

Te Tapa o te Tōrino – Reflections on the Waitangi Tribunal’s 50th Anniversary Conference

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At the feet of giants

As two early-career academics at Te Herenga Waka, being present hundreds gathered to mark the 50th anniversary of the establishment of the Waitangi Tribunal was remarkable. We often speak of standing on the shoulders of giants, but this felt like the rare privilege of walking among their feet. The Tribunal has had an incalculable influence on our nation and the significance of that moment was not lost on us, so we first wish to acknowledge those who made the conference possible. Chief Judge Caren Fox and Professor Rawinia Higgins, the rest of the organising committee, and all of those at Te Tumu Herenga Waka who kept us fed and watered during our wānanga, ngā mihi nui mō tā koutou tautoko, me tā koutou manaakitanga.

In this brief reflection, we discuss some of the themes of the kōrero shared at the 50th anniversary conference. It is not an attempt to catalogue everything that was said, nor it is an attempt to reproduce the eloquence of the esteemed speakers. Rather, we reflect from our position as junior scholars on the history and future of the Waitangi Tribunal. In doing so, we also return to the theme of the conference – Ko te Tōrino: Haere Whakamua, Haere Whakamuri, as the spiral moves outwards, so too it returns.

The legacy of the Tribunal – acknowledgement, influence, language

Three themes resonated with us from the kōrero shared across the conference. The first was the importance of acknowledgement. The Tribunal’s 50th anniversary provided a moment to honour those who made its work possible. It was a privilege to hear from those present at its inception and in its formative years. Tā Eddie Taihakurei Durie was appropriately acknowledged throughout the conference for his vision and leadership, as was the Honourable Matiu Rata. Annette Sykes spoke about how Matiu Rata’s legacy has never been fully recognised by most New Zealanders.

We take this opportunity to do just that, to recognise the extraordinary foresight it took to create what would become a foundational institution for our nation. Those two pou have left an incredible legacy through their work establishing the Tribunal and helping it find its voice. We mihi to them once again, as well as to all who have contributed to the Tribunal’s work. To the current and former members who have shaped the Tribunal’s legacy, the hapū and iwi who have hosted the Tribunal’s hearings, the kaumatua and kuia who have shared kōrero tuku iho and the thousands of claimants who have sought justice within the Tribunal’s walls, we acknowledge your tireless efforts. The legacy of the Tribunal has been shaped not just by judges and historians but by the thousands of stories heard within its hearings, so ngā mihi nui ki a koutou.

The second theme was that of influence. Tā Eddie during his keynote address stated that “our greatest impact is that we have changed New Zealand’s national identity. We now think of ourselves in a vastly different way.” This speaks to the role the Tribunal has played in helping move the Crown-Māori relationship beyond one of assimilation. Annette Sykes described how the power of the Tribunal is in its ability to change the hearts and minds of the people. She and others referred to the Tribunal as the conscience of the nation, echoing the words of former

Tribunal member Paul Temm.¹ Justice Joe Williams reflected on how the Tribunal is not a creator but a translator, and plays a crucial role making radical ideas sound sensible.

We see this crucial function continuing to play out in today's turbulent times. Earlier this year, when an unprecedented number of people made submissions opposing the Treaty Principles Bill, thousands cited the Tribunal's findings in Ngā Mātāpono.² When Parliament considered Bills which sought to erase Te Tiriti from child protection law, the health system, and our electoral legislation, the Tribunal findings again featured prominently in submissions. The Tribunal's influence extends beyond the technicalities of select committee processes; when thousands marched to Parliament in te hikoī mō te Tiriti, its work was present there too. These ongoing challenges demonstrate the critical role the Tribunal plays in mobilising te Tiriti awareness. When Paul Temm wrote that the Tribunal was the conscience of the nation, even he perhaps underestimated how much that would still be the case long after his passing.

The third theme we wish to mention is that of language. In the session during the conference on the Tribunal's contribution to history, Dr Aroha Harris spoke about the Tribunal giving the New Zealand public the language to understand kaupapa which they perhaps had a sense of, but previously couldn't name. Dr Paul Hamer spoke about how the Tribunal had taught Pākehā to understand history through a different lens, challenging myths like the 'best race relations in the world.' Dr Carwyn Jones noted that the Tribunal's work has shown us that the path the Crown took during the colonisation of this country was never an inevitable one. These sentiments highlight the critical role the Tribunal plays in speaking truth to our colonial histories.

'It's complicated' can be a common refrain from those who have at times sought to defend historical wrongs and contemporary inequities. The Tribunal's efforts to 'give language' to our history have shown us that sometimes it's not so complicated after all. Again we return to Annette Sykes's kōrero, where she referred to the Tribunal's work as "unpicking the onion layers of oppression". Colonialism and its impacts sometimes knock loudly at the front door but more often they quietly invite themselves through the back door. The Tribunal's work has enabled us to interrogate the latter as much as we do the former, 'unpicking the layers of oppression' and giving language to its consequences. This contribution must continue to be acknowledged.

The Tribunal's unfinished business

Despite its limitations, the Tribunal's ability to engage with the true intent of te Tiriti has contributed to a coming of age for our nation. The present moment reminds us that the road to Tiriti justice is rarely smooth, and 50 years has not lessened the challenges we face. While we gathered at Te Tumu Herenga Waka, the Marine and Coastal Area Amendment Bill was read for the second time just down the road at Parliament, a key milestone in what has been described as modern day raupatu.³ This served as a timely reminder that the 50th anniversary of the Tribunal would not be an occasion in which our work would be marked complete.

But as many speakers noted, judicial reasoning and executive decision-making have been profoundly shaped by Tribunal jurisprudence for decades now. The journey has been marked with setbacks, but the progress that has been made is something to be proud of. The Tribunal is

¹ Temm, P. (1990) *The Waitangi Tribunal: The Conscience of the Nation*. Random Century.

² Waitangi Tribunal Ngā Mātāpono: *The Principles* (WAI3300, 2024).

³ Coates, N. (2024) *Oral Submission on the Marine and Coastal Area (Takutai Moana) (Customary Marine Title) Amendment Bill*.

now a cornerstone of our constitutional framework and will continue to act as the conscience of the nation, now as much as ever.

Nevertheless, the vision of te Tiriti remains unrealised, and it remains important to ask what the Tribunal's role will be in future. In our view, many of the answers to that question lie beyond the institution itself. The Tribunal is not the fulfilment of the Tiriti relationship; in some ways it is merely an arbitrator. From this point forward te Tiriti justice will likely require constitutional transformation, and Matike Mai provides the blueprint for that change.⁴ Matike Mai proposes constitutional structures which could enable te Tiriti to be upheld, which are underpinned by 'spheres of influence' – the rangatiratanga sphere (where Māori make decisions for Māori), the kāwanatanga sphere (where the government makes decisions for its people) and the relational sphere (where the Tiriti relationship is realised). It is a testament to the foresight of the Tribunal's work that the 'spheres of influence' concept, so often attributed to Matike Mai, in fact originates in the WAI1040 report.⁵

Given that contribution, it is timely to ask what other tools the Tribunal has provided to advance the constitutional conversation. In its 50 year history, the Tribunal has profoundly reshaped our collective understanding of te Tiriti. In its early reports like the Motunui-Waitara Claim⁶ and the te reo Māori claim⁷ the Tribunal broadened our understanding of the term taonga, and articulated the holistic nature of the guarantees within te Tiriti. The Radio Frequencies report gave tangible expression to that holistic understanding,⁸ and the Waipareira report modernised our understanding of tino rangatiratanga and partnership.⁹ The Napier Hospital report informed our modern view of equity,¹⁰ and WAI1040 affirmed that the rangatira at Waitangi in 1840 never ceded sovereignty.¹¹ These examples, among many others, illustrate the enduring influence on Tiriti jurisprudence and constitutional developments.

Some of the Tribunal's most significant impacts have taken years to materialise, which suggests to us that recent reports may already contain ideas that will shape the future of the Tiriti relationship, and indeed the country. In WAI2915, the Tribunal articulated an interpretation of 'tino rangatiratanga over kāinga' that in our view was broader than ever previously discussed in law or policy.¹² In its reports on hauora, education, and child protection, the Tribunal proposed the establishment of independent Māori authorities, recommendations that, if implemented, could fundamentally reorient the modern New Zealand state. Its urgent reports in 2024 further outlined what the Tiriti relationship must look like for an incoming government. The statement in WAI3350, that "it is a Treaty of Waitangi, not a proclamation of Waitangi," remains a powerfully succinct critique of any attempt to disregard Tiriti obligations.¹³ Here, as elsewhere, the Tribunal continues to offer a compelling vision of how the Tiriti relationship can, and should, operate.

⁴ Matike Mai Aotearoa (2015). *Report of the Working Group on Constitutional Transformation*.

⁵ Waitangi Tribunal. *He Whakaputanga me te Tiriti | The Declaration and the Treaty: Report on Stage 1 of the Te Paparahi o Te Raki Inquiry* (WAI 1040, 2014).

⁶ Waitangi Tribunal. *Report of the Waitangi Tribunal on the Motunui-Waitara Claim* (WAI 6, 1983).

⁷ Waitangi Tribunal. *Report of the Waitangi Tribunal on the Te Reo Māori Claim* (WAI 11, 1986).

⁸ Waitangi Tribunal. *Report of the Waitangi Tribunal on Claims concerning the Allocation of Radio Frequencies* (WAI 150, 1990).

⁹ Waitangi Tribunal. *Te Whānau o Waipareira Report*. (WAI 414, 1998).

¹⁰ Waitangi Tribunal. *The Napier Hospital and Health Services Report* (WAI 692, 2001).

¹¹ WAI 1040, 2014

¹² Waitangi Tribunal. *He Pāharakeke, he Rito Whakakīkinga Whāruarua: Oranga Tamariki Urgent Inquiry* (WAI 2915, 2021)

¹³ Waitangi Tribunal. *The Oranga Tamariki (Section 7AA) Urgent Inquiry Report* (Wai 3350, 2024), p 13.

Not all aspects of that vision will come to fruition. The Tribunal is not infallible, and its structural limitations mean it will never hold all the answers. As Māori, we must critically interrogate whether an institution constrained by rules shaped by the Crown can ever serve as the ultimate source of our tino rangatiratanga. In our view, it cannot. Nevertheless, the Tribunal's recent work demonstrates its potential to remain as influential in the next fifty years as it has been in the past, especially as New Zealand's constitutional arrangements continue to evolve.

Haere whakamua, haere whakamuri

We have titled this reflection 'Te Tapa o te Tōrino', the edge of the spiral. As Māori academics at the beginning of our careers we feel as though this captures our position in relation to this work. We are joining a kaupapa that some of our colleagues have led for half a century. We have the privilege of listening in, and the responsibility to learn as much as we can. That sense of privilege and responsibility was palpable throughout the conference, given the significance of the occasion and the esteem in which we held its guests.

But of course, that is not the full story. Haere Whakamua, Haere Whakamuri – in her address to the conference at its concluding function, Professor Linda Tuhiwai Smith returned this theme once again, acknowledging the tōrino in relation to time and space itself. Referring to Te Tumu Herenga Waka Marae, she said, “when I have sat in whare like that one, I have often felt like the past, present and future are occurring at the same time, and that the past is listening in on us.”

Not only does this phrase capture what felt most remarkable about being part of the conference, it also speaks to the ongoing nature of our task. Those of us who feel we stand at the edge of the tōrino are in truth, both embarking and returning simultaneously. We acknowledge Whaea Linda for reminding us of that, and we extend our gratitude to all who shared their wisdom during the event. Our responsibility now is to honour what has come before us. May our descendants, fifty years from now, look back and say we achieved that.