

## The Treaty and Neotribal Capitalism

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The Treaty of Waitangi has become a talisman for a bicultural New Zealand. Such a leap from prior obscurity to ‘oracle’ status (Sharp, 2002) can be explained in a number of ways. The orthodox explanation is that Maori have overcome colonial-imposed subordination for the economic and political partnership promised by the treaty. In this paper I propose a different interpretation. I argue that the treaty’s elevation has occurred within the context of fundamental changes to the global political economy, most notably the repositioning of pre-colonial elites as the new elites of localised forms of the capitalist economy (Friedman, 1994; Wallerstein, 1991). In New Zealand’s case the localised form of capitalism is neotribal capitalism (Rata, 1999; 2000) under the control of a *comprador bourgeoisie* or brokering elite. As a result of successive governments’ acceptance of neotribal capitalism’s neotraditionalist ideology, this Maori elite has controlled the shifting interpretation of the Treaty of Waitangi (Rata, 2003, 2003a), along with the concepts of indigeneity and customary rights.

In the first stages of biculturalism, the treaty was promoted as a framework for the settlement of historical grievances. From the mid-1980s, its interpretation had shifted to a ‘partnership’<sup>1</sup> between two distinctive political entities, – the neotribes and the government. As a consequence the brokering elite emerged as a neotribal capitalist

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<sup>1</sup> Douglas Graham, a former Minister of Treaty Negotiations, has warned against the tendency to locate partnership in the Treaty of Waitangi. ‘This so-called partnership concept came into common parlance after a Court of Appeal case in the 1980s. The judges were attempting to describe the duties the parties to the treaty owed to each other. They likened it to the obligation partners in a partners had, but they did not say that the treaty actually created a partnership nor did it’. (Graham, 2000: 13)

aristocracy with sufficient institutionalised power to make new claims for economic resources (such as seabeds and native flora), and claims for political recognition on the basis of partnership alone.

As the main 'site' of neotribal brokerage, the treaty, as interpreted by the Waitangi Tribunal, plays a crucial role in legitimating the material and political aspirations of the neotribal elite. Supportive of the elite's interpretation but retaining the pan-Maori aspirations of earlier 'honour the treaty' protests, is the ongoing faith of still-marginalised Maori in the promises of treaty rhetoric as well as the aspirations of the tribes that have yet to receive any treaty settlements. With this diverse support, the Tribunal's interpretation of the treaty has become the orthodox interpretation. The following beliefs are held to be true and non-negotiable: The treaty is a 'partnership' between the tribes and the government, one that entitles the tribes to economic and political rights in perpetuity. Secondly, its 'principles' are the basis for a bicultural nation in which tribal authority is incorporated into government institutions and processes. Finally, the 'presentist' (Oliver, 2001) orthodox interpretation places the treaty above history. Its authority is 'spiritual' or 'otherworldly', and outside the political conditions of its real historical context.

The religious imagery of treaty orthodoxy illustrates the doctrinal status of a spiritually mandated authority, an authority which takes it out of the realm of critical scrutiny. According to Margaret Wilson (cited in O'Brien, 2003: 15), the treaty is a 'covenant' which has a 'higher purpose' (than that of a legal contract), one 'of defining the relationship binding two peoples'. The word 'atone' in the government's apology to the Tainui tribe (*New Zealand Herald*, 23 January 1995) conveys the idea of the expiation of a sin-inspired guilt, while the idea of a 'foundation document' with a spirit that 'still speaks today' evokes a timeless and commanding manifesto. This 'otherworldliness' takes the treaty from the combative political sphere to a level of unquestioning reverence. Such elevation of a historical agreement to a level where it provides a forever ongoing 'spirit' suggests that the treaty's authority challenges even the 'spirit of the law', the authority mandate for the supremacy of the law over all other forms of authority in

liberal-democracies. It combines the very political purposes of the elite (of this world) with the spiritual purpose of providing hope for those Maori who remain marginalised from fulfilling involvement in New Zealand society.

The elevation of the Treaty of Waitangi to such an authoritative, almost unchallengeable, orthodoxy<sup>2</sup> deserves intense scrutiny. Such scrutiny is difficult in a climate in which those who hold a different opinion are believed to be 'in error' rather than in informed disagreement. The government's continued confidence that increased education and leadership will convince the general public of the value of the treaty to New Zealand (Upton, 2003) belies an uncomfortable fact. It is not only the poorly informed who lack the required faith in the treaty. Perry and Webster's 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 five 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' (1999: 74).

There is also a small but growing body of scholarly literature (to which this paper contributes) interested in extending treaty discussion beyond the Waitangi Tribunal's doctrinal orthodoxy. This paper's contribution is an examination of the political-economic context of the current orthodox interpretation. Treaty revivalism is located within the post-1970s' restructuring of the global economy, the corresponding shift from universal class-based politics to identity politics (Wallerstein, 1991; Friedman, 1994; Turton, 1997), and the re-emergence of traditional elites as capitalist aristocracies. Treaty politics have played a major role in the New Zealand experience of these global elite repositionings.

Neotribal capitalism refers to structuring of material resources and peoples' relationships to these resources that was enabled by the juridication and capitalisation processes of the treaty settlements. These processes established the 'neotribe', a politico-economic

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<sup>2</sup> According to Margaret Wilson (1998: 1) 'It is accepted that it is only a question of time before some form of constitutional recognition is given to the Treaty of Waitangi.'

organisation that is fundamentally different from the traditional tribe. That difference is the result of the treaty settlement processes of privatisation and capitalisation of resources, and the accompanying establishment of political structures of control (or modes of regulation) over the relations of people to those resources and to one another. Economic resources were capitalised in the processes of privatisation to the neotribes (firstly juridified as the legitimate owners) and made available for the commodity production and profit-making that distinguishes all capitalist economies. However, and this is the critical point to the argument made in this paper, the neotribe is not only an economic corporation based upon capital resources. It is also a political organisation in that it structures the social environment for the production and reproduction of capital accumulation. Unlike a liberal-democratic politico-economic organisation that actively regulates the social inequalities created by capitalism's 'coercive law' (Lipietz cited in Boyer, 1990: 34) of accumulation, the capitalist neotribe lacks the institutions and processes to ensure democratic political regulation.

In non-democratic systems such as neotribal capitalism, an all-powerful state or an all-powerful oligarchy controls production, redistribution *and* the social environment of production. Class consciousness is replaced by collective consciousness. The interests of the tribal collectivity are considered to be the interests of each of its members. The antagonism between the interests of those who control and benefit from neotribal economic resources and those who don't are concealed in collective membership. *It is the control of both the economic and political/ideological spheres by the same elite and the lack of division between the spheres that distinguishes the neotribal regime from liberal-democracy and is what defines it as non-democratic.*

It would be naive to deny the existence of powerful oligarchies in liberal-democratic versions of capitalism. Undoubtedly the owners and controllers of production in liberal-democracies do have, because of their economic strength, the advantage in terms of greater political power to influence the regulation of the social environment. What does matter however, is that control of political regulation is not theirs *of right*. It can be, and

often is, challenged by individual citizens and associations of citizens claiming greater entitlement to the fruits of production via the processes of distribution.

New Zealand biculturalism is a local version of the identity movements that replaced the universalist class-based politics of the prosperous post-war decades. Identity politics enabled the most vulnerable of the new professional class (its most recent entrants, such as women and ethnic minorities), to respond actively to global economic contraction and its accompanying ideological shifts. Local movements were built around identity politics to ensure that the gains women and minority groups had made in the prosperous fifties and sixties were maintained in sites of identity recognition. These sites include women's studies and Maori studies in academia along with government policies that targeted the marginalised groups.

In the early 1970s a small group of tertiary educated Maori became the leaders of the cultural revival (Fitzgerald, 1971) that signalled the first stage of 'glocal' identity politics in New Zealand. With the galvanising of the pan-Maori movement of the 1960s into a political movement in the 1970s, the base was established for further transformation into neotribalism under the control of the elite. This group had entered the political arena through their leadership roles in the pan-Maori movement. The shift to tribal identification meant that they could use their political connections acquired in the earlier radical protests<sup>3</sup> in the cause of specific tribal interests and become recognised as brokers between the government site and the tribal site. Subsequently their brokerage role provided access to economic resources of the settlements on behalf of the tribes rather than pan-Maori. The use of 'tradition'<sup>4</sup>, in culturalist discourse, especially one located in

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<sup>3</sup> Many brokerage relationships between Maori neotribalists and Pakeha biculturalists were formed in the days of radical student politics, in the shared protests against the Vietnam war and, particularly, the anti-Springbok rugby tour of 1981. The protests against racism in another country marked the shift from a shared political platform to a new relationship between Maori and Pakeha. Maori turned to their own protests against racism in New Zealand and the role of bicultural Pakeha changed from co-activist to supporter in respect to Maori issues.

<sup>4</sup> 'Culturalism' or the reification of tradition and culture is well documented in studies by Hobsbawm, 1983; Handler, 1983; Babadzan, 1988 Friedman, 1994; Anderson, 1991, Turton et. al. 1997; Giltin, 1995; Kuper, 1999, Sandall, 2001 among others. According to Hobsbawm (1983: 1) tradition is defined as 'a set of practices . . . which seek to inculcate certain values and norms of behaviour by repetition, which automatically implies continuity with the past'. 'Concepts of culture and tradition (are divorced) from

the ‘blood and soil’ rhetoric of indigenous status, justified and legitimised this political role and its material benefits. With reference to Glazer and Moynihan (1973), David Turton (1997: 11) has explained the “strategic efficacy” of ethnicity in ‘mobilizing groups around common material interests’ as the result of the symbolic content of ethnicity. The symbolic content or ideology ‘masks or “mystifies” those interests for the group members themselves’. The treaty’s symbolism serves this mystifying purpose and explains the religious imagery that accompanies treaty discourse, including its ongoing talisman status for marginalised Maori and its acceptance (albeit reluctantly by many) in the public domain of a secular society.

By the end of the 1980s Maori revivalist leaders had successfully defined indigenous recognition in terms of the new identity politics and achieved important political gains, particularly the government’s willingness to revive and honour the treaty. The consequences of unjust colonial practices were to be addressed through historical grievance settlements. The powers of the Waitangi Tribunal were extended to hear reparation claims dating back to 1840. These inroads into political recognition and institutionalisation were extended in the 1990s to include the concept of political ‘partnership’ between the tribes and the government. This was to be achieved by legislating adherence to the principles of the Treaty of Waitangi in a range of Acts of Parliament. Tribal institutions, revived by the treaty reparation settlements, provided the structures for the materialisation of this politicised indigenous identity. Those Maori who had led the cultural and indigenous movements become the tribal brokers, a *comprador bourgeoisie*, on behalf of the newly established tribal economies. They negotiated for political and economic resources across the newly created sites of treaty partnership discourse: the revived tribes on the one hand, and, on the other, the state institutions committed to recognising the principles of the Treaty of Waitangi. The following

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historical forces of economic change’ (Dirlik cited in White, 2001:140). ‘As an anthropological ideology, culturalism is ‘increasingly used as a privileged tool to legitimise political domination’ (Babadzan, 2000: 150) with its sacralisation of cultures and identities. Babadzan also refers to the way that culture is ‘transformed and essentialised (2000: 149) with ‘anthropologists appropriating the ethnic-culturalist discourse that actors themselves hold about the meaning of their practices’.

description<sup>5</sup> of the initial inclusion of Treaty ‘principles’ in legislation provides a vivid account of the way in which brokerage between the Maori elite and government biculturalists occurred.

‘Section 9 of the State-owned Enterprises Act 1986 provides: "Nothing in this Act shall permit the Crown to act in a manner that is inconsistent with the principles of the Treaty of Waitangi". That is the first reference in legislation or policy to the principles of the Treaty - indeed, the first indication that the Treaty has principles. Their history began when in 1986 Ministers were considering the SOE legislation, then in Bill form. Concern was felt that its passage might lead, or be perceived to lead, to infringement of rights guaranteed to Maori by the Treaty as Crown assets were transferred to the new enterprises to become assets of the enterprises. That concern led to the Deputy Prime Minister, Geoffrey Palmer, travelling to meet Sir Hepi Te Heuheu, the paramount chief of Ngati Tuwharetoa, at his home. Sir Hepi expressed that concern directly to Mr Palmer, and told him that it would be allayed if the Bill were to provide as the Act now does. This was agreed to, and section 9 was duly enacted.’ (Berthold, 2003). However as Parliament did not indicate what the principles of the Treaty are, it fell to the Courts to discover them.

Brokerage also covers the inclusion of Maori advisers in developing government policy, and the influences and processes that strengthened the Waitangi Tribunal, and enabled the treaty settlement process to expand. Such brokerage mediated the relationship between Maori revivalists and government biculturalists, altering both groups in significant ways in the process. Citing Burt (1992), McAdam et al (2001: 142) argue that the brokerage process is itself transforming. ‘Brokerage produces new advantages for the parties, especially for the brokers.’ This was especially so for those Maori who moved from leadership of a pan-Maori cultural revival to leadership of tribal treaty claims. It was also true for those Maori who filled the new structural positions of adviser, kaumatua, and tangata whenua representative on the various councils, committees and

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<sup>5</sup> This description, including the account of the meeting between Mr Palmer (later Sir Geoffrey) and Sir Hepi Te Heuheu, was provided to the writer by Mr Tom Berthold.

panels that opened up as a result of the treaty partnership concept. Structural mobility on such a scale meant that many new professional Maori were promoted rapidly in order to fill the positions available. In some cases, it could be argued, this meant that individuals were promoted over and above their qualifications and experience. The rationale for such promotion was the candidate's Maori ethnicity and understanding of Maori tikanga, acceptable by neotraditionalist standards but at odds with liberalism's achievement-based meritocracy.

Elite control of the tribal settlements enabled the brokerage of tribal property in its capitalised and commodified form into national and international economic circulation. The acquisition of considerable economic resources, both real and anticipated, led to political power. Within the tribes, the elite established modes of regulation to unite the economic and ideological dimensions of the neotribal social structures. In turn, the consolidation of political power within the neotribal corporations resulted in increased brokerage leverage with the government. A political relationship was developed using the concept of a treaty partnership to link the new corporate tribes and the government. That partnership discourse currently enables the political brokerage of the neotribal modes of regulation into a new tribal –government political relationship. Tribal representatives and interests are included in government institutions at local and national level and with the recognition of specific Maori interests in the political process.

The success of the elite's political brokerage in institutionalising neotribal capitalist modes of regulation into all areas of government has profound implications for democratic institutions and processes. Significant and unintended outcomes have occurred in the area of constitutional politics. The Waitangi Tribunal, as the main institutional site for the brokerage of neotraditionalism by the neotribal elite, has, according to Sharp (1997: 452) become 'a central player in a largely unforeseen unfolding of law and policy, and opened up an as yet largely unexplored vista of constitutional change'. These legal and policy changes have consolidated the elite's considerable political and economic power, a power derived initially from their control of the settlement process. It is justified by claims that the new tribes are the legitimate

inheritors of the traditional social structures that first entered a political agreement with the state with the signing of the Treaty of Waitangi. In turn, this justification is legitimated by the government's uncritical acceptance of neotraditionalist ideology.

In the same way that 'honouring the Treaty' became a mantra of bicultural politics in the late 1970s and 80s, 'Treaty partnership' became the mantra of neoliberal politics a decade later. The resulting bicultural – neoliberal combination contributed significantly to neotribal capitalism. By recognising the neotribes as traditional and thereby enabling them to inherit the historical grievance settlements and to become the legal owners of traditional resources, government biculturalists first legitimated the neotraditionalist discourse. By recognising the new propertied tribes as political modes of regulation through the devolution of government regulatory functions to the tribes, government neoliberals, in the 1990s, enabled what are essentially economic corporations, to acquire a constitutional type political status, one embedded in treaty partnership discourse.

Brokerage has followed the same process throughout the shift from honouring the treaty by recognising historical grievances to accepting the concept of a treaty partnership. First, the claimants establish traditional 'authenticity' to ownership, then the resource is juridified as legal property available for contractual purposes. In its privatised character it is then available for capitalisation, providing the resource for commodity production and profit accumulation. While this suggests intentions and planning, such a comprehensive forward-looking strategy is from the neotribal side alone<sup>6</sup>. Apart from a desire to give the

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<sup>6</sup> In moves which point to the elite strengthening its control over the political re-positioning process a new legitimacy strategy may well be emerging. There are indications that justifying iwi resource ownership and political control in a treaty partnership may be replaced by the more comprehensive concept of 'customary rights' embedded in indigeneity. This approach would overcome the limitations of relying on treaty interpretation alone. It would enable the elite to claim full ownership of resources and full control over neotribal governance rather than the 50% implied by partnership. These claims would be justified in international law regarding indigenous rights. A recent statement by Professor Mason Durie indicates this shift from treaty discourse to customary discourse. Indigeneity rather than the treaty is linked to constitutional rights. His comment that 'the position of Maori as the indigenous people of New Zealand needed better constitutional recognition' (Cited in Berry, 2003) contains several significant indicators of a change in the discourse. The word 'indigenous' rather than 'the treaty' and 'Maori' rather than 'iwi' reverses the trend from 'Maori' to 'iwi' that first occurred in fisheries documents in the early 1990s (Rata, 2000). However 'the concept of indigeneity is a political construct of historical and geographical placement' (Rata, 2002) and will prove as problematic in the future (if these indicators are correct) as treaty discourse is currently. An autochthonous priority based in mythological origins, rather than a historical

treaty constitutional status (Wilson, 1998), at a policy strategy level the government's side is characterised by ad hoc re-active politics.

Andrew Sharp (1997: 452) has drawn attention to the unprecedented way in which 'governments were losing control of policy formulation and execution' in relation to the treaty. Such short-sighted and reactive political management by successive governments in response to treaty orthodoxy is illustrated by Simon Upton's description of the early 1990s National Government's incorporation of treaty principles into legislation through the highly influential 1991 Resource Management Act. 'I am quite sure that none of us knew what we meant when we signed up to that formula'. By 'formula', Upton said from the hindsight of 2003 in respect to the requirement that local government, through the Resource Management Act, 'take account of the "principles" of the treaty'. Revealing further the extent of a government driven by the neotribes rather than its own policies, Upton added that 'when it framed the Resource Management Act, the National Government was aware of treaty "principles" developed by the Court of Appeal in 1987 and by the Waitangi Tribunal in dealing with Maori land Claims. "But given the extraordinary wide reach of the act, handing over its implementation to local councils with no clear guidance on how those principles might intersect with the claimed rangatiratanga of any particular group amounted to a legislative evasion".' (Simon Upton quoted in the *New Zealand Herald*, 22 – 23 Feb. 2003)

The ad hoc nature of governments' reaction to tribal demands continued throughout the 1990s. In 2000, Helen Clark, acknowledged that 'there is no one in Cabinet actually co-ordinating the insertion of treaty clauses into new legislation' (*Listener*, 2000: 22). Yet, in response to a survey's findings (*New Zealand Herald*, 28. Nov. 2000, p. A3) that 'two out of every three people believe references to the Treaty of Waitangi should not be included in legislation, Helen Clark indicated that the government was providing effective leadership in matters of treaty and government legislation. Arguing that "strong leadership will reverse New Zealanders' views on this contentious issue", the Prime

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uniqueness, as the legitimising tool for economic and political claims further naturalises Maori as a racial category.

Minister located the problem in the “not very great public understanding”. However she did ‘admit that the ‘Government had not been properly prepared for the debate over the treaty clause originally inserted in the health reform bill’.

The government’s uncritical acceptance of the neotribe’s ideology of neotraditionalism could not have occurred without a supporting culturalist discourse from the government side. The two discourses combine to erase the historical consciousness that could jeopardise the elite’s control over material and intellectual resources. ‘In societies where the state class totally dominates the accumulation of commercial wealth’ (in contrast to the merchant class) ‘its own political power, which is identical to its economic power, that is, its ability to survive, is directly jeopardised by any form of historical consciousness. On the contrary, its requirements are more mythological in nature, a consciousness that de-temporalises its position in the cosmos’. (Friedman, 1994: 65) (Indeed this mythological requirement reinforces the possibility that an indigeneity legitimating discourse is emerging to replace treaty legitimation – refer to footnote 7).

In neotribal capitalism that ‘state class’ is the neotribal elite in that they control both economic and ideological domains of neotribal society. Along with a dehistoricised consciousness, neotraditionalism promotes the belief that the interests of the elite are the interests of the people. The idealism of this position (along with the reification of power) is demonstrated by E. T. Durie’s (1998: 8) confident assertion that the ideal values of leadership are, in fact, the reality. He states that ‘. . .two important values are discernible. One 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’.

Culturalism also serves neotraditionalism by emphasising ethnicity as a valid social and political category of differentiation. Despite extensive Maori-Pakeha intermarriage, and the widespread acceptance that all Maori have one or more Pakeha ancestors (Callister, 2003), the success of the ‘two worlds’ ideology demonstrates the process of ethnic boundarisation as a neotraditionalist strategy. Because ethnicity is a relational concept

this firming of the boundaries between Maori and Pakeha simultaneously weakens the modernist principle of universalism and strengthens the concept of social division on the basis of ethnicity. *Creating boundaries creates a 'space in the middle' that needs to be crossed.* This is the brokerage site where brokers provide essential and profitable services.

The treaty partnership concept is the second stage of the process of institutionalizing neotribal capitalism into government structures and processes. Having distinguished the two protagonists in the first stage of ethnic differentiation, the use of neotraditionalism to create ethnic boundaries, and treaty historical grievances, the partnership stage re-integrates the protagonists. Because differences have been naturalised so are no longer debated, similarities can now be re-constructed. Brokerage too, changes. Institutionalised partnership has greater permanency than the limited brokerage involved in one-off treaty settlements. As partners in government institutions the neotribes are positioned to claim a fixed and permanent partnership – one located in constitutional inclusion. From the reference in a 1986 Court of Appeal decision (Graham, 2000), treaty partnership has overtaken treaty settlements as the means by which the neotribal elite can undertake the following process.

First, political power is acquired to control tribal property acquired from the settlements. This is achieved by establishing modes of regulation that are recognised by the government in terms of treaty principle two, the rangitiratanga principle, or principle of self-management. Second, resources, such as airwaves, seabeds and foreshores, flora and fauna, gas and oil, that were not included in the original historical grievance claims, are claimed on the basis of treaty partnership rather than on the basis of treaty reparations for historical injustices. (The very recent shift from treaty justification discourse to customary discourse is referred to in footnote 7). Third, the partnership concept is used to establish and control the modes of regulating these resources. These strategies have led to the strengthening of a treaty partnership concept to the point where it is a driving rationale of treaty orthodoxy.

Treaty partnership justification is derived from the extrapolation of the possession guarantees in article two of the Treaty of Waitangi into the concepts of governance and citizenship in the first and third treaty articles. There is a shift from claims based upon reparation for past wrongs (in reference to the Treaty of Waitangi, article two) to one of entitlement based upon a political partnership with reference to article one. The interpretation of partnership in turn then enables the tribes to claim economic resources and political positioning on the basis of the political 'partnership' rather than on the basis of historical grievance reparations only. At this stage the juridification and institutionalisation of partnership principles in legislation such as health, education and conservation, enables the capitalist neotribes to acquire an institutionalised regulatory function and enables the neotribal elites to become an institutionalised oligarchy. This *unites the tribes' economic and political dimensions*, and provides the basis for the unchallengeable political control of economic resources by an undemocratic, hierarchical regime.

The tendency, in the early 1980s, to consider the Articles of the Treaty of Waitangi in isolation from each other (a consequence of the leading role played by judicial interpretations) limited interpretations that could arise from the consideration of the meaning that exists in the *relationship* between the three articles. The effect of the isolated method of interpretation was that the meaning of the articles in terms of an integrated purpose was lost. The concepts of sovereignty (and its expression in terms of governance or regulation) in article one, of resource possession in article two, and citizenship in article three, were not considered in totality, that is, with the meaning of one article being dependent upon the meaning of the others. However, by the late 1980s, a new 'total' interpretation emerged as article two, not article one, became the referent for interpreting all the articles of the treaty. This emphasis on article two was the result of the earlier treaty focus in terms of the resource reparation. It has led to the second article driving the meaning of the first and third articles.

Extrapolating the concept of governance from article one (regarding sovereignty secession) into article two (concerning economic resources), from where it acquired a

determinacy which rebounded back upon article one has enabled tribal members to be reconceptualised as subjects of the capitalised resource possessing tribe. In this interpretation (one driven by the Waitangi Tribunal), the right to govern (by establishing modes of regulation) results from resource possession. In other words, if the tribe is considered to be the owners of the capitalised economic resources, then the right of governance proceeds from that status.

The effect of basing the political right to regulate a social group upon the economic right to acquire possessions shifts both governance and political subjectivity from the democratic state to the non-democratic capitalist neotribe. However, the undemocratic and class structure of the contemporary neotribe is unrecognised because the tribes are conceptualised as communal and non-exploitative structures. As in the traditional tribe, leaders are seen to be acting in the best interests of their peoples. Temm (1990: 104) makes explicit this assumption. 'If there is to be a partnership, as envisaged by the Treaty, that partnership must be between the Crown on the one hand, representing all people who live in New Zealand and who are not of Maori descent, and the tribes of Maoridom on the other hand, who will speak through their rangatira (leaders)' (1990: 104).

In this way the elite group who first assumed control of the capitalised resources in the early stages of settlement allocation have acquired the political 'right' to establish and control the neotribal modes of regulation, including the regulation of the neotribal economies. Unlike the New Zealand capitalist class whose control over the economic dimension of society is regulated by the contradictory character of the state, as simultaneously a capitalist and a democratic state, the neotribal political economy lacks a democratic site for class antagonism (Rata, 2000: 225- 232; 2003). There is neither an institutional site 'the contradictory capitalist-democratic state' nor a democratic subject 'the citizen' within the tribal economy for legitimate challenge to the ruling elite and to the unequal distribution of wealth. The ruling elite of neotribal capitalism cannot be removed from political office by tribal 'citizens' because citizenship is not an institutionalised status in neotribal capitalism.

My pessimistic conclusion is that, through the establishment of a treaty orthodoxy based upon neotraditionalism and driven by the neotribal elite, and through the culturalism-based acceptance of this ideology and strategies, successive governments have created the conditions for the undermining of democracy in New Zealand. Ironically, this destructive process has been done in the name of the very democracy that served so well those of the new professional class who benefited from the prosperity of the post-war decades and who became the accommodating biculturalists of the 1980s and 1990s. It remains to be seen whether the emergent customary rights – indigeneity discourse will replace current treaty discourse as the neotribal elites’ legitimating discourse and further naturalise ‘two worlds’ ideology. Whether or not this is the case, both discourses are ideologies of a non-democratic elite, and both are subversive of the conditions necessary for democratic regulation.

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