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Forestry treaty claims in Aotearoa-New Zealand: bicultural significance and socio-economic impact

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ABSTRACT
The economic importance of forestry as a significant industry in Aotearoa is easily established; but to Māori it is demonstrably even more fundamental whereby a broader set of principles other than those based on individual property rights and economic values are solidly embraced. Manifestation of such importance is also revealed in forestry claims made under Treaty of Waitangi and related legislated processes facilitating recompensing actions and omissions by the Crown since 1840. However, the redress amount provided under any Treaty Deed of Settlement tells only part of the story in terms of property settlement and compensation. The more complete picture is that land gifting including sites of cultural and spiritual significance, and recovery of accumulated rentals for Crown Licensed Forests may also included as part of the final redress – distorting the apparent compensation amount paid. Notwithstanding, total compensation packages typically represent only a fraction of the current market value of dispossessed land. This is an observational paper establishing a conceptual framework, examining the proposition that contemporary Māori are likely to balance economic objectives with social, cultural and spiritual values – even though the embedding of these principles (especially those relating to environmental protection) are still held to strongly.

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Introduction

Few would argue that one of the crucial founding documents of Aotearoa-New Zealand is the 1840 Te Tiriti o Waitangi (Treaty of Waitangi). Over the last few decades, breaches of the Treaty, often nomenclatured as “acts and omissions by the Crown”, have been recognised with accompanying compensatory actions decreed by government primarily in the form of Treaty claims favouring Māori appellants. These claims typically comprise wide-ranging settlements which involve, *inter alia*, real and other property, with their coverage including acknowledgement of grievances and accompanying apology, cultural redress, land reversion, and financial compensation. This paper discusses the breadth, significance and impact of these claims, specifically as they relate to forests and forestry operations – characteristically a

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substantial component of many such claims. It examines the dynamics of balancing cultural and economic objectives by Māori in a predominantly bicultural environment.

Background

When people first arrived in New Zealand about 800 years ago, forests covered most of the country – a land dominated by trees unique to New Zealand, and often composed of very long-lived trees sometimes over 1000 years old (Landcare Research, 2014a). With an increasing realisation of their environmental and social benefits, forests are at the centre of New Zealand's climate change response efforts (Ministry for Primary Industries [MPI], 2014). They have provided important resources for people, from food, timber and water supplies to tourism (Landcare Research, 2014a). Public campaigns to protect and conserve forests have also been a significant feature in the country's political landscape.

The importance of forests is recognised in Article the second [Article 2] of the English version of the "Treaty of Waitangi (Te Tiriti O Waitangi)" (1840). It states that *(emphasis, the authors)*

> Her Majesty the Queen of England confirms and guarantees to the Chiefs and Tribes of New Zealand and to the respective families and individuals thereof the full exclusive and undisturbed possession of their Lands and Estates *Forests* Fisheries and other properties which they may collectively or individually possess.

This may be compared to a recent translation of the Māori version of the same article which states (Kawharu, 2004) "The Queen of England agrees to protect the chiefs, the sub-tribes and all the people of New Zealand in the unqualified exercise of their chieftainship over their *lands*, villages and all their *treasures* …".

Despite these seemingly key differences, it may be argued that the notion and specific expression of forests as a key component of Treaty obligations is explicitly articulated in both the English version (by exact usage of the word "forests"), and by direct inference in the Māori version by use of the word "lands" (which by definition incorporates forests), or alternatively comprising a part of what is meant by the term "treasures". According to Professor Kawharu (2004), submissions to the Waitangi Tribunal concerning the Maori language have made clear that "Treasures" – "taonga" – refers to all dimensions of a tribal group's estate, material and non-material heirlooms and wahi tapu (sacred places), ancestral lore and whakapapa (genealogies). Craig, Taonui, and Wild (2012) point out that the authoritative H.W. Williams Dictionary of the Māori Language defines taonga broadly as "property" or anything "highly prized"; and the contemporary Raupo Dictionary of Modern Māori extends this to include "property, treasure, apparatus, accessory, equipment, thing". The term "wenua" is used in the Māori version when expressing unqualified exercise of their chieftainship over their *lands*, i.e. Māori retain "te tino rangatiratanga o ratou *wenua* o ratou kainga me o ratou taonga katoa" (Bennion, Brown, Thomas, & Toomey, 2009, p. 5).

It is important to note that the possibility of any misinterpretations between the two versions of the Treaty is potentially resolved by the existence of Section 5 (2) within the relevant legislation ("Treaty of Waitangi Act", 1975) which requires the Waitangi Tribunal (established under this Act) to "have regard to the two texts of the Treaty", with it having "… exclusive authority to determine the meaning and effect of the Treaty as embodied in the 2 texts and to decide issues raised by the differences between them". The involvement of the Waitangi Tribunal and the Act under which it operates will be considered later.

Whenua – beyond a commodity

Problems in determining the exact meaning contained within the Treaty versions have never been easy to reconcile. According to Oliver (1991) this is largely due to the difficulty each language has in encompassing the thought forms of the other; exemplified in the duality of conveying kawanatanga to the Crown, as compared to guaranteed tino rangatiratanga to the Māori. Warbrick (2012, p. 92) points out that the closest equivalent Māori term for "land and estates" is "whenua", which in Māori is a concept associated beyond that of land being merely a mode of production or an asset to be traded (as in economic theory) – rather one based upon Māori values and meanings – incorporating their view of the world. Ka'ai and Higgins (2004) understand such notions as Māori interpreting the landscape differently from Pākehā, bestowing importance on places and geographical features in a different way.

Whenua is demonstrably and inextricably linked with Māori identity: in fact Williams (2004) describes whenua as being the same word for placenta, which for most iwi was buried after childbirth in the earth often with a tree planted over it, symbolising the interconnectedness between people and the land and at the same time forming the basis of tangata whenua or "local people". Thus, Māori are not just joined to the land, they are an integral part of nature. Regardless of interpretation, and aside from specific mention in the Treaty, forests are absolutely fundamental to Māori world view, and their inclusion is therefore crucial to any meaningful discussions surrounding the Treaty and the related obligations on the part of the Crown.

The importance of forests to Māori and Pākehā

It may also be established that in New Zealand, the common law principle held is that trees and crops are actually part of the land, a matter which according to Bennion et al. (2009) is explicitly embedded within Section 2 of the Land Transfer Act 1952. So, it is suffice to say that aside from the principles embodied within the Treaty itself, and those held at common law as outlined, comprehending the relevance of forestry settlements to the Treaty of Waitangi requires it necessary to first understand the enormity of importance attached to forests by both Māori, and also the New Zealand community more generally.

In the context of the New Zealand community, the economic importance of Forestry as a significant industry is easily demonstrated. According to the Ministry of Primary Industry (MPI, 2014), it contributes an annual gross income of around $5 billion ($4.5 billion in 2012, being a decrease of 5% from the previous year, according to Forest Owners Association/Minister for Primary Industries (FOA/MPI, 2013) – representing 3% of New Zealand's GDP and directly employing around 20,000 people. With wood products being New Zealand's third largest export earner behind dairy and meat, the MPI suggests the industry is based around sustainably managed exotic plantation forests, covering 1.751 million ha – approximately 7% – of New Zealand's land area. However, measurement by land area alone indicates complete dominance by the additional 6.5 million ha covered in indigenous forests, which are mostly managed by the Department of Conservation as part of the conservation estate (MPI, 2014).

Whilst the economic importance of forests is therefore undoubted, their importance to Māori is demonstrably even more fundamental. Indeed, it can be observed that the insights offered by Māori culture are beneficial in addressing a range of vexing environmental and

social issues in ways that embrace a broader set of principles other than those based on individual property rights and economic values (Craig et al., 2012). This suggests examination of the closest Māori term to asset, "taonga" which, according to Craig et al. (2012) includes a sacred regard for the whole of nature and a belief that resources are gifts from the gods and ancestors for which current generations of Māori are responsible stewards. Taonga emphasises guardianship over ownership, collective and co-operative rights over individualism, obligations towards future generations and the need to manage resources sustainably (Craig et al., 2012).

At the outset, it is therefore necessary to consider "Māori values", which have been described (Manaaki Whenua, 2005, p. 9) as being "instruments through which Māori people experience and make sense of the world". It has also been defined as "any natural resource, area, place, or thing (tangible or intangible) which is of physical, economic, social, cultural, historic, and/or spiritual significance to tangata whenua" (Landcare Research, 2014b). In this case, the definition was deliberately left open ended so that certain objects, attributes or other things of significance were not constrained in meeting this definition. The definition, by including the word "intangible", caters for language as in Māori place names, particularly those used by tangata whenua, with the recording of information related to metaphysics or to cosmology also regarded as important.

There is strong evidence that such Māori values include enormous matauranga (traditional knowledge) about the forests and biodiversity, with Māori typically traditionally interacting with these forests even on a daily basis. According to Manaaki Whenua (2005), the forest has provided Māori with mana (prestige, authority and power), resources, food, rangatiratanga (absolute sovereignty), responsibility, spiritual relationship, well-being and survival. Further, that the Māori values specifically associated with native forests, or Ngahere, include the nurture of significant biodiversity and cultural values that support important plant, animal, insect and fish species, communities and ecosystems, as well as helping to sustain many cultural activities and practices. Such natural areas not only enhance aquatic ecosystems and provide habitats for native birds and many threatened species of plants, animals, birds, fish and insects, but they are also significant in terms of cultural values. For example, they provide traditional supermarkets (kai o te ngahere), learning centres (wananga o te ngahere), medicine cabinet (kapata rongoa), schools (kura o te ngahere) and spiritual domain (wairua o te ngahere) (Manaaki Whenua, 2005).

Indeed in Māori tradition, people and forests are vitally connected – a "life force" to the point where if Māori chopped down trees or took food from the forest, they showed their respect by performing special rites (Taonui, 2014). In 1950, a famous Māori spokesperson (doctor, military leader, politician, anthropologist) Te Rangi Hiroa stated that (Manaaki Whenua, 2005, p. 1) "Man and plants have a common origin. Māori saw plants as having senior status, Tane created them before mankind, and they were therefore respected as older relatives. They are the link between man and sacred ancestors, Papatūānuku and Ranginui".

Nowadays, it may be reasonable to suggest that Māori are more likely to balance economic objectives with social, cultural and spiritual values (Asher, 2013). This may be exemplified by Ngai Tahu's well publicised $150 m forestry to dairy farm conversion redevelopment incorporating the transformation of their Eyrewell and Balmoral (South Island) forest land to irrigated pasture. However, the embedding of cultural Māori values and principles (especially, those relating to environmental protection) are still held to strongly despite the significant commercialisation aspects of that project.

Forest resources & ownership

Unfortunately, despite the significance of forests to both Māori and Pākehā, like many places across the world Aotearoa-New Zealand has a record of rapid forest destruction, particularly over the last century. It has been estimated (Manaaki Whenua, 2005) that from an initial "pre-human" level of 81% coverage of indigenous forest across the country, by 1770 – essentially during a period of exclusive Māori occupation – it had reduced to 51%. It remained much the same proportion until the time of the signing of the Treaty of Waitangi in 1840. This compares to the present day where it is estimated by Manaaki Whenua that there is only a 23% coverage (or 30% if exotic/plantation forests are included) across the whole of Aotearoa-New Zealand's 27.1 m ha. This compares to a total of 33% in the case of Māori freehold land (involving 1.5 m ha), or together with exotic forests accounting for almost half (45%) of the total land area (Manaaki Whenua, 2005).[1] This comparison is compelling, as demonstrated at Figure 1. It provides evidence that Māori have been arguably more diligent stewards of land devoted to forestry, since a much higher proportion has been retained compared to land other than Māori freehold. This applies to both indigenous and planted ("exotic") plantation forests. As put by Business and Economic Research Limited (BERL, 2010), Māori have adopted a more sustainable economy, based on cultivating kumara and fern root, and a careful harvest of the forests, the seashore and the sea. Although there is evidence that most of the present indigenous forest is on steep, less productive, mountainous terrain (Manaaki Whenua, 2005), it nevertheless supports the notion that Māori values, as described previously, remain genuinely and strongly tied to the Ngahere.

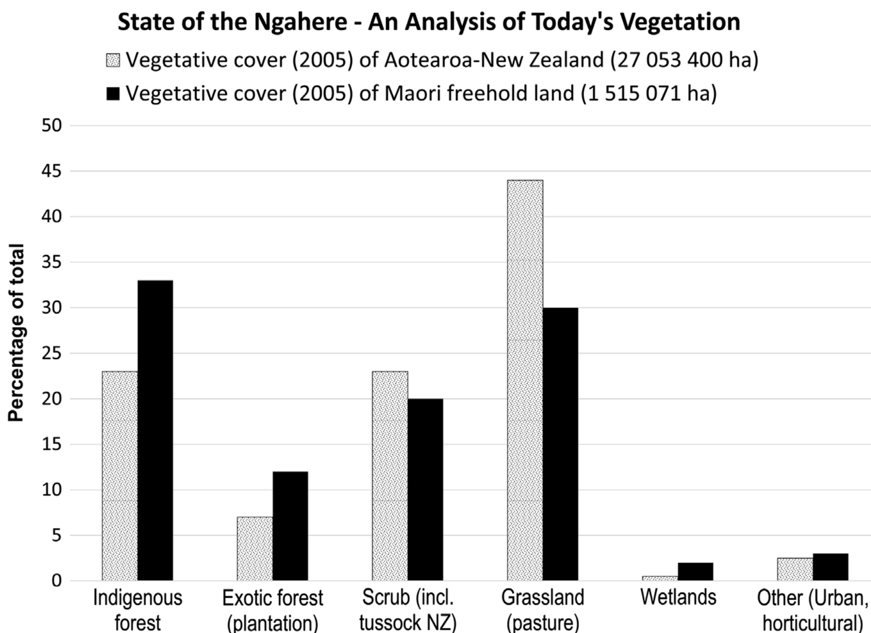

Figure 1. Comparison of forestry cover: Māori freehold land to all of New Zealand land.

According to BERL (2010) and Warren (2013), Maori currently have a large ownership interest in forestry land including around 36% of pre-1990 forests, and have at least 14% of the land underlying plantation forests. This is often represented as being part of "private ownership". Carpenter (2014) estimates that between 10 and 20% of Crown forests – the subject of Maori claims – have been established on land which is still technically Maori land, or land acquired by methods which clearly breach the Treaty. Asher, Naulls, and New Zealand Planning Council (1987) indicate that little Māori reserved or vested land now exists since a Commission of Inquiry into Māori Reserved Land in 1974–1975 resulted in legislation converting most of these areas into ordinary Māori freehold land (still subject to reserve leases) but held by incorporations and trusts. Thus, development options remained limited.

In overall terms, Goodhew (2013) estimates that with more than $2 billion in forest assets, whānau, hapū and iwi already stand out as key players in the forestry sector. It has been predicted that Māori will potentially control all New Zealand exotic forests if Māori plant a further 1 million ha on land already owned by Maori (Warren, 2013). However, a generalised Māori aspiration for 100% forestry ownership is often prolonged by iwi accepting land rentals that creates an immediate cash flow (Asher, 2013) as an interim arrangement. Nonetheless, BERL rightly suggests that the existing proportion will continue to increase in future as a result of ongoing Treaty settlements, i.e. settlements arising from breaches of the Treaty of Waitangi by the Crown. In fact, it has been estimated (Goodhew, 2013) that when all Treaty settlements are finalised in the next 10 years, the current level of Māori-owned land under plantation forestry (520,000 ha) could increase to 785,000 ha or close to half of the current forest estate. Moreover, although there exists a high expectation for employment opportunities, the current position of multiple ownership (average number of 86 owners per block) and large number of holdings overall (26,500 blocks) which characterises Māori land in Aotearoa-New Zealand (Asher, 2013) is unlikely to change significantly due to this inherent level of fragmentation.

The nature of forest treaty settlements

Forestry, therefore, clearly plays a very significant role in Treaty settlements. But exactly what are Treaty settlements? OTS (2014b) describes a Treaty settlement as being an agreement between the Crown and a Māori claimant (usually, iwi or large hapu group) to settle all of that claimant group's historical claims against the Crown. To assist with this process, the Waitangi Tribunal was established by statute in 1975 – ("Treaty of Waitangi Act", 1975). This set the scene for the Māori viewpoint finally making an impact upon Pākehā awareness whom had hitherto forgotten or ignored the Treaty despite consistent invocation and appeal by Māori (Oliver, 1991). However, it was not until the early 1990's that Māori and the Crown earnestly engaged in negotiations aimed to settle Māori historical grievances (Wheen & Hayward, 2012).

Section 5 of the Treaty of Waitangi Act outlines the functions of the Tribunal which includes an ability to "inquire into and make recommendations upon … any claims brought by Māori relating to actions or omissions of the Crown that potentially breach the promises made in the Treaty of Waitangi". Of particular relevance here are Sections 5(ab) and 5(ac) which provides for the Tribunal having ability to make any recommendations or determinations under Schedule 1 of the Crown Forest Assets Act, 1989; and/or land subject to a Crown forestry licence under the Crown Forest Assets Act, 1989 including lands where there is no liability for return to Maori ownership under section 36 of that Act.

A Treaty settlement is usually made up of a number of elements (OTS, 2014b):

(1) Historical Account, Acknowledgements and Crown Apology (the Acknowledgements provide the basis for the Crown Apology to the claimant group for its actions or inactions);
(2) Cultural Redress (comprising a range of mechanisms that aim to safeguard rights and access to customary food-gathering sources, provide recognition of traditional place names – for example, facilitating name changes to sites, such as Aoraki/Mt Cook – and provide opportunities for input into the management or control or ownership of sites and future relationships with government departments and other agencies); and
(3) Financial and Commercial Redress (an overall quantum or value in dollar terms agreed between the Crown and the claimant group in settlement of their historical claims against the Crown – taken by the claimant group in the form of cash or Crown-owned property or some combination of the two[2]). According to Orange (2011), it is the financial component that is used to build a strong economic resource, as the tribe sees fit.

Since 1985, the Waitangi Tribunal is able to inquire into grievances dating back to 1840, with a cut-off date of 1 September 2008 introduced for submitting historical claims (Goldstone & New Zealand Parliamentary Library, 2006). The Office of Treaty Settlements (OTS), a unit within the Ministry of Justice, is the Crown agency responsible for negotiating settlement of historical grievances. Although the Tribunal can only make recommendations to the Crown, in the case of Crown Forest and SOE (state-owned enterprises) lands it can make a binding recommendation for the Crown to return land to Māori. It is also possible for claimants to enter into direct negotiations with government (i.e. without a Waitangi Tribunal report).

Details of the Treaty settlement is provided in a document known as a Deed of Settlement, with supporting Legislation subsequently (usually) enacted to fully implement the process. An important feature of the Settlement is that it is a "final" redress in that, according to OTS (2014b), as part of the settlement, the claimant group accepts that the settlement is fair and final and settles all of the historical claims of the claimant group, whether they have been lodged at the Waitangi Tribunal or not. (OTS also points out that both the Crown and the claimant group accept that it is not possible to fully compensate the claimant group for their grievances. Redress instead focuses on providing recognition of the claimant group's historical grievances, restoring the relationship between the claimant group and the Crown and on contributing to a claimant group's economic development).

Some commentators, such as Rata (2011) and Wheen and Hayward (2012) have been critical of this process, since, *inter alia*, the claimant grouping has by necessity – due to the "greatly expanded Treaty of Waitangi settlements" – involved an artificial "retribalization" resulting in legal recognition only of the incorporated tribe, rather than all Māori. As a result, "neotribal capitalism", characterised by increasing inequalities, has resulted (Rata, 2011), where marginalised Māori have been treated unequally rather than communally. As Wheen and Hayward (2012, p. 13) questions, is it the "elite Māori few", or "all Māori with access to the resulting economic base" that benefit? Other criticism of the process suggests that it lacks equality of bargaining power, since ultimately the Crown "with all the

might and majesty of the state, decides when and how it wants to negotiate as well as the boundaries of any settlement" (Warbrick, 2012, p. 93). This is quite apart from the need to navigate through the minefield and complexity of bureaucratic and laborious Treaty of Waitangi claim processes.

As far as completed Māori settlements are concerned, according to OTS (2014b), there have been a total of 52 settlements which the author has calculated to equal a total redress amount of NZ$1.47billion. – refer Table 1. The significance of forestry settlements are immediately obvious considering that one such claim represents one of the largest settlements ever completed in Aotearoa-New Zealand thus far. In favour of a dedicated forestry Iwi collective (Central North Island Forests),[3] at NZ$161 m – or approximately 11% of the NZ total – it is almost equal in quantum amount to the other three largest claims settled (at NZ$170 m each). These include one for Commercial Fisheries, and another two being the claims of the Waikato-Tainui raupatu and Ngāi Tahu iwis. When amalgamated together, these four claims account for almost half of the NZ$1.47b total settled claims.

It is also noteworthy that in declaring a "quoted" redress amount of NZ$161 m (OTS, 2014b), the aforementioned Deed of Settlement signed by the Crown, and the subsequent enacting of the Central North Island (CNI) Forests Land Collective Settlement Act 2008 tells only part of the story. The more complete picture is that together the tribes have recovered ownership of the land under Kaingaroa and eight other central North Island forests. According to BERL (2010), the 176,000-ha estate land is estimated to be worth $196 million. Further, BERL point out that since 1989, the owners of the forests on that land have been paying rent for the Crown Forest Licences that entitle them to grow trees there. They calculate that when accumulated rent on the CNI forests had reached $223 million, it was passed to the CNI collective, together with ownership of the land. Combined with other Forestry settlements in the Bay of Plenty region, the total forestry asset base in the Waiariki region equates to over 186,000 ha, with a value of $320.5 m and accumulated rent of $241.6 m. (BERL, 2010).

The other matter relating to the possible understating of amounts paid to Māori is the practice of "embedding" the value of forestry lands in settlement amounts which may not be included, or properly included in the redress amount.[4] Whilst it is not suggested that that this is an attempt at avoiding transparency, as all details of claims are made publically available, it nevertheless acts, perhaps inadvertently, as a means of distorting the full compensation amount actually being paid. An example of this may be cited with reference to the claim settled in favour of Ngā Hapū o Ngāti Ranginui – an iwi based in the Tauranga region, North Island. Their area of interest includes the Athenree Crown Licensed Forest. This iwi's claim includes a financial redress of approximately $38.028 million. However, *in addition* to this amount, the commercial redress package includes commercial properties available for acquisition by Ngā Hapū o Ngāti Ranginui including 51 specific sites *plus* Puwhenua Forest Lands – the latter (containing the Athenree Forest) which will transfer to a joint entity with Ngāti Rangiwewehi and Tapuika (OTS, 2014a). Also additional to the foregoing, according to the Ngāti Ranginui Settlement Summary (OTS, 2014a), are various other sites of cultural and spiritual significance located on public conservation land, amounting to approximately 1000 ha which are included in the Final settlement as "vested lands" – some of which contain forest lands.[5]

Table 1. Māori settlements in New Zealand by Iwi/Region.

	Iwi/Region	Redress amount	Year of deed	Year of legislation
1	Commercial Fisheries	$170,000,000	1992	1992
2	Waikato-Tainui raupatu	$170,000,000	1995	1995
3	Ngāi Tahu	$170,000,000	1997	1998
4	Central North Island Forests Iwi Collective	$161,000,000	2008	2008
5	Ngāti Porou	$90,000,000	2010	2012
6	Ngāti Toa Rangitira	$70,000,000	2012	2014
7	Raukawa	$50,000,000	2014	2014
8	Ngāti Awa	$42,390,000	2003	2005
9	Ngāti Ruanui	$41,000,000	2001	2003
10	Affiliate Te Arawa Iwi and Hapu	$38,600,000	2006–2008	2008
11	Ngaa Rauru Kiitahi	$31,000,000	2003	2005
12	Ngāti Apa ki te Rā Tō	$28,000,000	2010	2014
13	Taranaki Whanui ki Te Upoko o Te Ika	$25,000,000	2008	2009
14	Rangitāne o Wairau	$25,000,000	2010	2014
15	Ngāti Kuia	$24,000,000	2010	2014
16	Maungaharuru Tangitu Hapū	$23,000,000	2013	2014
17	Rongawhakaata	$22,240,000	2011	2012
18	Ngāti Whātua o Kaipara	$22,100,000	2011	2013
19	Ngāti Pahauwera	$20,000,000	2010	2012
20	Ngāti Whātua Ōrakei	$18,000,000	2011	2012
21	Ngāti Apa (North Island)	$16,000,000	2008	2010
22	Te Uri o Hau	$15,600,000	2000	2002
23	Ngāti Mutunga	$14,900,000	2005	2006
24	Ngāti Tama	$14,500,000	2001	2003
25	Ngāti Manawa	$12,207,780	2009	2012
26	Ngāti Tama ki Te Tau Ihu	$12,000,000	2013	2014
27	Ngai Tāmanuhiri	$11,070,000	2011	2012
28	Ngāti Kōata	$11,000,000	2012	2014
29	Te Ātiawa a Māui	$11,000,000	2012	2014
30	Ngāti Rārua	$11,000,000	2013	2014
31	Tuwharetoa (Bay of Plenty)	$10,500,000	2003	2005
32	Te Arawa (Lakes)	$10,000,000	2004	2006
33	Ngāti Makino	$9,600,000	2011	2012
34	Ngāti Whare	$9,568,260	2009	2012
35	Te Roroa	$9,500,000	2005	2008
36	Ngāti Manuhiri	$9,000,000	2011	2012
37	Waitaha	$7,500,000	2011	2013
38	Ngāti Rangiwewehi	$6,000,000	2012	2014
39	Tapuika	$6,000,000	2012	2014
40	Ngati Whakaue	$5,210,000	1994	
41	Ngāti Turangitukua	$5,000,000	1998	1999
42	Pouakani	$2,650,000	1999	2000
43	Maraeroa A and B Blocks	$1,800,000	2011	2012
44	Ngati Rangiteaorere	$760,000	1993	
45	Ngāti Rangiteaorere	$750,000	2013	2014
46	Hauai	$715,682	1993	
47	Waimakuku	$375,000	1995	
48	Te Maunga	$129,032	1996	
49	Rotoma	$43,931	1996	
50	Waitomo[a]		1990	
51	Waikato River		2009–2010	2010
52	Ngā Wai o Maniapoto[b]		2010	2012
	Total	$1,465,709,685		

[a]The Crown transferred land at the Waitomo Caves to the claimant group, subject to a lease, and provided a loan $1,000,000.
[b]Enables co-governance and co-management of the Waipa River – does not settle the historical Treaty claims of Maniapoto. The Maniapoto comprehensive settlement is yet to come.
Source: Data extracted by the author from OTS (2014b).

Involvement of the Crown Forest Rental Trust

Another point of note is that during the period leading up to and including finalisation of settlement hearings, interest from the accumulated rentals collected on behalf of the Crown

and Māori by the Crown Forest Rental Trust (CFRT) have been used to finance claims' research and other activities (BERL, 2010). This has proved to be a substantial funding source for Māori involved in the very expensive process of establishing claims typically involving costly legal investigations, and the collection and presentation of historical and anthropological evidence. Significantly, this has facilitated not only claims related to forestry, but effectively claims made by Māori across the full spectrum rather than just singular claims based on specific forestry blocks. Indeed, by 2003, Orange (2011) reports that the CFRT was meeting about 80% of claimants' research costs, solving a previously ongoing major problem for all engaged in Treaty claims. This approach is consistent with, as stated by Goldstone and New Zealand Parliamentary Library (2006), a desire for the Tribunal to hear wider hapu and iwi claims, and the Crown's policy of only negotiating with large groupings. The significance of this may be appreciated by considering the size of such spending, which even in 1997, represented more than $12 m annually (Edlin, 1997).[6] Interestingly, the Crown Forestry Rental Trust have hitherto kept a non-disclosure policy concerning the details of how the money is being used – even with respect of the Finance Minister, or the Federation of Maori Authorities.

The aforementioned Crown Forestry Rental Trust was set up under the Crown Forest Assets Act, 1989; after the New Zealand Māori Council and Federation of Māori Authorities took court action to protect Māori interests in the Crown's commercial forests (Ngā Kaitiaki Rēti Ngahere Karauna, 2014; Waterreus, 2013). The Act allows the Crown to sell licences for forestry, but prevents it from selling the land itself until the Waitangi Tribunal recommends who has ownership, i.e. Māori, or the Crown. In so doing, the Crown Forest Assets Act 1989 therefore protects the claims of Māori under the Treaty of Waitangi Act 1975. However, the situation is typically highly protracted and convoluted. In particular, aside from anything related to Treaty obligations and the multifariousness of settlements, governance issues are highlighted by Wilson and Memon (2010) as demonstrating the complex interplay between endogenous environmental governance processes and exogenous drivers (in particular through the influence of international logging companies), and the policy environment which has sent mixed, and at times confusing, messages to Māori native forest owners.

Valuation implications

According to numerous authors, e.g. Rost and Collins (1993), Baxter and Cohen (2009), and Meade, Fiuza, and Lu (2008), the most common approach for forest valuation is the income or productivity approach. This also known as the "expectation valuation" methodology (Crighton Anderson, 2013). In the words of Liley (2002), forest valuation "seems no less dismal a science than its generic parent" (forest economics), since the income approach in this instance involves not only land valuation and the usual accompanying complications associated with future cash flow estimations (and by definition arriving at often contentious discount rate computations regardless of whether the approach is DCF, WACC or CAPM), but also other considerations such as reconciliation of forest asset sales with company share prices, and integration of valuation with the requirements of relevant accounting standards. There are also special technical issues to consider such as harvesting strategy of the forest owner (which may not be optimum), exchange rate considerations, and other matters.

In the case of forests, there are particular cases where the purpose of the valuation must also be considered. For example, Crighton Anderson (2013) highlights such important

differences by citing examples such as (1) calculating appropriate tax to pay based on the accurate value of the trees where the land and trees are sold together; (2) in forest planning and management, providing a stable basis for comparing various options and investments, and (3) providing estimated returns to investors for the purpose of prospectus promotion. However, regardless of the case in question, sales are invariably infrequent and therefore the subsequent dearth of evidence makes it difficult for the Valuer to strongly support their conclusions – unlike many other valuation categories. Bigsby (2004, p. 35) also acknowledges many of these and other factors by describing them as "challenges in refining forest valuation techniques", and further suggests that it is the context of commercial forestry in New Zealand that is most pertinent. This is especially so given that forest crops are generally valued separately from land – a distinction for New Zealand claimed by Bigsby to be unique internationally.

In contemporary New Zealand, Bigsby (2004) points out that these aforementioned complexities have resulted from an array of factors such as the Forestry Rights Registration Act of 1983 (which legislatively provides distinct rights of a forest separate from the land), the growth of joint venture-type arrangements between landowners and forestry investors, and privatisation of government-owned plantation forests in the early 1990s. The intricacy of Māori principals adds even greater complexity to the task of valuation of forest land, especially where the land is held in one of several forms of special Māori land tenure where the definition of "open market value" is readily challenged. Therefore, the reversion of forest lands under Treaty settlements to Māori ownership has simply added to the already composite diversity of ownership types in New Zealand – including the occurrence of separate forest and land ownership on the same parcel of terrestrial space. So, the implication here is that special account must be taken of the nature and type of ownership (where it is often incorporated as part of the land description component of a forest valuation), since in the case of forestry this may be a critical factor in establishing value. This is a point not lost on Bigsby and Willemse (2004) whom in examining the increase in international diversity of forest owners in New Zealand, found that whilst there were substantial differences between valuation methodologies being adopted, those differences were found not to be related or linked to the nationality of the owner. However, it is important to note that study did not look at Māori land ownership whatsoever, so perhaps this work could be updated and extended to cover a more contemporary Aotearoa.

Moreover, forest claims under the Treaty, rather than assisting in establishing value, have arguably just complicated matters even further since the financial compensation amount, and/or the assessed land (forest) value of the reversions, as contained in the settlement documentation, do not necessarily, nor are claimed to be, related to a full market value offset.

Conclusions

Forestry claim settlements, and for that matter Treaty settlements generally, represent an arduous and complicated process that has often proved frustrating to all parties involved in progressing and hearing grievances. Over recent years, forestry claims have nevertheless made considerable progress under Treaty-related legislative processes, despite individual situations rarely, if ever, proving anything like straight forward.

Whilst the Treaty of Waitangi guarantees Māori the right, amongst other things, to keep their forests, it has limited legal standing in itself. It is the related Waitangi Tribunal

and its legislated process, though not a perfect process, that has facilitated a means of registering and researching claims, and in many instances subsequently settling with government. Because of the long, often gruelling procedures, and the sometimes controversial nature of claims and evidence, together with various other difficulties – especially those problems associated with amalgamation (grouping) of hapu and iwi – it is inevitable that some Māori have and will be alienated. Indeed, the whole process has often been subject to intense criticism from nearly all stakeholders at some point. Notwithstanding, it has been a mechanism whereby a significant number of long held grievances have been able to be articulated, publically aired, and the opportunity for sites and other matters of cultural significance formally identified. For some, this has facilitated the grieving process and provided at least partial closure. Whilst full compensatory restoration – by admission from all parties – has not been possible, the Crown's acknowledgement of grievances, formal apology, cultural redress, along with financial and commercial compensation, have gone some way towards recompensing actions and omissions by the Crown which have breached its obligations under the Treaty of Waitangi. In some cases it will be the apology that has provided the greatest restorative affect, serving to rebuild lost relationships between Māori and Pākehā, and/or Māori and the Crown. For others it will be the restoration of matters or sites relating to cultural significance. In all cases the financial redress will no doubt be welcome, albeit considered insufficient by many despite successful removal of the artificial $1billion "fiscal envelope" limitation on claims. However, for some European New Zealanders, and more particularly those unable to grasp the bicultural concept of "one nation – two peoples", it unfortunately represents a needless reminder of grievances more correctly belonging to an ugly, historical past for which they are not personally responsible. As such, the Treaty and its resulting settlements represent a bewildering and confusing array of extravagant, expensive measures that are more borne out of needless political correctness, rather than a genuine attempt to "move on" and treat all New Zealanders with a true sense of equality.

Further research

The finality of Treaty settlements is yet to transpire, and may not occur for some years to come[7]. Further empirical analysis conducted as the process continues will enable a more thorough assessment of socio-economic impact derived, potentially transitioning the development of the currently conceptual to a more theoretical framework, as compensations for Crown actions and omissions since 1840 more fully materialise. Ultimately, the extent to which commercialisation (economic values) is balanced with and against Māori tikanga and principles (cultural and spiritual values) has yet to be comprehensively demonstrated. Regardless, the Crown"s desire for the achievement of "full and final settlement" is a lofty goal that may prove difficult to definitively achieve. Many commentators have observed that a more appropriate objective is that of achieving enduring settlements in a way that injustice may be seen to have been handled fairly and equitably – and minimising, at least as much as possible, the undermining of earlier albeit less satisfactory settlements. This paper has demonstrated the importance of this process, and it will be enlightening to establish whether this continues to prove as important as the details of the settlement/compensation itself, and whether such actions, in the words of the Office of Treaty Settlements, truly serve to "heal the past and build the future".

Notes

1. Interestingly, this proportion approaches a similar percentage that existed for the whole of Aotearoa-New Zealand prior to European settlement.
2. The combination of cash and property is a matter for the claimant group to decide, but also depends on the extent of suitable Crown property holdings in the area relevant to the claimant group.
3. Seven iwi are members of the Central North Island Collective – Ngāi Tuhoe, Ngāti Tuwharetoa, Ngāti Whakaue, Ngāti Whare, Ngāti Manawa, Raukawa and the Affiliate Te Arawa Iwi and Hapu.
4. The current market value of forestry land – a matter which in itself is relatively complicated and one which may typically be contentious and arguable – may not necessarily be formally calculated or even incorporated into the redress amount. Determination of "market value" of a forest is a process often referred to as a "Valuation Problem" (Meade et al., 2008, p. 3), and more particularly with the advent of Emission Trading Schemes (and potential sequestering of carbon if applicable) potentially involves an extension of the three possible approaches (comparable sales analysis, discounted cash flow DCF analysis, and real options analysis ROA), or as Bigsby (2004, p. 32) puts it, a "range of valuation methods" within this general schematic.
5. The Ngāti Ranginui Settlement Summary (OTS, 2014a) states that "the total cost to the Crown outlined in the Deed of Settlement is $38,027,555 *and* the value of cultural and commercial redress properties to be vested and transferred for consideration".
6. In 2001 Berry (2001) reported that the Crown Forestry Trust admitted that despite spending nearly $50 million over the past decade to help settle Maori forestry claims, it has failed to deliver to Maori. The report went further to say that only three forestry claims have been settled between Maori and the Crown since it was set up 10 years ago. The trust laid much of the blame on the Crown for the lack of settlement progress, when it appeared before the Maori Affairs select committee at Parliament.
7. According to the Waitangi Tribunal (2015) with its current resources, the Tribunal expects to have prepared casebooks for all historical and generic claims within the next 5 years.

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