

Treaty Politics

POLS 319

Semester 1, 2013

Lecture: Tuesday 10.00–10.50am (STDV2)
Seminar discussions: Friday 10.00–11.30am (T202 – College of Ed)

Associate Professor Janine Hayward
479 8666 janine.hayward@otago.ac.nz
Office Hours: Monday and Thursday 11:00-12:00

Topics, Key Readings and Discussion Questions

Introduction: The Treaty of Waitangi

Lecture 1 (26 February): The Treaty at Waitangi

- Claudia Orange, 'The Treaty at Waitangi', *The Treaty of Waitangi*, Allen and Unwin Press, 1987, pp.32–59
- Ranginui Walker, 'Tauīwi' *Ka Whawhai Tonu Matou: Struggle Without End*, (revised ed), Penguin Books, Auckland, 2004, pp. 78–97

Discussion questions:

1. Why did the British draft the Treaty?
2. Why did so many Māori sign it?
3. What were the important circumstances of the time that account for the provisions of the Treaty?
4. What are the significant differences in the Māori and English versions of the Treaty?
5. How do Orange and Walker's accounts differ?

Research:

- Watch 'Waitangi – What really happened' parts 1–4 (available on YouTube in seven parts). How well does this dramatisation of events at Waitangi fit with Orange and Walker's accounts?

Lecture 2 (5 March): The Treaty reconsidered

- Alan Ward, 'In the matter of The Treaty of Waitangi Act 1975 and in the matter of the Paparahi o te Raki (Northland Inquiry)', Summary Response, Wai 1040, 13 September 2010, pp.2–42

Discussion questions:

1. What are the key arguments Ward makes in his evidence to the Tribunal.
2. How does Ward's evidence challenge or develop Orange and Walker's interpretations?
3. Does the Māori version of the Treaty provide a workable framework for nation-building?
4. In theory, how could a nation have emerged from the 'essential exchange' of the Treaty?
5. How might a 'Treaty compliant' land management/ownership system have developed?

Research:

- Watch 'Waitangi – What really happened' parts 5–7 (available on YouTube in seven parts). How well does this dramatisation of events at Waitangi fit with Orange, Walker and Ward's accounts?

Topic 2: The Treaty and the Constitution

Lecture 5 (26 March): The Treaty and the Constitution

- Janine Hayward, 'The Treaty and the Constitution' in Raymond Miller (ed.) *New Zealand Government and Politics*, (5th ed), Oxford University Press, Melbourne, 2010, pp. 105–113.
- Matthew Palmer, *The Treaty of Waitangi in New Zealand's Law and Constitution*, Victoria University Press, Wellington, 2008, pp. 152–184

Discussion questions:

[Note that the discussion session for 29 March will be rescheduled for Thursday 28 March. Details available closer to the time.]

1. Is the Treaty more effective inside or outside the law (and the constitution), and why?
2. What is the status of the Treaty in international law?
3. Is the Treaty a 'treaty of cession' or a 'treaty of protection', and why?
4. How does Palmer summarise the status of the Treaty according to the courts?
5. How (by way of examples) is the Treaty incorporated into law?

Research activity:

Explain the 1) constitutional and 2) 'treaty' significance of the following law changes:

Group 1: New Zealand becoming a Dominion in 1907

Group 2: New Zealand adopting the Statute of Westminster Act in 1947

Group 3: The establishment of New Zealand citizenship (1948)

Group 4: New Zealand passing the Constitutional Act 1986

Group 5: New Zealand abolishing the right of appeal to the Privy Council (2003)

Lecture 6 (9 April): Perspectives on the Constitution

- P.G. McHugh, 'Constitutional Voices', *Victoria University Law Review*, Vol. 26, 1996, pp 499–529

Discussion questions:

1. How do Māori claims for recognition challenge New Zealand's constitutional discourse?
2. What is modern constitutionalism as opposed to contemporary constitutionalism?
3. What does Tully offer that challenges modern constitutionalism?
4. What did the courts do, according to McHugh, to create 'horizontal constitutionalism'?
5. How is Binney's work an 'indigenised' view of politics?

Research activity:

Learn what you can about the current constitutional review in New Zealand, and the place of the Treaty within that review. What might this constitutional review look like if it was guided by Tully's conventions?

Topic 4: The Treaty and Local government

Lecture 9 (30 April): The Treaty and Local Government

- Janine Hayward, 'In search of certainty: Local government policy and the Treaty of Waitangi' in Veronica Tawhai and Katarina Gray-Sharp (eds.), *Always Speaking: The Treaty of Waitangi and Public Policy*, Huia Publishers, Wellington, 2011, pp.79–94.

Discussion questions:

1. Is local government a Treaty partner?
2. What could the Crown have done to establish a 'Treaty-compliant' system of local government from 1852?
3. What obligations do local government currently have to Māori under the Treaty?
4. What, if anything, ought local government be compelled to do in relation to the Treaty of Waitangi?
5. What are the current Treaty provisions in the Local Government Act 2002? Are these appropriate?

Research activity:

Choose one local or regional authority around New Zealand (maybe your home town?) and find out all you can about its relationship with Māori. Does the local authority have Māori standing committees, advisory groups, consultation processes, etc?

Lecture 10 (7 May): Local Government, the Treaty, and representation

- Human Rights Commission, *Māori Representation in Local Government: The Continuing Challenge*, October 2010.

Discussion questions:

1. Does the Crown have an obligation to address the under-representation of Māori in local government. Why, or why not?
2. Is it appropriate for central government to impose electoral system reform on local government, or should reform be decided by local communities?
3. The Local Electoral Act allows for Māori wards to be established, but very few councils are pursuing the option. What are the obstacles to councils establishing Māori wards under existing law?
4. What does the Bay of Plenty model reveal about Māori seats in local government?
5. What were the key differences between the Royal Commission recommendations and the National government's legislative provisions relating to Māori representation in the new Auckland Council?

Research activity:

Learn what you can about the Independent Māori Statutory Board. What are its strengths and weaknesses when compared to guaranteed Māori seats (or other initiatives for local government/Māori engagement)?

Revision: (28 and 31 May)

Mock exam questions for revision:

This exam in two hours long.

You **must answer two questions in total**. Divide your time evenly between your questions.

Do not answer more than one question from a section.

Section 1: The Treaty and Parliament

1. Are the guaranteed Māori seats in Parliament a 'Treaty right'?
2. Are the Māori seats redundant under the mixed member proportional (MMP) voting system?

Section 2: The Treaty and Local Government

3. Is local government relevant to the Treaty partnership between Māori and the Crown?
4. What solutions would you advocate for the chronic under representation of Māori in local government?

Section 3: The Treaty and Health Policy

5. Is the provision of Māori health care a Crown obligation under article 3 of the Treaty or a Māori Treaty right under article 2 of the Treaty?
6. How far does Whanau Ora go in addressing Māori health needs?

Plagiarism and referencing

The essays must be fully referenced with a bibliography. You will find information about different referencing styles at:

<http://www.library.otago.ac.nz/research/citation.html>. Please note that assignments that do not contain adequate references and bibliography will be penalised and may (in extreme cases) receive a grade of 0%.

You should make sure that all submitted work is your own. Care should be taken to correctly cite the work of others and the teaching team are happy to provide guidance on this, or you can consult materials provided by the Student Learning Centre (see <http://hedc.otago.ac.nz/hedc/sld/About-us/Writing-at-University.html>). Plagiarism is defined as copying or paraphrasing another's work, whether intentionally or otherwise, and presenting it as one's own (approved University Council, December 2004). Any student found responsible for plagiarism in any piece of work submitted for assessment shall be subject to the University's dishonest practice regulations (<http://www.otago.ac.nz/administration/policies/otago003145.html>) which may result in various penalties, including forfeiture of marks for the piece of work submitted, a zero grade for the paper, or in extreme cases exclusion from the University.

The Politics Department requires that the following statement be appended to all submitted essays and assignments (also available on Blackboard as an essay coversheet):

'Declaration: I have read and understood the University plagiarism policy. I declare that this assignment is entirely my own work, all sources have been properly acknowledged, and that I have not previously submitted this work, or any version of it, for assessment in any other paper'.