

## *Māori Retribalization and Treaty Rights to the New Zealand Fisheries*

Steven Webster

The Māori constitute about 15 percent of New Zealand's total population of approximately 3.6 million people. Over 80 percent of Māori live in urban centers, and fewer than 20 percent speak Māori as their mother tongue. For more than a decade, Māori *iwi* (tribes) and other Māori organizations have been in conflict among themselves over allocations of a portion of the New Zealand commercial fisheries returned to them in 1989 as a treaty right in compensation for its misappropriation since 1840. A government that was forced to attempt a settlement may have succeeded in doing it cheaply while passing most of the resulting conflict and legal expense back to Māori. Traditional *iwi* as well as urban Māori may also have been drawn more firmly into the net of restructured capital.

All this took place amid a major Māori cultural renaissance that has built pride and respect for traditional values, but struggles less successfully to achieve significant material change (Webster 1998b). Due largely to a draconian regime of neoliberal restructuring, since the early 1980s economic inequalities have widened, especially between Māori and Pākehā (European) New Zealanders. Most Māori have seen little of the approximately NZ\$800 million (about US\$350 million) in fisheries assets held for them since 1992. However, social class differences have also widened within Māori society, and a few Māori have done very well indeed with these new assets.

This case history of the Māori fisheries claim raises wider practical and theoretical issues. My own interest has been to examine changes in ethnic politics and Māori kinship organization since colonization, as an integral part of the differentiation of capitalism in New Zealand (Webster 1975; 1997; 1998a). I have argued that Māori *iwi*, like Native American tribes in the United States and Canada, are misconceived as traditional social

organizations (Webster 1995). As one of several expert witnesses I also contributed to some court cases, one of which I describe later. Important recent research has shown that Māori *hapū* (subtribes) and *iwi* have historically been more complex and subject to change than has been assumed in traditionalist models (Ballara 1998), and that contemporary Māori kinship is being “retribalized” in capitalist forms in a “regulatory mode of production” responding to Māori initiatives as well as government policies (Rata 1996; 1999). The case history that I present here, of the struggle for control over a portion of fisheries assets, substantiates this ambiguous assimilation of Māori tribes into the changing New Zealand political economy.

This history bears comparison with others on the Pacific Northwest Coast, which I cannot pursue here (Boast 1989; Cohen 1986; Boxberger 1989; Newell 1993). A recent study of Māori fisheries by Canadian scholars compares the effects of commercial restructuring in a quota management system since 1983 with similar programs in the European Economic Community and in Canada in the 1990s (Schwimmer 2000). A major conclusion is that while customary fisheries of peasant and indigenous peoples are threatened by such commercial restructuring, successful “bicultural” adaptation is possible. However, I am skeptical. The overriding assumption is that this process is part of a transition from traditional to modern fisheries. I have argued that such an abstractly oppositional model leads back into an evolutionism or structuralism that obscures historical confrontations, and perpetuates an ideology of traditionalism that can obscure assimilation—not into a progressive “modernity,” but into a more subtly exploitative capitalist restructuring (Webster 1998a).

## HISTORICAL BACKGROUND AND CUSTOMARY FISHING RIGHTS

My primary concern is to trace implications of the recent recovery of Māori rights to commercial fishing, but first I must summarize the history of Māori customary fishing rights. Since 1988 the Māori claim to commercial fisheries has been sufficiently successful to regain control over 23 percent of the lucrative commercial quota. Whereas the commercial catch was about 700,000 tonnes in 1998, the customary catch was only 10,000 tonnes (*NBR* 23 Jan 1998). Nevertheless, Māori customary fishing rights have a much longer colonial history, and these rights are valuable in social and symbolic as well as political and economic terms. In one way or another, many Māori have long benefited directly from their customary

fisheries; on the other hand, few have yet received any direct benefits from the successful claim to the commercial fisheries.

Different policies and regulations have developed for the commercial, customary, and recreational fishery sectors, with Māori customary rights long assumed to be noncommercial and restricted to subsistence purposes. However, the distinction between customary and commercial fisheries is ambiguous and ideological. Traditional Māori fisheries were significantly “commercial” at the time of European exploration in the late 1700s (eg, through specialized production and trade-in-kind between regions—including *koha* [gifts]); indeed, through the 1850s settlers became increasingly dependent on this commerce, especially in the major urban centers (Ballara 1995; Firth 1959). This *customary commerce* continues among Māori: in interior Māori communities with no access to the sea, I have eaten sea food (*kai moana*), often preserved by allowing it to go slightly “off”: shark (*mango*), sea eggs (*kina mara*), rock lobster (*koura mara*), and mussels (*toroi*); and among Māori fishers, I have eaten farm produce, similarly preserved by fermentation: potato (*kōtero*) and maize (*kanga pirau*). Trade and exchange of these products as ceremonial foods continue in more ritualized form the systematic commercial trade-in-kind underway at the time of earliest European contact.

While the history of Māori land misappropriation has been under increasing scrutiny for several decades, an equivalent understanding of Māori fisheries has developed only since 1988 (Walker 1990; Ward 1997, 1999). The rights assured under the 1840 Treaty of Waitangi appeared extensive; the treaty guaranteed

to the Chiefs and Tribes of New Zealand and to the respective individuals and families thereof the full exclusive and undisturbed possession of their Lands and Estates Forests and Fisheries and other properties which they may individually and collectively possess so long as it is their wish and desire to retain the same in their possession. (Ward 1999, 14)

The legal force of the treaty, although recognized in New Zealand courts 1847–1877, was soon suppressed and has been restored only recently—in a 1986 customary fisheries case, which I will briefly describe (Kawharu 1989; Brookfield 1999; McHugh 1991). Even the customary rights to feed one’s family and offer hospitality became increasingly difficult to exercise under regulations that were often rationalized as conservation measures but in practice advantaged commercial or recreational interests over what remained of Māori fishing rights. During the twentieth century it became

established policy to require permits from the Crown specifying location, occasion, and quantity for customary Māori fishing and gathering for subsistence. For decades, this rubbed salt into the Māori wounds of denied treaty rights.

A major transformation of the New Zealand commercial fisheries took shape through the 1964 establishment of the New Zealand Fishing Industry Board to promote exports, the 1977 extension of exclusive economic control over territorial waters to two hundred miles offshore and outlying islands, and the 1983 implementation of a quota management system. In 1986, the expanding industry was integrated with one of the more extreme free-market regimes of the developed nations by converting the national fisheries into individually transferable quotas, privately owned leasehold rights tradable on the open market (Kelsey 1990, 1997). Not until several years later did the European Economic Community and Canada trial comparable quota management systems, much more cautiously (Schwimmer 2000).

In 1983 the quota management system redistributed commercial quotas with the goal of professionalizing the industry, and rationalized the regime in terms of conservation policy. The Hobbesian thesis of “the tragedy of the commons” was invoked to argue that while a resource open to exploitation by all would soon be exhausted, private rights mobilized private responsibility to maintain the asset (McCormack 1999). Quotas were awarded to commercial enterprises on the basis of previous catch records: fishing companies had to show minimum gross earnings of NZ\$10,000 per year and an intention to invest in the industry; the income records of family or unincorporated fishing enterprises had to show that fishing constituted at least 80 percent of total income. As a result of the new regime, within a few years as many as 1,800 small fishing enterprises (85 percent of which were Māori) were forced out of the commercial fisheries (Walker 1990, 274; Schwimmer and others 2000). Despite the social and environmental costs of this restructuring, the total allowable catch was reduced by only 5 percent, suggesting that increased profitability and expansion of a few dominant commercial fishing enterprises was the real intention of the legislation.

However, in 1986—more than a century after an 1877 ruling declared the Treaty of Waitangi a legal nullity—the landmark *Te Weehi* ruling restored Māori fishing rights not only as treaty rights but also as rights under aboriginal title and thus British common law (McHugh 1991, 130–131). Paul McHugh pointed out that in one swoop this decision intro-

duced legal pluralism to New Zealand law, because it “establishes that the Maori have a property right in the coastal fisheries. . . . This property right is defined by Maori customary law. . . . In finding out whether a prosecution can occur under the Fisheries Act, local courts are required to investigate and enforce Maori customary law” (1991, 131).

To all appearances, the informal economy of Māori customary fishing had acquired a new status to which the courts themselves had to defer. However, by 1992 there were clearly systematic legislative efforts to bring these new Māori opportunities in customary as well as commercial fisheries back within the confines of the formal market economy and away from any legal pluralism that might compromise it. From the point of view of “informal” or “irregular” sectors of a capitalist economy, the intention of restructuring regimes such as the quota management system is to overcome the inefficiencies and costs entailed in market “marginalities,” and draw—or coerce—these sectors more fully into the supposedly free flow of commodity exchange values ideally constituting the formal capitalist market (Henry 1987; MacKinnon 1997).

An examination of the 1992 Treaty of Waitangi (Fisheries Claims) Settlement Act suggests that the legal pluralism that McHugh hoped for following the 1986 Te Weehi decision has been tightly circumscribed, despite the act’s multicultural appearance. As I describe later, the 1992 legislation reacted primarily to the Māori effort to reclaim a share of the commercial fisheries. However, the important Hikuwai case of 1997–1998 suggests that an additional intent of the legislation was to force all but token remnants of the customary fisheries into the formal free-market regime (Rush-ton 1999; McCormack 1999; Treaty of Waitangi [Fisheries Claims] Settlement Act 1992). Hikuwai was charged with illegally exchanging several tonnes of snapper (which he had acquired without a commercial permit) to various individuals, *marae* (Māori ceremonial centers), and seafood distributors. His primary defense was that the fish were exchanged as *koha*, or traditional gifts (allowed under the 1992 act), and that they would otherwise have been wasted. He was convicted on the grounds that these exchanges violated the act’s requirement (section 10) that “such food gathering is neither commercial in any way nor for pecuniary gain or trade.” However, there are no ethnographic grounds for supposing that *koha* involves no money or “pecuniary gain”: in my experience, *koha* given on *marae* is often explicitly intended to defray expenses of hosts or friends, and is *primarily* in cash or checks; cash has certainly been included in *koha* since the 1850s. Eric Schwimmer (2000, 14–15) and Caroline Houle (in

Schwimmer, Houle, and Breton 2000) similarly argue that such *koha* has “no commercial purpose.”

I suggest that, behind the deference to Māori concepts such as *iwi*, *koha*, *marae*, and *kaitiaki* (stewards), the act seeks to exploit traditionalist enthusiasms to primitivize token aspects of customary fishing, while formalizing as commercial (and thus regaining control over) most aspects of it. Furthermore, even customs that can be purged of all “pecuniary” taint turn out to have no status in law and cannot be used in defense against prosecution until recognized by Crown regulations. Ten years later, few have gained that recognition.

### IWI AND COMMERCIAL FISHING RIGHTS: THE NEW MANA MOANA

The restored legal implications of treaty rights rapidly gathered force in 1986–1987 with the Māori Council’s successful challenge of the government’s plans to privatize Crown lands under the State-owned Enterprises Act, and the Waitangi Tribunal’s investigation of the Muriwhenua (Far North) land and fisheries claim (Waitangi Tribunal 1988; Walker 1990, 263, 273). The former case forced the government to cooperate with long-unsettled Māori claims to Crown lands, and the latter case forced the government to plan major reallocations of commercial fishery rights already distributed as individually transferable quotas. This situation, and the promise of the earlier Te Weehi case, are prime examples of Māori interests momentarily regaining the initiative in the historical differentiation of capitalism in New Zealand (Webster 1998a).

The Crown defended its position before the Waitangi Tribunal in the 1986 Muriwhenua case by arguing that the Māori had long since given up their exclusive treaty rights to the fisheries by not objecting to the development of colonial and commercial exploitation. But in fact protests had been more or less continual since the 1860s, and furthermore the tribunal found that the onus was on the Crown to actively protect the treaty rights. Although it was widely assumed that traditional fishing practices had long been forgotten, the Muriwhenua people were able to present a compelling array of oral evidence, including claims to commercial fishing up to thirty-two kilometers out to sea. In September 1987 the Māori Council obtained a ruling from the Waitangi Tribunal with which the High Court concurred, issuing an interim injunction against the government’s plan to bring further species in the Far North under the quota management sys-

tem. This initiative was led by Muriwhenua elder and longtime former Minister of Parliament Matiu Rata, who had himself been a fisher and railway union leader.

The following month a further suit by the Māori Council, in which the far more influential Tainui (central North Island) and Ngai Tahu (South Island) *iwi* confederations joined, was successful in extending the injunction to fisheries throughout New Zealand. In retrospect, one can also say that the joining of other *iwi* confederations in the fisheries claim gave the government the opportunity to begin to marginalize the efforts and influence of the Muriwhenua leadership in favor of more cooperative Māori leaders.

The resulting negotiations displayed the new balance of power between different Māori interests, the government, and commercial fishing corporations (Walker 1990, 276; Kelsey 1990, 107–139). The government appointed a working party of four government representatives and four tribal leaders. The latter included Sir Tipene O'Regan, a leader of Ngai Tahu, the dominant South Island tribe, along with Matiu Rata, the leader of the ice-breaking Muriwhenua case. Rata brought working-class and long political experience to the table and represented Northland Māori, the most populous and among the most impoverished Māori regions; O'Regan was a lecturer in political studies and brought his business and legal skills and influence to the working party. He also represented an *iwi* that was the most upwardly mobile socially and professionally and could claim a vast coastline in what was by far the most lucrative commercial fisheries zone. At the time, Ngai Tahu's own extensive land and fisheries claims were before the Waitangi Tribunal.

At the outset of the negotiations, the Māori representatives of the working party claimed 100 percent of the deepwater as well as inshore commercial fisheries rights, pointing out that the Crown and private enterprises had enjoyed the benefits of illegitimate control of them for more than a century. *Mana moana* (prestige and authority over the sea) was again standing tall. Moreover, in the spirit of partnership originally enshrined in the treaty, the Māori negotiators graciously offered to accept return of 50 percent of the commercial fisheries rights. In response the government was not so gracious, counter-offering 29 percent of the commercial fisheries, including the whole of the inshore fishery and one-eighth of the (now much more lucrative and commercially rationalized) deep-water fishery. Indignant at an offer that would leave them a minority partner, and confident that their resort to court might gain them more than 50

percent of their unextinguished rights to the commercial fisheries, the Māori representatives rejected the government's offer. Subsequent negotiations extracted a government promise of 50 percent Māori control, but this was to be returned piecemeal over twenty years while all other fishery claims under the treaty were given up. By the end of 1988 the Māori negotiators reluctantly accepted this arrangement.

However, by the time the settlement came before parliament the fisheries industry had mobilized against it, frankly threatening to subvert the already toothless government supervision of the quota management system by refusing to report quotas and withholding rental fees. The resulting Māori Fisheries Act 1989 granted only 10 percent of the commercial fisheries quota to be held in trust, along with a NZ\$10 million grant toward development of Māori fisheries. Ominously, parliament left to litigation the question of how much more quota the Māori would get.

In 1990 a Māori Fisheries Commission—subsequently renamed the Treaty of Waitangi Fisheries Commission, or *Te Ohu Kai Moana* (the seafood group)—was appointed by the government to manage the 1989 assets (subsequently termed the “pre-settlement assets”). The commission appointees were all influential Māori leaders, including Sir Robert Mahuta of the Tainui *iwi* confederation, and Sir Graham Latimer, national head of the Māori Council, as well as Rata and O'Regan. By September 1992 the commission was successful in negotiating a further transfer of fisheries assets, which was to be a “full and final” settlement of all Māori commercial fisheries claims. In what came to be known as “the Sealord deal,” the government bought out and transferred to *Te Ohu Kai Moana* 50 percent of the shares in the Sealord fisheries company, worth about NZ\$150 million. Sealord held about 26 percent of the total national fish quota, bringing to about 23 percent the quota held by the commission for the Māori (that is, the 10 percent of quota awarded in 1989 plus half of the Sealord quota).

The 1992 “settlement” assets were added to the 1989 “pre-settlement” quota, cash, and shares, which by 1992 were worth about NZ\$250 million, bringing *Te Ohu Kai Moana*'s total assets at that time to about NZ\$400 million. This was more than the largest settlements for some recently successful *iwi* claims for loss of land (about NZ\$170), but presumably had to be shared among more than forty *iwi*, and equaled less than half the value of one year's export profits of the privatized fisheries industry (NZ\$820 million in 1989 [AS, 29 July 1990]). It is also significant that under the 1992 act these assets were nothing like the fish resource



itself, but were already locked into the recently restructured, free-market quota management system and corporate shares—a very different kettle of fish from the independent resource rights that had been misappropriated from the Māori. The act also extinguished virtually all treaty rights to the fisheries, leaving only the token customary rights previously discussed.

The 1992 act furthermore declared beyond the jurisdiction of any court both the adequacy of these settlement benefits and the Deed of Settlement on which the act was based. This deed, based on agreements reached between the Te Ohu Kai Moana and various Māori groups between July and September 1992, nevertheless remains a matter of confusion, conflict, and litigation (see Moon 1998). In July, the commission had arranged an annual general meeting (*Hui a Tau*) intended to signal its intentions to distribute the pre-settlement (1989) assets to *iwi* and acquire a major shareholding in Sealord with the mediation of the government. This meeting resulted in a brief “Memorandum of Understanding” signed by forty-five Māori leaders apparently representing their *iwi*. Several further gatherings (*hui*) held by commission confirmed the memorandum in a Deed of Settlement on 23 September 1992. This deed legitimized the 1992 act and indeed was pivotal in the most recent decision (July 2001) of the British Privy Council regarding it.

Although many Māori leaders signed one or both of these documents, it appears that few did so as acknowledged representatives of their *iwi*, acting rather (as many subsequently claimed in defense) as private individuals or representatives of other organizations such as the National Māori Council and the Māori Congress. It was said that many came along to Wellington mainly for the national rugby game that day, and that at the meeting they “kept their *iwi* in their pocket.” However, the government took the agreements more seriously. Now entrenched in the 1992 act are several concessions made by the signatories that are particularly rankling for many Māori—including extinguishment of treaty rights, regulation under the quota management system, and distribution of the pre-settlement assets to *iwi*.

The last provision was a new and ambiguous direction. Whereas the 1989 act had envisioned that the commission would retain and manage the fisheries assets for the benefit of “all Māori,” the 1992 act directed the commission to allocate the pre-settlement assets to its beneficiaries, retaining management only of the Sealord shares and future quota shares awarded in the final settlement. Furthermore, while the act occasionally refers to these beneficiaries as “all Māori,” the role of Māori *iwi* had been

given new prominence. Because the term *iwi* is not explicitly defined in the act, and can be taken to mean “the people” as well as “tribe,” a central ambiguity in the interpretation of the act soon arose. It has been a focus of conflict and litigation—primarily between Māori—ever since.

From the point of view of Te Ohu Kai Moana, the issue was straightforward: *iwi* meant “traditional” tribes. The commission reasoned that because it was the traditional tribes from whom the treaty rights to their fisheries had been misappropriated, it was to these tribes that the rights should be returned, and the July annual general meeting and Deed of Settlement had given them a mandate from most of these tribes themselves. A contemporary tribe that was “traditionally acknowledged by other *iwi*” was accepted as “traditional” for purposes of allocation of the assets. “All Māori” would share in these allocations insofar as they belonged to such *iwi*. This last assumption was to be the most contentious.

Apparently relying on its own Māori expertise and that readily available to it, Te Ohu Kai Moana offered a laconic definition of Māori *iwi* in the sense of a “tribe” that has:

- (i) shared descent from tipuna
- (ii) hapu
- (iii) marae
- (iv) belonged historically to a takiwa
- (v) an existence traditionally acknowledged by other Iwi. (TOKM 1998, 37)

I will briefly elaborate on this definition to allay some of its ambiguities and to gloss Māori terms (later I will also take issue with some assumptions accepted here):

- (i) shared descent within an *iwi* is traced in *whakapapa* (genealogical descent) from a single *tipuna* (ancestor, often eponymous, ie, the *iwi* is named after him or her);
- (ii) *hapū* are subtribes in the sense that *iwi* are subdivided into *hapū*, and *hapū* are subordinate to *iwi*;
- (iii) *iwi* usually have several *marae* (ceremonial center, usually with a meetinghouse), one associated with each *hapū*;
- (iv) the *takiwa* (area, region, or territory) of an *iwi* is set off by a *rohe* (boundary) from other *iwi*, and subdivided correspondingly into *hapū* territories;

- (v) some Māori groups (for instance, *hapū*) may reject the authority of an *iwi* or themselves claim to be *iwi*, but if this claim is not acknowledged by other *iwi* (which are themselves so acknowledged) the aspirant group may not really be an *iwi* in a traditional sense.

It turned out that Te Ohu Kai Moana's definition of *iwi* had a less auspicious source than their own expertise. Through the late 1980s the Labour government, in mobilizing its free-market policies, had increasingly resorted to a naive notion of *iwi* as the "tribal" units of Māori society. The commission's notion of *iwi* was derived primarily from the 1989 Runanga Iwi Act, devised by the government to cut the costs of Māori Affairs by encouraging Māori organizations to bid for grants. The naive notion of *iwi* used in that act had been criticized by experts in Māori culture, but to no avail (Metge, personal communication, March 1998). The struggle for control over restored fisheries rights after the 1992 act was partly a continuation of the scramble to qualify as *iwi* that had been precipitated by the 1989 Runanga Iwi Act.

However, unlike the repealed Runanga Iwi Act, the 1992 act was being administered by a government commission of Māori leaders that now had the power to enforce their definition of traditional *iwi*. With this influential backing and the promise of considerable capital resources, some *iwi* organizations—"traditionally acknowledged" or not—attempted to assert or consolidate their authority over uncooperative *hapū* or local communities. Eric Schwimmer, an academic authority on Māori society as experienced as Joan Metge, says Te Ohu Kai Moana's legislative mandate "gave the corporation vast powers in defining nothing less than the structure of Māori authority, and the resolution of rivalries that had divided tribes and tribal segments right through Māori history" (Schwimmer 2000, 9).

The commission's definition of *iwi* and my elaboration of its assumptions above have wide popular or loose acceptance. However, on the basis of empirical observation and research some academic authorities (including Māori) as well as myself would disagree with assumptions (ii) and (iv), and wish to more carefully qualify assumptions (i), (iii), and (v). I have argued my own position in other essays (Webster 1997, 1998a).

Most tellingly, *iwi* are not at all the stable traditional entities they are often supposed to be: the number of *iwi* "traditionally acknowledged by other *iwi*" has increased and decreased through colonial history (Ballara 1998). Whereas in 1974 there were about 42 "acknowledged" *iwi*, by

early in 1998 there were about 55 (Metge 1967 and court testimony March 1998). By later that year, Te Ohu Kai Moana had acknowledged 78 (TOKM 1998, 43–44), and the government census for 2001 lists 95 (Statistics New Zealand 2001). Recent increases may be due to factors such as the promise of benefits deriving from the important role given *iwi* in government policies, and the fisheries commission's own power to decide who qualifies.

The power conferred on Te Ohu Kai Moana by the 1992 act also extends to ensuring the corporate commercial character of its recognized *iwi*. While being “traditional” in the sense defined by the commission, *iwi* are also required to fulfill certain “structural” criteria of capitalist modernity: “The requirements can be met in many different ways and Iwi can choose whatever legal structure they wish provided it meets the minimum standard set by Te Ohu Kai Moana” (TOKM 1998, 40). Although this phrasing appears to offer some latitude for traditional Māori ways, the crucial words are “legal structure” and “minimum standards.” The small print implies a free-market orthodoxy: “Managing the fisheries asset package involves investing the assets, monitoring their performance, extracting a dividend and making reinvestment decisions. . . . Whether Iwi own the harvesting entity, or lease their quota to a third party is a matter for the Iwi to decide.” So it turns out that recognized *iwi* are to be “traditional” in a significantly ambiguous sense perhaps best captured by Rata's oxymoron “tribal capitalism.”

As a result of the more prominent role given *iwi* in the 1992 act and Te Ohu Kai Moana's interpretation of it, several contentious issues began to take shape among Māori:

- If the fisheries assets were to be allocated, should they be given to *iwi*, to “all Māori,” or to some other unit of Māori society?
- If only *iwi* were to receive the allocations, how “traditional” did they need to be?
- Were *iwi* to be understood in terms of supposed traditional regions, or their contemporary population (widely varying and scattered beyond these regions)?
- If *iwi* were to be understood in terms of their traditional regions, was coastline a fair measure of their relative rights to the fisheries? (Did *iwi* really control such regions? What about inland *iwi* with little or no coastline? What about the far greater value of the commercial catch in southern latitudes?)

- If *iwi* were to be understood in terms of their contemporary population, how should this be counted when most live outside the traditional region, 80 percent live in urban areas, and many cannot or do not claim their membership?
- Whether *iwi* are to be understood in regional or population terms, should the relative extent of contemporary need or impoverishment be considered?

These issues gave rise to several opposed and shifting factions among Māori and also within the commission itself. The major development during 1995–1996 was the confrontation between some organizations advocating allocation exclusively to *iwi* (the “*iwi* fundamentalists”) and others advocating allocation to “all Māori” regardless of *iwi* affiliation, including urban Māori. By July 2001 this confrontation was to be taken twice to the British Privy Council and back.

By 1995 the two main organizations advocating allocation exclusively to *iwi* were the Treaty Tribes Coalition and the Area One Consortium. In sardonic recognition of their traditionalism, they came to characterize themselves as “*iwi* fundamentalists.” The coalition comprised 13 to 30 *iwi* (depending on how and when they were counted) including Ngai Tahu (the major South Island *iwi*), Te Iwi Moriori (the Chatham Islands, about four hundred miles off the east coast of South Island), the several *iwi* of the North Island east coast including Ngati Kahungunu (but not Ngati Porou), and the several *iwi* of the Coromandel Peninsula and the Hauraki Gulf. The Area One Consortium comprised 14 to 24 *iwi* (again, depending. . . ) in the North Island’s Bay of Plenty, Northland, and the Far North. Although both the Treaty Tribes Coalition and the Area One Consortium demanded allocation exclusively to *iwi*, they were diametrically opposed on the criterion by which these allocations were to be made: while the coalition demanded allocations on the basis of “traditional” coastlines, the consortium demanded allocations on the basis of contemporary populations.

Generally speaking, the coalition *iwi* had more coastline and fewer members, while the reverse was true of the consortium *iwi* (even in the case of the northern *iwi*; although their coastline is relatively long, the population is much larger and more economically depressed than that of most other *iwi*). The coalition argued the principle, *mana whenua mana moana* (authority over the land is authority over the sea), presented as *tikanga* or traditional Māori custom. According to this principle, tradi-

tional rights to an area of land necessarily implied traditional rights to the fisheries of any adjacent marine waters. Thus the traditional fishery rights of an *iwi* included the inshore and deepwater rights off all the coastline of the *iwi*'s traditional *takiwa* or region. Allocation of the fisheries assets should therefore go to each traditional *iwi*, in proportion to the coastline adjacent to their traditional regions. Arguing to the contrary, the consortium *iwi* asserted that although traditional inshore fisheries were often dominated by *hapū* or *iwi* who controlled the adjacent land, considerable evidence showed that deepwater rights had traditionally been shared between *iwi* without regard to coastlines, and furthermore that all *iwi* had benefited indirectly from these rights through widespread trade.

In retrospect, it appears likely that with the increasing influence of the Treaty Tribes Coalition and especially Ngai Tahu—and regardless of the facts of “tradition”—the coastline principle would have won out over the position of the Area One Consortium, had it not been for the urban Māori organizations' resistance to allocation exclusively on the basis of *iwi*.

This dramatic divergence between the coalition and consortium *iwi* positions tended to obscure other positions as well as doubts that *iwi* were the appropriate recipients of the assets. Two large North Island *iwi* (or, depending on your point of view, confederations of *iwi*), the Ngati Porou of the east coast and Tainui of the west coast south of Auckland, maintained their independence from either the coalition or the consortium (although Ngati Porou tended to align with the former and Tainui tended to align with the latter). Still other *iwi* organizations, especially those of the west coast, interior, and southern end of North Island, presumed no unified position such as that of the coalition or consortium; their constituent communities or *hapū* often took divergent positions on the issues. Although Ngai Tahu has come to dominate South Island in its treaty claim negotiations, by some counts there are a dozen other *iwi* there that often act independently, some entirely rejecting Ngai Tahu's recent hegemony. National organizations such as the Māori Council or the Confederation of United Tribes have urged alternatives to *iwi* such as Māori Districts or *hapū*, respectively.

### IWI FUNDAMENTALISM AND URBAN MĀORI

Against the *iwi* fundamentalism of Te Ohu Kai Moana, the Treaty Tribes Coalition, and the Area One Consortium, a variety of dissident positions shaped up, the most influential of which had come to be called “Urban Māori Authorities.” Urban Māori Authorities are mutual benefit, social

welfare, or trust organizations formed among urban Māori since the 1980s, although similar organizations have been characteristic of urban Māori at least since the 1950s (Metge 1964). Their diverse constituency ranges from *taura here* (literally, “tying rope”) or urban members of particular *iwi* based elsewhere, and “urban marae” with or without any particular *iwi* affiliation (Kawharu 1968), to many Māori more or less alienated from any marae, *iwi*, *hapū*, or *whānau* (extended family) connections at all. There are many other urban Māori organizations that merge indistinguishably with the Urban Māori Authorities. These include social clubs, church groups, housie or bingo groups, sporting groups, and other voluntary organizations. Extensive directories of such organizations are sometimes circulated.

By 1998 the most influential of the Urban Māori Authorities were the Manukau Urban Māori Authority of south Auckland, the Waipareira Trust of west Auckland, Te Runanganui o te Upoko a te Ika Association of Wellington, and Te Runanga o Mataawaka of Christchurch (Maaka 1994). All of these have been incorporated or established as trusts and thus, like any *iwi* recognized by Te Ohu Kai Moana, are regulated in accordance with the formal economy. However, against the *iwi* fundamentalists, the Urban Māori Authorities emphasized the 1992 act’s focus on “all Māori” as well as *iwi*, and the fact that 80 percent of the Māori population lived in urban areas, usually not in the region of their *iwi* affiliation. The Urban Māori Authorities also tended to present themselves as an urban working and unemployed class, poorer than their rural cousins.

Stereotypes abound in the highly politicized context. While urban Māori seeing themselves as progressive could derogate the *iwi* fundamentalists as “the old guard,” rural Māori seeing themselves as traditionalists might resent their city cousins for abandoning them to rural unemployment and poverty. After all, some say, it was the country cousins who had kept home fires burning and Māori culture—and *iwi*—alive. Now with the prospect of commercial fisheries benefits to *iwi*, city cousins should keep their hands out of the pot. On the other hand, both factions have their young and old. Urban Māori have often been in the city for two or more generations. While some urban elders are progressive, some urban Māori youth—especially university students—are traditionalist. The urban/rural assumption is itself misleading: most of the *iwi* fundamentalist leadership live in urban centers, many “rural” Māori spend most of their lives working in towns and cities, and rural Māori communities are beset with “urban” problems arising from unemployment, gangs, predation, drug addiction, isolation of the elderly, and so on. Nor can it be assumed that traditionalism

is characteristic of rural Māori communities; most are merely poor, and would be progressive if they had sufficient resources.

In anthropology, traditionalism has long been recognized as a form of adaptation to—or rationalization of—impoverishment. Yet, in the current situation of identity politics and capitalist differentiation, those with more resources or influence may take on the trappings of ethnic traditionalism. Given these ambiguities and the widening gap between rich and poor among Māori, one might suspect that most of the struggle over the fisheries assets is between new Māori elites, urban as well as rural subalterns, while the poorer majority of rural and urban Māori watch skeptically from the sidelines.

In March 1995, led by Māori barrister Donna Hall and others of Wellington and Auckland, the Manukau Urban Māori Authority and Te Runanganui o te Upoko a te Ika Association filed their suit in the High Court to stop Te Ohu Kai Moana's allocation of the fisheries assets exclusively to *iwi*, arguing that this would be a breach of the commission's duty to include in the benefits urban Māori with no tribal connections. The Area One Consortium chairperson was quoted as responding indignantly, "Who are they!? Will they be here in another hundred years? Nga Puhi will!" (Nga Puhi were the major *iwi* in the consortium, and asking who the two Urban Māori Authorities were—*ko wai korua?!—*was a characteristic Māori insult.) This challenge raises an interesting point: it so happens that Nga Puhi are among the several *iwi* shown to be of rather recent historical origin: in their case, post-1820s (Sissons and others 1987; Webster 1998a, 15).

By July 1995 the threat of Urban Māori Authorities and other Māori interests opposing allocation to *iwi* had enabled Te Ohu Kai Moana to close ranks with both the Treaty Tribes Coalition and the Area One Consortium. Under the commission's guidance, the coalition and the consortium announced that while the Urban Māori Authorities were litigating in the High Court they had agreed to negotiate their differences, that is, their opposed positions on whether to allocate the fisheries assets to *iwi* on the basis of coastline or population. At this time the coalition also announced its determination to appeal the case all the way to the British Privy Council if the High Court came down in favor of the Urban Māori Authorities' claim for a share of the assets.

Although the High Court avoided a decision in favor of the Urban Māori Authorities' claim, the subsequent unanimous decision of the New Zealand Court of Appeal came down firmly on their side. In May 1996 the



prestigious Robin Cooke of the British House of Lords emphasized, against the exclusive claims of *iwi*, that “the Deed of Settlement was conceived as a pan-Maori settlement of fisheries claims. It was not for the benefit of selected groups of Maori alone.” Guided by the 1975 Treaty of Waitangi Act, Cooke concluded that the ambiguous word *iwi* in the 1992 act meant “the Queen’s subjects already living on the land and yet to come,” a “nation people” not a “tribe,” and that the word *hapū* more properly meant “tribe” as well as “subtribe.” Clearly implying inequity, Cooke also pointed out that Te Ohu Kai Moana’s annual lease rounds of quota exclusively to *iwi* had resulted in a lion’s share going to Ngai Tahu (Lashley 2000).

The *iwi* fundamentalists reacted with indignation to the Court of Appeal judgment. Commission chairperson O’Regan considered that the decision marginalized the treaty rights of coastal *iwi* for the sake of “a race thing” (ie, emphasis on the act’s phrase “all Māori”). Although differences between the *iwi* fundamentalist factions had not yet been overcome, the consortium’s appeal of the Cooke decision to the Privy Council was backed by Ngati Porou as well as the Muriwhenua *iwi* (Matiu Rata), Tainui Waka Fisheries (Robert Mahuta), the Te Arawa *iwi* confederation, and Te Iwi Moriori (the Chatham Islands).

The *iwi* fundamentalists had closed ranks by January 1997, when the Privy Council decision came down. It is a measure of the urgency of presenting a united front in the face of the Urban Māori Authorities’ offensive that a compromise was reached between the opposed coalition and consortium demands. Adverse publicity and probably government pressure also helped Te Ohu Kai Moana to broker a deal. Chairperson O’Regan was himself in a difficult position, as his relatively small and well-off *iwi* Ngai Tahu of the South Island would lose a larger proportion (of their lion’s share) of the quota than would the larger coalition *iwi* based in less lucrative fisheries of North Island. Under these conditions, the compromise reached was a formula of 40 percent of deepwater quota allocated on the basis of *iwi* population, 60 percent of deepwater quota allocated on the basis of *iwi* coastline, and 100 percent of commercial inshore quota allocated on the basis of *iwi* coastline (it should be kept in mind that these are proportions of the pre-settlement assets, ie, the 10 percent of the total commercial quota granted to Māori in 1989).

Because this compromise shifted 40 percent of the Māori deepwater quota to a population basis, it allowed North Island *iwi* to claim 60 percent of the deepwater quota even though only 20 percent of it was caught

in northern waters. On the other hand, due to its huge coastline and southern latitude, Ngai Tahu still had almost 15 percent of the value of pre-settlement assets all to itself, while more than fifty other *iwi*—some with three times the population of Ngai Tahu—were left to share the remainder. Thus class privilege continued to rankle among the *iwi* fundamentalists, as well as between them and urban Māori.

However, Te Ohu Kai Moana's policy remained set against any compromise with the Urban Māori Authorities' interests despite their potential to represent a majority of Māori. For the *iwi* fundamentalists, O'Regan argued that any Māori could trace his or her descent (*whakapapa*) from an ancestor (*tipuna*) and thus a traditional *iwi* if they wished to—and that if they did not wish to do this they were in effect giving up their claim to be Māori at all. Although a few urban Māori might have been happy with this implication, it was a provocative challenge to many of them. It was also a frankly oligarchical assertion of *iwi* authority.

Further to my criticisms of Te Ohu Kai Moana's model of *iwi* outlined earlier, I would argue that tracing genealogy (*whakapapa*) does not necessarily implicate any *iwi* membership at all. *Whakapapa* is a fundamental and probably traditional principle of membership in contemporary Māori *hapū* organized by descent lines traced through both males and females (Webster 1975, 1997). As Cooke's decision pointed out, the word *hapū* more properly means tribe as well as subtribe, and the treaty was addressed, not to *iwi*, but to *hapū* in this sense. It is popularly assumed that all *hapū* are part of an *iwi*, and *iwi* are organized on the same principle of *whakapapa*, extending those of their constituent *hapū* from an earlier ancestor common to them all. However, I and some others would argue that this assumption is not so well founded, either historically or in contemporary Māori society (Schwimmer 1978; Webster 1998a; Ballara 1995, 1998; Metge 1995, 317 n 13).

I described earlier the historical changes in the number of recognized *iwi*. Briefly, I contend that unlike *hapū*, *iwi* rise and decline opportunistically, primarily in response to changing political and economic conditions, and that claims of common kinship through descent (*whakapapa*) in support of *iwi* are usually much more arbitrary and ideological than they are in *hapū*. Traditionally as well as historically, *iwi* might be defined as political and economic ways of holding the allegiance of *hapū* in the name of certain descent lines (*whakapapa*), while quite different allegiances and descent lines might obtain under somewhat different conditions. However,

by extending the principle of *whakapapa* from *hapū* to *iwi* as though there were no such difference, Te Ohu Kai Moana was enforcing a hierarchical subordination of *hapū* to *iwi* on the basis of a kinship ideology that might obscure the contingencies on which the subordination was actually based—for instance, access to fisheries assets. Such use of kinship ideology to reinforce assertions of political power is well documented among many so-called “tribal” societies (Wolf 1999, 69–131).

Arguing against the *iwi* fundamentalists, the Urban Māori Authorities emphasized that many contemporary Māori live far from their *iwi* regions, and that many choose not to affiliate, or have insufficient knowledge of their predecessors to affiliate or maintain contacts with an *iwi*. Some Māori academics have claimed that at least 50 percent of Māori have no active links with their *iwi*, and suggest that these are often poorer than other Māori (Durie 1998; Walker [eg, 1996] is also sympathetic to this view). They also pointed out that *iwi* organizations are often absent or weak, and notoriously unable to keep track of their members, much less deliver benefits to them. Furthermore, Māori who do know their *iwi* affiliations often have allegiance to and rights in more than one *iwi*.

Census statistics reveal a recent increase in the number of New Zealanders identifying as Māori in one way or another (Statistics New Zealand 1994, 29–30; 1997, 15; 1998, 13–16; data for 2001 are not yet available). Since the 1980s, censuses have again been identifying Māori (similar questions were common in colonial eras but not since the assimilation regimes of the 1950s). In the 1991 and 1996 censuses, respondents were given opportunities to (1) acknowledge descent from a Māori; (2) identify ethnically as a Māori; and (3) identify one or more *iwi* affiliations. Some differences among the responses to these three questions, and between responses in 1991 and 1996, are revealing.

The number of persons acknowledging descent from a Māori increased by 13 percent between 1991 and 1996 (to 579,714 in 1996). Of those acknowledging Māori descent, however, 10 percent did not identify ethnically as a Māori, and 26 percent did not name any *iwi* affiliation. On the face of it, these disparities represent assimilation to Pākehā culture or dilution of Māori culture. But comparisons of the 1991 and 1996 census data suggest opposing processes as well. While the proportion of New Zealanders acknowledging descent from a Māori increased by 13 percent, the proportion identifying ethnically as Māori increased by 20 percent. During the same period, those acknowledging Māori ancestry but not identi-

ifying ethnically as Māori decreased from 23 percent to 10 percent. Contrary to the previous comparisons, these suggest an increasing readiness to claim Māori ethnicity.

Whether or not these figures together represent cross-currents of assimilation and ethnic reidentification, yet other sociologically unexamined processes are going on: small but interesting proportions of the population identified ethnically as Māori but did not claim any Māori ancestry, or named an *iwi* affiliation but did not identify ethnically as Māori.

Nevertheless, regardless of the steadily rising stakes in Māori commercial fishing, the census data suggest that *iwi* retribalization was proceeding at a much slower pace than ethnic reidentification—at least among the population at large if not within its administration. Compared to 1991, in 1996 only 2 percent more of those acknowledging a Māori ancestor identified one or more *iwi* affiliations (an increase from 72 percent to 74 percent). In 1996, furthermore, while about 26 percent passively did not identify any *iwi* affiliation, 19 percent of respondents “said they were unable to name an *iwi* to which they were affiliated.” Perhaps surprisingly, “living in a rural or urban setting made little difference”: while 20 percent of those living in main urban areas “did not know their *iwi*,” 18 percent living in minor urban and rural areas did not know it (Statistics New Zealand 1998, 13–14).

With the Urban Māori Authorities’ case in mind, one must ask why so many, so late in a game with such high stakes, still did not (can not?) affiliate with an *iwi* or even identify ethnically as Māori. To the Urban Māori Authorities’ emphasis on choice or ignorance, I would add pride or hostility: I know of some urban Māori who, even when presented with an easy and anonymous way to find out their *iwi* affiliation, refused it. I suspect that behind these various reasons lie motives best understood in terms of social class disparity, among Māori as well as between Māori and Pākehā: while some disdain ethnic identification or *iwi* affiliation because they have regained access to sufficient other resources, many more do so because barriers to such access have alienated them in many other ways.

In 1996 while awaiting the Treaty Tribes Coalition’s appeal to the Privy Council, both Te Ohu Kai Moana and the Urban Māori Authorities attempted to recruit as many of the persistently unaffiliated urban Māori as they could. In November 1996, in an effort to counter the Urban Māori Authorities’ charges that many urban Māori did not know their *iwi* affiliations, the commission organized an “*iwi* helpline” (*te waea rapu iwi*; literally, *iwi* search-wire) through which Māori could request a search of

their genealogical connections and identification of their *iwi* affiliation. Between November 1996 and May 1997 about 2,900 such enquiries had been received (NZH, 14 May 1997). In response, in June 1997, two Auckland Urban Māori Authorities (Waipareira Trust and Manukau Urban Māori Authority) announced that in just a few weeks of campaigning they had signed up over 10,000 Māori who accepted their mandate to demand a share of the fisheries allocations regardless of *iwi* affiliation (NZH, 1 June 1997). Although some part of the larger response may have been passive support, it was clear that the Urban Māori Authorities enjoyed a lot of that in the main urban centers.

At about this time, responding to other critics, the commission acknowledged some of the difficulties in its plan to allocate fisheries assets exclusively through *iwi* (NBR, 25 July 1997). In addition to about 70 percent of Māori not living within their *iwi* area and about 20 percent not knowing their tribal affiliation, the commissioners admitted that, as a matter of policy, some Māori organizations rejected tribal structures. The most influential instance of this is the Ratana Church, which since forming in the 1920s has rejected tribal organization and leadership as primitive practices, and since alliance with the Labour party in the 1930s has usually dominated the four Māori seats in parliament.

Perhaps most significantly, the commissioners also admitted that about 26 percent of Māori claimed “multiple affiliation” or membership in more than one *iwi*. This comes as a surprise only if the popular definition of *iwi* as composed of several *hapū* with a common ancestor is taken literally. Such a model could work exclusively only if Māori saw themselves as kin related through only one side of the family (eg, through males); however, Māori descent is cognatic, that is to say, traced through both male and female ancestors. Because of this many Māori can in theory trace descent from many *iwi*. The 1996 census had encouraged reporting of multiple *iwi* affiliations, and as many as six were sometimes claimed.

Multiple *iwi* affiliation goes to the heart of Māori kinship, and might be the most difficult problem to reconcile with Te Ohu Kai Moana’s asset allocation plan. It is further complicated by the historical separation of some *iwi* into regions distant from one another, all of which could be claimed by any descendant regardless of the unfair proportion of coastline entailed. Despite these problems, in order to calculate each *iwi*’s share of the allocations, the commission decided to count all reported *iwi* affiliations equally, even though this would result in counting more than once as many as 38 percent of all those who claimed Māori descent (TOKM 1998,

56–57). The commission felt that few Māori would actually try to “double dip” in this way—but if the “fish” were to be divided this way, one wonders why not?

Where did the government stand on the escalating confrontation between the fisheries commission and the Urban Māori Authorities? Although the government (dominated 1991–1999 by the National Party) had drafted the 1992 act, it had itself been ambivalent about the position of urban Māori. When in July 1996 the *iwi* fundamentalists appealed to the British Privy Council against the Court of Appeal decision to include Urban Māori Authorities in allocations, the government’s submission argued that allocation decisions were best made in New Zealand. In effect, this backed the Court of Appeal decision and thus the Urban Māori Authorities. However, a week before the Privy Council hearing, noting its caretaker status in the conflict, the government decided not to actively pursue its submission—in effect, withdrawing its support of the Court of Appeal decision. John Tamihere of the Waipareira Trust charged that the pullout was an outrage and reflected political manipulation almost certain to harm the Urban Māori Authorities’ case (NZH, 23 Nov 1996). The government’s desertion of their cause likely did reflect its greater fear of the combined business and political influence of the *iwi* fundamentalists.

When the Privy Council’s decision was handed down in January 1997, Tamihere’s indignation appeared justified. The Privy Council did quash the New Zealand Court of Appeal (and Lord Cooke’s) decision that the allocations must include equitable, separately administered provision to urban Māori, and referred the case back to the New Zealand High Court for reconsideration. Perhaps momentarily, the Privy Council specified two questions for clarification of the 1992 act:

- (1) should the assets go only to *iwi* and/or bodies representing *iwi*? and
- (2) if yes, does *iwi* mean only traditional Māori tribes?

Thus most of the ground gained in the Court of Appeal for the Urban Māori Authorities and allocation to “all Māori” appeared to have been lost—but the issue of “*iwi* fundamentalism” was put squarely on the line.

Meanwhile Te Ohu Kai Moana’s uncompromising attitude toward the Urban Māori Authorities, and especially Chairperson O’Regan’s toward Tamihere, resulted in an unseemly public escalation of the confrontation. In April 1997, in an implicit appeal to traditionalist factions resentful of urban Māori, O’Regan contended that contrary to the assumption that

urban Māori claiming no *iwi* affiliations were the poorest of the poor, 1996 census returns showed that they instead tended to live in the more affluent suburbs of the cities. In an angry response to this, Waipareira Trust spokesperson Tamihere was backed by the Minister of Parliament Sandra Lee, who is also a Māori descendant of Ngai Tahu, O'Regan's own *iwi*. In a televised debate following the announcement of the commission's position, Lee and Tamihere charged that the commission had been "creaming off" the proceeds of the pre-settlement assets since 1989 and was now offering a unilateral proposal on a "take it or leave it" basis. O'Regan angrily walked out on the debate. In the commission's annual report for 1997, he disparaged supporters of the Urban Māori Authorities' stand, and perhaps revealed his own class interests: "One of the silliest and most culpably ignorant political comments we have had over the past year was that Māori had had no benefits from the Fisheries Settlement—that they had not had 'even a chocolate fish' [a form of candy]. There was an immediate chorus of assent and urgent recourse to that ever-reliable stimulant of Pākehā liberals, 'What's it done for the glue sniffing kids?' . . . Why on earth should Maori capital be dissipated to meet social needs? . . . No one should expect fish to fund the social redemption of the Maori people" (quoted in Schwimmer 2000).

The accusations of wealth and claims of poverty flung between traditionalists and the Urban Māori Authorities probably reflected increasing differences of social class among Māori themselves. While there was a three-fold increase of Māori among the poorest 20 percent of New Zealanders between 1984 and 1993, a small middle class developed among urban Māori (less than 9 percent of the Māori population in Auckland [Webster 1998b]). Between 1991 and 1996, while 11 percent of Māori became more impoverished, the small proportion of a relatively prosperous Māori elite increased from 3.4 percent to 7.7 percent of the Māori population (Lashley 2000, 45–46).

Te Ohu Kai Moana and some of its beneficiaries were probably among this new Māori elite. Between 1993 and 1999, Te Ohu Kai Moana paid eleven of its commissioners for their part-time work (most drew additional salaries in other positions) almost NZ\$5 million in fees and a few of them drew over NZ\$200,000 in some years (SST, 11 April 1999; NZH, 9 April 2001). By 2000, the market value of Te Ohu Kai Moana's holdings had been tripled to over NZ\$800 million and it boasted control of one-third of New Zealand's commercial fisheries; chairperson O'Regan was named one of the *National Business Review's* New Zealanders of the Year (NBR,

5 May 2000; 25 Aug 2000). Interim quota distributions to some *iwi* also probably enriched a few Māori: although later annual distributions remained confidential information under the State-owned Enterprises Act, it was revealed that, in 1992, 53 percent of the offshore quota was leased to Ngai Tahu fishers who paid an average of NZ\$353 per tonne for it, while the remaining 47 percent of quota was distributed among all other recognized *iwi*, and they paid an average of NZ\$1,144 per tonne for it (RNZ, 11 Mar 1999).

However, most *iwi* have insufficient access to fishing equipment or skills, and have instead placed their quota with finance companies for cash (Schwimmer 2000, 6). Although Schwimmer concluded that some of those taking the latter option had also done well with their new cash, Peter TapSELL, a Māori parliamentarian who favored retaining the assets in a government trust, had a more skeptical view: "Most tribes are in no position to exploit fishing quota to the best advantage. They will simply become 'rentiers,' on-leasing their quota to someone else to do the fishing. The proceeds will be squandered in providing salaries and motorcars for those on a steadily growing number of dubious tribal bodies" (NZH, 15 Oct 1997). The situation of a Māori rentier class and its likely outcome is not historically new: in the 1840–1850s some Māori chiefs did well renting tracts of land to settlers for sheep-runs (they too were charged with "squandering" their new wealth). However new legislation was soon established to loosen Māori control over land, and it turned out that the real wealth of New Zealand was accruing to those who owned the sheep. By the 1870s Māori were doing most of the shearing for them.

On the other hand, as O'Regan's taunt suggested, some urban Māori indifferent to their *iwi* affiliation had probably also done well in the economic restructuring. Organizers of the Urban Māori Authorities were apparently not unambitious. According to Waipareira Trust spokespersons, the *rangatiratanga* (chieflikeness) and *aroha* (compassion) that informed the ideals of the trust had been "empowered" by the neoliberal state sector reforms to deliver services on a larger scale, train business managers, and enlarge their infrastructure (Waitangi Tribunal 1998, 56). Although profits were to be applied in accordance with its constitution as a charitable trust, Waipareira's "corporate arm" was "dedicated to development of all business and investment opportunities."

The Urban Māori Authorities' case continued to gain popular support. Media interest, Tamihere's populist appeal and O'Regan's uncompromising indignation, and the sharp if perhaps innocent focus of the Privy



Council's questions for clarification drew public interest. By 1998 various Māori *iwi*, *hapū*, and individuals had procured legal representation and joined in the High Court rehearing of the Urban Māori Authorities' case against Te Ohu Kai Moana and the Treaty Tribes Coalition. Generally lining up with the Urban Māori Authorities were more than a dozen dissident *iwi* organizations in the Te Arawa and Taupo region, the far north of Northland, the Bay of Plenty, and the Taranaki region (Cull 1999).

Deferring to the will of the New Zealand Parliament, the Privy Council's two questions for the High Court asked only to clarify the intentions of the 1992 act. However, because criticisms and litigation had raised so many serious issues deriving from possible shortcomings in the act, it was decided that two successive hearings would be held. This splitting of the case had profound effects. While the hearing on the intentions of the act was held in Auckland in March 1998, the second hearing on the possibly serious shortcomings of the act itself has been repeatedly delayed into 2002—and, indeed, it may never be held. Thus its provisions have continued to hold sway.

The Auckland hearing lasted three weeks in late March and early April 1998. The day before it was convened, Auckland's Sunday newspaper described the situation with appropriate drama. The case brought to the fore one of the biggest issues facing Māoridom today:

What is a tribe? Urban Maori are once again taking Te Ohu Kai Moana (the Treaty of Waitangi Fisheries Commission) to court to argue they are a modern-day *iwi* and are entitled to a share of the \$350 million fisheries assets. Slogging the matter out will be some of the biggest guns in Maoridom. Urban Maori Authorities lawyer John Tamihere will be backed by academics and historians against what he calls the "new corporates, the Knights of the Brown Table—and their new weapon—money." (SST, 15 March 1998)

Tamihere's sardonic wit drew on the irony that several of the Te Ohu Kai Moana commissioners—all of whom were Māori, or "brown"—had been knighted by the British Queen, and played on the notorious influence on government policy by a few (Pākehā) corporate magnates popularly called "the Round Table."

Māori from all over the country attended the hearing. It involved about twenty lawyers, of whom about two-thirds were Māori, all relatively young. Although fluent in English many witnesses insisted on speaking in Māori, and an official interpreter was always on hand. In actuality, each side had its "academics and historians": about eight academics testified

mainly in support of the Urban Māori Authorities, and five testified mainly in support of the *iwi* fundamentalists (six if counting O'Regan, who submitted an affidavit but did not testify). Most of the academics were also Māori: four of the eight academics supporting the Urban Māori Authorities were Pākehā (two historians, and two social anthropologists including myself), whereas all on the commission's side were Māori. This ethnic bias is probably attributable to the strong ideological appeal of traditionalism among Māori academics (most of whom teach Māori Studies) and reliance of the Urban Māori Authorities' case on sociological and historical research (where there were still many fewer Māori academics) (Webster 1998b, 155–188).

Summing up their closing arguments against allocation only to traditional *iwi*, the lawyers for the Urban Māori Authorities and other appellants argued that the act did not intend *iwi* in any traditional or strict sense as “tribes,” but rather in the sense of “all Māori”; that in this case the criterion of genealogical descent (*whakapapa*) went against Māori custom (*tikanga*) because it was exclusive of some Māori members and divisive of Māori interests; that the 1992 act did not define *iwi* and furthermore relied on the repealed 1989 Runanga Iwi act; that early references to “tribes” such as the Treaty of Waitangi referred to *hapū*, not *iwi*; that even the earliest traditional *iwi* were intermittent and nonterritorial formations, and that many did not form until the nineteenth century; and that in the past as well as the present, *iwi* tended to be arbitrarily defined by those in power with regard to current political and economic opportunities rather than merely by kinship or descent.

In their closing rebuttal, the commission and coalition lawyers argued that the act intended allocation only to *iwi* in the traditional sense of “tribes.” Legitimate contemporary *iwi* share descent (*whakapapa*) from a common ancestor whose name the *iwi* typically bears, and hold traditional claim to a bounded territory of land and its adjacent inshore and offshore waters (the *mana whenua*, *mana moana* principle). The constituent *hapū* and extended families (*whānau*) of each traditional *iwi* are subordinate segments of the total *iwi* membership descended from the *iwi tipuna* and holding subordinate rights to corresponding sectors of the *iwi* territory and waters. Restoration of fisheries allocations to traditionally acknowledged *iwi* would thus partly redress the loss of traditional *iwi* fisheries rights, and *iwi* could then distribute these assets to their constituent *hapū* in accord with their respective share of the *iwi* territory. All Māori by definition could trace their *whakapapa* from an *iwi tipuna* if they wished to affiliate with an *iwi*.

Justice Paterson's decision on the Auckland hearings came down on 4 August 1998. He ruled that (1) the act intended the allocation of the pre-settlement assets to go to *iwi* or bodies representing *iwi*, and (2) that by *iwi* the act meant only traditional Māori tribes. So *iwi* in the sense intended by the act could not be so widely construed as in the claim of the Urban Māori Authorities (and as upheld in the previous decision of the Court of Appeal quashed by the Privy Council).

Regardless of his decision, Paterson had accepted much of the Urban Māori Authorities and other appellants' case that contemporary *iwi* were not the traditional, effective, and encompassing organizations that the 1992 act and Te Ohu Kai Moana assumed they were: "over 80% of Maori now live in urban areas, one third live outside any tribal influence and these are often the most disadvantaged of Maori people, and 70% live outside their tribal *rohe* (boundary). . . . At least 25% of Maori, over 112,000, either do not know their *iwi*, or for some reason, do not choose to affiliate with it. . . . The government has encouraged the *iwi* concept over the last 20 to 30 years. . . . decision making is now more from the top down rather than from the bottom up as it once was" (Paterson 1998). While he cautioned that because of such changes in Māori society it was necessary not to impose too rigid a definition of the term *iwi*, Paterson nevertheless appeared to assume that the act intended *iwi* in the narrow sense that Te Ohu Kai Moana *later* defined it.

Although Paterson's seeming ambivalence might simply have reflected the necessity that he interpret parliament's intention regardless of its shortcomings, it instead appears that he himself shared parliament's (or the commission's) traditionalist assumptions about *iwi*. Lawyers for the *iwi* fundamentalists had themselves proposed a way through his dilemma. They pointed out that the question of whether the act intended "traditional" *iwi* had been raised by the Privy Council in the specific context of the Urban Māori Authorities' claim to be as much an *iwi* as those recognized as "traditional" by Te Ohu Kai Moana. In essence, what the Privy Council had asked was: Does the act restrict allocation to *iwi* that are *more* traditional than those represented by the Urban Māori Authorities? The lawyers for the commission and coalition thus suggested that a response to the Privy Council's question did not require the High Court to interpret the act to intend "traditional" *iwi* in a naive and perhaps dogmatic sense. Indeed, the Crown's senior lawyer for the commission suggested that the Privy Council's question might inadvertently have raised a misleading "precedent."

Put less delicately, solicitors for all parties would probably have agreed

that the Privy Council's innocent query about "traditional" *iwi* had, in the overheated New Zealand context, turned into a red herring. Rather than pick it up and follow it, Paterson could tactfully have circumvented it.

## EATING RED HERRING

The innocent questions of the Privy Council and Judge Paterson's 1998 answers further entrenched in the law a rigidified sense of *iwi*, which may have begun in the 1980s simply as parliament's naive or paternalistic use of a Māori buzzword currently expressing popular ethnic pride—and white guilt. By the time of the 1992 act, this beguiling word was seized on to sweeten the extinguishing of treaty rights while undermining the independence of Māori fisheries and co-opting them into the restructured economy. A string of ironic contingencies promoting the notion of *iwi* had steadily been gathering force, perhaps first among a rising Māori elite who sensed the age-old potential of the ambiguous notion—suddenly more promising than in all previous colonial history—to garner influence in the name of kinship, and power in the form of capital.

The stalemate between *iwi* fundamentalists and the Urban Māori Authorities continues into 2002, although the government has become more and more involved and promises a resolution by late 2002. Te Ohu Kai Moana and the *iwi* that backed them have garnered increasing influence, but the Urban Māori Authorities could not be politically circumvented. The political tables were turned in November 1999 when a socially more liberal coalition formed by the Labour Party took over government, began to press for a resolution more favorable to "all Māori," and in August 2000 appointed several new commissioners sympathetic to urban Māori interests. This shift of power within Te Ohu Kai Moana had been forecast earlier in 2000 when Robert Mahuta, its deputy chair, moved against O'Regan and threw the weight of the Tainui confederation of *iwi* behind Nga Puhi and the remnants of the Area One Consortium, demanding allocation on the basis of population rather than coastline. On opposite sides of Auckland and with many or most of their members living in that city, the interests of these two most populous *iwi* confederations were perhaps inextricable from those of the Urban Māori Authorities.

In September 2000 O'Regan was replaced as chairperson of the commission by Shane Jones, a protégé of Matiu Rata with Muriwhenua and Nga Puhi affiliations, a Harvard degree, and business experience. In 1995–1996 Jones and a minority of other commissioners had resisted the rising

*iwi* fundamentalism, proposing retention rather than allocation of the fisheries assets and leasing out of quota in five- to ten-year rounds to seven regional fishing companies formed on a multitribal rather than *iwi* basis. After his appointment as the new chairperson in 2000, Jones reassured business interests that he favored “a conventional shareholding approach” as opposed to “anything akin to multiple land holding” (which had tied up Māori land outside the marketplace), and he again proposed retention of commission assets but distribution of the profits (*NBR*, 1 Sept 2000; 8 Sept 2000). Earlier that year John Tamihere of the Waipareira Trust, recently elected to parliament, similarly pointed out that “allocation might be the most disastrous commercial move you ever make by breaking up the asset” (*NZH*, 18 May 2000).

While these developments put the Treaty Tribes Coalition on the defensive, by July 2001 a long series of court decisions—and the much greater capital and business influence of the *iwi* fundamentalists—redressed the political balance. Early in 1999 Woodward Law Associates, arguing for some Urban Māori Authorities, had won a judicial injunction preventing Te Ohu Kai Moana from proposing its allocation plan to the Fisheries minister and thereby perhaps gaining a *fait accompli*. The injunction was to remain in force until the planned second hearing in which the Urban Māori Authorities would challenge the substance of the 1992 act itself. However, in October 1999 an appeal against the Paterson decision by the Urban Māori Authorities and Te Arawa and Muriwhenua *iwi* lost in a split decision. Woodward Law Associates’ further appeal of the Paterson decision to the British Privy Council was then met by Te Ohu Kai Moana’s successful request that the second hearing on the 1992 act be postponed until the Privy Council had ruled on this appeal.

In July 2001 the Privy Council dismissed the appeal against the Paterson decision, ruling that the 25 July 1992 Memorandum of Understanding—and thus, the 1992 act—unequivocally intended allocation only to traditional *iwi*. Although the Lords saw no insurmountable obstacle preventing some form of “ultimate” benefit to all Māori through such exclusive allocation, in favor of the appellants (who had requested retention of the assets in a government trust), they emphasized that the 1992 act explicitly left open the possibility that there might be no allocation at all. They also pointed out that other statutory authority (eg, an amendment to the 1992 act) could be sought to allocate assets to Māori other than traditional *iwi*. Nevertheless, this final ruling greatly strengthened the hand of the *iwi* fundamentalists—and increased the risk of renewed litigation.

Meanwhile, all parties had entered into formal procedures for dispute

resolution under mediation by a retired High Court judge, and agreed to suspend further litigation unless this final effort broke down. Based on the mediation, in early December 2001 Shane Jones and Te Ohu Kai Moana released for discussion *He Anga Mua* (A path forward), the commission's proposal of four revised options for allocation (see <[www.tokm.co.nz](http://www.tokm.co.nz)>). While a range of ways to retain rather than allocate some assets for the sake of greater commercial strength are proposed, all options accept that unless amended the 1992 act allows allocation of the pre-settlement assets only to recognized *iwi* organizations (none to "non-*iwi*," ie, Urban Māori Authorities, independent *hapū*, or unrecognized *iwi*). However, the proposals attempt to breach this impasse by transforming the post-settlement assets (mainly the Sealord shares, of about equal value to the pre-settlement assets: NZ\$300–400 million each) into various forms of centrally administered trust benefiting non-*iwi* organizations. The four options range from a free-market extreme allocating almost all post- and pre-settlement assets to recognized *iwi*, to a "command economy" extreme retaining all assets in a cooperative for *iwi* and a trust for non-*iwi*. Across this range the options also vary the proportion of deepwater quota to be based on coastline or population, and emphasize that the fifty-fifty resolution remains open to further change. However, in all options (perhaps compromising Jones' pledge to the *National Business Review*) the shares that *iwi* will hold, whether in their allocation or in a central cooperative, are to be restricted from sale in some way, protecting the patrimony from an unfettered free market.

One suspects that everything depends on how the reformed Te Ohu Kai Moana handles and interprets the planned extensive consultation on the new proposals, presumably still under guidance by the mediator. With regard to allocation if not retention, the mandate the government has given the commission to ensure benefit to "all Māori" is hamstrung by the reading of the 1992 act by Paterson and the Privy Council. The reinforced political and economic power of the *iwi* fundamentalists is not likely to indulge further compromise of their demand for exclusive allocation. But, unless they are generously bought off, neither are the Urban Māori Authorities and other dissidents likely to back down from their demand to litigate the 1992 act itself. Whatever the eventual resolution, "traditional" *iwi* in a new form of tribal capitalism are likely to remain a dominant influence.

To recapitulate: while the late 1980s marked the recovery of Māori *mana moana* in both the customary and the commercial fisheries of New

Zealand, by 1992 corporate and government initiatives had moved to extinguish treaty rights in the fishery and neutralize this potentially independent economic power. Although a vestige of treaty rights remained in a primitivized “customary” fisheries stripped of any form of exchange and subject to government approval, the recognition of extensive treaty rights hard-won in the commercial fisheries was extinguished, and replaced by a minority of quota reorganized as commodities and corporate shares that could be withdrawn from the open market only by cashing them in—a quite different kettle of fish from the one lost soon after 1840. In both cases, a display of Māori control, concepts, and customs obscured the real assimilative effect of policies and legislation. Since 1992 the government has largely reduced its role and expenditures to those of a crisis manager, while the burden of conflict and expensive litigation has passed to factions among the Māori themselves, who (in Marx’s telling phrase) proceeded to do battle “with their enemy’s enemy.”

It appears likely that urban as well as retribalized Māori organizations, in the guise of a modernity counterpoised to traditionalism, are being drawn more firmly into the net of restructured capital where all things, including people, ideally can be reduced to the free flow of commodity exchange values—and fair game for bigger fish. In establishing this regime the government has had the cooperation and often deferred to the initiative of Māori leadership, and a new Māori business elite is being established at the top of a rank of social classes that are widening among Māori even more than among Pākehā. Behind the appearances of a Māori renaissance, Māori ethnic solidarity is being eroded by divergent class interests. Although the new elite Māori wealth might yet prove precarious, it has become a rather big fish itself. *He aha te kii a te mako ki te kahawai?* “*Me hono taua!*” (What did the shark say to the sea trout? “Let’s assimilate [join to become one]!”) The Māori ruefully use this saying to satirize the colonial policy of assimilation (Metge 1967, 215, but my Māori). In this context, it takes on added significance between Māori themselves drawn into opposed social classes as haves and have-nots.

Thus the “fish” returned to the Māori are far from being fresh, and the new Māori *mana moana* is only ambiguously Māori. Although some Māori interests regained considerable control over New Zealand history for awhile, again it appears that the upshot is a further differentiation within New Zealand capitalism, with the Māori being an integral if sometimes unpredictable part of it.

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*Abstract*

By the end of the 1980s Māori had regained a treaty right to a share of New Zealand's lucrative commercial fisheries. The case history of the continuing struggle to distribute its benefits among factions of retribalized and urban Māori, through a Māori commission set up as a state-owned enterprise, raises issues of cultural renaissance and identity politics in capitalist differentiation. After more than a century of Crown disregard of commercial and restriction of customary fishery rights, Māori court actions in 1986 regained recognition of both aspects of the treaty right in what appeared to be the advent of a new legal pluralism and economic independence. However, by 1992 legislation promoting tribes and other

traditionalist concepts, and finalizing a settlement with a half partnership in a large fishing corporation, also radically narrowed customary and extinguished commercial fishery treaty rights while locking the settlement into the restructured economy. Over the next decade a Māori Fisheries Commission attempted to devise a formula for allocation of assets to qualifying tribal organizations pressing for conflicting criteria, while urban and other Māori organizations lacking recognition as tribes remained precluded from the formula. Major shifts in political power in both the government and the commission since 1999 show promise of a compromise out of court. Meanwhile, increasing wealth and influence of a Māori elite contribute to widening social class differences among Māori, obscured by an ideology of traditionalism and modernity.

**KEY WORDS:** Māori, political economy, indigenous rights, ethnic identity, retribalization, traditionalism