

Government and Legitimacy: Indigenous Development in Aotearoa

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Abstract

Within the indigenous paradigm lies a paradox over what constitutes legitimate Maori authority: Iwi structures are legitimated and recognised by the state, and traditional forms (for example, Hapu and Maori women), have had their authority diminished. Iwi authorities are colonial constructs that diminish the rights of Hapu and Maori women. The manner in which such constructs have come about generally has not involved tribe-wide debate over important issues in which Hapu and Maori women have an interest. For their legitimacy, emergent self-governing structures will need to be grounded in principles that ensure legitimate representation of Maori people and not socially constructed hybrids of a colonial past. Structures need to recognise Hapu and Maori women in the formulation, anything less than this will trigger a legitimation crisis.

Introduction

In 1840 the Treaty of Waitangi was signed between Maori and the British Crown. At least thirteen of the Rangatira (chiefs) who signed the Treaty were Maori women and this is significant in terms of the paradigm to which Maori leadership was introduced. In addition, the issue of what constitutes an Iwi (tribe) has been problematic since the Treaty of Waitangi was signed. Whilst Iwi is not mentioned in the Treaty, Hapu (descendants of an eponymous ancestor) on the other hand is. Despite Maori self-definition of Hapu as legitimate Maori authority for decision-making, the Crown mechanism for dealing with Maori on Treaty claims and negotiations is as Iwi authorities legitimated by statute. As my colleague and tribal whanaunga (relation), Dr Linda Smith (1999, p.156) states, Maori tribal authorities “are colonial constructions that have been taken for granted as authentic indigenous formations”.

The signing of the Treaty of Waitangi led to a collision between Maori lore and British parliamentary government and that relationship has characterised debate since. When the concept of rational-legal authority is applied to indigenous values and belief systems what have been the implications for indigenous political authority? Within the indigenous paradigm lies a paradox over what constitutes legitimate Maori authority: Iwi structures are legitimated and recognised by the state and traditional forms of authority whereas, for example, Hapu and Maori women have had their authority diminished. Thus, Iwi has displaced Hapu, and women “are on the outside looking in to Maori organisations” (Evans 1993, p. 64).

Smith (1999, p. 97) claims that “fragmentation is not an indigenous project, it is something we are recovering from. While shifts are occurring in the ways which indigenous peoples put ourselves back together again, the greater project is about recentring indigenous identities on a larger scale”.

Locating myself in the argument

The Treaty of Waitangi Act 1975 (Reprinted Statute of NZ, S.33, p. 908) established the Waitangi Tribunal to investigate grievances of Maori, dating back to 1975. In 1986 the Act was amended to allow claims dating back to 1840 (Reprinted Statute of NZ, S33, p. 940). Before lodging a claim to the Waitangi Tribunal claimants must show that the Crown has breached the Treaty of Waitangi.

In 1994 the New Zealand government introduced a policy of “full and final settlement” of all historical claims along with a capped settlement fund of \$1billion (a fiscal envelope) to settle all claims, and an option of contiguous direct negotiation with government (Durie 1994, pp. 190-194). Three major claims have been settled out of the envelope, as have some minor claims. Over 500 claims await hearing. A small number are at various stages of direct negotiation.

One of my own Iwi, Ngati Awa, has just received a Waitangi Tribunal report on its claim that was lodged eight years ago (Wai: 46, 1999). Ngati Awa has also been in direct negotiation with the Crown for a number of years and is about to enter the process of voting to ratify the final offer of settlement from the Crown. Iwi and Hapu discourse within Ngati Awa has focused on the process of negotiating and settling the offer and around the means of governing and managing as Iwi and Hapu following settlement.

As a lecturer in *Development Studies* at the University of Waikato who is teaching in the Master's programme on Contemporary Maori issues at our Whare Wananga (Tribal House of Learning), I find that the Treaty settlement process provides a rich discourse across disciplines and nations.

Treaty Post-Settlement Structures

Post-settlement Iwi governance structures are a case in point and I shall therefore analyse some of the trends that have occurred in relation to these structures over the last decade.

1. *Iwi Legitimacy*

In 1996 urban Maori ropu (groups) sued the Crown-appointed Treaty of Waitangi Fisheries Commission (comprising 12 Iwi representatives and 1 non-Maori appointee) claiming equivalent status with tribal authorities (see *Te Whanau O Waipareira Trust, & Manukau Urban Maori Authority & Others vs Minister of Fisheries*). They contended that since they looked after the vast number of tribal descendants living in urban areas, they were entitled to distribution from the fisheries assets. After extensive litigation and legal expenses in excess of NZ\$4 million, the Courts found that urban Maori constitute

“Iwi” or people as members of urban Maori authorities, but are not as such an “Iwi” or a tribal entity.

2. *Hapu Legitimacy*

Maori authorities established to deal with the Crown in the Treaty Settlement process are statutory authorities representing Iwi and Hapu interests. However, the Crown’s legitimisation of Iwi is contrary to Maori norms. A previous member of the Waitangi Tribunal, Maori Studies Professor Hugh Kawharu (1996, pp. 11-20) contends that the Treaty affirms that rangatiratanga (status, authority) resides in the Hapu not in the tribe, and that any encroachment on Hapu rights must not derogate the right of Hapu to deal with the Crown on Hapu-defined issues by allowing the Crown to deal only with the tribe. The Waitangi Tribunal also recognises that the body that exercised daily corporate functions was the Hapu (see The Ngati Awa Raupatu Report, Wai: 46, 1999, p. 132).

3. *Political Legitimacy*

However, at a national and international level, “there is no Maori body politic. In its absence, policy making for and on behalf of Maori is assumed by the Crown, with irregular Maori input and, inevitably, increasing Maori discontent. Even policy decisions about Maori resources rest with the state, not Maori. While the key participants are Maori, the accountabilities, reporting lines, and appointment processes lie with the state” (Durie 1998, p. 237).

4. *Gender Legitimacy*

The Maori Women’s Claim to the Waitangi Tribunal challenges the process of appointment by the Crown to organisations that are established to distribute the benefits from Treaty Settlements (Wai: 381, 1993, pp. 5-6). The claim was lodged in 1993 after the Crown extended the size of the Treaty of Waitangi Fisheries Commission and removed a foundation Commissioner, Hapu, Iwi and national leader Dame Mira Szaszy.

The Claim questions the exclusionary practices that exist to inhibit and prevent participation by Maori women in self-determination despite the fact that many women who were prevented from signing the Treaty and the thirteen who did sign, were acknowledged as Rangatira in their own right (Rei, 1993, pp.8 & 9). It is well known that many of the colonialist clerks who took the Treaty around to be signed denied Maori women the right to sign, even where they were clearly the Rangatira (chief), because they could not perceive that a woman could be chief.

Economic Rationalisation

In 1984, the fourth Labour government took office after a snap election. It introduced severe market led economic policies in what has become known as “the New Zealand experiment” (see Kelsey, 1995, p. 1). From 1986, any state activity with a potentially

commercial function was corporatised. Despite, or because of the experiment, “New Zealand is not and has not been performing well economically. Using the usual economic measure of per capita GNP, New Zealand has declined by around 15% compared with Australia and the average for other developed economies. This 15% worse performance has taken place since the so-called reforms and economic miracle started some 15 years ago” (Fletcher, 1998, p. 1). This poor economic performance could have been tolerated had trends in other areas improved. However, they have not done so and the gap between Maori and non-Maori continues to widen:

Some tribal leaders talk economic development, others talk self-determination. A new generation of indigenous elites also walk across the landscape with their cell phones, briefcases and assets. Some tribes have vigorously pursued a corporate ethos. Is this imperialism? Post colonialism? Economic independence? Tribal development? Progress? People live in a world that is fragmented with multiple and shifting identities, that the oppressed and the colonised are so deeply implicated in their own oppressions that they are no more nor less authentic than anyone else (Smith, 1999, p. 97).

Nation Building

Cornell (1998, p. 19) contends that “to be effective, governing institutions must have legitimacy with the people, and that this means that they have to match indigenous ideas about how authority should be organised and exercised”. The Treaty cases reviewed from Maori experiences suggest that Maori authorities rely for legitimacy upon constructs, which do not necessarily match Maori ideas in terms of the political authority of the Hapu and Maori women.

Creating new landscapes in indigenous political and economic structures can provide emergent organisations with the vitality needed for indigenous development. Iwi contemplating a new governance structure need to ensure that the structure involves a depoliticised decision-making process entailing a separation of governance and management in order to guard against old colonial oligarchies simply reinventing themselves as ‘old wine in new bottles’. Eade (1997, p. 26) contends that, “it is doubtful that an organisation that itself maintains oppressive social structures can be a reliable vehicle for transforming these in a liberating way, whatever the rhetoric”. The importance of developing appropriate and effective structures is a question of both leadership and direction.

One of the most important aspects of the development of a governance structure is to ensure that benefits will trickle down to citizens. As Eade observes, “capacities will not trickle down through a power structure unless active steps are taken” (p. 25). Looking across the spectrum of Maori post-settlement structures reveals that there are many Maori organisations that have bought into the western doublespeak of free market theory and have borrowed structures off the shelf. The greatest potential for indigenous development models in Aotearoa lies in the challenge to tap into our inherent uniqueness: Hapu and women.

Conclusion

A great deal of Treaty discourse has been confined within the parameters of legal positivism and therefore Maori sovereignty remains entrapped within the discourse of British constitutionalism. Consequently, Maori customary lore and social conventions, (which grounded and legitimated Maori society) have been subordinated to the superordinate norm that legitimated British sovereignty, as an absolute and final construct.

The argument of indigenous peoples entrapped within state boundaries laying claim to legitimacy and rightfulness of political power, becomes critical when the normative validity claim of the state is held to be right, and to be well grounded. Research on models of economic and political development (see, for example Cornell, 1998, p. 27) suggest a Nation Building model could provide more effective access to and use of resources, increased chances of sustained and self-determined economic development and a more effective defense of sovereignty.

Durie (1997, p. 113) maintains, however, that sovereignty is an outmoded concept denoting absolute power and that it is doubtful whether any state can truly have it. The impact of globalisation and the ownership of New Zealand's capital by multinational corporations reinforces Durie's argument. Furthermore, the fragmentation of indigenous societies as a result of colonisation, has lessened their resistance to and promoted acquiescence in, constructs not of their own making.

For their legitimacy, emergent self-governing structures will need to be grounded in principles that ensure legitimate representation of Maori people and not socially constructed hybrids of a colonial past. Structures need to recognise Maori women and Hapu in the formulation, anything less than this will trigger a legitimatisation crisis.

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