UNIVERSITY OF HAWAI'I

BICULTURALISM, RESOURCE MANAGEMENT AND INDIGENOUS SELF-DETERMINATION

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ABSTRACT

Indigenous self-determination is primarily a question of control over our own bodies, communities, resources and land. Most Indigenous peoples in North and South America as well as the South Pacific today find themselves dominated by nation-states which are governed by the descendants of settlers: removed from traditional lands, resources and cultural patrimony. Often this domination has brought Indigenous peoples into political and even armed conflict with settler controlled nation-states. This domination of Indigenous populations and separation from their resources and lands has severed Indigenous self-determination, disrupting their autonomy over their customary lands and its resources.

Biculturalism has been one answer proposed to reverse the trend of dispossession faced by Indigenous communities. In Aotearoa/New Zealand, biculturalism has become government policy, incorporated into legislation in an effort to substantiate the partnership between Maori and the Crown first proposed by the Treaty of Waitangi in 1840. This dissertation’s primary focus is on evaluating biculturalism as a model for Indigenous self-determination. One component of biculturalism in Aotearoa/New Zealand is the inclusion of Māori conceptual regulators within the legislative acts of the nation. This pluralistic turn within New Zealand law is
transforming not only the legal, but also the physical and cultural landscapes of the
nation.

The comprehensive Resource Management Act of 1991 (RMA) is one example of the incorporation of the government's bicultural discourse within the legal framework of New Zealand. The inclusion of Māori concepts such as *kaitiakitanga* has altered the framework within which resource management is practiced and adjudicated in New Zealand. In an effort to explore how the inclusion of Māori concepts within the RMA has furthered or hindered Māori self-determination this work focuses on telling the stories of several Māori who act as *kaitiaki* within their own communities. The exercise of self-determination by Māori, or any other Indigenous people, does not happen against an inert backdrop but is grounded in the local politics and history of the place. These stories provide evidence of the successes and failures of the RMA in furthering biculturalism and providing Māori with a full sharing in the processes of government and the exercising of power.
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Chapter One

INTRODUCTION

"There is a certain symmetry in the sound of indigenous voices. A symmetry born of an ancestral birthright in the land, a common core of collective interests, and a painful shared history of dispossession in the process of colonisation. There is a symmetry too in the united wish to be free from the consequences of that dispossession and exercise once again the right to self-determination."

Moana Jackson

Indigenous self-determination is a story, one told by those individuals and groups who are the descendants of the original inhabitants who greeted European colonial explorers and settlers to their homelands in the Americas, Africa, Asia and the Pacific over the past five centuries. These early encounters between Indigenous communities and Europeans led to global patterns of conquest and empire, varying from place to place but with common consequences; loss of lands, lives and resources. One of the variations of European colonialism

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1 Closing comments at the Indigenous Peoples, Environment and Development Conference, May 15-18, at Zurich, Switzerland. (Jackson 1995b)

2 Following the editorial precedent set by John Hylton in Aboriginal Self-Government in Canada, words such as “Aboriginal”, “Native” and Indigenous” have been capitalized in the same manner that words such as “European” and “American” are capitalized when referring to specific peoples. (Hylton 1999)
brought waves of permanent settlers into the lands of the Americas and South Pacific, displacing Indigenous communities from their homelands.

These patterns of conquest and empire brought untold suffering and turmoil to the ‘First Nations’ of these lands. Indigenous self-determination then is primarily a question of control over our own bodies, communities, resources and land. Most Indigenous peoples in North and South America as well as the South Pacific today find themselves dominated by nation-states which are governed by the descendants of settlers: removed from traditional lands, resources and cultural patrimony. Often this domination has brought Indigenous peoples into political and even armed conflict with settler controlled nation-states. (Nietschmann 1994) Several groups around the world are assisting Indigenous communities in seeking alternatives to the current state of internal colonization found within settler-states. (Center for World Indigenous Study 1998; International Work Group on Indigenous Affairs 1993; United Nations. Sub-commission on Prevention of Discrimination and Protection of Minorities. and Martínez Cobo 1986)

The research outlined in this dissertation seeks to tell the story of the struggle towards Indigenous self-determination being carried out in Aotearoa/New Zealand. Within Aotearoa/New Zealand, one of the many movements seeking
increased Indigenous self-determination has been labeled ‘biculturalism’.

Biculturalism has been described as a recognition of the treaty partnership that exists between Māori as the Indigenous population and the New Zealand settler state headed by the British Crown. (Anderton 1996)

The general aim of this research is to scrutinize biculturalism as one model of Indigenous self-determination, a model which if effective might be offered as an alternative to state domination of Indigenous peoples. My specific goals are to examine how biculturalism is being manifested in Aotearoa/New Zealand within the development of a bicultural legal system through the inclusion of Māori concepts within the Resource Management Act of 1991 and how this bicultural legal system is leading toward the empowerment of Māori groups to control their land and resources while still remaining a part of the New Zealand state. I am also including, in the concluding chapter, a brief discussion of the advances in resource management in Nunavut Territory, Canada, a newly-formed unit within the Canadian Arctic, in the concluding chapter. This comparison between Aotearoa/New Zealand and Nunavut Territory is aimed at representing the evolving nature of Indigenous self-determination within resource management regimes.
The government act discussed in this work, the Resource Management Act of New Zealand (Resource Management Act 1991), offers an example of a new trend toward legal pluralism in settler-state democracies which have a continuing Indigenous minority population(s). The Resource Management Act (RMA) was developed in an effort to coordinate a vast array of environmental law in New Zealand, coordinating nearly every issue from clean air and water to planning and resource consent. (Young 2001) Not attempting to critique the entirety of the RMA, this research has limited itself to investigating the successes and failures of Māori participation within the act.

**How I came to do this research.**

In this age of globalization, Indigenous groups and individuals are meeting other Indigenous groups and individuals at international gatherings with increasing frequency. These gatherings center on common issues of concern for Indigenous peoples such as education, health, welfare and self-determination. With the increasing contact between Indigenous groups there is an increasing awareness by participants of the particular issues faced by various groups worldwide.
Through my previous career as a medical social worker, I have had the opportunity to attend such national and international gatherings, especially ones focused on issues of health and welfare such as the International Indigenous Men’s Health Conference, the International AIDS Conference and many International Two-spirit Gatherings. Through these gatherings I have met with other Indigenous individuals and groups from across Canada, the United States, Mexico, Thailand, Guatemala, Australia and New Zealand. Repeatedly through these contacts I have heard discussions concerning the challenges faced by these Indigenous peoples. I found as Moana Jackson states, that there is a “certain symmetry” in the challenges faced by Indigenous peoples worldwide. (Jackson 1995b: 347) While there is a symmetry to the challenges faced by Indigenous peoples, there is also a common interest in finding solutions to these challenges, and this interest is a part of what drives these International gatherings.

While the challenges Indigenous peoples face through continued internal colonialism and control over our lands, resources and bodies are daunting, some groups bring stories of hope and improvement to these gatherings. While these stories often focus on specific examples of improved health, living standards, return of lands or legal victories, they together tell a story of self-determination. The approach to self-determination taken by different Indigenous peoples varies
according to their specific colonial history, colonizing agent and the current relationship with their settler-state. Despite the differences, Indigenous leaders and individuals learn important lessons from other Indigenous groups; lessons which aid in the development of strategies for their own communities.

The stories shared at these gatherings inspire much debate surrounding which Indigenous group has moved furthest in their quest for self-determination. Opinions frequently vary, but the general consensus formed by participants at the international gatherings I have attended is that Native groups in Canada are better off than those in the United States and that the Māori of New Zealand have certainly progressed further in their quest for self-determination than the Indigenous Australians and perhaps have the best current example worldwide.

It is my participation in these international gatherings and personal interaction with Indigenous peoples from around the world which has lead me to do the research outlined in this dissertation. It is my desire to aid these discussions by focusing my efforts on the successes and failures faced by Māori in their quest for self-determination and then to share these findings with other Indigenous groups, groups who are on their own quest and seeking examples and lessons of successful self-determination.
What I hoped to find.

The following chapters will address the effectiveness of biculturalism as it is currently manifest in Aotearoa/New Zealand. It is the description and interpretation of biculturalism’s impact on Indigenous self-determination that will constitute the central contribution of this project to geographic research. I intend to offer: (a) a grounded description of biculturalism as it is manifest within the legal acts of Aotearoa/New Zealand, (b) an interpretation of its effectiveness as a model for Indigenous self-determination (c) and finally a geographic perspective on Indigenous self-determination that focuses on Māori issues within resource management and on the alterations to the landscape being produced by the exercise of Māori self-determination.

A great deal of material has been written concerning Māori self-determination and biculturalism from a wide variety of viewpoints, generally separated into those supporting Māori self-determination (Allen 2002; Anderton 1996; Bams 1988; Cant 1995; Durie 1998a; 1998b; 1997; Durie 1995; Duffie 1998; Maaka 1998; Maaka and Fleras 2000; Mikaere 2000; Sharp 1997; Schwimmer 1968; Vasil 1988; Walker 1986) and those supporting the sovereign supremacy of the New Zealand state. (Burnard 1999; Gould, Daya-Winterbottom, and Chapman 1999) While covering a wide range of viewpoints, the material on
biculturalism in general lacks two components: first, a grounding in a particular issue within New Zealand society; and second, comparisons with other Indigenous movements of self-determination. This dissertation utilizes many of these cited works, expanding their scope by tying them together with my research specifically grounded in the expressions of biculturalism found within the RMA.

It is my intention that this work will contribute to the discussions and developments leading in the direction of greater Indigenous self-determination. As biculturalism in Aotearoa/New Zealand has been described by various authors as a possible model for Indigenous self-determination, it is my intention to empirically critique biculturalism within the Aotearoa/New Zealand context in an effort to assist with future discussions of Indigenous self-determination.

Additionally, it is my hope that this work, as a critical cultural geography, will add “to the work of cultural justice that everywhere remains to be done.” (Mitchell 2000: 294)

**How I went about doing the work**

The primary goal of this research has been to describe, analyze and interpret biculturalism as a model of Indigenous self-determination using the legal pluralism in the Resource Management Act of New Zealand as a primary
example. To accomplish this goal I coordinated a research agenda which incorporated archival research, textual analysis and interviews with Māori involved in various aspects of the RMA.

I recognize that as Linda Tuhiwai Smith states, “the term ‘research’ is inextricably linked to European imperialism and colonialism.” (Smith 1999: 1) It is this point which directs the style of research which I have sought to conduct in this study. A thoughtless use of standard research techniques would run the risk of perpetuating European imperialism in a study that hopes to further, rather than diminish Indigenous self-determination. My intent has been to take an indigenist focus to this work so that I might as Ward Churchill states, “draw upon the traditions – the bodies of knowledge and corresponding codes of values – evolved over many thousands of years by native peoples the world over.” (Churchill 1993: 403) I recognize that as a non-Māori, I am an outsider within the communities I am studying. It has been my hope that my own Native American heritage has provided a symmetry or connection with the Māori voices within this story. I believe that it has and I will discuss further the specifics of this connection in Chapter Five.

Borrowing from Linda Tuhiwai Smith’s text, Decolonizing Methodologies: Research and Indigenous Peoples, I perceive this project as an
‘envisioning’; an envisioning of one possible route for Indigenous communities movement toward self-determination. (Smith 1999: 152-153) It is my intent to produce a work which will assist Indigenous communities in imagining/envisioning self-determination. “To imagine self-determination, however, is also to imagine a world in which Indigenous peoples become active participants, and to prepare for the possibilities and challenges that lie ahead.” (Smith 1999: 124)

This work will explore how Māori have become active participants in building a bicultural society. If Indigenous peoples are to become prepared for the challenges that lie ahead, then Indigenous researchers need to examine the issues which will benefit the knowledge base of their communities. Hopefully this research into the challenges which Māori are facing will benefit the knowledge base not only of Māori but also other Indigenous communities.

**Waitangi: A bicultural landscape**

To provide a beginning to our story, let us turn our attention to the dawn of New Zealand’s national identity at Waitangi and the grounds upon which the treaty of 1840 was signed between Māori *rangatira* and the British Crown, as these grounds offer what the Waitangi National Trust refers to as “the birthplace
of the nation.” (Waitangi National Trust 2002) Certainly Waitangi, and the surrounding area of the Bay of Islands/Te Ketaetonga Peiwhairangi, was the center of the early contact between Māori and Pākehā in colonial 19th century New Zealand. This ‘contact zone’ rests upon the landscape where the first steps toward partnership were taken between the colonizer and colonized; but prior to the concept of biculturalism and the reversal of colonial oppression which it has promised could even be conceived, Māori and Pākehā had to struggle through their earliest contacts. These initial contacts and the development of an on-going relationship between Māori and Pākehā led inevitably toward the assertion of Pākehā supremacy; but it was upon the Treaty Grounds at Waitangi that the partnership between two peoples was initiated and the development of a New Zealand nation began.

Today the Treaty Grounds provide a ‘landscape for nationhood’. They are biculturalism etched into the landscape and a site for the perpetually renewing performance of a national identity centered on the partnership initiated there more than 160 years ago. The Treaty House (Figure 1), once the residence of the first Lieutenant-Governor, sits beside the Whare Runanga (Figure 2), a meeting house built for the use of all Māori. The flagstaff (Figure 3), topped by the New Zealand flag, representing the unified nation, flies over the flags representing the two
treaty partners; the Union Jack and the Māori Independence Flag. The flagstaff provides a focal point for the grounds and serves to unite the two houses together with the grounds; a landscape which the National Trust describes as “a place all New Zealanders belong to and where our people advance together.” (Waitangi National Trust 2002) The bicultural rhetoric of the Waitangi National Trust along with the museumification of the site has turned this once largely neglected property into a focal point for nation-building. (see Anderson 1991) The official bicultural rhetoric of the national government is bolstered through the dramatization of treaty partnership at Waitangi. For the Pākehā liberals who came of age in a period of civil-rights and anti-war protest and who have risen to leadership roles in the current national government; “[a] nation originating in military conquest and colonial oppression was unacceptable as an explanation for the foundation of nationhood and cultural identity. The bicultural project was to be the solution to this moral dilemma.” (Rata 2000: 123) This bicultural movement, defined as a national identity based on partnership and ‘equal rights’, has turned the treaty grounds at Waitangi into its icon.
Figure 1 Photo of the Waitangi Treaty House

Figure 2 Photo of Waitangi Whare Runanga
For this current work, the Treaty Grounds provides a means by which we can ground this over-arching theoretical discussion upon the landscape of the nation. While Waitangi serves as a reified representation of biculturalism, this dissertation will lead us to see other places within the state, places situated within the complex politics of biculturalism and Indigenous self-determination, as they are experienced by Māori and Pākehā on a daily basis. Before moving on to a discussion of the specifics of this dissertation though let me introduce and describe the key theoretical concepts which provide a foundation for this discussion.
In writing a geography of Indigenous self-determination it is imperative to tell the stories of the people, stories which in themselves are performed within the confines of the modern settler-state. These performances tell the story of a landscape created out of the interactions between the original people of the land and the immigrant settler. This performance, as we have seen portrayed on the grounds at Waitangi, paints a picture of what Mary Louise Pratt calls the ‘contact zone’, the space in which colonizer and colonized interact. (Pratt 1992: 6) Within this ‘contact zone’ the cartography of the settler-state is performed through the “spatial and temporal copresence of subjects previously separated by geographic and historical disjunctures, and whose trajectories now intersect.”(Pratt 1992: 7) It is within the confines of the colonial/settler-state that colonizer and colonized develop a unique and new identity, an identity developed in relationship both to each other and to the landscape their interactions create.

The colonial subject and object do not remain separated in a spatial apartheid but are constantly involved in a complex interchange. Colonizer and colonized exist in the same space at the same time continually renegotiating identities. These interchanges should not be confused for an equal sharing of the
same space and history because as Pratt recognizes these negotiations occur “often within radically asymmetrical relations of power.” (Pratt 1992: 7)

It is in response to asymmetrical relations of power that biculturalism was conceived. Biculturalism is in itself a recognition that the settler-state is a continuing contact zone; a space within which the settler and Indigenous have a “copresence, interaction, interlocking understandings and practices.” (Pratt 1992: 7) It is the goal of biculturalism not to separate the settler and Indigenous from each other but to recognize and embrace the contact zone while bringing symmetry to the relations of power.

Transculturation

This contact zone between colonizer and colonized is a place inscribed with transcultural sharing. Fernando Ortiz in introducing the term transculturation describes it as “the complex transmutations of culture that have taken place” in colonial settings. (Ortiz 1995: 98) Transculturation describes the process whereby various cultures come together, never completely replacing or destroying what came before, but incorporating individual cultures into a new form which contains traces of the original. It is this dynamic cultural interchange which recognizes that the colonized are not decultured by the impacts of colonial projects. It also recognizes that the colonizer in being influenced by the Indigenous is not
acculturated by that sharing, albeit unequal in nature. The transculturation of the colonial/post-colonial ‘contact zone’ creates new identities, forever altering the colonizer and the colonized.

It is within this transcultural give-and-take that colonial cultures are created, cultures which are expressed through many different types of textual representations. Pratt sought to discover these transcultural contact zones through the travel writings of European explorers and scholars. Ortiz revealed transculturation in the adoption of Indigenous products within European society. It is also possible to read this same transcultural mixing within the colonial landscape (Mitchell 1991), the colonial legal system (Merry 2000) and colonial/postcolonial literature. (Allen 2002) In this dissertation, I will be reading all of these types of texts to uncover the transcultural and bicultural contact zones of Aotearoa/New Zealand.

Ortiz writing specifically about Cuba, observes that “the concept of transculturation is fundamental and indispensable for an understanding of the history of Cuba, and, for analogous reasons, of that of America in general.” (Ortiz 1995: 103) While Ortiz limits his perspective to Cuba, I would assert as has Pratt that transculturation is ‘fundamental and indispensable’ for the understanding of any colonial/postcolonial setting. (Pratt 1992)
Autoethnography

There is one other term, coined by Pratt that is useful in the investigation of colonial/postcolonial texts: autoethnography. Pratt uses this term “to refer to instances in which colonized subjects undertake to represent themselves in ways that engage with the colonizer’s own terms.” (emphasis original Pratt 1992: 7)

Since the earliest days of European colonialism, the colonized have sought to convey their own information and knowledge back to the colonizer by employing the techniques and language learned from the metropolis. (see Adorno 1986) The stories, maps and texts created by Indigenous peoples and interpreted within this study are autoethnographic in nature; they seek to convey the understandings and desires of the ‘other’ within the epistemological framework of the colonizer.

As I have envisioned, biculturalism is a reinterpretation of the contact zone which attempts to bring equality into what has historically been a radically unequal relationship. I recognize that the stories, texts and landscapes of my research in Aotearoa/New Zealand offer autoethnographic texts which can be read and can articulate the Indigenous voice within the colonial landscape. Many of these texts produced by Māori concerning resource management and biculturalism are written, but as one might expect in a (post)colonial setting, many of the stories are unwritten and have required a concerted search. My desire has been to depict
the Indigenous voice in the dialogue over biculturalism and resource management. This has led me to listen to stories while drinking many cups of tea at kitchen tables, restaurant tables, in meeting rooms and while walking the beach. These texts, stories, maps and landscapes have provided the autoethnographic foundations to this work.

This work requires not only interpretation but also translation. As Pratt points out, autoethnographic texts are often “bilingual and dialogic.” (Pratt 1992: 7) While the stories, maps and landscapes of the Māori I have to interpret are produced employing metropolitan idioms, they also draw on their own unique linguistic and cultural idioms. Without a substantial training in the ontological frameworks of the Māori I am forced to rely on the interpretations provided, as are the intended metropolitan audiences of autoethnographies. As I will discuss in greater length in Chapters Three and Four, any attempt to understand the cultural constructs of another group are severely limited unless one has had extensive training in the language and ontology of that specific group. To fain a profound understanding of another’s ontology negates the depth and complexity of all peoples’ cultural constructions.

While both colonizer and colonized may at times envision their land free of the ‘other’, the reality of most settler-states dictates a continuing copresence of
the two groups within the single construct of the settler-state. While the interactions between colonizer and colonized have often occurred “within radically asymmetrical relations of power,” there is the hope among some that these relations of power may become more symmetrical. (Pratt 1992: 7) It is through the use of Pratt’s and Ortiz’s terms that I seek to describe the unequal relationships that have existed and the possibility of more equal relations through biculturalism.

**Site Selection**

Obviously there are a number of possible locations around the world on which a work concerning Indigenous self-determination could be focused. Even if one wishes to focus on the places where success and progress has been made over the past twenty years there are still several other locations around which this work could have been focused. Perhaps the three most notable areas in which success has been seen over the past twenty years, but which I have not focused on, are among the Nisga’a of British Columbia, the Sami in northern Scandinavia and with the home rule government in Kalaallit Nunaat/Greenland. (Minde 2000; Nanton 2000; Petersen 1995)
There is also an extensive list of locations in which Indigenous self-determination is failing to flourish. The legal attacks against Native Hawaiian programs including the United States Supreme Court decision finding that the *kanaka maoli* community is not an officially recognized Indigenous group within the United States along with the subsequent legal challenges to all programs specifically aimed at aiding *kanaka maoli* is one such example. The challenges to tribal sovereign immunity by state’s rights activists in the continental United States is yet another example. The failure of the Australian government to follow through with promised land claims hearings for Aboriginal groups along with the Mexican government’s decision not to uphold the peace agreements signed with the Zapatista rebels are yet two more. With so many failures, I have chosen instead to investigate two possible success stories in an effort to move the discussion of Indigenous self-determination forward instead of continuing a more common research focus on the failures.

Choosing to focus this work on Aotearoa/New Zealand (Figure 4) I believe will aid in forming useful comparisons with the situations faced by Indigenous groups in other settler-states, particularly in North America and the South Pacific. As many of these states were founded by British settlement, they have a common history and remain closely connected through the legal precedents.
established through British common law. While recognizing that there are significant differences between Indigenous peoples, as well as significant differences in the projects of internal colonization, hopefully “[t]he comparison of such widely differing peoples winnows away those features that don’t truly belong, leaving us with a digestible kernel.” (Niezen 2003: 86)
Figure 4 Aotearoa/New Zealand Map
In an effort to aid in the 'winnowing away' of those features that don't truly belong in drawing comparisons between Māori and other Indigenous peoples, I will limit the comparisons drawn between Indigenous groups to expressions of legal pluralism and resource management. It is my intent to show that biculturalism is yet another expression of a growing desire on the part of settler-states and Indigenous peoples to create a common ground of shared sovereignty.

Chapter Outlines

The chapters that follow are organized in such a way so as to tell the story of biculturalism as it is experienced primarily by Māori in Aotearoa/New Zealand within a specific discussion of resource management. This dissertation's aim is two-fold: first, to discern whether or not biculturalism is an effective model for furthering Indigenous self-determination; and second, to tell the specific stories of Māori concerning their experiences with biculturalism and self-determination related specifically to the RMA. The bulk of this work will be a review of the institutional discourse and historical framework which has led to biculturalism as a conceptualization of treaty partnership between Māori and Pākehā in Aotearoa/New Zealand. The development of the identities of Māori and Pākehā
within the contact zone of European colonialism will set our stage. The continually evolving discourse of international law regarding the rights of Indigenous peoples will provide an overarching script to this drama.

Biculturalism is influenced by all of these factors: set-up as a dualistic and frequently volatile discussion between two treaty partners, the modern day Māori and Pākehā. This discourse of biculturalism is largely based within Western political theory which is not, as James Tully recognizes, “the language of political self-understanding and self-reflection of indigenous peoples.” (Tully 2000: 36) My challenge then will be to bring Māori voices to the forefront, providing an avenue for their story-telling.

*Chapter Two: Autochthonous: Springing from the Land: Blood/land/sovereignty*

Every story must have a beginning and Chapter Two acts as a foundation for the story which follows by describing the three principle concepts covered in this chapter; identity, land and sovereignty. The idiom, autochthonous, acts as a defining principle in that all three of these concepts spring from our relationship to the land. As discussed above, Pratt’s contact zone is a space within which colonial encounters ensue. The identities of both the colonizer and colonized are irrevocably alerted within the transcultural interchange that takes place within the colonial and later the settler controlled state.
Chadwick Allen, in his book *Blood Narrative*, describes this connection between identity, land and sovereignty in a slightly different manner employing the joined concept, “blood/land/memory”. (Allen 2002: 15-16) I engage Allen’s terminology in an effort to discuss the complexities of identity and its connection to the constructions of land and sovereignty found within the colonial encounter.

While land/nature may seem to be an uncomplicated concept, a foundation upon which everything else is constructed, in fact colonial constructions of nature complicate Indigenous identity and seek to separate First Nations from their land base. One of the primary theoretical advancements assumed by colonial constructions of nature is that culture is intrinsically separate from nature. Within this construction of nature there also exists an communication of resources being created from wasteland through the impact of human labor.

The third concept dealt with in this chapter is no less controversial or complex than the proceeding two: sovereignty. The legal right to claim jurisdiction over the land and its inhabitants is an area largely controlled by the workings of Western legal traditions. Discussions of Indigenous self-determination inevitably progress toward consideration of sovereignty and International Law. There are inherent difficulties in conceptualizing Indigenous
self-determination within the Western traditions of International Law and other possibilities based on customary law will be discussed.

Chapter Three: Biculturalism; a thirdspace of Indigenous self-determination

Biculturalism has been most succinctly defined as a recognition of the inherent partnership which exist between settlers and the aboriginal inhabitants of settler-states. (Anderton 1996) This chapter looks at the history of biculturalism as it has been articulated within Aotearoa/New Zealand. This includes a discussion of the Treaty of Waitangi/Te Tiriti O Waitangi as a foundational document in the creation of the New Zealand state. Any discussion, though, of biculturalism must be prefaced with a discussion of multiculturalism and its function within the liberal democratic state. Specifically, this discussion focuses on the difficulties that multiculturalism presents to Indigenous groups and the obstacles it creates in the recognition of treaty partnership between Indigenous and immigrant populations.

In order to provide a theoretical and spatial viewpoint to biculturalism I incorporate Henri Lefebvre’s conceptualization of thirding (Lefebvre 1991) as it has been rearticulated by Edward Soja, Homi Bhabha and with particular regard to the work of Donald Moore. (Bhabha 1994; Butz and Ripmeester 1999; Moore 1997; Soja 1996) Soja defines thirdspace as “a combinatorial and unconfinable
third choice that is radically open to the accumulation of new insights:” it is within this radically open space that I place biculturalism and its insights into Indigenous self-determination. (Soja 1996: 65)

Biculturalism offers a political alternative to the dialectical opposition inherent in the relationship between colonizer and colonized. As Soja states thirddspace is “a space of collective resistance, a Thirdspace of political choice that is also a meeting place for all peripheralized or marginalized “subjects” wherever they may be located.” (Soja 1996: 35) To further this discussion of thirddspace as a ‘meeting place’ I incorporate the works of several authors who write from the margins/borderlands in an effort to give voice to the ‘thirddspace of political choice’. (Bhabha 1990; Butz and Ripmeester 1999; Law 1997; Pile 1994) The chapter concludes by returning the discussion of biculturalism as a thirddspace of political resistance to the Aotearoa/New Zealand context, recognizing as Donald Moore states that “[t]his move connects the metaphoric site ‘in theory’ with a politics of place ‘on the ground”. (Moore 1997: 101)

Chapter Four: Legal colonization, pluralism and parallelism.

This chapter begins by briefly covering the history of legal colonization in the creation of the New Zealand state and relies on the work of Moana Jackson and other Māori legal scholars. (Jackson and NZ Min. of Justice 1987; Mikaere
and Milroy 1999; Jackson 1995a; 1990; NZ Min. of Justice. 2001; Williams 1998b; Durie 1994) A discussion of the Treaty of Waitangi and its implications for governance, jurisprudence and the foundations of legal pluralism in Aotearoa/New Zealand is included. With the reinterpretation of the treaty that takes place over the years following its signing comes a disintegration of the customary legal systems of the Māori, but its rebirth is envisioned and described through the works of Jackson, Mikaere and Chief Judge Edward Durie.

One response of biculturalism to the legal colonization of Aotearoa/New Zealand has been an attempt to incorporate Māori concepts within the Common Law framework of the nation-state. This has served to create a legal pluralism, an influencing of Common Law by Māori customary law. This introduction of Māori concepts within the legal framework of the nation is one tangible influence that biculturalism has had on New Zealand society.

For some, this inclusion of Māori concepts within the laws of New Zealand has been a positive move toward a bicultural society. But for others this has been seen as a misappropriation of Māori tikanga. For Māori concepts to be fully incorporated within the legal system requires judges and lawyers sufficiently familiar with the concepts to be capable of adjudicating cases employing the concepts. Moana Jackson first introduced an alternative to legal pluralism in his
controversial report for the Ministry of Justice on Māori within the criminal justice system. (Jackson and NZ Min. of Justice 1987) It is within this report, and followed later with other additional works, that Jackson first introduces the possibility of parallel legal systems, one for and by Māori and the other for and by all other New Zealanders. Jackson’s response to legal pluralism concludes this chapter on legal colonization.

Chapter Five: Indigenous self-determination and resource management in New Zealand: Four Māori Stories of Self-determination

This chapter begins with the story of a profound piece of New Zealand legislation, the Resource Management Act. (Resource Management Act 1991) The RMA has both been influenced by and played an important role in furthering the commitment to sustainable development within international law. The Act has also played an important role in furthering bicultural aspirations in New Zealand by being one of the first pieces of legislation to incorporate Māori concepts within the law. This chapter addresses the role of the RMA in creating legal pluralism within the New Zealand legal system specifically addressing the implications for Māori as well as the role of the Environment Court.

The bulk of this chapter deals with my interview and research findings surrounding the RMA and its successes and failures in creating a bicultural
society. The research findings cover four major obstacles to the success of the RMA;

- Capacity building
- National versus local government implementations
- The role of mana in Māori affairs and within the courts
- Questions of authority and mapping

These obstacles are discussed through the stories told in interviews with Māori and tied to the theory of proceeding chapters with specific examples from interviews, court cases, mediations and archival material.

Chapter Six: Biculturalism; success or failure?

This concluding chapter addresses the questions of this research; is biculturalism an effective model for Indigenous self-determination first in the land where it had its start, New Zealand and then can it be an effective model for other settler-states grappling with similar issues? Some of the major difficulties from New Zealand are revisited and considered within an international context with a specific comparison to wildlife management in Nunavut Territory, Canada.

The work concludes with some conjecture concerning what might be applicable from biculturalism in New Zealand and Nunavut to other Indigenous peoples and settler-states. This focuses on four principles of biculturalism in New Zealand; partnership, equal sharing of resources, Indigenous civil rights, sharing
in the processes of government. The final word is given to a discussion of future research into the broader implications which the exercise of Indigenous self-determination is having on settler-states.

Summary

The primary questions to be answered by this research can be summarized in three points. How has the application of Indigenous cultural and legal concepts within biculturalism affected the cultural and legal landscape of Aotearoa/New Zealand and Nunavut? Does a pluralistic turn in the political and legal frameworks translate into greater Indigenous self-determination? Is biculturalism an effective model for creating a material ‘thirdspace’ of Indigenous and settler partnership? Hopefully the stories presented here will help us to answer these questions.
Chapter Two

Autochthonous: Springing from the Land

Blood/land/sovereignty

“Hei te iwi kē, he iwi kē
Tātiri atu, Tātiri mai!
One strange people and another,
Looking at each other!”

Merimeri Penfold

Introduction

As James Belich asserts in the title of his comprehensive history of Aotearoa/New Zealand, Making Peoples, the colonial encounter is one in which cultural identity is transformed and forged. (Belich 1996) The colonial encounter found within Aotearoa/New Zealand brought together several hundred different groups, most were descendents of Polynesian voyagers who had come to the islands of Te Ika a Māui and Te Wai Pounamu between five and ten centuries previously. These Polynesians had divided and sub-divided into groups who largely identified around the extended family with populations of not more than 1,000 and known as a hapū or band. The late-comers to this colonial encounter

3 From a haka, quoted in (Salmond 1997).
were the various groupings of Europeans who came with their own unique stories and voyages. Together these groups interacted and developed new and unique cultural identities born out of these interactions.

It is within this colonial 'contact zone' (Pratt 1992) that the various Polynesian groups found enough similarities to forge a common identity known as Māori. (Ballara 1998: 42) It is within this same contact zone that the European groups also developed a new identity known as Pākehā; an identity developed through their contact both with the Māori and their experiences in and with this new land. (Belich 1996)

Within contact zones three aspects of the colonial encounter are played out; development of unique identities, identification with and control over the land and its resources and the ability to assert ones’ own self-determination over the matters of daily life. In his text, Blood Narrative: Indigenous Identity in American Indian and Maori Literary and Activist Texts, Chadwick Allen combines these three aspects of the colonial encounter in a slightly different manner identifying them through the idiom blood/land/memory. (Allen 2002) Allen explains that “the blood/land/memory complex ...makes explicit the central role that land plays both in the specific project of defining indigenous minority...identities (blood) and in the larger project of reclaiming and
reimagining indigenous minority histories (memory).” (Allen 2002: 16) I have
expounded on Allen’s complex slightly in expanding his definition of memory to
included sovereignty. Allen describes land as occupying the central role of his
complex and I assert that land and its resources also plays a central role in
‘reclaiming and reimagining’ Indigenous self-determination.

This chapter utilizes these three idioms, blood (identity), land (resources)
and memory (sovereignty) to articulate the nature of the “on-going relations”
established within the colonial contact zone. (Pratt 1992: 6) Blood and identity are
the cultural foundation establishing the division between the two groups implicit
in biculturalism, the colonizer and the colonized. Land offers the space upon
which the specific articulations of identity and sovereignty are exercised. Within
this dissertation, resources offer the primary issue over which sovereignty is
contextualized.

Blood/identity

Issues related to identity and the appropriate measure of indigeneity are
complex, especially within any discussion of settler-state politics. One primary
issue consistently emerges from these discussions; who has a legitimate claim to
indigeneity? Ronald Niezen confirms that “[t]he lack of a rigorous definition of
the term ‘indigenous’...presents a challenge to scholarly analysis. But this state of affairs is in some ways preferable: a rigorous definition, one that in effect tried to close the intellectual borders where they were still porous, would be premature and, ultimately, futile.... The ambiguity of the term is perhaps its most significant feature.” (Niezen 2003: 19) Since this complicated question has no easy answers I have decided to divided it into two specific points; what measure can determine a legitimate claim toward membership in an Indigenous community and how long must the descendent of a colonizer live on the land before s/he can claim this land as his/her homeland?

As Allen observes, “[d]iscussions of indigenous ‘blood’...often raise disturbing issues of essentialism, racism, and genocide.” (Allen 2002: 15)

Definitions developed to establish authenticity of those claiming Indigenous identity have generally been constructed by colonial authorities and settler administrations. Any number of criteria have been applied in an effort to establish an authentic Indigenous identity; biological kinship, language usage, cultural connections, group identity, community recognition or personal declaration. (Niezen 2003) Often some combination of these subjective and objective criteria are employed to grant a belonging/connection to this increasingly reified Indigenous identity. The desire to manage Indigenous identity stems from a
desire to control the land and resources over which Indigenous claims are asserted. With a decreasing number of individuals meeting the definition applied by the settler-state there is an ever decreasing strength to the claim on this land and its resources.

Any discussion of Indigenous identity must navigate this minefield of politically volatile issues. Inevitably any stance taken on this issue risks falling too much on one side or the other of such a discussion: alienating one side or the other. By using the term autochthonous as a label for this chapter I intend to set a slightly different definition to this discussion of identity, one that recognizes that cultural identity springs from and is altered by a relationship with the land as well as the other peoples inhabiting those lands.

There is a common element to the history of settler-states such as New Zealand, that being the near complete demographic collapse of Indigenous populations around the turn of the twentieth century. The common belief in New Zealand, as can be found in the United States, Australia and Canada, was the widely shared belief that the Indigenous populations were destined for extinction and/or assimilation. (Mikaere 2000; see also Ballara 1986; Belich 1996; Churchill 1997) In all of these countries the Indigenous populations reached their nadir at about the same point in the late nineteenth or early twentieth centuries. The
demographic collapse witnessed in these countries was a combination of decades of epidemic illness from diseases introduced, occasionally purposefully, from Europe, and warfare. (see Ballara 1986; Churchill 1997) The remnant Indigenous populations were frequently located in isolated communities under the constant supervision of military or state officials and missionaries. The assimilation of this remnant population was the stated goal of these settler-states. (see Anaya 1996; Lâm 2000; Niezen 2003) As the twentieth century progressed, it became apparent that these remnant populations, instead of disappearing, continued to thrive and grow. With the failure of these communities to disappear either through death or assimilation, the settler-state has been forced to negotiate with ever growing Indigenous populations, populations which are the descendents of those who signed treaties with the progenitors of the settler-state. (Fleras and Spoonley 1999)

With the resurgence of Indigenous populations over the past century there has been a similar resurgence in the political awareness of these same populations. These political discussions have focused on land, resources, language, culture, justice and the rights guaranteed through treaty. I believe that these issues can broadly be defined as self-determination. (see Anaya 1996; Corntassel and Primeau 1995; Fleras and Spoonley 1999; Lâm 2000) The vision of self-determination held by some Indigenous individuals and groups is one of
separation from the settler-state with complete independence and total sovereignty. (Anaya 1996) Some even hold the belief that the descendents of the original settlers can be forced to return to their original homelands in Europe, Asia or Africa.4

It is unlikely that either group, Indigenous or settler, is likely to disappear from the settler-state leaving the land completely open to the sovereignty of one group or the other. The identity of both groups has become autochthonous and springs from the land they jointly occupy. Within the ‘contact zone’, there is a “spatial and temporal copresence of subjects previously separated by geographic and historical disjunctures [and] these subjects are constituted in and by their relations to each other.” (Pratt 1992: 7) It is how the colonizer and colonized of New Zealand have become Māori and Pākehā, through their relations to each other, that is the subject for the rest of this section.

Māori

Great debate has surrounded who the earliest settlers of Aotearoa were and when exactly they came to the islands. It is well established that several waves of

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4 Several different Indigenous movements, often spurred by prophecy, have developed during the period of European colonialism which foretell the destruction or removal of ‘the White man’ from Indigenous homelands. The Ghost Dance is perhaps the most notable example of such a religious movement. Founded through the vision of the Paiute prophet Wovoka, the Ghost Dance promised American Indian communities not only the removal of Europeans but also a return of grasslands, buffalo and wild horses. (see Deloria 1973)
east Polynesian migrants came to the islands between 1100 and 1350 CE. Modern Māori continue to trace their whakapapa back to crew members of these waka, but some continue to trace back to earlier ancestors, members of previous migrations. (Durie 1994: 13) The identity of these earlier migrants is less clear as are the dates of their migrations into Aotearoa. The migrants are often known by the names Maruiwi, Moriori and Kahui Maunga and may have been of some mix of Marqueasan or Micronesian descent. (Belich 1996: 27-36) The last wave of east Polynesian migrants came to the islands sometime around 1350 and intermarried with earlier migrants in an effort to make connections with the lands already held by the original immigrants and to gain occupation rights. Later generations have emphasized their connections with the crew of these final canoes because of the personal mana held by these ancestors but they also claim connection to earlier migrants in an effort to link with the mana whenua or the mana held over the land. (Durie 1994: 14)

Originally scholars believed that fighting occurred at the time of landing of the later Polynesian migrants but oral histories and recent archeology supports a later date for these battles. As Durie observes, the fighting was “between bifurcations of the descendents of both [earlier and later migrants] at a later period.” (Durie 1994: 13-14) These series of migrations brought this mix of
Pacific peoples to the islands of Aotearoa where they intermarried, fought and over several centuries developed into the peoples later English migrants would call Māori.

Despite the differences between Polynesian migrations and the regional variations which developed over time, Angela Ballara observes that “at least shortly before contact, and probably from the beginnings of settlement, all the people of the country, whatever their local region, shared elements of a common culture.” (Ballara 1998: 42) They held common beliefs about ancestral descent, they employed the concepts of *iwi* and *hapū* in delineating descent groups, they shared common protocols for meetings of differing groups and they all lived by common concepts such as *mana* and *tapu*.

Despite the fact that the English thought of the Māori as one people, before (and after) Cook’s voyages to the islands they themselves have identified and grouped themselves by virtue of *whakapapa*. These genealogies join individuals into groups by connecting them to common ancestors. As Angela Ballara observes, “when [Māori] named themselves, it was not as Māori, but as the descendents of a particular ancestor; the ancestor selected depended on the circumstances and the purpose of the naming.” (Ballara 1998: 42) For most pre-contact Māori these connections were primarily centered around *hapū* or extended
family groups generally between 100 and 1,000 members in size. As hapū grew and their numbers could no longer be supported by their lands or disagreements brought strife, a subdivision would occur thus creating new hapū. During times of conflict various hapū may join together into iwi or even into larger groups on the basis of connection to an original waka (Durie 1994). These alliances generally lasted only as long as the common need joined their interests. After contact with the English, iwi groupings became more common in an effort to join hapū together for defense against these most recent migrants. Some even larger confederations joined many hapū and iwi groupings around ariki or great leaders. One such confederation in the interior of the North Island, following the model set by the English monarchy, elected one such ariki to serve as a kīngi. The King Movement was able to join the forces of some fifteen different North Island iwi into a force which successfully repelled English colonial settlers from entering the Waikato until the end of the 1860’s.

These confederations and connections brought various Māori groups together over the centuries prior to European settlement but it was not until 1801 that the term Māori took on its modern definition as an Indigenous occupant of the islands of New Zealand, bestowing a common identity. (Belich 1996: 233) The first term used by Europeans for the Indigenous inhabitants of the islands was
based on the English version of the name of the islands. Hence the Indigenous inhabitants of New Zealand were New Zealanders. But as Europeans began to understand the Polynesian language, than the Polynesian term they heard was applied. Originally the term Māori was used to mean ‘normal’ and became used by the Indigenous inhabitants to describe themselves as opposed to the ‘alien’ Europeans. (Ballara 1998) Within twenty years of its initial use by the English, the term Māori became a commonplace descriptor to differentiate colonized from colonizer.

Despite this new found common identity, described by the term Māori, the various whānau, hapū and iwi have continued to be the primary form of cultural identification for Māori into the post-contact period. The post-contact settler-state has attempted to temporally fix hapū and iwi identity, restricting the pre-contact tradition of subdivision and growth. (see Ballara 1998; Rata 2000) In an effort to limit claimants in treaty or court cases, the New Zealand state has attempted to consolidate Māori claims around the largest groupings possible, usually that of an iwi, a process labeled by some as ‘iwi-sation’. (see Rata 2000) A recent resurgence in hapū identification and the assertion of urban Māori in establishing their own unique identities continues to change the cultural configurations of Māori identity. (see Barcham 2000)
With an increase in Māori activism in the 1960’s and 70’s, there has been an increasing pride taken in a Māori identity. While in earlier periods a pan-Māori identity was forced upon Māori by the objective gaze of the colonizing agent, with Māori activism came a self-conscious decision to identify around common issues of concern to all Māori. These issues which range from land claims to the protection of the Māori language have been the driving force behind what Elizabeth Rata terms the “pan-Māori ethnification movement.” (Rata 2000: 17) Despite the original intent of addressing commonly held concerns, the pan-Māori movement has over the past two decades evolved into a retribalization movement, geared toward reconnecting Māori with whānau, hapū and iwi in an effort to reconnect also with traditional homelands and mana whenua. These Māori civil rights movements have played a significant role in the rise of biculturalism in New Zealand.

In recent years, conflicts have arisen in Māori identity as nearly 80 percent of Māori have moved to urban centers far from ancestral lands. Manuhuia Barcham recognizes that these urbanized Māori have often lost connection with their hapū or iwi and with the increasing iwi-ization brought about by government programs, these urban Māori are often not recognized as ‘authentic’ Māori as they no longer maintain ahi kā. (Barcham 2000: 143) Since as Ballara observes, the
idea of the *iwi* as the active political unit of Māori tribal sovereignty is a relatively modern phenomenon, urban Māori have argued that their associations should be recognized on the same par as ‘traditional’ *iwi*. (Ballara 1998) The increasing iwi-ization process supported by government policy and treaty negotiations has served to isolate urban Māori further from traditional homelands and perhaps more importantly from treaty settlements and government programs. Barcham argues that the iwi institutions currently supported by government policy are, “no more authentic than other forms of Māori associational organisation.” (Barcham 2000: 142) Urban Māori have begun over the past ten years to challenge the iwi-ization process and have asserted their right to organize and to have these organizations recognized as legitimate representatives of *tāngata whenua*.

Elizabeth Rata describes this conflict concerning modern Māori identity from a different perspective. Rata agrees with Barcham that the retribalization movement has been usurped by government programs; “[t]hrough processes of juridification and institutionalisation the tribes became established in their economic character as the legal owners of large-scale property and as the legally recognised political and social structures of Māori society.” (Rata 2000: 25) Rata though, goes further in arguing that as Waitangi Tribunal claims are settled, the government looks for appropriate leaders within *iwi* who can assume fiscal
responsibility, leaders who are frequently Māori teachers and representatives of the Māori cultural revival. (Rata 2000: 68) These Māori have begun to function in an intermediary role within the bicultural project, a role which Rata describes as a Māori comprador class. This Marxist critique of modern Māori identity, while still based within an urban–rural divide, describes the evolving distinctions between Māori as primarily a class distinction. Rata’s assertion is that educated Māori, particularly those who have served as bicultural representatives and who have maintained iwi connections have become a comprador class now in control of the growing financial base of the iwi. While many modern Māori have striven to identify themselves within a neotraditionalist ideology which has sought to revive hapū and iwi along with communal economic structures, Rata and Barcham’s works demonstrate that these efforts have been subverted both by government policy and global capitalism.

Nonetheless, Māori, both those living in urban areas as well as those remaining on traditional homelands, have maintained an albeit hybrid indigenous identity. But as Paul Spoonley observes, “[b]iculturalism requires that the two principal ‘cultural’ groups should be self-conscious about their own identity, and be in a position to negotiate the form and content of a liberating and bicultural
system(s)." (Spoonley 1995: 96) So, how has the other principal cultural group in New Zealand faired in forming their own cultural identity?

Pākehā

Europeans first came to the shores of New Zealand over three centuries ago while searching for the fabled southern continent, Terra Australis Incognita. (McKinnon et al. 1997) The quest for this ‘unknown South-land’ was driven by a quest for “gold and spices, princes and pearls.” (Salmond 1997: 31) The first European explorer, Abel Tasman, left his Dutch name for the islands, Nieuw Zeeland, a name that has survived in one form or another to the present. Later European explorers came from England, a people with a long history of various groups coming together in their own homelands. In fact the English explorers who came to New Zealand in the 18th century were the descendents of various Germanic, French and Celtic groups who had been unified under an Anglo-Saxon English identity at approximately the same time Polynesians were unifying their own lands and previous migrants in Aotearoa. (Belich 1996: 13)

These English explorers, beginning with James Cook, introduced the islands to a new flood of migrants who brought a new language, ideas, laws, disease and permanent settlers into the islands. Unlike the waves of previous migrants, these new settlers did not speak a Polynesian language, did not have
cultural values similar to those who came before and for the most part did not have a desire to intermarry with the current residents. The English brought several centuries of experience in to the colonial project they introduced in New Zealand. They had learned in the Americas, Africa and other parts of the Pacific ways to displace Indigenous populations from valuable lands. (see Alfred 1999; Churchill 1997; Little Bear 2000; Mitchell 1991; Nietschmann 1994)

European settlement of New Zealand began in earnest in the 1830’s, a time in which most immigrants were attracted to the better known and settled North America. In addition to being little known in England, New Zealand had several other drawbacks as a destination for settlers. First the islands are the furthest colony from England, often requiring a voyage of up to six months and the high costs of passage associated. Second, other colonies already had established cities as destinations for settlers on their arrival before pushing inland to farmsteads. Third, the islands were often associated with Māori cannibalism in England. (Belich 1996: 283)

Despite these road blocks to European migration, over 400,000 did come to the islands in the first fifty years of settlement. With an additional 125,000 European births in the same period, the Māori population, already under assault from the various diseases introduced by Europeans, was overwhelmed by these
new migrants they called Pākehā. These Pākehā came to New Zealand driven by a variety of different impetus. A few came as convicts from the Australian colony. Many others came as a part of organized groups seeking some sort of paradise in an antipodean England. Whatever force brought these migrant to this new land they soon came into contact with unusual surroundings. These lands had none of the animals, plants or society to which they were accustomed. These lands needed, in their view, the civilizing hand of their colonial experience in order that it might become the paradisiacal antipodean England of their dreams.

Whatever brought these new migrants into the islands they soon became intrinsically connected to the land. As Belich observes, “[t]he peopling of Pakeha New Zealand and its cultural construction, the growth of a New Zealand image in people’s minds, were two interlocked processes.” (Belich 1996: 271) These processes had a consistent flow guided by British colonial visionaries from the first immigrants in the 1830’s through to the solidification of Pākehā control over the entire land in the 1890’s. Through these processes a new identity was born, one which separated these new immigrants from their homelands and asserted a new Pākehā identity, an identity born from their interaction with the Māori and their new homeland. As Michael King declares, “Pakeha people recognise shared points of contact with the British but do not mistake that recognition for
homecoming...Pakeha born in and committed to New Zealand have no other home, no other turangawaewae, any more that Maori do in the Cook Islands, Tahiti or the Marquesas, points of departure for Polynesian migrations to New Zealand.” (King 1999: 11)

Of course as Spoonley observes, “[i]t is impossible to obtain an unambiguous closure of meaning for the label of Pakeha, given the politics which have produced it.” (Spoonley 1995: 96) What it means to be Pākehā and even how to spell it is a mystery to many New Zealanders of European descent. Within the (post)colonial setting of New Zealand “those who have been the agents of colonialism...once colonialism has lost it legitimacy, find themselves without strong ethical and ideological support.” (During 1985: 370) Pākehā, Spoonley argues, are ‘unconsciously white’, without a self-conscious cultural identity to make them suitable partners in a bicultural debate with Māori. The development of a strong Pākehā identity is a (post)colonial act requiring a conscious decision. The majority of Pākehā find themselves being defined not through their own conscious choice but instead through the political discussions forced on them by an increasingly activist Māori population.

Despite the modern political realities between Māori and Pākehā, it is important to remember the foundation of this relationship was forged in the
unequal and racist furnace of the ‘contact zone’. The ‘imagined community’
known as New Zealand was born out of the imperialistic imaginings of British
settlers and “modelled, adapted and transformed [by] nationalism, its roots in fear
and hatred of the Other, and its affinities with racism.” (Anderson 1991: 141) It is
useful for us to remember though, as Anderson states, “that nations inspire love,
and often self-sacrificing love.” (Anderson 1991: 141) Elizabeth Rata observes
that the white-urban middle class of New Zealand cannot love “[a] nation
originating in military conquest and colonial oppression.” (Rata 2000: 125) This
explanation for the foundation of national identity is unacceptable to middle-class
Pākehā and Rata perceives “[t]he bicultural project … to be the solution to this
moral dilemma.” (Rata 2000: 125) It is though this love, a real connection to the
land and an imagined connection to a common community, which drives Pākehā
New Zealanders to defend their homeland from the transforming nature of Māori
self-determination which threatens to transforms the national identity and ideal of
citizenship.

**Nature/Land/Resources**

If Indigenous self-determination is primarily a question of control over our
own bodies, communities, resources and land, then land is the space within which
all agency is exercised. But how can we define land, nature and the resources which are contained within nature while attempting to take a bicultural approach which utilizes both Māori and Pākehā perspectives? It is necessary to examine both cultures’ perspectives on land, nature and resources in order to comprehend how these issues are understood by the two principal cultural groups involved in Aotearoa/New Zealand’s biculturalism movement.

Western society and its scientific discourses have over the past two and a half centuries constructed a definition of nature which makes it according to Raymond Williams “the most complex word in the [English] language.” (Williams 1985: 219) Williams identifies three broad areas of meaning for nature, first as an “essential quality and character of something; [second] the inherent force which directs either the world or human beings or both; [third] the material world itself, taken as including or not including human beings.” (Williams 1985: 219) This discussion will be limited to the third area of meaning within William’s definition, the material world itself. It is within this material world definition of nature that colonial projects created a space for the creation of the colonial state.

Linda Tuhiwai Smith states that for the Western man, “Land...was viewed as something to be tamed and brought under control...not simply for physical survival, but for further exploitation of the environment or making it ‘more
pleasing' aesthetically.” (Smith 1999: 51) But before the land could be tamed and exploited it had to be cleared of its Indigenous populations. One primary technique employed in making nature/land/resources available for exploitation was to free them from any cultural imprint. Derek Gregory states that “in general ‘culture’ and ‘nature’ were prised apart within the modern European imaginary and the advance of European culture was usually measured by the distance it was supposed to have traveled from its own nature.” (Gregory 2001: 87) This separation of European culture from nature was applied also in the colonial setting, separating Indigenous culture from their lands and hence opening these lands to the exploitation of the colonial state.

Bruce Braun has described this clearing of Indigenous populations as “a series of...representational practices through which ‘nature’ is made to appear as an empty space of economic and political calculation.” (Willems-Braun 1997: 7) These practices have sought to temporally and spatially fix Indigenous communities within this colonial construction of nature. This fixing occurs in two principal manners; first the removal or displacement of Indigenous populations to ‘reserved’ lands and second through a rhetorical temporally fixing which places Indigenous peoples in an earlier, ahistorical stage of human development.
Johannes Fabian (Fabian 1983: 29-30), in his work *Time and the Other*, describes this spatial and temporal fixing thus,

> After all, it is not difficult to transpose from physics to politics one of the most ancient rules which states that it is impossible for two bodies to occupy the same space at the same time. When in the course of colonial expansion a Western body politic came to occupy, literally, the space of an autochthonous body, several alternatives were conceived to deal with that violation of the rule. The simplest one, if we think of North America and Australia, was of course to move or remove the other body. Another one is to pretend that space is being divided and allocated to separate bodies. South Africa’s rulers cling to that solution. Most often the preferred strategy has been simply to manipulate the other variable – Time. With the help of various devices of sequencing and distancing one assigns to the conquered populations a different Time.

Employing either temporal or spatial distancing, colonial projects effectively removed the signs of Indigenous culture from the land, opening these resources to the “rational management of the nation-state.” (Willems-Braun 1997: 10) Braun observes that one of the primary tasks of the colonial explorer was to spatially fix Indigenous peoples at sites such as villages or resource procurement sites leaving the surrounding land as “the empty space of nature.” (Willems-Braun 1997: 17) This temporal and spatial fixing also served to separate Indigenous peoples from the ‘modern’ nation. Indigenous space was ‘traditional,
nonhistorical' and the surrounding space became the space of enterprise for a dynamic modern colonial venture.

Pākehā and the Land

The dynamic and modern colonizers brought with them a land ethic that saw this empty space of nature which had been freed of the cultural influence of the Indigenous communities as a wasteland. The temporal and spatial displacement of Indigenous communities was supported by the perception that the land had been left as waste. Geoff Park, in his text Ngā Uruora describes this colonial disenfranchisement within the context of New Zealand’s early history; “[a]ll this chaffer about the rights of the natives to land which they had let idle and unused for so many centuries,’ one wrote in 1843, in an early New Zealand Company’s newspaper, ‘cannot do away with the fact that, according to God’s law they have established their right to a very small portion of these islands.” (Park 1995: 40)

Angela Ballara, in her text Proud to be white?, describes another component of the creation of ‘wastelands’ specifically within the New Zealand context. Ballara states that the “[c]olonists in New Zealand were convinced that the Mori were ‘savage’. Bloodthirstiness, warlike tendencies, cannibalism, vengefulness; all these unpleasant characteristics were constantly stressed as the
'natural' attributes of the 'natives'." (Ballara 1986: 29) Ballara goes on to observe that "the principal use of propaganda concerning the Maori 'savage' was to use it to deny the right of the Maori people to the soil or landed property of New Zealand." (Ballara 1986: 32)

These colonial concepts of temporal and spatial displacement and wasteland informed the English colonizer in his quest for land upon settling in New Zealand. Through the Englishman's 'imperial gaze' the lands of New Zealand showed no sign of pasturage, tillage or planting and thus no Māori could claim dominion over the lands that "did not bear the marks of their labour in it.” (Park 1995: 39) This open land, the land opened up for the resources of the dynamic, modern nation then became the home of the English settler. But before the settler could move in marks must be made upon the land and the map of the land to determine the boundaries of what will be owned and by whom. The surveyor plays a central role in the settlement of lands opened by the explorer and his rhetorical discourse of displacement. “The colonial surveyor’s grid reshaped New Zealand’s best land with all the features that had enclosed Britain’s open fields and commons and pauperised millions of its rural people,” is how Park describes this process in New Zealand. (Park 1995: 26)
This ordering of the landscape created an enframing and domination of nature. (Gregory 2001) Enframing set a European order upon the landscape in an effort to make it comprehensible to the European eye. Explorers accounts and surveyors maps came to stand for the land itself, thus the real world was made available to the settler through these textual and graphic representations. (Mitchell 1991) Nature became controlled, dominated by the application of scientific techniques which went beyond merely ordering to a level of calculation. Braun sees these calculations “as a general calculus of private property and speculative valuation...the circulation of one inscription, the geological map, permitted the circulation of another, money.” (Braun 2000: 25)

The value of these lands and resources produced a speculative value for the lands of New Zealand within the European colonial economy. The first resources to be valued by the English were the tall, strong and straight trees of the North Island’s rainforests, *kahikatea* and *kauri*, primarily valued as ship timbers but later also as housing materials for the Australian and New Zealand colonies. (see Park 1995) Later flax, processed by the Māori, was valued as a resource for rope making. These land resources were perhaps secondary though to the whaling and sealing enterprise which brought an increasing number of ships and sailors to the island’s shores. (Belich 1996: 131-2) Once the Treaty of Waitangi had
brought English governance and law to the islands, it also brought a flood of settlers who moved into the ‘open lands’ and made them valuable through their labor.

The laws the English brought to New Zealand confirmed and asserted individual land tenure. The settlers who came and made the land valuable through their labor earned the right to own the land. As Dame Evelyn Stokes observes, “[t]he history of colonisation after 1840 for Māori is a revolution in tenurial systems, denial of custom law, and incremental loss of control and alienation of land and resources.” (Stokes 2002: 36) This revolution in tenurial systems not only alienated Māori claims to land and resources but to also assumed the right of settlers to these lands and resources.

The assumed right to the land and its resources by Pākehā has only recently begun to be questioned. The alienation of tenure is being challenged by the Waitangi Tribunal’s claims hearings, by the rulings of the Māori Land Court and by the assertions of the Resource Management Act of the right of Māori to a role in resource management. (Fleras and Spoonley 1999; Star 1998) As Māori regain control over an increasing amount of land, there is a greater discussion of Māori concepts of land tenure and resource management in New Zealand.
Maori and the Land

As we have seen in the previous section, Pākehā brought a rhetoric of enframing and ordering of land and resources to their colonial projects in New Zealand. Houston Wood’s in his text on the rhetorical production of Hawai‘i, *Displacing Natives*, refers to this as a monorhetoric (Wood 1999: 129). Wood argues that Kanaka Maoli (Native Hawaiians) perceive land and resources, in fact the entire world, within a polyrhetorical production, a production that embraces “shifting, and context-specific meanings.” (Wood 1999: 130) Monorhetoric produces a land ethic that establishes individualized ownership of land, identifies resources within an enframed spatial construct and places peoples on a linear timeline of progress. Wood identifies the differences between the two types of rhetoric, “[w]hile monorhetoric builds a single, linear, visible reality, polyrhetoric forms overlapping, elastic realities that prominently include invisible forces monorhetoric cannot ‘see’ or accept as real.” (Wood 1999: 130) While Wood is applying his construction of mono- and polyrhetoric to Hawai‘i exclusively it is apparent that these terms have a broad ranging application to discussions of discursive practices within ‘contact zones’. This same monorhetoric continues to influence European constructions of New Zealand. Similarly, I seek to show that
a polyrhetorical model is at work in Māori constructions of land, tenure and resources.

The complexities of Māori concepts of land reflect what Wood defines as a polyrhetoric with their overlapping and elastic definitions which intersect with invisible forces. High Court judge Edward Durie, former Chairperson of the Waitangi Tribunal, describes the Māori relationship with land: as “the cultural, social and spiritual life of the community was built around land,...the land was posited as a living being from which the community derived.” (Durie 1994: 61)

The interconnection between land and community identity can be seen in the multiple Māori definitions for the idiom land: first, as the land itself and second, as the afterbirth of an individual which was buried in the land helping to reinforce a bond between the newborn and the land, community and ancestors.

N. Scott Momaday describes a similar relationship between Native Americans and the land as a “reciprocal appropriation: appropriations in which man invests himself in the landscape, and at the same time incorporates the landscape into his own most fundamental experience.” (Momaday 1976: 80)

Indigenous peoples, whether Native American or Māori, do contrary to some ecological myths make use of the lands they inhabit. These appropriations, even when on occasion out of balance with the needs of the ecosystem, require that the
community reciprocate by investing the landscape in their everyday existence. The maintenance of these symbolic associations can be seen as a guiding, customary principle for Māori. (Durie 1994) Through these reciprocal relationships with the environment, Māori develop emotional attachments with specific places within their environment. These relationships with mountains, lakes, rivers as well as sacred and historical sites constitute “cultural expressions of territoriality.” (Durie 1994: 62)

This relationship with the land, while an emotional and often individual one, was based not on a concept of individual ownership but on a community relationship with the land traced back through the whakapapa of the inhabitants. Individual use rights derived from community membership which was generally defined by being born into the community but could also include adoption or long-term participation in the group. Interests in the land and its resources also extended temporally beyond the current generation both to the unborn and the ancestors. It is these temporal connections, especially to the ancestors, which validates a Māori’s right to land tenure and use. A whakapapa is used to connect the tenants of a piece of land to the earliest occupiers and even at times to the gods who created it. (Durie 1994)
These *whakapapa* were used not just to establish a right to residency but also could convey a type of tenure. This is not the same exclusive use right tenure frequently described by Western land law but a use right set within Māori custom law. These use rights conveyed varying levels of access depending on the type of use right held by an individual or group. Durie describes these use rights or land interests as “proprietal, inchoate, symbolic and political, were held by either...groups or individuals, were maintained at different levels and intensities and were referenced to specific resources or in the political sense, to territory.”

(Durie 1994: 67-68)

Proprietal rights were inherited, held either by an individual or *hapū*, and applied to specific resources. Use rights could be extended to others such as family members but proprietal rights continued to be held by the individual granting the use right. Proprietal use rights could be lost through disuse of resource, retiring of farm plots or on occasion through warfare. Inchoate rights were those which could be claimed through a range of ancestors but were limited by the practicability of actual use of the resource. Visiting kin may be granted the right to access resources while in residence. Inchoate rights were seen as secondary, a right held by descent but not by permanent residence and was secondary to a proprietal right which recognized both descent and residency.
Symbolic rights were not rights to resource use but instead, of access to significant sites considered sacred or tapu by a group. These sites are considered paramount to group identity and are thus symbolic use rights are a significant right for Māori. These symbolic connections to places have been the land claims least understood by Pākehā. (Durie 1994: 71)

Political rights of control were held primarily by the hapū and included all of the resources over which hapū members had influence. The mana or control over the territory was invested in the rangatira of the hapū. The distinction between various use rights and political rights can be defined as the difference between individual and group rights. While a hapū may hold control over a territory these territories were not strictly bounded being more permeable and open to non-residents still holding use rights within the territory. Ahi kā, or continued occupation of the land held the greatest level of use and political rights. A failure to maintain occupation due to warfare or dispossession was not considered an extinguishment of use or political rights though. Hapū and, more commonly in post-contact times, āti, could reassert use and political rights temporarily lost during such absences.

While the authority to speak in defense of homelands and resources generally rests in the hands of rangatira, the agency to speak on issues of resource
management is sometimes vested in certain individuals known as kaitiaki. Any animal, human or spiritual entity with mana whenua, mana over a place or resource, can act as a kaitiaki, or appoint another to serve in that role. (Patterson 2000: 89) Spiritual entities such as taniwha occupy certain waters and defend these waters against unjust uses. (Minhinnick 1989: 4) Physical/human kaitiaki inherit their positions generally through their whakapapa and through the recognition of tribal rangatira. It is important to remember though that any Māori with mana whenua may act as kaitiaki in defense of their lands and resources. (Patterson 2000)

Kaitiaki are guided by certain principles in their guardianship over natural resources. Nganeko Minhinnick describes these principles as a holistic Māori system of environmental management that “ensures harmony with the environment, measures, checks and balances daily, prevents intrusions that cause permanent imbalances and guards against ecocide.” (Minhinnick 1989: 5)

Individuals continue to serve in the role of kaitiaki within Māori communities today, protecting specific resources, sacred sites and marae grounds. The role of kaitiaki and the associated general principle, kaitiakitanga, have been codified within the Resource Management Act of 1991. (Resource Management Act 1991)
Many issues regarding the inclusion of *kaitiaki* within the Act will be discussed further in Chapters Four and Five.

**Memory/history/self-determination**

The exercise of control over land and resources exemplified through *kaitiaki* is but one example of the exercise of Māori self-determination currently occurring in New Zealand. Indigenous self-determination is a complex set of issues currently being debated in settler-state countries such as New Zealand and Canada, in former European colonies with tribal minorities such as Indonesia and Nigeria and within European countries where ethnic minority populations which have held out against assimilation and dispossession continue to struggle such as the Welsh, Basque and Sámi. As stated previously, Niezen observes in his text, *The Origins of Indigenism* that the lack of a definitive definition for the term Indigenous creates a particular challenge for academic scholarship, but this lack of a definition creates challenges for the international political community as well.

Defining exactly who Indigenous peoples are let alone what their rights are to self-determination has been an on-going dilemma since the United Nations began addressing the rights of self-determination for colonized peoples in 1960. José Martinez Cobo, in his report to the United Nations Sub-commission on
Prevention of Discrimination and Protection of Minorities in 1986 provided the first comprehensive report on the condition of Indigenous peoples worldwide. In the report Cobo stated:

Indigenous communities, peoples and nations are those which, having a historical continuity with pre-invasion and pre-colonial societies that developed on their territories, consider themselves distinct from other sectors of the societies now prevailing in those territories, or parts of them. They form at present non-dominant sectors of society and are determined to preserve, develop and transmit to future generations their ancestral territories, and their ethnic identity, as the basis of their continued existence as peoples, in accordance with their own cultural patterns, social institutions and legal systems. (United Nations. Sub-commission on Prevention of Discrimination and Protection of Minorities. and Martinez Cobo 1986: 379)

While Cobo may have been the first to attempt to define Indigenous peoples on an international stage other groups have continued his task and work to establish a universally accepted definition. The United Nations Working Group on Indigenous Populations (WGIP) has been meeting since 1982 in an effort not only to define Indigenous peoples but also to establish an international forum through which Indigenous peoples can discuss issues of self-determination, resource and land loss, culture and language loss, ethno- and ecocide. The WGIP has accomplished producing a Draft Declaration on the Rights of Indigenous
Peoples which not only provides a working definition of Indigenous peoples similar to Cobo’s but also outlines the rights sought by these peoples in their quest for self-determination. The right to self-determination currently sought by Indigenous groups was defined in International Law by the United Nations in its Declaration on the Granting of Independence to Colonial Countries and Peoples in 1960. This Declaration states that “[a]ll peoples have the right to self-determination; by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.” (quoted in Lăm 2000: xxi) This declaration was set in place to assist with the rapid decolonization process that began with the British granting of independence to India and Pakistan in 1948 and which had reached other parts of Asia as well as Africa by 1960. The concepts of self-determination discussed in the United Nations declaration were not invented in 1960 but had rather evolved over several hundred years through the developing jurisprudence of Western law. (see Anaya 1996; Wilmer 1993) It is in this context that Māori claims to self-determination can be set, but before discussing the specifics of

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5 Cobo’s definition attempts to include not only those groups which were the first to occupy a territory and assert claims that extend to time immemorial but also to those groups which are frequently described as tribal and have historical claims to their territories. (Lăm 2000: 7)

6 The WGIP definition does differ in one significant way from that offered by Cobo in that it allows for self-identification of individuals as Indigenous and is opposed to state imposed identification criteria.
Māori claims to self-determination it will be necessary to discuss concepts of sovereignty brought to New Zealand by British explorers, settlers and governors-general.

**Western Law and British Sovereignty**

The system of state sovereignty as currently expressed through International Law began to form in 17th century Europe. The laws and standards associated with states and their sovereignty have been applied across the globe over the intervening centuries, spread initially through European colonialism and more recently by the edicts of the United Nations. These International Laws while widely accepted are not universally so. Māviān Lām states that “[t]hey make certain ideas associated with the organization of a country and of international society appear transparently right, universal, and imperative when these ideas in fact are merely expedient, particular, and contingent.” (Lām 2000: 86)

The ideal of state sovereignty which the English brought with them to New Zealand was constructed through the interchange between the British Crown and the other states in Europe as well as through their experiences in colonial settings. The foundation of the Law of Nations under which English colonialism operated was founded in the natural law doctrine of St. Thomas Aquinas and
furthered by the work of Franciscus de Victoria in the 16th century. (Anaya 1996)

De Victoria, in answer to claims of barbarism against Indians living under Spanish rule, developed a legal justification which answered not only the accusations of brutality but in the end granted Europeans the right to take the lands of non-Europeans. De Victoria asserted that while Indians did hold “natural law rights as free and rational people” they did not hold the right to refuse Europeans entrance into their lands for commerce, friendship and the spread of Christianity. (Lâm 2000: 87) If any Indian group should refuse friendship, commerce or proselytizing from Europeans then they forfeited their right to continued possession of their lands.

The Law of Nations that de Victoria assisted in articulating has continued to evolve and by the time that the English began their settlement of New Zealand two significant events had occurred in Europe to influence the legal concepts which they applied in their dealings with the Māori. First, the Treaty of Westphalia by its granting of liberation from the edicts of the Pope and the Emperor of the Holy Roman Empire created within Europe, sovereign and independent states. Obviously England had separated itself from the authority of the Pope prior to 1648 but after the Treaty of Westphalia England was once again operating within the recognized Law of Nations. The second event to have a
significant influence on the *Law of Nations* propagated by European states was the French revolution. Lâm credits the French revolution with transforming the state into a people. (Lâm 2000: 89) While the Treaty of Westphalia had removed the Pope’s authority over the affairs of the individual European states, these states did continue to recognize the importance of religion and royalty in legitimating their sovereignty. The French revolution overthrew both religion and royalty and inserted the “people” as the legitimating foundation of the state. While the English have maintained a place for both religion and royalty within their state they have removed both religion and royalty to a symbolic role and handed sovereignty over to the people.

When the British arrived in New Zealand they found the Māori, unified by a shared language and culture but separated by political divisions. They found a land which was governed by customary laws far different than their own and outside of the Law of Nations. Once news of these lands returned to England many interest groups began to plan their own ventures. Belich describes these interest groups as the three tails which labored to wag the imperial, metropolitan dog into colonial occupation of New Zealand. First, the missionaries had established themselves in an effort to bring protestant Christianity to the wayward Māori. Second, settler organizations such as the Wakefield Company sought to
relieve English domestic stresses brought on by the industrial revolution which had “led Britain to overproduce both labour and capital.” (Belich 1996: 183) New Zealand was an ideal, mid-latitude land for the systematic colonization scheme Wakefield envisioned. Third, the capitalist forces propelled by whaling and the merchants in Sydney saw New Zealand as important to increasing their revenues. With English control, trade would be increased and the state would handle the overhead included in safeguarding capitalist interests. These three interest groups exerted a considerable influence over the Colonial Office but in the end Belich argues that a desire to both keep New Zealand out of the hands of the French and to provide the order British law could provide was the finally impetus which forced the Crown to assert its sovereignty. (Belich 1996: 187)

The instrument through which British sovereignty was extended over New Zealand was the treaty drafted by William Hobson, naval officer appointed Lieutenant-Governor and Counsel. (Belich 1996: 180) But this treaty was not only drafted by Hobson but with the assistance of the missionaries, merchants and their Māori comrades in the Bay of Islands, the Ngā Puhi. It was in the Bay of Islands, at Waitangi, that the treaty which brought English sovereignty to New Zealand was initially signed by Māori chiefs and Hobson, representing the Crown, on February 6, 1840. The Treaty of Waitangi, which brought English law and
sovereignty to the land also sought to guarantee Māori self-determination over their own lands and resources. The importance of the Treaty goes far beyond the exertion of English sovereignty in New Zealand and continues to be a topic of debate in New Zealand society. Its impact on law, land claims and Māori self-determination will be discussed further in later chapters.

Māori tino rangatiratanga

The exercise of sovereignty by the Māori over Aotearoa began with the first canoe landing. Through customary law, the Māori had exerted their own form of sovereignty, through their rangatira, a sovereignty founded on the cultural foundations brought with them on their voyages. These laws did not conform to the Law of Nations which Europeans had developed over centuries of interaction and did not bring the Māori into a league with these European nations.

The first attempt by the Māori to have their sovereignty recognized by the international community came in 1835 with their He Wakaputanga O Te Rangatiratanga O Nu Tireni/The Declaration of Independence of New Zealand. This declaration, signed at the urging of the British Resident, James Busby, was intended to thwart the expansionist intentions of the French. (Belich 1996) By recognizing Māori sovereignty the British government hoped to stem French expansion without incurring the expense of British administration over the
islands. The Declaration was the first attempt by the Māori to express their sovereignty within a Western legal framework. Seen as little more than a hollow gesture, the Declaration had little if any impact on European powers and brought no significant change to the relationship between Māori and Europeans.

It was within this context that Hobson was empowered with the duty of bringing New Zealand and the Māori under British authority through the Treaty of Waitangi. The ineffectiveness of asserting Māori sovereignty on the international stage was characterized by the French negation of the Declaration by their founding of a colony at Akaroa on the South Island. Hobson, the British Crown and the Māori rangītira through the treaty established English sovereignty over the islands and set in motion a debate concerning Māori self-determination which continues today.

The Treaty of Waitangi is a model of simplicity. With its three simple articles and introduction, the continuing impact of the Treaty appears out of balance with the brief nature of its text. Though brief, the Treaty is profound in its implications for sovereignty, self-determination and governorship. Perhaps the most profound impacts generated by the Treaty have come from the interpretations of its Māori language text. The Treaty is the first and only colonial treaty to be legally binding in both the language of the colonizer, English, and the
colonized, Māori. From the 1840’s to the present, it has been the interpretation of
the Māori text which has produced most of the conflicts between Māori and
Pākehā.

There are two specific issues within the text of the Treaty that are of
significance for this discussion: first, the establishment of English government and
law over the islands, outlined in the preamble and articulated in the first article
and second, the retention of Māori “chieftainship over their land, villages and all
their treasures” stated in the second article. (Kawharu 2002) Both the English
and Māori texts are clear in that the Crown would be granted
governorship/kāwanatanga over the islands. This is generally recognized as the
exercise of sovereignty and includes as the original text states “the necessary
Laws and Institutions alike.” (Kawharu 2002) The granting of sovereignty over
the islands to the English demonstrates that Māori claims to sovereignty
articulated five years earlier in the Declaration of Independence had failed to
secure their self-determination within the international arena. If Māori claims to
sovereignty had failed and the governorship of the islands had been granted,
through the treaty to the Crown, then what level of self-determination was left to
the Māori in their retention of chieftainship and how does this lead to present day
discussions of self-determination?
This question has been central to Māori claims to self-determination over land and resources since 1840. The retention of chieftainship, the principle of partnership between Māori and Pākehā and the Māori status as tangata whenua, or the original inhabitants of the land, left Māori with the expectation of self-determination over their own affairs within a British governed New Zealand. (see Durie 1998a) Instead the century following the signing of the Treaty brought the alienation of over 95% of Māori lands, the invasions of the Waikato, Taranaki and the Bay of Plenty and a dramatic decline in the Māori population brought by both warfare and introduced diseases. (see Stokes 2002; Fleras and Spoonley 1999) To add insult to grievous injury, in 1877 Judge Prendergast ruled that the Treaty of Waitangi was a nullity thus rendering all legal protections for Māori found within the Treaty void. (Fleras and Spoonley 1999: 62) With the loss of the vast majority of their lands, legal protection under the treaty, and a significant decline in population, it would seem that Māori could no longer lay claim to any measure of self-determination over their own affairs.

Several changes to the status of Māori brought significant changes to what had seemed a resigned acceptance to the losses suffered during the century following the signing of the Treaty. First, after reaching its nadir in the 1920’s, the Māori population began a significant rebound; second, more Māori were
moving from rural areas into the cities, and third, the political influences from the
civil rights movement in the United States began to have an influence on Māori
calls for their own civil rights. (see Ballara 1986; Schwimmer 1968) Māori calls
for redress to land loss, poverty and cultural deprivation disrupted the Pākehā
perception of racial harmony. The Land March of 1975, the occupations at
Bastion Point at Raglan in 1978 and 79 and the publishing of a text by Donna
Awatere on Māori Sovereignty brought the anger of Māori to the forefront of New
Zealand politics. (Fleras and Spoonley 1999)

Māori calls for redress were based in the principles and language of the
Treaty of Waitangi. While the New Zealand courts had found the Treaty to be a
nullity, Māori continued to find within the Treaty an avenue for addressing the
grievances brought about by the effects of British colonial administration and the
New Zealand settler lead government. (see Sharp 1997) The re/acknowledgement
of the Treaty’s importance came in the midst of Māori activism with the Treaty of
Treaty’s legal standing and with it an avenue was opened to address the
grievances of the past and provide at least a glimmer of hope for future
developments of Māori sovereignty over their own affairs. As a part of the Act,
the Waitangi Tribunal was established to address grievances against the Crown and its agents.7

The Waitangi Tribunal has aided Māori claims and redressed long held grievances against the Crown and Pākehā settlement of New Zealand. While many of the Tribunal’s claims have dealt with land claims and the deprivation caused through the loss of lands and resources, several have dealt with other issues related to the preservation of other Māori taonga. Two notable examples include a claim that the Crown had sought to deprive Māori of their language, recognizing language as a cultural treasure (Waitangi Tribunal. 1989) and a claim that the radio frequencies owned and sold to broadcasters by the Crown were resources jointly owned with the Māori community. (Waitangi Tribunal. 1990)

These claims have had broad ranging effects on New Zealand society including the establishment of the Māori language along with English as the official languages of New Zealand; an inclusion which has allowed for the use of the Māori name of the country, Aotearoa.

Another important task taken on by the Tribunal has been “in developing another jurisprudence to which it is hard to give a name: oracular, and oriented to

7 The original mandate given to the Waitangi Tribunal through the Treaty of Waitangi Act 1975 was limited to addressing modern grievances against the Crown. The Act has been revised
the future, yet a jurisprudence which sought retroactively to construct a
‘fundamental law’ for New Zealand based on the transactions of 1840.” (Sharp
1997: 167) This jurisprudence, based on the ‘principles of the Treaty of
Waitangi’, is vague in content, allowing the courts to apply common law to
“decide what precise (legal) ‘rights’ the Treaty might now be taken to have
implied in speaking of ‘sovereignty’ and ‘rangatiratanga’ for instance.” (emphasis
original Sharp 1997: 167) This fundamental law, based on the ‘principles’, now
stands as a test and measure for all existing and new legislation.

In general, the Waitangi Tribunal has dealt with the redress of past wrongs
and only recently has begun to recognize and address the deprivation caused by
historical losses to the Māori. But as Fleras and Spoonley recognize, “[t]he
continuance of rangatiratanga rights do more than redress historical grievances;
they endorse the right to establish innovative patterns of belonging that challenge
the once uncontested ground rules of an absolute state.” (Fleras and Spoonley
1999: 27) But this begs the question, how does one define these rangatiratanga
rights in modern day New Zealand/Aotearoa?

several times, most notably in 1985 to allow the Tribunal to address Māori claims back to its’
signing in 1840.
The rangatiratanga rights referred to in the Māori language text of the Treaty were vested in the mana of the rangatira of the hapū or iwi. (Durie 1994)

These rights were the basis for political autonomy within Māori society. Some have gone so far as to interpret the rangatiratanga rights reserved by Māori in the Treaty as “reserving to themselves ultimate power, or sovereignty (tino rangatiratanga) and that they were delegating a lesser form of power (kawanatanga) to the Crown.” (Mikaere 2000: 9) While it is perhaps impossible to know the interpretation Māori rangatira signing the Treaty in 1840 gave to these terms, it has been clear through the actions of settlers and colonial agents that the Crown considered its power to be an absolute sovereignty.

Fleras and Spoonley observe in seeking a definition for tino rangatiratanga that “[t]he concept itself is an intangible, which cannot be seen or touched, much like the nature of power or sovereignty.” (Fleras and Spoonley 1999: 27) Despite its intangibility, Māori self-determination can be identified through the evidence of its exercise. Inspired by the work of an American First Nation’s scholar Kirke Kickingbird, Fleras and Spoonley have developed this definition; “Tino Rangatiratanga is the supreme power from which all specific powers related to self-determination derive their legitimacy or effect.” (Fleras and Spoonley 1999: 27; see also Kickingbird 1984)
The tangible exercise of *tino rangatiratanga* is the quest of Māori seeking to reinstate the partnership established by the Treaty of Waitangi. One major obstacle to the exercise of Māori self-determination is the continuing perception of absolute power being held by the Crown thus allowing little or no room for the expression of Māori *rangatiratanga* rights. The search for balance between the exercise of the Crown’s sovereignty and the exercise of Māori self-determination to its fullest extent is the quest envisioned by biculturalism. Fleras and Spoonley describe the condition of New Zealand society in the midst of this bicultural quest:

Such a state of uncertainty and expediency is likely to persist until such time as conventional thinking accepts a ‘recalling’ of Aotearoa as a partnership between two consenting peoples, both of whom are sovereign in their own right, yet inextricably interlocked as partners in jointly exploring post-sovereign possibilities. (Fleras and Spoonley 1999: 78)

The exploration of these ‘post-sovereign’ possibilities continues to dominate New Zealand politics, legal interpretations and social discourse. One primary area in which *rangatiratanga* rights are exercised is within the arena of resource management. Much of the rest of this dissertation is the search for evidence of the exercise of these rights.
Conclusion

As the haka quoted at the beginning of this chapter articulates, Aotearoa/New Zealand is a land born of the relationship of two groups of strangers. Polynesians with a common language and similar cultural values have become Māori in the face of the influx of English strangers who have become Pākehā through their contact with the Māori. Two strangers have become neighbors, sharing the lands of Aotearoa/New Zealand and involved in an on-going relationship.

As Pratt observes though, in colonial settings these “on-going relations, usually involv[e] conditions of coercion, radical inequality, and intractable conflict.” (Pratt 1992: 6) The colonial encounter of New Zealand is no exception and the partnership proposed through the Treaty of Waitangi has failed in the face of dispossession, deprivation and inequality. Pākehā New Zealand has refused to share the land with its original inhabitants leading to a near collapse of Māori culture.

In the face of more than a century of dispossession Māori have begun to assert their Treaty preserved right to self-determination. The exercise of this right has forced Pākehā New Zealand to respond to calls for partnership with Māori, a
partnership which requires a co-eval sharing of the lands and resources of the state. So far Pākehā responses to this call for partnership have fallen short of the full sharing of resources and power sought through biculturalism, but yet the exercise of Māori self-determination leaves its evidence on the landscape of Aotearoa/New Zealand.
Chapter Three

BICULTURALISM: A THIRDSpace OF INDIGEnOUS SELF-DETERMINATION

"Newcomer governments claim to be forging historic new relationships with indigenous nations, relationships based on mutual respect, sharing, sovereignty, and our inherent rights. Economic development, modern treaties, self-government, compacts, revenue-sharing, and co-management have become the watchwords of the 'post-colonial' age. But beyond the words, is the promise holding?"

Taiaiake Alfred

Introduction

Under the title, "One Nation, Two Partners, Many Peoples," Jim Anderton, Deputy Prime Minister under New Zealand's Labour/Alliance government, described his vision of how biculturalism and multiculturalism might find their fulfillment within the context of liberal democracy in Aotearoa/New Zealand. (Anderton 1996) However, liberals consider the aims of biculturalism, a partnership between Māori and the crown, as antithetical to the supremacy of individual rights within a liberal democracy. This search for an avenue through

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which Indigenous rights might be expressed pushes us beyond multiculturalism toward other options.

The first aim of this chapter is to investigate multiculturalism and its development over the past several decades in recognizing the political and economic ambitions of ethnic minorities. While multiculturalism's efforts to recognize the rights of minorities within polyethnic states offers the appearance of supporting the group rights sought by Indigenous activists, its inevitable failure in the face of liberal democratic opposition to addressing the needs of national minorities will become apparent as we probe the distinct struggles faced by ethnic and national minorities. With the failure of multiculturalism to provide a foundation for Indigenous rights, some, particularly in New Zealand, have described a biculturalism which would recognize the unique relationship between Indigenous inhabitants and settlers.

The second goal of this chapter is to explore biculturalism in Aotearoa/New Zealand as a (post)liberal alternative to the failures of multiculturalism in addressing the sovereignty claims of Indigenous peoples as national minorities. Biculturalism recognizes Indigenous peoples as partners with colonizers in the exercise of sovereignty within settler-states and thus recognizes the rights of Indigenous peoples to the exercise of self-determination in the areas
of cultural preservation, resource management and the protection of land. It is primarily this aspect of biculturalism which is having an observable effect on the landscape of New Zealand and offers the greatest hope for other Indigenous peoples around the world.

Lastly, this chapter will explore the current literature (and beyond) for theoretical discussions of places/spaces which, like biculturalism, exist outside of the dialectical relationship between colonizer/colonized. This exploration will take us through borderlands, margins and finally to thirdspace in search of options for a geographic, place-based discussion of the exercise of Indigenous self-determination within the multi-nation settler-dominated state.

**Multiculturalism**

The development of the state and the corresponding international laws and norms associated with the majority of the world's liberal democracies have a long history based in European thought. International legal scholars trace this progression generally beginning with the Treaty of Westphalia of 1648, crediting this treaty with the formation of the modern state. (see Anaya 1996; Kymlicka 2001; Lâm 2000) The recognition of individual states, freed from the constraints
of the Papacy and the Holy Roman Empire began a transformation of international politics and law.

The French Revolution of 1789 is generally credited with the next advancement in the formation of the state, the recognition that the sovereignty of the state was based on its people and not on the King. Of course this revolution followed the formation of the United States which has been argued by some to be the true precedent setting event. (Anderson 1991) Both revolutions dispelled the magical/sacred notion that the royalty ruled by divine right, replacing this magic with an ideal of sovereignty held by the people and represented in the elected government of the republic. (Lâm 2000: 90; see also Anaya 1996) Of course France was not a unified single nation at the time of its revolution. Then as now, France is made up of many nations, Bretons, Basque, Gascons and so on. Only through the efforts of state-building, based upon a standardization of the core vernacular, has there evolved a core of French identity at the center of the French state. Nonetheless, those nations with the most cultural and linguistic dissimilarities from the French core have maintained their unique cultural identities in the face of the state-building project.

Borrowing from Benedict Anderson’s *Imagined Communities*, I define the state as “an imagined political community – and imagined as both inherently
limited and sovereign." (Anderson 1991: 6) Anderson observes that the state is imagined “because the members of even the smallest [state] will never know most of their fellow-members, meet them, or even hear of them, yet in the minds of each lives the image of their communion.” (Anderson 1991: 6) Further the state is limited because while this ‘image of communion’ may be shared by the members of any particular state, no state lays claim to the whole of humanity and is thus bounded by this limitation. Finally, a state is sovereign by virtue of its participation in the international system, recognized as a sovereign unit by the other over 190 states.

Anderson describes these imagined communities as nations, failing to recognize the distinctions which exist between nations and states. As described in Fourth World theory, a state represents a centralized political system with recognized civilian and military bureaucracies established to enforce a unitary set of institutions and laws within its boundaries. (see Stea and Wisner 1984; Seton 1999; Nietschmann 1994; 1987; Manuel and Posluns 1974) Nations on the other hand, while not as easily defined as a state, are a people with a distinct culture evolved over time; bounded together by such common attributes as ancestry, history, society, institutions, ideology, language, territory and religion. (Nietschmann 1994: 261) “Nations are, thus, self-defining and are created by a
sense of solidarity, a common culture, a historically common territory and a
national consciousness.” (Seton 1999: 6) I believe that this distinction is of
fundamental importance in any discussion of the rights of Indigenous peoples.

As Anderson describes, a major component of state-building, particularly
following the French Revolution, has been the connection of the ethnic core of the
state to its shared vernacular. (Anderson 1991: 67) Within the multi-national state
though, those who did not share a linguistic connection with the form of the
language that evolved in print media found themselves at the edge of the state­
building project, often the focus of assimilationist projects. The destruction of
languages, and the cultural structures expressed through these languages, has
assisted states in assimilating minority national groups.

Often accomplished through the educational system, the assimilation of
national minority groups in Europe has been mirrored by similar efforts to
assimilate Indigenous and non-Anglophone immigrant populations in the settler­
states of Australia, Canada, New Zealand and the United States. The failure of
European states efforts to assimilate and control national minority populations is
widely considered the precipitating event at the beginning of World War I and
played a significant role in the German invasions of Poland and Czechoslovakia at
the beginning of World War II. (Kymlicka 1995: 57) The significance of national

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minorities in European politics made the issue of central importance to the League of Nations following World War I. The protection of national minorities led the League to create a series of treaties by which two states with national populations residing in the territory of the other state might sign a pact of mutual protection for their isolated ethnic population. With the rise of the Nazi government in Germany, the supposed failure of treaties signed to protect ethnic German populations in Poland and Czechoslovakia were used as a pretense for the invasion of Silesia and the Sudetenland.

The participation of German ethnic minority populations in assisting Nazi expansionism led many post-war statesmen to reject continuing protections for national minorities. The curtailing of minority rights was not undertaken in an effort to extract justice but instead in an effort to protect the stability of the nation-state. (Kymlicka 1995: 57) As expressed by one political scientist writing in the post World War II era, “[the majority nationality] has an interest in making the national state secure, and its institutions stable, even at the cost of obliterating minority cultures and imposing enforced homogeneity upon the population.” (Claude 1955: 80-1)

At the same time that international law and the United Nations were supporting the liberation and sovereignty of the ‘salt-water’ colonies of Europe
across Africa, Asia and the Pacific it was also denying the rights of national minorities not separated by ocean from the national core of the state. (Lâm 2000; see also Wilmer 1993) Peoples who had begun to see some protections under international law between the World Wars now found themselves without protection and open to renewed assimilationist efforts. (Kymlicka 1995) This denial of minority rights did not in fact lead to the wholesale assimilation of these groups; instead the denial of rights to groups within the core of the state while the colonies were gaining their independence simply led to stronger demands by minority nationalities.

The pressure of post World War II calls for an increased recognition of the rights of national minorities spread to other groups. Generally it is recognized that this spread began with the desegregation and voting rights movement in the United States. (see Kymlicka 1995) Through this movement the rights and recognition of first African-Americans, followed then by a vast array of other ethnic groups, began a movement to protect the equal rights of individual members of these groups. The constraints of liberal democracy confined these calls largely to the level of individual rights, avoiding as much as possible calls for collective rights. Equal individual rights can be supported so long as the continued supremacy of the core state language and culture are preserved. Equal
voting rights, a recognition of civil rights for all citizens of the United States, have been accepted so long as minorities continued to speak English and allow Anglophone American culture and capitalism to predominate. (Day 2001; Kymlicka 1995)

The equal rights movement which began with the African-American community began to catch the interests of other groups and grew into a multicultural movement. This fledgling multiculturalism started to have an influence on groups outside of the United States initiating what has become an international multicultural movement with distinct characteristics in different states and regions. (Johnston 1995) Ethnic minorities, especially in states with large immigrant populations, began calling for both protection of their right to equal access to the benefits of citizenship and for recognition of their unique cultural distinctiveness. These calls for specific recognition though run contrary to the post World War II aims of states avoiding any specific acknowledgement of ethnicity especially where this recognition might threaten the continued unity of the state around the majority cultural core.

Will Kymlicka in his book *Multicultural Citizenship*, critiques the generalizations made within the arguments both for and against multiculturalism,
recognizing that the broadly defined term covers many different types of groups.

Kymlicka recognizes that there are in fact two broad patterns of cultural diversity. In the first case, cultural diversity arises from the incorporation of previously self-governing, territorially concentrated cultures into a larger state. These incorporated cultures, which I call ‘national minorities’, typically wish to maintain themselves as distinct societies alongside the majority culture, and demand various forms of autonomy or self-government to ensure their survival as distinct societies.

In the second case, cultural diversity arises from individual and familial immigration. Such immigrants often coalesce into loose associations which I call ‘ethnic groups’. They typically wish to integrate into the larger society, and to be accepted as full members of it. While they often seek greater recognition of their ethnic identity, their aim is not to become a separate and self-governing nation alongside the larger society, but to modify the institutions and laws of the mainstream society to make them more accommodating of cultural differences. (Kymlicka 1995: 10-11)

Within multiculturalism, the calls for rights by both national minorities and ethnic groups coalesce with similar calls by women, gays and lesbians. (Day 2001: 74) Despite often vastly different agendas, these groups are frequently lumped together as if one remedy will suit all situations. It is no wonder then that the calls of Indigenous populations often fail to gain much attention in the midst of so many various groups’ demands, especially in states where Indigenous populations constitute only a few percent of the total population.
Most states in the world face the dual difficulty of being both multinational and polyethnic. For example, New Zealand’s multinational status is based on the founding treaty relationship between Māori and the English Crown, which is a contract between two national groups. Over the intervening years though, immigration has brought many different non-English ethnic minorities to the country, particularly Pacific Islanders, Turks and more recently East Asians.

Of course the issues of all national minorities are not the same worldwide. While often lumped together under many international fora, the issues of national minorities in Europe and even a few in the Americas are distinct from the issues of Indigenous peoples. In Politics in the Vernacular, Kymlicka defines this distinction; “[a]s a rule, stateless nations were contenders but losers in the process of European state-formation, whereas indigenous peoples were entirely isolated from that process until very recently, as so retained a pre-modern way of life until well into this century.” (Kymlicka 2001: 122) While not intending to ignore the similarities that do exist between diverse national minorities, I think it is important to recognize that differences do exist in the political and economic situations faced by Inuit, Māori and American Indians versus those faced by the Welsh, Basques and Québécois.
One of the most profound differences, articulated by very few authors, is the economic disjunction faced by many Indigenous communities. These communities, as Kymlicka has observed, are only recently transitioning from pre-modern economic conditions. The economies of many Indigenous communities remain based on hunter-gatherer or other types of communal property regimes. (Brody 2001; Day 2001) Since, as Richard Day notes in his article on Indigenous issues in multiculturalism, “[l]iberalism has strong historical affinities with the capitalist system of states, which it tends to either assume as a natural backdrop to human life, or to applaud as the inevitable outcome of human evolution,” Indigenous claims for self-determination which support non-capitalist economic systems create an even greater threat to the survival of the state than is present in the claims of stateless nations. (Day 2001: 187)

The criticism that Kymlicka makes of multiculturalism that I want to reiterate here is two-fold; first, multiculturalism attempts to address the issues of too many groups with vastly different agendas/needs and second that addressing the individual rights of members of these groups may be sufficient for ethnic minorities but collective rights may be necessary to address the needs of national minorities including Indigenous peoples. This critique is not new to Kymlicka as it has been articulated by a few Indigenous authors, but Kymlicka is the first to
thoroughly critique the whole of multiculturalism and its deficits particularly in regards to Indigenous peoples. (see Corntassel and Primeau 1995; Durie 1998a; Jackson 1995a; Johnston 1995; Maaka and Fleras 2000; Mikaere 2000; Verne 1998) A third critique of multiculturalism which Kymlicka neglects is voiced by the Indigenous scholar M. Annette Jaimes Guerrero in her article, “Academic Apartheid: American Indian Studies and "Multiculturalism."” In the article, Guerrero states that “[f]or American Indians, there is a substantial case to be made for the necessity of decolonization before any genuine multiculturalism can take place.... Putting decolonization before multiculturalism would ease the tension produced by the mandated policies of assimilation and marginalization to which Native peoples have been subject in the process of their colonization.” (emphasis original Guerrero 1996: 49-50) What form the decolonization suggested by Guerrero would take is unclear, but I assume from her other references in the same article that she is primarily referring to a decolonization of our educational system. A decolonization which would not only remove the assimilationist elements from the educational systems of Indigenous youth but also effect the education of non-Indigenous youth in recognizing the continuing colonial nature of the white settler-states.
Narrowing this discussion, the primary critique of multiculturalism I want to focus on here is the struggle between individual and collective rights. This struggle between the collective rights called for by Indigenous communities and the individuals rights supported by liberal multiculturalism is perhaps the greatest hindrance for Indigenous self-determination faced in white settler-states. Mary Ellen Turpel, writing specifically about Canada, observes, "[t]he collective or communal base of Aboriginal life does not really, to my knowledge, have a parallel to individual rights: the conceptions of [Canadian and Aboriginal] law are simply incommensurable." (Turpel 1989-90: 30)

If it is true that the conceptions of rights based in Western and Indigenous conceptual frameworks are incommensurable, than what hope does liberal multiculturalism hold for Indigenous self-determination? As noted before, the issues of Indigenous peoples are often lost in the midst of multicultural debates, only really being addressed by a few scholars writing on the issue. A review of three authors, Kymlicka, Taylor and Day, and their approaches to Indigenous rights within multiculturalism will demonstrate the variety of approaches taken within this issue and perhaps demonstrate why New Zealand critics have chosen to embrace biculturalism as an alternative to multiculturalism. (Taylor 1994; Kymlicka 1995; 2001; Day 2001; 2000)
The ideal of individual rights is deeply imbedded in the Western liberal tradition. Despite a desire to embrace the ‘recognition’ and ‘self-determination’ of Indigenous communities, Kymlicka and Taylor both struggle with how to include collective rights for Indigenous communities without trampling the individual rights of the rest of society. (Kymlicka 1995; Taylor 1994) Taylor for his part embraces Herder's notion that all humans have an original way of being human. (Taylor 1994: 30) Our unique way of being human may also be attached to our group identity; female, German, working-class, gay or Māori. For Taylor the primary issue is our need for recognition of our uniqueness and a positive reflection back to us from the society around us, embracing our differences. (Taylor 1994: 25) He recognizes that “since 1492 Europeans have projected an image of [Native Americans] as somehow inferior, “uncivilized,” and through the force of conquest have often been able to impose this image on the conquered.” (Taylor 1994: 26) For Taylor the issue of Indigenous rights is consumed by a need to reverse the damage caused by misrecognition, similar perhaps to Guerrero’s call for educational decolonization.

Like so many other authors though, Taylor seems hard pressed to provide concrete examples of how the misrecognition suffered by Indigenous peoples is to be reversed. He seems to side with many others who, while desiring to assist
Indigenous communities in overcoming the devastation caused by more than 500 years of colonialism are yet more concerned with the preservation of the international state system. Taylor’s response to Indigenous self-determination is for a devolution of certain self-government functions while still maintaining the ultimate sovereignty of the state and its cultural core. (Taylor 1994: 40; Taylor and Laforest 1993: 30)

While Taylor does at least address the concerns raised by Indigenous peoples, his call for devolution of government functions to Indigenous communities as local government subdivisions is common in liberal democracies today. (Kymlicka 1995: 30) Devolution leaves the Indigenous community with some increased decision making capacity but confined by the continued control of the state and often without sufficient funding or capacity to carry out the mandated service being devolved. In addition, the functions devolved are contained within the legal and economic system of the state and based on the values of its cultural core.

Kymlicka, unlike Taylor, recognizes that the discourse surrounding multiculturalism is confused and unproductive because of the inclusion of so many different minority groups within one rights discourse. (Kymlicka 1995: 10) Kymlicka sees beyond the ‘politics of recognition’ proposed by Taylor to the
specific, collective needs of Indigenous communities in order to protect against
the dispossession of land and resources and the disappearance of language and
cultural institutions. Kymlicka believes in fact that it is not the historical
mistreatment of Indigenous communities that is leading the international
community toward embracing Indigenous rights but their cultural distinctiveness.
“Indigenous peoples do not just constitute distinct cultures, but they form entirely
distinct forms of culture, distinct ‘civilizations’, rooted in a premodern way of life
that needs protecting from the forces of modernization, secularization,
urbanization, ‘Westernization’, etc.” (Kymlicka 2001: 128-9) Recognizing that
Indigenous communities need the assistance of the international community in
protecting languages, cultures and the land base that supports these communities,
Kymlicka proposes international recognition for Indigenous self-determination.
He applauds the Draft Declaration for Indigenous Rights and supports its full
implementation by the United Nations. Still, like the majority of political theorist,
Kymlicka cannot conceive of a dramatic alteration to the state system which has
oppressed and neglected the rights of Indigenous peoples.

Kymlicka recognizes that Indigenous peoples deserve a differentiated
form of citizenship which recognizes and protects cultural differences. (Kymlicka
1995: 26) Unfortunately while I agree with Kymlicka that Indigenous peoples do
deserve the protection that collective rights would insure. I do not agree with his reasoning for why these groups deserve protection. Certainly Indigenous cultures do constitute unique civilizations which have an intrinsic value to humanity if not only in the knowledge held within their epistemologies. My apprehension is that protecting these cultures is Kymlicka’s primary concern, above protecting their right to self-determination, and that his language places this argument into an all too familiar discourse which Johannes Fabian has identified as ‘temporal distancing’. (Fabian 1983: 30) Kymlicka is arguing that Indigenous communities need to be protected from ‘modernization, globalization, Westernization, etc.’ but this merely serves to keep these same communities from making the crucial decisions required for their own survival by saying that their uniqueness will disappear if they should choose to embrace modernization. Indigenous peoples are political groups, with cultures which may be unique, but the reason for protecting their collective rights and recognizing their right to self-determination is their preeminent claim to the lands currently occupied and controlled by the settler-states. Self-determination does not equal paternalistic ‘protection’ of cultures frozen in time and not allowed to speak with a modern voice.

Richard Day in his article “Who is this we that gives the gift? Native American Political Theory and The Western Tradition,” hits upon many of my
same critiques concerning Taylor and Kymlicka’s works. (emphasis original Day 2001) The central question raised in the title to his article, “Who is this we that gives the gift?” hits upon the issue concerning who has the power to grant self-determination to a people and who qualifies under international law as a politically recognized group capable of holding this right? Day recognizes that many Indigenous peoples continue to assert, and have maintained an assertion of their self-determination through the many centuries of European colonialism. These Indigenous nations, such as the Mohawk that Day mentions and several different *iwi* and *hapū* in New Zealand assert “a path to self-determination that involves neither a recovery of a partial remnant of a sovereignty lost in the past, nor a futural project of a totalising nation-state.” (Day 2001: 184) These nations assert that they had sovereignty over their territories when Europeans arrived and have continued to assert their sovereignty ever since.

Certainly whether or not Indigenous nations have continued to assert their sovereignty Day recognizes that they continue to have the right to self-determination. One of the primary arguments articulated through liberal multiculturalism and found in the writings of Kymlicka and Taylor is a support for cultural pluralism. This pluralism recognizes that while there is a cultural core to the state there are also several other groups requiring recognition by the
bureaucracy of the state. Through pluralism these groups may find recognition within the structure of the state. Day acknowledges that many Indigenous authors envision parallel expressions of self-determination allowing the settler-state and the Indigenous nations the right to form separate institutions to govern their lands and citizens even where overlapping claims exist. (Day 2001: 187) Day draws upon a Mohawk description of the historical agreements between the Mohawk nation and European settlers known as the Gus-Wen-Teh or Two Row Wampum. The Wampum symbolizes the Mohawk understanding of the treaty agreements signed between the tribe and European nations. The Wampum, as described by Grand Chief Michael Mitchell, has two rows of purple shells separated by three beads symbolising peace, friendship, and respect. These two rows will symbolise two paths or two vessels, travelling down the same rivers together. One, a birch bark canoe, will be for the Indian people, their laws, their customs and their ways. The other, a ship, will be for the white people and their laws, their customs and their ways. We shall each travel the river together, side by side, but in our own boat. Neither of us will try to steer the other’s vessel. (cited in Day 2001: 190)

This description of parallel and separate systems is common not only in the writings of Native American authors but can also be found among Māori writing on issues of self-determination in Aotearoa/New Zealand. (Jackson 1990;
The bicultural nature of the description of the two rows of Wampum and its implicit critique of liberal multiculturalism leads to a discussion of one particular option which has gained an upper-hand in discussions of cultural difference and Indigenous self-determination in New Zealand.

**Biculturalism**

The first use of the term ‘biculturalism’ in reference to New Zealand society has been credited by Jeffrey Sissons to Erik Schwimmer’s introduction to a 1966 text, *The Maori People in the Nineteen-Sixties*. (Sissons 1995; Schwimmer 1968) Schwimmer, who was adapting a Canadian concept used to describe the relationship between Anglophone and Francophone Canadians, acknowledged that the use of the term in describing a new conceptual framework for relations between Māori and Pākehā required a dramatic redefinition. Schwimmer recognized that, “[t]o a significant extent, there are in New Zealand two distinct social groups and two distinct cultures in frequent intensive contact with one another.” (Schwimmer 1968: 9) Schwimmer married biculturalism with a concept developed by the American sociologist Talcott Parsons: inclusion. Biculturalism, defined as a conscious joining of Pākehā-European society with aspects of Māori culture, could not succeed in his opinion, without the full
inclusion of Māori into New Zealand society. He envisioned this inclusion, borrowed from Parsons, as including three basic requirements; “The first of these are equal civil rights. The second is a full sharing in the pursuit of collective goals of the society – in the processes of government and the exercising of power. The third requirement is equality of the resources and capacities necessary to make ‘equal rights’ into fully equal opportunities.” (Schwimmer 1968: 11)

Schwimmer’s text perceived the beginnings of a civil rights movement in New Zealand similar to the movement by African Americans in the United States, and indeed much of the Māori protests which took place over the decade following the books’ publication did bear a resemblance to civil rights protests in the United States. But Schwimmer envisioned something more than just civil rights. He envisioned an alteration to New Zealand society, beginning with “a basically European one which has been given a Polynesian twang by the adoption of certain variants which are still reconcilable with the main lines of European development.” (Schwimmer 1968: 19) Biculturalism has moved dramatically beyond this initial point. This description by Schwimmer though illustrates the comfort level most Pākehā New Zealanders currently have with the concept of biculturalism.
The ebb and flow of the discussion surrounding biculturalism in New Zealand has taken the term from its largely academic beginnings to the level of a nation-wide political debate. Biculturalism became official government policy through the State Sector Act 1988, in which Section 56 requires that chief executives within government agencies recognize the aims, aspirations and employment requirements of Māori. (Kelsey 1996: 185) Margaret Wilson and Anna Yeatman observe that, "[a]lthough biculturalism is inevitably contested territory, it has found official acceptance and become the policy of government departments and publicly funded institutions, including universities." (Wilson and Yeatman 1995: vii-viii) Defining what biculturalism means in present day New Zealand is much more complicated than simply returning to Schwimmer’s 1966 definition.

Table one illustrates the multiple definitions of biculturalism currently being supported and debated across Aotearoa/New Zealand. (Table 1) This multiplicity of biculturalisms contributes to a confusion regarding which manifestation any individual or group is supporting in their particular discourse. The table shows the breadth of meanings which continue to be supported and debated by different segments of New Zealand society. Unfortunately though, biculturalism rarely lives up to the standards which many Māori and Pākehā have
ascribed to it. Fleras and Spoonley state, “biculturalism may mean a lot of things, but it seldom means Māori claims for tino rangatiratanga rights.” (Fleras and Spoonley 1999: 239) Without a strong commitment to Māori self-determination and an honest re-working of colonial institutions, biculturalism ends up as little more than a multiculturalism with a particularly Māori bent. It should be remembered though that not all New Zealanders support biculturalism even in its ‘softest’ version and that there does continue to be a conservative segment of the country maintaining the Crown’s unimpeded sovereignty. Malcolm MacLean observes that, “[t]he Maori advocacy of biculturalism is premised on a notion of power sharing which Pakeha simply do not or can not accept.” (MacLean 1996: 114) Based upon the liberal democratic principles expressed through multiculturalism, “Pakeha ideology holds that equality [already] exists.” (MacLean 1996: 114)
Table I - A bicultural commitment: goals and structures

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<tr>
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<th>‘Soft’</th>
<th>Moderate</th>
<th>Inclusive</th>
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<td>Goals</td>
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<td>improving race</td>
<td>partnership</td>
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<td>Tino rangatiratanga:</td>
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<td></td>
<td>Māoritanga</td>
<td>relations</td>
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<td>equal</td>
<td>challenging the system</td>
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<td>Structures</td>
<td>removal of</td>
<td>a Māori</td>
<td>active Māori</td>
<td>parallel</td>
<td>Māori models of</td>
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<td>discriminatory</td>
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<td>involvement and</td>
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<td>Policy</td>
<td>mainstreaming</td>
<td>te taha Māori</td>
<td>responsiveness</td>
<td>devolution</td>
<td>He Putahitanga</td>
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Before beginning my field research in New Zealand I had read extensively on biculturalism, particularly material from its most ardent supporters. On my first day in the country I was able to witness the debate of one specific aspect of biculturalism, the establishment of a Māori television station funded by the government, discussed by pundits and political activists. The debates demonstrated that the support for biculturalism I had supposed was widespread in actuality was predominantly political and academic in nature. The reality of biculturalism that I saw demonstrated that day (and on many more days during my stay) showed that biculturalism is actually a thin veneer of rhetoric and policy attempting to cover the continuing colonial nature of the nation. The experience
served to dispel my lofty conceptions of equality in New Zealand society and
grounded my field work in the realities of New Zealand’s colonial present.

Some authors have focused the debate surrounding Biculturalism
primarily upon issues of culture. In an earlier discussion on nature I observed that
Raymond Williams has described that word as the most complicated word in the
English language. Additionally Williams describes culture as “one of the two or
three most complicated words in the English language.” (Williams 1985: 87)

Andrew Sharp observes though that “[i]f biculturalists are to speak of
biculturalism – or monoculturalism, multiculturalism – they need some
conception of what a culture is. And it is my view that when they, and not only
they, speak of there being cultures, they speak of cultures in two distinguishable
ways.” (Sharp 1995: 117) Sharp describes these two conceptions of culture used
by biculturalists; “at times as ideal realities, separate, incommensurable, and self-
justified; at others as ensembles of detailed custom and habitual activity, played
upon by current realities and permeable at the edges, capable of absorbing ideas,
and people, from the outside.” (Sharp 1995: 119) These two concepts of culture,
one essentialized, one non-essentialized, coexist at times in the same discussions
of biculturalism and can create confusion for anyone attempting to grasp the
complexities of the arguments for adopting biculturalism within New Zealand
society. Personally, I agree with Sharp when he criticizes an overly essentialized conceptualization of culture in that “[i]t mistakes the nature of human rationality and is too pessimistic about the possibility of translation across cultures and ‘conceptual schemes’.” (Sharp 1995: 118) Without the possibility of ‘translation across cultures’ there can be no biculturalism.

The creation of a bicultural society requires the participation of both Māori and Pākehā at the individual, community and national levels. (Sharp 1995: 120) Being bicultural has been increasingly required of Māori since the beginning of British colonialism in New Zealand. Survival was often predicated on a Māori’s understanding of the hegemonic colonial discourse. Since British sovereignty was established over New Zealand through the Treaty of Waitangi and the several wars fought to assert that sovereignty by force, Pākehā have been in a position to also assert cultural superiority. Culture has been one of the tools used by the British to gain political power and influence over the Māori. (see MacLean 1996) Today’s British descendent has no need either to articulate his own culture or to gain any understanding of Māori culture because his cultural, political and economic power is absolute, or is it?

As Māori pursue cases before the Waitangi Tribunal they increase their political, cultural and economic power. This increase in Māori power is perceived
by Pākehā to come at the expense of their own dominance. It is perhaps the perception of their decline in power which brings more Pākehā to appreciate a need for a bicultural sharing of the resources of Aotearoa/New Zealand. Whatever impetus moves Pākehā toward biculturalism, the question remains, how does an individual, institution or nation become bicultural?

The first step toward becoming bicultural is making a decision that biculturalism will aid in building a society with full sharing in the processes of government. Since Māori have been forced into biculturalism from the time when British colonialism began in the islands, the decision is left to Pākehā. Several books and videos have been produced to aid Pākehā in understanding the process of becoming bicultural. (Joint Methodist/Presbyterian Public Questions Committee (N.Z.) and Presbyterian Church of Aotearoa (New Zealand). Communication Dept. 1994; MacLean 1996; Ritchie 1992; Sharp 1995; Stokes 1998; Vasil 1988; Walker 1986; Collins and New Zealand Film Commission. Short Film Fund. 1990) The concepts which aid Pākehā in becoming bicultural can be broken down to three key concepts; recognition, respect, reciprocity.

Recognition entails not only Pākehā recognition of Māori as sovereign partners but also recognizes a Māori epistemology which is different from their own. European Enlightenment precepts have denied the existence of Indigenous
epistemologies. (Smith 1999: 22) When Indigenous culture has been recognized by the West it has only been as an object of study. The recognition required to achieve biculturalism is a recognition of equality instead of subjectivity.

Recognition seems like a simple step but in reality it requires Pākehā to acknowledge and relinquish the cultural and intellectual superiority which has typified this colonial period. The post-colonial movement in academia has begun to dismantle the Western intellectual hegemony. Translating this largely academic endeavor into a cultural movement which could actually change the relationship between Māori and Pākehā is the real challenge.

Recognition also requires that Pākehā acknowledge the existence of Māori in the everyday life of the nation. Māori face and voices need to become a constant part of New Zealand’s cultural, political and economic life. (Ritchie 1992: 11) Recognition requires an acceptance of Māori self-determination. It also requires Māori to “imagine a world in which [I]ndigenous peoples become active participants, and to prepare for the possibilities and challenges that lie ahead.” (Smith 1999: 124)

Respect may seem like the most straightforward concept of the three but it requires perhaps the greatest effort and re-education for Pākehā endeavoring to become bicultural. While recognition accepts that a Māori ontology exists
separately from Pākehā knowledge, respect acknowledges the right of this Māori ontology to share the same space and time, to be held as equal to Pākehā knowledge. Respect for Māori knowledge would mean treating it as more than an historical object of study, or as a distant oddity held far from the central concepts of Pākehā intellectuality. Respect also carries another definition for Māori, and many other Indigenous peoples, one which is built on a concept of ‘right’ relationship. A central concept for many Indigenous belief systems is the maintenance of a harmonious relationship between individuals and communities as well as between the individual and all other living beings. Linda Tuhiwai Smith states that “through respect the place of everyone and everything in the universe is kept in balance and harmony.” (Smith 1999: 120) Many Pākehā may have a difficult time accepting that an animal has a spirit, let alone that he should respect and seek a harmonious relationship with that animal, but this concept of respect and harmony is central to Māori views and influences Māori understandings of resource management.

Reciprocity is perhaps the most difficult of these three concepts to define. James Ritchie defines reciprocity using the Māori term, manaakitanga.

“Manaakitanga is reciprocal, unqualified caring. Why should I care for you? I should care for you because one day you will care for me. If I share with you the
bounty of my fish or my eel or my kumara crop, then I affirm that sense of all of us being a part of one another. The return need not be immediate. Nobody keeps count; no one expects. One only receives.” (Ritchie 1992: 75) Reciprocity seeks a balance in relationships. This balance and sharing of wealth and resources runs contrary to the accumulation of wealth assumed in a capitalist society. It requires a commitment to sharing which goes beyond that which is expected in Western society.

Reciprocity is central to any biculturalism which would seek full sharing in the processes of government and the exercise of power. Perhaps even more important though is a full sharing of the resources and capacities necessary to build a permanent equality. During most of the British history in New Zealand there has been an unequal distribution of the resources of the land. Māori have recently sought to rectify this disharmony through Waitangi Treaty claims and the assertion of kaitiaki rights through the Resource Management Act. A bicultural society would hopefully not require judicial interventions to maintain reciprocal relationships.

An understanding of key Māori cultural concepts is integral in the formation and inclusion of such concepts within New Zealand society. With an ever increasing inclusion of Māori concepts within the institutions of society, New
Zealanders are increasingly forced toward a bicultural reality. The manifestation of bicultural frameworks within legal institutions and parliamentary acts in particular demonstrates how biculturalism is concretely impacting New Zealand society.

The political discourse surrounding biculturalism is perhaps best defined as “One Nation, Two Partners, Many Peoples,” a phrase by Jim Anderton, quoted at the beginning of this chapter. (Anderton 1996) This seemingly simple phrase has guided the current and previous Labour government’s policies toward Māori. Let us take a moment to break down the phrase into its three components. “One Nation,” by itself appears to be a simple reference to the obvious, New Zealand is one nation. But this phrase stands in counter-point to some calls by Māori and others for overlapping sovereignties and bi-nationalism within the territory of New Zealand. Discussions of overlapping and/or parallel jurisdictions in the criminal system have been put forward by Moana Jackson. (Jackson and NZ Min. of Justice 1987) Calls for bi-nationalism have been articulated by Paul Spoonley and Augie Fleras, a concept I will return to briefly. (Fleras and Spoonley 1999) By pronouncing “One Nation” the government confines its articulation of biculturalism to the current system of one national sovereignty expressed through the Crown, its laws, parliament, constitution and institutions.
Through the second phrase, “Two Partners,” the government articulates its vision for official biculturalism. The government supports the view that Pākehā and Māori became partners through signing the Treaty of Waitangi in 1840. In the intervening years the importance of this partnership was lost and wrongs were committed against the Māori partners by Pākehā settlers and officials. While the Treaty itself has not been resurrected from those ‘lost years’, the government has enacted the Treaty of Waitangi Act (1975) which articulates the ‘Principles of the Treaty’ and uses these principles as guiding values within government ministries and several subsequent parliamentary acts including the Resource Management Act. The fundamental principle of the treaty is that it is upon this partnership between Māori and Pākehā that the foundation of the nation is based. Since the signing of the treaty though many non-English have immigrated to New Zealand and pushed the boundaries of this partnership and thus Anderton includes the final segment of this phrase, “Many Peoples.”

With the incorporation of immigrants from across Europe, Asia and the Pacific, the founding partnership and biculturalism itself has been forced to recognize the political clout these immigrants hold. It is within the recognition of this clout that multiculturalism has begun competing with biculturalism for attention within New Zealand society. Unfortunately multiculturalism’s focus on
individual rights frequently places all minorities in the same basket and fails to recognize the unique political status held by Indigenous peoples. Ranginui Walker voices this concern for Māori:

The Pakeha in-word ‘multi-culturalism’ has negative connotations for Maoris because it denies the basic reality of biculturalism. New Zealand is a bicultural country. The primary task of the Maori is to convert the Pakeha to recognise that reality and modify the country’s social institutions to incorporate compatible Maori values. (Walker 1987: 221)

Fleras and Spoonley criticize biculturalism failures because of its inclusion of multiculturalism and suggest a new term and focus for the debate through bi-nationalism. “In many ways, bi-nationalism in New Zealand is what biculturalism would have been had the latter not become multiculturalised (‘depoliticised’) as a form of institutional accommodation for Māori.” (Fleras and Spoonley 1999: 240)

They go on to more directly criticize multiculturalism stating that “[t]he bi-nationality at the heart of New Zealand society, which involves two founding nations and Treaty partners, must supersede the multicultural rights of immigrants. Otherwise there is a perceived danger of conflating Māori collective rights with the rights of immigrants while reducing their status as original occupants to the same level as recent arrivals.” (Fleras and Spoonley 1999: 240)

This brings us back to a central problem discussed in the previous section on
multiculturalism, how can liberal democracies accede to the recognition of collective rights by Indigenous peoples within the existing individual rights regime?

Collective rights have been invoked in certain situations where minorities have been mistreated not specifically as individuals but because of group characteristic related to gender, race or ethnicity. One example of collective rights, currently under attack in the United States, are affirmative action programs which were constructed to assist in creating equal opportunities in employment and education through racial quotas. The attacks against affirmative action have centered on majority employees and students who have been denied admission, employment or advancement and who feel that their individual rights have been denied. Finding equal footing for both collective rights and individual rights is then the challenge before liberal democracies, not only in relation to Indigenous populations but for all minority groups. Paul McHugh describes the group and inter-group relations created in liberal democracies as existing within a structuralist theoretical framework. He observes that this framework, "constructs identity and relations through membership of structures – nation, state, tribe, family...[o]nce membership is established, relations are described in terms of encounter, usually of a binary and oppositional character: the ‘family’ versus the
As Fleras and Spoonley have observed, the protection of Māori rights in exercising self-determination in the areas of cultural preservation, resource management and the protection of land requires a recognition of Māori collective rights. (Fleras and Spoonley 1999: 243) It is in recognition of this necessity of negotiating collective rights for Māori that Fleras and Spoonley put forward their bi-national framework based on what they perceive to have been the original intent of biculturalism. They define this bi-nationalism “as the formal acknowledgement of two fundamentally different peoples (or ‘nations’) as equal and autonomous, each of which is sovereign in its own right yet shares societal sovereignty by way of multiple but interlocking jurisdictions.” (Fleras and Spoonley 1999: 240) Bi-nationalism than as Fleras and Spoonley define it is a ‘hard’ form of biculturalism (see Figure 2), fully integrating Māori tino rangatiranga rights, collective rights to self-determination of jurisdiction related to land, identity and political voice. (Fleras and Spoonley 1999: 239) McHugh sees this type of response to the current liberal democratic institutions of New Zealand as post-structuralist in nature. McHugh argues that the political situation
faced by Indigenous peoples in Australasia and North America has become increasingly open to “process, contingency, and negotiation.” (McHugh 1998: 112) It is within an increasingly post-structural, post-liberal framework that collective and individual rights can be negotiated, accommodating both the needs of Indigenous peoples to self-determination while continuing to protect the basic tenants of human rights. It is by challenging the liberal democratic framework that indigeneity, through its demands for self-determination, is recreating settler-state conceptions of citizenship.

Biculturalism’s strongest expression recognizes that Māori are the *tangata whenua* of New Zealand and that they continue to hold the right to self-determination. Likewise indigeneity is founded on the principle that Indigenous peoples, as the original inhabitants of colonized lands, hold aboriginal title to the land and the right to self-determination. This right to self-determination can be defined as encompassing three specific areas: autonomy rights, identity rights and resource and land rights. My works focuses on resource rights and the evidence of the exercise of Māori self-determination on the landscape has so far looked at biculturalism as a framework within which Māori self-determination can be exercised. Resource and land rights are exercised by Indigenous peoples within places, grounded in local politics, inextricably connected to global forces.
Thirdspace

The primary aim of biculturalism, as it is defined in this work, is the full realization of Māori self-determination within Aotearoa/New Zealand. Biculturalism is a discourse, manifest predominantly in its texts, and while it endeavors to provide Māori with the “full sharing in the pursuit of collective goals of the society,” it continues to miss this mark, leaving Māori to pursue means of resistance through which to exercise their self-determination. (Schwimmer 1968: 11) I wish to finish this chapter with an exploration of geographic texts and theories concerning resistant sub-cultures in the hopes of finding a theoretical underpinning for the local politics of resistance through which Māori self-determination is exercised and by way of locating a global understanding of how biculturalism might aid other Indigenous resistance struggles.

The relationship between Pākehā and Māori can be reduced to a primary power dynamic: colonizer/colonized. This dualistic/binary relationship is not a simple opposition, it does consist of several relations, some more oppositional than others, but the primary relationship is one of domination. (Smith 1999: 26-27) This fundamental dialectic view of relations between Māori and Pākehā is based in a structualist understanding of group identity and relations and as
McHugh has stated these “relations are described in terms of encounter, usually of a binary and oppositional character.” (McHugh 1998: 111)

Over the last two decades within the social sciences, much has been written critical of structuralist understandings of power relations and group dynamics. It is within this criticism of structuralism that one finds several theoretical, post-structuralist discussions concerning power relations outside of a dualized interrogative. Henri Lefebvre was perhaps the first to make this a spatial discussion in his work, *The Production of Space.* (Lefebvre 1991) For Lefebvre structuralist reductionism created binary relationships which compacted meanings into “a closed either/or opposition between two terms, concepts, or elements.” (Soja 1996: 60) Lefebvre’s work seeks to crack open this binary relationship and introduce a third possibility which is something more than a simple combination or in-between position but is radically open to all possible relations. It is this thirding which has been adopted by other authors to discuss options to the particular dialectical relationship about which they write. Lefebvre’s spatialization of this post-structuralist discussion begins with the recognition that “every society…produces a space, its own space.” (Lefebvre 1991: 31) Lefebvre’s thirdspace is born when his principle of breaking apart the dualized
interrogative is transformed into a spatial directive as he observes “that new social relationships call for a new space, and vice versa.” (Lefebvre 1991: 59)

This thirding introduced by Lefebvre has led other social scientists, especially geographers, to speak of a thirdspace, a spatial construct through which the infinite possibilities of Lefebvre’s thirding are played out. (Soja 1996; Bhabha 1994; Butz and Ripmeester 1999; hooks 1990; Anzaldúa 1987; Pile 1994; 1997; Moore 1997) Some of these authors, like hooks and Anzaldúa, while not geographers, use spatial metaphors in their writing to speak about the location of their identities, communities and projects of resistance. They speak of margins, borderlands and peripheries, spaces which lie outside of the binary relationship between men/women, black/white, chicano/anglo, gay/straight. Some of the other writers cited speak of thirdspace as “an epistemological terrain for interrogating those foundational dualisms that...underpin the social constitution and policing of rigidly bounded cultural identities...and that underwrite the naturalization of domination and subordination.” (Butz and Ripmeester 1999: 7)

Homi Bhabha’s work renders space, as Gillian Rose observes, as a “central problematic of [cultural] politics.” (Rose 1995: 369) For Bhabha, “[t]hese ‘in-between’ spaces provide the terrain for elaborating strategies of selfhood – singular or communal – that initiate new signs of identity, and
innovative sites of collaboration, and contestation, in the act of defining the idea of society itself." (Bhabha 1994: 1-2) While Bhabha’s work focuses on the hybrid nature of cultural identity, exploring the interstitial spaces and enunciative sites of this hybridity, I will follow in Donald Moore’s footsteps choosing to “grapple with Bhabha’s ‘third space’ of ‘cultural practices and historical narratives’ insofar as it represents a point from which to engage contemporary accounts of power and resistance in cultural studies.” (Bhabha 1994)@217} (Moore 1997: 102)

Bhabha’s works only imply using thirdspace to describe a politics of place. My work sees thirdspace more as Butz and Ripmeester describe, as a “descriptor for particular spaces that have been produced from particular types of discourses and social interactions.” (Butz and Ripmeester 1999: 7) While appreciating the usefulness of thirdspace as a metaphorical spatial tool, it is as a descriptor of actual places and their power dynamics that will provide this dissertation with a theoretical underpinning of the local politics of Indigenous self-determination.

While others have used thirdspace as a technique for cultural/spatial critique, such as Edward Soja’s Thirdspace: Journeys to Los Angeles and other real-and-imagined places and Michel Foucault’s Of Other Spaces, I wish to focus on those employing the concept of thirdspace within a politics of place as those
few radical geographers writing about the Third World, Indigenous communities
and feminism have attempted. (Butz and Ripmeester 1999; Law 1997; Moore
1997; Pile 1994) Butz and Ripmeester’s decision to utilize thirddspace theory in
discussions of their research sites is based on a belief that “a Third Space
sensibility can allow the radically disempowered to discursively reconstruct actual
spaces in ways that allow them to engage more productively in directly
oppositional resistance.” (Butz and Ripmeester 1999: 8) This employment of
critical theory in the politics of place must also though avoid an ahistorical
approach. As Caren Kaplan warns, “any exclusive recourse to space, place, or
position becomes utterly abstract and universalizing without historical
specificity.” (Kaplan 1994: 87)

Conversely, discussions of the politics of place have often failed to
employee critical theories. Donald Moore bemoans this situation; “[d]espite
studies of the historically, geographically, and culturally specific struggles over
territory, rarely do the politics of place occupy critical ground.” (Moore 1997: 87)

This dissertation, like the works of Moore, Butz, Ripmeester, Law and Pile
endeavors to marry critical theory in the form of thirddspace with the politics of
place and specific exercises of resistance. Moore describes this as “connect[ing]
the metaphoric site ‘in theory’ with a politics of place ‘on the ground’ [and]
retrieving from habitual invisibility the spatiality of local politics.” (Moore 1997: 101)

Refocusing this discussion to the specific history and politics of Aotearoa/New Zealand, I wish to return to the work of Fleras and Spoonley. I have stated that the failure of biculturalism in providing for the full sharing of the resources of society has left Māori to exercise their self-determination through forms of resistance. With the increasing accommodation of Māori values within New Zealand legal and institutional frameworks, much of this resistance has taken on more direct and, to borrow from Butz and Ripmeester, less 'off-kilter' forms of resistance. Nevertheless, it is largely through acts of resistance that Māori self-determination is exercised.

Fleras and Spoonley state that self-determination, like thirddspace, “is an intangible, which cannot be seen or touched, much like the nature of power or sovereignty.” (Fleras and Spoonley 1999: 27) They go on to state that, “[o]nly the exercise of tino rangatiratanga provides tangible evidence of its existence.” (Fleras and Spoonley 1999: 27) I assert that the evidence of the exercise of tino rangatiratanga can be seen on the landscape of the specific places in which it is exercised and further, that the exercise of self-determination varies in scale with the specific act of resistance. The exercise of self-determination by Māori, or any
other Indigenous people, does not happen against an inert backdrop but is grounded in the local politics and history of the place.

Biculturalism seeks, like thir言语 theory, to offer alternatives to the dialectical relationship colonial systems of domination have wrought between Māori and Pākehā. Through the incorporation of Māori concepts into legal and institutional frameworks, biculturalism creates avenues through which Māori can engage, albeit not yet as fully sovereign partners, but at least as direct resisters to colonial power structures. Thirdspace also offers a means for critical post-structuralist interpretation of the politics involved in the exercise of self-determination within any given place.

Conclusion

"One Nation, Two Partners, Many Peoples," has become the guiding force of official-government biculturalism in New Zealand. This discourse, founded in multiculturalism, with a specific commitment to the principles of the Treaty of Waitangi, is seeking to create a partnership between Māori and Pākehā within the limits of the New Zealand state. This partnership, as yet unfulfilled, holds the promise of breaking apart the binary and oppositional relationship which the colonial ‘contact zone’ as wrought between Māori and Pākehā.
The increasingly direct resistance Māori employee against the hegemonic construct of the New Zealand state, both from within and without (their exercise of self-determination) is evident on the landscape of the specific places in which it is exercised. These landscapes of resistance are thirdspaces, places with a specific politics and history which are situated outside of the dualized interrogative of the colonial relationship.

The specific framework within which I have decided to ground this discussion of Indigenous self-determination concerns issues of resource rights and management. It is the specific inclusion of Māori concepts within the Resource Management Act of New Zealand (1991) that guided the field work I conducted and will be the backdrop of my discussions of the exercise of Māori self-determination. The RMA is a legality, based in the colonial legal system of New Zealand and thus is an inheritor of a long genealogy of legal concepts and precedents set not only within New Zealand but also the United Kingdom and her Commonwealth. It is therefore important to investigate the colonial history of British law in New Zealand and how the inclusion of Māori concepts is creating a legal pluralism within her society.
LEGAL COLONIZATION, PLURALISM AND PARALLELISM

"Kotahi te Kohao o te ngira, e kuhuna ai te miro ma, te miro pango, te miro whero. I muri, kia mau ke te aroha ki te ture, me te whakapono."

"There is but one eye of the needle through which the white, black and red threads must pass. After I am gone, hold fast to the love, to the law and to the faith."

Potatau Te Wherowhero

From the first Māori King’s quotation above we see that in his last words he admonished his followers to ‘hold fast’ to three components of human life: love, law and faith. This chapter will focus on just one of the facets of human society that the King felt was fundamental to the one path through which all must pass: the law. Franz von Benda-Beckmann broadly defines law as the ‘legitimate exercise of social power over people and resources like land, water, crops and minerals which are of existential importance for human life and organization.’

(von Benda-Beckmann 1997: 3) This definition of law is broad and anthropological in nature, but serves here as a foundation for a discussion of law which will move beyond the conservative basis of most legal theorization.

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9 Quote attributed to the first monarch of the Māori King Movement, June, 1860.
Within the colonial projects employed by Europeans over the past five centuries, the imposition of colonial legal frameworks has perhaps been one of the most pervasive enactments of colonial power. As Vera Chouinard observes, “to study law critically is to grapple with how and why law works to perpetuate particular relations of social authority, power, exploitation and oppression.” (Chouinard 1994: 415) To study colonial law critically then means that we must grapple with how and why the law has been used to perpetuate the colonial relations of social authority, power, exploitation and oppression inherent in the colonial setting. This chapter will employ both critical legal and critical geographic thought in an effort to investigate the intersection of law, colonization and the current biculturalism movement in New Zealand.

Moving beyond the colonial imposition of power as it is expressed through the law, I will then begin to explore how the biculturalism movement in New Zealand has begun to effect the legal landscape of the nation. Through the addition of Māori legal concepts within the state’s legal system, biculturalism has begun to create a legal pluralism within New Zealand society, bringing what had been considered little more than savage superstition within the closure of the law of the nation.
This addition of Māori concepts into the law of the nation has had its detractors; some that say it goes too far, some saying it does not go far enough. (see Williams 1994; Mikaere 2000; Jackson 1994; Kelsey 1994; McShane 1999) This chapter will finish with an exploration of those critics who say that legal pluralism does not go far enough toward creating equality for Māori under the law. Their critiques, perhaps best articulated by Moana Jackson, call not for a combination of Māori concepts within New Zealand’s common law framework but for two parallel legal frameworks, one for Māori and one for Pākehā and other immigrants. (Jackson 1994)

**Law and geography**

Traditional and conservative views of law hold that “the rule of law...[is] rational, benign, and necessary.” (Blomley 1994: 9) As such it is attached to a central conception of the right, or just, being always juxtaposed to the anarchistic prelegal regime. (cf Hobbes 1988) In an effort to maintain this value-free conceptualization of the law, and thus a separation or ‘closure’, the law “divorce[s] itself from the “value-laden” politicized and mercurial conditions of social life.” (Blomley 1994: 10) This conceptualization of law holds itself to be
separate not only from social life but also from the questioning gaze of the social
scientist.

Fortunately, critical legal scholars have moved beyond this ‘closure’ of the
law and begun to apply familiar social scientific theories to its critique. These
scholars theorizations view law, as Nicholas Blomley describes, ”as socially
constructed and therefore analytically inseparable from social and political
relations.” (Blomley 1994: 11) These critical legal scholars employ theories from
Marxism, feminism and the multi-disciplinary critical legal studies movement.

While employing a variety of critical theories, these scholars hold one thing in
common, an opposition to legal closure and its separation of the law from social
life. (Blomley 1994: 11) Chouinard states “that critical studies of law, by
definition, are aimed at challenging the power of law to silence, marginalize and
oppress.” (Chouinard 1994: 415)

Geography’s role in the critical theorization of legal studies has been
profoundly limited. (Blomley 1994) Perhaps predicated upon the conservative
view of legal closure, the right and just nature of the law is seen as transcending
all terrains. For geographers, closure may serve to present a barrier to the study of
legal issues within a spatial analysis. But, as has been seen in other critical social
scientific inquiry over the past two decades, critical legal studies has begun
employing spatial metaphors in its critiques without fully recognizing the spatial
foundation inherent in all legal studies. Chouinard observes that one of the
primary additions of geography to critical legal studies is the observation that
legal meaning and application are “temporally and spatially situated.” (Chouinard
1994: 423)

The reason for bringing geography and law together in this dissertation is
in an effort “to shed light on the causes of power imbalances within the law and
ways of shifting power in favour of currently excluded and marginalized groups.”
(Chouinard 1994: 415) This dissertation’s focus on the expression of Māori self-
determination through (and sometimes in spite of) the Resource Management Act
is an effort to shed light on how the shifting landscape of New Zealand law is
providing additional avenues for the exercise of tino rangatiratanga and
kaitiakitanga. These expressions of Māori legal concepts are themselves
exercised on the landscape; ‘temporally and spatially situated’. A critical
methodology combining geographic and legal studies allows for an exploration of
the effectiveness of the expression of Māori self-determination within the politics
of place and through the context of the state’s legal framework.

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Law, colonialism and New Zealand

When Europeans began their colonial endeavors at the end of the fifteenth century, their first explorers and conquerors took with them laws which revolved around Christian understandings of justice. (Williams 1990: 107) Perhaps it is more accurate to say that their conceptions of right revolved more around securing territory and wealth for the Crown than in spreading the faith. Francisco de Vitoria, a Dominican friar, is credited with providing the primary text through which the European state could ‘justly’ deal with the legal questions of colonial rule. (Fitzpatrick 2001) De Vitoria’s work established that while the Indigenous peoples of the Americas were human beings and had a right of dominion over their lands their legal institutions “were of a decidedly defective kind.” (Fitzpatrick 2001: 11) De Vitoria determined that it was the right and obligation of the European to enforce ‘natural law’ upon the non-European peoples. Despite this obligation, these “rights could not be aggressively asserted unless they were resisted by the Indians.” (Fitzpatrick 2001: 10) So, while the Indians held the right of dominion over their lands they did not hold the rights to the supremacy of their own laws, religion or government as these were found to be of a defective nature. De Vitoria’s work laid a legal foundation for the imposition of European
law, religion and government through her colonial projects on the rest of the world.

De Vitoria is commonly credited with being the father of international law. His works lay not only a foundation for a just colonial endeavor but also for extrapolating European moral codes into a 'natural law' for all nations. (Fitzpatrick 2001) While his work sought to bring a Christian and European order to what was seen as the barbarous and defective governments of the non-European, it also served to justify the violence necessary to impose European order on the world.

De Vitoria’s foundational work on International Law has been further refined over the centuries in an effort to reflect the changing understandings of law and sovereignty held by Europeans and the changing needs of her colonizers. One fundamental change which is important to this dissertation is the imposition of the ‘doctrine of discovery’. While early European ‘discoveries’, such as those of Columbus, were largely founded on pre-modern religious modes of laying claim, they did resort to at least one technique well founded in European law; marking the land. (Fitzpatrick 2001) What was at operation here was the “long occidental romance between law and agriculture.” (Fitzpatrick 2001: 16) Law confirmed ownership upon the peoples who marked the land with agriculture’s sharp delineation. Holding or owning the land then conferred the right of
sovereignty over the land and its resources. Where lands did not bear the mark of agriculture or some other mark of human occupation they were deemed by European constructions of nature to be waste-land, or *terra nullius*.

These lands, while occupied by Indigenous populations, were void of the clear signs of useful human occupation. These open lands, once removed from their Indigenous occupants provided an ever increasing space for European settlement and industry. As John Westlake observed in his 1894 treatise on International law, “The inflow of the white race cannot be stopped where there is land to cultivate, ore to be mined, commerce to be developed, sport to enjoy, curiosity to be satisfied.” (Westlake 1894: 141) The *terra nullius* of the Indigenous people’s of the Western Hemisphere and South Pacific became the container which caught this inflow of the white race.

Law not only served to justify European colonialism and occupation but it also became, in modernity, a justification unto itself. European law became the pre-eminent gift of the colonial mission and its imposition on lawless lands became a justification for further colonial expansion. As Peter Fitzpatrick describes, law became “the supreme justification of imperial rule [as]...it brought order to chaos.” (Fitzpatrick 2001: 19; see also Jackson 1994) This European order, established through law, was not only one of rationality and civilization; it

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was driven by commerce and capitalism. Sally Engle Merry, in her book

Colonizing Hawai‘i, observes that “the law was one of the core institutions of
colonial control, serving the needs of commerce and capitalism by producing free
labor and privatized land.” (Merry 2000: 8)

As Merry observes, the imposition of colonial order in Hawai‘i was
accomplished, at least in part, by the assertion of European law, granting a legal
order to the disorderly Native Hawaiian system which threatened commerce and
private land ownership. (Merry 2000) In New Zealand the imposition of colonial
law and sovereignty, while not taking the same course as Hawai‘i, was
precipitated upon similar circumstances. The imposition of European order
through law brought not only protection for commerce and capitalism, but also the
‘just’ exercise of sovereignty.

Tikanga: Māori Customary Law

Before British common law came to New Zealand, an āhua specific Māori
system of justice existed across Aotearoa. Early British merchants and
missionaries saw the Māori justice system as barbaric and capricious and
questioned whether it met the standards of ‘law’? (Belich 1996: 224) High Court
judge Edward Durie sees the question of whether or not Māori cultural and
behavioral norms constituted law as an issue of definition. (Durie 1994; see also NZ Min. of Justice. 2001) For Durie the question “might more aptly be whether there were values to which the community generally subscribed.” (Durie 1994: 3; see also Durie 1995) The justice to which Māori ascribed was not rules based but values based and encouraged the emulation of renowned ancestors. Durie holds that the values to which Māori held “were sufficiently regular to constitute law, in this context a social norm being defined as legal if its application or neglect provoked a predictable response.” (Durie 1994: 4)

Māori law did differ from the standards of law brought by the British. Māori law was a ‘custom law’, “generated by social practices and acceptance.” (Durie 1994: 4) Custom is also the foundation for British common law, but the customs contained within common law have been replaced largely by case law and statutory regulation. (NZ Law Commission. 2001) The common custom held by Māori was not universal across Aotearoa but contained regional variations. Despite these variations, Māori did hold to a set of common regulators which provided “[t]he fundamental principles or values of Maori law.” (Durie 1994: 5)

As the original inhabitants of the land, or tangata whenua, Durie observes that “Maori law is thus the original lex situs; it springs from the earth.” (Durie 1995: 34)
The idea that Māori society was governed by law, while widely held today, has only recently been accepted by the Pākehā legal establishment. (Boast 2001; Jackson and NZ Min. of Justice 1987) Richard Boast believes that this contention over the existence of Māori law probably stems from “the narrow positivism that has characterised not only the practice but the teaching of law in this country until recently.” (Boast 2001: 125) Despite this failure to recognize Māori law until recently by the legal establishment, Boast observes that several early Pākehā inhabitants in the early eighteenth century wrote extensively about Māori tikanga and the dedication of certain members of chiefly families to the study of the traditional knowledge which served as the foundation of this legal system. (Boast 2001: 126; see also NZ Law Commission. 2001) In addition, much of the legal foundation for the Māori Land Court is based on the genealogies and descriptions of Māori customary law provided in testimony before the court. (Boast 2001)

As Boast recognizes, the published material describing Māori customary law is meager at best. Fortunately, since Māori law is increasingly being incorporated into general law either by statute or through the provisions of acts such as the RMA, the New Zealand judicial system has begun to compile reports on Māori customary law. This work, predicated upon the need for legal
definitions of concepts included in general law, is serving to save the history of Māori customary law. (Boast 2001)

The foundational work for describing and defining Māori customary law is the unpublished manuscript, *Custom Law*, by High Court judge Edward Durie.\(^{10}\) (Durie 1994) More recently two comprehensive works have been published; one by the New Zealand Law Commission and the other by the Ministry of Justice. (NZ Law Commission. 2001; NZ Min. of Justice. 2001) These two works, while addressing the same topic, come at the work from different perspectives and seem to be aimed at two different audiences. The Ministry of Justice report is geared, like Durie’s work toward a preservation of Māori customary law for a general audience. On the other hand the Law Commission work has a distinctively legal approach and is geared toward the judicial community in an effort to assist them in their work interpreting Māori customary law and its concepts within New Zealand law.

Māori customary law is defined in the Māori language as *tikanga*.

*Tikanga* derives from the adjective *tika* meaning right and just and when married

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\(^{10}\) This manuscript by Durie, is referred to in the Law Commission’s work, *Māori Custom and Values in New Zealand Law* as an unpublished “Confidential Draft” paper prepared for the Law Commission. I received a copy of Durie’s work from my dissertation supervisor and, although it is referred to as a confidential draft, I have seen it cited in other works.
with the suffix *nga* is rendered a noun which may be defined as “way(s) of doing and thinking held by Māori to be just and correct, the right Māori ways.” (Williams 2000) Hirini Moko Mead gives an expanded description:

Tikanga embodies a set of beliefs and practices associated with procedures to be followed in conducting the affairs of a group or an individual. These procedures are established by precedents through time, are held to be ritually correct, are validated by usually more than one generation and are always subject to what a group or an individual is able to do... (Mead 1998)

*Tikanga* comprise a wide spectrum of values which inform the right action for any given situation within Māori society. Thus, “the real challenge is to understand the values because it is these values which provide the primary guide to behaviour.” (NZ Law Commission. 2001: 17) Durie believes that these values or key concepts act as ‘conceptual regulators’ of Māori *tikanga* or customary law. (Durie 1994: 4) Joseph Williams specifically identifies these ‘conceptual regulators’ as *whanaungatanga, mana, tapu, utu* and *kaitiakitanga.* (Williams 1998a) These values, as should always be assumed in *tikanga* Māori, are interconnected and cannot be understood alone. This list is not a definitive one and certainly there are variations among Māori to the definition and inclusion of those concepts considered key to *tikanga,* but the five included do form a commonly recognized list of the key values held by Māori. Recognizing the
difficulty in defining terms between languages with such different epistemological frameworks as te Reo Māori and English, and as I am uninitiated into Māori culture, allow me to include some definitions gathered from Māori authors on these key concepts of tikanga. These definitions will serve as a foundation for later discussions of these concepts as they relate to New Zealand common law.

As is the case with most Indigenous peoples, relationship or whanaungatanga is the foundation for all ‘conceptual regulators’. (Williams 1998a; see also Cajete 2000; Little Bear 2000) Relationships are everything in traditional Māori thinking; the relationships “between people, between people and the physical world and between people and the atua.” (NZ Law Commission. 2001: 30) These relationships define the individual’s connection to all other people, animals, plants and spirits in the world. Whakapapa then serves to define the relationship between all things. (Roberts et al. 1995) The individual is significant as a member of the collective and one’s genealogy defines their position within the group. Whakapapa is a bilateral genealogy connecting one through both the father and mother’s line. This bilateral lattice “gave the individual an entry to numerous communities, and allowed the communities to claim the adherence of widely scattered persons.” (Durie 1994: 5) One consequence of these widespread bilateral relationships is “that neat lines cannot
be drawn between groups or between kin groups or between humans and the physical world.” (NZ Law Commission, 2001: 32) An individual Māori has a multitude of allegiances built through their whakapapa to different hapū, iwi and atua which cross many boundaries.

*Mana* lies at the heart of Māori conceptions of leadership. (NZ Law Commission, 2001: 32) On one hand *mana* is a physical power, prestige or influence and on the other hand it is a spiritual force. Maori Marsden defines *mana* as a “lawful permission delegated by the gods to their human agents and accompanied by the endowment of spiritual power to act on their behalf and in accordance with their revealed will.” (Marsden 1992: 119) Each individual’s *mana* comes from three sources: *mana atua*, that received from God, *mana tīpuna*, that received from one’s ancestors and *mana tangata*, that derived from personal attributes. (Marsden 1975: 194) These three forms of *mana* come together to determine the leadership of the hapū or iwi. *Mana tīpuna* still serves as the foundation of an individuals claim to leadership but *mana tangata*, or one’s personal attributes and accomplishments plays an increasing role in choosing leadership. (NZ Law Commission, 2001: 33) While *mana* comes to the individual or object through the intersession of an atua, each mauri (life force, ethos) is seen as the inherent essence of a person or object. (Marsden 1992: 121) While this life
force dwells in all animate and inanimate objects, human beings are considered to have a higher order of essence known as *mauriora* (life principle). *Mauri* serves to connect all of creation while *mana* represents a special authority granted by a spiritual being. (Marsden 1992)

*Tapu* can be described in two different ways: one stresses the opposites of sacredness and secularness; the other emphasizes an avoidance of danger. (NZ Law Commission. 2001: 37) When an individual or object is dedicated to a deity through or because of the *mana* of its agent, this individual or object “is thus removed from the sphere of the profane and put into the sphere of the sacred.” (Marsden 1992: 119) The opposite state of *tapu, noa* or common, implies that an individual or object is “bereft of potentially dangerous mana.” (Patterson 1992: 108) The second method for describing *tapu* fundamentally describes it as a code for social conduct and adaptation to the environment. It is a demonstration of respect for the significant *mana* of a place, person or object. Thus *tapu* may be described as a spiritual respect, or it may be set by a *rangatira* in an effort to protect the safety or resources of their people. Patterson describes *tapu* as the force which controls the power of *mana* held within a place, person or object. (Patterson 1992)
Utu, while commonly thought of as revenge actually has a wider meaning and is often defined as *tau utuutu* or reciprocity. (NZ Law Commission. 2001: 38)

Utu is the maintenance of harmony and balance; it underpins the reciprocal nature of Māori society. (Durie 1994: 6) Generally this reciprocity meant the maintenance of relationships based on *aroha*, or love, but it can also mean the revenge associated with the appeasement of killings and the punishment of wrong-doings. (Durie 1994: 6)

*Kaitiakitanga* is the last term in this list to define but it has the most bearing of the five for this dissertation. *Kaitiakitanga* while relatively recently coined is a term which “give[s] explicit expression to an idea which was implicit in Māori thinking but which Māori had hitherto taken for granted. It denotes the obligation of stewardship and protection.” (NZ Law Commission. 2001: 40)

Through *whakapapa*, everything in the universe, is connected and ultimately linked to the gods Rangi (Sky Father) and Papa (Earth Mother). (Roberts et al. 1995: 9) This interconnected relationship between humans and all other components of the physical environment has been termed by some as an ‘environmental whanaungatanga’ or a ‘familial relationship’. (Chetham 1998: 34; see also Minhinnick 1989; Roberts et al. 1995) It is through the protection of other members of the environmental family that *kaitiakitanga* gains its common
(and overly simplistic) English definition of guardianship. (Roberts et al. 1995)

*Atua* such as the *tupuna* Tangaroa and Tane Mahuta were the first to serve as *kaitiaki*. (Chetham 1998: 34) In addition to these *atua* there are other spiritual *kaitiaki*, known as *taniwha* or water spirits, who with humans also serve in this role. (Minhinnick 1989) Acting in concert, the spiritual and physical *kaitiaki* serve to protect the *mana* of the *taonga* or resources of the community.

*Kaitiakitanga* is necessarily connected to the *mana*, held by a *rangatira*, which grants the authority to the individual or groups exercising stewardship over a resource and the *tapu* which acknowledges the significant character of the resource and the reason for its protection. In the exercise of stewardship, *hapū* and *iwi* make use of *rāhui* (objects or signs) which serve to signify that a *tapu* has been placed on a resource and that the respect of the community is required in order to maintain that resource for future generations. (NZ Law Commission 2001) The relationship between the *kaitiaki* and the *taonga* protected is one of “reciprocal appropriation.” (Momaday 1976: 80) The guardian invests his *mana*
into the preservation of the resource and in turn derives from the resource *mana*, *mauri* and food to feed himself and the community.\(^{11}\)

These ‘conceptual regulators’ and the Māori customary law they underpin have come under attack through the imposition of British cultural, educational, religious and legal hegemony upon the *tāngata whenua*. Law has played a pivotal role as a colonial project in New Zealand. Dispossessions of land, culture and resources have depended on the rule of law and when this has failed, warfare.

**The legal colonization of New Zealand**

The imposition of British law and sovereignty on New Zealand was not necessarily the natural extension of British colonial expansion. As Belich observes, the Colonial Office’s primary concern by 1840 was not the expansion of the Empire but the maintenance of the Empire which existed and the protection of trade. (Belich 1996: 182) Empire while being extremely profitable was also very expensive. In addition, the concept of the ‘white man’s burden’ had begun to give

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\(^{11}\)“Reciprocity ensured that food was obtained in return for respect shown the mana and mauri of the taonga. This primary emphasis on food for survival was matched by its additional importance in maintaining the mana of the tribe. Any hapu or iwi able to provide an impressive feast or gift of food for another hapu or iwi was in fact demonstrating their expertise in the ritual observance and practise of environmental kaitiakitanga, and their mana was thereby maintained and enhanced.” (Roberts et al. 1995: 15)
way to the realization that colonization often did more harm than good for Indigenous populations.

According to Belich there were three strands of English interests which finally brought Empire to New Zealand’s shores: missionaries, the agents of organized immigration and the merchants and capitalists. (Belich 1996: 182-3)

These three groups in concert with a shadowy threat of French colonization finally forced the Colonial Office to accept plans for New Zealand’s addition to the Empire. The one thing that these three groups had in common was a desire to bring British law and order to New Zealand. The missionaries sought the protection of Māori from the lawlessness of whalers coming ashore at the stations scattered along the coast of the North and South Islands as well as the protection of their Protestant conversion efforts against those of the French ‘papists’. (Belich 1996: 182) The supporters of organized immigration, like those of Wakefield who established the New Zealand Company, sought an avenue for alleviating the overproduction of labor and capital within England. For Wakefield, “[t]he solution was to export labour and capital to new colonies, at once improving the lot of the emigrants, strengthening imperial power and relieving the domestic situation.” (Belich 1996: 183) The merchants and capitalists, for their part, sought
the expanded markets colonization would bring along with control of the whale, timber and flax trade.

With the signing of the Treaty of Waitangi, British law became the law of the land. Practically speaking though, English common law was only formally introduced with the Treaty while the majority of New Zealand remained under Māori control. Belich observes that “[o]utside the major settlements, to which police were mainly restricted, Pakeha law lacked coercive power and worked only when Maori let it.” (Belich 1996: 224) As one settler observed in 1860, “The Natives generally consider themselves an independent nation, and not amenable to British law.” (Belich 1996: 225) Belich describes three distinct New Zealands which existed within this early contact period, “Aotearoa, or independent Maoridom; the persisting Old New Zealand interface: and the New New Zealand of mass European settlement.” (Belich 1996: 192) Belich recognizes a distinct correlation between the dispossession of Māori from an ever increasing amount of land and the ability of the colonial authorities to assert British law over a district. (Belich 1996) With the ever diminishing control of Māori over their lands, there was also an ever diminishing existence to Aotearoa and Old New Zealand.

When Māori refused to freely sell their land or refused to recognize British law, the government employed another common feature of colonialism, warfare.
Boast observes that as Māori were British subjects and subject to the law, “those Maori who followed a path of armed resistance to the expansion of the Government’s effective sovereignty were rebels...[and] technically guilty of high treason.” (Boast 2001: 138) The Māori – Pākehā wars which began soon after the signing of the Treaty of Waitangi in 1843 with the Ngāti Toa alliance of the South Island, moved to the North with the attacks of Hone Heke in 1845 and did not finally end until the Uruwera ‘police action’ of 1916 served to bring treasonous Māori rebel groups under the colonial government’s sovereignty. (Belich 1996) By the end of these wars, Pākehā law reached its grasp throughout the colony, universally if not equally applied to both Māori and Pākehā alike. With the end of these wars came an end to Aotearoa and Old New Zealand.

Imperial law won the day; it had succeeded in bringing “order to chaos, reined in ‘archaic instincts’, and all this aptly enough through subjection to law.” (Fitzpatrick 2001: 19) Not only had the Māori been brought under the subjection of the law, the Imperial violence used against them “was legitimated in its being exercised through law.” (Fitzpatrick 2001: 19; see also Kelsey 1994) Law was the ends, as was it the means. This law, this civilized law brought from the outside, also claimed to serve as a “universal valency free from polluting involvement with the particularity of the local scene.” (Fitzpatrick 2001: 21) Speaking on behalf of
the rise of positivism which began to take precedence in British and international law during the Māori Wars, John Westlake justifies European colonial law and government;

When people of the European race come into contact with American of African tribes, the prime necessity is a government under the protection of which the former may carry on the complex life to which they have been accustomed in their homes, which may prevent that life from being disturbed by contests between different European posers for supremacy on the same soil, and which may protect the native in the enjoyment of a security and well-being at least not less than they enjoyed before the arrival of the strangers. Can the natives furnish such a government, or can it be looked for from the Europeans alone? In the answer to that question lies, for international law, the difference between civilisation and want of it. (Westlake 1894: 141)

On its way to providing a universal law and civilized government for both Māori and Pākehā, the British common law introduced to New Zealand was forced to acknowledge and in some cases embrace the customary law of the Māori.

**Legal Pluralism in New Zealand: Then and Now**

Within the British Empire of the nineteenth century there existed a vast array of customary laws. (NZ Law Commission. 2001: 8) The colonial courts and Privy Council, which acted as a final arbiter, were faced with the task of recognizing those customary laws that “were not repugnant to common law values (as were, for example, suttee and cannibalism) and had not been replaced by
statute.” (NZ Law Commission. 2001: 8) This acceptance of customary law treated Indigenous laws as analogous to particular customs in England that were considered to have existed ‘since time immemorial’. The flexible nature of common law, itself based on English custom, to accommodate non-English custom is not as uncomplicated as it may seem. The way of life and language of the Māori were foreign to the vast majority of Pākehā settlers, certainly to the courts and lawyers. The interpretation of customary laws based on a way of life and language so dramatically different from English custom continually vexed the courts.

The common law doctrine which serves as a foundation for accepting Indigenous customary law is based on a principle of continuity. (NZ Law Commission. 2001) In the context of colonization, this principle of continuity maintained basic aboriginal rights and title even after “a declaration of sovereignty and the imposition of English law throughout a particular territory.” (NZ Law Commission. 2001: 11) The preservation of a semblance of legal title to the land was of particular interest to the courts and government. An aboriginal title, supported by the English court system could then be transferred by sale to a

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12 The test for an English custom existing since time immemorial cannot be appropriately applied to non-English settings because its interpretation dates such customs as existing since the first year of the reign of Richard I.
Pākehā settler. Where Māori refused to sell land to Pākehā, or even to engage in the legal title process of the Māori/Native Land Court, warfare could be used to dispossess the Māori.  

The majority of situations in which Māori customary law became imbedded in laws of New Zealand prior to 1975 occurred in the Māori/Native Land Court. The principle of continuity was unfortunately applied more consistently to the continuity of land title than to the preservation of Aboriginal rights.

In the first two decades following the signing of the Treaty of Waitangi, English settlers and their newly installed courts took a pragmatic approach toward the inclusion of Māori customary law. First, Māori made up a clear majority of the population and second few Māori could read English and could not be expected to understand the underlying customs of English law even if the laws were translated into Māori. (NZ Law Commission, 2001: 18) The acceptance of some Māori customary law by the colonial courts was seen though only as a temporary measure. As the Treaty made the Māori British subjects, the Māori must eventually then also come under British law.

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13 Richard Boast observes, “The colonial state changed Maori land-holding in two key respects. There was first, a revolution in ownership: Maori lost ownership of most of the land of the country with great rapidity. There was also revolution in tenure, by which the law governing the ownership and title to land that Maori did retain was changed out of all recognition.” (Boast 2001: 140)
The principle of continuity was not universally held by the courts. By the nineteenth century many judges began to reject any inclusion of Aboriginal customary law, stating that the customs of Indigenous peoples were savage, barbarous and uncivilized. (NZ Law Commission. 2001) Whaimutu Dewes argues that Māori customary law has been dealt with by the New Zealand courts by:

- express denial that it exists,
- overt suppression,
- assimilation into the imported institutional law followed by express extinguishment,
- assimilation by recognition followed by extinguishment through reinterpretation,
- alteration to the social structures with which the social controls of Māori custom law are exercised, and
- removal of the resources to which Māori custom law is applied. (Dewes n.d.: 23)

This tentative and often subversive incorporation of Māori custom law within New Zealand’s general law during the nineteenth and early twentieth centuries can not truly be considered legal pluralism. Peter Sack and E. J.
Minchin define legal pluralism as "more than the acceptance of a plurality of law; it sees this plurality as a positive force to be utilised – and controlled – rather than eliminated. Legal pluralism thus involves an ideological commitment...an opposition to monism, dualism and any other form of dogmatism." (Sack and Minchin 1986: 2) The incorporation of Māori custom law during the nineteenth century was little more than acknowledgement of the reality that vast tracts of the colony continued under the control of Māori rangatira. Once Pākehā control was consolidated, Māori custom law disappeared from the courts, save the Māori/Native Land Court which had a continuing mandate to secure titles.

The brief acceptance then outright denial of Māori customary law in the nineteenth century has led some Māori authors to mistrust the inclusions of customary law in the current era. Michael Belgrave argues persuasively that the acquisition of the resource base by the Crown was effected through a sustained attack on Māori custom law by the monocultural colonial and post colonial systems. In addition he observes that any recognition of Māori custom law has been quickly followed by extinguishment, and that Māori people have every right to be cautious about attempts to recognise custom law. (Belgrave 1996: 22)

This mistrust of the courts and the inclusion of custom law continue among Māori. Despite this mistrust, a significant proportion of Māori leaders are
beginning to engage Pākehā courts and are exercising Māori self-determination through the custom law which has been incorporated into various statutes.

Despite the considerable efforts made by colonial and post-colonial governments to suppress and displace Māori customary law, tikanga and its underlying values continue to guide Māori today. While limited in the area and occasions in which tikanga can be exercised it does still find expression on marae and at hui. (NZ Law Commission. 2001) Increasingly, some Māori are calling for a further inclusion of tikanga in "a number of different areas of general law, including family law, criminal justice, and administration of land." (NZ Law Commission. 2001: 27)

The policy of successive nineteenth and twentieth century governments in New Zealand has put land and resources beyond the reach of Māori and undermined their cultural connection as expressed through tikanga. The Māori push for the inclusion of tikanga in areas of resource management and conservation paired with the desire by recent governments to divest itself of land and resources has increased the pressure on including Māori custom within parliamentary acts, especially those dealing with the environment and social programs. (NZ Law Commission. 2001) As will be discussed in Chapter Five, the
Resource Management Act is a prime example of this pluralistic turn in New Zealand law.

**Legal Parallelism**

Some Māori remain cautious about the inclusion of Māori custom within the general law following from the criticisms of Dewes and Belgrave cited above. The criticism of legal pluralism in Aotearoa/New Zealand generally runs along three lines: first, the courts of New Zealand are dominated by Pākehā jurists who are uninitiated and incapable of effectively interpreting Māori tikanga, second, that the inclusion of tikanga in the general law serves only to bring Māori resistance to universal Crown sovereignty under the control of the courts, and third, that Pākehā culture is too individualistic to accommodate tikanga’s focus on collective responsibility. The work of four legal scholars, Moana Jackson, Jane Kelsey, Ani Mikaere and David Williams, all critics of legal pluralism in New Zealand, will assist in developing these arguments. (Jackson 1994; 1995a; Jackson and NZ Min. of Justice 1987; Kelsey 1994; Mikaere 2000; Williams 1994)

Following on from these critiques of pluralism, I will explore the framework of legal parallelism offered by the works of Jackson and Mikaere. (Jackson 1995a; Jackson and NZ Min. of Justice 1987; Mikaere 2000)
The problems faced by Pākehā courts in basing decisions on Māori concepts within the general law is one of the primary reasons that so much has recently been written in an effort to provide a foundation in Māori tikanga for Pākehā legal professionals. As Jane Kelsey observes, “The...judiciary had minimal, if any knowledge of Māori people, other than as chaff falling from the judicial grindstone, of Māori language, or of the Treaty of Waitangi.” (Kelsey 1994: 10) While Kelsey is writing about the judiciary of the 1970’s, the New Zealand Law Commission recognizes that only, “[i]n recent years, judges are increasingly being required to develop an understanding of Māori cultural values and practices and how they apply to particular situations that confront them.” (NZ Law Commission, 2001: 49) The necessity judges face in learning about Māori tikanga has led Moana Jackson to foresee a new legal consulting business developing around Treaty jurisprudence. (Jackson 1994) The crux of this problem concerns whether it is actually possible for any judge, uninitiated in Māori culture, to become sufficiently adapt at Māori tikanga in rendering legal decisions? As Ronald Niezen observes, “Anthropologists, [and by extension, judges and lawyers] no matter how sincere, skilled, or persistent, are never able to plumb the depths of an alien conceptual system. Moral standards are inescapably part of culture and, not being properly understandable, are incapable of being properly
judged.” (Niezen 2003: 106) Currently, legal interpretations of Māori concepts included in legislation are subjected to an interpretation based on little more than sentence long English definitions of the concepts included in the Act in question. As observed above, it is exceedingly difficult to translate key cultural concepts between languages, especially between two languages with such different epistemological frameworks. The Law Commission and Ministry of Justice works recently published offer an attempt to educate Pākehā jurists but I fear that Māori critics would argue that while helpful, these works fall short of the level of initiation required to bring about a depth of understanding.

The second area of criticism concerning legal pluralism in Aotearoa/New Zealand, the cooptation of Māori protest within the state-legal system, is the key compliant of the four legal scholars and particularly common among Māori activists. Moana Jackson characterizes the problem thus;

By redefining the base of Maori aspiration and by seeking to co-opt Maori legal and cultural processes, the law maintains its place as a colonising leviathan that can choose which norms of the oppressed will be validated and which will be dismissed. The consequences for the Pakeha law are a growing and profitable business of ‘expertise’ in Maori law and Treaty jurisprudence. The consequences for Maori are a painful subjection to delusion and illusion. (Jackson 1994: 125)
This subjugation of Māori tikanga to the deconstruction and subsequent reconstruction in a form controlled by Pākehā law is as Jackson observes, “inherently assimilative and racist.” (Jackson 1994: 116) Kelsey articulates another angle of this problem in observing that:

Those who harbour grievances are persuaded to abandon radical measures, such as boycotts or militant action, in favour of orderly and peaceful resolution under the protection of informal state institutions. The conflict is redefined, its manifestation controlled with state-prescribed limits, and the demands of the grievants moderated. Voluntary submission to the process increases the likelihood of consent to the outcome. The lack of any real alternative further helps to encourage grievants to accept, and even to propose, compromises which fall short of their actual entitlement, in return for the willingness of the state to meet them halfway. Continued resort to extra-legal tactics by other grievants can be discredited by reference to those who have accepted the opportunity, which the state has provided to address their concerns responsibly. (Kelsey 1991: 697)

While the justice system does provide an increasingly receptive avenue for the hearing of grievances, it is also serving as Kelsey observes to silence Māori dissent. Māori are increasingly faced with the decision of whether or not their grievance will be better received by the courts or the Waitangi Tribunal as opposed to taking their protests to the streets and the court of public opinion.

Many state as Williams does that, “[i]t might be argued that incorporated justice is better than no justice at all.” (Williams 1994: 208) But the critical legal
theorists cited here would argue that incorporated justice serves to only humiliate, accommodate and co-opt Māori voices. Some go so far as to state that incorporation is in their opinion impossible. Donna Awatere, articulating the third area of criticism of legal pluralism, in a reminiscence on the beginnings of her work on Māori self-determination in the 1980’s states that “the more I thought and researched and observed and thought again the more I could see clearly biculturalism is not possible. Because of something completely invisible to Pakeha people... things like individualism, materialism, alienation.” As in our previous discussion on multiculturalism, we once again return to this common theme of individual versus collective rights.

Within a discussion of law, Patterson describes this issue more broadly as collective responsibility. (Patterson 1992: 137) Quoting extensively from Jackson’s work on the criminal justice system, Patterson observes that there is a common theme of collective responsibility distinguishing Māori law from the predominately individual basis for Pākehā law. Jackson is particularly critical of the practice of focusing responsibility on the individual as opposed to the community, believing that “responsibility for actions rests primarily not with individuals themselves but with the groups to which they belong.” (Patterson 1992: 141) The system of justice Jackson advocates for Māori would
“incorporate the Maori ideas of mediation and restoration in place of the Pakeha adversarial system.” (Jackson and NZ Min. of Justice 1987: 159)

It is within his ground-breaking work, *The Maori and the criminal justice system: a new perspective - he whaipaanga hou*, that Jackson introduces the concept of parallel legal systems; one adjudicating justice for Pākehā and based on the English common law tradition and the other for Māori and based on *tikanga*. (Jackson and NZ Min. of Justice 1987) This parallelism is fundamentally predicated on Jackson’s lengthy study of the disproportionate numbers of Māori adjudicated, convicted and imprisoned in the New Zealand state-legal system. Besides the very concrete data demonstrating the biases inherent in the state justice system, Jackson also argues that the acceptance of Pākehā law, even with the incorporation of Māori concepts, “causes many Maori to define justice only in terms of what the foreign legal system might grant, and not in the belief that their own political power could deliver.” (Jackson 1994: 117)

Mikaere takes this idea of parallel systems to another level. She proposes a constitutional division providing two parallel systems of government unified only at the highest levels. Her work considers the “establishment of a three-house parliamentary system,” with one house entirely controlled by and based on preparing legislation for Pākehā, another house for Māori and a third house which
would consider and pass the legislation of the lower two houses. (Mikaere 2000: 21-22) The upper house, called the “Treaty of Waitangi House, or Senate” would serve as a balance of the powers of the lower houses and would consider all legislation in light of the Treaty. (Mikaere 2000: 22)

The basic principle for both Mikaere and Jackson is that Māori self-determination and justice should be based in a dynamic and Māori controlled system through which “the rights of Maori can have independent life again.” (Jackson 1994: 129) This independent life for Māori systems of government is not widely supported by the government or Pākehā society. The partnership of the two treaty partners, with full sovereign control maintained by the Crown and Māori servings as the ‘junior partner’, is the current position put forth by the government.

Legal parallelism has found expression in other settler-state settings. In fact parallel systems of justice were quite common in colonial settings particularly in Africa. (see Sack and Minchin 1986; Rushton 2001) In Canada and the United States, semi-independent legal systems operate within the confines of the reserve/reservation system, allowing First Nations the possibility of articulating their own cultural concepts within a modestly self-governing system. (see Belley 1997; von Benda-Beckmann 1997) Unfortunately in the New Zealand context...
there is no clear definition of *iwi* or *hapū* boundaries which could be used to define those areas which would fall under the jurisdiction of Māori law. There is also no clearly defined legislative or judicial organization for passing and adjudicating Māori justice. Without some separation of Māori authority from Crown authority, probably expressed through defined land boundaries, the possibility of two parallel legal systems seems remote.

Mikaere and Jackson’s vision would grant Māori justice through Māori *tikanga*, founded on *rangatiratanga*. Mikaere has offered her vision of a unified government with two separate but equal communities, represented by separate houses of parliament. But the difficult task ahead is in finding an avenue for the fullest expression of Māori *tino rangatiratanga* while still recognizing the concerns and desires of the Pākehā majority; this is the tight-rope the nation currently walks.

**Conclusion**

Law has played a central role in the subjugation and dispossession of Indigenous peoples all over the world. It is as Merry states, a “core institution of colonial control,” serving to protect the Empire’s citizens and commerce from the chaos of Indigenous populations. (Merry 2000: 8) **It is law’s importance as a key**
colonial project, playing “a critical cultural role in defining meanings and relationships...[within] the context of state power and violence,” which identifies its importance within (post)colonial scholarship. (Merry 2000: 8)

Just as law plays a central role in Pākehā society, so tikanga plays an important part in preserving and perpetuating Māori society. The role that Māori customary law plays as a dynamic and evolving conceptual framework for the relationships individual Māori have with other humans, their ancestors and gods as well as the environment around them makes it centrally important to the exercise of Māori self-determination. Without the foundation tikanga provides, Māori self-determination is merely “aping our colonisers.” (Mikaere 2000: 10)

The aim of Māori self-determination which Mikaere envisions would “be to give life to Māori world views in a contemporary context, to take principles of Māori law and adapt them to suit present-day realities.” (Mikaere 2000: 10) The adaptation of Māori legal principles within ‘present-day realities’ is one definition of the current inclusion of Māori concepts within New Zealand’s legal framework. The Resource Management Act (1991) provides a valuable avenue to explore this nexus of Māori self-determination, legal pluralism and the reconnection of Māori with their lands.
Chapter Five

INDIGENOUS SELF-DETERMINATION AND RESOURCE MANAGEMENT IN NEW ZEALAND

Four Stories of Self-determination

Introduction

Aotearoa/New Zealand is a land populated by peoples with long migrant histories. (Belich 1996: 13) Two distinct peoples, the Polynesian migrants who came to the islands of Te Ika a Māui and Te Wai Pounamu and developed tribal identities within their iwi and hapū, united by a common cultural and linguistic heritage and the English who came to the islands they named North and South as settlers in search of land, resources and empire. Both groups developed unique identities in their new homeland; born of their experiences with the land and each other. Within this contact zone Ngāpuhi, Kai Tahu, Ngāti Porou, and the other tribes became Māori and the English, along with other European settlers became Pākehā.

Māori and Pākehā were brought together through the mechanism of European colonialism. This contact was not then and is not now based on
equality. It is as Pratt describes, a contact “involving conditions of coercion, radical inequality, and intractable conflict.” (Pratt 1992: 6) It was in the early days of this contact though that the English presented the Māori rangitira with a treaty; an instrument through which the English could secure a claim to New Zealand legitimized by the prevailing standards of international law. What the Māori rangitira hoped to benefit from signing the treaty is still a matter of some debate today. Perhaps it was simply hoped that the English would be able to control the settlers and whalers already living in the islands through the imposition of their law. Certainly the Māori believed that they would secure control and continued ownership of their own lands through the Treaty. The words of the Treaty of Waitangi promised a partnership between Māori and Pākehā. Unfortunately, the only functional partnership formed by the treaty though was between the British Colonial Office, settlers, merchants and whalers. (see Pocock 2000; Durie 1998a) The Māori have struggled over the past 160 years for a return to this ideal of partnership.

The rise of a new discourse of partnership between Māori and Pākehā, labeled by some as biculturalism, has brought new life to the Treaty and its broadly interpreted principles. This Treaty Partnership finds itself at times impacting, and at others directed by, an evolving norm within international law.
related to Indigenous peoples. The principles of partnership evolving in New Zealand and articulated through the discourse of biculturalism run parallel to the norms being established in international law. S. James Anaya observes that the efforts toward “securing indigenous peoples’ self-determination and related rights may substantially be a function of giving effect to historically negotiated treaties or renegotiating their terms in light of modern conditions.” (Anaya 1996: 131)

Much of the work toward establishing Māori self-determination over the past thirty years has been an effort to give effect to the principles of the Treaty of Waitangi by incorporating those principles, along with key Māori conceptual regulators into various pieces of national legislation.

One such piece of legislation is the Resource Management Act of 1991 (RMA). (Resource Management Act 1991) The RMA is a ground-breaking piece of environmental legislation not only within New Zealand but also by international standards. (Young 2001: 5; see also Birdsong 1998; Lunt, Spoonley, and Mataira 2002) The RMA “is not simply an amalgamation of [proceeding environmental law]; it provides a new process for the management of land, water, soil, air quality, geothermal energy, pollution control, noise and the management of the coast. It also provides for natural hazards avoidance and mitigation and for the management of hazardous substances.” (Young 2001: 1) In addition the RMA
gives effect to the principles of the Treaty as well as including key Māori environmental concepts within its framework.

This chapter, divided into six sections, begins with a brief history of the RMA and a description of its structure. The third section describes the role of the Environment Court in adjudicating cases arising from the act including those related to Māori concepts as well as the overriding directive of sustainable development. The fourth section brings the RMA together with the discourse of biculturalism as described in previous chapters. The fifth section encompasses the key four case studies from my field work in New Zealand. This section is subdivided into a brief introduction including a discussion of the research methodology followed by the four case studies each containing a story describing the place, people and context of the study followed by a discussion of the broader issues contained within the story, tying in the theories explored in previous chapters. This chapter concludes with a discussion of the failures and successes of the RMA in providing for a bicultural partnership between Māori and the Crown.
The Resource Management Act: an environmental history

The RMA is the most recent manifestation of over a century’s worth of legislation aimed at “facilitating resource development to promote social and economic growth” in New Zealand. (Wheen 2002: 261) The various pieces of legislation leading up to the RMA have been entirely dominated by Common Law precepts, ignoring the strong conservation ethic underpinning Māori environmental management which existed at the time of contact. These key Māori conceptual regulators such as whānaungatanga, utu, kaitiakitanga, discussed in previous chapters, have served to create a Māori environmental management regime which as Nicola Wheen observes “straddl[es] both the physical and metaphysical.” (Wheen 2002: 261)

The environmental law regime introduced by British colonials discounted Māori environmental management systems along with most other Māori legal precepts. New Zealand’s earliest environmental laws served to support the new tenurial system of private land ownership and resource acquisition introduced by the British which removed Māori from their common land ownership and resource management regime. Little if any thought was given to the sustainable management of resources under this early legislation. The primary focus was to enable access to resources while preserving either Crown or private ownership.
(Wheen 2002: 262) When restrictions were enforced it was for one of two reasons: first, in an effort to preserve the health and safety of the community and worker; and second, to prevent over-exploitation.

When legislation was enacted to enforce a restriction on resource use, the legislation was usually introduced and enacted in a piece meal fashion. Legislation was introduced to protect specific resources only when a threat was perceived. For example, while a Water Pollution Act 1953 already existed, separate legislation was passed which purported to specifically control oil pollution in harbors. The primary focus to all of this piecemeal legislation has been to support resource development and enforce conservation measures “on an ad hoc basis in response to particular problems.” (Wheen 2002: 263)

The beginning of reform for environmental law in New Zealand is credited to the fourth Labour government (1984-1990) lead successively by David Lange, Geoffrey Palmer and Mike Moore. This Labour government was dominated as Wheen describes by “a core group of half a dozen ‘free market’ ministers [whose] perspective on government was that in order to reinvigorate economic development, the extent of state activity and regulation had to be ‘rolled back’.” (Wheen 2002: 269) Environmentalists agreed with this ‘roll back’ mainly because they viewed government as the primary culprit in environmental
degradation. The coupling of economic reform and environmental protection garnered support for the reforms from a wide variety of public groups, which ultimately led to the success of the effort.

One of the early successes in environmental reform under the fourth Labour government came with the dismantling of mixed mandate environmental agencies such as the Ministry of Works and Development as well as the Department of Lands and Survey. The work load of these agencies was then transferred to the newly created Ministry for the Environment, Department of Conservation and the Parliamentary Commissioner for the Environment who held audit functions. This consolidation of government agencies foretold the consolidation of environmental legislation which was to be introduced by the same Labour government toward the end of its term in office.

David Young, in his book, *Values as Law: The History and Efficacy of the Resource Management Act*, describes the factors which lead to the creation of the RMA as a "convergence of ideas." (Young 2001: 5) One of his informants in writing this history, Julie Frieder, describes this convergence as
an enormous and impassioned effort. Its conceptual influences were Maori ideas about stewardship and sustainability, the Brundtland Commission report on sustainable development, *Our Common Future*, international trends toward deregulation, decentralisation and community empowerment, exiting New Zealand resource law and public reaction to deficiencies with those laws, as well as the idea of efficiency and accountability that were at the heart of economic and state sector economic reform. (Young 2001: 15)

As Frieder’s statement demonstrates, Māori concepts played an important role in the very formation of the RMA, but while Māori concepts had a profound impact on the final product Māori leaders fought for a greater presence within the Act.

Geoffery Palmer, Minister for the Environment and Prime Minister during different phases of the fourth Labour government, spearheaded the development of this resource management reform. Many view him as the driving force behind the dramatic and overarching nature of the Act. (Young 2001) The vision of resource management Palmer brought to the RMA recognized that resource management is not only a political and technical endeavor, but also based on specific cultural constructions of the environment. (see Howitt 2001) He endeavored to include Māori cultural concepts concerning resource managements, as well as their active political involvement, directly into the specific language of the Act. Palmer’s driving force ran into a brick-wall though, an impediment produced by Māori concerns over the Act. In consultations with Māori leaders,
Palmer found that while they were receptive to his inclusion of the Principles of the Treaty of Waitangi as well as key Māori concepts such as kaitiakitanga within the language of the Act they remained concerned over a continuing failure to settle the claims Māori were making on resources before the Waitangi Tribunal. (Young 2001: 25) Palmer and other environmentalist activists decided that attempting to deal with claims related to the environment either within the Act or prior to its introduction would prevent its passage.

Despite this stumbling block which prevented Palmer from meeting the full requests of the Māori leadership, the inclusion of a role for Māori within the Act continued. The convergence of two streams of international law; environmental and indigenous rights came together to strongly influence the RMA. Within international environmental law, the concept of sustainability, is at once both key and unfortunately also widely defined. (Wheen 2002: 272-273) Sustainability has played a significant role not just in international law but also within New Zealand law since the environmental reforms which began in 1984. Richard Howitt acknowledges that the “[r]ecognition and application of traditional ecological knowledge is an increasingly important element in many resource management systems,” and Māori concepts of management and stewardship influenced the language of the RMA. (Howitt 2001: 45) The second stream of
international law influencing the RMA is the ever increasingly defined customary norms elaborating the elements of Indigenous peoples’ right to self-determination. Demonstrated by the International Labour Organisation’s Convention Concerning Indigenous and Tribal Peoples in Independent Countries and the United Nations Draft Declaration on the Rights of Indigenous Peoples, a norm within international law has begun to “require states to safeguard indigenous peoples’ rights to the natural resources throughout their territories, including their right ‘to participate in the use, management and conservation’ of the resources.” (Anaya 1996: 106) Whether conscious or not, by embracing a sense of sustainability informed by both international standards and Māori concepts and by recognizing the Māori right to participate in the use, management and conservation of the nation’s resources, the RMA has placed itself squarely within, if not at the forefront of evolving norms of international law (see Solomon and Schofield 1992: 2-3).

The Organization of the RMA

The RMA is a vast document, over 500 pages in length. It is not my intention to work through the entirety of the Act, but only to give a brief overview.
than proceed with elaborating the specific sections of interest to Māori and their self-determination.

The Act illustrates its overarching reformist nature in its opening description as “[a]n Act to restate and reform the law relating to the use of land, air and water.” (Resource Management Act 1991: 8) These reforms cover fifteen sections or parts as they are labeled in the Act:

- Part I consists of a brief description of the act and provides definitions of the key concepts, including Māori terms, used in the Act.

- Part II describes the purpose and principles of the Act, clearly stating that the primary intent of the Act is “to promote the sustainable management of natural and physical resources.” (Resource Management Act 1991: 24)

- Part III outlines the duties and restrictions of citizens and corporations under the act in regard to their use of the land, sea and air of the nation.

- Part IV separates the duties and functions of the central and local governments.
• Part V deals with national environmental standards and the production of regional, district and iwi resource management plans.

• Part VI discusses what has become a contentious issue within the RMA, resource consents. Consents under the Act require extensive consultation with local communities including Māori.

• Parts VII, VIII, IX and X, deal with various subdivisions of protections guaranteed under the Act; coastal, heritage, water and subdivisions of land.

• Part XI deals with the adjudication of contestations under the Act and thus the formation of what was originally the Planning Tribunal but which was elevated to a full court standing under a 1996 amendment to the Act and thus entitled the Environment Court.

• Part XII deals with the enforcement powers of the Environment Court.

• Parts XIII, XIV and XV deal with various miscellaneous and transitional provisions.
The RMA presents a significant inclusion for Māori within the conservation and management of the resources of the nation. This is accomplished primarily in four sections of the Act: first, is the inclusion and definition of Māori concepts related to resource management within the act; second is the inclusion of the principles of the Treaty of Waitangi, as outlined by the Treaty of Waitangi Act, as well as the admonition to regard the relationship of Māori and their culture and traditions as a matter of national importance; and third the Act allows under section 33 for the transfer of the “functions, powers, or duties under this Act” from the local authority to another public authority including an iwi authority and fourth is the requirement for those seeking resources consents to consult with the local Māori authority or mana whenua.

(Resource Management Act 1991: 45)

The Act includes several Māori concepts within its text and provides definitions which then become legally binding through their inclusion in this legislation. These terms include; Kaitiakitanga, Mana whenua, Maataitai, Tāngata whenua, Taonga raranga, Tauranga waka, Tikanga Māori. One particularly significant term included in the act, and discussed earlier in this research, kaitiakitanga, is defined by the Act as “[t]he exercise of guardianship; and, in relation to a resource, includes the ethic of stewardship based on the nature of the
resource itself.” (Resource Management Act 1991: 15) While inclusion in this legislation provides legal standing to these concepts, some Māori are concerned though that the limited and monorhetorical definition of this term within the Act does damage to their cultural and language. Solomon and Schofield argue that “[t]he meaning of kaitiakitanga should not be limited by the statutory definition.” (Solomon and Schofield 1992: vi) Like Solomon and Schofield, Moana Jackson and others have argued that removing Māori terms from the broader context of the language and culture within which they are based dilutes their meaning and co-opts Māori participation within the Common Law setting. (see Belgrave 1996; Hayes 1998; Jackson 1995a; 1995b; Jackson and NZ Min. of Justice 1987; Kelsey 1996; Mikaere 2000; and Nuttall and Ritchie 1995)

Some commentators have described Part II of the Act as the most crucial section for the protection of Māori values and the exercise of self-determination. (Beverly 1998) Part II section 5 describes the Acts commitment to sustainable management of natural and physical resources, “[i]nherent in this definition are Maori interests such as cultural well-being and the foreseeable needs of future generations.” (Beverly 1998: 122) Paramount for Māori in Part II though is section 6(e) which describes the “relationship of Maori and cultural traditions with the ancestral lands, water, sites, waahi tapu, and other taonga” as a matter of
national importance. (*Resource Management Act* 1991: 25) This provision requires that individuals and corporations seeking resource consent “shall recognize and provide” for this section along with other issues of national importance. Particularly with regard to Environment Court decisions, section 6(e) has provided Māori with an avenue to protect sites of importance by contesting applications for resource consent they view as threatening their ancestral lands. (Beverly 1998; Nuttall and Ritchie 1995) The final section of Part II provides that “all persons exercising functions and powers under [the Act]…shall take into account the principles of the Treaty of Waitangi.” (*Resource Management Act* 1991: 26) While not carrying the same weight as the provisions in section 6(e), this final section does further the Māori role with regard to resource management.

One of the significant principles of the Treaty of Waitangi is that of *rangatiratanga*, or Māori self-determination over their own lands and resources. This provision in the RMA has helped to further the role Māori are playing in legally exercising self-determination over their resources by legitimating, to some extent, the role of *kaitiaki*.

Section 33 has significant potential for furthering Māori self-determination. By granting local authorities the ability to transfer their duties and responsibilities to *iwi* authorities, Māori could gain significant control over their
own land and resources, regaining the *rangatiratanga* promised in the Treaty of Waitangi. (Matunga 2001) Unfortunately, no local authority has agreed to transfer their powers to an *iwi* authority and this section remains only a potential source of Māori self-determination.

Finally, the area in which perhaps the greatest power has been granted to local *iwi* and *hapū* authorities is the requirement for those seeking resource consents to consult with these Māori authorities prior to the final approval of their consent by the district council. This requirement of the Act while not granting local Māori the right of ultimate refusal does allow for their voices to be heard during the consultation procedure, a step that was often overlooked prior to the enactment of the RMA. In addition, if Māori have serious concerns about an application for resource consent which they may have already declined to support but which gains support from the district council, they may then contest the application before the Environment Court. I will discuss the role of the Environment Court and its usefulness for Māori briefly, but let me say here that the resource consent process and the ability to contest applications before the Court has dramatically furthered the ability of Māori to exercise their *tino rangatiratanga* over their lands and resources. (Greensill 2001)
The Environment Court

Formed by the Resource Management Act Amendment of 1996, the Environment Court, which replaced the Planning Tribunal, is vested with a wide range of functions “at the planning, resource consent, and enforcement stages of environmental management.” (Birdsong 1998: 18) The Court operates as a traveling body visiting different cities through the country on a regular basis, rotating environment judges through the hearings. With the Act’s primary goal of sustainable development, the Environment Court is then faced with the unenviable task of adjudicating sustainability. (Birdsong 1998) This task often concerns whether regional or district plans meet with the current national policy statement on the environment and with the precepts of the RMA itself.

This challenging task notwithstanding, the incorporation of Māori concepts within the Act has added another unenviable task for the Court. While the authors of the Act, against much Māori dissent, applied legally binding definitions to the Māori concepts included in the RMA, it falls to the Court to interpret those concepts as they apply to specific cases. Many of the cases brought by Māori before the Environment Court consist of appeals to decisions made in support of a resource consent by a regional or district council or consents brought by councils themselves. The inclusion of kaitiakitanga within the Act

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gives legal standing to the already existing ethic of stewardship which Māori continue to practice in their communities. Appeals of a resource consent decision are not always adjudicated before the court but on occasion are sent to mediation before an officer of the court. Generally these circumstances require that all parties involved agree to mediation and that the court consider the case well suited to mediation.

The required notification of local and iwi authorities of resource consent applications has given both Māori and concerned Pākehā citizens an increased awareness and ability to participate in resource management and conservation of the local community. The ability to contest applications for resource consent furthers this power, and the inclusion of key Māori concepts within the act allows Māori the ability to argue their concerns within their own cultural framework. In addition the inclusion of the principles of the Treaty of Waitangi further strengthens the role of Māori in resource management particularly by reiterating their ability to exercise tino rangatiratanga over their own resources and treasures.

The RMA and Biculturalism

The RMA offers a concrete example of biculturalism. The inclusion of Māori law, and the principles of the Treaty within the act provide us with at least
an attempt at creating the biculturalism envisioned by Schwimmer in the late 1960’s when he observed that biculturalism would include “a full sharing in the pursuit of the collective goals of the society – in the processes of government and the exercising of power...[and] equality of the resources and capacities necessary to make ‘equal rights’ into fully equal opportunities.” (Schwimmer 1968: 11) As has been mentioned previously, biculturalism, while a common phrase in New Zealand’s national dialogue on Māori rights, has been, according to several writers, too co-opted and altered to be of use in this new century. (see Durie 1998a; Fleras and Spoonley 1999) A primary critique of biculturalism by Fleras and Spoonley is that it has become an accommodationist depoliticized policy, embraced by the government but falling far short of the full sharing and treaty partnership promised.

One common element contained in the original description of biculturalism, as well as current day descriptions of binationalism, treaty partnership and mana motuhake, is the necessity of Māori control of Māori resources. (see Durie 1998a; Fleras and Spoonley 1999; Pocock 2000) In fact Mason Durie states this as one of five elements in a “Five point plan for Māori self-determination.” (Durie 1998a: 240) Durie also recognizes Māori control over
Māori resources as a necessary constitutional element for an envisioned Māori Nation. (Table 2)

<table>
<thead>
<tr>
<th>Mana Wairua</th>
<th>Mana Whenua</th>
<th>Mana Arika</th>
<th>Mana Tangata</th>
</tr>
</thead>
<tbody>
<tr>
<td>Spiritual and cultural values, beliefs, practises</td>
<td>Iwi and hapū ownership and control over tribal resources, including land, forests, rivers, the sea</td>
<td>The authority of paramount leaders within their own tribes and as leaders of all Māori</td>
<td>The rights of individual Māori to organize as Māori and to assert citizenship rights</td>
</tr>
</tbody>
</table>


It is within this context that the ability of the RMA to provide Māori with self-determination over their resources may be critiqued. It is also important to keep in mind the place that biculturalism and its manifestations in national legislation occupies in comparison to the evolving customary norms for Indigenous rights under international law.

Case Studies: Four Māori Stories

Methods

The goal of the next section of this chapter consists of portraying stories, told by Māori, describing their experience of biculturalism and their efforts to exercise self-determination, all within the framework of the RMA. These stories
provide an undercurrent to the official/governmental discourse of biculturalism being portrayed in the language of the RMA as well as the actions of the national and local governments. At times these stories describe forms of resistance and struggle against the institutions of Pākehā controlled New Zealand government, but always running alongside this resistance is a story of hope that biculturalism and the progress of the last few decades will bring this continuing dialogue between Māori and Pākehā to a fuller understanding of partnership.

This research has been guided by three specific methodologies outlined by Linda Tuhiwai Smith in her text, *Decolonizing Methodologies.* (Smith 1999) Smith observes that there are various “[t]hemes such as cultural survival, self-determination, healing, restoration and social justice [which] are engaging indigenous researchers and indigenous communities in a diverse array of projects.” (Smith 1999: 142) Smith goes on to outline these projects and the methodologies and methods being employed toward their fulfillment. As has been briefly stated previously in this dissertation, my overall aim has been to employ an indigenist methodology to this research which as Smith observes is “an approach which borrows freely from feminist and critical approaches to research, but privileges indigenous voices.” (Smith 1999: 147)
In an effort to ' privilege indigenous voices', as well as connecting with another methodology presented by Smith, this research has focused on four specific stories, told by Māori, of their experiences exercising their self-determination over the resources of their communities. As Smith states, "[s]tory telling, oral histories, the perspectives of elders and of women have become an integral part of all indigenous research.... These new stories contribute to a collective story in which every indigenous person has a place." (Smith 1999: 144) The four stories shared here represent one truth within the 'diversity of truths' involved in elaborating the politics of each specific place described. Russell Bishop suggests that "story telling is a useful and culturally appropriate way of representing the 'diversities of truth' within which the story teller rather than the researcher retains control." (Bishop 1996: 145) This is not intended to discount in anyway the stories shared but to observe that different perspectives always govern the way in which one perceives events. While I as the researcher did not attempt to retain control over the stories as they were told to me, or observed by me, I did have my own experience of the place, the interview and the interactions of group participants and these experiences do play a role in how the stories are shared here.
Sharing is, or at least should be, an integral part of any form of research. Smith observes that one of the most important aspects of indigenous research is “about sharing knowledge between indigenous peoples, around networks and across the world of indigenous peoples.” (Smith 1999: 160) Beyond the obvious sharing of their stories, many Māori and Pākehā shared generously of their time, knowledge and hospitality during my research in New Zealand. I, as an Indigenous identified outsider, was asked on several occasions to share information in two specific ways. First, I was frequently asked what I thought of one or another aspect of biculturalism and Māori self-determination with the idea that an outside observer might have a unique understanding. Second, I was asked to share any information I had about of Indigenous peoples, particularly my own tribes. Sometimes this request would relate to resource management or land claims, but frequently it was a more general request demonstrating a desire to know more about my community, our history and culture. James Tully envisions this desire for sharing thus; “[b]y listening to the different stories others tell, and giving their own in exchange, the participants come to see their common and interwoven histories together from a multiplicity of paths.” (Tully 1995: 25-6)

One of the driving forces behind engaging in this research has been a desire on my part, spurred by requests from other Native Americans, to learn more
about the state of Māori self-determination. As Smith states, "[f]or indigenous researchers sharing is about demystifying knowledge and information and speaking in plain terms to the community." (Smith 1999: 161) By taking on this research agenda, I have a responsibility to share the information learned not only with the Native American community which spurred my interests in the research but primarily with the Māori community who agreed to participate in the research.

Since this research as been focused on an indigenist approach which ‘privileges indigenous voices’, one of my first tasks was to identify those individuals whose stories would be important to this research. The choice of who to interview for this research was directed initially by contacts provided by my advisor, Brian Murton and largely flowed outward from those initial contacts. Early interviews with Sir Paul Reeves, former Governor-General of New Zealand and Professor Mere Roberts of the University of Auckland assisted in establishing further contacts. In addition, the Māori staff and students at the University of Waikato also provided invaluable contacts, particularly with those Māori activist most noted in conservation and resource management struggles.

Interviews were conducted in an informal manner in an effort to provide a non-invasive condition for the participants. I decided to forego recording equipment in favor of written notes in an effort to make participants feel more at
ease and to avoid lengthy legal release discussions in group meetings. Following Māori and Native American practices I provided gifts or koha to participants as recognition of their participation and an acknowledgement of the knowledge and hospitality they shared with me. Frequently interviews would begin on a more formal setting until the koha was presented and I had a chance to properly introduce myself. Following these preliminaries, the interviews general became more relaxed and frequently there was a change of location from a living room or office to a kitchen table. This informal style of communication between Indigenous identified researcher and participant has been referred to by others as “kitchen table” discourse. (YoungBear-Tibbetts 1996) My own identification as an Indigenous person helped to some extent allay concerns that Māori participants may have had about an outsider using their knowledge in an inappropriate manner.

My position as an American Indian identified researcher, presented a unique situation for my research agenda. I was, in some ways, as Smith identifies, an ‘inside/outside’. (Smith 1999: 137) While not the classic outside, ‘objective’ researcher “able to observe without being implicated in the scene,” I am outside the dualistic relationship between Māori and Pākehā. (Smith 1999: 137) And while being Indigenous identified, I am not a Māori owing specific allegiances to
Feminist and critical approaches to research have created an increased acceptability for an ‘insider’ approach within qualitative research, but as Smith observes, “[i]ndigenous research approaches problematize the insider model in different ways because there are multiple ways of both being an insider and an outsider in indigenous contexts.” (Smith 1999 137) In many contexts within my research in New Zealand I was treated, if not as an insider, at least as an Indigenous individual who would understand the broader issues and impacts of colonialism on Indigenous communities. As an outsider, while I did understand the broad context of how Māori had been affected by colonialism, there was much I needed to learn about the specific situations and locations in which their lives have been lived. The learning curve of an outsider, as well as the occasional acceptance as an insider, is contained within the stories told below.

Each of the stories below is divided into two sections. The first section is an italicized account of my interview or group observation along with a description of the community and quotations from the Māori participants. As my interviews were conducted in an informal manner the quotations included in the italicized section are frequently paraphrased references from notes composed following the interview. Some of the material in the italicized sections is also a description of my own learning curve. The second section is a discussion of the
central theme of the attached story discussed within the context of the theory raised in Chapters 2 through 4; theoretical discussions of legal pluralism, cultural identity production and authority structures.

Four Māori Stories

Capacity Building

I drove across the North Island to the East Coast and my advisor’s hometown of Gisborne. The Gisborne District is one of the most isolated regions of the North Island with only one highway crossing the Huiaaru mountains to the west and only one coastal highway running north/south through the District. (Figure 5) It was this winding road from Ōpōtiki which I cautiously drove across the mountains and into the District. Gisborne District, in addition to being isolated, largely mountainous terrain is also sparsely populated outside of the District seat at the town of Gisborne. The 2001 census gave the District a population of 43,791 with over 30,000 living in Gisborne town.¹⁴ Māori consider this part of the East Coast as the original landing area for the first migrations of Polynesians over 1000 years ago. (Gisborne District Council 2001) The mountain

Hikurangi, a key site in the District for Māori, is said to be the resting place for Māui’s waka following his fishing of the North Island (Te Ika a Māui) out of the Pacific (Te Moana Nui a Kiwa). The District currently has four primary Māori groups, Ngāti Porou to the north and Te Aitanga a Māhaki, Rongowhakaata and Ngai Tamanuhiri to the south.

Besides being sparsely populated and isolated, I learned that the District is unique in two other ways; first, it has a significant Māori population with over forty-six percent claiming Māori ethnicity compared to less than fifteen percent at
the national level, and second, the population is significantly poorer than the national average with a median income of NZ$15,300 for the District compared to NZ$18,500 for the Nation. The poverty of the town was one of the things I noticed first, especially among the Māori. I had been used to seeing Māori and Pākehā mixing in stores and cafes in Hamilton but in Gisborne I noticed that Pākehā had money to shop and eat out while Māori generally were the ones serving. Interestingly also, despite the fact that nearly half the population identifies as Māori only two of the fourteen seats on the district council are filled by Māori.

Before leaving Honolulu, I had begun correspondence and set-up meetings with the leader of the Treaty of Waitangi claim for Te Aitanga a Māhaki, Charlie Pera. My advisor was involved in preparing one section of the claim for Te Aitanga a Māhaki, and had made the initial contact for me with Charlie. Charlie had agreed to meet with me despite a busy schedule at the culmination of ten years of work on their claim and their impending court hearings. I knew that Charlie would not have much time to meet with me and I was content to sit and listen to what was happening in claim group's offices. Immediately on my arrival, Charlie began asking what he was supposed to do for me. I continually reiterated that I knew he was busy and I was content to listen and if there was any time
available for me to ask a few questions about the RMA that would be all I needed.

I presented Charlie and the other individuals active in the claim process present with the presents I had brought, and I also offered to answer any questions they might have about American Indian’s and our land claims processes. Charlie finally started to warm to my presence and let me know that his hesitation at first was based on a bad experience with another recent visit from a student.

After warming to my presence, the kaumatua, Charlie included, started asking questions about American Indians and our political struggles. The kaumatua, all elderly men, are the remaining members of those who started the claims process ten years previously. In the beginning of the claims process, I am told, the leadership group was mainly the wives of these men who have now continuing their work after their deaths. The importance of their claims process becomes evident as a film crew comes into the offices. The crew has been filming sites important to the Māhaki claim which the Treaty of Waitangi Tribunal will not have the opportunity to see in person. At the end of their visit, they announce that they are also working for Te Karere, the daily Māori language news program, and that they would like to shoot some scenes in the office for that evening’s broadcast. As I watched the show later that day and saw myself in the midst of their broadcast, I had a deeper realization of the poor timing of my visit.
As the turmoil of that first day settled, I was able to spend some quieter moments with whatever members of the group were present as they came and went from the offices. In the end, they asked me as many questions about American Indian issues as I asked them about their claims process and the RMA. Their primary focus though was consumed with the culmination of their decade long claim against the Crown and much of our early discussion dealt more with the Treaty claims process then the RMA. Charlie analogizes the claims process like the theft of a car. "You discover that your car has been stolen and you easily find the one who’s stolen it. Once you have found the one who stole your car you discover that they are also the one who will get to decide if the car was yours in the first place and whether or not they will give it back to you. Once you have convinced them that it is in fact your car, they apologize for it’s theft but add that they are not done using the car. They ask you to accept their apology and the spare tire instead of the return of the whole car.” This frustration with the claims process and the previous ten years worth of work laid heavily on Charlie and the other elders.

Once I had gotten Charlie to turn his attention to the RMA he observed that he was generally the one who dealt with resource consents for the iwi. He referred to a recent contentious issue related to a resource consent in the
community. A prominent site along the harbor, which Charlie observed was waahi tapu, had been occupied for decades by a freezing works and had only recently been cleared of the old plant. Many Māori in the area feel that the site should be left alone, but a new proposal has arisen which promises to bring economic activity to this impoverished community. Charlie's view on the proposal and the associated resource consent was that the site had already been built upon once and thus tapu had been broken so why should the iwi attempt to block this new construction. This resource consent was just one of many which continually cross his desk. Charlie stated that he received more resource consent applications than he could carefully read and investigate. He also stated that the iwi did not have the capacity to deal with every problematic application; he had to pick only the most grievous ones to fight and allow the others to pass on and receive consent from the district council. The applications he decides to fight he does so only with a vague hope of success, believing that the RMA is designed to support development and that Māori consultation is merely for political means, not practical ones. (Pera 2001)

The lack of capacity and need for capacity building is a common complaint voiced by Māori against the RMA. Under the act, Māori have a great number of rights acknowledged. (Beverly 1997b) They have the right to view and
respond to all resource consents requiring notification affecting their geographical area, they have the right to create their own iwi or hapū resource management plans, they also have the right to expect that applicants, councils and the Environment Court will consider consents with regard to the “relationship of Māori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga” in addition to the principles of the Treaty of Waitangi. (Resource Management Act 1991; see also Beverly 1997a)

Despite its frequent use by development-focused organizations, governments and the World Bank, Deborah Eade in her text, Capacity-Building: An Approach to People-Centered Development, recognizes that there exist no adequate theory of capacity building. (Eade 1997: 1) Eade’s work is geared toward providing a strength’s based prospective to capacity building, an approach influenced by the work of Paulo Friere, Arturo Escobar and many other development critics. Eade states that,

A capacity-building approach to development involves identifying the constraints that women and men experience in realising their basic rights, and finding appropriate vehicles through which to strengthen their ability to overcome the causes of their exclusion and suffering....Thus capacity-building is an approach to development not something separate from it. It is a response to the multi-dimensional processes of change, not a set of discrete or pre-packaged technical interventions intended to bring about a pre-defined outcome. (emphasis original Eade 1997: 24)
This strengths-based approach to capacity building described by Eade is also recognized by authors working on Māori issues as an empowerment approach to community activism. Lunt, Spoonley and Mataira state that “a strengths-based approach to action sees communities as diverse groups with capacities to resolve issues for themselves. It requires professionals to recognize such capacity and assist individuals to access information so as to allow them to make their own decisions.” (Lunt, Spoonley, and Mataira 2002: 357) Unfortunately this strengths-based approach to capacity building is not the approach taken by the New Zealand national and local governments. Lunt, Spoonley and Mataira reinforce this sentiment by observing that “government policies and programmes continue to conceptualize Māori on the basis of being “disadvantaged”, and this impedes social or economic development that reflects positively the Māori way of life.” (Lunt, Spoonley, and Mataira 2002: 357)

The resource consent process, one of the key ways in which the RMA has made Māori active participants in the resource management process is defined as the proposal of any alteration in the usage of lands or coastal waters including the discharge of sewage and subdivision of land holdings. Applications are made through the regional councils and if the proposed alteration impacts Māori lands, waters, sites, waahi tapu or other taonga than notification must be made to the
appropriate hapū or iwi group. The Māori group, usually represented by a chosen leader, will review the application and decide whether or not it is in the interest of the group to support or decline to support the consent. The number of consents and the time required to consider the ramifications of any given consent to the iwi or hapū can for some groups equate to a full-time position.

Unfortunately, with all of the rights accorded Māori within the RMA, the provision of funds to support the staff and to build the necessary capacity within the iwi to effectively respond to applications for resource consent has not been considered. Richard Howitt observes, that by withholding resources necessary to their success in resource management, “indigenous groups are often set up to fail.” (Howitt 2001: 158) Howitt sees capacity building and institutional strengthening as a method by which governments force Indigenous communities to conform to more ‘orderly’ organizational structures. Howitt states that the process of capacity building, “seeks to reproduce within indigenous institutions those relationships and processes that characterise its own institutional form.” (Howitt 2001 159) This conceptualization of capacity building fails to recognize the strengths inherent in Indigenous institutions. As Lunt, Spoonley and Mataira observe, “[f]rom a Maori worldview, communities have first to be valued as a
collective of individual stories that ensure inbuilt capacities towards self-preservation and positive outcomes.” (Lunt, Spoonley, and Mataira 2002: 356)

Some iwi have already settled claims with the Crown concerning land and resources and have received some amount of financial compensation. These funds have a great many demands placed on them but some far-sighted iwi have chosen to spend money on preparing resource management plans and on staff to handle applications for resource consent. While this expenditure of funds may play into the hands of local and national government officials, seeking to mold Māori institutions within a Western model, it has allowed these iwi to participate to a greater extent in the resource management process. Most iwi unfortunately do not have this luxury and are forced, as is Charlie Pera and Te Aitanga a Māhaki, to cope with these applications without sufficient funding to deal with them effectively.

Carmen Kirkwood, widely recognized as one of a handful of Māori who have led in the area of environmental activism, shared her concerns over the struggle Māori have in becoming proactive agents in environmental protection. Kirkwood, having worked in environmental planning for a wealthier iwi, Ōiraiti, restated this concern over capacity and the ability of the community to respond to the rights and demands placed on it by the RMA. (Kirkwood 2001) Her greatest
concern, one voiced by many Indigenous leaders worldwide, is for the condition of the environment we are providing for future generations, and with building the capacity of Māori in taking a more active role in providing a vision for the environment.

Despite the greater funds available to them, even larger and wealthier iwi are confronted with serious questions concerning their capacity when the issue of transfer of power has been raised. As noted above, the RMA allows for the transfer of powers from local authorities to an iwi authority. This section of the Act has never been implemented and one of the common complaints made by local authorities when questioned concerning their reluctance to transfer powers to the iwi is the question of the capacity of the iwi to handle the responsibilities required under the Act.

The transfer of power under the RMA to iwi authority would be a profound step toward the full sharing of resources and their administration. It would be one example within the broad issue of Indigenous land and resource claims of a true partnership between the Crown/government and Indigenous nations. As James Tully observes in the case of Canada, Indigenous communities do not currently have “the abilities to govern themselves, nor the land, resources, and skills to be economically self-reliant.” (Tully 1998: 150) Indigenous
communities did possess all of these capabilities prior to European colonial expansion into their territories; it is now the responsibility of the settler-state to assist the Indigenous nations in recreating the necessary capacities to serve as truly equal Treaty partners.

Another issue of concern surrounding the RMA is echoed in some of Charlie Pera’s comments. His concern that the Act is primarily focused on supporting development and that no matter how strenuously he objects to an application for resource consent on behalf of his iwi, he believes that developers will get what they want in the end. This type of accommodation of Māori without holding a true desire toward furthering partnership is one of the primary complaints which many Māori and some Pākehā make about biculturalism’s failures. Fleras and Spoonley observe that biculturalism has become “multiculturalised (‘depoliticised’) as a form of institutional accommodation for Māori.” (Fleras and Spoonley 1999: 240) The RMA’s inclusion of Māori concepts and Treaty principles can be perceived, and in fact may be, a mere accommodation of Māori by the national government. In fact though, the Act does provide at least the few outlined avenues for Māori participation and holds out the possibility of being one small step toward true partnership.
National versus Local Government

We drove to Raglan (Whaingaroa) from Hamilton in early morning rain but as we reached the coast the day soon became fine and warm. Angeline Greensill, lecturer of geography at the University of Waikato and daughter of the famous Māori activist, Eva Rickard, had asked if I was interested in attending a mediation that she was involved with in Whaingaroa. (Figure 6) Angeline, along with a mixed group of local Māori from Tainui hapū, tāngata Pasifika and Pākehā have brought suit in the Environment Court against the Waikato District Council for what they perceive as an unhealthy outfall of sewage into the harbor at Whaingaroa. They are arguing that the sewage outfall pipe, whose end is visible at low tide is dumping human wastes into the harbor and following Māori environmental prescriptions has kept community members from swimming, surfing, fishing or gathering shellfish in the harbor for many years. Tainui hapū, the local Māori group, is one of the thirty-three hapū affiliated with Tainui iwi, a large Māori tribe whose territory encompasses much of the Waikato region. Tainui iwi is led by Te Atairangikaahu, the current ariki, Queen and leader of the Kingitanga movement, an association which grew out of the Māori self-determination movement of the 1860's.
The day’s meetings began with the claimant group gathered around a large table in a community meeting room next to the local government offices. Their discussion centers on the problems with the sewage treatment system for the town along with the discussion of several options to the current treatment system they would like the district council to consider. Raglan, also known by the Māori as Whaingaroa, has a population of only 2,667.\textsuperscript{15} The town is primarily a tourism center with a sizable arts and counter-culture community. Besides the beautiful vistas, the town is perhaps best known as one of the best surf spots in New Zealand. As I had learned to expect, since Raglan has a Māori population roughly

double the national average, it also has a dramatically higher unemployment and significantly lower annual median income.

For many in the claimant group, their primary concern is in making the water safe according to Māori standards which require that human wastes be filtered through the earth. They are proposing a system of final filtration which would flush this sewage, following the current treatment process, through a final sand filtration, allowing the water to pass safely then into the earth.

Various alternative plans for treating the wastes are discussed and during this discussion the fractures between the various constituencies within the claimant group rise to the surface. The Māori are primarily focused on making the water safe, by their standards, for swimming, fishing and claming. The Pākehā group is primarily concerned with the growth of their community and in having a new system which would handle the increasing population and tourist development of Raglan. The lone tangata Paskifika/Pacific Islander in attendance, an avid surfer, is primarily concerned for the safety of the surfing community as the surf break at Raglan is located directly in the path of the outflow pipe.

The claimants’ morning meeting ends for a lunch break of sandwiches and more of the ever-present tea and biscuits. Lunch time discussions flow into larger issues of Māori sovereignty and engage me in discussions of the international
Indigenous movement. It became obvious to me that Māori are becoming increasingly connected to the workings of this international movement and are readily informed about issues in Australia, the United States and particularly Canada.

The afternoon meeting began the formal mediation between the two groups: local claimants and the district council. The members and staff of the district council came into the meeting hall and took their places on the opposite side of the table from the claimant group. Notably, the council and its employees were all Pākehā and male; dressed in suits and ties. The distinction between the two groups, at least in appearance, was blatantly obvious. I was interested in seeing if the bicultural discourse, so clear in national government policy, would be equally apparent at the local and district level.

I soon discovered that a clear distinction exists between, at least, this district council and the national environmental policy supported by the RMA. The members of the district council and its staff argued that the waste that exits the pipe into the harbor has been treated to a stage the government classifies as ‘swimming quality’ and that there is no measurable presence of human wastes in the water leaving the outflow pipe. They see the treatment being provided as meeting their obligation to the community of Raglan and despite the fact that they
have agreed to mediation, their position remained unchanged. They seemed to hold the concerns of the community, especially the Māori in contempt. This came to a head when Angeline began to speak about the local taniwha, a supernatural being which the Māori believe inhabits this harbor and acts as kaitiaki of these waters. Angeline told the council; “the human wastes entering the harbor are as poisonous to our taniwha as they are to us.” The council openly discredited the concept of a taniwha; a beast which had never been discovered by Western science and was a representation of Māori superstition for them. The meeting ended without any progress being made and I held the distinct impression that the council was using the mediation process as a stalling measure, probably fearful that they would lose in court proceedings before the Environment Court and be forced to put monies into making the changes requested by the claimant group.

This meeting in Raglan/ Whāingaroa was not the only example of the distinctions that exists between the national government’s discourse surrounding biculturalism and the way in which local government responds that I was to encounter. Local government in New Zealand is divided into two levels of administration; the sixteen regional councils which are subdivided into fifty-seven largely rural district councils and sixteen city councils. Most of the
responsibilities for the implementation of the RMA are held by the sixteen regional councils.

The RMA offers but one example of the difficulties which exist in transferring the responsibilities inherent in the Treaty of Waitangi from the level of the Crown and national government to the local level. One obvious difficulty lies in the fact that the Treaty of Waitangi was signed between the British Crown and Māori rangitira, and not between New Zealand settlers and the Māori. Local governments in New Zealand continue to operate under a monistic legal framework which recognizes only Common Law and a singular national sovereignty. The pluralistic turn in the New Zealand legal landscape over the past decade has yet to substantially impact the relationship between Māori and local governments. The pluralism inherent in the national government’s bicultural discourse continues to be fought by local and regional councils and the method for transferring this pluralism to the local government level has evaded national policy agents.

Unfortunately, since its revival in the 1975 Treaty of Waitangi Act, the principles and their protections for Māori have remained significant only at the national level. While helpful to many projects of national concern including legislation and the Treaty claims process, this has left much of the day-to-day
decision making, which happens at the local level, without much if any, concern for the Treaty principles and Māori legal and political concepts. In fact, a 2000 report by the Ministry for the Environment found that while īwi tended to expect local government bodies to uphold the Treaty and its principles as the Crown and national government would, local councils observed that they do not have any legal obligation to the Treaty and that they do not represent the Crown. (Church 2000: 5)

This separation between the concerns of the national and local governments with regard to Māori participation and treaty partnership is also apparent in the area of representation. While Māori have had specified representation in the New Zealand Parliament since 1868, beginning with four seats and currently expanded to seven Māori electoral districts, local and regional councils have not taken such an approach and few Māori have been able to gain a seat on these councils, even in districts with sizable Māori minorities.

Hirini Matunga, Director of the Centre for Māori and Indigenous Planning and Development at Lincoln University, stated that he perceived the greatest impediment for Māori in the area of resource management did not exist in any failure within the RMA itself but in the failures of the Local Government Act of 1974. (Matunga 2001; *Local Government Act* 1974) Matunga sees the key short-
coming of the RMA and the Local Government Act lying in its failure to recognize the *rangatiratanga* of the *iwi* in dealing with the management of their lands, resources and waters. (Matunga 2000: 42) This failure of the national government to address the self-determination and self-government concerns of Māori along with the failure of local governments to conduct their affairs with regard to the Treaty leaves measures such as the RMA at the level of mere accommodation instead of empowerment.

This opinion regarding the shortcomings of the Local Government Act was apparently not only held by Professor Matunga but also by key members of the current Labour government. Reform of the Local Government Act became a priority for the national government in late September, 2001 and the reform of the Act was completed and enacted by the end of 2002. (*Local Government Act* 2002) Increasing the voice of Māori in local decision making was one of the primary concerns of the reform. Regional, district and urban councils are currently grappling with the impact these changes will have on their administration. The historical transformation of the land from Māori Aotearoa to Pākehā New Zealand was a slow process, directed by colonial policy, but most importantly, carried out largely by local authorities and Pākehā settlers. While the current transformation toward a pluralist treaty-partnership is a policy directed by
the national level it will require the cooperation, support and participation of local authorities to succeeded.

Mana

Jacquie Amohanga has invited me to a consultation between Mighty River Power and the Ngati Wairere hapū. I am excited by the opportunity to see a consultation for resource consent in process. Jacquie serves many local hapū and iwi in their environmental efforts primarily as a consultant and advocate. Jacquie’s primary concern is that the kaumatua understand the issues being presented in resource consents and the associated consultations. She sees her role as, “educatingmana whenua about various issues related to the environment so that they can provide an informed consent to applications for resource consent.”

Mighty River Power is a state-owned corporation which took control of the hydro-electric dams along the Waikato River from the Electricity Corporation of New Zealand when the corporation was split into three separate entities during the electricity reforms of 1998. The corporation’s primary assets are the nine generation plants and eight dams which run along the Waikato River from the outflow of Lake Taupō to the final dam at Karapiro. (Figure 7) Mighty River Power along with the coal plant at Meremere provides almost all of the electricity produced on the North Island.

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The Ngati Wairere hapū is one of the thirty-three hapū that together form the Tainui iwi. The hapū has lived along the Waikato River for more than 500 years and its members are considered a river-based people unlike most other Māori who ocean-based. The land confiscation or Raupatu of 1863 separated the hapū from much of its ancestral lands along the river. The RMA though recognizes their connections with the river and gives the hapū the opportunity to act as kaitiaki for their lands and taonga.
The consultation began at the corporate headquarters just outside of Hamilton. We all gathered around a large meeting room table, ten kaumatua and
kuia from the hapū, Jacquie Amohanga, Don Scarlet, the regional affairs manager
from Mighty River Power and the half-breed Indian researcher from Hawai‘i.
Don’s job was to present the substantive information related to the resource
consent sought by Mighty River. His presentation was informative but I felt at
times he intentionally geared his materials and language at a technical level above
the understanding of the elders from the hapū. The crux of the resource consent is
that the corporation wants to generate more electricity and ultimately revenue.
They have been constrained by limitations to the amount of water they can allow
to flow through the gates of their dams to avoid a rapid rising and lowering of the
river level. If they can hold more water behind the gates and then are allowed
greater outflows they will be able to run their turbines at a higher level, creating
more electricity.

The corporation treats us very well, knowing that if these elders were to
decided against this resource consent they may be forced into legal proceedings.
Following a catered lunch it was Jacquie’s turn to reduce the information Don had
given in the morning to something the elders would be able to better understand.
It is obvious from her presentation that Jacque is concerned about the effects of
river bank and bed erosion should Mighty River receive approval for their resource consent. It is difficult to tell whether the elders of the hapū share her concern, at least at this point in the meetings.

Following Jacquie’s presentation the majority of the elders, Don and another staff member from Mighty River, Jacquie and I drive approximately 30 minutes outside of town to the hydro-dam lying within the hapū’s territory at Karaprio. Don and other staff members at the dam give us a tour of the facility showing us what they consider to be the most important aspects: turbines, safety equipment, earthquake damage measurement devices. The elders of the hapū confirmed my previous belief that they were not all that interested in discussing the current resource consent. Their primary interests lie in how the dam impacts the migration of eels which are an important food source for the Māori. In a manner similar to how salmon are blocked from migrating by hydro-dams in the Pacific Northwest, these dams along the Waikato frequently block eels from migrating upstream for procreation. Often the eels are caught and killed in the turbines and the elders were most interested in seeing the equipment the company has created to assist the eels with this migration. Water outflows and the possibility of river bank and bed erosion were secondary to their concerns for the eels.
As the day progressed I realized that there was an underlying issue of importance to this consultation and the RMA in general. Ngati Wairere is a hapū within the much larger Tainui iwi. *This hapū does live along the river that will be most significantly impacted by the proposed changes to river levels but so do many other hapū and the iwi of Tainui as a whole.* Why then was the consultation so focused on this single hapū? How did the Pākehā employee of Mighty River Power know with which Māori group(s) he needs to consult?

The answer was found in the pervasive Māori concept, mana. *This hapū wants to maintain their own mana over their land, resources and taonga.* When I asked about their relationship with the greater Tainui iwi, I was confronted with a vague answer that though the two groups may be related, Ngati Wairere takes care of its own affairs. *Since mana is based on its connections with the ancestors and the land, these connections need to be remembered and protected in the present.*

By asserting their right to speak on behalf of the river, the Ngati Wairere seek to reinforce their mana, and by doing so keep their hapū strong and vibrant in the face of constant pressures toward assimilation and centralization.

The issues surrounding *mana* and how it impacts Māori actions related to resource management and the RMA were difficult concepts for me to grasp. Issues related to capacity building and the troubles between Māori tribes and local
government were familiar to me from my work in Native American communities in the United States, but *mana* is a concept which while similar to some Native American thought is distinct enough to confuse a non-Māori. I assumed that my confusion concerning how *mana* affected resource consent issues must be felt by other non-Māori involved in the process and this was confirmed by the Pākehā representative of Mighty River Power privately following his presentation to the Ngati Wairere elders.

This “conceptual regulator,” *mana*, is perhaps the key or foundational regulator for Māori law and certainly is a primary influence concerning actions taken by Māori individuals and groups. (Williams 1998a) *Mana’s* relationship to *whakapapa* and *whenua* is grounded in a history of ancestors and land, lands which may be, but probably are not currently in the hands of Māori today. The cultural survival of Māori as individuals and groups is tied to their continuing ability to connect themselves to their ancestors and their lands. Without this connection, *mana* and the power of self-determination lose its foundation. As the old Māori proverb states, “Ta te Rangatira Tana Kai he Korero” (Speech is the food of chiefs). The role of the leaders of a *whānau, hapū* or even an *iwi* is to speak on behalf of the people and the land. Connections to resources and lands are exercised through the assertions of *rangatira*; expressed through the
whakapapa which identifies their hapū as the holders of mana whenua. Today with 80% of Māori living in urban areas, far from ancestral homelands, the assertion of these rights can not frequently be made through occupation rights or ahi kā, but must be maintained through assertions in modern settings such as resource consent consultations, Environment Court hearings or before the Treaty of Waitangi Tribunal.

Preservation of the mana of an iwi or hapū requires the group to continue to maintain their obligations to their homelands, including keeping the home fires burning/ahi ka. It also requires that they continue to serve as kaitiaki over the resources and treasures of their community. With the inclusion of kaitiakitanga as a key concept within the RMA, Māori now have another avenue through which to exercise their guardianship over these resources. By establishing themselves as kaitiaki through the consultation process of the RMA, an iwi or hapū can actively preserve their mana.

While certain Māori terms were included and defined within the RMA, other equally important but difficult to define terms were left out. The legal pluralism inherent in this endeavor to define Māori concepts within this Act and other New Zealand legislation has met with stiff opposition from Māori who believe that the terms are not definable within the context of the English language
and Common law system. (Jackson 1995a; Jackson and NZ Min. of Justice 1987; Mikaere and Milroy 1999; Solomon and Schofield 1992) The inclusion of some concepts while omitting others though perhaps creates an even more difficult situation. For instance, the inclusion of the term *kaitiakitanga* while omitting *mana* leaves the guardianship of the previous terms definition without the foundation of a key conceptual regulator. In addition, the inclusion of the concept of human *kaitiaki* without including *taniwha*, and their role as spiritual *kaitiaki*, is just another shortcoming of the legal definitions found within the Act.

On occasion, as could be expected, two Māori groups have both claimed to have authority over a single resource or territory. Some of these contentions have been played out before the Environment Court in situations where one Māori group has contested an application for resource consent and another Māori group has contested the first group's authority to speak on behalf of the resource or lands in question. Some have contended that such protests before the Environment Court are not necessarily intended to gain a victory before that court but to add legal weight in forth coming Treaty of Waitangi claims. Since much of the claims process is contingent on an *iwi* or *hapū* being able to substantiate their claim to particular lands, prior assertions before another court are hoped to support Treaty
claims and further the mana of some groups which may have been little heard from in recent years.

Authority and Mapping

I had thought that my interviews and research was largely finished. I had thought that my trip to the Northland with Brian and the interviews and meetings I would have there would merely be a repeat of the work I had been doing for the proceeding three months. The meetings with Margaret Kawharu and Esther Grey helped me to gather a deeper understanding of the importance of building capacity within the iwi, and the importance of having leaders remaining on the whenua and serving as ahi ka, but I did not gathering any real new insights. Brian and I traveled on from our meetings with Esther in Maungaturoto to Dargaville to stay with some of his cousins from Oturei Marae. Dargaville, like many of the other communities I had visited during my research, has a large Māori minority, nearly twice the national average at twenty-five percent. Also like other communities in New Zealand with sizable Māori minorities, Dargaville has a higher unemployment rate and lower median income than the nation as a whole.

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After many months of fog and cold in Hamilton it was nice to be in sunny, fine weather in Northland. Brian's cousins were very welcoming and had met other American Indians through their international Indigenous arts work. After hearing about my research interests, they decided that I should meet another distant cousin, Jim Te Tuhi, who serves as kaitiaki on a long stretch of the beach claimed by Te Uri o Hau hapū, one of four hapū within the Ngāti Whātau iwi.

Jim came by the next morning to meet with me; a meeting for which I really had no idea what to expect. Jim brought several notebooks full of information he had been collecting about his work on the beach from Pouto to Maunganui Bluff. (Figure 8) He had an errand to run in town and would return after I had had some time to look through this material. Once back from town Jim decided that I should see the beach and his work protecting the toheroa or giant surf clams. We traveled out to the beach in Jim's pickup, him telling me stories about the marine researchers he is working with from different universities and organizations. While the toheroa was once a valuable foodstuff, once even canned for export, there has been a ban on harvesting the clams on most beaches, especially in Northland since 1971. (Stace 1991) Prior to the rapid decline in numbers in the 1960's, the clams could be found in the millions on beaches around Dargaville and at lengths exceeding 140-200 millimeters. Despite the
decline in numbers extending across the last four decades, it is only in the last ten years that much research has been done into the life cycle and health of the toheroa.

Once out at the beach Jim told me his version of the Maori story of the life cycle of the toheroa, which has been a significant food stuff in Maori life since Maori arrived in the islands. Jim told me that Maori believe that the toheroa breed in early spring moving up from the deeper waters of the beach to the high water mark, females laying their eggs and the males fertilizing them. The young, once
hatched, are then blown by the stiff winds up the sand dunes and into the pingao grass, otherwise known as the eyebrow of Tane, the god of the forests. Jim believes that the replacement of the native pingao grass with spinifex grass from Australia, a common grass used in sand dune stabilization programs, has contributed to the decline in toheroa numbers. He believes that the spinifex grass does not provide a hospitable home for the toheroa fry and stated that areas of the beach with pingao grass are areas still with higher numbers of clams. While lodged in the pingao grass, the toheroa mature and await easterly winds, usually in September, which will allow the small fry to fly back down the beach into the surf at the high tide levels where they dig into the sands and continue to mature. This story is widely told among Māori and can be heard in one version or another even in newspaper articles about the clams. (Tohera Breeding 1950; Toheroa 1927) Of course Western science has a much different account of how these particular clams reproduce that does not contain references to Māori deities and does not match with the story recounted in the newspaper articles and by Jim. Glenys Stace recounts the Western scientific version of the toheroa life cycle for New Zealand Geographic as a fertilization which occurs in the ocean, where the small fry "live and grow in the plankton for about 20 days before being eventually washed up on the beach as miniature toheroa smaller than a pinhead by incoming
tides.” (Stace 1991: 22) In the Western version of the story, the beach grasses play no role in the life-cycle of the clams.

While I learned a great deal from Jim about the toheroa, it was not finally what made this meeting so important to my research. What was important was Jim’s dedication to his role as a kaitiaki for the beach and the toheroa. Sometimes his work has required that he break the laws governing the beach and the toheroa which are considered a protected species by the New Zealand government. Jim believes that his efforts relocating young toheroa from densely populated beds to areas where there are few will help the species survive. He certainly cares enough about the clams to stop poachers from illegal harvests using whatever non-violent means he can. All of this is work governed by the Ministry of Fisheries and its fisheries officers, governed by the RMA and other laws which fail to recognize that Jim works under Māori auspices, having been recognized by Te Uri o Hau as a kaitiaki of the beach. The government recognizes that Māori have a customary right to take toheroa for cultural purposes but continually fail to recognize Māori rights to protect and actively manage this resource. Jim believes that his work will save the toheroa not only for Māori use but under strict control for all New Zealanders.
Jim allowed me to have a copy of a letter he had sent to the then Minister of Fisheries, the Right Honorable Mr. Hudson. (Te Tuhi 2000) Jim outlines in the letter his work to save the toheroa and serve as kaitiaki on the beach. He even takes it upon himself to educate the minister concerning the meaning of key words contained in his letter as well as the RMA including: kaitiaki, kaitakitanga and taonga. Jim’s primary purpose for writing this letter was to request official recognition from the government of his right to serve as kaitiaki for the beach and the toheroa. Jim describes: “[f]his appointment of Kaitiaki means... that I believe that I have the right to disturb Toheroa and see that they are there for future generations.” (Te Tuhi 2000) Finally after several years worth of letters Jim was successful and received a highly prized license from the Ministry of Fisheries outlining his right to exercise his iwi granted authority.

The question of authority between Māori and Pākehā within Aotearoa/New Zealand can be seen as two distinct issues. First, there is the question of who holds ultimate authority over a specific jurisdiction. As has been discussed earlier, New Zealand common law has assumed the complete dissolution of any continuing jurisdiction for Māori customary law. All rights are assumed to be held by the Crown and the general citizenry and while common law may recognize an occasional unextinguished customary right to consume a
particular resource or even to ownership of land, foreshore or seabed it has not yet recognized a customary right to the management and control of resources. All rights to manage their own resources are granted by the Crown back to the Māori, such as the recognition of rāhui (prohibition or embargo against the use of certain resources in a prescribed area) and the occasional official recognition of kaitiaki, despite a general acknowledgement that these customary rights were never extinguished by the Treaty or by subsequent legislation. It is this slow, halting accommodation of Māori rights, usually following lengthy court battles and/or protests which has led many Māori to view the bicultural ideals of the government as failing to recognize the full treaty partnership sought by Māori.

The second issue related to authority I see as a conflict between what Houston Wood has described as two distinct rhetorical systems; mono and polyrhetoric. (Wood 1999) Māori today continue to view their authority grounded within the mana they hold through their connection to their homeland, ancestors and extended family/hapū. This system leads to a multilayered, “shifting and context-specific” view of authority which defies clear definitions and boundaries. (Wood 1999: 130) James Tully describes the monorhetorical, Western political discourse as “the dominant language that presents itself as a universal vocabulary of understanding and reflection; the [Indigenous] a subaltern language which,
when noticed at all, is normally taken to be some kind of minority language within
the dominant language of western political thought.” (Tully 2000: 37) The New
Zealand government, operating from a monorhetorical view of authority,
assuming the right to impose its ‘universal’ political order on Māori, has sought to
transform Māori authority into clearly defined large groups based on iwi or iwi
confederations /rūnanga, therefore limiting the number of groups and official
spokespersons representing the interests of Māori in negotiations. Manuhuia
Barcham has labeled this process by the New Zealand government as the “iwi-
isation of Māori society.” (Barcham 2000: 140) The Māori indigenizism and
retribalization movements have been unyielding to the attempts of the government
to redefine, simplify and fix their authority structures. This refusal to accept the
iwi-ization program of the government can perhaps best be seen in the Māori
success in repealing the Runanga Iwi Act (1990), an Act which sought to codify
this iwi-ization within law, within one year of its adoption by Parliament.

Jim Te Tuhi’s exercise of his kaitiaki rights on the beach between Pouto
and Manganui Bluff creates evidence of the existence of Māori self-determination.
Jim’s work, a large scale effort for one retired man, is altering the landscape of the
beach. His efforts have increased the numbers of toheroa, decreased the poaching
and broadened the understanding of Western researchers. Jim’s work occurs on a
specific beach, with a specific history and politics. As kaitiaki, Jim is resisting the imposition of Western political and scientific thought on the management of the beach. He is asserting the right of Māori to continue to speak and act on behalf of the beach, toheroa and the other taonga located therein. The exercise of self-determination on the beach is going beyond what Butz and Ripmeester have envisioned as a discursive reconstruction of an actual place “in ways that allow [the radically disempowered] to engage more productively in directly oppositional resistance.” (Butz and Ripmeester 1999: 8) The exercise of self-determination and the imposition of Māori values on the beach creates a thirdspace through its measurable alteration of the landscape. This is more than a discursive reconstruction, it is a physical manifestation of Māori self-determination.

Another component to this difference in understanding authority relates to mapping. Mapping is largely an attempt to provide a visual order to the landscape, an order which allows for easier control by state systems. (Scott 1998: 88; see also Anderson 1991) The New Zealand government has sought to produce a visual order to the Māori authority structures and in an effort to support their iwi-ization project. The multi-layered, overlapping nature of Māori relationships and authority structures provides a distinct challenge to applying clear, linear boundaries to Māori groups. The continuing desire of the government to have a
map outlining the boundaries clearly separating one Māori group’s authority from another has led to the production of a map frequently found in the offices and publications of government agencies. (Figure 9)
Despite its clear disclaimer stating that “the boundaries are for knowledge only [and] have no official standing,” this map is nonetheless used as a reference tool by government officials seeking a clear definition of which Māori group holds authority over any given territory within the nation. (Atlas of New Zealand 1988) The map recognizes the level of Māori authority which the government wants to encourage, ĭwi and rūnanga. It also orders the patterns of Māori authority and relationship across the landscape, attempting to force an order which does not exist in Māori society. Māori though continue to recognize the hapū as the primary authority structure and refuse any attempt at reorganizing into the more centralized structures desired by the government. They also refuse all attempts to legally define their boundaries, particularly boundaries based on ĭwi or rūnanga authority.

Personally, I initially found the fluidity of the definition of boundaries and authority among Māori as confusing as Pākehā seem to find it. My own experience in the United States and Canada is with First Nations who have clearly defined, by treaty and legislation, reservation/reserve boundaries and leadership structures. The authority structure recognized by the state is defined by legislation, such as the Indian Reform Act in the United States, which has
imposed democratically elected tribal council structures, superimposing these power structures over traditional authority regimes. Māori have demonstrated an admirable tenacity in avoiding the imposition of a monorhetorical state order to their own authority structure and as a part-time cartographer I especially admire their repudiation of rigid linear boundaries upon their fluid relationships with one another, their landscape and their taonga.

**Conclusion**

These four stories, generously shared with me by these Māori who are actively involved in the protection and management of their resources for the generations yet to come, have assisted in identifying four critical areas of failure in Māori participation in the RMA and can also point to more general disappointment with the bicultural discourse within New Zealand today. The broader stage of the nation within which these four specific stories are told is a nation built by a Treaty between two groups; a Treaty which has been interpreted as a partnership between Māori and Pākehā. This bicultural partnership has been described as a full-sharing in the resources of the nation. (Schwimmer 1968)

The difficulties outlined in the four stories above point clearly to the failure of the RMA to provide for a full-sharing in the management and use of the
resources of the nation between Māori and the Crown. More generally though, these stories point to the failure of the bicultural discourse in providing for “a full sharing in the pursuit of the collective goals of the society – in the processes of government and the exercising of power.” (Schwimmer 1968: 11) Many authors have begun to describe the bicultural discourse as it is portrayed by the New Zealand government as an accommodationist approach toward dealing with Māori aspirations for self-determination. (see Fleras and Spoonley 1999; Pearson 1994; Poata-Smith 1996; Rata 2000) The failures and/or assimilation of biculturalism within government and capitalist regimes has meant that while “biculturalism may mean a lot of things; it seldom means Māori claims for tino rangatiratanga rights.” (Fleras and Spoonley 1999: 239)

These four stories demonstrate Māori efforts to exercise their tīno rangatiratanga rights actively in defense of their resources and environment. Their exercise of self-determination is visible in the changes their actions create in the harbors, beaches, rivers and towns across Aotearoa/New Zealand. As Fleras and Spoonley have observed, “[o]nly the exercise of tino rangatiratanga provides tangible evidence of its existence.” (Fleras and Spoonley 1999: 27) The stories recounted here provide tangible evidence of the exercise of Māori self-
determination and the continuing desire by Māori to actively defend and manage those taonga important to their continued survival as a people.

Finally, and perhaps most significantly, the continued exercise of tīno rangatiratanga rights present in these four stories demonstrates the “special quality” inherent to indigenous self-determination which “enables all levels of Māori to exercise Māori models of ownership and control over resources.” (Fleras and Spoonley 1999: 27) The continuation of Māori self-determination is not only affecting the physical landscape but also the political and legal landscapes of the nation; challenging what was once the unchallenged absolute power of the state.
Chapter Six

CONCLUSION

Biculturalism: success or failure?

"[A]ll societies must call at times on their seers—be they artists, writers, or preachers—to guide them beyond normalcy, to offer reflection, critique, and visions of alternatives. Humankind, for its part, receives most of its paradigm shifts, as anthropologist will tell, not from “successful” societies, but from those at their fringes who are compelled by the “winners” to re-invent, or succumb. Indigenous peoples have been subordinated and injured by the modern state. Politically, and often physically as well, they live at its edge. Conceptually, however, they may be turning that edge into a cutting one as they construct new paradigms of the rightful structure, function, and relationship of states to constituent peoples."

Maviân Clech Lâm

Introduction

This dissertation has sought to tell the story of the struggle towards

Indigenous self-determination being carried out in Aotearoa/New Zealand. I have explored the various aspects of biculturalism as my research has led me through

the foundational cultural identities of Māori and Pākehā, created through the

colonial ‘contact zone’, within a matrix of land, resources and sovereignty. There has been a theoretical exploration of how biculturalism and the exercise of Māori self-determination creates evidence of its existence by altering the landscape within specific places as demonstrated within the four stories in chapter five.

In this concluding chapter, I want to look back at where the process of exploring the foundations of biculturalism has taken us, review the findings based on the four Māori stories and finally move on to a discussion of where this research may lead. This story of biculturalism has evolved from identity production within the colonial ‘contact zone’, through the liberal democratic development of multiculturalism as a response to national and ethnic minorities. We have explored biculturalism as a thirddspace in search of a critical geographic theory of ‘politics of place’, acknowledging that the exercise of Indigenous self-determination is evident on the landscapes it alters. And finally there has been an examination of biculturalism’s effect on the legal landscape of New Zealand.

This foundational work has set the stage for the four stories of Māori self-determination told in the last chapter. These four stories have provided us with the evidence of the exercise of self-determination and its specific effects on the landscape of Aotearoa/New Zealand. These four stories have also shown how the Resource Management Act and biculturalism is failing to provide for the treaty
partnership promised within the government’s discourse on biculturalism. I will review the key points of these four stories, weaving in the critical geographic and legal theory from the foundational chapters.

Finally, I want to explore how this work in Aotearoa/New Zealand is connected to the international indigenism movement as well as the international drive for sustainable development. A brief comparison with the progress being made in Nunavut Territory, Canada with regard to wildlife management will aid in seeing how these two international movements are impacting Indigenous self-determination in resource management and will provide a launching board for a discussion of future research. As Lám observes, Indigenous peoples are creating paradigm shifts in the way our society conceives “the rightful structure, function, and relationship of states to constituent peoples.” (Lám 2000: xxvi) These paradigm shifts are being expressed through the international indigenism movement and their effect is being felt within the local ‘politics of place’ in settler-states.

A review of where we have been

Māori and Pākehā are peoples produced within the colonial ‘contact zone’ of Aotearoa/New Zealand. These identities are born from an autochthonous
connection to the islands and intrinsically linked with each other. Without Pākehā, the common identity shared between Māori would likely not exist; likewise without their migration and contact with Māori, Pākehā identity would never have evolved. While the ‘contact zone’ theory developed by Pratt describes a metaphoric space, when applied to specific colonial encounters it begins to explain the ‘politics of place’ involved within a specific transcultural exchange. (Pratt 1992)

Māori and Pākehā identities are both connected to the land. Their separate understandings of this connection to the land are expressed through the epistemological frameworks of their unique world-views. As Allen describes, this connection between identity and land is also intrinsically connected with the history of each people. (Allen 2002) While Pākehā New Zealanders may not be the Indigenous people of Aotearoa, their collective identity is autochthonous to the ‘contact zone’ created in the islands. Māori and Pākehā not only share this connection to the land, they also share a common history.

The common history shared by Māori and Pākehā is one “involving conditions of coercion, radical inequality, and intractable conflict.” (Pratt 1992: 6) It is a history through which Pākehā New Zealand slowly overwhelmed Māori
Aotearoa, converting the land, laws and people to the unconditional sovereignty of the British Crown, removing Māori from their culture, lands and resources.

The mono-cultural ‘imagining’ produced through the imposition of a Pākehā New Zealand has over the past few decades slowly given way to an acknowledgement of the multicultural and bi-national realities of the state. As a liberal democratic state, changing with the evolving nature of international law, New Zealand has embraced multiculturalism as an acknowledgement of individual rights to difference. The unique character of Aotearoa/New Zealand has prompted a modification of the nation’s expression of multiculturalism, a modification which recognizes not only the poly-ethnic nature of the state but also the bi-national character expressed through the Treaty of Waitangi.

Biculturalism embraces the two founding nations of the state, represented by the rangatira of the Māori and the British Crown. Biculturalism as it was envisioned by Schwimmer was intended to be a “full sharing in the pursuit of the collective goals of the society – in the processes of government and the exercising of power.” (Schwimmer 1968: 11) The official bicultural discourse of the government unfortunately falls short of this promised full sharing, leaving Māori
expressions of self-determination largely as acts of resistance against the sovereignty of the state.

In exploring a critical geographic approach to biculturalism and the expressions of Māori self-determination, I have borrowed from Donald Moore’s interpretation of the term thirdspace which he in turn has borrowed from Bhabha. I envision this thirdspace as does Bhabha, as an ‘in-between’ space which recognizes the hybrid nature of settler-state society but I also recognize as Moore describes “that place matters; it has a politics and is produced through myriad material and symbolic struggles. Places, and people’s relationship to them, have histories woven into their very fabric.” (emphasis original Moore 1997: 103; Bhabha 1994) It is within specific places that the exercise of Māori self-determination, evidenced by the alterations made to the landscape and through the stories told, creates thirdspaces/places ‘in-between’ the hegemonic control of the state. While biculturalism has promised a full sharing in the processes of government, a full recognition of treaty partnership, in reality the exercise of Māori self-determination remains an act of resistance continually creating/recreating thirdspaces where as Pile observes the “multiplicities of power operate with, off and against each other.” (Pile 1994: 273)
As the British sought to impose their will in an effort to control the land and resources of New Zealand, they employed their law as a means to that end, supported by the Law of Nations which championed the imposition of European law onto uncivilized non-Europeans and their lands. Māori tikanga was replaced with English Common law. The only preservation of Māori custom within the law of the state pertained to the ever imperative establishment of title to the lands, lands sought after by Pākehā settlers.

As international law has evolved, so too have the legal standards of New Zealand. With the adoption of biculturalism as an official government discourse, the New Zealand parliament has sought to codify biculturalism by creating a pluralistic legal landscape where monistic common law once stood. This pluralism has pervaded legislative acts over the past fifteen years, most notably for this dissertation within the Resource Management Act.

The pluralistic turn in New Zealand law is seen by some as an honest expression of the government’s commitment to its bicultural discourse. Others though see the incorporation of Māori tikanga as an “inherently assimilative and racist” act. (Jackson 1994: 125) Authors such as Jackson and Mikaere would prefer to see Māori law legislated, enforced and adjudicated by and for Māori. (Jackson 1994; Jackson and NZ Min. of Justice 1987; Mikaere 2000)
envision parallel legal systems which would allow Māori self-determination, in their opinion, its greatest expression.

These three chapters have provided the foundation for exploring the expressions of Māori self-determination found in the four stories shared in Chapter Five. It is this exercise of self-determination and what may be learned from these stories, set within a ‘politics of place’, which weaves together these threads.

**What has been learned**

This dissertation, while exploring the nature of biculturalism in New Zealand, has been grounded within the local politics of resource management and Māori participation within the RMA. The use of these four stories has provided a method for ‘placing’ the metaphorical theories of critical geographies of resistance. This ‘placing’ has sought to weave the issues of identity, history and law into the exercise of Māori self-determination within a ‘politics of place’ and with regard to the RMA.

These four stories of self-determination have clearly shown that despite the bicultural discourse within which the RMA was drafted, Māori exercise of their own customary laws regarding resource management and their attempts to
engage with the Act are still largely acts of resistance. I want to review the key points of these four stories and explore how these acts of self-determination can inform our understanding of how Indigenous self-determination effects the landscape of the places in which it is exercised.

Each of the four stories shared was captioned by the key issue I saw within that story and which I sought to describe more fully in the discussions which followed. These four captions; capacity building, local versus national government, mana and authority/mapping, demonstrate the ways in which I witnessed the RMA failing to support Māori as full treaty partners. They also represent the issues around which Māori continue to struggle “to exercise Māori models of ownership and control over resources.” (Fleras and Spoonley 1999: 27)

The issue of capacity building entered into nearly every interview I conducted with Māori. The RMA, by intentionally including Māori cultural concepts and the opportunity to review applications for resource consent, gives the appearance of fully supporting Māori participation in resource management. Unfortunately this support of Māori participation presupposes an existing capacity within iwi and hapū to engage as full partners. There are two problems with this presupposition. First, iwi and hapū have been decimated by over one hundred and fifty years of colonial rule. The loss of land, population, resources, culture (and
cultural knowledge) have depleted the capacity of the *iwi* to deal with the demands placed upon them, including the review of applications for resource consent. The second problem concerns the failure of the Pākehā resource management establishment, operating within a Western scientific model, to recognize the capacities which *iwi* have been able to maintain, including an extensive traditional ecological knowledge of the islands.

Without the necessary support to engage as full partners, the RMA is setting Māori up to fail. (see Howitt 2001: 158-9) Without the support to function as ‘full’ partners in resource management, the government is perpetuating its own soft form of biculturalism which treats Māori as little more than ‘junior’ partners in the processes of government. (see Fleras and Spoonley 1999)

This failure of the national government to fully support the ideals of treaty partnership contained within biculturalism seems like a small failure when compared to the complete lack of commitment to biculturalism found at the local government level. The evolution of biculturalism within New Zealand has seen it progress from a largely academic discussion, to being embraced by the intersection of Māori activism and the new Pākehā middle class and finally finding expression as an official national government discourse. (Kelsey 1996: 185; see also Rata 2000) While the expression of biculturalism embraced by the
government is as Fleras and Spoonley describe it, ‘soft’, it does go significantly further toward embracing Māori self-determination than has been witnessed by local governments. (Fleras and Spoonley 1999)

Perhaps it could be argued that since biculturalism has been a discourse embraced largely by the middle-class and intellectuals that the failure of local governments to respond reflects the same failure which is described by MacLean in his article, “The Silent Centre: Where are Pākehā in Biculturalism.” (MacLean 1996; see also Rata 2000) If, as MacLean observes, Pākehā are failing to engage with biculturalism and continue to hold a ‘one nation, one people’ view of New Zealand, then how can national government policy seek to alter this view? While legislating beliefs is a tricky endeavor, the recent reforms of the Local Government Act have sought to transfer the national government’s commitment to the ‘principles of the Treaty’ down to local governments. (Local Government Act 2002) While this may not have much bearing on altering the beliefs of average Pākehā New Zealanders, it does extend the policy discourse from the national level to local governments and bring the politics of biculturalism closer to the lives of the ‘silent centre’.

One of the reasons that biculturalism has failed to reach the ‘silent centre’ perhaps lies with the failure of most Pākehā to understand the basic components
of the Māori world-view. (see Ritchie 1992) Many works have been written to assist the average Pākehā in engaging and understanding Māori culture including James Ritchie’s, *Becoming Bicultural.* (Ritchie 1992) With the inclusion of Māori key conceptual regulators within the laws of the state, several works have been written to assist jurists in engaging and understanding Māori *tikanga.* (NZ Min. of Justice. 2001; NZ Law Commission. 2001) This pluralistic turn in New Zealand law has though, as several critical legal scholars have noted, served to “co-opt Maori legal and cultural processes.” (Jackson 1994: 125) The ‘co-optation’ of Māori legal processes has equated to the reduction of complex cultural values to overly simplistic definitions within legislation such as the RMA. Additionally, while key concepts such as *kaitiakitanga* do at least receive a cursory definition within the RMA, other equally important concepts, concepts crucial to the understanding of *kaitiakitanga* are left undefined.

*The key cultural concept of mana is one such example. By leaving mana undefined within the RMA, all other Māori concepts contained within the Act are rendered impotent. If as Niezen observes, we “are never able to plumb the depths of an alien conceptual system [and since] moral standards are inescapably part of culture and, not being properly understandable, are incapable of being judged,”*
then what hope do Pākehā jurist have in judging Māori concepts, especially without full definitions of the key concepts which underpin tikanga?

While some attempts, futile as they may be, have been made to include Māori cultural concepts within the RMA, there has been no inclusion of Māori as active agents within resource management. The inclusion of kaitiakitanga within the text of the RMA does in some simplistic way further the power of Māori cultural values within resource management, but while including this conceptual term the Act neglects to include an active role for kaitiaki. The core principle of kaitiakitanga as defined by the RMA is ‘guardianship’. This guardianship dovetails with the overarching principle of sustainable development which guides all decisions made under the Act. (see Wheen 2002) Unfortunately those Māori who currently serve in the role of kaitiaki have not been accorded agency within the RMA.

Jim Te Tuhi’s role as the kaitiaki of the North Kaipara beach is a role he exercises with the full authority of Te Uri O Hau hapū. The authority of the hapū to grant Jim this role is an authority not recognized by the RMA. No jurisdiction bounded or otherwise, is recognized for the agency of Māori to actively engage in the management and protection of their resources. When Jim engages in managing the toheroa of North Kaipara beach, he is exercising tino rangatiratanga,
not only on his own part, but for the hapū, iwi and all those who will benefit from his actions. His actions are having an observable effect on the landscape of the beach.

As Fleras and Spoonley argue, “[o]nly the exercise of tino rangatiratanga provides tangible evidence of its existence.” (Fleras and Spoonley 1999: 27) I would argue that Jim’s work as kaitiaki on the beach is providing tangible evidence of the exercise of tino rangatiratanga. Within each of the four stories shared in this dissertation, there is evidence of the exercise of Māori self-determination, each varying in scale according to the particular action taken.

When Angeline Greensill and her community took action to change the way in which waste water is pumped into Raglan/Whāingaora Harbor, they are acting to protect the health and safety of their community. When Ngāti Wairere hapū seeks to maintain their mana through asserting their right to speak on behalf of the Waikato River and the resources which lie within it, they are exercising their self-determination as a people. And when Charlie Pera contests applications for resource consent, he is acting to protect the lands of his iwi.

These agents of Māori self-determination are creating thirdspaces on the colonial landscape of the settler-state, places ‘in-between’ the colonizer/colonized dialectic. Their acts of resistance occur within a ‘politics of place’, within a fabric
of history and relationship. (Moore 1997: 103) By exercising their self-determination, these agents of Māori resource management are challenging the dialectical relationship colonial systems of domination have wrought in New Zealand. While these agents exercise their self-determination within the local politics of their communities, the exercise of self-determination also engages them in the interconnection of their community with the national and global flow of Indigenous politics. With the growth of global Indigenous connections, the specific ‘politics of place’ involved in Indigenous self-determination is becoming increasingly a matter of global concern.

Globalization and Indigenism

The global indigenist movement has brought together widely differing peoples within the context of international fora, in an effort to share the symmetry of common interests in a globalizing world society. As Ronald Niezen observes, “The concept “indigenous peoples,” developed principally within Western Traditions of scholarship and legal reform, has nurtured the revival of “traditional” identities. It has transcended its symbolic use by acquiring legal authority. It is the focus of widening struggles by increasing numbers of “peoples” for recognition, legitimacy, and validation. It has been taken control of
by its living subjects – reverse-engineered, rearticulated, and put to use as a tool of liberation.” (Niezen 2003: 221) The global sharing of Indigenous peoples’ common struggles takes place in such international fora as the International Labor Organization, the United Nations Working Group on Indigenous Populations as well as the newly formed United Nations Permanent Forum on Indigenous Issues, not to mention the hundreds of other international organizations representing specific aspects of Indigenous peoples’ education, health and welfare. (see Anaya 1996; and Niezen 2003) These international fora have given voice to the common struggles of Indigenous communities and in a tentative manner, also begun to give the legitimacy of international legal rights to these concerns. Until the last few years, the work of these organizations has been contested by most states. In general these states complain that their internal sovereignty is being threatened and undermined by the strengthening calls for self-determination by Indigenous communities. Despite the fact that the work of these international organizations has largely remained unsupported by the majority of states, particularly settler-states, a customary norm towards the rights of Indigenous peoples has begun to coalesce within international law. (Anaya 1996)

There are a few specific documents and conventions at the international level which are impacting this evolving customary norm regarding the rights of
Indigenous peoples. The two documents with the most influence are the International Labor Organization’s Convention Concerning Indigenous and Tribal Peoples as well as the United Nation’s Draft Declaration on the Rights of Indigenous Peoples. S. James Anaya observes that these documents within international law “require states to safeguard indigenous peoples’ rights to the natural resources throughout their territories, including their right “to participate in the use, management and conservation’ of the resources” (Anaya 1996: 106).

While most states have not signed the International Labor Organization’s Convention and many still actively fight the acceptance of the United Nation’s Draft Declaration, they nevertheless find themselves increasingly forced to conform to the norms created by these international legal documents. Anaya says that this can be observed most significantly in the reports submitted by states to the International Labor Organization and the United Nations, an especially important activity of the newly formed Permanent Forum on Indigenous Issues.

(Anaya 1996)

These evolving norms of Indigenous peoples’ rights within international law are
aimed at remedying two distinct but related historical phenomena that place most indigenous communities in economically disadvantaged conditions. The first phenomenon is the progressive plundering of indigenous peoples’ lands and resources over time, processes that have impaired or devastated indigenous economies and subsistence life, and left indigenous people among the poorest of the poor. The second is the discrimination that has tended to exclude members of indigenous communities from enjoying the social welfare benefits generally available in the states within which they live. (Anaya 1996: 108)

The focus of this dissertation has been in critiquing the success of the New Zealand biculturalism discourse in remedying the plundering of Māori resources through the pluralistic approach taken in the RMA. As has been discussed, the RMA has both succeeded and failed in its endeavor to remedy the loss of Māori self-determination in the management and use of resources important to their economic livelihood. The important point for this discussion though is that the language within the RMA geared toward remedying these losses by Māori, while falling short of the promised full partnership between Māori and the Crown, does conform well to the evolving customary rights of Indigenous peoples’ within international law as described by Anaya.

**Sustainable development and international law**

There is another important trend within international law which is bringing about a customary norm and commitment to sustainable development within
resource management. This customary norm, influenced by green activism, the Brundtland Commission on Sustainable Development as well as what Richard Howitt refers to as the “[r]ecognition and application of traditional ecological knowledge [as] an increasingly important element in many resource management systems,” is influencing not only international law but also national laws regarding resource management. (Howitt 2001: 45; see also Wheen 2002)

As can be seen in the internationalization of Indigenous peoples’ campaigns for self-determination, green activists have also internationalized their campaign for ecological sustainability and biodiversity. The 1992 Rio de Janeiro Earth Summit is frequently acknowledged as the globalization of this movement and the beginning of a political and legal commitment to sustainable development (see Howitt 2001). Unfortunately, this international green movement has “found it easier to advocate protection of … warm fuzzy animals than to prioritize the rights of indigenous peoples.” (Howitt 2001: 25-6)

Benjamin Richardson recognizes that because these two streams of international law have failed to converge, “the challenge for indigenous peoples has been to modify existing international treaties and instruments dealing with the environment, or to devise new, more appropriate instruments that better serve the environmental objectives of their communities.” (Richardson 2001: 1) While the
international movement in support of sustainable development has largely failed to integrate the rights of Indigenous peoples, some nations have succeeded in this integration within their own resource management and related legislation. The RMA is perhaps the best example of a national commitment to sustainable development and is also credited by many as the forerunner of integrated planning legislation. (Wheen 2002) Its integration of sustainable development and Indigenous resource management certainly makes this legislation unique. While unique at the national level, there are smaller scale attempts, in other states, at integrating Indigenous peoples' rights and cultural values within a resource management regime aimed at sustainable development.

**Nunavut Territory, Canada**

The newly formed Nunavut Territory in Canada, officially declared on April 1, 1999, comprises over half of the former Northwest Territories. (Figure 10) Nunavut evolved out of a land claim agreement between the Crown and Inuit of this region. (Nunavut Act 1993) The Canadian government, recognizing the unique status of the Inuit of the Nunavut land claim region agreed to grant this area territorial status. The area encompassed by Nunavut, while over one fifth of the total landmass of Canada, has a population of only 27,000, of which over
eighty five percent are Inuit. While the Act establishing the new territory does not grant control of the territorial government to Inuit specifically, or to some form of tribal self-government, it does currently guarantee Inuit rule by majority.

Figure 10 Map of Nunavut Territory, Canada

Although some of the structures of Nunavut are unique, the territorial government is largely similar to that of the Yukon and what remains of the Northwest Territories. While the Territory has the same basic structure as the other territories of Canada, such as a premier and legislative assembly, the
Nunavut government is attempting to incorporate Inuit values within the framework of their territorial government. Some have argued that the acceptance of majority rule, territorial status by the Inuit constitutes devolution of Canadian sovereign responsibilities to a local authority as opposed to recognition of the inherent right of the Inuit to self-determination. (Lâm 2000: 188; see also Kersey 1994) Other, more recent, Canadian/Aboriginal land claims agreements, such as those with the Nisga'a and Tli Cho, have recognized the right of these two specific First Nations to self-government, including an Aboriginal judiciary. At the time of its founding, Nunavut inherited the territorial laws of the Northwest Territories. Since its founding, the territorial government has been engaged in revamping those laws to fit the needs of the new territory and to develop a new legal framework under the Nunavut Court of Justice. While this new judicial system in Nunavut may be actively incorporating Inuit conceptual regulators within its framework, this new court still must operate on behalf of all Nunavummiut and not just for the majority Inuit.

One of the laws inherited from the Northwest Territories, currently under review, is the Wildlife Management Act (WMA). Over the past year, meetings have been held in communities across Nunavut in an effort to include local voices in the rewriting of this crucial Act, culminating in the recent release of a report by.
the Nunavut Ministry for Sustainable Development. (Akesuk 2003) A large proportion of the population of Nunavut continues to rely on hunting as their primary form of subsistence and interface with the cash economy. One of the changes envisioned by this review of the WMA is the desire to include Inuit concepts concerning resource management or *qaujimanituqangit* within the act to further integrate Inuit culture within the Territory’s legal system.

Within the area of land and resource management, the Inuit negotiators of the Nunavut Land Claims Agreement were successful in gaining Inuit control of key government-Aboriginal boards appointed to deal with wildlife management, land use planning and environmental protection by requiring that 85 percent of the membership of these boards be Inuit. Graham White observes that “[t]hese boards [exist] at the intersection of the three orders of Canadian government – national, federal/territorial and Aboriginal” (White 2002: 1). Despite the fact that the Territory and these management boards have existed for only a few years, White observes that “[t]hey have significantly enhanced Aboriginal peoples’ influence over land, wildlife and resource decisions.” (White 2002: 2) The question which remains for Nunavut is the extent to which the Inuit culture and worldview is impacting the decision-making process within resource management while the laws governing wildlife management in the Territory remain void of
Inuit concepts. The recently released report on public consultations in the territory outlines the strategy for this inclusion; "[a]n Inuit Qaujimajatuqangit focus group was formed to include Inuit cultural beliefs and practices into public law. The focus group drew up a set of principles that are included in the legislation. The government proposes that these principles provide guidance to all persons involved in wildlife management in Nunavut." (Akesuk 2003: 2) White’s work concerning these management boards has been an initial attempt to determine whether or not these boards have been successful in furthering Inuit self-determination in the area of land and resource management. The question of whether or not the proposed changes in the development of a Nunavut Wildlife Act will further the inclusion of the Inuit worldview within wildlife management in the Territory is research still waiting to be done.

A Brief Comparison

The evolving situation in wildlife management in Nunavut remains fluid and changeable. The impacts which the proposed changes to legislation will have on the local politics of hunting, fishing and whaling remain untested. The recent consultation work carried out by the territorial government indicates a strong desire to change the legislation governing wildlife management but to date no
action has been taken by the legislative assembly. As White observes in his text, research work into the effectiveness of the Inuit controlled management boards remains, “as yet, thin on the ground.” Despite the preliminary nature of research into Nunavut wildlife management, I believe that there are two areas in which comparisons can be made between the wildlife management situation in Nunavut and the broader resource management situation in Aotearoa/New Zealand.

While these two areas of comparison may both be broadly described as related to self-determination, it is apparent that within these two states wildlife and resource management are being dealt with in distinctly different manners. First is the issue of the decision making process within the framework of resource management. The extensive research concerning the RMA of New Zealand, including my own, has clearly shown that Māori are only marginally included in the decision making process outlined by the Act. While iwi are encouraged to produce resource management plans of their own, Māori are rarely included in the production of management plans by regional governments and their own management plans go largely ignored by local governments. Māori do have the right to challenge applications for resource consent under the legislation, and consent seekers are required to consult with Māori on applications sought within their territory, but this is not a right of refusal and Māori still must frequently
resort to challenging resource consents before the Environment Court. While the RMA does provide an avenue for the transfer of resource management powers from local governments to *iwi* authorities (section 33 of the Act), this transfer of powers remains untested. These three failures of the RMA by themselves demonstrate an unwillingness on the part of the government to embrace Māori as full treaty partners and Māori remain relegated to the periphery of the decision making process.

In Nunavut, on the other hand, where the Canadian government has embraced treaty partnership under the label treaty federalism\(^{18}\), Inuit have been included in the decision making process through their control of the land and resource management boards of the Territory. The commitment of the Canadian government to treaty federalism includes, as White observes, a commitment to “Aboriginal peoples’ ‘inherent right to self-government’.” (White 2002: 3) This overarching commitment to treaty federalism is the driving force behind the

\(^{18}\) The notion that the treaties between the Canadian government and First Nations are defining elements of the Canadian state has come to be termed treaty federalism and was first introduced in a book on the relationship of American tribes to the United States government entitled, *The Road*. “Intent, interpretation and practice combine to make these instruments something more than ‘treaties’ as they are understood in international law. They are political compacts irrevocably annexing tribes to the federal system in a status parallel to, but not identical with, that of the states....Treaties are a form of recognition and a measure of the consensual distribution of power between tribes and the United States.” Barsh, Russel Lawrence, and Henderson, James Youngblood. 1980. *The road: Indian tribes and political liberty*. Berkeley: University of California Press.
inclusion of Inuit in the decision making process of the government land and
resource management boards.

The New Zealand governments' commitment to Māori is not via the more
powerfully defined treaty federalism of Canada but instead it is through
biculuralism. As the name implies, frequently the focus of New Zealand
government initiatives toward Māori remain preoccupied with issues of culture
instead of self-determination or partnership. This can be seen in both the strengths
and weaknesses of the RMA. Perhaps the greatest strength of the RMA is its
commitment to the inclusion of Māori values within the legal framework of the
Act. By creating legal definitions, as problematic as they may be, the RMA is
giving voice to Māori cultural values and applying those values, through the Act,
to all New Zealanders, not just to Māori. While the Inuit of Nunavut have the
commitment of treaty federalism behind their control of decision making boards
in the Territory, they are somewhat behind the Māori in establishing their cultural
values within the legal framework of the Territory. Granted, the Territory of
Nunavut has only been in existence for four years and must deal with all of the
crucial issues of its citizens, not just those related to wildlife management. The
RMA of New Zealand, on the other hand, is over twelve years old now and is still
failing to provide Māori with the equal sharing “in the pursuit of collective goals

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of the society – in the processes of government and the exercising of power” promised by biculturalism. (Schwimmer 1968: 11)

As Fleras and Spoonley observe, “[i]n the final analysis…neither biculturalism nor multiculturalism can deliver a framework for addressing the concerns of tino rangatiratanga. Nor are they capable of recalibrating the relationship between Treaty partners around rights rather than needs.” (Fleras and Spoonley 1999: 239) As can be seen in this comparison between Aotearoa/New Zealand and Nunavut Territory, Canada, Indigenous self-determination needs both a strong commitment to the inclusion of Indigenous cultural values within the framework of government in addition to a full sharing in decision making processes. While biculturalism, as expressed by New Zealand government policy has rightly placed Māori cultural values squarely within the framework of government it has failed to accept Māori as full partners in the decision making processes, certainly within resource management.

A lesson for other Indigenous communities

Niezen suggests that comparisons drawn between widely differing peoples in the global Indigenous movement assists in “winnow[ing] away those features that don’t truly belong, leaving us with a digestible kernel.” (Niezen 2003: 86)
The primary aim of this dissertation has been to investigate biculturalism in Aotearoa/New Zealand as one of the many different endeavors around the world seeking to improve the condition of Indigenous peoples. Instead of researching biculturalism through a metaphorical discussion, this work has attempted to investigate what Donald Moore calls "a politics of place ‘on the ground’," by listening to Māori discuss their efforts to exercise self-determination in protecting their land and resources. While the discussion of issues concerning Nunavut has been preliminary in nature due to the Territory’s recent creation, I believe that this brief comparison has assisted in winnowing away the kernel of biculturalism’s successes and failures.

Hopefully this dissertation has added in some small way to the discussion of biculturalism and its impact on resource management in Aotearoa/New Zealand. While the successes and failures of biculturalism may be unique to the politics of Aotearoa/New Zealand, there are still lessons which may be useful to other Indigenous communities around the world.

Richardson describes ‘environmental justice’ as a key concept in the protection of Indigenous people’s rights within resource management and environmental protection. Richardson defines “[e]nvironmental justice for indigenous peoples...as requiring, at a minimum: the recognition of ownership of
land and other resources traditionally utilized; allowing for their effective participation in resource management decision-making; and securing an equitable share of the benefits arising from the use of environmental resources.”

(Richardson 2001: 1) I would add to Richardson’s definition that for Indigenous peoples to effectively participate in resource management decision-making there must be an inclusion of their key conceptual regulators concerning land, the environment and resources within all aspects of the decision-making process.

Clearly, the RMA and the New Zealand government’s policy of biculturalism have failed to meet these minimum standards which Richardson has borrowed loosely from the evolving customary norms of Indigenous peoples’ rights under international law. While the situation in Nunavut may come closer to meeting these minimum standards defined by Richardson, it has so far failed to fully support Inuit values within the decision-making process. In view of the failures outlined here, what recourse is available to Indigenous peoples in protection of their land and resources?

While international law continues to evolve with regard to the rights of Indigenous peoples, different authors have proposed various methods for supporting Indigenous self-determination. As many settler-states have treaties, historical and modern, with their Indigenous populations, many have sought
recourse to issues of self-determination through a re-recognition of these existing treaties. This has succeeded in some limited measure with modern treaties producing perhaps the best results. Unfortunately, not all Indigenous peoples have treaties with their occupying settler-state, Native Hawaiians and Australian Aborigines being two notable examples. As not all Indigenous peoples have treaties with their settler-state, through which to pursue self-determination, some authors have recommended the international arena as the appropriate recourse to Indigenous efforts toward self-determination. Jeff Corntassel and Tomas Primeau observe that "[t]he existing body of human rights law is sufficient to ensure that all indigenous groups in the international system have recourse under international norms which, if respected, will ensure their cultural survival." While I would argue that 'cultural survival' is a bare minimum within a broader definition of Indigenous self-determination, I do believe that the evolving nature of Indigenous rights within international law does hold out perhaps the greatest hope for Indigenous communities. Two words though, within the quote by Corntassel and Primeau above, should be of greatest concern for Indigenous communities seeking recourse through the international legal system; 'if respected'.
Unfortunately, states do not always respect the rule of international law whether it is in regards to Indigenous rights or environmental protections. Some states have a stronger commitment to their participation in the international community and generally respect the norms of international law to a greater extent than do others. Currently, the commitment of the international community to the protection of Indigenous peoples rights has not risen to a level at which action is taken against a state which disregards those rights. Many states still perceive any intervention on behalf of their Indigenous populations by an international organization or court as an affront to their national sovereignty. (Niezen 2003)

Perhaps the combined voices of Indigenous peoples, which are slowly growing within the various organizations of the international community, will in time produce an unambiguous protection of Indigenous rights.

At this time though, Indigenous groups must resort to whatever means are at their disposal to deal with threats to their land, cultural and resources. This may mean modifying existing treaties or other instruments, devising new, more appropriate instruments or resorting to protest and acts of resistance. No matter what course of action is taken by Indigenous peoples in support of their self-determination, these actions are affecting, to one degree or another, the states
within which these peoples reside, changing what it means to be a New Zealander, a Canadian, an American or an Australian.

**Indigeneity’s challenges to the settler-state**

The demands for increased rights to self-determination by Indigenous peoples are pressuring states to transform themselves from the monolithic systems of the past into more pluralistic systems of power sharing. Niezen observes that

> [t]here are... two principal ways in which the indigenous peoples’ movement challenges state sovereignty: one is at the international level, pressing for reforms within international law and eroding the statist orientation of the international system; the other is as a pluralistic force within states that presses for realization in practice of the notion, uncomfortable to many, of nations within nations, of peoples who have rights to self-determination nested within their rights as citizens of states.” (Niezen 2003: 148)

The struggle between states and Indigenous peoples at the international level is a struggle which goes unnoticed by most. As Corntassel and Primeau observe,

> “The erosion of state sovereignty in the international system has long been apparent,” and the addition of Indigenous claims is just one more component of that erosion. (Corntassel and Primeau 1995: 345) The work of securing increased rights within international law may have profound effects in the long term for Indigenous peoples but it is the realization of the unique rights of self-determination, possessed by Indigenous peoples, nested within the rights they
share with all citizens of the state which produces the greatest challenges to
citizenship within multicultural, multinational liberal democracies.

It is the unique status of Indigenous rights which is producing significant
backlash against Indigenous communities especially among the English-speaking
settler-states. This backlash has taken many forms in various locations. In
Hawai‘i, attacks have been leveled at any program which recognizes a unique
status for Native Hawaiians as being racially discriminatory. In the continental
United States there has been a strong backlash against tribal casinos and tribal
sovereign immunity. Australians have protested the notion that Aborigines have
continuing claims to lands currently held by non-Aboriginals and the state.

The research completed for this dissertation has led to a greater
understanding of the ways in which Māori self-determination in resource
management is exercised within a history of colonial relations and local politics.
It is this connection between the ‘politics of place’ in Indigenous self-
determination and the international indigenist movement which I believe needs
further study. A question for that research to answer is how does the local politics
of Indigenous self-determination affect the international movement and how does
the international movement affect the way in which Indigenous peoples exercise
their self-determination?
Within Aotearoa/New Zealand, biculturalism has sought over the past two decades to bring some understanding of the unique status held by Māori as the *tāngata whenua* or original inhabitants of the land to the general population. Yet the idea that Māori have customary rights, rights which have been held since before the arrival of the first Europeans and that they also have specific rights recognized within the Treaty of Waitangi remains a fact unimaginable to many Pākehā New Zealanders. Coming to terms with, and embracing the rights of Māori as nations within Aotearoa/New Zealand is the challenge facing its citizens.

Biculturalism has begun to face these challenges presented by the demands of Māori by firmly securing a future for Māori culture and language within the operations of government and the educational system. The next step for Māori self-determination is the recognition of Māori by the state as full treaty partners, sharing in the processes of government and in the resources of the nation. Māori have emerged from the edge of the New Zealand state, bringing with them a new paradigm of citizenship. The question is will the New Zealand state be able to modify their official biculturalism into the treaty partnership this new paradigm demands?
GLOSSARY

Ali kā. Occupation rights
Atua. The gods
Hapū. Sub-tribe
Iwi. Tribe
Kaitiaki. Guardian, trustee, caretaker
Kaitiakitanga. Guardianship
Kaumātua. Old man, elder, adult
Kāwanatanga. Government
Kuia. Old lady, matron
Mana. Charisma, integrity, prestige
Māori. Native peoples of Aotearoa/New Zealand
Mauri. Life principle, spirit
Pākehā. Non-Māori, European, Caucasian
Rangatira. Chief, landlord
Tangata whenua. Local people, aborigine, native
Taniwha. Water spirit
Taonga. Treasure, property
Tapu. Sacred, forbidden, taboo
Tino rangitiratanga. Self-determination
Utu. Price, revenge
Waka. Canoe
Whakapapa. Genealogy, cultural identity, chronicles
Whānau. Extended family
Whanaungatanga. Relationship, kinship
Whenua. Ground, country, placenta

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