



Article

# Encircling the commons: Neotribal capitalism in New Zealand since 2000

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## Abstract

This paper uses a neotribal capitalism approach to theorize the corporate Maori tribes' economic and political strategies in New Zealand. I trace the current convergence between neoliberalism and the corporate tribe to the alliances and networks established in the inclusive bicultural stage of the 1970s. These alliances were later institutionalized in the exclusive bicultural stage through brokerage processes which, in the brokerage function itself, developed a political relationship between the corporate tribe and the government and established the brokers as self-interest class agents. The consequence of brokerage politics has been the consolidation of a system for the transfer of economic resources from public to tribal ownership and for the devolution of state services into tribal control. This has implications for New Zealand's liberal democracy.

## Keywords

biculturalism, brokerage, corporate tribe, ethnic politics, Maori, neoliberalism, neotribal capitalism, New Zealand

## 1. Introduction

'Neotribal capitalism' (Rata 2000, 2003a) is a theoretical approach to understanding the ethnic politics of the post-1960s period of retribalization and biculturalism in New Zealand. The approach conceptualizes the revived tribal unit (*iwi*) as a corporate economic enterprise operating in the national and international capitalist economy. The term 'neotribe' is used to capture the entity's economic character and the traditionalist ideology that justifies claims for the economic and political inheritance of the past with the neotribal unit understood as a contemporary entity created by a small group of Maori professionals and academics.<sup>1</sup> This group

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(discussed in section 6) first emerged as leaders of the Maori cultural revival in the 1970s within the bicultural project spearheaded by the liberal-Left (Rata 1996; Howe 2009). By the 1980s a new interpretation of the 1840 Treaty of Waitangi as a political ‘partnership’ between the Crown (the New Zealand state) and the tribes became the source of claims for historical grievance settlements.

In 1987 the Federation of Maori Authorities (FoMA) was formed to lead the Treaty settlements process within the neoliberal era of New Zealand politics. Under traditional tribal leader Sir Hepi Te Heuheu, the FoMA brought together a strong alliance of the Maori professional and academic leaders, the tribal committees of the post-war welfare state, and representatives of a reviving tribal ‘aristocracy’.<sup>2</sup> The alliance led the campaign to ensure that the Treaty settlements were awarded to the rapidly incorporating tribal entities. Despite opposition by some urban Maori leaders who continued to represent the disadvantaged section of the Maori population in whose name Treaty claims were initially made and accepted by successive governments, ‘the 1998 High Court decision<sup>3</sup> that “iwi” means “tribes” and tribes existing and recognised in 1840’ (Round 2000: 668) was a victory for the corporate neotribes.

Treaty settlements were to be wealth generating for the incorporated tribal entities, not mechanisms for improving the social circumstances of Maori. ‘Sir Robert Mahuta, for example, declared in the 1997 Tainui Trust Board annual report that, regardless of the latest Treaty settlement, it was the Crown and not the tribe, who had the duty to provide proper health care, welfare, housing, employment and all the basic needs of the Maori people’ (Round 2000: 669).

Since 2005 the FoMA has developed into the Iwi Leaders’ Group and the Iwi Chairs Forum. Second generation brokers concentrated in the Iwi Leaders’ Group<sup>4</sup> are all representatives of tribes, not of pan-Maori, as was the case with the first generation of leaders in the 1970s and early 1980s. Disadvantaged Maori remain in the same, if not worse, circumstances. ‘Maori living standards in 2004 showed increased within-group inequality’ (Callister 2004: 24) as the number of Maori in severe poverty increased, from 7 per cent in 2000 to 17 per cent in 2004 (Jensen et al. 2006).

The neotribal theoretical approach covers two broad areas. The first analyses the enabling role of New Zealand’s bicultural ideology in providing the conditions for the emergence of the corporate tribe – the neotribe. The second area is the examination of the ideological and political strategies and mechanisms used by the neotribal elite as it responds to those conditions. The outcome is the acquisition of economic resources and political power. For example, the tribes now have ‘more than 25,000 ha in dairy farms, they own forest estates (200,000 ha of pre-1990 exotic forests and 400,00 ha of pre-1990 indigenous forests as well as 200,000 ha of scrub); they also own 35 per cent of the fishing industry’ (O’Sullivan 2009a: A19). According to the Iwi Leaders’ Group Taskforce Report, *Iwi Infrastructure and Investment Report* (2010: ii), by 2005–6 ‘the total commercial assets owned by Maori individuals, whanau [families], hapu [sub-tribes] and Iwi stood at \$16 billion – a massive increase of \$7.5 billion from 2001’.

In addition, the Iwi Leaders' Forum operates 'a working group to look at constitutional change, ahead of an official exercise run by the Government' (Gifford 2010). The goal of constitutional recognition extends and consolidates the Treaty political 'partnership' interpretation, one that originates as recently as 1987, when a Court of Appeal decision stated that the Treaty established a relationship 'akin to a partnership' (TPK 2001: 78). From that decision, 'partnership' discourse moved quickly into general use. By the time of the 1997 Muriwhenua Land Report, the Waitangi Tribunal (established in 1975 to hear Treaty settlements claims) had 'anchored its view of the equal status of the Treaty partners in likely Maori perspectives at the time of signing of the Treaty: "That Maori and the Governor would be equal, not one above the other"' (TPK 2001: 81).

The emergence of capitalist elites through self-advancing political strategies that take advantage of localized historical circumstances is, of course, nothing new. The process has been a characteristic of global capitalism since the 15th century (for example, see Lachmann 2000), as people 'create and configure their worlds' within 'the relation between world processes and the distribution of conditions of social existence' (Friedman 2003: xiv). The transformation of the state in the current period of global capitalism (Moutsios 2010) is characterized by localized forms of devolution and privatization referred to as neoliberalism (Rata 2010). These provide various opportunities for corporatization. New Zealand, like other countries, has experienced the rise of corporate elites; however, its particular history has also produced a racialized corporate elite. That history includes the recognition of Maori as indigenous and it is in the indigenous concept that neoliberalism in New Zealand has a character distinctive to that country. Indigeneity is the management of people in relation to land in the capitalist period (Li 2010) – it may or may not serve the interests of the people who are categorized as indigenous given that the concept can function as a political instrument either for or against the people. My focus in this article is on the racialized neotribal elite and its successful use of a justifying traditionalism that uses the discourse of indigeneity in its own interests.

## 2. The neotribe

The neotribal elite has re-configured its localized character in ways that consist of two defining features. The ethnicized nature of the elite is one feature, a racialized character made possible only within the enabling bicultural ideology of the post-1960s period.

In its initial stage biculturalism was a new social and political positioning in the name of the approximately 14 per cent of New Zealanders who identify as Maori<sup>5</sup> and those New Zealanders, in the main liberal-Left professionals of the new middle class, who identified as 'Pakeha'<sup>6</sup> (Rata 1996; Openshaw 2009a). The 'inclusive biculturalism' of the 1970s and early 1980s was a set of ideals, policies, and practices intended to bring Maori culture into mainstream society and, through social justice policies and historical reparation for illegal land confiscations, to assist in

the full integration of Maori people into New Zealand's liberal democratic society. The ideals of 'one nation, two peoples: Maori and Pakeha' and redistributive politics were fundamental to biculturalism. They remained the basis of the ideology until the late-1980s, when biculturalism shifted to the 'exclusive' form of retribalization and the legal recognition of the incorporated tribe, rather than pan-Maori, as the recipient of the greatly expanded Treaty of Waitangi settlements.

Yet New Zealand's social reality confounds the bicultural ideology of two racial groups with distinctive cultures. 'Maori are neither a homogeneous group nor a closed population – all Maori also have European or other ancestry, and around half the Maori population identifies as both Maori and European' (Bromell 2008: 41). There is a range of possible identifications available to the population that identifies as Maori. Callister (2003: 15) notes that 'of all those who recorded Maori as one of their ethnic groups in the 2001 census, only 56 per cent recorded *only* Maori'. Indeed it is quite possible that many New Zealanders identified with several ethnic groups including Maori prior to 2006 but, as Callister (2007) points out, the prioritization principle used by the Department of Statistics until that year meant that those who included Maori as one of their ethnic identities were automatically assigned to the Maori category. This would increase the numbers of Maori but the actual situation is less straightforward.

As a result of nearly two hundred years of intermarriage, 'some people of Maori descent have a strong ethnic Maori identity; others have little or none. For some, their Maori identity is central to their lives; for others, different aspects of their social and personal identities ... seem to take precedence' (Chapple 2000: 104). However, as access to Treaty settlements is now through tribal membership, there has been a marked increase in the number of people of Maori ancestry and/or identity who have joined a tribe – most tribal registrations can now be made over the internet. The 2001 census shows the proportion of Maori descendants who do not have tribal affiliation at 25 to 30 per cent (Statistics NZ 2005). According to Gill et al. (2010: 19), by the 2006 census the percentage of Maori without tribal affiliation had decreased from 26 per cent 'with 17% reporting no tribal affiliation'.

The second significant characteristic of the New Zealand tribal elite that distinguishes it from other corporations is the convergence of political and economic functions. That is, the neotribe is both a socio-political entity (the ideology of the revived traditional tribe) and an economic corporation. Mark Solomon, the chair of the Asset and Collaboration Workstream of the Maori Economic Development Taskforce (the taskforce established by the Iwi Leaders' Group), in speaking to tribal leaders demonstrates this conflation of economic and political functions:

We are the perfect partner for Government. And they are aware of our thoughts on this matter. A relationship between Crown and Iwi, as co-investors in national infrastructure, is the next step in the Treaty of Waitangi partnership. (*Iwi Infrastructure and Investment Report* 2010: v)

The corporate tribe's political goal of tribal sovereignty (*tino rangatiratanga*) in a constitutional relationship with the New Zealand government is the fundamental difference between that entity and other business enterprises in New Zealand. It has implications for New Zealand's future as a liberal democracy. The formal separation of the economic and political spheres is essential to democracy because it is in the political sphere that the unequal economic subject becomes the equal citizen. In practice, of course, some individuals and groups are politically 'more equal than others'. Major New Zealand corporations, such as Fonterra and Telecom, do have informal networks that enable them to influence the political sphere. Trade unions have also exerted considerable influence on various Labour governments from their positions as interest groups within the Labour Party. But while the economic interests of these groups influence politics in direct and indirect ways, it remains an influence, not a right. In contrast, the neotribe has acquired rights to political power through the institutionalized brokerage systems that I discuss in section 7.

In addition, the tribes are not held accountable for the exercise of that power because the very placement of the mechanisms of power creates distance between the interest group and the expression of its interests. This distance disguises the tribe–power relationship and makes accountability difficult.

The institutionalization of neotribal economic and political interests is accomplished through two brokerage mechanisms. The first is the legislation of Treaty principles since the late 1980s (TPK 2001) and the second is the more recent inclusion of direct government–tribal consultation procedures in recent Treaty settlements. An example of this is the provision in the settlement with the Ngati Porou tribe (OTS 2009: 8) for 'an annual Ngati Porou–Crown Forum for high-level discussion between Ngati Porou and Ministers'. Initially, tribal brokers tended to be individuals. For example, the brokering of Treaty principles into legislation was the result of informal discussions held in 1986 between the Deputy Prime Minister, Geoffrey Palmer (now Sir Geoffrey), and Sir Hepi Te HeuHeu, the paramount chief of Tuwharetoa (Rata 2004).

However, the incorporation of the Federation of Maori Authorities (FoMA) in 1987 produced a brokerage group that became increasingly powerful during the 1990s. A timeline of the Federation's activities (FoMA 2010) shows the growth of its influence and interests. In 1990, members expressed 'concern with purported Crown ownership of Geothermal Resources', an economic interest that remains active today. Throughout the 1990s, the Federation influenced the Maori Fisheries Review 1991, the Maori Land Act 1993, the reform of the Producer Board 1997, the Maori Authority Tax Review 1997, and the Maori Reserved Lands Amendment Act 1997. The FoMA was included in government trade missions to China and elsewhere in 1998, and advocated on genetic modification issues and Crown plans to ratify the Kyoto Protocol on Climate Change 2001 – the Protocol was seen to impact on tribal forestry interests. In 2004, the Federation was involved in opposition to the Foreshore and Seabed Act (FoMA 2010). The Maori Commercial Aquaculture Claims Settlement Act, 2010, was the result of direct negotiations between the tribes and the Government. According to the chairman

of the Te Tau Ihu customary fisheries forum, Michael Bradley, the settlement was negotiated 'extremely swiftly', the result of the new model whereby 'you sit down with the minister and you thrash it out' (Bennett 2010: A4).

In 2008, a streamlined lobby group (linked to the Federation) emerged to broker neotribal interests by promoting the direct negotiation model between the corporate tribes and the government. The 'Climate Change Iwi Leadership Group and Maori Reference Group Executive' (Te Aho 2008) described itself as 'a collective of Iwi and Maori economic entities that have come together to respond to common issues relating to Climate Change'. The group, now referred to as the Iwi Leadership Forum or Group, emerged into public view at the beginning of 2010 when it was involved in direct negotiations with the Prime Minister over tribal claims to the ownership of the foreshore and seabed. One of the few media reports about the group commented: 'A select but powerful group of leaders from the wealthiest and biggest iwi [tribes] is fast emerging as the major player in the Government's approach to Maori issues. It is already taking a pivotal role in talks on what will replace the Foreshore and Seabed Act' (Kay 2010: D3).

The Iwi Leaders' Group Taskforce Report shows the corporate tribes planning for economic expansion within a political arrangement with the government. The goal is to create 'State-Iwi Owned Enterprises' (*Iwi Infrastructure and Investment Report* 2010: v) from tribal ownership of public assets and services. The report proposes determining

how Iwi Maori could invest in a range of Crown assets, including Crown 'social infrastructure' assets such as schools and hospitals, and 'economic infrastructure' assets such as toll roads, bridges, tunnels, airports, seaports, rail networks and energy infrastructure. Some of the assets (or the potential to invest in these assets) will also sit at other levels, such as local government. (*Iwi Infrastructure and Investment Report* 2010: 2)

The proposed acquisition of public infrastructure within a Treaty partnership arrangement can be traced to a background paper prepared by the Iwi Chairs Forum for the United Nations Special Rapporteur's visit in 2005 (*Iwi Chairs Forum Background Paper* n.d.). The document states that a 'co-investment with the Crown is also founded in the concept that a relationship between the Crown and Iwi as co-investors in national infrastructure is the next step in the Treaty of Waitangi partnership'.

The acquisition of public resources by the corporate tribes within the Treaty partnership framework has been made possible by the inclusive form of biculturalism of the 1970s and early 1980s which promoted a 'difference within unity' model for New Zealand society. 'Difference' was accepted on the basis that the difference was understood as cultural, not racial, difference, and one that would lead to greater social unity. However, this inclusive biculturalism was overtaken in the mid-1980s by a shift to 'exclusive biculturalism' (Rata 2008). The 1985 Treaty of Waitangi Amendment Act which recognized the tribes, not pan-Maori, as the

legal claimants for historical reparations and allowed claims to be backdated to 1840 changed the discourse in a fundamental way.

'Maori' was now used increasingly to mean tribal Maori with 'social justice' referring to tribal recognition rather than the inclusion of Maori culture more generally into New Zealand society. Complicating the discourse is that the term 'iwi' refers to both 'tribe' and Maori people generally. Elsewhere (Rata 2011a) I have analysed the discursive strategies employed by the neotribes. The conflation of the two meanings of 'iwi' is one such strategy. It can be seen in the Iwi Leaders' Group Taskforce Report, *Iwi Infrastructure and Investment Report* (2010), which makes frequent use of the term 'iwi Maori'. In this context the term actually refers to tribal shareholders. These are Treaty settlement beneficiaries as a consequence of their tribal registration. It does not refer to all Maori, although 'iwi' implies both groups.

Since 2000, another major shift in neotribal discursive strategy can be identified. As the earlier shift was concerned with the definition of the people in whose name the resources are acquired, with the shift from all Maori to tribal Maori, so too is the current shift about defining 'the people'. The 1999 publication of Linda Smith's influential book, *Decolonizing Methodologies*, and the 2001 production by the Ministry of Education of Mason Durie's 'A Framework for Considering Maori Educational Advancement' (2001) represent the increasing use of the terms 'indigenous' and 'tangata whenua' (people of the land). These terms are increasingly significant signifiers in the discourse of the post-2000 decade (Rata 2011a).

Indigeneity locks people into an ahistorical primordial timelessness so that one is always 'indigenous'. The creation of a primordial people outside of time simultaneously implies the timeless quality of the resources of those people. In this way a new ideological justification for both 'people' and resources is created, one outside the modern nation-state. An example of the strategic use of indigenous discourse and the practices to which it leads is provided by Tainui tribal leader and member of the Iwi Leaders' Forum, Tukoroirangi Morgan. Commenting on Tainui's invitation to the Sheik of Dubai to attend the coronation anniversary celebration of Maori King Tuheitia, Morgan referred to the desire by Tainui to build a relationship with the Emeratis, 'a group the iwi wanted to do business with'. 'They bring scale and economic muscle – they're indigenous and they share some common values with us' (Tahana 2009a: A6).

The ideological shifts in neotribal capitalism and biculturalism, along with the rise in indigenous identification, correspond to shifts in the global political economy. The idea of re-conceptualizing 'the people' in pre-modern, ethnic and tribal terms is not confined to New Zealand. The loss of confidence in modernity and progress corresponds with the desire for the imagined stability of the traditional past (Friedman 1994). The consequence of this reactionary hegemony is a decline in the nation-state as the site for the regulation and administration of capitalism, the corresponding public sphere as the imaginary of the nation-state and the movement of power away from the public sphere (Moutsios 2010). It provides the conditions for the shift in New Zealand, as elsewhere, to the neoliberal politics of

privatization, corporatization, and the devolution of state services to various private or semi-private organizations. In New Zealand, the corporate tribe is one such organization. Biculturalism, as a socio-political movement interdependent with neotribalism, is similarly changed in significant ways, moving from its inclusive form to a separation between two peoples, Maori and non-Maori, through a politically defined Crown–tribal treaty partnership. In this exclusive stage of biculturalism, the tribe is the socio-political unit for the governance and management of devolved public services and the ownership of privatized public resources.

The convergence of neoliberalism and neotribalism (Rata 2010) owes its efficacy to the alliances and networks first established in the ideology of ‘two peoples within one nation’ promoted during the inclusive bicultural stage, and institutionalized in the second, exclusive bicultural stage. Brokerage mechanisms were the means by which the ideology of exclusive biculturalism was put into practice. The construction of ‘two peoples’ and of boundaries to delineate each party created the need to cross the divide separating the two. Representatives from each side took on that task. In doing so, that is, in representing a separate and distinctive group, and in crossing the divide to negotiate its interests, self-serving positions were created within government institutions. It is in that brokerage process that the elite emerged as a self-interested group (Rata 2003b). As McAdam, Tarrow and Tilly (2001: 142), citing Burt (1992), have observed, the brokerage process is itself transforming: ‘Brokerage produces new advantages for the parties, especially for the brokers’. The functions, and the representatives carrying out the functions, exist only in so far as the two sides exist. For that reason, the consolidation of the neotribe as a permanently instituted entity is essential to the permanent establishment of the elite as a ‘class-in-itself’.

### 3. A new imaginary

Biculturalism transformed New Zealand in two fundamental ways. As the ideology of a new national imaginary of ‘two peoples’, Maori and Pakeha, ethnic identification became strengthened as national identification was weakened. Secondly, it provided the ideological justification for the construction of a socio-political unit, the neotribe, for that new imaginary. This was the entity with which people can identify either directly as members or, in the case of those who became ‘Pakeha’, as the referent for ethnic identity. Despite claims that the entity is the revived tribe of a traditional redistributive economy, the corporate neotribe is an administrative unit of late capitalism, a pre-modern *jus sanguinis* imaginary that provides ‘new forms of integration between the individual and the smaller entity’ (Friedman 2006: xvi). It claims the restoration of kinship social relations as the structuring principle, but acts as a capitalist corporation, competing in the international marketplace in the interests of its share-holders and seeking to enhance its advantage through effective political strategies.

In post-industrial capitalism, the nation-state loses its status as ‘the major site in which capital reproduces itself’ (Shore 2009), with the rise of smaller, pre-modern

units such as the corporate ‘tribe’ or other types of non-democratic corporations that combine economic functions with political power. Pre-modern forms of identification such as ethnicity, tribal allegiance, or religion serve as the structuring mechanisms for social integration and provide a direct challenge to the national identity of the modern nation-state.

In New Zealand, biculturalism was the vehicle for that change in identification and for the acceptance of the new socio-political unit. Until the rise of biculturalism in the 1970s, tribalism was regarded as an anachronism (Kawharu 1989). Yet from the mid-1980s, the idea of the revived tribe was actively promoted in government circles with the networks and alliances laid down in that decade proving invaluable in recent moves by the corporate tribe to claim the governance and administration roles of the nation-state. Bicultural ideology enabled both those claims and their acceptance. Indeed, the development of the neotribe was made possible by biculturalism, with the 1980s and early 1990s dominated by tribal historical grievance settlements concerning land that was considered to have been unjustly confiscated in the 19th century.<sup>7</sup>

From the 1990s, the type of claim made by the neotribe has changed in substance to fit its emergent character as an alternative ‘nation’, or at the very least, a socio-political unit within the New Zealand nation (Mulholland 2006; Duncan 1999). The claims are now being made for public resources on the basis that the tribe is a new ‘public’ entity comprised of the ‘people’ as the historical kinship group. Claims are justified in the ideology of an older, pre-national idea of the people. In the process of establishing the political character of the corporate tribe, *jus solis* consolidates the earlier *jus sanguinis* of ‘blood’ or racialized social relations. This is in contrast to the modern ‘social contract’ – the idea of the people constructed in the present from individuals and groups who do not necessarily share a common past. The democratic public domain serves as the site for the ongoing construction and integration of these non-kin people as a new imaginary – the modern nation-state. A society consisting of people already constructed in the past does not require a public sphere. Power is located not in a public sphere but in the traditionalist hierarchies. Because there is no need to challenge these birth-ascribed relations, there is no requirement for the site of challenge and politics – the public sphere.

The resurgence of traditionalist birth-ascribed hierarchies of power occurring in the alliance between ‘the *nouveau riche* of an Anglo-Maori urban elite and the residual or imagined Maori aristocracy’ is identified by Tremewan (2006: 96). The third anniversary of the Maori King’s coronation in 2009 provides insights into the construction of these hierarchies with the discourse of several leaders from several major tribes, Ngati Porou, Ngati Maniapoto and Ngati Tuwharetoa, demonstrating interest in such a resurgence. Selwyn Parata of Ngati Porou comments that ‘iwi ariki – bluebloods – needed more access to the King’. Tui Adams, Ngati Maniapoto, ‘said “iwi had repeatedly spoken about re-instating a council around the King. “He needs a group of ariki, and not just a group of anybodies around him”, a position supported by Ngati Tuwharetoa paramount chief, Sir Tumu te

Heuheu. Tainui leader Tuku Morgan said 'iwi (tribes) "would always have access to the King, most likely through an economic iwi leaders' forum"". Asked if that was 'the same as having a direct link to the monarch, Mr Morgan said it was' (Tahana 2009a: A6).

The process of re-conceptualizing the 'people' as a revived socio-political entity and developing the traditionalist ideologies and mechanisms for managing the new imaginary of a tribal 'people' is pre-democratic politics. These earlier forms of social identity and cohesion, such as tribal kinship groups, replace the class consciousness and national identity that characterized social groups in industrial capitalism, an era when the working class was sufficiently powerful to democratize the state. It is within this new, increasingly reactionary, even anti-democratic global context that events in New Zealand are located. The revived tribes are considered more suitable political units for the production and reproduction of post-industrial capitalism than are democratic political units. This is the case because the traditionalist ideologies justify status inequalities that are less costly to capital than the egalitarian claims of working-class democratic movements that characterize the era of the liberal-democratic nation-state (Rata 2000). In addition, post-industrial corporations that use traditionalist ideologies to secure resources and political power are congruent with the neoliberal devolution and privatization policies that characterize contemporary nation-states.

Neotribal politics is now characterized by two strategic stages in the justification for economic and political claims. The first is the Treaty of Waitangi ideology which dominated the 1990s. The second is the indigenous ideology of the post-2000 period referred to above. There is now a direct attack on the concept of the liberal democratic public. Previously, the claims had used concepts inherent to liberal democracy, those of human rights and social justice. Now neotribal claims have the new discourse of indigeneity, one in opposition to liberal democracy, and in the name of an older 'people' constructed on ideas of primordial rights to a socio-political entity (the *jus sanguinis* tribe) and primordial rights of that entity to territory (*jus solis*). The 'longer memory' (Durie 2001: 8) claimed for indigeneity strengthens the earlier non-public idea of 'the people'.

A Maori leader's explanation of the shift from a Treaty of Waitangi to an indigenous focus captures the discourse. According to Mason Durie:

the recognition of indigeneity is a different issue from the celebration of cultural difference or human rights and requires a different set of constitutional guarantees. Although the Treaty of Waitangi has become the focus for considering the Maori constitutional position, it is not always the most useful document to define the extent of indigenous rights. In contrast to the Treaty, where 1840 represented a new beginning, indigenous rights have a longer memory. 1840 is somewhat incidental to a set of customs and lore that evolved over some hundreds of years. Increasingly the state will need to be concerned about indigeneity as an issue that is related but not identical to the Treaty of Waitangi, and the indigenous voice will need to be heard alongside the Treaty dialogue. (Durie 2005: 15)

Durie acknowledges the incompatibility between indigeneity and democratic political entities. ‘The principle of indigeneity will not be welcomed by all New Zealanders’, because ‘while there is a measure of acceptance that Treaty grievances should be settled, and inequalities in society should be eliminated, there is less enthusiasm for accepting that being indigenous confers special rights on a particular group’. There are ‘conflicting principles of citizenship and indigeneity’ (Durie 2001: 4). This is a significant statement because it explicitly addresses the fundamental conflict between New Zealand’s liberal democracy and the exclusive *jus sanguinis* criteria for tribal membership.

#### 4. Encircling the commons

A significant change to neotribal capitalism which complements the increasing use of indigenous discourse in the last decade is in the type of economic claims made by the corporate tribes. The claims of the 1980s and 1990s were mainly concerned with settlements of historical grievances. From the late 1990s, those claims have expanded to include resources such as radio frequency, the foreshore and seabed, minerals, gas, geothermal power, forests and mountains in the conservation estate, water, river and lake beds, flora and fauna, and intellectual property. These are resources previously considered to be inviolate as public property – part of ‘the commons’. However, the ‘encircling of the commons’ which precedes the transfer of publicly-owned assets is not driven by tribal quest for property and sovereignty alone. The neoliberal policies that have characterized New Zealand from the mid-1980s have been a ‘loosening’ of the strong centralized state. With the exception of the 2004 Foreshore and Seabed Act (the Labour Government of 1999–2008 legislated to keep the foreshore and seabed in public hands), a growing convergence between increased privatization and devolution and the corporate tribes’ interest in these assets indicates that the commons is at risk.

Two recent government settlements indicate a willingness to consider claims for public assets. The Ngati Toa Rangatira settlement contains ‘special provision for the Ka Mate haka’, the first time a settlement has dealt with intellectual property matters. (Haka is the ceremonial song used by the national rugby team, the All Blacks, preceding international test games.) According to a media commentator, further discussions will occur about ‘commercial opportunities for Ngati Toa in relation to the haka’ (Tahana 2009b: A1). Also in 2009, the ‘Treelords’ settlement saw the large state-owned Kaingaroa Forest in New Zealand’s Central Plateau transferred to the ownership of a consortium of North Island tribes. This occurred despite protests against such privatization which drew on evidence showing that the land was legally purchased by the government in 1879 and that the forests were planted as an ongoing asset for all New Zealanders. (Much of the tree planting was done by work gangs on government unemployment schemes during the 1930s’ Depression.)

A contradictory discourse pervades the government’s current proposals to allow mining in Schedule Four of the Crown Minerals Amendment Act (No. 2) 1997

which protects the Conservation Estate from such activity. On the one hand, it has confirmed that minerals belong to the people. On the other hand, 'National ministers had indicated a proportion of royalties from mining activities could be directed to a conservation fund' (Tahana 2010a: A2). That 'loosening' of what was previously an unacceptable idea has encouraged 'Coromandel Peninsula iwi (tribes) to put the rights to mineral wealth on the table as they head into Treaty negotiations and the Government talks about mining on Conservation land. . . . Usually royalties go straight to the Crown accounts. The change could see Maori argue royalties could now be set aside for tribes given that money may be set aside for other specific purposes' (Tahana 2010a: A2).

Other claims for public resources and infrastructure are in progress (*Iwi Infrastructure and Investment Report* 2010). Te Pumautanga o Te Arawa, the incorporated organization which received the Te Arawa tribe's Treaty settlements in 2009, is currently negotiating with Maori land trusts, sub-tribes and other trusts to develop geothermal power resources in the tribe's area and compete in the power production industry (Tahana 2010b). The recent claim for radio frequency in the change-over from analogue to digital transmission activates an earlier 1999 Waitangi Tribunal decision that Maori had rights to the radio spectrum by defining the 'electromagnetic spectrum [as] a taonga (treasure). Maori have the right to the technological exploitation of that radio spectrum' (Drinnan 2010: 7). The opening address by the co-leader of the Maori Party to the Tribal National Summit on Freshwater Management in December 2009 (Sharples 2009) linked interests in water management to indigenous ideology which conceptualizes water as sacred and indivisibly tied to the spirit of the people. While not using the word 'ownership', Sharples noted that the initiative was led by the Iwi Leaders' Forum which provided the leadership to 'encourage tangata whenua engagement with the concepts underpinning Maori approaches to water' (*tangata whenua* – 'people of the land', i.e. indigenous).

The growing interest by the tribes in claiming public resources and infrastructure is justified by the concept of the tribe as the revived socio-political unit of a distinctive indigenous people – a new concept of the 'people' who comprise the 'public', with rights that are seen to derive not only from the Treaty of Waitangi but from that indigenous status. There is increasing unease about these deeper issues behind claims. For example, recreational users, such as hunters, fishers and trampers, had expressed concerns that 'their access to Rotorua's Whakarewarewa and Kaingaroa forests could be in jeopardy when 176,999ha of the Central North Island's forests are handed over to Maori ownership'. The example was given of Mt Tarawera: 'In 2000, Mt Tarawera New Zealand gained sole access to the mountain, winning a contract from iwi owners Ngati Rangitihi. The company banned free recreational use and started running guided tours up the mountain' (*NZ Herald* 2009: A4).

The issue of tribal claims to public assets was brought to a head with the 2004 government decision not to accede to tribal demands for ownership of the foreshore and seabed despite considerable Maori protest. The Foreshore and Seabed

Act vested the full legal and beneficial ownership of the public foreshore and seabed in the Crown, a move designed to prevent Maori acquiring ownership. The Labour government was aware that New Zealanders would not have accepted the privatization of the beaches. Indeed, the purpose of the act was: 'To preserve the public foreshore and seabed in perpetuity as the common heritage of all New Zealanders'. Ongoing objections by the Maori Party led to the act's repeal and its replacement by the Marine and Coastal Area Act 2011, which removed public ownership for a complex 'no ownership' status. However, the matter is far from settled. The Coastal Coalition (2011), a broad-based action group organized by the New Zealand Centre for Political Research, continue to oppose the new legislation for a return to the public ownership of the 2004 legislation.

Media articles in the months leading up to the repeal indicated that the concerns expressed in 2004 (and continued by the Coastal Coalition), about privatization leading to commercial activity, remain valid. 'The Maori Party wanted the act repealed and replaced with a law recognising the right of Maori under the Treaty of Waitangi to the foreshore and seabed – and a stake in any future mineral claim' (McNeilly 2009: A4). At present, oil and gas explorers negotiate only with the Crown, with royalty payments going into the public coffers.

A leaked document from an adviser to the Iwi Leadership Forum suggested that the new legislation should 'be silent on the issue of ownership', with tribal decision-making and autonomy of iwi and hapu increased. It also called for 'veto rights over economic development including coastal occupation and resource extraction'. According to the journalist who broke the story, the document revealed the 'real agenda' behind secret dealings between the government and 'that group and its Maori Party proxies'. 'Whoever leaked the document has done all kiwis a favour by bringing these shadowy dealings into the open' (O'Sullivan 2010a). The tone of the article shows the extent of scepticism towards Treaty settlements and tribal intentions. 'Park the charming stories about the customary connections that Maori enjoy with the foreshore and seabed. What's really at stake here are the big bucks that can be earned from commercial activities such as marine farming, mining iron sands or even clipping the ticket on revenues from offshore gas and petroleum deposits' (O'Sullivan 2010a).

Such public criticism of the tribes would have been impossible in the biculturalist climate of the 1990s without inviting protests of racism. Even during the Maori street protests of 2004 against the Seabed and Foreshore Act, such strong criticism of tribes in a national newspaper would still have been unlikely. Sullivan's article appeared in the main Auckland newspaper, the *New Zealand Herald*, headed 'Foreshore Debate All About Big Bucks' (O'Sullivan 2010a: A19). Referring to the Iwi Leaders' Group as a 'cabal' engaged in unaccountable negotiations with the government leading to 'a sweetheart deal for Maori forest interest in the emissions trading scheme', the article ends: 'New Zealanders should say a clear No to this political version of insider dealing' (O'Sullivan 2010a).

A second article, in the Wellington-based *Dominion Post*, takes a similar critical tone. In 'A New Power in the Land' (Kay 2010: D3), the journalist

maintains: 'a select but powerful group of leaders from the wealthiest and biggest iwi is emerging as the major player in the Government's approach to Maori issues'. Both articles indicate the changing mood in the country from the dominant view of the 1980s and 1990s that saw tribal claims in social justice terms to growing concerns about the public estate.

## **5. Devolving governance and control**

In conjunction with claims for the ownership of public resources, the neotribe is also promoting itself as the site for the governance and management of devolved government services. A comprehensive example of this process is the 'Whanau ora' (family well-being) initiative by the political Maori Party. The scheme transfers the provision of health and social services for Maori from government agencies to locally-based private providers. These are either tribally-based or tribally-associated organizations or, at the very least, private Maori providers endorsed by local tribes. There are numerous concerns about the devolution of public services to private providers, not the least being the race-based character and the allocation of considerable amounts of public funds to private groups via a 'high-trust' model of accountability. 'It will involve welfare, housing, health, justice, the police and community agencies, apparently working together through a single delivery organization, with the Maori party claiming that Whanau Ora will enable "Maori solutions to Maori problems"' (O'Sullivan 2010b: A19).

Interestingly, the justifying discourse is one of liberal-left 'opportunity' rather than right-wing 'privatization', a conflation of politics that encouraged the convergence of the left and right in supporting neoliberalism in the 1980s (Openshaw 2009b) along with identity politics itself. The politician promoting Whanau Ora, Tariana Turia, demonstrates this in her response to accusations that the policy is privatizing welfare. According to Turia, 'I don't call it privatisation. I call it opening an opportunity for others who perhaps can provide better than the state', referring to the tribal providers 'who had performed well over the past 20 years' (cited in Trevett 2010: A6).

Governance and management provisions are included in all Treaty settlements with direct and rapid negotiations now taking place in order for the government to complete all Treaty settlements by 2014. The haste means that little is known about the settlement packages until they are in the final stages of negotiation, at which time information becomes available in the media, on tribal websites, and from the Office of Treaty Settlements. The public domain is placed under co-governance arrangements with no public discussion about the, as yet, unknown consequences for the future of large areas of the commons, much of which is included in the Conservation Estate, as well as for national cohesion itself. An example of the extent of co-governance arrangements may be seen in the 2009 Crown offer to the large Ngati Porou tribe. The agreement includes a 'co-governance' section with one clause stating that 'the Crown's offer includes a co-governance arrangement where the Crown and Ngati Porou jointly develop those parts of the East

Coast Bay of Plenty Conservation Management Strategy that apply to the Ngati Porou rohe [area]'. In addition, 'The Crown agrees that all Crown owned conservation lands within the Ngati Porou rohe/area of interest will be known as the "Ngati Porou Place"', one subject to tribal management strategies (OTS 2009: 2).

A series of agreements are proposed to 'provide Ngati Porou input into Government priority setting and decision-making related to Government funding and responsibilities within particular portfolios and/or Crown providers, focused on infrastructure, control of erosion and social services' (OTS 2009: 8). It is significant that these provisions refer to the 'Crown', not to the 'public', and work from the premise of a 'Crown-tribe' partnership evoking the British Crown with whom the tribes signed the Treaty of Waitangi in 1840. It is a discourse that sidesteps 170 years of New Zealand history which, from the 1852 Constitution Act, established the concept of a New Zealand public and the public domain managed by the state. The by-passing of the public for a future direct relationship between the 'Crown' and the tribe is included in the agreement: 'To support the Accord, the Crown offers an annual Ngati Porou-Crown Forum for high-level discussion between Ngati Porou and Ministers' (OTS 2009: 8). Not only is the public excluded here, but so too is Parliament.

There are growing print media and internet commentaries about 'secret dealings' concerning the privatization of public resources and tribal constitutional ambitions; for example, O'Sullivan (2010a), Drinnan (2010), the Liberation website (Edwards 2010), and the New Zealand Centre for Political Research's website (NZCPR 2011). There is also disquiet about the growing economic inequality within the Maori population given that it is Maori with no tribal affiliation who are 'some of those most disadvantaged in society' (Gill et al. 2010: 19). For example, in 2010, high-profile Maori lawyer Annette Sykes, in a public debate at the University of Auckland, referred to the 'self-anointed Iwi Leaders' Group' whose commercial deals for acquiring geothermal resources, national parks, private prisons, and mining were 'harnessing Maori to a global capitalism that impoverishes the mass of working-class Maori' (Sykes 2010).

## 6. Alliances and networks

Biculturalism provided the ideology of 'two peoples' and the networks and alliances between those 'two peoples' that has consolidated boundaries between the two parties, leading to the requirement for representatives on each side, and for brokerage mechanisms to link the two groups. There are now signs that the bicultural political project is entering a third stage, one of waning influence. With the consolidation of the corporate tribe as the unit of governance for the devolution of public services to Maori and as the incorporated body for the ownership and management of privatized resources and infrastructure that were previously in public ownership, biculturalism may well have served its purpose in securing support for tribal ambitions from the governing class. Neotribal power is now institutionalized through the brokerage mechanisms of legislated Treaty principles and

legislated arrangements for direct tribal–government negotiations that I identified in section one. This section examines how biculturalism provided the ideological and political conditions for the networks of alliances that secured such institutionalized political power for the neotribe.

Those who became biculturalists were, in the main, left-wing humanists of the new professional class, many from working-class backgrounds, who turned in disillusionment from class to identity group politics. The prosperity of that era that had improved the lives of working-class people throughout the developed world, a prosperity from which they had benefited as had no other class in history (Cannadine 2008), came to an abrupt close with the economic crises of the 1970s and beyond. The enthusiasm of the post-war generation that had initially thrown its weight behind left-wing class politics was directed instead to the group-identity politics of feminism, gay rights, and ethnicized cultural rights, and also to issue-based politics. The latter included anti-nuclearism and the conservation of natural resources such as lakes, flora and fauna, and marine life – for example the ‘Save the Whales’ campaign that remains ongoing.

The strands that were to define biculturalism emerged from within the identity politics of this new intellectual class. New Zealand historian Kerry Howe (2009: 18–19) recalls how ‘we were involved in a post-imperial/post-colonial sentiment that started sweeping through western universities from the late 1960s. The focus shifted from the colonisers to the colonised (as it did from the powerful to the poor, from white to black, from male to female). Generally, we were all caught up in an intoxicating dose of decolonisation’. The radicalized university graduates who divided along racial or ethnic lines, identifying as either Maori or Pakeha to create biculturalism as an ideology and a political movement in the 1980s, drew on earlier processes of cultural revivalism.

The leaders of Maori revivalism had already begun emerging during the Maori cultural renaissance of the 1960s, a revival that paved the way for inclusive biculturalism. These individuals were later to become the instigators of the shift to exclusive biculturalism. However, in the 1960s, they were, as Thomas Fitzgerald (1972) describes, a ‘second generation of Maori graduates [who] live exclusively in non-kin-based, non-tribal, urban areas’. . . . Many were incompletely socialised in the Maori subculture’. Fitzgerald explains the turn by this group to cultural revivalism as a response to their material circumstances. ‘The achievement of economic security permits the exercise of a new kind of cultural choice’. He identified the ‘latent manifestation of culture for these particular individuals’ (1972: 41) as the consequence of the security provided by the economic prosperity of the post-war years.

A decade later, that prosperity was in rapid decline. The leaders of the Maori renaissance went from cultural revivalism in prosperous times to politicizing culture as economic leverage in a more depressed era. As Maori graduates became politicized around demands for the recognition of the culture, their colleagues in the universities and teacher training colleges who were unable to identify as Maori – it was not unknown for individuals, upon finding a Maori ancestor in

their genealogy, to take on a Maori identity – also began to identify in ethnic terms. Radicals, who had embraced Marxism in the '60s, now became racialized. A seminal event was the 1985 publication of *Being Pakeha* (King 1985). This book had an immediate response from young educated New Zealanders who were completing their university studies and moving into positions in the professions and government. It became commonplace for this group, especially those in the 'caring professions' – the church, education, health and social services – to refer to themselves as 'pakeha', sometimes with the prefix 'ngati' (tribe) as in 'Ngati Pakeha'.

Two decades later, this ethnic group in the making has de-constructed itself rapidly and without fanfare, its demise attracting little comment. (The commentators are themselves part of the dis-establishing group.) 'Pakeha' is now used infrequently. While immigration from Asia has contributed to the increasing use of the term 'non-Maori' (for example, the New Zealand Curriculum [Ministry of Education 2007] now uses the term 'non Maori'), the decline has come from within the 'pakeha' group itself.

The adoption of a primary ethnic identity by a professional class had only made sense in the inclusive bicultural stage, when 'pakeha' was a term relative to 'Maori' and expressed a social relationship framed by unity. With the shift to retribalization following the 1985 Treaty of Waitangi Amendment Act, Maori identity was now understood as tribal (iwi) identity and expressed as an 'iwi-Crown' political relationship. Having lost its referent within the social relationship between 'two peoples', 'pakeha' became free-floating and without substance. In fact, the reality of the New Zealand population with its considerable degree of ethnic fluidity made it increasingly difficult to sustain that 'two peoples' ideology. Many New Zealand families have Maori and non-Maori members (including growing numbers of people from non-European countries). Indeed 'the majority of Maori ethnic children growing up today have a non-Maori parent' (Chapple 2000: 105) and 'half of Maori living as part of a couple have non-Maori partners' (Callister 2004: 109).

The timing of the radical graduates' division into ethnic groups is significant, occurring as it did at the same time that the group (both Maori and Pakeha) was moving from student life into influential positions in the professions and government. The shared experience of radicalized politics simultaneously with the division into ethnic camps was the basis for the development of powerful alliances. Networks were established across feminist groups, the church, the legal profession, politicians and government officials, academics, teachers and health professionals. Individuals from the ranks of judges, lawyers, historians, academics and the claimants themselves acquired a vested interest in the Treaty claims process as it grew from the mid-1980s to claims for the considerable public resources and infrastructure demonstrated in the *Iwi Infrastructure and Investment Report* (2010) and the Ngati Porou settlement discussed above.

The movement of key individuals across sites developed and strengthened the networks. For example, Sir E.T. Durie, chief judge of the Waitangi Tribunal from 1981 to 2000, was also influential in academic and political circles. According to Oliver (2001: 10), Durie believed that the Tribunal should help to rewrite

New Zealand history 'from a Maori point of view'. He promoted constitutional change based on his assumption that cultural difference, an idea accepted by inclusive biculturalists, justifies different political forms of governance. In this quotation Durie (1998: 8) explains his views about fundamentally different forms of governance between Maori and European.

One (i.e. value) is that in Maori society power ascends upwards from the people below as compared with western society where power is from the top down, from a sovereign body above to the people below. There is support for tribal management through iwi authorities. This provides a united approach to treating with the outside world and an economy in combining resources.

The most outstanding example of brokerage was the 1986 agreement between Sir Geoffrey Palmer and Sir Hepi Te HeuHeu to insert 'Treaty principles' into legislation and policy (see Rata [2004, 2011a] for a detailed account of the meeting between these two brokers). Other individuals too played similarly crucial roles in maintaining and strengthening the network of influential biculturalists as they moved across political, judicial, academic and important social sites. These individuals include Robin Cooke, later Lord Cooke of Thorndon, Chief Judge of the 1987 Court of Appeal, which, by likening the Treaty of Waitangi relationship to a 'partnership', justified the partnership discourse of the current Treaty orthodoxy.<sup>8</sup> By 2001, the 'Guide to the Principles of the Treaty of Waitangi as expressed by the Courts and the Waitangi Tribunal' (TPK 2001) referred to the Treaty as 'the founding document of New Zealand ... an exchange of promises between two sovereign peoples, giving rise to obligations for each party' (2001: 14).

The informal network of women in leadership positions that had its origins in the feminist movement of the 1960s and '70s intersected with the judicial and academic networks to create what Minogue refers to as a 'grand alliance' between Maori activism and feminism' (1998: 61). Margaret Wilson exemplifies this group and its support for tribal ambitions. She was President of the Labour Party from 1984–87, and Professor of Law at Waikato University in the 1990s, and following Labour's election to Government in 1999, was variously Attorney-General, Minister of Labour, Associate Minister for Justice, Minister in Charge of Treaty Negotiations, and Speaker of the House of Representatives. In a 1998 essay written for the Department of Justice she advocated constitutional change, identifying the factors considered essential 'for the agreement in the Treaty to become a basic tenet of the new constitutional arrangements'. The 'strategic plan' of Chief Judge E.T. Durie was identified 'as an appropriate model' for 'a reconstituted set of governance arrangements [that] is not only desirable but achievable' (Wilson 1998: 3–4).

The church was also an important site for the network of alliances and provided considerable support from the spiritual mandate provided to ethnic primacy from the church. Sir Paul Reeves, Archbishop of New Zealand, then Governor-General in the 1980s, exemplifies the individuals who linked church and political groups. Christopher Tremewan's analysis of the decision by Anglican church leaders in

1992 to prioritize race as a constitutional distinction in church membership shows how ‘the church’s endorsement of racial division as an organising principle’ (2006: 95) contributed to the same process occurring within the state and society as a whole. The main proponent of the constitutional changes, Professor Whatangi Winiata, an influential Maori church leader, academic, and leader of the political Maori Party, ‘has consistently maintained that the Anglican constitutional formula is a model for the New Zealand state’ (Tremewan 2006). Tremewan’s analysis shows the extent to which the Anglican Church, led by an activist left-wing clergy, provided the site for the ‘*nouveau riche* of the Anglo-Maori urban middle class and the traditional rural tribal leadership’ to coalesce (2006: 100).

Church influence ensured that biculturalism was understood in social justice terms and as a way for Pakeha to expiate what was understood as colonial guilt (Rata 1996; Openshaw 2009a). Throughout the 1980s and ’90s, the Treaty acquired the doctrinal status of a spiritually-mandated authority, one taking it out of the realm of critical scrutiny. According to Margaret Wilson (cited in O’Brien 2003: 15), the Treaty is a ‘covenant’ that has a ‘higher purpose’ (than that of a legal contract), one ‘of defining the relationship binding two peoples’. The Bishop of Auckland (Paterson 2005 [1992]: 10) also used the term ‘covenant’ to refer to the Treaty of Waitangi. This ‘otherworldliness’ elevated the Treaty from the combative political sphere to a level of unquestioned reverence.

The alliances made in the education sector have been particularly influential in maintaining ongoing networks. Openshaw (2006, 2009a) describes the web of practices used to institutionalize bicultural adherence, likening them to a religious conversion. ‘Professional Maori facilitators were regularly inducting department curriculum officers into a selective and highly gendered Maori protocol that included *whaikorero* (selected male officers’ speeches) and reply to *karanga* (selected women officers’ welcoming call)’ (2006: 123).

Cementing the alliances is the shared discourse about the Treaty of Waitangi and indigeneity. In 2002, the Governor-General, Dame Sylvia Cartwright, in the Speech from the Throne at the Opening of the 47th Parliament, said: ‘The basis of constitutional government in this country is to be found in its founding document, the Treaty of Waitangi. My government values and remains committed to strengthening its relationship with tangata whenua [indigenous people]. That means fulfilling its obligations as a Treaty partner’ (Cartwright 2002). In 2010, Sir Douglas Graham, formerly Minister in Charge of Treaty Negotiations during the 1990s, used the timeless and spiritual discourse of indigeneity to justify the transfer of a number of Auckland’s volcanic cones from public ownership to a trust consisting of 12 tribes. According to Graham (2010: A11): ‘Most of us appreciate that indigenous peoples see land as part of their very existence and it gives them a right to belong to that area’.

The shift away from bicultural to indigenous discourse of the past decade is an effective strategy given biculturalism’s waning appeal (D. O’Sullivan 2008). Support from the New Zealand public, never guaranteed given that biculturalism was the project of the intellectual class, is no longer necessary to ensure tribal

economic and political ambitions, nor can such support be relied upon. A 1999 survey of attitudes to the Treaty and the Waitangi Tribunal found that the Treaty 'is a major point of division within the country'. Only 5 percent of those surveyed 'think that the Treaty should be strengthened and given the full force of law'. 'About 34 percent want the Treaty abolished' (Perry and Webster 1999: 74). In 2009, the Human Rights Commission's annual progress report on Treaty issues for 2009 (HRC 2010) found declining numbers who agree that the Treaty is the country's founding document (a central idea of biculturalism).

## 7. Conclusion

While a number of factors consolidated biculturalism as the dominant orthodoxy – factors such as individual beliefs and actions, the intensity of the discourse, and the number of sites where biculturalism was practised – it was in the brokerage function carried out by individuals that the two ethnicized partners of influential biculturalists and neotribal leaders came into existence. Brokerage went through three stages: (1) constructing difference, (2) representing difference, and (3) enacting the difference in terms of a Treaty partnership. Inclusive biculturalism enabled the first two brokerage stages. The idea of a fundamental difference between Maori as indigenous people and Pakeha as colonizers was the basis upon which biculturalism developed as an ideology. The promotion of this fundamental colonizer–indigene difference by leading Maori academics such as Mead (1997), Smith (1999) and Durie (2003) (Rata 2011b) was used to justify separate representation of a different people perceived to have different interests.

The second brokerage stage was the creation of the mechanisms by which that difference could be represented with positions for tribal representatives established in government institutions at all levels. These are the two mechanisms identified in section one: the first mechanism is the legislation of Treaty principles since the late 1980s and, the second is the inclusion of direct government–tribal consultation procedures in recent Treaty settlements.

The third brokerage stage was the actions of these representatives in pursuing the interests of the two 'partners'. For example, brokering the transfer of ownership of the Auckland volcanic cones and 'untangling the claims in Tamaki Makaurau' (Auckland) (a process conducted away from public involvement) earned 'Sir Douglas Graham \$177,264 in government fees' (Tahana 2010c: A4). Treaty claims facilitator Tukoroirangi Morgan 'was paid \$141,000 in director's fees as well as a \$100,000 success fee for completing Tainui's Waikato River settlement. The Government also contracted Mr Morgan as a Crown facilitator to help move the iwi through the settlement process. Between November 2008 and March 1 (2010), the Office of Treaty Settlements (OTS) paid Mr Morgan \$171,093.61 (Tahana 2010c: A4). Not all brokerage occurs at the elite level. Much takes place in committees and involves consultants and advisers acting for local tribes. For example, local tribal interests are represented by advisers in the human research ethics compliance process at the University of Auckland.

Applicants undertaking research about, or of interest to, Maori are required to consult with local tribal representatives (*Applicants' Manual 2009*).

Maori retribalization is a localized ideology which serves neoliberalism's wider interests and is, in turn, served by neoliberalism (Rata 2010). The transfer of public resources, services and infrastructure into varying degrees of privatized tribal ownership and control results from the convergence between biculturalism and neoliberalism and the enduring alliances between the leaders of the retribalization movement and biculturalists of the post-war generation. Both groups include the liberal-Left which had abandoned universalist class politics for identity politics in the late 1970s and 1980s, and the neoliberals emerging in the 1980s (in some cases, the same individuals). In New Zealand's small population, these groups are relatively fluid with overlapping networks and many personal, often familial, connections (Rata 2011a, 2011b). Political decisions tend to come from the many layered interactions between these informal connections as much as from ideological positioning. Biculturalism provided a broad ideological church unintentionally supporting the consolidation of neoliberalism as the dominant political orthodoxy in the first decade of the 21st century. In the shared neoliberal understanding, the tribes are 'stakeholders', like any other private or semi-private business, as well as the 'partners' of Treaty politics.

The devolution of state functions into tribal control enables the neotribal elite to consolidate its power in areas where that authority is recognised. It is where the socio-political unit is the tribe, the criteria for membership is genealogical descent, the structuring social principle is kinship, and the concept of the relationship between the social group and place is indigeneity. This racial criteria for membership of the tribal polity is demonstrated by tribal leaders Professor Sir Sidney Mead and Professor Whatarangi Winiata: 'If you are born a Maori, then you have to accept the consequences of that biological fact, and the culture that comes with it' (Mead 1997). 'A person who is 1/1024 requires only nine or ten generations ancestry to be identified with a full Maori. By contrast, a person who does not have one dot of Maori ancestry is unable to do this' (Winiata [1988] cited in Tremewan 2006: 110).

Given the expense of Maori welfare to the state, its devolution to tribal business groups is acceptable to the political right while the legitimating discourse of traditional revivalism and indigenous rights is aligned to the discourse of left-wing progressive politics. However, indigeneity as a legitimating discourse reaches beyond neoliberal and left-wing politics to promote a pre-modern, non-democratic socio-political unit. (See, for example, Mason Durie's (2009) 'Global Indigenous Systems network scenario'.<sup>9</sup>) The concept enables the 'communal making' and 'communal fixing' of a social group to territory by combining *jus sanguinis* (right of the blood) and *jus solis* (right of the territory). It is in response to this discourse that concerns have emerged from both the Left and the Right to question the racial character of the tribe and the effects of tribalization on New Zealand's democratic system. (See for example the Liberation website [Edwards 2010] and the Centre for Political Research website [NZCPR 2010]).

Despite the various discourses of tribal revival, indigenous rights, and social justice used to justify the neotribe's claims for economic resources and political status, the entity is a capitalist corporation operating according to the norms of capitalist expansion. The strategies of 'encircling the commons' are in the tradition of the spread of capitalism throughout the world, including to New Zealand in the 19th century, although in the present case they are justified according to indigenous ideology. Since the 1980s, the transfer of a degree of governance, the privatization of public resources from the nation-state to the neotribe, and the intention to secure tribal ownership of public infrastructure (*Iwi Infrastructure and Investment Report* 2010) is compatible with the regulation of capitalism through neoliberal politics. However, the racialized character of the neotribe, while also compatible with capitalist accumulation, is incompatible with the universalistic character of the liberal-democratic nation-state. It is likely that this deeper incompatibility will play a major role in shaping New Zealand's political future as ethno-nationalist politics increasing make use of, then subvert, liberal democracy in the interests of the neotribal elite.

## Notes

1. The group included Sir Robert Mahuta, Sir Tipene O'Regan, Professor Sir Sidney Mead, Professor Whatarangi Winiata, Professor Sir Mason Durie, former Chief Justice Sir E.T. Durie, and Dr Apirana Mahuika.
2. Steven Webster (1998) noted how the idea of birth-ascribed status and prestige continues to linger on in contemporary society. The tribal elite draws on this traditionalist discourse to justify their wealth and status and to elevate the idea of aristocratic descent and kinship connections.
3. The role played by judicial activism in advancing the neotribes' claims along with a critique of that activism is available in Round (2000) and Rata (2011a forthcoming).
4. The Iwi Leaders' Group consists of: Mark Solomon (Ngai Tahu, chair), Sonny Tau (Ngapuhi), Naida Glavish (Ngati Whatua), Harry Mikaere (Hauraki), Tukoroirangi Morgan (Waikato-Tainui), Ngahiwi Tomoana (Ngati Kahungunu), Sir Archie Tairaroa (Whanganui) and Matiu Rei (Ngati Toa Rangatira). ('Further work to be done on Foreshore and Seabed', 2010). The smaller Iwi Chairs Forum is: Sir Tumu Te Heuheu, Mark Solomon, Tukorirangi Morgan, Sir Archie Tairaroa, and Toby Curtis. These groups draw on about 100–120 Maori tribal and business leaders and enjoy the support of the Maori Party, whose co-leader, Dr Pita Sharples, established and chaired the national 2010 Maori Economic Development Taskforce of the Iwi Leaders' Group. The Taskforce has produced reports from the inaugural 2010 conventions – *Iwi Infrastructure and Investment Report* (May 2010) and *Iwi Investment Wananga Report* (August 2010).
5. According to Statistics New Zealand (2005): 'Ethnicity is a measure of cultural affiliation, as opposed to race, ancestry, nationality or citizenship. Ethnicity is self perceived and people can belong to more than one ethnic group' (my emphasis). By 2011 the Statistics NZ website included a reference to ancestry, noting that 'Ancestry (biological and social

roots) continues to play an important role in ethnic identification'. However, the idea of self-identification remains the key concept:

Definitions of ethnicity are based on self-identification and/or definition by others. Individuals have their own perceptions of ethnicity and whether they belong, or wish to belong, to a group or not. The way they understand their personal 'ethnic identity' can differ from how others see them. Ethnic identification is a dynamic process and changes over time, according to individuals' experiences and what they regard as relevant in a situation. (Statistics New Zealand 2011)

Yet genetic descent criteria (i.e. race) are required for registration of the Maori parliamentary electoral roll, and education scholarships require evidence of Maori descent.

6. 'Pakeha' referred to British settlers during the colonial period, becoming the term for white New Zealanders more generally in the 20th century.
7. The historical revisionism which has justified Treaty settlement grievances and a victimhood mindset is strongly criticized by leading historians Graham Butterworth (2006), Peter Munz (1994, 2000), W.H. Oliver (2001), Terry Howe (2009) and Roger Openshaw (2006, 2009a).
8. David Round (2000: 670) dates nearly 'all cases of judicial activism from the time of Sir Robin Cooke's presidency of the Court of Appeal' (p. 670), concluding that 'it has certainly brought the judiciary into disrepute and it has certainly encouraged unrealistic expectations' (p. 670).
9. In his 'Global Indigenous Systems network scenario' (2009: 6), Durie suggests that 'even the Westminster system' is not guaranteed by a future that contains possibilities of 'new understandings of society, democracy, commerce and sovereignty'.

## References

- Bennett A (2010) \$97m aquaculture deal speedily resolved. *New Zealand Herald*, 25 March: A4.
- Bromell D (2008) *Ethnicity, Identity and Public Policy*. Wellington: Institute of Public Policy.
- Brooker B, Ellis G, Parkhill F and Brailsford I (2010) Maori achievement in literacy and numeracy in Canterbury schools. *New Zealand Journal of Educational Studies* 45(1): 49–66.
- Burt RS (1992) *Structural Holes*. Cambridge, MA: Harvard University Press.
- Butterworth G (2006) Historical revisionism in New Zealand: Always winter, never Christmas. In: Rata E and Openshaw R (eds) *Public Policy and Ethnicity: The Politics of Ethnic Boundary Making*. Houndmills: Palgrave Macmillan, 185–200.
- Callister P (2003) The allocation of ethnicity to children in New Zealand: Some descriptive data from the 2001 census. Paper given at Population Association of New Zealand Conference, Christchurch, 3–4 July.
- Callister P (2007) *Special Measures to Reduce Ethnic Disadvantage in New Zealand*. Wellington: Institute of Policy Studies, School of Government, Victoria University of Wellington.

- Cannadine D (2008) *Making History Now and Then*. Houndmills: Palgrave Macmillan.
- Cartwright S (2002) Speech from the Throne at the Opening of Parliament. Wellington, August.
- Chapple S (2000) Maori socio-economic disparity. *Political Science* 52(2): 101–115.
- Coastal Coalition (2011) Available at: <http://www.nzcp.com/CoastalCoalition.htm> (consulted 20 May 2011).
- Drinnan J (2010) Maori seek their cut of spectrum cash. *New Zealand Herald*, 29 January.
- Duncan P (1999) The national interests? *Revolution* May/June: 1318.
- Durie ET (1998) Ethics and values, Te Oru Rangahau Maori Research and Development Conference, 7–9 July, Massey University.
- Durie M (2001) A framework for considering Maori educational advancement. Ministry of Education. Available at: <http://www.minedu.govt.nz/> (accessed 11 July 2005).
- Durie M (2003) *Nga Kahui Pou Launching Maori Futures*. Wellington: Huia.
- Durie M (2005) Tino Rangatiratanga. In: Belgrave M, Kawharu M and Williams D (eds) *Waitangi Revisited: Perspectives on the Treaty of Waitangi*. South Melbourne: Oxford University Press.
- Durie M (2009) Pae Mana: Waitangi and the evolving state: The Paerangi Lectures. Maori Horizons 2020 and Beyond. Massey University Te Mata O Te Tau Lecture Series 2009, 14 July.
- Edwards B (2010) Liberation. Available at: <http://liberation.typepad.com/liberation/2010/08/the-2010-bruce-jesson-memorial-lecture-annette-sykes.html> (accessed 18 March 2011).
- Fitzgerald T (1972) Maori acculturation: The evolution of choice in a post-colonial situation. *Delta* 11: 38–48.
- FoMA (Federation of Maori Authorities Corporate Statements) (2010) Available at: [http://www.foma.co.nz/about\\_foma/corporate\\_statements.htm](http://www.foma.co.nz/about_foma/corporate_statements.htm) (accessed 7 February 2010).
- Friedman J (1994) *Cultural Identity and Global Processes*. London: SAGE.
- Friedman J (ed.) (2003) *Globalization, the State, and Violence*. Walnut Creek, CA: Altamira Press.
- Friedman J (2006) Preface. In: Rata E and Openshaw R (eds) *Public Policy and Ethnicity: The Politics of Ethnic Boundary Making*. Houndmills: Palgrave, xi–xxv.
- Further work to be done on Foreshore and Seabed (n.d.) Available at: <http://www.media-people.co.nz/releases/article.php?id=30816> (accessed 21 March 2011).
- Gifford A (2010) Foreshore Act replacement takes shape. *Waatea News Update*, 8 February. Available at: <http://waatea.blogspot.com> (accessed 19 March 2010).
- Gill D, Pride S, Gilbert H and Norman R (2010) The future state. Working paper 10/08. Institute of Policy Studies, Victoria University of Wellington.
- Graham D (2010) No harm in acknowledging iwis' link to land. *New Zealand Herald*, 10 February:A11.
- Howe K (2009) The politics of culture: A personal history of history in New Zealand. In: Openshaw R and Rata E (eds) *The Politics of Conformity in New Zealand*. Auckland: Pearson, 14–24.
- HRC (Human Rights Commission) (2010) *Treaty of Waitangi in Review*. Available at <http://www.hrc.co.nz> (accessed 29 March 2010).
- Iwi Chairs Forum Background Paper* (n.d.) Available at: [www.iwichairs.maori.nz](http://www.iwichairs.maori.nz) (accessed 17 March 2011).
- Iwi Infrastructure and Investment Report* (2010) Ministerial Taskforce on Maori Economic Development, May. Available at: <http://www.iwichairs.maori.nz> (accessed 17 March 2011).

- Iwi Investment Wananga Report* (2010) The Report of the Iwi Collaboration Infrastructure Wananga, held at Tapu te Ranga Marae, 9–10 August 2010. Available at: [www.iwichairs.maori.nz](http://www.iwichairs.maori.nz) (accessed 17 March 2011).
- Jensen J, Krishnan V, Hodgson R, Sathiyandra SG and Templeton R (2006) *New Zealand Living Standards 2004: An Overview*. Wellington: Centre for Social Research and Evaluation, Ministry of Social Development.
- Kawharu H (ed.) (1989) *Waitangi, Maori and Pakeha Perspectives of the Treaty of Waitangi*. Oxford: Oxford University Press.
- Kay M (2010) A new power in the land. *The Dominion Post*, 20 February: D3.
- King M (1985) *Being Pakeha*. Auckland: Hodder and Stoughton.
- Lachmann R (2000) *Capitalists in Spite of Themselves: Elite Conflict and Economic Transformations in Early Modern Europe*. New York: Oxford University Press.
- Li T (2010) Indigeneity, capitalism, and the management of dispossession. *Current Anthropology* 51(3): 385–414.
- McAdam D, Tarrow S and Tilly C (2001) *Dynamics of Contention*. Cambridge: Cambridge University Press.
- McNeilly H (2009) Maori MP sees repeal bonanza. *New Zealand Herald*, 21 April: A4.
- Mahuika A (1998) Whakapapa is the heart. In: Coates KS and McHugh PG (eds) *Living Relationships – Kokiri Ngatahi: The Treaty of Waitangi in the New Millennium*. Wellington: Victoria University Press, 214–221.
- Mead S (1997) *Landmarks, Bridges and Visions: Aspects of Maori Culture*. Wellington: Victoria University Press.
- Ministry of Education (2007) *New Zealand Curriculum*. Wellington: Ministry of Education.
- Minogue K (1998) *Waitangi: Morality and Reality*. Wellington: Business Roundtable.
- Moutsios S (2010) Power, politics and transnational policy-making in education. *Globalisation, Societies and Education* 8(1): 121–141.
- Mulholland M (2006) *State of the Maori Nation: Twenty-First-Century Issues in Aotearoa*. Auckland: Reed Publishing.
- Munz P (1994) The two worlds of Anne Salmond in postmodern fancy-dress. *The New Zealand Journal of History* 28(1): 60–75.
- Munz P (2000) Te Papa and the problem of historical truth. *History Now* 6(1): 13–14.
- NZ Herald* (2009) Fears over future access to forests. *New Zealand Herald* 29 June: A4.
- NZCPR (2011) New Zealand Centre for Political Research. Available at: <http://www.nzcpr.com>
- O'Brien T (2003) A law unto herself. *Canvas, New Zealand Herald*. Auckland: Wilson and Horton, 14–15.
- Oliver WH (2001) The future behind us. In: Sharp A and McHugh P (eds) *Histories, Power and Loss*. Wellington: Bridget Williams Books, 9–30.
- Openshaw R (2006) Putting ethnicity into policy: A New Zealand case study. In: Rata E and Openshaw R (eds) *Public Policy and Ethnicity: The Politics of Ethnic Boundary Making*. Houndmills: Palgrave Macmillan, 113–127.
- Openshaw R (2009a) Solution or problem? Te Kotahitanga as cultural politics. In: Openshaw R and Rata E (eds) *The Politics of Conformity in New Zealand*. Auckland: Pearson, 135–153.
- Openshaw R (2009b) *Reforming New Zealand Secondary Education*. New York: Palgrave Macmillan.

- O'Sullivan D (2008) *Beyond Biculturalism: The Politics of an Indigenous Minority*. Wellington: Huia.
- O'Sullivan F (2009a) Maori party laughing all the way to the bank. *New Zealand Herald*, 19 September: A19.
- O'Sullivan F (2009b) Goff in need of fine-tuning. *New Zealand Herald*, 5 December: A19.
- O'Sullivan F (2010a) Foreshore debate all about big bucks. *New Zealand Herald*, 6 February: A19.
- O'Sullivan F (2010b) Sterilisation idea not as far-fetched as first thought. *New Zealand Herald*, 6 March: A19.
- OTS (Office of Treaty Settlements) (2009) Crown settlement offer to Ngati Porou. Available at: <http://www.ots.govt.nz/DocumentLibrary/CrownOfferToNgatiPorou8December2009.pdf> (accessed 26 March 2010).
- Paterson J (2005 [1992]) *Exploring Maori Values*. South Melbourne: Thomson Dunmore Press.
- Perry O and Webster A (1999) *New Zealand Politics at the Turn of the Millennium*. Auckland: Alpha Publications.
- Rata E (1996) 'Goodness and power': The sociology of liberal guilt. *New Zealand Sociology* 11(2): 231–274.
- Rata E (2000) *A Political Economy of Neotribal Capitalism*. Lanham, MD: Lexington Books.
- Rata E (2003a) An overview of neotribal capitalism. *Ethnologies Comparées, Oceanie*. Available at: <http://debutdesiecle.6.alor.univ-montp3.fr/cerce/r6/e.r.htm>.
- Rata E (2003b) Leadership ideology in neotribal capitalism. *Political Power and Social Theory* 16: 45–73.
- Rata E (2004) Marching through the institutions, the neotribal elite and the Treaty of Waitangi. *Sites New Series* 1(2): 56–81.
- Rata E (2008) Educating for citizenship in a bicultural society. In: St. George A, Brown S and O'Neill J (eds) *Facing the big questions in teaching: Purpose, power and learning*. Melbourne: Cengage Learning, 51–62.
- Rata E (2010) Localising neoliberalism: Indigenist brokerage in the New Zealand university. *Globalisation, Societies and Education* 8(4): 523–538.
- Rata E (2011a forthcoming) Discursive strategies of the Maori tribal elite. *Critique of Anthropology* 31(4).
- Rata E (2011b) Researching academic agency in the cultural production of indigenous ideology in New Zealand universities. Working Papers on University Reform, Working Paper 17. Danish School of Education, Aarhus University, April.
- Round D (2000) Judicial activity and the treaty: The pendulum returns. *Otago Law Review* 19(4): 653–671.
- Sharples P (2009) Iwi Maori National Summit on Freshwater Management, 10 December. Available at: <http://beehive.govt.nz/speech/iwi+maori+national+summit+freshwater+management> (accessed 19 March 2010).
- Shore C (2009) Neoliberalization and university reform in New Zealand. *Social Anthropology* (Special Issue: Anthropologies of University Reform) 18(1): 15–29.
- Smith L (1999) *Decolonizing Methodologies*. London: Zed Books.
- Statistics New Zealand (2005) *Statistical Standard for Ethnicity 2005*. Wellington: Statistics New Zealand. URL: <http://www.stats.govt.nz> (accessed February 2009).

- Statistics New Zealand (2011) *Review of the Measurement of Ethnicity: A Question of Ethnicity (Executive Summary)*. Available at: [http://www.stats.govt.nz/browse\\_for\\_stats/population/census\\_counts/review-measurement-of-ethnicity/a-question-of-ethnicity.aspx](http://www.stats.govt.nz/browse_for_stats/population/census_counts/review-measurement-of-ethnicity/a-question-of-ethnicity.aspx) (accessed May 2011).
- Sykes A (2010) The politics of the Brown table. Bruce Jesson Lecture, University of Auckland, 27 October.
- Tahana Y (2009a) Followers want more access to King. *New Zealand Herald*, 22 August: A6.
- Tahana Y (2009b) Treaty deal to recognise tribe's rights over All Blacks haka. *New Zealand Herald*, 11 February: A1.
- Tahana Y (2010a) Iwi eye minerals for Treaty talks. *New Zealand Herald*, 25 March: A2.
- Tahana Y (2010b) Iwi work on geothermal power plan. *New Zealand Herald*, 27 January: A6.
- Tahana Y (2010c) Tainui leader fuming over double-dip insinuation. *New Zealand Herald*, 19 March: A4.
- Tahana Y (2010d) Treaty's status needs review – commission. *New Zealand Herald*, 28 January: A6.
- Te Aho W (2008) Climate Change Leadership Group. Available at: <http://www.foma.co.nz/documents/ILGRequesttoFESelectCommittee-Extension.doc> (accessed 28 March 2010).
- TPK (Te Puni Kokiri, Ministry of Maori Development) (2001) *He Tirohanga o Kawa ki te Tiriti o Waitangi: A Guide to the Principles of the Treaty of Waitangi as Expressed by the Courts and the Waitangi Tribunal*. Wellington: Department of Justice.
- Tremewan C (2006) Re-politicising race: The Anglican Church in New Zealand. In: Rata E and Openshaw R (eds) *Public Policy and Ethnicity: The Politics of Ethnic Boundary Making*. Houndmills: Palgrave, 95–112.
- Trevett C (2010) Accountability will be key to Whanau Ora task force report. *New Zealand Herald*, 8 February: A6.
- University of Auckland Ethics Committee (2009) *Applicants' Manual*. Auckland: University of Auckland.
- Webster S (1998) *Patrons of Maori Culture*. Dunedin: University of Otago Press.
- Wilson M (1998) The Treaty of Waitangi: An instrument for constitutional reform. Paper for the Ministry of Justice, 3 June.
- Winiata W (1988) Kinder Library Archives ANG 139/1/6(1). Auckland.

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