State Owned Enterprises where there are proven claims over those lands in keeping with the maxim 'Me riro whenua atu, me hoki whenua mai.'"

MANA Movement[224]

Analysis

The lack of engagement in the rhetoric on the limitations of Treaty settlements from the dominant discourse suggests that the content of settlements is now considered by the status quo in New Zealand politics to be settled. Indeed, the acceptance by political figures

[222] Green Party (2014) *Māori Issues policy*
[223] Green Party (2014) *Te Tiriti o (Treaty of) Waitangi policy*
[224] MANA Movement (2014) *Treaty Settlements policy*

from within the status quo, but outside of government, of these limitations is evidence of the lack of movement on limitations to be expected while those within the dominant discourse remain in the driving seat on Treaty settlements. The acceptance by Ron Mark, then a negotiator for the Ngāti Kahungunu ki Wairarapa-Tāmaki Nui ā Rua Trust, of these limitations shows them now as a sedentary part of Treaty settlements in Aotearoa. A lack of resistance to the parameters of settlements set by the colonial state is a danger of 'land claims' processes predicted by indigenous scholars, both in Aotearoa and abroad.

Taiaiake Alfred has noted the threat of indigenous leaders accepting and mimicking the limitations of colonial institutions for indigenous peoples as a death knell to indigenous aspirations for sovereignty and decolonisation.[225] Without interrogation of these limitations by both Māori and non-Māori there is a real risk that those limitations will create inflexible, Crown derived parameters within which Māori must operate in the future – including not just land and resources to be returned but Māori authority over themselves.

The rhetoric by the Green Party on rejecting the use of conservation land as Treaty settlement redress is problematic. In Hauraki, for example, public conservation land makes up the vast majority of land on the Coromandel peninsula – it is unthinkable that meaningful settlement could occur without the return of significant tracts of public conservation land to Hauraki iwi. Beyond the return of conservation land, it is the implied devaluation of Māori as kaitiaki that presents the Green Party here as a neo-colonial force. But this is not necessarily a surprise. Aroha Te Pareake Mead has written that "in a New Zealand context, it is often conservationists who launch the most stinging attacks on any notions of returning conservation land to iwi as part of a Treaty of Waitangi settlement."[226] Rather, Mead views the Crown-Māori relationship on conservation land and conservation matters as being another manifestation of colonial power, and this is unchanged by Treaty settlements.[227] This contradiction from the Green Party demonstrates the challenge for even those parties who advance the cause of decolonisation to bring all of their constituents along with them. In this case, the conflict between conservationists and indigenous peoples seems to be poorly managed.

[225] Alfred and Corntassel (2005)
[226] Aroha Te Pareake Mead (2013) "Sharing Power: Māori and Protected Areas" in Selwyn Katene and Malcolm Mulholland (eds) *Future Challenges for Māori: He Kōrero Anamata* (Huia Publishers, Wellington)
[227] Ibid

Finally, the rhetoric from within marginalised discourse B on increasing the value of settlements, including a rejection of the full and final settlement model, may challenge the status quo on those now accepted limitations to settlement but does not necessarily indicate that decolonisation will emerge from settlement any more readily. It is the lack of rhetoric on the renegotiation of Māori rangatiratanga and mana motuhake which preserves colonial power in settlement policy and ensures that, while Māori may become significant land holders now and into the future, their authority over those lands will remain subject to the will of the Crown.

Benefits of settlement for all – discourses on Māori, economic, and regional development

As the number of completed settlements under the current process increases, the benefit of these settlements to Māori development (economic and cultural), regional economic development and national economic development have increasingly become a focus for political figures and the media alike. The rhetoric from the dominant discourse within the 2014 election focussed heavily on the wider benefits settlements bring: to Māoridom, to regional New Zealand and to the country as a whole. The timing of this focus was well aligned with the 'year of the billion dollar iwi', 2014 being the first time that the total value of assets held by Ngāi Tahu and Waikato-Tainui each surpassed $1 billion.[228]

This theme was only addressed from within the dominant discourse, with the marginalised discourses instead addressing their perceived downfalls of the Treaty settlements process and the changing Crown-Māori relationship.

Dominant discourse on Māori, regional and economic development

"The increased number of Treaty Settlement tribes has changed the way in which Māori participate in the political, economic, cultural, social and environmental aspects of New Zealand society. Iwi have become significant contributors to the economic productivity of our nation and this is an emerging landscape to cultivate new partnerships with the Crown."

[228] Grant Bradley (2014), "Ngāi Tahu Holdings set to grow" *New Zealand Herald* (Thursday 9 October) and Anne Gibson (2014) "Waikato-Tainui tops $1b in assets" *New Zealand Herald* (Wednesday 2 July)

Labour Party[229]

"As part of our commitment to Māori development, Labour will ensure that all historical Treaty settlements are completed by 2020…"

Nanaia Mahuta[230]

"National will:

Continue to progress Treaty settlements, settling historical grievances and providing an economic boost to regional New Zealand. By 2017, all willing iwi should have deeds of settlement."

National Party[231]

"The financial proceeds of settlements help iwi lay the foundations for economic success and grow their wealth," Mr Finlayson says. "They also make a valuable contribution to regional economic development and issues, such as social housing."

Hon Christopher Finlayson[232]

Analysis

Discourse on Māori development, economic development and regional development can be understood through two different paradigms: the first is Māori success on Pākehā terms, and the second is on who benefits from Treaty settlements and whether this benefit is coming to be part of a wider colonising agenda.

The first paradigm, Māori success on Pākehā terms, relates to judging Māori succeeding according to Pākehā cultural and economic values, where economic development and regional development become justifications of the Treaty settlement process by the dominant discourse. As a result settlements become less about redressing historical grievances and decolonisation and positioning iwi as players in a colonial economic system

[229] Labour Party (2014) *Māori Development policy*
[230] David Cunliffe (2014) *Labour will facilitate regional Māori economic development agencies* (17 August 2014, Labour Party press release)
[231] National Party (2014) *Māori Affairs policy* (12 September 2014, National Party policy)
[232] Christopher Finlayson (2014) *Treaty and Māori Affairs Policies Released*

and whose value is measured by their ability to contribute to that system.[233] This paradigm also relates to the question of Māori controlled resources, with the dominant discourse suggesting that the return to Māori of customary resources is again not about restitution but about providing benefits to the colonial economic structure – this also addresses concerns of non-Māori populations by positioning the use of those resources in a benefit to 'all new Zealanders.'[234] The rhetoric focussing on Māori economic growth also contributes to the views of an increasing number of commentators that the Crown has deliberately structured Māori post-settlement governance entities as corporatised structures which fall into existing patterns of colonial economic dominance and neoliberalism.[235]

Māori development, economic development and regional development are in themselves positive sounding experiences. However, the sharing of benefits from settlement of historical grievances remains entirely the decision of Māori, on what they share and who they share it with. As such, the rhetoric from the dominant discourse on the promise of economic and regional development can be viewed not as an affirmation of Māori authority over their recently returned assets but rather as an expectation that Māori will 'contribute to the wider community' and bring benefit to all New Zealanders through their settlements. This can also be seen as an attempt to legitimise settlements in the minds of the voter base of the dominant discourse.

This rhetoric contributes to the dichotomy of good and bad Māori, whereas good Māori contribute to the expectation created by the dominant discourse of communal benefit from settlements, and bad Māori focus only on iwi needs.[236] The rhetoric from within the dominant discourse also strengthens ideals of national identity by locating settlements as benefiting all New Zealanders, again subsuming Māori into a national identity. This can be contrasted, as discussed further below, with the idea of Māori privilege where Māori are

[233] Barnes et al (2012)
[234] Ibid
[235] Bargh (2002), McCormack (2012) and Marilyn E. Lashley (2000) "Implementing Treaty Settlements via Indigenous Institutions: Social Justice and Detribalization in New Zealand" *The Contemporary Pacific* (Vol.12, No.1)
[236] Barnes et al (2012) and McCreanor (2009)

categorised by politicians and the media as 'privileged' if they seek direct or indirect benefit from the Crown or the success of non-Māori.[237]

"True property rights for Māori only began with the signing of the Treaty"[238] – discourses on Māori rights

Māori rights have long been the subject of multiple spaces of contention amongst New Zealand academics, political figures, media commentators and the public. The idea that there may be a set of rights which are exercised exclusively by Māori seems to provide a major obstacle to widespread acceptance of a bicultural paradigm in Aotearoa.

In the 2014 election Māori rights were discussed at length, often in conjunction with the theme of Māori privilege. The rhetoric on Māori rights emerged predominantly from marginalised discourse B, and was related more broadly within that discourse to empowering Māori and advancing the notion of a system in which both Māori and non-Māori have different but parallel rights reflecting different cultural paradigms. There was limited discourse on Māori rights from marginalised discourse A, and that rhetoric can be seen to be disempowering of Māori alongside the rhetoric on Māori privilege from that discourse, focussing exclusively on property rights of the English common law tradition which were guaranteed under the Treaty of Waitangi. Little notable rhetoric emerged from the dominant discourse.

On this theme we again saw political figures who are primarily located within the dominant discourse commenting in a way which on this theme aligns them more closely with marginalised discourse B. The rhetoric from both Peeni Henare (Labour) and Hon Te Ururoa Flavell (Māori Party) on Māori rights challenged the status quo in a way which could be seen to empower Māori in a manner that challenged colonial structures of power in Aotearoa.

Dominant discourse on Māori rights

As above, little rhetoric on Māori rights was identified from within the dominant discourse. That which was seen reflected Treaty rights, including "equal rights for everyone."

[237] Barnes et al (2012)
[238] ACT Party (2014) *Treaty of Waitangi and Race Relations policy*

"The Treaty is the catalyst for the relationship that exists between Māori and the Crown. It established a governance framework for the country (kāwanatanga); guarantees the existing rights of Tāngata Whenua (rangatiratanga); and recognises equal rights for everyone (rite)."

Labour Party[239]

Marginalised discourse A on Māori rights

Marginalised discourse A also did not produce extensive rhetoric on Māori rights, beyond the recognition of property rights guaranteed to Māori by the Treaty. These rights were portrayed as equal to the property rights of all New Zealanders but pertaining to the specific property identified in article two of the Treaty.

"I don't believe that in a situation like New Zealand now, indigenous people have a right.

But I do believe that colonisation violated rights that they had. People were living there peacefully, or not always peacefully, occupying their own land, and western or European colonists came along and trampled all over their rights."

Jamie Whyte[240]

"The Treaty of Waitangi gave Māori property rights over the land they occupied. Many violations of these rights followed. The remedies provided by the Waitangi Tribunal are not a case of race-based favouritism. They are recognition of property rights and, therefore, something that we in ACT wholeheartedly support."

Jamie Whyte[241]

"Until the Treaty of Waitangi, Māori had no property rights that could not be usurped by a stronger tribe. True property rights for Māori only began with the signing of the Treaty"

[239] Labour Party (2014) *Māori Development policy*
[240] Waatea News (2014) *Property only right for right Whyte* (4 August 2014, Waatea News)
[241] Jamie Whyte (2014) *Race has no place in the law*

ACT Party[242]

Marginalised discourse B on Māori rights

Whereas the discourse on privilege, in the following section, can be seen as disempowering Māori and extending patterns of colonisation, the discourse on Māori rights can be more closely aligned with marginalised discourse B as the rhetoric reflects attempts to empower Māori beyond the status quo and is a move towards decolonisation. As such, rhetoric on Māori rights was a prominent focus in marginalised discourse B and notably included rhetoric from political figures whose voice was for the most part in the election period included in the dominant discourse when it came to settlements.

"Māori own the water. Any settlement of water rights must include the fundamentals of running water and basic sewage systems. MANA will ensure for communities like Ruatahuna, Minganui, all of those that don't have that, that that must be part of any settlement because iwi leaders forget the basics… There's unfinished business in the Tūhoe Urewera settlement, water and roads are key."

Annette Sykes[243]

The Tāmaki Makaurau candidate said allowing the Crown to continue to hold rights to ancestral land is not a genuine settlement. He also questioned why day-to-day management of the settlement land has been awarded to Auckland Council.

Peeni Henare said co-management and co-governance can work, but if land was returned to iwi, it should legally stay in tribal hands.

Peeni Henare[244]

"Parliament is a Westminster system imposed on Māori, which confiscated Māori land and took away Māori rights to self-determination."

Hon Te Ururoa Flavell[245]

[242] ACT Party (2014) *Treaty of Waitangi policy*
[243] Annette Sykes (2014) *Kowhiri 14 - Waiariki Candidate's debate* (1 September 2014, Native Affairs, Māori Television)
[244] Gareth Thomas (2014) *Crown Land System 'nonsense'* (11 September 2014, Radio New Zealand)

"The rangatiratanga of tangata whenua is a collective human right protected in the Universal Declaration of Human Rights.

Support Māori protection of cultural and traditional knowledge, and intellectual property rights, from misappropriation."

Green Party[246]

Analysis

The limited discourse on Māori rights and its location as primarily within marginalised discourse B should be of concern as far as it impacts on decolonisation emerging from Treaty settlements. Māori rights have increasingly come to be defined in public discourse by colonial legal institutions and the conversation on these captured in the rhetoric of the Crown and the dominant discourse.[247] This capturing of indigenous concepts and repositioning within a colonial framework is common to the position of indigenous peoples across the world and in Aotearoa permeates not only Treaty settlements but institutions such as the Waitangi Tribunal which many Māori look to uphold their rights emerging from Te Tiriti o Waitangi.[248] The lack of any challenge to this notion from within the dominant discourse on Treaty settlements can be seen to demonstrate that the colonisation of Aotearoa through Treaty settlements continues.[249]

The rhetoric of marginalised discourse B on Māori rights reflects the delineation of Māori and Pākehā rights in Aotearoa, that the two can be "different and complimentary" in challenging the neoliberal presentation of rights in Aotearoa as universal, and blind to difference and systemic violations of those rights in the past.[250] Challenging this assumption underlies the major thrust of decolonisation in Aotearoa, which is to deconstruct the position of "Māori rights as inherently subordinate to those of the Crown" and renegotiate power in the Crown-Māori relationship as a result.[251] In referencing rangatiratanga as a

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[245] Te Ururoa Flavell (2014) *Do Māori get special treatment? What the candidates say* (2 August 2014, Rotorua Daily Post)
[246] Green Party (2014) *Māori Issues policy*
[247] Jackson (2005)
[248] Jackson (1994) and Coulthard (2007)
[249] Bargh (2002)
[250] McCreanor (2009) pp18
[251] Jackson (2005) pp11

collective right of Māori, the rhetoric from the Green Party challenges existing, Western preconceptions of individual rights as the only legitimate rights within a democracy.[252]

Rhetoric from within marginalised discourse B highlights a view not commonly espoused in the dialogue on Treaty settlements in New Zealand: that claims for sovereignty, recognition of Māori rights and general decolonisation of the Crown-Māori relationship are intrinsically linked to Treaty settlements and that settlements represent the start of a process of renegotiation, not the end.[253]

The position of the ACT Party within marginalised discourse A not only continues the dispossession of Māori by subsuming them into a colonial hegemonic national identity, but also illustrates that myths of Māori as primitive and savages before the arrival of European settlers and British law continue to permeate our political and public discourse.[254] Moreover, the framing of Māori rights exclusively as property rights insists on Māori subservience to the market in a neoliberal, globalised New Zealand and ignores the constitutional and political rights inherent in the Treaty of Waitangi.[255]

The club of Māori and French aristocrats – discourses on privilege

As noted in the previous section, whereas discourses on Māori rights can generally be viewed as empowering Māori and challenging colonial power, discourses on privilege, and in the 2014 election Māori privilege almost exclusively, contribute to a disempowerment of Māori.

Marginalised discourse A, in particular through the rhetoric and policy from the ACT and Conservative parties, focussed heavily on Māori privilege as something that destroyed race relations in New Zealand, undermined national unity and was an affront to liberal democracy. Pākehā privilege was only acknowledged by a then ACT candidate (who subsequently resigned before the election) in response to ACT leader Jamie Whyte's speech on Māori privilege. There was no rhetoric from within the dominant discourse on privilege.

[252] Barnes et al (2012)
[253] Bargh (2002)
[254] Barnes et al (2012)
[255] Moana Jackson (2007) "Globalisation and the Colonising State of Mind" in Maria Bargh, ed. (2007) *Resistance: An Indigenous Response to Neoliberalism* (Wellington, Huia Publishers)

Marginalised discourse A on privilege

Alongside discourse on national unity, Māori privilege was the key theme of rhetoric from within marginalised discourse A on Treaty settlements in the 2014 election. This rhetoric emerged from both ACT and the Conservative Party throughout the election period and could, in particular for the Conservative Party, be considered one of the core planks of their election platform.

“Māori are legally privileged in New Zealand today, just as the Aristocracy were legally privileged in pre-revolutionary France."

Jamie Whyte[256]

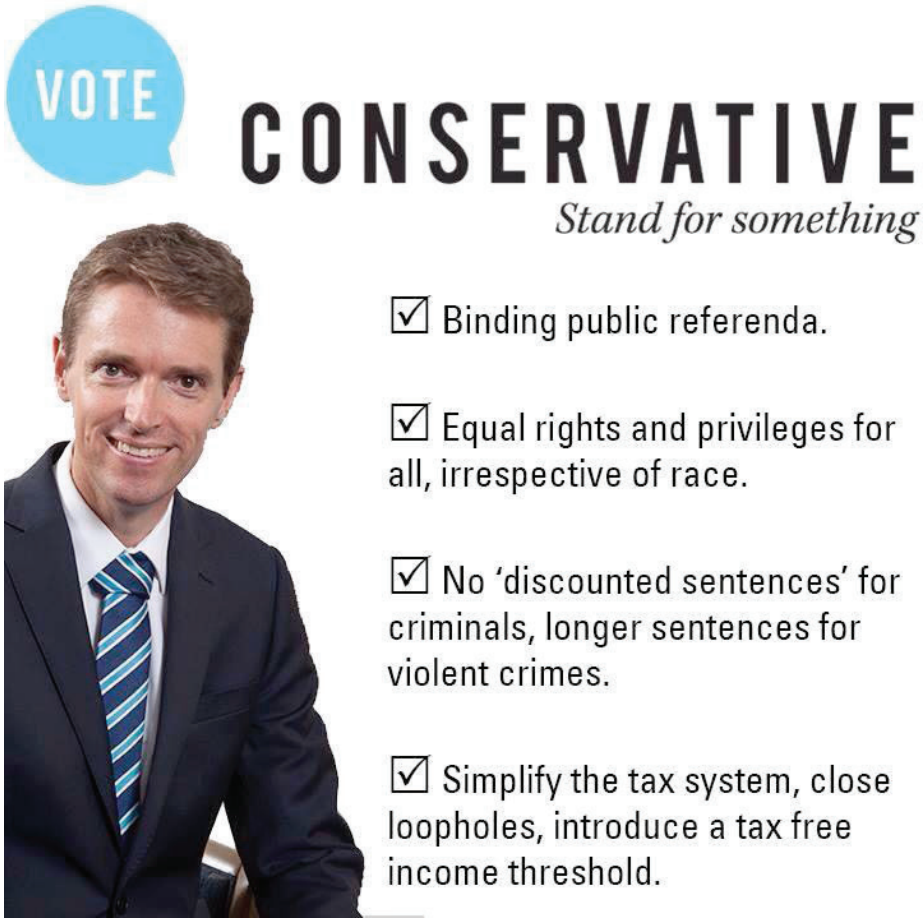
He cited as an example a law he'd repeal - the requirement for Auckland Council's unitary plan to pay "special significance" to Māori spirituality.

"How many people believe in Māori spirituality?" he said.

He questioned why councils and others seeking resource consent had to alter plans because someone had said there was a taniwha in the way. "I've met very few people who say ‘Colin, please go to Parliament and protect the taniwha'."

Colin Craig[257]

[256] Jamie Whyte (2014) *Race has no place in the law*
[257] Mathew Grocott (2014) *Taniwha low on Craig's list* (5 September 2014, Manawatu Standard)



Conservative Party[258]

"It quite clearly gives Māori the same rights as all New Zealanders and promises no racial privilege or partnership. For that reason ACT opposes all legislation which gives a different legal status to Māori. This includes the Electoral Act and which provides for separate Māori parliamentary seats.

ACT will: Abolish all racial political privileges including the Iwi consultation requirement in the RMA, reserved parliamentary or local authority seats and official appointments for reasons other than ability to do the job"

ACT Party[259]

[258] Conservative Party (2014) *Conservative: stand for something* (2014, Conservative Party election advertisement)
[259] ACT Party (2014) *Treaty of Waitangi policy*

Marginalised discourse B on privilege

Marginalised discourse B had limited focus on privilege, in particular (and in contrast to marginalised discourse A) highlighting the existence of Pākehā or colonial privilege within Aotearoa. Notably, this privilege was identified by an ACT candidate who resigned from the party in response to the speech in which ACT Party leader Jamie Whyte made a number of the comments above. While there is ample literature addressing the role Pākehā privilege plays in perpetuating colonial power structures, this was addressed by neither the Green Party nor the MANA Movement who have in other themes in the discourse on Treaty settlements identified in this thesis been active in identifying other barriers to decolonisation.

Mr McCallum said the speech lacked any sort of calculation and sympathy for race relations in New Zealand.

He said the so-called privileges for Māori Jamie Whyte had described were, in fact, legal rights.

Mr McCallum said that if those rights were taken away, he as a Pākehā male would still have privileges, and he saw something wrong with that picture.

Guy McCallum[260]

Analysis

'Māori privilege' is identified as a key area through which Māori are attacked by the colonial hegemony and media in order to subsume them into a dominant national identity based on Pākehā and colonial norms.[261] This rhetoric from within marginalised discourse A can be seen as constructing Māori as a threat to that national identity and as an affront to the values of Western democracy, favouring Māori above others in a system that is often compared to apartheid.[262] Where the rhetoric acknowledges that there are disparities between Māori and non-Māori to be addressed, it goes on to identify that "legal privilege" is

[260] Radio New Zealand (2014) *ACT candidate protests, quits party* (6 August 2014, Radio New Zealand)
[261] Barnes et al (2012)
[262] McCreanor (2009)

not an appropriate or effective response. The question of colonial privilege perpetuating these inequalities and disparities is not addressed.[263]

This privilege is also seen in the rhetoric from marginalised discourse A on the value and interpretation of the Treaty of Waitangi: this is positioned as a document that guarantees Crown sovereignty, British-derived rule of law and egalitarian foundational principles without any interrogation of the role of colonial privilege in allowing marginalised discourse A to define the role of the Treaty without regard to Māori as the partner to this agreement.[264] "This pattern is underpinned by assumptions about the neutrality of Pākehā judgement" and reinforced by the notion of a single national identity where Māori are either for (subsumed) or against New Zealand.[265] That privilege to create a national identity in the way we see in New Zealand is also a fundamental reflection of the power which rests with the colonial hegemony, as is the privilege that is inherent in being able to re-centre group identity and rights as is discussed in the previous section.[266]

It is the lack of challenge to that institutional, colonial and Pākehā privilege that ensures the perpetuation of Treaty settlements as a tool of entrenching colonialism in Aotearoa. Without challenge to the power to represent common sense, create legitimacy in political and social constructions and to structure identity, existing patterns of colonisation for Māori will not be changed.[267]

The impact of the rhetoric from the 2014 election period on Treaty settlements is unclear – while this rhetoric has emerged strongly in the 2014 election from marginalised discourse A, it is important again to evaluate the political reality in which that rhetoric sits, and what makes the discourse marginalised. Rather than looking to the rhetoric from the ACT and Conservative parties on privilege, it is important to look to the lack of rhetoric from the dominant discourse and marginalised discourse B and see that without a challenge from other of these discourses, then entrenched and assumed patterns of colonised Pākehā privilege will remain. While this silence does not necessarily imply agreement, without an alternate position put forward from another political perspective, discourse which is

[263] Ibid
[264] Ibid
[265] Ibid pp18
[266] Barker and Galasinski (2001) and Jackson (1994)
[267] Barker and Galasinski (2001)

colonising will by default set the tone of the national conversation around settlements and decolonisation. Where this is the environment in which Treaty settlements or any Crown engagement of Māori aspirations for rangatiratanga will operate, the decolonising effect of those policies will be inevitably be limited by the perpetuation of colonially established privilege.

Rewards for good behaviour – discourse on 'willing and able' iwi

One of the final rhetoric themes on settlements from the 2014 election, and another theme on which little was said across the fields of discourse discussed here, is that of 'willing and able' iwi. This theme was only addressed by the National Party within the dominant discourse, and by neither of the marginalised discourses. However, as mentioned in the introduction to this chapter, the political reality which is the background to these discourses means that as it is again the National Party who are in government in New Zealand, the impact of this discourse is likely to be widespread throughout the Treaty relationship.

The discourse on 'willing and able' iwi should also be viewed in conjunction with the discourses on the post-settlement world: the intention of both parties within the dominant discourse to move to positive Treaty relationships following settlement implies that those who are neither 'willing' nor 'able', or who the Crown directed process has excluded, may be left outside the fold. This active construction of a new Treaty partner by the Crown in a new post-settlement phase of the Treaty relationship has the potential to derail decolonisation in Aotearoa and Māori aspirations for self-determination.

Dominant discourse

This theme was only addressed by one perspective from within the dominant discourse, and is aligned to the current discourse emerging from the Office of Treaty Settlements on which iwi can be engaged in Treaty settlements prior to a 2017 deadline. While this rhetoric was limited in its utilisation to only the National Party and National Party political figures, it is important to note that the National Party was elected for a third term of three years in the 2014 election. This term will see the government through to their proposed timeframe for the completion of historical Treaty settlements, so the impact of the 'willing and able' rhetoric should be seen as this discourse in action over the coming three years.

"Virtually all iwi willing and able to settle are engaged with the Crown, which is a huge achievement."

National Party[268]

Treaty Negotiations Minister Chris Finlayson said the target was "conservative". At current pace they would settle with all those "willing and able" by 2017.

Hon Christopher Finlayson[269]

"By 2017, all willing iwi should have deeds of settlement."

National Party[270]

Analysis

Rhetoric from the dominant discourse on willing and able iwi within the 2014 election period can be seen as contributing to the dichotomy of good and bad Māori as well as invariably contributing to the construction of a post-settlement world where the Crown has identified a preferred Treaty partner on the basis of those who accept settlement terms and fit within the Crown's preferred structures for Māori. [271] Sir Edward Durie describes those Māori who wish to participate in this process as needing to be prepared to jump through whatever hoops the Crown has set up in order to claim the resources needed to pursue self-determination, with those who will not jump through the hoops being placed at the back of the queue.[272] The following section goes one step further and suggests that those who do not jump through the hoops, or are not able to be part of the game, are not merely placed at the back of the queue but will be excluded from the Treaty relationship by the Crown altogether. The lack of a concrete definition for 'willing and able' is worrying in that in can be seen to be setting a moveable classification of Māori by the Crown that can and will be interpreted by the Crown as best suits its colonising agenda.[273]

[268] National Party (2014) *Māori Affairs policy*
[269] Michael Fox (2014) *Waitangi Tribunal sets 2020 target*
[270] National Party (2014) *Treaty of Waitangi Negotiations policy*
[271] Barnes et al (2012)
[272] Durie (2013) pp39
[273] Minister for Treaty of Waitangi Negotiations (2014) "Estimates Examination 2014/14, Additional Written Questions, Vote Treaty Negotiations" *Māori Affairs Select Committee* (12 June 2014)

Alfred and Jackson both describe those indigenous leaders who are prepared to work within the constructs of colonial power to achieve greater autonomy within those constructs as putting at risk the wider project of indigenous self-determination and decolonisation.[274] This places additional pressure on those who may be branded as 'bad Māori' who resist the Crown's settlement policy, terms and vision for a post-settlement world by pitting them against the 'good Māori' who are willing to engage on the terms that the Crown has presented and to accept the extension of colonial power structures.[275]

While this relates primarily to the 'willing' aspect of this discourse, the 'able' element equally as implications as far as excluding and structuring Māori identities. Those able iwi are not simply the ones who are prepared to engage with the Crown on the terms available, the 'good Māori', but the ones with whom the Crown is willing to engage. The following section discusses in greater length those Māori who the Crown is actively excluding and restructuring and what this means for them as the Treaty partner in the post-settlement world.

"… a positive Treaty partnership in the post-settlement era"[276] – discourses on the post-settlement world

In a thesis which has looked for the decolonising capability of Treaty settlements, signs of on-going colonisation in Aotearoa through the rhetoric of the 2014 election are of particular interest. The rhetoric emerging from the dominant discourse on the post-settlement world may justifiably be of concern to Māori around Aotearoa as well as non-Māori working towards decolonisation of the Crown-Māori relationship.

The focus of rhetoric from both Labour and National within the dominant discourse was on a future space where they envisage a positive Treaty relationship with Māori, the underlying implication being that this will be with the post-settlement governance entities which represent the interests of settled iwi. While there was no rhetoric from marginalised discourse A on the post-settlement world, marginalised discourse B engaged with the theme

[274] Fagan (2004) and Jackson (1994)
[275] McCreanor (2009)
[276] David Cunliffe (2014) *Labour will facilitate regional Māori economic development agencies*

through rhetoric from both the Green Party and MANA Movement on the ongoing transfer of resources and authority to Māori after settlement.

As discussed throughout this thesis, the existing Treaty settlement policy framework does not represent decolonisation in Aotearoa or the achievement of political justice for Māori. Should the rhetoric of the post-settlement world indicate the intention of the dominant discourse to have a relationship with Māori on the terms agreed through their full and final settlements, this presents a real threat to Māori aspirations for self-determination. The post-settlement world promised by the dominant discourse is merely another chapter in the colonial reality of Aotearoa and the continued dispossession of Māori.

Dominant discourse on the post-settlement world

The post-settlement world was a key feature of rhetoric from the dominant discourse, indicative of the attitude that the end point of Treaty settlements is a new, positive Treaty relationship with an organised Māori Treaty partner who have moved from grievance mode to development. This attitude reflects the perpetuation of colonialism that we have seen throughout multiple fields of discourse in the 2014 election from within the dominant discourse when it comes to settlements.

"Labour is committed to working towards a positive Treaty partnership in the post-settlement era that supports Iwi, Hapū and Whānau to determine their aims, aspirations and success."

David Cunliffe[277]

"Post Treaty settlements

The increased number of Treaty Settlement tribes has changed the way in which Māori participate in the political, economic, cultural, social and environmental aspects of New Zealand society. Iwi have become significant contributors to the economic productivity of our nation and this is an emerging landscape to cultivate new partnerships with the Crown.

Labour will:

[277] Ibid

work in partnership with hapū and iwi to develop relevant Governance frameworks that recognise the unique collective feature of tribal wealth and resources

consider the active partnership opportunities that can be forged with iwi on projects of national significance

work with hapū, iwi and Māori to quantify the contribution of its economy on real growth and productivity predictors that inform its economic policy

work in partnership with Māori to develop a unique export trade window that platforms industry participation in niche markets

consider Māori business and services equally in the tendering and procurement of services in its regional economic growth initiatives."

Labour Party[278]

"we can't return all that land or undo all the tragedies that happened but we can restore an honourable relationship between the Treaty partners and a government that I lead will continue to do that with vigour"

David Cunliffe[279]

"Set up a post settlement office to ensure the Crown keeps its commitments and Treaty settlements are final.

Working with iwi across government to ensure the benefits of settlement are enjoyed by all."

National Party[280]

"National will ensure Māori institutions are fit-for-purpose in the 21st century as we move forward into a post settlement environment."

National Party[281]

[278] Labour Party (2014) *Māori Development policy*
[279] David Cunliffe (2014) *Interview with David Cunliffe*
[280] National Party (2014) *Treaty of Waitangi Negotiations policy*
[281] National Party (2014) *Māori Affairs policy*

"National recognises the importance of settling Treaty of Waitangi claims in a fair and durable way," Treaty Negotiations and Māori Affairs Spokesman Christopher Finlayson says. "Settlements not only provide iwi with an economic base to build on, but also enable the resolution of historical grievances, which is good for iwi and good for New Zealand."

Hon Christopher Finlayson[282]

"We will also review the Office of Treaty Settlements and the Post Settlement Commitments unit to ensure they are meeting expectations of iwi and the Crown."

Hon Te Ururoa Flavell[283]

Marginalised discourse B on the post-settlement world

References to the post-settlement world from within marginalised discourse B were limited to rhetoric on what the Crown's obligations in that world look like, from ensuring that further grievances are not created, to ensuring that decolonisation continues beyond Treaty settlements being signed. The construction of what that world looks like and who occupies it was not addressed from within marginalised discourse B.

Māori Party candidate Chris McKenzie says the Government must compensate tribes for the devaluation of their assets under their Treaty settlements.

"The Māori Party absolutely agrees that cheap foreign labour must be abandoned and vessels operating in New Zealand waters should abide by our health, safety and employment laws. But this is a double edged sword. As a consequence the value of their fishing stock granted under the Treaty of Waitangi Fisheries Settlement will now be vastly reduced. What compensation will the tribes receive for the devaluation of their fishing stocks?"

"The same situation has been created for those tribes with forestry assets gained through the treaty settlements process. Tribes are continuing to lose money on their forestry settlements due to the influx of foreign carbon credits allowed by the government which eats away at the redress provided. Some tribes are facing multi-million dollar losses by rules

[282] Christopher Finlayson (2014) *Treaty and Māori Affairs Policies Released*
[283] Māori Party (2014) *Māori Party will overhaul the justice system and dis-establish the Independent Police Conduct Authority* (11 September 2014, Māori Party press release)

imposed on them overnight by successive governments that erode the good faith that the settlements were negotiated in."

My own tribe, Raukawa, negotiated carbon credits worth $23.00 each and are actively involved in mitigating carbon emissions. But these credits are now only worth around $3.00 due to crown actions."

"We must not create new treaty grievances by ignoring losses that iwi are experiencing in the fishing and forestry industries. That is not a partnership, that was not what Te Tai Hauāuru iwi signed up to and that is definitely not in line with the principles of the Treaty of Waitangi," says Mr McKenzie.

Chris McKenzie[284]

"Increase the value of settlements to iwi and hapū by introducing a graduated system of settlement rather than a one-off settlement package. This would replace the current "full-and-final" settlement system and would enable the Crown to justly settle claims over time.

Advocate for constitutional transformation

Begin a process to settle the way in which political and legal power is structured in Aotearoa New Zealand. Settlement must include meaningful constitutional transformation."

MANA Movement[285]

Analysis

Amongst the range of rhetoric in the 2014 election period which denotes Treaty settlements as another tool in the embedding patterns of colonial dominance and the further dispossession of Māori, the rhetoric on the post-settlement world from within the dominant discourse is of particular concern. Whereas other rhetoric from the dominant discourse demonstrates the perpetuation of existing patterns of colonisation under the guise of Treaty settlements, rhetoric on the post-settlement world suggests a definite shift in who the Crown perceives as the Treaty partner and a rewriting of the terms on which it will engage that partner.

[284] Māori Party (2014) *Government must compensate iwi to maintain value of settlements* (2 August 2014, Māori Party press release)
[285] MANA Movement (2014) *Treaty Settlements policy*

Despite protestations from the Crown that settlements are not a constitutional matter and therefore should not include constitutional elements (key to ensuring settlements are a comprehensive method of decolonisation), the dominant discourse appears to have every intention of acting as if the post-settlement represents a new chapter in the constitutional relationship.[286] The post-settlement world itself can be viewed as the "new phase of colonialism" described by Taiaiake Alfred and reflects his observation that in Canada, indigenous leaders operating within the structures of the colonial state risk committing their people to submission within this new phase.[287]

The post-settlement world theme is influenced by all other themes in the discourse discussed in this chapter. The post-settlement world will reflect established conceptions of a national identity which subsumes Māori difference and positions as 'other' Māori claims for recognition and exercise of their rangatiratanga. This world denotes an acceptance of the limitations of the current settlement negotiations, where land may be returned and co-governance over natural resources established but the authority of iwi remains subject to Crown authority. Settled iwi become an extension of Crown authority into Māori communities in certain areas, and another function of the colonial economy in others. Māori rights remain set within the interpretation of colonial institutions. And all this happens on the 2017-2020 timeframe which the dominant discourse have predicted for the completion of all outstanding settlements of historical claims.

It is not just the features of the post-settlement world which should be of concern to those seeking decolonisation in the Crown-Māori relationship and a fair Treaty settlement process which contributes to this decolonisation: it is also the identities that populate it. As discussed in the section on willing and able iwi and in Chapter Four, the Crown appears to be constructing the Treaty partner through choosing which Māori they will engage with on settlements and excluding others.[288] What does the post-settlement and the new 'positive relationship' mean for those who will not accept the colonising impact of the settlement terms that the Crown is offering, those who the Crown will not recognise exist as iwi or

[286] Mason Durie (1998) *Te Mana, Te Kawanatanga: The Politics of Māori Self-Determination* (Auckland, Oxford University Press)
Bargh (2002)
[287] Alfred (2007)
[288] Michael Belgrave (2005) *Historical Frictions: Māori Claims and Reinvented Histories* (Auckland, Auckland University Press) and Barcham (2000)

Treaty partners in their own right, those who honour the commitment to the Treaty made by the tūpuna of their hapū as opposed to their iwi, and the huge proportion of Māori who do not affiliate to any tribal structure but value their Treaty rights just the same? While the post-settlement world is challenged to an extent by rhetoric from marginalised discourse B, particularly on what the features of what that world are, the way in which the Crown will choose its Treaty partner in the future was not challenged in any rhetoric throughout the 2014 election period.

Conclusion

Despite Treaty settlement not being a prominent feature per se of the 2014 general election in New Zealand, the identified rhetoric on settlements is useful in illustrating the state of discourse on colonisation or decolonisation in New Zealand politics. What is immediately clear is that settlements have become a largely uncontested space of political conversation, with their terms and intention acceptable to most political figures, and the context of which they are part remains as capable as ever of entrenching colonisation and continuing the dispossession of Māori.

Much of the rhetoric of the 2014 election was not new, either in politics or in the national media conversation, and merely reinforced existing understandings of how discourse in Aotearoa is used to perpetuate colonisation and maintain an unbalanced power dynamic between the Crown and Māori.[289]

What was new about the rhetoric of the 2014 election was the focus within the dominant discourse on 'willing and able' iwi and on the post-settlement world. And this rhetoric is of concern. Not only does it represent the extension of colonisation through creating a post-settlement environment where the existing tools of colonisation and dispossession which settlements utilise are cemented as part of the Crown-Māori relationship, it reflects an intention on the part of the dominant discourse to control who the Māori Treaty partner is and to limit the Treaty partnership into the future on that basis. It suggests that the Crown is attempting to define, shape and manipulate Māori in order to make them fit for purpose within the institutions of power of the colonial state.

[289] Barnes et al (2012) and McCreanor (2009)

However the election also saw decolonising rhetoric from within marginalised discourse B and despite the political futures of the parties and figures within that field of discourse being less certain than those of the dominant discourse, the focus of this discourse provides some hope that within the political context the chance for Treaty settlements to act as a tool for decolonisation in Aotearoa has not yet been defeated. The relative silence around this discourse in the election campaign (characterised by party policy releases as opposed to the press releases, public speeches and the inflammatory media interviews of the marginalised discourse A) must be encouragement to those who seek decolonisation from the settlement process to make their voice heard; without this voice it is inevitable that those who seek a continuation of the colonisation and dispossession of Māori will set the political agenda around settlements and Māori justice.

Chapter Seven: Conclusion

From the perspective of those seeking a healthier relationship between Māori and settler society, this thesis has told a reasonably glum story. This story has highlighted the myth of settler superiority ever-present in the colonial experience; the way in which that myth has seeped into the Treaty settlement process and its negotiated outcomes, controlled by the Crown and for Crown purposes; the way in which this myth informs, directs, constructs and extends a political discourse which will see the interests of the colonial state put at the centre of any Crown-Māori relationship. It is not a positive vision for a decolonised relationship where the perspectives of both Māori and the Crown have legitimacy and influence the exercise of power in their relevant spheres of particular influence.

The 2014 general election was, like many which have come before it, a showcase of how the dominant political establishment of New Zealand consider Māori rights and Māori political autonomy to be subservient to and exercised within the constructs of the colonial state. Like in other elections of the Treaty settlement era, anti-Māori discourse from a conservative and right wing front provided a vision to Pākehā New Zealanders of a world and way of life under siege from Māori privilege, and positioned the parties which make up the dominant discourse of national politics (Labour and National) as a bicultural middle-ground; allowing Māori restitution for past wrongs while preserving colonial hegemony and the settler privilege which comes with it.

Within the 2014 election there were also a number of other areas of Māori-specific politics where the dominant discourse, and anti-Māori marginalised discourse A, extended their colonising rhetoric; namely in policy discussion on the Māori electorates and on the current and future role of the Waitangi Tribunal. While not directly addressed by this thesis, and noting that both topics provide ample scope for future research, political rhetoric on these topics can be seen as a wider part of the colonising discourses which dominated policy debate on Treaty settlements. All of this becomes a part of a wider picture in which the Crown appears determined to use Treaty settlements as a mechanism to entrench colonial hegemony, continue the dispossession of Māori and uphold the status quo where the

Crown exercises political authority in New Zealand to which the Māori authorities established through settlements become a vehicle through which the Crown exercises that authority and achieves the political ends associated with the government of the day.

There is a more subtle story to this thesis though, echoed by the election rhetoric from within marginalised discourse B which perhaps provides some hope that within a party political environment overwhelmingly geared towards the protection of colonial power, there is an opportunity for the realisation of decolonisation through the completion of historic Treaty settlements. The rejection of the MANA Movement (likely influenced by its electoral arrangement with the Internet Party) both by the voters of Te Tai Tokerau as well as by the wider electorate, has certainly limited the efficacy of this voice in the 51st Parliament, though the electoral success of the Green Party of Aotearoa New Zealand (despite the limitations discussed in Chapter Six) certainly is an indication that decolonising political leadership, through Treaty settlements or other political means, is an achievable outcome in this electoral climate. If the Green Party wishes to play such a role in the decolonisation of Crown-Māori relations, it must continue to insist that its Treaty responsibilities are a non-negotiable part of its electoral identity and to address conflicts within its membership as to whether the Crown with a Green Party influence can step back from the need to exercise unilateral colonial power. The Green Party must also be honest to its constitutional commitment to Te Tiriti o Waitangi and not allow this to become an empty promise to lure Māori voters which is ultimately placed below Western conservation values and the authority of the Crown to determine environmental best practice in a hierarchy of policy priorities.

This theme of 'stepping back' can be applied more broadly to how both the Crown and Pākehā generally approach Treaty settlements and the relationship between Māori and the State in Aotearoa. It requires both the Crown and Pākehā to evaluate their privilege in New Zealand and to consider how their engagement with Māori is based on this privilege, and how their engagement may entrench it. For example, it requires a rejection of the idea discussed in Chapter Six that Māori claims for tino rangatiratanga and rights through settlement undermine a unified national identity and are therefore bad New Zealanders. The Crown must also withdraw from involving itself in or determining internal Māori matters, including the construction of Māori identity and making judgements about who the

Crown recognises as the Treaty partner.[290] These are matters which only Māori can address and the intervention in them by the Crown and Pākehā carries with it the implication that Māori are not capable of managing their own affairs, contributing to damaging myths of colonial superiority.[291] Fundamentally, like the decolonising methodology adopted throughout this thesis, the Crown and Pākehā must move their focus to how they support the on-going dispossession of Māori through entrenched patterns of colonial power instead of problematising Māori, and invest in dismantling those structures which exclude and marginalise Māori and privilege a Pākehā cultural paradigm. As a result, we could expect to see the tone of the national discussion about Treaty settlements and Māori rights move from one reflective of the need to protect the status quo of colonial privilege to one focussed on confronting that privilege and the resulting structural dispossession of Māori.

It is also important to note that the on-going colonisation of Māori through historical Treaty settlements is not yet a foregone conclusion: the Crown still has a number of years before it completes all of its intended settlements and has the chance to ensure that new relationships emerging from these are based on a deconstruction of the historical power disparity between the Crown and Māori. The door has also not closed for the Crown to engage with Māori who are excluded by the existing settlements process rather than continuing down a path which would ignore them in favour of a seemingly preferred Treaty partner. Lastly, Māori continue to resist the efforts of the Crown to retain as much control, and influence as possible, through Treaty settlements, whether this be in negotiating more favourable settlements, insisting that settlements be accepted on their terms or using their newly enhanced relationship with the Crown to push for the self-determination which was not available through settlement. Despite the limiting tone of the current political conversation about Treaty settlements in New Zealand, there remains an opportunity for Treaty settlements to become an avenue for justice for Māori if the Crown and the Pākehā population are able to decolonise their view of Māori and of their relationship with Māori and sit down at the negotiating table with a mind open to opportunity and critically aware of their own privilege.

[290] Barcham (2000)
[291] Bishop (1998)

This thesis has identified a number of concerning trends throughout the Treaty settlement process, and has identified the way in which dominant political discourses support and extend these; the apparent intention of the Crown to construct and control Māori identity, to limit Māori to these constructions, to enter into settlement negotiations only with these constructions and to pursue a post-settlement relationship with those constructions. I argue that this behaviour constitutes an entrenchment of colonial dominance on the part of the Crown and a limitation to a decolonised future relationship between the Crown and Māori. Moana Jackson notes that "when people assume they have the right and ability to define what is worthy and 'real' and then impose that upon someone else, while distorting or dismissing any contesting views, they are colonising at an especially primal level."[292] It is the existence of this "primal," fundamental colonisation throughout the Treaty settlements process and the colonial arrogance present in the vast majority of political discourse on settlements that present the greatest barrier to decolonisation.

Treaty settlements are not full and final. They cannot be full and final as long as the perpetuation and embedding of colonisation are an integral part of the settlements process and an integral part of the motivation for it. They cannot be full and final when they are agreed under duress and with heavy limitations on the ability of Māori to influence the negotiating position of the Crown. While this thesis has explored some elements of the process and of the discourse around it that provide hope for the decolonisation of the Crown-Māori relationship, alongside the decolonisation of the Crown and Pākehā themselves required as part of the renegotiation of the existent structures of colonial power, it can be concluded that historical Treaty of Waitangi settlements do not provide an answer to colonisation and if anything appear to be establishing new obstacles to be overcome by future generations.

[292] Jackson (2007) pp178.

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