

**A Mana Wahine Critical Analysis of New Zealand
Legislation Concerning Education:
Implications for Addressing Māori Social
Disadvantage**

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Haruru Mai Ana

Na Elva Wetekia Kotua (nee Kawharu)

| | |
|------------------------|-------------------------------------|
| Haruru mai ana | The roaring sound of darkness |
| Te rongo mau awhio | overwhelms me |
| Tai atu ki ahau | and I feel an aching |
| Te mamae muri nei e | deep within my heart |
| Whaka rongo ki nga tai | Listen to the tides |
| E tangi haere ana | lamenting as they flow |
| Whakariri ai | surging sullenly by |
| Te rae ki Rangitoto e | the headlands at d'Urville Island |
| Kua a makariri ke | From this bitter place of ashes |
| Te okiokinga | memories rise in the still air |
| Puehu kau ana | and from the ashes of the past |
| Heoi te ahi ka e | a glimmering light appears |
| Pumai tonu atu | Steadfastly and sure, the streams |
| Te rere o nga awa | will continue to flow, the sun will |
| Te Tonga o te ra | continue to rise and set and the |
| Nga maunga tu noa e | hills of home will stand for ever |

Translation na Elva Wetekia Kotua

Song provided by Nohorua Akuhata Kotua

ABSTRACT

Theory and practice are intertwined, woven inextricably together by the way that each informs and is informed by the other (Moss 2002, Pihama 2001, Simmonds 2009). This research confronts and analyses the legal bases of gendered and race-based inequalities by critically analysing New Zealand social policy legislation through a mana wahine perspective. Mana wahine and critical policy analysis share common goals to challenge dominant theoretical and methodological norms in order to recognise unequal power distributions, of which colonisation is implicit (Tomlins-Jahnke 1997).

This research has been guided by a reading of literature that suggests Māori social disadvantage has become ingrained and that policies designed to address this inequality and to include Māori people and Māori perspectives in mainstreamed systems are both confusing, and yet to be successful. This study has been designed to explore present policy legislation concerning social development. A case study of the education system has been used, which draws on historic and more contemporary Western political agendas as reflected in legislative shifts.

Key findings of this research include the exclusion of mana wahine through the ongoing processes of colonisation that do not give rise to Māori cultural understandings. To summarise, the social policy context at present is characterised by: Māori demands for greater self-determination; an absence of Treaty rights for Māori; liberal interpretations of Treaty principles, and scant processes to implement them; a devoid of aspects pertinent to mana wahine, and; the contradiction between Government's articulated position on rights and inclusion in social policy and the language used in and concepts enforced by legislation.

The findings are significant and reveal the ongoing complexities of Indigenous inequalities in the context of widespread policy 'commitment' to inclusion and equality. The central argument developed throughout this study is that there is an urgent need to shift policy thinking toward Māori if there is to be a significant movement toward justice for Māori women, which will involve Māori-centred decolonisation and the inclusion of aspects pertinent to mana wahine.

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DEDICATION

For Lesley and Nohorua Kotua

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ABBREVIATIONS

| | |
|---------------|--|
| DHB | District Health Board |
| DPB | Domestic Purposes Benefit |
| IBR | International Bill of Rights |
| ICCPR | International Covenant on Civil and Political Rights |
| ICESCR | International Covenant on Economic, Social and Cultural Rights |
| ILO | International Labour Organisation |
| ITU | Iwi Transition Authority |
| MMP | Mixed Member Proportional |
| MOE | Ministry of Education |
| MOH | Ministry of Health |
| MOJ | Ministry of Justice |
| MSD | Ministry of Social Development |
| MWA | Ministry of Women's Affairs |
| NCEA | National Certificate of Educational Achievement |
| NZPCO | New Zealand Parliamentary Counsel Office |
| NZCF | New Zealand Curriculum Framework |
| TPK | Te Puni Kōkiri |
| UN | United Nations |

GLOSSARY

Te Reo Māori to English

Note: Māori terms and definitions are those implied by the purposes of this thesis. There are many complexities in defining Māori terms in the English language and terms can vary based on context. This thesis offers simplified translations in-text, whereas lengthier or more conceptual interpretations are located in accompanying footnotes.

| | |
|----------------------|---|
| Aotearoa | ‘The Land of the Long White Cloud’ commonly used to refer to New Zealand |
| Hapū | Sub-tribe, family collectives usually with common ancestry and ties to land |
| Harakeke | Flax plant |
| Hikoi | To step, stride, march, walk. Also refers to ‘The Land March’ protest of 1975 |
| Hine | The female essence |
| Hui | To gather, congregate, assemble, meet |
| Iwi | Extended kinship group, tribe. Often refers to a large group of people descended from a common ancestor |
| Kaitiaki | Guardian |
| Karanga | To call, call out, summon |
| Kaumatua | To grow old, grow up. Respected elder |
| Kaupapa Māori | Māori approach, Māori topic, Māori customary practice, Māori institution, Māori agenda, Māori principles, Māori ideology - a philosophical doctrine, incorporating the knowledge, skills, attitudes and values of Māori society |
| Kāwanatanga | Government, dominion, rule, authority, governorship, province |

| | |
|---------------------------|---|
| Kōrero | To tell, say, speak, read, talk, address |
| Kura Kaupapa Māori | School of Kaupapa Māori |
| Mahuika | Personal name and from whom Māui obtained fire |
| Mana | Prestige, authority, control, power, influence, status, spiritual power, charisma |
| Mana Tāne | often referred to as Māori masculinist discourses, is a theoretical and methodological approach that explicitly examines the intersection of being Māori and male |
| Mana wahine | often referred to as Māori feminist discourses, is a theoretical and methodological approach that explicitly examines the intersection of being Māori and female |
| Māori | Indigenous people of Aotearoa/New Zealand |
| Marae | Courtyard - the open area in front of the <i>wharennui</i> , where formal greetings and discussions take place. Often also used to include the complex of buildings around the <i>marae</i> |
| Mātauranga Māori | Māori knowledge - the body of knowledge originating from Māori ancestors, including Māori world-views and perspectives, Māori creativity and cultural practices |
| Māui | Personal name and well-known Polynesian character of narratives. He performed a number of amazing feats |
| Noa | To be free from the extensions of tapu, ordinary, unrestricted |
| Ngati Tūwharetoa | Tribal group of the Lake Taupō area |
| Ōritetanga | Equality, equal opportunity, equal outcomes |
| Pākehā | New Zealander of European (usually settler) descent |
| Papatūānuku | Personal name for Earth Mother and wife of Rangi-nui |

| | |
|-----------------------------|--|
| Ranginui-nui | Sky Father |
| Rangatahi | Younger generation, youth |
| Rangatira | Be of high rank, become of high rank, rich, well off, noble, esteemed, revered |
| Rūnanga | To discuss in an assembly |
| Tangata Whenua | Local people, hosts, Indigenous people of the land - people born of the whenua, i.e. of the placenta and of the land where the people's ancestors have lived and where their placenta are buried |
| Taonga | Treasure, anything prized - applied to anything considered to be of value including socially or culturally valuable objects, resources, phenomenon, ideas and techniques |
| Tapu | Sacred, prohibited, restricted, set apart, forbidden, under <i>atua</i> protection |
| Te Ao Māori | The Māori world |
| Te Ao Mārama | Be clear, light (not dark), easy to understand, lucid, bright, and transparent. The natural world |
| Te Kōhanga Reo | Māori language and philosophy preschool |
| Te Pō | Darkness, night. The place of departed spirits |
| Te Reo Māori | Māori language |
| Te Tiriti o Waitangi | The Treaty of Waitangi |
| Te Urupare Rangapu | A report to advise Māori – Crown relations based on Māori structures, Government commitment to principles and devolution of some roles to (iwi) authorities. |

| | |
|----------------------------|--|
| Tikanga Māori | Correct procedure, custom, habit, lore, method, manner, rule, way, code, meaning, plan, practice, convention |
| Tino Rangatiratanga | Self-determination, sovereignty, domination, rule, control, power |
| Tipuna | Ancestor, grandparent |
| Wā | Time, season, period of time, interval, area, region, definite space |
| Wahine | Woman, female, lady, wife. The intersection of wā and hine |
| Wairua | Spirit, soul - spirit of a person which exists beyond death |
| Whakanoa | To remove <i>tapu</i> - to free things that have the extensions of <i>tapu</i> , but it does not affect intrinsic <i>tapu</i> |
| Whakapapa | Genealogy, genealogical table, lineage, descent - reciting <i>whakapapa</i> was, and is, an important skill and reflected the importance of genealogies in Māori society in terms of leadership, land and fishing rights, kinship and status |
| Whānau | Extended family, family group, a familiar term of address to a number of people |
| Whanaungatanga | Relationship, kinship, sense of family connection - a relationship through shared experiences and working together which provides people with a sense of belonging |
| Whāngai | To feed, nourish, bring up, foster, adopt, raise, nurture, rear |
| Whare tangata | House of humanity, womb |

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CHAPTER ONE

Introduction

Successive New Zealand government policies have been cited as reasons contributing toward the negative experiences and representation of Māori (L Smith 1996, Bishop and Glynn 1999, L Smith 1999b, G Smith 2000, Rata 2003). The ongoing impacts of colonisation have been seen to contribute to the incessant disadvantage experienced by Māori women in their own societies and within colonising societies (L Smith 1999b). Concurrently within development studies, education is identified and lauded as a strong component in lifting socio-economic disadvantage for women and Indigenous groups around the world. Yet, within Aotearoa New Zealand, Māori women and their perspectives remain on the periphery of hegemonic, masculinist and institutionalised processes of Pākehā (non-Māori of European descent) (L Smith 1999b).

Introducing the Social Development Context

The present environment in New Zealand is characterised by an aging Pākehā population, and an increasing youthful Māori populace (Statistics NZ 2014c). The Māori population has increased almost 40 per cent in the past 22 years to comprise 14.9 per cent of New Zealand's total population. Now, one in seven people living in New Zealand identify as Māori, and one third of Māori are under the age of 15 years (Statistics NZ 2014c). Māori women comprise 51.8 per cent of Māori (Statistics NZ 2014c), and therefore comprise more than half of the tangata whenua (Indigenous people of the land).

Recent trends in social development have seen some improvements for Māori. For example, 36,072 Māori now have a bachelors degree or higher (Statistics NZ 2014c). Yet, Māori are not represented as positively as Pākehā in any spectrum of social development, and high levels of disparity persist. Complicating the matter is evidence that relationships between social development indicators are strongly correlated with each other (M Durie 2001, M Durie 2005b, Boston 2013). Therefore, the same groups of people tend to be negatively represented in numerous categories of social development at the same time.

Perhaps reflecting this trend are the findings that Māori are less likely than Pākehā to obtain academic qualifications (Ministry of Education 2014), less likely than Pākehā to be

employed (Statistics NZ 2014a), and have a shorter life expectancy than Pākehā (Statistics NZ 2013). For example, in 2013 the percentage of 18 year olds who attained the equivalent of National Certificate of Educational Achievement¹ (NCEA) Level 2 or higher was 63.3 per cent of Māori, compared with 83.4 per cent of Pākehā (Ministry of Education 2014). In the same year, the national employment rate was 64.1 per cent for the total population, however, Pākehā were above the national average at 66.8 per cent, while Māori were below it at 57.3 per cent (Statistics NZ 2014a). In addition, while the national average life expectancy at birth (from 2010 to 2012) was 78.3 years, the average for Pākehā was above the national average at 82 years, and Māori were below it at 74.7 years; a significant difference of 7.3 years (Statistics NZ 2013).

New Zealand has political and moral responsibilities to ensure that Māori succeed in a manner consistent with other New Zealanders, and in an environment where the unique and distinct world-views of Māori are embraced within every stratum of society, as guaranteed by Te Tiriti o Waitangi.²

Introducing The Treaty

The Treaty of Waitangi was first signed on the 6th of February 1840 by representatives of the British Crown and various Māori chiefs, including Māori women of mana (prestige) from the North Island of New Zealand (Orange, 1987). The Treaty, as it is most commonly known, created reciprocal rights and obligations for both parties and comprises of written and verbal guarantees in both Māori and English. The Treaty is now considered the founding document of New Zealand. Complications in the relationship between Māori, Pākehā and the Crown arose almost immediately post signing, due to misunderstandings, mistranslations, and flagrant Crown abuses of the Treaty. The Treaty remains the centre of much debate in New Zealand political and social spheres. To curtail dissension, attempts have been made to further define versions of the Treaty, legislate the Treaty, and abolish the Treaty respectively. As it stands, the Treaty affords certain rights to both parties, but specifically what these rights are remains to be fortified in legislation (see chapters three and four).

¹ NCEA are New Zealand's main standards-based system for secondary school qualifications.

² The Treaty of Waitangi (the Treaty) is the socialised term for the agreement between the Crown and Māori representatives. Where this thesis uses the term the Treaty it is in reference to either all nine documents that comprise the full agreement, or to the English version, respective to context. Where the term Te Tiriti is used it is in explicit reference to the Māori documents.

Māori Women and the Treaty

The validity of Māori women's roles and responsibilities are crucial to Māori culture, and therefore implicit to the Treaty. Māori culture holds women in high regard as they are the *whare tangata* (bearers of life) (McBreen 2011). As Mikaere (2003) elaborates, the "female reproductive organs and the birthing process assume major importance throughout creation stories" (pp. 13-14). Birth is most sacred in the perspective of *whakapapa* (genealogy), and *whakapapa* is of paramount importance in *te ao Māori* (the Māori world) (McBreen 2011). Women, as the bearers of life, are considered to have special and sacred significance in shaping the world for succeeding generations (McBreen 2011). As Pere (1994) articulates, "the first human was a woman... she was from *Papatūānuku*... all of us have sprung from the very beginning from the womb of a woman" (p. 167).³

Māori women are considered *taonga* (defined below), which are complex and pivotal to *tikanga Māori*. The significance of *taonga* differs from Western constructs of tangible property to be owned (McBreen 2011). For example, Tapsell (1997) describes *taonga* as "a powerful and all-embracing concept" (p. 326). The significance of *taonga* to Māori is further recognised as it "immediately elicits a strong emotional response based on ancestral experiences, settings and circumstances" (Tapsell 1997 p. 326). *Taonga* comprises three core elements being *mana*, *tapu* (sacredness) and *kōrero* (speech) (Tapsell 1997). *Taonga* have *mana* through association with *tūpuna* (ancestors), and this *mana* grows over time as *taonga* accumulate history. *Tapu* protects *mana* by placing restrictions on *taonga*; and *kōrero* is the means of passing on the education of the *taonga*, and traditions attached to it (C Royal 2007).

Tapu comprises two aspects, the sacredness of each life, and protective restrictions. Regarding the sacredness of life, Mikaere (2000) has described that:

No individual stands alone: through the *tapu* of *whakapapa*, she or he is linked to other members of the *whānau*, *hapū* and *iwi*... Every person has

³ *Papatūānuku* is mother earth, and provides the physical and spiritual basis for all life.

a sacred connection to Rangi and Papa and to the natural world around them (p. 4).⁴

Henare (1988) previously referred to this as ‘intrinsic tapu’ because everybody is born with this tapu and it cannot be removed. Jackson (1988) also asserted that this tapu is “the major cohesive force in Māori life” (p. 41). Other forms of tapu have been considered ‘extensions of tapu’ because they add an additional layer to the tapu that is intrinsic (Henare 1988). For example, a restriction on a person, an object or land can render it sacred as a means of protection or prohibition, restrictions which “linked the people and the event with ancestral precedent” (Jackson 1988 p. 42).

Whakanoa is the process used to remove a tapu restriction. Noa, while set apart from what is considered sacred, refers to a safe and unrestricted state, with intrinsic tapu still intact. Māori women play a fundamental role in the processes of tapu and whakanoa. Women whakanoa by drawing the tapu into themselves and sending the tapu back to the place of origin, that is, to the spirit forces (Binney 1986 cited in McBreen 2011). Tapu is drawn into the same passage that “each of us passes through to enter Te Ao Mārama and is the same passage each of us must pass on our inevitable journey back to Te Pō” (Mikaere 2003 p. 23).^{5,6,7} According to Henare, these processes are “the mana and the tapu of women” (Henare 1988 p. 20).

Tapsell (1997) considers kōrero of most importance to taonga, because:

kōrero allows descendants to re-live the events of past generations...[which] allows ancestors and descendants to be fused back into a powerful, single, genealogical entity (p. 330).

Kōrero and taonga are further linked through mana wahine - the conveyor of karanga, which the first and sole voice.

All taonga are directly associated with ancestors and land (Tapsell 1997). Mikaere (2006) has described taonga as the physical manifestations of ancestors, which can be

⁴ Whānau refers to a family group; hapū are collectives of whānau, and Iwi are the extended tribe.

⁵ Te Ao Mārama refers to the earth as the physical world, the world of life and light.

⁶ Te Pō refers to the setting of the sun, darkness and night; and the place of departed spirits, underworld - the abode of the dead.

⁷ Because tapu is drawn into where tangata only women who are virgins or beyond the age of child bearing are able to conduct whakanoa.

understood in at least two ways. First, that they represent the mana and tapu of tūpuna. Second, that taonga actually possess the wairua (spiritual element) of tūpuna, and therefore *are* tūpuna.

In the Māori world, everything is interrelated; connected across time, space, place, and dimension. There are many ways in which the Treaty protects ngā wahine (Māori women) as sacred bearers and protectors of life. Māori women derive specific rights through the assurances of kāwanatanga (authority), tino rangatiratanga (self-determination), and ōritetanga (equality) and therefore, Government has a responsibility to protect Māori women's interests; facilitate Māori women's self-determination over their own affairs; and ensure Māori women derive equality of outcomes. As signatories to Te Tiriti, Māori women further evidenced their positions of political leadership and mana (Irwin 1992a). Mana wahine rights are strongly positioned as Treaty rights (Hutchings 2002).

There are powerful arguments that the Christian missionaries responsible to the Crown for Te Tiriti, actively and intentionally ostracised Māori women, preventing participation by many Māori women (Orange 1987), the result of which had severe effects on those women and their interactions within the Māori world. Since then it can be argued that very little has been done to actively protect the rights of Māori women as guaranteed in Te Tiriti. The issue of Māori women's involvement in Treaty decision-making processes remains largely unaddressed, and Māori women's perspectives are persistently absent in social policy legislation.

Māori women have been, and continue to be, adversely impacted by the various processes of colonisation (Law Commission 1999). Western settlers and missionaries brought with them Western imperialism and Christian ideologies. These beliefs contained negative discourses relating to Indigenous peoples, and Indigenous women in particular (Law Commission 1999). Thus, Māori women experienced "diminution of their value in Māori society and consequently, in the new [Western] regime" (Law Commission 1999 para. 54). As L Smith (1999b) expressed,

By the nineteenth century colonialism not only meant the imposition of Western authority over Indigenous lands, Indigenous modes of

production and Indigenous law and government, but the imposition of Western authority over all aspects of Indigenous knowledge's, languages and cultures (p 64).

New Zealand's history of imperialist colonialism effectively focused on the destruction of Māori philosophies and culture. In doing so, Western ideologies became hegemonic – forced downward from State level by multiple laws⁸ and the daily acts of settlers and some Māori. Imposed over several generations, these ideologies have since permeated all strata of Māori society. Over time the entanglement of Christianity in New Zealand national politics has diminished. State emphasis has shifted away from Christian ideologies and toward secular Western science as a 'legitimate' construct of knowledge (L Smith 1999b). However, while the New Zealand Government is now considered secular, 1.9 million citizens identify as Christian, and the only faith affiliated with any national public holidays is Christianity (Statistics NZ 2014b), which demonstrates only one example of the many remnants of colonisation.

Throughout New Zealand's history, research has perpetuated negative stereotypes of and about Māori. Western research has 'problematised' and 'pathologised' Māori culture, social structure, beliefs and attitudes (L Smith 1997 cited in Oh 2005). In addition, Western development has corrupted the experiences, values, beliefs, practices and knowledge of Māori women, who remain marginalised and redefined by a multitude of Western socio-political and cultural practices. To move forward and facilitate positive social development for Māori it is necessary that colonial impositions are acknowledged and uprooted.

Māori-centred Decolonisation

⁸ For example, the Native Schools Act (1867 repealed in 1891) was a rigorously enforced act that prohibited the use of te reo Māori in the education of Māori children; and the Tohunga Suppression Act (1907 repealed in 1962), which prevented the practice of Māori experts in fields such as health, medicine and fitness. There is a significant body of legislation in New Zealand history used to exert colonial religious and political agendas. For example, te reo has only been recognised as an official language of New Zealand since the Māori Language Act (1987).

International literature calls attention to state level decolonisation as paramount. The United Nations (UN) Committee of 24 (C-24)⁹ exclusively deals with the issue of decolonisation (United Nations 2014). The General Assembly established the committee in 1961 with the fundamental purpose of monitoring the application of the Declaration.¹⁰ The committee is responsible for the organisation of seminars that examine the political, social and economic situation in applicable territories. Further, the C-24 offers recommendations concerning the distribution of information to “mobilise public opinion in support of the decolonisation process” (United Nations 2014 para. 2). Ultimately, the core focus of the C-24 is monitor the implementation of declarations of independence.

However, political independence alone does not equate to decolonisation or post-colonialism. It merely removes some of the externally enforced influences. The remaining presence of colonisers and their epistemologies, ideologies and privileges is evidence that colonisation and its impacts remain long after independence is granted. Imposed ‘norms’ need decolonisation, including the deconstruction of state politics and nationally enforced ideologies (Orange 1987).

In a New Zealand context, this would see Māori women reclaim their participation in decision-making processes where they would otherwise remain marginalised in every stratum of their own societies. Decolonisation from the government down remains critical to any strand of mana wahine analyses (Pihama 2001, Hutchings 2002), an issue not new to Māori women.

Decolonisation, ‘Feminisms’ and Māori Women

Though colonialism has played out in different processes of colonisation around the world, Māori women and other Indigenous groups share many common experiences (Simmonds 2011). The systemic displacement from land and the aggressive destruction of Indigenous knowledge are only two examples of what links native populations (L Smith 1999b, L Smith 2005). Indigenous women the world over relate through the commonality of “being different from (and fundamentally opposed to) the dominant culture” (Lavell-Harvard and Lavell 2006 p. 2). It is particularly useful to consider Māori

⁹The formal name for the C-24 is the Special Committee on Decolonisation for the Implementation of the Declaration on the Granting of Independence of Colonial Countries and Peoples.

¹⁰ General Assembly Resolution 1514 (XV) of 14th December 1960.

women's journey in the framework of international development and development studies.

Western feminist movements defend equal political, economic and social rights for women.¹¹ These drives are located within three main waves, two of which are considered here. The initial, or first-wave, feminism occurred between the 1800s and early 1900s. Focus was dedicated to overturn inequalities within the legal context, and did not extend to economic equality in the workplace (Blackmore 2006). At the forefront of this movement and, in bringing attention to the plight of women's suffrage, was advocacy for the right of women to vote and to stand for electoral office. New Zealand was the first country to 'allow' women the vote¹² (Atkinson 2003). However, and it is important to note, prior to colonisation many Māori women already held positions considered to be of great influence, mana and political power within their communities¹³. On the international front, the second wave of feminism emerged between the 1960s and 1980s. This demonstrated a broadening of debated issues more inclusive of cultural inequalities, gender norms and the roles of women within society. New Zealand echoed international movements, and mana wahine gained momentum throughout the political activities¹⁴ experienced in New Zealand during the late 1970s and early 1980s. Māori political issues were finally being propelled onto a national and global platform.

¹¹ In many circumstances, this was still a race-based privilege of 'white' women. For example, Australian women who were British subjects of age were afforded the Commonwealth vote in 1902 whereas Aboriginal women in Australia were not afforded the modern federal vote until 1962 (Australian Electoral Commission 2006). The Commonwealth Franchise Act (1902) specifically excluded Aboriginal women from the vote.

¹² Before the 18th century, European countries restricted franchise by property not gender. However, as women did not own property they were limited. Pitcairn Island gave woman universal suffrage in 1838, but was not a self-governing country. Neither were the Isle of Man (which enfranchised female ratepayers in 1881), or the Cook Islands (which passed a woman's suffrage bill days after New Zealand but held their election over one month earlier). Several American states and territories enfranchised women before 1893, but this was not nation wide action (see Atkinson 2003 p. 280-281).

¹³ Māori women were not restricted by notion of gender inequality within their communities. Although they enacted different roles to Māori men these roles were not considered to be of lesser value, quality or relevance.

¹⁴ Māori rights and desires to protect and preserve lands, culture and language experienced public revival after a period of little nationalised acknowledgement. Pivotal initiatives include the non kin-based establishment of early 1970s anti-racism organisations to address the consequences of colonisation. Organisations included Ngā Tamatoa, the Māori Graduates Association, and the Māori Organisation on Human Rights (MOHR). Activism included the 1975 land march organised by the Te Rōpū Matakite o Aotearoa and led by Dame Whina Cooper; the 1977 to 1978 (507 day) occupation of Bastion Point by the Ōrākei Māori Action Group and Ngāti Whatua; and the protest at the Raglan Golf Course fronted by Eva Rickard (and others). All activities were significant in asserting rangatiratanga of Māori.

However, women's rights movements lacked racial acknowledgement by non-Western groups. Western constructs of feminism exclude the specific rights, needs and desires of Māori. During this time, many Māori women began to expose the severe gender-race inequalities in New Zealand. Māori academics, including Kathy Irwin, Ngahuia Te Awekotuku, Rangimarie Rose Pere, and Linda Tuhiwai Smith, began exploring the "interconnectedness of racist and sexist oppressions" (Simmonds 2009 p. 22). Whiu (1994), in addressing the 'race issue' of Western feminism, poignantly states:

It seems to me that my struggle necessarily takes account of your struggle. I can't ignore the patriarchy in my struggle. Yet you can and do ignore the 'colour' of patriarchy, the cultural-specificity of patriarchy. And in doing so, you ignore me (Section IV 3 para. 2).

Many Māori and other minority groups afforded priority to the 'race issue,' but feminist activities were often perceived as being anti-Māori men (Irwin 1992a, Irwin 1993). Irwin (1992a) contended that while mana wahine received criticism, mana tāne gained support in wider hegemonic society. Though hardly in abundance, the wider acceptance of mana tāne emphasises the severe penetration of colonial race and gendered ideologies that demonstrate preference for male superiority. It is imperative to address race and gender relations within mainstream and Indigenous communities.

Pihama (2001) argues that Māori women's roles are positioned negatively in relation to Te Tiriti, and that this may reflect the wider denial of Māori women. Pihama further articulates that Māori women in leadership roles are not depicted as 'the norm.' Additionally, (Irwin 1992b) notes that Māori women appear 'expunged' from historic records. In 1994, a group of Māori women submitted a claim to undergo official Treaty Settlement processes with the intention of challenging the substandard representation of Māori women. Regarding the claim, Sykes (1994 p. 15 cited in Simmonds 2011) emphasised that "because Māori women constitute over [half] of Tangata Whenua there must be equal representation in all areas of decision-making in the future" (p. 17). The claim argued the denial of Māori women's input in Treaty processes was unjust; and insisted that mana tāne remained more protected in political dealings with the government (Irwin 1993). Sykes insists on the inclusion of Māori women and rangatahi (youth) in all levels of decision-making processes (Pihama 1996) and identifies the Treaty

as guaranteeing equal participation for all Māori, including Māori women (Mikaere 2003). The claim is still waiting to be heard.

Te Tiriti is an essential component to any mana wahine research. The denial of Māori women to participate in decision-making processes is a direct breach of tino rangatiratanga (Pihama 1996). Colonial ideologies of gender and race only perpetuate the denials that Māori women face. To engage these issues and contribute toward breaking down barriers, this nation must concentrate on shifting social and political processes to actively focus on Māori-centred decolonisation from government level down.

Development Studies, Social Policy and Māori Development

Development Studies is concerned with the study of almost any aspect of the development of human societies. Development Studies is a multidisciplinary field, interested in studying inequality between people and state (Victoria University of Wellington 2013). Ortiz (2007) defined the social contract between citizen and state as social policy. Social development policy has been chosen as the site for this research because it forms one aspect of the public policy sphere and pertains to areas of health care, human services, social justice, education and inequality (Harvard University 2012) – areas that are centrally important to Māori men and women's wellbeing.

Public policy is primarily concerned with wellbeing and is the set of decisions that shape the way a country is run. When such policy is legislated, it becomes an act and is enforceable through the social institutions of a democratic nation. There are five types of acts in the New Zealand legal system, though this research concentrates on public acts. A principal act refers to a specific topic, where as an amendment act is a legislated change made to any act. The term act refers to both the principal and amendment version. This study focused on public acts that specifically concern social development, otherwise recognised as social policy legislation.

As a vehicle to explore relationships between social policy and Māori development – particularly for Māori women, this study explores present social policy legislation that primarily concerns education. The unwillingness of Pākehā to accept Māori values and culture has been characterised in the Crown's approach to education policy since the early 1800s (Jane 2001). Literature identifies that Māori underachievement is a direct

result of past policies and practices (L Smith 1996, Bishop and Glynn 1999, L Smith 1999b). Ethnocentric government policies have promoted assimilation, integration, multiculturalism and biculturalism (Bishop and Glynn 1999), the cumulative effect of which has seen Māori surrender their culture, language, and educational aspirations to the mono-cultural elite (Glynn 1998 cited in Jane 2000). Accordingly, a case study of the education system and principal act has been used as the site for a critical analysis of policy discourse from a mana wahine perspective. Such analysis offers alternative perspective to the way inequality and inclusion can be understood to inform thinking about relationships between Māori development and development studies.

Research Approach

Researchers engaging in critical policy analyses have described policy as ‘the authoritative allocation of values’ (Kogan, Henkel et al. 2006, Lingard 2010, Ball 2012). In this sense, policy texts are an appropriate source to examine in order to identify and analyse the types of dominant values informing social policy discourse and practice. This is particularly true when exploring dominant themes in policy discourse through non-dominant lenses. Taking a critical approach to policy involves challenging conventional theoretical and methodological perspectives. In doing so, critical analysis seeks to reshape dominant empirical-analytic discourse (European Consortium for Political Research [ECPR]). To restructure dominant discourse, one must consider the relationship of political and policy theory to democratic processes of government such as participation, social justice, and public welfare. Critical policy moves beyond the narrow fixation of “technical rationality” and focuses on “interpretive, argumentative, and discursive approaches” to researching and developing policy (ECPR 2014 para. 1).

Policy formation can be understood through discourse (Ball 2012). Using certain critical theories can help challenge hegemonic policies, and suggests that theory can be a platform for generating thinking in alternative ways (Ball 2012). Theory offers a language for challenge, and modes of thought other than those articulated for some by dominant parties. The purpose of such theory is to de-familiarise present practices and categories, to make them seem less self-evident and necessary, and to open up spaces for new forms of experience (Ball 1995 p. 266).

Critical analyses resist the notion of ‘neutral’ information. From a critical perspective, the concept of a ‘neutral’ position “represents an irresponsible form of bias that either impedes or entirely precludes attention to crucial questions” (ECPR 2014 para. 1). A critical researcher must accept that they too are located within the sphere of social meaning that they are analysing. When researchers accept that they are surrounded by multiple meanings, such analytical difficulties become inevitable.

Ozga (2000) has suggested that theory should be used as a tool for asking and answering research questions in an open and self-conscious way. Questioning will help prevent research being undertaken merely as a demonstration of correctness; it is important that policy is understood in a “theoretically informed way” (p. 42). Ozga also notes that critical theory projects in education policy research are vulnerable to pressure from economic-centred agendas within the processes of policy formation. The critical analysis of policy is therefore interested in challenging dominant agendas to examine and interrogate the values guiding present policy formation.

This study is oriented towards understanding relations of power and values within policy formation. As a result, critical analysis guides this study and its objectives of analysing themes inherent in the current social policy legislation in New Zealand. To bring relevance to a Māori development, analyses are informed by the epistemology of Kaupapa Māori (Māori approach to) research and mana wahine.

Kaupapa Māori research acknowledges the Treaty and addresses the oppression of Māori (Cram, Ormond et al. 2004). Likewise, mana wahine research seeks to claim a space and, in doing so, legitimise the perspectives of Māori (Cram, Ormond et al. 2004) to better inform future development outcomes.

L Smith (1999b) argues that the primary goal of an Indigenous research agenda should be self-determination; and that processes of decolonisation, transformation and mobilisation can be incorporated into the practice and methodologies of research. Kaupapa Māori emerged as a written concept in the 1980s as a result of the political struggle to legitimise Māori identity (L Smith 2011, Penetito 2011). Previously, Kaupapa Māori had remained imperceptible (G Smith 1997, L Smith 2011) and intangibly ingrained into the everyday lives of Māori (T Royal 1998) and the intent behind the

public ascent of the term Kaupapa Māori was to resist Western discourse, challenge the Department of Education, and initiate legislative change (T Royal 1998, Pihama, Cram et al. 2002). Pihama (2005) has said that Kaupapa Māori theory is “an Indigenous theoretical framework that challenges the oppressive social order within which Māori people are currently located and does so from a distinctive Māori cultural base” (p. 192). Contemporarily, Māori-centred perspectives have provided a platform upon which to challenge past research. For example, L Smith (2011) avows that Kaupapa Māori research “addresses the oppression of Māori in their own land and breaches of the Treaty of Waitangi and guarantees of Tino Rangatiratanga” (p. 17).

Mana wahine research is Kaupapa Māori research with the alternative perspective of examining and validating the distinct interconnectedness of being both Māori and woman. Mana wahine is concerned with the tino rangatiratanga of ‘being’ Māori, including Māori development. Kaupapa Māori and mana wahine contribute to the contemporary theoretical and methodological spaces within which the dominance of Western masculine knowledge can be unpacked, and recognition for Māori women’s perspectives can be achieved.

Hutchings (2002) developed a mana wahine framework approach (see Figure 2). At the centre of her research agenda was self-determination, radiating from which is social and political decolonisation, the analysis of hegemonic patriarchal ideologies, social and political transformation, and the right of Indigenous women to participate in research. Pihama (2005) has said that Kaupapa Māori theory is “an Indigenous theoretical framework that challenges the oppressive social order within which Māori people are currently located and does so from a distinctive Māori cultural base” (p. 192). Simmonds (2009) further promotes recognition for Indigenous women’s rights in research agenda with her theoretical and empirical exploration of understandings of Papatūānuku.

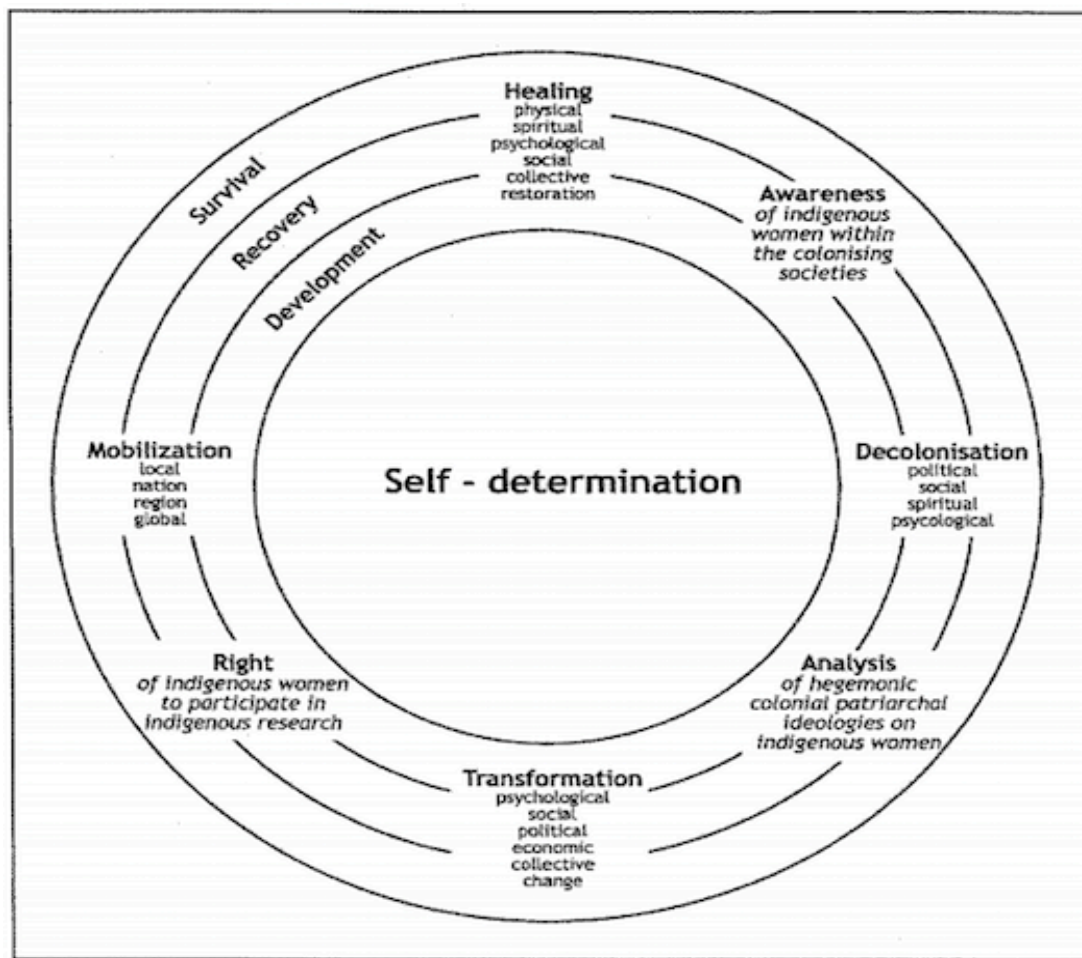


Figure 1: Indigenous women's research agenda.¹⁵

Mana wahine has cultural relevance to Māori researchers and is a pivotal link to self-determination as guaranteed under the Treaty of Waitangi (Pihama 2001, Hutchings 2002, Cram, Ormond et al. 2004, Simmonds 2009, Simmonds 2011). Appropriate to this research is the inclusion of the Treaty in legislation, and the Treaty plays a pivotal role in the analysis of documents at the heart of this work

Relevance of the Study

Development practitioners are concerned with the facilitation of empowerment for participation and effective social services (Harvard University 2014). Simmonds (2009) thinks this is particularly true for mana wahine research. This research primarily encapsulates mana wahine methodologies, which are anchored in Kaupapa Māori, and which draw on Indigenous and feminist development perspectives to provide a platform from which to challenge the privilege of allegedly “rational, objective and scientific

¹⁵ Reproduced from Hutchings (2003 p. 63).

research” (Simmonds 2009 p. 34). A mana wahine approach to analysis is not necessarily considered ‘scientific’ as it does not always align with Western logic. However, mana wahine can be powerful in enabling researchers to consider alternative perspectives; to imagine things being other than what they are, and to understand the abstract and concrete links that make them so (Simmonds 2011).

Challenging dominant research practices involves research that acknowledges the interests of the West, and the way the West resists the ‘Other’ (L Smith 1992). Therefore, research stemming from Kaupapa Māori praxis – like that involving a mana wahine approach – can make important conceptual contributions to the research field. It is hoped that this study may reveal insight into how social policy legislation has produced and sustained inequalities, and how that insight might encourage or enable more thorough research into Māori development through the application of Māori women’s perspectives. Kaupapa Māori praxis, particularly mana wahine, offers distinctly Māori perspectives fundamental to achieving better outcomes as determined by Māori women, for Māori women.

Thesis Outline

The present chapter has introduced core concepts of the study and determined the necessity for research.

Chapter two describes the research epistemology and methodologies undertaken and explains the sample selection of policy legislation. Mana wahine provides the epistemological lens for the critical analysis of the social legislation context. Chapter two discusses ethics and acknowledges my personal subjectivities. Lastly, the methods of this study and research limitations are discussed.

Chapter three builds on the introduction of the Treaty in chapter one and discusses common Treaty debates. The rise of the Treaty is reflective of the collective efforts of Māori and Treaty prominence is subsequently addressed. Next, the principles of the Treaty are considered. Chapter three provides context to Māori women’s rights and mana wahine guaranteed by the Treaty.

Chapter four outlines the framework for acknowledging Māori rights in social policy legislation. Rights are defined and the structure of the New Zealand Government is presented. Chapter four provides greater context to Māori rights within social policy.

Chapter five provides the context to the analysis of the Education Act in chapter six. Chapter five examines successive educational policy shifts and concludes with a summary of the present education context.

Chapter Six critically analyses the Education Act. All relative amendments have automatically been subsumed into this principal act and therefore the analysis focuses on the Education Act and not individual alterations to it. The Education Act was best suited for the analysis based on the findings of the policy identification processes outlined in chapter two. Analyses draw on the Treaty and the principles (chapter three), social rights and policy (chapter four), and the education context that have shaped and is shaped by, the Education Act (chapter five). Analyses are split into two contexts: social and land.

Chapter Seven identifies the research objectives and summarises how the research met these. The discussion reconnects the findings with literature and notes its relevance to development studies. Chapter six reflects on the current context of the education sector as an example of the wider social policy environment, and discusses notions around possible areas of research for the future.

CHAPTER TWO

Epistemology, Methodology and Methods

L Smith (1999b) articulated, “the word itself, ‘research’, is probably one of the dirtiest words in the Indigenous world’s vocabulary” (p. 1). Consequently, the methodology of this thesis has developed as a response to mainstreamed research praxis. It engages closely with a multiplicity of perspectives in order to challenge Western narratives and encourage alternative methods to inform policy development.

The purpose of this chapter is to describe the research epistemology and methodologies undertaken and to explain the sample selection of policy legislation.

Mana wahine provides the epistemological lens for this critical analysis of the social legislation context. Mana wahine and critical analyses are complimentary in their shared goals of challenging dominant norms. Mana wahine methodologies must be ethically and culturally safe, and appropriate for Māori women. Scholars specialising in mana wahine methodologies and critical research analysts emphasise that research is shaped by positionality and therefore should not attempt to appear neutral (L Smith 1999b, Simmonds 2009). Hence, I acknowledge how my personal subjectivities affect the research and my positionality is explicitly stated. Lastly, the methods of this study and research limitations are discussed.

Kaupapa Māori

Kaupapa Māori is not a theory in the orthodox Western sense. It refrains from subsuming under “European philosophical endeavours that construct and privilege” one theory, one rationality, one philosophical paradigm, one knowledge or one perspective, over and above any respective other (S Walker 1996). In this regard Kaupapa Māori avoids the dualistic nature rampant in Western culture, challenges Western knowledge constructs of privilege, and offers unique and explicitly Māori perspectives. It is a theory in the Māori sense, comprising of culturally rich and deeply rooted histories, yet remaining an “evolving, multiple and organic” practice thoroughly permeated with transformative ethos (Pihama 2001 p. 113). Indigenous praxis and theories such as Kaupapa Māori must question the current hegemonic application and practice of knowledge (Pihama 2001).

Kaupapa Māori, as an Indigenous praxis, can be located within international and local spaces. Pihama (2001) considers Kaupapa Māori to connect internationally through “a process of sharing Indigenous Peoples’ theories” (p. 102). Pihama further articulates that Kaupapa Māori is also distinctively local because it draws on uniquely defined mātauranga Māori – “by Māori for Māori” (p. 102). Kaupapa Māori has emerged from the political and social movements of Māori including Te Kōhanga Reo and Kura Kaupapa Māori (Pihama 2001, G Smith 2003). Māori socio-political movements provide a theoretical process to ensure “the inherent power relationships... are a conscious part of our analysis” (Pihama 2001 p. 100). These are necessary to guarantee Māori viewpoints are ‘re-privileged’ like they were prior to European settlement (Simmonds 2009).

Literature describes Kaupapa Māori as upholding the philosophies and practices of being Māori (Henry and Pene 2001, L Smith 2011), G Smith, 2003), where the validation of Indigenous epistemologies are fundamental (G Smith 1992, Henry and Pene 2001, Pihama, Cram et al. 2002, Bishop 2003, Mikaere 2011). Homogenous opinion exists that understandings of Kaupapa Māori can vary (G Smith 1997, Mikaere 2011), because Māori can redefine the boundaries at any given time (L Smith 2011). L Smith (2011) captured the essence of fluidity when she stated, “[Kaupapa Māori] was what it was, it is what it is, and it will be what it will be” (p. 10).

Kaupapa Māori, as with Māori culture, is concerned with relationships. These relate to physical and symbolic spaces in Aotearoa where the legitimacy of all aspects of being Māori can occur. Māori are diverse, not homogenous. Accordingly, Kaupapa Māori should not be, nor attempt to be, deterministic nor exclusive. As Takino (1998) explains, Māori are not singular and therefore neither is Kaupapa Māori. Spatial and temporal influences further affect Kaupapa Māori. This flexibility is what retains Kaupapa Māori as fundamentally transformative (L Smith 1999a, L Smith 1999b, Pihama 2001, G Smith 2003).

Kaupapa Māori is a phenomenon developed from cultural practices that extend before Māori arrived in Aotearoa (Taki 1996, Simmonds 2009). Within Kaupapa Māori, the

legitimacy of *tikanga* Māori, Māori subjectivities, histories and experiences are without question. Kaupapa and *tikanga* are dynamic foundation concepts that “continue to inform the reproduction and transformations of *nga tikanga me nga Ritenga* as *iwi* laws today” (Taki 1996 p. 17). Kaupapa Māori is the “conceptualisation of Māori knowledge” (Nepe 1991 p. 15) and places Māori at the centre, and is “the absolute validity of our world-view and from there locates the acts of colonisation as impositions” (Nepe 1991, Pihama 2001 p. 141). Kaupapa Māori is a space where Māori can challenge masculine hegemony (Pihama 2001), and provides a platform from which Māori can validate being Māori in Māori ways.

The explicit focus of *mana wahine*, then, is the relationship between being both Māori and female. Simmonds (2011) emphasises that this incorporates what “all the diverse and complex things being located in this intersecting space can mean” (p. 12). It is within this space that we can continue to expand and improve on the “issues of gender, and the intersection of race, class and gender” (Pihama 2001 p. 300). *Mana wahine* is a platform to bring validity to Māori, which can better inform decision-making processes in the wider New Zealand context to achieve greater outcomes for all Māori and specifically Māori women.

Mana Wahine

There are many difficulties in defining *mana wahine*. *Mana wahine* is an expression that is the interwoven relationship between ‘mana’ Māori and ‘wahine’. The relationship is both diverse and dynamic, as is the relationship between *mana* Māori and women. The process of definition is one tainted by socio-political and colonial derivatives (Johnston and Waitere-Ang 2009), which are the same barriers that have been hostile to Māori women’s growth and cultural development. There are many issues in using the English language to define what *mana wahine* exactly is (Pere 1991). The main issue is there are no equivalent English translations of this term, as *mana wahine* is not “singular, insular, or definitive” (Henare 1988). This does not mean Māori concepts are limited to those fluent in *te reo* Māori. Simmonds (2011) stresses that to do so would limit the conceptual understandings of many Māori denied their own language through the processes of colonisation (myself included). However, it remains important that distinct limitations when translating Māori concepts into English words are acknowledged.

Mana has complex and multiple “worldly and ethereal meanings” (M Durie 1998 p. 2). Commonly, mana symbolises prestige, honour, spiritual power and integrity (Calman 2012). Mana is a supernatural force, fluid in strength and weakness, and; is relational, spatial, and informed by spiritual influences (Pere 1991, Waitere-Ang 1999, Johnston and Waitere-Ang 2009) and is an essential aspect of all strata within Māori society (Waitere-Ang 1999). Traditionally there are three types of mana, the mana a person is born with; the mana people give or bestow; and group, or collective mana (Calman 2012). Mana is a fundamental component woven throughout the relationships between all people and all elements. In the context of discussing Māori women’s theories, L Smith (1992) notes that mana is a concept related to power, status and collective merit. Furthermore, Henare (1988) believes that understanding the concept of mana is vital to gaining a better insight to Māori worldviews.

‘Wahine’ is a term far more complex than its English translation of ‘women.’ Māori concepts place high value on Māori interrelationships. Significant spatial and relational concepts are reflected in the nature of te reo. Wahine represents the intersection between wā (time and space) and hine (the female essence) (Pihama 2001). Wahine, therefore, describes only one of the many time and space dimensions that Māori women experience in ‘our’ lives (Pihama 2001). This remains in contrast to Pākehā binaries, which limit the female to being (only) the biological variation of male. Pihama (2001) contends that interrelationships between Māori, which extend beyond gender, are not “simplistic, dualistic or oppositional” as we are often presented with (p. 265). In fact, the ways in which these roles and relationships are negotiated remain complex, diverse, and multiple.

Colonisation has affected all Māori, but impacts have certainly been and continue to be gendered (Mikaere 1999, L Smith 1999b, Pihama 2001, Mikaere 2003). Mikaere (1999, 2003) argues that the imbalance of Māori society is the result of colonial impacts. Missionaries rewrote Māori histories to align with Christian beliefs, and this distortion of history has resulted in a gross misrepresentation of Māori women. Pihama (2001) adds further perspective by discussing how Pākehā men have continued to skew these inauthentic representations. The *Māui Myths*, reproduced by Grey (1855), Best (1924), Alpers (1964), and Gossage (1980) respectively, are used by Pihama to demonstrate her point. Each rendition contains Western masculinist interpretations. Pihama notes that

Māui, a male demi-god, is always considered the protagonist, and often the hero of these stories. Meanwhile, Mahuika, a female fire deity, is positioned in a disturbingly negative light (Pihama 2001). Actions aside, images portray Māori women as “ugly, hideous, and unsightly” (Pihama 2001 p. 292).

In contrast, Pihama (2001) offers Grace and Kahukiwa (1984) as the creators of *Wahine Toa, Women of Māori Myth*. Grace and Kahukiwa depict Mahuika as an intelligent and knowledgeable ancestress. The actions of Mahuika reflect important Māori values like the sharing of resources, whanaungatanga, and the guardianship and protection of resources for future generations. Based on positive Māori attitudes and customs toward Māori women at that time, the Wahine Toa portrayal of Mahuika seems more realistic. Unfortunately, as Pihama notes, positive examples are few and far between.

As noted earlier, mana wahine forms the epistemological and methodological frame for this research, and is located under the umbrella of Kaupapa Māori theory. This thesis draws on the works of Pihama (2001) and Hutchings (2002), as well as more recent work of Simmonds (2009, 2011) as they engage with the colonial processes that continue to marginalise Māori women. In particular, this research uses the mana wahine conceptual framework of Hutchings (2002) represented in Figure 1.

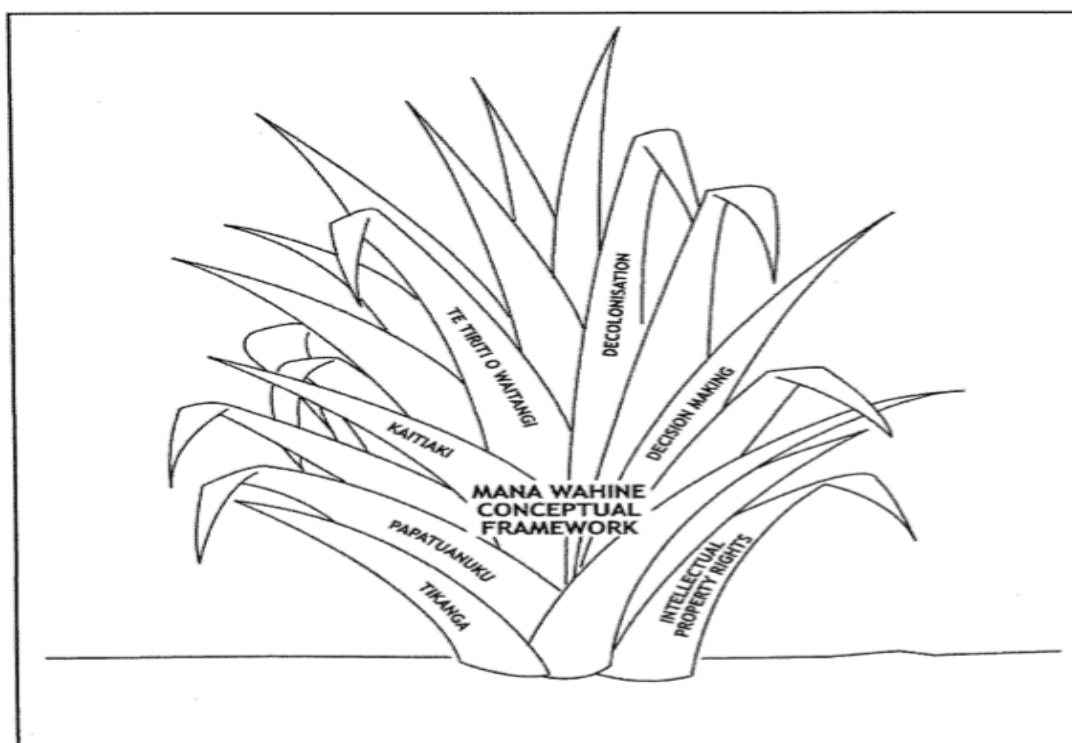


Figure 2: Mana wahine conceptual framework¹⁶

Pihama (2001) in her doctorate research refers to personal experience and historical documentation to validate the ideologies of Pākehā men and women that have become entrenched in legislation and government policy. These same Eurocentric dogmas, which predominantly favour the male, generate a race and gender based strata that posit Māori women beneath Māori men, Pākehā women, and Pākehā men. Pihama promotes mana wahine as a tool through which to instrument State decolonisation. With regards to decolonisation, Simmonds (2001) articulates, “decolonisation is not about the fragmentation resulting from colonisation, but about unlearning, disengagement, and strengthening Māori at multiple levels” (p. 17).

Hutchings (2002) in her doctorate research engages mana wahine theory as a framework to analyse state policies and challenge the stance of New Zealand’s government on the subject of genetic modification (GM) technologies. Hutchings provides an alternative to the otherwise hegemonic approach to Western science that currently informs government policy. At the same time, Hutchings exposes patriarchal and colonial assumptions of genetic engineering.

¹⁶ Reproduced from Hutchings (2002 p. 151).

More recently, Simmonds (2009) identified that there have been positive steps in contemporary developments of mana wahine as a theoretical and methodological approach informed by Māori.

Hutchings (2002) has conceptualised mana wahine in the form of a harakeke plant. Harakeke is native flax with historical significance to Māori, and particularly suited for this conceptualisation. Mana wahine is uniquely Māori in that it is grounded in Papatūānuku, with roots in tikanga Māori. Māori women, who form the fibre, are at the centre of this approach. Mana wahine provides a space for Māori women to theorise and analyse. The roots represent Māori women, whānau, and tikanga; while the leaves demonstrate core themes considered pertinent to a mana wahine approach. Inherent in mana wahine is the Treaty, which informs the research questions of this thesis. Simmonds (2009) noted that core aspects to mana wahine should not be disconnected from each other, nor “deterministic or exclusive” (p. 25). However, the limitations of a thesis word-count prevail, so primary emphasis is placed on the Treaty, within which other aspects of mana wahine can be located. The Treaty is fundamentally important to the aims of this research.

Legal acknowledgement and adherence to the Treaty is crucial in the creation of a moral founding for Māori and Pākehā to participate with each other in their respective roles and responsibilities. However, the Treaty has never been directly acknowledged in any social policy legislation (E Durie 1996). Decolonisation is imperative to the review of current legislation as colonial ideologies continue to shape how laws are informed, enacted and applied.

Māori and Pākehā must aim to participate with one another in their respective roles and responsibilities. This can only be done through decolonisation and a review of current legislation that has been under the sway of colonial ideologies. These ideologies continue to shape how laws are informed, enacted and applied without any legal acknowledgement or adherence to the Treaty. If Treaty recognition were fully implemented, there would not only be a legal foundation for more positive social and relations, but also a moral motivation.

Ethics

Research that concerns Māori must be undertaken in accordance to Māori ethical considerations. Research, therefore, must aim toward Māori empowerment by being addressed in a manner that is culturally safe, enriching and relevant to Māori (L Smith 1999a, L Smith 1999b). Ultimately, the ethical responsibilities of Māori researchers are to engage Kaupapa Māori methodologies, and to ensure that the principles and ethics of Kaupapa Māori are adhered. Research using a Māori feminist methodology such as mana wahine is primarily intended to benefit Māori women by validating the contributions that Māori women have made and continue to make to society (Irwin 1990a).

Western knowledge, particularly in the field of research, has all too often encroached into the lives of Indigenous peoples and disregarded specific world-views and desires of those same peoples which ‘research’ has concerned (Ermine, Sinclair et al. 2004). Historically, Western applications of research have been conducted on Indigenous peoples whether they were willing or not (Ermine et al. 2004). The history of research from many Indigenous perspectives is so deeply embedded in colonisation that it has been regarded as a tool only of colonisation and not as a potential for self-determination and development (L Smith 1985). Stokes (1985) localised Indigenous resentment by drawing on similar Māori experiences. She highlighted that Māori begrudged ‘participating’ in research over which they had no control, received no benefits, and where research was conducted with the objective of knowledge rather than Māori empowerment. Western dominance over ‘acceptable’ research practice has generated a feeling of suspicion from Indigenous peoples, whom have been misrepresented in their own ways of living (Maynard 1974, Trimble 1977). As a result, a majority of Indigenous culture and history now consists of information that has been constructed or recounted by non-native perceptions of native peoples and culture (Peacock 1996).

Western research places strong emphasis on Indigenous peoples being the cause of the negative social issues that they experience (Peacock 1996, Bishop 1997, Ermine, Sinclair et al. 2004, M Durie 2005a). These negative or ‘deficit’ reiterations toward Indigenous populations do little to alter Western research that continues to be destructive toward Indigenous peoples and their communities, which in turn informs misguided Western policies (L Smith 1999b).

Greater numbers of Indigenous peoples are demanding the use of disaggregated data that describes their experiences as a means of informing socio-economic, political and policy change (UNICEF 2003, UNPFII 2003). Research with first nation peoples predominantly encompasses qualitative frameworks because it is considered to be more “Indigenous in nature” due to the strong oral traditions of many cultures (Blackstock 2009 p. 135). Qualitative methods are therefore more culturally safe and inclusive of Indigenous perspectives (L Smith 1999b, Denzin and Lincoln 2000). Blackstock (2009) has offered an alternative view and believes that it is possible to present quantitative data that remains sensitive to Indigenous peoples by enveloping research methods in Indigenous perspectives and holistic world-views. This, she argued, is of great importance. Western policy-makers prefer quantitative research when pursuing the translation of research into political agendas.

Consequently, an ethical dilemma arises as Indigenous researchers using qualitative methods may be overlooked regarding policy decisions yet quantitative data methods may be considered not “Indigenous enough” (Blackstock 2009 p. 136). The reality is that, despite Western universities and democratic societies claiming to espouse alternative perspectives, dominant power structures that heavily privilege Western paradigms persist (Blackstock 2009). As a result, many Indigenous researchers must ‘confirm’ their knowledge and experiences using Western methods or risk being overlooked by mainstream and non-Indigenous policy makers.

A Durie (1998) reasoned that acknowledgment of Māori concepts of ethicality is an obligation that supersedes social or cultural sensitivity. A Durie further expresses that Māori concepts of ethicality are pivotal in achieving successful ethical guidelines. Māori centred literature widely acknowledges that Māori researchers must meet the obligations of ethical research in addition to meeting respective university requirements¹⁷ of a thesis (L Smith 1999b, Cram 2001, Pihama 2001, Hutchings 2002, Simmonds 2009).

Ethical guidelines for research concerning Māori have developed over the past two decades (Ministry of Social Development 2004). The guidelines were established with the goal that appropriate Māori conventions would be expressed to non-Māori researchers,

¹⁷ Typically involves course work and supervised personal research that is then written up (and defended) by a candidate for a university degree, usually at Masters or Doctorate level.

and that Māori researchers would be reminded of their obligations to their people (Mead 1996). Peacock (1996) has emphasised that appropriate guidelines are necessary to ensure the 'researched' are never hurt by the research. A Durie (1992), Jhanke and Taiapa (2003), and Oh (2005) have proposed that Māori are better suited to conduct research that concerns Māori, as researchers must be willing to adhere to Kaupapa Māori and appropriate ethical systems, and it is more like that Māori are able to conduct research in this way.

Positionality

Mana wahine informed research expects that the researcher should be competent in Māori cultural practices and Māori customary practices (Pihama 2001, Hutchings 2002, Oh 2005, Simmonds 2009). For many Māori researchers, this assumption can be limiting. Due to the processes of colonisation not all Māori are accustomed to the practices which are now associated with identifying as Māori (Oh 2005). In my case, most of my tikanga and te reo knowledge comes from childhood experiences, thanks largely to my beloved Māori Grandpa, Pākehā Grandma and Māori bi-lingual class that I attended for four years. I was raised in a small, conservative and predominantly Pākehā town intent on strengthening non-Māori norms.

In addition, arguments for Indigenous research typically discuss qualitative research methods. For example, Bishop and Glynn (1992) assert that the researcher must be able to interact appropriately and in te reo with kaumatua and kaitiaki. Furthermore, the researcher must ensure that research is respectful of Māori world-views and that Māori and researchers are empowered by the research undertaken.

This study involves none of the above. Yet, I am Māori and work from a mana wahine perspective. It is my belief that a critical analysis of literature can be done with respect and adherence to Māori world-views. L Smith (1999b) has claimed that no researcher who is 'anti-Māori' or just 'happens to be Māori' has a place in Kaupapa Māori research. However, Tomlins-Jahnke and Taiapa (2003) contend that due to the effects of colonialism there are few Māori eligible to undertake research concerning Māori. Like Oh (2005), I initially felt confused and intimidated regarding my own eligibility to undertake this research appropriately. Rata (2004) argues that Kaupapa Māori research

methods have created a dichotomy of ‘us and them.’ However, Mataira (2003) has said, “whether one is ‘insider’ or ‘outsider’ [it] is fundamentally a matter of perspective” (p. 11). Since undergoing this research, I feel more confident in identifying myself as a Māori ‘insider.’

A personal conflict is that I do not yet speak te reo Māori fluently, nor am I confident in Māori customary and cultural practices. Yet, I identify strongly as being Māori. My research does not require me to interact personally with participants, and therefore I do not need to converse in te reo. However, there is a demand to ‘feel’ more Māori, and therefore feel worthy of conducting research for the benefit of Māori. Furthermore, there is an absolute need to understand Māori concepts and the contexts in which they are located. Pihama (2001) argues that one’s inability to speak te reo Māori does not reflect an inability to understand concepts. It is also imperative to emphasise that the English language falls short of being able to provide cultural and literal translations and understandings of Māori terms and concepts. As Lee (2005) has made clear:

to assume that all Māori are linguistically and culturally able to ignore the past (and continued) invasion of colonisation of our land and people, and the subsequent fragmentation of our social, economic, political lives and cultural identity (p. 5).

Grandpa, to whom I was whāngai, belonged to one of the generations of Māori who Pihama (2001) identified as being:

physically, emotionally and psychologically denied Te Reo Māori through the formal system of education and the strength of ideological assertions that marginalised and devalued Te Reo Māori. Those who were constantly fed the ideology that in order for their children to survive in the world all they needed was English (p. 116).

My generation was different. I was born the same year that te reo was recognised as an official language. I was born into a country considered to be “classless” more than “any other society in the world” (Sinclair 1969 p. 276 cited in Philips 2012 para. 2). And yet, I faced and continue to face impacts of colonisation like those imposed on my forbearers. Ignorance and racism have been a common theme, where comments such as “go back to where you came from” by Pākehā schoolmates were not rare. At school, I was formally advised not to study Māori because “it won’t get you anywhere.” As a young adult

participating in undergraduate studies I was all too aware of the sea of Pākehā faces around me. Mainstream academic courses are largely devoid of any Māori perspectives. Comments such as “you are beautiful, for a Māori” and “you are articulate, for a Māori” persist, even in my adult life. And so, throughout my life I have had external forces imposing colonial ideologies on me. Pākehā have expressed their surprise when I don’t meet their low expectation of what being Māori means to them. Pākehā have tried to make me feel shame for being Māori; when actually, I am extremely proud of my rich Māori heritage. I come from direct lines of honourable Māori men and women.

Māori women academics acknowledge that our research and research practices are not immune or disconnected to the biases that we embody (L Smith 1992, Pihama 2001, Hutchings 2002, Simmonds 2009). Mana wahine does not attempt to appear neutral (L Smith 1992, Pihama 2001, Hutchings 2002, Simmonds 2009). Likewise, scholars enveloped in feminist and Indigenous epistemologies identify and address issues of power relations including those of research interactions (Simmonds 2009). Like many other researchers, I occupy a space of in-betweenness because I am both Māori and Pākehā. In my life and in this research, I take pride in positioning myself as a Māori woman.

I am a Māori postgraduate student of Victoria University, studying Development Studies. I have academic curiosity in the field of Māori social development, from which I personally might stand to benefit. As a Māori member of wider New Zealand society, and a citizen who would value the incorporation of Māori content and perspectives in public legislation, I feel it is important to identify that I am personally connected to the purpose of research in this area.

Policy Identification

The online search engine *New Zealand Legislation* on <http://legislation.govt.nz> is owned, provided, and administered by the New Zealand Parliamentary Counsel Office (NZPCO). The NZPCO is responsible for drafting and publishing most of New Zealand’s legislation, and *New Zealand Legislation* is the authoritative source of these acts, bills and legislative instruments. The search engine includes a record of all acts and bills and was used to conduct the advanced searches for this research.

Advanced searches were narrowed through the application of specific references including time, type and status indicators. The application of a time-based filter was used to whittle all searches to the contemporary context, considered by this thesis to be from the date of the present Government's assent on the 19th November 2008 to the 17th June 2014, which is the most recent date that the research findings of this study were finalised. Where this thesis refers to the dates 2008 to 2014 it is in reference to the period outlined above. A status reference was then incorporated to reduce the search of all legislation to public acts with a status of being either a principal act in force, an act not yet in force or, an amendment act in force. That is, enacted principal acts or enforceable amendments to those acts.

Public act searches concerning the period of 2008 to 2014 returned the following 583 results:

- 103 Principal acts in force;
- 11 Acts not yet in force; and
- 469 Amendment acts in force.

The application of additional filtering processes brought greater relevance to the study by refining the social legislation context. Acts concerning social policy were considered to be those administered by the Ministry of Social Development (MSD), the Ministry of Education (MOE), the Ministry of Health (MOH), the Ministry of Women's Affairs (MWA) and Te Puni Kōkiri (the Ministry of Māori Development) (TPK). Any act with a dominant economic (rather than social) focus was excluded (see welfare and wellbeing discussions in chapter four).

Of the total 583 public acts that have been enacted in the 2008 to 2014 period, only 23 met the requirements outlined by this research as being considered social development legislation. All 23 were amendment acts. Not one of these amendments made direct reference to the Treaty of Waitangi, the principles of the Treaty, or the Treaty of Waitangi Act. However, it may not necessarily be imperative for an amendment act to contain any Treaty based references if the corresponding principal act has already done so. Any time an amendment bill becomes an amendment act, that act is subsumed into the principal act. Principal acts therefore contain all legislated alterations including

repealed or in force amendments. Therefore, the present social development context is not just characterised by legislation enacted within the 2008 to 2014 timeframe, but is also characterised by principal acts which, though pre-dating the guidelines above, are still in force. As such, it was necessary that any principal act that pre-dated the period 2008 to 2014 be included in this research if it corresponded to one of the 23 amendment acts identified above.

The 23 amendment acts from 2008 to 2014 related to nine principal acts, which pre-dated 2008. Table 1 shows the quantity and type of act that each ministry is currently responsible for administering. Internal document searches were conducted to reveal if any act contained the term ‘Treaty.’ Where Table 1 uses the term ‘Treaty,’ it is in relation to any reference of either the Treaty of Waitangi, the principles of the Treaty of Waitangi, or the Treaty of Waitangi Act (1975). The far-right column indicates how many corresponding principal acts from before 2008 contained a ‘Treaty’ citation.

Table 1. The Quantity of Social Development Acts as Administered by Respective Ministry.

| Ministry responsible for Acts | Principal Acts enacted 2008 to 2014 | Amendment Acts enacted 2008 to 2014 | Corresponding Principal Acts enacted pre-2008 | Corresponding Principal Acts enacted pre-2008 with a ‘Treaty’ citation |
|-------------------------------|-------------------------------------|-------------------------------------|---|--|
| MSD | 0 | 8 | 2 | 0 |
| MOH | 0 | 7 | 6 | 1 |
| MOE | 0 | 8 | 1 | 1 |
| TPK | 0 | 0 | 0 | N/A |
| MWA | 0 | 0 | 0 | N/A |

The Ministry of Social Development administers eight amendment acts from the period of 2008 to 2014. These eight amendment acts correspond to two principal acts which pre-date 2008. Neither corresponding act mentions the Treaty. However, the Children Young Persons and Their Families Act (1989 no. 36) most recently amended in 2014 notes that the duties of the chief executive must “have particular regard for the values, culture, and beliefs of the Māori people” (Section 7(2)). Yet, the interpretations of what those Māori values, culture and beliefs might be are determined exclusively by “the chief

executive's [own] opinion" (Section 7(1)). Perhaps more significant to Māori are the provisions of the act relating to iwi social services (Part 8). Though, in the absence of any reference to the Treaty, those iwi services are not a focus of this thesis.

The Ministry of Health administers seven amendment acts, which correspond to six principal acts. Two amendment acts correspond to the same principal act, which is the New Zealand Public Health and Disability Act (2000 no. 42), most recently amended in 2013. The Public Health and Disability Act contains a single reference to principles of the Treaty. It states that in order to recognise the principles, "with a view to improving health outcomes for Māori, Part 3 provides for mechanisms to enable Māori to contribute to decision-making on, and to participate in the delivery of, health and disability services to Māori" (Part 1, section 4). However, Part 3, which concerns District Health Boards (DHBs), does not mention the Treaty, the principles, or the Waitangi Act. Schedule 3 of the act concerns provisions applying to DHBs and their boards. The Schedule positions the Treaty in a negative light, mentioning only that board members must already be or become trained in "Treaty of Waitangi issues" (section 5(1)), and that records must be kept concerning how 'familiar' board members are with "Treaty of Waitangi issues" (section 5 (2)(c)). The focus of these two references appears to appease political correctness and protect employers and employees, rather than mitigate the negative experiences of Māori men and women within the system.

The Ministry of Education is responsible for administering eight of the 23 amendment acts from the period 2008 to 2014. Not one amendment references the Treaty itself. All amendments correspond to a single principal act, the Education Act (1989 no. 80), most recently amended in 2014. The Education Act mentions both the principles of the Treaty, and the Waitangi Act. As such, this research has come to focus primarily on the Education Act.

Meanwhile, neither the Ministry of Women's Affairs nor Te Puni Kōkiri are responsible for administering any social development legislation enacted in the period of 2008 to 2014. As there are no acts for the timeframe given, no corresponding principal acts can be considered.

Thesis Aims

This thesis engaged in a critical mana wahine analysis of New Zealand social policy and primarily education legislation with core goals to:

- Confront and analyse the legal bases of gendered and race-based inequalities to better understand the ongoing complexities of Indigenous inequalities in the context of widespread policy ‘commitment’ to inclusion and equality; and
- Contribute toward using Māori perspectives in mainstream praxis to enhance the platform from which these perspectives can be expressed in a way that is perceptive to policy makers.

Guiding Questions Informing Analysis

This thesis is directed by the application of seven guiding questions that engaged different stages of this study and analyses.

Treaty inclusion is important because if the Treaty itself is not specifically mentioned then that act avoids establishing Treaty-based rights that could otherwise serve as a basis for litigation (Barrett and Connolly-Stone 1998). Furthermore, the present approach of the courts is to give effect and interpretation to the specific context of the reference. Hence, the first two guiding questions were pertinent to the refinement of this study and policy identification, and were as follows:

1. Does legislation reference the Treaty of Waitangi, the principles of the Treaty or the Treaty of Waitangi Act (1975)?
2. In what context is the Treaty referred to and, is it mentioned in general terms or do specific actions apply?

Based on the findings of the first guiding questions, the education sector (see chapter five) was used as the analytical case study and to provide context to the primary analysis of the Education Act (in chapter six) in order to reflect the social development policy context.

The following three questions were applied to the subsequent legislation and explicitly sought to critically analyse the representation or implied representation of areas pertinent to mana wahine:

3. How does legislation pay attention to areas pertinent to mana wahine, such as the Treaty of Waitangi, decolonisation, Papatūānuku, and decision-making?
4. If not explicitly mentioned, are aspects of mana wahine reflected?
5. Are Western ‘reflections’ of mana wahine the same as Māori conceptualisations?
For example, are Māori terms (e.g. whānau) used merely as a direct translation (e.g. family) or is the true concept (e.g. to be born; to give birth; extended family; a familiar term of address to a number of people; the primary economic unit of a traditional Māori society) implied as well?

The remaining two questions further drew on the evidence extracted from the critical analysis and pursued wider reflections on the social development policy and legislative context. Those questions were:

6. How has the production of policy excluded mana wahine?
7. How can policy open up to be more inclusive of mana wahine?

The seven guiding questions refined the scope of research, directed analysis toward areas critical to mana wahine and helped provide context to the wider social policy context in New Zealand.

Limitations

A limitation to exclusively concentrating on the analysis of documents is the omission of qualitative practices. Qualitative research methods, as noted earlier, tend to be the preferred method when dealing with research that concerns Indigenous populations. However, as no empirical work was carried out with research subjects these methods are not relevant to this research.

Masters theses are limited in that they do not seek to provide innovative content, and instead build on existing research. The time consuming nature of the methodological approach undertaken for this study meant that the analysis was able to gain depth but not breadth, and therefore, I am unable to generalise to other areas of policy – only to make observations about this chosen arena.

Conclusion

Māori knowledge was first distorted by missionaries but perpetuated by Pākehā men over history. Altered narratives have placed women in a negative context, on the periphery of policies that govern society. Over time, these colonial ideologies have become “insidiously internalised into our belief systems” (Pihama 2001 p. 290). The effects of this colonial impact remain evident in the present social development context, where Māori women remain largely on the outside of positive representation. Where legislation exists, Māori women remain invisible. To reclaim mana wahine, there must be awareness for the impacts of colonisation, recognition for the rights of Māori women as guaranteed under the Treaty, and Māori-centred decolonisation.

This chapter has explained the epistemology, methodology and methods of this research. It has highlighted the importance of the Treaty to mana wahine and leads into chapter three, which discusses the Treaty and the principles of the Treaty.

CHAPTER THREE

The Treaty of Waitangi and Treaty Principles

Mainstream awareness of the Treaty of Waitangi has gained momentum over the past few decades as a result of several factors. These include the rise of Māori activism in the 1980s followed by the establishment of the Waitangi Tribunal and Treaty settlement processes (Oh 2005). Each shift in Treaty processes has contributed to the significant body of interpretations regarding the Treaty. Consequently, the Treaty now represents an array of perspectives and expectations that have resulted in debate centring on the values and relevance of the Treaty in the present New Zealand socio-political context (Oh, 2005).

The previous chapter discussed *mana wahine* as the epistemological and methodological framework for this thesis, which is informed by *mana wahine*. Central to *mana wahine* analyses is the critical role of the Treaty. At the time of signing, categorical assurances were given to Māori that their rights customs would be protected (see chapter one) (Te Puni Kōkiri 2001) and that Māori would maintain the authority to manage their own affairs (Ministry for Culture and Heritage 2012c). As a result, Māori men and women signatories believed that the Treaty would guarantee many things including the unique needs, desires and perspectives of Māori women.

The purpose of this chapter is to discuss the Treaty and the principles of the Treaty. This chapter outlines the framework for contemporary understandings of the Treaty of Waitangi by presenting the articles of the Treaty. The ambiguity of the Treaty is then discussed followed by an acknowledgement of the Treaty's rise to prominence in the public sphere due to the efforts of Māori activism. Next, this chapter looks at the concept of Treaty principles and the subsequent role of the Waitangi Tribunal regarding these principles. There has been significant public and political debate concerning the principles, and several of the arguments and corresponding responses by various bodies are introduced. The principles debate is heightened by ambiguity in definition and therefore the vague, absent or non-committal application of these principles, as a representation of Māori rights, persists in policy and legislation. This chapter provides context to Māori women's rights guaranteed by the Treaty. The following chapter

positions Māori women's rights as social rights, and examines the practical application of rights in social policy legislation.

The Treaty of Waitangi

Representatives of the British Crown and 540 independent Māori rangatira (chiefs) including nga wahine Māori signed¹⁸ the Treaty of Waitangi in 1840¹⁹. The Treaty created reciprocal rights and obligations for both parties and although intended as a relatively straightforward agreement, it is complicated by the fact that multiples versions were executed in two languages – Māori and English. Variations in translation, perceived value and cultural perspectives have contributed to on-going interpretive confusion and subsequent social, political and cultural conflict involving Māori, Pākehā and government. The English version of the preamble indicates British intentions were to “protect Māori interests from the encroaching British settlement; provide for British settlement; and, to establish a government that would maintain peace and order” (Ministry of Justice a para. 3). According to the Māori version of the preamble, the Queen's fundamental promises were to secure rangatiratanga and Māori land ownership (Ministry of Justice a). Articles in the English translation²⁰ of the Treaty are as follows:

Article One:

The Chiefs of the Confederation of the United Tribes of New Zealand and the separate and independent Chiefs who have not become members of the Confederation cede to Her Majesty the Queen of England absolutely and without reservation all the rights and powers of Sovereignty which the said Confederation or Individual Chiefs respectively exercise or possess, or may be supposed to exercise or possess over their respective Territories as the sole Sovereigns thereof.

Article Two:

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 so long as it is their wish and desire to retain the same in their possession; but the Chiefs of the United Tribes and the individual Chiefs yield to Her Majesty the exclusive right of Preemption over such lands as the proprietors thereof may be disposed to alienate at

¹⁸ Many Māori included a copy of their moko rather than their name or signature on the document, and many Māori refrained from participating in Treaty processes or negotiations.

¹⁹ The reader is referred to Orange (1987) for a more detailed account of the signing of the Treaty of Waitangi. See He Tirohanga o Kawa ki te Tiriti o Waitangi (2001) for more information on the Treaty.

²⁰ The full text of the Māori version of the Treaty is given in the appendix.

such prices as may be agreed upon between the respective Proprietors and persons appointed by Her Majesty to treat with them in that behalf.

Article Three:

In consideration thereof Her Majesty the Queen of England extends to the Natives of New Zealand Her royal protection and imparts to them all the Rights and Privileges of British Subjects.

Treaty Ambiguity

The Treaty of Waitangi has long been the centre of debate in New Zealand political and legal spheres. Much confusion has resulted from mistranslation and subjective interpretations derived from different cultural understandings. Barrett and Connolly-Stone (1998) concede that from the perspective of the Crown, the Treaty indicated “Māori submission to British sovereignty (Article One) in exchange for British Citizenship (Article Three) with traditional property rights to be protected (Article Two)” (p. Three). In contrast, contemporary Māori understanding is that the Treaty provided for *kāwanatanga* (which is further established within other Articles) (Article One), *tino rangatiratanga* (Article Two), and guaranteed *ōritetanga* (Article Three). Māori interpretations of the Articles are strongly supported by assurances that the Queen would not impede on Māori law or custom, and that any land taken by deceit or force was to be returned (Te Puni Kōkiri 2001).

As discussed in chapter one, Māori women’s roles and responsibilities are of fundamental value to Māori culture, and therefore embedded into readings of the Treaty. Therefore, the Crown has an agreement and moral obligation to protect Māori women’s *kāwanatanga*, *tino rangatiratanga*, and *ōritetanga*.

The Treaty debate is fuelled by ambiguity. It is stressed that the Treaty is a significant contributor to the historical and political landscape of New Zealand (Sharp 2004). However, it wields “relatively little legal and constitutional power” (Oh 2005 p. 7). In 1941 the Privy Council heard the case *Te Heuheu Tūkino v Aotea District Māori Land Board*. In the case, Te Heuheu (Ngati Tūwharetoa) asserted the legislation under which the Land Board operated was in breach of the Treaty of Waitangi. The ruling determined the contrary, and found that unless the Treaty was specifically incorporated into statute then it was not legally binding (Ministry for Culture and Heritage 2014). The orthodox view

persists that the Treaty does not hold any legal power if it is absent from legislation and, as such, rights afforded by the Treaty are unenforceable (Ministry of Justice b).

Additional debate exists over whether the Treaty is a static or living document. As Poata-Smith (2004) observes: the Treaty settlement process has entrenched a view of Māori identity that draws on a mythic sense of primordial authenticity and a set of static cultural social and political assumptions that ignore the dynamism and diversity of contemporary society (p. 183). Critics supporting this viewpoint insist that any rights afforded to Māori within the Treaty should remain limited to the civil and political rights of 1840. In contrast, opponents of this theory believe that Te Tiriti is a living document²¹ and guarantees are not limited to the socio-political context that existed at the time of signing (Barrett and Connolly-Stone 1998, Monteiro and Sharma 2006). Contrasting debate regarding the Treaty is also reflected in sentiment regarding inconsistent political approaches of successive Governments toward and concerning Māori.

Further, in the instance that the Treaty is explicitly referred to in legislation, the present approach of the courts is to give effect and interpretation to the specific context of the reference.

Despite confusion surrounding interpretations and the legal status of the Treaty, it is commonly considered to be the founding, and therefore constitutional, document of New Zealand. However, New Zealand remains one of the few democratic nations lacking a formal, written and legally binding constitution (see chapter four). As such, New Zealand's constitution has evolved through multiple laws and conventions within which the Treaty is considered.

Treaty Prominence

Māori unrest in the 1960s contributed to public awareness of the Treaty. Discontent grew from frustrations experienced by a century of largely unsuccessful Māori efforts concerning the Treaty and their rights (Ministry for Culture and Heritage 2013). Māori activism coincided with the rise of civil rights movements emerging worldwide. Māori campaigns sought to shed light on the “considerable socio-economic inequality”

²¹ The Treaty's status as a living document in a legislative environment was first recognised under the State Owned Enterprises Act (1986).

experienced by Māori (Oh 2005 p. 8), many of whom considered the Treaty either implicit or ineffective in addressing these inequalities (O'Malley, Stirling et al. 2013). Reflecting this attitude is the statement of Barclay (1960 cited in Oh 2005) that the Treaty is essentially treated as “little more than a scrap of paper” (p. 8). Māori rights and the Treaty were further projected into the national limelight with activities such as the 1975 Hikoī (land march). The hikoī was organised by Māori human rights activists and lead by Māori humanitarian and feminist, Whina Cooper. The hikoī is a strong example of the leadership and engagement of Māori women.

The 1970s and 1980s marked a shift toward greater national awareness of the pervasive racism embedded in New Zealand. White supremacist attitudes were explicitly prevalent amongst early colonial settlers. To reflect xenophobic attitudes, Came (2012) cites ‘The Aborigines’ (1844 p. 2) article from early colonial newspaper *The Southern Cross*. It states:

The native race is physically, organically, intellectually and morally, far inferior to the European. No cultivation, no education will create in the mind of the present native race that refinement of feeling, that delicate sensibility and sympathy, which characterise the educated European... the Māori is an inferior branch of the human family (p. 63).

National Pākehā belief in a more recent context was one of perceived racial harmony. Non-Māori New Zealanders considered themselves responsible for a “shining example of race relations,” a mentality encouraged through a firm grounding in welfarism (Oh 2005 p. 8) and egalitarian policies (Black 2014). A study by Ausubel (1960) confirmed the contrary, revealing that severe levels of Pākehā prejudice and intolerance persisted, and that Māori were experiencing substantial racial discrimination. Ausubel concluded that race perceptions partially the result of a lack of contact between Māori and Pākehā, and therefore remained as an untested assumption. The prevalence of race-based issues ‘surprised’ many Pākehā (Ministry for Culture and Heritage 2013) and likewise, the Government. The National Business Review conducted a poll revealing that growing numbers of Māori and Pākehā were attributing the visible increase in racial tensions to the Treaty of Waitangi (National Review Poll 1989 cited in Oh 2005).

Principles of the Treaty

The Treaty of Waitangi Bill (1975) was introduced amidst growing racial tensions, and marked a vital shift toward recognising Māori rights as guaranteed under the Treaty of Waitangi. This Bill is the earliest contemporary record of the principles of the Treaty in a legal sphere, though it did not define what those principles are. Principles were developed to bridge the literal differences between the English and Māori versions of Treaty texts. Treaty principles, discussed in detail later, comprise aspects of partnership, protection, and participation (Mason 1995). Principles are fluid and continuously evolving (Barrett and Connolly-Stone 1998) therefore, it may not ever be possible to assemble a comprehensive list. The evolutionary nature of the Treaty principles is intended that they may be incessantly modernised, and therefore applied to contemporary policy contexts. However, at the second Parliament reading Venn Young (Member of Parliament for Mount Egmont) predicted that if the principles remained undefined, it “would lead to debate, dissension and even divisiveness within the community” (Hayward 2004 p. 30). Regardless of Young’s warning, the Bill proceeded and the Treaty of Waitangi Act (1975) was approved under the third Labour Government of New Zealand. While the Waitangi Act has been incorporated into municipal law, the Treaty itself is not specifically mentioned, and therefore remains outside of national decree.

Tribunal

In 1877 The Chief Justice of the Supreme Court, Sir James Prendergast, dismissed the Treaty as “worthless” because it had been signed “between a civilised nation and a group of savages,” making it a simple and legal “nullity” (*Wi Parata v The Bishop of Wellington* 1877). Little changed until the Waitangi Tribunal was established under the Treaty of Waitangi Act (1975) as an ongoing commission of inquiry to hear Māori grievances against the Crown concerning breaches of existing or new Treaty principles. It also investigates these breaches in the context or case to which they were applied (McHugh 1991, Hayward 2004). Tribunal jurisdiction was initially restricted to inquiry of grievances occurring after 1975 and to make recommendations on findings only. However, an amendment approved by the fourth Labour Government in 1985 saw the Tribunal’s powers extend to facilitate historic claims dating from 1840 (McHugh 1991). Tribunal procedures vary from civil procedures because they occur on marae and adhere to Māori protocols and customs. However, procedures still follow the characteristics of court

processes. For example, the Tribunal has the ability to commission research, appoint legal counsel for claimants, and perform in a manner consistent with a court (Sharp 2001 cited in Oh 2005).

The Treaty and The Courts: Iwi Settlements

Traditionally, the daily lives of Māori communities operated in whānau and hapū units and it was units that were the source of Treaty guarantees. Government manipulation imposed statutory frameworks that have redefined tikanga Māori and placed emphasis on 'iwi' and 'iwi authorities' in Crown – Māori relations (Greensill 1997).

Government preference of iwi over whānau and hapū groups is strongly reflected in the outcomes of Tribunal Settlement processes. Since opening the floor to claims, more than 2,000 have been lodged with the Tribunal. In some instances multiple claims may overlap regarding the people involved or specific events. To counteract any issues this causes the Tribunal clusters claims into district-based enquiries and compiles a casebook of evidence. The Tribunal will then report whether claims are well founded as discerned by evidence presented by the claimant and the Crown.

The Crown negotiates Settlements with a focus on the iwi level. Hapū and whānau claims within iwi are commonly addressed in one set of negotiations. By 2010, enacted legislation represented settlements to the collective value of approximately \$950 million. Though this figure appears high, it is relatively minuscule compared to the 'real value' of lost assets. Additionally, three early settlements, the Commercial Fisheries (\$170 million), Waikato-Tainui Raupatu (\$170 million) and Ngāi Tahu (\$170 million) followed by the 2008 Central North Island Forests agreement (\$161 million) comprise the bulk of this value. Claimants were subjected to strict time limitations within which to file their claims. Furthermore, when a Settlement is negotiated, it is considered to also settle any additional existing or potential historical claims made by the same group. Once legislation is formalised, the Tribunal loses the power to hear further historical claims from that group.

Status and Approach of the Tribunal

There is confusion regarding the status of the Tribunal. On the one hand, the Tribunal is authorised to deliberate on Treaty-related issues and make court-like recommendations.

These findings, delivered by authoritative experts, carry considerable weight and influence Treaty jurisprudence. The courts recognise the value of Tribunal findings (Cooke cited in *New Zealand Māori Council v Attorney General* 1987), and of great importance to the many Māori who rely on the Tribunal as a power to facilitate Settlements (Sharp 2004). On the other hand, Tribunal members, elected and installed by Government, were restricted from considering the Treaty and the Tribunal was only recognised as a commission of enquiry.

The Tribunal's 'robust' approach to procedures has come under scrutiny (Oh 2005). For example, if Tribunal findings sit outside of the literal wording of the Treaty then laws have been used to justify particular (alternative) interpretations (McHugh 1991). Further, it has been argued that the Tribunal oversteps statutory limitations and therefore compromises credibility of Tribunal findings (L Smith 2000). Oliver (2001 cited in Oh 2005) posits that the Tribunal is reshaping historic processes to align with the political aspirations of today. In contrast, E Durie (1998) insists that the Tribunal is not reshaping the past, but revealing more of New Zealand's history.

The Tribunal, Court of Appeal and the Royal Commission on Social Policy (1988) have expressed definitions of Treaty principles regarding social policy. Barrett and Connolly-Stone (1998) identify reciprocity as the dominant guideline for determining the relationship between Crown and Māori. Reciprocity, in this sense, is "the exchange of the right to govern for the right of Māori to retain rangatiratanga and control over their lands, possessions, affairs and all things important to them" (Barrett and Connolly-Stone 1998 p. 6). Ultimately, notions centre on Crown perceptions of tino rangatiratanga and kāwanatanga, which respectively act as overarching values under which social development principles are derived. As already noted, the Treaty "is capable of a measure of adaptation to meet new and changing circumstances provided there is a measure of consent and an adherence to its broad principles" and therefore, emphasis should be placed on the context within which they appear (Motonui-Waitara Report 1983 para. 10.3).

The Tribunal and Treaty Principles

The Tribunal and the courts disagree with regards to the status of said Treaty partners. The Tribunal considers Treaty partners to be equal, whereas the courts do not. However,

the courts and the Tribunal found similarities in the attributes of the meaning of partnership as a principle. Barrett and Connolly-Stone (1998) note the general consensus is:

The Treaty established a partnership, and the Treaty partners are under a duty to act reasonably and in good faith with one another. The needs of both cultures must be respected, and compromises may be needed in some cases (p. 6).

The principle of protection refers to Crown responsibilities to protect the interests of Māori respective to those anticipated by Māori signatories of the Treaty (M. Durie, 1989). Within the context of social policy, understandings of protection require government to act in a way, which “accepts diversity, supports relevant service development and encourages independence” (Oh 2005 p. 14). Citing from the Motonui-Waitara Report (p. 51), Barrett and Connolly-Stone (1998) derive that:

The Treaty guaranteed to Māori, full authority, status and prestige with regard to their possessions and interests. The Treaty guaranteed not only that possessions would be protected, but also the “mana to control them in accordance with their own customs and having regard to their own cultural preferences” (p. 6).

The principle of participation refers to the joint responsibility of government and Māori to facilitate and enhance the involvement of Māori across all sectors and to do so in a manner consistent with Māori desires. As Barrett and Connolly-Stone (1998) articulate:

The Crown must make informed decisions by having regard to the Treaty when exercising its discretions and powers. While good faith does not always require consultation, it is an obvious way of demonstrating its existence (p. 6).

Principles: the Definition Debate

Defining Treaty principles has been the source of much debate and confusion. This has complicated the legal framework from which they can be applied. For example, Fleras and Spoonley (1999) draw on a proposal submitted in 1986 that sought to ensure the Treaty of Waitangi and the Treaty principles would be incorporated into all future law. Amendments to this proposal saw any mention of the Treaty eliminated, whilst reducing

the weight of Treaty principles. Eventually, principles in this context were used as more of a guideline in articulating policy formation than actually within formalised policy.

Perhaps the most significant decision of the courts in recognising interpretations of the principles was the case of *New Zealand Māori Council v Attorney General* (1987), also known as the Lands case. The Māori Council used the State-Owned Enterprises Act (1986) to bring the Lands case against the Crown. Primarily, the objective of the Lands Case was to prevent potentially irreversible transfers of Crown-owned land to state owned enterprises subject to Treaty claims. Section 9 of the State Owned Enterprises Act (1986) assented by the fourth Labour Government of that same year states “nothing in this Act shall permit the Crown to act in a manner that is inconsistent with the principles of the Treaty of Waitangi” (Laking 2012 para. 1). Court interpretations of this clause identified responsibilities “akin to partnership” including obligations of “fiduciary duty; good faith; the honour of the Crown; and fair and reasonable redress (Beehive 2007 para. 15). The decision created a platform for Crown obligations to Māori to be reconsidered and redefined (*New Zealand Māori Council v Attorney-General* 1987).

Prior to the State Owned Enterprises Act (1986), there had been very little discussion as to the idea and validity of Treaty principles. During the Lands case proceedings the Māori Council asked the Court of Appeal whether the Crown’s plans to transfer these assets were in breach of the principles of the Treaty of Waitangi. In response, the court made two revolutionary decisions. First, that the Treaty was a living document and therefore, the principles were of greater significance than the actual text of the Treaty. Second, and for the first time in New Zealand legal history, the principles of the Treaty would be articulated. It was noted by Justice Cooke that Tribunal findings would not be binding on the courts. However, Justice Somers noted that the court decisions would be binding on the Tribunal (Mason 1995). Justice Cooke proceeded to describe the case as “perhaps as important for the future of our country as any that has come before a New Zealand Court” (*New Zealand Māori Council v Attorney-General* 1987).

Principles have been reworked in definition and application relative to successive government’s specific political agendas. For example, the fourth Labour Government of 1989 released the *Principles for Crown action on the Treaty of Waitangi* as government

principles to guide its actions regarding the Treaty. In brief, (Hayward 2012) identified those principles as comprising:

- The government has the right to govern and make laws;
- All New Zealanders are equal before the law;
- The government and iwi are obliged to cooperate reasonably on issues of common concern; and
- The government must provide processes that seek to resolve grievances and reconcile.

Some Māori criticised the 1989 government Treaty principles, as an attempt to 'selectively refine' the Treaty principles defined by the Court of Appeal (1987) and the Waitangi Tribunal (Kelsey 1993). Thereafter, the fourth National Government of 1995 again reworked established principles in their proposal, the 'Crown Proposals for the Settlement of Treaty of Waitangi Claims'. The proposition by the National Government was later abandoned (Henare 1999).

As anticipated in 1975 by Venn Young, there persists broad scope regarding Treaty principles and terms used or implied in the Treaty itself. The process of defining rangatiratanga is one that has drawn significant attention and been subject to a wide range of interpretations and subsequent responses by various bodies. For example, Fleras and Spoonley (1999) note that debate persists as to whether rangatiratanga warrants the absolute ownership and control of Māori over their own political matters or, whether Māori should retain control over their own resources and taonga concurrent with ceding sovereignty to the Crown. When considering the meaning and application of rangatiratanga, the Tribunal reiterates the importance of context. Fleras and Spoonley proceed to emphasise government responses to Māori demands for rangatiratanga, evidenced through government preference for iwi as the manifestation of rangatiratanga (Fleras and Spoonley 1999). Backlash toward the government has included criticism over iwi being the preferred Māori societal structure afforded State recognition or control. Reproach comes as a response to apparent Government disregard for diversity in Māori societal structures that may otherwise be more effective, more important and more relative to Māori. The Waitangi Tribunal's Te Whānau o Waipareira Report (Waipareira Report) supports the above argument, and proffers that signatories to the Treaty were

not representing iwi, but various hapū and whānau groups, as the dominant social and political organisations of that time (Waitangi Tribunal 1998).

As is evident, definitions of Treaty principles located within legislation are either absent or broad. Therefore, the practical application of such principles is heavily dependent on perspective, interpretation, political will, and ultimately, context (Ministry of Justice b). More recently, in an attempt to combat the issue of defining principles, the Treaty of Waitangi Principles Bill (2005) was introduced to Parliament. The Principles Bill identified a lack of guidance regarding the principles “that were certainly not considered by either Governor Hobson or the Māori signatories” (Rodney Hide 2005 para. 1 cited in Treaty of Waitangi Principles Bill 2005). As such, the bill considered it desirable to set out the principles of the Treaty in a statute to “assist with greater clarity and certainty the interpretation of Acts of Parliament which have been enacted to date or which may be enacted in future” (para. 2). The bill attempted to redefine the principles as follows:

Principle of Article the First

The principle of the first article is that there is just one New Zealand, one sovereign nation and the Crown exercises sovereignty on behalf of Māori and non-Māori alike.

Principle of Article the Second

The principle of the second article is that the Crown has a duty to uphold citizens’ property rights. No property may be taken by the State without good cause and full market consideration paid.

Principle of Article the Third

The principle of the third article is that everyone in New Zealand who is a citizen has the same rights and obligations as every other citizen - the right to the rule of law, to a fair trial, free speech, to vote, and the principle that all citizens are equal before the law.

The Bill was defeated before making it to the Select Committee. In direct contrast to the Principles Bill was the introduction of Winston Peters’ Principles of the Treaty of Waitangi Deletion Bill (2005). Winston Peters, by way of the Deletion Bill sought to eliminate “all references to the expressions ‘the principles of the Treaty’, ‘the principles of the Treaty of Waitangi’, and the ‘Treaty of Waitangi and its principles,’” from all aspects of New Zealand statutes and related documents (Principles of the Treaty of Waitangi Deletion Bill 2005 p. 274-1). The inherent purpose of the Deletion Bill was to

remedy race relations that had been 'harmed' since the incorporation of the concept of principles in legislation dating from 1986. Part of this motivation came in response to the thought that "virtually every recent issue involving Māori-Pākehā relations is underpinned by reference to the Treaty" (Principles of the Treaty of Waitangi Deletion Bill 2005 p. 274-1). The Deletion Bill (2005) was also defeated.

Principles: Ambiguity

There are now more than forty statutes that refer to Treaty principles in relation to the purpose of respective legislation (Fleras and Spoonley 1999 p. 13). However, (Ministry for Culture and Heritage 2012d) and Barrett and Connolly-Stone (1998) have found that a lack of clarity concerning principles in legislation persists. Phrases such as 'adhering' to the 'principles of the Treaty of Waitangi' do not define the principles, nor do they indicate practical application Oh (2005). Additionally, many statutes allude to the inclusion of the Treaty and the principles through expressions such as 'Māori interests'; though many of these same statutes do not specifically reference the Treaty, the principles, or define what 'interests' may be.

For example, the Children, Young Persons and their Families Act (1989) lacks reference to the Treaty or the principles. However, section 7(c) does refer to the special needs of Māori and instructs the Director-General of Social Welfare to "have particular regard for the values, culture, and beliefs of the Māori people." More important for Māori in this statute are the provisions of the Act that relate to iwi social services (section 396). As discussed in the previous section, iwi based or administered services such as iwi social services may not be the most effective or preferred option for many Māori.

Likewise, the Education Act (1989) and respective amendments do not specifically mention the Treaty of Waitangi, and nor do they define what it means regarding the Treaty principles. The Act is vague, and therefore avoids establishing Treaty-based rights in the education sector that could otherwise serve as the basis for litigation.

Conclusion

The contemporary Treaty-debate is fuelled by decades of government action that have been, at best, vague and inconsistent. Orthodox considerations of the Treaty appear to imbue the Treaty with a highly charged reputation that is both political and, to draw

again on the words of Venn Young, divisive. The Treaty of Waitangi has never been and might never be fully incorporated into formal New Zealand legislature. The absence of Treaty absorption into all municipal law means that the Treaty remains largely excluded from domestic law and consequently internal governance. Exceptions are far and few between and subjected to the contextual applications in which the Treaty appears.

A large contributor to Treaty confusion lies with the introduction of the concept of principles, followed by the persistent morphing of principle interpretations. As it stands, the principles represent a metaphorical mountain in the incessantly confusing socio-political landscape of the Treaty-debate. Based on shifting perceptions concerning the essence of the Treaty rather than the Treaty itself, principles are subjected to an array of perspectives and expectations framed in part by the ethno-cultural world-views of disagreeing, and largely European, successive governments. Context plays a significant role in the determining of these interpretations. This is further complicated by the position of the Tribunal that, whilst empowered to conduct independent investigative research into breaches of Treaty principles, lacks any legal bearing on the Courts to ensure that Tribunal findings and recommendations are upheld.

This chapter has provided perspective to the contemporary Treaty debate, of which the Treaty principles are inherent. The Treaty represents a relationship concerned with openness and good faith, one that is strengthened by partnership, and remains a significant symbol for Māori. Partnership should allow for Māori to engage in open consultation with the government regarding their social policy objectives as the determinant to social development. This chapter contributes to the discussion of social policy and Māori rights which are explored in chapter four. It is critical to point out that understanding the Treaty context and its principles is fundamental to a mana wahine analysis. Comprehending the utility of Treaty principles in social policy as a reflection of Māori rights might also contribute toward the critical analysis of social policy legislation in this study.

CHAPTER FOUR

Social Rights and Social Policy

Goals, embedded in political agendas, have shifted over time. This is reflected in the objectives of Māori-specific policies that fall within three core domains, the limitation or destruction of Māori interests;²² the restoration of Māori interests or compensation for losses incurred;²³ or the development and protection of Māori interests²⁴ (M Durie 2004). The success of these policies is subjective, measured by achieved political agendas or the lived experiences of Māori. Inconsistent political agendas toward Māori have resulted in temporal fluctuations between assimilationist policies (Simpson 1979, R Walker 1987, Kawharu 1989, R Walker 1990, Ballara 1996, Hill 2005, Minsitry for Culture and Heritage 2012b) and policies in support of Māori interests. The most significant impacts experienced by Māori are certainly due to policies intending to “limit or extinguish Māori interests” (M Durie 2004 p. 5).

The attitude of successive New Zealand governments is reflected in the policy decisions made so far. New Zealand has increasingly taken steps to recognise human rights within social policy legislations. Where policies concern Māori, there is a dominant emphasis on the settling of historic land disputes regarding traditional property rights and issues around environmental respect and sustainability (Barrett and Connolly-Stone 1998). What is yet to be comprehensively addressed are the relationships between Māori and Pākehā, and likewise, Māori and government (Barrett and Connolly-Stone 1998). Part of this relationship is the acknowledgement of Māori differences to Pākehā, and appreciating these differences through legislation that validates Māori rights. This is of increasing importance in a changing national demographic, where the Māori population is growing, and increasingly young. Yet, government have a strong record of inconsistency where Māori policies are concerned.

²² For examples see the Oyster Fisheries Act (1866), Māori Representation Act (1867), Coal Mine Act (1903), Tohunga Suppression Act (1907) and Māori Affairs Amendment Act (1953).

²³ Such as the Māori Language Act (1987), Treaty of Waitangi (Fisheries Claim) Settlement Act (1992) and Te Rūnanga o Nga Tahu Act (1999).

²⁴ For instance, the Children Young Persons and their Families Act (1989), Resource Management Act (1991), Rūnanga Iwi Act (1990), Electoral Act (1993) and Ture Whenua Māori Act (1993).

This chapter builds on the Treaty and Treaty principles that were discussed in chapter three, and outlines the framework for acknowledging Māori rights guaranteed by the Treaty in social policy legislation. First, contemporary understandings of social policy are introduced. Welfare policies are a prominent theme in the New Zealand socio-political landscape. I acknowledge egalitarian approaches then contrast them with examples of racist statutes. Rights are defined and the structure of the New Zealand Government is offered to facilitate understanding of how rights are currently promoted and protected through observance to various municipal and international laws. Understanding New Zealand's adherence to certain rights-based laws enables the examination of Indigenous and then Māori rights within the social policy context. This chapter concludes with contemporary debates concerning Treaty Articles, complicated by the inconsistent application of these in government policies, initiatives and legislation.

Social Policy

The Ministry of Social Development's Approach broadly defines social policy as "all policy that has an influence on desirable outcomes" (Ministry of Social Development 2001 p. 1). Geiringer and Palmer (2007) refine the Ministry's understanding of social policy as being the "principles and mechanisms" undertaken by government in order to facilitate the developmental progression of a society, with specific emphasis on education, health and welfare (p. 14). Geiringer and Palmer further emphasise that the Treaty of Waitangi must be considered in social policy development and implementation.

Social policy involves examining social problems and areas of debate to facilitate various methods of response to meet human need and improve living conditions. Primarily, social policy legislation refers to the legal environment of activities that affect the living conditions conducive to human 'welfare' and 'wellbeing'. Welfare and wellbeing approaches to social policy are the most prevalent in academia. Wellbeing is defined as the state of being comfortable, healthy or happy. This is akin to the economic concept of 'utility' (Bentham 1789 cited in Duncan 2005). Wellbeing reflects the ability to make informed decisions, and the freedom to live preferred lifestyles. This summons notions of a good or satisfactory condition of existence. Welfare pertains to more formal applications of statutory, organisational or social procedures that promote the improvement of a person or groups' physical or material conditions (Collins 2009). Principally, welfare policy gauges development through economically focussed means.

Welfare and wellbeing based policy have distinct differences in definition, though are commonly used interchangeably.

Welfare Policy

New Zealand has a strong history of 'egalitarian' welfare history (Black 2014). Pertinent to the ideology of the welfare state is the mitigating of negative social issues to improve the status of social divisions (Ginsberg 1992). However, there is evidence indicating that in some instances, welfare state systems have reinforced male supremacy and gender-race divisions (Ginsberg 1992). Reinforced white male hegemonies are evident in the way that conventional Western social policy has been formulated around the entire concept of the family wage and the Christian patriarchal division of labour within a family (Ginsberg 1992). M Durie (2003) insists these hegemonic divisions took women's labour for granted and adopted a "somewhat patronising attitude towards Māori" (p. 2).

New Zealand has ongoing policies to ensure citizens retain good access to basic human needs and state-provided foundations of wellbeing. One such provision, entrenched in New Zealand, is education regulated by the State. Debate surrounding interpretations of citizenship and the application of education are discussed respectively in chapter five. New Zealand has achieved an international reputation for progressive social policy through ongoing egalitarian welfare legislation of which the Old-Age Pension (1898) and the Social Security Act (1934) are both examples. Forty years ago, the Domestic Purposes Benefit (DBP) was introduced to New Zealand's social welfare system through the Social Amendment Act (1974). Initially for emergencies, the DBP provided financial support to single mothers on a discretionary basis.

Concurrent with the policies above, New Zealand has a history replete with policies negatively targeting Māori, or intentionally omitting Māori from fully experiencing positive outcomes experienced by others (Came 2012). Ballara (1986) called attention to ethnocentric and racist attitudes among Europeans as having been pervasive factors in New Zealand society, and these attitudes are subsequently reflected in policy development and implementation throughout New Zealand's history. Such initiatives have included The (British) New Zealand Constitution Act (1852), the Native Schools Act (1858; 1867), the New Zealand Settlement Act (1863), the Native Land Court (1865),

the Native Land Act (1873), and the Old-Age Pension Act (1898)²⁵. More recently, a member of the Māori Council identified the Māori Affairs Act (1953) and the Māori Affairs Amendment Act (1967) as an attempt at one last chance to grab land (Ministry for Culture and Heritage 2012a).

Despite a history steeped in irrefutably racist policies, New Zealand maintains a strong international record for human rights commitments, within which women's rights are acknowledged. For example, an international precedence was set when in 1893 New Zealand women were successful in being the world's first 'lady voters' (Ministry for Culture and Heritage 2012b). Since then, New Zealand has excelled in high achievement for women. In 1972 women were granted equal pay under the Equal Pay Act (1972) followed by the establishment of the Ministry of Women's Affairs (1985). In 2001, under the fifth Labour Government, New Zealand became the first country in the world where women simultaneously held all three highest positions: Prime Minister, Governor General, and Leader of the Opposition and Chief Justice. In 2005, again under the fifth Labour Government, New Zealand elected the highest number of women ever to parliament.

Furthermore, the Social Progress Imperative (2014) recently ranked New Zealand as number one in the world according to the measures comprising their Social Progress Index report. Within the Index, New Zealand ranked first overall for the dimension of 'opportunity,' sixth for 'foundations of wellbeing' and eighteenth for the provision of and access to 'basic human needs.' Enhancing this reputation is New Zealand's subscription to the rights ascribed (and enforced through independent judiciary system) in the Bill of Rights Act (1990) and the Human Rights Act (1993).

Defining Rights

Rights are defined as the moral or legal entitlement to have or do something. A rights-based approach to policy development safeguards New Zealand's human rights obligations as acknowledged by both international and domestic law. In the context of this thesis, the definition may be perceived as self-contradictory.

²⁵ Administered to only those of "good moral character" of which race was a consideration (Ministry of Culture and Heritage 2014).

For example, the Treaty within a contemporary setting offers rights in the sense of moral and mutual obligations, however these have not been comprehensively subsumed into the framework of New Zealand legal doctrine. To oversimplify, Māori rights afforded under the Treaty of Waitangi are not explicitly recognised as legally binding rights unless where unequivocally expressed directly in law.

On the contrary, overarching human rights are protected in New Zealand through both statute and common law. For the most part, the process of developing and enacting policy can also act as a facilitator toward amending statute and common law practices. Human rights here are considered to be the basic rights and freedoms to which all people are entitled (Human Rights Commission 2005). These rights concern the interactions that people have with each other and with State. Rights include such concepts as equality before the law, and rights pertaining to social, economic and cultural factors. Drawing on the definition by (Geiringer and Palmer 2007 p. 16). I refer to human rights frameworks as the instruments derived from domestic and international law to protect people.

Contemporary Policy Shifts

In 2001 the fifth Labour Government of New Zealand released their statement of intent *Pathways to Opportunity: From Social Welfare to Social Development* (New Zealand Government 2001a) followed shortly thereafter by the release of its associated policy framework. The Government indicated their intention to move progressively away from social welfare policies whilst increasing emphasis on social development policy approaches. Core aspects of the framework were based on the *Report of the Royal Commission on Social Policy* (1998) that principally noted the importance of:

- Improving the level and distribution of wellbeing;
- Formulating Government goals based on desired social outcomes; and
- Undertaking social investment approaches.

Ultimately, the Ministry concluded that investigating social policy in New Zealand affects the level and distribution of wellbeing because of the extent to which the desirable outcomes are achieved. Benefits of social cohesion include shared values and understandings and enable individuals and groups to trust each other and work together. These benefits are sometimes referred to as social capital (OECD 2007). Geiringer and

Palmer (2007) are quick to point out the Ministry's framework lacks adequate language and perspective concerning human rights. Human rights commitments within the policy-making environment have increased since the assent of the Bill of Rights Act (1990). However, Geiringer and Palmer (2007) further assert that reasonable ambiguity remains within Government about the policy implications of rights unprotected by the Bill of Rights Act (1990).

Government Structure and Policy Framework

Presently, New Zealand operates as a constitutional Monarchy. Elections are held every three years under mixed member proportional (MMP), a system of representation introduced in 1996. New Zealand follows a Westminster unicameral system of Government, as the upper house was abolished in 1951. The Legislature,²⁶ the Executive²⁷ and the Judiciary²⁸ are the three core branches of this State. The Governor General, acting on behalf of HM Queen Elizabeth II, must consent all passing legislation. The main function of the Governor General is to arrange for the leader of the main political party to form a Government. The Governor General has the power to dissolve the government and chairs, but is not a member of the Executive Council. The Council comprises members of Parliament who are usually also members of cabinet. The Executive Council is the highest formal instrument of government. It is the part of the executive branch of government.

When social policy is enacted in law, it becomes social policy legislation. Law refers to the context within which citizens are governed by the state. Democratic states legitimise law through the process of recognising elected lawmakers and legislation that has been made on behalf of these same citizens (Parliament 2014). Law in New Zealand is the formal recognition of a policy known as an act of Parliament. Proposed policies, in the form of a bill, are not formally recognised in New Zealand until they are introduced into the House of Representatives. The House comprises New Zealand's elected members of Parliament and provides our government.²⁹ A bill must then pass through a sequence of three readings, punctuated respectively by either a select committee or the committee of

²⁶ Makes law by examining and debating bills which become law when passed. It is composed of Members of Parliament and Select Committees.

²⁷ Initiates and administers the law by deciding policy, drafting bills and administering Acts. Composed of Ministers of the Crown and government departments.

²⁸ Applies the law by hearing and deciding on cases. Composed of judges and judicial officers.

²⁹ The House and the Legislative Council formed each of the two chambers from 1854 until 1951. Now, the House alone represents New Zealanders and is responsible for making the laws in this country.

the whole House. Each bill must adhere to the Cabinet Manual (2008) guidelines regarding the correct process and development of legislation, consistency with basic principles and existing law, and finding appropriate solutions to particular issues. The Cabinet is fundamental to decision-making within the New Zealand Government. Decisions and actions of the Executive only progress as the result of collective discussion and agreement by the Cabinet. Cabinet papers seeking to advance policy and legislative proposals are required to consider several domestic and human rights related guidelines: the Bill of Rights Act (1990), the Human Rights Act (1993) and the Treaty of Waitangi. Pertinent to this research is the fundamental bureaucratic mechanisms that have seen human rights, women's rights, and Māori rights respectively built in to the Cabinet Manual guidelines. Geiringer and Palmer (2007) extract the following:

Since May 2003, all policy proposals submitted to Cabinet committees must include comment on their consistency with the Bill of Rights Act 1990 and the Human Rights Act 1993. Formulation of this advice is the responsibility of the relevant officials, who may consult with the Ministry of Justice and/or Crown Law Office (Cabinet Office 2001b para. 3.53–3.57).

All Cabinet papers submitted to the Cabinet Social Development Committee are required to include a gender implications statement as to whether a gender analysis of the policy proposal has been undertaken (Cabinet Office 2001a: paragraphs 3.61– 3.62, Cabinet Office 2002) and “where appropriate” a disability perspective (Cabinet Office 2001b para. 3.63).

The Cabinet Manual (Cabinet Office 2001a para. 5.35–5.36) requires legislative proposals submitted to Cabinet Legislation Committee to confirm compliance with the principles of the Treaty of Waitangi, the rights and freedoms contained in the Bill of Rights Acts 1990 and the Human Rights Act 1993, the principles in the Privacy Act 1993 and “international obligations.”

Section 7 of the Bill of Rights Act 1990 requires the Attorney-General to draw to the attention of the House of Representatives any inconsistencies between proposed legislation and the Bill of Rights Act 1990, and, accordingly, government officials (from the Ministry of Justice or the Crown Law Office) must advise the Attorney- General on the consistency of all proposed legislation (see Cabinet Office 2001a para. 5.39) (p. 32).

The excerpts mandate state agencies to consider human rights, women's rights and Māori rights in their development of policies for public services. Agencies have the core responsibility of providing advice to respective ministers and the wider government on

pertinent issues relevant to their department. It is important to note that Māori also derive rights from common law. This is law that has evolved from centuries of successive court decisions based on local custom and judicial precedent. However, Māori have not been able to rely on common law for the protection of their traditional rights and, unlike other commonwealth countries such as Canada, common law does not have a strong record of being used as the basis for litigation in New Zealand (Barrett and Connolly-Stone 1998).

Cabinet decision-making processes are further required to consider international obligations as entered into by the New Zealand Government. Binding international obligations are located primarily within two sets of international treaties: the United Nations (UN) and the International Labour Organisation (ILO) respectively (Geiringer and Palmer 2007).

The United Nations premises human rights standards in a combination of directives comprising the Universal Declaration of Human Rights (the Universal Declaration), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the International Covenant on Civil and Political Rights (ICCPR) and two protocols accompanying the ICCPR. Collectively, these instruments are commonly referred to as the International Bill of Rights (IBR). With the exception of the Universal Declaration, New Zealand has incorporated aspects of the IBR into domestic law.

The IBR is further supported by a number of documents intended to protect the rights of more vulnerable groups. Additional treaties most pertinent to this research include the Elimination of All Forms of Discrimination (the Race Convention), the Convention on the Elimination of All Forms of Discrimination Against Women (the Women Convention), Convention on the Rights of the Child (the Child Convention), and the Declaration on the Rights of Indigenous Peoples (the Indigenous Declaration).

Indigenous Rights

In 2007, the United Nations General Assembly adopted a Declaration on the Rights of Indigenous Peoples (the Indigenous Declaration). Recently, the Human Rights Commission has focussed on the Treaty of Waitangi and its relevance to human rights. They decree that the Treaty has “profound significance for human rights and

harmonious race relations” in New Zealand (Human Rights Commission 2005).

With regard to the Indigenous Declaration, M Durie (2003) presented a paper at the Human Rights Commission symposium on the Treaty of Waitangi in which he stated:

[The Indigenous Declaration draft proposes] that Indigenous peoples should have access to the Indigenous world with its values and resources, access to the wider society within which they live, access to a healthy environment, and a degree of autonomy over their own lives and properties. [The Indigenous Declaration] looks forward as well as backward and is as much about development as restoration. It is also about the rights of Indigenous groups – as tribes or collectives – to form policies within their own cultural context (p. 9).

The Indigenous Declaration applies to Māori men and women as the Indigenous peoples of New Zealand. The Indigenous Declaration reflects and elaborates on the provisions of the Treaty of Waitangi, as well as the Universal Declaration of Human Rights. International law prefers the rights of an individual to group rights, whereas the Treaty of Waitangi provides for both individual rights and the rights of the collective. The interconnectedness of individual rights is being increasingly recognised as important (Human Rights Commission 2005). While international treaties have been subsumed into the jurisdiction of New Zealand’s municipal law, the Indigenous Declaration holds no authority domestically as it remains on the periphery of state legislature. New Zealand Prime Minister John Key said of the United Nations Declaration on the Rights of Indigenous Peoples that “it will have no impact on New Zealand law and no impact on the constitutional framework” (House of Representatives 2010 para. 4). As it stands, neither the Indigenous Declaration nor the Treaty have been universally subsumed into New Zealand’s legislative framework.

Confusing Government Policies

Changes to state developed policy and state delivered services in relation to Māori were a prominent theme of the 1980s and 1990s. Hui Taumata, the Māori Economic Summit of 1984, revealed dissatisfaction from attending Māori leaders regarding the effectiveness of the Department of Māori Affairs (Law Commission 1999). Hui Taumata emphasised that Māori economic, social and cultural factors should be self-determined to achieve positive Māori development (M Durie 1998, Law Commission 1999 p. 67). Kōhanga Reo

and Kura Kaupapa Māori were offered as examples of alternative structure successes, proving what iwi were capable of with access to sufficient resources (C Smith 1994).

In 1988 the Minister of Māori Affairs released *Te Urupare Rangapu* (Partnership Response). This document made clear the desire of Māori for the devolution of the Department of Māori Affairs to iwi organisations and the necessity for “mainstream” agencies to be more responsive to the needs of Māori. These needs were legislated under the State Sector Act (1988) (the State Act). As outlined in section 56 of the State Act, departments and those responsible for departments are required to operate policy that explicitly recognises Māori interests. This includes the “aims and aspirations of Māori people; the employment requirements of Māori people; and, the need for greater involvement of Māori people in the public service” (Law Commission 1999 para. 67).

The first major change as a result of the State Sector Act (1988) was the founding of Manatu Māori, a policy Ministry in 1989. This unit was responsible for the inclusion of Māori worldviews in policy development and making recommendations to government on effectively delivering services to Māori. There were two main changes resulting from the Māori Affairs Restructuring Act (1989). First, the Department of Māori Affairs was restructured into the Iwi Transition Authority (ITA), also known as *Te Tira Ahu Iwi*. Core functions of the ITA under section 7 of the Act were to:

- Administer the former Department’s programmes until they were devolved to local iwi authorities;
- Promote the development of iwi authorities and transfer programmes to their control; and
- Ensure iwi authorities were fully operational and capable of carrying out the programmes in their people’s best interests (Law Commission 1999, paragraph 68).

The second major change to occur was the abolishment of the Board of Māori Affairs. Of the Board, it was found that:

Section 5 of the Māori Affairs Act 1953 made the Board responsible for administering that Act, which was concerned mainly with Māori land and property. The Board, which comprised the Minister of Māori Affairs, any member of the “Executive Council appointed to represent the Māori

race,” five departmental heads and three other appointed members, had powers to acquire, purchase, lease or sell land under the Act (Law Commission 1999 para. 68).

The fourth Labour Government’s devolution strategy was a response to Māori calls for greater autonomy and tino rangatiratanga rights under the Treaty (Fleras and Spoonley 2002). The Rūnanga-A-Iwi Bill (1989) (The Rūnanga Bill) was designed to permit legal recognition and therefore representation to the rūnanga (councils) of registered iwi. Registered iwi would then be eligible for government funding though remain financially accountable to government. Additional accountability to government would be achieved through ‘charters’ which off-loaded administrative responsibilities onto local iwi bodies whilst retaining control at central government (C Smith 1994). Gordon and Codd (1991 cited in C Smith 1994) maintain that school charters are the government’s way of retaining control over what knowledge is taught in schools. This charter method would be applied to iwi although iwi would be treated as corporate entities. Ultimately, iwi would gain responsibility but lose control.

Unsurprisingly, Māori opposition to the Rūnanga Bill was significant (Metro 1990 cited in C Smith 1994). The bill was rejected fifty-to-one at the Hui Whakakotahi in Turangi. Jackson (1990 cited in C Smith 1994) recognised that the bill ignored the Treaty. Jackson pointed out that the bill assumed, “tino rangatiratanga is [sic] ‘given’ to us in local bodies by the establishment of powerless advisory committees... the Bill does not recognise sovereign entities are required by the Treaty” (p. 108).

Further criticisms of the Bill included that it prevented Māori from generating iwi based policy, that the Bill did not recognise hapū or marae social structures, and that the Bill operated in a ‘bureaucratised’ top-down structure (C Smith 1994). Kōhanga Reo and Kura Kaupapa Māori were given as evidence of alternative structures that Māori could achieve if iwi could obtain necessary resources (Metro 1990 cited in C Smith 1994). However, Māori became responsible for delivering government programmes that were heavily confined within regulatory frameworks, and inadequately supplied with resources to meet high levels of health and social needs (Oh 2005). Furthermore, the responsibility for welfare was transferred back to communities most in need of social development resources. Realistically, as Oh (2005) describes, “devolution may have answered Māori calls for self-determination, but it was within a limited interpretation of the word” (p.

15). The Rūnanga Act (1990), the last “major Māori policy initiative of the [fourth] Labour Government,” was revoked one year later by the fourth National Government of 1991 (Law Commission 1999 para. 68).

Ka Awatea, published in 1991, was a report commissioned by the Minister of Māori Affairs. This report reviewed current policy with the aim of improving the social and economic positioning of Māori. It highlighted the overrepresentation of Māori in adverse health, education and employment statistics. It recommended the establishment of four separate bodies relating to education, health, training and economic development within a specialist Māori agency. The agency, Te Puni Kōkiri, was to replace both the Manatu Māori and the ITA. Established in 1992, Te Puni Kōkiri is the only Ministry explicitly focused on Māori. It is the government’s core policy advisor on issues relating to Māori, hapū and iwi. However, Te Puni Kōkiri was blocked from delivering services in the four areas of concern discussed above. Instead, and despite Māori wishes as outlined in Ka Awatea, Te Puni Kōkiri is confined to provide policy advice in four principal areas, that being compliance, Treaty relations, asset management and social policy (for more see User’s Guide to Te Puni Kōkiri).

Report 53 by the Law Commission (1999) states that since 1990 neither goal of Te Urupare Rangapu has been fully endorsed by government. Te Puni Kōkiri is obligated to ensure that Māori levels of achievement in education, training and employment increase. Further, they are to liaise with other government agencies and monitor the delivery of services to Māori (Ministry of Māori Development Act 1991). The Social Policy Branch of the Treasury is responsible for the purchasing and regulation of social services. In their briefing the Treasury highlighted that an understanding of cultural factors may enhance the outcome and effectiveness of state services delivery. Kōhanga Reo and Kura Kaupapa Māori were used as examples where alternative forms of service delivery were successfully utilised. Positively, there has been an increase in Māori involvement through Māori policy units, increased Māori staff, and enhanced Māori engagement through consultation processes. Yet, there remains a continuing preference for mainstream control over services for Māori rather than a specialist Māori agency to assume this responsibility.

Public Discontent with Māori-centred Policy

Three decades of Treaty claims and increasing Treaty awareness has resulted in public opinion that any policy directed toward Māori is distributing Māori benefits derived from the Treaty (Oh 2005). Humpage and Fleras (2001) argue that that social development terms such as ‘social justice,’ ‘equality,’ and ‘partnership’ frequently appear in policy content but remain open to the interpretation of a wide range of perspectives. In citing Solomos (1988), they argue that such perspectives are subject to the philosophical positionality of those able to capitalise on the competing interests of intersecting policy discourses.

For example, the fifth Labour Government’s *Closing the Gaps* (Gaps Policy) (1999) was the latest in a long list of policies to target social inequalities. Māori were acknowledged as experiencing significant levels of inequality (Fleras and Spoonley 1999; Humpage and Fleras 2001). In the budget speech delivered by Prime Minister Helen Clark it was identified that emphasis would be placed on reducing the disparities between Māori and Pacific Islanders, to other New Zealanders because:

First, it is a simple issue of social justice. Second, for Māori, it is a Treaty issue. Third, for all New Zealanders it is important that the growing proportion of our population, which is Māori and Pacific Island peoples, not be locked into economic and social disadvantage, because, if they are, our whole community is going to be very much the poorer for it (Beehive 2000 para. 43).

The Gaps initiative and Treaty Articles appear to correspond. ‘Social justice’ discourse is in line with Article 3; identifying ‘Treaty’ justice acknowledges tino rangatiratanga in Article 2, and ‘social cohesion’ correlates with Article 1. Humpage and Fleras (2001) further identify that rationale for the Gaps initiatives correspond to varying models of social justice. When competing social models intersect, contradictions in the politics behind policy are revealed. Exposed contradictions attract substantial critical attention, as the Gaps initiative did (Chapple 2000, Humpage and Fleras 2001, Comer 2008). Consequently, Labour re-launched the Gaps Policy as an initiative designed to target social equity to the benefit of all New Zealanders, before it was abandoned the following year. Government remains careful to statutorily declare their position regarding any social equity issue (Oh 2005).

Article Debates

All three Treaty articles were intended to operate in unison (Waipareira Report 1998). This appeals to Māori culture where holistic approaches are applied to all aspects of life and emphasis is placed on achieving balance between the relationships of each component. However, as Michael Cullen (Beehive 2005) highlights, “at the heart of our nation and its history lies a not yet finished debate... the Treaty of Waitangi” (para. 5). Cullen further elaborates by acknowledging that Treaty debates can be healthy and progressive if it leads to better understanding and agreement between Māori, Pākehā and government.

Te Whānau o Waipareira Trust is a non-iwi community assistance body involved in social development programmes such as education, employment and community services. In 1998 the Waipareira Trust filed a Tribunal claim addressing the discriminatory ‘iwi-only’ funding practices by the Department of Social Welfare. The *Waipareira Report* by the Tribunal has implications for social policy in general and contributes to the Treaty Article debate. The Report identifies two core principles:

- All Māori communities have the right to apply tino rangatiratanga in their relationships with the Crown, including social service delivery. Government has a responsibility to actively protect tino rangatiratanga.
- Iwi is a status determined by common ancestry. However, iwi status doesn’t necessarily guarantee tino rangatiratanga, and nor is tino rangatiratanga exclusive to iwi.

Article One

Social cohesion is an important feature of the government's efforts to strengthen human dignity and social rights in a spirit of partnership solidarity and strong leadership. Member of Parliament Tariana Turia, now Associate Minister for Social Development, has said that in recent years, New Zealand has come to realise that “if we are to enjoy security... then social cohesion is a necessary and essential ingredient for that security” (Beehive 2003 para. 32).

In addressing social cohesion, successive governments have focused on the notion of equality. Fleras and Spoonley (1999) argue 'equality' can be dangerous for Māori, as it has in the past enhanced colonial dictates of homogeneity and assimilation. They insist that we need to focus on the 'bigger picture,' which, in their interpretation, insists on addressing Articles 1 and 2 of the Treaty and bringing change at a constitutional level. Consistent with the findings of the Waipareira Report, Fleras and Spoonley feel that the fundamental nature of New Zealand will need to be questioned in order to determine how, as anticipated by Māori in exchange for sovereignty, Māori rights to tino rangatiratanga will be constitutionalised.

Article Two

In 1984 a claim was lodged with the Tribunal that argued for Government recognition, protection and promotion of Te Reo Māori. The Tribunal ruled that Article 2 of the Treaty protects te reo Māori as an intangible taonga and that the Crown had breached its obligation to Māori to protect it. Government response to the ruling was to introduce the Māori Language Act (1987) that recognises te reo as an official language and established Te Taura Whiri I Te Reo Māori (the Māori Language Commission). Pertinent to the purpose of this thesis, the Act provides legal recognition that te reo Māori is a taonga protected by the Treaty.³⁰ This challenges conventional approaches to Article Two that restricts it to tangible property rights (Barrett and Connolly-Stone 1998). Successful cases in other areas of social policy are required to establish a body of social policy Treaty jurisprudence. Pita Sharples (Beehive 2011) in discussing the Articles concedes that Government must take responsibility to meet Article Two obligations afforded by the Treaty to provide protection of Māori rights to taonga. Sharples further articulates that Article Three provides Māori the right to participate in Aotearoa as equal citizens.

Article Three

Understandings of Article Three include the scope of the rights that citizenship affords and whether those rights guarantee equal opportunities or equal outcomes for Māori. Social rights have only been expressed in New Zealand law since the late eighteenth and early nineteenth centuries. This expression coincides with the rise of social theory, the

³⁰ See preamble of Act.

development of the welfare state, and progression of human rights norms (Barrett and Connolly-Stone 1998). In its most rigid form, citizenship in a democratic nation is a legal status that affords individuals access to social rights such as welfare (Anderson 2011). The debate then shifts to understandings of equality and whether that means equality of opportunities or equality of outcomes. Some critics favour the argument that Article 3 guarantees equality of opportunity or legal equality (Barrett and Connolly-Stone 1998). In essence, this stance emphasises that no legal distinction should be made between Māori and non-Māori or rather, that Māori need to conform to the socio-political environment of New Zealand that is composed predominantly of Anglo-centric colonial ideologies and practices.

In contrast it is debated that Article 3 supports the right to enjoy social benefits. This includes access to all services considered necessary for a good standard of living such as education. This stance asserts that equality of outcomes is both guaranteed (Barrett & Connolly-Stone 1998) and necessary (M Durie 2005a) to address present social disparities. Disparities between Māori and non-Māori in areas such as educational attainment (and a host of other variables) indicate that individual Māori, and specifically Māori women, “have not enjoyed the reciprocal benefits guaranteed to all citizens under the Treaty” (Barrett and Connolly-Stone 1998 p. 4).

Government has long understood its social policy responsibilities toward Māori in terms of Article Three. By guaranteeing citizenship rights to Māori, Article Three prohibits discrimination and arguably requires Government to be proactive in reducing social and economic disparities between Māori and non-Māori.

In contrast, the *Waipareira Report* challenges Crown understandings of Article three that, where social services are delivered to Māori, the Crown need only ensure Māori equal citizenship rights (Barrett and Connolly-Stone 1998). Instead, *Waipareira* found that "Her Majesty the Queen of England extends to the Natives of New Zealand Her royal protection" is in addition and separate to "and imparts to them all the Rights and Privileges of British Subjects" (p. 21). The understanding of *Waipareira* is that Article 3 contains two messages, guaranteed protection of Māori as a people and, the promise of equal citizenship rights.

Conclusion

The Treaty intended to facilitate a relationship of mutually beneficial goodwill to Treaty partners. It was considered that the interests of all signatories should be strengthened by partnership. Fleras and Spoonley (1999) believe that partnership should entail common action for issues of common concern, whilst allowing for the development of both cultures to remain distinct. The role of government in advancing the discourse beyond its current point will be crucial. It will require government to engage in an open dialogue with Māori about social policy objectives rather than seeking to set the terms of the debate as it does at present. This must involve greater, and more explicit, recognition of Māori rights to tino rangatiratanga.

This chapter provides perspective to the rights afforded in legislature and the commitment of New Zealand to certain international rights. Māori derive certain rights as a Treaty partner, yet the government's approach to Treaty Articles in the social policy arena has a history of being unclear and inconsistent. Rights afforded to Māori under the Treaty remain on the periphery of municipal legislation. This is confusing not just to Māori, but also to wider society. Furthermore, contradictory policies enacted by successive governments have sent mixed messages and do nothing to mitigate social unease concerning misunderstandings of the Treaty and the application of the Treaty in a contemporary setting.

The legislature and policy context has implications for Māori women, as within racist policy there is sometimes also gender blindness. Mana wahine provides a framework to analyse and break down this gender blindness, and is discussed specifically in the context of education policy in the following chapter.

CHAPTER FIVE

The Education Sector

Education is a social right, and imperative to social development (UN 1995, UN 1996, Roudi-Fahimi and Moghadam 2003). Participation in education has wider implications for societal wellbeing and has been identified as pivotal in the ability of citizens to participate in decision-making processes (UN 1995, UN 1996, M Durie 2005b). Issues centring on Māori education, in particular Māori students' disadvantage and inclusion elicit considerable concern in the field of education and reflect a broader social concern with the rights and wellbeing of Māori in New Zealand. Approaches taken are evident in the extensive policy commitments to address disparity in development between Māori and non-Māori (Meredith 1998a, Hemara 2000). However, throughout these documents, there is wide acknowledgement of the failure to achieve equality in the outcomes of the educational achievements of Māori. As it stands, there is a wide gap between high and low achievers in education (Cram, Ormond et al. 2004) that is reflective of a racial divide, where Māori tend to be positioned more negatively than Pākehā.

As explored in chapter four, the New Zealand education sector is unique in that the Treaty forms the basis for Māori – Crown relations, with moral implications for education policy (M Durie 2005a). Māori women and their perspectives must be validated within the mainstream New Zealand education context, as guaranteed by the Treaty and Treaty jurisprudence, to enable Māori and Pākehā to work collaboratively toward a common purpose of a better and more culturally aware society and to contribute toward society as a collective (Ministry of Education 2012).

The core purpose of this chapter is to provide context to the legislative analysis in chapter six. In doing so, this chapter explores shifts in educational policy and practices through a mana wahine analytical lens, and investigates if Māori women and mana wahine are represented by or in the present education system. First, this chapter discusses Māori education in the context of pre-colonisation. Next, this chapter looks at conventional Western education policy in New Zealand, which primarily sought to destroy, limit or assimilate Māori knowledge with Pākehā values and knowledge, with negative affects for Māori women in particular. This chapter then considers the

education context from the 1980s, examining the Kura and mainstreamed contexts respectively. This chapter concludes with a summary of the present education context.

Māori Education (pre-European)

Māori education is historically deep and intellectually complex (Hemara 2000). Mana wahine and Māori womens perspectives are fundamental to mātauranga Māori. Traditional Māori societies embraced the acquisition of knowledge as a means of maintaining their mana and enhancing their quality of life (Te Puni Kōkiri 1998, Hemara 2000). Māori society highly valued knowledge systems and maintained various institutions for knowledge preservation and its dissemination at different levels (Calman 2012). Men and women could participate in crucial daily tasks which were learned through formal education, observation and practical experience. Formal learning in schools were enhanced by tending gardens, gathering seafood, and performing other responsibilities essential to the collective welfare of their people (Manawatu 2009, Simmonds 2009). Descendants of ariki (paramount chiefs) were formally trained in traditional lore, ritual and history (Simmonds 2009). Certain knowledge was regarded as sacred, and where wānanga (higher education institutions) closely guarded access to this knowledge. First-born ariki descendants were afforded the same education, rights and privileges as each other, regardless of gender (Simmonds 2009).

Wānanga armed historians and tohunga (expert practitioners) with specialist knowledge. Advanced institutions facilitated higher learning in fields such as tribal whakapapa (genealogy), the arts of peace and warfare, astronomy, navigation, and agriculture. Emphasis was placed on the cerebral process of learning, mental discipline, and adeptness in various fields of study (Calman 2012). Māori education was a graduated process of learning, and those with appropriate skills would instruct those chosen for specific roles. Students would not advance until all aspects of the learning process were mastered (Calman 2012). Māori knowledge was retained through strong oral traditions and was written into highly technical carvings and weavings. The correct preservation of knowledge for future studying and generational transferring is vital to the survival of iwi.

Māori women are pivotal to Māori culture and play an essential role in the continuation of whakapapa and iwi (see chapter one) (McBreen 2011). The significance of whakapapa exceeds the physical world and as Mikaere (2003) has explained, “whakapapa binds

humanity to the spiritual forces from which the world was created” (p. 13). Nothing in te ao Māori is more important than ensuring the continuation of whakapapa (McBreen 2011), and the power to give life and give birth to future generations comes from Papatūānuku, the first mother and mother of the universe (Pere 1994).

Papatūānuku is the world’s first educator. She taught her son Tāne Mahuta (deity of man forests and everything that dwells within) where to locate the human element, and guided him to create Hine-ahu-one (the earth formed maiden) so that all of mankind could exist.

Papatūānuku represents land, which is of absolute importance to Māori in every aspect of spiritual, physical, cultural, social, political and economic life (Mikaere 1994). The narrative of Papatūānuku clearly demonstrates the important roles that Māori women enacted as the source of life and land, as nurturer and educator. Māori women are located in highly visible positions within Māori histories. They enacted roles of creation, protection, and were actively involved in the politics of life (L Smith 1993). Kaupapa Māori upholds the philosophies and practices of being Māori, and these are accepted without question (Pihama 2001, G Smith 2003). Likewise, Māori women’s histories and perspectives were inherently validated.

Māori men and women valued education highly, and were eager to exchange knowledge with Pākehā on their arrival in New Zealand (Manawatu 2009). The historical record is replete with Māori demonstrably adapting new forms of knowledge for their own use, and incorporating ancient traditions with imported knowledge (Belich 1996). Missionaries brought with them Christianity in addition to the tools of literacy, a skill Māori were quick to learn, and by the 1830s many Māori were literate and bilingual (Belich 1996). Education was undertaken by all Māori, and Māori women held positions of mana within the truths and teachings of Māori.

Conventional Education Policies

Missionaries and settlers transplanted compulsory English models of education to New Zealand that were founded on the Anglo-centric values and beliefs of Pākehā. As L Smith (1999b) has explained:

By the nineteenth century, colonialism not only meant the imposition of Western authority over Indigenous lands, Indigenous modes of production and Indigenous law and government, but the imposition of Western authority over all aspects of Indigenous knowledges, languages and cultures (p. 64).

Traditional Māori education and practices became disallowed. State provision of education for Māori from the 1840s prevented Māori access to decision-making processes, and education was restricted to a limited and largely non-academic curriculum, with fewer opportunities for Māori women than Māori men (Belich 1996). The Education Ordinance of 1847 provided government funding of mission schools, which were later financially supported by the Native Schools Act (1858) (Simon 1998a). Mission schools were used in an effort to destroy or limit traditional Māori culture and replace it with Pākehā concepts and ideals. Missionaries re-wrote history (Mikaere 1999, 2003), with ongoing repercussions for Māori women (L Smith 1999b). Pākehā practices that gave rise to descriptions of the Other have had “very real consequences for Indigenous women in that the ways in which Indigenous women were described, objectified and represented” (L Smith 1999b p. 46). Consequently, practices changed the knowledge that Māori men and women had access to and, “left a legacy of marginalisation within Indigenous societies as much as within the colonising society” (L Smith 1999b p. 46).

Mission schools were perceived as a way by which the government could achieve vast ‘moral’ influence (Barrington 1966). The missionary agenda made it imperative for Māori women “to be domiciled very quickly to the values of the new regime” (Jenkins 1986 p. 12 cited in Mikaere 1994 para. 29). In a debate about the Native Schools Act (1858), Auckland schools inspector Hugh Carleton asserted that “it was necessary to either exterminate the natives or civilise them” (Simon 1998a, Simon 1998b). Government policy aimed for social control and assimilation with particular focus on “civilising the natives” (Waitangi Tribunal 1998) as a means of ‘liberating’ Māori from the burden of their ethnicity (Manawatu 2009). Māori women were to be ‘civilised’ in a manner consistent with Anglo-centric morals and ideals.

The Native Schools Act (1867) established government approved education for Māori, which was first administered by the Department of Native Affairs, and later the Department of Education (Hickling-Hudson 2003, Manawatu 2009). Euro-centric

assimilationist systems denigrated Māori cultural values and institutions (Barrington 1966) through the primacy of the English language and normalisation of Pākehā values and beliefs (Came 2012). Pākehā did not value Māori women whom were stripped of any power and in some cases were considered “less worthy than the men’s horses” (Jenkins 1988 p. 161 cited in Mikaere 1994 para. 21). Policy targeted the Māori language, which was made forbidden, and Māori students were faced with corporal punishment if rules were broken (Jane 2001).

Language is arguably the most important component of culture and in regards to Māori, “te reo holds the mātauranga, and without the mātauranga, the tikanga are only arbitrary rules” (McBreen 2011 para. 53). Examining te reo shows the centrality of women and strong connection to spiritual forces and land. As Mikaere (2003) pointed out:

Atua means both the ancestor gods and menstrual blood; hapū is both pregnancy and a large political group; whenua is both the placenta and land; whānau is both birth and the extended family; ūkaipō refers to nurturing both in terms of breastfeeding a baby, and in belonging to land (p. 32).

As a consequence of Pākehā determination to extinguish ‘the Māori world,’ many Māori hated the school system, and some developed negative attitudes toward their own language (Ka’ai-Oldman 1988 cited in Jane 2001). Māori were faced with the dilemma of trying to preserve their language in an environment where it was both forbidden and considered to be of lesser worth than English (Jane 2001).

A central policy of the native schools’ philosophy was the limitation of the curriculum with the intention of restricting Māori boys to working-class agricultural employment. Further initiatives were established to train Māori girls to be servants, a movement that was met with strong Māori opposition (Coney 1993 cited in Mikaere 1994). In 1931, TB Strong, the Director-General of Education, reaffirmed the policy of limiting the Māori curriculum, particularly to agriculture, as to ensure the “Māori boy to be a good farmer, and the Māori girl to be a good farmer’s wife” (Ministry of Justice c section 2.5). Strong’s attitude corroborated English common law, whereby the wife was considered the property of man (Mikaere 1994). One of many approaches to undermine the mana of

Māori women was to relocate Māori women into Anglo-appropriate positions of subservient human property.

In the 1930s the assimilationist policies in Māori education were questioned by the Sir Apirana Ngata³¹ inspired Māori cultural revival. However, the Department of Education (controlled by Pākehā) retained the right to determine what constituted 'Māori knowledge' and what was appropriate to be included in the Native Schools' curriculum (Waitangi Tribunal 1998b). The hegemonic intentions of the Government's policy to limit or destroy Māori knowledge were reiterated by E. Parsonage, the Senior Inspector of Māori Schools, when he claimed Māori must learn to live under conditions where the 'Pākehā way was dominant' (Mikaere 1994). The 'Pākehā way' afforded little space for Māori women to exist as they had, let alone excel.

Hunn (1961) released the *Report of the Department of Māori Affairs* known commonly as the Hunn Report. Though essentially a departmental review, the report made far-reaching recommendations on social reforms affecting Māori. While the report sought to document the racial disadvantage experienced by Māori (Spoonley 1993 cited in (Came 2012), it came short of acknowledging the privilege and advantage of being Pākehā (Came 2012). The report identified 264 laws of racial discrimination against Māori, and made recommendations that the legislation be addressed. Shortly after the Hunn Report was released, the *New Zealand Commission on Education in New Zealand Report*, known as the Currie Report (1962) was published. Both the Hunn and Currie reports brought attention to the educational disparities between Māori and non-Māori in New Zealand.

The Hunn Report attempted to appear egalitarian whilst committing to assimilation (Thomas and Nikora 1992). While intending to reduce disparities, the Hunn Report recommended an accelerated programme of active integration between Māori and Pākehā, and advocated for urbanisation and Eurocentric socialisation programmes (Came 2012) within an "overall Pākehā framework" (Fleras and Spoonley 1999 p. 115 cited in Came 2012 p, 71). Meanwhile, the Currie Report offered cultural deficiencies as explanations for Māori underachievement (Davies and Nicholl 1993) and emphasised the

³¹ Sir Apirana Ngata was a prominent Māori politician and lawyer. He was the first New Zealand to obtain a European constructed double degree. Ngata is known for his work promoting and protecting Māori culture, te Reo, and features on the New Zealand \$10 note.

assumption that the homes and communities, in which Māori children socialised, prevented the acquisition of cognitive skills and cultural characteristics necessary for scholastic success (Marshall 1991). The Hunn and Currie reports preferenced vocational training for Māori rather than academic pursuits, reflecting the same intent of the Native Schools Act (1867) one hundred years prior (Stewart 1997 in Jane 2001).

Ka'ai-Oldman (1988 cited in Jane 2001) disputed notions of cultural deficiency, arguing that the 'blame the victim' attitude stems from the inability of the dominant Pākehā culture to accept their own policy shortcomings. Cultural deficiencies are a highly challenged concept amongst Māori (L Smith 1993). Instead, analyses recognised the severe imbalance of Māori and Pākehā power relations and a masculine non-Māori curriculum endorsing only the superiority of Pākehā based knowledge (Young 1971). Young (1971) and the Waitangi Tribunal (1998b) identified structural problems at all levels to be an issue within academia. Unequal power relations and masculinist Pākehā knowledge systems have vastly contributed to the on-going educational disparities between Māori and non-Māori.

For Māori girls and women, the conventional educational policies consistently failed to deliver them equality of opportunity let alone equality in outcomes. Western policies have resulted in a far-reaching socio-economic crisis whereby Māori women often locate themselves or are placed by others 'at the bottom of the heap' (Nepe 1991 cited in L Smith 1993). A century of negative policies toward Māori saw a disproportionate number of girls avoiding school, leaving without any qualification, and leaving "feeling alienated and dumb" (L Smith 1993 p. 307). Meanwhile, the Hunn Report and Currie Report respectively were blaming Māori for their inability to succeed in a Pākehā dominated context. It is from within this context that Māori women struggled to escape from the down under of New Zealand society and assert their right to mana wahine (L Smith 1993).

Kura Policies from the 1980s

The 1980s is characterised by Māori assertions for self-determination and access to Māori-centered education. The establishment of Māori-centred learning facilities transpired when Māori whānau and their communities took ownership of self-governing

local schools as a space to acknowledge and appreciate Māori culture. The establishment of kōhanga reo (pre-school of Māori world-views) triggered further initiatives to facilitate the continuation of Māori language education, on the periphery of the mainstream education system (G Smith 2003). These schools were born out of concern for the severe loss of Māori language, knowledge and culture (G Smith 2003); and the “strong determination of parents and whānau to preserve, protect and nurture the Māori language and Kaupapa Māori knowledge of their children” (Nepe 1991 p. 64).

The first Kura Kaupapa Māori (school of Māori world-views) was formally established in 1985 at the expense³² and energy of whānau and communities of the students. In 1987 a collective of Māori investigated a schooling model for the Kura to adopt. They decided on Te Aho Matua as the founding document and driving force behind Kura; a model that describes Māori world-views of education, teaching and learning. The founding document also contains the established principles of Kura and policy guidelines for all involved.

In 1987 the Picot task force was established by government with a mandate to review the structures and cost effectiveness of the education system in New Zealand. In 1988, findings were released in the *Administering for Excellence: Effective Administration in Education* (Picot) Report. One of the recommendations of the Picot Report was that Māori communities should be allowed to establish and govern their own schools.

Constant lobbying by Māori communities resulted in amendments to the Education Act (1989 Part 12 section 155), which effectively gave Kura Kaupapa Māori legitimacy within the New Zealand education system. Some Kura communities expressed concern that the amendment did not adequately define the Te Aho Matua ethos. As a result, the Education (Te Aho Matua) Amendment Act (1999) was instated to ensure all Kura Kaupapa Māori comply with the principles of Te Aho Matua.

Debate centring on Kura validity ensued. On the one hand, recognised legitimacy means that Kura may access financial government support. Conflictingly, others saw this as presenting “an increasing possibility of State encroachment on what were originally local

³² It took five years from the establishment of the first Kura to receive any government financial aid.

whānau-based initiatives” (May 1999 p. 62). Kura Kaupapa Māori must now meet State educational standard objectives, agendas, and expected outcomes (Martin 2012). Wider concerns arise regarding the context that informs current decision-making processes in schools. For example, in a wider social development context where masculinist Pākehā ideologies remain preferenced, issues are raised concerning what knowledge is to be taught; the ways in which it is taught; and the methods of evaluating this knowledge.

The preservation of the Māori language, cultural traditions, and the transference of knowledge are fundamental in the aim of teaching Māori education within a Māori cultural context (Ministry of Social Development 2008). Analysing solutions within the framework of Māori cultural knowledge proposes feasible solutions to problems that appear irrefutable (Sissons 1993, G Smith 2002, Bishop, Berryman et al. 2005, Bishop, Berryman et al. 2009). Fortifying Māori ownership of education and responding to Māori interest in self-determination enforce this notion (Sissons 1993, G Smith 2002, Bishop, Berryman et al. 2005). Martin (2012) credits Kura and participating whānau that children be able to competently express their thoughts and experiences fluently in te reo Māori, their native yet endangered language. She further argues that these achievements, though blatant, often remain unacknowledged because they conflict with and are located outside of the “boundaries of a conventional, mainstream, or western framework of success” (p. 114).

Kura Kaupapa Māori are frequently located in low decile neighbourhoods. Residents and thus students are more likely to come from areas of high unemployment, poor health (Whitty and Power 2002), and have little access to education-facilitating resources (Whitty and Power 2002). Poor financial, health and access-to-resource barriers can negatively impact educational achievement. Choice policies can marginalise entire groups of people and perpetuate already disproportionate divisions. Whitty and Power (2002) found that the choice to live in an affluent neighbourhood enhances the chances of attending a school populated by students of similar wealth, race and religious demographics. The result of this is the creation of homogenous pockets of wealth and race (Wells, Lopex, Scott and Home 1999 cited in Blackmore 2006). The privatisation of educational costs has proliferated ‘social fragmentation’ throughout New Zealand’s education system based on class and race which is of immediate concern to Māori girls

and women whom are likely to belong a class, race and gender of high disadvantage (L Smith 1993).

As a relatively new sector, limited long-term data exists on students whom have graduated from kura schooling. Ringold (2005) noted that students did, however, graduate with higher achievement levels than expected, which may in fact suggest low levels of expectations are prevalent. Critical analyses are still being conducted, to determine if the family background of these students had any controlling influence; and long term outcomes such as tertiary education, labour market outcomes, and school enrolment patterns for the children of these graduates are yet to be decisively examined (Ministry of Education 2005c).

Contemporary Mainstream Approaches

Over time, the principles established through Treaty jurisprudence have formed the basis of obligations between the Crown and Māori (Ministry of Education 2011).³³ In education, these obligations have been expressed through the establishment of Māori education pathways that foster and support the Māori language and culture. During the past decade Ministry of Education has tried to support a number of initiatives to improve the outcomes for Māori within mainstream schools. One such course of action saw amendments to the New Zealand Curriculum Framework³⁴ (Alton-Lee 2003) while other programmes have focused on improving the quality of teaching through professional development training. Further areas of emphasis involved strengthening community and family participation, while initiatives at school level target parental involvement, focus on growing Māori participation in school governance, and generating partnerships with iwi. Yet, Māori remain disproportionately represented in negative educational statistics compared to Pākehā. For example, in comparison to Pākehā, Māori are less likely to attend early childhood education facilities, less likely to obtain secondary school qualifications and less likely to complete tertiary level training (Ministry of Social Development 2007).

³³ In 2010 New Zealand participated in the OECD Review on Evaluation and Assessment Frameworks for Improving School Outcomes. The purpose of the review was to explore how systems of evaluation and assessment can be used to improve outcomes in primary and secondary schooling.

³⁴ The New Zealand Curriculum Framework (NZCF) sets National Guides to ensure consistency in teaching, content, and assessment methods.

The National Education Goals (NEGs) give insight to the national policy commitment to education, of which core foci include the achievement of positive economic and social development. In recognition of the significance of education, the Government has outlined what can be considered useful and important intentions. Two of these NEGs contain Māori specific objectives. The first is to see “increased participation and success by Māori through the advancement of Māori education initiatives, including education in Te Reo Māori, consistent with the principles of the Treaty of Waitangi” (Goal 9). The other is to demonstrate “respect for the diverse ethnic and cultural heritage of New Zealand people, with acknowledgement of the unique place of Māori” (Goal 10) (Ministry of Education 2009).

The NEGs correlate to Treaty principles and are discussed in wider educational policy such as The New Zealand Curriculum. However, much like the principles of the Treaty, the NEGs are subject to the interpretations of those responsible for administering them. In the wake of colonisation, non-Māori perspectives dominate the framework that guides these understandings.

Te Hui Taumata Mātauranga³⁵ is an on-going collaboration between the Ministry of Education and Māori stakeholders to identify issues and priorities surrounding Māori education. Fundamental tenets of the strategy involve supporting the development of quality Kaupapa Mātauranga Māori, increasing the quality of education in mainstream education, and facilitating greater Māori involvement and authority in education. The Ministry has made allowances for Māori dimensions to be incorporated into educational assessment (Ringold 2005). Yet, it is not compulsory that Māori world-views or language be provided, unless explicitly requested by the families of those students (Education Act 1989 no. 80); and changes to practices and educational policies are still developed under a framework of ‘post-colonialism’ (Bishop, Berryman et al. 2009).

The on-going effects of colonisation have been damaging and demeaning toward Māori and especially Māori women (L Smith 1993). Impositions have occurred by force but continue through the effects of “undermining Indigenous authority, and corrupting

³⁵ “On-going consultation meetings with Māori education have been held between the Ministry and Māori stakeholders across New Zealand. The meetings process aims to maintain a collaborative relationship between the government and Māori and to identify issues and priorities” (Ringold 2005).

Indigenous knowledge — by selective education and relentless cultural imperialism” (McBreen 2011 para. 37). Said (1994 p. xiii cited in McBreen 2011) explains:

The power to narrate, or to block other narratives from forming and emerging, is very important to culture and imperialism, and constitutes one of the main connections between them (para. 38).

Contemporary policies and practices are still created within the context of epistemological racism – the type of racism embedded in the fundamental principles of the hegemonic culture (Hickling-Hudson 2003). Therefore, solutions to Māori educational achievement and disparities appear within ‘knowledge-generating’ processes of the culture that the system is marginalising. The determination of Māori to retain autonomy over their education is no small measure from the impact of racism on their academic achievement (Bishop, Berryman et al. 2009).

Policy changes generated from outside of the experiences and understandings of Māori have previously failed to acknowledge mātauranga Māori (Māori ways of knowing) within which mana wahine is located (Bishop, Berryman et al. 2009). G Smith (1997, 2002) emphasises how locating solutions within mātauranga Māori and therefore mana wahine, provide solutions to longstanding problems of social disparity that will liberate Māori and their oppressors (Bishop, Berryman et al. 2009). Suitably addressing the causes of disparities between Māori and non-Māori will improve social cohesion and the quality of society within New Zealand (Bishop, Berryman et al. 2009).

Policy-makers have only relatively recently prioritised the importance of Māori achievement, yet success is persistently viewed through Eurocentric values and measures (Lee 2008). Tomlins-Jahnke (2007) cited in Milne (2009) also noted that Māori outcomes in education are inevitably measured against and compared with norms based on and embedded in Western hegemonic philosophies and beliefs. Western values emphasise individual success, which comprises “academic excellence, proficiency in literacy and numeracy, wealth and status and competence in... valid [Western] knowledge” (Martin 2012 p. 113). In contrast, Indigenous success is likely to be unique to context and culture (Cockrell, Douglass and Valentine 2007 cited in Martin 2012 p. 113). This is true of Māori who place great significance on cultural factors such as te ao Māori, tikanga Māori, whakapapa, and Te Reo (L Smith 1997, M Durie 2001).

Current education priorities focus on a nationally driven effort to address the education system's major challenges. Hurdles include reducing the achievement disparities within and across schools, particularly for Māori students, and Māori enjoying education success as Māori. Yet, analyses are complicated because most mainstream schools did not collect or examine data on the achievement of their Māori students prior to 2001 (Education Review Office 2002). The same investigation exposed that despite 86 per cent of schools accumulating Māori achievement statistics; only 70 per cent were actively using this information to enlighten decision making procedures (Ministry of Education 2005c). The Education Review Office (2005) revealed that despite a majority³⁶ of schools evaluating the initiatives to improve educational outcomes of Māori, only a few of these evaluations linked the initiatives to student assessment and achievement. The Education Review Office also found that schools frequently criticise students and parents as obstacles to learning (Education Review Office 2002). Alton-Lee (2003) suggests this "is to blame the victim and to acquiesce in the continuation of educational inequality" (p. 61). As previously discussed, victim blaming is an issue hotly contested by Māori (L Smith 1993). The negative attitude toward Māori achievement has been highlighted as a principal influence contributing to poor performance of Māori in mainstream schools (Ryan 1976).

Conclusion

Recent rethinking has led to the progressive restructuring of education policies and practices that have been historically employed to intentionally subjugate Māori (Fitzsimons and G Smith 2000, Alton-Lee 2003). The key objective motivating this transformation has been to improve the learning experiences and educational performance of Māori, who have not achieved at the same level as other New Zealanders in this realm.

Yet, initiatives have persisted in the wider context of colonisation where difference has typically been viewed as 'failure' and conceptualised as problematic; and the responsibility to remedy it has fallen on the students and their families, rather than on the institutions or the system that has perpetuated it. In such an environment, where there is central control over policy development but devolved responsibility for policy

³⁶ 69 per cent of primary schools and 90 per cent of secondary schools

implementation within a national accountability framework; there seems little room for Indigenous diversity in the mainstream.

The development of a parallel system of education for Māori is often noted as an exemplar of the educational reforms (G Smith 2000). For this reason it has been suggested that the primary institution where Māori cultural revitalisation has taken place is education (Bishop and Glynn 1999, G Smith 2000, Pihama, Cram et al. 2002). Within the field, there has also been a concerted debate about the respective contributions of cultural identity and socio-economic status in influencing Māori educational outcomes.

However, mainstream institutions should not rely on Kura deterministically as the sole provider of Māori education. I posit that Māori world-views need embracing in Māori communities, but also in wider New Zealand society by both Māori and non-Māori. Greater awareness of the unique perspectives of Māori will facilitate greater understanding, and therefore enhance the way policies are informed. Just as Hutchings (2002) engages mana wahine frameworks to analyse policy to change governments stance on GM, so too can mana wahine inform education dogma.

Defining what opportunity and empowerment might look like for Māori women is a monumental task as Māori are a diverse and heterogeneous group. A resonant theme is the desire of Māori to succeed on 'their own terms' (self-governance) within an increasingly globalised world. Māori desire the agency in which to make policies inclusive. They have emphasised the importance of weaving diversity and culture into policy design, and the need to build on success. Yet, as L Smith (1993) said:

the wider crisis for Māori education is situated in a context of continuing underachievement by Māori students. The wider crisis for Māori people is the continuing threat to the survival of Māori people by Pākehā society (p. 322).

Although L Smith's sentiments are now two decades old, underachievement persists and the continuing threat to the survival of Māori people by Pākehā society remains. The task that remains is to continue to develop systems to better cater to the diverse range of needs that can be classified as Māori. Indigenous praxis must question the hegemonic application and practice of knowledge (Pihama 2001), and mana wahine can afford

recognition to Māori women's unique experiences and histories to facilitate better opportunities and social cohesion for the wider community.

This chapter has examined the ways in which policies and practices have undergone temporal shifts to reveal the present positioning of mana wahine in the education sector. This chapter presented the argument that although New Zealand is taking some steps in the right direction, there is a demand for more critical evaluations and a need to maximise opportunity and empowerment for Māori. This is of particular significance when considering the correlations between education achievement and other social development indicators (see also chapter one).

This chapter has also raised questions about the need to formulate policy that strives for educational justice for Māori. Such as, does education legislation represent and include views pertinent to mana wahine? If not explicitly mentioned, are Māori understandings implied? Are Western interpretations of 'Māori views' the same as Māori perspectives? The following chapter examines these questions and more, by analysing a specific education policy; the Education Act (1989).

CHAPTER SIX

Critical Analysis of the Education Act (1989 no. 80)

Barrett and Connolly-Stone (1998) argue that the inclusion of Treaty specific clauses in social policy legislation is generally considered to pose a significant risk to the Crown. That ‘risk,’ they argue, is the way that Treaty clauses might open Ministerial and administrative decisions for review against Treaty principles, a process that could create a degree of uncertainty regarding the application of legislation. Barrett and Connolly-Stone suggest that this is the reason that legislation such as the Children and Young Persons Act contain ‘Māori interest’ clauses as an alternative to specific Treaty provisions. With regards to social policy legislation, Barrett and Connolly-Stone further argue that litigation of decisions against Treaty principles would encourage the courts to rule on what constitutes reasonable Crown action in meeting their obligations to the Treaty and ‘usurp’ the role of the legislature.

Public decision-making processes must consider if and how the Treaty is referenced in legislation and, take account of the specific context in which the Treaty is documented. Social development legislation refers to the principles of the Treaty or the Treaty of Waitangi Act (1975) rather than the Treaty itself.

The Education Act identifies that Māori have specific needs and aspirations in the education sector. However, the Act does not specifically mention the Treaty itself. As such, the Education Act avoids establishing Treaty-based rights in the education sector that could otherwise serve as a basis for litigation. Where the Treaty is suggested, it relates to either the principles of the Treaty or the Treaty of Waitangi Act (1975), discussed in chapters three and four respectively. The context in which the principles of the Treaty or the Waitangi Act are mentioned relates to a single social development approach, and five references primarily concerning land ownership. Every single direct citation of either Treaty principles or the Waitangi Act occurs within Part 15 of the Education Act. It is important to highlight that Part 15 of the Education Act relates specifically and exclusively to the administration of tertiary level institutions.

The core purpose of this chapter is to analyse the Education Act through a critical mana wahine lens. Analyses draw on the Treaty and the principles (chapter three), social rights

and policy (chapter four), and the education context that have shaped and is shaped by, the Education Act (chapter five). Analyses are split into two contexts: social and land.

Analyses of the Social Context

Where the functions and duties of the councils of tertiary institutions are concerned, section 181 of the Education Act states:

it is the duty of the council of an institution, in the performance of its functions and the exercise of its powers... to acknowledge the principles of the Treaty of Waitangi (Education Act 1989 section 181).

Determining the precise meaning of the words in the above excerpt is crucial to analysing the context and effect of the provision. Section 181 only refers to the ‘duty of the council,’ which indicates the only administrative body with a responsibility to make decisions regarding or recognise the importance and quality of the Treaty is that of a tertiary institution’s council. This suggests that any other internal body, external body, or individual engaged with a tertiary institution are not constrained by this provision to consider the Treaty in any of their actions. Conversely, although it this is not legislated for in the Education Act, individuals and additional bodies may need to adhere to the Treaty itself in accordance to an institutions internal employment or engagement regulations. However, this thesis examines legislation and national policy therefore, internal institutional policies remain outside of the scope of analysis for this particular research.

Pertinent to mana wahine is access to all levels of decision-making processes (Pihama 1996, Pihama 2001, Hutchings 2002). Imposed colonial ideologies of gender and race perpetuate the denials that Māori women face, and it is these ‘norms’ that need Māori-centred decolonisation (Hutchings 2002). Māori women and their perspectives need representation at high level so that they may actively contribute toward Māori-centred decolonisation from the top down (Hutchings 2002, Hutchings 2003, Pihama 2001). Furthermore, the denial of Māori women to participate in decision-making processes is a direct breach of mana wahine and tino rangatiratanga, guaranteed under the Treaty (Pihama 1996).

The United Nations identify that education is fundamental to the ability of women participate in decision-making processes (UN 1995). This analysis agrees with the UN, but postulates that participation in decision-making processes will likewise effect education with regards to the way decisions, processes, and education are informed. This is of particular importance when considering the UNs observations that education and participation in decision-making processes are highly correlated to improving societal wellbeing (UN 1995).

Currently, Māori represent 14.9 per cent of the total population (Statistics NZ 2014b) and Māori women comprise more than half the tangata whenua (Sykes 1994). Yet, Māori representation in high-level company positions, similar to that of councils, is only 3.9 per cent, and Māori women only 1.1 per cent of these (National Equal Opportunities Network 2014). Kaupapa Māori praxis can inform decisions and policies that are made by Māori to represent Māori (Pihama 2001). Access to education and decision-making processes will improve the wellbeing of Māori whānau and their communities, a process shown to benefit wider society. It is of particular significance to facilitate Māori access to decision-making processes when considering that the present environment is characterised by the shifting demographics of an aging Pākehā population and a growing population of Māori youth (Macfarlane, Glynn et al. 2008, Statistics NZ 2014b).

Māori women's participation in council decision-making processes is congruent with a mana wahine perspective. Of equal importance to note, a core tenet of mana wahine is inclusivity (Hutchings 2002). The concept of inclusiveness permeates all strata of social grouping and is not limited to a representative council. A mana wahine approach considers that it is not the exclusive responsibility or decision of a council to engage in mana wahine perspectives. Māori women and mana wahine should be engaged and represented at all levels within an institution so that the validations of Indigenous epistemologies, which are fundamental to Kaupapa Māori praxis, permeate every stratum.

Section 181 further expresses that the principles of the Treaty must be 'acknowledged.' There are several definitions for the term acknowledge. According to the *People's Law Dictionary*, an online legal terms and definitions resource, the term acknowledge is used to

infer general admittance of something, be it good, bad or indifferent; or, to verify that a document is certified as legal and suitable for recording (Hill and Hill 2013). Within the context of the Education Act, this suggests that the principles of the Treaty be accepted as valid and legal. Yet, these same principles remain undefined and unlegislated and therefore, as discussed further below, presents a contradiction in itself. Furthermore, the term 'acknowledge' implies that the principles of the Treaty is something that exists outside the mainstream which indicates, perhaps truthfully, that the Treaty would be ignored without concerted efforts to appreciate it.

The observations of Nepe (1991) and Pihama (2001) invoke that a *mana wahine* perspective considers being Māori and all things Māori to be normal. The legitimacy of *tikanga* Māori, Māori subjectivities, histories and experiences are without question. Placing Māori at the centre is synonymous with *mana wahine* ideology whereas, Western hegemonies identify Māori as the 'other' and place Māori at the periphery (L Smith 1992). Making efforts to appreciate the Treaty are important. That this must be incorporated into legislation, for fear of it being ignored otherwise strengthens the notion that Western ways are positioned as the norm. *Mana wahine* can make policies inclusive (L Smith 1993), confront masculine hegemony (Pihama 2001), provide an alternative to challenge Western science that informs policy (Hutchings 2002) and subsequently, challenge the way that educational policy is informed.

As noted above, section 181 refers to the 'principles of the Treaty of Waitangi.' Where the principles are referenced, the Education Act provides a link to the Treaty of Waitangi as set out in English and Māori in schedule 1 of the Treaty of Waitangi Act (1975). Key sources of principle meanings are set out by the Tribunal and the Courts, though primarily pertain to aspects of partnership, protection and participation (Mason, 1995). The 'fluidity' of these principles (Barrett and Connolly-Stone 1998), is intended that they may incessantly evolve and therefore be applied to on-going contemporary policy contexts. Conversely, and as highlighted in chapter three, the action of not defining principles was also predicted to cause conflict in the future (Hayward 2004). Treaty principles contribute to the Treaty debate, a factor of tension within national discourse as discussed in chapter three.

The Ministry of Justice (2014) articulates that tension often features in policy-making processes, which must deal with a range of conflicting values. Mechanisms exist in New Zealand for resolving tension at decision-making level with a focus on law-making functions. For example, Palmer and Palmer (2004 cited in Ministry of Justice 2014) suggest that a by-law can be contested in court if it runs contrary to the New Zealand Bill of Rights Act (1990) (discussed in chapter four). However, Rizvi and Lingard (2010) convey that complications primarily arise when contradictions in values leads to the re-articulation of those values or principles informed by hegemonic preconceptions. This thesis recognises that New Zealand's constitutional arrangements primarily favour Pākehā norms to Māori customs and that dominant norms need to be questioned (Tomlins-Jahnke 1997, Hutchings 2002) to challenge inherent power relationships, so that Māori perspectives can be re-privileged (Simmonds 2009). The Treaty itself is not legislated for and the principles of the Treaty are very much subject to interpretation. Treaty principles are constantly exposed to re-articulation, informed by dominant Western discourse.

Understandings are informed by philosophical positionality and the Treaty is not alone in being subject to personalised analyses. Social development terms like 'equality' and 'partnership' frequent international development, development studies and social policy arenas (Marshall et. Al 2000 cited in Humpage and Fleras 2001). However, when members of the dominant group fail to recognise their own privilege, supremacist values, belief systems, and therefore the processes that inform their understandings, then they cannot recognise the ways in which their own actions support the structure of racist domination (Hooks cited in Rudolph 2012). This is true even for Western members of society whom do not consider themselves to be racist (Hooks 1990 cited in Rudolph 2012).

Young (1990) suggests there is a blindness to difference within cultural imperialism. In the context of colonisation, norms express the views of the privileged. With regard to the principles of the Treaty, these views often appear to be neutral and universal. It may be argued that Western norms foster assimilationist projections (see chapter five) because, in the context of the education sector, all students are expected to be congruent with mainstream behaviour, values and goals. In the instance that Māori students do not meet typical expectations, deficit assumptions have been applied (Davies and Nicholl

1993). These moulds place emphasis on Indigenous peoples as being the cause of their negative social issues (Bishop 1997, Ermine et al. 2004, Peacock 1996, M Durie 2005a). Negative or 'deficit' assumptions toward Indigenous populations do little to alter Western discourse, which in turn informs Western policies (L Smith 1999b).

Māori Clauses in the Social Context

Part 7 of the Education Act relates to the control and management of State schools. In the Education Act, State schools are defined as a school that is "a primary school, a composite school, a secondary school or a special school" (Education Act 1989 Part 1).

Although the Education Act does not reference the Treaty itself, Part 7 does contain one of the Acts' few Māori clauses. The national education guidelines in section 60A relate to school administration. Section 60A considers that the guidelines may, and without limitation

set out... broad requirements to ensure that boards take all reasonable steps to discover and consider the views and concerns of Māori communities living in the geographical area the schools serves, in the development of a school charter (Education Act 1989 section 60A).

Section 60A indicates that educational institutions must consider the importance of Māori culture in their schools' annually established aims, objectives and targets. In vetting section 60A, it appears that it is for the school, and not local Māori, to determine what constitutes as the 'reasonable steps' taken to discover the views of respective Māori groups. Furthermore, it appears that it is for the school to regulate how these views might be translated into school policy by way of a school charter to "reflect New Zealand's cultural diversity and the unique position of Māori culture" (Education Act 1989 Section 61).

Section 61 seeks to acknowledge 'diversity.' Discussions that concern issues of diversity draw on Leonardo's (2002 cited in Rudolph 2012) observation that Westerners tend to see themselves as an individual rather than a racial group and describe diversity as any culture or racial group other than themselves and, therefore, "other than white" (p. 72). Within section 61, the notion of 'diversity' immediately precludes 'Māori culture' illustrating that diversity is positioned as any culture other than hegemonic masculinist non-Māori.

Recognising the importance of Māori culture includes providing instruction in te reo and tikanga. However, section 61 states that there is an:

aim of ensuring that all reasonable steps are taken to provide instruction in tikanga Māori (Māori culture) and te reo Māori (the Māori language) for full-time students whose parents ask for it (Education Act 1989 section 61).

Therefore, it is not mandatory for mainstreamed schools to provide access to tikanga Māori and te reo Māori unless specifically requested by the parents of those students. This seems counterintuitive to the NEG 9 outlined by the Ministry of Education (see chapter five). NEG 9 explicitly seeks the “increased participation and success by Māori.” The Ministry intends to meet NEG 9 “through the advancement of Māori education initiatives, including education in te reo Māori, consistent with the principles of the Treaty of Waitangi” (NEG 9).

Furthermore, by singling out that the learning outcomes of Māori must ‘improve’ NEG 9 positions Māori students in a deficit or negative position to those whom have already ‘succeeded.’ Deficit assumptions are strongly contested by Māori (L Smith 1993). There is no doubt that Māori success in education and social development is important. However, the ways in which it is expressed gives insight into the structural mechanisms of the education sector, as a reflection of the social development environment, which favour Western methods of comparison and rank.

The Treaty, supported by Treaty jurisprudence, guarantees that Māori knowledges are taonga and must be validated (Durie 2005). Furthermore, alternative learning systems such as Te Kōhanga Reo have been largely considered a success (Martin 2012). Providing tuition in te reo and tikanga has been heralded an accomplishment in alternative education schemes. Lessons learned from Indigenous movements can be effectively applied in mainstream educational contexts.³⁷ Yet, in mainstream environments the onus of accessing te reo remains on the initiative and determination of students and their whānau rather than responsibility falling on the school to provide it. Additionally, the emphasis of teaching Māori world-views consistent with the Treaty appears only to

³⁷ See the Iwi Social Services and Whanau Ora programmes.

target Māori; an attitude that appears to express ‘Western education is for everybody but Māori education is only for Māori, and only when Māori request it.’ The above approach is counterintuitive with the findings of the (Human Rights Commission 2005) whom believe the Treaty, and therefore a balanced understanding of the Treaty, has ‘profound significance’ in improving the relationships between Māori and Pākehā in New Zealand. This is of particular importance in an environment where ‘Treaty issues’ are thought to be synonymous with ‘Māori issues’ instead of being considered a matter of national, and therefore Māori, Pākehā and Crown concern.

Sections 60A and 61 relate strongly to the Treaty principle and mana wahine aspect of participation. Participation emphasises positive Māori involvement at all levels of education in both mainstream and Kura contexts. It is important for students to learn how to participate so that they can contribute as an active New Zealand citizen (Ministry of Education 2012). However, it is fundamental that Māori women are able to participate as Māori women, and not as the “brown skinned Pākehā” which educational policies have encouraged since the early 1800s (Vercoe 1995 p. 124 cited in Jane 2001 p. 2).

Participation involves opportunities for New Zealanders to explore and appreciate the rich and diverse cultures, languages, and heritages that forms their identity as a New Zealander. For all New Zealand students, instruction in tikanga Māori and te reo Māori will facilitate a greater number of citizens able to participate in society with an increased awareness and more balanced perspective of Māori world-views. Subsequently, one would expect Māori – Pākehā relations to improve. In addition to being a Treaty principle, informed civic participation is pivotal in the *New Zealand Curriculum’s* future focus principles.

Partnership is a principle of the Treaty. Section 60A does not go as far to indicate a partnership between schools and Māori communities served in the geographical area of the school. However, the concept of recognising the views and concerns of local Māori groups are based on increasing cross-cultural respect. Importantly, this has the effect of attributing some mainstream value toward Māori culture and prevents it from being completely denied or ignored in discourse. Though not akin to true partnership, bicultural recognition demonstrates a considerable shift from the way in which Māori culture has been dealt with in the past, where Māori were to be “exterminated” (Waitangi

Tribunal 1998 p. 2), “civilised” (Waitangi Tribunal 1998 p. 2, Manawatu 2009) and ‘liberated’ (Hickling-Hudson 2003, Manawatu 2009); and all Māori content was completely disallowed in schools.

Of importance to the Kura community is sections 155 and 156 of the Education Act that relate to Te Aho Matua (discussed in chapter five). Te Aho Matua is a statement that sets out an approach to teaching and learning that applies to kura designated under section 155. The official version of Te Aho Matua is the statement in te reo that is prepared by te kaitiaki and published under the authority of the Minister. This thesis recognises the significance of kura and the pivotal role kura have undertaken in contributing to the facilitation of te reo and tikanga Māori. While the successes of kura have been heralded (Martin 2012) they still operate within a wider context of colonialism and, it is the wider hegemonic masculinist colonial environment of most concern to this research. Therefore, whilst appreciating the efforts of kura and the benefits they have afforded to Māori whānau and their communities, the focus of this research remains most concerned with the mainstream educational and social development context.

Analyses of the Land Context

The Education Act lacks specific attention to areas pertinent to mana wahine. For example, Mana wahine acknowledges the significance of Papatūānuku (L Smith 1992, Hutchings 1997, Pihama 2001, Hutchings 2002, Simmonds 2009, Simmonds 2011). Hutchings’ (2002) mana wahine conceptual framework is represented as a harakeke plant and the roots are embedded in Papatuanuku who is the bearer of first life, the world’s first educator, and Mother Earth. As tangata whenua, Māori are the kaitiaki of land, and consider land to be of utmost significance in every aspect of spiritual, physical, cultural, social, political and economic life (Mikaere 1994). Land is therefore pivotal to positive Māori social development.

Pākehā reflections of components that comprise mana wahine are not the same as Māori conceptions. For example, Pākehā regard land as a commodity, as tangible property with fiscal value, which is reflected in the Education Act. Part 15 of the Education Act contains five land-based contexts in which the Treaty of Waitangi Act (1975) is referenced. Each citation primarily concerns land ownership. Only a single mention of the Waitangi Act indicates any acknowledgement that land may be viewed as more than

just physical and tangible object to be owned, and that is the lone provision regarding wahi tapu. Wahi tapu is a site identified (usually by iwi or hapū) as being of spiritual, cultural, or historical iwi significance to Māori.

Part 15 sections 210, 212 and 213 of the Education Act concern Māori land claims, the resumption of land based on the recommendations of the Waitangi Tribunal, and the resumption of land to be effected under the Public Works Act (1981) respectively. The land context of the Education Act are analysed below.

Section 210 applies to Māori land claims. It stipulates that the submission (in respect of any land or interest³⁸ in that land) of a claim under section 6 of the Waitangi Act does not prevent the transfer of that land or the interest in it either by the Crown to an institution, or by an institution to any other person.

Section 212 affects the resumption of land on recommendations of the Waitangi Tribunal, and contains two references to the Waitangi Act. The first explains that if the claim is well-founded and the Tribunal has, under section 8A(2)(a) of the Waitangi Act, recommended the return of land to Māori ownership then it shall be resumed by the Crown and returned to Māori, subject to certain provisions (see 8B of the Waitangi Act, and section 213 of the Education Act). However, the second reference explicitly exempts any land to the above conditions if it has been issued a (registered) certificate under 8E(1) of the Waitangi Act.

Furthermore, section 213 pertains to the resumption of land to be effected under Public Works Act (1981). Where section 212 requires land or interest to be resumed by Crown, then it shall be acquired under Part 2 of the Public Works Act (1981) as if it were land or interest in that land required for both Government and public work. However, the power that is discussed in section 213 exempts the power to take, obtain or hold (under section 28 of the Public Works Act 1981) any land or interest in land described in section 8A(6) of the Waitangi Act.

³⁸ Interest in land is considered to have been interest that existed immediately before that land was transferred to State enterprise or an (educational) institution, or vested in State enterprise or an institution, subject to conditions (see 8A(6) of the Treaty of Waitangi Act 1975).

Sections 210, 212 and 213 concern land and impose multiple limitations and actions to be undertaken regarding Māori attempts to resume their land or interest in it. These sections essentially decree that Māori land claims don't prevent land transfers to third parties; that any land transfer to Māori must be well founded, recommended by the Tribunal and not in conflict with 8E(1) of the Waitangi Act; and that no land protected by section 8A(6) of the Waitangi Act can be resumed under the Public Works Act (1981).

Nowhere do the above three sections of the Education Act express that land is viewed as any concept other than tangible property to be possessed and interest in it transferred. Sections 210, 212 and 213 lack any mention of areas pivotal to mana wahine such as land being considered or accepted as Papatūānuku or Māori being the kaitiaki of that land. That land transfers are even debated in the education sector reflects wider socio-political disputes concerning Māori cultural and property rights. For example, many Māori have identified nationwide problems with the level of participation and engagement in land and resource management relating to planning and policy. In the report *Good Practice Guidelines for working with Tangata Whenua and Māori Organisation*, Harmsworth (2005) compiled iwi-identified barriers to effective participation. In the report, hurdles included the lack of recognition for the rights of iwi and hapū as Treaty partners, and a lack of knowledge and provision for the Treaty of Waitangi. Ineffective consultation processes, and difficult systems that restrict Māori participation complicated processes further.

Section 214 of the Education Act concerns the resumption to Māori of land or interest in land that is considered to be wahi tapu. Where the Governor-General is satisfied that land or interest in land is held by or vested in that institution, the Governor-General may declare it resumed by the Crown, whereby that land is no longer liable to resumption (under section 212). At that point, Crown and iwi are expected to deal with the land or interest in that land accordance to an agreement or, failing that, subject to recommendations by the Tribunal.

However, the power to reacquire (wahi tapu) land (under section 28 of the Public Works Act 1981) does not extend to land described in section 8A(6) of the Waitangi Act. Additional barriers to Māori participation include the actions of local

government bodies that impinge or breach the rights of iwi and hapū. Negative affects regard land subject to Treaty claims (including land in section 210 of the Education Act); adverse impacts on wahi tapu and culturally significant sites (see section 214 of the Education Act); and the loss of access to cultural sites that have been identified as significant to Māori.

The provision of wahi tapu in the Education Act does not reflect synonymy between Māori and Western conceptualisations of land. It is merely offered as the reason behind Māori requests for land or interest in that land to be transferred, with principal focus remaining on the ownership of that land. The Education Act does not even imply that land is viewed as anything other than a commodity. Concerns in the land context of education policy reflect wider Māori concerns in resource policy that Harmsworth (2005) identifies as being a lack of knowledge of issues that concern Māori, lack of representation of Māori, and that policies do not take Māori communities into account.

Conclusion

In this chapter, I have examined some of the ways in which the Education Act has legislated theory and methods of understanding, which almost exclusively favour Western practices and policies that are informed by non-Māori philosophical endeavours and framed by a history of cultural imperialism. These actions construct privilege, which centre on the supremacy of Western rationality and knowledge over and above that of any respective other (Walker 1996). This chapter has illustrated how notions pertinent to mana wahine are largely absent, or embedded in particular political, cultural and racialised values, which render their meanings and effects different, according to these values.

Chapter five discussed the historic shift of education policies to demonstrate the practical application of Western ideals as they have evolved over the past two hundred years. Chapter five outlined the present national policy commitment to education, of which core foci includes the achievement of positive economic and social development, with Māori specific objectives. This chapter analyses education legislation and shows that declared government intentions to foster better learning environments for Māori (chapter five) and legislation that explicitly decrees these intentions (chapter six), do not align. This chapter shows some of the ways in which Māori women's perspectives are excluded from view, even in an educational environment of rhetorical inclusion and

equity for all.

The following chapter draws together the insights illuminated through this theoretical approach to critically analysing Māori women's representation in legislation, as exemplified by the education sector. Chapter seven also concludes with the impact that these insights may have on future educational policy and practice.

CHAPTER SEVEN

Discussion and Conclusion

This study has attempted to offer an alternative way of challenging the inequalities experienced by Māori women by critically analysing social policy legislation through a mana wahine lens. This research has drawn on the mana wahine conceptual framework of Hutchings (2002) and the Indigenous women's research agenda of Hutchings (2003) to direct and inform research processes. The Treaty and Treaty principles were discussed to provide the framework for contemporary understandings of the Treaty, and to facilitate the understanding that Māori women's rights are located within Treaty rights. Then, the framework for acknowledging Māori rights in social policy legislation was applied. The education sector was used as a case study to provide the base from which to critically analyse the Education Act in order to illuminate the structural inequality prevalent within the education system and to represent the wider social policy context.

This chapter first summarises the aims and findings of this thesis along with a discussion of contribution to the field of development studies. Limitations to this study are then discussed, before this chapter makes recommendations for the future.

Thesis Aims

This thesis engaged in a critical mana wahine analysis of New Zealand social policy and primarily education legislation with core goals to:

- Confront and analyse the legal bases of gendered and race-based inequalities to better understand the ongoing complexities of Indigenous inequalities in the context of widespread policy 'commitment' to inclusion and equality; and
- Contribute toward using Māori perspectives in mainstream praxis to enhance the platform from which these perspectives can be expressed in a way that is perceptive to policy makers.

Guiding Questions Informing Analysis

This research used the conceptual framework of Hutchings (2002) and the Indigenous women's research agenda of Hutchings (2003) to direct the study and to inform the

guiding questions in order to meet the objectives of this thesis. Seven guiding questions directed different stages to this research.

The first two questions sought to reveal which social policy legislation would be relevant for deeper analytical examination. Those two questions were as follows:

1. Does legislation reference the Treaty of Waitangi, the principles of the Treaty or the Treaty of Waitangi Act (1975)?
2. In what context is the Treaty referred to and, is it mentioned in general terms or do specific actions apply?

The following three questions were applied to the subsequent legislation and explicitly sought to critically analyse the representation or implied representation of areas pertinent to mana wahine:

3. How does legislation pay attention to areas pertinent to mana wahine, such as the Treaty of Waitangi, decolonisation, Papatūānuku, and decision-making?
4. If not explicitly mentioned, are aspects of mana wahine reflected?
5. Are Western 'reflections' of mana wahine the same as Māori conceptualisations? For example, are Māori terms (e.g. whānau) used merely as a direct translation (e.g. family) or is the concept (e.g. to be born; to give birth; extended family; a familiar term of address to a number of people; the primary economic unit of a traditional Māori society) implied as well?

The remaining two questions draw on the evidence extracted from the critical analyses and pursued wider reflections on the social development policy and legislative context. These questions were:

6. How has the production of policy excluded mana wahine?
7. How can policy open up to be more inclusive of mana wahine?

Summary of Findings

Undertaking this research facilitated answers to the seven guiding questions as per the following:

1. The Treaty of Waitangi is not specifically mentioned in any act and therefore all acts avoid establishing Treaty-based rights that might otherwise serve as a basis for litigation. Social development legislation enacted from 2008 to 2014 is further characterised by a complete absence of any mention of the principles of the Treaty and the Treaty of Waitangi Act (1975). Social policy acts corresponded to only two principal acts which pre-dated 2008 and which contained a 'Treaty' citation. In the instance of the New Zealand Public Health and Disability Act (2000 no. 42) most recently amended in 2013, there is a single reference to the principles of the Treaty. In the instance of the Education Act (1989 no. 80) most recently amended in 2014, there is a single reference to the principles of the Treaty, and five references of the Treaty of Waitangi Act (1975).

Based on the findings of the first guiding question, the education sector (chapter five) was used as the analytical case study and to provide context to the primary analysis of the Education Act (chapter six) in order to reflect the social development policy context.

2. In the Education Act (1989) the principles of the Treaty are cited in a single social context and relate only to the duties and functions of councils; the citation is general terms and remains subject to interpretation. The Education Act (1989) cited the Treaty of Waitangi Act (1975) five times and every single reference was in the context of land with exclusive focus on ownership; extensive and specific provisions (limitations) applied.
3. With the exception of clauses relating specifically to Kura Kaupapa Māori, the Education Act did not explicitly pay attention to areas pertinent to mana wahine. Fundamental to mana wahine is the centrality of Māori women's perspectives, which engage in dynamic relationships that transcend time, space and dimension. The Education Act has been framed in the context of ongoing colonisation and lacked any direct reference to Māori women's perspectives in the mainstream. Factors which determined the absence of areas that are significant to mana wahine were evidenced in that the act:

- Didn't pay attention to nor reference the Treaty;
 - Didn't define the principles of the Treaty or outline approaches toward implementing and monitoring those principles;
 - Didn't acknowledge tikanga Māori;
 - Didn't appreciate Papatūānuku;
 - Didn't distinguish that Māori men and women are kaitiaki;
 - Didn't strive toward or recognise decolonisation let alone Māori centred decolonisation;
 - Didn't guarantee Māori (and non-Māori) students automatic access to instruction in tikanga Māori and te reo Māori; and
 - Didn't demonstrate the complex relationships that Māori have with all things Māori.
4. The Education Act did not pay specific attention to areas of mana wahine although several Māori interest clauses reflected that perhaps mana wahine interests could have been implied. For example, the Education Act reflected a growing awareness for cross-cultural respect, a need for Māori to contribute to decision-making processes, and recognition for Māori land claims. Māori interest clauses predominantly suggested that State schools must:
- Discover the views of local Māori communities;
 - Reflect the diversity of Māori; and
 - Take steps to provide tikanga Māori and te reo Māori if requested by parents.

Meanwhile, where higher education facilities are concerned:

- General provisions must address development aspirations of Māori; and
 - Polytechnic councils 'should' include Māori.
5. Western reflections of mana wahine were not synonymous with Māori conceptualisations. Furthermore, implied actions are not the same as undertaking

well informed and culturally appropriate processes or guaranteed implementation. For example, the analysis found:

- Acknowledgement and implementation of principles were not the same;
- Cross-cultural respect didn't reflect participation;
- Taking steps to provide instruction in tikanga and te reo didn't result in the compulsory provision of, or readily accessible instruction in, tikanga and te reo;
- The provision of Māori-centred instruction to only full time students whose parents requested it is not the same as providing a balanced education that represents Māori world-views or legitimises them within mainstream contexts;
- That councils 'should' include Māori is not the same as guaranteed inclusion, participation, or representation;
- Recognition for Māori have views and the validity of these philosophies are different;
- Māori conceptualisations of land (Papatūānuku) were not the same as Western conceptualisations of land.

The Education Act contained several Māori interest clauses and reflected determinants of implied interest to mana wahine. Yet Pākehā understandings, interpretations, cultural values and beliefs were not synonymous with the understandings, cultural values and beliefs of Māori.

6. The production of policy is currently informed by dominant Western philosophical endeavours that have been constructed on the legacy of imperialism and in the context of colonisation. The culmination of a history replete with policies targeting Māori has continued effects, evidenced in the way Māori continue to be negatively represented in multiple social development indicators.

Social policy has excluded mana wahine. Drawing on evidence extracted from the critical analysis, policy:

- Did not adequately recognise the rights of iwi and hapū as Treaty partners;
- Lacked knowledge of and provisions for the Treaty;
- Ignored or limited Māori women's access and contribution to decision-making processes;
- Restricted the level of participation and engagement in management related to planning and policy;
- Engaged ineffective or ingenuine consultation processes;
- Enforced difficult systems that restricted Māori participation;
- Was deficient of knowledge of issues that concern Māori; and
- Had adverse impacts on and loss of access to wahi tapu.

Furthermore, Māori women's participation; tikanga Māori; Papatūānuku; kaitiaki; and Māori centred decolonisation were absent from the production processes of policy and consequently, fundamental tenets to mana wahine were void in legislation.

7. This study suggests that there are possibilities for ways that policy can open up to be more inclusive of mana wahine. In brief, these possibilities include legislating the Treaty to guarantee:

- Kāwanatanga (government obligations to Māori interests);
- Tino rangatiratanga (Māori authority over their affairs and taonga); and
- Guaranteed ōritetanga (equality in outcomes).

Fundamental tenets to mana wahine comprise tikanga Māori, Papatūānuku, kaitiaki, and Māori centred decolonisation; and self-determination over policies which need to ensure the:

- Decolonisation of political, social, spiritual and psychological spheres;
- Transformation of structural, social, political and economic barriers to achieve positive collective change;
- Mobilisation of all stratum of society; and

- The rights of Māori women to participate as Māori women are enhanced and protected.

Discussion

Māori women have been perpetually subjected to negative historical processes that include colonisation, institutionalised racism, and sexism (Poata-Smith 2004). Successive government efforts have focused on extermination, civilisation, assimilation, integration and deficit approaches (Bishop and Glynn 1999). Legacies of racist, hegemonic, masculinist policies have been cited as reasons contributing toward the negative experiences and representation of Māori (L Smith 1996, Bishop and Glynn 1999, L Smith 1999b, G Smith 2000, Rata 2003). The ongoing impacts of colonisation have been seen to contribute to the incessant disadvantage experienced by Māori women in their own societies and within colonising societies (L Smith 1999b). Hence, more recent approaches to address inequalities have been produced within the framework of ongoing colonisation, and are therefore yet to be successful.

Mana wahine assumes that colonisation and cultural differences are central in explaining the educational achievement disparities between Māori and Pākehā. Without acknowledgement, respect, or adherence to Māori cultural differences within learning environments, New Zealand subsequently enforced racist and sexist schooling systems that mirrored mainstream Pākehā thinking (Bishop and Glynn 1999, Pihama, Cram et al. 2002). Failure, therefore, has been systemic (Fitzsimons and G Smith 2000). Consequently, the continued denigration toward Māori identity has resulted in failure in the education system (M Durie 2005).

Interrelationships are highly prized by Māori and all aspects of the Māori world contribute toward Māori identities. For example, all taonga are associated with ancestors and land, and closely connected to whenua (Tapsell 1997); land, a tūpuna, cannot be owned and neither can taonga (Tapsell 1997); te reo is a taonga and holds the mātauranga, which informs the tikanga (McBreen 2011); and tikanga Māori embraces gender balance and females are consistently honoured in the truths and teachings of Māori (see chapter One and Five). In addition, all of these aspects comprise fundamental tenets to mana wahine.

This research has examined the patterns, practices, policies and theories associated with inequalities in New Zealand social development. Development Studies pays particular heed to the relationships between 'developed' and 'developing' societies. Of importance to Development Studies is the examination of the roles played by various institutions within society, and the effects on the processes of social, political, economic and environmental change (Victoria University of Wellington 2013). This research examined the inequalities experienced by Māori, and notes the ongoing processes of colonisation are inherent in these. This research has found that the production of policy has excluded mana wahine. In doing so, it has reaffirmed the normalisation of hegemonic patriarchal ideologies, and perpetuated the limitations imposed by colonisation. It is recognised that there is a need redress these imbalances. Bringing together Māori and Pākehā knowledge can contribute toward positive change in what is a complex world.

Conclusion

In conclusion, this research has found that mana wahine has been excluded through the ongoing processes of colonisation that do not give rise to Māori cultural understandings. To summarise, the social policy context at present is characterised by:

- Māori demands for greater self-determination;
- An absence of Treaty rights for Māori;
- Liberal interpretations of principles, and scant processes to implement them;
- Complex land interest clauses for Māori to comply;
- A devoid of aspects pertinent to mana wahine;
- The contradiction between Government's articulated position on rights and inclusion in social policy and; the language used in and concepts enforced by legislation.

The present approach of the Government toward Māori social development is somewhat inconsistent and therefore confusing not just to Māori but also to those whose responsibility it is to implement policies. The issues identified by this research should not just be considered an issue for Māori; these are matters of national concern that affect wider society and relationships between Māori, Pākehā and Crown. In describing these relations in the 1990s, Fleras and Maaka (1998 p. 50 cited in Barrett and Connolly-Stone 1998) stated:

On the assumption that we are all in this together for the long haul, it would appear more urgent than ever to re-calibrate Māori-Pākehā discourses around the principles of constructive engagement (p. 14).

The sentiments of Fleras and Maaka characterise the concerns of the 1990s, though, sixteen years on, still ring true. Overall, steps are being taken in the right direction. For example, Kura communities present an example of Māori determination and community-driven development. However, mainstream education policy remains constructed from and informed by hegemonic Western constructs and it is evident that there is still a long way to go to validate the rights and desires of Māori, and to achieve greater equality in all social development outcomes in New Zealand.

The Treaty is founded on premise of goodwill between parties; whose interests are mutually strengthened by partnership (Barrett and Connolly-Stone 1998). Partnership involves validating each culture as equal and distinct, while all contributing to common goals. Government has a duty to advance discourse beyond its present point. Focus must shift from confining the limitations of debate, to facilitating open dialogue with Māori, and part of this process is recognising Māori rights to self-determination.

It can be argued that research conducted from the perspective of mana wahine is a positive and useful example of bringing alternative methods of thinking into mainstream arenas and, subsequently, contributes to the overall body of Māori literature. Conducting mana wahine research within the framework of a Western institution has added to the platform from which Māori perspectives can be expressed in a way perceptive to policy makers, and therefore help in the decolonisation of embedded philosophies.

The central argument developed throughout this study is that there is an urgent need to shift policy thinking toward Māori if there is to be a significant movement toward justice for Māori women. This will involve Māori centred decolonisation and the inclusion of aspects pertinent to mana wahine.

Recommendations for Future Research

The only relevant legislation that referenced the principles of the Treaty and the Treaty of Waitangi Act (1975) was the Education Act (1989). Subsequently, the education sector was used as a means to represent the wider social policy context. However, based on the findings of this study the Education Act was considered to be the most inclusive of Māori interests; demonstrated in its application of clauses concerning principles and the Waitangi Act. Hence, it is important to note that the findings of this research will perhaps present a more positive reflection of the wider social policy context than in actuality.

Therefore, scope for further research in this topic area indicates the need for analyses that include or compare other social legislation. Additional research could further expand the social policy context to incorporate analyses of all public policy in New Zealand to provide more breadth of analyses. Collective examinations of the processes guiding other areas of policy might reveal more insight into the processes guiding legislation and philosophies represented in legislation.

It would be desirable to return to this subject in the future to see if the implementation of recommended changes have taken heed.

APPENDICES

Appendix A **Te Tiriti o Waitangi** (The Treaty of Waitangi, Māori Version)

Ko Wikitoria, te Kuini o Ingarani, i tana mahara atawai ki nga Rangatira me nga Hapu o Nu Tirani i tana hiahia hoki kia tohungia ki a ratou o ratou rangatiratanga, me to ratou wenua, a kia mau tonu hoki te Rongo ki a ratou me te Atanoho hoki kua wakaaro ia he mea tika kia tukua mai tetahi Rangatira hei kai wakarite ki nga Tangata maori o Nu Tirani-kia wakaaetia e nga Rangatira maori te Kawanatanga o te Kuini ki nga wahikatoa o te Wenua nei me nga Motu-na te mea hoki he tokomaha ke nga tangata o tona Iwi Kua noho ki tenei wenua, a e haere mai nei. Na ko te Kuini e hiahia ana kia wakaritea te Kawanatanga kia kaua ai nga kino e puta mai ki te tangata Māori ki te Pakeha e noho ture kore ana. Na, kua pai te Kuini kia tukua a hau a Wiremu Hopihona he Kapitana i te Roiara Nawi hei Kawana mo nga wahi katoa o Nu Tirani e tukua aianeī, amua atu ki te Kuini e mea atu ana ia ki nga Rangatira o te wakaminenga o nga hapu o Nu Tirani me era Rangatira atu enei ture ka korerotia nei.

Ko te tua tahi

Ko nga Rangatira o te wakaminenga me nga Rangatira katoa hoki ki hai i urn ki taua wakaminenga ka tuku rawa atu ki te Kuini o mgarani ake tonu atu - te Kawanatanga katoa o o ratou wenua.

Ko te tua rua

Ko te Kuini o mgarani ka wakarite ka wakaae ki nga Rangatira ki nga hapu - ki nga tangata katoa o Nu Tirani te tino rangatiratanga o o ratou wenua o ratou kainga me o ratou taonga katoa. Oilia ko nga Rangatira o te wakaminenga me nga Rangatira katoa atu ka tuku ki te Kuini te hokonga o era wahi wenua e pai ai te tangata nona te wenua - ki te ritenga o te urn e wakaritea ai e ratou ko te kai hoko e meatia nei e te Kuini hei kai hoko mana.

Ko te tua toru

Hei wakaritenga mai hoki tenei mo te wakaaetaiga ki te Kawanatanga o te Kuini - Ka tiakina e te Kuini o mgarani nga tangata Māori katoa o Nu Tirani ka tukua ki a ratou nga tikanga katoa rite tahi ki ana mea ki nga tangata o mgarani.

[signed] W. Hobson Consul & Lieutenant Governor

Na ko matou ko nga Rangatira o te Wakaminenga o nga hapu o NuTirani ka huihui nei ki Waitangi ko matou hoki ko nga Rangatira o Nu Tirani ka kite nei i te ritenga o enei kupu. Ka tangohia ka wakaaetia katoatia e matou, koia ka tohungia ai o matou ingoa o matou tohu.

Ka meatia tenei ki Waitangi i te ono o nga ra o Pepueri i te tau kotahi mano, e warn rau e wa te kau o to tatou Ariki.

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