

# **Economic Re-colonisation: Financialisation, Indigeneity and the Epistemic Violence of Resolution**

## ***Abstract***

*The 1998 Ngāi Tahu-Crown Te Tiriti o Waitangi-Treaty of Waitangi settlement represents a long battle for justice concerning Te Waipounamu (South Island) of Aotearoa, New Zealand. We focus on the resolution practices of the New Zealand Government and the impacts of financialising historic harm as economic techniques dominate the articulation of resolution. The paper challenges three main ideas. First, it illustrates a logical impossibility in a process of 'resolution' determined by the Crown. Second, it challenges the financialisation rhetoric applied in 'resolving' harm caused. Third, it challenges the imposition of economic control in requiring Ngāi Tahu to establish a corporate structure to be eligible to receive settlement. These three elements constitute 'economic re-colonisation' by denying alternative approaches to resolution and knowledge and consequently, the rhetoric of resolution constitutes 'epistemic violence'.*

## **KEYWORDS:**

Resolution; Indigeneity; Financialisation; Epistemic Violence; Re-colonisation

*Kia kaha, kia manuwanui, kia u*  
Be strong, be steadfast, and be full of courage (a Māori proverb).

## INTRODUCTION

*'Behind the tattooed face, a stranger lurks, his face is white, he owns the land'*

*'Weep not for me, weep for yourselves, for the time will come when white feet shall desecrate my grave'* (Ngāi Tahu prophecies from 16-17th Centuries, quoted in Taylor 2016:48)

Indigenous conflict and historical harm, such as claims concerning Aotearoa New Zealand's [NZ] Te Tiriti o Waitangi-Treaty of Waitangi [TOW], challenge narratives of resolution and reparation (Cilliers 1998; Lashley 2000; Pasternak 2015; Howlett and Lawrence 2019). The TOW claims and settlement process involves Māori iwi (tribes) claiming that the Crown<sup>i</sup> committed wrongs with respect to Māori land, such as land confiscations, unfulfilled contractual promises, impoverishment, unfair land prices and duress. In 1985, the Waitangi Tribunal (established by the TOW Act 1975) was allowed to hear claims against the Crown dating from 1840. The Waitangi Tribunal makes non-binding recommendations on claims 'brought by Māori relating to actions or omissions of the Crown that breach the promises made in the [TOW]' (Waitangi Tribunal).<sup>ii</sup> The Office of Treaty Settlements [OTS], established in 1995 under the Ministry of Justice, is the Crown agency responsible for settling TOW claims (OTS 2018). The NZ political discourse concerning TOW claims, negotiations and settlements focuses on moving forward and various governments imposed time limits on the right to lay claims, focused on 'full and final' settlement and capped settlement budgets (McCormack 2016; Mutu 2018; McDowell, 2018). The OTS sets out the Crown's approach to negotiating and settling TOW claims in *Ka tika a muri, ka tika a mua: Healing the past, building a future* (OTS 2018).

NZ's history of 'Indigenous' relations is complex (Belich 1986; Mutu 2018),<sup>iii</sup> with historic, ongoing and new ethnic conflicts including Māori being denied sovereignty pursuant to the

TOW,<sup>iv</sup> unfair land purchases, land confiscations, historical policies of assimilation that denied “Māori” culture through the early 1900s, comparative socio-economic disparity for Māori, over-representation of Māori in negative health, income, employment and imprisonment statistics and issues arising post-Treaty settlements (Rumbles 1999; Banner 2005; McCormack 2016; 2017; McDowell 2018; Mutu 2018). Through Spivak (1999:331-332), we would suggest this current political debate operates to deny Indigeneity, as the imperative ‘is to fix the critical glance not specifically at the putative identity of the two poles in a binary opposition, but at the hidden ethico-political agenda that drives the differentiation between the two’, as colonial relations involving muting or silencing Indigeneity (Spivak 1982; 1985; 1999; 2014).

This paper explores the historical harm caused to Ngāi Tahu (a Māori iwi; tribe) by the coloniser (the Crown). Our paper does not critique Ngāi Tahu - our concern is the Crown. Ngāi Tahu were forcibly impoverished through Crown wrongs and neglected by the Crown despite repeated attempts to seek justice for historic harm. We examine the 1998 Ngāi Tahu settlement and the Crown’s attempts at redress concerning Crown purchases of NZ’s Te Waipounamu from 1844 to 1864. The paper focuses first on how the NZ Government reinforces and redefines historic harm through financialisation and employs that ‘financialisation’ to ‘resolve’ harm by focusing on valuation, price and financial redress. Second, this paper argues that the Crown’s insistence on Ngāi Tahu’s incorporation pursuant to NZ statutory law to be eligible for settlement constitutes a form of ‘economic re-colonisation’ (McCormack 2016; 2017).<sup>v</sup> In sum, we argue that the financialisation of harm and economic re-colonisation constitute ‘epistemic violence’ embedded in a rhetoric of resolution (Spivak 1988).

As a study of ‘epistemic violence’, the first section examines critical geography literatures concerning financialisation, land, neoliberalism and Indigeneity. The second section overviews

the historic injustices committed against Ngāi Tahu, as recognised by the Waitangi Tribunal in Wai 27 (1991) and the TOW settlement between the Crown and Ngāi Tahu (Ngāi Tahu Claims Settlement Act 1998). The third section examines the ‘violence’ of the resolution process in muting the Indigenous voice. This includes the Crown determining the settlement process and timeframe, redefining the harm as financialised and imposing a financialised settlement contingent on Ngāi Tahu’s incorporation, as an appropriate governance structure to the Crown. The final section then reflects on the implications of this ‘epistemic violence’ in closing comments.

## THE IMPACTS OF FINANCIALISATION ON INDIGENOUS COMMUNITIES

### Financialisation and Land

Central to our contribution is the impact of the Crown determining the process for resolving harm, defining how Ngāi Tahu could present its harm, how that would be heard, and how the Crown determined the mechanisms of resolution, including a financialised quantum in settlement. The Crown claims that this process constitutes ‘full and final’ resolution (see section 461(1) of the Ngāi Tahu Claims Settlement Act 1998).<sup>vi</sup> Mutu (2018) and McDowell (2018) illustrate how the focus of the Crown in settlement was on claims extinguishment rather than claims resolution (see also Mikaere 1997; Rumbles 1999; Coyle 2011; Joseph 2012; Boast, 2016). McDowell (2018, p. 607) argues:

... treaty claims settlements were actioned to unpick the legal rights Māori gained through [*New Zealand Māori Council v Attorney General* 1987] by diverting Māori away from the [Waitangi Tribunal], containing the financial risks posed by the tribunal, maintaining public acceptability and winding back Māori rights and Crown obligations to a time when settlement were at the discretion of politician, not the judicial system.

Tauri and Webb (2011) argue that the Treaty settlement process operates to constrain the voices, political opportunities and protest actions of Māori. Additionally, we embed our contribution in significant critical human geography literature that challenges the politics of

the settler-discourse of recognition with respect to Indigeneity (see, for example, Borrows 2002; 2010; Bhandar 2004; 2007; 2011; Palmer 2006; Coulthard 2007; 2014).

Our contribution explores the nature of financialised resolution as an approach to hearing historic harm framed through a juncture of critical geography and financialisation. Critical geography literature suggests that the complexity of financialisation, modern finance and accounting requires demystification (Christophers 2009; 2016; Aalbers 2018; Cameron 2006).<sup>vii</sup> Our case study contributes to explorations of the geographies of sovereignty and financialisation by exploring ‘resolution’, ‘hearing harm’ and financialisation in an Indigenous space (McCormack 2012; Mountz 2013; Coulthard 2014; Birch and Siemiatycki 2016). Significant geography literature examines how subjects are constructed as ‘financialised’ through money and finance, financial subjectivities and neoliberalism (Peck *et al.* 2010; Hall 2011; Kear 2012; Peck and Theodore 2012; McCormack 2012; 2016). While geography research examines the influence of financial markets on the economy, polity and society (French *et al.* 2011), there are calls to further examine the spatial and cultural operation of financialisation (Leyshon 1995; 1997; 1998). Financialisation influences all areas of life including nature, land, infrastructure, health, energy and development agendas (Sayre 2008; Dalby 2013; McCormack 2016; 2017). Mawdsley (2018) calls for further exploration of the threats posed by financialisation and the expansion of calculative practices in different geographical contexts (Hall 2011; Bassens and Van Meeteren 2015). Thus, our paper contributes to this literature through examining the Crown’s approach to settling the Ngāi Tahu’s Treaty claim and the impacts of neoliberalism and financialisation on that settlement.

Current critical geographical research explores how the imposition of financialisation, monetisation and commodification with respect to land reinforces control and domination

(Christophers 2016; Kay 2017). Mollet (2016), in a Latin American context, examines how development activities re-operationalise a post-colonial ‘savagery’ that justified colonial land-grabbing from Indigenous populations, enabling the imposition of control. Both AlShehabi and Suroor (2016) and Ward and Swyngedouw (2018) examine the impact of financialisation within a neoliberal agenda, as land becomes a financial asset dominated by powerful groups in socio-spatial struggles. We do not wish to imply that financialisation is only a modern issue, as financialisation was a central feature of colonial dispossession. For example, the British Crown paid £14,750 pounds for 34.5 million acres for Ngāi Tahu land.<sup>viii</sup> There are significant instances of dispossession by the British Crown from Indigenous peoples on financialised terms and the prime beneficiary of dispossession was the Crown, its agents and privileged (chosen) elites. Neu (2000:175) similarly looks at an accounting example of financialisation in the Canadian colonial context:

... accounting simultaneously functioned as a discursive field constructing/rationalizing the culture of colonialism, an active agent in expropriation and as a settling up mechanism that apportioned the spoils of colonialism and represented them in monetary terms.

In the NZ context, land confiscations from Māori involved in the NZ Wars with subsequent fragmentation through sales or gifts of land on individualised titles and the Crown’s right to pre-emption (the right of first refusal on Māori land) under Article II of the TOW are examples of colonial financialisation concerning land. Colonisation and financialisation were co-producers of the historical harm subject to review in this paper. What is important, though, is that financialisation within a neoliberal agenda seeking resolution has impacts with respect to the politics of Indigenous recognition (Borrows 2002; Bhandar 2011). Financialisation delimits the nature of ‘recognition’ itself as it is a totalising logic that is in opposition to Borrow’s (2002) argument for pluralism. It is also totalising from the perspective of the Indigenous community because compensatory damages might appear as the only avenue for resolution. We detail in the second half of the paper how financialisation subject to the neoliberal agenda

constitutes a form of epistemic violence as it operates to silence or mute Indigeneity (Fanon 1963; Priyadharshini 2003). Financialisation, as a settlement device, re-describes the dialogic capacity of the colonised, as the neoliberal agenda both ‘others’ (as ‘in or ‘out’) and ‘dehumanises’ (by focusing harm inflicted as economic rather than social or cultural) contemporaneously.<sup>ix</sup> We use the term ‘re-description’ deliberately to illustrate the politics by which neoliberal governance reconceptualises, renames, re-weights meaning and normatively revalues indigenous harm. Redescriptions ‘assign different causes, a different state of mind and a different motive for what was done’ (Skinner 2002:183; see also Howarth and Griggs 2006, Carter and Warren 2019). The power of the Crown to determine the forum, format and scope of hearing historic harm in the NZ context is illustrative of a re-description, because the Coloniser taking the dominant position creates the conditions of possibility by which the subaltern ‘speaks’ (Spivak 1988). Examples of ‘muting’ involve the dominant speaking for the subaltern, disqualifying the voice of subaltern, or permitting the subaltern to ‘speak’ within the dominant group’s political ideology (Gidwani 2008). This is the role of financialisation within a neoliberal agenda and it is this *violence* that is at the core of postcolonial theory for Spivak (Norman 1999:353). The violence of financialisation is persuasive, as all other alternative solutions are crowded out. Galván-Álvarez (2010:12) explains epistemic violence as ‘violence exerted against or through knowledge’, which constructs certain ‘epistemic frameworks’ to ‘legitimise and enshrine’ domination and delegitimise other ways of knowing (Garbe 2013). Dotson (2011:238) characterises epistemic violence as a refusal of reciprocity central to the colonial system and financialisation is an exemplar of a refusal of reciprocity (Gidwani 2008).

Financialisation (quantum) is a central mechanism of resolution within NZ’s settlements approach (OTS 2018:81-89) and reflects ‘a neoliberal social, political and economic framework that was implemented in NZ in the mid-1980s’ (McCormack 2012:421).

McCormack (2012:422) illustrates that with respect to Indigeneity, ‘neoliberal practices ... result[ed] in a proliferation of newly propertised things’ and this is both “facilitating” and “inhibiting” to Indigeneity, particularly when “the distinctiveness of Indigenous social and cultural formations, political and economic structures may be further realigned to better fit the neoliberal state” (see also Trigger and Dalley 2010). Impacts of this approach to resolution include ‘estrangement’ between ‘created’ governance organisations and the Indigenous communities they represent (Rata 2000; Joseph 2000), a shift from communal common property to individualised rights (McCormack 2010) and little success in raising Māori out of poverty (Lashley 2000). Central to the neoliberal, financialised approach to resolution is that Treaty settlements are not reparative, restorative nor about community empowerment:

The settlement process itself was birthed with neoliberalism so it is not altogether surprising that the ‘things’ returned, and the bodies to which these are repatriated, are meaningful only within the confines of neoliberal economic imaginings (McCormack 2012:430)

Compensation is an inherent technology of neoliberal governance (Rogers and Wilmsen 2019). A critical geography literature examining resettlement illustrates the role of compensation in expanding the commodification of land, assets and natural resources (Nielsen and Nielsen, 2015; Green and Baird 2016). At the same time, compensation favours elites, as those in power control the terms of compensation (Wilmsen and Webber 2015). Financialised compensation reifies power relations and constrains the manner by which subaltern groups can speak by redefining harm as economic (Rogers and Wilmsen 2019). Furthermore, the financialised compensation lens largely ignores the historical, social or cultural harm. While the role of compensation has been less explored in the Indigenous settlement context, financialised compensation illustrates the power of the neoliberal governance approach with respect to resolution as compensatory damages perfects an agenda around extinguishing claims by redefining harm as financial (Tauri and Webb 2011; Mutu 2018; McDowell 2018). The financialised approach to Treaty settlements perfects the incorporation of Indigeneity into the

neoliberal system and this either silences Indigeneity (Spivak 1982; 1985; 1999; 2014) or rewards certain Indigenous communities that most resemble neoliberal structures (see, Lashley 2000; Rata 2000; McCormack 2012; 2016). The impact of the compensation approach to the settlement of social and historic injustices is to limit the form and scope of resolution. Neoliberal concerns with budgets, with State affordability and with efficacy and efficiency, for example, all impact upon the financialised approach to resolution (McCormack 2012, 2016; Rogers and Wilmsen 2019). Engaging with the neoliberal approach to financialisation further functions assimilation.

### Resolution and Indigeneity

Our focus is on examining the financialisation of historic harm in resolution. Ngāi Tahu's historic harm derives from land sales and the Crown's failure to uphold contractual promises. We suggest that the Crown's employment of financialisation as the primary means of resolving historic harm causes new, subsequent harm. Human geography research examines varieties of discourses concerning Indigeneity. Examples of this work include discussions concerning the importance of counter narratives (Barker and Pickerill 2012; McCormack 2012), the importance of Indigenous knowledge (Borrows 2002; Laurie *et al.* 2005) and the exclusion of Indigenous interests through environmental or economic discourses (Grydehøj and Ou 2017; McCormack 2017; Bosworth 2018). Further work focuses on power structures, calling for Indigenous peoples to define Indigenous interests (Gibson 1999; Bhandar 2011) and identifying how legal and governmental decisions continue to dispossess Indigenous populations (Palmer 2006; Coulthard 2014; Howlett and Lawrence 2019). Castree (2004), for example, examines discourses concerning Indigeneity and the struggle for recognition, locating struggles concerning definition, the status of the Indigenism project and conflict over resources. Our contribution joins others as illustrations of the struggles of Indigeneity against colonial

spatial relations (Andreasson 2010; da Silva 2018). Tomiak (2017:934) explores in a Canadian context how the neoliberal project dispossesses Indigenous people through privatising land, arguing, '[t]here are serious limitations with respect to how settler law can function as a framework for advancing Indigenous self-determination'. Tomiak (2017) argues that privatisation normalises dominant property relations. McCormack (2016) argues similarly, in the NZ context, that the process of settlement forces neoliberal governance mechanisms onto Māori and that this changes the nature of traditional Indigenous inter-relationships (Rata 2000; McCormack 2012; 2017). The principle issue is marginalisation (or muting) as in Indigenous struggles with the coloniser, the coloniser's account tends to be privileged over other accounts (Mollett 2015). This results in a situation where colonisers suggest that Indigenous people should 'get over it' (Gahman 2015:314), which privileges a relativist, epistemological way of knowing over alternatives (Demeritt 2001).

Similarly, Gibson (1999:63) identifies a circularity embedded in discourses of appropriation in the Australian context:

Regardless of the means by which the sovereignty over land was acquired (by force, by treaty, etc.), all inhabitants of that territory (prior or otherwise) could only appeal to the courts of that new sovereign power, under the rights and laws recognised by the new sovereign power.

This circularity of appropriation is central to colonisation: the coloniser 'takes' land by force, treaty, purchase, contract or by law, but the coloniser determines mechanisms for redress within their legal and political systems (Gibson 1999; Borrows 2002; Bhandar 2011; McCormack 2012). The Crown, in our case study, perfect their appropriation by purchasing the land, making contractual promises, failing to perform said promises, denying wrongdoing for over 100 years, determining the legal framework for settlement, redefining the harm as primarily financial, determining quantum and imposing neoliberal governance structures on Ngāi Tahu as a condition of settlement. The impact of this circularity is, in effect, to appropriate the Indigeneity

as when Indigenous peoples call upon the nation-state to recognise their rights, the nation-state becomes the arbiter of Indigeneity (Jackson and Warren 2002; Wainwright and Bryan 2009; Ybarra 2013).

Property rights are complex in colonisation (McCormack 2016; 2017). Tensions manifest spatially, as Indigenous peoples often ascribe to collective ownership, while colonists tended to impose individualised property regimes (Boast 2016). The complexity manifests culturally as well, as the imposition of individual property rights based on material value displaces Indigenous cultural understandings of property as a social construct embodying deeper social-cultural values (Coombes *et al.* 2012; Howlett and Lawrence 2019). McCormack (2011; 2016) sees this as a central pillar of neoliberal approaches to resolution. In a politics concerning recognition, the state seeks to reconcile Indigenous claims by accommodating the Indigenous identity within Crown sovereignty (Rumbles 1999; Borrows 2002; Coulthard 2007; Pasternak 2015). Thus, Indigeneity is only validated if it fits within the colonial political, economic and legal frameworks (Bhandar 2011; Ybarra 2013; Coulthard 2014; McCormack 2016). As ‘political possibilities are constrained by fixed structural domination’ (Altamirano-Jimenez 2013:19), Indigenous groups have no control over the outcomes of propertisation and this is reinforced through the neoliberal approach to property rights (McCormack 2011; 2016). Coombes *et al.* (2012:817) characterise this appropriation circularity as violence:

... propertization often miscarries, leading to a ‘restricted economy of owning, knowing and being’ where Indigenous groups may own land, and even have their ecological knowledge about it revered, but they cannot use it gainfully ... Hence, by ‘recognizing and valorizing certain Indigenous ... relations with land as property ... these relationships are constrained. Such recognition reinforces state power and deepens capitalist social relations’.

The coloniser, spatially and culturally, misrecognises, colonises, constrains, denies, appropriates, controls, subsumes and governs Indigeneity (Coulthard 2014; Hall 2015; McCormack 2016). Consequently, the imperative is scholarship that critically interrogates the

increasing challenges faced by Indigenous peoples (Coombes *et al.* 2012; Radcliffe 2017). Geography's engagement with indigeneity refocuses our attention on the impact of disciplinary practices, including financialisation, propertisation (Rata 2000; McCormack 2016; 2017), attempts at reconciliation (Lashley 2000), apologies (Coombes *et al.* 2013), climate change (Cameron 2012; Haalboom and Natcher 2012), opportunities for (and denial of) entrepreneurial behaviour (Bargh 2011) and the environmentalist approach to planning (Petheram *et al.* 2011).

Coulthard (2014:179) illustrates that 'settler-colonialism has rendered [Indigenous people] a radical minority in [their] own homelands' (see also, Pulido 2018). While resolution may constitute an attempt to correct historical harms caused by settler societies, the circularity of appropriation suggests that the coloniser determines when and how resolution takes place and in what form, structured within colonial legal, political and economic systems. This resonates with Roseberry's (1989) examination of the reification of meaning and action in unequal social relationships and distributions of power through history and anthropology (see also McCormack 2016). As Coulthard (2014:22) argues, this approach to reconciliation is presented as:

... the process of individually and collectively overcoming the harmful "legacy" left in the wake of past abuse, while leaving the present structure of colonial rule largely unscathed.

The impact of the structural power imbalance (the "settlers' myth") results in different discursive positions. The settler myth may operate discursively to suggest an absence, in the sense that Indigenous peoples were not there or are present (Coulthard 2014). A more extreme settler myth discourse may focus on erasure, in the sense that Indigenous peoples would die out or assimilate (Pasternak 2015; Howitt 2019). However, the most common settler myth discourse focuses on the denial of Indigenous sovereignty, nationhood and rights (Borrows 2010; Coulthard 2014; Howlett and Lawrence 2019). Radcliffe (2019:5) suggests:

Colonising societies assume and assert not only their own superiority, but also the inferiority of others. They (we?) see their (our?) own privilege as normal and reasonable. They (we?) fail to see, understand or take responsibility for the mess and suffering upon which their (our?) privilege relies.

Such discourses effect a violence on Indigenous peoples that operates simultaneously in the past (by reproducing a ‘convenient’ understanding of history), in the present (through social, economic, cultural and political opportunities) and into the future. Coulthard (2014:152) argues that ‘[s]ettler-colonialism is territorially acquisitive in perpetuity’. This current and future impact is absent from the ‘settler myth’, as the resolution of historic harm is rooted ‘firmly in the past’ so as to move forward (Coulthard 2014:22). For example, the OTS (2018) entitles their approach to settlement as, *Healing the past, building a future* (Ka tika a muri, ka tika a mua). Consequently, as Howitt (2019:2) illustrates, the ‘settler myth’ means that:

there is no need ... to revisit history, to stir up old memories, because, say the powerful, things are already settled ... The privileged and powerful ... ask “Why can’t ‘we’ just move on? Let’s focus on the future, not the past”.

Rumbles (1999) reinforces this in the NZ context arguing that focusing on historic harm operates to cleanse that history, maintain current power relations and annul settler guilt by focusing on a biracial postcolonial identity. Mutu (2018) and McDowell (2018) suggest that this desire to ‘move on’ constitutes claims extinguishment rather than resolution. McCormack (2016:240) affirms and illustrates the impact of this settler-domination:

... the power to decide the composition of the claimant and post-settlement groups creates frictions and sets in place a new era of silencing ...

... the repatriation process — being embedded in the broader programs, philosophies, and practices of neoliberalization — is implicated in the unequal distribution of the benefits of settlements, the emergence of new types of social stratification, and the necessity of innovating new ways to marry customary and market obligations.

McCormack’s (2016) focus on the future impact of settlements illustrates a fluidity within the concept of time. For Indigenous peoples, the link between yesterday, today and tomorrow is a lived, embodied experience, and the actions of today and tomorrow operate to reinforce historic harm as well as introduce new harm. A prime example of this is a human geography study of

Yolŋu women in Arnhem land in Australia (Bawaka Country *et al.* 2017). The concept of time as a multiplicity was a central lesson:

...we have made time/s, been time/s, lived time/s, attended to time/s as they communicate with us, and practiced being in the moment of co-becoming together, a moment that co-becomes with what has gone before and what will come. Time/s have become the eternal present/past/future, and we have woven ourselves into more-than-linear multiple patterns of co-emergence and responsibility, the patterns and rhythms of Yolŋu Law/lore, that underpin, allow and bring forth Country (Bawaka Country *et al.* 2017).

The linearity of the concept of *time* for colonisers and as expressed through the simplicity of resolution (at a moment in *time* for all *time*) is often contra to the interwoven concept of time lived by many Indigenous peoples. Thus, the impacts of financialising historic harm redescibes yesterday's harm and introduces new harm. We consider this an epistemic violence and to illustrate this we present Ngāi Tahu's struggle for redress.

#### NGĀI TAHU AND LAND SALES

*The narrative that follows will not lie comfortably on the conscience of [NZ], just as the outstanding grievances of Ngāi Tahu have for so long troubled that tribe and compelled them time and again to seek justice. The noble principle of justice, and close companion honour, are very much subject to question as this inquiry proceeds. Likewise, the other important equities of trust and good faith are called into account and as a result of their breach sadly give rise to well grounded iwi protestations about dishonour and injustice and their companions, high-handedness and arrogance (Wai 27 1991:11).*

Approximately 80 percent of Te Waipounamu is represented within Ngāi Tahu's takiwā (tribal area) and Ngāi Tahu holds rangatiratanga (right to exercise authority) and exercises kaitiakitanga (guardianship) over that land under legislation such as the Resource Management Act 1991. Figure 1 depicts this mana whenua (authority):<sup>x</sup>

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Insert Figure 1 about here

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Ngāi Tahu (n.d.) had significant interactions with Europeans prior to the TOW, initially focused on supplying provisions:

[Whaling] stations were established from 1835 under the authority of local Ngāi Tahu chiefs ... the tribe was no stranger to European ways. When seven high-ranking southern

chiefs signed the Treaty of Waitangi in 1840, it was seen as a convenient arrangement between equals.

What this illustrates is that the relationship between Ngāi Tahu and settler-Europeans involved a variety of resources beyond land, including food, fisheries and culture and that trade was common. However, co-existence between settler-European and Māori was not entirely peaceful with mixed interactions including Whalers, settlers, the NZ (settler) Company and the British Crown and its agents (Wanhalla 2007). In exploring this case, there are three critical moments for Ngāi Tahu: a) the signing of the TOW; b) the Crown purchases of Ngāi Tahu land; and c) the failure of the Crown to fulfil promises made in land sales.

Ngāi Tahu signed one of the seven ‘copies’ of the TOW presented to iwi (tribes) around NZ. The original TOW was signed 6 February 1840, but it was not until late-May 1840 that Ngāi Tahu had opportunity to consider the Treaty. Ngāi Tahu signatories to the TOW include John Tikao, Iwikau, Tuhawaiki, Kaikoura, Taiaroa, Koroko, Karetai and at least nine other chiefs. However, prior to Ngāi Tahu signing the TOW, Lieutenant-Governor Hobson (the British Crown’s NZ representative) proclaimed British Sovereignty over the North Island by *cession* under the TOW and over the South Island and Stewart Island by right of *discovery* on 21 May 1840:

Ngāi Tahu, whose Māori predecessors have occupied Te Wai Pounamu for upwards of one thousand years, take umbrage at the notion that the British discovered ... the South Island (*Wai* 27 1991:212).

The effect of the *discovery* proclamation is akin to *terra nullius* in Australia (Howitt 2019; Howlett and Lawrence 2019).

Article Two of the TOW gives a right of first refusal (pre-emption) to the Crown to purchase Māori land, and the Crown established native land commissioners. Between 1844-1864, the Crown purchased 34.5 million acres of Ngāi Tahu land for £14,750. These sales constituted

nearly half of NZ's total land mass and left Ngāi Tahu impoverished with 35,757 acres. During the sale negotiations, Ngāi Tahu maintain that the Crown promised to set aside ten percent for Ngāi Tahu reserves and to establish schools and hospitals (*Wai 27 1991*).<sup>xi</sup> Ngāi Tahu entitle these purchases the 'Nine Tall Trees',<sup>xii</sup> and they include purchases in Otakau (Otago), Canterbury, Banks Peninsula, Murihiku (Southland), North Canterbury, Kaikoura, Arahura and Rakioura (Stewart Island).<sup>xiii</sup> The Waitangi Tribunal (*Wai 27 1991:24-25*) determined that:

... these [land purchases] resulted in the near total denial of Ngāi Tahu's rangatiratanga, their confinement to a handful of totally inadequate reserves, and the inevitable tribal disintegration and impoverishment of a proud and loyal tribe.

Ngāi Tahu lost access to food gathering and traditional resources such as greenstone (pounamu) and burial grounds. The Crown began defaulting on the negotiated terms in 1849 (*Wai 27 1991*).

Ngāi Tahu sought redress for this harm in 1868 by raising petitions with the NZ Parliament, the British Crown and the Native Land Court. The Government established the Smith-Nairn Commission 1879-1880 to consider the South Island land purchases. The Commission wanted to publish a finding that the Government should have set aside more reserves for Ngāi Tahu, but the Government prevented this finding being published (*Wai 27 1991*). Judge MacKay presided over a Royal Commission, established in 1886-1887, and concluded that a 'substantial endowment' of land gifted to Ngāi Tahu would go some way to 'right so many years of neglect' (*Wai 27 1991:172*). In response, the NZ Parliament establishing a Joint Committee to 'consider and report' on the claims of Ngāi Tahu with respect to Judge MacKay's determination (*Wai 27 1991:1006*). This Joint Committee, concluded that:

... no promises of reserves of land have been made which have not been fulfilled, and that at the negotiations no promises of tenths were made or held out (*Wai 27 1991:1006*).

A further Joint Committee, established in 1889, found that all promises made during land sales had been fulfilled, but that it might "yet be found highly expedient that more land should be

provided where the provision proves to be insufficient to afford Natives a livelihood” (*Wai 27 1991:1008*). Ngāi Tahu’s concerns were set aside and they received no redress. Judge Mackay, in 1891, was appointed to a new Royal Commission to consider Ngāi Tahu’s plight. The report graphically depicts an impoverished tribe and found no reason to disagree with his original Royal Commission: 44 percent of Ngāi Tahu had no land, 46 percent had “insufficient” land, and only 10 percent had land sufficient to meet future economic needs (Ngāi Tahu: Our Stories 2017a). This pattern of request, committee of inquiry and side-lining continued until 1920, with seventeen Parliamentary inquiries into Ngāi Tahu’s claims concerning the Crown’s failure to fulfil promises or the state of Ngāi Tahu’s. The Waitangi Tribunal concluded: ‘It is a story of seemingly endless delay and procrastination’ (*Wai 27 1991:1048*).

Ngāi Tahu continued its search for redress in the belief that the Crown should act *justly* and honour its promises. There are two Crown actions that sedimented a financialised approach to resolution in response to Ngāi Tahu: The South Island Landless Natives Act 1906 and the Ngāi Tahu Claim Settlement Act 1944. Following Judge MacKay’s second Royal Commission, the Crown did agree to ‘act’ and tasked Judge MacKay and the Surveyor-General, Percy Smith to identify ‘landless’ Māori and assign them land parcels. An Act of Parliament was passed and section 3(1) of The South Island Landless Natives Act 1906 explains that the Act was ‘[f]or the purpose of providing land for landless Natives in the South Island’. Ngāi Tahu’s account of the Act is telling:

The reality ... was very different to the altruistic outer appearance. Almost all the land set aside under [the Act] was unfit for purpose ... it could not in reality be used to live on, nor to generate a sustainable income. As noted in the many government inquiries and reports over the years, much of the land was uneconomic, inferior, remote, and required significant capital expenditure on roads and infrastructure to become productive. Some blocks were far removed from the actual residences of the “landless natives”. To add insult, the lands were a stark contrast to the productive and fertile lands provided to landless Europeans under other legislation at the time (Ngāi Tahu: Our Stories 2017a).

Unfortunately, this law as repealed in 1909 and illustrates that loss to Ngāi Tahu continued post-TOW. A Native Land Commission report in 1921 recommended that Ngāi Tahu should be paid compensation of £354,000. Ngāi Tahu considered this insufficient; the Crown considered this too high. The result was the Ngāi Tahu Claim Settlement Act 1944, which included a £300,000 payment (in 30 instalments of £10,000) in relation to the 1848 Kemp purchase of Canterbury. The Waitangi Tribunal commented that these payments were no more than a ‘small measure a recognition of the Crown’s obligation to Ngāi Tahu’ (*Wai 27* 1991:1051). In 1986, Ngāi Tahu filed a claim to the Waitangi Tribunal pursuant to section 6 of the TOW Act 1975. The Waitangi Tribunal was established as a non-binding authority to hear Māori claims caused by the Crown’s failure to adhere to the principles of the TOW, as the TOW had been increasingly integrated into NZ legislation and given legal effect. From a legal perspective, the principles of the TOW, as determined in *New Zealand Māori Council v Attorney-General* [1987] 1 NZLR 687, provide a foundation for partnership between Māori and the Crown, which includes good faith, being fair to one another and acting honourably. Having examined the historical claims and attempts to seek redress, the next sections examine *Wai 27* and the settlement.

### Wai 27: Ngāi Tahu’s Waitangi Tribunal Claim

*Now in making purchases from the natives I ever represented to them that though money payment might be small, their chief recompense would lie in the kindness of the Govt. towards them, the erection & maintenance of schools & hospitals for their benefit & so on-you know it all (Wai 27 1991:170, 974. Quoting Land Commissioner Walter Mantell from 1855, who acted for the Crown in certain of the purchases of Ngāi Tahu land).*

*Kemp promised us reserves, we were to have our fisheries, our burial places, mahinga kai [food-gathering places], eel weirs, anywhere, everywhere. The promises were made 30 years ago! Where is the fulfilment of them? Our mahinga kai were places where we used to get food, the natural products of the soil ... We used to get food from all over our island (Evison 1993:444).*

Ngāi Tahu’s Waitangi Tribunal claim (*Wai 27*), filed by Henare Rakiihia Tau, related to loss of land and food resources, fisheries and forests and unfulfilled promises of hospitals and

schools. There were two years of hearings and deliberation and the Tribunal’s report totals over 1,200 pages (Cant 1995; Wai 27 1991). Ngāi Tahu organised its claim as the “Nine Tall Trees”, which included eight deeds of purchase and a claim with respect to mahinga kai (food resources), as summarised in Table 1:

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Insert Table 1 about here

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The central finding in Wai 27 is that the Crown exerted undue influence with respect to price, conditions of sale and failed promises:

The Tribunal cannot avoid the conclusion that in acquiring from Ngāi Tahu 34.5 million acres ... for £14,750 pounds, and leaving them with only 35,757 acres, the Crown acted unconscionably and in repeated breach of the Treaty of Waitangi ... As a consequence, Ngāi Tahu has suffered grave injustices over more than 140 years. The tribe is clearly entitled to very substantial redress from the Crown (*Wai 27 1991:1066*)

In light of Wai 27, Ngāi Tahu entered into negotiations with the Crown eventuating in the Ngāi Tahu Claims Settlement Act 1998.

### Treaty of Waitangi Settlement

*E whakapuaki atu ana te Karauna ki te iwi whānui o Ngāi Tahu i te hohonu o te awhitu a te Karauna mō ngā mamaetanga, mō ngā whakawhiringa i pūtake mai nō roto i ngā takakino a te Karauna i takaongetia ai a Ngāi Tahu Whānui.*

*The Crown expresses its profound regret and apologises unreservedly to all members of Ngāi Tahu Whānui for the suffering and hardship caused to Ngāi Tahu, and for the harmful effects which resulted to the welfare, economy and development of Ngāi Tahu as a tribe.<sup>xiv</sup>*

Negotiations concerning settlement commenced in 1991 with the OTS. The Crown unilaterally suspended negotiations in 1994. Subsequently, Ngāi Tahu won a Court of Appeal ruling that the Crown preserve assets that could be used in settlement (see, *Ngāi Tahu Māori Trust Board v Director-General of Conservation* [1995] 3 NZLR 553). Then Prime Minister, Hon Mr Jim Bolger, intervened and negotiations resumed with the signing of non-binding Heads of Agreement on 5 October 1996; the Deed of Settlement at Kaikōura on 21 November 1997; and the Ngāi Tahu Claims Settlement Act 1998.

The details of the settlement are as follows:

- a) Ngāi Tahu received a formal Māori and English apology from the Crown, which acknowledged that the Crown acted ‘unconscionably and in repeated breach of the principles of the Treaty of Waitangi in its dealings with Ngāi Tahu in the purchase of Ngāi Tahu land’.
- b) The Crown agreed to return Aoraki Mount Cook (NZ’s tallest mountain) to Ngāi Tahu. Once the Crown gifted title in Aoraki to Ngāi Tahu, Ngāi Tahu re-gifted Aoraki to NZ as ‘an enduring symbol of their commitment to co-management of areas of high historic, cultural and conservation value’.
- c) The Crown provided economic redress to Ngāi Tahu in the form of a payment of NZ\$170 million plus the ability to purchase property from the Crown.<sup>xv</sup>
- d) Cultural redress with respect to mahinga kai and confirming Ngāi Tahu’s ability to express its traditional kaitiaki (guardianship) relationship with the environment.

Ngāi Tahu fought for the Crown to recognise the harms inflicted by the settler society and the subsequent denials and acts of avoidance over time. The object of our analysis is not Ngāi Tahu, but rather, the Crown’s operationalisation of resolution. We see the Crown’s ‘resolution’ as a form of epistemic violence by financialising the historic harm, the Crown’s insistence on incorporation for settlement and how the Crown operates a circularity of appropriation by framing the settlement as ‘full and final’. This de-legitimises Ngāi Tahu’s frame of reference concerning redress. Wanhalla (2007) argues that Ngāi Tahu’s settlement allows Ngāi Tahu and NZ to move beyond the preoccupation with land, colonisation and ‘post-colonisation’. However, in our reading of the situation, the Crown’s approach to resolution and reconciliation invokes Coulthard’s (2014:22) concern that apologies and settlements focus more on moving *past* the ‘historic ills’ for the coloniser, but does little to affect the power or structure of colonial rule. Mutu (2018), McDowell (2018) and McCormack (2016) reinforce this reading of the Crown’s approach to TOW settlements.

### THE EPISTEMIC VIOLENCE OF RESOLUTION

We locate the Crown’s intervention (in seeking ‘full and final’ resolution) as a form of epistemic violence (see McDowell 2018; Mikaere 1997). Springer (2011) locates the notion of

epistemic violence within an approach to geography that is dynamic. This dynamic understanding focuses less on a particular place at a particular moment in time and is appropriate for Indigenous peoples' approaches to time (Bawaka Country *et al.* 2017). The potential for violence of geography is that it manifests differently depending on cultures, times and histories. The Crown's actions subjugate the knowledges of Māori and Ngāi Tahu and institute Coloniser domination (Foucault 1980; Spivak 1988; Galván-Álvarez 2010; McCormack 2011). We see evidence of this in the way that neoliberalism favours certain forms of Indigenous, while simultaneously marginalising alternative governance forms and collective or communal ownership (Joseph 2000; Rata 2000; Trigger and Dalley 2010; McCormack 2010; 2016). Indeed, Ngāi Tahu's often stands accused of prioritising financial remedies over other social agendas and even in terms of how resources obtained via settlement are distributed among its people (McCormack 2010; Lashley 2000; 2006). Lashley (2006), for example, critiques the limited extent that settlement monies and enterprises have economically trickled down to individual households. This is an illustration of how epistemic violence constitutes the colonised subject as an Other, in various ways, including working to remove or accommodate traces of the Other (such as Indigeneity) within the coloniser's subjectivity (Spivak 1988). Spivak (1988: 24-25) argues that epistemic violence 'is the remotely orchestrated, far-flung, and heterogeneous project to constitute the colonial subject as Other'. An impact of the neoliberal agenda concerning proprietisation and financialisation is the production of 'Othering' (McCormack, 2010; 2011).

Ngāi Tahu's *Wai 27* claim highlighted the Crown's failure to fulfil contractual obligations promised during sale, including reserves and education and health benefits. Ngāi Tahu's claim did not concern a lack of appropriate financial consideration for land sales, but it focused on the failure to fulfil promises. Ngāi Tahu saw the TOW as an agreement between equals. Every

claim concerned land taken from Ngāi Tahu mistakenly or purposely included in a sale against Ngāi Tahu's wishes or the failure to set aside land reserves. As further evidence of Ngāi Tahu's focus on land, the Court of Appeal decision in *Ngāi Tahu Māori Trust Board v Director-General of Conservation* sought to preserve potential Crown land assets that could be made available to Ngāi Tahu in settlement. The Crown's distortion here is the redescription of a focus on land as financial damage (OTS 2018; Fanon 1963; Priyadharshini 2003).

The Crown silences Ngāi Tahu in three interrelated ways that redescribe the harm. First, the Crown re-describes or misrecognises the harm caused as economic harm through financialisation, which imposes the Crown's way of knowing over Ngāi Tahu's cultural and spatial association with land. Second, the Crown employs a traditional approach to breaching legal obligations by focusing principally on paying damages. The impact of this financialisation of harm introduces the third method as the focus on economic harm allows the Crown to disqualify Ngāi Tahu's focus on rights and shift the discourse to a focus on needs and affordability. The Crown chooses the approach to resolution, determines the framework for the calculation of quantum and then focuses the discourse away from loss to needs. Ngāi Tahu, spiritually, is connected to the land, as Te Waipounamu is their waka (war canoe) that brought them to Aotearoa NZ. Ngāi Tahu believe that they are *kaitiaki* (guardians) of the land and its food, culture and other resources. Although the Crown recognises that claims include 'spiritual, cultural and environmental concerns', quantum is *usually* of 'critical importance' (OTS 2018:83). The Crown's focus on financialised damage mutes Ngāi Tahu's cultural and spatial ways of knowing 'land', by imposing their financialised, neoliberal way of understanding land as an economic resource (McCormack 2016; Coombes *et al.* 2012; Howlett and Lawrence 2019). The Crown's approach to resolution is a further act of colonisation as part of the circularity of appropriation (Gidwani 2009; Spivak 1988; Coombes *et al.* 2012). The TOW

resolution process is Crown-designed, Crown-controlled and Crown-acceptable. When the Crown does ‘allow’ Ngāi Tahu to ‘speak’, the Crown does not hear, listen or understand because the Crown imposes their cultural approach of harm, financialisation and resolution. The impact is to create an epistemic framework that controls the conditions through which Ngāi Tahu can speak as an act of epistemic violence in and through knowledge (Spivak 1988, Gidwani 2008).

In enacting dominance, the Crown controls the form of communication concerning resolution (Spivak 1988; Galván-Álvarez 2010) and the Crown recognises whether the claim is legitimate (Dotson 2011; Hornsby 1995). This renders the Crown arbiters of harm and Indigeneity (Ybarra 2013). This illustrates the circularity of appropriation associated with colonisation (by re-describing a cultural and spatial Indigenous dispute as economic) and constitutes ongoing colonisation (through the imposition of economic and legal form) in the shifting relationship between power and space (Berg, 2001).

### Financialisation, Quantum and Epistemic Violence

The full impact of financialising the historic harm manifests in determining the *appropriate* quantum for settling Ngāi Tahu’s claims. The OTS outlines general principles to determining quantum with respect to TOW settlements (OTS 2018). *Ka tika a muri, ka tika a mua: Healing the past, building a future* has significant sections concerned with quantum:

... It is impossible to put a precise value on the economic losses resulting from most historical Treaty breaches. This is because so much time has passed, and because identifying the effects of various causes on the economic status of the claimant group today is such a complex matter ... European settlement has also brought benefits to Māori that cannot be easily expressed in money terms. However, many commentators estimate that the losses to Māori amount to tens of billions of dollars ... it is clear that a full compensation or ‘damages’ approach to redress would place too great a burden on the present and future generations of taxpayers ... Negotiations are instead aimed at a fair level of redress, taking all the circumstances into account (OTS 2018:83).

This argument is illustrative of the critical geography concern with moving past historic ills to focus on moving forward: the Crown and citizen taxpayers cannot afford today the economic value of the harm caused to you yesterday, so please accept what the Crown considers ‘a fair level of redress’ because we are ‘building a future’ together (Coulthard 2014; Mutu 2018; McDowell 2018; McCormack 2016). The OTS process applies loading factors, formulas and accounting to the historical harm to calculate settlement figures ([www.ots.govt.nz](http://www.ots.govt.nz)). For example, when Crown land (such as a school) is included in settlement, iwi are entitled to rental payments for that property (but they cannot use the land themselves). This rental income factors into the Crown’s settlement offer:

In deciding how much to offer, the Crown mainly takes into account the amount of land lost to the claimant group through the Crown’s breaches of the Treaty and its principles, the relative seriousness of the breaches involved (raupatu with loss of life is regarded as the most serious), and the benchmarks (measures) set by existing settlements for similar grievances. Secondary factors are the size of the claimant group today, whether there are any overlapping claims and any other special factors affecting the claim.

In illustrating the Crown’s neoliberal approach to financialisation, the Crown established a ‘land bank’ of potential Crown-owned properties that Ngāi Tahu could purchase with settlement monies. Ngāi Tahu Holdings Corporation did purchase Crown-owned properties including the Christchurch and Dunedin police stations. But note the neoliberal impact here: land was not offered in fulfilment of failed promises, but as a propertised resource available for purchase with settlement monies subject to the Crown’s property law. This approach to resolution should ‘not lie comfortably on the conscience ...’ (*Wai 27 1991:11*). We recognise that Ngāi Tahu do refer to unfair sale prices or a failure to compensate in three of their ‘Nine Tall Trees’. However, the principal failure in all nine of Ngāi Tahu’s claims was the Crown’s failure to perform contractual obligations, but the financialisation focus emerged explicitly in the Waitangi Tribunal’s conclusion that, ‘the Crown acted unconscionably and in repeated breach of the Treaty of Waitangi’ by purchasing ‘34.5 million acres ... for £14,750 pounds ...’ (*Wai 27 1991:1066*). Details of Ngāi Tahu’s negotiations with the Crown offer insights into

the impact the Crown's approach to resolution<sup>xvi</sup>. As Ngāi Tahu, Waikato-Tainui and a commercial Fisheries settlement (McCormack 2017) were first settlements, there was a lack of clarity as to how to proceed (Fisher 2015). Furthermore, as test cases, they sedimented how future claims would proceed (Ward 2015). The Crown limited the role of the Waitangi Tribunal to *prima facie* breaches of the TOW and not to make recommendations as to remedy. Consequently, when negotiations commenced in 1991 there was disparity between the two parties. Ngāi Tahu (Our Stories 2017b) explains the starting positions:

While the Crown approached the negotiations from the perspective that earlier settlements of the 1940s only required updating, negotiators for Ngāi Tahu believed that the amount returned to them had to reflect the value of what they had lost.

Fisher (2015) details considerable debate, disagreement and resistance between Ngāi Tahu, the Crown and Crown agencies including the OTS and Treasury. The Crown invited Ngāi Tahu to make an 'opening bid' with respect to quantum for remedy. Ngāi Tahu insisted on identifying evidence for a property rights-based claim and a valuer suggested property loss was NZ\$13 billion (Fisher, 2015:102). Negotiators for Ngāi Tahu estimated NZ\$1.3 billion based on internal valuations (representing the 10 percent of land reserves not provided subject to deeds of sale) (Ngāi Tahu: Our Stories, 2017b).

The NZ Treasury took the Crown's lead with respect to quantum. In contrast to Ngāi Tahu's loss of property rights approach, Treasury defined a 'needs' approach reflecting what was necessary 'to take Ngāi Tahu collectively out of poverty' (Fisher 2015:102). For Treasury, the 'needs' approach was 'relatively inexpensive' (Fisher 2015:104). This illustrates the Crown's neoliberal approach, as settlement was a 'political' question as to what was affordable and palatable to the Crown, divorcing quantum from actual 'loss'. Treasury rejected Ngāi Tahu's estimated loss as 'highly subjective ... historical research' and countered with an offer of NZ\$100 million (Fisher 2015:105). Ngāi Tahu considered this unreasonable, halving their

request to NZ\$650 million (Ngāi Tahu: Our Stories 2017b). Tensions simmered between the two parties concerning loss, calculation methods and amounts. Three events further disrupted proceedings including a Māori fisheries settlement valued at NZ\$170 million (see McCormack 2017), a changing political climate (a fiscal envelope) that capped monies available for settlement (Fisher 2015; Mutu 2018; McDowell 2018) and Waikato-Tainui agreed on a NZ\$170 million settlement for land confiscations (McCormack 2012). Negotiations officially broke down in December 1994 and Ngāi Tahu took significant litigation against the Crown with up to twelve concurrent law cases concerning land, commercial rights and specific Crown assets. Fisher (2015) notes that the litigation approach was not supported by all of Ngāi Tahu.

Negotiations recommenced in 1996 and Ngāi Tahu agreed that settling all claims with a NZ\$170 million quantum 'would be the baseline for negotiations' (Fisher 2015:155). NZ\$170 million was the 'full and final settlement' of Ngāi Tahu's claim. Ward (2015) suggests that the settlement figure is better understood as a percentage (the Fiscal envelope policy suggested a maximum of NZ\$1 billion for all settlements), so Ngāi Tahu and Waikato-Tainui both represent approximately 17 per cent of fiscal settlements. Ngāi Tahu negotiated a relativity clause which meant that for each dollar the Crown spent over the cap of \$1 billion in 1994 dollars, Ngāi Tahu could request a 16.1 percent top-up. As Fisher (2015:98) comments, 'the relativity clause would provide a powerful rationale for ... Ngāi Tahu negotiators to press their ... members to accept the final settlement'. Although the Crown acquiesced with respect to financial certainty, the determination of quantum still reflects the Crown's approach. The negotiations radically redescribe Ngāi Tahu's rights-based approach to reflect the Crown's financialisation focus on 'needs'. Ngāi Tahu shouldered significant economic loss on top of the historic harm already incurred as Ngāi Tahu (although accepting they would not receive full compensation) bears the difference between the value of their loss and what the Crown was

prepared to pay. The financialisation impact is Ngāi Tahu's acceptance of the Crown's position that compensation bore little or no relation to loss. In short, the Crown constrained, controlled and established the fiscally-acceptable parameters for settlement.

We are not suggesting a smooth narrative here, as there was significant disagreement internally (within Ngāi Tahu and within the Crown), between the parties and in political and media coverage. Interchanges continued to shift Ngāi Tahu's position towards the Crown's way of knowing and Ngāi Tahu's explanation of the economic security associated with settlement is illustrative:

The Ngāi Tahu Negotiators believed that the \$170 million ... was sufficient redress to re-establish an economic base for the tribe (Ngāi Tahu: [www.ngaitahu.iwi.nz](http://www.ngaitahu.iwi.nz))

While Ngāi Tahu accepted the Crown's offer of NZ\$170 million, it forewent significant redress as 'a contribution to the development of NZ' (Ngāi Tahu: [www.ngaitahu.iwi.nz](http://www.ngaitahu.iwi.nz)):

No package that is economically affordable by New Zealand could adequately compensate Ngāi Tahu for our full loss and thus give us 'justice'. However, the Crown's Settlement Offer was judged by the whole Ngāi Tahu Negotiating Group to be the best that could be achieved in present circumstances (Ngāi Tahu: [www.ngaitahu.iwi.nz](http://www.ngaitahu.iwi.nz)).

Ngāi Tahu explains that this amount was *sufficient* and that NZ\$170 million was 'affordable' to the Crown. This reinforces the dominance of the Crown as Ngāi Tahu adopts the Crown's ideological approach to resolving harm (Spivak, 1988; Gidwani 2008). The financial lens dominates the understanding of the problem (Neu 2000) and is a component of denying indigeneity (Gidwani 2008). Despite repeated attempts to articulate their claims in terms of respect, justice and their intimate connection to the land, Ngāi Tahu's claim is condensed to economic need, what was sufficient and what was 'affordable'. The Crown views the TOW settlement process as an opportunity to 'resolve' certain historical ills, so that *we* can 'move on' as a unified whole (Coulthard 2014; Radcliffe 2019; Howitt 2019). This is a 'wrong' in itself, as Ngāi Tahu's historic ill is constrained within the domains of the Crown's political ideology (Gidwani 2008).

To continue the circularity of appropriation, the Crown requires settlement recipients to have appropriate neoliberal governance structures (OTS 2018). This is necessary for the Crown to fulfil its accountability obligations to its stakeholders, including taxpayers. Not only does the Crown determine what counts for quantum purposes, but the Crown determines what constitutes appropriate governance structures (OTS 2018:67-72).

The Crown's principles for post-settlement governance entities are that the entity has a structure that:

- adequately represents all members of the claimant group
- has transparent decision-making and dispute resolution procedures
- is fully accountable to the whole claimant group
- ensures the beneficiaries of the settlement and the beneficiaries of the governance entity are identical when the settlement assets are transferred from the Crown to the claimant group, and
- has been ratified by the claimant community.

The Crown proposes 20 questions concerning governance structure, representation, accountability and transparency for claimants (OTS 2018:70-72). The Crown advises that a relatively small number of governance structures are 'appropriate', including corporations, trusts or incorporated entities through private bills. While the choice of entity is up to claimants, a governance entity acceptable to the Crown is required to be eligible for settlement. This is an act of re-colonisation.

Despite political resistance (from certain members of Parliament) and concerns from certain members of Ngāi Tahu, Ngāi Tahu incorporated as a body corporate in anticipation of settlement. By a Private Act,<sup>xvii</sup> the Government enacted Te Rūnanga o Ngāi Tahu Act 1996 to incorporate Te Rūnanga o Ngāi Tahu. Section 6, entitled Incorporation of Te Rūnanga o Ngāi Tahu, provides that for the benefit of Ngāi Tahu Whanui, this Act establishes:

... a body corporate to be known as Te Rūnanga o Ngāi Tahu, having perpetual succession and a common seal, with power to purchase, accept, hold, transfer and lease property, and to sue and be sued, and having all the rights, powers, and privileges of a natural person.

In a complex governance structure, Te Rūnanga o Ngāi Tahu holds the assets and liabilities of the tribe, but established Ngāi Tahu Holdings Corporation to manage the commercial interests

in seafood, capital, property and tourism. The Charter of Te Rūnanga o Ngāi Tahu explains that the role of the company ‘is to use, on behalf of the Ngāi Tahu Charitable Trust, the assets of the Trust allocated to it and prudently to administer them and its liabilities by operating as a profitable and efficient business’ (Ngāi Tahu: [www.ngaitahu.iwi.nz](http://www.ngaitahu.iwi.nz)).<sup>xviii</sup> The economic redress established the tribe as an ‘economic powerhouse’ within Te Waipounamu. However, the adoption of the Crown’s governance structures further reinforces the Crown’s attempt to ‘resolve’ through the Crown’s ways of knowing. Incorporation is a form of propertisation and normalises Ngāi Tahu as the same as Western corporate structures (Altamirano-Jimenez 2013; Gidwani, 2008; McCormack 2017). *This, itself, is harm* as to be eligible for settlement, Ngāi Tahu must appear acceptable to the Coloniser (Priyadharshini 2003; Fanon, 1963). In drawing on Spivak, this is ‘epistemic violence’, as traditional Māori governance structures, so much the subject of TOW discussion, are replaced with Western corporate governance (Spivak 1988). This delegitimises Indigenous knowledges and reifies the Crown’s ways of knowing, and as Ngāi Tahu was an early settlement concerning TOW claims, it constrains and limits subsequent claimants and the opportunity for resolution. In terms of appropriation, this reinforces the Crown’s ways of knowing, and consolidates the binary nature of colonisation (Said 2003:297). Resolution completes the circularity of appropriation, but simultaneously, due to instituting corporate form, resolution also constitutes new violence through the imposition of new colonising form (Fanon 1963:48).

## CONCLUSION

The paper deconstructs the NZ Government’s approach to resolving the historic harm caused to the NZ Māori as epistemic violence. We detail Ngāi Tahu’s struggle for justice with respect to Crown purchases of their land from 1844-1864 and the Crown’s subsequent failure to fulfil promises concerning reserves and other social welfare provisions including education and

health care. Fundamentally, we examine a circularity of appropriation around Ngāi Tahu's claims, perfected by the Crown's financialisation approach to settlement. We argue that the Crown's approach to claims extinguishment rather than claims settlement by financialising the historic harm and instituting neoliberal governance structures illustrates the logical impossibility of the Crown's approach to resolution (McCormack 2012; 2016).

We extend existing work concerning financialisation by examining the implications of financialising historic Indigenous harm. This connection allowed the exploration of financialisation through the epistemic violence lens, as financialising historic harm involves re-describing historic harm, the privileging of the coloniser's ways of knowing and the disqualification of Indigenous knowledge systems. The impact of this is to reinforce the coloniser's legal, political and economic structures. This is not 'resolution'. We empirically demonstrate how the Crown divorced the financialised quantum from actual damage to a focus on what was affordable and politically palatable. This shifted the compensation discourse from Ngāi Tahu's rights-based agenda concerning land to the Crown's needs-based approach. The impact of the approach to claims extinguishment as a circle of appropriation is to reinforce the Crown's propertised, material understanding of land, as the financialised quantum reinforces the alienation of Ngāi Tahu from their land and requires Ngāi Tahu to shoulder not only cultural, spatial and spiritual harm, but the difference between the economic loss forced upon them and the quantum deemed acceptable to the Crown. A further act of epistemic violence relates to the full and final settlement component, which reinforces that settlement needs to be concluded pursuant to the Crown's agenda, timetable and political ideology (Mutu 2018; McDowell 2018). This manifests in the requirement for Ngāi Tahu to adopt appropriate neoliberal governance structures. The Private Act of Parliament to incorporate Ngāi Tahu

suggests a new form of economic colonisation, as the appropriateness of the governance structure is adjudged according to the Crown's ways of knowing.

The settler myth is that the Ngāi Tahu settlement should allow NZ to move beyond the preoccupation with land and colonisation (see, for example, Borrows 2010; Coulthard 2014; Pasternak 2015; Howitt 2019; Howlett and Lawrence 2019; Radcliffe 2019). Wanhalla's historiography (2007) certainly suggests this given settlement of the claim. However, we suggest that the settler myth is evident in the assertion that the claim is settled; at best, the claim was extinguished through epistemic violence. The acts of epistemic violence manifest in muting Ngāi Tahu in multifaceted ways, fundamentally associated with the circularity of appropriation. These include the imposition of the coloniser's ways of knowing, including the propertisation of land, the choice of when and how to hear the historic harms, the choice of mechanisms and approach for determining financialised quantum for resolution, controlling the discourse with respect to quantum (politically palatable and affordability), privileging economic harm from a needs-based approach over cultural, spatial and other harms, imposing a need for acceptable neoliberal governance structures over Ngāi Tahu and requiring that such resolution was 'full and final'. Much of this involves acts of re-colonisation and new harm is instituted through the approach to extinguishing Ngāi Tahu's claims (McCormack 2016; Mutu 2018; McDowell). These actions by the Crown illustrates a circularity of appropriation and delegitimises Ngāi Tahu's ways of knowing. This epistemic violence is no resolution.

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<sup>i</sup> The Crown is an important metonym in this paper. When Maori signed the TOW, the Treaty was with the British Crown. The NZ Government is understood as the Crown.

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- <sup>ii</sup> See McCormack (2012; 2016), Joseph (2000) and Tauri and Webb (2011) amongst others, for accounts of the experience for claimants before the Waitangi Tribunal and critiques of the Tribunal's creation, approach and impacts on Māori.
- <sup>iii</sup> NZ Māori migrated circa 800-1000 A.D. Technically, 'first peoples' or 'original inhabitants' is a more accurate description, given that Indigenous tends to invoke imagery of being native to the land. While conceding complexities around the term 'Indigenous', we use 'Indigenous' and 'indigeneity' throughout. We also note the literature contesting and debating understandings of indigeneity and whether it can be understood relationally, against criteria or by process (see, for example, the excellent summary in McCormack 2012).
- <sup>iv</sup> There has been a mixed history with respect to the TOW in NZ. For example, Chief Justice Prendergast, in *Wi Parata v Bishop of Wellington* (1877) 3 NZ Jur (NS) SC 72, ruled that the TOW was a 'simple nullity', signed by 'primitive barbarians' (78). One reading of the current state of affairs is that current status of TOW recognition is improved in light of historical political and legal denial of the legitimacy of the TOW. Other commentators question the nature of this 'recognition' and challenge the dominance of the coloniser in this discourse (see Rumbles 1999; McCormack 2010; 2011; 2012; 2016; and more generally, Borrows 2002; Coulthard, 2007; 2014). The TOW was first signed 6 February 1840 at Waitangi in the Bay of Islands by 'Captain Hobson [representing the Crown], several English residents, and approximately 45 Māori rangatira' (Chiefs) (Waitangi Tribunal). By 1841, over 500 Māori signed copies of the Treaty across NZ. The Treaty consists of a preamble, three articles and an epilogue and is written in both English and Māori. There are significant textual variations between the two versions, and the legal presumption is that Indigenous text should prevail in the event of interpretive difference (McNair 1961; Wai 9 1987). This continues to be a source of social, political, legal and cultural contention in NZ. One interpretation is that the TOW expresses a 'living' relationship between the Crown and Māori, while scholars such as Salmond, Mutu and Mikaere suggest that the two versions of the Te Tiriti (in Māori) and the TOW (in English) are two separate documents (See Mikaere 2011; McDowell 2018)
- <sup>v</sup> The creation of binary opposites ('us'/'them') is a common characteristic of post-colonial literature (Spivak 1999; Said 2003).
- <sup>vi</sup> The Ngāi Tahu settlement is final and "the Crown is released and discharged in respect to [Ngāi Tahu's] claims". Section 461(3) excludes courts from considering Ngāi Tahu's claims or from examining the Settlement Act.
- <sup>vii</sup> We recognise that the critical accounting literature suggests that financialisation incorporates a limited frame of reference that colonises social situations (see, for example, Wickramasinghe and Hopper 2005; Efferin and Hopper 2007; Jayasinghe and Thomas 2009). Neu (2000) examines the 'purchases' of First nations' land in Canada to illustrate how accounting rationalised colonisation through land exchanges. Gibson (2000) examines the experience of Australian Aborigines, examining how accounting practices constituted a dispossessor both 'then' and 'now', particularly through the opposition of accounting concepts to traditional knowledge. Gallhofer *et al.* (2000:381) argue that '... accounting contributes to the oppression, dispossession, and silencing of Indigenous voices worldwide', as accounting and financialisation colonise, expropriate and oppress. There is significant scope beyond this paper to examine the interactions between accounting, financialisation and human geography.
- <sup>viii</sup> This is the central example of financialised loss related to land. There are other instances of resource loss for Ngāi Tahu not necessarily related to land loss, such as with respect to fisheries.
- <sup>ix</sup> The concept of 'redescription' derives from the work of Quintilian's (1920) technique of rhetorical redescription (Skinner 2002).
- <sup>x</sup> Reprinted with the permission of New Zealand's Te Kāhui Māngai (Directory of Iwi and Māori Organisations) and Te Puni Kōkiri (the Ministry of Māori Development).
- <sup>xi</sup> The Waitangi Tribunal did find that the Crown had provided insufficient reserves for Ngāi Tahu with respect to the eight purchases within the 'Nine Tall Trees'. This was in breach of the TOW. However, it did not necessarily find evidence for Ngāi Tahu's claim that the Crown promised that ten percent of Ngāi Tahu land purchased would be set aside for Ngāi Tahu. In Wai 27 (1991:828-829), the Waitangi Tribunal concluded that ten percent reserves 'would have been greatly to their advantage'

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- <sup>xii</sup> The Crown proclamation upon purchase provided that one tenth of all land sold was to be kept for ‘public purposes especially for the future benefit of the aborigines’ (*Wai 27 1991:25*).
- <sup>xiii</sup> See Table 1 below. These eight purchases plus lost access to food resources form the ‘Nine Tall Trees’ that constituted Ngāi Tahu’s claim to the Waitangi Tribunal (*Wai 27*). For completeness, we include the mahinga kai (Food resources) component of the claim, but mahinga kai is a form of cultural redress and is not part of the financialisation argument in this paper.
- <sup>xiv</sup> This is part of the formal apology from the Crown to Ngāi Tahu.
- <sup>xv</sup> In settlement, a relativity clause was inserted, which allowed Ngāi Tahu to receive compensatory top-ups relative to settlement budgets and future settlements with other iwi in NZ, so that Ngāi Tahu’s settlement should be 16.1 percent of all settlements, updated every 5 years. In 2017 and 2018, Ngāi Tahu received approximately NZ\$197 million. However, our point as commentators is that the principal issue is not about amount per se, but about the impact of the Crown’s approach to financialising harm as a means of resolution.
- <sup>xvi</sup> There is extensive detail available in a variety of sources on this and our paper is not able to do this justice, so for further information, please see Ward (2015), McCormack (2016), Fisher 2015, Ngai Tahu: Our Stories, (2017a; b; c).
- <sup>xvii</sup> In NZ, a Private Act differs from a Public Act, in that they apply to a specific group of people, rather than the general public. In effect, the only practical differences between a Public and Private Act is stricter interpretation and the limited scope of application (see Rakvillgel, 1986).
- <sup>xviii</sup> For further information on the structure, see [www.ngaitahu.iwi.nz/Te-Rūnanga/Management](http://www.ngaitahu.iwi.nz/Te-Rūnanga/Management).

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