Cultural And Intellectual Property Rights

Economics, Politics & Colonisation

Volume Two
Cultural And Intellectual Property Rights

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Volume Two

A Series of Readers Examining Critical Issues in Contemporary Maori Society

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MATAATUA DECLARATION
on Cultural and Intellectual Property Rights of Indigenous People

Nine Tribes of MATAATUA in the Bay of Plenty Region of Aotearoa, New Zealand, convened the First International Conference on the Cultural and Intellectual Property Rights of Indigenous Peoples from June 12-18, 1993 in Whakatane. Among the indigenous representatives in attendance were those from Japan, Australia, Cook Islands, Fiji, India, Panama, Peru, Philippines, Surinam, USA and Aotearoa.

PREAMBLE
Recognising that 1993 is the United Nations International Year for the World’s Indigenous Peoples;
Reaffirming the undertaking of the United Nations Member States to:
“Adopt or strengthen appropriate policies and/or legal instruments that will protect indigenous intellectual and cultural property and the right to preserve customary and administrative systems and practices’ - United Nations Conference on Environmental Development; UNCED Agenda 21 (26.4b);
Endorsing the recommendations on Culture and Science from the World Conference of Indigenous Peoples on Territory, Environment and Development, Kari-Oca, Brazil, 25-30 May 1992;
WE
Declare that Indigenous Peoples of the world have the right to self determination; and in exercising that right must be recognised as the exclusive owners of their cultural and intellectual property;
Acknowledge that Indigenous Peoples have a commonality of experiences relating to the exploitation of their cultural and intellectual properties;
Affirm that the knowledge of the Indigenous Peoples of the world is of benefit to all humanity;
Recognise that Indigenous Peoples are capable of managing their traditional knowledge themselves, but are willing to offer it to all humanity provided their fundamental rights to define and control this knowledge are protected by the international community; Insist that the first beneficiaries of indigenous knowledge (cultural and intellectual property rights) must be the direct indigenous descendants of such knowledge;
Declare that all forms of discrimination and exploitation of Indigenous Peoples, indigenous knowledge and indigenous cultural and intellectual property rights must cease.

1. RECOMMENDATIONS TO INDIGENOUS PEOPLES

In the development of policies and practices, indigenous peoples should:

1.1 Define for themselves their own intellectual and cultural property.

1.2 Note that existing protection mechanisms are insufficient for the protection of Indigenous Peoples’ Intellectual and Cultural Property Rights.

1.3 Develop a code of ethics which external users must observe when recording (visual, audio, written) their traditional and customary knowledge.

1.4 Prioritise the establishment of indigenous education, research and training centres to promote their knowledge of customary environmental and cultural practices.

1.5 Reacquire traditional indigenous lands for the purpose of promoting customary agricultural production.

1.6 Develop and maintain their traditional practices and sanctions for the protection, preservation and revitalisation of their traditional intellectual and cultural properties.

1.7 Assess existing legislation with respect to the protection of antiquities.

1.8 Establish an appropriate body with appropriate mechanisms to: a) preserve and monitor the commercialism or otherwise of indigenous cultural properties in the public domain; b) generally advise and encourage Indigenous Peoples to take steps to protect their cultural heritage; c) allow a mandatory consultative process with respect to any new legislation affecting Indigenous Peoples’ cultural and intellectual property rights.

1.9 Establish international indigenous information centres and networks.

1.10 Convene a Second International Conference (Hui) on the Cultural and Intellectual Property Rights of Indigenous Peoples to be hosted by the Coordinating Body for the Indigenous Peoples Organisations of the Amazon Basin (COICA).

2. RECOMMENDATIONS TO STATES, NATIONAL AND INTERNATIONAL AGENCIES

In the development of policies and practices, States, National and International Agencies must:

2.1 Recognise that Indigenous Peoples are the guardians of their customary knowledge and have the right to protect and control dissemination of that knowledge.

2.2 Recognise that Indigenous Peoples also have the right to create new knowledge based on cultural traditions.
2.3 Note that existing protection mechanisms are insufficient for the protection of Indigenous People’s Cultural and Intellectual Property Rights.

2.4 Accept that the cultural and intellectual property rights of Indigenous Peoples are vested with those who created them.

2.5 Develop in full co-operation with Indigenous Peoples an additional cultural and intellectual property rights regime incorporating the following:
* collective (as well as individual) ownership and origin
* Retroactive coverage of historical as well as contemporary works
* protection against debasement of culturally significant items
* co-operative rather than competitive framework
* first beneficiaries to be the direct descendants of the traditional guardians of that knowledge
* multigenerational coverage span

BIODIVERSITY AND CUSTOMARY ENVIRONMENTAL MANAGEMENT

2.6 Indigenous flora and fauna is inextricably bound to the territories of indigenous communities and any property right claims must recognise their traditional guardianship.

2.7 Commercialisation of any traditional plants and medicines of Indigenous Peoples, must be managed by the Indigenous Peoples who have inherited such knowledge.

2.8 A moratorium on any further commercialisation of indigenous medicinal plants and human genetic materials must be declared until indigenous communities have developed appropriate protection mechanisms.

2.9 Companies, institutions both governmental and private must not undertake experiments or commercialisation of any biogenetic resources without the consent of the appropriate Indigenous Peoples.

2.10 Prioritise settlement of any outstanding land and natural resources claims of Indigenous Peoples for the purpose of promoting customary, agricultural and marine production.

2.11 Ensure current scientific environmental research is strengthened by increasing the involvement of indigenous communities and of customary environmental knowledge.

CULTURAL OBJECTS

2.12 All human remains and burial objects of Indigenous Peoples held by museums and other institutions must be returned to their traditional areas in a culturally appropriate manner.

2.13 Museums and other institutions must provide, to the country and Indigenous Peoples concerned, an inventory of any indigenous cultural objects still held in their possession.

2.14 Indigenous cultural objects held in museums and other institutions must be offered back to their traditional owners.

3 RECOMMENDATIONS TO THE UNITED NATIONS IN RESPECT FOR THE RIGHTS OF INDIGENOUS PEOPLES, THE UNITED NATIONS SHOULD:

3.1 Ensure the process of participation of Indigenous Peoples in the United Nations fora is strengthened so their views are fairly represented.

3.2 Incorporate the MATAATUA Declaration in its entirety in the United Nations Study on Cultural and Intellectual Property of Indigenous Peoples.

3.3 Monitor and take action against any States whose persistent policies and activities damage the cultural and intellectual property rights of Indigenous Peoples.

3.4 Ensure that Indigenous Peoples actively contribute to the way in which indigenous cultures are incorporated into the 1995 United Nations International Year of Culture.

3.5 Call for an immediate halt to the ongoing “Human Genome Diversity Project” (HUGO) until its moral, ethical, socio-economic, physical and political implications have been thoroughly discussed, understood and approved by Indigenous Peoples.

4. CONCLUSION

4.1 The United Nations, International and National Agencies and States must provide additional funding to indigenous communities in order to complement these recommendations.

UN.1993.COMMISSION ON HUMAN RIGHTS.
The Declaration has also been printed in Spanish and Mandarin Chinese. For further information, contact Aroha Mead, Director, International Association of the Mataatua Declaration, PO Box 76, Whakatane, New Zealand. Fax: 64 7 307 0762
This second volume of ‘Economics, Politics and Colonisation’ raises critical issues related to cultural and intellectual property rights. Its timing is apt given the increasing involvement of a wide range of national and multinational companies in acts of commodification of Indigenous resources, language and cultures. As this volume goes to print the hearing for the Wai 262 claim, before the Waitangi Tribunal, begins. This claim is one that raises crucial questions in regard to Cultural and Intellectual Property Rights and is one that will be followed with great interest by many.

We acknowledge the work of the interviewers, interviewees, writers, photographers who have provided material for this volume. We also acknowledge the wider contribution made by each of these people in the struggle against the abuse and theft of Maori knowledge, reo, tikanga, genes, image, and their involvement in the development of mechanisms for the protection of cultural and intellectual property rights for Maori and Indigenous peoples generally.

There are many others who are active in the affirmation of our rights as Tangata Whenua, as Indigenous people of Aotearoa, and who work daily to ensure that the rights of generations of tamariki and mokopuna will be safeguarded. We recognize and acknowledge the work that is undertaken by all of those people, the names of which are too numerous to note, they however know who they are. Further acknowledgment is made to those involved in the wider Indigenous movements worldwide who seek the protection of Indigenous peoples cultural and intellectual property rights and work toward the wider goal of tino rangatiratanga, sovereignty.

No reira, ki a koutou e kawe ana i tenei kaupapa, tena ra koutou katoa.

Providing mechanisms for protection of cultural and intellectual property rights for Maori is critical if we are to provide protections for our tamariki and mokopuna.
Cultural and intellectual property rights are areas of growing concern for Indigenous peoples. Both locally and globally we are seeing the development of laws, conventions, declarations and all forms of legal documentation in relation to cultural and intellectual property. On the whole the developments of these documents has been controlled by dominant groups, who seek affirmation and legitimisation of their ‘rights’ to patent, to own, to determine the use of a multitude of aspects of our lives. However, Indigenous peoples globally have been working consistently, seeking protection for our taonga, whenua, awa, maunga, Ranginui and Papatuanuku. It has been a long and intensive struggle over definitions, control, ownership. For Maori these struggles are not new. We have been involved in struggles for the retention and return of our taonga for over 150 years. The arguments for and against cultural and intellectual property rights are complex within the context of national and international relations, however on the other hand the arguments are quite fundamental, that is Maori control of all things Maori.

The aim of this publication is to highlight some key areas of discussion within the debates surrounding cultural and intellectual property rights, and in doing so to encourage each of us to think widely about the implications of some of the events and actions that are occurring around us, both here in Aotearoa and more widely for Indigenous peoples on a global scale.

So what are cultural and intellectual property rights? Originally the term intellectual property rights was applied to inventions or discoveries but over time intellectual property rights have come to mean ownership of human thought and ownership of people through DNA. So in the last decade there has been a rapid movement to the ownership of these less tangible areas. This has launched Indigenous Peoples into battles over control for their own knowledge and even over who owns Indigenous genes. Cultural and intellectual property rights is a vast arena and the types of struggle that have ensued have included;

* Indigenous Peoples battling to stop the exploitation of traditional medicinal knowledge by pharmaceutical companies;
* Struggles over control of Maori material and images, ownership and control of archival material through numerous institutions including museums, art galleries, media archives;
* Arrests over the last year for performing haka and karakia;
* Indigenous struggle to halt the collection of genetic material and the genetic engineering of flora and fauna;
* Appropriation and commodification of Indigenous knowledge.

Indigenous knowledge of plants and resource management have made enormous contributions to Western cultures in the areas of food sources, food production and to knowledge such as the fact that one in four prescription drugs was discovered from studies used by Indigenous Peoples for healing.(Plant, People and Culture Balick M, Scientific American Library 1996)

The reason that researchers, scientists and multinational companies might be interested in Indigenous communities is that Indigenous people have retained knowledge of medicines, textiles and plant production. Crop development and seed knowledge are also regarded as of interest. Also, as the worlds resources and diversity of the ecosystems have become more scarce, it is Indigenous Peoples with Indigenous knowledge systems that retain a great deal of this knowledge in regard to conservation of natural resources.

Each article included was selected for its depth of discussion of key areas. Nga patai provides an introduction to some of the terminology used in the journal to support those readers who are not actively involved in this field. The discussion provided in this section is very general and should be seen purely in an introductory manner.
cultural and intellectual property rights. Graham raises critical points about the control of Maori knowledge and the power relations that exists between colonisers and colonised in the struggle over whose knowledge is seen as ‘valid’ knowledge. He states that cultural and intellectual property rights are a site of struggle because of these issues of control and ownership of knowledge.

Bringing to the discussion wider international issues, Aroha Te Pareake Mead provides depth analysis of cultural and intellectual property rights and the relevance of these terms to Indigenous peoples. Aroha’s work in the International field with Indigenous groups provides her with critical insights into wider global issues and in particular those related to the Draft Declaration on the Rights of Indigenous Peoples and other United Nations developments. Aroha shares crucial information with us in her paper. This paper is followed by an interview with Moana Jackson which focuses more specifically on intellectual property rights and the implications for Maori. In this interview Moana traces the Western history of intellectual property rights and the relationship of that to New Right ideologies and privatisation. Moana posits the argument that the introduction of the term ‘property’ alongside intellectual rights is potentially dangerous for Maori.

Toni Liddell highlights the dangers in her article examining the links between publications by Pakeha writer Barry Brailsford, and the growth of New Age movements in Aotearoa. She identifies, and questions, the processes involved in the production of the book ‘Songs of Waitaha’. Toni draws on existing published material by key people involved in the development of the book highlighting contradictions in statements that appear in the publication. This article raises key questions about the commodification of Iwi histories and the ways in which these are presented as ‘truth’.

Donna Ngaronoa Gardiner provides further analysis focused on Iwi experience. Donna traces the developments of biotechnology and genetic engineering. The case study provided here outlines events that occurred for Ngati He and Ngai Te Ahi, where Indigenous genes were taken and used for medical experimentation. Permission to use whenua to ‘house’ the experimentation lab was “given” in processes that left Ngati He and Ngai Te Ahi unsure of what had happened. The mixing of human genes with sheep genes is abhorrent to these hapu, so that not only is the way in which the company entered the community questionable, but so too are the actual experiments themselves. These are issues that require urgent attention.

The final article by Leonie Pihama relates to cultural and intellectual property rights in the field of representation. It is argued that the representation of Maori images has been limited by a lack of commitment from broadcasters and that in order for Maori to take control of Maori representation existing mechanisms of gatekeeping must be removed. Leonie also raises questions about definitions of who ‘owns’ images and in doing so calls for Maori to discuss issues of cultural and intellectual property rights in relation to the ‘taking’ of and ‘ownership’ of images.

This volume of ‘Economics, Politics and Colonisation’ seeks to raise issues across diverse areas that are influenced and impacted upon by cultural and intellectual property rights. The main intention of both the authors and the editors is to create wider discussion, dialogue and debate. If this volume does that, then we have achieved our purpose.

Kia ora koutou katoa
Leonie Pihama (Te Atiawa, Ngati Mahanga)
Cherryl Waerea-i-te-rangi Smith (Ngati Porou, Ngati Apa)
Editors
The aim of ‘Nga Patai’ is to provide some thoughts and clarification of key terminology in the area of cultural and intellectual property rights. What we have come to realise in the development of this volume of the journal is that there are many technical terms that are used which require definition and contexting for those of us who are ‘new’ to this area of debate. ‘Nga Patai’ is then designed to allow readers to have some understanding of the ways in which particular terms are used in the debates surrounding cultural and intellectual property rights. A second area of the debate that requires comment and clarification is that related to the use of particular anagrams, such as TRIPs, GATT etc. For those people working in this area these anagrams are used regularly with little need for explanation, however for many Maori and Indigenous peoples who are coming to terms with the potential impact of cultural and intellectual property rights, and the issues surrounding these notions, there is a need to ensure that we are aware of the institutions, agreements, conventions etc. that these terms refer to.

1. What is meant by intellectual property rights?

For several centuries in Western law, people have been able to claim ownership of ideas, and able to ‘sell’ these ideas and ‘protect’ these ideas from being ‘stolen’. These are Intellectual property rights. Indigenous people who historically operated from a collective cultural base have had western systems of law imposed upon them which has often ruled that Indigenous knowledge is for the ‘common good’ and therefore able to be taken.

2. What are cultural and intellectual property rights?

Cultural and intellectual property rights is the reassertion by Indigenous Peoples that there are taonga, both tangible and intangible, that colonisers need to keep their hands off. These taonga are diverse and can include land, knowledge about healing properties of native plants or the use of Indigenous symbols.

3. Does the Treaty of Waitangi have impact on cultural and intellectual property rights for Maori?

The Treaty clearly raises the issue of cultural and intellectual property rights in a number of ways. Firstly, there is the reference to the guaranteed right of Maori to retain taonga, which is clearly identified in the Treaty. A key issue is the tino rangatiratanga debate which Maori relate to sovereignty and the State defines as a limited form of self-governance. Recent hui at Hirangi called for the State to deal with the issue of sovereignty as a part of Maori aspirations and negotiations. These are two examples of the role of the Treaty of Waitangi in relation to cultural and intellectual property rights.

4. How are Indigenous people engaging with cultural and intellectual property rights at the International level?

Each year the Working Group on Indigenous Peoples meet in Geneva. These are the largest Indigenous meetings at the U.N where the Draft Declaration of Indigenous Peoples is worked on. Indigenous People are currently involved in establishing a permanent forum at the U.N. There are a range of agreements that mention the rights of Indigenous peoples. The Convention on Biodiversity: offers some protection of Indigenous knowledge and resources with explicit articles of protection. Provisions on Indigenous and local communities and biodiversity have been adopted by the United Nations Conference on Environment and Development and the Commission on Sustainable Development. The Commission on Human Rights is conducting a study on the potential utility of treaties, agreements and other constructive arrangement between states and Indigenous Peoples. The United Nations Development Programme has prepared draft ‘Guidelines for Support to Indigenous Peoples.’

5. Are Maori people involved in the development of cultural & intellectual property rights?

Yes. Maori people have been very involved nationally and internationally, joining other Indigenous people in making very clear statements about the protection of our cultural and intellectual property rights and drawing connections to issues of sovereignty. Maori people have been actively involved as a part of the Working Group for Indigenous Peoples at the United Nations, some of
those involved include Pauline Tangiora, Hilda Halkyard-Harawira, Nganeko Minhinnick, Moana Jackson, Aroha Mead, Archie Taiaroa, Tamati Reedy, Raewyn Bennett, Donna Hall, Maui Solomon and many others. The Mataatua Declaration has been the most comprehensive statement by Maori on cultural and intellectual property rights. This declaration was formulated at an international hui at Whakatane in 1993. It was presented to the United Nations and has been signed by 150 groups and nations. This document and the Treaty of Waitangi have been critical in the cultural and intellectual property rights struggles for Maori. Nationally Maori are using the Waitangi Tribunal to take the Wai 262 claim on cultural and intellectual property rights for Maori.

6. What is meant by the following terms:

**Biodiversity**
The range of life forms on the planet.

**Bioprospecting**
The hunting out of useful life forms that may be sold for profit. An example is the exploitation by multinational companies of rongoa.

**Commodification**
The belief that anything is available for sale and may therefore be given a dollar value. An example is the Crown's attempt to value maunga and awa under the fiscal envelope.

**Free Trade**
This concept is a part of the New Right market imperatives, where the market is seen as the only appropriate way to determine prices, access, quality etc. The word ‘free’ here implies that trade will be beneficial to all. This is a negative use of the term ‘free’ in that it means that in order for trade to occur all barriers must be removed. In this context Indigenous cultural and intellectual property rights and Treaties, such as the Treaty of Waitangi, are viewed as barriers that must be removed. Free Trade is also a concept that is based on ideas of individual choice, which assumes that all people have the same access to the resources and information needed to make choices.

Free Trade Agreements
Agreements made between governments in relation to the protocols under which free trade will operate, including the removal of trade barriers to allow import/export trade to flow freely across national boundaries.

**GATT**
General Agreement on Trade and Tariffs.

**APEC**
Asia Pacific Economic Convention.

**WTO**
World Trade Organisation

**NAFTA**
North American Free Trade Agreement

**TRIPS**
Trade Related Intellectual Properties. The TRIPs agreement is about the protection of U.S industry and advancing U.S corporations position in information technology. Since the British industrial revolution, early industrialisation in the countries that have since become leading powers was ‘industrialisation by imitation’.

The GATT-TRIPs accord threatens to make industrialisation by imitation a thing of the past. As the United Nations Conference on Trade and Development has warned the TRIPs regime represents a ‘premature strengthening of the intellectual property system...that favours monopolistically controlled innovation over broad based diffusion’

The U.S has assumed their role of sheriff of the world and is currently using the TRIPs agreement to ensure that US firms are allowed monopolies over advanced innovations. Critics argue that TRIPs is a giant setback for ‘the universalization of knowledge and a giant step towards its privatisation and monopolisation’. Walden Bello argues that it is important for the U.S to not only lead the world in innovation but to also control the rate at which others might innovate.

It is interesting to note that Indigenous knowledge and resources have often been taken for ‘the good of all’ e.g medicinal knowledge but the concern of TRIPs is to protect technological innovation as being a commodity and a private good. Therefore, anyone who uses it without paying or obtaining permission is a pirate. The idea that knowledge can be for the social good is highly selective. Indigenous Peoples knowledge is much more likely to be
regarded as ‘social goods’ whilst computer software, for example, is regarded as private property.

Transgenic

The insertion of genes from one species into another, for example the use of chicken genes in tomatoes that creates a longer lasting tomato which can be then transported long distances to markets. Genetically engineered food is already being sold in the United States and Europe, and increasingly in New Zealand. The trade agreements that New Zealand is a signatory to require this country to be open to trade and therefore to be open to genetically engineered food.

7. What is the Human Genome Project?

Aims to map the genetic sequence of the human genome (the genetic blueprint of human) by the year 2005. This is a controversial project because its implications and possibilities for misuse are so enormous.

8. What is the Human Genome Diversity Project?

Commonly called the Vampire project. Some 722 Indigenous Peoples worldwide have been identified for collection of blood and tissue samples by the Human Genome Organisation (HUGO). Priority is being given to collecting the genetic material of ‘endangered’ Indigenous Peoples.
Colonising Airspace

Cherryl Waerea-i-te-rangi Smith (Ngati Porou, Ngati Apa) and Kuni Jenkins (Ngati Porou) have developed this article specifically for this journal. This writing may be seen as work in progress and seeks to open discussions and debate about certain assumptions held by the State in relation to Airspace. Given the commodification and privatisation of land, forests, fisheries, water and many other of our taonga, Cherryl and Kuni raise some questions for us to consider in regard to Ranginui and the air elements that surround us.

Na te kune te pupuke
Na te pupuke te hihiri
Na te hihiri te mahara
Na te mahara te hinengaro
Na te hinengaro te manako.

From the conception the increase,
From the increase the thought,
From the thought the remembrance,
From the remembrance the consciousness,
From the consciousness the desire.

Ka hua te wananga
Ka noho i a rikoriko
Ka puta ki waho ko te po
Ko te po nui, te po roa,
Te po tuturi, te po i pepeke
Te po uriuri, te po tango-tango,
Te po wawa, te po te kitea,
Te po te waia
Te po i oti atu ki te mate.

Knowledge became fruitful
It dwelt with the feeble glimmering;
It brought forth night
The great night, the long night,
The lowest night, the loftiest night,
The thick night, to be felt,
The night to be touched,
The night not to be seen,
The night of death.

Na te kore i ai
Te kore te wiwia
Te kore te rawea
Ko hotupu
Ko hauora
Ka noho i te atea
Ka puta ki waho,
te rangi e tu nei.

From the nothing the begetting,
From the nothing the increase,
From the nothing the abundance,
The power of increasing,
The living breath;
It dwelt with the empty space,
and produced the atmosphere which
is above us.

Ko te rangi e teretere ana
i runga te whenua,
Ka noho te rangi nui e tu nei,
ka noho i a ata tuhi
Ka puta ki waho te marama
Ka noho te rangi e tu nei,
ka noho i a te werowero
Ka puta ki waho ko te ra
Kokiritia ana ki runga,
hei pukahou mo te rangi
Ka tau te rangi
Te ata tuhi, te ata rapa
Ka mahina, ka mahina te ata
i hikurangi.

The atmosphere which floats above
the earth;
The great firmament above us, dwelt with the early
dawn,
And the moon sprung forth;
The atmosphere above us, dwelt with
the heat,
And hence proceeded the sun;
They were thrown up above,
as the chief eyes of Heaven:
Then the heavens became light,
The early dawn, the early day,
The mid-day. The blaze of day
from the sky.
Kaharoa i Ha\v{a}iki
Kahako ki waho
Ko Ta\porapora, Ko Tauwarenikau
Ko Ku\ku-paru, Ko Wawau-a\tea,
Ko Wi\wi-\te-Rangi\ora.

Ko Ru, no Ru, ko Ouhoko...  
... And now Ru (a god) was born,  
and from Ru, Ouhoko;

Na Ouhoko, ko Ruatapu,
Ko Ruatapito, no Ruatapito
Ko Ruakaipo, no Ruakaipo
Ko Ngae, Ngae nui, Ngae roa
Ngae pea, Ngae tuturi
Ngae pepeke, ko Tatiti,
Ko Ruatapu, ko Toi,
Ko Rauru . . .

From Ouhoko, Ruatapu
and Ruatapito; from Ruatapito,
Ruakaipo; from Ruakaipo,
Ngae (a man), Ngae nui, Ngae roa
Ngae pea, Ngae tuturi
Ngae pepeke, and then Tatiti,
Ruatapu, Toi
and Rauru

(Tauparapara of Te Kohuwai in Rongoroa  
Taylor 1855: 4-16, 1854:179)

CHANTING MAORI MAPS

Interpreting the deeper meanings of chants such as this one recorded from Te Kohuwai by Taylor in his 1855 writings highlights Maori definitions of their universe and how it locates them in particular spheres. Notions that Maori were merely occupiers of land and water are dispelled when one begins to engage the fuller layers of meaning that were seemingly lost on those early missionary writers and agents of the Crown who sort to ‘explore’ the Maori ways of thinking. Their translations and dealings with Maori knowledge often dealt with superficial levels of meaning.

Scholars of Maori into the 20th century were often vague about their translations, pleading that the depth of meaning of chants, waiata, oriori etc. was too difficult to fathom. Elsdon Best who boasted of a great expanse of knowledge of Maori custom and language is seldom referred to, by those Maori who know his work, as an authentic source of in-depth Maori knowledge. It is widely known by the people of Tuhoe that many of the informants for much of Elsdon’s work, often lied to him or just did not tell him the information he needed for issues that Elsdon tried to explore.

Similarly in John Grace’s work Tuwharetoa, there are several Maori texts that he treats as being non-translatable, yet the words do seem to have the potential for being translated albeit very broadly. Interestingly also in his work are English texts which are obviously translations of Maori text - but the Maori text is absent. So how is the Maori scholar to know if the translation is apt and does indeed capture the full meaning of the Maori text if the Maori text is absent?

There is a point at which resistance to giving meaning to the text is in fact a measure of cultural protection, a point at which the power and control of the interpreter can be measured. It is probable that the texts were non-translatable but it is quite possible that some of the knowledge was quite private and the interpreter wanted only those who have the depth of thinking and knowledge to enjoy these special texts which have been included rather than left out and forgotten. These texts serve as puzzles, as cryptic clues to a greater depth of learning and knowing about the world in which we live.
WHAT IS THE WORLD?

Big Bang theories are not part of Maori ideological beliefs. With Big Bang theories come the idea of absolutely nothing existing. Yet this chant demonstrates clearly that before Nothingness is conceptual power, then thought, then remembrance, then consciousness, then desire. There is within this a hierarchy of those psychological senses that hitherto have not been discussed or teased out in this form, in post-colonial Maori life. Yet Maori had long debated and taught this progression of psychosomatic reasoning in their wananga in their attempt to define and claim their world.

The world is more than just earth and plants and sea and fish and air and birds. Engaging with the world is more than just a physical sense of occupying these domains. Earth is not just a firmament that humans occupy. Humans are more than just Earthly creatures. Earth itself is part of a greater universe on which some humans dwell. Other non-Earth beings have served to create Earthly beings. A consciousness of being, and consciousness of humanness for Maori is linked well beyond the physical constraints of time and space by the frailty of human mortality.

This chant as repeated and translated in Salmond’s *Two Worlds*, is one version of several such chants that reflect a consciousness of the fullness of the universe in which Maori define the parameters of their lives. The chant tries to capture the fuller meaning of where the world begins and expands for Maori. Having control of life, of knowledge, of power lies in the greatest depths of understanding what the text is trying to impart.

Appreciating that the wider universe impacts so dramatically upon the Earth, Maori in their ‘exploration’ of their world have laid claim to all of its terrain by explaining their relationship within it, toward it and from it. The idea of the many dimensions to their world is clearly described in this chant. Using the translation given by Salmond (1991) is opportune, although I find her explanations of the chant sells the text extremely short. She glosses over its meaning as ‘authentically pre-European’ (Ibid.:39) suggesting that the real meaning was still to be developed by post-European colonisation. It is well known that post-Europeanisation of Maori text served to discredit it as inferior knowledge arising as it did from a barbarous and savage people.

Yet the text on its own stands quite clearly as a mapping of the Maori world which extends well beyond the crude mapping that Captain Cook jubilantly returned to England with, to unveil and announce his ‘discovery’ of the Antipodes. Maori had drawn Maui’s fish in the Bay of Plenty sand for him to show only part of their world. They did not draw for him the many domains that this chant uncovers. He did not ask for that. Hence an English perception of the Maori world is extremely limited and lacking in the fullness of detail and meaning over what domains Maori claim as their world.

Establishing Maori rights over land needs to consider the total sphere in which that land exists. The chant details the domains that need to be traversed to understand the context in which land exists. Land is but a small part needed to support human existence. From the concept, to conscious desire, to ways of knowing, through time and space, towards nothingness, gaining power, controlling space, understanding of the universe, to living in the fullness of family. The chant shows that issues of land are significant but are only a small part of dealing with the fullness of what is the world. It is clear that the Maori world reaches beyond the physical domains to the wider universe and to the spiritual domains.

Maori readily took on Christianity thinking that the Pakeha evangelists also understood this. It is therefore not surprising that Taylor as a missionary would be given this chant to assist his understanding of what the Maori world included. In Binney’s writing (1964) she discusses Thomas Kendall’s manuscripts, some of which were lost. Among them was a manuscript wherein he is supposed to have been given Maori information about eternal existence. It is my belief that a chant like the one Taylor has captured here, may have been among those lost scripts.

How fortunate that Taylor should have recorded it at that historical point in time. He captured a world of meaning without seemingly comprehending the fullness of the message. Or did he? Perhaps the pace of colonization was moving at such a rate that he believed this kind of thinking was to be replaced by a more glorious and noble future with his British world for Maori under the Treaty of Waitangi which had been signed about a decade earlier than his manuscript. Therefore these ideals in the chant would possibly be safeguarded. Why would he leave such evidence to posterity which might serve to halt the desires of British and European colonizers for Indigenous resources and instead continue to empower Maori to retain the control over their world?

The establishment of a State in Aotearoa involved the assumption of ownership over a number of areas, two examples are the gradual assumption of control to regulate, control and derive state income from fisheries and natural resources. Much of this assumed ownership is passed off as commonsense.

But also many Pakeha remain unaware of what they have commodified and this was highlighted in the water shortages in Auckland in 1994. During that time it was suggested that Waikato river water be piped to Auckland for its use. In response to the reported possibility that Tainui might charge Auckland City a fee for use of the water, M.P John Banks
commented that the next thing they will be doing is charging for rain water.  (Dominion: 16 August 1994, P6). For many years councils have been charging for water that falls from the sky, it has been sold for a number of years.

Airspace has begun to be focused on globally for a number of reasons. One being the ownership of airspace and the other being the growing realisation that the airspace is critical as an ecological concern. It has only been in recent times that global action has been talked about in regard to destruction of the environment. As surprising as it may seem the interconnectedness of life through such aspects as acid rain in one country being caused from smoke stacks of other countries or the ozone layer depletion over Antartica being cause by CO2 emissions in the U.S and other countries is a remarkably new idea amongst governments. What is done in the airspace has critical effects on life. Global action was a key focus during the Earth Summit. Global warming of the atmosphere is causing the seas to rise.

Colonisation was initially a very crude process that involved the plunder of land, resources and the enslavement or deaths of the colonised. Whilst in some parts of the world such activities are still occurring, there is a growing sophistication to the extraction and exploitation of Indigenous Peoples physical territories and knowledge territories. This is particularly true for those Indigenous Peoples who live within countries which are considered to be ‘advanced capitalist societies’. Perhaps this can be illustrated by considering the realm of Ranginui - the airspace/ outer space.

In order to gain ownership of territory it has to be mapped and its boundaries have to be marked out. This is true whether we are considering the appropriation of land territories or knowledge territories. The fact that Indigenous Peoples had mapped out ideological markers on land and space did not matter, what counted was the colonisers mapping system. Official or state recognition had to be gained in order for land purchases to be considered valid. The sale of that land could then proceed and money would be exchanged. In similar ways anthropologists and early students of the Maori marked out and mapped the boundaries of Maori knowledge.

A great deal of other things have been mapped with boundaries marked out that few people consciously consider as saleble items. An example is the airspace which for many years has been regarded as space that is ‘no-thing’ or space that is ‘empty’. But for a long time states have asserted the right to shoot down planes who are considered to be military targets if they come within their airspace. Airspace has been regarded as state territory. In Auckland there are planes setting forth to spray chemicals in the airspace of the Eastern suburbs to prevent tussock moth. Numbers of iwi and hapu have objected to the 1080 poison drops over forests in their rohe.

Planes use the airspace, satellites, television transmitters on maunga and microwave links cause space to be a highway. Cellular phones broadcast through the airwaves. Airspace can be charged for in a number of ways such as parking meters which charge you for occupying space. Height restrictions on buildings, the sale of airspace in commercial zones for housing is another area. American tracking stations exist in this country.

Satellite space has become fought over space. The satellite race was joined by Tonga in 1991. Tonga as a sovereign nation can lay claim to satellite space and in 1991 they decided in conjunction with an american businessman to launch a number of satellites and lay claim to a large portion of the satellite space left over the Pacific that runs from Asia to America. They set up Tongasat. At the time competing satellite companies such as Panamsat criticised what they said was the breaking of a ‘gentleman’s agreement that countries would only take enough satellite space for their own needs’. Recent reports show that Telstra N.Z is to launch a satellite service to Polynesia targeting Samoa, Tonga and Fiji.

The realm of Ranginui has become more intensely used for commercial actively. There have been reports of garbage being dumped, as well as discussion of disposal of bodies, in space. This process of taking control of the sky ways has been done gradually and subtly. You know the saying “they taught us to look to the heavens while that stole our land”, we should now be saying “they taught us to close our eyes whilst they stole our land and our heavens”.

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How would you define intellectual and cultural property rights for Maori?

I think that Maori people generally have operated on a ‘needs’ basis with respect to interpreting cultural and intellectual property rights and have generally taken a commercial interpretation in relation to what their needs are for this moment. I think it is important to understand the fundamental issues which are at stake when we talk about intellectual and cultural property rights and for me the key element perhaps is knowledge. However, I would also expand that definition and say that within the modern context where Maori people live in a situation of unequal power relationships with a dominant Pakeha group, that the definition ought to also embrace the critical intersection of knowledge, power and economics. Those three components are important fundamental elements which are simultaneously at play (to varying degrees) within this whole business of intellectual and cultural property rights. So that at times people are faced with the dilemma of, on the one hand, wanting to develop, I guess their livelihood, by ‘exploiting’ (if I can use that term in a neutral sense) their own cultural resources which they have at hand in order to develop some form of sustainable return. The ‘trick’ of course is in the term ‘sustainable’; there is a tension between exploiting in ways which (in the end) are detrimental to our own cultural and knowledge frameworks, and the social class/underclass positioning of many Maori whose economic needs are urgent and immediate. That is the ‘trick’, being able to ‘exploit’ and at the same time maintain the integrity of your knowledge and cultural frameworks. I think those are the key issues at the moment for the direction which Iwi development may go.

You talk about knowledge as being a part of this three part triad: knowledge, power and economics. What do Maori and Pacific Island people have to be aware of when they are looking at their own knowledge for example?

There is a fundamental dilemma here and that relates to what counts as traditional knowledge and what doesn’t. Obviously people are concerned to protect their traditional knowledge because in the national context of unequal power relations there is a tendency for it to be eroded and assimilated and colonised and so forth. The big tension is where exactly is the boundary, and that’s why this is such a very difficult concept to legislate for, or to protect yourself against, particularly from the point of view of the Indigenous group. What we are seeing at the moment is that external interest groups are able to exploit Maori knowledge. This is mostly because we ourselves cannot define the boundaries of what counts as the traditional knowledge.

A lot of traditional knowledge, for varying reasons, hasn’t been opened up to the modern context this is a dilemma which is shared more widely with Indigenous people across the world. Having said that, I know that it is possible to construct some legal boundaries which define our knowledge and there are groups who are working in this area who are working to establish some legal definitions of what do in fact constitute Maori intellectual and cultural properties and how they should be protected. This work is really in its infancy; it’s still fraught with problems because once you get into the area of legislative engagement non-Maori or non-Indigenous people have had a lot more experience and they have a lot more resources to do battle with than we have, so again we are at a distinct disadvantage in terms of the ‘weapons’ that are being used for engagement. On the one hand, yes the law may protect us. While it might be useful to support Maori lawyers to develop such frameworks for protection on the one hand, the contradiction is that on the other hand entering into the domain of legal frameworks and so on, opens ourselves to be even more exploited.

So it is a two edged sword and I think we need to be very careful. The other stance is to just assert, our autonomy - our tino rangatiratanga. This is something that we have learned from the Kaupapa Maori approach, which picks up on the Freirean notion of naming the world. In this sense we just declare that this is Maori knowledge, and command dominion over what we say is our knowledge and cultural and intellectual property rights, and that’s it, and don’t enter into any debate about it whatsoever and not get involved in the litigation process.

You speak about there being dilemmas around Maori knowledge, what are the dilemmas you are referring to?

It is difficult for me as an educationalist to reflect on this because on the one hand I’ve got a particular form of training which gives a particular insight but if I speak in terms of how other people might see it, some understanding of these dilemmas may become apparent. There is a contradictory stance in the position that traditional knowledge had tapu
which in turn provided sanctions to protect and control knowledge. However, today some traditional knowledge is also exploited by some Maori.

What is traditional and tapu as opposed to what is open to the public domain is very confused, even amongst ourselves and that’s a major difficulty. But if we go beyond what is happening and look at it educationally, Maori don’t have this problem on their own. Basically all knowledge is socially constructed. If we are looking at it from a sociological perspective, the control over knowledge is able to be transformed into political power. Different groups in society use knowledge and control the meanings of knowledge in order to exercise power over other groups. Of course if we look at Maori society generally, Maori do that as well. So do Pakeha. I come back to the first point I was saying that is, we need to critically reflect on the intersection of knowledge and power and economics and the subsequent impact on Maori.

Can you give examples in the way in which power relations work in terms of appropriation of Maori knowledge?

I could give some very good examples. One example, in fact, happened yesterday where I was sent a form by the Registry which asked me to furnish a receipt for the Koha that I had given at a Hui. So I had given a Koha which is a traditional gift, given without any thought to the amount and so on. It’s a gift that’s given ‘from the heart’, and yet the hierarchy or institution requires me to go and see those people and get a receipt off them and then take that receipt and declare it in a formal way to the Finance Registry. In this example, a traditional cultural practice is ‘demeaned’ by Pakeha cultural expectations of ‘financial accountability’.

Schools and educational institutions in New Zealand are major sites where Maori knowledge is under attack. In this view, schools and institutions run by the State in New Zealand are not neutral sites. They promulgate the views and interests of non-Maori, of dominant Pakeha society. Within the societal context of unequal power relations Maori needs and aspirations are often thwarted, marginalised or undermined. Maori knowledge in schools is basically excluded from the curriculum, through the processes of a selected curriculum. Maori knowledge is often perceived not to be valid or legitimate and that’s a major struggle. I mean on the one hand we might say that’s great, that’s fine, our knowledge is being protected from Pakeha, but in actual fact marginalisation has the other powerful message which positions Maori knowledge as inferior.

You discuss elsewhere that credentialling is part of Maori struggle over cultural and intellectual property rights, can you elaborate on this?

I think that the qualifications authority which has been set up to establish a knowledge framework is in fact a major impediment to Maori knowledge, in the sense that it attempts to control Maori knowledge. The key issue that we are again talking about is the intersection of knowledge, power and economics. The process I am referring to is the commodification of knowledge. Commodification is a process whereby all knowledge becomes reduced to an economic factor. Knowledge can be bought and sold and traded as a commodity and so if you have a qualifications authority, dominated by Pakeha interests, and which operates on reducing knowledge to an economic unit then it makes Maori knowledge very vulnerable when they take hold of it. So what we have seen from the qualifications authority is that traditional Maori knowledge has been packaged up into portable units which can be essentially bought and sold and traded within the qualifications framework and that the qualifications authority from the centre, from the State and government is able to reach out and exert ownership over all knowledge that it puts on the framework. Maori knowledge, such as incremental skills for developing a weaver or incremental skills which develop a tohunga whakairo credential now become owned by the Qualifications Authority. So sovereignty over determining what counts as a carver or a weaver moves out of the control of Maori people to the non-Maori/Pakeha State. This is a major intrusion, a major inroad into Maori knowledge and perpetuates the traditional assimilation role of schooling and education. The State is taking ownership of traditional Maori knowledge. That’s an example. There is also the often cited example of Kohanga Reo, where the qualifications authority have moved inside Kohanga Reo and begun to develop specific credential packages for workers in the Kohanga Reo context. Now a Kaumatua gets a certificate to say that they are in fact the Kaumatua who can work in a particular Kohanga Reo. The power of being able to name what counts as a Kaumatua moves from the people to the institution or the State or in this case the qualifications authority. It won’t be too long in the foreseeable future whereby in order for a Kaumatua to work in a Kohanga Reo it won’t be up to the people to nominate who is a Kaumatua, you will have to line up and produce your certificate with your qualification which says you are an official Kaumatua as endorsed/approved by the Qualifications Authority.
There appears to be an acceleration of the commodification of Indigenous peoples knowledge. Why do you think this is happening?

The acceleration is a structural thing that sits outside, the control of Maori people as a singular Indigenous group. This is where our difficulties join with the difficulties that are now being experienced by Indigenous people across the world. What we are seeing then is the global initiative of the influence of free market economics. That is, the development of a global village in which the constraints on trade are being collapsed and an erosion of national boundaries. This is what the APEC talks are really about. The APEC talk is about freeing up trade and taking off trade constraints. So what we are getting are huge open free market places, this is the essence of the GATT agreement, the APEC agreement between the Asian countries, the NAFTA agreement, which is the North American free trade alliance, from Canada down to Mexico, and so on. When we look at those larger globalised market places we find that exploitation can take place because what it means is that you can’t put up barriers to protect your own cultural interests, that the workforce is expanded which allows labour costs and wages to be driven down.

Let’s take NAFTA for example, the workforce from Canada to the States to Mexico is seen as one labour pool so within that big companies look for the cheapest labour that is available so sustain their businesses and we’ve seen that in the States the movement of large numbers of factories and industries from the States, across the border into Mexico because they don’t have to pay very high wages, they can exploit the Mexican workers and the multi-national companies make bigger profits. In this global marketplace profits become even more important and the ability to manipulate, and to make profits for the multi-national companies, I think begin to usurp even local governments. In this particular situation, in New Zealand, where we have a Treaty as is the basis of our protective rights. These fights are susceptible to becoming more and more diminished as the government increasingly reneges on its national responsibility to Maori in favour of entering into this new global alliance whether it be the APEC or the CER (closer economics relations) with Australia agreement.

I think Maori in this scenario become extremely vulnerable. Maori knowledge, cultural and intellectual properties are opened up and are made more vulnerable to colonisation and to external influence in the global marketplace. One of the more interesting things that has happened here in New Zealand is of course the deliberate attack on the Treaty, because the Treaty has been the one instrument that has held up the progress of successive governments of going wholly into alliances with other countries overseas and I am left in no doubt as to the fact that is the very reason why the government is very keen on seeking a full and final settlement on Treaty grievances. I guess they feel that they can get rid of the Treaty by the year 2010 in order to make New Zealand a completely open marketplace.

I feel there is a need to strongly defend the Treaty. I think we need to defend very strongly the responsibility of the State to hold up its end of the bargain with the Treaty. Within the Treaty there are two sets of rights, there is a set of property rights which I think can be settled with property or with compensation, but also in the Treaty there are lots of personal rights which extend to such things as citizenship rights, which extend to such things as protection and equality. These personal rights cannot be bought off in a commodified way. In a sense the Treaty can never be settled through a fiscal deal and I think we need to work very hard at protecting, well, at least holding the government to their end of the bargain.

It’s a moot point because I think that this is where the words “full and final settlement” become absolutely crucial because they can settle property rights but it would never ever be in full and final settlement in some people eyes. This whole business of Treaty Settlements is still very much in a vulnerable phase at the moment.

You talk about us being caught between these two extremes of sustainability and exploitation and we are somewhere along the line. How do you feel we ought to be moving given these two tensions?

My own personal point of view is that a lot of Maori people have been made to suffer. They are the ones who have missed out on the so-called ‘trickling down of wealth’ in this country and I don’t think it is fair for me to say that we should just wrap up our intellectual and property rights in a cocoon and that’s it, no-one exploit them. I think that Maori are entitled, where they can, and within certain guidelines, and parameters, to exploit (and I use the word here in its sustainable definition) the resources that they have in order to give them an economic return in a managed and careful way. Having said that, I think that there are some initiatives that lend themselves more to an entrepreneurial framework than others. On the other hand I think that there are some properties which belong more universally to all Maori, which do not belong to individual iwi or groups or people and therefore ought not to be exploited individually on that basis.

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1 The words “full and final settlement” refer to the governments fiscal envelope policy introduced in 1995 which sought agreement from Maori to settle all grievances within a cap of $1Billion. The fiscal envelope was refused unanimously by Maori.
These cultural properties should remain in the centre, as part of a common cultural and intellectual property right held by Maori people generally and should be sustained and protected as such.

Just where the boundaries are, round that kind of knowledge, is a very difficult thing to say but I think it would be possible to identify some areas, for example I would cite the language as one. Perhaps ‘genes’, are another example where there are collective Maori interests at stake. This is a hot topic at present and is something that can evoke a whole lot of debate. But I am sure there are some things that belong in the centre that ought to be protected for the collective benefit of Maori. At the other end I think that there ought to be some form of ‘gate’ or group who are able to make authoritative decisions about these things on behalf of Maori generally.

The notion of public good is important here and that decisions aren’t located as the “New Right” and the “Free Market” would have us believe, at the level of individual freedoms and so on. For Maori it is not simply an issue of individual autonomy over your own decision making. Individualism inevitably develops the potential divide and rule scenario and subsequently commodification and exploitation. There ought to be some form of Maori authority which is at the centre which can make collective decisions on behalf of Maori with respect to what counts as intellectual and cultural property rights. We need an authority, a stamp an authorisation or whatever. There are creative ways around this but I think the tension between sustainable development and controlled exploitation needs to be dealt with. I don’t think we necessarily need to freeze in the headlights because it is a hard issue to deal with. My view would be that we have to find ways to also develop our people economically. Some of those ways are going to involve the controlled use of our own resources that we have to hand. There are ways to do this with a conscience and with care.

What ways do you think we should respond to globalisation as Indigenous peoples?

I think that Maori need to join with the collective struggle with Indigenous people across the world. The trend towards the “free-market” economy is not an issue which pertains only to us here in our small corner of the world; the global, economic initiative, impacts on everyone. These are serious issues which, I think, we need to share information about and to develop strategies around. There is already, I think, already some very good work being done in the States on the exploitation and commercialisation by the tourist industry which I think would be helpful for Maori to look at.

In Hawaii there has been quite a bit of work done on responding to the legislative process in developing issues of sovereignty. At the end of the day sovereignty - tino rangatiratanga is a key component in the ability to make decisions for ourselves - as Indigenous people, the ability to have the control over our own decision-making, the ability to say what ought to be held in reserve, and the ability to say what is able to be commercially used in a sustainable way. These are critical decisions. That fundamental struggle, in our terms tino rangatiratanga, is a universal one, about self-determination and control over our own lives.
Cultural And Intellectual property rights
Of Indigenous Peoples Of The Pacific

Aroha Te Pareake Mead (Ngati Porou, Ngati Awa) is widely known within Indigenous circles and is acknowledged as a world expert in the area of cultural and intellectual property rights. She has worked for many years both nationally and internationally with Maori organisations, communities, Iwi, Maori Congress, United Nations forums and Indigenous Networks. This paper was delivered at a regional meeting on the United Nations Draft Declaration on the Rights of Indigenous Peoples in Suva, Fiji on the 4 September 1996.

Mr. Chairman, on behalf of Maori Congress I would like to convey to the Prime Minister, the government and people of Fiji, the Planning Committee, resource people and Indigenous participants from throughout Te Moana-Nui-A-Kiwa, our deepest respect. It is indeed a great honour to be invited to participate in this historical regional meeting on the UN Draft Declaration on the Rights of Indigenous Peoples.

Before I begin my discussion on cultural and intellectual property rights, I would like to make some brief observations about a few of the issues that were raised at this workshop yesterday. On my first day here in Suva, it was my birthday. My age is reaching a stage where a birthday is not necessarily a celebration anymore, it is more a commemoration, a time for reflection. So on my birthday I reflected on the fact that in the year I was born there were 63 member states in the United Nations. Now, in 1996, there are 185, which means that in my short but ever lengthening life, 122 new countries have realised their right to self-determination, their right to decolonisation and to independence. Nothing in current world events suggests that 185 countries is the final number. Indeed I expect that within the rest of my lifetime, that number will surpass 200 and many of the new states will be Indigenous from here in the Pacific basin. This is not a dream it is an inevitable reality.

The right to self-determination of Pacific Indigenous peoples will in some cases mean the creation of new UN member states, but it does not mean that this is what all Indigenous peoples are seeking. For some, their right to self-determination means a renegotiation of the system of governance to enable greater autonomy for them in political, economic, social and cultural decision-making. We must respect the different visions of Indigenous peoples, acknowledge there are differences, identify the commonalities and work towards constructive agreements that do not predetermine how Indigenous peoples throughout the world will realise their right to self-determination. The fundamental area of commonality, is the experience of colonisation and the wish therefore to de-colonise, but the journey of de-colonisation will be different according to the needs and aspirations of respective Indigenous peoples and of how they view their future relationship with colonising governments.

INTRODUCTION

From its inception, the United Nations has regarded the question of decolonisation as an important aspect of its purposes and functions. The 1945 Charter of the United Nations proclaimed the principles of self-determination of all peoples in Article I and Article 55. In 1960, the General Assembly adopted as Resolution 1514 (XV) The Declaration on the Granting of Independence to Colonial Countries and Peoples, known as the Decolonisation Declaration. The declaration states that "the subjection of peoples to alien subjugation, domination and exploitation constitutes a denial of fundamental human rights, is contrary to the Charter of United Nations and is an impediment to promotion of world peace and co-operation ".

The UN Draft Declaration on the Rights of Indigenous Peoples takes this one step further by proclaiming that all peoples, including specifically Indigenous peoples, have the right to self-determination (Article 3) and uses precisely the same wording as the 1960 De-Colonisation Declaration to clarify that "by virtue of which they freely determine their political status and freely pursue their economic, social and cultural developments."

It is within this fundamental context of self-determination that I will be speaking on issues of cultural and intellectual property rights of Indigenous peoples as it is becoming increasingly obvious that our right to 'freely pursue economic, social and cultural development" appropriate to us, is severely threatened. Political independence from a colonising power is, and will continue to be, a shallow victory if on the other side of independence, one is confronted with an even greater power of dominance and oppression, that being economic globalisation.

Cultural and intellectual Property rights is fast becoming one of the most contentious issues of our time. It is an area that challenges our every understanding and vision of self-determination, sovereignty and independence. The future ability of peoples and countries alike to protect their heritage and assets will further diminish as the multilateral agreements which have been enacted over the past decade are implemented globally. People are now beginning to realise that such agreements, based on western legal norms and standards will not bring about significant benefits for
Indigenous peoples or for developing countries, in fact there is every indication that we will lose more of our heritage in the next two decades than was lost during the immediate postcolonial times of last century.

Colonial powers are still in the infancy stages of looking back at the first wave of colonisation and acknowledging that their violent acts of seizing foreign lands and territories in order to develop settlements and secure resources, such as gold and other minerals, food crops, were calculated acts of genocide which resulted in the extermination of millions of Indigenous peoples, as well as the alienation of millions of others from their traditional homelands.

While the pace of acknowledging past wrongs is a fairly slow one, the drive to legalise to the greatest extent possible a continuation of the same behaviours is accelerating. Some regard cultural and intellectual property rights as the second wave of colonisation because the principles that underpin western legal perceptions of particularly intellectual property are seen as a continuation of the ideologies of foreign conquest and domination.

For the purposes of this paper, I will very briefly discuss the understandings implicit in the terms cultural and intellectual property rights. I do not profess to offer a culturally neutral analysis of these terms. I am an Indigenous person committed to the realisation of self-determination of all Indigenous peoples and that is the framework of my analysis. I also reject the notion that western trained scholars and scientists are culturally neutral and therefore objective. We are all affected by our cultural world views. I will then offer some examples to illustrate why cultural and intellectual property rights are important for Indigenous peoples of the Pacific. Finally, I would like to suggest a number of strategies for your consideration as a means to focus our plenary discussion.

CULTURAL vs INTELLECTUAL PROPERTY

It is important to note that western law distinguishes cultural property from that of intellectual property, in that it regards cultural property as being tangible physical expressions of culture, such as music, dance and art forms, whereas intellectual property is seen as the outcomes, both tangible and intangible of ideas or processes that have been the result of human intervention. I wish to emphasise the term human intervention as I will be speaking further on this point later.

Land and water rights are not acknowledged within these legal constructs, nor is customary ownership or collective heritage.

The distinguished Chairperson of the UN Working Group on Indigenous Populations (WGIP), Professor Daes has produced several reports, first on the issue of cultural property and then on the combined issues of cultural and intellectual property. I invite Professor Daes to discuss her Reports later in the plenary discussion.

By way of background to the partnering of cultural and intellectual property, the following might be helpful. In resolution 1990/25 of 31 August, the UN Sub-Commission on the Prevention of Discrimination and Protection of Minorities entrusted Professor Daes to prepare a working paper on the question of the ownership and control of cultural property of Indigenous peoples for submission to the ninth session of the WGIP. A number of Indigenous peoples and organisations, submitted that the western legal distinction between cultural property and intellectual property was superficial in that Indigenous cultures did not separate culture from intellect or intellect from culture. The Indigenous group asked that any further research into this area be progressed as a duality. In 1992, the Sub-Commission at its forty fourth session expressed the conviction in its resolution 1992/35 of 27 August 1992, that

"there is’ a relationship, in the laws or philosophies of Indigenous peoples, between cultural property and intellectual property, and that the protection of both is essential to the Indigenous peoples’ cultural and economic survival and development."

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2 Todorov estimated that in 1500 the world population was approximately 400 million of whom 80 million inhabited the Americas. "By the middle of the 16th Century out of these 80 million there remained ten. Or limiting ourselves to Mexico, on the eve of conquest its population was about 25 million. In 1600 it was 1 million. If the word genocide has ever been applied to a situation with some accuracy, this is here the case. It constitutes a record not only in relative terms (a destruction in the order of 90% or more) but also in absolute terms since we are speaking of a population diminution estimated at 70 million human lives. None of the great massacres of the 20th Century can be compared to this hecatomb. " (Tzvetan, Todorov, The Conquest of America (Harper & Row, New York: 1982)).

3 Add to Todorov's account, figures for Australia, New Zealand, Asia and the Pacific and one would have a greater understanding of the gross carnage that Indigenous peoples have suffered.

4 1991 intervention by Ngati Awa and Ngati Te Ata (Aotearoa), National Aboriginal and Islanders Legal Service (Australia) and the National Indian Youth Council (USA) to the UN-WGIP.
Accordingly, the Sub-Commission recommended that the title of the study Professor Daes was to undertake should be revised to "Protection of the cultural and intellectual property of Indigenous peoples." All subsequent reports by Professor Daes reflect this inter-relationship. While it was important to combine the two areas for the purpose of enabling the western legal system and states to acknowledge the flaws in current legislation, it is equally important to separate the two to enable Indigenous peoples to better understand how these terms are made distinguishable within western norms and standards.

CULTURAL PROPERTY

Cultural property includes all tangible forms of culture and therefore heritage. It is a term used mostly to describe items of cultural and spiritual significance that were misappropriated in the early periods of post-colonisation. Items such as burial objects, and human remains. It also includes tangible aspects of heritage, such as language. Cultural property is also referred to as 'folklore'.


Articles 12 and 14 of the Draft Declaration on the Rights of Indigenous Peoples pertain to cultural property and folklore provisions.

Article 12
Indigenous peoples have the right to practise and revitalise their cultural traditions and customs. This includes the right to maintain, protect and develop the past, present and future manifestations of their cultures, such as archaeological and historical sites, artefacts, designs, ceremonies, technologies and visual and performing arts and literature, as well as the right to the restitution of cultural, intellectual, religious and spiritual property taken without their free and informed consent or in violation of their laws, traditions and customs.

Article 14
Indigenous peoples have the right to revitalise, use, develop and transmit to future generations their histories, languages, oral traditions, philosophies, writing systems and literature and to designate and retain their own names for communities, places and persons.

States shall take effective measures, whenever any right of Indigenous peoples may be threatened, to ensure this right is protected and also to ensure that the ‘can understand and be understood in political, legal and administrative proceedings, where necessary through the provision of interpretation or by other means.

Article 12 mentions restitution. Implicit in this is repatriation and an acknowledgement that many properties have been taken in violation of traditional customary laws and/or traditional customs have been subjugated through colonisation. Therefore within the sphere of cultural property, the debate tends to focus on redress as being the return of misappropriated items to the original Indigenous owners or their descendants, and the revitalisation of cultural traditions, including language, that were previously denied. Issues such as, protection and use of sacred sites, repatriation and reburial of human remains, recovery of sacred and ceremonial objects and resurgence of Indigenous languages including place names.

Indigenous peoples argue that all heritage, intangible and tangible, including lands, waters and resources constitutes cultural property but as can be seen, western norms simply cannot accommodate such a world view within the parameters of ‘culture’. So entrenched is the separation of culture from a western capitalist world view that natural resources are regarded only as tradeable commodities and not as an expression of cultural identity. Hence, much of what Indigenous peoples would regard as cultural property has been transferred into the legal construct of intellectual property.
INTELLECTUAL PROPERTY

Intellectual property relates more to development rights. Its genesis is from the period known as the industrial revolution where the advent of technology created a radical societal transformation. An age where wood was replaced with metals, where inventions included, glass, electricity, the wireless, the telephone, steel bolts and screws. A time when human intervention was obvious and formed the major component of a product, an invention. Patents and trademarks were used by individuals to protect their inventions from commercial exploitation at a time when their inventions were in fact the first of their kind in the history of the world. [Early patents include: Germany, 1903 Reinhold Burger Thermos Flask; USA, 1844 Linus Yale Sr. and 1861 Linus Yale Jr. ale Securi Locks; USA, 1886 George Parker, USA, 1901. King Camp Gillette, Gillette Razor Blades protected by a Patent and company Trademark]

Since the industrial revolution, intellectual property has extended its sphere of coverage and influence to a point where the lines of distinguishing the degree to which human intervention forms the major component of a product is extremely blurred. In particular, intellectual property rights have come to encompass issues such as, authenticity of Indigenous artforms, communal rights to traditional designs, performing arts, and tourism'. Within the Pacific region these are significant issues as so many traditional designs are being misappropriated by foreign companies and reproduced on fabrics and souvenirs for tourism. But the most controversial area of intellectual property coverage is that associated with genetic resources and biological diversity. This includes, Indigenous knowledge, science and technology particularly in the areas of taxonomy (plant and animal classification systems), environmental management, traditional medicines and healing practices, biological and human genetic diversity. Intellectual property now also includes products of nature, modified plants and animals, fish, and indeed products based on genetic materials of humans.

To appreciate the concerns of 'Indigenous critics of intellectual property rights mechanisms, is to delve into the history of partnerships amongst western commerce, science and the law and the complimentary role these three doctrines have played in colonisation and so-called modernisation. Peter Donigi from Papua New Guinea writes 'I subscribe to a very liberal interpretation of the term 'terrorism'. It is not limited to acts of violence. In its most liberal sense it applies to threats - by multinational companies or their respective industry organisations - issued to governments of developing countries to coerce them to adopt legislative policies to benefit the companies in their continued exploitation of the resources of those countries at the expense of the interests of the Indigenous peoples'.

Intellectual Property rights, for instance can be interpreted as a legitimising of the acquisition of goods by nationals of one state from nationals of other sovereign states, such 'goods' include genetic materials of citizens. In the past, this is what caused wars. It was seen as 'invasion and conquest'. By legalising the acquisition within a framework of commerce and intellectual property rights, the same act is seen as a 'market transaction' where the major consideration is the market price and ethical/cultural considerations are dismissed as anti-development and conspiracy theory. The process used is the western scientific paradigm of reductionism. Instead of looking at a whole country and its territorial boundaries, one reduces the country to a grid of ecosystems (terrestrial biodiversity, marine and coastal, agricultural biodiversity, deserts, marshlands) and then further reduces those ecosystems to plant/marine species and then again to genetic resources of all living things within a state's territory. Each level of reduction presents an increased commercial opportunity.

But there is a terra nullus perspective implicit in the intellectual property requirement to demonstrate human intervention or innovation (value-added) in that intellectual property rights laws do not acknowledge existent customary Indigenous knowledge or Indigenous ownership. Nor do they agree that Indigenous knowledge and processes are scientific and technological, nor do they accommodate a connection between Indigenous peoples and their lands and heritage. In short, they do not regard existent Indigenous knowledge as being an intellectual property and deserving of protection, rather they consider such knowledge as 'common' and define human intervention based on what non-Indigenous peoples 'add' to what has existed for generations.

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5 Intellectual property is in fact a collection of legal mechanisms (copyrights, patents, trademarks, plant breeders rights and trade secrets) which accords on a first come first served basis, exclusive ownership rights over products (including ideas) for a defined period of time, where the applicant is able to demonstrate their intellectual contribution to that product, and the commercial viability (industrial application) of that same product.

6 Peter Donigi is a prominent lawyer who has practised law in PNG for 20 years. From the Badeabus clan in the Sepil Province of Papua New Guinea he is currently the PNG Ambassador to Germany with accreditation to the Holy See, Peter Donigi, Indigenous or Aboriginal Rights , to Property v: A PNG Perspective (International Books, The Netherlands: 1994), 14

7 A Latin legal term meaning 'territory belonging to no one'. The general rule of the English common law system was that ownership could not be acquired by occupying land already occupied by another, hence settler governments evoked terra nullius in the new colonies thereby refusing to acknowledge existent indigenous inhabitants. See Mabo Vs State of Queensland, High Court of Australia Decision, F.C.92/014, 3 June 1992. I have co-opted the term to describe a mindset of colonisers and their descendants.
For instance, at the July meeting of the World Trade Organisation's Trade & Environment Committee, states considered the importance of linking the Trade Related Intellectual property rights (TRIPS) agreement to the Convention on Biological Diversity. In a discussion on the issue of traditional and Indigenous knowledge, it was reported that Canada and the US progressed the view that "From a legal standpoint, ii-traditional and Indigenous knowledge was not an 'intellectual property' and cannot be treated as such" Both favoured an approach where "traditional and Indigenous knowledge could be recognised and rewarded through benefit sharing approaches which entail voluntary contractual arrangements on mutually agreed terms. Such private contractual arrangements did not require multilateral disciplines, nor would an international sui generis system be established to protect or grant some right of compensation for this type of subject matter".

Some states are also beginning to advocate a position that traditional knowledge is not scientific, therefore it cannot be afforded legal protection through existing mechanisms, does not require agreements across countries as to access rights, or equitable sharing of benefits and can be left to voluntary contractual arrangement between Indigenous communities and multinational companies. For instance, a hypothetical case where Ciba-Geigy of Switzerland with 83,980 employees and a 1994 revenue of US$16,381 million would negotiate a voluntary contract directly with a village of 80 people in Vanua Levu (Fiji). Preferences for direct negotiations to occur, company to community, without national or international guidelines do not acknowledge an enormous resource disparity in such negotiations. Without national or international guidelines to direct companies to observe basic social justice principles such as 'informed consent' the potential for abuse by companies is substantial.

TRADITIONAL MEDICINES

Article 24 of the Draft Declaration on the Rights of Indigenous Peoples relates to the right of Indigenous peoples to access and utilise their traditional medicines and health practices as well as to access protection for vital medicinal flora and fauna. The WTO Trade & Environment Committee discussions are already indicating that some states will have grave difficulty with this provision.

**Article 24**

Indigenous peoples have the right to their traditional medicines and health practices, including the right to the protection of vital medicinal plants, animals and minerals.

An all too frequent experience of traditional healers of the Pacific is that they are not accorded status, either as health experts, people of wisdom, or even as traditional owners of lands and knowledge. Many are forced to offer their services 'underground' and many patients are reluctant to admit that they use and trust traditional healing practices. This is the case not only in Pacific developed countries such as Australia and NZ, but also in other Pacific states where health 'standards' (which are really western norms and values rather than universal standards) are set as preconditions in order to access regional and international development funding. While most Indigenous peoples are still fighting for the right to recognition of the validity of traditional knowledge and healing, foreigners are taking over that knowledge at a faster pace than communities are able to re-establish and promote their traditional healing. Because of the *intellectual property* requirement to demonstrate human intervention, foreigners are taking over the knowledge of traditional medicines that has existed for generations, adding value to it through western scientific explanation and using *intellectual property rights* to claim exclusive ownership of the processes and products that arise from utilising the Indigenous knowledge. Protocols that require acknowledgement of the primary source of information, or the sharing of any benefits with the traditional owners of that knowledge are not observed. If developed states continue to marginalise Indigenous knowledge as not meeting standards of *intellectual property* this creates a no-win situation for Indigenous healers. The risks of sharing information outweigh any potential benefits.

HUMAN GENE PATenting


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8 WTO Trade & Environment Committee Report, PRESS@010, 8 July 1996. To receive complimentary copies of the WTO Trade and Environment Committee reports write to: Information and Media Relations Division, World Trade Organisation, Centre William Rappard, 154 rue de Lausanne CH-1211 Geneva 21, Switzerland or Internet: webmaster@wto.org

9 Ciba-Geigy 83,980 employees, 1994 revenue $16,131.8 million, Merck 47,500 employees, 1994 revenue $US 14,969.8 million and Monsanto 29,354 employees, 1994 revenue $US8,272 million are currently negotiating for access rights in the Pacific region, ranked 188, 210, 478 and respectively on the Global List of the Top 500 World's Largest Corporations. (Fortune, No. 15, 7 August 1995)
also attempted to assert a world-wide patent through the World Intellectual Property Organisation (WIPO) Patent Cooperation Treaty (WO93/03759). The Hagahai patent has raised to the forefront the very worst case scenario that Indigenous peoples feared about human genetic research in general.

I recently published an article entitled Genes, Sacredness and the Commodities Market in the US quarterly, Cultural Survival (Vol.20, Issue 2, Summer 1996) further discussing these issues. This is an entire edition devoted to the consideration of human genetic research and human gene patenting, particularly in the Pacific. As the issues in human genetic research are in themselves highly complex, I urge you to locate a copy as the edition offers the perspective of those who advocate human gene patenting and the Human Genetic Diversity Project (HGDP) as well as those who reject it.

FOOD SECURITY

An additional concern that many Indigenous peoples raise is the rising prominence of intellectual property rights as a bona fide business practice of the food industry. There have been a number of recent global meetings on food security that have highlighted the earnest attempts by particularly US and European based companies to assert intellectual property laws over the world's basic food supply; Soya bean, rice, maize, wheat, potato. You might ask why would they want to do that, it is quite simple, money/profit/greed. Why is it important in this region? Any attempt by outsiders to genetically modify Pacific crops, be they agricultural or marine resources, and in so doing assert an intellectual property right would be devastating to Pacific economies. According to a recent Asia Development Bank Report, the ADB predicts that only two South Pacific developing countries will be financially viable by the end of the next decade, Fiji and Papua New Guinea. A plant variety right taken out for instance on a modified coconut palm, or a patent taken out on a traditional process for extracting coconut oil would enable foreign based companies to replicate the plants, the process and the product anywhere in the world and in so doing prevent Pacific states from continuing to produce and trade in customary produce. This places Pacific states and Pacific Indigenous peoples equally in a highly vulnerable position.

Within the consideration of food security issues, it is important for us to ponder the implications of private ownership of the world's food staples. I realise this sounds a bit science fiction, conspiracy theory, anti-development and anti-science, but there is just cause for healthy scepticism. Need I remind you of the technological advancements that have been made in our own lifetime (television, videos, computers, walkmans, photocopy machines, voice mail, CDs, Fax machines to name but a few). The telecommunications industry has made possible what most of us considered impossible in the space of 20-30 years. The biotechnology industry is considered the 'boom industry' of the 1990's. In the space of a decade, it has introduced technology to identify an individual based on DNA samples from minute fragments of hair, blood or semen. The technology is capable of achieving things that we cannot possibly comprehend. Biotechnology is advancing well ahead of societal comfort zones and unfortunately ahead of cultural, ethical and even political concerns.

As a scenario, should a company be successful in asserting for instance a global species patent on potatoes, it would mean that in the future small scale farmers would be prevented from retaining their seed stocks from one harvest for plantation the following year. To store seed stocks would become an illegal activity. Instead, farmers would have to purchase seeds every year from a company. Through biotechnology, an increasing number of seed strains are being developed precisely in order that they do not generate new seeds. Because patents are for a finite period of time, usually years, companies are required to continually modify their products so as to meet the requirement for innovation, human intervention and industrial application. Transgenic seeds are becoming a popular method for companies to keep their intellectual property rights intact. If this continues within the Pacific one can see that it will become increasingly difficult and expensive for small farmers to continue to farm. If biotechnology extends into the ocean as it is beginning to do, it will also become increasingly difficult for fishermen to fish. Species will no longer be customary. Fishermen might find themselves having to pay access rights, in fact the current fisheries quota systems already requires this, not to their state governments but instead to foreign companies. Customary access and harvesting rights will be lost.

10 in 1994 a species patent was granted in Europe on the soyabean crop - the first time a species patent had been granted on a food crop.

11 for instance, Zeneca Seeds Inc. applied to the New Zealand government on 30 August 1996 for controlled field-trialing of Canola containing the Monsanto Corporation's Roundup Ready (TM Genes for Glyphosate Herbicide Resistance Ciba-Geigy) and were granted by the NZ government approval to field trial transgenic maize.

12 the sea's economic potential is enormous. Majestically swirling ocean currents influence much of our world's weather patterns; figuring out how they operate could save trillions of dollars in weather related disasters. The oceans also have vast resources of commercially valuable minerals ... pharmaceutical and biotechnological companies are already analysing deep sea bacteria, fish and marine plants looking for substances that they might someday turn into miraculous drugs (Ocean Frontiers, Time Magazine No.32, 14 August 1995, 48)
The biotechnology industry is going to great lengths to convince people that these new modified and transgenic seed strains are for our benefit because they will make crops grow twice as big and twice as fast, and therefore we are asked to believe that this is a good thing. But with the improved strains of seeds, come higher seed stock prices and specially designed herbicides/pesticides which will not be offered at competitive prices. The crops themselves will be purchased by companies who will set strict standards for growing and harvesting and require contractual agreements that might preclude a grower from selling their crop to a higher bidder. An increased reliance on genetically modified crops will mean a loss of traditional biodiversity. Instead of an Indigenous community growing 17 varieties of potatoes, they would grow only one or two hybrids because of market demands. While a patent on a hybrid seed might last 20 years, pests rejuvenate and build-up resistances within a much shorter time frame. If pests wiped out a hybrid crop and communities had lost their traditional varieties, the community would end up with no food and no income. What I'm trying to build up here is a picture where you can see that every aspect of what used to be a customary activity - will in the future become a series of commercial transactions, the land, the seeds, the pesticides, the markets. That fatal mix of western science, commerce and through intellectual property rights, law. Is this really what Pacific Indigenous peoples want?

At a recent public consultation in Wellington, New Zealand, a panel of sixteen reached the following conclusions about the ethical considerations of plant biotechnology and intellectual property rights. "Ownership means different things to different people. the results of genetic modification to plants must be considered an invention, which, because it is a novel use, means a person or company can have intellectual rights. Notwithstanding this, we accept that intellectual property rights of current NZ legislation differs from the views of Maoridom .... while we accept the ethics involved and the perspective of various cultural groups, we believe that plant ownership is a reality and issues of practicality seem to take precedence over ethics".

It is also a matter of concern that an increasing number of food products are being developed are transgenic, including comprising human genetic materials. The Health Research Council of NZ in its report 'The Clinical And Research Use of Human Genetic Material: Guidelines for Ethical, Cultural and Scientific Assessment' noted that 'transfer of copy human genes into other organs .. ranging from fish to farm animals is now a widespread practice (1994, xi)’. The United Kingdom Report on the Ethics of Genetic Modification and Food Use recommended that 'organisms containing copy genes of human origin may be used in the food chain subject to the necessary safety assessment. "

So the direction that intellectual property rights and biotechnology is taking us therefore is not only one that is systematically alienating our traditional resources, it is also threatening our livelihoods and the economies of our Pacific communities and countries. It is also imposing on us a value system that is absolutely contrary to Indigenous Pacific world views, and beliefs in the integrity of nature and concepts of what is sacred and what is profane. It also places Pacific Indigenous peoples in a competitive framework where we fear that if we don't take out a patent first, someone else will. Imagine the regional divisiveness that would result if one Pacific country took out a Patent on kava thereby preventing any other Pacific state from producing kava themselves, or at a community level if an artist copyrighted a traditional song or sold a traditional art design to a foreign company who in turn copyrighted the design.

These issues are why there are a growing number of Indigenous peoples and nongovernmental organisations who are striving to develop sui generis systems which better protect collective heritage as well as to have removed from inclusion in intellectual property rights mechanisms, all lifeforms. In 1995 Pacific Indigenous peoples established the Treaty for a Lifeforms Patent Free Pacific (at a Suva conference sponsored by UNDP and hosted by the Pacific Concerns Resource Centre) The Treaty does not prevent research and development projects, but asserts that it is not necessary to use intellectual property rights in order to develop policy and products to improve human and environmental conditions.

With all these issues as background, I now wish to draw your attention to Article 29 of the Draft Declaration. Article 29 attempts to bring together all the issues inherent in cultural and intellectual property rights even though some of the points are covered in other Articles as well. Article 29 was deliberately drafted as an all-inclusive provision in order that states did not seize upon the separation of components of cultural property as meaning that Indigenous peoples therefore did not regard them to be intellectual property.

**Article 29**

Indigenous peoples are entitled to the recognition of the full ownership, control and protection of their cultural and intellectual property.

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They have the right to special measures to control, develop and protect their sciences, technologies and cultural manifestations, including human and other genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literature, design and visual and performing arts.

Some governments regard this Article as tantamount to heresy as these provisions present a direct contradiction to all that is happening in the biotechnology industry and in regard to the Trade Related Intellectual property rights Agreement (TRIPs). To retain this Article in its current form will present as great or perhaps an even greater battle as Article 3 on the right to self-determination. We need to be clear that commerce rules politics, it always has.

In 1993, the Mataatua Declaration on the cultural and intellectual property rights of Indigenous Peoples was developed by Indigenous peoples from throughout the world. It represents one of the first articulations of global Indigenous concerns and aspirations on these issues.

THE CONVENTION ON BIOLOGICAL DIVERSITY

The Draft Declaration includes strong provisions such as Article 29, but as well as the ensuing battle we will endeavour to try and hold on to these provisions, even when the Declaration is finalised and agreed to by the General Assembly it will not be a legally binding document. Therefore it is important that Indigenous peoples participate in relevant discussions held in other fora, particularly those that involve legally binding Conventions.

For instance, the Convention on Biological Diversity (1992) was one of two legally binding Conventions agreed to through the UN Conference on Environment and Development (UNCED) process. [The other is the Convention on Climate Change] 145 countries have ratified the Convention on Biological Diversity (CBD) including most countries of the Pacific. Within the Convention, there is specific provision, Article 86 which relates specifically to Indigenous knowledge and requires of states the development of policies that outline access, utilisation, protection, sharing of benefits.

"Subject to national legislation, respect, preserve, maintain knowledge, innovations and practices of Indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity and promote their wider application with the approval and involvement of the holders of such knowledge, innovations and practices and encourage the equitable sharing of the benefits arising from the utilisation of such knowledge, innovations and practices. " (Article 86) In-situ conservation, Convention on Biological Diversity

Article 86 will be discussed at the next meeting of the Conference of the Parties, November 5-14 in Buenos Aires, Argentina. It is an extremely important meeting for Indigenous peoples to participate in because it is at this meeting that states will reach legally binding agreements on the issues implicit in Article 86. The outcomes will also influence how states ultimately consider the Articles of the Draft Declaration as they relate to cultural and intellectual property rights.

At the meeting of the CBD, other agenda items include: agricultural biological diversity (food security), terrestrial biological diversity (forests and forestry), economic valuation of biological diversity (the process to accommodate global trade) and coastal and marine biological diversity which includes special consideration of bioprospecting of genetic resources of the deep sea bed. Already some states are calling for a review of the UN Convention on the Law of the Sea to exclude the deep sea bed from inclusion within a state's economic zone.

OTHER MULTILATERAL AGREEMENTS

Through multilateral agreements such as the GATT and regional agreements such as NAFTA there is a strong push to harmonise intellectual property laws of all states so that it becomes easier for nationals of one state to access and assert ownership of materials and resources derived from other states. It is significant that Australia announced on 3 September 1996 its withdrawal from the South Pacific Regional Trade Co-operation agreement (SPARTECA) and that New Zealand has also indicated its intention to withdraw. NZ, Australia and Fiji are the only South Pacific countries to have ratified the GATT. Few Pacific nations have in place the full spectrum of intellectual property rights laws and a

14 to seek accreditation for attendance at all CBD related meetings, and to receive documentation, write to: Secretariat, Convention on Biological Diversity, World Trade Centre, 413 St. Jacques St., Office 630, Montreal, Quebec, Canada H2Y 1N9 or Email: biodiv@mtl.net
15 other relevant Articles of the CBD include; 8(a) protected areas, IO(d) remedial action in degraded areas. 16 technology transfer. 18 scientific co-operation 28 adoption of Protocols
16 General Agreement on tariffs and Trade, The Final Act (also known as the Uruguay Round), finalised in 1994.
withdrawal from SPARTECA can be interpreted as a move to force Pacific countries to ratify the GATT and submit their intellectual property rights laws to global harmonisation.

CONCLUSION

In conclusion, I would like to say that although the Draft Declaration on the Rights of Indigenous Peoples does not present for me the ideal of how I would wish to see provisions written to protect Indigenous cultural and intellectual property rights, there is nothing in my opinion that suggests that these Articles in their current form would necessarily hinder what Indigenous peoples are trying to achieve.

It is important that the Articles of the Draft Declaration be retained in their current form as they represent minimum standards for states to observe. We must follow the Inter-governmental negotiations on the Draft Declaration to ensure the spirit and intentions of the Articles are upheld. But it is equally important that we also expand our energies into some of the other relevant international fora such as, the GATT, the World Trade Organisation Trade & Environment Committee, the Convention on Biological Diversity, Law of the Sea, FAO, UNESCO Bioethics Committee. Developments in these fora should be closely monitored to ensure that nothing that is expressed in the Draft Declaration is compromised through agreements reached in other international mechanisms.
Strategies: For Future Action

CULTURAL AND INTELLECTUAL PROPERTY RIGHTS OF INDIGENOUS PEOPLES OF THE PACIFIC

1. LOCAL LEVEL
   * empower Indigenous communities with the knowledge they need to negotiate with foreign researchers and companies particularly bioprospectors and health researchers.

2. NATIONAL LEVEL -
   * develop and/or amend intellectual property laws to exclude all lifeforms from patentability
   * develop copyright and *sui generis* systems to protect traditional material culture

3. REGIONAL LEVEL -
   * sign and implement the Treaty on the Life-Forms Patent-Free Pacific and Related Protocols as a commitment to Pacific Indigenous communities and to the Region
   * lobby Pacific governments to sign the Treaty
   * network with other interested Indigenous peoples and NGOS
   * develop and promote a Pacific regional profile and position on cultural and intellectual property rights issues
   * develop and promote regional Indigenous trade networks

4. INTERNATIONAL LEVEL
   * sign and implement the Mataatua Declaration on the cultural and intellectual property rights of Indigenous Peoples
   * monitor relevant international agreements and negotiations including:
   * encourage one or several Pacific governments to take a case to the International Court of Jurists (World Court) to seek an opinion on the legality of including lifeforms in intellectual property rights mechanisms
Intellectual property rights and Implications for Maori

Moana Jackson (Ngati Kahungunu and Ngati Porou) is a Maori lawyer who has been actively involved, nationally and internationally, providing information for Maori people about the implication of Intellectual property rights. Given the impact of Intellectual property rights on Maori it is critical that we have an awareness of the ways in which Intellectual property rights are defined. In this interview Moana looks back to the history of Western law and philosophy to explain the current processes of commodification.

What are intellectual property rights?

One of the first things is that we have to define is what we mean by intellectual property rights because it is one of those terms that lawyers have made up. But like all the things that lawyers do it’s actually a very simple concept. They [lawyers] have tried to make it sound all sort of mysterious and my understanding of intellectual property rights is simply anything that was created in the human mind in the past, the present or will be created in the future. So a waiata is intellectual property in the sense it’s created in the mind of someone. Now what has happened in the last 50 years particularly is an extension in Western law of the idea that intellectual property rights is not just things that someone creates or invents or makes up, a product of human genius, but now it is simply regarded as something which we can own.

In international law Pakeha law the original term was simply intellectual rights. Intellectual property rights as it applies now is not just something you make up like a waiata or something you invent like a computer but also now applies to things such as a species of tree, a species of bird, a flower, even a human gene. These are now being regarded as intellectual property and what that means is something therefore that humans can own. I think that extension of the notion of intellectual property rights carries real dangers with Maori and I think it’s inevitable given that the New Right has moved to commodify or turn everything into property and I don’t think we should be surprised by it.

I think again one of the important things about intellectual property rights and its place in the current debate is that it is part of that wider context. Western society has always been based on commodified things the earth was a thing that man and it was always man, was given dominion. For centuries Pakeha law commodified and made a property out of women so men owned Pakeha women. For about 300 years they made an economic commodity out of black slaves and so the fact that now the notion of intellectual property has been extended from a waiata in a book to human genes or a species of a tree should not surprise us. There is a certain absurd logic in the way that Western economic theory develops. Intellectual property within the context of the general agreement of tariffs and trade or GATT and all of the other debate that is going on is simply saying we the Western economic world believe that everything in this world is ownable by us and that is not a new standpoint.

It’s just that they are trying to rationalise it in purely economic terms and so they can turn fish into a property that they own, they can turn a tree into a property that they own and now in genetic engineering and so on they can turn the very basis of human life, the DNA into property that they can own. The consequence of that in law is that ownership builds a fence around the thing that is to be owned and it excludes others from access or rights in it unless they pay for it. Whereas an Indigenous view of intellectual property is quite different. First of all that there are certain things in the world that cannot owned that humans have no rights to own. One of the most ludicrous examples for me is that under Pakeha law you can now own the air. I cannot think of anything more absurd than to believe that you can own the air. But they sell what they call air space and it becomes the property of Brierleys or Fletcher Challenge or the Ford Motor Company or whatever. And people used to laugh when I say that we should be worried about that because the logical extension of that is that under the New Right thinking the air can be privatised and so everyone will be walking around with meters on their lips and putting 20 cents in everytime they take a breath because the air will be owned by Oxygen Incorporated or something. A society that believes that you can own anything will not stop at creating the assumption that you can own the air or even own the genes, the whakapapa or the ira tangata of a people. Looking at it from a Maori standpoint I think its just absurd but like so many absurdities in colonisation also potentially dangerous for our people. Not only did they have the right 100 years ago to dispossess us they now claim the right to own what we are, and that is the most fundamental attack on the peoples integrity that I can think of.
What are some other examples of patents being taken out over Maori property?

Well in 1987 the process really began to take off in this country with the passage in Parliament of an act called the ‘Plant Variety Rights Act’ which allowed for the granting of PVRs or Plant Variety Rights which is a sort of patent over species which they called cultivators of plants. And so since then certain species of Koromiko certain species of puawananga have had PVRS granted over them which means that somebody now owns them. In terms of the Treaty of Waitangi, that seems to be a direct challenge to the rangatiratanga of our people to exercise not ownership but guardianship or rangatiratanga of the forests lands, etc. that our people have lived with for hundreds of years. So that is one type in Maori terms of a non-ownable taonga being turned into a property in which intellectual property rights will be granted. There are lots of others, including a number of plants, which our people will be aware of, from which we extract rongoa or medicines. There are applications to seek patents over those medicines and so on. Now the response to that threat from some of our corporate warriors is well Maori people have to take out their own PVRs, or their own patents over these plants but that seems to miss the point because if we buy into that regime that is contrary to our history that we can own the trees that they are no longer things with which we are meant to coexist but we like all good christians have dominion over them and that again just dismisses what I understand to be one of the cultural underpinnings of who we are. The second danger in taking out patents or copyrights is those copyrights or patents under Pakeha law vest individual rights and if we are to learn anything when we talk about the collective nature of Maori society but we might decide that that tree over there is a property that one individual can own to the exclusion of others so then we are debasing the things that we claim are the pillar of our society.

Is it true that the rugby union has patented the haka “Ka Mate”?

I think that the use of the haka ka mate by the All Blacks has a number of intellectual property implications. First of all it has significance for Ngati Toa and equally but importantly for Ngai Tahu but it was co-opted by Pakeha as they co-opt all Maori cultural things which are non-threatening to them and they have taken it as their own and I am always amused that when the All Blacks do a haka its a source of national, meaning Pakeha pride. But when a group of Maori men do a haka in the main street of Whanganui, they are arrested for offensive behaviour. So the interpretation of what the intellectual property is, what it means and who can control it is assumed by the coloniser. It’s like these Pakeha people that go overseas and they sing this abortion of Pokarekare Ana just like the Air New Zealand advertisements use it and in the latest advertisements they have a black man singing it in London well that song was actually written by one of my Kahungunu tipuna and it’s actually a love song for the woman he later married in Ngati Porou. But that song has almost become a Pakeha anthem and my response to Pakeha is to say sing your own songs, why don’t you sing your own songs to define who you are, why to define your uniqueness do you have to take something more off us?

So the use of the haka by the All Blacks or the use of Pokarekare by Pakeha overseas is actually intellectual theft and whether they have claimed they now have the copyright over those things now is irrelevant because they are not the product of their intellect and unless our people willingly allow themselves to define the terms on which it can be used and so on then it is an act of colonial theft. If the All Blacks want to use something distinctly New Zealand then why don’t they make something up themselves.
THE TRAVESTY OF WAITAHA:
The New Age Piracy of Early Maori History

This article is written by Toni Liddell, a descendant of Ngai Tahu / Nga Puhi who is a student at Auckland University. Toni has produced a number of writings on the appropriation of Indigenous knowledge by the New Age movement. In this article she looks at the impact on her own Iwi of one example of the New Age phenomenon, the book ‘Song of Waitaha’ and how Maori suffer as a consequence of the appropriation of such knowledge. A version of this article won the Maharaia Winiata Memorial Prize at Auckland University in 1996 jointly with another student.

INTRODUCTION

They came for our land…And now they’ve come for the very last of our possessions…our pride, our history and our spiritual traditions. (Margo Thunderbird. Native American elder/activist.1988).

Since the signing of the Treaty of Waitangi in 1840, Iwi, Hapu and Whanau Maori have become intimately familiar with the many manifestations of colonisation - from the appropriation and alienation of lands at the hands of a succession of Pakeha governments, to a raft of ‘educational’ and social initiatives aimed at the subversion of Maori language, spirituality and culture. In recent times, having achieved the alienation of much of the land and other tangible natural resources under the kaitiakitanga of Maori, the colonial juggernaut appears to have rolled on towards greener pastures, and now it seems our intangible cultural resources are the subject of interest – our tikanga, whakapapa, traditional knowledge, spirituality – indeed our very identity as Tangata Whenua of Aotearoa. Such taonga are now sought by non-Maori of all descriptions, flocking to the doorstep of Maoridom, most in search of a sense of belonging to these shores.

This article provides a critique of the work of one such individual by the name of Barry Brailsford – author of the book ‘Song of Waitaha’ (1994), which purports to be an account of the tribal histories and traditions of some of the first people to settle the South Island – the Waitaha – as told to him by the elders of this ancient ‘nation’. While Brailsford may claim to have written his book out of respect for the Iwi of Te Waipounamu some contention exists among some of the southern Hapu and Iwi as to the role of ‘Song of Waitaha’ in undermining their tino rangatiratanga as kaitiaki of their own histories and whakapapa. Critics of the book claim that what was, in their minds, originally to be a relatively straightforward research project to assist an Iwi claim before the Waitangi Tribunal had, by the time of its publication as ‘Song of Waitaha’, grown into something quite different. The accounts of Tipene O’Regan and Te Maire Tau of Te Waipounamu are discussed, illustrating the manner in which Brailsford, having lost the support of Ngai Tahu, allegedly turned to the testimonies of a different group of Maori - positioning themselves as the ‘Elders of the Ancient Nation of Waitaha’ - upon which to base ‘Song of Waitaha’. This article raises some concerns about both the processes involved in the production of this book, as well as issues relating to authenticity, as a basis for highlighting some of the tensions and controversy surrounding the release into Pakeha hands of maatuarangi Maori.

In examining the contents of ‘Song of Waitaha’ an underlying political agenda will be identified – an agenda which it is argued, espouses a somewhat ‘new-age’ philosophy promoting notions of harmonious racial integration and reconciliation as the way forward for this land and its people. Further, it is argued that various ideologies arising from Brailsford’s work - while appearing harmless on the surface - may in fact, by reconstructing Pakeha and other non-Maori as equally Indigenous to Aotearoa have more far-reaching consequences - threatening ultimately to undermine the status of Maori as Tangata Whenua. On this basis ‘Song of Waitaha’ will be identified as posing a universal threat to the tino rangatiratanga of all Hapu and Iwi, not simply those from Te Waipounamu.

Far from being an isolated incident, the controversy surrounding the publication of ‘Song of Waitaha’ can be located within a wider global context, as part of a phenomenon currently plaguing many Indigenous peoples world-wide, and a number of Native American writers included in this article have highlighted the potentially genocidal implications this form of appropriation may hold for Tangata Whenua everywhere.

THE POLITICS OF WHAKAPAPA

It is important to note that within Maori paradigms the realm of Whakapapa or genealogy is rarely straightforward or absolute. Within any given Hapu or Iwi group there are bound to exist varying versions of shared histories and traditions. Indeed, it could be said that an integral part of a traditional tribal knowledge base is the acknowledgement of the existence of those other varying, perhaps even contradictory accounts. And, while most understandably give precedence to their own knowledge bases, other historical perceptions are respected as being the equally-treasured taonga tuku iho of other Whanau, Hapu or Iwi. Beware therefore, the so-called ‘expert’ claiming to possess the only true history.
While such variation in tribal korero highlights an incredible diversity among Maori, at the same time it is true that neither those Whanau, Hapu, nor, Iwi, nor their histories and tikanga etc. should be seen as existing completely within a vacuum, isolated and divorced from those around them. To assume such would be to deny the innumerable points of intersection - located both in the past and the present - between different Hapu and Iwi as a natural consequence of intermarriage, warfare, conquest and other forms of contact. These points of intersection form the very foundation of Te Ao Maori to the extent that the whakapapa, histories and traditions of any given Hapu or Iwi - while certainly being unique and distinct in themselves, are at the same time, inextricably linked with those of others. This is an issue which has been compounded by colonisation as the upheavals enacted upon Maori society resulting in the mobilisation and urbanisation of Whanau, Hapu and Iwi nation-wide have caused the lines of distinction between such groups to become even more blurred. Thus, while it may be convenient today to perceive of ourselves or others as belonging exclusively to one particular Hapu or Iwi, the reality is that as contemporary Maori, we are in fact the products of many different lines of whakapapa whether we acknowledge it or not.

It appears the intertwining of whakapapa and tribal histories and the blurring of tribal delineators has become a bone of contention following the publication of ‘Song of Waitaha’, with some factions from within Te Waipounamu debating what constitutes the Waitaha tribal identity, who may claim it, and ultimately, who may represent this ancient people and their histories.

WAITAHA

The Waitaha people arrived in Te Waipounamu in their waka Uruao, from somewhere in Eastern Polynesia. (O’Regan. 1993:149).

As stated here by Tipene O’Regan, the Waitaha people were among the earliest migrants to people Te Waipounamu. And even given the passing of the millennia, it is clear that the names of these ancient ancestors, their teachings, and many accomplishments still live on in the whakapapa and histories of their many descendants:

It is Waitaha who established our southern whakapapa, it is they who named the land and it is they who planted the seeds of our tribally unique mythology in Te Waipounamu. (O’Regan. ibid).

In keeping with the point made above, there are various accounts of the fate of the original Waitaha people. Some say they were wiped out following successive waves of settlement, others (including many of Brailsford’s supporters) say they escaped death by conquest, surviving up until present day in various parts of Aotearoa. Still others maintain that the ancient Waitaha line lived on following intermarriage with those later arrivals and that the descendants of those unions carry the Waitaha legacy. The issue is not which account is the ‘truth’, but rather to clarify some of the complexities, and areas of contestation surrounding the claiming of Waitaha identity. Whichever account one may prefer, the fact remains that Ngai Tahu are just one Iwi that claims direct descent from Waitaha as evidence of ‘overlapping histories and intertwined territories’. (Said. 1978).

PRELUDE TO THE PUBLICATION OF ‘SONG OF WAITAHA’

THE FOOTSTEPS PROJECT—

According to historian Te Maire Tau of Te Waipounamu, the genesis of ‘Song of Waitaha’ occurred in 1988 when Rakiihia Tau (the then secretary of Ngai Tuahuriri Runanga), put forward a proposal to the Minister of Internal Affairs suggesting that a book be written detailing the histories of the various Iwi of Te Waipounamu – Ngai Tahu, Ngati Mamoe, Rapuwai and Waitaha. The name of this project was to be ‘Nga Tapuwae o Te Waipounamu’ (The Footsteps of the South Island), or more simply, ‘Footsteps’ (Tau.1995). Tau stresses that:

It is important to realise that at this stage the Footsteps project was to include the history of Ngai Tahu and Ngati Mamoe. (Tau.1995:6)

The purpose of the Footsteps project was reportedly to support the Iwi Treaty claim being brought before the Waitangi Tribunal and as such, Tipene O’Regan (chairman of the Ngai Tahu Maori Trust Board - Iwi authority for Waitaha) reveals that a key requirement of the project was that the traditional histories be supported by archaeological evidence (O’Regan.1993). On this basis, Rakiihia Tau is said to have suggested the employment of Pakeha archaeologist-turned-author Barry Brailsford, who in his previous dealings with Ngai Tahu involving various research projects, is reported to have earned the respect of the Hapu and Iwi of Te Waipounamu. Because the Footsteps project involved the whakapapa, histories and other taonga under the kaitiakitanga of southern Hapu and Iwi, Tau states that…”there was…an assurance that Brailsford would work under the cloak of the Ngai Tuahuriri Runanga as well as other local Ngai Tahu runanga.” (Tau.1995:6)
In addition to Brailsford being accountable to Ngai Tahu, Tau (1995) states that a body called the Kaipoi Pa Trustees - descendants of both Ngai Tahu and Waitaha - would also provide supervision. Given these measures, the interests of the Iwi whose whakapapa and histories were to be the focus of the book would appear to have been well-secured. Unfortunately, time was to show that such was not the case.

IWI EXPRESS CONCERN

Shortly after being assigned to the project, Brailsford it is claimed, began to stray from the ‘archaeologically-based’ kaupapa set out by Iwi towards an increasingly spiritually oriented investigation – a development of concern according to Tau:

By April 1989 [Rakihia] Tau was critical of Brailsford’s delving into spiritual matters belonging to Maori. (Tau.1995:6)

As mentioned, Footsteps was to have consisted of a relatively straightforward account of the history of Te Waipounamu based largely upon supporting archaeological evidence (O’Regan.1993). However, O’Regan states that project soon began to grow into something much larger:

This project rapidly escalated, with a series of sub-projects, into the publishing of a book of a much larger scope. There was considerable concern within certain of our runanga, and approaches were made to the Ngai Tahu Maori Trust Board by these runanga to express their concern and to try and bring the project under control (O’Regan.1993:164).

A further concern expressed by O’Regan pertained to the influence of certain Maori reportedly from outside of Te Waipounamu upon the direction of the project. Investigations on the part of the Trust Board led them to conclude that Brailsford had formed relationships with individuals from other tribal regions – a development of some concern to those involved:

Some considerable runanga time was spent debating the fact that the two Maori members of the trio were not of Ngai Tahu and had no standing in terms of our histories. (O’Regan.1993:164).

One individual in particular - identified by Tau (1995) as one Peter Ruka – is said to have drawn criticism from Ngai Tahu factions. Tau maintains that while generally believed to have hailed from Taitokerau in the North Island, Ruka claimed southern whakapapa, using this Tangata Whenua status to position himself as something of an authority on the histories of Te Waipounamu – claims strongly negated by Ngai Tahu authorities:

Ruka claimed Ngai Tahu descent, yet has never enrolled as a Ngai Tahu beneficiary. This is not unusual. Many Ngai Tahu do not enrol. Yet Ngai Tahu from the home marae generally know what house of whakapapa tribal members slot into. The Ngai Tahu Trust Board whakapapa expert, Terry Ryan is not aware of Ruka’s Ngai Tahu affiliation. This is unusual as Ryan knows the whakapapa of Ngai Tahu intimately. What we do know is that Ruka has no connection to any Ngai Tahu runanga or marae. The Waihao and Moeraki Runanga, cradles of Ngai Tahu whakapapa do not recognise Ruka as one of theirs. (Tau.1995:6)

Despite his northern origins, Ruka was evidently no stranger to the Iwi concerned. Indeed it seems he was something of a familiar figure in Te Waipounamu having been the subject of an earlier debate concerning the authenticity of matuaranga Maori:

Ruka came to prominence within Ngai Tahu in 1986 when he approached Rakihia Tau...to help in the formation of fishing evidence for the Waitangi Tribunal. It soon became apparent that the evidence presented was not traditional...The Tribunal agreed with Ngai Tahu that [his] fishing evidence was taken from a text book on fishing rather than an unnamed kaumatua informant as Ruka had said. Ruka’s evidence did not stand examination when compared to traditional fishing information from Ngai Tahu – Waitaha – Mamoe fishermen. (Tau.1995:6)
NGAI TAHU WITHDRAWS SUPPORT

Given this history, it is perhaps understandable that Ngai Tahu factions were so concerned at Ruka’s close involvement in the project. Tau maintains that a meeting was called during which Ruka evidently encountered their wrath (Tau.1995:6):

*During this meeting, it was decided that Ruka was to either produce whakapapa linking him back to Ngai Tahu or Iwi support for the Footsteps Project would be withdrawn. This documentation was not forthcoming, and therefore Ngai Tahu kaumatua Waha Stirling, Rakihia Tau and Tipene O’Regan informed Brailsford of the tribe’s withdrawal of support (Tau.1995).*

And how did Brailsford respond to this development? Did he halt proceedings and begin to review the direction of his work in order to rectify the mistakes? Did he ask those concerned for instruction in order that the project be carried out according to their wishes? The answer unfortunately, appears to be a resounding ‘no’. O’Regan points out that such was Brailsford’s apparent determination to continue on with the project at any cost, that when faced with the rejection from Iwi and Hapu groups, the focus of the project was shifted:

*As Ngai Tahu reservation and indeed hostility began to emerge, this group [Brailsford, Ruka et.al.] seized upon the ancient history of Te Waipounamu and began to call themselves ‘Waitaha’. (O’Regan.1993:164).*

Tau adds that this shift in focus effectively freed the author from any accountability to Ngai Tahu:

*It was at this stage that the book became ‘Waitaha’ in its direction. In doing this, the book’s direction could then be focused on the South Island but the histories did not have to be Ngai Tahu. The result is the publication of ‘Song of Waitaha’. (Tau.1995:2).*

GOVERNMENT SUPPORT FOR ‘SONG OF WAITAHA’

In 1990, while Maori from all over Aotearoa were converging on Waitangi to air a long litany of grievances over broken promises and legalised land-grabs, government officials by contrast, were waxing lyrical as to the harmonious racial success story which the 150-year Treaty commemorations purportedly ‘celebrated’. It was amid this mood of celebration on the part of the government that ‘Song of Waitaha’ emerged, with the assistance of considerable financial backing from the Education Department:

*This group was able to capture very considerable resources from the Ministry of Education... These resources, which included the continuation of substantial educational salaries, were added to by the support of a major motor company and from various other sources (O’Regan.1993:164).*

Such was the enthusiasm for ‘Song of Waitaha’, that the Prime Minister himself encouraged Brailsford to:

*Make it happen, do it now, get the funds from Vote Education. (Brailsford.1995).*

Questions arise as to what the government may have seen in the project that made it such a favorable candidate for funding, particularly during the all-important year of 1990, being the 150th anniversary of the signing of the Treaty of Waitangi. Perhaps an answer lies within the pages of ‘Song of Waitaha’ itself, in particular, within the lines of a dedication by kaumatua Pani Manawatu:

*Within these pages we share our ancient knowledge, the treasures of our past... We give it to all the people of this land in the hope it will help us walk the path of mutual trust and understanding... Where pain walks today, there will be a healing tomorrow. Where misunderstanding falls, tolerance will stand... These taonga speak of the ancient ones who lived in harmony with each other. Our dream is of one whanau... (Pani Manawatu -in Brailsford.1994).*

From this introduction to ‘Song of Waitaha’ parallels can be drawn to the sentiment espoused by the 1990 government, such as ‘We are all New Zealanders’/’He Iwi tahi tatou’ and similar slogans evident during the 150-year treaty commemorations. Perhaps it comes as no surprise therefore, that Brailsford’s book was received so warmly by government officials – presenting as it does a picture-perfect image of Maori as a people content with their lot, willing to let go of past grievances, open to sharing their traditional taonga with the rest of the nation in the spirit of peace, unity and forgiveness.
USE OF SOURCES QUESTIONED

On the face of it, the opening dedication by Ngai Tahu kaumatua Pani Manawatu seems to indicate a wellspring of support and goodwill among the kaumatua of Te Waipounamu towards Brailsford and his book. However there are some who argue against the accuracy of such an image. Historian Te Maire Tau, grandson of Pani Manawatu and inheritor of his manuscripts upon his recent death, claims that while supporting Brailsford in the beginning, his grandfather later withdrew his support as the direction being taken by Brailsford and Ruka became increasingly clear (Tau 1995). Tau identifies issues of accountability as being key concerns to Manawatu:

Both Rakihia Tau and Pani Manawatu were concerned at Brailsford’s and Ruka’s apparent disregard of their accountability to the Runanga and Kaiapoi Pa Trustees. (Tau. 1995:13).

Despite the concerns Manawatu had regarding Brailsford and company, Brailsford evidently went ahead anyway, including in his book not only Manawatu’s introductory dedication but also an additional patriarchal blessing by the same kaumatua. Exactly why remains unclear. Perhaps Brailsford valued the mana of such dedications too highly to discard them simply because the writer had since had a change of heart. And, while these developments are concerning enough, the ethical problems associated with Brailsford’s inclusion of Manawatu’s words are given greater emphasis when it is revealed that Manawatu had passed away in 1991 – three years prior to the publication of ‘Song of Waitaha’. On this basis Tau concludes:

I do not see how Pani Manawatu would have approved of this book as he died before it was published...Why did Brailsford, Ruka and associates use Pani Manawatu’s dedication and patriarchal blessing when he had died three years before the book was released and he could not have seen the end product? (Tau.1993:6,13).

Similar concerns have been leveled at the identification of the sources of the information contained in ‘Song of Waitaha’. According to Brailsford, Manawatu’s involvement in the book extended beyond simply endorsing it. In his own words:

Pani Manawatu’s words were strong markers for my journey with ‘Song of Waitaha’ (Brailsford.1995:53).

Te Maire Tau describes his grandfather’s teachings as comprising part of the Pitama scripts, those being:

...those manuscripts that hold the traditions and histories of Pani Manawatu’s elders, along with the ...manuscripts produced last century and early this century by Taare Te Maiharoa, Wikitoria Paipeta, Hoani Maaka, Taare Tikao, Harieta Beaton, Ware Rehu and Rawiri Te Mamaru...(Tau.1995:6)

Contrary to Brailsford’s claims, Tau argues that a comparison between the teachings and the contents of ‘Song of Waitaha’ leads him to conclude that ‘...those traditions do not make it into this book’(Tau.1995:6).

Claims to the teachings of another prominent kaumatua as having provided a foundation for Brailsford’s ‘Song of Waitaha’ are also subject to debate. In the opening pages of the book the reader encounters the names and photographs of various kaumatua whose teachings the book apparently represents. It is implied that the teachings of one Te Maharoa are included within its pages. However the inclusion of Te Maharoa’s name draws strong argument from Tau who asserts that while the various accounts of Te Maharoa’s teachings - as compiled by several of his descendants and students – are all consistent with one another, ‘None of [those] whakapapa texts support the traditions of ‘Song of Waitaha’. (Tau.1995:13).

Tau goes on to raise doubts as to whether Brailsford had access to Te Maharoa’s teachings. He states:

None of these people instructed Brailsford or Ruka. How could they? Brailsford is a Pakeha and cannot claim Waitaha whakapapa, nor did he meet or learn from the kaumatua...(Tau.1995:13).

Given these concerns, the question remains one of who actually did contribute their teachings to ‘Song of Waitaha’.

WHO ARE THE ELDERS OF WAITAHA

In answer to this question, Tipene O’Regan (1993) refers to a group of Maori who emerged in Te Waipounamu positioning themselves as the ‘Elders of the Ancient Nation of Waitaha’. However, despite assuming the mantle of Waitaha, O’Regan describes these kaumatua as coming ‘from different parts of Maoridom’ (O’Regan.1993:165). Evidently, having earned the disapproval of the kaumatua consulted originally, Brailsford and Ruka were then forced to look further afield for support for their project. On this Tau comments:

No doubt Brailsford was crushed when Ngai Tahu-Waitaha kaumatua such as Pani Manawatu and Rakihia Tau withdrew their support...The tragedy is that Brailsford looked for another [source of support].(Tau.1995:20).
Clearly some grave concerns have been raised concerning the authenticity of the knowledge contained in, and the processes surrounding the publication of ‘Song of Waitaha’. As such, the reader needs to be critical of the notion that Brailsford’s book represents the ‘treasures of the peoples of the nation of Waitaha’, as claimed in the preamble (Brailsford.1994). Rather, it is argued ‘Song of Waitaha’ needs to be seen in context of the concerns and doubts raised by Tipene O’Regan, Te Maire Tau and others involved in this project.

**Methodological issues**

Brailsford’s methods of recording, recalling and reproducing the histories which make up the body of ‘Song of Waitaha’ are deserving of closer analysis. One might expect a trained academic of Brailsford’s experience to be well acquainted with the appropriate methodologies and practices required for a task of the magnitude of the Waitaha project. One might also expect to find evidence of sound processes being used to gather the information and ensure that when the time came to reproduce it on paper, the integrity and authenticity of the information were preserved intact. One could be disappointed therefore, to discover a startling lack of such processes employed in the compilation of ‘Song of Waitaha’. Indeed, it is apparent that for some reason the author abandoned his years of training, opting instead to adopt a somewhat novel approach to his latest work, as indicated by his own account of how he recorded the teachings of his informants:

> The question often surfaces…’How did you record the information given by the elders?’…I sat and drew pictures as the knowledge was revealed and added a word here and there. Mainly I listened and let my mind open to the wide horizons and depended upon my memory to hold the lore. When I returned…I took my crumpled drawings out of my pack and sat for hours making the little pictures into bigger pictures, filling in detail, colouring them like a child. (Brailsford.1995:62)

This admission from the author himself signals an alarming departure from any clearly defined methodology in favour of a highly questionable practice whereby Brailsford, a trained researcher, evidently depends primarily upon his powers of retention, recall and reproduction to collate this publication.

**Learning by osmosis**

Brailsford appears to have perceived little need to record verbatim the information presented to him during these interview sessions with the ‘elders’, indicative of a romanticised, somewhat mystical new-age perception of traditional Indigenous knowledge as being learnable only whilst in a state of ‘openness’, wherein the information is ‘soaked up’ on a subconscious level by the learner. This belief is obvious in the author’s own explanation of how he retained this in-depth body of knowledge:

> Somehow learning seeped into me by a process of osmosis. (Brailsford. 1995:54).

Tipene O’Regan (1993) expresses concern as to the type of mysticism evident in Brailsford’s approach to the histories of Te Waipounamu, rejecting the ‘intuitive’, ‘learning-by-osmosis’ method of learning traditional tribal histories on the basis that:

> the examination of Maori traditional history does not require a deep esoteric knowledge, or the deep spiritual insights of the guru...Whakapapa is not a mystery – it is essentially a task of intellectual management... (O'Regan.1993:169).

Contrary to Brailsford’s apparently misconceived notions, the transmission of mataruranga Maori upon which the survival of Hapu and Iwi depended, was by all accounts strictly regulated in order to preserve the purity and integrity of tribal knowledge for use by forthcoming generations. And, as stated by O’Regan, the learning of such things would have been relatively straightforward - more reliant upon strict drilling than the dubious method of internalisation by ‘osmosis’ described by Barry Brailsford.

By admitting to having relied largely upon a series of pictures with perhaps a word added here, a name there, to record detailed whakapapa and ancient histories, Brailsford highlights the fact that any information given to him was ultimately ‘filtered’ through the lens of his own interpretation:

> ‘Song of Waitaha’ could only reach as far as my mind could travel. Its boundaries and its depths were limited...by my understanding...my vision. (Brailsford.1995:63)

Such an admission raises some major concerns about a process by which he, a Pakeha author, collected, organised and articulated the teachings of another culture according to his own admittedly limited understandings. In this way ‘Song of Waitaha’ can only legitimately be understood as the creation of the author, Brailsford himself clearly recognising that the book was developed according to a framework based on his own knowledge, his own ‘vision’. It is disturbing therefore, to discover that while stating on the one hand that... 'Song of Waitaha' could only reach as far as my mind...
could travel’, Brailsford simultaneously asserts that the knowledge contained therein is in fact from a deeper, far more ancient source:

Bound in secrecy for centuries, protected through the ages by those who gave their lives to keep it safe, this knowledge travels out of the past to be revealed in ‘Song of Waitaha’. (Brailsford.1994).

Quite obviously a contradiction exists between these two positions, one of which constructs knowledge subjectively, as being shaped and limited by the author’s own knowledge parameters; the other espousing an objective knowledge construct, the Waitaha traditions having somehow emerged from a far distant past to be ‘revealed’ within the pages of a contemporary book without, it seems, having been influenced in any way by the Pakeha author. Despite Brailsford’s own apparent confusion on the matter, it can be argued that the publishing of any body of knowledge can never be a fully objective exercise, as no author can distance completely, their own interests from a text. Rather, the subjectivity involved in collecting, organising and publishing information should always be acknowledged.

THE CONTENTS OF ’SONG OF WAITAHA’

While critics have centred their concerns around some of the methodologies and ethics employed by Brailsford in the compilation of ‘Song of Waitaha’, the resulting reproduction of the histories contained in the book also comes in for criticism.

RECONSTRUCTING PAKEHA IDENTITY

For you are of this land, as we are of this land. (Brailsford.1994.preamble)

As Brailsford tells it, the Waitaha ‘nation’ was comprised of three physically distinct ‘races’ of people: On the waka there were three very different races. The white skinned people, the tall dark people [and] the olive skinned people. (Brailsford.1995:70)

From this premise comes the conclusion that...’All born in this land are of this land. All who sleep beneath the mountains are of this land. All who choose to call this land home are of this land’. (Brailsford.1995:71).

Many Pakeha are currently in crisis about their cultural identity and their relationship to this land. The sort of assertion being made here by the author – himself a Pakeha – is dangerous in that it actively encourages Pakeha to assume Tangata Whenua status – as Indigenous to this country, and in so doing, to deny the legitimate status of Hapu and Iwi Maori. It encourages them to deny also the history of this land - in particular the history of British colonisation. Such a premise enables Pakeha readers to ignore their responsibilities as Treaty partners, thereby freeing them from having to deal with many of the political and social issues currently being raised by Iwi and Hapu nation-wide. No doubt many Pakeha encountering Brailsford’s publication will be delighted with suggestions that they too belong here in Aotearoa - not merely as colonial settlers, but as Tangata Whenua no less. Certainly Brailsford’s writings promise to alleviate even the most deep-seated feelings of cultural alienation and disaffection with the simple assertion that:

We are all tangata whenua, the white ones with their freckles and blue eyes and blond hair, the dark ones who worked the gardens, the snow people from the Asian lands. We are all part of this land. (Brailsford in Rainbow Network.1996:7)

Another alarming consequence of Brailsford’s positioning of Pakeha as Tangata Whenua is that it potentially allows them (at least in their own minds), free and unfettered access to all other aspects of taonga Maori, as somehow belonging to them also. In the words of Native American activist, Russell Means:

What’s at issue here is the same old question that Europeans have always posed...whether what’s ours isn’t somehow theirs. And, of course, they’ve always answered in the affirmative (in Churchill.1992:194).
BLUEPRINT FOR RACIAL INTEGRATION

Underpinning Brailsford’s ‘Song of Waitaha’ appear to be certain themes of racial harmony and social integration – perceptions more reflective it is argued, of the new-age movement, than the complex socio-political reality of contemporary Aotearoa. Readers are informed that in the days of the Waitaha:

All were embraced for Waitaha understood strong children came of the mixing of the blood (Brailsford.1995:297).

This notion of a harmonious society based on successful ‘racial’ integration is echoed throughout ‘Song of Waitaha’ in phrases such as:

The ancestors of the Nation came from many colours. (Brailsford.1994:297).

The ancestors…believed there was a place for all…All had a place to stand tall. (1995:72), and:

The true heritage of this land is peace. Its stone sings of healing and its spirit cries of aroha – love without bounds. (Brailsford.1994:73).

The idea of such constructions being more reflective of some romantic perception of a far-distant past, than an objective historical account is reiterated by Tipene O’Regan who criticises Brailsford’s construction of the ancestors of Waitaha as,- an ancient and peaceful people...wandering through the world in full communion with it and each other in a spirit of love and trust’,(1993:167) as being little more than,- a somewhat simplistic version of the ‘noble savage’-turned-pacifist’. (O’Regan.1993:167).

The issue of overly simplistic interpretations of history also applies to the way in which interactions between Waitaha and later Maori migrants are portrayed by Brailsford. Having successfully crafted within the mind of the reader, an image of an idyllic, harmonious existence enjoyed by all three Waitaha ‘races’, the author then proceeds to relate a tale in which this veritable paradise is subsequently destroyed by hordes of marauding, war-like Maori from the Pacific:

The Nation…did not collapse from within, but fell when successive waves of warrior peoples arrived out of the Pacific in their waka of war. (Brailsford.1995:72).

Few would argue that conquest featured at some point in the histories of many Hapu and Iwi. However, while pitting the venerated Waitaha against vile harbingers of death and destruction may make lively reading, it is doubtful that such oversimplified depictions aptly describe the history of social interaction among the peoples of Te Waipounamu.

Regardless, Brailsford seems convinced that just as the Waitaha ancestors embodied all that is good in the human psyche, so too did the later Maori arrivals typify all that is dark and negative. This dualistic outlook is summed up in the following passage:

The children of peace are like saplings nurtured by the Earth Mother. Seeking the light, they reach ever upwards to the sky to become the tall trees of the forest. The children of Darkness grow as stunted plants. Their minds are bound within soured roots and tangled branches. They are the children of Tumatuenga. And as long as they walk to the beat of his drum they remain as children bound within...bodies which see strength in destruction and find succour in the suffering of others. (Brailsford.1994:293-4).

The tone of Brailsford’s Waitaha versus the Maori saga is somewhat reminiscent of that much-loved colonial tool the Moriori myth, which conveniently provided for many years a justification for the conquest of Maori by Britain as representing a kind of ‘cultural karma’. It can be argued that Brailsford has borrowed heavily from that construct, portraying the Waitaha-Maori relationship in the same light – resulting in the Moriori myth effectively being revived and updated to the Waitaha version in order to achieve the same political purpose - the undermining of the moral high ground upon which many Maori grievances against the British colonisers are based. Interestingly, while Brailsford lavishly fleshes out his grim tale of death and destruction at the hands of the war-like ‘children of Tumatauenga’, his moral tirade stops short of even mentioning the aggression enacted upon Maoridom in later times at the hands of his own Pakeha forbears who, much like the Maori villains in ‘Song of Waitaha’, appeared at the shores of Aotearoa in their ‘waka of war’. The author appears to have overlooked this aspect of history in recounting the ‘histories of a nation’, preferring one assumes, to align himself and his Pakeha readers with the more noble ‘white skinned’ ancestors of his peaceful Waitaha ‘nation’.

RELEVANCE OF ‘SONG OF WAITAHA’ TO NEW AGE MARKET

It is interesting to observe that while ‘Song of Waitaha’ was promoted as a ‘gift for all New Zealanders’ (Brailsford.1995), its release appears to have largely escaped the attention of many Maori. By contrast Pakeha and other Tauiwi have flocked in droves to purchase copies of this beautifully presented publication. And nowhere have copies of ‘Song of Waitaha’ sold more successfully than in bookstores and outlets with a new-age flavour. Indeed, Brailsford and his work appear to have discovered an enthusiastic audience among the nation’s new age population.
This may be due to the existence of similarities between some of the themes reflected in Brailsford’s writings and certain new age philosophies. For example, Brailsford’s treatment of the histories of Waitaha strongly reflects the new-age tendency to mystify and romanticise knowledge that is both ancient and Indigenous. Indigenous knowledge - especially that dealing with the realm of spirituality - is perceived as being removed from the physical day-to-day realities of those to whom such mātauranga belongs, as somehow inhabiting a realm far above the often harsh reality of contemporary Indigenous existence. No doubt this particular new age notion can account for the overly romanticised reproductions apparent in ‘Song of Waitaha’ - particularly that of Waitaha as noble pacifists, almost divine in their goodness.

Implicit also in both the new-age movement and in Brailsford’s ‘Song of Waitaha’ is the imperialistic assumption referred to by Russell Means, that Indigenous traditional knowledge is somehow the universal cultural property of all humanity - a ‘gift’ to be shared with all - not, as most Indigenous peoples believe, the exclusive property and ancestral inheritance of those from whom it derives. Clearly it is an assumption that undermines the sovereignty of the Indigenous owners/caretakers who lose control over their own ancestral knowledge base, while simultaneously enabling non-Indigenous ‘hunters’ of such taonga to feel good about themselves and their interest in other peoples mātauranga. This need to believe that no harm is caused in the process of extracting Indigenous traditions, be they historical or spiritual, is often evident among new age appropriators, resulting in the emergence of certain justifications which construct this process as ‘natural’ and even ‘necessary’ for human well-being - be it individual or collective. A similar attitude is evident among subscribers to Brailsford and his Waitaha construct, most of whom appear either oblivious to, or unconcerned by the parallels that exist between their actions and the other more recognised forms of colonial exploitation. Many, it seems, prefer to believe that their appropriation of Maori tribal whakapapa and traditions - to say nothing of the Tangata Whenua identity itself - is merely a natural consequence of two peoples inhabiting the same space, sharing the best aspects of each others culture.

Given the new-age belief in the highly personalised nature of human spiritual evolution, it is perhaps not surprising to discover a theme of ruthless individualism both in Brailsford’s approach to his work, and to the writing itself, much of which echoes sentiments of being true to oneself, and following one’s own spiritual path, the result being, as highlighted by critics of ‘Song of Waitaha’, an absolute disregard of the interests or rights of others.

Even with these few examples, the influence of the new age upon ‘Song of Waitaha’ becomes clear.

‘Song of Waitaha’ was publicly released in 1994, accompanied by a series of public seminars around the country during which Brailsford – greenstone-clad, tokotoko in hand – would reminisce about his ‘walk with the elders’ reaffirming in sing-song intonations his vision of the ‘ancient nation of Waitaha’. (Seminar.1994.Auckland). Given the feel-good message of this ‘vision’ it is perhaps not surprising that public response was so enthusiastic. As, in the words of one critic:

...Mr Brailsford’s book sold emotively and largely to those uneducated in Waitaha histories, language and traditions – and to those without the knowledge...this book would have been wonderful. (Thomas.1996:3)

Regardless of their background, be they new-agers, conservationists, academics or otherwise, it appears Pakeha of every description have flocked to hear Brailsford’s message. O’Regan provides a possible reason for such enthusiasm:

There are many people who warm to concepts such as the ‘ancient treasures of the Maori’...themselves yearning for some kind of religious certainty. (O’Regan.1993:168).

Such certainly appears to have been the case, with regards to ‘Song of Waitaha’ given the meteoric rise in popularity of both the publication and its author shortly following its release, and this tide of feeling was apparently quickly capitalised upon by Brailsford who, in between speaking engagements, had gone on to release yet another book ‘Song of the Stone’(1995).

‘SONG OF THE STONE’

This is my story and my truth. (Brailsford.1995:8)

As stated by the author himself, ‘Song of the Stone’ purports to tell the story behind the story. Readers are treated to a behind-the-scenes account of the evolution of ‘Song of Waitaha’ – that is, according to the author. Not surprisingly, the story told by Brailsford differs markedly from that of O’Regan, Tau and other critics. Certainly ‘Song of the Stone’ holds the author in a far less damning light. It is interesting to note in this second work some of the conclusions Brailsford appears to have drawn from the material in ‘Song of Waitaha’. The reader is further encouraged to consider themselves Tangata Whenua, and to consider the contemporary Waitaha as a nation of pacifists – part of a global network of Indigenous peoples committed to sharing their traditional teachings for the upliftment of all humanity.

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Brailsford also draws upon the dualistic mindset outlined in ‘Song of Waitaha’ to dismiss any negative Maori responses and criticisms of himself and supporters of his vision as nothing more than the fear-based, limited responses of Tumatauenga’s angry, unenlightened children. Thus, while ‘Song of Waitaha’ sets the tone of Brailsford’s theory of Waitaha, ‘Song of the Stone’ expands upon, and fleshes out this vision. A vision - as has been demonstrated - of questionable authenticity.

As well as shedding light on Brailsford’s own interpretation and application of the information in his first book, ‘Song of the Stone’ provides an alarming evidence of how far the author is prepared to go to enact the teachings of his ‘elders’. Not content with misappropriating the histories and whakapapa of southern Iwi, Brailsford goes on to claim as his own the actual tribal pepeha which traditionally identifies descendants of Waitaha. An integral part of this stance involving laying claim to direct blood descent from founding Waitaha ancestor Rakaihautu:

Ko Barry Brailsford                      My name is Barry Brailsford  
Ko Tuhua te maunga                      My mountain is Tuhua       
Ko Mawhera te awa                      My river is Mawhera         
Ko Te Aka Aka o Poutini te marae        My marae is Te Aka Aka o Poutini   
Ko Rakaihautu te tupuna               My tupuna is Rakaihautu     
Ko Waitaha te iwi.                     My iwi is Waitaha.          
(Brailsford.1995:9)

There can be few Maori comfortable with the idea of a Pakeha – regardless of their motivation – assuming so completely as their own a people’s traditional tribal pepeha and whakapapa, by virtue of having been born in New Zealand. This pepeha so blithely adopted here by Brailsford is in fact a taonga tuku iho – the ancestral inheritance which ‘belongs’ exclusively to those able to claim direct descent from specific lines of whakapapa. Such a pepeha defines a particular Iwi or Hapu, and locates that group not only within a certain geographical context, but also within a wider set of socio-historical relationships. The foundation of those relationships is primarily whakapapa – genealogy, as stated by O’Regan:

The whakapapa that ties me to my tupuna is also the structure that orders my history and that of my people. (O’Regan.1987:13)

Such a tribal marker cannot therefore, simply be picked up and worn in the manner of Brailsford – by any non-Maori who feels an emotional attachment, affinity or sense of ‘belonging’ to a particular region. Affiliation is claimed according to blood – Maori blood, which Brailsford of European descent simply does not possess. As observed previously however, issues of authenticity and legitimacy do not appear to deter Brailsford from assuming – rightly or wrongly - the Waitaha identity.

Having established a following in this country, the market for Brailsford’s ‘product’ has since been expanded to include capturing larger audiences beyond the shores of Aotearoa. While it is tempting to perceive this development as little more than a shrewd marketing strategy, the author himself claims the move was in accordance to the wishes of the ‘elders’ themselves, following the declaration that:

Barry is not to speak again on the marae of this land...His marae is now the world. He speaks for Waitaha beyond these shores.  He speaks to Waitahanui, the peace nations of the world... (in Brailsford.1995:188)

It seems from this that Brailsford has been promoted by his informants from the position of national spokesperson for the ‘Nation of Waitaha’, to that of international spokesperson, charged with delivering the ‘word’ of Waitaha to the waiting world. Thus, one could argue the Waitaha phenomenon looks to have become one of this country’s most recent exports.

**IMPLICATIONS OF ‘SONG OF WAITAHA’**

Quite simply, Barry Brailsford’s ‘Song of Waitaha’ is representative of the destruction of Iwi sovereignty over traditional Maori knowledge bases. O’Regan (1993) emphasises the absolute seriousness of the Waitaha phenomenon:

Why not regard the Elders...as a phenomenon which will disappear because they are ultimately ridiculous? Because I believe that (our) heritage and history is part of our rangatiratanga... I believe that rangatiratanga is being subverted. (O‘Regan.1993:172).

As stated, the ramifications of something of the nature of ‘Song of Waitaha’ for Hapu and Iwi nation-wide must be considered in the most serious light, given the importance of taonga such as whakapapa, which O’Regan defines as:

...the conduit that carries the spiritual force [of the tupuna] – their wairua – to me in the present and by which I pass it forward to future generations. It carries the ultimate expression of who I am... (O’Regan.1987:13)
Native American academic Ward Churchill believes that the misappropriation of a people’s history, spirituality and cultural identity will, if allowed to continue unchecked, ultimately have lethal consequences:

*When our last definable asset, our conceptual property, spiritual practices and understandings…are gone – or hopelessly prostituted – there will truly be nothing left with which we may sustain ourselves.* (Churchill.1994:286-7)

Given the central importance of whakapapa, tikanga, traditions and histories to the survival of Whanau, Hapu and Iwi Maori as outlined by both Churchill and O’Regan, there is clearly a need to protect and preserve the integrity of these and other taonga Maori. In order to achieve this, Iwi may have little choice but to adopt a stance which establishes some very explicit boundaries regarding access to and treatment of matauranga Maori. Such a position relates particularly to Pakeha like Brailsford wanting to study the histories of Hapu and Iwi. In the words of O’Regan:

*…it denies scholars any absolute right to study my past without my consent. It demands respect from them for who I am and what I am. It says that my past is not a dead thing to be examined…without my consent…It says that I am the primary proprietor of my past.* (O’Regan.1987:13).

O’Regan (1987) suggests the adoption of a similar stance by all Hapu and Iwi universally wherever access to taonga Maori is an issue. Such a suggestion has much to recommend it, particularly given the very real threat posed by Brailsford’s ‘Song of Waitaha’ to the tino rangatiratanga of not only Southern Iwi, but indeed all Maori, for in his appropriation of the identity of Waitaha without appropriate whakapapa Brailsford not only undermines the exclusive right of Maori to claim Tangata Whenua status in this land, but in fact completely reconstructs the way that term is understood. If this is allowed to continue, it will no longer be Maori defining Te Ao Maori, but rather Pakeha such as Brailsford defining what is, and is not truly ‘Maori’.

The controversy surrounding the publication of ‘Song of Waitaha’ exemplifies the misappropriation of taonga Maori by non-Maori for their own purposes. This incident is however, but a part of a much wider phenomenon currently affecting Iwi, Hapu and Whanau all over Aotearoa. There a numerous examples of the appropriation of Maori intellectual property, indicative of the widespread loss of control over aspects of our culture and identity as Tangata Whenua. Increases in our tourist market have brought to the entrepreneurial attention the international appeal of things Maori. Aspects of Maoritanga are consequently appropriated and repackaged for sale in this thriving marketplace – a development of grave concern to Maori such as Intellectual Property Rights campaigner Dell Wihongi, who writes:

*It saddens and offends me when I travel overseas to see the ‘trinkets’ and ‘nick-nacks’ on sale in tourist shops depicting my Maori culture. These are impressions being exported to foreign countries. Apart from the personal cultural offence of selling plastic hei-tiki, and pictorial images of my culture (displayed on t-shirts, tea towels and postcards), this is being done without authority or consent from the owners of that cultural material.* (Dell Wihongi in McNeill.1995:100).

Apart from the extensive range of souvenirs for sale on the tourist market, many other aspects of Maori culture have been adopted by non-Maori New Zealanders as part of a growing national identity. Perhaps the most obvious of these is the haka originally performed by Te Rauparaha upon his defeat of Ngai Tahu which is now widely perceived as the property of ‘all New Zealanders’ - a symbol of national sporting pride and prowess. The misappropriation of those aspects of Maori culture which are deemed attractive to Pakeha is not as Brailsford’s supporters might wish to believe, any different from other forms of colonisation such as land alienation etc. On the contrary, phenomenon such as ‘Song of Waitaha’ and the All-Black haka are proof positive that the colonial machine is alive and well in Aotearoa. In the words of Native American Janet McCloud:

*This is just another in a very long series of thefts from (our) people and in some ways, this is the worst one yet.* (in Whitt.1993:5)

**MAORI RESPONSE / RESISTANCE**

As indicated by the responses of Tau, O’Regan and others regarding the actions of Barry Brailsford and his informants, many Maori are not simply allowing this newest form of colonisation to go unchallenged or unresisted. Just as our ancestors in earlier times resisted Pakeha attempts to alienate their lands and resources using a wide variety of mechanisms and strategies, so too are their descendants demonstrating a commitment to resisting the attempted appropriation of our knowledge and identity. Different avenues are being explored to find effective ways of securing taonga Maori, as seen in the Wai 262 Treaty claim currently lodged with the Waitangi Tribunal, and the Mataatua Declaration on Intellectual Property Rights of 1993. But it could be that what is needed more than anything else at this time is a pan-tribal consciousness-raising programme to inform our people of what is occurring, and the potential impact upon their lives and those of their descendants. Perhaps then we will see the emergence of a weapon of real power, that is, the unified stance of a people committed to stamping out once and for all this neo-colonial ngangara.
It is clear from Native American writings and the global Indigenous support for the Mataatua Declaration since 1993, that Maori are not alone in their determination to protect and preserve their cultural and intellectual property. It is also clear that the forums for this resistance are many and varied, as indicated by the different steps currently being taken by Maori to retain tino rangatiratanga over all taonga Maori. While some may favour one measure over another, it may well be that the only effective way of achieving this goal will be to attack the problem from all sides simultaneously. One thing is clear, there is a battle being waged. A silent battle. A battle for the control of ideas and beliefs. Intangible. Nevertheless, it is a battle which is as real as any fought with guns and weapons. A battle which Maori must win if we are to survive as a distinct entity, unique in the world.

E kore e ngaro te kakano i ruia mai i Rangiatea
-the seed sown from Rangiatea will never perish –

(Editor’s Note: I recently attended one of Barry Brailsford’s Seminars in Auckland in February and Brailsford claimed to be ‘merely telling stories’. He also urged those present to ‘follow your own path, follow your own song’. Given the history of oppression world wide he didn’t seem to consider that many people had been following their own song when they took away the rights of others, or beat their wives. Unfortunately the current focus on the consumer market of individualistic enlightenment focuses solely on an inner journey and does not necessarily translate the spiritual into the human realm. This is a disembodied focus on the spiritual. He has since moved towards writing in the creative non-fiction genre, so the boundaries of truth and fiction have become even more blurred. C.S)
This paper is an edited version of a Masters dissertation by Donna Ngaronoa Gardiner. Donna is from Ngati He and Ngai te Ahi and has worked to highlight the struggles, political and moral issues, and implications of biotechnology for Maori people. This article describes what happens when transnational corporations gain access to Maori communities.

Tu moke moke ana au i runga Mauao
   Ka hoki mahara kia ratou ma
   Ko enei ra nga nohonga tupuna
   O Ngai Te Rangi o Ngati Ranginui
   Timata ra taku haere i Otawhiwhi
   Kei reira ra tu mai koe Tamaoho
   Hoki whakaroto au ki Katikati
   Rereatukahia ko Tamawharuia
   Haere tikou tonu au ki te Pirirakau
   Kai Omokoroa ko Tawhitinui
   Kei Te Punaka ko Paparoa ko Tutereinga
   Ko Potuterangi
   Heke tonu atu au ki tatahi
   Tiro whaka waho au ki Motuhoa
   Tiro whaka muri au ki Rarapua
   Kupapa atu au ki raro Okemoke
   Piki tonu atu au ki Pukewhanake
   Whakawhiti atu au te awa Wairoa
   Ko Ngati Kahu ko Ngati Pango
   Peke atu au ki Peterehema
   Kei reira ra ki Ngati Hangarau
   Kei Otumoetai kua ngaro ratou
   Hoki whakaroto atu ano taku haere
   Ngai Tamawaheo kei Huria
   Rere tikou tonu au ki Hairini
   Tu mai koe ko Ranginui
   Ko Ngai Te Ahi ko Ngati He
   Tiro muri whenua ki Waimapu
   Tiro runga maunga ki Taumata
   Rere tikou tonu au ki Maungatapu
   Rauna atu taku haere ki roto Waitao
   Ko Tahwhakatiki ko te Whetu
   Tu mai koe Ngati Pukenga
   Kei Maungatawa ko Tamapahore
   Nga papaka ene ki Rangataua
   Rere tikou tonu atu taku haere
   Ki Hungahungatoroa ki Whareroa
   Te iwi kaunei ko Tukairangi
   Peke atu au ki Waikari
   Kei reira ra ko Tapukino
   Kau atu te Moana ki Matakania
   Ko te Rangihouhiri
   Kei Opureora ko koe ra
   Ko Tuwhiiwhia
   Kei te Kutaroa ko Tauaiti
   Kai Rangiwae a Haka a te Tupere
   Kei Opounui Romainohorangi
   Moe mai ra koro Tupaca
   I raro i te marumaru o Te Maunga
   Tiro whaka waho ki aku moutere
   Ki Motiti ki Tuhua tu mai koutou Ngai Tauwhao
   Hoki, piki ano ki runga Mauao

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TWO WAVES OF COLONISATION

Maori political, legal, social and cultural processes operated in the interests of Iwi Maori prior to European arrival in Aotearoa. Tino Rangatiratanga for Iwi Maori was intact. Between 1800 and 1840 however, British capitalists had reached a point in England where they needed to expand overseas in order to keep up their profits. A period of social unrest from 1830-50 further resulted from a combination of ‘too much capital, a low rate of profit, unfavourable terms of trade and an unfavourable balance of trade’\(^1\). This led to expansion overseas resulting in the annexation and colonisation of Aotearoa. This platform of ‘trade’ outlined the context and agenda by which European settlers and England’s Crown representatives were to establish contact with the Tangata Whenua of Aotearoa.

The earliest formal response made by Maori to the advances of colonisation by British nationals was the 1835 Declaration of Independence. This declaration declared Aotearoa an Independent Sovereign State. This position of independence was restated by Maori five years later when Maori Chiefs signed the Treaty of Waitangi in 1840. The Treaty reaffirmed Tino Rangatiratanga\(^2\) for te Iwi Maori while also entering Maori into an agreed association with the British Crown - an association governed by specific terms of reference\(^3\). The signing of the Treaty however, set the scene for future tides of conflict between Maori and the British Crown.

Disagreement between the two parties as to the intent and interpretation of the Treaty has dominated New Zealand’s history and political scene for the last 150 years. The conflicts over politics, power, economics resources, social, cultural and ideological processes, has resulted in Iwi Maori being marginalised and ‘powerless’. The inability of Maori to contest issues that relate to them directly is related to their position of subordination.

Maori have always resisted the notion that the Treaty signified a cession of sovereignty and that the mana of the Tangata Whenua was handed over to another authority\(^4\). A chronological examination of the response of Iwi Maori to the various moves by Pakeha throughout the years, shows that this resistance has been consistent. From 1840-1870, for example a period of intense land acquisition by the Crown and Pakeha settlers was met with a determined military response by Maori, a period now referred to historically as the land wars.

From 1870 - 1935, the British consolidated and entrenched their authority. The Westminster Parliamentary system was set in place which promoted and endorsed democracy through majority rule. Laws were created - law and order however according to Tauiwi interpretations and designs. Tangata Whenua responded with the beginnings of various spiritual and pacifist movements and Maori people started to petition Parliament and the Queen of England. At this time the Kingitanga movement\(^5\) gained some momentum.

From 1930 onwards Maori had to contend with economic depression and it was during these years that the Welfare State was set up by the first Labour government. 1935 to 1975 saw however a further breakdown of traditional Maori support systems as the need to move from rural to urban areas for employment occurred - due to dwindling land resources not being able to support Maori families.

Maori also attempted to participate within existing political frameworks, with the Ratana movement forming an alliance with the Labour Party both as a part of a survival strategy and as an avenue to seek redress for injustices that were becoming more and more prevalent.\(^6\) One of the many petitions that were presented to Parliament was one circulated by Ratana and his followers which asked that the Treaty grievances be addressed. government response was to introduce a facsimile of the Treaty of Waitangi to schools but the version presented was the English version which talks about cession of sovereignty by Maori to the British Crown\(^7\).

Up to the early 1970’s successive governments have effectively chipped away at Maori assets - fisheries, forestry, mineral resources etc that the Treaty was meant to protect. The last 10 to 15 years of Aotearoa’s political and economic development has had major repercussions for Maori.

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2. Tino Rangatiratanga is translated as sovereignty or autonomy.
3. One of these terms of reference guaranteed British subjects ‘residency rights’.
5. The Kingitanga movement was a response by Maori to the sovereignty posed by the British Crown.
6. cf King, M (1977) Te Puea Scoptre: Upper
During the 1970s and 1980s for example there was a move by government towards international economic trends and markets, which saw a build up of government business based on Maori assets and taonga e.g., forestry and mining. At this time however, the New Zealand government sought to placate Maori demands for redress as Maori activism focused upon the injustices of the past. The Waitangi Tribunal was set up in 1975 to consider Treaty grievances. However, these grievances were limited to 1975 onwards. The shortcomings of the Waitangi Tribunal was its purely recommendatory function. The Tribunal could not address the unequal power-relationship between Maori and Pakeha because that was neither its intent nor purpose. It subsequently also failed to address the key questions relating to economic and political power for Maori.

NEW RIGHT POLICIES

The period 1984 to 1990 saw a change in the direction of state involvement in the welfare state with the advent of ‘user pay’ economic policies by the Labour government and their Minister of Finance Roger Douglas. The rationale for Rogernomics as explained by Kelsey is;

(a). A response to international economic trends;
(b). The economic agenda was to disestablish the state and its drain on the economy;
(c). The ideological agenda was to remove the welfare state from peoples lives in the name of efficiency and freedom;
(d). There was a need to deregulate the economy and the labour market.

The state would then;
(a). Create a number of corporate entities-government departments.
(b). Privatize its assets -which would effectively mean that the state would not have to comply with Treaty obligations.
(c). Institute the user pays system and devolution.

Thus the Labour government embarked on a structural readjustment programme that was to have even more profound effects on Maori.

According to Patricia Johnston, “the term new right is not a simple one. The label is used loosely to cover a variety of beliefs and practices which can be mutually contradictory”. In citing Roger Dale, Johnston refers to these as conservatism and liberalism/neoliberalism. The former component, conservatism, stresses the importance of factors such as ‘tradition, order and social hierarchy’. Although not opposed to state intervention, the conservative position challenges the role of the welfare state. This role is seen as creating a ‘dependency’ on welfare services and threatening factors which conservatives see as important, such as the family, tradition and social order.

The second part of ‘New Rightist’ in New Zealand, embraces the importance of free markets. These are ‘allied to political ideas stressing the importance of individual freedom and the need to curtail state interference/intervention in individual lives’. It is this component of the New Right which predominates in the New Zealand context. The manifestation of these free market principles was to be seen by the policies of privatisation of ‘so called’ State assets in order to accumulate funds for the government.

More recently, the government has attempted to settle the ‘Treaty headache’ once and for all by securing a final settlement for all grievances (including potential future grievances) by the imposition of a ‘fiscal cap’ commonly referred to as the ‘fiscal envelope’. The rationale behind the fiscal envelope is that Maori were to forfeit all outstanding Treaty claims in return for a putea of one billion dollars. This money would be allocated to Maori over a period of ten years and utilised by them as they saw fit. The issues relating to the Treaty and the rights of Maori as guaranteed by the Treaty could then effectively be moved away from an agenda of political contestation. The government could then take

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8 This date of 1975 was later changed to include all Treaty grievances retrospectiver to 1840.
9 Kelsey, (1990)
10 Ibid.
14 Ibid
15 Ibid
16 Johnston, (1991)
17 Ibid
18 In 1986, the State Owned Enterprises Act came into being. All ‘Public assets which had been managed by the State on behalf of the New Zealand Public, were transferred to State Ownership. Most of these assets have subsequently been sold to overseas investors and interests.
its place in the global framework having divested itself of its colonial status, satisfied that it had addressed the needs and interests of its Indigenous people.

The response from Maori to the governments fiscal proposals was overwhelming. Consultation hui held around the country for example produced a united and unanimous rejection to government attempts to limit the claims of existing and future generations. One of the reasons that Maori rejected this proposal was because they refused to participate in the commodification of the Treaty. The Treaty represents for Maori all things Maori, tangible and intangible. It is the only barrier between total ‘take-over’ by New Right policies and the protection of Maori interests as guaranteed through the Treaty.

INTELLECTUAL AND CULTURAL PROPERTY RIGHTS.

Maori are being forced to contend with another more insidious form of colonization, that is, the control over cultural and intellectual property of Indigenous groups.

Graham Smith¹⁹ in using definitions from the United Nations publications distinguishes these two distinct categories of property rights.

1) Intellectual property rights.
This category targets the rights which accrue to Indigenous peoples in regard to preserving Knowledge over medicinal plants, agricultural biodiversity, cultural creations, talents and expertise, environmental management, cultural customs, language, epistemology, specialized knowledge, skills and pedagogy.

2) Cultural property rights.
This category targets the preservation, protection and control of cultural properties by Indigenous peoples of their cultural artifacts, archaeological and traditional sites of significance, traditional food resources, material culture such as weaving, songs, rituals, legends and other oral traditions, skeletal remains and so on. Major initiatives undertaken by Indigenous peoples in recent years have seen attempts to recover possession and ownership of their cultural properties which have fallen into other peoples hands such as museums and private collections²⁰.

Smith further states that there is a need to monitor carefully:

• what counts as intellectual/cultural properties?
• who defines it?
• who benefits? and
• whose interests will be served?²¹

This is particularly important where commercial activity arising from patents, copyright and cultural standards authorities, are concerned because such authorities etc could result in Indigenous groups like Maori losing ownership over their own cultural property.

Fundamental to these commercial activities lies a dilemma for Maori in terms of mediating between their roles as protectors, preservationists, and revitalization (ie. guardianship), and the entrepreneurial, marketability also associated with those same roles.²² These conflicts further exemplifies the fact that ‘notions of cultural and intellectual property can not be discussed in isolation from the wider social, economic, political, and cultural context in which they may be situated.’²³

Maori have however attempted to formalise the ways in which they need to take cognisance of the contradictions between their guardianship and entrepreneurial roles. In 1993 for example, the Nine Tribes Of Mataatua, met in Whakatane from 12-18 June, in recognition that 1993 was the United Nations International Year for the World’s Indigenous Peoples. They held forums for discussion on issues relating to cultural and intellectual property rights and further developed a declaration for the use by all Indigenous peoples in dealing with governments and transnational companies. This declaration is known as the Mataatua Declaration.

The Mataatua Declaration reaffirms the undertaking of United Nations Member States to: “Adopt or strengthen appropriate policies and or legal instruments that will protect Indigenous intellectual and cultural property and the right to preserve customary and administrative systems and practices”²⁴.

¹⁹ Smith, (1993)
²¹ Smith, (1993)
²² Ibid
²³ Ibid
Essentially the document is one of the first international indicators identified by any Indigenous Peoples of the ethics and protocols which should be considered by individuals or organizations accessing Indigenous cultural and intellectual property. These ethics and protocols identified by the hui, have not been practiced by Transnational companies or governments who seek ownership of Indigenous genetic material, cultural and intellectual property of Indigenous people. There is evidence which suggests however that misappropriation of these properties has already occurred.

Aroha Te Pareake Mead (1995) in her article “Misappropriation of Indigenous Knowledge: The Next Wave of Colonization”, states that “Aotearoa/New Zealand as well as the rest of the global community will no doubt face a heated debate as citizens come to realise that misappropriation of Indigenous knowledge and resources is as much an issue of national sovereignty as it is about race relations and human rights”.

This comment by Mead emphasizes that the issue of intellectual property and cultural rights and the ongoing misappropriation of those properties (and its associated rights) are inextricably linked to the Treaty of Waitangi and Tino Rangatiratanga for Maori.

Graham Smith contends that Maori have already argued strongly against the erosion of their cultural values, knowledge and rights, and notes that a particular issue in the New Zealand context is the way in which the economics of the freemarket influenced by New Right ideology, has had a detrimental impact on Maori language, knowledge and culture. Smith defines commodification as the process whereby a market value is ascribed to all things including such items as knowledge, value and culture. Within the ‘New Right’ economic view, everything is regarded as having a ‘price’ and is therefore considered to be ‘goods’ which can be brought or sold within the open marketplace. Through subsidiary policies such as ‘user pays’ these commodified properties are potentially able to be fully commercially exploited. The desires of Maori to learn their own language is being packaged in terms of commercial viability rather than the rights of Maori as Indigenous, - as Tangata Whenua. It is through these practices in particular that Maori intellectual and cultural property rights are reduced to economic commodities.

Moana Jackson states that the problem for Maori is associated with a history of ownership over intellectual property of Indigenous peoples which has significantly occurred through colonisation during the last 500 years. The most fundamental right to determine what Indigenous People see as being their intellectual property has been destroyed through the processes of colonisation. The long history of the export or destruction of artifacts (the ‘cultural’ property) of Indigenous peoples grew out of this imperial belief in the right to define. Out of it also grew the still pervasive belief that any concept of Indigenous intellectual property was a contradiction in terms. This process may be termed ‘cultural invasion’. Cultural invasion promotes the preservation of oppression, a parochial view of reality, a static perception of the world, and the imposition of one world view over another implying the ‘superiority’ of the invader and the ‘inferiority’ of those invaded. Notions such as these continue to manifest the assimilatory practices of the New Zealand government (and now transnational companies) that serve to exploit and undermine the ability of Maori to respond to the threat that they represent and the economic philosophies which underpin them.

It is against this historical backdrop that this paper will examine through a Case Study, the implications for Maori of commodification, sovereignty and globalisation on their cultural and intellectual property rights. What is discussed in the next Section is a component of the second wave of colonisation known as genetic engineering. Through commodification, genetic engineering has become a viable commercial activity. The result for Indigenous peoples is that not only is guardianship or ownership of our intellectual and cultural property up for ‘sale’, but the very ‘nature’ of what those taonga constitute is also ‘up for grabs’.

WHO OWNS WHOSE GENES? : BIOTECHNOLOGY AND ITS IMPLICATIONS FOR MAORI.

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28. Ibid, p.13
30. Jackson, p.2
32. Ibid.
Genetic engineering is commonly referred to as biotechnology. Biotechnology is being claimed by geneticists and scientists as the key to a new age of progress in which all of humankind can benefit from the manipulation of genetic structures. Progress of this kind is seen as a vision for humankind. The possibility that hunger would not exist; diseases can be cured; new super-species of plant and animals can be created; and old ones can be rescued or resurrected from extinction is appealing. However, what has not been touted by those who appear to have an intense interest in biotechnology, is that economic benefits are available for those who gain commercial control over that genetic information.

Biototechnology as it applies in this paper will refer to the specific engineering of genetic material for commercial profit. While there maybe some gain for humankind in terms of the benefits of genetic engineering, it needs to be recognised that there are major dangers associated with this engineering for all of humankind.

Scientists through the application of science and technology can identify DNA, gene structures and change or create new gene structures (and therefore new species) from the genetic make-up. They are then able to patent the material, for commercial profit.

The problem is however that the validity of claims of ownership over transgenic species depends on the proposition that an organisms can be defined in terms of its genes. It is generally considered by geneticists for example that genetic manipulation constitutes inventive activity and that transgenic organisms (ie organisms which have the genes from two or more species) are considered to be inventions.

Natural genes cannot be patented as such because they are not new genes, they are not discovered and not invented, however, patents can be granted on the genes that have been engineered. [This is the real danger]...patents on a gene claim is related not to the actual gene but to the gene isolated from its natural surroundings and products containing this isolated gene. Gene inventions of this sort are patented in both Europe and the United States, and will be patented under TRIPS.

Thus, it is possible to gain ownership over life (organisms, their parts, processes and products) by experimenting, creating and thus recording unique DNA sequences. Life then takes on new meaning without having to coincide to the moral and traditional codes over which human beings have come to understand are the blueprints of what constitutes reproduction and life.

For Indigenous People the problem becomes compounded as the genetic sequences of their own crops and plants can be taken and manipulated by corporations. The products - the new species of the genetic engineering thus becomes the property of the corporations who lay claim and patent the DNA sequences. The ‘new improved species’ of plant/animal can then be sold world-wide and the corporation collects the royalties. The people from the society who discovered the use for the plant in the first place, receive no compensation at all.

Biototechnology has entered into the global economic system. This system enables and encourages the exchange of goods, and services across international networks. Globalisation is the term used to refer to the processes by which all nations, societies and economies of the world are becoming increasingly and systematically integrated through their economies, technologically, educationally, ideologically and culturally as well. The result will ultimately be a global economy, served by a global labour pool and supported by a global ‘market culture’. In the global economy or market, all countries are seen as equal competitors for all that the market has to offer. National advancement or national wealth theoretically comes from finding one’s place in the market, and successfully producing for it in a cost-efficient way. In reality, the competitors and, therefore the beneficiaries of any success are not really nations, but private players, entrepreneurs, companies and corporations though these may be supported by their respective nation states.

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33. Willis, P. (1994)
36. Crucible Group, The (1994) People, Plants and Patents: The Impact of Intellectual Property on Trade, Plant Biodiversity and Rural Society International Developmental Research Centre:Canada p.105. TRIPS was developed as a part of the GATT agreement. It means Trade Related Intellectual property rights which allows companies to copyright and patent material.
37. Because genetic engineering has the potential to create competition in the marketplace, new species can be developed to contain for example, resistance to a herbicide made available by a particular corporation, allowing the crop to be grown more readily in the presence of a herbicide applied to kill other species.
So ‘people’ generated from gene engineering would fit readily into being commercialised as human robots to develop
global economies of a kind unknown to human history.

While the process of globalisation is not new, the recent technological advances in information and communication
systems have produced a level of global ‘interconnectedness’ which even ten years ago would have been
unimaginable. More significantly, since the collapse of the Soviet Union and the Eastern European socialist regimes,
globalisation in the sense of near total global conformity has been fueled by the conviction that there is only one
economic system, only one path of economic development and that path is capitalism. Never before has capitalism
together with its accompanying beliefs and values, its proselytise and adherents, enjoyed such unchallenged
hegemony or dominance as today. It is also free market capitalism or capitalism without any fetters or controls,
which is being served by globalisation.40

What is problematic however, is that countries like New Zealand are being forced to enter into these markets and
compete against countries and companies who have potentially unlimited resources. We are also entering into
agreements which bind us to these companies (and countries) through trade. One of the more recent examples of this last
point is the established general agreement on trade and tariffs agreement commonly referred to as GATT.

GATT is an international agreement which fixes the rules and regulations for international trade. New Zealand is one of
over a hundred signatories to the agreement. The New Zealand government entered into negotiations with other GATT
signatories without consultation or consideration for Maori concerns. The result is that our genetic materials are
available to transnational companies who may seek to create new products from that genetic material.
“In the 1980’s developed countries began to grant patents on life forms and on constituents of life forms (such as
dNA sequences, cells and so forth) it is proposed that this practice will extend to all members of GATT41.

There are few restrictions placed upon transnational companies in terms of ‘ownership’ but the real problem is that these
companies have no loyalty to any particular country and no commitment to any political, cultural or social values let
alone commitment to the Indigenous People within those countries. Their goal is to simply increase their profits.
Imagine for example how lucrative genetically engineered people would be?

The GATT agreement contains clauses which have specific provisions for the claiming of intellectual property rights,
giving rise to the granting of patents and collection of royalties by those who have the knowledge and resources to lay
claim to the genetic make-up of plants and animals. These companies in particular have sought to remove barriers that
prevent globalisation occurring easily. Their kaupapa is to privatise resources under a global framework which gives
them easy access to any assets around the world. It is their interests which engineered the GATT agreement and they
have been assisted most readily in their endeavours by organisations like the International Monetary Fund (IMF) and the
World Bank.

The role of IMF/World Bank is to expand the opportunities of world trade and economic enterprise but critics of IMF
and the World Bank suggest that their roles are to assist third world countries into continual, spiraling debt. IMF and the
World Bank for example advise countries to sell state owned assets in part payment of their debt.42 They encouraged for
example a heavily indebted Argentina to privatize its tele-communications industry in return for wiping out some of its
outstanding repayments. It is the International Monetary Fund organization which makes the decision as to whether a
country may belong to the World Bank and often in order to qualify (particularly for developing countries) the
requirement is to implement structural re-adjustment programmes that prioritize economic profits over people. The
IMF may also advise debt laden countries to open up their markets to multinational companies.

Trade agreements like GATT have effectively removed any semblance of protection for Indigenous Peoples intellectual
and cultural properties. Countries like New Zealand have agreed to allow other signature countries access to resources,
information etc, thus allowing global predators free entry into New Zealand - despite the guarantees for the protection
of our taonga in articles two and three of the Treaty of Waitangi. This ‘opening-up’ has allowed for the collection of
genetic material to occur but what is even more significant is that human genetic material can also be obtained. The
significance of the availability of human DNA is that we as Indigenous People may one day, not be in control of - or
own - our DNA. There is evidence to suggest that the first steps towards this scenario is already underway.

One of the projects that is currently being conducted on Indigenous People for example is the Human Genome
Diversity Project. This project is a manifestation - a ‘spin-off’ of the activities of biotechnology. The Human Genome
Diversity Project is one that brings the debate surrounding intellectual and cultural properties and the ethics which
should be associated with those issues, to the forefront for Maori people and indeed all Indigenous Peoples. The real
danger is however, already in existence as the commercial viability and the means to market genetic information, is

40 Ibid
41 Willis, P.
42 GATT Watchdog (1993) Newsletter, November/December
removed completely out of the hands of Indigenous People. Our destinies, our futures and our genes are already being
determined and controlled by transnational, profiteering interests.

HUMAN GENOME DIVERSITY PROJECT.

The Human Genome Project and the Human Genome Diversity Project are two major international projects being
undertaken at present. The Human Genome Project was initiated in 1989 and is due for completion in the year 2005. The
Project is an informal consortium of universities and scientists in North America and Europe backed by the US National
Institute of Health as part of the Human Genome Organisation (HUGO). The aim of this project is to map the entire
DNA sequences of all human gene pools. An extension of the Human Genome Project is the Human Genome Diversity
programme. This latter programme targets only Indigenous gene pools.

The Human Genome Diversity programme is problematic for Indigenous Peoples. Transnational companies and their
profit seeking interests have succeeded in removing the barriers to free trade through globalization and the activities of
the scientific community and have also aided the removal of protective sanctions that Indigenous People throughout the
world at one time could rely upon to protect them and their interests.

The Rural Advancement Foundation International (RAFI)\textsuperscript{43} released a RAFI Communique criticizing the U.S. -
based Human Genome Diversity Project for its plans to collect blood, tissue and hair root samples from as many as 70 unique
populations of Indigenous peoples scattered around the world. According to RAFI’s Executive Director, Pat Moony,
\textit{It is sadly ironic that this costly human scavenger hunt is being organised in 1993, the United Nations’ Year of
Indigenous People, with little sensitivity to the implications for Indigenous peoples around the world}\textsuperscript{44}.

The problem presented by the Human Genome Diversity Project is that the collection of gene pools from Indigenous
Peoples and the subsequent engineering of those same genes, is a commercially viable and profitable venture for those
companies who stand to benefit from marketing our genes. As Willis has stated
\textit{Genetic engineering is overwhelmingly commercial to the extent that successful professors of molecular biology,
routinely attract venture capital and split off their research from universities, into independent money-making
operations the activities of genetic manipulation which they undertake are then validated in terms of the commercial
success of the company which finances them.}\textsuperscript{45}

Geneticists, scientists and researchers working for the interests of transnational companies have identified seven hundred
Indigenous tribes that are in danger of extinction. Many of these tribes have unique gene systems that are sought after by
scientists researchers and transnational companies for the purposes of genetic manipulation or engineering.

A large number of Indigenous Peoples genes contain DNA codes which gives them natural immunity and resistance to
certain diseases. The intention of the scientific community is to clone these genes for the benefit of all humankind. In
most instances the ‘subjects’ of these experiments are participating without fully understanding what they are
participating in or the implications for themselves and their future generations.

A common practice of scientists who are involved in the human diversity programme is to negotiate with Indigenous
communities, without fully informing the people as to the implications of their participation. Doctors have gone into
communities and offered ‘one off’ medical treatments to some of the Indigenous communities in order to persuade them
to allow the blood samples to be taken. This has certainly been the experience for some of the Indian tribes in northern
and eastern Columbia. Leonara Zalabata, spokeswoman for the Arhuaco people of northern Columbia states ‘Our land,
our culture, our subsoil, our ideology and our traditions have all been exploited. This could be another form of
exploitation, only this time they are using us as raw materials’.\textsuperscript{46} When scientists have been challenged\textsuperscript{47} about the
ethical concerns regarding ‘informed consent’, the response has tended to be that the Indigenous peoples would not
understand any way.

The scientists obtain gene material usually in the form of blood samples, and these samples are then transferred to blood
banks for further experimentation. The gene material may be scientifically altered to create a new product which can
then be patented by researchers, scientists and companies. That material can then be used to create material and
medicines that potentially can be of immense commercial value to those companies.

\textsuperscript{43} RAFI COMMUNIQUE (1993) Rural Advancement Foundation International - May 15. The Rights Of Indigenous People Threatened By
Human Genome Diversity Project
\textsuperscript{44} Ibid
\textsuperscript{47} Ibid
In the event of a community saying no to the experimentations, Western scientists view that resistance as being based on ignorance and misunderstanding of the projects aspirations. These attitudes reflect beliefs about western racial superiority - that western science knows best, - even if the subjects of that science do not consent. This is also a symptom of arrogance and the belief that any innumerable number of experiments can be undertaken in the name of science. The fact that Indigenous populations may not consent because of a fundamental difference in world view is of little consequence to unscrupulous companies and scientists. Zalabata further states they haven’t been honest. They haven’t told the Indigenous authorities what they are looking for. We think the way they have taken these samples is arbitrary. We don’t want to be guinea pigs for their experiments.\textsuperscript{48}

The complaint highlights the key issue in this moral debate - informed consent. Do the individuals who are giving these samples know what is happening to them? Are they consulted about further applications of the scientific findings? Are they assured of a share in any of the benefits?\textsuperscript{49} In almost all cases the communities have no idea as to what is being done with their gene material.\textsuperscript{50}

The crux of the matter for scientists, geneticists and transnational companies pivots on discussions concerning what actually counts as human genetic material. Aroha Mead comments for example that the scientific community actually goes to great lengths to

...de - humanize the humanness of human genes. For instance, they distinguish a copy gene from the original specimen. They take the view that because a copy gene is synthetically reproduced that it is therefore non-human, non lifelike. Accordingly, in issues such as transgenic transferal of human genes into sheep genes - the ethical issue for them is in the welfare of the sheep not the integrity of the human gene and certainly not the informed consent of the individual whose genetic material has been co-opted for transgenic research.\textsuperscript{51} The very process of divesting Indigenous peoples of their genetic materials without consideration for their rights is in itself a dehumanizing one. Her point though is that these genetic engineers in order to continue their experiments unrestrained, distinguish a human gene from that of a copy. By doing this they can patent the material that is synthetically produced from the human gene as a new product.\textsuperscript{52}

Because there exists this fundamental argument pertaining to what are human genes and what are not, there are no clear-cut guide-lines on how those genes should be respected. The result is that these synthetically produced genes are being transferred into other living organisms, an operation which is not seen as being unethical because they are not recognised as ‘being human’ in the first place. The lack of protection for Indigenous Peoples against predatory practices by scientists, geneticists etc have made Indigenous Peoples more aware of the issues. These issues have been exemplified by the experiences of those Indigenous Peoples targeted by the Human Genome Diversity Programme.

WHAT DOES THIS MEAN FOR MAORI.?

The Mataatua Declaration made a number of recommendations to States, National and International agencies with regard to the development of policies and practices pertaining to cultural and intellectual Property rights (and the subsequent development of biotechnology and genetic engineering). The Declaration states that those entities must:

1. Recognize that Indigenous Peoples are the guardians of their customary knowledge and have the right to protect and control dissemination of that Knowledge.
2. Recognize that Indigenous peoples also have the right to create new Knowledge based on cultural traditions.
3. Note that existing protection mechanisms are insufficient for the protection of Indigenous Peoples cultural and intellectual property Rights
4. Accept that the cultural and intellectual property rights of Indigenous peoples are vested with those who created them.
5. Develop in full co-operation with Indigenous Peoples an additional cultural and intellectual property rights regime incorporating the following:
   • collective (as well as individual ) ownership and origin.
   • retroactive coverage of historical as well as contemporary
   • protection against debasement of culturally significant items.
   • co-operative rather than competitive framework.
   • first beneficiaries to be the direct descendants of the traditional guardians of knowledge.
   • multi-generational coverage span

\textsuperscript{48} ibid.
\textsuperscript{49} ibid.
\textsuperscript{50} ibid
\textsuperscript{52} Ibid
Our rights as Indigenous People as outlined by the Mataatua Declaration cannot however, be automatically assumed to be guaranteed because the actions of the New Zealand government suggest otherwise.

Presently the New Zealand government is attempting to remove the Treaty of Waitangi from its agenda by the year 2000. The fiscal envelope is meant to represent a full and final settlement of all Treaty claims thus absolving the government of its Treaty obligations. However, without the Treaty, Maori have very little left to protect their Intellectual and Cultural Property. At this moment an urgent claim is being heard by the Waitangi Tribunal on matters that include ownership of all native New Zealand flora and fauna and cultural symbols which also includes the DNA genes of all Maori people, the genes of native plants and animals.

The claimants (Pu Hao Rangi) have made the claim to the Tribunal on behalf of all ‘New Zealanders’, in order to protect New Zealand’s natural heritage and the Intellectual and Cultural Property of Maori against multi-national pharmaceutical firms. Del Wihongi who represents the claimant group says that advances in genetic science combined with international patent laws have already seen instances of companies being given wide ranging ownership rights.53

One can only be optimistic about the claim outcome however, should the tribunal recommendation rule in favour of Maori because it would not be in the interests of the New Zealand government to follow through on the recommendations. The New Zealand government after all has a signed agreement with other GATT signatory partners, and is interested predominantly in maintaining positive trade relations with those partners. The government however, should commit itself to protecting Maori as guaranteed by the Treaty of Waitangi. Aroha Mead comments for example that there should be;

- Codes of ethical practices amongst professionals and or the industry itself;
- Due legal processes at national and international levels;
- Informed consent procedures which also acknowledge the right to say no;
- Rationalisation of desirability and priority in world health.54

Why Mead’s recommendations are so important is that we as Maori, as Indigenous People have no recourse on transnational companies who seek ownership over our genes. There already exists here in Aotearoa, unscrupulous activity which will be difficult to halt or contest because the frail guidelines that are in place consider the needs and interests of transnational companies and not the interests of Maori. Some of these activities and issues surrounding genetic-engineering exists as implications for both my hapu - Ngati-He, and for all Maori generally.

BACKGROUND TO THE COMMUNITY: NGATI HE, NGAI TE AHI HAPU OF TAURANGA MOANA

Ko Maungatapu Te Marae.
Ko Wairakewa -(Irakewa) Te Wharenuai
Ko Te Aotakawhaki-te Wharenuai
Ko Maapiao te Maunga
Ko Tauranga te Moana.
Ko Mataatua te waka
Ko Ngai He te Hapu
Ko Ngaiiterangi te Iwi.

The name Ngati He originates from confusion over the death of an old ancestor named Turapaki. The story related over the years is that after visiting some of his grandchildren in the Te Whanau a Apanui district, he was waylaid on his return journey and killed at Motu Tohora (Whale Island). Unaware of this fact, his people at Maungatapu thought he was still with relatives at Whanau a Apanui, and likewise his Whanau a Apanui relatives in turn believed that he had returned safely to Maungatapu. Thus his descendants are referred to as Ngati He55.

Ko Hairini te Marae
Ko Ranginui te Wharenuai
Ko Urutomo Te Wharekai.
Ko Tauranga Te Moana
Ko Maapiao te Maunga
Ko Taakitimu- Mataatua nga waka
Ko Ngai te Ahi te Hapu.

54 Mead, A.
Ko Ngati Ranginui te Iwi

Historically these two hapu have always worked alongside each other, they are in close proximity geographically and many intermarriages have occurred over the years. In other words, the two hapu have close whakapapa links.

Both hapu work closely around the marae and most of the whanau members are active in hapu affairs, living within a ten kilometre radius of the marae. Both marae are serviced by the hapu members and the kaumatua and kuia tend to lend advice to both marae. Each hapu has a marae based Kohanga Reo, and their own marae trustees and women’s committees. The marae are the central focus points for the activities of the hapu. They form a significant part of our lives.

BIOTECHNOLOGY COMES TO TAURANGA

In November 1994 an incident took place which precipitated my closer involvement in and with both hapu. Moana Jackson (lawyer) of Kahungunu and Ngati Porou, advised me at a hui that he had received a fax from members of one of the First Nation Tribes in America noting that Ngati He/Ngai Te Ahi hapu and Ngai te Rangi Iwi had written a letter in support of an application that had been made by a company wanting to conduct experiments with animal and human genes at their New Zealand premises. One of their laboratories is based in Tauranga on land which traditionally belong to Ngati He/Ngai Te Ahi. Jackson was concerned that the hapu may have entered into an agreement with a company without knowing the full implications of that agreement.

The company involved was Selbourne Biological Services (New Zealand) Ltd. This company is working closely with another company based in Scotland Called Pharmaceutical Proteins Ltd.

Pharmaceutical proteins Ltd have developed sheep with a gene which produces a protein that is used in the treatment of the disease called emphysema. In the past, the protein had been purified from human blood plasma - but only small quantities can be obtained by this method. The company have chemically engineered another way of creating this protein and as one of a growing number of unscrupulous transnational companies has accessed in particular Indigenous blood samples and body scrapings in order to access the DNA material contained within.

Indigenous Peoples have a particular resistance to emphysema that in the main afflict other peoples and it is the genetic sequences associated with that resistance, which the company is interested in. Pharmaceutical Proteins Ltd have developed through genetic engineering a means of producing that resistant gene.

This gene is injected into the gene material of rams in Scotland. The rams in turn impregnate ewes which then have lambs that have human genes in their make-up. The ewes’ milk (also containing human genetic material) is extracted and then used to create drugs for medicinal purposes.

The parent company in Scotland contracted a Tauranga based company, Selbourne Biological Services, to receive the semen from the rams that have been treated in Scotland to impregnate ewes held on their farm laboratory in Tauranga. The intention was to experiment and produce genetically altered sheep here in Aotearoa. However, in order to be allowed to conduct such experiments certain requirements had to be met. These requirements as outlined by the Ministry Of The Environment; include;

- as a part of the application procedure a requirement that the Public be advised of the company’s intentions.
- And that the community and Iwi be consulted or advised.

When I telephoned my whanau in Tauranga on 6th November 1994. I discovered to my dismay that Jackson’s concerns had been well founded. Two days later I was asked by my sister to invite Jackson to attend a meeting with the Hapu as they needed to find out as much as they could about these transgenic experiments and to also see the letter that had been sent purporting to represent their support of these experiments. Fortunately Jackson was available and duly arrived at the hapu hui held at Maungatapu Marae. He introduced whanau members at the hui to information about Intellectual and Cultural Property and Rights and the lack of protection for Maori, despite the agreements laid out in the Treaty of Waitangi. He also spoke about the methods used by researchers, scientists and company representatives to manipulate information for their own interests.

What I was able to discover from minutes of meetings, letters and correspondence and other information (like newspapers etc) was that the company had written to the Maungatapu Marae and the Ngati He/Ngai Te Ahi Hapu Committee requesting a meeting to discuss the kaupapa of genetic engineering. The hapu representatives at that meeting asked that more information be provided for their consideration. They intended to make themselves as informed as possible.

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56. By 1995 there were 63 transgenic projects occurring in New Zealand. Cf Mead, A. op cit

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possible about genetic engineering before they would agree to any proposals. They also requested further information about the company, its experiments, and the reasons for this company requesting an audience with the hapu of Ngati He/Ngai Te Ahi.

Several months later, members of the hapu discovered that a letter had been sent to a committee called The Interim Assessment Group (Ministry For The Environment), the Group responsible for monitoring applications by companies or scientific researchers wanting to conduct experiments of this type in this country. The letter indicated that five representatives of the hapu had attended a meeting with representatives of the applicant company and had formalized their approval of the company’s application. The letter also purported to have the mandate from Ngai te Rangi Iwi. This information shocked my whanau as the people implicated in the letter all stated that they had not given any such approval, and none of the people named in the letter (my mother included) had been present at that meeting. Needless to say they were all extremely hurt as well as mystified by the contents of the letter. It became incumbent on them to clear their names as well as to find out as much as they could about this company and its activities.

After some probing the whanau realized that one of their members had indeed signed this letter. She told the meeting that she had been approached by a representative of the company soon after their initial attempts to set up a meeting with the hapu - one of the requirements as outlined previously. The representative from the company had persuaded her to write a letter in support of their application. He had talked with her about the experiments being for the greater good of ‘mankind’ [sic] and that the experiments were part of their scientific research intended to develop cures for diseases that were killing people around the world. Unfortunately the company representative had succeeded in manipulating our whanau member into (what we thought at that time) writing a letter when she had no authority to do so. It came to light however, that the company themselves had composed the letter and the whanau member had merely signed it.

IMPLICATIONS OF THE EXPERIMENTS FOR THE HAPU

For the women of the hapu the greatest concern was for their mokopuna and whakapapa. The thought of human and animal genes being mixed, was totally abhorrent and offensive both culturally and morally. Possible questions which were being raised included what would happen if a ewe/lamb/ram escape its confines. The possibilities were horrifying.

The ram could inseminate domestic stock with human genes thus contaminating domestic flocks. Further still, the ewe/lamb/ram could be eaten, the outcome being human consumption of meat that carries human genes.

What was even more distressing for the hapu was the implications associated with these experiments occurring in our area. Jackson had informed us that the genetic material used in the experiments had been ‘stolen’ by the companies concerned. We in fact were granting affirmation to that theft by allowing the transgenic experiments to occur on our land. A second issue which arose from the dealings with Selbourne Biological Services was the way in which one whanau member of the hapu was assumed by Selbourne to be able to speak on behalf of all members of the hapu. This raises some issues and concerns regarding the right of individuals to speak for the hapu without the mandate of the collective.

What is also important is that issues around informed consent, lack of information and lack of protection for the hapu, needs urgent attention. Priority must be given to setting in place some systems of monitoring and accountability for the hapu.

There have been many instances for example of organizations (both statutory and non-statutory) consulting with the hapu, obtaining material without any accountability measures being placed on its use, and in some instances the information has been sold off to overseas companies. One local Maori Consultant’s contribution to the Resource Management Plan commissioned by the local authority included material that had come from the hapu. The consultant did not acknowledge the input from the hapu and of particular concern, did not feed the information back to the hapu for consideration before presenting the material to the authority.

The major issue however, is that we as a hapu have no resources, no international networks, no knowledge and no finances to take on companies which have potentially unlimited resources. The problem posed for us now, is how do we halt this process? Added to this is the question of how do we stop this happening to other hapu here in Aotearoa?

CONCLUSION

What the experiences of Ngati-He have outlined, is that we as a people need to consolidate our networks within Aotearoa and with other Indigenous Peoples, in order to be more vigilant and proactive against the activities of capitalist governments and Transnational companies. These networks have to allow the free access of information - the demystification of that information - in order to allow knowledge to be disseminated amongst Indigenous groups.
We need to effect protocols that protect us, protect our hapu, our whanau and ultimately our people. We need to remain vigilant and informed about the activities of governments and Companies who have a history of exploiting Indigenous People, in order to counteract their moves and their motives. We need to protest against the injustices that are being carried out on us in the name of ‘Science’. That Western knowledge is seen as ‘superior’ is evidenced by the continued onslaught of western practices and beliefs upon our cultural systems. That ‘West is Best’ and to ‘hell with the Rest’ - still predominates.

A key point for us as tangata whenua, as Maori however, is that related to the treaty of Waitangi -Tino Rangatiratanga, or Sovereignty for Maori people. We cannot be separated from the continuing debates over the significance of the Treaty of Waitangi because it is in our best interests to persevere with the struggle of asserting our Rights via the Treaty, in order to effect protections for ourselves at a local level. We cannot allow the government to divest itself of its Treaty ‘obligations’. As Aroha Mead has stated

Internationally we (like all Indigenous Peoples), remain in a position of extreme vulnerability. We are reliant on researchers, scientists governments and transnational companies to act ethically and morally in our interests in a climate that has scant regard for the rights of Indigenous peoples.

Clearly the New Zealand government is not prepared to support our case. It declared its position when it aligned itself with the interests of other free-market protagonists. It has already entered into an agreement (GATT) without our consent and agreed to conditions which contradict our interests as guaranteed by the Treaty. government is clearly being driven by its own agenda - one motivated by profits. Also, transnational companies are not interested in protecting our interests because they want access to our cultural and intellectual Property. They also want access to the gene pools - to the whakapapa that is ours. The commercial viability for them of what we have and what they want, means they are finding ways to get it. They are also being motivated by profits.

While the issues relating to transgenic experiments is critical, they are issues subsumed within the wider displacement of Indigenous Peoples Intellectual and Cultural property rights. In a world of capitalism, surrounded by profit oriented governments and the companies that drive that need for profits, the only thing that stands between total unethical behaviour - perhaps even the very integrity of what it is to be human - are the guardians of Mother Earth - Indigenous Peoples. The continual monitoring, contestation and challenges directed at the activities of capitalists has alas fallen completely upon the shoulders of Indigenous Peoples. With the onslaught and interests in our genes, in our integrity, in our ‘humaness’, this contestation, challenging and monitoring may not be enough to guarantee our future as a people. It may not be enough to guarantee our survival.

Perhaps however, the most frightening aspect of biotechnology is the possibility of those companies to commit crimes upon us, to commit ‘genocide by genes’. If they can isolate a gene which is characteristic to particular Indigenous peoples and use that gene for medicinal purposes ‘for the good of all humankind’, then the opposite is also possible. They have the potential to isolate that same gene, to cause death and destruction of Indigenous populations, through germ warfare. Eradication of Indigenous populations is possible by releasing viruses which attack only specific genetic DNA sequences - sequences which are the specific ‘signatures’ of particular Indigenous populations. The possibilities are indeed, frightening. We cannot afford to be complacent. We must be vigilant. We must prevent ‘genocide by genes’. This is the theft of our whakapapa.

Ka whawhai tonu matou Ake, ake, ake.
Re-Presenting Maori: Broadcasting And Knowledge Selection

Leonie Pihama (Te Atiawa, Ngati Mahanga) is a lecturer in the Maori Education Department at the University of Auckland. She is also a Director for Moko Productions. This article raises issues of how representation and control of Maori images is linked to power relationships and who controls production and broadcasting. This has major implications for Maori in that it 'ownership' of those images often lie with Pakeha production companies and broadcasters.

INTRODUCTION

The representation of Maori and processes of broadcasting have been sites of contestation for many years, with perhaps the most well documented being the period spanning from the 1970s to present day. That contestation has been multi-leveled, and operated within a range of institutions, not least those institutions such as Television New Zealand who for so long have maintained control over the ways in which Maori people are re-presented in the public domain of public broadcasting57.

Struggle has occurred in both the structural and cultural arenas and these remain a point of serious debate. Each of these areas are interconnected and therefore analysis of production and broadcasting is more complex than an act of solely deconstructing the images that we are presented with on the screen. Those complexities require interrogation that position Maori people and their re-presentation within the context in which they are located and the types of power relations that are embodied in that context. What is required then is a questioning of the fundamental assumptions embedded within both representation and the processes of production.

The term 'Broadcasting' is one that many take for granted. It is viewed in common-sense terms as encompassing notions of 'scattering widely' and of 'dissemination'. Such common-sense definitions may then lead to an assumption that those institutions that take the title 'broadcaster' would operate fundamentally within a framework that seeks to disseminate and to do so as widely as possible. Although such assumptions appear reasonable there are serious doubts about the extent to which broadcasters in Aotearoa meet these expectations.

The media is a key vehicle through which representations of knowledge, language and culture occurs. It is equally a site at which representations of knowledge, language and culture are suppressed. Film and television Producers, Directors, Writers, Funding committees etc. all play a role in the validation and legitimisation of knowledge, and the selection processes that determine which knowledge, whose language and whose culture is affirmed. What is not often recognised, by many of those involved in the process, are the structural gate keeping mechanisms that deny particular types of knowledge and which maintain Pakeha control of Maori representation.

Over the past five years there has been a marked increase in the participation of Maori people in the moving image arenas58. Much of this may be linked directly to the works of Maori film makers such as Ramai Hayward, Merata Mita, Barry Barclay, Derek Fox and Don Selwyn (to name a few) who have maintained a strong and consistent Maori presence within the industry. These Maori film makers have provided constant Maori voices within those industries that work in the areas of image construction, presentation, re-construction and re-presentation. They have acted as image-guards for Maori, challenging the ways in which Pakeha media focuses upon negative portrayals of Maori and denied Maori access to the resources and tools necessary to take control of our own image. This role is highlighted by Merata Mita where she states,

"[Maori] are aware of how negatively we are portrayed in television, in film and in newspapers...[and] are becoming increasingly aware that at some stage in this media game we must take control of our own image. And the reason that that is important is because only when we do that, only when we have some measure of self-determination about how we appear in the media will the truth be told about us. Only when we have control of our image will we be able to put on the screen the very positive images that are ourselves, that are us."59

MAORI RE-PRESENTATION IN CONTEXT: SOME HISTORICAL CONSIDERATIONS

In discussing Maori portrayals and re-presentations it is necessary to maintain a sense of context. The historical, cultural, social, economic, political contexts all play a role in the ways in which re-presentations of Maori may be
viewed and read. Images are not separable from the context within which they are positioned nor are they separable from the relationships that exist within the societal context around them.

COLONIAL EXPANSION

Colonial expansion has been explained, on the whole, as a need for a growing structure of capitalism to explore "new" lands to access resources, raw materials and cheap labour. Colonial imperialism in its desire for capitalist expansion assumed that the colonies were open for their exploitation. What was required were mechanisms which would provide the least expensive access to primary materials, whilst simultaneously relieving Britain of its "excess" population. Sociologist David Bedggood notes that there was an intention to transplant a "vertical slice of British Society - economics, politics and ideology ". Ideologies of race provided the immigrant settlers with reasoning through which to justify the oppression of indigenous peoples throughout the world. Parliamentary records of colonial settler governments also provided a plethora of examples which highlight the notions of racial hierarchy that prevailed as the dominant discourse of the time.

I do not advocate for the Natives under present circumstances a refined education or high mental culture; it would be inconsistent if we take account of the position they are likely to hold for many years to come in the social scale, and inappropriate if we remember that they are better calculated by nature to get their living by manual than by mental labour.65

The first plank of public policy must be to stamp out the beastly communism of the Maori.61

For Maori women the intersection of ideologies related to gender exacerbated their oppression. Maori womens status in Maori society was actively undermined by the coloniser. Maori womens knowledge was redefined or made invisible.

Maori women in particular have been written out of historical discourses not just in the year after colonisation but also from the centuries prior to Pakeha settlement...This process has turned Maori history into mythology and Maori women within those histories into distant and passive old crones whose presence in the 'story' was to add interest to an otherwise male adventure. Women who were explorers, poets, chiefs and warriors, heads of families, founding tipuna or ancestors of various hapu or iwi have frequently been made invisible through processes of colonisation such as education.62

What colonisation brought to this country were explicit notions of race and gender, which served as ideological justification for the alienation of Maori people from our whenua. The commodification of Maori land was a key focus for colonial immigrant settlers and ‘For Sale’ signs were planted very early in the colonial history of this country. The New Zealand Company were operating a mail order service and "selling" land to settlers well in advance of their leaving the shores of the "mother country". To ensure effective means of accessing Maori resources colonial settler governments enacted legislation which would facilitate this process. Legislation was targeted toward the rapid transfer of Maori lands and resources into the hands of the settlers and the speedy assimilation of Maori people into "the habits of the european".63 Capitalist notions of individual ownership were imposed at the level of land tenure which was a crucial component of the economic, political and social structures of Iwi. As Graham Hingangaroa Smith writes:

Historically the same processes of commodification were used by Pakeha to access Maori land. This was achieved through the individualisation of Maori land titles, that is to commodify - 'package up' - what were collective or group individual holdings in order to facilitate their sale to Pakeha under Pakeha rules and custom.64 These processes were hastened by the States implementation of assimilation policies, the necessity of which is highlighted by the following quote from Hugh Carleton an Inspector of Native Schools.

He [Carleton] meant to say that things had now come to pass that it was necessary either to exterminate the Natives or to civilise them. They could not go on fighting them any longer. Honourable members were now no doubt well up in the financial question, and all would, he was sure, agree that another serious war would not only cripple the colony but would actually break its back.65

Carletons statement highlights that colonial economics had a major influence on the decisions made in regard to Maori people. Assimilation was a cheaper option to that of extermination; a fiscally expedient way to alter the -natives. A key

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65 Extract from Mr Carleton, New Zealand Parliamentary Debates Part 2, 1867, Government Printer, Wellington
assumption of assimilation policies was the notion of the existence of a hierarchy of knowledge, within which the knowledge of the coloniser is 'superior'. The coloniser when established in the position as the dominant group then control what is defined as valid knowledge, what knowledge forms are legitimated, the distribution of knowledge and ultimately the control and ownership of knowledge.

What this has meant in Aotearoa is the suppression of those aspects of Maori knowledge that were, and are, considered undesirable. It has also meant the development and implementation of selection processes to (i) define what is acceptable Maori knowledge (ii) establish structures which act as gate keeping mechanism to ensure only selected knowledge is accessible and (iii) to control the use of knowledge.

Broadcasting has been instrumental in these processes. It has been constructed to facilitate the representation and control of selected knowledge and images.

REPRESENTATION AS A SITE OF CONTESTATION

In recognising the ideological construction of images and the colonial notions that have historically impacted on Maori representation, we then locate all representations as potential sites of contestation. For Maori, this is a particularly important notion, as it supports our moves beyond having to accept dominant group assertions of ‘neutrality’ ‘balance’ ‘objectivity’, all of which are used to defend Pakeha control of media institutions in this country and which maintain Pakeha control of how Maori are portrayed in the moving image industries.

Professor Ranginui Walker in his article The role of the Press in defining Pakeha perceptions of the Maori, explores the myth of journalistic ‘neutrality’ in analysing the portrayal of Maori. He provides a range of examples to illustrate his point, including reports related to: The ‘Haka Party’ incident, Maranga Mai, Waitangi Action, Gangs, The Maori ‘Loans Affair’ and the Waitangi Tribunal. Walker writes of reports related to the ‘Haka party’ incident:

“...Not until the Star (28/5/79) reported the Auckland District Maori Council’s reasons for providing ‘Maori Help for the Haka party’ case went to court, it was reported by both the Herald (6/7/79) and the Star as a ‘light-hearted stunt’. Only two writers put the issue in its context of racism.” (Ibid., 40)

The overall inability of Pakeha media to provide for Maori voices continues. Presentations of Maori Land occupations such as Pakaitore and Takahue have done little but fuel anti-Maori feelings. Mainstream Pakeha programmes on Maori Sovereignty and Maori Leadership have done little to promote depth analysis but have focused on divisions and presenting a ‘range of positions’ with no exploring of the power dynamics linked to the possible positions.

Exploring the impact of writing on Maori representation Patricia Grace has argued, that literature can contribute to the setting and affirmation of social, ethical values and identity and what is seen as important about groups of people through explaining the world and defining relationships. Literature can therefore provide positive, self affirming messages about ourselves and our world, similar statements may be made in relation to broadcasting. Such is the power of the literary and visual fields. However, she also located these same characteristics as having the potential to construct negative images, maintaining dominant group beliefs about Maori and denying Maori people the opportunity to see ourselves. These are reproduced through processes of denial and marginalisation of Maori voices within texts and/or the ongoing perpetuation of stereotyped images which deny the diversity of Maori experiences.66

This raises the issue of the role of broadcasters in the maintenance and reproduction of images of Maori that reinforce the negative stereotypes and which deny Maori opportunities to construct programming that moves beyond dominant definitions of who we are. An example of this may be seen in the construction of ‘news’ and documentary in this country. There remains a dominant belief that ‘good’ journalism provides the range of arguments for the audience to engage with. Where I agree in a notion that there exists a range of positions and stories within society, this must be taken in context of the existing power relations and the impact of dominant discourses. As Gary Wilson states, “the

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news media are constantly shaping society by deciding what is important and what is not, and by telling people how things should be seen”.67

Therefore, to provide a range of positions unproblematically constitutes a maintenance of the status quo, nothing is challenged or contested, the inequities of re-presentation remain and the presentations of Maori through dominant group constructions continues. This is not new but may be located in the historical constitution of Maori images through colonial gaze(s), what then becomes crucial for Maori is to have access to the knowledge that then allows us to distinguish critically between colonial representations and how we see ourselves. As Merata Mita has stated;

It is very important to make the distinction between the way we are seen and the way that we see ourselves. And the reason for this becomes very clear if you look at the films that have been made starting from 1911 in the United States, in Europe and in Aotearoa. If you look at those films made by tauiwi or by foreign eyes on us, you will see very important differences to the way they look at us and the way we see ourselves.68

Statements such as this from Merata have provided the foundation for the call by political Maori film makers for Maori to take control of our image and re-presentations. This is located on multiple levels of which encompass notions such as: control, knowledge, representation, self-determination. Each of which related to the need for the deconstruction and reconstruction of our own images.

Define your own image and to create what is yours within your own culture and to have the means be which you present it to the public. Not only Aotearoa but to the rest of the world.69

There is a very strong case for Maori working radio, television and print journalism from and for a Maori perspective. The Pakeha mass media have show that they are unable and unwilling to fairly reflect the Maori position accurately. Maori people have a right to arrangements which give expression to the ‘tino rangatiratanga’ (authority) guaranteed in the Treaty of Waitangi. This implies ‘mana whakahaere’ (control), Maori are not interested in being advisers or ‘colour consultants’. We are ready to make our own way in this world, but we want to take our equitable share of the resources with us to do so.70

EXAMINING POWER RELATIONS

What has been evident in this country, since colonisation, is that any attempts by Maori to control our lives and our destinies have been actively denied by the colonisers.71 Within the moving image industries this denial has been maintained through a range of ways including areas such as: who defines audience, what is determined as a ‘quality’ programme, who controls funding etc. Each of these areas are used as gatekeeping mechanisms against Maori and have contributed to the marginalisation of Maori within the film and television industries.

It is perhaps time that we stopped referring to TVNZ and TV3 as ‘The Broadcasters’, or as they are often referred to as ‘mainstream Broadcasters’, because the reality for Maori is that these key players in the market are not casting broadly at all. What is even more detrimental is that they can't see that they're not. At the Maori Television Hui held by Te Mangai Pahó, September 1996, it became very clear that neither TVNZ nor TV3 were even remotely capable of self analysis. They each believed that they were providing sufficiently for Maori people. Such assertions are absurd when placed alongside even the most crude of statistics related to Maori representation.

Many Maori Independent Producers and Directors struggle continuously with and against the processes of knowledge selection and the commodification of Maori knowledge. An example of the type of gate keeping mechanisms that occur is the notion of the ‘audience’. Programmes that Maori people want to produce are often defined as being of little or no interest to the Tauiwi audience. These programmes are then not considered ‘prime time’ material. These programmes are either rejected outright by ‘The broadcaster’ or they are ghettoised. What is defined as a large audience is controlled by the majority group. Therefore it is Pakeha people that deter selection and the commodification of Maori knowledge. An example of the type of gate keeping mechanisms that occur is

69 Ibid.
71 Reference here is made to the collective cultural destinies of Maori people, as those who operate within individual notions would argue that Maori, as individuals, have access to the same rights as all ‘New Zealanders’, however it is necessary to highlight that the notion of the individual ‘New Zealander’ is one that privileges colonial cultural configurations and in itself denies the complexities of Maori participation in the Whanau (extended family), Hapu (Sub Tribe) and Iwi (Tribal grouping).
POLITICS OF REPRESENTATION

What is becoming increasingly evident within film and television in this country is that there remains the myth of “Art for Arts sake”. This mythology promotes an ideal that one can participate in image creation, construction, re-presentation from a neutral position of Art which operates beyond the parameters of political analysis. Pakeha film makers and Media institutions continue to present Maori images unproblematically and then all too often defend their representations through postmodernism or postcolonial frameworks. The feature film ‘The Piano’ is one example of this. I have provided analysis of the re-presentation of Maori in ‘The Piano’ elsewhere and bring to this discussion the following quote:

A clear example of the types of definitions and control in regard to imagery of Maori people can be seen in the recently acclaimed ‘The Piano’. There is little doubt in my mind that Jane Campion is a film maker of incredible ability and repute. However, the depiction of Maori people in the film leaves no stereotyped stone unturned. What we have in ‘The Piano’ is a series of constructions of Maori people which are located firmly in a colonial gaze, which range from the ‘happy go lucky native’ to the sexualized Maori woman available at all times to service Pakeha men. The perception of Maori people given in ‘The Piano’ is that our tipuna (ancestors) were naive, simplminded, lacked reason, acted impulsively and spoke only in terms of sexual innuendo, with a particular obsession with male genitalia. For Maori people ‘The Piano’ is dangerous. It is dangerous in its portrayal of Maori people that is linked solely to a colonial gaze, which is uncritical and unchallenging of the stereotypes which have been paraded continuously as ‘the way we were’.

The point that I want to highlight here is that where the representation of Maori was constructed within colonial ideological notions the film was lauded within Aotearoa and little if any discussion was directed at the presentation of Maori characters as the ‘native backdrop’. Rather the film was presented as an example of ‘bicultural’ film making and Pakeha film makers considering their position in this country. This was highlighted in an interview with Jane Campion by Listener writer Diana Wichtel.

Then there was the whole bicultural thing [sic]. In ‘The Piano’, the Maori characters provide a highly ironic and subversive counterpoint to the settler’s world view. Maori characters conceived by a Pakeha. The other Australians, says Campion, for the purposes of this occasion classifying herself one, had little idea just how sensitive an issues this was. New Zealanders she spoke to warned her off the idea. If she had been living here, that’s something else she might not have been brave enough to try - “Because at some stage someone is going to call you something not very pleasant.”

The power relationships related to who defines, selects and control the re-presentation of Maori image was not engaged with. The Piano was lauded as ‘The Great New Zealand Movie’ 76, and those who sought to critically reflect on the movie were viewed as participating in the ‘tall poppy syndrome’.

The issue of Maori control of Maori definitions and representation of images is not isolated to the moving image industries but is a part of a wider issue of cultural and intellectual property rights. The economic and political climate at this time in history has set the scene for particular forms of relationships to occur in the market place. Film and Video production is a part of the market place and therefore those working in this industry need to take cognisance of what is happening in the wider context within which we are located. The Uruguay round of the GATT agreement and its inclusion of Intellectual Property Rights has highlighted the moves by dominant groups, and in a global sense of dominant capitalist countries, to control and own both intellectual and cultural property. GATT and the moves that are occurring on a global scale have brought about an added dimension to the Maori struggle against commodification of our Reo, Tikanga, and Matauranga.

The globalisation of image is an area of considerable concern for indigenous peoples. The ways in which we are represented to the world can serve to either perpetuate or transform dominant colonial presentation of Maori. The imposition of colonial definitions is discussed by Edward Said (1978) in relation to the notion of “orientalism”. He argues that “orientalism” is socially constructed by the West, hence that which is considered Oriental by the West has been defined as such through a Western consciousness. Furthermore, Said notes, one aspect of an "electronic post-modern world" has been the accessibility of people to images of cultures internationally. As with Patricia Grace’s discussion of books, Said locates film, video, television as providing access to knowledge of other peoples, whilst also providing messages, about who we are, internationally. A danger, however, lies in the “reinforcement of the stereotypes” of the ‘Other’ by the dominant group and

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72 Both of these theoretical frameworks are problematic for Maori people, refer Pihama, L. ‘No, I will not be a Post...’ in Te Pua 2 op.cit.
73 For indepth discussion of the issue of Maori Representation historically refer to the article by Merata Mita, ‘The Soul and the Image’ in Dennis, J., & Bieringa, J. (eds) Film in Aotearoa/New Zealand. Victoria University Press, 1992
75 Wichtel, Diana ‘Return of the native: The Piano expresses Jane Campion’s romantic affection for her place of birth’, Listener, October 16, 1993. It is also interesting to note the title of the article with the use of the term ‘Native’ in reference to Jane Campion being born in Aotearoa, the title could be equally deconstructed as a reflection of the film itself which promoted a 1990’s version of Maori as the Native Other.
76 ibid:pp12-20
in particular in how “television, the films and all the media’s resources have forced information into more and more standardised molds”

CONTROLLING MAORI REPRESENTATION, PROTECTING MAORI IMAGES.

Critical cultural analysis of the representations of Maori is a part of wider political and cultural issues related to controlling Maori representation and protecting Maori images. Questions of who control, protect and ‘own’ Maori images require intensive discussion and debate. Issues related to the access and use of archival footage of our tupuna, our whenua need to be raised within our communities. Concerns surrounding the use of Maori images are not new. Early photographs and paintings of tupuna have been bought and sold throughout the world with little thought for the descendants of those people. Maori taonga have been stored in museums throughout the world, often sold by people who have no link to those pieces. The long struggle by Ngati Awa for the return of their tupuna whare is one example of the intense concern Iwi have for the return of taonga Maori. These are all a part of the need for Maori to maintain a consciousness about cultural and intellectual property rights in dealings undertaken with the film and television industries.

It is clear that Maori need to actively take control of processes related to cultural and intellectual property rights, and that this needs to be done at all levels, as individuals, whanau, hapu and iwi. Cherryl Smith provides the following example from her Whanganui:

An advertisement was run by the BNZ which featured scenes of a river with a voice over saying ‘Ko au to awa, ko te awa ko au’, followed by an English translation saying I am the river and the river is me. This pepeha is a well known one that specifically identifies anyone from the Whanganui river area. As such it clearly belongs to iwi. Numerous people were stunned at the use of this pepeha and a letter was written to the BNZ asking why no consultation had been undertaken with the iwi. In this case consultation had gone on with one individual within the iwi and he had given permission and received payment for his consultancy work. When contacted the BNZ withdrew the ad and promised to undertake consultation with the iwi. What this case showed up was that iwi themselves need to be giving clear guidance to their own about what is and isn’t appropriate to ‘sell’ as well as telling commercial interests that they are not allowed to just use taonga without adequate clearance. Those guidelines need to be determined by iwi or hapu.\textsuperscript{77}

Who can sell taonga? Who can give permission for the use of Iwi specific pepeha? Who can determine the use of archival film footage? Who controls the use of Maori programmes in the archives of Pakeha broadcasters? Who will archive, and determine the use of, Maori television productions? These questions are all critical. Perhaps a fundamental starting point is about whose images are they. Surely the people or whanau or Iwi from whence those images are ‘taken’ must have some decision making input into the use of those images and the ways in which they will be archived etc. For many film makers there appears to be an assumption that because they are the Producers or Directors of a programme that they then ‘own’ the images. This is misconception. There needs to be dialogue about notions of ‘ownership’ of Maori images, and ways in which the cultural and intellectual property rights of Maori people will be protected.

One way of creating change is to ensure that real negotiation occurs between Maori and film makers. This is negotiation that includes cultural and intellectual property rights. There is a process of film making in this country that denies the ‘subject’ any real input or rights in the process. This needs to change if Maori people are to safeguard images for coming generations.

A second process is a challenge that Merata refers to as ‘Demystifying the process, Decolonising the screen and Indigenising the Image’\textsuperscript{78}. This is a process of making available to Maori the tools, knowledge and skills to take control of their images and the ways in which they are represented. It is a process that many political Maori Independent film-makers are committed to in order to make change in the ways in which Maori are imaged and presented in television and film, both nationally and internationally. What is clear is that those who control the mechanisms for production and broadcast ultimately control the ways in which Maori are represented.

Understanding the position of Maori in the moving image industries is couched in wider contexts of Maori as Tangata Whenua, relationships established through Te Tiriti o Waitangi, and calls for Tino Rangatiratanga. To deny these contexts is to deny the position of Maori in this country. Until such time as these issues are brought to the fore there will be a continuation of Pakeha domination over Maori image. The call for Maori control over Maori image is one which challenges the existing power dynamics and which asserts a need for structural change within image industries. It is one that challenges the notion of ‘broadcasting’ and who controls access to the ability to bring Maori voices to our people and to the world. It is also one that many see as contentious. However, as Patricia Grace has identified, in her field of literature, there is a need for Maori people to be involved in the writing and telling of our own stories. This is critical if we are to move away from the limited representations that we have been presented with. The same can, and must, be said in the moving image industries. That in order for Maori people to be presented in ways that extend beyond the stereotyped images that we are constructed in,

\textsuperscript{77} Cherryl Smith, 1997 Personal Communication with author

\textsuperscript{78} Paraha, G. 1993 op.cit.
it is time Maori must be given the resources required. A crucial aspect of that resourcing must also be that there is minimal State control, and that Maori select the processes and structures needed to ensure the success of Maori production.

The establishment of Aotearoa Television Network in Auckland on May 1, 1996 saw the first piloting of Maori television. Tenders were called for late in 1995 and a decision was reached by Te Mangai Paho to fund Aotearoa Television Network to operate the pilot. The Maori Television Pilot Project broadcasts on Channel 35, a UHF frequency, one of a number of UHF frequencies which has been held by the Crown since the Te Reo Maori claim to the Waitangi Tribunal in 1986. The processes of development and operation of the Maori Television Pilot Project have been controlled by Te Mangai Paho as a Crown Agency. Members of the Board of Te Mangai Paho are appointed by the Crown, and the agency itself is accountable to the Minister of Broadcasting and the Ministry of Commerce. The present structure and the future possibilities for Maori Television lie totally in the hands of the Crown. As such what we have seen is a limited version of what Maori Television could be. The limitations are clear (i) lack of funding (ii) control by the Crown of structures (iii) the operation of the channel within an economic framework that denies active collaborative input. This is not to deny the power of Aotearoa Television Network bringing Te Reo Maori me ona Tikanga to the screen, at least in the Auckland area, but it calls in to question the ways in which Maori television is being defined and controlled by the State. Until such time as Maori Television is able to explore more fully the possibilities and potentials these limitations will prevail, and the likelihood of Maori representation moving beyond existing dominant representation is limited. Maori television of the future must include processes that operate in ways that move outside of Western definitions of production and style, and which actively safeguard Maori cultural and intellectual property rights.

The Auckland Museum is one site where many Indigenous peoples taonga are held. These institutions are presently being challenged to return pieces of cultural significance to the peoples from whom they were taken. Issues of archiving images is an area that requires urgent attention.
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