The Treaty of Waitangi and Research Ethics in Aotearoa

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Abstract Researchers, when engaging with Māori communities, are in a process of relationship building and this process can be guided by the principles of the Treaty of Waitangi, partnership, participation and protection. The main concerns for many indigenous peoples in research revolve around respect for their indigenous rights, control over research processes and reciprocity within research relationships to ensure that equitable benefits are realised within indigenous groups. Māori have identified similar issues and these concerns can be aligned with the principles of the Treaty of Waitangi. The relevance of the Treaty of Waitangi to research ethics is discussed and this paper suggests a revised interpretation of the treaty principles to incorporate the range of ethical issues that Māori have expressed as important.

Keywords Treaty of Waitangi · Research ethics · Indigenous ethics

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Introduction

The Treaty of Waitangi marked the foundation of the modern state of New Zealand and formalised a relationship between the British Crown and Māori to recognise and protect Māori values, traditions and practices (Cram 2003, 10). Although phrased in broad terms, the Treaty provides for a transfer of sovereignty (article one), a continuation of existing property rights (article two), and citizenship rights (article three) (Durie 1994). From a Māori stand-point, its role and status have never diminished, however, the importance of the Treaty within New Zealand society has changed over the past 160 years (Durie et al. 1989, 64). The Treaty of Waitangi Act 1975 established the Waitangi Tribunal and reinstated the legal authority of the Treaty. Over the years, Māori have made repeated claims to government and the Waitangi Tribunal that their rights, as guaranteed under the Treaty of Waitangi, have been breached. These claims cover a spectrum from misappropriated land and resources to the preservation of language and intellectual property rights.

In 1988 the Royal Commission on Social Policy identified Treaty principles, partnership, participation and protection, and this created varying levels of expectation and debate about the implications of the Treaty in contemporary society (Durie 1994). The principles imply that the State has an obligation to both recognise Māori aspirations for self-determination and

protect the interests of Māori (Hudson 2004). As such, these principles have been widely adopted throughout government organisations as a mechanism to respond to inequalities in society that affect Māori. Government organisations have each, in their own way, interpreted the Treaty principles in relation to their spheres of activity. The Treaty of Waitangi is recognised as an integral part of New Zealand's ethical framework but its interpretation needs to reflect the ethical understandings of both parties, Māori and European, particularly in relation to the contribution that research can make towards addressing inequalities within our society.

The Nature of the Research Relationship — Indigenous Perspectives

The importance of relationships as the foundation for equitable partnerships and development within Indigenous communities is promoted strongly by Indigenous academics. Indigenous communities have expressed concerns about research practices happening in their communities and frustration at the inability of researchers to recognise cultural difference and its influence on the interpretation of knowledge.

> In a research context, to ignore the reality of inter-cultural difference is to live with outdated notions of scientific investigation. It is also likely to hamper the conduct of research, and limit the capacity of research to improve human development. (National Health and Medical Research Council 2003, 24)

A number of Indigenous peoples (e.g. Aboriginal and Torres Strait Islanders, Navajo, Mi'kmaw) provide ethical guidance for researchers when working in their communities (Hudson 2004; Powick 2002). In New Zealand, kaupapa Māori theorists have been at the forefront of challenges to research practices and have given guidance for ethical research with Māori communities (Smith 2001; Cram 2001). The Health Research Council (HRC) has also developed, in consultation with the relevant communities, research guidelines for working with both Māori and Pacific communities (HRC 2008; 2005). The various frameworks emphasise that the parameters of the research relationship should be negotiated between the Indigenous community and the researchers, and should be relative to the context of the situation. Value-based

engagement rather than rule-based consultation promotes consistency with Indigenous communities and their values (NHMRC 2003; HRC 2008; HRC 2005; Anderson et al. 2003).

The principles that inform ethical relationships with Indigenous communities as described within Indigenous ethical frameworks can be structured around three broad themes: respect, control and reciprocity. (Hudson 2004)

> ▪ Respect entails the recognition of indigenous groups as sovereign entities and respect for their cultural knowledge and traditions.
> ▪ Control affirms indigenous control over involvement of indigenous groups in research processes and relates to the ability of indigenous groups to control the extent of their participation in research processes and negotiate what is acceptable.
> ▪ Reciprocity involves ensuring there are mutual benefits and that they are realised within Indigenous groups in an equitable manner.

With respect to the final point, notions of reciprocity are particularly important for Indigenous cultures which have a tendency towards a beneficience-oriented approach to ethics rather than the autonomy-oriented evaluations favoured in contemporary Western bioethics (Hudson 2004; Tsai 1999; Aksoy and Tenik 2002). The themes, informed by acknowledging Indigenous control and ownership of intellectual property, highlight negotiation and a preference for participatory research processes. This approach, in turn, creates opportunities for Indigenous workforce development and considers research in the context of the significant and important issues for local Indigenous communities.

These themes also correlate with three significant aspects of a research relationship: status (recognition of parties as equal), process (integrity of engagement) and outcomes (equity of outcomes) (Hudson 2004). While the relationship evolves over time and the parameters may change, ideally, the Indigenous group will retain a significant level of control over the direction of the project. Showing respect can have immediate results, however, demonstrating reciprocity and ensuring equitable outcomes for the community are goals that will generally be realised over a longer period of engagement. Recognising the inherent inequality between the partners in terms of access to knowledge, resources and funding implies that the

research organisation should take responsibility for actively ensuring adequate boundaries are in place and that the goals of the Indigenous community are respected (Hudson et al. 2007).

Incorporating the Treaty into Research Processes

Research has an increasingly important role within our society. The developing culture of evidence-based policy and practice has embedded research as its primary tool for planning and evaluation. Through investment portfolios and funding signals, the government controls the agenda for a substantial section of New Zealand's research resource. Funding is directed towards areas where the government considers the best value from its investment can be achieved. The Ministry of Research Science & Technology also informs social policy and can help address issues such as persistent social and economic disadvantage, identify ways to improve health care policy and delivery, and address population health disparities (Ministry of Research, Science and Technology 2007). The Government also plays a part in determining the shape and direction of the system of ethical review in New Zealand through the Ministry of Health, and statutory committees like the National Ethics Advisory Committee (NEAC) and the Health Research Council Ethics Committee (HRCEC). These agencies are responsible for finding the right balance between facilitating research and protecting the public.

The responsiveness of New Zealand's system of ethical review in relation to Māori has been brought into focus, ironically, because one of its key functions is to consider the responsiveness of research proposals to Māori communities. Māori members of ethics committees have expressed a sense of frustration relating to the inadequate consideration of Māori issues by researchers and the ambivalence of many ethics committees to accepting Maori issues as ethically relevant (Hudson 2004). Successive Māori writers have consistently expressed concerns ranging from the level of Māori representation on ethics committees (Cram 2003; Hudson 2004; Te Puni Kokiri 1994; Robson 2004); the lack of Māori specific pathways for ethical review (Cram 2003; Hudson 2004; Walsh-Tapiata 1998); and the appropriateness of research methodologies and processes of consultation with communities (Cram 2003; Cram 2001; Te Awekotuku 1991). Issues such as; the allocation of research

resources; the development of the Māori research workforce; *Rangatiratanga* (authority); developing *Mātauranga Māori* (traditional knowledge); demonstrating respect for *tikanga Māori* (Māori protocols and practices); allowing *mana whakahaere* (control over decision-making); validating Māori concepts; incorporating Māori values; aligning research with Māori goals; intentional exclusion of Māori from projects; and recognition of cultural intellectual property rights have been identified as important for Māori (Hudson 2004).

On closer examination it can be seen that many of the issues relate primarily to concerns about "justice" or "social and cultural responsibility" principles already part of the existing framework. These are both concepts that require a broader community- and society-oriented perspective when interpreted in relation to the ethics of a specific research project. Interestingly, while beneficience is not explicitly stated as a principle in the ethical framework, if inequalities in society are considered to be unjust, the benefits of research should be a focus. An argument could be made that such benefits should accrue to marginalised communities and contribute towards reducing inequalities. Consideration of how a research study fits within a broader social agenda has not been considered to fall within the realm of deliberation for ethics committees, despite this being recognised by Māori as having a bearing on the potential benefits and risks of the study. The political nature of this debate often involves consideration of how resources and funds have been allocated, a decision which sits beyond the control of ethics committees. However, ethics committees are not without influence in this regard. By default, ethical review is one measure of research excellence and ethical approval is often a prerequisite for receiving government research funds (Ahuriri-Driscoll et al. 2008). The Treaty of Waitangi is in effect a partnership arrangement and as such any interpretation of this document should reflect the understandings of both parties. In the context of research ethics, interpretations of the treaty principles should frame and provide space for both Western ethical concepts and Māori ethical concepts. It is important that the process of critical reflection in terms of a framework of research ethics in New Zealand keeps pace with the evolving practice of ethics and changing expectations that communities have of researchers.

The rights, responsibilities and role of researchers and Māori communities they engage with can be

framed by *Te Tiriti o Waitangi* (The Treaty of Waitangi). Russell asserts that the rights of Māori in research arise from *tino rangatiratanga* (self-determination) and the right to participate, and that Māori have an interest in research that relates to them (Russell 2004). This is underpinned by concepts such as *kaitiakitanga* (guardianship) and the responsibility to preserve the natural world for future generations, which creates an imperative for us to participate in research that will impact on our role as *kaitiaki* (guardians) (Russell 2004). The responsibilities of Māori within research potentially range from initial consultations at the conceptual stage, through to assisting with the analysis and subsequent dissemination of results. Māori must maintain a role in research to ensure that it is directed towards addressing issues of relevance to their communities. Kaupapa Maori researchers, who advocate a "by Māori for Māori" approach to research, have contributed significantly to outlining the parameters of an ethical relationship between researchers and Māori communities, and have emphasised the importance of Māori control over the research purpose and process (Smith 2001).

The responsibilities of *Pākehā* (European New Zealanders), as a treaty partner, in research with Māori have also been articulated. Martin Tolich suggested that the promotion of Māori-centred research paradigms had been a contributing factor in the exclusion of Māori participants from research projects conducted by Pākehā post-graduate students (Tolich 2002). This has resulted from an inability for Pākehā to distinguish a role in Māori-centred research and more generally in research on New Zealand society, which involves Māori among other ethnic groups. He proposed the adaptation of the Nursing Councils' model for cultural safety as a governing principle for cross-cultural research. This position reiterates earlier statements made by Glynn who suggest that deficits in knowledge or skill in cross-cultural research will not be addressed by complete withdrawal of non-Māori conducting research for the betterment of Māori, but by engaging with Māori researchers and sharing research skills and technologies that will address research questions generated by Māori (Glynn 1992). This thinking contributed to the promotion of bicultural approaches to research with Māori (Glynn and Bishop 1995; Bishop and Glynn 1999). Ahuriri et al. discuss the nature of collaborative scientific research partnerships with Māori communities and

note that as communities become empowered in the research process there is less emphasis on the ethnicity of the researchers and a greater focus on skill and their relationship with the researchers (Ahuriri-Driscoll et al. 2008). Hepi et al. describe their experience working in a cross-cultural collaboration and states that what the *hapū* (sub-tribe) seek is that the researchers are trustworthy, and that they build credibility through their integrity as people and by their actions, whether they be indigenous or not, bi-cultural or not (Hepi et al. 2007).

Organisations have Treaty responsibilities too. Sporle and Koea developed a Treaty relationship framework outlining inter-relationships between host organisations, researchers, Māori end-users, ethics committees and *mana whenua* (local tribes) when developing a research proposal that is responsive to Māori (Sporle and Koea 2004). This structural framework, initially designed for use at the Auckland District Health Board, encourages the development of institutional policy statements that clarify consultation mechanisms, issues for consultation and local research priorities for Māori well-being. This approach intends to provide a structure for the ongoing involvement of Māori, guidance for researchers and a mechanism for host organisations, ethics committees and funding organisations to assess the Māori responsiveness of an intended research project (Sporle and Koea 2004). Ethics committees review locality assessments conducted by research organisations. These assessments are required to determine the level of Māori consultation required for particular research projects. Institutional monitoring has a role in guiding organisation-based scientists and researchers to work with Māori (Teariki, Spoonley and Tomoana 1992), however the development of Māori-specific organisational policies should only constitute a first-step in seeking improvements (Moewaka Barnes 2006).

Beyond individual researchers and research organisations, the government via its various agencies has responsibilities to develop appropriate mechanisms to ensure that Māori ethical issues are adequately addressed. This has been enacted to a certain degree. Statements within the Operational Standard, which governs ethical review in New Zealand, and the Guidelines on Ethics in Health Research produced by the Health Research Council state;

The Treaty of Waitangi is the founding document of New Zealand. The principles of partnership

and sharing, implicit in the Treaty should be respected by all researchers and, where applicable, should be incorporated into all health research proposals. (Health Research Council of New Zealand 2002)

The principles of the Treaty of Waitangi must be incorporated in the proceedings and processes of ethics committees… Broad Māori cultural concepts should be respected and supported through ethical review. (Ministry of Health 2006)

The Operational Standard also gives guidance to researchers in terms of implementation of the Treaty principles of partnership, participation and protection in research with Māori and also lists additional issues that arise from the ethical principles to ensure that *tikanga* (protocols and practices), and cultural concepts are acknowledged. The principles are defined as follows:

▪ **Partnership** — working together with *iwi* (tribe), *hapū* (sub-tribe), *whānau* (family) and Māori communities to ensure Māori individual and collective rights are respected and protected.
▪ **Participation** — involving Māori in the design, governance and management, implementation and analysis especially research involving Māori.
▪ **Protection** — actively protecting Māori individual and collective rights, Māori data, Māori culture, cultural concepts, values, norms, practices and language in the research process.

This interpretation of the Treaty principles does not encompass all of the issues that Māori have identified as ethical concerns. The interpretations of partnership and protection basically describe the same rights, that is, respecting and protecting Māori individual and collective rights. The only difference is a change of focus on who is responsible for this action. Significantly, this interpretation is oriented towards processes of engagement rather than the potential outcomes of that relationship. As such notions of reciprocity, equity and benefit-sharing — which frame ethical issues like resource allocation, Māori workforce development and developing mātauranga Māori — are not incorporated within these descriptions. Therefore, a more Māori-responsive interpretation of Treaty principles in terms of research ethics is required, one that allows space for the outcomes of research for Māori communities to be fully considered.

Reinterpreting the Treaty of Waitangi Principles for Research Ethics

Ethics arise from within a cultural worldview. They are consistent with, and reinforce, the values and philosophies of the particular knowledge system. Ethical practice is based on culturally bound concepts that require discussion and negotiation in cross-cultural environments. Ethics committees, as one such environment, inevitably become a site for cultural negotiation (Durie 1998). The importance of finding a neutral zone for dialogue to facilitate a conscious deliberative process of knowledge exchange and critical reflection is central to the process of negotiating space (Smith et al. 2008). Affirming the existence of differing ontologies, each claiming their own distinct and autonomous view of the world, creates an "ethical space" where the opportunity exists to examine similarities and differences and allow for critical conversation (Ermine, Sinclair and Jeffery 2004). The principles of the Treaty of Waitangi should be interpreted in a manner that acknowledges and affirms the ethical understandings of both Māori and Pākehā New Zealanders.

The principles of respect, control and reciprocity have been identified as central themes within both Māori and Indigenous research ethics and can be incorporated within a framework that aligns them with the principles of the Treaty of Waitangi. The suggested revisions to the Treaty principles are;

▪ **Partnership** — recognition of Māori groups as partners in research and respect for their cultural knowledge and traditions, including Māori individual and collective rights, Māori data, Māori culture, cultural concepts values, norms, practices and language.
▪ **Participation** — control over involvement in research processes by Māori, and Māori participation in design, governance, management, implementation and analysis especially for research involving Māori.
▪ **Protection** — actively protecting Māori rights and ensuring there are tangible benefits that can be realised within Māori groups in an equitable manner.

For researchers to improve the relevance and responsiveness of their research project to Māori communities, they will have to consider their role in

addressing ethical issues of concern to Māori as part of their consultation process, and in doing so address the Treaty responsiveness of their research projects. The framework in Table 1 below aligns the existing Treaty principles with core Indigenous concerns to provide a more accurate interpretation of the Treaty principles in the area of research ethics. The framework also illustrates how identified ethical issues of concern for Māori are framed by the revised definitions of the principles and outlines some of the potential implications for research activity. Notions of collective consent relate to the ability of Māori groups to agree or disagree to the external ethicality of the study. External ethicality relates to the safety of the study for the community and is differentiated from the internal ethicality of the study which is concerned with the safety of the study for the participants (Hudson 2004). Respect for Māori protocol and opportunities for *whanau* (family) support have

been discussed by numerous writers (Smith 2001; Cram 2001; Te Awekotuku 1991; Glynn 1992; Hepi et al. 2007). It demonstrates that the researchers are sensitive to cultural difference and it assists in developing a relationship based on trust and integrity. Increasing Māori involvement in the design, methods and analysis of research has been a constant theme, best summarised in the Taxonomy of Māori Research presented by Chris Cunningham (2000). He recognises the level of Māori involvement and degree of *mana whakaahere* (control over decision-making) within a project will depend on the type of research being conducted. However, there may be a need for a collective approach to constructing the project, ensuring access to Māori advice, Māori participation as researchers, and the use of Māori forms of analysis. The recent convergence of thinking around kaupapa Māori theory and epidemiology also indicates the

Table 1 Treaty based framework for engaging with Māori in research

Indigenous ethical themes	Revised Treaty Principles	Ethical Issues for Maori	Potential Implications for research
Respect — Recognition of Indigenous groups as sovereign entities and respect for their cultural knowledge and traditions. *Status: Recognition of parties as equals*	Partnership — Recognition of Māori groups as partners in research and respect for their cultural knowledge and traditions, including Māori individual and collective rights, Māori data, Māori culture, cultural concepts values, norms, practices and language in the research process	Rangatiratanga (Authority) Respects culture Tikanga Māori (Māori protocols and practices)	Collective consent Use of Māori protocols Whānau (family) support
Control — Indigenous control over involvement of Indigenous groups in research processes. *Process: Integrity of engagement*	Participation —Control over involvement in research processes by Māori and Māori participation in design, governance, management, implementation and analysis especially research involving Māori	Mana whakahaere (control over decision-making) Validating Māori concepts Incorporating Māori values Alignment to Māori goals Involvement of Māori participants	Collective construction Access to Māori advice Māori participation as researchers Māori analysis Collect ethnicity data Over-sampling protocols to provide equal explanatory power
Reciprocity — Ensuring there are mutual benefits and they are realised within indigenous groups in an equitable manner. *Outcome: Equity of outcome*	Protection —Actively protecting Māori rights by ensuring there are mutual benefits and that they are realised within Māori groups in an equitable manner.	Allocation of research resources Māori workforce development Mātauranga Māori (traditional knowledge)	Relevance to Māori health goals Development of Māori research capacity End use of results Cultural Intellectual Property Rights

potential importance of collecting ethnicity data and the usefulness of over-sampling protocols to provide equal explanatory power for comparative analyses (Robson 2002; Robson and Reid 2001). Māori are particularly interested in the end-use of results, and research that results in specific tangible benefits and contributes towards Māori development will be viewed positively. This may be achieved by ensuring the project is relevant to Māori health or development goals, that it develops Māori research capacity, and that it acknowledges and protects cultural and intellectual property rights (HRC 2008). Ensuring that Māori have the opportunity to assess and negotiate the respective risks and benefits of participation in research is central to determining whether specific projects contribute towards reducing inequalities or increasing them.

The suggested revision of the treaty principles in relation to research ethics is necessary to ensure that issues of reciprocity, equity and benefit-sharing are an explicit part of the negotiation process between researchers and Māori communities. It is envisaged that this framework will provide a useful guide to both researchers and ethics committees when evaluating the Māori responsiveness of a research project, both in terms of distinctive ethical issues for Māori and the principles of the Treaty of Waitangi.

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