

Indigenous Peoples' Ownership and Management of Mountains:

The Aotearoa/New Zealand Experience

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In 1840, the British Crown guaranteed to Māori, the Indigenous people of Aotearoa/New Zealand, the continued right to exercise tino rangatiratanga (self-determination) over their own taonga (treasures). This article assesses the historic and current legislative reality for giving effect to this guarantee in the context of the treasured landscapes of mountains. Throughout the world, mountain ownership and management has become an integral part of many Indigenous peoples' struggles for self-determination. While this article has a narrow domestic focus, the struggle here told, which is illuminated through legislative examination, will be of comparative interest to many jurisdictions.

I INTRODUCTION

Aotearoa/New Zealand,¹ an island country bordered by the Tasman Sea and the Pacific Ocean, is renowned throughout the world for its geographical beauty. Mountains dominate the landscape; 60 per cent of the South Island and 20 per cent of the North Island is classified as mountainous. Tourists from all over the world visit and experience the wonder of these mountains every year. But the people who trace their ancestors to these very mountains have largely been disconnected from them. Historically, this has been ensured through “mono-cultural” legislation premised on only Pakeha² cultural values. While present legislation somewhat remedies the cultural bias of past law, it still remains piecemeal and *ad hoc* in its recognition of Māori rights to own, or participate in the management of, mountains in accordance with their own world view.

Today, the most prominent mountain ranges are located within national parks, owned and managed by the Department of Conservation, a central government department.³ The *National Parks Act 1980* and the *Conservation Act 1987* ensure that these mountains are managed according to a protection for preservation stance that, at times, runs contrary to how Māori once managed these mountains. The shift in ownership and management from Māori to a Crown government body occurred not long after both parties signed the *Treaty of*

1. Aotearoa is a Māori word for New Zealand. Since 1987, the Māori language has been recognized as an official language of Aotearoa/New Zealand; see section 3 of the *Māori Language Act 1987*. Aotearoa/New Zealand legislation is passed by the unicameral Parliament, the House of Representatives, and can be viewed at <<http://www.legislation.govt.nz>> [date accessed: 16 June 2004].

2. A Māori expression for people of British origin living in Aotearoa/New Zealand.

3. For further information on the Department of Conservation, see its official website, online: <<http://www.doc.govt.nz/>> [date accessed: 16 June 2004].

Waitangi in 1840.⁴ This article will examine historical and present legislative directives that dictate who owns our mountains and how they should be managed. It is conceded that present, rather than historical, legislation is better aligned with what the signatories to the *Treaty of Waitangi* envisaged. But, with partnership being at the heart of this vision, current provisions still remain short of conclusively giving effect to the *Treaty*.

This examination of mountain ownership and management comes in the wake of international celebrations of "2002: The International Year of Mountains." The United Nations General Assembly proclaimed that one objective of the celebrations was to promote and defend the cultural heritage of mountain communities/societies.⁵ In the aftermath of these celebrations, it is important to examine the extent of Indigenous peoples' rights to be included in the management of publicly owned mountains, the preference given to their management practices, and the degree to which Crown bodies are prepared to negotiate transfers of ownership back to the original owners. Issues such as these are being tackled within many of the domestic jurisdictions that share a similar British colonial history with Aotearoa/New Zealand. Australia, Canada and the United States are of particular relevance. Negotiated agreements embodying joint management regimes are being established in many of these countries.⁶ While this article has a narrow domestic focus, the struggle here told should be of comparative interest.

The next section of this article provides a generalized overview of the relationship the peoples of Aotearoa/New Zealand have with mountains. The third section depicts the importance of the *Treaty of Waitangi*. The fourth section considers the historical and current transfer of ownership of mountains. The fifth and sixth sections focus on management: first, how historical management was culturally exclusive; and, second, how present legislation is providing Māori with an avenue to reclaim management responsibilities. The seventh section

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4. To view a copy of the *Treaty*: see First Schedule of the *Treaty of Waitangi Act 1975* or the Government's official *Treaty of Waitangi* Website, online: <<http://www.treatyofwaitangi.govt.nz>> [date accessed: 16 June 2004]. For a discussion of the "Crown" in Aotearoa/New Zealand see N. Cox, "The Treaty of Waitangi and the Relationship Between the Crown and Māori in New Zealand" (2002) 28 Brooklyn J. of International Law 124.
 5. See Beyond the International Year of Mountains Website at <<http://www.mountains2002.org>> [date accessed: 16 June 2004]. The United Nations refers to mountains as "fragile ecosystems, which are globally important as the source of most of the Earth's freshwater, repositories of rich biological diversity, popular destinations for recreation and tourism and areas of important cultural diversity, knowledge and heritage": see *International Year of Mountains, 2002*, UN GAOR, 58th Sess., Item 96, UN Doc. A/58/134 (2003), online: Mountain Partnership Website <<http://www.mountainpartnership.org/news/news.html>> [date accessed: 16 June 2004].
 6. For example: see P. Robert & D. Ostergren, "Evicting People from Nature: Indigenous Land Rights and National Parks in Australia, Russia, and the United States" (2002) 42 Natural Resources J. 331; D. Craig, "Recognising Indigenous Rights through Co-Management Regimes: Canadian and Australian Experiences" (2002) 6 New Zealand J. of Environmental Law 199; Justice R. Sackville, "The Emerging Australian Law of Native Title: Some North American Comparisons" (2000) 74 Australian L.J. 820; and J.R. Wunder, "'Looking After the Country Properly': A Comparative History of Indigenous Peoples in Australian and American National Parks" (2003) 2 Indigenous L.J. 27.

suggests some pathways for better moving towards partnership as envisaged in the *Treaty*.

In order to illustrate the ownership and management status of the majority of the mountains in this country, three specific mountains which lie within the boundaries of the national park estate have been chosen as case studies: Tongariro, Taranaki/Mount Egmont and Aoraki/Mount Cook.⁷ The stories of these three peaks enlighten both the historical and present situation of mountain ownership and management in Aotearoa/New Zealand. The most inclusive legislation to date has concerned these three mountains, which are our three most well-known mountains and are of great spiritual, cultural and historical value to Māori. It is for these reasons that they have been signalled out as appropriate case studies for this article.

II THE SIGNIFICANCE OF MOUNTAINS TO PEOPLES IN AOTEAROA/NEW ZEALAND

The two peoples who make up the majority of the country—Māori (about 15 per cent of the population) and Pakeha (about 70 per cent of the population)—have distinctly different reasons for valuing mountains. The difference is largely due to dissimilar world views. This part of the article briefly examines the Māori and Pakeha values for mountains.

Māori Association

The Māori world view places central importance on whakapapa (genealogy) and the personification of the natural world. As with many Indigenous peoples, Māori see the world as a unified whole where all elements are genealogically connected. Māori creation stories explain the beginning of the world order as Te Kore, the realm of chaos or nothingness, in which dwelt Io, the supreme god, from whose iho (essence) the subsequent voids were conceived. From Te Kore arose Te Po (the night realm) from whence came Rangi and Papa, the primal parents of all that exists in the realm that we live in today, Te Ao Marama (the full light of day).⁸

7. To visualize the placing of these mountains in Aotearoa/New Zealand, see online: Department of Conservation Website <<http://www.doc.govt.nz/explore/001%7enational-parks/index.asp>>.

8. The creation story, as told by our elders, explains that in Te Po many offspring, all supernatural beings, arose from Rangi and Papa and lived in the world of dark until they were successful in separating their parents. After the separation of Rangi and Papa, Rangi became known as Ranginui e tu iho nei, the male principle, or sky father, and Papa as Papatuanuku, the female principle, or earth mother. In Te Ao Marama, their offspring became responsible for, or guardians of, particular natural phenomena. For example, the first-born child, Tane, became the God of the Forests and all things that inhabit them. For a good introduction to Māori custom see any of the Waitangi Tribunal reports, including the recent *Te Whanganui A Tara Me Ona Takiwa: Report on the Wellington District*. Wai 145 (Wellington: Waitangi Tribunal, 2003) at c. 2. Note, Tribunal reports are available online at <<http://www.waitangi-tribunal.govt.nz/reports/>> [date accessed: 16 June 2004]. See also New

This Māori world view contributed to the development and practice of a unique environmental ethic that holds many of the mountains as intensely sacred natural landscapes. Aoraki/Mount Cook is the highest mountain in Aotearoa/New Zealand and stands within the takiwa (territory) of Ngai Tahu, the largest iwi (tribe) in the South Island. Aoraki/Mount Cook is of utmost importance to Ngai Tahu. This iwi tells the creation story of four sons, including one named Aoraki, born of the union between Papatuanuku (earth mother) and Ranginui (sky father). Aoraki and his brothers came in a waka (boat) and “cruised around Papatuanuku who lay as one body in a huge continent known as Hawaiiki.”⁹ Unable to find land and unable to return to their celestial home, their waka finally ran aground on a hidden reef and “the whole waka formed the South Island ... Aoraki and his brothers clambered on to the high side and were turned to stone. They are still there today. Aoraki is the mountain known to Pakeha as Mount Cook and his brothers are the next highest peaks near him.”¹⁰ Aoraki/Mount Cook specifically gives Ngai Tahu people their identity. It is their ancestral mountain and reference is made to it in formal introductions.¹¹

Moreover, mountains are tapu (sacred) and have mauri (a life force) because they are tupuna (ancestors). As Māori interacted with the slopes of mountain peaks for passageway, for places for shelter and burial grounds, and as areas on which to gather flora, fauna and other precious resources, such as pounamu (jade/greenstone), a unique environmental ethic developed. The ethic dictates that the tapu and mauri of the mountain must be respected. The ethic ensures that humans are kaitiaki (guardians) of the surrounding environment: “to be a kaitiaki means looking after one’s own blood and bones—literally. One’s whanaunga (family relations) and tupuna include the plants and animals, rocks and trees.”¹² Nonetheless, the ethic does not instruct preservation. Rather, it centres on sustainable use. Māori are expected to relate to nature in a meaningful way because their world view positions humans as tangata whenua (people of the land) and, as such, not above nature, but an integral part of it.¹³

To fulfil their duty, Māori developed an intricate knowledge of the natural world. For instance, all parts of a plant had a use, be it for food, medicine, or fibre for clothing or storage. Sustainability was ensured through ritual. For example, gathering certain plants or snaring certain birds would be restricted to

Zealand Law Commission, *Study Paper 9: Māori Custom and Values in New Zealand Law*. (Wellington: New Zealand Law Commission, March 2001).

9. *Ngai Tahu Claims Settlement Act 1998* at Schedule 80.

10. *Ibid.*

11. The following is an example of a formal identification introduction: Ko Aoraki te mauka teitei (Aoraki is the lofty mountain), Ko Waitaki te awa (Waitaki is the river), Ko Te Waipounamu te whenua (The South Island is the land), Ko te Rapuwai, Ko Waitaha, Ko Kati Mamoe, Me Kai Tahu te iwi (These are the tribes that make up Ngai Tahu family).

12. M. Roberts, *et al.* “Kaitiakitanga: Māori perspectives on conservation” (1995) 2 *Pacific Conservation Biology* 7 at 7. See also N. Tomas, “Implementing Kaitiakitanga Under the RMA” (1994) *New Zealand Environmental Law Reporter* 39; and S. Hayes, “Defining Kaitiakitanga and the *Resource Management Act 1991*” (1998) 8 *Auckland University L. Rev.* 893.

13. For example: see Ranginui Walker, *Ka Whawhai Tonu Matou: Struggle Without End* (Auckland: Penguin, 1990) at 13-14.

specific persons; gathering was not a “free-for-all.”¹⁴ Collection of flora or fauna was restricted to certain areas. Karakia (prayer) would be said before and during the taking to protect the person gathering the resource, to thank the gods for the provision of the resource and to acknowledge the life force of the resource. Rituals for collecting the flax plant, for example, deemed it appropriate to take only part of the plant (the outside leaves), to cut it in a certain manner (on a slant to ensure rain does not get into the plant and rot it) and to leave the residue at its base (to promote further growth).¹⁵ Likewise, rituals existed for crossing landscapes. For example, a person should not stand on the top of an ancestral mountain for this is the head of the tupuna. If the rituals are not performed, it is believed that the tapu will be breached and the gods will cause harm to befall the person, including his or her wider family, to the extent of illness and, if the breach is severe, death. Loss of mana (authority) would certainly be forthcoming. The ethic thus guaranteed sustainable use through respect for the world order.

The environmental ethic has ensured that Māori interact and care for mountains and resources found on mountain slopes as taonga (treasures). It is an ethic that embodies the historical, spiritual and cultural association with land. Through oral tradition and practical observation, this knowledge is passed on to the next generation. These practices are absolutely vital for Māori well-being and cultural survival.

Pakeha Association

Pakeha also consider mountains special, albeit for different reasons than Māori. Unlike Māori, Pakeha tend not to personify the natural world. Rather, when the first European travellers came to Aotearoa/New Zealand they brought with them an ideology of fear: mountains were unfamiliar environments lying beyond the borders of social control. For instance, one of the first European settlers pronounced this land to be, “A dismal looking country ... fearfully mountainous.”¹⁶

The Pakeha relationship with mountains has changed over time. Mountains were initially regarded as mammoth obstacles that hindered the search for routes, resources and land.¹⁷ However, as Pakeha settlement began to take hold, mountains began to gain status as places that should be protected from private sale and preserved for public use. During this early colonial era, mountains were “often viewed as wastelands, unless commodified for purposes of tourism or

14. H. Mihini, “Hutia te Rito o te Harakeke: A Flaxroot Understanding of Resource Management” in Merata Kawharu, ed., *Whenua: Managing our Resources* (Auckland: Reed Publishing (NZ), 2002) 21 at 24.

15. *Ibid.* For another good introductory source, see David Williams, *Matauranga Māori and Taonga* (Wellington: Waitangi Tribunal, 2001).

16. E. Pawson, “The Meaning of Mountains” in Eric Pawson & Tom Brooking, eds., *Environmental Histories of New Zealand* (Australia: Oxford University Press, 2002) at 138.

17. *Ibid.* at 139.

used for character-building recreational pursuits.”¹⁸ For instance, protecting the mountains in central North Island under the Tongariro National Park label allowed the “useless” and “worthless” area to become “a very great pleasure-resort for all kinds of people.”¹⁹ Likewise, it was stated that by protecting the mountain integral to the Egmont National Park, the government ensured that “thousands of tourists visited Taranaki/Egmont every year, and it was acknowledged to be the most graceful mountain in the world.”²⁰ During this era, Pakeha embraced the beauty and remoteness of mountains as a means to gain substantial prestige for having settled in such a beautiful country. This, in turn, enabled them to create a separate identity from the older world of Britain and Europe.²¹

While the early impetus for protecting mountains in their natural state was utilitarian—“wilderness had to have a use and purpose, rather than being there for its own sake”²²—present motivation tends more towards protecting mountains for their own inherent intrinsic value. For example, section 4(1) of the *National Parks Act 1980* declares, alongside other points, that national parks are to be preserved in perpetuity for their “intrinsic worth.” This wording marks a significant departure from previous uses of the national park label, which was to preserve for simply scenic and recreational value.²³ The recognition that landscapes and resources contain their own value represents a small first step towards an alignment between the Pakeha and Māori world views.

This brief insight into how Māori and Pakeha value mountains has shown that “mountains are not neutral landscapes but features of the environment employed to various social ends.”²⁴ In today’s climate, both peoples are exerting a right to own and manage mountains, either exclusively or on a shared basis. These landscapes have the potential to be employed as a means for our country to move more conclusively towards partnership, giving true effect to the *Treaty of Waitangi*.

18. *Ibid.* at 147.

19. Dr. Newman, Member for Thordon, in *New Zealand Parliamentary Debates*, vol. 57 (20 May 1887) at 400. For an example of the perceived uselessness of the area, see comment by Hon. McKenzie in *New Zealand Parliamentary Debates*, vol. 86 (11 October 1894) at 679: “anyone who had seen the portion of the country ... which he might say was almost useless so far as grazing was concerned, would admit that it should be set apart as a national park for New Zealand.”

20. Mr. McGuire, Member for Egmont, in *New Zealand Parliamentary Debates*, vol. 94 (11 August 1896) at 233.

21. For a detailed discussion of this movement: see John Shultis, *Natural Environments, Wilderness and Protected Areas: An Analysis of Historical Western Attitudes and Utilisation, and Their Expression in Contemporary New Zealand* (Ph.D. Thesis, University of Otago, 1991) [unpublished].

22. Pawson, *supra* note 16 at 147.

23. See its predecessor, s. 3 of the *National Parks Act 1952*.

24. Pawson, *supra* note 16 at 150.

III THE *TREATY OF WAITANGI*: THE BASIS FOR RIGHTS AND NEGOTIATION

In the late 1700s, British explorers, whalers and sealers began settling in Aotearoa/New Zealand. By the 1830s, the nature of Aotearoa/New Zealand had changed drastically. Introduced diseases and musket guns had had a devastating impact on Māori. The “unruly and unsanctioned behaviour of some settlers”²⁵ was getting out of hand. Pressure from colonizers seeking to acquire Māori lands was accumulating. Other countries including France and the United States were becoming increasingly interested in Aotearoa/New Zealand. Humanitarians in Britain were urging their government to mitigate the negative effects of colonialism on the Indigenous peoples in Aotearoa/New Zealand. Motivated into action, Britain sought to sign a treaty with Māori to address these concerns.

In 1840, representatives of the British Crown and Māori signed the *Treaty of Waitangi*. It consists of three articles. There are several written versions including one in English, one in Māori and various English translations of the Māori version. In the English version, Māori ceded to the British Crown absolutely and without reservation all the rights and powers of sovereignty; Māori retained full exclusive and undisturbed possession of their lands and estates, forests, fisheries and other properties; and Māori were granted the same rights and privileges as British citizens living in Aotearoa/New Zealand.²⁶ However, in the Māori version, Māori only ceded to the British Crown governance, and retained tino rangatiratanga (sovereignty) over their taonga (treasures). Most Māori present at the signing of the *Treaty of Waitangi* “were probably left with the idea that their authority over their customs and law would remain intact, that their tribal rangatiratanga would be enhanced, and that British governance would restore law and order and ward off French interest in the new colony.”²⁷

Despite the *Treaty*, the Crown disregarded the guarantees made and “within a few years [Māori] began to protest at what they regarded as unwarranted encroachments on their lands and autonomy.”²⁸ The majority of the lands swiftly passed from Māori hands.²⁹ Today very little Māori classified land exists.³⁰ The

25. Te Puni Kokiri/Ministry of Māori Development, *He Tirohanga o Kawa ki te Tiriti o Waitangi: A Guide to the Principles of the Treaty of Waitangi as Expressed by the Courts and the Waitangi Tribunal* (Wellington: Te Puni Kokiri, 2001) at 26, online: Te Puni Kokiri Website <<http://www.tpk.govt.nz/publications/subject/default.asp>> [date accessed: 16 June 2004] [hereinafter *He Tirohanga*].

26. To view a copy of the *Treaty*: see references in note 4 above.

27. *He Tirohanga*, *supra* note 25 at 30.

28. Alan Ward, *An Unsettled History: Treaty Claims in New Zealand Today* (Wellington: Bridget Williams Books, 1999) at 19.

29. The best records are with the Waitangi Tribunal: for example see *Ngai Tahu Report, Volume One: Summary of Grievances, Findings and Recommendations*. Wai 27 (Wellington: Waitangi Tribunal, 1991) [hereinafter *Ngai Tahu Report*] and *The Taranaki Report: Kaupapa Tuatahi*. Wai 143 (Wellington: Waitangi Tribunal, 1996) [hereinafter *Taranaki Report*]. Alienation by dubious means, including confiscation, is also documented, and apologized for, in Crown-iwi settlement legislation: for example, see *Waikato Raupatu Claims Settlement Act 1995*, *Ngai Tahu Claims Settlement Act 1998*, *Te Uri o Hau Claims Settlement Act 2002* and *Ngati Ruanui Claims Settlement Act 2003*.

dispossession occurred by many means, including legitimate and illegitimate purchases; war; confiscation; the introduction of a new land tenure system via the establishment of the Māori Land Court; legislation, including public works legislation; and judicial proceedings.³¹ The specific loss of mountain ownership is highlighted in the case studies below. Before launching into this examination, it is prudent to provide a brief history of how the government, including the judiciary, has regarded the *Treaty of Waitangi*.

Under Aotearoa/New Zealand's constitutional system, Parliament is supreme and has no formal limits to its law-making power.³² The *Treaty of Waitangi* is not part of the domestic law of Aotearoa/New Zealand. Rather, it is commonly said to form part of our informal constitution along with the *New Zealand Bill of Rights Act 1990* and the *Constitution Act 1986*. Therefore, for the judiciary or those acting under the law, the *Treaty* itself usually only becomes relevant if it has been expressly incorporated into statute.³³ Even so, statutory incorporation of the *Treaty of Waitangi* has been a relatively recent phenomenon. Our legal history once endorsed the *Treaty of Waitangi* "as a simple nullity."³⁴ It was not until the 1970s, when Māori visibly took action to highlight *Treaty* breaches, that the *Treaty* began to gain mainstream recognition and, in turn, the attention of those in Parliament and the judiciary.

In 1975, the government established the Waitangi Tribunal in part as a response to the Land March with its slogan "not one more acre of Māori land

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30. There exists six types of land: Māori customary land, Māori freehold land, general land owned by Māori, general land, Crown land and Crown land reserved for Māori (see s. 129 of *Te Ture Whenua Māori Act 1993*). Māori classified land includes Māori customary land and Māori freehold land. Prior to 1840, all land in Aotearoa/New Zealand was Māori customary land (land held in accordance with tikanga Māori with no Crown issued title to it). Māori freehold land is land in which the beneficial ownership has been determined by the Māori Land Court by freehold order. To learn more about Māori land, see the Māori Land Court Website <<http://www.courts.govt.nz/Maorilandcourt/>> [date accessed: 16 June 2004]. Note that a distinction is made between Māori customary land on dry land and land under salt water following the Court of Appeal decision *Ngati Apa v. A.G.*, [2003] 3 N.Z.L.R. 643 (N.Z. C.A.) [hereinafter *Ngati Apa*]. It held that the Māori Land Court has jurisdiction to determine whether land under water remains Māori customary land. However, the government intends to pass legislation which will vest this land in the Crown: see *Foreshore and Seabed Bill 2004* and *Beehive: The Official Website of the New Zealand Government* <<http://www.beehive.govt.nz/foreshore/>> [date accessed: 16 June 2004].
31. For example, see the sources cited in note 29 above. For an excellent commentary on the historical means of alienation, see David Williams, *"Te Kooti Tango Whenua" The Native Land Court 1864-1909* (Wellington: Huia Publishers, 1999).
32. For example, see *New Zealand Māori Council v. A.G.*, [1987] 1 N.Z.L.R. 641 (N.Z. C.A.) at 691 [hereinafter *New Zealand Māori Council*], per Somers J. "Neither the provisions of the Treaty of Waitangi nor its principles are, as a matter of law, a restraint on the legislative supremacy of Parliament." See also Geoffrey Palmer, *Unbridled Power: An Interpretation of New Zealand Constitution and Government*, 2d ed. (Auckland: Oxford University Press, 1987).
33. For example, see the comment made by Justice McKay in the Court of Appeal: "Treaty rights cannot be enforced in the Courts except in so far as they have been given recognition by statute." *New Zealand Māori Council v. A.G.*, [1992] 2 N.Z.L.R. 576 at 603 (N.Z. C.A.).
34. In 1877, Chief Justice Pendergast, in *Wi Parata v. The Bishop of Wellington* (1877), 3 N.Z. Jur. (NS) 72 (N.Z. H.C.) at 78 held: "So far indeed as the Treaty of Waitangi purported to cede the sovereignty ... it must be regarded as a simple nullity. No body politic existed capable of making cession of sovereignty, nor could the thing itself exist."

should be taken from Māori hands.”³⁵ The Tribunal’s role is to inquire into claims made by Māori that they have been, are, or are likely to be, prejudicially affected by acts or omissions of the Crown which are inconsistent with the “principles” of the *Treaty of Waitangi*.³⁶ The *Act* does not list the principles. The Tribunal is limited in its power to rectify a Crown breach of the *Treaty*; it can only recommend to the Crown that action be taken to compensate for the prejudice or remove it so to prevent other persons from being similarly affected in the future.³⁷ The recommendation may be in general terms or it may indicate in specific terms the action the Crown should take.³⁸ The Tribunal cannot recommend either that private land be returned directly to Māori ownership or that the Crown should acquire private land to return to Māori ownership.³⁹

Since 1975, some 30 or so statutes have been enacted with reference to *Treaty of Waitangi* principles. One of the strongest inclusions to date requires that those acting under the *Conservation Act 1987* interpret and administer the *Act* as to “give effect to” the principles of the *Treaty of Waitangi*. But the more common inclusion is to “have regard to”⁴⁰ or to “take into account”⁴¹ the *Treaty* principles. All statutory references refer to the “principles” of the *Treaty*, not the text of the *Treaty*. The Court of Appeal has endorsed this approach as appropriate because the *Treaty* is to be regarded as a “living instrument”⁴² and “an embryo rather than a fully developed and integrated set of ideas.”⁴³

Treaty jurisprudence has developed from both Waitangi Tribunal inquiries and judicial interpretation of *Treaty*-inclusive statutes. It is beyond the scope of this article to do anything more than provide a mere overview of this emerging law. An appropriate beginning point is what is often described as the general overarching *Treaty* principle: “the Māori gift of governance to the Crown was in exchange for the Crown’s protection of Māori rangatiratanga.”⁴⁴ Māori interpret tino rangatiratanga as a guarantee of Māori sovereignty, a right to self-determination and, in some instances, simply a right of self-management.⁴⁵ While

35. In 1975, thousands joined the Land March as it moved from the Far North to Parliament. The message they brought was that Māori had only about 3 million acres of land left from the 66 million in Māori hands in 1840, and that no more land should be lost. See the discussion in Ward, *supra* note 28 at 22-23. The Waitangi Tribunal was established pursuant to the *Treaty of Waitangi Act 1975*. Note that this *Act* was amended in 1985 to allow the Tribunal to hear claims relating to actions of the Crown since 6 February 1840: see *Treaty of Waitangi Amendment Act 1985*. The original 1975 statute had restricted the Tribunal’s jurisdiction to hear claims relating to actions of the Crown in breach of the *Treaty* which occurred on or after October 1975.

36. *Treaty of Waitangi Act 1975* at s. 6(1).

37. *Ibid.* at s. 6(3).

38. *Ibid.* at s. 6(4).

39. *Ibid.* at s. 6(4A). For a good introduction to these issues, see C. Wainwright *et al.*, *New Zealand Law Society Seminar: Treaty of Waitangi* (Wellington: New Zealand Law Society, August 2002).

40. See *e.g.* s. 4 of the *Crown Minerals Act 1991*; s. 3 of the *Foreshore and Seabed Endowment Revesting Act 1991*; and s. 10 of the *Crown Research Institutes Act 1992*.

41. See *e.g.* s. 8 of the *Resource Management Act 1991*; s. 25(1)(b) of the *Crown Pastoral Land Act 1998*; and s. 6(d) of the *Energy Efficiency and Conservation Act 2000*.

42. *New Zealand Māori Council*, *supra* note 32 at 656, per Cooke P.

43. *Ibid.* at 663, per Cooke P.

44. *The Whanganui River Report*. Wai 167 (Wellington: Waitangi Tribunal, 1999) at 265.

45. *Māori Electoral Option Report*. Wai 413 (Wellington: Waitangi Tribunal, 1994) at 4.

the courts have avoided defining tino rangatiratanga, Justice McGechan, then of the High Court, has observed: "I readily accept that [tino rangatiratanga] encompassed a claim to an ongoing distinctive existence as a people, albeit adapting as time passed and the combined society developed."⁴⁶ The Waitangi Tribunal has added that tino rangatiratanga "denotes the mana of Māori not only to possess, but to control and manage [taonga] in accordance with their own cultural preferences."⁴⁷ Implicit in the tino rangatiratanga principle are a number of other principles, including, most notably, partnership. In particular, the Court of Appeal has referred to the *Treaty* relationship as akin to a partnership, using the concept as an analogy that emphasizes the parties' duty to act reasonably, honourably and in good faith.⁴⁸ Importantly, the Crown has an obligation to actively protect Māori interests.

In practice, an application of the *Treaty* principles will depend on the circumstances of each iwi and the taonga in question. When considering *Treaty* breaches in relation to natural resources that now fall within the boundaries of our conservation estate, the Waitangi Tribunal has shied away from exclusive ownership, instead recommending negotiation between the Crown and iwi to foster an end goal of co-management.⁴⁹ This approach aligns with the restrictive jurisdiction in which the Tribunal operates. It also aligns with specific government policy that posits the Department of Conservation as the appropriate body to own the conservation estate "on behalf of all New Zealanders."⁵⁰ The policy denotes that public conservation land is, therefore, not readily available for use in *Treaty* settlements.⁵⁰ Accordingly, instead of equating the notion of partnership with anything akin to 50-50 ownership, the Tribunal has focused its recommendations on inclusive management practices, including the need to recognize and provide for the Māori environmental ethic of kaitiakitanga.⁵¹ Moreover, the emerging *Treaty* jurisprudence at least provides a framework for recognizing the rights of Māori to participate in the ownership and management of sacred mountains.

46. *Taiaroa v. Minister of Justice* (4 October 1994), Wellington CP99/94 (N.Z. H.C.), McGechan J. at 69.

47. *Ngawha Geothermal Resource Report*. Wai 304 (Wellington: Waitangi Tribunal, 1993) at 136.

48. See *New Zealand Māori Council*, *supra* note 32, per Cooke P. at 664, Richardson J. at 682, Somers J. at 692-693 and Casey J. at 702. For a more recent summary of the principles, see *Carter Holt Harvey Ltd. v. Te Runanga o Tuwharetoa ki Kawerau*, [2003] 2 N.Z.L.R. 349 (N.Z. H.C.), per Heath J. at 359-361.

49. For example, see Waitangi Tribunal reports: *Te Ika Whenua Rivers Report*. Wai 212 (Wellington: Waitangi Tribunal, 1998); *Pouakani Report*. Wai 33 (Wellington: Waitangi Tribunal, 1993); and *Mohaka River Report*. Wai 119 (Wellington: Waitangi Tribunal, 1992).

50. See Department of Conservation Website <<http://www.doc.govt.nz/Community/005~Conservation-and-Māori/Settlements/index.asp>> [date accessed: 16 June 2004]. For an understanding of the Crown/iwi *Treaty of Waitangi* settlement process, see Office of Treaty Settlements, *Healing the Past, Building a Future: A Guide to the Treaty of Waitangi Claims and Negotiations with the Crown* (Wellington: Office of Treaty Settlements, 2003). The book can be viewed at the Office of Treaty Settlements Website <<http://www.ots.govt.nz>> [date accessed: 16 June 2004].

51. For example, see *Hauraki Gulf Report*. Wai 728 (Wellington: Waitangi Tribunal, 2001) at 40.

IV CROWN TACTICS: HISTORICAL AND CURRENT TRANSFERS OF OWNERSHIP

By telling the story of three specific mountains—Tongariro, Taranaki/Mount Egmont and Aoraki/Mount Cook—this part of the article discusses the transfer of ownership of mountains from Māori to the Crown and, in some instances, back to Māori. The historical and current legislation associated with these three mountains arguably illustrates the Crown's indifferent regard to the exercise of tino rangatiratanga by Māori. Despite the Crown guaranteeing to Māori their right to retain undisturbed possession of their taonga, the Crown sought exclusive ownership of the mountain ranges almost immediately after the *Treaty of Waitangi* was signed.

Tongariro

Tongariro lies alongside Ruapehu and Ngauruhoe in the middle of the North Island and the peak is sacred to the Ngati Tuwharetoa iwi that inhabit this part of the country. The volcanic mountain is described in ancient tribal stories as a great force in a universe where everything is alive—it is “regarded with respect and humility as well as with awe.”⁵² The iwi's ancestor, Ngatoroirangi, was responsible for the formation of Tongariro. He had been exploring the region and became very cold. To avoid death, he called out to his sisters from his Pacific homeland, Hawaiiki, to send him fire. The fire came, but its passage left a trail of volcanic vents.⁵³

In 1887, the paramount chief of Ngati Tuwharetoa decided the best way to ensure that Tongariro would not be “cut up”⁵⁴ and sold piece by piece to Pakeha was to gift the summit to the Crown for the specific purpose of creating our first national park “for the use of both the Natives and Europeans.”⁵⁵ The Crown became the legal owner of Tongariro in 1887, but the government of the day took some seven years to fulfil the condition of the gift to give the summit national park status. In the interim, the government unsuccessfully sought ownership from Ngati Tuwharetoa of the surrounding Tongariro summit land for inclusion in the national park. The Members of the House believed the land was of no use to Ngati Tuwharetoa and valuable only for its scenery.⁵⁶ The eventual *Tongariro National Park Act 1894* allowed the Governor to forcibly take the land in return for monetary compensation, which was merely a phantom concession

52. Department of Conservation, *Tongariro National Park Draft Management Plan* (Wellington: Department of Conservation, 2003) at 26 [hereinafter *Tongariro*].

53. *Ibid.*

54. James Cowan, *The Tongariro National Park, New Zealand: Its Topography, Geology, Alpine and Volcanic Features, History and Māori Folk-lore* (Wellington: Tongariro National Park Board, 1927) at 30.

55. Correspondence relevant to the gift is contained in *Appendices to the Journals of the House of Representatives* (II) 1887 at G-4 [hereinafter *Gift Document*].

56. Minister of Lands, Hon. McKenzie in *New Zealand Parliamentary Debates*, vol. 80 (28 July 1893) at 322.

considering the government's perceived "uselessness" of the area to Ngati Tuwharetoa.⁵⁷ The Member for Northern Māori, Mr. Heke, called it a "monstrous piece of legislation" that "was entirely inconsistent with the *Treaty of Waitangi*."⁵⁸

Interestingly, the seven-year statutory delay has today been all but forgotten. Accordingly, the country celebrated a century of national parks in 1987. It is common to hear Aotearoa/New Zealand heralded as the "first Western country to reserve a national park in cooperation with its [I]ndigenous people" because of Tongariro National Park.⁵⁹ While the 1887 gift illustrates cooperation, the government's actions thereafter did not. It seems it has become convenient to gloss the seven-year delay.

The mountain remains in Crown ownership. While Ngati Tuwharetoa and the Crown are presently completing a deed of mandate with the view to enter *Treaty of Waitangi* settlement negotiations, it is unlikely that the iwi will gain complete ownership of the mountain. This is because of government policy, mentioned above, which stipulates that public conservation land is not readily available for use in *Treaty* settlements.

Taranaki/Mount Egmont

Aotearoa/New Zealand's second national park, the Egmont National Park, established in 1900, has as its centrepiece Taranaki/Mount Egmont, a near perfectly formed cone shaped mountain. Taranaki/Mount Egmont is linked by legend to the mountains of the central North Island. As Māori retell the story, Taranaki and Tongariro, both mountains personified as male warriors, came into conflict over Pihanga, the only female mountain in the region. A battle ensued. Taranaki lost, and was exiled from the range. On its tragic flight from its ancestral home, Taranaki carved out the bed of the Whanganui River.⁶⁰ Taranaki now stands alone on the western side of the North Island. The mountain is sacred to the Taranaki iwi.

Tension between the first settlers and Taranaki Māori concerning access to land increased after the signing of the *Treaty of Waitangi*. In 1860, war broke out with the government marching in troops to attack Māori villages. Legislation, including the *New Zealand Settlements Act 1863*, was used to confiscate millions of acres of land from Taranaki Māori, including Taranaki/Mount Egmont.⁶¹ As the new owner of the mountain, the government first protected it as a reserve, then, in 1900, declared the area a national park.⁶²

57. See s. 2 of the *Tongariro National Park Act 1894*.

58. *New Zealand Parliamentary Debates*, vol. 86 (11 October 1894) at 679.

59. Shultis, *supra* note 21 at 196.

60. The river originates high on Tongariro and descends through the central volcanic plateau towards Wanganui and the Tasman Ocean.

61. For an account of the Taranaki wars and Crown confiscations see *Taranaki Report*, *supra* note 29. See also the preamble and ss. 7 and 9 of the *Ngati Ruanui Claims Settlement Act 2003*.

62. See comment by McGuire, *supra* note 20.

Many decades later, the Crown acknowledged that much of the land contained within the original Egmont National Park boundary had been unfairly confiscated from its Māori owners. In order to amend this historical wrong, the *Mount Egmont Vesting Act 1978* returned ownership to Taranaki Māori, but at the same time stipulated that upon receipt of title, the descendants of the original Māori owners must automatically gift it back to the Crown. Doubt has since been cast on the credibility of the 1978 statute as a final settlement. In 1996, the Waitangi Tribunal stated that it found no evidence to suggest that the descendants of the original Māori owners agreed to the arrangement provided for in the *Act*.⁶³

Today, the rightful ownership of Taranaki/Mount Egmont remains a contentious issue. The Crown has acknowledged that Mount Taranaki is of great traditional, cultural, historical and spiritual importance to the iwi of Taranaki, but it has not reached any settlement in regard to the mountain.⁶⁴ While it is likely that the iwi are seeking something akin to ownership, the current government policy on the limited use of conservation lands in *Treaty* settlements will restrict the progress of negotiation. In the meantime, the Crown remains the owner of this “most graceful mountain.”

Aoraki/Mount Cook

Aoraki/Mount Cook is the highest mountain in Aotearoa/New Zealand. It lies within the Aoraki/Mount Cook National Park.⁶⁵ The mountain is the tupuna of the Ngai Tahu iwi and is considered their “most sacred of ancestors.”⁶⁶ The Crown assumed ownership of Aoraki/Mount Cook following Governor Grey’s instructions to Henry Kemp to purchase land in the South Island in the late 1840s.⁶⁷ Ngai Tahu protested the purchase almost immediately after it was made. At issue was whether or not the deed of sale included the mountains that run down the centre spine of the South Island. According to Ngai Tahu these peaks, including Aoraki/Mount Cook, were never included in the sale deed.

Ngai Tahu successfully brought their claim to the Waitangi Tribunal after more than a century of protest. The Tribunal recommended that the Crown restore to Ngai Tahu sufficient land to provide for the future economic, social and cultural development of the tribe.⁶⁸ In 1990, as a consequence of the Tribunal’s recommendations, the Crown entered into negotiations with Ngai Tahu. In late 1997, the Crown and Te Runanga o Ngai Tahu⁶⁹ reached agreement.

63. *Taranaki Report*, *supra* note 29 at 299.

64. For example, see *Ngati Ruanui, Deed of Settlement* (12 May 2001) clauses 2.6-2.8, online: <<http://www.ots.govt.nz>> [date accessed: 16 June 2004].

65. The Park name was officially changed to incorporate Aoraki in 1998: see s. 162(1) of the *Ngai Tahu Claims Settlement Act 1998*.

66. See Schedule 80 of the *Ngai Tahu Claims Settlement Act 1998*.

67. See “Kemp’s Purchase” in *Ngai Tahu Report: Volume Two*. Wai 27 (Wellington: Waitangi Tribunal, 1991) c. 8.

68. See *Ngai Tahu Report*, *supra* note 29.

69. A body established pursuant to s. 6 of *Te Runanga o Ngai Tahu Act 1996*.

The agreement is given effect to in the *Ngai Tahu Claims Settlement Act 1998*. A major feature of this *Act* is cultural redress, including making provision for Ngai Tahu to exercise tino rangatiratanga. The redress concerns both ownership and management.

With regard to ownership, the *Act* provides Ngai Tahu title rights to Aoraki/Mount Cook akin to those given to Taranaki in the *Mount Egmont Vesting Act 1978*. The 1998 *Act* vests ownership in fee simple in Ngai Tahu for up to seven days, but upon the expiry of those seven days Te Runanga o Ngai Tahu⁷⁰ must gift the mountain back to the Crown. The vestment is merely a symbolic gesture in line with government policy that the conservation estate is not readily available for use in *Treaty* settlements. Te Runanga o Ngai Tahu have yet to action the seven day vestment. They may not do so until all parts of the settlement have been effected. While some have commented that Ngai Tahu ought to action only part of the Aoraki/Mount Cook vesting provision—the taking of the mountain⁷¹—the government has ensured that this cannot occur. The 1998 *Act* states that if the deed of gift is not returned to the Prime Minister by 3:00 pm on the gift date then an escrow agent will be appointed.⁷² It then becomes the responsibility of the escrow agent to deliver the deed of gift to the Prime Minister. However, there is no statutory provision that can force Ngai Tahu to action the vesting order. In the meantime, the mountain remains, like the other two mountains, in the ownership of the Crown.

V A LOSS OF MANAGEMENT RIGHTS: HISTORICAL EXCLUSIVITY

As discussed, by the late 19th century, the Crown exerted ownership over most mountains to the exclusion of Māori. Māori were also prohibited from managing mountains, despite the guarantee in the *Treaty of Waitangi* that they had a continued right to exercise tino rangatiratanga over their own taonga. The Crown's presumption of management responsibilities upon acquisition of ownership was near to absolute. This part of the article discusses how the Crown excluded Māori from the management of sacred mountains, by examining legislation passed prior to the enactment of the present *National Parks Act 1980* and *Conservation Act 1987*.

70. See ss. 13-18 of the *Ngai Tahu Claims Settlement Act 1998*.

71. For example, Member for Parliament Joe Hawke stated if “the Crown gave back Maungakiekie [One Tree Hill] to Ngati Whatua Orakei ... if I had it for 7 minutes they would never get it back again, never. I am not giving ideas to Ngai Tahu about becoming deliberate breakers of a deed of settlement, but that is how I feel” in *New Zealand Parliamentary Debates*, vol. 571 (10 September 1998) at 11945.

72. Section 16(3) of the *Ngai Tahu Claims Settlement Act 1998*.

Tongariro

One condition of the paramount chief's gift of Tongariro to the government was that his son was to be appointed for life to the first Board established to manage the Tongariro National Park.⁷³ Thereafter, the Minister of Lands was to name a successor to the son on five-year terms. The chief's representative had all the same rights as others on the Board, including a right to vote. However, the representation right proved vulnerable. Buried in the *Reserves and other Lands Disposal and Public Bodies Empowering Act 1914* was a provision that entirely changed the Park's management regime.⁷⁴ The Minister of the Department of Tourist and Health Resorts became solely responsible for managing the park.⁷⁵ In 1922, the "very great injustice"⁷⁶ of the 1914 *Act* was recognized. The new *Tongariro National Park Act 1922* rectified the wrong; it reintroduced the Tongariro National Park Board as holding responsibility for managing the park, and reinstated that a successor to the son be appointed to the board. This right to representation on the management board has become a mainstay of subsequent national park legislation.

Before concluding this part, it is interesting to note a discussion that took place in Parliament in the 1920s. The Members of the House brainstormed ideas for better associating the mountain with the paramount chief who had gifted the summit land. The ideas included constructing a monument in recognition of the gift, publishing a book containing old Māori legends⁷⁷ and constructing a Māori village.⁷⁸ But the rationale for doing so was entirely monetary, rather than an acknowledgment of Māori rights pursuant to the *Treaty of Waitangi*. As stated by a Member of the House, "if we could show them Māori characteristics and the antiquarian instincts of the Māori—then the rich visitors who come to New Zealand"⁷⁹ would spend twice as much. The politicians at that time obviously felt comfortable acknowledging the association Māori had with the vicinity, but not that this should transpire into any type of rights. As one inquisitive Member directly asked the Minister of Lands, "what [are the] rights the Māoris have had in connection with these lands Have they, for example, the right of shooting pigeons? Are we going to deprive them of any rights they now enjoy?"⁸⁰ The answer was blunt. Replying that he had no knowledge of any rights, the Minister emphasized that the lands within the park boundaries were now owned by the Crown, implying ownership correlated to complete management responsibilities.

73. See ss. 4 and 4(1) of the *Tongariro National Park Act 1894* and *Gift Document*, *supra* note 55 at 1.

74. See s. 54(2). Only ss. 1 (the Long Title) and 2 (concerning land acquisition) of the *Tongariro National Parks Act 1894* were left standing following the enactment of this 1914 *Act*.

75. Section 9(a) of the *Tourist and Health Resorts Control Act 1908*.

76. Mr. Hockly, Member for Rotorua, in *New Zealand Parliamentary Debates*, vol. 198 (17 October 1922) at 226-227.

77. Member for Otaki, Mr. Field in *ibid.* at 233.

78. Member for Christchurch East in *ibid.* at 238.

79. *Ibid.* at 239.

80. Mr. Sidey, Member for Dunedin South in *ibid.* at 223.

Taranaki/Mount Egmont

In 1952, the first consolidated *National Parks Act* was enacted. Absent from it was any mention of Māori, other than the right of a descendant of the paramount chief of Ngati Tuwharetoa to sit on the Tongariro National Park management board. That changed in 1977. The *National Parks Amendment Act 1977* gave the local Taranaki iwi a statutory right to nominate one person to sit on the Egmont National Park Board.⁸¹ The achievement was hard won. When the 1977 *Act* was first introduced into the House as a bill, there was no provision for representation. Matiu Rata, the Member for Northern Māori, described the bill as “another example of the Government’s arrogance on matters affecting the Māori people.”⁸² The exclusive stance lay in the belief that national park land is owned by all New Zealanders and therefore the Minister of Lands should not be restricted in making appointments to national park management boards. The Minister stated, “Those members may be Māori, they may be pakeha, but they will all be New Zealanders who represent the national interest.”⁸³ Another Member of the House noted the fallacy of the argument: “If the Federated Mountain Clubs of New Zealand and the New Zealand Ski Association are specifically entitled to be represented, then why not another group with a significant and much more traditional right in that area—the Māori people?”⁸⁴ The bill was amended at the select committee stage to give the Taranaki Māori Trust Board the statutory right of representation. It was only the second board in Aotearoa/New Zealand’s national park history to do so.⁸⁵

Aoraki/Mount Cook

No legislative provision to include Ngai Tahu in the management of Aoraki/Mount Cook existed prior to 1980. In fact, as is discussed below, it was not until the late 1990s that Ngai Tahu were finally recognized as deserving a right of representation similar to that in place for Ngati Tuwharetoa and the Taranaki iwi. The absence of any legislative recognition for inclusion of Ngai Tahu in the management of Aoraki/Mount Cook was typical of early legislation. For the most part, it simply endorsed the Crown’s patronizing attitude that it knows best how to manage special land, such as mountains, despite Māori having done so for hundreds of years prior to the arrival of Pakeha. In recent years, that hardline attitude has started to diminish.

81. Section 2 of the *National Parks Amendment Act 1977* allowed the Minister of Lands to appoint one person on the recommendation of the Taranaki Māori Trust Board.

82. *New Zealand Parliamentary Debates*, vol. 413 (2 September 1977) at 2673.

83. Hon. V. S. Young, Minister of Lands, in *ibid.* at 2684.

84. Hon. Mrs. Tirikatene-Sullivan, Member for Southern Māori, in *ibid.* See s. 4(1) of the *National Parks Act 1952*.

85. The amendment was made as a result of the submission made by the Taranaki Māori Trust Board to the select committee. See discussion in the House: *New Zealand Parliamentary Debates*, vol. 416 (1 December 1977) at 4952-4954.

VI MANAGEMENT TODAY: *AD HOC* INCLUSIVITY

The *National Parks Act 1980* and the *Conservation Act 1987* state how most mountains in Aotearoa/New Zealand are to be managed. While there are no mountain-specific provisions in either *Act* (the legislation does not distinguish between the type of landscape within a national park, be it mountains, forests, sounds, seacoasts, lakes, rivers or other natural features), the fact that most peaks fall within national park boundaries make these provisions relevant. This part of the article focuses on three components of the legislation: the law's underlying management ethic; the inclusion of the *Treaty of Waitangi* in the *Conservation Act*; and the specific recognition and representation provisions stipulated in the legislation concerning Māori. These three angles provide a comprehensive glimpse into where Aotearoa/New Zealand is currently situated with respect to recognizing the importance of mountains to our Indigenous peoples. This part gives substance to the thesis put forward that while the present legislation is better than historical legislation, the current provisions still remain short of conclusively giving effect to the *Treaty*.

Management Ethic

The *National Parks Act* and the *Conservation Act* are both premised on a Western ethic of management that focuses on protection and preservation. It is relevant to investigate this ethic for it lays the foundation for how and why mountains are currently managed. This examination will provide a basis for the subsequent discussion of whether the current management ethic gives effect to the *Treaty* principles.

Section 4(1) of the *National Parks Act* declares that “for their intrinsic worth and for the benefit, use, and enjoyment of the public, areas of New Zealand that contain scenery of such distinctive quality, ecological systems, or natural features so beautiful, unique, or scientifically important that their preservation is in the national interest” must be preserved in perpetuity. Distinctly missing from this purpose is recognition of the spiritual, cultural and historic relationship Māori have with land, such as mountains, within the national park estate. Instead, the provision is simply premised on a Pakeha/Western management ethic. Significantly, it fails to state that national park landscapes are special to Māori for spiritual and cultural connections that depend on sustainable use. The *Conservation Act* similarly ascribes to the Western protection and preservation ideal. Conservation is defined in section 2 of the *Act* as “the preservation and protection of natural and historic resources for the purpose of maintaining their intrinsic values, providing for their appreciation and recreational enjoyment by the public, and safeguarding the options of future generations.”

The singular mandate of conservation through preservation and protection theoretically allows little opportunity for Māori to practice their own environmental ethic or to have it enforced. For example, the inability to pay homage to a resource through use disrupts the natural world order and risks the

loss of knowledge pertaining to the resource, including the appropriate manner in which it can be taken and used. This is a fundamental concern for Māori. While policy officially sanctions traditional uses of indigenous plants or animals for food or cultural purposes, such allowances are heavily qualified. For example, Māori have no right to take the flora or fauna if: other legislation prohibits it; demand is excessive; there are alternative sources outside the national park; there is intention to derive commercial gain or reward; or it will impact on other national park visitors.⁸⁶ Even if permission is granted, government officials will supervise gathering. In the case of protected native birds (such as kiwi and kereru (wood pigeons)), if the feathers are used to make korowai (cloaks), the korowai will be deemed government property for all time.⁸⁷ Not surprisingly, a Māori leader has aptly summarized the protection mandate as “hostile to the customary principle of ‘sustainable use’” and notes that the “spiritual linkage of iwi with indigenous resources is subjected to paternalistic control.”⁸⁸

In adopting a singular mandate of conservation, rather than a more encompassing plural (Māori/Pakeha) mandate, the *National Parks Act* and the *Conservation Act* fail to represent any significant shift towards providing for the Māori environmental ethic. The statutes do not recognize that, prior to Pakeha arrival in Aotearoa/New Zealand, these same landscapes were managed for hundreds of years in accordance with a sustainable use ethic. The legislation encapsulates a mono-cultural stance of preservation despite the fact that when the *Conservation Act* was enacted, there existed, on the world scene, a definition that was more accommodating of the Māori approach. The *World Conservation Strategy* defined conservation as “the management of human use of the biosphere so that it may yield the greatest sustainable benefit to present generations while maintaining its potential to meet the needs and aspirations of future generations.”⁸⁹

Such a definition in the Aotearoa/New Zealand context would, however, have proved very contentious, especially if the motive was to give effect to the Māori environmental ethic.⁹⁰ Many oppose any re-introduction of the Māori environmental ethic. They point to past experiences as evidence of why it would

86. See National Parks and Reserves Authority New Zealand, *General Policy for National Parks* (Wellington: Department of Lands and Survey, 1983); and New Zealand Conservation Authority, *Draft General Policy National Parks Act* (Wellington: New Zealand Conservation Authority, 2003).

87. See the *Wildlife Act 1953* and New Zealand Conservation Authority, *Māori Customary Use of Native Birds, Plants and Other Traditional Materials: Interim Report and Discussion Paper* (Wellington: New Zealand Conservation Authority, 1997) at 143-144.

88. Edward Ellison, “Deficiencies in Conservation Subsidiary Legislation” Report to the New Zealand Conservation Authority (25 July 2001) [unpublished].

89. International Union for Conservation of Nature and Natural Resources (IUSN), United Nations Environment Program (UNEP) & the World Wildlife Fund (WWF), *World Conservation Strategy: Living Resource Conservation for Sustainable Development* (Gland, Switzerland: International Union for Conservation of Nature and Natural Resources, 1980) at 3.

90. For example, while sustainable use concepts are applied to non-conservation resources in New Zealand, conservation resources are viewed as special, and in some instances, as the “jewels” of the Crown. See s. 5(1) of the *Resource Management Act 1991*: “The purpose of this Act is to promote the sustainable management of natural and physical resources.” While s. 9 restricts what activities can take place on land, s. 4(3) excludes the conservation estate from these restrictions.

be destructive to incorporate such an ethic into present-day mainstream practices. For example, common points of contention include the hunting of the moa (a giant flightless bird) to extinction and the use of fire as a tool for forest clearing. But, as Chanwai and Richardson have succinctly argued, this should not disqualify the ethic: “Pakeha development activities over the past 150 years have caused massive ecological damage, and yet this is not held to disqualify Pakeha society from seeking to improve environmental conditions today.”⁹¹ As Chanwai and Richardson stress: “What is important is the development of new cross-cultural approaches to resource management that synthesise the contributions of both European science and technology with the traditional knowledge and cultural world-view offered by [I]ndigenous peoples.”⁹²

It is possible for a plural, bi-cultural approach to the management of our national parks to develop. Already in this country, we have a few examples where respect is given to both the Māori environmental ethic and Western science.⁹³ One notable example is the return of title over certain small islands to Rakiura Māori.⁹⁴ Rakiura Māori now manage the islands as nature reserves and work with the Crown to develop a joint work program each year for the islands. In addition, the government funds research into the Māori cultural practice of catching titi (*Puffinus griseus* sea birds) on these islands. The research accords equal respect to Māori traditional environmental knowledge and ecological science.⁹⁵

The Māori and Pakeha association with the natural world can co-exist. The pathway forward for doing so lies in the *Treaty of Waitangi*.

***Treaty of Waitangi* Direction**

The *Treaty of Waitangi* guaranteed to Māori the continued right to exercise tino rangatiratanga over their taonga. As discussed above, the judiciary accepts that tino rangatiratanga exerts a principle of partnership operating between Māori and the Crown. Since 1987, legislation has specifically made the *Treaty* relevant to the management of mountains.

Section 4 of the *Conservation Act* states: “This Act shall so be interpreted and administered as to give effect to the principles of the Treaty of Waitangi.” In 1995, the Court of Appeal in *Ngai Tahu Māori Trust Board v. Director-General of Conservation*⁹⁶ held that the section 4 directive is applicable to all statutes

91. K. Chanwai & B. Richardson, “Re-working Indigenous Customary Rights? The Case of Introduced Species” (1998) 2 New Zealand J. of Environmental Law 157 at 163.

92. *Ibid.*

93. For a summary of recent initiatives, see H. Moller *et al.*, “Co-management by Māori and Pakeha for Improved Conservation in the Twenty-First Century” in P. Ali Memon & Harvey Perkins, eds., *Environmental Planning & Management in New Zealand* (Palmerston North: Dunmore Press, 2000) 156 [hereinafter *Environmental Planning*].

94. See ss. 333-337 of the *Ngai Tahu Claims Settlement Act 1998*.

95. See University of Otago Website: <<http://www.otago.ac.nz/titi/bicultural.html>> [date accessed: 16 June 2004]. See also Moller, *supra* note 93 at 163-164.

96. [1995] 3 N.Z.L.R. 553 (N.Z. C.A.) [hereinafter *Ngai Tahu Māori Trust Board*].

listed in the First Schedule of the *Conservation Act*. However, the Court added several qualifications. One is that if the statute in question has an internal reference to the *Treaty*, the reference will override the section 4 direction. Another is that if giving effect to the *Treaty* principles will mean that a provision in the statute will be overridden, the *Treaty* principle loses. Therefore, in the context of the *National Parks Act* (a statute which is listed in the First Schedule and has no internal reference to the *Treaty*), it must be interpreted and administered as to give effect to the principles of the *Treaty*, but only to the extent that this is consistent with its own provisions. Applying this reasoning, the provisions in the *National Parks Act* relating to preservation in the national interest will override any *Treaty* principle including a right to exercise rangatiratanga over certain taonga. The *Ngai Tahu Māori Trust Board* precedent is thus far-reaching and, in real terms, dilutes the impression first gained from the strongly-worded section 4 direction.

The *Conservation Act* attempts no definition of the actual principles of the *Treaty of Waitangi*. In fact, no government, court or Māori body has attempted to define them conclusively. This is appropriate, for the *Treaty* should be regarded as “a living document to be interpreted in a contemporary setting.”⁹⁷ In recent years, the Department of Conservation (“DOC”) and other associated bodies with national park management responsibilities have attempted to contextualize the direction.

The DOC Head Office has committed itself to promoting effective partnerships with Māori. The goal is that “tangata whenua work with the Department to achieve enhanced conservation of New Zealand’s natural and historic heritage.”⁹⁸ The indicator will be that “tangata whenua are supported by the Department to maintain their cultural relationship with taonga located in areas managed by the Department.”⁹⁹ This goal is recognized as one of the DOC’s seven key steps for the next five years.¹⁰⁰ However, the DOC appears to view partnership in a narrow manner as constituting consultation with Māori, committing its own staff to voluntarily undertake Māori cultural and language training, and increasing the number of Māori staff within DOC.¹⁰¹ These are important goals, but whether they encapsulate a Māori, or even a judicial, vision of partnership is debatable. For instance, absent is any expression to give effect to the Māori environmental ethic of kaitiakitanga.

Before concluding this part, it is worthwhile to mention the national park management plans.¹⁰² These plans are drafted by DOC conservancies and

97. *New Zealand Māori Council*, *supra* note 32.

98. Department of Conservation, *Statement of Intent 2003-2006* (Wellington: Department of Conservation, 2003) at 48 [hereinafter *Statement of Intent*].

99. *Ibid.*

100. Key step number six is to promote effective partnerships with Māori. Key steps one to five concern: protection and restoration of New Zealand’s natural heritage; minimizing biosecurity risk; protecting and interpreting New Zealand’s diverse historic and cultural heritage; promoting recreation; and engaging the community in conservation.

101. *Statement of Intent*, *supra* note 98 at 48-50.

102. Today there are 14 national parks: see Department of Conservation Website, *supra* note 3.

approved by the independent New Zealand Conservation Authority. The plans are reviewed every 10 years and, sometime after, new plans are published. The plans provide a clue as to how the DOC has contextualized the section 4 direction. Recall that the legal duty to give effect to the *Treaty of Waitangi* principles has existed since the *Conservation Act* was passed in 1987. The Department was slow to respond. Only one of six plans published in the later part of the 1980s mentioned the *Treaty*, and it did so in a brief manner, simply stating that “the Department will have full regard to the *Treaty*,”¹⁰³ despite the section 4 directive stipulating the threshold test as “to give effect to.” The draft and operative plans published in the 1990s were more inclusive, especially those published in the later part of the 1990s. Obviously *Ngai Tahu Māori Trust Board* provided policy makers with the impetus to consider what section 4 means for the DOC and its management practices.

The national park operative and draft plans for the three mountains discussed in this article exemplify the changing approach to management. The old Egmont,¹⁰⁴ and the current Aoraki/Mount Cook¹⁰⁵ and Tongariro¹⁰⁶ national park management plans, published in 1986, 1989 and 1990 respectively, contain no references to the *Treaty of Waitangi*. A mono-cultural Pakeha management regime existed in near entirety through legislation and policy.

In comparison, the new *Egmont National Park Management Plan*,¹⁰⁷ published in 2002 and the 2003 draft plans for Aoraki/Mount Cook¹⁰⁸ and Tongariro¹⁰⁹ all contain extensive references to the *Treaty* principles. In like manner, they state that it is a management objective to give effect to these principles. They add that this objective should only be pursued so long as it will not create any inconsistencies with the *National Parks Act*—the same approach taken by *Ngai Tahu Māori Trust Board*. They also elaborate on the meaning of the *Treaty* principles. For example, principles include: the Crown’s right to make law; Māori right to exercise authority over their own land; the need to act reasonably and in good faith; the Crown duty to take active steps to protect Māori interests and to avoid action which would create new *Treaty* grievances.¹¹⁰

The 2002 *Egmont* plan and 2003 *Tongariro* draft plan, in particular, discuss at length how the principles should be applied in regard to national park

103. Department of Conservation, *Te Urewera National Park Management Plan* (Rotorua: Department of Conservation, 1989) at 56.

104. Department of Lands and Survey, *Egmont National Park Management Plan* (New Plymouth: Department of Lands and Survey, 1986).

105. Department of Conservation, *Mount Cook National Park Management Plan* (Wellington: Department of Conservation, 1989).

106. Department of Conservation, *Tongariro National Park Management Plan* (Turangi: Department of Conservation, 1990).

107. Department of Conservation, *Egmont National Park Management Plan* (Wellington: Department of Conservation, 2002) [hereinafter *Egmont*]. Note that the more recent plans and drafts can be viewed at the Department of Conservation Website, *supra* note 3.

108. Department of Conservation, *Aoraki/Mount Cook National Park Revised Draft Management Plan* (Wellington: Department of Conservation, 2003) [hereinafter *Aoraki/Mount Cook*].

109. *Tongariro*, *supra* note 52.

110. *Ibid.* at 45-48; *Egmont*, *supra* note 107 at appendix 1; *Aoraki/Mount Cook*, *supra* note 108 at appendix f.

management. For example, the *Tongariro* draft plan lists “development issues” which need to be “resolved to the satisfaction of iwi and the department in order to achieve co-operative conservation management.”¹¹¹ Issues listed include: participation in conservation management projects; sharing of resource information; recognition of the parties’ perspectives; development of resource management approaches to achieve the protection of taonga; involvement in the process of considering concession applications; involvement in concession opportunities; and involvement in visitor services to achieve ongoing protection of taonga. The *Egmont* plan has policies pertaining to: strengthening “the achievement of conservation goals by drawing on the cultural values of Māori in the management of park”; ensuring “that the spiritual and cultural significance of Taranaki Maunga to hapu and iwi of the region is respected by the Department”; and investigating “mutually acceptable formal arrangements for levels of active involvement in the protection and management of [special places].”¹¹²

The draft 2003 *Tongariro* and 2002 *Egmont* plans are indicative of a positive new trend. This new inclusive approach represents a significant mind-shift from the 1920s when the Māori relationship with Tongariro National Park existed essentially only for monetary gain through tourism. These plans illustrate that with real commitment at the policy level, a middle ground between the two management ethics can be found and applied. This end goal is yet to be achieved, but at least the willingness to do so is now being expressed in DOC plans.

Recognition and Representation Rights

Besides the section 4 directive in the *Conservation Act*, certain other “Māori-specific” legislative provisions exist. Most provisions relate to Ngai Tahu because of the *Ngai Tahu Claims Settlement Act 1998*, an agreement between Ngai Tahu and the Crown to settle past *Treaty of Waitangi* breaches.¹¹³ This *Act* made numerous amendments to the *Conservation Act*. The Minister of Conservation, the New Zealand Conservation Authority and conservation boards are all now required to have particular regard to the advice of Te Runanga o Ngai Tahu in specific situations. To illustrate the extent of the provisions, it is worthwhile returning to Aoraki/Mount Cook. While the provision of vesting Aoraki/Mount Cook in Te Runanga o Ngai Tahu for a period of seven days has already been discussed in the context of ownership, this part briefly focuses on the provisions which affect its current management.

The *Ngai Tahu Claims Settlement Act* declares that Aoraki/Mount Cook is a Topuni. This statutory label is used to acknowledge “Ngai Tahu values,” meaning Ngai Tahu’s cultural, spiritual, historic and traditional association with

111. *Tongariro*, *ibid.* at 48.

112. *Egmont*, *supra* note 107 at 39-43: see paras 3.1.2 and 3.1.4.

113. Many provisions in the *Act* are aimed at cultural redress, restoring Ngai Tahu’s ability to give practical effect to its kaitiaki (guardian) responsibilities. For a discussion, see the Ngai Tahu Website <<http://www.ngaitahu.iwi.nz/office-claim-cultural-overview.html>> [date accessed: 16 June 2004].

the area.¹¹⁴ The legal significance of a Topuni is that Ngai Tahu values are afforded a certain measure of protection. For example, the New Zealand Conservation Authority or any conservation board must consult with Te Runanga o Ngai Tahu and “have particular regard to its views as to the effect on Ngai Tahu values of any policy, strategy, or plan.”¹¹⁵ The *Act* also declares Aoraki/Mount Cook to be an area pertaining to a “statutory acknowledgment.” This statutory label ensures that the Crown acknowledges statements made by Te Runanga o Ngai Tahu about its cultural, spiritual, historic and traditional association with the area. One such statement explains the genealogical traditions that link Ngai Tahu with Aoraki/Mount Cook and the continued special importance that the area has to Ngai Tahu: “The meltwaters that flow from Aoraki are sacred. On special occasions of cultural moment, the blessings of Aoraki are sought through taking of small amounts of its ‘special’ waters, back to other parts of the island for use in ceremonial occasions.”¹¹⁶ The legal effect of such statements is that authorities must “have regard”¹¹⁷ to Ngai Tahu association with particular areas and Crown ministers are empowered to enter into formal deeds of recognition.¹¹⁸ With respect to Aoraki/Mount Cook, a deed has been entered into requiring that the minister responsible for managing the statutory acknowledged area consult with Te Runanga o Ngai Tahu and “have particular regard” to its views in relation to the management or administration of Aoraki/Mount Cook.¹¹⁹ However, the effect of the provisions has proved limited. New Zealand’s Environment Court recently stressed that while it recognized “the real psychological and cultural importance of these statutory acknowledgements their main legal purpose seems to be procedural and/or consultative.”¹²⁰

The *Ngai Tahu Claims Settlement Act* also allows for the appointment of Te Runanga o Ngai Tahu as a statutory advisor to the Minister of Conservation in respect of certain sites, including Aoraki/Mount Cook.¹²¹ The Minister must “have particular regard” to Te Runanga o Ngai Tahu’s advice.¹²² The *Act* also states that the Crown acknowledges the cultural, spiritual, historic and traditional association of Ngai Tahu with taonga species such as native birds, plants, animals and fish.¹²³ When the Minister of Conservation makes policy decisions about the taonga species, Te Runanga o Ngai Tahu must be consulted and “particular regard” is to be had to its views.¹²⁴ The *Act* also provides for DOC protocols to be developed so as to provide Ngai Tahu with the potential to be

114. *Ngai Tahu Claims Settlement Act 1998* at s. 237.

115. *Ibid.* at s. 242.

116. See Schedule 14 of *ibid.*

117. *Ibid.* at s. 215(b).

118. *Ibid.* at s. 215.

119. *Ibid.* at s. 216. To see a copy of the Deed of Recognition for Aoraki, see *Aoraki/Mount Cook*, *supra* note 108 at appendix c.

120. *Kemp & Billoud v. Queenstown Lakes District Council*, [2000] N.Z.R.M.A. 289 (N.Z. E.C.) at 310. See also *Ngai Tahu Claims Settlement Act* at s. 217(b).

121. See *Ngai Tahu Claims Settlement Act*, *ibid.* at ss. 230-234 and Schedule 79.

122. See *ibid.* at s. 233.

123. See *ibid.* at ss. 287, 288 and 298.

124. *Ibid.* at 293. In regard to fish, see ss. 303 and 304.

more involved in the management of certain areas.¹²⁵ Te Runanga o Ngai Tahu are permitted to sit on the New Zealand Conservation Authority¹²⁶ and two Ngai Tahu representatives can sit on the conservation board responsible for managing Aoraki/Mount Cook.¹²⁷

Similar legal rights do not exist for other iwi. Ngai Tahu are in a unique position. For example, Ngati Tuwharetoa and Taranaki iwi have no specific legal rights to participate in the management of Tongariro or Taranaki/Mount Egmont other than through their preserved historical right to have a single representative on the relevant managing conservancy.¹²⁸ The cultural redress package for Ngai Tahu was a massive political success for them. Before being passed, the Māori Affairs Select Committee (the committee responsible for reviewing the bill) received many hostile submissions claiming that the proposed provisions gave “an unjustified dominance to Te Runanga o Ngai Tahu’s advice and interests,”¹²⁹ and that the provisions were outright undemocratic.¹³⁰ The Select Committee attempted to counter the concern by stating that “the views of Ngai Tahu will be given, all other things being equal, somewhat more weight than the views of parities that the law requires the administering authority only to have regard to. So it falls short of being a veto, but it rides higher than simply having one’s views considered.”¹³¹

While the inclusive provisions do not translate into self-management, the settlement package does reflect a negotiated outcome of partnership appropriate for Ngai Tahu. It represents a form of self-determination appropriate for this iwi. Bearing in mind that most conservation lands, including mountains, in Aotearoa/New Zealand are situated in the Ngai Tahu takiwa (territory) of the South Island, to have sought self-management would have meant taking responsibility for onerous introduced pest control, hut, track and fence maintenance and so on. Whether Taranaki iwi and Ngati Tuwharetoa will seek, on the one hand, similar or more extensive rights and, on the other, succeed in negotiating those rights with the Crown remains to be seen.

125. See *ibid.* at ss. 281-286.

126. *Ibid.* at s. 272. The Authority has a total of 13 members: see s. 6D(1) of the *Conservation Act*.

127. This is because the conservation board’s jurisdiction is wholly within the Ngai Tahu claim area. If the conservation board had fallen only partly within the Ngai Tahu claim area, then Ngai Tahu would be entitled to appoint one person to the board. See s. 273. See also s. 6P of the *Conservation Act*.

128. A lineal descendant of the paramount chief of Ngati Tuwharetoa must be appointed to the conservation board responsible for managing the Tongariro National Park (s. 6P(6)(b) of the *Conservation Act*) and the Taranaki Māori Trust Board has the right to recommend one person to be appointed to the conservation board responsible for managing the Egmont National Park (s. 6P(5)(b) of the *Conservation Act*).

129. Office of Treaty Settlements, Executive Summary, “Part 12 of the Ngai Tahu Claims Settlement Bill Mahinga Kai: General” NTS/OTS/42 (23 June 1998) at 1.

130. See Public Access New Zealand (Inc.), “Submission on Ngai Tahu Claims Settlement Bill” NTS/270 (11 May 1998).

131. As recounted by Hon. Jim Sutton, Member for Aoraki, in *New Zealand Parliamentary Debates*, vol. 571 (17 September 1998) at 12141.

VII PATHWAYS FORWARD

While numerous options exist to advance the ideal of partnership as envisaged under the *Treaty of Waitangi*, it is important to recognize that the present *Treaty* negotiation settlement process provides a means for partnership to be achieved. For instance, the ownership and management mechanisms in place for Ngai Tahu to exert their tino rangatiratanga over mountains in their area have been settled through agreement: the *Ngai Tahu Claims Settlement Act*. This process should be encouraged as it enables both *Treaty* partners to negotiate together to find their own solutions. However, because the playing ground is not level—the Crown adheres to policy that the conservation estate is not readily available for *Treaty* settlements—this avenue should not be solely relied upon. Even though the policy is nothing but a hangover of the past, reinforcing the paternalistic ideology that “the Crown knows best,” the government steadfastly clings to it.

Energy is needed to explore other avenues. Some of my own thoughts include the following options. The government should take responsibility for effectively accessing or amending the current legislative management regime to better reflect the *Treaty of Waitangi* guarantees. For instance, national park management plans should be consistent in their approach to recognizing *Treaty* principles. In this regard, the 2002 *Egmont* and draft 2003 *Tongariro* plans prove sound models from which to develop other plans. Additionally, qualified Māori should be encouraged to work towards being appointed onto management boards and adequate resources should be made available to encourage the public education of Māori relationships with mountains. The *National Parks Act* should be amended to reflect the importance of protecting mountains within national parks as a taonga to Māori. Amendments ought to require park management bodies to give effect to the advice of Māori on any matter that involves the spiritual, historical and cultural significance of mountains within parks. Both *Treaty* partners’ conservation values should be incorporated into the *Conservation Act*. A mandate of partial sustainability in favour of Māori may be an appropriate compromise between the Māori and Pakeha environmental ethics. Finally, the *Act* should be amended to ensure Māori have a right to sit on all conservation boards.

Of course, another option exists. New legislation could be enacted which endures ownership and management structural and policy change that is based on a partnership model where a form of self-management is given to Māori. Aotearoa/New Zealand could look at other jurisdictions for further ideas. The joint management agreements operative in Australia in regard to several of its national parks is an option that should be more fully explored.¹³² This more fundamental change in ownership and management philosophy for nationally significant ancestral mountains would nonetheless require a substantial mind-shift for the majority of those living in Aotearoa/New Zealand. At its basis, it

132. The Kahadu, Uluru-Kata Tjuta and Booderee National Parks are jointly owned with the Aboriginal Traditional Owners: see the Australian Government, Department for the Environment and Heritage Website <<http://www.deh.gov.au/parks>> [date accessed: 16 June 2004].

would require equal recognition and respect for the Māori environmental management ethic and Māori associations with mountains.¹³³

There is, however, little evidence that the country has reached the maturity required to debate such notions of partnership. For instance, as the Minister of Conservation remarked at the time Ngai Tahu were negotiating their settlement: "From listening to talkback radio and a few of the conservation organisations, one would think that Ngai Tahu had horns, tails, and probably a fork."¹³⁴ The recent furor over potential Māori ownership of the foreshore and seabed illustrates majority public opinion would little welcome increased rights of Māori to participate in the management and ownership of our mountains.¹³⁵ However, perhaps it is time to start addressing these "hard" questions and commit to being more pro-active in educating the public on such issues.

VIII CONCLUSION

The purpose of this article was to illustrate how legislation has historically, and currently, grappled with recognizing the rights Māori have to participate in the ownership and management of mountains special to this country. As has been shown, significant progress has been made in recent years. This is true for the three mountains case studied: Tongariro, Taranaki/Mount Egmont and Aoraki/Mount Cook. But, legislation overall remains piecemeal and *ad hoc*. The story told is nonetheless but one domestic example of the many Indigenous peoples who are presently struggling to make their governments recognize their rights to participate in the ownership and management of mountains special to them. This legislative examination of Aotearoa/New Zealand may act as some gauge for other Indigenous peoples. With the "Year of the Mountains" celebrations now behind us, hopefully international and domestic consciences have been raised sufficiently to address and preserve the unique relationships Indigenous peoples have with mountains.

133. See also discussion by H. Matunga, "Decolonising Planning: The Tiriti o Waitangi, the Environment and a Dual Planning Tradition" in *Environmental Planning*, *supra* note 93.

134. *New Zealand Parliamentary Debates*, vol. 567 (31 March 1998) at 7947.

135. See *Ngati Apa*, *supra* note 30. For public reaction, see articles posted online: Indigenous Peoples and the Law Website <<http://www.kennett.co.nz/law/indigenous/>> [date accessed: 16 June 2004]. Moreover, in January 2004, the National Party (second largest political party in Aotearoa/New Zealand, currently in opposition) launched its "nationhood" policy vowing to remove all "race-based" legislative provisions, including reference in legislation to the *Treaty of Waitangi*: see <<http://www.nationalparty.org.nz>> [date accessed: 16 June 2004]. See also media coverage of the supportive public reaction to the policy, for example: Ruth Laugensen, "Nats, Labour Share Lead in Shock Poll" *Sunday Star Times* (1 February 2004) A1 and Anthony Hubbard, "Brash Pandering to Pakeha, Stirring Divisiveness, Says Māori Leader" *Sunday Star Times* (1 February 2004) A4. See also J. Ruru, "A Politically Fuelled Tsunami: The Foreshore/Seabed Controversy in Aotearoa me te Wai Pounamu/New Zealand" (2004) 113 *J. of Polynesian Society* 57.