

‘Marching through the Institutions’: The Neotribal Elite and the Treaty of Waitangi

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Introduction

The elite of neotribal capitalism¹ have played a decisive and self-interested role in controlling shifts in the interpretation of the Treaty of Waitangi. In the identity politics of the 1970s ‘honouring the treaty’ initially referred to restitution for illegal land confiscations. From the late 1980s treaty interpretation shifted from its focus on reparations to the idea of a political partnership between the tribes and the government. In recent years that political partnership has been extended to ideas of a constitutional arrangement (TPK, 2001: 14; M. Durie, 2003; E. T. Durie, 1998; Wilson, 1998).

Control over the interpretation and symbolism of the Treaty of Waitangi was one of the most effective of the brokerage mechanisms used by the emergent neotribal elite. It enabled a strategic march through the institutions of a democratic society by non-democratic neotribalist forces. Elsewhere (Rata, 2003a) I examined the brokers or compradors (using the examples of Sir Tipene O’Regan, Sir Robert Mahuta and Professor Tamati Reedy), the brokerage mechanism, and the ideology of revived traditional leadership. This paper focuses specifically on the ‘partnership’ interpretation of the Treaty of Waitangi and its contribution to the success of the elite’s brokerage strategy.

¹ Neotribal capitalism (Rata, 1996, 1999, 2000, 2003) refers to ‘the view of modern tribes as organizations of capitalist accumulation that are legitimised through a “neotribalist” ideology that re-create present-day class relations in colonial terms’ (Schroder, 2003: 435). The neotribe is not the revived traditional tribe but the new and non-democratic socio-political organisation of an emergent capitalist elite. Schroder (2003) uses the model of neotribal capitalism in his analysis of Native North America. Larson and Zalanga’s (2003) account of indigenous capitalism and elite class emergence in Malaysia and Fiji provides an excellent discussion of the complex connection between class and ethnic relations. In New Zealand, as in Malaysia and Fiji, ‘the tension between class and ethnicity in relation to the emergence of the indigenous capitalists has been managed by downplaying the class-basis for political mobilization, emphasizing instead ethnic-based mobilization. Simultaneously, the connections between lower- and under- class individuals across ethnic lines are downplayed.’ (Larson and Zalanga, 2003: 95).

1. The Neotribalist Context

In contrast to, and as a critique of the view that Treaty of Waitangi based claims for economic compensation and political partnership are justified in terms of the need to compensate Maori for a putative colonial-imposed subordinate status, treaty revivalism is better understood within the late twentieth century context of fundamental changes to the global political economy. Jonathan Friedman (1994; 2001) and Immanuel Wallerstein (1991) are among world systems theorists who argue that one of the features of late capitalism is the repositioning of pre-colonial elites as the new elites of localised forms of the capitalist economy. In New Zealand's case the localised form of capitalism is neotribalism under the control of a *comprador bourgeoisie* or brokering elite. Its ideology is neotribalism (Habermas' [2001] 'conscious traditionalism'). Contemporary capitalism relations of production are concealed by beliefs in a restored (and romanticised) kinship social structure characterised by benign birth-ascribed leadership (Rata, 2003b).

The shift to the 'partnership' interpretation dates from the 1987 Court of Appeal decision that likened the relationship between the tribes and the government to a partnership (TPK, 2001: 78). During the 1990s the tribal leaders actively promoted the idea of two distinctive socio-political entities in partnership, – the 'neotribes' and the government² (E. T. Durie, 1998). Successive governments' support for the idea of a treaty partnership during that decade enabled the leaders to use partnership and principles concepts as brokerage mechanisms for a strategic march³ through the institutions of government.

As a consequence of the transformative capacity of the brokerage function (McAdam, Tarrow and Tilly, 2001; Overbeek, 1990; Rata, 2003b) the leaders of the retribalisation movement have emerged as a neotribal capitalist elite, an 'aristocracy' in the making⁴. By

² For an analysis of the incompatibility between the reactionary non-democratic neotribal organisation and the democratic socio-political system institutionalised in New Zealand government see Rata, 2004.

³ An account of the 'strategic march through the institutions' and the transformation of Maori revivalism from a prefigurative to a strategic political movement is available in Rata, 2000: 93 – 109.

⁴ I use the term 'aristocracy' to refer to the promotion by the new elite of the non-democratic concept of birth-ascribed authority in the neotribal socio-political organisation. According to Sidney Mead (1997: 203) 'the social system of traditional times is still in place, though greatly changed. Waka, iwi, hapu and whanau still exist despite years of government efforts to undermine them. There is still a Maori leadership system'.

the late 1990s the elite has sufficient institutionalised power to make new claims for economic resources (such as seabeds and native flora), and claims for political, to the level of constitutional, recognition on the basis of partnership alone.

The treaty, as interpreted in Waitangi Tribunal reports, is the main ‘site’ of neotribal brokerage. The Tribunal played a crucial role in legitimating the material and political aspirations of the neotribal elite. Under the lengthy chairmanship of E. T. Durie, the Waitangi Tribunal used its reports to create the ‘instrumental presentism’ (Oliver, 2001: 9) and the channelling of retribalisation⁵ that has served the elite’s economic and political aspirations. Three disparate groups have supported the Tribunal’s interpretation. The first group comprises the still-marginalised Maori who retain the pan-Maori aspirations of earlier ‘honour the treaty’ protests. These people were the intended recipients of bicultural social justice initiatives. The second group are those tribes that have yet to receive any treaty settlements.

Finally, the most influential supporters of the Waitangi Tribunal’s interpretation of the treaty are the ‘culturalists’⁶. Located in social science departments in universities and in

Ranginui Walker has referred explicitly to ‘aristocracy’ in commenting on disputes amongst Tainui leaders. ‘Professor Walker dismissed the emphasis being placed on democracy. “ Tainui must adopt a more collegial and consensual leadership or they will continue to undermine the aristocracy”’ (The New Zealand Herald, 19 – 20 August 2000). A further example of the non-democratic ‘aristocratic’ values of the neotribal elite is provided by E. T. Durie’s reference to Sidney Mead. In the Foreword to Mead’s book, *Tikanga Maori*, a work acknowledge by Durie as ‘scholarly’, the distinctly unscholarly reference is made to Mead’s ‘respected family lines’ (Durie, 2003: ix). The juxtaposition of ‘scholarly’ and ‘family lines’ reveals the non-democratic ideology of neotribal capitalism given that birth-ascribed authority is in opposition to the universalism and equality of modernist scholarship. *Tikanga Maori* is a very detailed example of the reactionary character of neotraditionalism. The ideology’s commitment to birth-ascribed authority explains the frequent use of ‘Crown’ rhetoric rather than the modernist terms of ‘government’ or ‘state’.

⁵ ‘The tribunal became the institutional mechanism for legal processes to be undertaken between the government and the tribes. Crucially it systematised a tribal – state relationship by conferring a juridified identity upon the concept of tribe grounded in treaty partnership, thus legitimating and incorporating within the capitalist order the existence of a mode of regulation based upon a tribal form’ (Rata, 2000: 202). The Tribunal can be seen as the ideological base for the march through the institutions.

⁶ ‘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, 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 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

the professions of education, health, law, the media, the church, and social services, culturalist ideas have informed academic analysis, government policy and guided popular understanding since the 1970s. By the 1990s the culturalist intellectual approach (also variously known as cultural idealism, cultural theory, cultural relativism, and identity politics) had attained the status of orthodox doctrine in New Zealand. However its flawed adherence to cultural relativism, its ahistorical approach to social change, and its ethnic-culture reductionism are increasingly subject to strong criticism by writers from a range of disciplines. These include Barry, 2001; Bunge, 1998; Friedman, 2001; Gitlin, 1995; Kuper, 1999; Matthews, 2000; Munz, 1992, 1994; Nanda, 2003; Sandall, 1999; Windschuttle, 1994, 2002.

Culturalism has informed treaty interpretation in numerous ways. It places the treaty outside history and outside the political and economic context of human intentions and actions. 'Human beings (are construed) as products rather than as producers of culture' (Hannerz, 1992: 16). Such an ahistorical or 'presentist' (Oliver, 2001) view fixes the meaning of the treaty in a timeless spiritual realm that guides human behaviour rather than being the result of peoples' motives and actions at a certain historical moment.

Steven Webster (1996: 1-2) has referred to the role played by 'most New Zealand-based social anthropologists since the 1970s (who) have been caught in theories of culture which present the Maori as somehow outside history'. In other writing I have analysed the pervasive influence of culturalism in education in several influential policy documents. (Rata, 2004a, 2004b, 2004c). A recent critique by Christopher Tremewan (2004: 4) refers to culturalism as 'a central component of Kiwi political correctness, a moral enforcement incomprehensible in terms of lived social reality but comprehensible in terms of a reconstructed social reality. It insists on a biological connection between ethnicity, culture and entitlement and, in my view, is better termed cultural

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'. Kolig (2002: 8) refers implicitly to the modernist character of cultural revival in his description of 'retraditionalisation . . . supported by globalisation through the freedom of choice'.

fundamentalism. Its historical antecedents are invidious. Yet it dominates policy prescriptions and academic analysis of New Zealand society.’

Culturalist ideas of primordial ethnic-cultural difference, cultural relativity and ahistoricism underpin Tribunal reports and with support from (bi)culturalists in government, the courts, academia and the professions, the Tribunal’s interpretation of the treaty has become the orthodox interpretation, one that serves the political interests of the neotribes. According to W. H. Oliver (2001: 9) the Tribunal ‘reports exemplify an instrumental but – because never explicitly avowed – elusive way of writing and using history’. Oliver refers to the Tribunal’s ‘presentism and the way in which this is shaped by a current political agenda and by the anticipation of its achievement in the future’.

This culturalism approach is also found in judicial decisions. ‘In the important 1987 *Lands* case the Court of Appeal said that the Treaty should be interpreted as a “living instrument”, which laid the foundation for “an ongoing partnership” between Maori and the Crown, and which must be seen as “an embryo rather than a fully developed and integrated set of ideas” (TPK, 2001: 15). ‘In 1990 Sir Robin Cooke, the then President of the Court of Appeal, speaking extra-judicially, said of the Treaty: “It is simply the most important document in New Zealand history”. (TPK, 2001: 14).

Culturalist beliefs underpinning the orthodox interpretation of the treaty are demonstrated in the Te Puni Kokiri publication, ‘Guide to the principles of the Treaty of Waitangi as expressed by the Courts and the Waitangi Tribunal’ (2001). The Guide refers 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). It is a ‘partnership’ between the tribes and the government, one that entitles the tribes to economic and political rights in perpetuity. It has constitutional significance. Treaty ‘principles’ are the basis for a bicultural nation in which tribal authority is incorporated into government institutions and processes.

The neotribal justification for two separate socio-political organisations in contemporary New Zealand uses a presentist, 'two worlds' approach. This is despite the contemporary realities of fluid and mixed ethnicity (Callister, 2003; Chapple, 2000), the modernist culture shared by all New Zealanders (one enriched and textured by the cultural heritage of its contributing ethnic groups), and the single democratic socio-political system that replaced the traditional kinship organisations.

In the culturalist approach, because the treaty's authority is 'spiritual' or 'otherworldly', and outside the political conditions of its real historical context, contemporary realities are ignored. The religious imagery of treaty orthodoxy illustrates the doctrinal status of a spiritually mandated authority, an authority that takes 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 word 'atone' in the government's apology to the Tainui tribe (*The 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' elevates the treaty from the combative political sphere to a level of unquestioning reverence.

The treaty combines the very political purposes of the elite (of this world) with the otherworldliness of a past considered to be forever present in the unchanging spirit of the people, carried from the ancestors to the present and projected into the future. Oliver (2001: 25) captures these dual and contradictory purposes with his comment that the Tribunal 'looks for a revival of traditional tribal politics in the twentieth and twenty-first centuries through the creation of a tribal economic base' through an approach which reasserts, 'to the point of reinventing, the evidences of continuity and denying the significance, if not quite the actuality, of change'.

In contrast to culturalism, a world systemic analysis (Friedman, 1994; Bunge, 1998) locates causation in the actions of real people living in historically specific

circumstances. Traditional revival and other fundamentalist movements are understood, not as responses to nineteenth century colonisation but as contemporary responses to contemporary circumstances. In the case of neotribal capitalism the context is the post-1970s' restructuring of the global economy, the corresponding shift from universal class-based politics to identity politics, and the re-emergence of traditional elites as a capitalist ruling class⁷. Treaty politics expresses the New Zealand experience of the global elite repositioning.

2. The neotribal elite

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 1960s' pan-Maori cultural renaissance 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 protests⁸ in the cause of specific tribal interests (O'Regan, 1994: 43). They

⁷ Barry, 2001; Friedman, 1994; Turton, 1997; Turner, 2003; Wallerstein, 1991; Kuper, 1999; Gitlin, 1995; Nanda, 2003; Sandall, 2001; Ekholm Friedman, 2003; Martinelli, 2002.

⁸ 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

became recognised as brokers between the government site and the tribal site, a brokerage role provided access to economic resources of the settlements on behalf of the tribes rather than pan-Maori.

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 1985 Treaty of Waitangi Amendment Act that allowed claims to be backdated to 1840 established the Waitangi Tribunal as the main brokerage site between the emergent neotribal elite and the government. Political recognition and institutionalisation were extended throughout the 1990s to include the concept of a political equal 'partnership' between the tribes and the government. 'The principle of partnership was first identified explicitly in the Tribunal's Manukau Report (1985) (TPK, 2001: 80). By 1987 the Court of Appeal could say that the treaty established a relationship 'akin to a partnership' (TPK, 2001: 78). And by the Muriwhenua Land Report of 1997, the Tribunal '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).

Culturalist beliefs informed the interpretation of the treaty held by both the Tribunal and the courts. As early in the brokerage process as 1988 a government document (Environmental Management and the Principles of the Treaty of Waitangi, 1988: 19, reprinted by the Dunedin Law Community Centre, 1995) contains a chart 'Summary of Principles of the Treaty of Waitangi defined by the Waitangi Tribunal and the Court of Appeal'. Column one summarises the Tribunal's interpretation of the principles. Column two is the Court of Appeal's summary. Both interpret treaty partnership as an unproblematic reality. In the Tribunal column 'the Treaty implies a partnership, exercised with utmost good faith'. The Court of Appeal statement is even stronger. 'The Treaty requires a partnership and the duty to act reasonably and in good faith (the

protests against racism in New Zealand and the role of bicultural Pakeha changed from co-activist to supporter in respect to Maori issues.

responsibilities of the parties being analogous to fiduciary duties).’ (Dunedin Law Community Centre, 1995: 13).

Tribal institutions, such as the Ngai Tahu and Tainui Trust Boards, given renewed impetus by the treaty reparation settlements, provided the structures for the materialisation of this politicised ‘partner’ identity. Some of the leaders who had led the cultural and indigenous movements become tribal brokers, a *comprador bourgeoisie*, on behalf of the newly established tribal economies (Rata, 2003a). It was a transformation that occurred within the brokerage process itself as institutional sites (for example, the Waitangi Tribunal, the Crown Forestry Rental Trust, the Treaty of Waitangi Fisheries Commission) were established. The positions within the new sites provided privileging roles for the brokers. ‘Brokerage produces new advantages for the parties, especially for the brokers’ (Burt cited in McAdam et al, 2001: 142).

The first generation of the emergent neotribal elite include individuals who acted on behalf of neotribal interests. Amongst this group are: Sir Tipene O’Regan, Hon. Matiu Rata, Sir Robert Mahuta, Sir Graham Latimer, Justice E. Taihakurei Durie, Professor Mason Durie, Professor Whatarangi Winiata, Rev. Api Mahuika, Professor Tamati Reedy, Sir Hepi Te Heuheu, Professor Ngatata Love, Sir Paul Reeves, and Professor Hirini Sidney Mead. They negotiated⁹ for political and economic (including knowledge) 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.

Individuals and families within the emergent elite may be at different stages in the trajectory of elite emergence. Some will maintain their place in this structural class and continue along the trajectory over the course of several generations while others may not. (Indeed Laslett [1984] has observed that upward and downward social mobility is a distinguishing feature of societies structured according to capitalist relations). What is

⁹ Larson and Zalanga (2003: 88) describe how the ‘new indigenous elites have political and economic involvement and connections that span across other capitalist groups and traditional indigenous authority’.

important is the creation of the structural position itself. However individuals are important in that the new class structured position is the result of their role in the brokerage function.

Their control of the main brokerage site, the Waitangi Tribunal, was pivotal in establishing, then naturalising, the concepts of treaty partnership and principles. Mason Durie (2003a: 94) has referred to the Tribunal's role in 'rewriting New Zealand's history'. The Tribunal intentionally and actively undertook this task. Oliver (2001: 10) describes how E. T. Durie, chair of the Tribunal from 1981 to 2000 'made clear his belief that the Tribunal should help to rewrite New Zealand history "from a Maori point of view"'. Also important was the elite's control over knowledge production, attested to by the number of neotribalists who hold professorial chairs in the universities and directorships of the *whare wanangas*. In publications, conference presentations, reports, masters and doctoral dissertations, and speeches, neotribal intellectuals defined and codified the parameters and content of neotraditionalism.

The most influential publications include Ranginui Walker's 1990 *Ka Whawhai Tonu, Struggle Without End*. More recent publications draw on several decades of articles, presentations and postgraduate dissertations. These include three recent books by Professor Mason Durie, *Te Mana, Te Kawanatanga, The Politics of Maori Self-Determination*, 1998, *Mauri Ora: The Dynamics of Maori Health*, 2001, and *Launching Maori Futures*, 2003. Professor Sidney Mead's *Landmarks, Bridges and Visions*, 1997 and *Tikanga Maori*, 2003, and Professor Linda Smith's *Decolonizing Methodologies*, published in 1999, are major neotraditionalist texts.

These writings exemplify the symbolic use of tradition to justify and legitimises the elite's political role and the material benefits that accrue. Neotraditionalism is entrenched as its symbolic content or ideology 'masks or "mystifies" those interests for the group members themselves' (Turton, 1997: 11). The use of spiritual symbolism in neotraditionalist writings such as Mead's *Tikanga Maori* and in treaty rhetoric serve this mystifying purpose. The symbolism of oppressor and victim is a strong theme in

neotribal revisionist writing (Bishop, Berryman, Tiakiwai and Richardson, 2003; G. H. Smith, 1997). It underpins the redemptive and reparative beliefs used to justify treaty claims. In his analysis of the Taranaki and Muriwhenua Reports, W. H. Oliver (2001: 26 - 27) discusses the Tribunal's 'redemptive history', in its depiction of a "possible" past is a "known" future, a kind of paradise lost at the dawn of colonial time. It is not altogether strange to find in its history some of the elements of a religion of the oppressed and the promise of delivery from bondage into the promised land'.

One short section of the Taranaki Report (Wai, 143, 1996: 12.2) shows how the narrative style of the tribunal reports identified by Oliver (2001) evokes the good versus evil struggle found in all mythological epics. The use and number of words and phrases describing the government create a vivid caricature of evil: 'macabre', 'fraud', 'corruption', 'cruel', 'machinations', 'violations', 'war of aggression'. The good versus evil struggle is played out in heightened poetic imagery: 'emblazons in vivid relief', 'protests of desperation', 'to destroy, by stealth and by arms'. The dramatic effect produced by this writing is not just in the word meaning. The rhythmic phrasing and periodic sentences of the syntax itself contributes to the binary opposition between oppressor and victim with active and passive voices supporting the ascribed roles of each protagonist.

This use of syntactical phrasing to add to the dramatic quality of the writing and to build tension is clearly demonstrated in the following quotation (taken from the same short section of the Taranaki Report, the italics are mine) ' . . . Maori custom, law and institutions were judged by those who did not know them, *and the judgments were wrong*. The right of Maori to make their own decisions about who controlled the dispossession of land and the nature of the interests held was negated, *and the immediate result was war*. The long-term consequence was that the Government enforced a plan to alter Maori land tenure and *to destroy, by stealth and by arms*, the capacity of Maori to manage their own properties and *to determine rights with them*. The relationship the Government imposed was that *of dominance and sub-servience*.'

A final example, also from section 12.2 of the Taranaki Report (Wai 143, 1996), captures vividly the range of language techniques used in the reports (despite being only a sentence fragment). ‘the invasion and sacking of Parihaka must rank with the most heinous action of any government, in any country, in the last century.’ The build-up of qualifiers ‘must’, ‘most’, ‘any’ ‘any’ in such a short space empowers the sentence with authority. ‘Invasion’, ‘sacking’, ‘heinous’ evoke poetic epics of battles between the forces of good and evil. Finally, the periodic triple construction of the final phrases ‘of any government, in any country, in the last century’ is one of the most effective and evocative oratorical devices used in persuasive language.

3. The Brokerage of Treaty Principles

The development of treaty principles to express the putative partnership led to a major extension of the neotribal elite’s control of treaty interpretation. The following description¹⁰ of the development and inclusion of Treaty principles in legislation provides a vivid account of what is probably one of the main brokerage ‘events’, - the brokerage of the principles of the treaty into New Zealand’s democratic institutions.

‘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, traveling 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.’ However as Parliament did not indicate

¹⁰ 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.

what the principles of the Treaty are, it fell to the Courts to discover them. (Berthold, 2003).

The development of principles to express the treaty partnership and the inclusion of these principles in legislation activated the march through the institutions of a non-democratic neotraditionalist ideology. The process was quick. 'As of May 2001 there were over thirty pieces of legislation that refer to the Treaty of Waitangi or its principles' (TPK, 2001: 20). Fourteen acts of legislation 'contained clauses requiring some action in respect of the Treaty'. These include the Conservation Act 1987 (section 4), the Hazardous Substances and new Organisms Act 1996 (section 8), the New Zealand Public Health and Disability Act 1996 (section 4) and the Resource Management Act, 1991. A further eighteen Acts contained 'treaty references not amounting to a direction to act' (TPK, 2001: 111). The latter were Waitangi Tribunal reports.

These legislative acts carried neotraditionalism into many areas of government life. Policy and practice at all levels of government institutional operation were affected. The following examples of the influence are from several areas in the education sector. They show the consequences for policy and practice that follow from the legislative requirement to acknowledge the principles of the Treaty of Waitangi (Education Act 1989 (section 181(b) (added 1990)). The *National Education Guidelines* (Ministry of Education, 1999: 1) require that school programmes 'for increased participation and success through the advancement of Maori education initiatives (be) consistent with the principles of the Treaty of Waitangi'. The Group Special Education Maori Strategy (Ministry of Education, 2004) opens with the brokerage-facilitating statement 'The Treaty of Waitangi is the principal founding document of our land'.

The early childhood education document 'Quality in Action' (Ministry of Education, 1998) asks educators to 'reflect (on) the unique place of Maori as Tangata Whenua and the principle of partnership inherent in Te Tiriti o Waitangi' (1998: 63) along with recommending that 'Management ensure that their service's budget and financial policies reflect a commitment to Te Tiriti o Waitangi' (1998: 81). Policy distinctions between

Maori and non-Maori contribute to naturalising the culturalist 'two worlds' view of New Zealand society and to consolidating ideological boundaries between people on the basis of race. Emerging practices that treat children differently according to their race reinforce these race boundaries.

Widespread beliefs had developed among teachers that Maori children have a different 'way of knowing' and different learning styles from other children. According to Cormack (1997: 165) 'Maori children generally work best as individuals when they know that they are part of a group which in turn is part of a larger groups, a secure hapu and iwi base in the classroom'. The early childhood education document 'Quality in Action' (Ministry of Education 1998: 64) refers to a 'Maori pedagogy (that) incorporates philosophical and spiritual beliefs, preferred learning styles, conditions conducive to learning, methods of transmitting knowledge, and appropriate people to pass on this knowledge.' References are made to 'Maori theories of human development', and to the need to 'recognise that different whanau, hapu and iwi vary in their views on the roles and significance of gender, ability and age' (1998: 46).

There are examples from outside education of the far reach of treaty principles legislation into policy and practice such as requirements for Maori representatives to serve on committees and for consultation with iwi groups. The Royal Commission's Report on Genetic Modification recommends that Institutional Biological Safety Committees (IBSCs) include at least one Maori member, appointed on the nomination of the hapu or iwi with manawhenua in the locality affected by an application'. (Report of the Royal Commission, Recommendation, 2001, 6.10, p. 353).

The Health Research Council of New Zealand 'Partnership Programme Request for proposals Expression of Interest Form EO1204-OHS' (HRC, 2004) requires applicants to 'meet at least the minimum requirements for Maori responsiveness'. These include identify 'the Maori group(s) that were consulted regarding the proposal', describe 'the ongoing role they will have in the further development and/or implementation' of the

research project’, explain if ‘any Maori participants’ are involved in the research, and ‘identity any Maori researchers or research staff named’ on the proposal. (HRC, 2004: 3)

As the brokerage function became institutionalised into government departments with the legislative requirement to acknowledge the principles of the treaty, several layers of brokers emerged below that of the elite themselves. These were people ‘on the ground’ who served as Maori advisers, iwi consultants and representatives, and kaumatua. They worked, often tirelessly, on numerous committees at national and local level in all areas of government activity including education, health, social welfare, local government, and conservation.

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 advisor, kaumatua, and tangata whenua representative on the various councils, committees and panels that opened up as a result of the treaty partnership idea.

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, 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 the achievement-based meritocracy of New Zealand democracy.

4. Marching through the institutions

Hazlehurst (1993: 74 – 75) locates the early development of the neotribal strategic project for institutional change in the 1980 – 1981 formation of the Maori Mana Motuhake Party. She refers to Ranginui Walker's (a key strategist) program of institutional transformation' . . . responsibility was to be firmly located in whanau, hapu and iwi'. By the end of the 1990s another highly influential neotribal brokers, Professor Mason Durie, has successfully brokered the 'Durie Principles' into every area of Maori educational policy. The three Hui Taumata Matauranga (the first, in February 2001 was convened by Tumu Te Heuheu) show the driving force of neotribal ambitions for education (M. Durie, 2003a). The hui also show the strategic direction moving beyond education, possibly into a broader constitutional partnership including all government sectors.

'The Hui Taumata process has been innovative and appealing as a practical demonstration of the Treaty of Waitangi relationship, it has also provided a model for the articulation of collective Maori aspirations. . . in order to understand the interface between te ao Maori and the wider society , whether it is linked to education or health or employment or the economy, Maori need to have a clearer framework within which sectoral endeavours can be conceptualised. Thinking in sectors such as the education sector, the health sector, the social services sector – can distort te ao Maori. To that end it may be timely to consider creating an opportunity for Maori to identify their own priorities and plans on a broader front, using a similar process to the Hui Taumata Matauranga but focussing on higher level aspirations and goals, including constitutional arrangements.' (Durie, 2003a: 18).

E. T. Durie's long tenure as chair of the Waitangi Tribunal is a good example of an influential brokerage position within a pivotal government institution. The Tribunal played a major role in shifting the interpretation of the Treaty from its role as a grievance settlement mechanism to its role in justifying political, even constitutional, partnership. His strategic plan for the cultural change required for a constitutional 'arrangement' incorporating 'the Treaty as a basic tenet' (Wilson, 1998: 3 – 4) demonstrates the political aspirations of a broker in an institutional position with real driving power.

Brokerage into specific institutions such as government ministries and statutory organisations led to institutional links between the government, the neotribalists and the courts. This enabled the march through the institutions to proceed with relative ease. For example the link between the political and judicial areas of government is made explicit in E. T. Durie's (1995: 3) suggestion of a political role for the judiciary in regard to indigenous issues. 'The courts may be called upon to play a larger role in such political issues, at least where statute law has left some openings. In New Zealand for example, where the Waitangi Tribunal may direct the transfer of state properties to Maori in reparation for historical losses, there is the question of whether the Tribunal should compensate to the fullest extent of proven loss, or should consider it necessary to restore the tribe to a reasonable equilibrium. The issue may be seen as political, but given the lack of statutory direction to the Tribunal, the issue may fall to be determined by the courts, in High Court proceedings that are now current.'

Comprehensive and forward-looking brokerage strategy has been driven by the neotribes. 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. This is most clearly demonstrated by the way in which the treaty principles have been brokered into government legislation with enormous consequences for all sectors and levels of government activity.

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 reveals an almost cavalier approach to this most far-reaching of government activities. 'I am quite sure that none of us knew what we meant when we signed up to that formula'. By 'formula', Upton (from the hindsight of 2003), referred 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). Until recently the Labour Government also appeared not to have grasped the significance of the brokerage of treaty principles into legislation¹¹. 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).

5. The process of treaty re-interpretation

Neotraditionalist ideology naturalises ethnic division to create the belief the New Zealand society is divided into two political partners, the tribes and the government, characterised by fundamental ethnic and cultural differences that must be recognised in distinctive socio-political structures. Furthermore this relationship between the two ‘partners’ was agreed to in 1840 and is considered to be ongoing.

The concept of partnership, authorised in the treaty’s timeless authority, was made concrete by legislating the treaty principles. With the legislative recognition of two separate entities, the way was opened for the next stage in the brokerage of neotribal influence and interests. Similarities can now be re-constructed. The partners can agree to relate in particular ways. For example iwi partnerships are created in health and education with iwi providers taking on some of the functions of government agencies¹². The whare wanangas are an example of the way in which the partnership is cemented into practice.

Brokerage too (the process of linking the partners), undergoes changes. Institutionalised partnership has greater permanency than the limited brokerage involved in one-off treaty

¹¹ Since the Leader of the Opposition, Don Brash’s, Orewa speech in January 2004 revealed the extent of the public’s disquiet with treaty politics, the Labour Government has indicated a willingness to reconsider treaty policies.

¹² See the Ministry of Education Statement of Intent 2003 – 2008: Iwi Education Partnerships, (Ministry of Education, 2003)

settlements. Having become partners in government institutions (the result of the insertion of the principles into legislation), the neotribes are positioned to claim a fixed and permanent partnership – one located in constitutional inclusion. Treaty partnership has overtaken treaty settlements as the means by which the neotribal elite can continue and consolidate their march through the institutions. The final stage is that of neotribal brokerage into a constitutional arrangement.

Treaty interpretation changes throughout these stages. Treaty partnership was initially justified by extrapolating 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 new interpretation then enabled the neotribes to claim economic resources and political positioning on the basis of the political ‘partnership’ rather than on the basis of historical grievance claims only.

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 or tribal self-management institutions, policies, practice and beliefs) results from resource possession. In other words, if the neotribe is considered to be the owners of the capitalised economic resources, then the right of governance proceeds from that status. At this stage the neotribes have the economic and political platform to launch the campaign for constitutional recognition.

Conclusion

For over two decades a group of neotribal leaders have controlled the shifting interpretation of the Treaty of Waitangi. That control has, through complex brokerage processes, led to the group’s own emergence as a self-interested political elite. The elite’s

‘strategic march through the institutions’ is now at the final constitutional stage. Mason Durie’s (2003: 105 - 116) recommendations for a new constitutional framework would create two separate socio-political organisations based upon race origins and justified according to culturalist beliefs that ‘race causes culture’ (Rata, 2004a).

The neotribal ‘side’ will be organised according to non-democratic principles of kinship, race heritage, and hierarchical leadership. Its policies and practices, justified by the neotribalist ideology of revived and romanticised communalism, will conceal the self-interested class character of the ruling elite. It is difficult to see how, given the incompatibility between the non-democratic race-based neotribal structure and the democratic institutions of the New Zealand state that both forms can be accommodated within the one nation. Yet that is the implicit assumption behind the idea of a treaty partnership and the brokerage of the treaty principles into legislation.

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