

BOOK REVIEW

Bain Attwood on making up Native Title

David V Williams

University of Auckland, Auckland

Empire and the Making of Native Title: Sovereignty, Property and Indigenous People, by Bain Attwood, Cambridge, Cambridge University Press, 2020, xiv + 442 pp., £34.99, ISBN 9781108478298, Online ISBN 9781108776424, Publisher's website <https://www.cambridge.org/core/books/empire-and-the-making-of-native-title/0AB36B7DD557ACDC050519DAD9F9008B>

Many historians have delved into archival sources seeking to understand and explain the apparently diverging means by which New South Wales and other colonies in New Holland (later Australia) became British territories, as compared to the origins of New Zealand as a colony. The failure by officials (both imperial and local) to acknowledge the rights and interests of indigenous peoples in the colonies that became Australia is compared to the fact that the British Crown entered into a treaty with Māori in New Zealand. This book by Bain Attwood provides a new and very different approach to assessments of indigenous peoples' and their sovereignty (if any), and property (if any), in these parts of the Empire. Attwood is distinctly unconvinced by juridical histories written by the likes of Henry Reynolds to understand Australian history: 'These histories ... have tended to resemble myth rather than history' whereas 'the duty of the academic historian is to ... understand the past on something like its own terms' (402). For Attwood, the story is not of principles, rights and responsibilities but 'is largely one of unexpected events and unintended consequences' involving 'forces that were invariably complex, occasionally incoherent, sometimes mundane, frequently base and seldom constant' (6).

The book comprises nine substantive chapters, the first three of which deal with colonisation of the land mass known to James Cook as New Holland. The remaining six cover in compelling detail the relevance (if any) of the Treaty of Waitangi to what eventually came to be seen as native title to land in all of New Zealand, and how to extinguish that title to advance British colonisation. This is a well written monograph dealing primarily with archival traces into which the author at points inserts his own opinions – often with the use of succinct observations in parentheses. Each chapter ends helpfully with a short statement of conclusions.

A major claim is that there is a single story of British imperial expansion to erect settlement colonies in this part of the world. For example, Cook's assertions of British sovereignty based on 'discovery' in both New Holland and New Zealand were justified by the same premises. There was anxious reflection by officials and politicians on the role a treaty might play in both New South Wales (Batman) and in New Zealand (Waitangi). In the period 1835-1837 the very same men in the Colonial Office and in the British Parliament were arriving at different conclusions on protection for native rights in the differing contexts of Port Phillip, South Australia and New Zealand. It was the different local contexts that were crucial, not grand theory nor humanitarian principles.

Certainly, Attwood insists, the Treaty of Waitangi in 1840 was of marginal relevance to decisions made in London, Sydney and the Bay of Islands on the proclamation of British sovereignty in that year. That treaty and its articles only became central to policy choices

from 1844-1847 in the course of vigorous contestation involving the New Zealand Company, the Colonial Office, a parliamentary select committee report, and missionary society representations. Many parliamentary days and nights were devoted to alternative Whig and Tory versions of what those factions now understood to be the positions they had taken on the treaty in 1840, or the invention of new justifications for viewing the treaty as a praiseworthy device for amusing and pacifying savages on the one hand, or a solemn compact on the other hand.

Attwood's history emphasises the contingency and messiness of policies and practices. He seeks also to understand the character and motivations of those officers on the spot who were trying, a long ship's voyage from London, to apply or adapt imperial policy to the actual situations with which they had to deal. Robert FitzRoy, second Governor of New Zealand, certainly failed to keep his superiors informed with regular despatches but he is also assessed as being mentally ill. He is described as acting in ways that were 'foolish as well as foolhardy' (295) in his efforts to curb the New Zealand Company's rash attempts to occupy land without the consent of Māori. His successor as governor, George Grey, wrote plenty of despatches – many of which were economical with the truth. Both governors deliberately breached their instructions at times, but Grey with more money and some troops achieved success in 'making' native title and then extinguishing it as quickly as possible.

This reviewer is not completely convinced by the lines of argument Attwood advances. The implications of the word 'sovereignty' are not sufficiently problematised. The British empire included many territories where the authority and laws of indigenous rulers continued under British sovereignty. Māori assertions of such entitlements post-treaty could have been honoured. In Colonial Office fights with manipulative promoters of settler interests, was it pre-determined that colonisation would proceed apace in New Zealand as George Grey and Earl Grey desired? I think not. Attwood's view that the Treaty of Waitangi was somewhat marginal (or even irrelevant) in 1840 is a view that I held myself in the early 1980s. However, I have found more recent work to the contrary, especially that of Ned Fletcher, convincing. A shortened version of his thesis is to be published by the end of this year.

When some historians choose to highlight statements actually made by Crown representatives in the first decade of colonial rule, and those statements seem pertinent to our understanding of law and policy on Māori/Crown relationships in the changed circumstances of the twenty-first century, then their work is still 'history'. Selecting certain stories and narratives may underplay the complexity of the past but that does not deserve Attwood's negative use of the epithet 'myth' to describe 'juridical history'.