

# BOOK REVIEW

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*New treaty, new tradition: Reconciling New Zealand and Māori law.* Jones, Carwyn. (2016). Toronto, Canada: University of British Columbia Press. 211 pp. ISBN 9781776561100. Book review DOI: 10.20507/MAIJournal.2018.7.1.9

In this book, which draws on the author's previous published work as well as his PhD thesis, Māori academic Carwyn Jones sets out to examine Māori legal traditions. Jones is interested in elucidating the nature of Māori law and in particular the principles from which it is derived. He also wishes to trace how Māori law has changed, adapted or been maintained in response to the introduction of colonial and then settler law. To do this, he offers a close examination of New Zealand's Treaty of Waitangi settlements and the Post-Settlement Governance Entities (PSGEs) formed as a result of such settlements. His aim is to see whether the changes and adaptations of Māori legal traditions support or detract from two key goals of the Treaty settlement process: reconciliation and Māori self-determination or *tino rangatiratanga*.

The themes of reconciliation and self-determination are well canvassed in the broader field of Indigenous studies. The notion of reconciliation in particular has been criticised by Indigenous scholars, who have rejected the idea that Indigenous peoples can be reconciled in the way that national governments mean. Jones gives full rein to some of these arguments in Chapter 2, drawing on a number of North American legal and Indigenous theorists, such as James Tully, Jeff Corntassel, Dale Turner

and Taiiike Alfred, to bolster his arguments in succeeding chapters. While these arguments provide the philosophical and conceptual core of the book, Jones sets up the legal core in Chapter 2 by considering arguments for legal pluralism that have decentred the notion that there is only one law—that of the colonial then settler state. Jones argues that these arguments have created the theoretical “space” for Indigenous law to be recognised.

With both philosophical and legal theories in place, the remaining chapters explore these core arguments through exemplars drawn from Treaty of Waitangi settlements. As a frequent commentator on such settlements, Jones considers the extent to which Māori *tikanga*-based legal traditions have been required to conform to state concepts of justice and the tensions this has caused Māori claimant groups. Jones finds that in some limited aspects Māori legal traditions have found their way into the common law, such as in family law—Jones cites the well-known *Takamore v Clarke* case—and in the Resource Management Act 1991. However, the major part of the book shows that the principles that underpin *tikanga*-based law—*whanaungatanga*, *mana*, *tapu/inoa*, *utu* and *manaakitanga* (all covered extensively in Chapter 3)—are by and large compromised within Treaty settlements. Given that the state's

key consideration is not so much reconciliation as certainty, both of a final settlement and of its ongoing and undisputed sovereignty, this is unsurprising.

The state's desire for certainty and procedural justice comes, Jones argues in Chapter 4, at the expense of substantive justice. Hence, the PSGE structures that all Māori claimants are expected to adopt are built on inherent tensions between traditional tikanga-based approaches to settling injustice and the "full and final" approach of the state. In his examination of PSGEs in Chapter 5, Jones finds little evidence that these structures are tikanga-based, noting that both the Tainui and the Ngāi Tahu PSGEs were designed primarily to facilitate commercial activity. Moreover, drawing on the research of Canadian legal scholar Kirsty Gover, Jones finds that PSGE descent-only membership clauses designed to identify who may be a tribal member may be at odds with tikanga-based traditions. Jones concludes that the unilateral parameters of the Treaty settlement process are inherently biased and structurally designed to inhibit true reconciliation. In order to finalise a settlement, Māori communities move away from their own legal traditions.

However, Jones contends that the current approach can change, but would require the state to acknowledge Māori legal traditions as the first law of Aotearoa New Zealand. In turn, Treaty settlement processes, structures and objectives would need to be reset, primarily by the Crown reframing sovereignty as a shared concept. This might then open the way for both Māori and state legal systems to interact productively, thereby creating new legal traditions in contrast to one system dominating or assimilating the other.

*New Treaty, New Tradition* is part of an increasing body of international Indigenous scholarship that imagines a different and renewed relationship between settler states and Indigenous peoples. Jones references much of this scholarship in combination with detailed analysis of Treaty of Waitangi case studies.

Legal scholars will undoubtedly welcome this approach, particularly those who are interested in comparative legal studies. For the general reader, Jones confirms that there *is* such a thing as Māori law derived from Māori principles, explaining how such law has changed or been forced to adapt.

The book is a dense read, which Jones lightens by including in each chapter a story told by a fictional father to his son. These stories draw on the author's Ngāti Kahungunu heritage, helping to situate the discussion within a specifically Māori context. Additionally, they reinforce Jones's thesis that traditional tribal understandings and practices are consonant with New Zealand law.

Overall, *New Treaty, New Tradition* presents a well-considered argument on why and how settler systems of law can meet Indigenous aspirations. By analysing his case studies via legal pluralism and Māori legal traditions, Jones offers a decentred approach to the current legal order and the possibility of a non-colonial form of lawmaking. *New Treaty, New Tradition* presents an optimistic vision of how the law can tell a different story, signifying not the end of a treaty relationship, but rather a beginning.

## Glossary

mana	prestige, status, authority, influence, integrity; honour, respect
manaakitanga	respect; hospitality, kindness; mutual trust, respect and concern
Ngāti Kahungunu	Māori tribe located along the lower East Coast of the North Island
noa	not sacrosanct, having no restrictions/prohibitions; free from tapu
tapu	sacrosanct, prohibited, protected, restricted
tikanga	customs and practices

tino rangatiratanga  
 utu  
 whanaungatanga

Māori self-determination  
 revenge; reciprocity  
 the interrelationship  
 of Māori with their  
 ancestors, their family,  
 subtribe and tribe,  
 as well as the natural  
 resources within their  
 tribal boundaries such as  
 mountains, rivers, streams  
 and forests

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*Indigeneity: A politics of potential.* O’Sullivan, Dominic. (2017). Bristol, England: Policy Press. 216 pp. ISBN: 978-1447339427. Book review DOI: 10.20507/MAIJournal.2018.7.1.10

Waikawa is a small island off the coast of the Mahia peninsula. Shortly after the Takitimu waka landed on the peninsula, the tohunga Ruawharo established a whare wānanga on the island and for centuries it was the hub of advanced learning for Ngāti Kahungunu.

Each time the wānanga was held, the students would land at a little inlet named Whaiwhakaaro (“to follow the thought”). Their first task was to light fires at the natural gas vents along the foreshore, both as a signal that the wānanga was in session and as a symbol of the fact that, like a flame, knowledge could be illuminating yet dangerous unless it was treated with respect. Early each day they would then walk to a rocky outcrop called Te Tīmatanga (“the starting”) and back again as a reminder that any learning had to start by going back to the beginning. Knowledge and the veracity or logic of the philosophies and theories and presumptions that went with it depended upon where they started from.

Stories are like that too. The way in which their plot or argument advances depends upon their beginnings, the papa or the “once upon a time” from which the storyteller constructs a theory or fantasy. Books are really just stories, and Dominic O’Sullivan’s *Indigeneity: A*

*Politics of Potential* is a carefully, sometimes densely, argued story about the “intersection of ideas about the terms of indigenous peoples’ belonging to the state, and the nature of their citizenship and participation in public life” (p. 1). It is also a story that is broad in its scope. It not only considers the ways in which Australia, Fiji and New Zealand may develop “indigeneity as potential” to transcend what he unfortunately calls “neo-colonial victimhood”, but it also discusses the fraught intersection between Indigenous rights and neoliberal globalisation.

There is certainly value in considering the place of indigeneity as a site of political and constitutional possibility in countries that have been colonised by Great Britain. Indeed there is a very real need to explore the notion of indigeneity beyond the vexed parameters of ethnic classification or the simplistic assumption that anyone born in a place is Indigenous. It is also timely to consider how the effective constitutional authority of the tangata whenua in Australia, Fiji and New Zealand has been denied or warped in colonisation, and how that might now be remedied in a meaningful way.

The issues raised in the book touch on important constitutional, political, social and even