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Are the Treaty Principles Needed in The Bay of Plenty?: A Critical Reexamination of the Fedarb (Bay of Plenty) Sheet of Te Tiriti o Waitangi

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Abstract

This study explores the nature of the Fedarb sheet of the Treaty of Waitangi. The author argues that it conflicts with the conventional argument for the necessity of Treaty principles. She argues that the Treaty principles are a device of settler/invader colonialism. The study is a type of Kaupapa Māori writing inquiry. In the case of the Fedarb sheet, if there was no English treaty sheet provided, then most traditional Treaty scholarship arguments become invalid. Rather than interpret Te Tiriti in light of the English Treaty, we must recognize that all the Fedarb signatories provided to the government was the ability to regulate land-use. Mataatua waka should not have been made a part of the settler colonial construction that was the results of settlers' inaccurate interpretations of the document. All this highlights the need to view the various sheets of The Treaty of Waitangi and/or Te Tiriti o Waitangi as not a single monolithic and homogenous document, but differentiated international treaties between sovereign hapū and the Crown of England. Each sheet should be seen as separate and different on a regional and whakapapa basis, in its own context.

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Keywords

Te Tiriti o Waitangi, Settler Colonialism, Biculturalism, Māori Politics, New Zealand Studies, Cultural Translation, white possessive

Are the Treaty Principles Needed in The Bay of Plenty?: A Critical Reexamination of the Fedarb (Bay of Plenty) Sheet of Te Tiriti o Waitangi

During the course of my University education in the areas of Indigenous Development, Economics, and Environmental Planning, I was taught that the Treaty of Waitangi is a positive instrument that provides us as Māori with rights. The curriculum insisted that the principles of the Treaty were (and still are) the necessary groundwork for a collective future. But are they? Or was the training I received in fact deeply settler/invader[1] colonial and political, not least for how it flattened all hapū and iwi—Indigenous social groups—into an imagined Māori race? Instead, I assert that the Treaties of Waitangi[2] must be reinterpreted with an orientation towards a regional or whakapapa (kinship) perspective. We should approach Treaty interpretation in a context-specific way, with attention to the language of particular copies, the circumstances of particular signings, and the perspectives of particular signatories, each with their own histories. Each Treaty sheet is a separate international treaty between each hapū that signed and the literal monarch of the United Kingdom.

These documents should not be treated as identical and homogenous or as the singular "Treaty of Waitangi," a phenomenon promoted by the white possessive government.[3] This usage erases hapū and iwi and reduces our existence to nothing. It treats the English language treaty as normative for no other reason than that the English treaty legitimizes the status quo and the white possessive government's ill-gotten power. However, history demands a more reasonable approach. Hapū are different clans within a loosely confederated Indigenous nation or iwi. They are sovereign.

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[1] This paper utilizes "settler/invader" as opposed to "settler" to describe those who settled in Aotearoa New Zealand post-European contact. This terminology expunges the myth that Indigenous lands were settled peacefully, instead engaging attitudes of acceptance and responsibility to history on the part of settler/invaders. See (Simon, 2023b) for further explanation.

[2] In my recent work in *Ethnic Studies Review*, I assert that what is commonly known as the "Treaty of Waitangi" must be seen as two distinct documents: the Treaty of Waitangi and Te Tiriti o Waitangi. They do not speak to each other, and the authoritative version is the one in Te Reo. The plural "Treaties of Waitangi" should be adopted to address these issues (Simon, 2023b). In this paper, these arguments are further extended: if the individual Treaty/Tiriti sheets are to be considered treaties in their own right, on a regional and/or whakapapa basis, this provides further support for the author's call to recognise the multiplicity of the Treaties of Waitangi. To support the aforementioned assertion by the author, the following quotation by Ani Mikaere (2011a) is key: "One of the greatest misconceptions currently plaguing Treaty jurisprudence [and its general interpretation in society] is the conviction that Te Tiriti and the Treaty bear some kind of relationship to one another, the common description of them as English and Māori texts of the one document illustrating the ultimate absurdity of pursuing such a view to its logical conclusion. This position is typically characterized by an irrational expectation that the two documents are capable of being 'read together' which, in turn, has led to reliance on the statutory device of the Treaty 'principles' as a means of resolving the 'tensions' between them. This misguided attempt to reconcile the irreconcilable has not only resulted in a mire of muddled thinking, it has also enabled the perpetration of a dangerous 'truth,' whereby Te Tiriti has been subordinated to the Treaty and one of our most significant historical documents, He Whakaputanga o te Rangatiratanga o Nu Tireni, the 1835 Declaration of Independence, has been marginalized." Additionally, when society enacts and entrenches terms such as "the Treaty" as singular, it perpetuates the colonial narrative that the English Treaty is the legal version. Refer to Mikaere, A. (2011).

[3] Aileen Moreton-Robinson's (2015) "The White Possessive" is the key theory platform underpinning this essay. The language utilized here is a reflection of Moreton-Robinson's work. For more information refer to the "Mana Motuhake, White Patriarchal Sovereignty, and The White Possessive Doctrine" section of this article

This study explores the historical context of the Fedarb (Bay of Plenty) sheet of Te Tiriti and argues that it directly conflicts with the conventional argument for the necessity of the Treaty principles. I start by providing a brief history around the signings of The Treaties of Waitangi. While academic literature and government policy often speaks of "The Treaty" in the singular, the English and Te Reo Māori "versions" differ substantially, were signed by different hapū and iwi, and have been academically and legally[4] recognized as separate "Treaties" (see for example Mikaere, 2011). In this study I extend that argument, urging separate treatment not only of the two Treaty "versions", but also of the several Treaty sheets. I particularly focus on the histories of the Waikato-Manukau sheet of The Treaty of Waitangi[5] and the Fedarb (or Bay of Plenty) sheet of Te Tiriti o Waitangi. I examine the current relevant literature on Te Tiriti, Treaty principles, and mana motuhake (Indigenous sovereignty).

Moreton-Robinson's "White Possessive Doctrine" and Mead's "Difference in Approaches" supply a theoretical context. I conclude with a discussion emphasizing the importance of the Fedarb (Bay of Plenty) sheet of Te Tiriti o Waitangi to current debates around The Treaty, Te Tiriti, and the Treaty principles.

I make three arguments for discarding the Treaty principles.[6] First, in the context of Mataatua waka in the Bay of Plenty-Waiariki region, the principles of the Treaty should not apply, because the main language in Aotearoa New Zealand was Te Reo Māori in 1840, and only the Te Reo version, Te Tiriti o Waitangi ("Te Tiriti"), was presented to the rangatira (leaders) of the Mataatua iwi in the eastern Bay of Plenty. Second, the Treaty principles must be seen as a device of settler/invader colonialism created to further the white possessive government's power. Third, Māori retain—could not have, and did not, sign away—their mana motuhake.

In this article, I argue that the Treaty principles are a device of the white possessive government that function to distract from the legally binding text of The Treaties of Waitangi, Te Tiriti. This allows the government to justify its historical violations through a fuzzy interpretation of language under the guise of reconciling Te Tiriti with the English-language Treaty, which, as Mikaere (2011) argues, are in fact unreconcilable. While this paper is a critique of Treaty principles as a settler/invader colonial device, it is intended to be constructive, as a call back to the legally authoritative text of Te Tiriti and to faithful legal interpretation and implementation of this text. It is also an acknowledgement that previously much of

[4] In this paper, unless otherwise stated, "legal" pertains to whether something complies with tikanga, the first law of Aotearoa New Zealand (Mikaere, 2011), rather than whether it complies with settler/invader colonial law.

[5] The Waikato-Manukau version is the only surviving treaty sheet in English. This does not include the so-called "Littlewood Treaty," sometimes identified as the lost final English draft of the Treaty (See Doutré, 2005). Phil Parkinson (2004) and Donald Loveridge (2006) have convincingly shown that this document (discovered in 1989 and now in Archives New Zealand) is an English back translation of the Māori text, although the translation is influenced by the translator's knowledge of the text of the English draft.

[6] This perspective fails to acknowledge the recent and ongoing policy developments and changes implemented by the coalition government in 2023-2024, particularly those associated with the New Zealand ACT Party. The existing Treaty principles and the proposed policy and legislative reforms advocated by the ACT Party do not align with mana motuhake. Moreover, my critique of the Treaty principles does not imply my endorsement of policy reforms, such as a referendum on the Treaty principles or their redefinition of these principles based on the ideological foundations of the ACT Party and found in the current Principles of the Treaty of Waitangi Bill (2024). For additional context, refer to O'Sullivan (2024), Maxwell (2023), OneNews (2024).

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the interpretation of Te Tiriti has been significantly geared towards a Taitokerau (Northland iwi) narrative. I am steadfast in the belief that more regional viewpoints, like this case study, are required to truly be faithful in the understanding of Te Tiriti. Within this article we will specifically explore the Waikato-Manukau copy of The Treaty and the Fedarb (or Mataatua) sheet of Te Tiriti. The next section will discuss Mahi Tuhituhi as Post-Qualitative Writing Inquiry methodology.

Mahi Tuhituhi

This study represents a type of Kaupapa Māori writing inquiry called Mahi Tuhituhi. Mahi Tuhituhi, based on the work of Georgina Stewart (2021) and the Author (Simon, 2022), is a (post)qualitative Kaupapa Māori research methodology that uses academic writing as a medium for advancing critical Māori principles and political objectives. Mahi Tuhituhi uses the written word to speak back to the Eurocentric "archive" that underpins the entire academy (Stewart, 2021).

According to Stewart (2021), writing enables Māori academics to contest established academic norms. Kaupapa Māori provides a framework for addressing ethical issues in writing and research. Key principles include (1) a commitment to reflexively interrogate one's own presuppositions, ideas, and judgements, alongside empirical qualitative research methods; and (2) the elevation and exercise of Māori conceptions of community, ethics, intellectual deliberation, and sovereignty within academia to decenter Western epistemic norms, reclaim Māori representation in the public sphere, and restore epistemic space for Māori (Stewart, 2021 as cited in Simon, 2022).

Empirical qualitative research is a dominant approach in Māori scholarship within the social sciences. The term "conducting interviews" is increasingly synonymous with "conducting research," indicating a prevailing trend of scientism that emphasises "empirical data" and "technique" (Pipi et al., 2004; Sorell, 1991; Stewart, 2021). Māori research emphasises the incorporation of Māori perspectives and favours direct engagement methods, such as "kanohi-ki-te-kanohi" (face to face) or "kanohi kitea" (a seen face) (Pipi et al., 2004). Kaupapa Māori research rectifies this imbalance by emphasising the activity, experience, or process involved in Māori textual production. Simon (2022) The aim is to identify occurrences in written discourse where inflexible or inadequately adaptable Western academic research standards subtly affect decision-making, framed as "methodology." This shifts the Indigenous individual from being a passive subject of external research to an active, analytical, and collaborative participant in academic discourse (Stewart 2021; Simon, 2022).

Consequently, it is essential to critically examine Kaupapa Māori research, encompassing aspects from topic selection to methodological and aesthetic choices. Kaupapa Māori research necessitates self-reflection (Stewart, 2021). Stewart (2021) asserts that I should articulate my perspectives from my Māori identity; however, my arguments are applicable to Indigenous research in a wider context. Utilising English, Te Reo Māori, or a combination of both serves as an effective means for analysing Māori subjectivities and political aims (pp. 41–42). The methodology utilised in this article aligns with

these principles. Rather than offering a detailed explanation of the subsequent reflections are informed by Kaupapa Māori theory and methods, as previously clarified by Stewart (Simon, 2023b). [7]

Mahi Tuhituhi offers a critique-based strategy to responsive Indigenous research. Māori voices ignored or distorted by Eurocentric research methods or policy directives must be heard. (Simon, 2022) This endeavor cannot claim a radical political orientation until Māori ethical norms, research designs, and spiritual or philosophical orientations are properly integrated into writing and knowledge production. If uri (descendants) reflect our tūpuna (ancestors), then our writing reveals their stories, realities, whakaaro (thoughts and teachings), pūmanawa (traits), feelings, mātauranga (traditional knowledge), stories, and preferences. Without this, Kaupapa Māori research risks "domestication" (G. Smith, 2012).

Kaupapa Māori research is political; hence, Mahi Tuhituhi allows reflective analysis of Indigenous politics and policy. This reflexive (post)qualitative inquiry questions collective political and intellectual claims to truth and power (Stewart, 2021). With this explanation of Mahi Tuhituhi, I will proceed to provide an understanding of He Whakaputanga and Te Tiriti o Waitangi.

He Whakaputanga and Te Tiriti o Waitangi

The 1835 Declaration of Independence of the United Tribes of New Zealand or He Whakaputanga o te Rangatiratanga o Nu Tireni ("He Whakaputanga") preceded the 6 February 1840 signing of Te Tiriti o Waitangi between British Governor William Hobson and a number of representatives of several northern hapū (Orange, 1988; Walker, 2004 as cited in Chan & Ritchie, 2020). In He Whakaputanga, the rangatira had asked the King (William IV) to control his lawless subjects residing in their territories and prevent their lawlessness, teach them to respect and uphold the mana (full authority) and the rangatiratanga (chieftainship) of the hapū whose lands they were living on, and allow Māori and Pākehā (white settlers) to live in peace (Mutu, 2019a). Britain gazetted He Whakaputanga as a proclamation of sovereign independence that gave Māori the political capacity to negotiate a treaty (Orange, 2015, as cited in O'Sullivan et al., 2021). According to Sadler (Te Kawariki and Network Waitangi, 2012), He Whakaputanga aids our understanding of Māori political authority under Te Tiriti. By signing He Whakaputanga, the British acknowledged the mana or sovereignty of signatory hapū in the form of "rangatiratanga" over their own rohe (territory), which was held in Te Whakaminenga o ngā Hapū. [8]

The New Zealand white possessive state arose from Te Tiriti o Waitangi (in Māori) and the Treaty of Waitangi (in English), negotiated between the British Crown and certain hapū in 1840 (O'Sullivan, 2021). Te Tiriti was signed four and a half years after He Whakaputanga and over 500 rangatira signed. Te Tiriti and The Treaty are considered separate treaties, but the doctrine of *contra proferentem* justifies privileging Te Tiriti as the legally binding version (Simon, 2016; also see Hayward, 2018; Mikaere, 2011).

[7] For more information on Kaupapa Māori principles and theory, see G. Smith (2003) and L. T. Smith (2012, 2015).
[8] Te Whakaminenga o ngā Hapū was the legislative body that was created by the signing of He Whakaputanga. It was comprised of the collective of rangatira (leaders) that signed the document. Effectively, He Whakaputanga created an Indigenous state.

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As Margaret Mutu (2019a) notes, Te Tiriti was meant to augment Britain's control over its own citizens. By 1840, the persistent lawlessness of British immigrants led the rangatira (leaders) to seek a new arrangement with the Crown (see also Came and Tudor 2016; Barrett and Connolly-Stone, 1998).

William Hobson drafted the Treaty of Waitangi and Te Tiriti o Waitangi was translated by missionary Henry Williams and his son Edward (Orange, 2015). The two versions differ because these writers were neither lawyers nor translators (Ross, 1972, cited in Bell, 2009).

Te Tiriti affirmed the sovereignty and authority held by Māori over their lands (Waitangi Tribunal, 2014). In contrast, the English version ceded sovereignty to the British Crown, while the Te Reo version did not (Te Kawariki and Network Waitangi, 2012). The agreement's nature has been constantly contested; the Māori and English language versions divide political authority differently between Māori and the Crown (O'Sullivan, et al., 2021).

According to the Waitangi Tribunal (n.d.) in a general guide to the meaning of the Treaty texts, the preamble to the English text states that the British intentions were to:

- protect Māori interests from the encroaching British settlement
- provide for British settlement
- establish a government to maintain peace and order.

The Māori text includes similar statements but has a different emphasis because it suggests that the Queen's main promises to Māori were to secure the rangatiratanga of iwi and hapū and secure Māori land.[9]

In the Māori text of article 1, Māori gave the British "kawanatanga," the right of governance, whereas in the English text, Māori ceded "sovereignty." One of the problems that faced the original drafters of the te reo Māori text of the treaty was that "sovereignty" had no direct equivalent in the context of Māori society. Rangatira (chiefs) exercised full authority ("mana") over land and resources on behalf of the wider community. The term used in the te reo Māori text, "kāwanatanga," was a transliteration of the word "governance," which was then in current use. Māori understanding of this word came from familiar use in the New Testament of the Bible (when referring to the likes of Pontius Pilate), and from their knowledge of the role of the Governor of New South Wales, whom they referred to as "Kāwana." (Waitangi Tribunal, n.d.)

The Māori text of article 2 uses the word "rangatiratanga" in promising to uphold the authority that iwi had always had over their lands, resources and taonga. This choice of wording emphasizes status and

[9] These understandings stem in academic literature from the journal article, "Te Tiriti o Waitangi: Text and Translations" by historian Ruth Ross (1972). This article was the first to outline the significant difference between The Treaties of Waitangi (see Attwood, 2023; Bell, 2009). However, alt/far right hate groups in contemporary times use these initial understandings by Ross to push misinformation against what they term as being the "Māorification" of Aotearoa New Zealand, where scholars are termed "Collaborators" and histographobia is commonplace (see Simon, 2021).

authority. In the English text, the Queen guaranteed to Māori the undisturbed possession of their properties, including their lands, forests, and fisheries, for as long as they wished to retain them. This text emphasizes property and ownership rights.

In the Māori text the chiefs agree to sell land to the Queen at agreed prices. By contrast, in the English text this was called the "exclusive right of preemption," which meant only the Crown could purchase land from Māori. Both scholars and the Waitangi Tribunal have concluded Māori and the Crown held different interpretations of this provision (Waitangi Tribunal, n.d.).

Under Article 3, Māori were assured of the same rights and privileges as British subjects. Oral in nature, the fourth article proclaimed the right to religious liberty and customary law (Came and Tudor, 2016).[10]

Mutu (2019a) description of the treaty is one of peace and friendship that acknowledged sovereign authority of the rangatira over their territory and exempted them from accountability regarding uncontrolled British immigration. Mutu's description pertains specifically to the iwi of Taitokerau (Northland).[11] Popular and political discourse frequently presupposes that the Māori signed Te Tiriti as a unified Indigenous group; however, it was distinctly and verifiably signed on a hapū-by-hapū basis. Furthermore, not all hapū or iwi signed (Simon, 2022; also see Simon, 2016; Mahuika, 2019). Poutini Ngāi Tahu, Te Arawa, Tūwharetoa, and Waikato-Tainui did not sign, thereby maintaining their mana motuhake over their rohe (Simon, 2022). Numerous iwi, especially those located in the Central North Island, had minimal, if any, interaction with non-Māori in 1840 (Simon, 2011, 2016). The notion that Te Tiriti aimed to establish or enhance relationships between Māori and the Crown is consequently misleading and alienating to non-signatory hapū and iwi. This narrative exemplifies self-serving

[10] It should be note that the Kawharu translation of Te Tiriti denotes that the word used for subjects it meaning in Te Reo is "citizenship". Therefore, citizenship is what was offered to signatory hapū (see Kawharu, 2013; Waitangi Tribunal, 2016).

[11] This is because the Waitangi copy of Te Tiriti has to be seen in the light of He Whakaputanga and the history of Taitokerau iwi, in particular Ngāpuhi. This narrative, which is specific to the Taitokerau context, dominates within the literature to the extent that it has become a de facto Māori narrative on The Treaties of Waitangi. This, despite the major contextual differences between the signings of the Waitangi copy and those of other copies, not to mention the perspectives of non-signatory hapū and iwi. One key contextual difference is that Te Tiriti, as well as The Treaty, specifically refer to those rangatira who signed He Whakaputanga, because the British had recognised the sovereignty and construction of a sovereign state declared through He Whakaputanga prior to Te Tiriti. This is a major difference between the Waitangi copy and the Fedarb copy (and several other copies) of Te Tiriti. Those signatories to the Fedarb copy are not signatories of He Whakaputanga. They are "separate and independent Chiefs who have not become members of the Confederation" (Article 1, Treaty). Due to this and other differences, the Taitokerau narrative cannot be applied uncritically across all hapū and iwi. This narrative is not just peculiar to Margaret Mutu; it can be found throughout the scholarship of Mānuka Hēnare, Dominic O'Sullivan, Tui O'Sullivan, Ella Henry, Hone Sadler, Rawiri Taonui, and others. These scholars assert a Taitokerau-centric view because that is where they were raised and had access; they are from these iwi. When properly contextualized, this narrative provides a valuable perspective on how the Treaties of Waitangi are understood in one part of Aotearoa New Zealand. However, this narrative holds an undue influence over pan-Māori understandings of The Treaties of Waitangi at present, to the extent that the colonial histories of other hapū and iwi are ignored. This prevents deeper, nuanced conversations and learnings about Te Tiriti and mana motuhake. As an unintended consequence, the Taitokerau perspective suits a government narrative of "all Māori signed Te Tiriti," used by the government to uphold its claim to sovereignty over the whole of Aotearoa New Zealand.

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mythmaking by the government, reinforcing institutional structures that sustain and perpetuate white possession.

Regardless, as Thomas and Nikora (1992) observe, "the present reality is that, having been subjected to the colonizing processes of British settlers, Māori people cannot exercise their sovereign rights over Aotearoa" (p. 2). I have commented elsewhere (Simon, 2016, 2022) that mana motuhake (Indigenous sovereignty) requires affirmation, which is impossible under conditions wherein consent was either questionable, such as those surrounding the signing of the Waikato-Manukau sheet of The Treaty, or altogether absent as in the case of non-signatory hapū and iwi.

Prior to the dispatch of several signed copies of The Treaties to Britain on 21 May 1840, Governor Hobson issued two proclamations that asserted British sovereignty (Stokes, 1992). One contended that, according to the Treaty, the Queen of Great Britain and Ireland obtained absolute and unreserved sovereignty over Te Ika-a-Māui (North Island). The British representatives, through this declaration, established paternalistic rights over both the signatory and non-signatory hapū and iwi of Te Ika-a-Māui. The other proclamation asserted Her Majesty's sovereign rights over Te Wai Pounamu and Rakiura (South and Stewart Islands) based on a right of discovery, declaring terra nullius on this region following the signing of Te Tiriti, despite the subsequent acquisition of several signatures from southern iwi. This situation results in non-signatory hapū and iwi, who neither signed Te Tiriti nor were conquered, existing in a political, moral, and legal vacuum (Simon 2016, p. 94; also see Stokes 1992, p. 176). According to Ngāti Whakaue legal scholar Claire Charters (2019), these legal proclamations asserting sovereignty are deemed "illegitimate."

The Treaty of Waitangi became the single legal basis upon which the British Crown recognized certain rights of the various iwi who occupied the islands of Aotearoa New Zealand. The Treaty of Waitangi Act 1975, establishing an institution called the Waitangi Tribunal, recognizes the equal validity of the English Treaty of Waitangi and the Te Reo Te Tiriti o Waitangi as constitutional documents (Stokes 1992, 176).

Mutu (2011) contests that viewpoint. From a Taitokerau perspective, she contends that Te Tiriti, rather than the English-language document, was regarded as the official treaty by the rangatira who signed it and was the sole one comprehended by the rangatira. Te Tiriti, as presented to the rangatira at Waitangi, affirmed the sovereignty of the rangatira and committed to resolving issues arising from the lawlessness of Pākehā immigrants. (Mutu, 2011; also refer to Mutu, 2018, 2019a; Hayward, 2018; Simon 2016, 2022; Mikaere, 2011). Mutu, in her summary on the Treaty text, comments:

> Te Tiriti clearly states the Queen of England's and the rangatira's aims . . . the Queen of England wanted peace and order between her subjects and the Māori people, and to do that, she needed to manage her own lawless Pākehā subjects residing throughout the land and those who would come in the future. She used kāwanatanga to request permission from Te Whakaminenga and other rangatira. Wiremu Hopihana acted as her kāwana [sic] (Mutu, 2011a, 35).

Mutu adds that if the rangatira agreed, the Queen would respect and uphold their tino rangatiratanga (self-determination) and thus their mana, their ultimate power and authority over all their territories and people (Mutu 2011a, 35).

In agreement with Mutu, "Te Paparahi o Te Raki," the 2014 Waitangi Tribunal report, concludes that Māori signatories to Te Tiriti o Waitangi did not relinquish mana motuhake (Indigenous sovereignty) to the Crown (also see Simon, 2016; Te Kawariki and Waitangi Network, 2012; Waitangi Tribunal, 2014). This finding undermines the entire legal and philosophical foundation of Aotearoa New Zealand's white possesive state. It refutes pre-2014 interpretations that held Māori were only entitled to tino rangatiratanga limited by the existence of, and based on rights guaranteed by, a sovereign and legitimate New Zealand government (see Maaka & Fleras, 2005).

Since 1840, Māori and the Crown have struggled over Treaty interpretation and enforcement. The Land Wars of 1845–1872 were fueled by Pākehā migration and desire for land and power (Belich, 1986). Land confiscations followed the wars, and 19th- and 20th-century land alienation was significant (Belich, 1986; O'Malley, 2016, 2019; Simon 2023a). New Zealand became a colonial state in 1852 when the British Parliament established a settler Parliament with unitary parliamentary sovereignty. The English Laws Act 1858 (retrospective to 1840) overruled Māori law and the New Zealand Settlements Act 1863 that permitted Crown confiscations of Māori land, disrupting Māori culture and society. The Treaty remained largely unknown until recently, variously understood by the colonizing power as a "simple nullity" and a "treaty of cession" (Williams, 2013; Walker, 2004; Tate, 2004; Oh, 2005). However, as observed by Oh (2005), multiple factors accelerated its climb from obscurity. Māori activism, Treaty settlements, Iwi development, and the Waitangi Tribunal have influenced the Treaty's place in society, such that modern New Zealanders argue about the Treaty's value, meaning, and significance. This alone should be sufficient reason for skepticism of the present-day need for Treaty principles; an agreement flagrantly flouted by one of its signatory parties for a century and a half cannot be suddenly invoked whenever it serves that party's interests.

Waikato-Manukau Sheet Copy of 'The Treaty of Waitangi'

We now turn to The Waikato-Manukau Sheet of 'The Treaty of Waitangi," which provides an illuminating point of comparison to The Fedarb Sheet. Te Reo preceded the English Treaty of Waitangi in sequence as well as in legal authority. Te Tiriti was signed by Governor Hobson, several English citizens, and some 43–46 rangatira on 6 February 1840.[12] Two to three months later, thirty-nine rangatira inscribed the English-language Treaty at Waikato-Manukau (Mikaere, 2011). Mutu (2011a) asks concerning this sheet, "Why were the rangatira asked to sign something in a foreign language they didn't understand?" Robert Maunsell, the missionary who collected signatures at Waikato, received one of Paihia's 200 printed copies of Te Tiriti on 17 February 1840 and may have used it to explain the Treaty in Māori (Mutu, 2011, 19; King, et al., 2009b). However, Claudia Orange notes that "there is no

[12] According to Orange (2015) Hobson had a stroke around the 1st of March 1840. This put planned treaty signings in doubt. To remedy this situation copies of the treaty text of both languages were made (p. 68-69). Most surviving ones are of Te Tiriti except one which is the Waikato-Manukau Treaty in English. This does not include the "Littlewood treaty" for reasons highlighted in footnote five of this article.

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record that any explanation of the [written] treaty [text] was given" (Orange, 2015, 79; Mikaere, 2011, 161–162). Mikaere further comments that "one signatory recalled some years later signed had done so "on missionary advice," convinced by Maunsell of Britain's benevolence and warned about the comparative evils of leaving themselves open to the advances of other European powers who might seek to establish a formal presence in Aotearoa" (Mikaere, 2011, 161–162).

O'Sullivan notes that rangatira who signed the English text read the Māori text and preferred verbal explanations over reading the document. *Contra proferentem*—the international law notion that treaties should be read in favor of the non-drafting party—should also guide our interpretations and arguments (Te Kawariki and Network Waitangi, 2012; Orange, 2015; O'Malley et al., 2013 as cited in O'Sullivan et al., 2021). The Waitangi Tribunal concluded that Te Tiriti was the "version of precedence" (Waitangi Tribunal, 2014 as cited in O'Sullivan et al., 2021).

During the Treaty signing period, Aotearoa New Zealand spoke Te Reo Māori. Thus, it is improbable that rangatira who signed The Treaty in the Waikato or at Manukau fully understood what the Treaty said. The idea that they would give up the mana of the Waikato hapū to a foreign monarch is unfathomable (Mikaere 2011; Blincoe 2016). Maunsell or Symonds[13] would not have compromised their goal by explaining the document's subtle differences from the Māori version. Under tikanga (Indigenous law and customs), the rangatira would have resisted any attempt to cede mana (Mikaere 2011, 162; Blincoe 2016).

Contrary to the conclusions of the Wi Parata judgement of 1877, which dismissed The Treaties of Waitangi as a "simple nullity" (Ruru, 2012; Williams, 2013; Tate, 2004), it can be argued that the Waikato-Manukau Treaty in English was effectively recognised as an official version by subsequent governments and officials during the nineteenth and early twentieth centuries.[14] The officials and governments involved adopted this stance not for legal reasons, but because it aligned with their interpretation, with aspects of it serving the colonial government's aim of establishing white patriarchal sovereignty. This copy predominated until the 1970s, when Pākehā New Zealanders were reminded of the existence of Te Tiriti. The preferred argument, contingent upon the government's positioning, ultimately yields a consistent outcome: the preservation of white patriarchal sovereignty.

Having interrogated the context surrounding The Waikato-Manukau Sheet and thus dispensed with the English-language Treaty, we now turn to the signing of The Fedarb (Bay of Plenty) Sheet of Te Tiriti o Waitangi to understand why so-called "Treaty principles," too, can have no significance for the modern context.

[13] It was William Symonds and James Hamlin (the translator) who organised for a signing of the Treaty of Waitangi on the Āwhitu Peninsula, where Apihai Te Kawau of Ngāti Whātua signed but several Waikato Tainui chiefs refused, including Pōtatau Te Wherowhero (see Orange, 2015).
[14] For example, Apirana Ngata's apologetic position justifying the Crown's acquisition of sovereignty through his reading of The Treaty. See Jones (2024).

The Fedarb (Bay of Plenty) Sheet of Te Tiriti o Waitangi

James Fedarb was 23 years old when he departed Paihia on a trading voyage. On 22 May 1840, he arrived in Tauranga where Rev. James Stack commissioned him to carry a copy of Te Tiriti o Waitangi, the Te Reo Māori copy, and gather signatures from rangatira around the Bay of Plenty (McCauley, 2018). During May–June 1840, Fedarb visited Ōpōtiki, Tōrere, Te Kaha, and Whakatāne collecting the signatures of 26 chiefs. Lieutenant-Governor William Hobson's signature on this sheet is forged (Ministry for Culture and Heritage, 2016; Orange 2015, 79; King, et al. 2009a).[15] Fedarb did not attempt to enter the interior of Mataatua waka (King, et al. 2009b).

Fedarb gave the copy to the printer William Colenso, for whom he had once worked, to pass on to Lieutenant Governor William Hobson. No one commented on the fact that Hobson's signature on the copy was forged by Rev. Stack when he made the copies at Tauranga (King et al. 2009a). For purposes of this analysis, it is extremely important to note that only Te Tiriti or the Te Reo Māori was ever presented to Mataatua rangatira (Ministry for Culture and Heritage, 2016; New Zealand and Great Britain, 1976; King et al., 2009a).

The Principles of the Treaty

Labour Party candidate Norman Kirk pledged during the 1972 election to "examine a practical means of legally acknowledging the principles" of the Treaty of Waitangi (The Law Association of New Zealand, 2023). The Waitangi Tribunal was established by the 1975 Treaty of Waitangi Act because of this assurance. The Act was passed in response to the Crown's purported violations of The Treaty of Waitangi and in an effort to ascertain The Treaty's intent and consequences (Law Association of New Zealand, 2023). The formation of the Waitangi Tribunal represented a momentous advancement in New Zealand's recognition and adherence to the principles outlined in the Act. The Waitangi Tribunal has jurisdiction to "investigate claims made by Māori who may have been prejudiced by acts or omissions by the Crown that are inconsistent with the principles of the Treaty of Waitangi" (s.6). The Tribunal may make findings and recommendations to the Crown as to how the Crown may address these grievances and reconcile with Māori (Carr, 2014).

In the absence of explicit definitions in the legislation, 'the principles' interpretation has been gradually established through the decisions of the Waitangi Tribunal and courts. Early Tribunal reports were legalistic and conservative, but beginning in 1980, under the leadership of Sir Edward Taihakurei Durie, the tribunal shifted to a more relational and inquisitorial stance, taking into account the concerns of both Māori and Pākehā. This transition resulted in influential reports during the mid-1980s that provided a modern interpretation of the treaty's significance, with a particular focus on the Crown's collaboration with Māori (Law Association of New Zealand, 2023).

The employment of Treaty of Waitangi principles in policy is one of the most contentious issues presented here. Treaty principles are believed to reconcile the differences between Māori and English

[15] This has been concluded because Hobson always signed as 'W Hobson,' whereas The Fedarb Sheet is signed "William Hobson" (Ministry for Culture and Heritage, 2016).

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Treaty texts. Principles supplement the Treaty, not replace it (see Mikaere, 2011). However, there is no consensus on the principles' meaning, and their indeterminate nature and constant evolution makes a complete list likely unattainable (Oh, 2005).

Ultimately, the concept of "Principles of the Treaty" is a creation of the white possessive government under the Treaty of Waitangi Act 1975. When this legislation passed, these principles were not defined. At Parliament's second reading of the Treaty of Waitangi Bill (1975), the now-deceased Venn Young (Member of Parliament for Mount Egmont) anticipated that without precise definition, the principles "would lead to dispute, discord, and even division within the community" (Hayward 2004 p. 30).

Surveys in which respondents stated they neither understood nor cared about Treaty principles and therefore did not believe that Treaty principles should be incorporated into legislation (National Business Review Poll, 1989 as cited in Kelsey, 1993; Oh, 2005). However, the legislation passed irrespective of Young's concerns.

Treaty principles became further codified in 1987, through the first and most significant legal proceeding involving the Treaty principles: the *New Zealand Māori Council v Attorney-General* case, also known as the *Lands* case.[16] The pivotal ruling of the Court of Appeal in this particular case underscored the mutual obligation of Crown/Pākehā and Māori Treaty partners[17] to conduct themselves in a manner that is honest and sincere. The court formulated several principles, among which included the obligation to consult, safeguard Māori interests, and provide redress for prior violations (Ruru, 2007; Law Association, 2023).

President Cooke, in his Court of Appeal judgment, stated that "This case is possibly as crucial for the future of our country as any that has come before a New Zealand Court," (Cooke, 1990, 2). Justice Somers stated that the case "has encompassed analysis of the social and political history of New Zealand and is of significant importance not only to the parties to it but also for the impact it may have for the social future of the country" (*New Zealand Maori Council v Attorney-General* [1987]). In President Cooke's view, the Treaty principles oblige "the Pākehā and Māori treaty partners to act towards each other reasonably and with the utmost good faith" (1990, 1).

Mutu (2018 as cited in Mutu, 2019b) comments that the Crown secured an out-of-court arrangement with the Māori Council after the *Lands* case. This accord resulted in legislative amendments that gave the Waitangi Tribunal the authority to order the return of Crown forests, state-owned enterprise and

[16] In this case, the Court of Appeal interpreted the phrase "the principles of the Treaty of Waitangi" from section 9 of the State-Owned Enterprises Act 1986. The Court of Appeal's interpretation of Treaty principles influenced the development of the Waitangi Tribunal's Treaty principles, while government departments and other courts started to use them when the term "principles of the Treaty of Waitangi" appeared in other legislation, such as the Conservation Act 1987, Crown Minerals Act 1991, and Resource Management Act 1993.

[17] Note that this judgment tends to conflate "Crown-Māori partnership" with "Māori-Pākehā partnership," despite the Crown's status as signatory to The Treaties of Waitangi as opposed to Pākehā as the settler population represented by this signatory at 1840.

certain other lands to Māori, along with compensation for forests (Waitangi Tribunal, 2018; McDowell, 2018; Mutu, 2018, 2019b).

In accordance with this determination, in 1989 government officials sought approval from Cabinet to prepare a paper that outlined the principles as to how the government should approach and act on treaty issues (Palmer, 2013). It was to be balanced so that the Crown's rights and obligations were both clearly stated so departments and agencies could have clarity: "We [the government] needed clear principles that would be applied by the whole government system and that is what we got" (Palmer, 2013, p. 6). This resulted in "Principles for Crown Action on the Treaty of Waitangi," encompassing acknowledgment of the Crown's paternership with Māori, autonomy for iwi, fairness, rational collaboration, and recourse for disputes stemming from the Treaty[18] (see Palmer, 2013).

In general, substantial transformations in New Zealand's stance towards the Treaty of Waitangi were sparked by the Labour Party's 1972 pledge. These changes culminated in the formation of the Waitangi Tribunal and the acknowledgment of guiding principles for Crown-Māori relations. With the progression of the treaty relationship and the active participation of both parties in constructive dialogue, these principles persistently undergo development.

Network Waitangi (2018) affirm that there are different versions of Treaty principles that have developed over time. They maintain that the principles are an attempt by non-Māori and the government to reconcile or ameliorate the contradictions in the English and Māori language text. They also note that Māori have consistently said that Te Tiriti speaks for itself, and that there is no need to create principles. They summarize a selection of the various sets of treaty principles as follows:

- Waitangi Tribunal (1975) principles: Partnership, Rangatiratanga, Active Protection, Mutual Benefit, Consultation.
- Court of Appeal (1987) principles: Honour, Good Faith, Reasonable Actions, Partnership.
- Labour Government (1988) principles: Kāwanatanga, Rangatiratanga, Equality, Co-operation, Redress.[19]
- Royal Commission on Social Policy (1988) principles in the "Pū-Ao-Te-Ata-Tu" report: Partnership, Participation, Protection (p.37).

O'Sullivan et al. (2021) conclude that overall there are 40 different treaty principles.

In addition to its role in formulating and interpreting Treaty principles, the Waitangi Tribunal has made rulings on specific components of the texts, such as the meaning of tino rangatiratanga, and wider questions such as whether sovereignty was transferred under the Treaty (TPK, 2001, 74-75; also see Waitangi Tribunal, 2014; Simon, 2016; Te Kawariki and Network Waitangi., 2012). O'Sullivan et al. (2021) observe that the Waitangi Tribunal was created in 1975 to investigate alleged contemporary

[18] These are commonly known as the Executive or White Paper Principles.
[19] These are the same as the Executive or White Paper Principles mentioned above.

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violations of the Treaty and offer non-binding recommendations on how to remedy them (s.6 Treaty of Waitangi Act, 1975). In 1985, the Tribunal's jurisdiction was expanded to cover breaches since 1840.

Although non-binding, recommendations regularly affect Crown practice and policy. However, claims are not always settled, and disputes over government power and the Māori authority recognized in the Preamble to Te Tiriti remain unresolved.

Since 1987, the Courts have interpreted Treaty-related legislation through the Principles; as jurisprudence has evolved, numerous cases link the Treaty principles to the Lands case (Ruru, 2007). In the 1992 Broadcasting Assets case, Justice McKay, reflecting President Cooke's perspective, asserted that "The Treaty's principles, not its wording, apply" (TPK, 2001, p. 74). The English and Māori texts in the first schedule of the Treaty of Waitangi Act are acknowledged not as translations; rather, jurisprudence asserts that the spirit holds greater significance than the literal wording. The Waitangi Tribunal is able to assess the Treaty as represented in its two texts to ascertain whether the Crown has behaved in a manner that is "inconsistent with the ideals of the Treaty" (Pryor, 2009; O'Sullivan, 2021).

Consequently, the interpretation of Treaty principles by the Tribunal, courts, or government functions as a mechanism for ambiguous interpretations that obscure the differences between the Treaty "versions" and hinder a thorough examination of the legitimacy of the current status quo. Ani Mikaere asserts that the principles of the Treaty are often marked by an unrealistic expectation that the two Treaty documents can be "read together" and reconciled (Mikaere 2011, pp. 155–156). Mikaere critiques this flawed attempt to address irreconcilable "tensions," resulting in a confusion of thought and the propagation of a perilous "truth" that subordinates Te Tiriti to the Treaty and He Whakaputanga 1835, thereby marginalising a significant historical document (Mikaere 2011, pp. 155– 156). Mutu (2019b) observes that the Crown has recently undermined the rights established by the Lands case. This erosion is facilitated by the assertion that the "principles of the Treaty of Waitangi" seek to circumvent the original treaty, leading to a misinterpretation of Māori sovereignty as Crown sovereignty (Mutu, 2019b, 7, 10).

O'Sullivan et al. (2021) argue that the Treaty principles do not meet Māori self-determination aspirations under the UN Declaration on the Rights of Indigenous Peoples (see also United Nations, 2007).[20] They also violate the Māori text of Te Tiriti, which accepted Britain's right to form a government and make laws for its settlers, but also reaffirmed Māori tino rangatiratanga, or authority over land, natural resources, and all that was and is valuable to Māori (Te Kawariki and Network Waitangi, 2012). Thus, Te Tiriti limits Crown jurisdiction over Māori. Jackson (1995) writes that the

[20] Article 3 of the Declaration states: "Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social, and cultural development." (United Nations, 2007). This self-determination has been curtailed by the unilateral imposition of Crown sovereignty over Māori, both prior to the development of Treaty principles and after their ascendance within government policy-making. Treaty principles have not served to realise Māori self-determination aspirations to fruition, as any gains made under this regime remain largely subject to Crown sovereignty and Parliamentary supremacy in law-making. For further discussion of Māori self-determination rights under the Declaration, refer to Erueti (2017).

ancestors provided tino rangatiratanga to the living to pass on, making it spiritually and legally incomprehensible for Māori to cede sovereignty to or derive it from the Crown (cf. Blincoe, 2016).

The understanding that The Treaties of Waitangi (specifically in English) represents the transfer of Māori sovereign power to the British Crown has shaped how subsequent governments and courts have interpreted the authority of the Crown in matters concerning Māori people, cultures, and natural resources (Fletcher, 2014). Contemporary interpretations of the Treaty of Waitangi vary, spanning from the Crown's belief in its complete and absolute authority over Māori (Williams, 2006), to the notion that the Treaty establishes a partnership between Māori and the Crown, where the Crown's position as the senior partner is moderated by a set of Treaty principles (Hayward, 1997; Waitangi Tribunal, 2019; Royal Commission on Social Policy, 1988).[21] However, any interpretation contingent on Crown sovereignty over Māori, whether Treaty principles feature or not, is illegitimate by virtue of being inconsistent with both Te Tiriti o Waitangi and mana motuhake. It is to the latter that we now turn.

Mana Motuhake, White Patriarchal Sovereignty, and The White Possessive Doctrine

In order to discuss mana motuhake, we must first look at the concept of mana. Mana is considered one of the main tikanga concepts in Māori society. Contact-era Māori had constitutional traditions that were/are pan-tribal or whakapapa-based. These traditions are informed by the traditional tikanga values of: whanaungatanga, mana, utu, manaakitanga, tapu, and noa (Jones, 2014). Of these, mana is a key concept that requires investigation, particularly regarding its interaction with sovereignty discourse and the concept of mana motuhake (Simon, 2016). Jones (2014) asserts that "mana is the central concept that underlies Māori leadership and accountability." Mana is described by Marsden as "spiritual power and authority as opposed to the purely psychic and natural force—ihi" (Marsden 1975, 145), and by Mutu as "power, authority, ownership, status, influence, dignity, respect derived from the gods" (Mutu,

[21] Note that other interpretations of The Treaty of Waitangi also exist, such as Fletcher's (2014) argument that the "sovereignty" obtained by the Crown was intended as a more limited form of authority than absolute, unitary governmental authority. See also Fletcher (2022).

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2011a, 213). There are many forms of mana (Mutu, 2020). One of these is mana motuhake, which I consider to be the closest Māori term reflective of Indigenous sovereignty.[22]

The term "motuhake" is understood as "separated, special, distinct, independent, unattached" (Te Aka Māori Dictionary, n.d.). However, if we understand that motu means an "island," (Te Aka Māori Dictionary, n.d.) then we can establish that a philosophical understanding of mana motuhake would be a form of Indigenous power or authority that is derived from Ngā Atua (the gods) and, like an island, is separate, independent, special, and unattached. I believe that mana motuhake is about claiming a place bounded in space and time. It is about saying Papatūānuku (Earth Mother) made this place/space for me, her uri (descendant), and gifted it to me/us to protect.

The related concept of ahi kā (continuous occupation of land) must also be involved in any claim of mana whenua (Simon 2016, 68; Simon, 2020, 2022; Minhinnick, 1988). Mana whenua is described as: "authority over land and therefore the right to occupy those lands. This in brief is the way Māori determine "ownership" to the land. Land (or whenua) is a tūpuna, an ancestor, through whom this mana has been acquired through whakapapa by the present-day descendants [or uri]" (Mahuika 2011). Grey et al. (2020, 220) comment that iwi, hapū, and whānau have mana whenua over specific land.

Cox affirms that mana whenua is derived from "a special relationship [with the land] . . . developed over generations of occupation and control" (Cox 1993, 19). Among Māori, there is an on-going dialogue in which some hapū and iwi maintain that mana motuhake was never ceded or given away. This position is supported by my earlier work (2016) on non-signatory hapū and iwi. Furthermore, several authorities point out that that even if an iwi or hapū signed Te Tiriti, they still maintained mana motuhake (Simon 2016; Waitangi Tribunal 2014; Te Kawariki and Waitangi Network 2012*). Ngāpuhi Speaks*, a summary report of evidence presented to the Waitangi Tribunal, conclusively demonstrates that:

1. Ngāpuhi did not cede their sovereignty.

[22] In both current and older literature, including the writings of Nin Tomas, Margaret Mutu, Moana Jackson, Manuka Henare and Hal Levine (1994), (tino) rangatiratanga is considered to be Indigenous sovereignty. However, considering the 2014 "Te Paparahi o Te Raki Stage 1 Report" of the Waitangi Tribunal and the recent Hui aa Motu of February 2024 in conjunction with my previous work (see Simon, 2016, 2020, 2022, 2023a), these developments question the primacy given to rangatiratanga as the Māori concept of power. In my view, when discussing Indigenous sovereignty, the valid concept is mana (rather than rangatiratanga), one of the five key tikanga values underpinning the constitutional traditions of Te Ao Māori, as demonstrated by Carwyn Jones (2014). This is because it is understood that mana, in relation to sovereignty, is tuku iho (passed down) from our tūpuna; power thus traditionally resided within the hapū (Mutu, 2011a). In contrast, the present positioning of He Whakaputanga and Te Tiriti in the Māori legal history of Aotearoa New Zealand, which approximates "rangatiratanga" as sovereignty, tends to omit or downplay the explanation that rangatiratanga is the exercise of power or mana. The effect of this, whether intended or unintentional, is to substitute "rangatiratanga" for "mana". Instead, mana motuhake is the more accurate descriptor of Indigenous sovereignty. We must also consider Mason Durie's (1998) comment that, in comparison to rangatiratanga, "mana motuhake more strongly emphasises independence from state and crown and implies a measure of defiance." (p.220) However, in saying this, a common related concept is the phrase "Mana Māori Motuhake" which is a pan- Māori (as opposed to hapū-specific) response to settler colonialism and the white possessive government's claim and exercising of its supposed sovereignty. Mana Māori Motuhake is the equivalent and arguably superior claim of power and authority vis-a- vis the Crown's supposed sovereignty.

2. The Crown had recognised He Whakaputanga as a proclamation by the rangatira of their sovereignty over this country.

3. The Treaty entered into by the rangatira and the Crown—Te Tiriti o Waitangi— followed on from He Whakaputanga, establishing the role of the British Crown with respect to Pākehā.

4. The Treaty delegated to Queen Victoria's governor the authority to exercise control over hitherto lawless Pākehā people in areas of hapū land allocated to the Queen.

5. The Crown's English language document, referred to as the Treaty of Waitangi, was neither seen nor agreed to by Ngāpuhi and instead reflects the hidden wishes of British imperial power.

(Te Kawariki and Network Waitangi, 2012; Cf Simon, 2016)

It must also be noted that the Stage Two report of Te Paparahi o Te Raki concluded that the Crown overstepped its authority to govern (Waitangi Tribunal, 2022; Tahana, 2022). In addition, the predecessor of Te Tiriti, He Whakapūtanga, guaranteed the mana motuhake of the rangatira and their hapū (Hayward, 2018). This being said, those hapū and iwi that did not sign Te Tiriti, which I describe in my work as non-signatory hapū and iwi, retained their mana motuhake as well (Simon, 2016). This argument can easily be extended to those who did not sign He Whakaputanga also.

In contrast to mana motuhake, we now turn to examine the nature of white patriarchal sovereignty. The colonial New Zealand government emphasizes that only the government can own nation-state territory. According to Moreton-Robinson (2015), this ownership conceptually renders the nation as a "white possessive." The settler government's concept of sovereignty is a white possessive concept in which the government administration is usually white and patriarchally male. The New Zealand Land Wars and biopower-supported instances like Ngatapa (Williams, 2006; Belich, 2013; Wrigley, 2019; Te Waitohirangi, 2023) and Rangiaowhia (Coromandel-Wander, 2013) legalized the theft and invasion of Indigenous territory (Moreton-Robinson 2015; Simon 2016, 2020, 2021, 2022, 2023b). The international literature on Indigenous sovereignty and rights has flourished since the 1990s.[23] However, Indigenous Peoples' moral authority continues to be diminished and is substituted by the implementation and delivery of human rights, which primarily serve to portray the white possessive government as benevolent and validate their patriarchal white sovereignty claims (Moreton-Robinson, 2015).

Moreton-Robinson's (2015) work addresses fundamental problems regarding the democratic state. Sovereign power is the internal self-realization of a state's truth and virtue, through which will and ownership function discursively. Within the legal idea of discovery, virtue functioned as usable property, which gave the justification for sovereign wills to take possession of Indigenous Peoples' lands and power (Moreton-Robinson, 2011, 641; Simon, 2016). When a government claims territory for itself, its citizens adopt the claim as part of their social norms, rules of interaction, and codes of conduct. The state

[23] Including the works of these Indigenous authors: Moana Jackson, Margaret Mutu, Ranginui Walker, Noenoe Silva, Haunani-Kay Trask, Glen Coulthard, Taiaiake Alfred, Lowitja O'Donoghue, Marcia Langton, Martin Nakata, Lester-Irabinna Rigney, Gary Foley and Sonia Smallacombe.

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and the law system are particularly blatant examples of this phenomenon. Consequently, patriarchal white sovereignty's socio-discursive functioning inside society, supported by the state's body, reinforces the ontological framework of possession and virtue (Moreton-Robinson 2011, 641).

Moreton-Robinson contends that possessive logic, integral to state construction and regulation, serves to mobilise patriarchal white sovereignty. This reasoning serves more as a justification than a coherent set of ideas aimed at a specific outcome, and it is motivated by an obsession with the state's ownership, control, and authority over its citizens. Patriarchal white sovereignty, characterised by an unquenchable desire for possession, inherently denies and rejects the sovereignty, or mana, of Indigenous peoples, as it lies beyond its scope (Moreton-Robinson, 2011, 641; Simon, 2016). Sovereignty in political theory is not inherent; it cannot be established by mere documentation—only through administrative practice can it be realised. The document serves solely to persuade individuals of one's entitlement to sovereignty (Croxton, 1999 as cited in Simon, 2016).

I have argued elsewhere (2016) that academics and institutions who uplift the treatyist arguments— like the Treaty principles are necessary due to the equal validity of both Treaty texts, and that these texts are the national founding document(s)—do not recognise that by endorsing such statements they continue to enshrine hegemony and subjugation of iwi who did not conform to the wishes of the Crown and sign Te Tiriti. In practice, Treaty principles privilege the rights and possessive nature of colonizers and the white possessive state. Using rhetoric and/or discourse about a "founding document" ignores non-signatory hapū and iwi's experiences of the settler colonial process (Simon 2016). These arguments effectively work to maintain the status quo and white patriarchal sovereignty, which is necessary for the state to survive. The state has adapted and provided justification for its continued existence while clinging to white patriarchal sovereignty and a possessive interest in Aotearoa New Zealand (Simon 2016, p. 77). I argue that is the motivation behind "Treaty principles": so that the white possessive government can continue to possess and claim patriarchal white sovereignty while still paying lip service to a legal that invalidates its claims. This was probably done to mitigate the upsurge in Māori activism. Therefore, the Treaty principles can only be seen as a white appeasement device, to reproduce white supremacy, patriarchal white sovereignty, and ill-gotten power on Indigenous land.

Essential to understanding this statement about the Treaty principles being an appeasement device is Moreton-Robinson's observation that race controls and protects the status quo. State sovereignty defends social order not only from foreign attacks, but also from internal foes. The state views hapū, iwi, and Māori as internal enemies in its settler colonial framework and as threats to its incumbent white possessors (Moreton-Robinson 2006, 386; Simon, 2016). The existence of mana motuhake is a major threat to the European-based white possessive state constructed on Indigenous lands. I argue that Māori are not obtaining something major through the provision of treaty rights via the Treaty principles, but in actuality are denied their rightful mana motuhake. This appeasement device neuters the Māori challenge to the white patriarchal government's sovereignty (Simon, 2016).

New theory is needed to describe the current situation of hapū and iwi and reflect their authentic experience of colonisation. As many journal articles (Moreton-Robinson, 2004, 2005, 2006, 2011, 2015) and my earlier (2016) case study on New Zealand argues, the British colonized Aotearoa New Zealand and instituted a racist and imperialist legal system. They also established a culture based on white

possession, one in which Indigenous law (tikanga) is slaughtered and/or repressed by being absorbed into white possessive colonial law in ways that distort it to fit it into the coloniser's categories and make it serve the coloniser's interests. Similarly, the colonisisers are given a legal advantage over the mana whenua because of the imported colonial legal system. These actions are guided by official policy. The Court of Appeal's Treaty principles are an expression of this (Moreton-Robinson, 2015; Simon, 2016, 2020, 2021, 2022). White governments dehumanized hapū and iwi to legitimize their own colonial activities, whenua because of the imported colonial legal system. These actions are guided by official policy. The Court of Appeal's Treaty principles are an expression of this (Moreton-Robinson, 2015; Simon, 2016, 2020, 2021, 2022). White governments dehumanized hapū and iwi to legitimize their own colonial activities, then strove to benevolently rehumanize us in their own image and under their own sovereignty. Indeed, to deprive hapū and iwi of their moral standing, the government must appear kind.

Mead's Difference in Approaches Theory

Having analyzed the white possessive government's view of Treaty principles, we may now turn to Aroha Mead's Difference in Approaches Theory to understand how Māori and Pākehā see approaches to policy differently. Mead's comparative theory can be used to examine Pākehā and Māori ideas and behaviors to determine if they are based in tikanga and Kaupapa Māori or whiteness.

According to Mead (1994), policy approaches rooted in whiteness exhibit the following characteristics:

1. One answer for a variety of distinct issues: the all or nothing syndrome;
2. short-termism and desire to see outcomes in one's own lifetime;
3. focus on direct empirical experience as a prerequisite to understand and/or safeguard something;
4. compartmentalization, classification, and subdivision; and
5. emphasis on the rights of individuals.

In contrast, tikanga and Indigenous thinking exhibits a different set of characteristics:

1. Creating policy iwi by iwi (or even hapū by hapū);
2. intergenerational obligation;
3. safeguarding intangibles such as mauri, ihi, wehi, and mana without having "experienced them firsthand";
4. reiterating the holistic interdependence of social, cultural, environmental, and economic domains; and
5. emphasis on the legitimate collective rights of Indigenous Peoples.

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This collection of contrasting ideas and approaches to policy is key to understanding how the Treaty principles are weaponised against hapū and iwi as government policy. It will highlight why the Fedarb sheet of Te Tiriti is critical to deconstructing these white possessive government principles, moving forward into "the collective future" (Simon, 2020, 2021, 2022).

1. safeguarding intangibles such as mauri, ihi, wehi, and mana without having "experienced them firsthand";

2. reiterating the holistic interdependence of social, cultural, environmental, and economic domains; and

3. emphasis on the legitimate collective rights of Indigenous Peoples.

This collection of contrasting ideas and approaches to policy is key to understanding how the Treaty principles are weaponised against hapū and iwi as government policy. It will highlight why the Fedarb sheet of Te Tiriti is critical to deconstructing these white possessive government principles, moving forward into "the collective future" (Simon, 2020, 2021, 2022).

Discussion

The principles of the Treaty provide a judicial and legal solution to the issue of the entrenched illegitimacy of the settler/invader colonial system. Their objective is to justify white possession and demonstrate the all-or-nothing mentality characteristic of the government's ideology. The government tends to address the legitimacy of Te Tiriti o Waitangi and mana motuhake uniformly, disregarding the distinct histories and perspectives of Indigenous Peoples. Instead of recognising the diversity among hapū and iwi, it consolidates various interpretations of "the Treaty" under a singular legal and policy framework. The establishment of these principles reflects a short-term perspective, addressing contemporary issues based on current understandings rather than prioritising the needs of future generations, thus perpetuating settler/invader colonial power structures. The legal framework does not recognise mana unless it is incorporated into the Western settler colonial system via legislation or regulation. Ultimately, it establishes a systematic framework that undermines Indigenous existence, culture, and autonomy. The moral authority of Indigenous Peoples, stemming from the impacts of colonisation, is supplanted by the Crown's provision of human rights, which are primarily intended to project a benevolent image of the white possessive government and to lend legitimacy to its patriarchal sovereignty.

The recent emergence of the Doctrine of Discovery in Aotearoa New Zealand colonial discourse is linked to Indigenous consciousness and public awareness of it through events such as

Tuia250/Whakawetewete250.[24] This demonstrates how much of a diversion Te Tiriti and The Treaty have been, as well as the Crown's use of Treaty principles as a smokescreen to mask the reality of non-signatory hapū and iwi: that we have mana. Mana is genuine. The Government lacks mana and sovereignty. Therefore, a new strategy must be developed: one that is not founded on white supremacy and possession, biopower, settler/invader colonialism, and racism; that does not indulge ignorance and comfortable social amnesia; that does not suppression and oppress the Indigenous community. This is also vital since the major paradigm shift instituted by the declaration of the Waitangi Tribunal in 2014 and the body of research I have subsequently developed on mana motuhake in relation to non-signatory hapū and iwi (see Simon, 2016, 2022,2023a, 2023b).

In light of recent developments in the area of Treaty politics and policy in Aotearoa New Zealand, there have been major shifts in thinking. The first of these was with the release of the Te Paparahi o Te Raki inquiry report by the Waitangi Tribunal in 2014, which reaffirmed the knowledge and traditions of Ngāpuhi (Te Kawariki & Network Waitangi, 2011). The Tribunal ruled that hapū and iwi that signed the Treaty still maintained mana motuhake.

What critical examination of the Fedarb Sheet introduces is the new significant argument that for Bay of Plenty iwi, particularly those from Mataatua waka, only the Te Reo version or Te Tiriti was presented to these iwi. This has significant implications for the iwi of Ngāti Awa, Ngāi Tai, Te Whakatōhea and Te Whānau ā Apanui and their hapū. This is because, for these iwi, there is no question of rival texts, no confusion over what was signed, no question about meanings lost in translation. The Te Reo version, Te Tiriti, was the only version ever signed by these signatory hapū of these iwi.

Another intriguing fact is that not all of these iwi or hapū actually signed. I have previously argued (Simon, 2016, 2020, 2022, 2023a, 2023b) that non-signatory iwi should be considered on par with signatory iwi at the hapū level in places where signing occurred. In Mataatua, with The Fedarb Te Tiriti Sheet, you will find a variety of arguments that vary amongst hapū within the same iwi, each arguing an affirmation of mana motuhake in a different way based on the decision of their preceding rangatira to sign or not sign Te Tiriti. Because of this, the dynamics of Treaty politics and mana motuhake contradict traditional white Western policymaking based on the idea that there is one solution for many different problems, an all- or-nothing syndrome with no intergenerational responsibility, as outlined by Mead (1994).

[24] Known officially as "Tuia – Encounters 250," this was a commemoration in 2019 marking 250 years since the first onshore encounters between Māori and Pākehā in 1769. Tuia 250 celebrated Aotearoa New Zealand's Pacific voyaging heritage and was a national opportunity to hold honest conversations about the past, the present and how we navigate our shared future (Ministry for Culture and Heritage, 2020a, 2020b). However, many felt that the government did not fully realise "the depth of ill-feeling towards the arrival of Cook from a Māori perspective" (Moera Brown quoted in Webb-Liddall, 2019), and the problems of an event largely promoting a Pākehā history. The key event was a flotilla which included a replica of the Endeavour. Activists dubbed it the "death ship." With its weapons of war and military crew, HMB Endeavour exacted a violent and deathly toll on Indigenous populations. Nine Māori were killed by Cook's men when they visited Tūranga-nui- ā-Kiwa in 1769. A key outcome of the protest action was a petition known as "The declaration of non-participation," which challenged the official commemorations by reminding its receivers of the continuing ideologies of racism and white supremacy underpinning "discovery" (i.e. invasion) and its commemoration (see Te Papa, 2020).

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By refusing to perpetuate white patriarchal sovereignty in Aotearoa New Zealand and erasure of hapū—not accepting Te Tiriti signatories in 1840 conveniently spoke for all Māori as a single homogenous group—we can begin to address the settler/invader colonial problem. New policy emphasis should be placed on the text of Te Tiriti—the only text seen and signed by rangatira in the Bay of Plenty or Mataatua area[25]—and reject the settler government's claim to sovereignty over all lands termed "New Zealand" based in settler/invader colonialism. There is a particular need to analyze and take a more forensic approach to the interpretation of Article One of Te Tiriti. Treaty discussions have taken place over a long period, largely due to government insistence and commitment to the principles of the Treaty as the legal charter for its sovereignty and possession. Despite this, no hapū or iwi has ever ratified any set of Treaty principles. The government insists upon the belief that both documents—Te Tiriti and The Treaty—can somehow speak to one another and be read together (Mikaere 2011). This, as a result, has caused the debate to focus, in terms of Article One and Two, on the terms "sovereignty" vs "tino rangatiranga" or "mana motuhake," and "government" vs "kāwanantanga."

According to Hugh Kawharu, the word "kāwanatanga" in English means "full government," as indicated in the official translation of Te Tiriti o Waitangi (Kawharu, 2013; Waitangi Tribunal, 2016). The government has adopted this translation, and the courts will use it as the official version of the text. It is worth noting that Ranginui Walker (1984) offers up "governance" as a translation of kāwanatanga.

What is particularly intriguing about this is that Walker's paper predates the Kawharu translation text by five years and was subjected to rigorous peer review. It is well established in the 2020s that several Treaty and Māori academics, however, have moved away from this strictly literal interpretation of Te Tiriti and that insistence that the term "kāwanatanga" denotes "government" as noted above. (See Bargh & Jones, 2020; Barrett & Connolly-Stone, 1998; Blincoe, 2016; Dam, 2023; Duffie, 1999; Fisher,

2015; Kidd, et al., 2022; Hill, 2018; Network Waitangi, 2018; Mutu 2018, 2019a, 2019b; Mikaere 2011; Salmond, 2023; Simon, 2016, 2022, 2023b). Additionally, given the historical context, one can only guess at the extent to which the white possessive government influenced the final reading and translation of the treaties. However, if the Treaty is to maintain its position as a central document to this country, we must take *contra preferentum* seriously, because it is widely accepted in the academic community, and even more so in the Māori and allied academic community, that kāwanatanga means governance, in line with the Walker's translation of what was being offered to the white possessive government.

If we take an accurate reading of Te Tiriti, as the legal treaty, The Crown was offered "governance over the land" as per the sentence, "te Kawanatanga katoa o o ratou w[h]enua." In other words, the body of people that belong to the iwi of Mataatua waka were never supposed to be incorporated into what became the settler/invader colonial state of "New Zealand"; the Crown was only ever supposed to have some form of regulation over land and possibly resource use. This calls into question the existence of

[25] I make the clear distinction here about where in the Bay of Plenty I am referring to, which is limited to the areas controlled by Mataatua iwi. This does exclude coastal and inland areas of Te Arawa waka who were given the opportunity to sign at Ohinemutu but refused to do so following the words of Mananui Te Heuheu (see Simon, 2011; Orange, 2015).

resource extractive industries in the Bay of Plenty. This view differs significantly from the conventional discussion around The Treaties of Waitangi.[26]

The Fedarb sheet and its context has received too little attention in the academic literature on The Treaties of Waitangi. If rangatira signatories only saw a Te Reo Māori copy without an English translation, Treaty principles that read Te Tiriti o Waitangi alongside The Treaty of Waitangi are null and void. These signatures did not give the white possessive government sovereignty over signatory hapū and iwi. Since there was no English sheet at these signings, rangatira would not have discussed sovereignty. The word written on and read from the document, kāwanatanga, would have been understood according to Māori and not British convention. Thus, traditional scholars (typically legal scholars like Benedict Kingsbury and Matthew Palmer (2008) who view kāwanatanga as a charter for comprehensive and sovereign government, like the white possessive government, must instead adapt to Māori understandings of kāwanatanga.

Additionally, the British should have chosen a more suitable word than "whenua" to refer to reign over a fixed realm. They should have engaged the kupu (word) "takiwā" or "rohe," which mean "region" and "territory." The position of those hapū that signed the Fedarb Sheet of Te Tiriti thus challenges the dominant discourses and government policy-making over the past 50 years. It is also questionable whether the Fedarb (Bay of Plenty) copy of Te Tiriti is even valid, since Orange (2015), the Ministry for Culture and Heritage (2012), and King et al. (2009a) have all acknowledged its falsification by the forgery of the British governor's signature.

To continue to insist that the principles of the Treaty apply given what has been outlined above is simply a continuation of the violence and genocide of the settler/invader colonial state. The state must reconsider its position on power and white patriarchal sovereignty. In Mataatua Waka, only Te Tiriti was provided to our Rangatira, and as such it is clear that there is no discrepancy in the text. As demonstrated above, the discrepancies in the text are the foundational argument in favour of the treaty principles existence. This is in direct contrast to the Waikato-Manukau sites, which were given only The Treaty—in English—with no effort by the white British signature-gatherers to provide translation aids. Mataatua Waka understood completely what was being asked of them. To this group of hapū and iwi, the principles of the Treaty simply should not and do not apply. To do so can only be seen as an abuse of ill-gotten power and the unjust imposition of Western colonial law.

Therefore, the Treaty principles, the arguments that kāwanatanga means complete government, and the claims that the people of Aotearoa New Zealand are a "Treaty people", or that the Treaty is a founding document, are, and should be considered false ideas perpetuated for the current power structure. (Simon, 2022, 2023b). Subsequently, the importance of Te Tiriti and The Treaty should be openly questioned. Iwi or hapū should be considered sovereign nations, and this recognition contradicts the

[26] This reading is offered to highlight that Mataatua iwi only cited Te Tiriti o Waitangi which would produced differing understandings from the normal scholarly and governmental discussions on the subject. This is largely due to these discussing being based on the idea that there is an "English version" and that they should be read together.

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ideologies of discovery, British paternalism, "wilderness," and manifest destiny on the islands. Hapū signed these documents nationwide as sovereign nations with tūpuna-sourced mana motuhake.

Legally, Te Tiriti is the sole valid treaty, particularly in this circumstance. These are international nation-to-nation treaties, and they should be treated as such. The then-Labour government's establishment of the Treaty principles effectively altered the terms of The Treaties of Waitangi, promoting settler/invader colonialism by not upholding *contra proferentem*, established the Crown's exclusive method of doing things. Consequently, to this day Te Tiriti has not been codified in statute or even acknowledged as the legitimate version.

Towards a Collective Future

When settled people are viewed as having the exclusive ability to "craft narrative identities and live up to them," according to Veracini (2013) (p. 236), the displacement of an Indigenous population and the presumption of patriarchal white sovereignty become inextricably linked. No project in the modern era has made an effort to synthesise values and commitments that are significant to the entirety of Aotearoa New Zealand society. The displaced Indigenous population lacks authentic political capacity due to the absence of provisions ensuring political equity and equality for this group (Simon, 2020b). The clear understanding and application of principles such as mana motuhake (Indigenous sovereignty) and mana (power, authority) are imperative in Aotearoa New Zealand. The constitution should, according to Veracini (2013), articulate such societal commitments and shared values. Constitutional transformation would facilitate the settler-colonial society's "settling up" with "displaced, unsettled . . . wronged" Indigenous Peoples, and moving forward in "newly settled circumstance" (p. 3). Such reform could be regarded as a value-driven undertaking (Simon, 2021). Once more, in order for constitutional transformation to transpire, consensus must be reached on the values of governance. The existing discourse surrounding treaties is overly dependent on the assumption of a static document that establishes a relationship between three entities: the state, society as a whole, and Indigenous groups. This discourse overall muddles the issue of the rights and development of indigenous peoples.

An element of this transformation invariably hinges on an understanding of the white possessiveness, ignorance, sense of belonging, and fragility (refer to Simon, 2020b). However, in order to attain a genuinely post-settler-colonial society, Ranginui Walker argues persuasively that the foundation of a society or a constitution must be the base culture. These can only be Māori values in Aotearoa-New Zealand (Treaty Project, 2015). Jones' (2014) Māori constitutional values, which are grounded in tikanga (traditional norms, laws, and values), offer guidance for a collection of principles that Aotearoa New Zealand society can readily assimilate. Veracini (2013) argues that the fundamental principles espoused in Jones' constitutional values can and ought to guide the discourse surrounding the settler government "learning to make do in the current context. I contend that the Māori Constitutional values whanaungatanga (relativity, kinship), mana (power, authority), utu (reciprocity), manaakitanga (care), tapu (sacred), and noa (without restriction) ought to form the foundation for advancing Aotearoa New Zealand towards a collective future (Simon, 2020b, 2021). By permitting the settler to transition into a settled state of affairs (once they have assumed genuine accountability), it is possible that all individuals in Aotearoa New Zealand could make positive strides towards a shared collective future.

The urge to acquire, along with the need to demonstrate the morality of the civilizing mission, must be laid to rest. Moving forward, policy research should challenge the notion that New Zealand has a foundational document must (see Simon 2016). Policy research should move away from the imposition of everything that constitutes "Britishness" and instead pursue constitutional transformation based on Māori Constitutional Values. Despite the articulation and appeal for this set of values to be instilled, we must remember Mikaere's declaration that "For Māori . . . we must stop contributing in our own assimilation/extinction by accepting colonized practices and going along with Crown-created goals," such as the Treaty settlements process. Mikaere (2011), exhorts us to stop being courteous so as not to make the colonizer feel terrible. Instead, we must examine the lies that are offered as universal truths, and Māori must also reject the colonizer's notion of what is realistic (Mikaere 2011, pp. 92–94). Mana must be acknowledged as the foundation of our collective future. It is central because it is the platform that refutes the assertions of the white possessive regime.

Conclusion

The Fedarb sheet of Te Tiriti is key to understanding that in Mataatua context, Treaty interpretation analysis must be far more context-specific and far less shaped by generalized "principles." The New Zealand government's Treaty principles are fundamentally about the maintenance of settler colonialism, as they effectively rewrite Te Tiriti and aim to further cement the white possessive government's power. This research highlights a significant gap in Treaty research in Aotearoa New Zealand. More research is required into the contexts of the signing of each individual Treaty sheet to understand how those contexts should shape modern Treaty interpretation. As in the case of The Fedarb Sheet, if there was no English Treaty sheet provided, then most traditional Treaty scholarship arguments become invalid.

Rather than interpreting Te Tiriti in light of the English Treaty, we must recognize that all the Fedarb signatories provided to the government was the ability to regulate land-use (if that). Mataatua waka should not have been made a part of the settler colonial construction that was the result of settlers' inaccurate interpretations of the document. All of this highlights the need to view the various sheets of The Treaty of Waitangi and/or Te Tiriti o Waitangi as not a single monolithic and homogenous document, but differentiated international treaties between sovereign hapū and the Crown of England. Each sheet should be seen as separate and different on a regional and whakapapa basis, in its own context.

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