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**American Indian Culture and Research Journal**

**Title**

Goals for Fourth World Peoples and Sovereignty Initiatives in the United States and New Zealand

**Permalink**

<https://escholarship.org/uc/item/5113d5v6>

**Journal**

American Indian Culture and Research Journal , 22(1)

**ISSN**

0161-6463

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**Publication Date**

1998

**DOI**

10.17953

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COMMENTARY

## Goals for Fourth World Peoples and Sovereignty Initiatives in the United States and New Zealand

MARY KAY DUFFIÉ

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In 1993 my dissertation fieldwork took me to the North Island of New Zealand where I collected the life history of an elder Maori woman. While there I also began comparing the national indigenous policies of New Zealand to those of the United States.<sup>1</sup> It was interesting to discover that the historical relationships between Native Americans and Maoris and their respective colonizing governments bear striking similarities in terms of treaty relationships, cyclical policy waves, and sovereignty disputes. Colonized according to a similar value arrangement inherent in the European colonial pattern, American Indians and Maori have inherited a fairly common set of sociopolitical circumstances. Wherever Europeans went, also went the European colonial pattern whose legacies, such

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as fourth world status and factionalism, are a continual reminder of past injustices.

### TREATY RELATIONSHIPS

Treaty-making with indigenous governments was a common aspect of the European colonial pattern which effectively opened huge tracts of aboriginal lands for colonization by non-indigenous Others. Both Native Americans and Maori have treaty relationships with their dominant governments, but there are important differences.

In the United States, *many* treaties guaranteed protection of tribal interests and sovereignty in exchange for land cessions. Treaties are legally protected by the U.S. Constitution and have thus been a viable basis, at times, for pursuing legal action in the courts when guaranteed rights have been violated. Sometimes rights are restored, other times not. However, there are major inconsistencies in the jurisprudence relative to Indian sovereignty. On one hand are success stories, such as the historic Boldt decision of 1974 which recognized the validity of native fishing rights for Indians in the Northwest, then being violated by sports and commercial fisherman. Or *Worcester v. Georgia*, in which Chief Justice John Marshall decided in favor of Cherokee treaty rights then being violated by the Georgians who for decades had sought to dispossess them of their land. On the other hand are the exceptions, such as the Lakota Treaty of 1868, which retained the sacred Black Hills for the full and exclusive right of the Lakota people until they were stolen by an act of Congress known as the Agreement of 1877. In 1980 the Supreme Court acknowledged the illegal act of 1877, but offered a cash settlement instead of a return of the Black Hills. The standoff continues.

By contrast, there was only *one* treaty in New Zealand—the Treaty of Waitangi—an agreement between Maori chiefs and the British Crown. From the Maori perspective, the treaty ceded *governorship* of their lands to the Crown, while Maoris retained *sovereignty*. In return, the Maori were to obtain full rights as British citizens which included health, education, and welfare benefits. However, the colonial interpretation of the Treaty of Waitangi was different from the Maori version. From the colonists' perspective, the Maori ceded sovereignty to the Crown; Maori were not to be treated as equal British citizens and were thus barred from certain public institutions, denied

full political rights, and forced to endure a steady stream of land alienation. Moreover, the treaty was never ratified into law. Thus, unlike in the United States, the treaty has never been a politically viable basis for procuring certain treaty-guaranteed rights through the courts. It does, however, remain a basis for considering criteria which relate to contemporary Maori land claims. The treaty is also an enduring symbol for Maori protest.<sup>2</sup>

### SIMILAR POLICY TRAJECTORIES

The trajectory of federal policy in both countries has been marked by a rather precise vacillation between liberal and conservative legislation, though the goals of acculturation and indigenous absorption into the body politic have arguably remained constant. After treaties were signed recognizing indigenous peoples as sovereign powers, conservative legislation was quickly passed in both countries which sought to nullify treaty provisions and encourage assimilation.

In the United States, for example, the political tides have shifted predictably between conservative policies such as the Dawes and Termination acts, which denied original treaty provisions, and liberal ones such as the Indian Reorganization Act (IRA) and Indian Self Determination Act (PL 93-638), which sought rectification.

A liberal-conservative trend also exists in New Zealand, though it is less obvious because the pendulum has swung more slowly. For more than 135 years—between the establishment of the treaty and the Maori renaissance of the 1970s—unchecked non-Maori hegemony sought to dispossess the Maori of their treaty-guaranteed sovereignty. Assimilation policy was called “amalgamation policy.” It constituted a spate of conservative colonial legislation pertaining to land and cultural reforms such as the School Act, the Native Land Act, and the Maori Land Court. The latter two had the effect of extinguishing aboriginal title, “legalizing” huge land confiscations, and encouraging individual land ownership. These legalisms abrogated the original provisions of the Treaty of Waitangi, while opening New Zealand to European settlement in areas with the richest agricultural potential, such as the Waikato. For now, New Zealand is in a liberal phase. The Waitangi Tribunal Act of 1975 and a recent amendment in 1985 created the Waitangi Tribunal which uses the treaty as a measure to investigate com-

pensation claims for illegal land confiscations. The government receives recommendations from the board, just as the Indian Claims Commission did in the United States, to return (or provide just compensation for) land and resources taken during the course of the last 135 years. The tribunal has restored Maori input in the political process; however, the treaty remains statute-barred, and therefore sovereignty issues are unenforceable and also vulnerable to the ever-changing political climates.

### SOVEREIGNTY DISPUTES

The third similarity pertains to sovereignty disputes. In both countries a historical clash exists between tribal expectations of sovereignty, guaranteed by treaty in theory, and European-derived expectations in practical application. To indigenous peoples, sovereignty means the legitimate exercise of power and authority by the people themselves, sometimes in partnership with other national entities, sometimes not, in order to direct their own authentic courses of political action, separate and apart from any kind of dependency status. National governments, on the other hand, view this question in a more qualified manner, regardless of previous agreements which may recognize otherwise. Even during liberal periods of federal policy, indigenous groups have been handicapped by the paternalism that characterizes their relationship with the colonizing body politic.

For American Indians, sovereignty has remained elusive as a result of the slippery relationship among Indian sovereignty, state sovereignty, and federalism.<sup>3</sup>

[T]here are three kinds of governments in the United States possessed of some kind of sovereignty. Of the three, the federal government has established itself as the overriding sovereign in contests with the other two. As a superior sovereign (in the legal sense of having the most extensive powers of internal and external sovereignty) the United States can act to diminish Indian sovereignty, much as it exercises a superior sovereignty relative to the states by virtue of the national supremacy clause of article VI in the U.S. constitution.<sup>4</sup>

Sovereignty for American Indians is further complicated by the federal trust status imposed by Congress which on the one hand is supposed to protect the tribes from abuses of power by state and local governments, but on the other hand has historically participated in such abuses by mishandling the allocation, sale, development, and management of tribal resources. The sovereignty question is further exacerbated by Supreme Court decisions that limit sovereignty by ignoring the appropriate jurisprudence relevant to the issues at hand, for instance, *Employment Division v. Smith* (peyote), or *Hagen v. Utah* (criminal jurisdiction), which used the previous "intent of Congress to disestablish the reservation" as the basis for determining sovereignty limitations. If used as a precedent case for a future sovereignty question, *Hagen v. Utah* effectively wipes out the policy reforms of the last seventy years by regarding the "intent of Congress" as supreme.

For the New Zealand Maori, sovereignty disputes have arisen as a result of the incongruence between the Maori and English versions of the Treaty of Waitangi in which significant discrepancies exist between the words used for *governorship* and *sovereignty*. In the Maori version (signed by five hundred high-ranking Maori chieftains), the treaty guarantees separate independence; full rights and privileges as British subjects; and retention of sovereignty over their lands, fisheries, and resources. The legal system envisaged by the Maori version was to be a unique relationship between the Crown and the original people, in an enduring and enforceable covenant partnership, much like the government-to-government relationship that exists between Native American nations and the U.S. government. However, it was the English version (signed by only forty low-ranking chiefs) that was to be recognized for most of the nineteenth and twentieth centuries. That version, coupled with the conservative legislation outlined before, has had severe cultural and economic consequences.

The result is that since the 1850s Maori culture has been trapped within, or submerged inside, European-derived society. Until 1950 most Maoris lived in the country, while most non-Maori lived in the cities. That is why New Zealand falsely earned the reputation for having the best race relations in the world; the two groups didn't have much interaction.<sup>5</sup> Moreover, the two social systems did not share the same services and benefits, though the treaty guarantees these in both versions. Maori migration to the cities, and the subsequent

demand for jobs and social services, brought political protest in the 1970s, and the Maori renaissance of the 1980s, in which Maori continued to seek official ratification of the treaty. Non-Maori opposition to Maori demands that the treaty be honored and the land returned has created increasingly high racial tensions into the 1990s.

Non-Maori find Maori sovereignty issues unsettling, and try to pin them down to something more solid and controllable.<sup>6</sup> The general consensus among non-Maori is that sovereignty is a local concern. Hugh Fletcher, chief executive officer for Fletcher Challenge Limited, a company with an annual revenue of ten billion dollars in New Zealand currency, put it this way:

One thing the Maori DID give up in the *Treaty of Waitangi* was sovereignty—in a national and international sense. However, (they) did not give up local authority—and Maori sovereignty should be seen as a local issue. I personally think they do themselves a lot of damage in running the more extreme sovereignty arguments. There is no chance that Maori are going to get a separate parliament that is going to have any authority over New Zealand. I don't think they have the sympathy of the public—nor will they ever get it.<sup>7</sup>

Steven Young, a Wellington civil engineering consultant of Chinese ancestry, said,

A vague document like the *Treaty of Waitangi* can say whatever one wishes to make of it. What matters is the weight of numbers and relative strength and who has access to the organs of power. No doubt if Maoris were 90 percent of the population, the Treaty would be interpreted in a way which was very favorable to the Maoris.<sup>8</sup>

In Maori circles, sovereignty issues are used to assert pride, identity, and independence. Sandra Lee, Maori minister of parliament for Auckland Central, commented, "It's an indisputable fact. Maori are a sovereign indigenous people. We are a nation of people. This is our *turangawaewae* (resting place). Irrespective of who holds power at any given time and their political morals, they cannot negate the facts."<sup>9</sup> Robert Mahuta,

principal negotiator for the Tainui Trust Board in the historic Waikato *raupatu* settlement, said, "You may have had our lands, but you never had our *rangatiratanga* (sovereignty). No way do you have the power nor the capacity to 'restore' it. It survived, as did the *Kingitanga* (a unifying protest movement), in spite of what the Crown did."<sup>10</sup>

## LEGACIES OF FOURTH WORLD STATUS

As a result of similar policy trajectories, beginning with the expedient treaty and including failed policies of assimilation, many indigenous groups hold what has come to be called "fourth world status." They are those who live on or near their original homeland, culturally and economically submerged within a wider dominant society whose government is increasingly transnational in its economic activities. Fourth world peoples are those whose cultural traditions are in jeopardy while they seek economic self-determination in a disproportionate context of social problems. In the 1990s, fourth world status translates into the following challenges for both Indian country and Maoridom: (1) disproportionately high rates of unemployment and underemployment; (2) historical losses of timber, fishing, and other economic resources; (3) disproportionately higher rates of "ethnostress,"<sup>11</sup> including depression, alcohol, suicide, violent and accidental death; (4) child welfare problems; and (5) indigenous leadership problems including factionalism and nepotism. Federal statistics in both countries measure their indigenous people as the least educated, most addicted, and shortest-lived citizens.<sup>12</sup>

Scholars and activists sometimes use opposing frameworks for prioritizing the answers to these problems. In New Zealand, Robert Mahuta has defined the current concerns of Maoridom as falling into two camps—the cultural nationalists and the economic nationalists.<sup>13</sup> Scholars tend to side with the economic nationalists suggesting that social problems result from the loss of "cultural capital"; in their view, this can be ameliorated by linking sovereignty and self-determination to the capitalist system. Indigenous governments that participate in the capitalist system, using a corporate model, are empowered to funnel revenue back into the social infrastructure which then creates cultural capital. Cultural capital can be used to create culturally relevant programs and institutions to facilitate a



better-educated, employed, and less-stressed populace. In these instances, economic nationalism comes first, while cultural nationalism comes second. "The main thing about a capitalist system," says Bob Mahuta, "is that you have to have capital to produce the profit in order to be able to utilize it (culturally)."<sup>14</sup>

While scholars see a capitalistic model as making for a stronger defense, activists view it as assimilative and therefore inappropriate. They argue that economic self-determination must be separated from traditional sovereignty or indigeneity. To accept and use a corporate model that will guarantee wealth may enhance the economic security of the people, but is thought among some to be a "sell-out." They are critical of economic self-determination schemes that downplay the cultural side of the argument. They worry that the desire for wealth in the present may come back to haunt generations of native people in the future, whose traditions will be threatened by European models for the exercise of power, for example, the leadership problems associated with the IRA and PL 93-638.<sup>15</sup>

There is a need to find a compromise on both sides of the argument because anti-indigenous lobbies are still working in both countries to undermine treaty rights and indigenous sovereignty. Professor James Ritchie has suggested that biculturalism, based on sound economic development strategies, is the answer to fourth world problems on the cusp of the twenty-first century. He notes that the various fourth world renaissances, such as the political emergences of Native American groups and the New Zealand Maori, have brought about the development of three intertwined political objectives which are based entirely on indigenous questions of sovereignty and political viability in a multicultural environment: (1) to penetrate the bastions of power and become politically audible and visible; (2) to capture or repossess traditional resources upon which to base some measure of economic self-determination; and (3) to secure the means of continuing cultural distinctiveness, or identity.

Ritchie argues that in order for indigenous groups to retain their cultural distinctiveness and heritage for generations to come, they must become viable trading partners in the modern economy, earn revenue, and then reinvest the income back into social institutions that are controlled by tribal organizations. Cultural heritage is thus protected by a release from fiscal dependency on the federal government and its accompanying outsider interference. He argues that indigenous people must

undertake these activities while at the same time withstanding internal challenges from indigenous adversaries—factionalism, as well as external challenges which may come from other political entities, corporations, lobbying groups, or public protest.<sup>16</sup>

The focus of the following discussion will be to test the reasoning of Ritchie's goals for fourth world peoples by comparing contemporary sovereignty initiatives occurring in both the United States and New Zealand. The gaming movement in the United States and the negotiation of land compensation monies by the Tainui tribe in New Zealand both conform to the political objectives of fourth world peoples outlined above. While there have been certain costs common to these initiatives, which are in line with the activist arguments, the evidence suggests that the benefits well outweigh the costs, at least for now, and may serve as an important model for other fourth world peoples in the century to come.

## TO PENETRATE THE BASTIONS OF POWER

### Gaming in Indian Country

On the surface, Indian self-determination policy appears to provide evidence that American Indian nations have finally penetrated the bastions of power (Congress and the Bureau of Indian Affairs) and become independently politically audible and visible. Indeed, PL93-638 offered encouragement to many in Indian country that Congress had finally abandoned its nineteenth-century paternalistic role and allowed Indian tribes to determine their own destinies by allowing them to contract with the federal government to provide tribal services on their own. In hindsight, however, it appears that the bastions of power may be impenetrable, and that the only way to become *and remain* politically audible and visible is to seek economic autonomy separate from the structures of the federal government.

Numerous scholars have commented on the legal barriers that still impede tribal sovereignty initiatives and economic self-determination. Nicholas Peroff, in his critical assessment of Indian self-determination policy, has suggested that the accompanying "conditions" to the policy demonstrate that paternalistic ghosts continue to influence the thinking of Congressional policymakers. He cites continuing complaints in Indian country that most of the federal dollars earmarked for

Indian programs are spent on overhead costs supporting the federal bureaucracy, and that many of the 551 federally recognized tribes lack the skills and resources required to cope with the complex laws, issues, rules, and regulations that govern a tribe's relationship with Washington, D.C. He summarizes by saying,

Self-determination policy will never inspire INDIAN self-determination until Indians themselves seize the spirit of IndianNESS away from the suffocating guardianship of the federal bureaucracy and transfer it to the custody of their own institutions; where, if its essence survives, it can aid and strengthen Indian people for an enduring accommodation to an uncertain future.<sup>17</sup>

Increasingly tribes are looking elsewhere for economic alternatives that do not involve contracting with the federal government.

Gaming operations have offered tribes one of a variety of alternatives to federal contracting as a way to provide tribal services while at the same time achieving self-governance and economic autonomy.<sup>18</sup> Gaming revenue is subject to minimal government interference, unlike federal monies. In many cases, gaming profits are managed by and belong to the tribe with profits earmarked for tribally configured projects and programs. Richard Jefferson, chairman of the Lummi Casino's management board, summarized it this way, "What it comes down to is if you don't control the money, you don't control the decision-making process."<sup>19</sup>

Currently, there are 327 gaming operations in Indian country, which range from large organizations, such as the Mashantucket Pequot with four slots and ten thousand employees, to small isolated operations with bingo and pull tabs, such as those in Oklahoma, to operations with less than one hundred machines, such as those in Montana. The typical Indian gaming operation has less than five hundred machines and tables that provide some jobs and revenue for tribal services. A small number of tribes, about 15 to 20 percent, are doing well enough to make per-capita payments to tribal members. Unfortunately, this has generally been misinterpreted by the media, the public, and the casino industry.<sup>20</sup>

The Indian Gaming and Regulatory Act of 1988 was passed to protect and promote the interests of Indian tribes. The act contains three stated purposes, which include "Indian economic

development, Indian self-sufficiency, strong tribal governments to regulate gaming within their own lands, and protection by the National Indian gaming commission against the infiltration of organized crime and other sources of corruption."<sup>21</sup>

At present, however, Indian gaming is facing challenges from the courts and from Congress. Wilmer notes that Indian gaming has become the newest battleground for challenges to Indian sovereignty characterized by federal, state, and local authority controversies: "Native people and their governments have found themselves embroiled in legal and political conflicts with state governments, members of Congress, powerful gambling lobbies and, in the case of some of the Iroquois, pro- and anti-gambling interests within their own communities."<sup>22</sup>

Once tribes began to take their piece of total gaming revenues, currently 10 percent of forty billion dollars industry-wide, powerful lobbies organized against Indian gaming, forcing Congressional members to propose amendments to the IGRA.<sup>23</sup> These opponents have asserted an "unfair competition" platform. Their proposed amendments are designed to limit tribal sovereignty by effectively destroying the ability of tribal governments to regulate their own gaming activities. Wilmer notes that both houses of Congress have been involved with hearings on the issues.

Powerful lobbies behind the amendments, such as Parimutuel Wagering, the Association of Racing Commissioners International, and Donald Trump Enterprises, lack a fundamental understanding of the nature of Indian gaming and how it differs from their own businesses. Wilmer writes,

Most fail to realize that Indian gaming is primarily a revenue-for-government rather than profit-for-private enterprise. Revenues from Indian gaming are distributed for the benefit of government operations and community programs rather than corporate stockholders. Tribal governments are investing in diverse economic development so that real long-term structural benefits derive from the profits generated by the present gambling boom.<sup>24</sup>

Because of this, many in Indian country question the need to regulate Indian gaming further when profits are being used to help their people with desperately needed health and social programs.

Consequently, Indian gaming is being challenged in the courts. To pursue casino-style gambling is a federally guaranteed tribal right which can be impeded by states that fail to negotiate a compact in good faith (stipulated by the IGRA). Tribal governments that would like to get involved with casino-style gambling are thus handicapped by such states, as was the case with the Seminoles in Florida:

The issues in the Seminole case highlight a special problem within the federal system—the interaction of federal, state, and tribal sovereign governments and the struggle for regulatory control over tribal affairs. Within that struggle is the question of the tribe's power to protect their own sovereignty, as recognized by the Supreme Court and the Congress, against unlawful incursion by the States.<sup>25</sup>

On March 27, 1996, the United States Supreme Court struck yet another blow to tribal sovereignty when it decided in favor of the state of Florida. This decision seriously impairs the sovereign rights of tribes to be free of state control, because it implies that states do not have to comply with federal requirements in favor of Indian tribes. The secretary of the interior had the power to override the decision of the Supreme Court, but it was an election year after all, and the administration may have been unwilling to offend states such as Florida and California that contained big chunks of key electoral votes.<sup>26</sup>

The gaming issue is only the latest battle in the ongoing struggle for American Indians who are fighting for control of their own economic and cultural destinies. The gaming frontier, as is true with matters pertaining to religion and sovereignty, is complicated by the configuration of multiple sovereignties that make up what Wilmer calls the jigsaw puzzle of American federalism.<sup>27</sup> The struggle continues.

### **Waikato Raupatu Settlement**

Penetrating the bastions of power, and becoming politically audible and visible, has been equally difficult for the Tainui Maori. The word *raupatu* means confiscation, but the Centre for Maaori Studies and Research points out that it is more than a word for

confiscation. According to Michael King, "To those who have lived under its shroud, it has meant loss, injustice, grievance and the cause for much speculation over what might have been."<sup>28</sup>

After a one-hundred-year struggle involving warfare, disease, and unfair political dealings, the Tainui have won a series of land-settlement claims for the illegal confiscation of their lands by the New Zealand government. A Centre publication reports, "We're getting the core lands with the 35,000 or so acres, and some cash to buy further land. Even though people say it's (only) \$NZD170 million, it's far more than that in value. We're talking about half a billion dollars, and within five to ten years it's going to be a billion dollars, a huge stake."<sup>29</sup> To understand both their struggle and their successes, it is necessary to trace their history with the *Kingitanga* movement. "The impulse behind the establishment of the Maori kingship was that of giving Maoris a matching sense of brotherhood and confidence, a view of themselves as 'Maori,' and of something worthy of respect. Without these things, they had been at a constant demonstrable disadvantage in dealings with Europeans."<sup>30</sup>

The *Kingitanga* movement had its inception in the middle nineteenth century, a period when the Maori were undergoing severe cultural crisis. It was initiated to establish the unification of all Maori tribes under one leading aristocratic line whose leader would serve as a uniting force among the people, protect the land, and act as a respectable politician who could stop the forced sale of sacred lands. The Maori believed that to model their government on the British Crown would give them strength in what they thought would ultimately be a government-to-government relationship with the Crown.

By the 1850s, many Maori groups had become fragmented because the Europeans were trying to force Maoris to sell their sacred lands. This, coupled with disease, meant the Maori were being attacked on all fronts—territorially, socially, and biologically. Leading families met to discuss possible candidates for the kingship in the traditional manner, which involved the development and achievement of consensus. Finally, a candidate who was considered high-ranking by those who proposed him achieved unanimity. Potatau was descended from Hoturoa, captain of the Tainui canoe, whose crew provided the major antecedents of the Waikato tribes.<sup>31</sup>

Potatau did not live very long after he was crowned at age eighty. Though he did not have the chance to carry on with the ideals of the *Kingitanga* agenda, he did much to establish the

*mana*, "sovereignty," of his office in the view of the Kingites. Potatau was succeeded by his son, who later became known as Tawhiao. King Tawhiao had grown up in Ngaruawahia, his *turangawaewae*, "the sacred place where he felt secure." However, just three years after he took office, he and his followers were driven out of their ancestral home by Governor Grey, who ordered imperial troops to invade the Waikato. Like his father before him, Tawhiao was committed to cooperation and negotiation in the spirit of partnership with the Europeans. However, on July 12, 1863, when imperial troops invaded Tawhiao's territory, he reluctantly found himself at war. He was defeated in nine months and fled with his followers into the bush area which was later called King Country.

During his exile, many of his people's sacred places, including cemeteries and ancestral lands, were stolen. Among them was Ngaruawahia, the place where King Tawhiao's granddaughter, Te Puea, would later build a Maori renaissance. In his biography of Te Puea, King writes,

To punish the so-called rebels and prevent the reformation of the King Movement in Waikato, the Government confiscated one-and-a-quarter million acres of land and opened it for European settlement and agriculture. Its real objectives were the dislodging of the King movement and the acquisition of the most fertile Waikato acreage; both were achieved.<sup>32</sup>

Human devastation and subsequent cultural breakdown, as with American Indians, followed the land confiscations. "Confiscation was a far greater blow than military defeat; its consequences were to cripple Waikato for the next 60 years. First, a group of tribes that had formerly been able to support themselves comfortably, and to offer hospitality liberally, were now unable even to subsist on land of their own."<sup>33</sup>

After twenty years of soul-searching, Tawhiao made an agreement with the new government. The king would be allowed to come safely out of exile if he agreed to open parts of the King's Country to the *Pakehas* (non-Maoris, Europeans). Tawhiao went immediately back to Ngaruawahia, and he wept when he discovered that it was now a European township. Shortly thereafter, he left this sacred place, but prophesied that one day his people would enjoy a renaissance led by one of his

descendants: "This place of salvation shall not pass beyond the days of my grandchild, when we shall be reborn."

In 1894 Tawhiao's son, Mahuta, became the third Maori king. King Mahuta's first son died when he was born, so to remember his death he gave the name Te Puea, "to rise to the surface," to his sister's new daughter. Te Puea was born on November 9, 1883. Though she was only the niece, not the daughter of the Maori king, she would ultimately fill the leadership void left by Te Rata, Mahuta's son, the fourth Maori king, who was an invalid. Te Puea Herangi thus became princess, and despite a rather cavalier youth, she (as her name suggests) ultimately redirected her priorities toward the welfare of her people and the *Kingitanga* movement, which now included reacquiring the stolen land. First she proceeded with economic development, and later with developing the infrastructure to facilitate the social solidarity needed to keep Maori culture in the King Country thriving. Te Puea then devoted the remainder of her life to building up her beloved Waikato people. "When she went back to her people in 1910, they had almost no land, no steady work, and no hope. In more than 40 years of relentless effort, in her own words, she made Waikato 'a people once again.'"<sup>34</sup>

In 1913, the Waikato people endured a devastating small-pox epidemic. This was to be the first of many times when Te Puea would demonstrate the compassionate, nurturing side of leadership.

The small pox epidemic of 1913 had a tragic effect on Te Puea's settlement and on others along the Waikato River. With very little money or support, she organized camps to nurse those affected by what was often a fatal disease. Very few hospitals at the time would accept Maori patients. The reluctance was mutual, with most Waikato Maori fearful and suspicious of the medical profession.<sup>35</sup>

By early 1919, her village was a thriving community. But it was also fast becoming unsuitable for the large numbers of people who had flocked there for a host of different reasons. Overpopulation was one problem, but also the Waikato River flooded the village each year when the winter rains came. To Te Puea, it was only logical that her people should move back to the



sacred area called Ngaruawahia, the place where Potatau and Tawhiao reigned before it had been stolen during the land wars. Te Puea decided to fulfill Tawhiao's prophecy—that his people would rise again, reborn from despair at his *turangawaewae*, the place where he felt secure. So this became her goal.

From the early 1920s on, Te Puea's aims were to re-establish the *mana* and strength of the *Kingitanga*, to achieve economic strength, and to build a marae [a courtyard in front of traditional meeting houses for conduct of ceremonies, or the settlement around such a courtyard] at Ngaruawahia. Waikato were almost landless—a result of the confiscations of the 1860s. Attempts to procure compensation from the government were not to result in a settlement until 1946. So funds for her projects were slowly raised in a number of ways. Her people took up contracts for scrub-cutting, road-making, gum-digging. A touring concert party travelled the North Island giving performances. Not only was the tour a financial success, but it also contributed to a revival of interest in haka, and poi [traditional dance and song forms].<sup>36</sup>

In the late 1920s, enough money had been saved to buy back some of the stolen land at the sacred place called Ngaruawahia. The Tainui now had control of their own property again, and Te Puea set about at once to build the *turangawaewae marae*. Te Puea and her people struggled for several years "against the odds to build Turangawaewae Marae, and in March of 1929 the main meeting house Mahinarangi was opened to an historic *hui* [gathering] where 6,000 people attended. Te Puea's genius for organization and hospitality was obvious, and her reputation grew deservedly."<sup>37</sup>

Te Puea eventually found favor with national politicians when she met the great parliamentarian Apirana Ngata. Her association with him led to the reintroduction of farming for hundreds of Waikato people who were poor and struggling during the depression. The "land development scheme" was intended to provide Maoris with blocks of land, if they would develop it. The people were able to borrow money based on the value of certain land blocks. They then had the means to clear the land and to establish dairy cows, cattle, sheep, or crops. As

these began to earn money, the people then paid off their debts and became self-sufficient.<sup>38</sup> King writes,

Maoris—including Ngata and Te Puea—saw [the land schemes] as a way of enabling the Maori to retain a communal life based on Maori values; ... parliamentarians viewed it far more as a way of teaching Maoris to farm in a businesslike fashion so they would not be a drain on the public purse, and of ensuring that land was exploited for primary production as efficiently as possible.<sup>39</sup>

For Te Puea, the way was now paved to begin reviving Maori cultural activities for the Waikato people:

She could now turn to more ambitious and more visible cultural projects: the building of a house for Koroki [fourth Maori king] at Turangawaewae; the raising of additional meeting houses throughout Waikato; and the construction of a fleet of canoes that would highlight the tribe's former strength as a people with a river culture, and echo the more distant Polynesian tradition of seafaring and exploration.<sup>40</sup>

The effects of her contributions continue today:

An awful lot of Maori, because of where they grew up and other circumstances are not able to keep up with their cargo system, and have been disadvantaged by all of that. But the *Kingitanga* movement has been a great umbrella for the Waikato tribes. There are all sorts of smaller structures underneath it to which people can attach themselves. I notice here with my Tainui students that they are very committed to all of the rituals and festival days of the *Kingitanga*, as if it were a religion itself. I mean, it's something that protects the mind, nurtures it. Very few other tribes compare in this way. A couple of tribes have big sort of supra-tribal structures which keep all the groupings together, but nothing on the scale you have here in the Waikato.<sup>41</sup>

Te Puea focused on getting compensation for the land confiscations at the end of her life. A settlement was finally reached after much discussion and debate. The settlement called for the payment of six thousand pounds a year for fifty years and five thousand pounds a year after that in perpetuity.

Te Puea played a leading role in these negotiations, and the offer was eventually accepted, although agreement was not unanimous. A section of Waikato held strongly to the belief that, as land was taken, only land was acceptable compensation. In Te Puea's eyes, settlement of the Raupatu grievance meant that finally funds were available to continue economic development, to pay for the upkeep of Turangawaewae, and to enable her people to pursue educational goals. And it also meant official recognition of the validity of their grievance, and of the principle that unjust treatment by government should be rectified, however much time had elapsed.<sup>42</sup>

## TO CAPTURE OR REPOSSESS TRADITIONAL RESOURCES

### Gaming in Indian Country

Since bingo halls first opened on reservations in the 1970s, Indian gaming has fostered the capturing and repossession of traditional resources both cultural and human. Tribes that undertake gaming operations are working with a familiar enterprise and therefore traditional resources. Gambling has been part of the traditional life and culture of Native American societies for generations. Scholars have noted that Indian gaming is consistent with the cultural traditions of all culture areas. Wayne Stein argues,

Gaming traditions developed well before contact with Europeans, and early records describe these for every region of the country and within almost every nation of Native peoples. Gaming was an accepted part of the social life of American Indian nations with native societies setting aside specific times of the year when important celebrations of life included gambling.<sup>43</sup>

Most of the games focused in one way or another on elements of chance associated with a certain activity and wagering the outcome. Typical games included horse-racing, archery, and other athletic contests, for instance, lacrosse in the Woodlands. There were also stick, hand, and button games that involved guessing. In the Plains, "the 'button' or 'hand' game was played with pairs of small objects, one of them marked, say by a string around the middle, the other plain; usually the guesser had to guess the hand holding the *un*marked object. At times two or three horses were the prize staked."<sup>44</sup>

Successful gaming nations are using their own people to staff and administrate gaming halls, allowing tribes to capture or repossess human resources as well. This is important, because most American Indian reservations, consistent with fourth world status, have endured disproportionate unemployment rates handicapping economic self-determination efforts throughout most of the twentieth century. "Many, if not most, Native Americans remain America's internal exiles, living within the confines established by their conquerors. Of 2 million Native Americans, 400,000 at last count lived below the poverty line."<sup>45</sup> For example, in Yakima County Washington, home to the Yakama Indian Nation, 51 percent of American Indians under the age of eighteen live below the federal poverty line. This is correlated with a 21 percent American Indian unemployment rate due in part to lack of job opportunity and disproportionately lower educational attainment. Of those eligible in Yakima County, 4 percent of American Indians have earned a bachelor's degree, while 35 percent have not received a high school diploma.<sup>46</sup> Other Indian communities, such as Pine Ridge, South Dakota, are worse. Like many western reservations, unemployment rates there are as high as 80 percent.<sup>47</sup>

Using indigenous personnel to staff gaming operations has slashed unemployment rates in Indian communities because successful casinos offer steady, year-round employment for both tribal members and non-Indians. Since 1975, 290,000 direct and indirect jobs have been created in Indian country. A national survey conducted by Wayne Stein at the Center for Native American Studies at Montana State University indicated "ninety-two percent (92%) of gaming tribes experienced significant growth in new employment opportunities."<sup>48</sup> For example, the Lummi Casino in Bellingham, Washington, was established by the Lummi Indian Nation and has been in operation since December of 1991. This facility employs more than

380 people, 60 percent of whom are members of the Lummi Nation.<sup>49</sup> Other examples include the Oneidas of Wisconsin whose unemployment rate went from 40.1 percent in 1976 to 28.8 percent in 1986; the Sandia tribe north of Albuquerque whose unemployment rate went from 14 percent in 1983 to 3 percent today; and the Milles Lacs Band of Chippewa in Minnesota who have all but eliminated the 45 percent unemployment rate with their casino success which began in the spring of 1991.<sup>50</sup> "Some have said that Indian gaming is the 'new buffalo' with the ability to provide sustenance and support far beyond other sources."<sup>51</sup> Part of the potential of gaming is that the economics are based on the capturing and repossession of traditional resources.

### **Waikato Raupatu Settlement**

Like Indian gaming, the Waikato *raupatu* settlement claim has fostered the capturing and repossession of traditional resources, both cultural and human. The Tainui Maori, whose lands were confiscated in the Waikato land wars of 1863, won an initial settlement claim from the New Zealand government. The settlement comes after more than eighty years of building a relationship with the New Zealand government and a decade of hard negotiations and political dealings. According to Mahuta, "We wanted to (re)establish an economic base, to develop our own economic programs, to expand that base, to enhance employment opportunities for our people, and to play a much more significant role in the development of this country."<sup>52</sup>

Late in 1995, a settlement package valued at 170 million New Zealand dollars in cash and land was negotiated. This amount includes the capturing and repossession of traditional land resources including a large parcel of formerly owned properties in the city of Hamilton. The Tainui are the first to win such a settlement, which is in line with Article II of the Treaty of Waitangi. Article II provides for the "full exclusive and undisturbed possession of their Lands and Estates Forests Fisheries and other properties which they may collectively or individually possess so long as it is their wish and desire to retain the same in their possession";<sup>53</sup> Land once thought stolen and gone forever is now back in the hands of the tribe.

Like American Indians, Maoris suffer disproportionately higher unemployment rates based, in part, on lower educa-

tional attainment. Indeed, Maoris have the highest unemployment rate for any ethnic category in New Zealand, at 24 percent.<sup>54</sup> Those who are unemployed and actively seeking work, and those not in the labor force, comprise 62 percent of the total Tainui population, while 34 percent of Tainui over the age of fifteen are in salary or wage paid jobs. Income statistics are related to unemployment problems. Forty-four percent of those Tainui over the age of fifteen have total incomes under ten thousand New Zealand dollars, while 84 percent had total incomes under thirty thousand New Zealand dollars.<sup>55</sup> The settlement monies will help to ameliorate disproportionately high unemployment and disproportionately low incomes by allowing for the (re)capturing of human resources. As is true in the case of Indian gaming, the Tainui intend to ameliorate unemployment problems by providing skilled and unskilled jobs to disenfranchised Maori people in any of a number of businesses, operations, and institutions paid for with revenue earned from the settlement. For example, the tribe now holds title to a mental health hospital in Auckland. Ownership will not only provide jobs for urban Maori, but will also be important for research and the development of culturally relevant treatment and prevention paradigms.

In keeping with the terms of the treaty, the money is to be held collectively by the people and administrated by a tribal congress (*runanga*); it was handed over in the name of their ancestor, King Potatau, who reigned as paramount chief at the time of the confiscations. The preamble of the settlement act includes a formal apology on the part of the New Zealand government admitting that its actions in confiscating Waikato lands were wrong. While the settlement is a large one, by everyone's standards, the struggle to gain settlement claims on the west coast beaches and the Waikato River will continue.

#### TO CONTINUE CULTURAL DISTINCTIVENESS, OR IDENTITY

### Gaming in Indian Country

Indian gaming provides an economic vehicle for building and maintaining the situations necessary to revitalize Indian culture and identity. The IGRA requires gaming profits to be funneled into social services that benefit the tribe: "(These) rev-

venues are an increasingly important component of tribal budgets for housing, education and other matters. Such revenues are in themselves a source of independence and power, and may be the key to funding important land claim suits or other litigation crucial to future cultural survival."<sup>56</sup> Moreover, self-esteem and feelings of pride associated with successful Indian-owned businesses have been a boost for Indian identity.

Ensuring cultural distinctiveness is partly related to improving educational opportunities for tribal members. Tribes with profitable gaming ventures budget part of their monies to enhance curriculum at all levels, kindergarten through twelfth grade. Priorities for curriculum development include language preservation and cultural enhancements, which provide improved modes of instruction and content-driven approaches in the classroom. Gaming profits also provide funding for higher education scholarships to tribally controlled colleges, and/or to universities. Wayne Stein's national survey found that 64 percent of gaming tribes had a positive education result from gaming revenues. He identified tangible results, which included an increase in the number of tribal members who took advantage of higher education opportunities and improvement in the quality of facilities and existing programs.<sup>57</sup> For example the Fond du Lac Chippewa have used their profits to offer more scholarships to Chippewa college-bound students. With earnings of 170 million dollars in 1986, large percentages were funneled into improvements for the Oneida Tribal School, Oneida Nation Museum, Head Start, and the Oneida Research and Technology Center. Likewise, the Sandia tribe north of Albuquerque invested a portion of its profits to provide educational grants and to subsidize the local Head Start program.<sup>58</sup>

Cultural distinctiveness can also be ensured by enhancing tribal programs devoted to ending alcoholism in culturally appropriate ways. Life in an alcoholic home is antithetical to traditional values; for obvious reasons, alcoholic parents are not able to provide the family structure and stability necessary to pass on cultural traditions and heritage. The Oneida of Wisconsin funded their Alcohol and Drug Abuse Prevention and Treatment Center, as well as their Domestic Abuse program with profits from Oneida Bingo. Many others have followed suit.<sup>59</sup>

In many instances the relationship between land and culture is analogous to the relationship between language and culture. They are inextricably linked, the vehicles for the expres-

sion of religious, mythological, and traditional value systems. The profits from Indian gaming have allowed some tribes to repurchase land they lost years ago due to the Dawes Act and/or to inappropriate leasing schemes authorized by the Bureau of Indian Affairs. In terms of perpetuating Indian identity, successful gaming enables American Indian tribes to purchase land and increase the size of their land base with the ability to direct more financial resources toward perpetuating their ethos. According to Stein's report,

The very ability of tribal leaders to successfully run a major business enterprise to their tribes' benefit seems to empower individual tribal members with a sense of success. This empowerment is also evident in adults who, often for the first time in their lives, are earning a good living and providing comfortable lives for their families.<sup>60</sup>

### Waikato Raupatu Settlement

As is true with IGRA, the Waikato *raupatu* settlement stipulates that revenues earned from land, leasing, and other activities should be channeled back into the social welfare infrastructure. First, it stipulates that earned revenues should be reinvested into the community for enhancing the land base. The Tainui intend to expand their capital base in order to produce a profit, most of which will be returned directly to the people in one way or another.

The second stipulation of the settlement calls for providing improved educational benefits for the Tainui people. Like American Indians, Maori are disproportionately undereducated. Because they have asymmetrically lower educational levels than the general population, they are most vulnerable to the lack of gainful employment, reinforcing a cycle of poverty. New Zealand assembles their educational statistics into two categories: (1) secondary school qualifications, and (2) tertiary ones. Almost two-thirds of all New Zealand Maori have no secondary school certification, which means they do not have the equivalent of a high school degree. Only 17 percent of all New Zealand Maori have earned degrees beyond high school. Of those, 12 percent earned a certificate from a trade or technical



school, while only 5 percent have earned a bachelor's degree or its equivalent.<sup>61</sup> Less than 1 percent of Maori have a graduate degree. Of those Tainui over the age of fifteen, 34 percent had no educational qualifications at all. Twenty percent held tertiary qualifications holding either trade or technical certificates (8 percent), 2 percent had teaching or nursing diplomas, and another 8 percent had other tertiary qualifications.<sup>62</sup>

Robert Mahuta says the settlement will benefit Maori education by providing more Maori-operated projects within traditional educational institutions. For example, the Tainui intend to use their monies to establish two endowed colleges at Auckland University and at Waikato University. "The endowed colleges will provide the horse power for us to create a cadre of educated leaders to take us through the next hundred years. Those leaders will need a whole host of skills—management, communications, information and cultural."<sup>63</sup> He intends for education to become a business for the tribe which he believes will be a significant cure for unemployment while at the same time, building Maori-operated resource bases:

At Waikato, the endowed college would ... operate through seminar and research activities, a 'think tank', where, in particular, national matters of policy and international matters of scholarship can be pursued at an advanced level. The core ethos will focus on development and management. (It will) be a place where scholars of national and international status may be in residence for varying lengths of time, (and will be) a place for Maori activities and workshops, especially in the arts.<sup>64</sup>

The third stipulation calls for direct cash distribution payments to individual *maraes*. Each *marae* is a cultural focal point for Maori, where important political *hui*, or strategy meetings, are held, as well as being a place for Maoris to celebrate their life and culture in the collective sense. The first interest payment on the 170-million-dollar package is twelve to fifteen million dollars (New Zealand currency). After the major proportion of profits are reinvested according to the above criteria, direct cash payments, anything up to fifty thousand dollars each, will be given to individual *maraes*. Each *marae* will choose how to spend, save, and reinvest their own checks. They may

use it as a deposit to buy a farm or small business, they may spend it on cultural activities, they may save it for a larger purchase, or some combination of the three. In any case, enhancing the *maraes* as the cultural locus of *Maoritanga* (Maori-ness) is directly in line with the goal of securing cultural distinctiveness and identity.

### FACTIONALISM AS A CONSEQUENCE OF NEW WEALTH

In both countries, one consequence of sovereignty initiatives that have brought new money to indigenous institutions is factionalism. In the United States, for example, profitable gaming tribes (of which there are few) that are left with a surplus after providing mandatory infrastructural investments are able to provide per-capita cash payments to enrolled members. In Wisconsin this has led to a surge in applications for tribal enrollment. The question of who is an Indian and who is not, already a divisive issue in Indian country, has become exacerbated in this context.<sup>65</sup>

Another legacy has been a corruption of the community ethic in Indian country—that of helping one another without regard for financial reward. Tribal councils from profitable gaming tribes lament a younger generation who, when asked to provide a service for the good of the group, respond with “How much are you going to pay me?”<sup>66</sup>

In New Zealand, factionalism remains a constant source of frustration for those involved with the settlement negotiation. For as long as the Tainui Trust Board has been in mediation with the New Zealand government, opponents of the process have protested not only the board’s methods and practices (which have been exclusionary in their eyes), but the outcome of the settlement as well. They believe the fiscal envelope approach, or a one-time settlement deal, extinguishes indigenous sovereignty forever. They criticize the Tainui for accepting partial payment and not holding out for the whole basket. Supporters counter by saying, “It’s the best we can do. Of course the ideal is to have all that land returned, but short of a civil war, I doubt whether we could ever get (all of it back), under the present system.”<sup>67</sup> By making a “full and final” settlement, economic self-determination is favored while sovereignty is lost. Mahuta disagrees, “The only way we are going to beat the white man is at his own game. We could allow our-

selves to come out thinking as white men—but ideally we will come out thinking as international people.”<sup>68</sup> The controversy between the two camps has been a frustrating one for the Tainui Trust Board, which is now saddled with the task of building a tribal congress to administrate the monies. The congress, known as a *runanga*, will behave something like a stockholder’s organization charged with establishing authorization procedures for the administration of revenues from the new land base.

Likewise in New Zealand, the question of who is a beneficiary for tribal resources and who is not has exacerbated factionalism; unlike in the United States, blood quantum as a measure of identity is not an issue. Presently, the Waikato-Tainui beneficiary roll contains some 28,000 members. Around two thousand are unaccounted for. To benefit from the *raupatu* settlement, all Tainui must register. “The current tenet of the roll is to protect the land asset returned, and to ensure the benefits are there for the beneficiaries with appropriate *whakapapa* (genealogy).”<sup>69</sup> This is done in the following manner. First, each applicant must undergo application procedures. The application is then checked by board members, *Kaumaatua* (elders), to ensure authenticity.<sup>70</sup> All questions of tribal membership remain a traditional matter, handled in a culturally appropriate manner. The question of who is a Tainui and who is not, is determined on a *hapu* (clan) basis in order to determine by law a beneficiary or tribal roll. Each *hapu* elects a *kuia*, or council of elder women, who are the recognized guardians of the tribe’s *whakapapa*, or genealogy. The council makes a judgment based on two criteria: (1) Is the claimant able to establish a bloodline to one of the thirty-three original *hapus* which existed at the time of the 1863 confiscations? (2) Is the claimant able to identify with a traditional *marae* from which he or she might have current relatives? If the claimant identifies a bloodline that does not match the *marae*, or vice versa, or if the claimant tries to falsify bloodlines to the council, then enrollment will be denied.

The Maori are perhaps luckier than many Native American groups insofar as they retain traditional models, albeit conservative, to answer for themselves who is a Tainui, and therefore eligible for benefits and tribal services, and who is not. They have been helped by a stream of legal jurisprudence that acknowledges Maori membership on a collective basis.

## CONCLUSION

The Waikato *raupatu* settlement and Indian gaming are indigenous sovereignty initiatives that are parallel in terms of addressing three stated goals for fourth world peoples. First, the drive for economic self-determination has involved a continuing struggle to penetrate the bastions of power and become politically audible and visible. For American Indians, this has involved finding alternatives to government contracting and the interaction of federal, state, and tribal sovereign governments who are at odds over the regulatory control of tribal gaming. For the Tainui Maori, who were dispossessed of their lands and subsequently impoverished, the persistence and devotion of *Kingitanga* leaders made them politically audible and visible. Over the generations, they instilled confidence in their young people that the Crown was not unassailable. The work of the late Princess Te Puea, and, later, her cousin Robert Mahuta, proved that doing their homework would enable them to beat the New Zealand government at its own game.

Second, both initiatives have involved the capturing and repossession of traditional resources—cultural and human. For American Indians, gaming tribes are working with a familiar enterprise, because gaming activities are consistent with the traditions of all culture areas. Furthermore, successful gaming nations are using their own people to staff and administrate gaming halls, allowing them to capture or repossess human resources as well. Likewise, the Waikato *raupatu* settlement provides for the return of 35,000 acres of traditionally held Tainui lands, plus cash to buy back additional parcels from private owners. As is true with Indian gaming revenues, part of the monetary portion of the settlement will be used to create desperately needed skilled and unskilled jobs in King Country.

Finally, sovereignty initiatives in both countries provide for securing the means for continuing cultural distinctiveness. For gaming nations and the Tainui Maori, profits are funneled into culturally relevant social services that revitalize indigenous identity; they are also the key to funding important land claim suits or other litigation crucial to future cultural survival. In both countries, economic self-determination efforts have paid off in terms of cultural dividends, which only scratch the surface at compensating them for centuries of lost opportunities.

## ACKNOWLEDGMENT

This paper was first given at the Western Social Science Association annual conference April 18, 1996.

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