Paradox Lost? Four Theoretical Perspectives on Whānau Ora

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New Zealand’s bicultural project, as initiated by the 1984 Labour government, is marked by paradox and contestation. The paradox shows Māori to be both enfranchised by the inclusion of references to the Treaty of Waitangi and Māori specific clauses in legislation, and disenfranchised economically by successive governmental adherence to neoliberal economic policies. The contestation is shown by the majority Pākehā public’s resistance to the practices of Wright’s idealisation of hard biculturalism as found in the creation of separate institutional structures for Māori. This thesis uses four theorists examining if the policy recommendations of the Whānau Ora Report represent a mitigation of the difficulties found in the bicultural paradox and the Pākehā contestation. As measured, the Whānau Ora Report is remarkably similar to 1984. Overall, Parekh, Barry and Young provide explanations of the limits of Whānau Ora; Kymlicka unpacks the origins of the Whānau Ora Report as being informed by a historical-colonial view; Parekh shows the difficulties of embarking on bicultural practices in a multicultural national setting; Barry’s analysis suggests Whānau Ora is not based on a class-based analysis; and Young’s ideas emphasise that it is only democratic when it is funding neutral. In sum, the current environment neither represents a challenge to the detrimental effects of neoliberal governance, nor does there appear in this policy framework a means to gain the social solidarity necessary to encourage more equal socioeconomic outcomes for Māori.
# Table of Contents

List of Tables ......................................................................................................................... iv
Acknowledgements .................................................................................................................. v

1. Introduction .......................................................................................................................... 1

2. Bicultural Contradictions ...................................................................................................... 11
   Bicultural Theory .................................................................................................................. 13
   Bicultural Legislation .......................................................................................................... 22
   The Paradox of Bicultural Governance ........................................................................... 31
   The Pākehā Contestation of Hard Biculturalism ............................................................... 36
   Biculturalism as a Contradictory Project ........................................................................... 43

3. Four Theoretical Perspectives ............................................................................................. 45
   Kymlicka’s Liberal Multicultural Citizenship ................................................................. 45
   Parekh’s Cultural Imperative ............................................................................................ 50
   Barry’s Liberal Egalitarianism .......................................................................................... 55
   Young’s Democracy of Inclusion ..................................................................................... 60

4. Whānau Ora and Strengthening Families .......................................................................... 67
   The Strengthening Families Programme ......................................................................... 69
   The Whānau Ora Report .................................................................................................. 75

5. Theorising Whānau Ora ....................................................................................................... 86
   Origins .............................................................................................................................. 87
   Limits ............................................................................................................................... 92
   Challenging the Bicultural Paradox and Pākehā Contestation? .................................... 106

6. The Bicultural Present .......................................................................................................... 108

References ............................................................................................................................... 114
Glossary ................................................................................................................................. 131
Appendices ............................................................................................................................. 133
Appendix I, the Treaty of Waitangi and Commentaries .................................................. 133

Treaty of Waitangi (English translation of Māori version - Kawharu Translation) ......................................................................................................................... 136
The Treaty Of Waitangi (English Version) ................................................................. 139
Hayward’s The Principles of the Treaty as found in the Appendix section of the Waitangi Tribunal report *Rangahaua Whānui National Overview*. ...... 142

Appendix II, New Zealand Governments and Prime Minister since 1984 ...... 175
Appendix III, Legislation ............................................................................................. 175
State-Owned Enterprises Act 1986 (as at 1 May 2011) ......................................... 180
State Sector Act 1988 No 20 (as at 01 July 2011) ....................................................... 182
Education Act 1989 No 80 (as at 01 January 2012) .................................................. 183

Appendix IV, the Whānau Ora Report .................................................................... 186
List of Tables

Table 1, Wright’s Bicultural Continuum (2006, pp. 530–531). .............................17
Table 2, Structural Comparison of the proposed Whānau Ora programme as represented by the Whānau Ora Report and the currently operational Strengthening Families programme.................................................................67
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1. Introduction

In July 2010, the United Nations Report of the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous Peoples observed that New Zealand’s Treaty of Waitangi settlement process is,

...clearly one of the most important examples in the world of an effort to address historical and ongoing grievances of indigenous peoples (Anaya, 2010, sec. 5).

Special Rapporteur professor James Anaya ends this report, however, with a critique of the Government’s poor record of securing socioeconomic benefits for Māori and a validation of the potential of the proposed Whānau Ora programme as an approach likely to challenge this disadvantage.

Finally, the Special Rapporteur cannot help but note the extreme disadvantage in the social and economic conditions of Māori people, which are dramatically manifested in the continued and persistent high levels of incarceration of Māori individuals... In this regard, the Special Rapporteur is pleased to learn about a number of Government programmes to address this disadvantage, including the Whānau Ora programme, an initiative currently being developed by the Government, to be carried out in partnership¹ with Māori people to address socioeconomic concerns, especially through the strengthening of Māori families (Anaya, 2010, sec. 10).

¹ The meaning of partnership between Māori and the government of New Zealand is placed in section 3 of this United Nations report. Included in the idea of partnership is the concept of Māori self-determination as provisioned in the principles of the Treaty of Waitangi.
Given the Whānau Ora programme’s hoped-for role in addressing the extant nature of Māori socioeconomic disadvantage, one might expect that the Government would outline with rigour its facilitation of Whānau Ora. The responses of the minister of Social Development, the Hon. Paula Bennett, to parliamentary questions relating to Whānau Ora (some six months before the United Nations report) would suggest otherwise.

Hon. Annette King [Deputy Leader of the Labour Party Opposition]:
Does she [the Hon. Paula Bennett] agree that Whānau Ora is a cross-sectorial, whole-of-Government concept that uses a structured process of Government agencies and community organisations working together to achieve better education, housing, health, and social outcomes for families, in which both Government and non-governmental and community organisations will participate; if not, why not?

Hon. Paula Bennett: Yes

Hon. Annette King: Is she aware that the description I have just given is that of the Strengthening Families programme, which has existed for 6 years, has been evaluated, and is operating effectively? Why are we going through the pretence of saying to New Zealanders that the Government has a new programme for vulnerable families, and wasting time and money pulling the wool over their eyes? (Reporting Services (HoR), 2010).

By accusing the Hon. Paula Bennett of introducing a new programme bereft of substantial differences to the Strengthening Families programme, the Hon. Annette King’s questions lead the Hon. Paula Bennett towards an answer that references the differences between the Strengthening Families and Whānau Ora initiatives. The most obvious difference between both initiatives is (as hinted at by the earlier Professor James Anaya’s explanation of Whānau Ora) that Whānau Ora represents a partnership between Māori and the New Zealand Government.
To explain Whānau Ora to parliament in similar terms, however, is something that the Hon. Paula Bennett simply refused to do despite the leading of the Hon. Annette King’s questions. She responds to the Hon. Annette King instead by simply leaping into an attack of the former Labour Government’s short-lived Treaty invoking ‘Closing the Gaps’ programme prompting the Speaker of the House [the Hon. Lockwood Smith] to interrupt her:

I heard the member ask a question, but I am not hearing much of an answer relating to the question, at all... Some attempt to answer that question would be helpful, rather than a launch into the Opposition (Reporting Services (HoR), 2010).

Despite this censure, the Hon. Paula Bennett further refused to distinguish between the two programmes other than to distance the Government from Whānau Ora by contending that the programme represented a “grassroots” Māori development as opposed to the Government-sponsored enterprise that the report of the Special Rapporteur shows it to be. Later attempts to bring Bennett back to point were unsuccessful and the topic of debate moved to funding questions (Reporting Services (HoR), 2010).

What can be made of the information provided thus far? A summary makes for conflicting reading. New Zealand is rated as an ‘important example’ on the world stage with respect to its efforts to address indigenous historical and on-going grievances - though the on-going nature of Māori socioeconomic disadvantage has remained. The United Nations’ Special Rapporteur validates Whānau Ora as a means to address Māori socioeconomic disadvantage, yet the Government minister responsible for Social Development, the Hon. Paula Bennett, appears reluctant to reference the Treaty of Waitangi-based partnership between Māori and the State that forms the central point of difference of Whānau Ora from the Strengthening Families programme.

This thesis will argue, as hinted in the example shown above, that New Zealand’s bicultural project is marked by conflicting forces. In particular, it has been marked historically by paradox and contestation. The paradox shows Māori to be
both enfranchised culturally by the inclusion of references to the Treaty of Waitangi and Māori-specific clauses in legislation, and disenfranchised economically by successive governmental adherence to neoliberal economic policies. The contestation is seen in the majority Pākehā public’s resistance to the practices of hard biculturalism such as is found in the call for separate institutional space for Māori.

The central question of this thesis is: does Whānau Ora represent a mitigation of the difficulties found in the bicultural paradox and the Pākehā contestation? In order to address this question, this thesis concentrates on the policy recommendations of the Whānau Ora Report and the work of four theorists: Kymlicka, Parekh, Barry and Young.

The Report of the Taskforce on Whānau Centred Initiatives (Whānau Ora Report) as presented to the Government in April 2010 is taken by this thesis to represent the policy aspirations of the proposed Whānau Ora programme. The Whānau Ora Report, in most cases, will represent the final data gathering point of this thesis (leaving the implementation of the Whānau Ora programme outside the analysis).

In reflecting on my personal motivations for choosing this subject matter for my thesis topic, my biography holds some clues to my personal motivations: At the age of thirteen, I moved with my family from the island nation of Fiji to the compact and predominantly Pakeha city of Nelson New Zealand in the mid-to late eighties. I had left a country that lived something like biculturalism in everyday life to one that, though newly bicultural, now appears to me in retrospect to have been thoroughly monocultural in practice. My former life was lived in a ‘bicultural’ context as found in the heterogenic twin cultures of the indigenous Fijian and Indo-Fijian way of everyday life. Whereas I had previously experienced life as a colourful contrast of ethnically based styles of food, dress, religion, architecture, custom, mythologies, media and even gardening styles, my new world felt to me to be as engagingly diverse as that great staple of many
New Zealand evening meals – the mashed potato. Living in the New Zealand ‘biculural society’, in my personal experience, has fallen far short of the implicit claim of two visible cultures living side by side. Moreover, if indeed one of the earlier ideals of biculturalism was to furnish all New Zealanders with rudimentary understandings and practices of Māori culture so all could “stand comfortably in both cultures” (Smith, 1997, p. 386), biculturalism has been sadly lacking in my lived experience.

It would appear that social scientists share a wish to make sense of the world around them given their corporate preoccupation with on-going attempts to explain the social world. Sociologist Evan Poata-Smith (2008) confirmed as much on a personal level during his presentation at the annual Sociological Association of Aotearoa New Zealand conference held in Otago University in December 2008, when he noted that the ability of sociology to enable his desire to ‘question’ the world around him is what drew him to social science as a career choice. Social Anthropologist Jeffery Sissons has extended this need to explain the social world into a professional sphere when he contends that in the context of the sometimes ‘ultimate’ authority that bicultural discourse can attain,

The role of social science in New Zealand should be to explain and expose these developments rather than to participate in them (2005, p. 28).

By this I take that, within the discipline of social science, biculturalism is a framework within which social phenomena are conceptualised and performed. As one framework amongst many, it cannot claim to possess an unimpeachable moral value, but must rather, like every other framework, defend its position by showing theoretical coherence, credible responses to competing theories, and an ability to accurately predict stated outcomes. In the above vein this thesis seeks to share the task to which many before have resolved themselves – to uncover or explain, by way of comparative theoretical analysis, something of the social meaning of biculturalism as practiced in New Zealand. The following chapter will
begin this exercise by examining the New Zealand bicultural context in which the Whānau Ora Report is situated.

Chapter 2, Bicultural Contradictions defines the continuum of biculturalism and charts the path of biculturalism in New Zealand in four, often contradictory, spheres. When taken together, these four spheres explain the bicultural paradox and Pākehā contestation of the practices of hard biculturalism. The first sphere follows the Treaty of Waitangi-inspired aspirational theories of biculturalism and their ideals of Māori gaining institutional inclusion within a predominantly Pākehā societal context. Bicultural thinking divides New Zealand society into the cultural categories of Māori and Pākehā (or Māori and non-Māori) – an extension of the Māori and Crown division found at the signing of the Treaty of Waitangi. This division is underlined by the Pākehā preference for ‘soft’ bicultural ideals of inclusion which invite Māori into existing institutional frameworks, and Māori preference for ‘hard’ biculturalism and its call for Māori to gain separate institutional space from Pākehā. Wright’s bicultural continuum (2006) is introduced as a framework for defining hard and soft biculturalism. The second sphere of legislative and policy arenas traces the inclusion of the Treaty of Waitangi and Māori specific references into the New Zealand constitutional framework with special note given to the unprecedented institutional advantages Māori have gained from this process. The third sphere outlines the bicultural paradox as found in the governmental shift towards neoliberal economic practices that occurred concurrently with Māori gaining increased institutional regard. These two shifts have resulted in Māori gaining legislative empowerment alongside economic disenfranchisement. The fourth sphere, the political arena and the related area of public opinion, examines the rapid political abandonment of biculturalism as a nation-building project due to an uncontested Pākehā contestation of the practices of hard biculturalism. When taken together, New Zealand’s bicultural context can be seen as contradictory: as Māori have been legislatively enfranchised by references to the Treaty of Waitangi and Māori-specific references in legislation, neoliberal economic structures have undermined
the economic lives of Māori. Furthermore, the practices of hard biculturalism have been constricted by Pākehā preferences for soft biculturalism.

Chapter 3, Four Theoretical Perspectives leaves the shores of Aotearoa, and in doing so, examines four international authors who argue from differing perspectives what might be the best way to conceptualise and mediate ethnic difference within the bounds of a Western nation. The authors and their theoretical leanings are as follows: Kymlicka’s liberalism - augmented with group-specific rights - constructs indigenous identity within a historical/institutional framework allowing a conceptual link between the return of indigenous institutional self-determination (facilitating the societal practice of indigenous culture) and the mitigation of the social harm caused by the previous supplanting of indigenous institutional practices. Parekh’s concentration on cultural legitimacy builds a framework of identity and wellbeing that is linked deeply to culture allowing the ‘alienation’ of individuals from their culture to be viewed as individually destructive (whether they are indigenous or non-indigenous persons). Barry’s class-based defence of egalitarian liberalism theorises that ethnic or cultural identity are best reserved to the private sphere – leaving the public sphere free to concentrate on the ‘key’ driver of unequal socioeconomic outcomes: the uneven spread of society’s resources. Young’s deeply pluralistic ‘engaged democracy’ argues for the return of the decision-making functions of democracy to ‘all who are affected’ by a given issue in order to rid politics of its ‘authoritarian’ practices and allow communities themselves to decide the makeup of society. The theoretical frameworks of the above authors are extended, in Chapter 5, to the policy recommendations of the Whānau Ora Report.

Chapter 4, The Whānau Ora and Strengthening Families compares the structurally similar Strengthening Families programme to the policy recommendations of the Whānau Ora Report in order to place the policy recommendations of the Whānau Ora Report on Wright’s bicultural continuum. While the policy recommendations of the Whānau Ora Report call for a programme that shares many points of similarity to the Strengthening Families
programme such as advocating a multi-sectoral approach (the facilitated use of many Government departments and community organisations), it is the differences found in the Whānau Ora that are of most concern here. Chief amongst these are the Whānau Ora Report’s expectation of practices that conform to the hard end of Wright’s bicultural continuum. In particular, when the Whānau Ora Report advocates that the Whānau Ora programme should operate singularly within Māori cultural practices and worldviews, it builds an idea of a separate Māori institutional space – a key distinction of hard biculturalism.

Chapter 5, Theorising Whānau Ora uses the frameworks of the four authors outlined in Chapter 2 to analyse the hard bicultural policy recommendations of the Whānau Ora Report. Conceptually, the chapter is split into two sections. The first section discusses the theories of Kymlicka and explains the origins of the hard bicultural logic found in the Whānau Ora Report. Kymlicka’s historical/institutional framework, when extended into this context, explains the way the Whānau Ora Report’s use of the Treaty of Waitangi allows the Whānau Ora Report’s authors to make plain the historical and on-going colonial power relationship between Māori and the New Zealand State and propose a solution founded on the return to Māori of a degree of self-management. The Whānau Ora Report’s support of hard bicultural practices can then be seen as the return of what was appropriated by the dominant Pākehā regime – the institutional practice of culture. The Whānau Ora Report’s linking of whānau access to Māori culture and wellbeing can be viewed within this historical framework. In creating a Māori space within State structures, however, the Whānau Ora Report implicitly enters into a junior partnership with the Crown, which places the policy recommendations of the Whānau Ora Report within the national economic and government social service context in which the State has ultimate jurisdiction. The second section extends the logic of the remaining three authors and explains the limits of the Whānau Ora Report as operating within the context just referenced. Parekh’s framework, which ignores historical contexts in preference for a multicultural focus on cultural legitimacy, uncovers the way in
which access to culture can appear important for individuals regardless of historical precedents. This can be seen to show the in-built tensions of using bicultural practices in a notional setting where multiple cultures are present. This tension is located in the differing justifications to those found in the Whānau Ora Report and multicultural theories (such as those of Parekh) of the link between access to culture and wellbeing. In such a framework that emphasises cultural legitimacy ‘first and foremost’, Māori recourse to the Treaty of Waitangi can appear as ‘special treatment’ over other ‘equally legitimate’ cultures. Extending the class-based logic of Barry onto the context of the Whānau Ora Report unpacks the limits of such policy to counter the detrimental effects of current neoliberal economic policies outlined in chapter 2 - of which Māori bear a disproportionate burden. Likewise, extending the democratic focus of the theories of Young on to the context of the Whānau Ora Report’s policy recommendations highlights the way in which hard bicultural practices, such as are advocated by the Whānau Ora Report, do not encourage the support of Pākehā New Zealanders – support which is necessary to influence democratic governance. Using this framework in this way suggests that the ‘funding neutral’ fiscal limits placed on Whānau Ora can be explained by the Pākehā public’s lack of support for hard bicultural initiatives. These limits of Whānau Ora suggests that it provides neither a mechanism with which to negate the negative impacts of neoliberal economic policies, nor an instrument with which the democratic support of Pākehā New Zealanders may be encouraged.

Chapter 6, Discussion briefly recalls the key points raised in this thesis by returning to the central question of the thesis, namely: do the policy recommendations of the Whānau Ora Report represent a mitigation of the detrimental effects of the bicultural paradox and Pākehā contestation? The analysis in this thesis suggests that the Whānau Ora Report represents little challenge to the conflicting nature of past bicultural environments. In particular, the use of Barry’s frameworks show the Whānau Ora Report is unlikely to challenge the detrimental effects of neoliberal governance, while this policy framework does not appear, when wielding the logic of Young, to show sufficient
social solidarity needed to encourage more equal socioeconomic outcomes for Māori.

These theorists are important because, when taken together, they demonstrate that the current environment (as represented by Whānau Ora) neither represents a challenge to the detrimental effects of neoliberal governance, nor does it possess the means to encourage the social solidarity necessary to gain more equal socioeconomic outcomes for Māori. To put this another way, the policy recommendations of the Whānau Ora Report do not appear to provide a meaningful challenge to the detrimental effects of the bicultural paradox or the Pākehā contestation.
2. Bicultural Contradictions

New Zealand's bicultural project as outlined in this chapter has not operated in isolation from other spheres of the national context but is contradicted by both the effects of a central paradox and a Pākehā political contestation. A bicultural paradox shows Māori to be at once enfranchised by the inclusion of references to the Treaty of Waitangi and Māori-specific clauses into legislation, and simultaneously disenfranchised economically by successive Governments' adherence to neoliberal economic policies. The Pākehā contestation symbolises Pākehā resistance to 'hard' bicultural practices that encourage the allocation of institutional space specific to Māori.

In an effort to explain and outline the above contentions, this chapter is divided into four sections: 1) bicultural theory and its promotion of increased Māori inclusion; and, 2) bicultural practice as mandated by the insertion of the principles of the Treaty or Māori-specific references into New Zealand's legislative framework; 3) the bicultural paradox as represented by neoliberal economic policies operating concurrently with bicultural practices; 4) the Pākehā contestation of hard bicultural practices.

To begin, however, I shall explain what I take to be the meaning of biculturalism and its dual categories of Māori and Pākehā.

Biculturalism is considered here to refer to an idealisation of a New Zealand divided into the cultures represented by Māori (indigenous New Zealanders) and Pākehā (non-Māori New Zealanders who are alternatively called Tauiwi) and is concerned primarily with the accommodation of Māori within the majority Pākehā context. The symbolic beginning point of biculturalism is the 1840 signing of the Treaty of Waitangi between the Crown and Māori. Biculturalism can be considered distinct from multiculturalism as biculturalism is “consistent with the rights of indigenous people” (Thomas & Nikora, 1996, p. 4) who have suffered the effects of colonisation (Johnson, 2003, p. 11), while multiculturalism
is concerned with limiting prejudice felt at institutional and individual levels by
immigrant communities (Fleras & Spoonley, 1999, p. 248). The focus of
biculturalism on the overt place of culture within a national or institutional
context, furthermore, finds biculturalism at odds with assimilation ideals of
nationhood that emphasise the need for ‘race’ to be “submerged within a single

This chapter constricts itself to ideas of biculturalism within the New Zealand
context. Every theorist cited in this chapter, therefore, is concerned with
biculturalism as it is involves or impacts on New Zealand.

In outlining the theory and contextual practice of biculturalism, I take as given
the two categories of Māori and Pākehā. There are two reasons for this: firstly,
this is how the large majority of the theorists cited in this chapter use the
categories of Māori and Pākehā as forming the conceptual basis of biculturalism.
Secondly, since it is the purpose of this chapter to outline biculturalism as it is
theorised and practiced in the New Zealand context, a problematisation of the
categories of Māori and Pākehā is left to the analysis chapter of this thesis, as
found in an extension of the theoretical frameworks of the democratic theories of
Young found in Chapter 5.

Additionally, regarding the use of the term Pākehā, there appears over time to
have been a shift in use away from the term Pākehā (generally - though not
exclusively - considered to referred to New Zealanders of European descent) to
the more inclusive terms (which allow for the increasingly multicultural makeup
of New Zealanders) of non-Māori and Tauiwi. No distinction is made here
between these three terms, as the ramifications of these potential conceptual
differences do not appear to be explored in a substantial way by the authors cited
in this chapter in forms that alter the idealisation of the position of Māori within
the bicultural paradigm. For the sake of consistency then, the term Pākehā is
used in this thesis unless the terms non-Māori and Tauiwi are used in direct
quotes.
Bicultural Theory

The birth of bicultural thought in New Zealand can be considered to have arisen out of a New Zealand adaptation of the world-wide trend on the part of indigenous populations to reject the notions implicit in assimilation policies that assume indigenous peoples must abandon their culture and identity (Meijl, 2006a, p. 66). R. J. Walker placed this trend as the current iteration of Māori assertion of mana Māori motuhake (Māori sovereignty) – a pattern of resistance to Pākehā dominance that emerged as early as three years after the signing of the Treaty of Waitangi (1984, p. 269). R. J. Walker underlines the evolving and on-going nature of Māori protest by tracing the Māori resistance to majority Pākehā politics. This protest activity has manifested over time in such diverse actions as armed conflict, pacifist movements, petitions to the Queen of England, direct engagement in politics, the formation of civil Māori groups designed to pressure government, class-based action, and land marches and occupations (R. J. Walker, 1984). In this context, bicultural thought can be considered a latter iteration of a long held Māori struggle.

The central point of biculturalism in New Zealand is the Treaty of Waitangi (Sibley & Liu, 2004, p. 94). While strictly speaking, the Treaty of Waitangi forms a partnership between the British Crown and Māori (M. Durie, 2002, p. 175; Hayward, 1997, p. 477), implicit in bicultural thinking is a view of the Crown as representing more than simply an acultural bureaucracy, but rather, an extension of Pākehā culture. This contention is shown in the following quote.

Since British colonization of New Zealand, Pakeha have become dominant in most nationally-organized institutions (Thomas & Nikora, 1996, p. 1).

O'Sullivan underlines this view when he calls the New Zealand State “culturally exclusive” (2007, p. 15). Barrett and Connolly-Stone add to this idea of the Crown/Māori relationship conforming to an association defined by two differing cultures when they cite the Crown and Māori as Treaty partners (1998, p. 6), and
also locate this partnership as being defined by differing cultures as shown below.

The Treaty established a partnership [between the Crown and Māori], and the Treaty partners are under a duty to act reasonably and in good faith with one another. The needs of both cultures must be respected, and compromises may be needed in some cases (Barrett & Connolly-Stone, 1998, p. 6).

Wright, likewise, explicitly outlines the Māori/Pākehā cultural duality of the biculturalism when he states:

...most Māori and liberal Pākehā commentators hold on to this as basic: namely that the Treaty is primarily concerned about the partnership between two sovereign peoples, the Pākehā and Māori (Wright, 2006, p. 528).

Viewed through this bicultural lens, the Treaty of Waitangi captures the principle of ‘two people sharing one land’ – a concept that by the mid-1980s had entered the vocabulary of mainstream New Zealand (Sissons, 1995, p. 61). Such bicultural logic legitimises the place of Pākehā in New Zealand as the uptake of the Māori word for non-Māori (Pākehā) is in itself a link to Māori claims to be the original inhabitants of Aotearoa (Collingwood-Whittick, 2007, p. 159). Spoonley adds to this argument by contending that the Pākehā identity is constructed on the difference to, and in interaction with, Māori (1993, p. 60). In this logical framework, settler colonisation can be seen for what it always has been – an ethnic movement (Pearson, 1990, p. 35). Biculturalism, then, furnishes Pākehā with a link to the belonging of the indigenous Māori – away from Europe in terms of identity (Spooneley, 1995, p. 55) - and therefore having the potential to fulfil something of what Sissons calls the “great unfinished project of post-settler nationhood to convert illegitimate possession into legitimate belonging” (2004, p. 19).

A further conceptual benefit of the above legitimacy through affiliation with Māori is that it makes plain what has historically been invisible – Pākehā
hegemony (Bell, 1996, p. 153). Ritchie cites MacNoughton (1995) to explain the pervasive nature of the Pākehā ‘system’.

Pākehā individuals and groups are able to exercise power because their discourses have become institutionalised as normal, right, and desirable thus privileging these people and silencing and marginalising alternative discourses such as those of Māori (MacNoughton, cited in: Ritchie, 2008, p. 2).

In this vein of logic Meijl has noted that bicultural thought unmasks the disparities between Māori and Pākehā in ways that can be reduced to a clash of cultures (2006b, p. 918).

This cultured view of society allows the measurable differences in socioeconomic outcomes between Māori and Pākehā to reveal institutional racism in the following logical pathway: biculturalism assumes the equal standing of both cultures (Spoonley, 1993, p. 94) which is to be expressed as a coexistence (as opposed to an amalgamation of both as in assimilation) (Riad, 2009, p. 173). The differences that exist, therefore, in socioeconomic well-being between Māori and Pākehā are attributed to the effect of institutional racism (Spoonley, 1993, p. 69). What theories of biculturalism contend, then, is that cultural clashes form the fundamental cause of Māori socioeconomic inequalities (Poata-Smith, 2001, p. 276).

The onus thus moves onto the givers of opportunity in society - its institutions such as educational structures (Ritchie, 2008, p. 3), the public service (Eagle, 2000, p. 1), policing and the justice system (see: Jackson, 1987), government social services (M. Durie, 2003, p. 48) and legislative frameworks (New Zealand, 1988, p. 188) - to give equal regard to both cultures. As stated thus far, bicultural logic notes the historical problem of Māori culture lacking legitimacy in the Crown’s ‘Pākehā’ institutional settings giving Pākehā an unfair advantage in the ability to gain societal resources. The framework of biculturalism leads logically to an argument for the increase of Māori cultural space in societal institutions. It
is this next step (allocating the most appropriate means to include Māori), that sharpens the differences in bicultural ideals (Humpage, 2004, pp. 25–26).

Underlining this lack of agreement is the use of what might be considered the most commonly cited definition of biculturalism found in the work of Mason Durie which is itself based on multiple ‘workable’ biculturalisms (1995, p. 35). In this vein Wright’s ‘bicural continuum’ (an expansion of Mason Durie’s ‘three workable biculturalisms’ with added insights from the work of Fleras and Spoonley (1999), Smith (1997), Smith, Smith and McNaughton (1999), and Cunningham (1999)) is used here to illustrate the diverse meanings of inclusion in bicultural theory (See Table 1, page 17).

While examinations of biculturalism can take an interest in either the individual, institutional or national level (Thomas & Nikora, 1996, p. 11), the focus of Wright’s bicultural continuum is on the institutional level of biculturalism (Wright, 2006, p. 529).

Following across Table 1 from left to right (ignoring the ‘Denial’ model as it was inserted for comparison purposes) Wright’s bicultural continuum begins at the ‘soft’ end of bicultural practice and ends at the ‘hard’ separation model. Following Table 1 down, Wright examines the meaning of each model of biculturalism, as represented by the goals, structures, policy outcomes, and the given meaning of the Treaty of Waitangi found in each model.

The meaning, therefore, of ‘soft’ biculturalism is found in its goals, structures, policy outcomes and interpretation of the meaning of the Treaty of Waitangi. In this case, the intent of soft biculturalism is to celebrate Māori culture in the mainstream culture of an institution, remove discriminatory barriers to Māori involvement, invite Māori into the colonial framework and thus maintain assimilation. Wright makes it clear when using the phrase ‘maintain assimilation’ that the soft option is less preferable (as he also does with the ‘moderate; cultural model’ when he views this model as honouring the ‘paternalistic’ parts of the Treaty of Waitangi).
Table 1, Wright’s Bicultural Continuum (2006, pp. 530–531).

<table>
<thead>
<tr>
<th>Models</th>
<th>Denial</th>
<th>‘Soft’</th>
<th>Moderate; Cultural Model</th>
<th>Inclusive; Structural Model</th>
<th>Strong Diversity Model</th>
<th>‘Hard’; Separation Model</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Goals</strong></td>
<td>Conformity to Pākehā culture, denying place of Māori culture</td>
<td>Celebrating Māori culture, language and tradition within society</td>
<td>Improving race relations</td>
<td>Partnership within institutions</td>
<td>Separate but equal</td>
<td>Māori self-determination, tino rangatiratanga; the system; centres of resistance</td>
</tr>
<tr>
<td><strong>Structures</strong></td>
<td>Status quo; Western and ‘colonial’</td>
<td>Removal of discriminatory barriers and prejudice</td>
<td>A Māori perspective into the culture of an institution</td>
<td>Active Māori involvement within the central mission of an institution</td>
<td>Parallel institutions both committed to the same overall aims</td>
<td>Māori models of self-determination</td>
</tr>
<tr>
<td><strong>Policy outcomes</strong></td>
<td>Retaining status quo; absorption acculturation</td>
<td>Incorporating Māori; maintaining assimilation</td>
<td>Accommodation; integration</td>
<td>Responsiveness to the other; inclusivity; partnership</td>
<td>Devolution of power, resources, and outcomes; self-management; parallelism</td>
<td>Self-determination</td>
</tr>
<tr>
<td><strong>Treaty of Waitangi</strong></td>
<td>Historical; nullity or fraud irrelevant</td>
<td>Māori invited into colonial framework</td>
<td>Paternalistic parts to be honoured</td>
<td>Partnership, as one people adaptable</td>
<td>Partnership, but parallel; principles</td>
<td>Essential for restorative justice; but indigenous rights way forward; spirit</td>
</tr>
</tbody>
</table>
The intended outcome of Wright’s ‘strong diversity model’ is for Māori to enjoy separate but equal institutions to Pākehā, which operate in parallel and represent (to Māori) self-management in alignment with the principles of the Treaty of Waitangi which is interpreted in a policy sphere as allowing a devolution of power, resources and outcomes to Māori.

Perhaps the most notable feature of the bicultural continuum, moving across the continuum, is its particular meaning of the inclusion of Māori culture and perspectives into an organisation or institution, or more precisely, how this meaning of inclusion changes along the continuum. It begins with an idea of inclusion focused on the insertion of Māori perspectives and culture into the mainstream practice of an organisation or institution, only to diverge at the ‘Strong Diversity Model’ into a framing of inclusion that insists on a separation from the Pākehā mainstream into parallel Māori institutions that are committed to the same overall aims. The ‘Hard Separation Model’ pushes this frame of inclusion a step further when it concentrates on Māori models of self-determination at the expense of any reference to Pākehā institutions or worldviews. The continuum begins, in other words, with an ideal of inclusion where Māori are invited into the mainstream, and diverges at the ‘Strong Diversity Model’ into an ideal of inclusion whereby Māori are given separate institutional space and are thus included into the institution of societies through the mechanism of cultural separation.

A theoretical example of the differing ideals of inclusion (when extending the ideas found in Wright’s bicultural continuum) onto an educational institution such as a State sponsored primary school might look like the following:

In the soft end of the bicultural continuum, Māori culture and language is celebrated within the current class environment, mandatory training is introduced for Pākehā teachers in Māori cultural competency, bilingual wording will complement the school signage, and Māori will be invited to participate in
governance structures such as the school board (though as participants and not equal partners).

At the hard end of the bicultural continuum (assumed here to refer to both the strong diversity and ‘hard’ separation models), Pākehā and Māori schools are separate institutional entities without structural or philosophical ties. Māori have full self-determination over their schools – they are run ‘by Māori, for Māori’. The operation of the Maori schools would take into account Māori cultural values, processes and protocols. The Pākehā schools would presumably continue as before.

Most important to this thesis is the particular meanings of institutional inclusion found in the above example. While both of the hard and soft scenarios above represent the inclusion of Māori culture into an institutional context, soft biculturalism places Māori culture into the pre-existing framework, while hard biculturalism creates a new institutional framework as a way of including Māori.

In this light, this thesis will take hard biculturalism to refer to an aspiration to attain separate institutional space for Māori as underlined by the expression of values such as Māori self-management, the Treaty partnership or principles and Māori models of self-determination. Likewise, soft biculturalism is taken here to mean the inclusion of Māori into dominant institutional frameworks without reference to a Treaty relationship and its implicit call for separate Māori self-determination.

It is instructive that the above primary school example of hard and soft biculturalism did not include the ‘middle’ models of Wright’s bicultural continuum because, as shown below, Māori and Pākehā have historically tended to affiliate at differing ends of the continuum. The reason for this can be found, according to an extension of Pearson’s observations, in the historical tendency of both Māori and the Crown to possess an ethnocentric belief in their own right to dominate (1990, p. 72). Māori appear to gravitate to the hard ends of the bicultural continuum, while Pākehā tend to favour the soft end (Humpage, 2004, pp. 25–26).
Mason Durie finds Pākehā are ‘challenged’ by the recognition of Māori nationalism as it undermines belief in ‘one New Zealand’. They prefer, he contends, recognition of ethnicity, but not the reality of shared power or decision-making that Māori self-determination would entail (1998, p. 232). Mainstream New Zealand, in other words, is more comfortable with the soft end of the continuum (Humpage, 2004, p. 26). Sibley and Liu confirmed this tendency when they found that Pākehā tend to favour biculturalism in principle, but resist ideas of biculturalism that call for resources to be assigned specifically for Māori (Sibley & Liu, 2004, p. 94). Sissons, likewise, worried in 1995 that the more expressive cultural elements of Māori life have been more easily incorporated into mainstream life at the expense of the more difficult need for increased political and economic inclusion for Māori (1995, p. 71) – a tendency that in itself conforms to the soft bicultural end.

The Treaty, according to Mason Durie, has: “always meant more to Māori” (1995, p. 33). It holds, furthermore, a key component to indigenous identity in New Zealand - an identity that Durie later contends “hinges on the Treaty” (2003, p. 204). Given that the Treaty is viewed as a document that provides both the case for, and expectation of, self-determination (Toki, 2011, p. 284), the Māori demand for greater self-determination in the context of social policy (Barrett & Connolly-Stone, 1998, p. 14) is hardly surprising. Māori, then, have tended to consider the increases in bicultural legislation as moves towards greater autonomy from the State. Indeed, the later moves towards the practice of biculturalism were interpreted by Māori as an opportunity for greater autonomy, the opportunity to bring about the revitalisation of Māori culture and a more direct role in Māori service delivery (M. Durie, 2003, p. 1). Conformation of this widespread Māori view can be found in the practice of the New Zealand government promoting its economic programme of devolution to Māori as ‘something akin to rangatiratanga’ (Māori self-determination) (D. Henare, 1995, p. 50).

A split has emerged then between Māori and Pākehā meanings and goals of bicultural inclusion. Māori tend to favour the hard end of inclusion that encourages separate Māori-controlled institutional structures; Pākehā tend to
prefer the soft end of inclusion that aims for increased Māori participation and representation without the need for the practice of power sharing (Humpage, 2004: 25). The ramifications of this split in the perceptions of what biculturalism means or should be between the Māori and Pākehā public will be examined in a later section of this chapter concerned with the effect of public perception on politics.

Despite ideals of biculturalism reaching the vocabulary of mainstream New Zealanders (Sissons, 1995, p. 61), theories of biculturalism have not been without their critics.

Bicultural ideals of difference are questioned as they are believed to have the capacity of being either ‘democratic, just and participatory or it may be exclusionary or even unjust’ (Turner, 1995, p. 79). Pearson underlined this fear when he noted the historical tendency of states to use the means of inclusion and exclusion as a means to control the population (1990, p. 35). Bartley and Spoonley question the extent that biculturalism has yet to be extended to include the presence of significant numbers of immigrant communities (2004, p. 138) - a condition that Pearson contends leaves “in-built” tensions within New Zealand’s “different historical and current ethnic and civic representations” (2000, p. 91). In addition, the strict use of the categories of Māori and Pākehā is thought to leave no place for a third voice such as that of the largely individualised urban Māori (Sissons, 1993, p. 19). Taking things a step further, the bicultural notions of what constitute Māori, is theorised to be undone somewhat by the increasingly hyphenated Māori-Pākehā, Pākehā-Māori identities that people move in and slip in and out of (Turner, 1995, p. 81).

Biculturalism, furthermore, is believed by some to encourage the effect of dichotomising Māori and Pākehā thus encouraging a polarising perception of how each is viewed. Pākehā can be considered from a Māori perspective as “lacking passion and spontaneity; the Pākehā approach to things are cold and rational...Pākehā is out of step with nature – it pollutes the environment and
lacks a close tie with the land; Māori culture is represented as an ideal counterbalance to these Pākehā failings” (Hanson, 1989, p. 894). It is contended, moreover, that notions of culture wielded in resistance to State policies and actions have the effect of what Sissons calls a ‘reactive objectification of culture’ (1993, p. 99). Rata goes as far as contending that biculturalism itself is a “self-serving ideology of an emergent pre-colonial elite” (2005, p. 4). Tremewan adds to this critique when he singles out institutionally powerful Māori whom he argues bully Pākehā in the educational settings with what he calls “cultural fundamentalism” (2005, p. 4). Pearson finds that biculturalism gives little weight to either class or power effects (1990, p. 239). O’Sullivan criticises the power differentials between the Crown and Māori, contending that the outworking of biculturalism is “inherently colonial. It positions Māori in junior ‘partnership’ with the Crown...” (2007, p. 3).

Bicultural theory constitutes a framework that has reached into the discursive worlds of ‘mainstream’ New Zealanders. Its framing of identity is set around an extension of the Crown/Māori relationship formed at the Treaty of Waitangi – Māori and Pākehā. Biculturalism as constructed in Wright’s bicultural continuum represents a theoretical framework intended to legitimise Māori and Māori culture in institutional settings. Where bicultural ideals tend to diverge is around the unresolved tension between the continuums of bicultural inclusion. Each differing position on the bicultural continuum can be explained by a specific meaning that each attribute to the Treaty of Waitangi and the resultant implications for the meaning of inclusion of Māori into New Zealand’s institutions. While theories of bicultural inclusion can take diverse forms, the advocates of the differing points along the continuum are not random, but polarised: Māori have tended to pull to the hard end of the continuum and Pākehā to the soft.

**Bicultural Legislation**
For all the national prominence that biculturalism theory had attained by the mid-1980s, it was the changes in the national legislative framework that have moved New Zealand from what Bartley and Spoonley call an undifferentiated citizenship model to a bicultural one (2004, p. 138).

The influence of the fourth Labour government (1984-1990) is most significant in this context as it represents a sharp break with the past (Spoonley & Pearson, 2004, p. 28) due to its unprecedented support for Treaty-based legislation and bicultural ideologies of policy practice (Hill, 2009, p. 237). It was the fourth Labour government, moreover, that penned or had significant input into every single piece of legislation examined in this chapter section.

Bicultural legislation is considered here to be Acts of Parliament that either reference the Treaty of Waitangi or specifically advocate for the needs of Māori.

This section shows six examples of such legislation: the Treaty of Waitangi Act (1975) and the Treaty of Waitangi Amendment Act (1985); the State Owned Enterprises Act (1986); the State Sector Act (1988); the Māori Language Act (1987); and the Education Act (1989).

Before examining the five biculturalism legislations, however, a short explanation of the ‘principles of the Treaty’ is warranted.

An essential issue with a direct application of the Treaty of Waitangi is that there are “serious discrepancies” between the Māori and English versions of the Treaty itself (R. Walker, 1989, p. 263). These discrepancies are found in the choices of words to translate crucial terms in the Treaty versions that are,

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2 Appendix II contains a list of the three governments, their respective Prime Ministers, and their time-lines referenced in this chapter.

3 In addition to this section, further information including sections of the six legislations are found in appendix III.
... not equivalent, either because they mean something else, or because the Māori words are more general and less precisely defined than the English” (Biggs, 1989, p. 310).

The preference for the use of the principles of the Treaty of Waitangi instead of the Treaty itself in legislation, therefore, allowed a move away from the strict word-for-word interpretation of the Treaty of Waitangi in preference for an understanding of the ‘spirit’ or ‘intent’ of the Treaty found in the Māori and English versions (Wright, 2006, p. 528). In doing so, this shift gained two advantages: it allowed a reconciliation of meaning between the otherwise incompatible English and Māori versions, and provided a more flexible legal framework with which to consider Treaty related concerns and obligations (Kingi, 2007, p. 9).

Currently, within New Zealand’s legislative framework, the Treaty of Waitangi creates no rights ‘in and of’ itself that can be enforceable by law (Hayward, 2010, p. 108). The Treaty is therefore legally relevant only to the extent to which its principles are incorporated into legislation (Toki, 2011, p. 277). Barrett and Connolly-Stone show this contextual specificity when they note instances when the Treaty principles are not inserted into legislation, thus removing the influence of the Treaty of Waitangi within the scope of such legislation (1998, p. 8).

Practically speaking, then, the principles define the meaning of the Treaty (Duncan, 2007, p. 43) – by reconciling the Māori and English versions (Kingi, 2007, p. 9) - and give the Treaty of Waitangi validity in a legal setting (Hayward, 2010, p. 108). The two key settings where the Treaty principles are defined are the courts and within the reports of the Waitangi Tribunal (Hayward, 2010). Both these settings will be covered in the examples of the Treaty of Waitangi Act and State Owned Enterprises Act to follow.

*The Treaty of Waitangi Act 1975* established the Waitangi Tribunal and empowered it to investigate Māori claims against Crown actions that were, or

While the Waitangi Tribunal’s decisions are non-binding (Berke, Ericksen, Crawford, & Dixon, 2002, p. 132), its capacity to contest government action came from its ability to:

...publish reports on any claim, by any Māori, that Government actions (or inactions) were contrary to the principles of the Treaty of Waitangi (Te Ata & Muldoon, 2006, p. 214).

The subsequent moral weight of these reports allowed a movement in public and political perception, according to Durie, from the idea of restitution for historical injustices emerging simply from State generosity, into one based on an historical obligation (M. Durie, 2003, p. 2). This changed the focus, furthermore, of much Māori protest activity, as Kelsey contends, from “the streets to the doors of the Waitangi Tribunal and courts” (1996, p. 183).

Within the reports of the Waitangi Tribunal the meaning of the principles of the Treaty of Waitangi (as relates to the Tribunal’s jurisdiction) are defined. Hayward, in her appendix to the Waitangi Tribunal report the *Rangahaua Whanui National Overview Report*, listed the more than twenty Treaty principles defined by the Tribunal. A smaller number are listed here as an introduction. The principle of partnership must be exercised with the utmost good faith; the Crown has an obligation to protect Māori Treaty rights; the needs of Māori and the wider community must be met (requiring compromise on both sides); the principle courtesy of early consultation; and the tribal right of self-development (Hayward, 1997). In such a capacity, the Tribunal had steadily worked through claims against the Crown, which by the 1990s, had led to the Tribunal
recommending the funding of ‘substantial settlements’ to Māori (Harris, 2004, p. 130).

Māori corporates have subsequently wielded the pay-outs of such Treaty settlements into large scale business enterprises that form an increasing share of New Zealand's gross national product. Walton traces this trend in his report to Te Puni Kōkiri (the Ministry for Māori Development) finding that the value of Māori business more than doubled between 1996 and 2003 (2007, p. 5). A later 2010 report to Te Puni Kōkiri confirmed this increase in the years following 2003 and estimated the total economic asset base of Māori (this includes Māori business and self-employment) at $36.9 billion dollars or a total asset growth of 29% between 2006 and 2010 (Nana, Stokes, & Molono, 2010, p. 5).

Journalist O'Sullivan (2011) recently commented on the increasing influence in the business community of Māori enterprise and used by way of example a business investment roundtable organised by Te Puni Kōkiri between five Māori concerns representing Tainui, Ngāi Tahu and 3 Auckland tribes, and some 40 major companies and banks. Together these tribes had an asset base of $2.3 billion New Zealand dollars – an amount to tilt the power of the negotiations into Māori economic favour as Ngāi Tahu chairperson Mark Solomon would remark:

We have stood in front of you for 150 years and been absolutely invisible... If you do wish to work with us, then you need to change the way you wish to do business. We’re kaupapa based. We are more relationship based than you are and if your kaupapa doesn't match ours then to be blunt we don't want to work with you. (cited in F. O’Sullivan, 2011).

The Māori Language Act 1987 elevated the Māori language to an official language of New Zealand (Kāretu, 1995, p. 1). It does not directly mention the Treaty of Waitangi or the Treaty principles in its main body, though it uses the Treaty of Waitangi as justification in its preamble as follows.
Whereas in the Treaty of Waitangi the Crown confirmed and guaranteed to the Maori people, among other things, all their taonga:

And whereas the Maori language is one such taonga (Māori Language Act 1987)

The Māori Language Act 1987 gives any the right to speak Māori at any legal proceeding (A. Durie, 1998, p. 303). Further to this legitimisation, under the Act, a Māori language commission was established to foster the “use and development of the Māori language” (Sissons, 1993, p. 109). English language scholar Devenor noted that subsequent to this Act “government departments and other bodies have been adopting alternative Māori names”, and furthermore, due to increased exposure of the Māori language, the English language as spoken by New Zealanders has become increasingly informed by a “Māorification of English”(1991, pp. 18 & 21). The Māori Language Commission had higher aims for the Māori language:

By the year 2011, the Māori language will have been significantly revitalized as a dynamic feature of everyday life. This will involve sustained increases in both the number of people who speak Māori, and its level of use (cited in: Spolsky, 2003, p. 565).

The State Owned Enterprises Act 1986 (SOE Act) is concerned with defining the behaviour of the Crown's State Owned Enterprises. Included in the SOE Act is a clause that stated: “Nothing in this Act shall permit the Crown to act in a manner inconsistent with the principles of the Treaty” and as such represented the first formal legalised recognition of the principles of the Treaty (Hill, 2009, p. 209) (as Treaty principles in the Treaty of Waitangi Acts were not legally binding).

Mason Durie marks the SOE Act as representing the first legislative move to push the Treaty beyond a legislative ‘nullity’ (1995, p. 32); a shift that Bartley and Spoonley contend represents a move into a bicultural citizenship model (2004, p. 138).
The validation of the as-then-undefined legal principles of the Treaty, which the SOE Act represented, moved the burden of interpretation to the courts (Sullivan, 2005, p. 123). A key moment in this definition of the principles came in the subsequent year when the New Zealand Māori Council tested the SOE Act in court successfully halting further sales of Crown land subject to Treaty claims, as this was defined by the court as contrary to the Treaty principles (Wilson, 1995, p. 3).

The Court of Appeal declared that the Treaty must be considered a ‘living document’ capable of adapting to new circumstances and ruled that the principles of the Treaty were of more importance than the word - thus resolving the legal tensions between the English and Māori versions (Barrett & Connolly-Stone, 1998, p. 6). Over time, such court proceedings have clarified the principles (Berke et al., 2002, p. 118) which are summarised as the right of partnership, participation, and protection (Hudson & Russell, 2009, p. 62). For a fuller examination of the Treaty principles found in both the court definitions and the Waitangi Tribunal, see Hayward’s summary found in Appendix I (Hayward, 1997, p. 142).

The SOE Act, then, validates Māori as the Treaty partner to the Crown and allows, through the principles of the Treaty, a legislative process with which to critique the ability of the government’s State Owned Enterprises to sell land subject to Treaty of Waitangi claims. It is important to note the discrete context of the court ruling did not cover the relationship between Māori and Pākehā within a government State Owned Enterprise. This is covered in the following legislation.

*The State Sector Act 1988* (SSA) defines the place of Māori in the employment of the State. Section 56 (SSA) required the Public Service under the ‘good employer’ requirements to recognise the ‘aspirations and employment requirements of Māori’ (Kelsey, 1996, p. 185). Furthermore, the Act requires consideration of the practical steps required to exercise the “need for greater involvement of the
Māori people in the Public Service” (New Zealand, 2011a, sec. 56). Māori, therefore, are a target group under the Act (Ngawati, 1996, p. 1) making explicit the responsibility of the State to protect Māori interests (M. Durie, 2003, p. 134).

Eagle notes that the Public Service is the ‘engine room’ of New Zealand’s administrative legislation (2000, p. 205), and it is here that the SSA is mandated. In practice, the State Services would funnel the SSA requirement through the Equal Employment Opportunity (EEO) programmes that were initiated when the various heads of Government departments made EEO policy statements (Jones, Pringle, & Shepherd, 2000, p. 366). To this, they added the ‘good employer’ provisions found in the SSA (Walsh & Dickson, 1994, p. 47).

The advantages to Māori are immediately obvious: this legislation legitimises not only the employment of more Māori staff, but the demand for the recognition of Māori cultured aims and aspiration and a consideration of the practical requirements that would be needed to attract and maintain Māori staff to meet these guidelines (Tremaine, 1994, p. 75,76). Such targeting of Māori has led to recruitment and retention drives that have resulted in State sectors such as the New Zealand Police force emerging as one of the largest employers of Māori in the country (Jaduram, 2011, p. 305).

The Education Act 1989 was designed to facilitate schools that would reflect the communities they represented in terms of the special language and cultural interest of each community (Bishop & Glynn, 2003, p. 87). Explicitly with regard to Māori, the Act requires school boards to take “all reasonable steps... to discover and consider the views and concerns of Māori communities living in the geographical area” (Barrett & Connolly-Stone, 1998, p. 7). While this can take the form of the introduction of Māori perspectives into a ‘mainstream’ school, Section 155 of the Act allows for a further step when it supports the designation of Māori language schools where at least 21 parents request it (Spolsky, 2003, p. 561). The Act allows, in other words, for schooling steeped in Māori language and cultural
perspectives to be brought within the fiscal and logistical support of the State schooling system (Köcher, 2006, p. 124; Smith, 1997).

The six pieces of legislation referenced here show the advantages to Māori of bicultural legislation. The benefits range from paving the way for a mechanism with which to argue for, and gain, State reparations for past State behaviour that were ‘inconsistent with the principles of the Treaty’, to legalising the Māori language (and creating a Commission to foster its use). Additional benefits include a legal path to critiquing State Owned Enterprises according to the principles of the Treaty of Waitangi, the ability to require that the State sector recognise the ‘aspirations and employment requirements of Māori’, and that the formation of Māori language schools be given the full logistical and financial support of the State schooling system.

Mason Durie contends that the insertion of such Treaty of Waitangi clauses and Māori-specific references into legislation represents has garnered for Māori cultural rights such as,

...the right to receive a sound education that does not side-line Māori perspectives, or to enjoy television programmes in one’s own language, or to receive an adequate psychiatric assessment... taking into account Māori cultural values, processes and protocols (M. Durie, 2005, p. 5).

The Whānau Ora Report concentrates on the institutional advantages of this framework when it notes that government legislative and policy changes since 1984 have led to the,

...advent of a greatly expanded Māori workforce in schools, hospitals, prisons and welfare agencies [which] has significantly altered standards of practice and made services more responsive to Māori. Māori provider organisations have also emerged so that there is greater choice. Whānau can now opt for Māori language immersion education, Māori health care providers, Māori social services – or for mainstream
Te Ata and Muldoon describe the benefits Māori have gained as “citizen-plus” as such benefits are over-and-above the standard rights of New Zealand citizenship (2006, p. 214) – though they are quick to counter any suggestion that this places Māori in a position of gaining unfair advantage over Pākehā New Zealanders when they state:

It is by no means self-evident, however, that legal rights will be sufficient to safeguard Maori from the darker side of [neo]liberal governance (Te Ata & Muldoon, 2006, p. 226).

The effect of this neoliberal governance is addressed in the following section.

**The Paradox of Bicultural Governance**

Concurrent to the bicultural changes noted in the previous section, successive New Zealand Governments have shown a preference for neoliberal economic governance – a path that operates in contradiction to the legislative gains Māori have made.

When New Zealand’s fourth Labour Government gained power in 1984, it inherited a financial crisis from the outgoing Government (Hill, 2009, p. 202). This offered the new Government an historic opportunity to align itself with the growing neoliberal economic critique of the New Zealand economy, namely the belief that it had historically failed to achieve comparable growth to other OECD countries due to following economic policies that were regulation-heavy and therefore presumably less efficient (Dalziel, Maclean, & Saunders, 2008, p. 2). Spurred by this crisis and moulded by neoliberal theory, the New Zealand Government would follow an economic path that has largely been considered orthodoxy both here and outside of New Zealand since the 80s (Lunt, 2008, p. 8).

Implicit within such neoliberal views is the perception that governments should not overly constrict the economy with regulation since this is thought to dull an individual’s perception of self-interest thought necessary for dynamic industry
(Beeson & Firth, 1998, p. 219). What is believed to be needed is less like the warm cradle-to-grave care of the Welfare State and more like the cut and thrust of a Darwinian world where individuals, and indeed companies, are unconstrained by onerous legislation in a playing field that supports something like the ‘survival of the fittest’ (Roan & White, 2010, p. 346). Davis et al critique such ideology as:

...withdraw[ing] value from the collective and the social good. The free, autonomous, responsible individual of neo-liberalism is no longer located within a community of others: as Margaret Thatcher famously declared, ‘there is no society — there is only the market, and competition among individuals within it.’ (2006, p. 311).

Henare remarked on the impact of this ideology in the New Zealand context with regard to ideas of culture when he stated:

...neoliberal economies place culture as subservient to the economy (M. Henare, 1994, p. 214).

In its desire to create such a ‘competitive business environment’, the government, beginning in late 1984, removed restrictions on imports, prices, production and distribution, overseas currency, foreign investment and subsidies (Cronin, 2008, p. 341). The effect was particularly marked on what might be called the primary sectors such as forestry, meat processing and light industry leading to near catastrophic follow on effects for the communities dependent on such industries (Dalziel et al., 2008, p. 2).

In addition to the above measures, labour rights were ‘restructured’ with the intended purpose of lowering labour costs (Genoff, 1998, p. 101). This reflected a shift in focus towards the legislative needs of employers with an eye to eliminate ‘restrictive’ legislation that might impede business growth (Cronin, 2008, p. 2). Through the use of the newly-drawn Employment Contracts Act (1990) and other legislation, the bargaining powers of Unions were restricted, and the employment of casual and contracted staff was encouraged (Rasmussen, Lind, & Visser, 2004, p. 640). The end result of such government policies is that labour cost (and
correspondingly many workers’ pay) has for some time been trending down (Perry, 2007, p. 23), and not surprisingly, real incomes, particularly for poor households, have declined since the period of economic reforms (Blakely, Tobias, & Atkinson, 2008, p. 1).

The New Zealand consensus since the 1984 fourth Labour government has been what Starke (2005, p. 23) calls a ‘passive’ view of its role regarding employment. What this can be seen to represent is the restriction of a government’s role to the structuring of the economy and a concurrent pulling away from direct interventions that might increase employment through interventions such as increasing employment in the State sector (Seuffert, 2002, p. 602). Perhaps not surprisingly then, unemployment rose during this period from 4.1% in 1986 to 10.4% by 1992 followed by a slow and steady decrease in unemployment levels which dropped back to 3.7% by the mid-2000s (Blakely et al., 2008, p. 1).

While it might be tempting to consider that this slow return marks a validation of neoliberal theoretical claims to ultimately create employment in a dynamic economy, a closer view of the quality of the new jobs tell a different story as many of the reemployed in the 2000s found themselves in employment marked by lower pay and conditions. Rasmussen et al contend as much when they note that these newly created jobs have tended to be lower quality, lower paid part-time work (2004, p. 641). So widespread is this move towards part-time work that Larner notes that as early as 1994 such employment accounted for 28% of the total employment in New Zealand (1996, p. 44).

Coupled with the fourth Labour government’s changes to the economic environment, it would restructure government social services. In what Stephens has called “... perhaps the most dramatic example of welfare State retrenchment not just in New Zealand but the OECD as a whole” (2008, p. 192), the subsequent social spending focus centred on how the government might ‘cut’ social spending as opposed to seeing its role as encouraging social good (Lunt, 2008, p. 8). In such regimes the costs of health and education increased to the extent that many families have struggled to find ways to pay for health care and also wonder how they might send their children to university (Barber, 2006,
Perhaps most deeply felt of the cuts to come, however, were what Larner describes as the “severe” cuts in unemployment benefits (1996, p. 36). Considering that unemployment levels rose on the back of government policies, this represented a double blow for many who at once lost their jobs and were then forced to live on a constricting income level. When and if such individuals did gain employment in the 2000s, it often came with limited levels of income.

While the pain of neoliberal economic reform and State withdrawal of social services was borne by many, it was not borne by all. A defining feature of such policies in the New Zealand context has been both the increasing socioeconomic inequalities within society and the lack of political will to confront them as the following quote by the former Finance Minister the Hon. Bill Birch shows:

[Income disparities] are widening, and they will widen much more.
That doesn’t worry me (cited in: Kelsey, 2000, p. 1).

While the previous section showed how government restructuring of the labour and economic market led to decreasing wages for many, others have profited disproportionately. Larner (1996) has noted that the effect of the government freeing up capital flow across New Zealand borders has led to the disproportionate wage growth of a small minority of senior executives. As telecommunications, forestry, health, engineering and construction industries have become ‘internationalised’ many chief executives now find that their wages are tied to international remunerations considerably above the majority of New Zealand workers (Larner, 1996, p. 48).

Crothers notes this historical space as one where “massive” increases in inequality have occurred in ways which have undermined previous progress in poverty reduction in New Zealand (2009, p. 2). Indeed, as Larner and Craig contend, the twenty years following the mid-1980s restructuring are marked by socio-economic polarisation (2005, p. 12). The result of this is that many in contemporary New Zealand have found that their standard of living has been “severely compromised.” (Hosking, 2011, p. 126). Kelsey points to a human toll when she noted:
New Zealand is now a deeply divided society. Hundreds of thousands of individuals, their families and communities have endured a decade of unrelenting hardship. The burden fell most heavily on those who already had the least: the Māori, the poor, the sick, women with children, and the unemployed. Their "freedom of choice" was whether to use their scarce resources to buy housing, health and education, or other essentials such as food - and which of these essentials to go without (Kelsey, 2000, p. 1).

Lashley notes this disjuncture where the Government embarked on reparative treaty settlements without contending with the underlying problems of unequal distribution, leaving the gap between Māori and Pākehā incomes to increase as Māori disproportionately bore the brunt of deindustrialization, economic restructuring and public sector reforms (2000, p. 19). Poata-Smith goes as far as to say the economic reforms were “disastrous for the majority of working class Māori” (2001, p. 246). This burden weighed heaviest on Māori youth where unemployment rates topped 50% (James, 1992, p. 134), an effect that can be seen as late as 2010 with Māori unemployment more than twice the Pākehā rate, and Māori youth unemployment currently over 30% (de Bres, 2010, p. 4). Inequalities in the New Zealand economy, in other words, have become “racialised” (Larner & Craig, 2005, p. 12).

There are currently, according to the United Nations Department of Economic and Social Affairs, “persistent disparities between Māori and Pākehā in areas such as paid work, economic standard of living, housing, health and justice” (2009, p. 37). This disparity can be seen in the differences between New Zealanders as calculated as a single group when measured against the compared life outcomes in the United Nations Human Development Index, and also when Māori are treated separately in this scale. New Zealand as a whole ranked 20th, in the scale of human development just below France and Spain, while Māori – when conceptualised alongside other nations - ranked as tied with Saudi Arabia at 73rd and just above the Ukraine (Cooke, Mitrou, Lawrence, Guimond, & Beavon, 2007, p. 10). So stark are these different outcomes that one can...
statistically predict the probability of an individual thriving throughout one’s lifespan with the answer of a simple question: are you Māori or Pākehā? If the answer is Māori, one might expect an “almost 10 year” lower life expectancy than Pākehā (Stavenhagen, 2005).

To return to the context of Kelsey’s quote, despite the unprecedented legislative gains Māori have enjoyed since the mid-80s, it is Māori who are disproportionately “the poor, the sick, and the unemployed”.

When the above insight is placed alongside the legislative gains Māori have made as a result of the bicultural project beginning with the 1984 fourth Labour government, a central paradox becomes apparent: as Māori have gained cultural and legislative empowerment, the concurrent trend to neoliberal economic practices has simultaneously economically disempowered Māori.

The Pākehā Contestation of Hard Biculturalism

In addition to the above bicultural paradox, hard bicultural legislation would have to contend with a Pākehā contestation as represented by the Pākehā public sensitivity to hard bicultural practices undermining their ‘needs’. The first section of this chapter defined hard biculturalism as an aspiration for separate institutional structures for Māori that are invigorated by ideas of self-management, the Treaty partnership or principles and Māori models of self-determination. The periods of three governments: the fourth Labour (1984-1990), the fourth National (1990-1999) and Clark Labour governments (1999-2008), are outlined briefly below. Each of the three governments responded to the Pākehā public’s sensitivity to hard biculturalism by either withdrawing from planned bicultural legislation or policy, or by directly leveraging Pākehā Treaty-based fears for electoral gain.

As stated earlier, it was the influence of the fourth Labour government (1984-1990) that represented the sharpest break with the past government policies due to its unprecedented support for Treaty-based legislation and bicultural ideologies of policy practice. It was the fourth Labour government, furthermore,
which ushered New Zealand into the bicultural era (Bartley & Spoonley, 2004, p. 138).

The fourth Labour government concentrated, however, on the legalities of the Treaty of Waitangi-inspired legislation at the expense of the more difficult process of engaging with the Māori and Pākehā public in an ideological nation-building context. Kelsey contends as much when she notes that Labour was:

[F]ixed on the legal processes of the Treaty at the expense of broaching the hard realities of delivering Māori expectations, quelling Pākehā hostilities and meeting economic costs (Kelsey, 1990, p. 59).

Sharp further undermines the idea of bicultural practice as constituting the work of a forward-looking government intent on reshaping New Zealand society when he contends that the Government “partly stumbled into and were partly forced into” bringing the Treaty into law (2000, p. 275). Spoonley and Pearson note that many in the government sector were not motivated by a view of “Māori self-determination, but rather as a test-case for reducing public expenditure” (2004, p. 30). It is perhaps not surprising, therefore, that as the majority public began to resent bicultural practices which many felt were giving Māori ‘special treatment’, such belief went largely unchallenged in the public sphere (Humpage, 2004, p. 26).

As Durie contends, the Pākehā public “feared the Treaty” as it represented to many a threat to private property and to the make-up of contemporary New Zealand (1995, p. 33). This fear is aided by the Pākehā preference for ideologies expressed in the rhetoric of ‘one New Zealand’ that allow for some expression of ethnicity, but without the implementation of shared power or decision-making (M. Durie, 1998, p. 232) – a tendency towards the soft end of biculturalism.

As early as 1988, Labour's Treaty policies were becoming a political liability (Kelsey, 1990, p. 239). By 1990, the majority Pākehā public had become convinced that Māori now received special privileges, and Labour in reaction, withdrew from planned future legislation that would have included references to the Treaty (Kelsey, 1990, p. 267).
The soon to be fourth National government (1990-1999) entered the election period in the run-up to the 1990 election with the slogan ‘one nation, one law’ (Hill, 2009, p. 247) - a direct challenge to the ‘special privileges’ thought by majority Pākehā to be inherent in Treaty-based or bicultural legislative approaches (Sullivan, 2005, p. 128). Further to this end, National promised, if elected, to rescind the principles of the Treaty inserts into legislation (Hill, 2009, p. 239). Likewise, following a successful election, National announced an intention to repeal the Treaty-influenced State Owned Enterprises Act (D. Henare, 1995, p. 52). The rhetoric of ‘one New Zealand’ continued into the reign of the National government and is underlined by the following 1995 statement by Prime Minister the Rt. Hon. Jim Bolger that: “The sovereignty of Parliament is not devisable” (Hill, 2009, p. 264). The message could hardly be clearer to Pākehā New Zealand that treatment by the Government would be applied in an ethnically blind manner. The fourth National government, therefore, was distinguished by a reluctance to publicly acknowledge the Treaty and instead publically pushed for resources to be distributed on the basis of ‘need’ and not ‘race’ (D. Henare, 1995, p. 49) or as Parata argues “needs over rights” (1994, p. 1) – a tendency to the soft end of the bicultural continuum.

Despite the obvious political benefit of withdrawing from Treaty rhetoric, National found that they could not practically abandon the Treaty and hope to work with Māori to implement their social policies (Hill, 2009, p. 239). This led to something of a spit between the rhetoric of ‘one New Zealand’ and the bicultural practice of governance as can be seen in the ways in which National did not fulfil its election promises in terms of a significant withdrawal from biculturalism. National, therefore, kept the principles of the Treaty (Hill, 2009, p. 239) and endorsed the Treaty of Waitangi as a founding document (Kelsey, 1990, p. 267). In a reversal of its election promise, it did not repeal the State Owned Enterprises Act (New Zealand, 2011b), and in response to the Waitangi Tribunal’s reports recommending ‘generous and long-lasting settlements’ (Harris, 2004, p. 130), settled with the Tainui and Ngāi Tahu tribes in 1994 and
1998 respectively (Ward, 1999, p. 54, 57). National, furthermore, completed what would become known as the ‘Sealord deal’ which gained Māori a half share in the large fishing company (Sealord Products) along with an extra fishing quota with the expectation that this would end all Māori fisheries claims (Sissons, 2004, p. 21). Finally, while National did halt the march of the EEO legislation into the private sector, they left the State Sector Act 1988 in place to influence the public sector in a soft bicultural manner (New Zealand, 2011a). In the context of government social services, the fourth National government showed a preference for the soft end of the biculturalism continuum. The National government, therefore, tended to favour multiculturalism rather than give ‘special’ treatment to any one group (Eagle, 2000, p. 85), attempted to forge ‘relational’ rather than structural ties with Māori (Hill, 2009, p. 285), and moved towards ideals of Māori ‘cultural sensitivity’ (Humpage, 2004, p. 32).

The Clark Labour Government (1999-2008), like the fourth Labour government, was marked by an early attempt to increase the prominence of the Treaty of Waitangi only to have to contend with negative Pākehā reactions to what they perceived as ‘special treatment’ for Māori. Two specific incidents are outlined here: The Closing the Gaps policy and the reactions to the Seabed and Foreshore Court of Appeal ruling.

The logic for Closing the Gaps emerged from the linkage by researchers Barrett and Connolly-Stone (1998) between government research confirming socioeconomic disparities between Māori and Pākehā and the perception that this removed from Māori the benefits guaranteed to all citizens as promised in the Treaty of Waitangi. The authors extended these insights in the government’s own Ministry of Social Development journal to call for targeted assistance to Māori with the aim of ‘closing the gap’ (Barrett & Connolly-Stone, 1998, p. 4). It is with this logic that the then Prime Minister Rt. Hon. Helen Clark in her 2000 budget speech offered her justification for the Labour-led Government’s Closing the Gaps policy and its concentration on reducing the disparities between Māori and Pacific peoples and other New Zealanders:
First, it is a simple issue of social justice. Second, for Māori, it is a Treaty issue. Third, for all New Zealanders it is important that the growing proportion of our population which is Māori and Pacific Island peoples not be locked into economic and social disadvantage, because, if they are, our whole community is going to be very much the poorer for it (Cited in Humpage & Augie, 2001, p. 38).

The use of the Treaty of Waitangi coupled with the ethnic targeting of Māori in the social services proved to be difficult for the majority public to accept however. The Pākehā public resistance, fuelled by the widely held perception that such policy represented Māori gaining ‘special treatment’ (Humpage & Augie, 2001, p. 50), was sufficiently strong as to be termed by Consedine as a “Pākehā backlash” (2005, p. 246).

The Clark Government responded to this challenge to Treaty-based social policy by simply withdrawing the slogan of Closing the Gaps and issuing a claim that the purpose was “always about reducing inequalities” (Humpage, 2006, p. 232). With this shift, the rhetoric moved away from a stated commitment to overt defence of 'Treaty principles' towards the vocabulary of 'equal opportunities' (Humpage, 2006, p. 232) – a move towards the soft end of biculturalism.

The Pākehā public’s sensitivity to Māori being given Treaty of Waitangi-based ‘special treatment’ would also become apparent following the June 2003 Court of Appeal ruling allowing the Māori land Court to hear foreshore and seabed claims (Nairn, Pega, McCreanor, Rankine, & Barnes, 2006, p. 186). In doing so the Court of Appeal agreed that Māori "should be allowed the opportunity to prove, in New Zealand courts, their customary ownership of foreshore and seabed" (Gagne, 2008, p. 125). The foreshore and seabed is the thin but potentially valuable piece of real estate which can be considered to constitute the ‘wet’ part of the beach between the high and low tide lines (Meijl, 2006a, p. 76).

The Pākehā public largely considered this ruling to threaten the link between ‘kiwi’ culture and free access to the beach, and responded predominantly negatively to this ruling (Meijl, 2006a, p. 77). Sufficiently motivated, a large
proportion of the Pākehā public maintained pressure on the Government to quickly resolve the question of foreshore and seabed rights (Bargh, 2006, p. 18) – a reaction that can be considered to be fuelled by what much of the Pākehā public saw as ‘excessive’ recent reparations to Māori (Meijl, 2006a, p. 77).

In response, the Clark Labour government announced in the very same month as the Court of Appeal ruling that it would both legislate to protect the foreshore and seabed for "all New Zealanders" (Bargh, 2006, p. 13), and ensure existing rights for Māori to maintain customary activities (Meijl, 2006a, p. 76). Humpage considers this move shifted the basis of discourse from a Treaty framework in preference for an equal citizenship approach that allowed Māori interest to be framed as 'privileged' (2006, p. 237).

The Opposition National Party entered this public debate by capitalising on the frame of ‘Māori as privileged’ by running a counter campaign based on the tag line "Beaches for All", thus raising the possibility that Pākehā access to beaches was under threat - gaining sufficient following to significantly dent support for the Labour Party (Gagne, 2008, p. 125). Meijl recalls how this debate not only became a national controversy entering the realm of everyday conversations, but also polarised the various positions of Māori and Pākehā (2006a, p. 77).

Many Māori offered strident opposition to the Act claiming that its implementation wrested control of a Māori resource away from Māori in favour of the majority population without consideration of reparation (Nairn et al., 2006, p. 186). This argument, however, appeared to hold little sway with the majority Pākehā population (Meijl, 2006a, p. 78).

In his January 2004 Orewa speech, Leader of the National Opposition the Hon. Don Brash capitalised on the negative Pākehā reaction to the foreshore and seabed controversy that had been sustained during the preceding 6 months (Gagne, 2008, p. 126). In what Johansson called a “deliberate attempt at agenda control by manipulating race discourse to realign party support” (2004, p. 111), the Hon. Don Brash leveraged the undercurrent of Pākehā fears when he contended that all policies that 'privilege' Māori be abandoned – along with the
Treaty of Waitangi itself (Humpage, 2006, p. 233). Brash claimed that Māori-specific rights threatened the ‘one standard of citizenship’ needed to maintain a unified nation-state (Humpage, 2008, p. 256). With this explicit anti-Treaty stance, the National Party was able to ride a “wave of Pākehā resentment towards Māori” that reflected strongly in the opinion polls (Barber, 2006, p. 17).

In November of 2004, the Clark Government passed the Foreshore and Seabed Act 2004 giving ownership of sections of the foreshore and seabed, not currently privately owned, to the State (Gagne, 2008, p. 134). Coupled with this legislation, the Government fulfilled their promise to allow Māori to apply for customary rights over what Gagne calls “certain activities, usages and practices” regarding the foreshore and seabed (2008, p. 134).

This shift from Māori gaining potential ownership of the seabed and foreshore, to the more limited access rights, was interpreted by Māori as representing legislation that discriminates against them – a situation that the United Nations Committee on the Elimination of Racial Discrimination confirmed when it stated position that the Foreshore and Seabed Act 2004 contained,

Discriminatory aspects against the Māori, in particular in its extinguishment of the possibility of establishing Māori customary title over the foreshore and seabed and its failure to provide a guaranteed right of redress... (2005, sec. 5 & 6)

Despite the Clark Government’s clear preference for the opinions of Pākehā New Zealanders over Māori (as shown in the Foreshore and Seabed Act 2004), the National Opposition entered the campaign for the September 2005 general election by linking the Clark Government with giving Māori ‘special privileges’ (Barber, 2006, p. 17). The National Party’s advertising campaign included the catchphrase ‘Iwi/Kiwi’ – a catchphrase that discursively placed the Māori push for recognition as an antithesis to national unity (Craw, 2007, p. 592).

Despite the rhetoric of the National Opposition gaining an increase in political support, the National Party would lose the 2005 election (Meijl, 2006a, p. 78). Though the National Party gained a larger share of Members of Parliament than
the Labour Party, it was the Labour Party’s ability to go into a ruling coalition with the newly formed Māori Party that would allow it to continue in government (Barber, 2008, p. 153). The National Party adjusted to this political reality by softening its stance on ‘race’ with an eye to the future possibility of forming a government with the Māori Party (Barber, 2008, p. 153).

The Pākehā contestation as found in the Pākehā resistance to the use of the Treaty of Waitangi in the terms of the fourth Labour, fourth National and Clark Labour governments uncovers a Pākehā public opposed to the practices of hard biculturalism. Clearly much of the Pākehā New Zealand public feel unease at Māori gaining ‘special treatment’ on the basis of a Māori Treaty relationship, with many preferring a governmental focus of ‘need’ instead of ‘race’. This section shows the political benefits of major political Parties, such as Labour and National, of aligning with the perceptions of the numerically superior Pākehā voters. Māori voices are not powerless, however. This is evidenced in the sustained Māori protest activity that created space for bicultural thought (referenced in the introduction of this chapter); the fourth National government’s need to maintain references to the Treaty of Waitangi already in legislation in order to gain Māori support for its social service initiatives, and the post-Brash National Party’s move to soften ‘race’ rhetoric in order to work with the Māori Party. Despite Māori ability to pressure successive governments, the larger narrative has been Pākehā resistance to resource-specific designations to Māori that have caused all three governments referenced here to place future Treaty of Waitangi-based legislation and Māori-specific government policy on hold – practices that conform to soft biculturalism.

**Biculturalism as a Contradictory Project**

The four sections of this chapter show New Zealand’s bicultural project as marked by contradictory forces. While bicultural theory illuminates the historical and on-going colonial domination of societal institutions by the Crown (as the
representative of Pākehā culture), the subsequent call for an increase in Māori inclusion within societal institutions is marked by Māori preferences for hard biculturalism and Pākehā for soft biculturalism. Hard bicultural legislation and government policy has had, therefore, to contend with the numerically superior Pākehā population’s preference for soft biculturalism – a political contestation that has largely bent political action away from future biculturalism practices. Finally, the paradox of New Zealand’s bicultural project is found in the context of Māori empowerment on the basis of Treaty of Waitangi or Māori-specific legislation that is countered by the economic disempowerment of Māori as a result of the concurrent trend towards successive governments’ preference for neoliberal economic policies.
3. Four Theoretical Perspectives

This thesis uses four theorists, each of which may partially unlock the meaning of the Whānau Ora Report. The four theorists outlined in this chapter can be seen in the light of two generalised explanations. Kymlicka and Parekh argue for an increased concentration on the specific needs of cultures; while Barry and Young call for a concentration on the spread of societal resources and mechanisms of democratic political decision making respectively. All four theorists create theoretical frameworks intended to be relevant to Western democratic countries such is represented by New Zealand as well as their particular countries of residence namely: Canada (Kymlicka), the United Kingdom (Parekh and Barry), and the United States of America (Young).

Each of the theorists build frameworks that will be used in Chapter 5 to analyse the policy aspirations of the Report of the Taskforce on Whānau-Centred Initiatives (Whānau Ora Report).

Kymlicka’s Liberal Multicultural Citizenship

Kymlicka’s theories are consistent with the need to reconcile the apparently different needs of Canada's indigenous peoples and of Canada’s increasingly diverse immigrant population. Kymlicka’s chief concern is for such groups to receive parity across society. He makes a case for a liberal iteration of multiculturalism, one where universal liberal individual rights are upheld in tandem with appropriate indigenous group rights, given as a counter to the problems of groups that do not, or for historical reasons choose not to, fit into the majority culture and thus negatively affecting their ability to gain parity with the majority group in society. To negotiate this terrain, Kymlicka proposes a two stranded historically dependent conceptualisation of non-majority identity – national minorities and ethnic groups. National minorities are indigenous groups that have experienced the negative effects of colonisation; ethnic groups are culturally distinct groups living in liberal democracies as a result of recent immigration. Kymlicka contends that the differing histories of these two groups
require different approaches. National minorities should be entitled to a degree of self-determination and an institutional recognition of their culture to allow the return of an institutional culture denied by the colonial regime; ethnic groups simply require the ability to be different from mainstream society and not suffer disadvantage. The overarching tension of Kymlicka’s theories is the balance between the universal individual values of liberalism (which are thought paramount) and the differing, historically distinct needs of groups – a realm that contains no easy answers (1995, p. 1). In taking his stance, Kymlicka is arguing, he contends, for the current orthodox practice of Western democracies, as he finds that this is the most common form of democratic tradition at the present time (1997, p. 73).

With respect to indigenous groups, whom he calls national minorities, Kymlicka contends that such groups are bound to historical power relationships of colonial origin. National minorities are defined as previously self-governing groups that have been colonised - an event that colours the kind of relationship that minority groups want to have with the majority (1995, p. 10). There is a sense here of a ‘culture stamp’ where colonisation aimed to install an institutionally complete society to the detriment of the pre-existing societal culture (Kymlicka, 1995, p. 15). It is thought this institutional takeover removed from the culturally distinct national minorities the ability to fairly compete in society, since the benefits of majority group belonging and ‘shared vocabulary’ of national institutions such as education, media, national and local governance and the economy (Kymlicka, 1995, p. 76) were created without care for the national minority culture (Kymlicka, 1995, p. 108). Coupled with this loss of equal opportunity, such societal and institutional domination has historically propagated the coloniser’s perception that indigenous peoples were inferior to the colonials (Kymlicka, 1995, p. 22). Kymlicka considers this loss of respect to negatively impact wellbeing in indigenous peoples as it can delegitimise the routine of indigenous culture due to this long-term validity of the practice being linked to inclusion in the institutions of society (Kymlicka, 1995, pp. 89, 90). Given this historical propensity of colonial practice to overturn pre-existing governance structures and its resultant de-
legitimisation of ethnically-based social practices, Kymlicka allows for the following types of rights as counterbalances to the perceived deficiencies of liberal values in relation to national minorities. The first is the right to some form of self-governance and culturally-specific institutional regard as distinct from majority politics; the second is what he calls poly-ethnic rights, which are designed to ensure that ethnic expression does not hinder mainstream success; and finally, the right to special representation rights on boards and greater governance (Kymlicka, 1995, p. 32).

What Kymlicka defines as ethnic groups are largely formed by relatively recent immigration and therefore inhabit differing historical paths than those of national minorities (Kymlicka, 1995, p. 11). Kymlicka contends that such groups arrive in new nations to take advantage of the particular society, not to fundamentally change it (1995, p. 15). This focus could be thought to be tied to self-interest as the success of such groups is measured by their ability to gain equal opportunity in the educational, political and economic institutions of mainstream society, which is in itself, tied to their ability to integrate successfully into the linguistic, economic, political and legal institutions of ‘mainstream society’ (Kymlicka, 1997, p. 76). Ethnic groups, he contends, do not wish to form parallel societies, but rather desire to reject assimilation and remain culturally particular but still fully partake in public society (1995, p. 15). The accommodation process is not intended to be one-way, however, as Kymlicka insists that “distinctive ethnocultural practices of immigrants” be accommodated so that integration does not equal a “denial of their ethnocultural identities” (Kymlicka, 1997, p. 76).

Kymlicka is a liberal pragmatist. He holds to the individually emancipating ideals of liberalism, but recognises that some group regard is needed to fulfil the liberal promise of parity for all. Kymlicka, therefore, defends liberalism and its defence of freedom of speech, conscience, the right to assembly, effective participation, equal opportunity, redistribution and mutual respect as ultimate guiding principles (Kymlicka, 2010, p. 260), but admits the need for the recognition of difference where national minorities and ethnic groups are
concerned (Kymlicka, 1995, p. 26). The reason for this augmentation, according to Kymlicka, is the inability of individual liberal freedom to flourish when the particular societal culture to which one belongs might not have parity across the nation (Kymlicka, 1995, p. 76).

National minorities, then, are at a particular disadvantage when attempting to gain access to the benefits of mainstream society since the institutional regard of a society is tilted in favour of the much larger mainstream society over indigenous groups (Kymlicka, 1995, p. 108).

Kymlicka is convinced of the need to develop site-specific solutions to the particularities of a minority group. As an example he noted the differing aims of African-Americans, who have a history of segregation from the majority, and may want to dismantle the notions of intrinsic difference as a response to their being treated differently because of difference; as compared to an indigenous group who have faced assimilation and may wish to have their difference acknowledged (Kymlicka, 1995, p. 25). Kymlicka, therefore, rejects a ‘one size fits all’ approach to group rights and instead points to recognising the historical particularities of a group and how they might want to counteract past inequalities.

While Kymlicka is adamant that group rights should be given, he contends that these must be used in tension with, and ultimately aid, the individually enabling ideals of liberalism. Kymlicka is careful to construct a hierarchy of value between liberal ideals and national minority access to culture (Kymlicka, 1995, p. 75). This represents a viewpoint that considers the augmentation of group rights to liberal ideals as a means to serve the individually liberating notion of liberalism and not of cultural validation per se. The validity of a group rights structure, then, is to be measured by the ability of individuals within a national minority to experience liberal freedoms. This qualification on the limits of group rights is motivated by Kymlicka's fear of the potential problem of ethnic groups wielding group rights in a manner that will unduly restrict the choices of individuals in the name of group solidarity or cultural purity (Kymlicka, 1995, p. 39). Liberals, then, when endorsing group rights, must reject in-group restrictions that limit the rights of group members to question and reverse traditional practices and
authorities (Kymlicka, 1995, p. 37). This rejection, however, must be held in tension with a degree of sensitivity to the way in which differing cultural contexts may reach liberal ends with different means. Kymlicka notes by way of example how the liberal desire for the expression of democratic principles in Canadian Indian communities may not use the “periodic election of representative”, but nonetheless conform to democratic liberal principles through the differing path of consensual political decision making (Kymlicka, 1995, p. 39).

Kymlicka’s arguments, like those found implicitly in bicultural ideals, place the majority/indigenous relationship within the context of a coloniser/colonised relationship. His version of identity centres on ethnicity that is both informed by history and reinforced by the parity, or lack thereof, across society. There is an unacknowledged assumption in Kymlicka’s work that Western society is essentially ‘fair’ for those who fit into the majority culture and unfair for those who do not. Differing rights for national minorities culminating in the institutional validation of indigenous culture through an increase in self-determination is therefore considered appropriate to counter the detrimental historical colonial effects borne by indigenous groups as a means to allow ethnic groups to gain parity across society. Underpinning such thought is Kymlicka’s use of liberal ideology as a foundational moral concept and therefore encourages all groups to conform to its precepts as a starting point. Also consistent with bicultural thought is Kymlicka’s division of ethnic minorities, which are given the right to free cultural expression in public without suffering majority censure, but – with their interests thought to be tied to such minorities acclimatising themselves to the institutions of society – Kymlicka believes it best that ethnic minorities not gain institutional recognition of their culture.

The following theorist, Parekh, validates Kymlicka’s link between access to culture and wellbeing, but critiques his theories as representing a view that suggests ethnic minority access to culture is somehow less important to individuals than if they were national minorities.
Parekh’s Cultural Imperative

Political Scientist Parekh writes from the context of the United Kingdom and directly criticises Kymlicka’s distinction between national minorities and ethnic groups and its implication that “immigrants have chosen to leave behind their culture” when immigrating (Parekh, 2006, p. 103). Parekh is further at odds with Kymlicka’s theories when he suggests that minority ethnic cultures desire much more than simple recognition, they want acceptance (2006, p. 1). It is his argument that the path to such acceptance does not begin with an agreement on the value of liberal thought, but rather an agreement on the unimpeachable value of culture to the individual self. This places him at odds with liberals such as Kymlicka who require that liberal logic form foundational universalistic notions of human dignity. Parekh seeks to undermine this argument by contending that such notions of commonality have emerged, not from a cross-cultural engagement, but from a singular cultural tradition that is grafted onto other cultures. Liberal thought, he argues, places non-liberal culture at an immediate disadvantage as they are phrased negatively – the very description of cultural monism. Parekh defends his position by laying out a view of identity as bound tightly to culture. This fundamental difference between cultures is believed to produce profound differences in thought, action and morality. With this framework built, Parekh rejects Kymlicka’s conceptual split between indigenous and immigrant minorities as representing a spurious argument that indigenous groups value their culture more (Parekh, 2006, pp. 107–108). He argues instead for the development of a multicultural consensus that emerges out of a dialogue based on equal respect between cultural groups. Parekh’s argument will be unpacked within the following three frames: his critique of the discrimination of liberalism, his fundamental link between culture and identity, and the need for national frameworks to emerge out of non-judgemental dialogue.

Parekh begins by critiquing what he called ‘cultural monism’, where the liberal version of the ‘good life’ is considered best (Parekh, 2006, p. 17). He criticizes the liberalistic claim of the universality of humanity, suggesting instead that the cultural embeddedness of such notions of humanity are but an expression of one
culture and therefore not capable of transcending all other cultures (Parekh, 2006, p. 35). Parekh finds liberal approaches to other cultures to be inherently judgemental, and therefore have little real interest in truly understanding other cultures (Parekh, 2006, p. 49). Liberalism, he contends, is a way of viewing other cultures that begins with an external framework of reference, a framework that obscures the view of a culture on its own terms.

Parekh rejects the commonality assumed in liberalism as being ignorant of the realities of human nature. It is the nature of humans, according to Parekh, to be at once bound by a commonality of the species, but differentiated by the particularities of culture that are sufficiently profound as to make interaction between cultures puzzling in the individual sense (Parekh, 2006, p. 124). Culture is viewed as the mechanism of difference and a “system of beliefs and practices in terms of which a group of human beings understand, regulate and structure their individual and collective lives; a way of both organising and understanding human life” (Parekh, 2006, p. 143). It is thought that because of this difference, liberal concepts of the ‘good life’ cannot be shared across cultures (Parekh, 2006, p. 125).

In rejecting liberalism as a means to view other cultures, Parekh then finds Kymlicka’s ideas (which he terms liberal pluralism) troubling. Kymlicka’s theories are presented as recognising difference, but as not being truly accepting. He considers, therefore, that Kymlicka’s recommendations that liberal principles be mandated to some extent in minority cultures set in Western society, are a form of moral intolerance because he does not value other cultures on their own terms (Parekh, 2006, pp. 107–108). Parekh contends that liberal pluralists have three flaws. Firstly, they cannot fully appreciate the cultural embeddedness of individuals due to the preoccupation of their universal transcultural view. Secondly, they operate on a false liberal/illiberal dichotomy when they need to embrace a more fully cultural and morally pluralistic view; and finally, that they all, to some degree, desire acceptance of liberal principles from other cultures (Parekh, 2006, pp. 109–111).
Human agency and morality, according to Parekh, is lived through the conduit of the culture. It forms a knowledge-based division between peoples as each culture develops a unique way of viewing the world that amounts to both a conduit through which an individual gains agency, and a lens through which individuals evaluate morality (Parekh, 2006, p. 145). His view is that cultural differences are more fundamental than liberals’ theories would suggest, and as such, the act of importing moral principles from one culture to another risks overriding the differing and equally valid notions and frameworks of morality without giving them full consideration.

By framing culture as fundamental to the wellbeing of individuals (Parekh, 2006, pp. 149–150), Parekh is able to predict negative consequences for individuals whose cultural values are challenged by outside forces. The ‘flittering between cultures’ as might be required by adherence to liberal ideals can play out personally in what he calls ‘internalised cultural conflict’ where individuals suffer from lack of historical depth and therefore lose the ability to derive moral certainty, identity stability and personal rigour and discipline in their lives (Parekh, 2006, pp. 149–150). According to this logic, to externally pressure non-liberal ethnic groups to conform to liberal notions of human dignity profoundly upsets and even destabilises the individuals concerned.

Parekh’s focus on culture over the more common usage of ethnic group allows him to collapse the distinction between ethnic groups and national minorities that Kymlicka proposes and give each iteration equal place. He criticises, therefore, Kymlicka’s distinction between national minorities and ethnic groups and its implication that immigrants have chosen to leave behind their culture (Parekh, 2006, p. 103).

If the artificial requirements of liberal ideals grafted on to non-liberal cultures take the form of a cultural assault, what might be an intercultural alternative? Parekh’s prescription, he asserts, is largely born out in the 1948 United Nations Declaration on Human Rights. While he is not entirely happy with some of the liberal underpinnings of the document, it is the manner in which consensus was attained out of a ‘cross-national dialogue’ that is most important (Parekh, 2006,
The underlying logic here is to enter into dialogue with equal respect for the other and without demanding that morality be tied to one particular cultural framework. Only then can there be a development of meaningful consensus, rather than through a projection of one culture on to another (Parekh, 2006, p. 128). As a fundamental purpose of Parekh’s work is to enable minority groups to enjoy the ability to practice and continue their culture (2006, p. 197), the purpose of this dialogue is for minority groups to be allowed a platform from which to defend their cultural practices to the majority in society. Such a platform can allow cultural practices such as arranged marriages and the wearing of Sikh turbans (though they may preclude the use of otherwise mandated apparel such as police officer’s head gear) to be advocated by minority groups in a non-discriminatory way, and conversely for practices such as female circumcision to be challenged in a way that is inclusive rather than demoralising to the minority (Parekh, 2006, pp. 241, 275 & 278).

This focus on dialogue based on respect for the moral underpinning of another culture allows for, according to Parekh, a cultural exchange that can meaningfully benefit the various parties. There is a sense here that abandoning the discriminatory notions of liberalism as a starting point will allow an exchange which is otherwise unavailable. The benefits of such a dialogue are believed to be enhanced human freedom since no culture can encompass all there is to being human and therefore the meaningful rubbing of each culture against the other allows the meaningful exchange of artistic, literary, musical and moral traditions which can enhance them both (Parekh, 2006, pp. 167–168). It is in this underlying framework that Parekh wishes to place multiculturalism. Every multicultural society, therefore, “needs to devise its own appropriate political structure to suit its history, cultural traditions, and range and depth of diversity (Parekh, 2006, p. 195). An ideal multicultural society then, is the antithesis of ‘centrism’ (such as Euro-centrism or Afro-centrism) and is something of an alchemy and expansion of the cultural views that bump against each other in a truly open dialogue (Parekh, 2006, p. 338).
While the above view does not explicitly preclude Kymlicka’s concern for indigenous self-determination (as shown by the quote above calling for ‘appropriate structures’ for particular national contexts and his call for the active cooperation of states with ethnic community leaders in order to meet their cultural needs (Parekh, 2006, p. 358)), Parekh’s implicit view of national dialogue appears to prefer the view of the ‘rubbing of each culture’ against others while challenging the institutions of society to reflect the consensus that the dialogue forum negotiates. It is his chief concern, however, that minority groups are given legitimate societal and institutional space within which they can be accepted for the unique culturally embedded individuals they are and not suffer disadvantage.

By collapsing the conceptual distance between national minorities and ethnic groups into the single division of culture and rejecting the universal role of liberalism found in Kymlicka’s work, Parekh simplifies his argument to the validation of the ‘foundation stone’ of human experience – culture. Identity in this idealisation is bound deep inside a cultured person. One’s sense of self, therefore, cannot be uncoupled from this foundation of being without profound dis-ease. With this conceptualisation of identity, Kymlicka’s notion of immigrant groups needing less cultural validation than that of national minorities appears absurd and perhaps even discriminatory. Likewise, given these deeply held differences between groups, tying together liberal logic intended for application for all is considered problematic – ethnocentric even. What is needed, in Parekh’s framework, is a value-free beginning place for non-discriminatory dialogue and consensus to be achieved regarding how difference is to be negotiated across society. Unlike Kymlicka, Parekh does not explicitly call for separate institutional regard (though he does not rule it out), concentrating instead on the promotion of minority morality and practice to be accepted within the institutions of society.

The following author Barry, however, not only contends that a close association with identity and culture is overstated; he argues that the current concentration on the mediation of cultural difference in society has provided a ready-made
scapegoat with which the growing and morally unacceptable socioeconomic disparities across Western societies have escaped public attention.

**Barry’s Liberal Egalitarianism**

In contradiction of Parekh’s view of culture as an impermeable and fundamental divide, academic Brian Barry criticises multiculturalists for assuming that identity and culture are intimately connected. Barry counters cultural frameworks of identity with a class-based conceptualisation of identity. The use of the framework of class, Barry argues, can gain for society what multiculturalists implicitly promise but cannot deliver – socioeconomic parity across society. Multicultural societies are thought to concentrate attention on the validation of differences between individuals, and away from a necessary focus on the unequal division of society’s resources. What is needed instead, according to Barry, is a robust theory of social justice that moves beyond what is presently considered equality of opportunity and towards a ‘whole of life’ equalising of life chances. Considering his belief that multiculturalism has failed to create socioeconomically fair societies, the validation of culture or ethnicity as found in the context of multiculturalism is, in his contention, largely unhelpful as a means to improve what is most important – socioeconomic parity across society.

Barry’s arguments will be examined in further depth here, beginning with his use of class-based framework in preference to multicultural ideologies, and ending with his universal theory of social justice.

Barry concentrates on the framework of class over culture or ethnicity. He uses this framework as a proxy for socioeconomic inequalities across society, as inequalities are considered the most important cause of class-based differences (Barry, 2005, p. 118). The current Western trend of growing inequalities within societies is thought to be mirrored by an increased segregation of class and incomes (Barry, 2005, p. 68).

When noting the contemporary move towards multiculturalism (a category which would include biculturalism), Barry observes the concentration on what “divides
people at the expense of what unites them” - a concentration that included a parallel move towards growing inequality in the Western world (2001, p. 3). Barry finds this concentration on difference to be somewhat false and, in the end, unhelpful. Multiculturalism here is more than an appreciation of cultural or ethnic difference, but something like a ‘red herring’ that diverts attention away from shared structural disadvantages such as unemployment, poverty and low quality housing (2001, p. 12).

Barry directly critiques multiculturalists that assume identity is primarily based around culture (2001, p. 21). He challenges the different treatment inherent in multiculturalism with equal treatment under egalitarianism (2001, p. 11). He argues against Kymlicka’s contention that rights be given to a cultural group contending that this move is above and beyond the legitimate call for equality of opportunity (Barry, 2001, p. 67). He stands, furthermore, against differing laws for differing ethnicities since if a law is unduly harmful to one, it should be re-examined and mended, rather than adding a parallel layer of law (Barry, 2001, p. 39).

When considering the similar topic of ethnically based positive discrimination, Barry recommends a degree of pragmatism. In the case of workforce policies, Barry is careful to state that such ethnically-based interventions are better than doing nothing at all (2001, p. 115), while making it clear that it is his view that such programmes cannot attack the destructive environments such as the poor schools of inner city ghettos (Barry, 2005, p. 201). Consequently, such discriminations are believed to become the ‘way out’ for fortunate individuals, leaving the toxic social environment that created the problem unacknowledged and unchallenged (Barry, 2001, p. 98). Barry notes, moreover, that tying positive discrimination to ethnicity can create the situation where the middle class of an ethnicity claim the ‘lions share’ of the benefits that would best be reserved for the impoverished (2001, p. 115).

A further difficulty that Barry finds with multiculturalism is the perceived danger of using ethnic or cultural difference as the means of categorising individuals - as this beginning point is thought to open up a target for convenient
blame for those who suffer from the effects of poor socioeconomic performance. This can degenerate into something of a double bind: resentment can build in the middle class in the form of ethnic scapegoating against those who attain ‘undeserved’ culturally specific benefits at the bottom (while ignoring their inability to gain an equitable share of societal resources). Barry contends that the ensuing stigma plays into the hands of those who wish to see those lower down fight each other (Barry, 2005, p. 182). Considering such difficulties, Barry insists that it would be more helpful to let universal moral principles take precedence over ethnically specific positive discrimination (2005, p. 15).

In order to flesh out these universal moral principles, Barry put forwards his own theory of social justice that is focused on the distribution of rights, opportunities and resources across society (2005, p. 18). Barry’s concern, and his justification for the use of the framework of class, is the mediation of unequal life chances propagated by the unequal distribution of the following three domains: rights, opportunities and resources.

*Rights.* In the liberal tradition, Barry marks the French Revolution as a key moment when legal rights taken from a “patchwork of historical jurisdictions” which gave some greater protection and life-chances and replaced this with a regime that brought all people to equality under the law (2001, p. 10). This is his fundamental principle behind the concept of rights that they are irrespective of difference and shared by all. Barry finds the 1948 United Nations Universal Declaration Human Rights to add a new dimension to the idea of rights – that of the obligation of governments to actively pursue the fulfilment of rights such as adequate nutrition, housing, sanitation and a generally healthy living environment, education and medical care for all of its citizens (2001, p. 10).

*Opportunity.* As many liberal democracies currently have comprehensive rights enshrined in law without necessarily providing the opportunity of access to all, Barry adds the ideal of equality of opportunity to the concept of rights. Rights are to be evaluated by the opportunities of gaining access to a right rather than simply a structure of law (Barry, 2005, p. 20). In other words, it is no use having
the right of access to healthcare when it is priced at a level above the reach of members of society.

Linked to this idea of equality of access to opportunity is the concept of the quality of opportunities available across society - as differences in the quality of opportunities, such as the standard of education in themselves create inequality. Barry makes this case by noting that differing qualities of social phenomena as diverse as diet, prenatal care, neighbourhood safety and paid parental leave create unequal life chances (2005, pp. 49, 50).

*Resources* are concerned with the measure of the equitable spread of rights and opportunities across a society (Barry, 2005, p. 21). Resources are the sum of what can be wielded in a socioeconomic sense and includes ideas of social capital. This can be seen on an individual basis where one attends a job interview which would depend much on such things as earlier access to education, family background and neighbourhood environment (Barry, 2005, p. 40). It is the role of a society (using the above example) to ensure individuals do not suffer the disadvantage of having attended a ‘lesser’ school, coming from a family background that is considered to be of a ‘lesser’ socioeconomic position and suffering the stigma of belonging to a socioeconomically poor neighbourhood. It is not simply stigma that Barry is concerned about here, it is that schools may differ in the quality of education to the degree that individual students at some schools are denied much of the socioeconomic benefits of education by the ‘accident’ of their birth. Socioeconomically poor families may lack the finances to provide their children with adequate nutrition, furthering a child’s disadvantage. A socioeconomically deprived neighbourhood, moreover, may expose children to levels of shared disadvantage that may stunt positive development.

Barry’s theory of social justice intends to allow each individual to gain the socioeconomic advantages of society by encouraging a concentration on equal access to many rights, opportunities and resources. It is not considered enough rely on individualised ideas of success which trumpet the ‘effort’ of those who ‘make it’ out of their circumstances. Only a concentration on the structural roadblocks to success of the many will do (Barry, 2005, p. 42).
The focus on rights, opportunities and resources on their own, however, is not enough to bring about the substantial structural changes Barry has in mind. Four preconditions must be present in order for Barry’s theory of social justice to be actioned.

First, universal moral (class-based) principles such as those laid out in the above theory need to override a preoccupation with creating ethnically specific programmes (2005, p. 15).

Second, the redistribution role of the State needs to be fundamentally strengthened (Barry, 2005, p. 208). The cornerstone of this argument is that wealth tax is fundamental for social justice (Barry, 2005, p. 191), as it will create the economic conditions in which all can receive resources such as an unconditional individual income with sufficient means to allow one to flourish (Barry, 2005, p. 209).

Third, the neoliberal economic constant of unemployment should be actively mediated. Barry’s argument is that society as it is currently structured needs ‘losers’ with poorly paid work who are kept ‘honest’ by the even less financially secure unemployed who can be even less discerning with regards to work benefits. The idea of social mobility in this context is simply a ‘zero sum game’ as the positive mobility of a given number of individuals would need to be matched by the same number suffering negative mobility (Barry, 2005, p. 61). Likewise, in such a limited marketplace, simply increasing the education of a society cannot on its own move sections of the population out of poverty as this would merely ‘raise the bar’ of entry into higher professions and not change the underlying context. Education, in other words, is effective in an individual sense, but holds no promise on its own to restructure society (Barry, 2005, pp. 169 & 171). The active economic structuring of full employment, is therefore, required.

Finally, a class-based (and therefore ethnically blind) solidarity based around such a shared concern for common outcomes should demand that political actors enforce fair outcomes for all (Barry, 2005, pp. 79 & 46).
By constructing a measurable theory of justice, Barry poses solutions that require a view of the structures of society from a whole-of-life perspective – a considerably broader concept than either Kymlicka or Parekh attempt. In doing so, Barry calls for a parity of opportunity that covers most facets of life from cradle to grave.

For Barry, the focus on ethnic or cultural identity misses his fundamental point: the structures of society represent the cause of socioeconomic disparities in Western societies. Ethnic identity is valid – but in a private rather than a public sense. He precludes, therefore, the use of ethnicity as a framework to address injustice in socioeconomic outcomes. The use of class-based solidarity would, he contends, allow solidarity to form around shared disadvantages and be wielded against an unfair economic system through the political pressure such solidarity alone can provide.

Barry constructs an ‘either or’ argument with multicultural logic. It is his view that a society can have either the recognition of ethnic or cultural identity that multiculturalism requires or the socioeconomic parity across society that class-based frameworks build. It is a dichotomous choice, however, that Young finds spurious.

Young’s Democracy of Inclusion

Iris Marion Young implicitly rejects both Parekh’s and Barry’s notions of identity, choosing instead to chart something like a middle course between their views. She rejects the ideologies that argue for the impermeability and centrality of culture (as found in the work of Parekh), favouring instead a belief that culture is one of the many identities one can inhabit. Likewise, Young undermines Barry’s assertion that identity politics are based around difference alone, countering that such allegiances are foremost concerned with the unequal competition for resources – and not identity per se. These ideas allow her theory to acknowledge the desire of particular cultural or ethnic groups to be considered culturally unique, while allowing the extension of affiliations to include all
intersecting groups in a community. Such intersections move beyond cultural affiliations and can overlap much as an individual’s identity can stretch from ethnic affiliations to gender affiliation, sexual preferences, the area of employment and socioeconomic status. Young’s antidote to structural inequalities across society (thought to be the underlying motivation behind identity politics) is what she terms ‘deliberate democracy’. The practice of deliberate democracy represents a conscious move to shape the institutions of democracies into a form that she hopes will encourage a wider and deeper democracy where all who are affected have a voice – and one that can influence the State who then can control the economy for the socioeconomic benefit of the populace.

The following pages outline Young’s wish for identity politics to unite as civil society against shared structural disadvantages and her idealised democratic system of deliberative democracy which intends to return the decision-making ability of governance to communities.

As stated above, Young does not consider group identity or culture a singular defining feature of individuals. Thus, belonging to one group cannot, and does not, define one’s identity as individuals are thought to move in differing identities as agency allows (Young, 2002, p. 99). Identity, furthermore, is not thought to be tied to the singular idea of ethnicity alone, nor at points of differences such gender, sexual preference, religious and national affiliations, but rather, a personalised use of these frameworks as agency and the frameworks themselves allow (Young, 2002, pp. 99–101). An individual, therefore, would likely have many identities that overlap, compliment and jar with each other in ways that undermine personal loyalties to a singular grouping (Young, 2002, p. 122). It is this practice of cross-affiliation within an individual that Young believes counters the cultural reification of groups (Young, 2002, p. 89).

That said, Young is adamant that a group has the right to ethnic or cultural expression and bristles at Kymlicka’s assertion that immigrants need to privatise their ethnicity (Young, 2002, p. 219). It is precisely Young’s view of groups as at once containing a common identity and widely differing identities which allows her to perceive the possibility of solidarity to form beyond the category of any
given group. As Applied to the New Zealand context, it is quite possible to be at once: Māori, Pākehā, a male, gay, a father, an accountant, a ratepayer and an Anglican. This would give such an individual multiple identities and empathies for multiple viewpoints and therefore placing him singularly in one of these categories does a disservice to the complexities of his likely allegiances. Likewise, projecting this logic into a group context assumes that the diversity present in any grouping of persons is likely to be marked (Young, 2002, p. 133). It is unnecessary to constrict the affiliations of immigrant ethnicities or any others as they cannot, in Young’s contention, exist without links to multiple groupings in the larger community.

It is exactly because Young notes how inter-linked groups are, that she finds groups converging around central structural inequalities as more helpful than making group-based claims alone (Young, 2002, p. 105). It is her hope, furthermore, that a ‘differentiated solidarity’ can emerge in such collaborative sorties (Young, 2002, p. 221). In a sense Young wishes to move beyond the need for the cultural affirmation of identities ‘in and of’ itself and instead towards a concentration on shared structural inequalities (Young, 2002, p. 92). It is her contention that it is the wish of many that they simply are free to be openly different and not suffer social and economic disadvantage – though she allows a caveat for indigenous peoples scarred by historical colonial impact to push for a fuller validation of identity (Young, 2002, pp. 106 & 107).

The above iterations of the politics of difference, according to Young, naturally push forward claims that take into consideration many groups and perspectives and would be designed to appeal to a sense of justice that wider society should or would accept (Young, 2002, p. 86). With such an inclusive design armed with the potential to incorporate the many brush-strokes of society, Young understandably rejects the ideals of a comparatively limited class-based action (Young, 2002, p. 108).

The purpose of groups and group based action, then, is not simply to validate identity, but rather to counter broadly felt and mutually shared societal inequalities. When combined, such groups form what Young calls ‘civil society’
With its inherent solidarity built upon shared socio-economic goals, civil society is thought to possess the ability to “expose injustice in economic and state powers” (Young, 2002, p. 155). It is precisely because civic movements sit outside of the structures of the state that they can take positions that are in tension with larger economic and political interests and argue, instead, in collective rather than solely self-interested terms (Young, 2002, p. 175). As no democracies currently allow for such a civic engagement with either politics or larger economic interests due to inequalities of “wealth, social and economic power, access to knowledge, status and work expectations and racial prejudice” (Young, 2002, p. 34), Young puts forward the following theory of deliberative democracy as a means to counter inequalities of power.

When considering the application of democracy in the political sphere, Young is concerned with inclusion and a voice for ‘all who are affected’ by a given problem or issue (2002, p. 5). With this beginning point, it is Young’s hope that democracy will both widen and deepen to move beyond its ‘superficial trappings’ (2002, p. 5). Liberal values, therefore, should ‘pervade’ democratic relationships (Young, 2002, p. 147), while politics would need to reflect a multitude of perspectives (Young, 2002, p. 111). To achieve this, Young calls for community inclusion into the debate and decisions of parliament, a morality negotiated at community level, and structures that encourage politicians to represent the peoples of her or his constituency.

Young is critical of what she terms the ‘use of authoritarian force’ common to many current political actors as their decisions do not emerge from a consensus agreed upon in his or her consulate – an action she terms as “always wrong” (2002, p. 35). Instead, Young suggests an alternative pattern that represents a double layer of debate: first, issues of concern should be discussed and debated locally; and secondly, the Member of Parliament should encompass this expression to Parliament where it will be debated with other Members representing their constituents (Young, 2002, p. 131).

Young wishes to construct the above deliberate democracy with an emphasis on the ideals of inclusion, political equality, reasonableness, and publicity (2002, p.
17). When combined, the liberal moral underpinnings stated above and the practical inclusion of constituents in decision-making are hoped to moderate the “sometimes strict power of voting numbers and powerful interests” that are thought to blunt the effectiveness of democracy in terms of its ability to engage with and reflect the people it serves (Young, 2002, pp. 23–25).

When it comes to the concept of justice, Young is entirely democratic. For her, there is no justice like the justice of the people. Here she returns to the strength of democracy as valued and valuable because of its ability to confront injustice and promote justice (Young, 2002, p. 27). So strong is her faith in the practice of democracy that she sees little use for theories of justice (Young, 2002, p. 33). Deliberate democracy, she contends, has the advantage over abstract theories of justice and is, therefore, more just because all affected by the problem are involved and accountable to each other (Young, 2002, p. 30), a further advantage put forward is the quieting of the mantra of ‘the common good’. A concept she contends can narrow the agenda for consideration and therefore silence differing points of view (Young, 2002, p. 43). It is thought that constructing such shared mores in this framework will disarm the tendency to consign minority claims such as those of indigenous peoples, homosexuals or religious minorities to appear to be a call for special treatment (Young, 2002, p. 81).

Citizens don’t need a moral framework to understand justice, she claims, rather they simply require the frameworks to allow open and equal debates around decisions that affect their communities.

Consistent with her view of identity as non-singular, the main theme with regards to representation in Young’s work is diversity over a constituency. When drawing up regional authorities, she allows for some commonality but with the caveat that each voting region must include and embrace a certain degree of diversity (Young, 2002, p. 213). The consequences of failing to embrace a reasonable level of diversity in a boundary are thought to exacerbate residential segregation that in turn feed inequalities between residential regions. It is this residential segregation that produces the undesirable effects of reproducing the structures of disadvantage, limiting choice through special segregation and
obscuring from those who lie outside of a boundary the lack of privilege endured by those inside it (Young, 2002, p. 205).

As a counter to the loss of political representation in numerically smaller communities, Young proposes quotas for groups such as women and ethnic minorities in political parties (Young, 2002, p. 150). Explicit in this argument is an important distinction between quotas and special representation. Quotas (a regulated percentage of differing identities in a political party) are thought to encourage majority political parties to include differing perspectives which in turn maximises the “social knowledge available to make decisions with” and to encourage minority group members to move beyond “self-regarding interests and towards linking their claims into broader appeals to justice.” (Young, 2002, p. 115). Designated political seats (allocated seats outside of party lines as representatives of an identity), on the other hand, are thought to create a tendency that leads to both the marginalisation and reification of such groups and therefore should be used only as a last resort (Young, 2002, p. 150).

In forming her theory of deliberative democracy backed by ideals of individual identity and differentiated solidarity, Young creates a theoretical framework intended to direct identity politics into positions of influence over politics. It is Young’s implicit belief that as democracy is widened and deepened to allow ‘all who are affected’ a voice, the negotiated morality emergent from such deliberate debates will call for fairer societal structures and outcomes than Western countries currently attain – an outcome that only differentiated solidarity (with its broad base of support) can command of politics. The requirement to reach community level consensus, furthermore, will encourage ethnic and cultural groups to move beyond simply outlining their ‘rights’, and instead foster an explanation from each group of their particular needs to their community in a way that the maximum of people present can understand and identify with. The implementation of Young’s theories, however, is not simply a matter of various groups getting together to lobby politics. The structures of democracy would need to provide the forums for debate, political actors must be required to fulfil the
mandate of their constituents, political parties must be required to fulfil minimum quotas of diversity, and political zones must be drawn with an eye for including diversity of constituents.

The four theorists referenced in this chapter have laid out four distinct conceptualisations of what each might consider an ‘ideal’ society or perhaps ‘improved’ society. The frameworks of each theory, moreover, allow each a distinct view of social phenomena within national boundaries as shown by Kymlicka’s consideration of the effects of colonial history on indigenous people within a multicultural society, Parekh’s singular concentration on the legitimacy of culture, Barry’s focus on the economic structures of society, and Young’s concentration on the functions of democracy.

Each of the perspectives of these four theories will be used in Chapter 5 to examine the policy recommendations of the Whānau Ora Report.

The following chapter, however, will establish the Whānau Ora Report as it is symbolised by its position on Wright’s bicultural continuum through a direct comparison between the Whānau Ora Report and the Strengthening Families programme.
4. Whānau Ora and Strengthening Families

In order to establish the meaning of the Whānau Ora Report within the context of this thesis, the Whānau Ora Report needs to be given a place on Wright’s bicultural continuum. In this chapter, this is accomplished by comparing and contrasting the policy recommendations of the Whānau Ora Report with the structurally similar Strengthening Families programme. Table 2 (below) outlines the key points of similarity and difference between the two programmes which will be discuss in this chapter.

Table 2, Structural Comparison of the proposed Whānau Ora programme as represented by the Whānau Ora Report and the currently operational Strengthening Families programme

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<th>Points of Similarity</th>
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<td>Third Way collaborative (cross sectorial) model of governance that includes multiple government departments and community groups</td>
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<td>A ‘family’, instead of individual focus</td>
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<td>One contact person or practitioner per family instead of multiple contact persons at multiple government departments</td>
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<td>Family is implicitly viewed as a ‘living arrangement’ and parental ties (ethnicity neutral)</td>
</tr>
<tr>
<td>Family behaviour and environment as symptoms</td>
</tr>
<tr>
<td>Implies positive benefits as a result of better linking of families to government social services institutions</td>
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</table>
From Table 2 we can see, under the heading ‘Points of Similarity’, the structural similarities between the Strengthening Families programme and Whānau Ora found in their respective columns. Strengthening Families programme and Whānau Ora share, therefore, cross-sectorial models of governance designed to encourage multiple government departments and community group involvement that are facilitated by the practice of designating a single practitioner for each family. Both are ‘funding neutral’ (meaning that both programmes will draw their incomes from the existing budgets of the respective government departments), are centrally administered (referring to the shift to a model of funding that gives control of funding to a central government agency and away from the discretion of affiliated agencies who may or may not give the programme the expected attention), and are designed to enhance cost-effectiveness.

Under the Table 2 heading of ‘Points of Difference’, the differences between the Strengthening Families programme and the Whānau Ora Report are listed. The Whānau Ora Report differs from the Strengthening Families programme in that it defines whānau as Māori who are culturally unique; is intended to be based on a Treaty-partnership; and situates the government as an ‘adaptive’ partner and therefore distinct from the separate Māori institutional and whānau level space advocated by the Whānau Ora Report. The Whānau Ora Report can be seen, therefore, to be symbolically situated towards the hard end of Wright’s bicultural continuum as it is an expression of hard bicultural values (outlined in Chapter 2) such as Māori self-management, the Treaty-partnership or principles and Māori models of self-determination that call for the formation of separate Māori institutional space.

With regards to the ‘points of difference’ of the Strengthening Families programme found in Table 2, Strengthening Families is shown to differ from the Whānau Ora Report in that it is not Treaty-based, places government agencies as the key drivers and power holders of the programme, forms an implicitly ethnically neutral view of family, considers family environments as symptoms and implies a better linkage between families and the government social
institutions. According to the definition of soft biculturalism as signifying the inclusion of Māori into dominant institutional frameworks without reference to a Treaty relationship and its implicit call for separate Māori self-determination, soft biculturalism is therefore consistent with the Strengthening Families programme.

In an effort to describe these findings, the structure of this chapter begins by an examination of the Strengthening Families programme and its underlying assumptions, governance structure, funding, definition of family and its position on the Treaty of Waitangi. The subsequent Whānau Ora section will briefly establish the said commonalities between the Strengthening Families and Whānau Ora programmes (as represented by the Whānau Ora Report) and outline in greater depth the key differences that mark the Whānau Ora Report as representing a shift in bicultural practice from soft to hard biculturalism.

The Strengthening Families Programme

Strengthening Families has two assumptions: that families are important in shaping children’s outcomes, and that cross-sector co-ordination in service delivery is likely to achieve better outcomes than uncoordinated sector-specific approaches (Department of Social Welfare, 2001, p. 13).

Strengthening Families was born out of the desire of the Department of Social Welfare to target, for the purposes of intervention, the comparatively small group of “at risk” families (Department of Social Welfare, 2001, p. 12). The intention of Strengthening Families is to build on the logic of prevention as opposed to simply treatment. It is anticipated that interventions can move from simply dealing with negative consequences to preventing “things from going wrong in the first place” (Ministry of Social Development, 2009a, p. 18). To do this there is a shift in focus from simply an individual, to a broader scope of the family in which individuals are embedded. In other words, instead of targeting ‘at risk’ youths, Strengthening
Families seeks to target their wider families as a means to improved results (Roelvink & Craig, 2005, p. 113).

The Strengthening Families programme reflects a change in bureaucratic management philosophy that represents a conviction that the ‘fragmented’ social services of the government were unable to give cohesive assistance to such struggling families (Department of Social Welfare, 2001, p. 13). Strengthening Families, therefore, aims to get all relevant agencies involved (Ministry of Social Development, 2005a, p. 8). The agencies involved can be as diverse as government agencies, iwi, local government and community organisations (Ministry of Social Development, 2005a, p. 8). The local government and community organisations involved with Strengthening Families can take as diverse forms as the involvement of: District Health Boards (Ministry of Social Development, 2009b), School principals, school guidance councillors, General Practitioners, Lawyers for children, child psychologists, and anger management course tutors (Ministry of Social Development, 2011). Organisations such as the Buddy Programme (which matches children with trained adult volunteers for activities that encourage positive interests), Barnardos (who provide child and family services), Birthright (who concentrate on building confidence skills and resilience in family members) are also actively involved with the Strengthening Families programme (Ministry of Social Development, 2011). In terms of the Government departments involved in Strengthening Families, its history reads like a slow accumulation over time with the Government’s Health, Welfare and Education agencies involved at the outset (Department of Social Welfare, 1999, p. 11). By 2005, the list of government agencies involved directly with Strengthening Families had grown to include: the Ministry of Social Development, Children and Young Persons Service, the Ministry of Education, Ministry of Health, Housing NZ Corporation, Police, Corrections, Ministry of Justice and the Department of Internal Affairs (Ministry of Social Development, 2005a, p. 10). Furthermore, by 2009, two more departments would be added to the list bringing the total number involved to 11 different departments that operated in nearly 60 locations in New Zealand (Ministry of Social Development,
When non-government agencies are included, Strengthening Families would include 40 agencies as early as 1999 (Department of Social Welfare, 1999, p. 3). It is difficult to gain more up-to-date information regarding the community organisations currently involved, perhaps due to the sometimes informal nature of the engagement with such organizations (see: Kernaghan, 2009b, p. 248). Such collaboration is intended to provide a ‘network of support’ for struggling families (Ministry of Social Development, 2009a).

It is hoped, moreover, that this style of social service provision would reduce duplication between departments and as a result allow service delivery to become more efficient, and therefore, more cost effective (Roelvink & Craig, 2005, p. 114). The key government departments involved in this policy development are the Health, Education and Welfare sectors (Majumdar, 2006, p. 190) and it is this collaboration that is intended to produce a consolidation of reporting and evaluation protocols (Roelvink & Craig, 2005, p. 114). In 2004, the Family and Community Services (FACS) was established in the Ministry of Social Development to oversee and support this very process both in Strengthening Families and other family related initiatives (Whitcombe, 2009, p. 9). With regards to the behaviour of government, Strengthening Families represents one example of the current trend to reunify government departments through cross-sectoral development by developing a ‘protocol for collaboration’ (Roelvink & Craig, 2005, p. 113).

At the practice end of the spectrum Strengthening Families is based around organising groups to facilitate hoped for outcomes (P. E. Walker, 2007, p. 165) and the practice of inter-agency family case management (Ministry of Social Development, 2005a, p. 8). In this respect, the initiative sits alongside other initiatives such as Family Start, Social Workers in Schools, and Child and Youth Mental Health (Department of Social Welfare, 1999, p. 3).

The Strengthening Families initiative began in pilot form in 1996 and was subsequently rolled out across the country in 1999 (Strengthening Families, 2010), though it was officially introduced in 1998 (McTaggart, 2005, p. 36). Strengthening Families has been evaluated by the Christchurch City Council
(1999), Angus (1999), Visser (2000), Bennett (2002), Parsons (2002) and Nuthall and Richardson (2003) and endorsed as an effective approach for social services (Majumdar, 2006, p. 190). Oliver and Graham in their report to the Ministry of Social Policy (that would soon merge into the Ministry of Social Development) found Strengthening Families to be an approach that was ‘evidently needed’ (Oliver & Graham, 2001, p. 35). Later, in a review of Strengthening Families in 2005, the Ministry of Social Development endorsed it as a ‘critically useful approach’ (Ministry of Social Development, 2005a, p. 6).

The funding of Strengthening Families as a separate entity began in the 1997 budget (Department of Social Welfare, 2001, p. 17) and was boosted in the 1999 Budget (Department of Social Welfare, 2001, p. 50). In a validation of the initiative, the Government increased funding for Co-ordinator salary levels in 2005 to $2.3 million over four years (Ministry of Social Development, 2005b). The funding of Co-ordinator salaries does not give a full picture of government spending on Strengthening Families as this is not likely to include the national and regional co-ordination administration cost. Other ‘hidden’ spending is found in funds released for Strengthening Families to cater for training, administration costs, and a ‘discretionary fund’ that reached almost half a million dollars (Ministry of Social Development, 2005a, p. 10).

The origin of the initial funding for local collaboration came from separate departments until 1999, after which funding arrangements were centralised in the Department of Social Welfare (Ministry of Social Development, 2010a, p. 10). This change to centralised funding ‘locked in’ future funding (allocated from each department) for the Strengthening Families programme (Ministry of Social Development, 2010a, p. 10). The Strengthening Families programme can therefore be considered ‘funding neutral’ as it draws its funding stream from the existing budgets of government departments and is financially ‘locked in’ to future budgets.

In the Strengthening Families section of the Ministry of Social Development’s Annual Report of 2008/2009, the term of ‘family’ is preferred instead of family/Whānau. There appears to be no directive to define family in any
substantive way, but rather an acknowledgement that families are important for ‘at risk’ children as they are believed to foster both positive and negative outcomes. Families, furthermore, provide an opportunity for positive change as consultative action plans can be drawn up in the family context that reflects the needs of a particular family (Ministry of Social Development, 2009a). The Department of Social Welfare was most explicit in its focus on families (though without an attempt at definition) as opposed to individuals when it stated that: “families are important in shaping children’s outcomes” (2001, p. 13).

In 2008, over 1,500 families participated in a Strengthening Families programme (Ministry of Social Development, 2009a). By 2011, over 37,000 children and young people had been involved in the Strengthening Families programme (Ministry of Social Development, 2011). Given that a defining feature of Strengthening Families is its adherence to a community-based level of practice that was tailored to local needs and circumstances (Ministry of Social Development, 2005a, p. 8), it appears there is sufficient room to tailor this service to Māori Treaty-based aspirations. A report to the Ministry of Social Policy by Oliver and Graham contended as much when it responded to the concerns of Māori families. The report recommended that the facilitators “consult with Māori parents with regard to time, agenda, goals, attendees, and so forth – then it may meet the needs of Māori parents just as well as those of non-Māori” (2001, p. 34). Despite the overall success of the Strengthening Families programme, Māori have not engaged with Strengthening Families in the expected numbers (P. E. Walker, 2007, p. 232). An audit of Strengthening Families by Te Puni Kōkiri that same year recommended more targeted action with the aim of meeting Māori expectations. The report recommended that a Māori Caucus of Māori Strengthening Families co-ordinators be ‘set up’, with the support of the Families and Community Services – a recommendation that has been subsequently followed (Ministry of Social Development, 2005a, p. 18).

Perhaps a more profound obstacle for some Māori, however, was that it was not based on a Treaty relationship (P. E. Walker, 2007, p. 245). In this vein, Walker notes in 2007 the suggestions of some that a parallel Māori Strengthening
Families initiative be set up (p. 233) - the argument for this results from a Treaty perspective where power is idealised as being an equal arrangement between the government and iwi. Viewed through this lens, Strengthening Families was considered to be ‘top-down directed’ when in practice it gave government agencies priority over the iwi community, and as such, was not ultimately empowering for Māori and the likely reason for lessened Māori involvement in the programme (P. E. Walker, 2007, pp. 227, 232 & 233).

Based on this information, the Strengthening Families programme appears to be placed on the soft end of Wright’s bicultural continuum. The definition (or lack of) of family found in the Strengthening Families programme shows a lack of Māori/Pākehā separation inherent in bicultural logic. The decision not to use the family/whānau framework symbolises the programme’s lack of call for substantive institutional separation for Māori, while the calls for Strengthening Families facilitators to “consult with Māori parents” hints at Māori representing one of many special interest groups, such as community groups and local government, which the Strengthening Families programme wishes to include in its programme. The later move to ‘set up’ a Māori caucus of Māori Strengthening Families co-ordinators goes some way to increase the institutional space dedicated to Māori – though Walker’s (2007) critique of this structure suggest that the ‘top down’ nature of the Strengthening Families programme’s structure relegated this Māori involvement to tokenism rather than representing a partnership.
The Whānau Ora Report

The Whānau Ora Report, as shown in Table 2 (page 67), conforms in significant organisational forms to those of Strengthening Families\(^4\).

Like the Strengthening Families programme, the Whānau Ora Report endorses a multi-sectoral approach to case management (M. Durie et al., 2010, sec. 4.2.2) and will therefore involve such government departments such as: Te Puni Kōkiri, the Ministry of Social Development, the Ministry of Justice, the Ministry of Health and the Ministry of Education (sec. 6.4.15) along with non-government networks which include:

- Māori services and authorities extending from iwi and hapū and other organisations such as urban Māori authorities, the Kōhanga Reo Trust and the Māori Women’s Welfare League through to district health boards and primary health organisations and smaller local groups, including voluntary groups (M. Durie et al., 2010, sec. 6.4.19).

This multi-sectoral approach can be seen as early as the creation of the Whānau Ora Report. Here senior representatives of the Ministry of Social Development, Te Puni Kōkiri, the Ministry of Health, the Ministry of Education, The Ministry of Justice, Housing New Zealand Corporation, the Department of the Prime Minister and Cabinet, Treasury and the Department of Internal Affairs supported the writing of the Whānau Ora Report (sec. 1.3.1).

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\(^4\) The 2010 *Report of the Taskforce on Whānau-Centred Initiatives* (Whānau Ora report) forms the predominant point of analysis of the Whānau Ora programme in this thesis. To aid reading flow, Whānau Ora report citations are in shortened form, e.g. (sec. 3.2.2) instead of (M. Durie et al, 2010, sec. 3.2.2) unless direct quotes are used.
In a similar vein to the Strengthening Families programme, the Whānau Ora Report validates the use of a single contact person per family (p. 26; sec. 3.1.2), is designed to decrease duplication between government providers (sec. 6.4.1), enhance cost effectiveness (sec. 1.1), and is ‘funding neutral’ with funding moved around existing budgets (Ministry of Social Development, 2010b, p. 2). The funding neutral aspect of government expenditure was largely accounted for by the movement of $120 million of funds directly out of the Pathways to Partnership initiative (Beehive.govt.nz, 2010), a fund that supports community-based services that support families (Ministry of Social Development, 2010c) - one of which was Strengthening Families⁵ (Ministry of Social Development, 2008, p. 2).

The above structural similarities, however, do not preclude the Whānau Ora Report from containing important differences to the Strengthening Families programme – differences that represent a shift to the hard end of Wright’s bicultural continuum. Chief amongst these is the centrality of the Treaty of Waitangi, an expectation of an increase in self-determination (justified by the linkage between access to Māori culture and wellbeing), and the desire to increase the institutional use of Māori cultural practices beginning in societal structures such as education and government social services and finally in the Māori economy.


Underlying the genesis of the [Whānau Ora] framework is a wider societal context that recognises the position of Māori within New

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⁵ This raises questions regarding the temporal validity of ‘locked in’ government funding. One might assume that he on-going funding levels dedicated to Whānau Ora may potentially be equally vulnerable to change.
Zealand. Te Tiriti o Waitangi, the Treaty of Waitangi, remains a key instrument to guide national development. It affirms the unique status of Māori as the tangata whenua, the indigenous population, while simultaneously conferring, through Government, the rights of citizenship upon all New Zealanders (M. Durie et al., 2010, p. 6).

The Whānau Ora Report, through the above use of the Treaty of Waitangi, discursively moves Māori beyond a ‘special interest group’ requesting increased recognition from the government, to Crown partners. The Treaty of Waitangi, moreover, recognises Māori in New Zealand’s national context as distinct from, and even validates the citizenship rights of Pākehā New Zealanders.

Adherence to the Treaty-based relationship is believed to have enabled the historic settlements between iwi and the Crown allowing ‘positive outcomes’ for both parties – a government/Māori interdependence template that the Whānau Ora Report intends to follow and expects ‘all New Zealanders’ to benefit from (though the Whānau Ora Report does not elaborate how all New Zealanders will benefit) (p. 6). The Whānau Ora Report, furthermore, believes that the Whānau Ora programme has the potential to,

[U]nlock the latent potential in the relationships between government, providers, whānau and iwi to accelerate Māori social and economic development. The resulting relationships will more closely reflect the spirit and intent of the Treaty partnership (M. Durie et al., 2010, sec. 5.3.3).

The Treaty partnership found in the Whānau Ora Report is expected to gain Māori in the longer term “positive changes in data across social domains (eg, health, education, culture, safety, economic wellbeing and employment) at the population level (sec. 3.3.13).

During the consultation phase, the Whānau Ora taskforce were ‘frequently reminded’ that the Whānau Ora programme should be about self-determination (sec. 4.2.2). The Whānau Ora Report incorporates this desire into its intended practice and marks its recognition of Māori ‘group capacity for self-determination’
as one of its six defining features (sec. 4.2.3 & 4.4.5). The use of the phrase self-determination is used in the Whānau Ora Report for both whānau units (sec. 2.3.27 & 4.2.2), and in the context of Māori as an overall group (sec. 2.2.3 & p. 29: ii).

In addition to the Whānau Ora Report definition of Māori as a distinct group as validated by the Treaty of Waitangi, the Whānau Ora Report defines whānau as a cultural group.

Whānau has been variously defined but generally refers to Māori who share common descent and kinship, as well as interests that generate reciprocal ties and aspirations (M. Durie et al., 2010, sec. 2.2.1).

The use of the word ‘generally’ is a both a recognition that there might be more than one way to define Māori families/whānau and a contention that the above definition is informed by orthodoxy. Throughout the Whānau Ora Report, the terms Māori and whānau appear to be used interchangeably.

Included in the Whānau Ora Report’s definition of Māori whānau as a cultural group, the Taskforce report moves beyond the nuclear family and considers whānau to include:

intergenerational relationships, parenting and grand parenting, and extended responsibilities for the young and the old, [these] are important cultural markers that underpin whānau (M. Durie et al., 2010, sec. 7.2.2).

It is with these greater whole of whānau extended family relationships that the Whānau Ora Report wishes to interact, and in doing so, move beyond simply ‘treating individuals’ (Ministry of Social Development, 2010b, p. 1).

Having defined whānau, the Whānau Ora Report explicitly links access to Māori culture with wellbeing. Whānau wellbeing is believed to be “strengthened by Māori values and participation in Māori social networks” (sec. 6.2.11). Prominent in the margins of the Whānau Ora Report is cited a hui respondent’s view that appears to encapsulate this view.
Culture is at the centre of wellbeing to Māori - it is about caring, sharing, and looking after each other (M. Durie et al., 2010, p. 16).

The Whānau Ora Report notes the importance of “many social and economic variables” such as health, education, housing, income, employment, relationships and wealth to whānau wellbeing (sec. 6.1.2), but considers that,

... in the whānau context, wellbeing is also closely linked to Māori cultural identity and the expression of Māori cultural values. Te reo Māori, the observation of cultural codes of conduct (tikanga), protocols to guide interactions within the whānau and beyond (kawa), as well as cultural preferences for food, recreation and socialisation are integral to Whānau Ora (M. Durie et al., 2010, sec. 4.2.2).

In linking whānau access to Māori culture with wellbeing, the Whānau Ora Report wishes for whānau to experience confident participation in te ao Māori (sec. 6.2.0) in order to gain the advantages of the Māori world beyond immediate whānau and into a breadth of Māori communities and networks (sec. 2.3.8). These networks can encompass diverse settings including: Māori cultural events, iwi affairs, marae hui, waka ama and kapa haka (sec. 6.2.10). The Whānau Ora Report views this pan-whānau connection profound enough to the experience of ‘being Māori’, that those who have little links to their iwi and hapū are considered to be alienated from them (sec. 6.2.11).

The Whānau Ora programme is intended to bring wellbeing to extended whānau family units, and to Māori whānau overall (sec. 6.1.2). Such wider cultural contexts as iwi and hapū are viewed as a key plank in this development path. Iwi and hapū are considered advocates for Māori to the government as Treaty partners (sec. 5.2.2), facilitators of iwi programmes to benefit whānau, employers of whānau (sec. 2.3.10), powerbrokers with the resources to ensure the government enables whānau to gain access to such services, and supporters of cultural development and whakapapa connections (sec. 5.2.7).
The Whānau Ora Report builds on this link between a strong cultural foundation and whānau wellbeing to call for Whānau Ora practitioners to incorporate the design and delivery of its services. 

...in accordance with Māori values and philosophy service design and delivery based on Māori models of holistic wellbeing providing for tikanga Māori in all aspects of provider operation (M. Durie et al., 2010, sec. 5.2.1).

While the Whānau Ora Report admits that many whānau may not desire to be immersed in this cultural paradigm, it makes plain its preference for whānau to receive its services within Māori cultural frameworks in the following quote. 

Though not all Māori share the same sense of ‘being Māori’ they are Māori nonetheless, and the Māori contexts within which whānau live need to be part of whānau-centred initiatives. These contexts are characterised by distinctive sets of cultural norms, a range of social networks, variable tribal influence, common histories and different degrees of acculturation and alienation (M. Durie et al., 2010, sec. 7.2.1).

The Whānau Ora Report defines a wide and communal scope of Māori culture, a practice that it links to whānau wellbeing. This incorporates the te ao Māori contexts of immediate whānau relationships all the way to collective ties with iwi and hapū. The task of Whānau Ora practitioners, then, is to operate within a Māori cultural paradigm and facilitate a restoration of individuals that have experienced cultural alienation. Practitioners of Whānau Ora are therefore encouraged to seek to reaffirm whānau cultural identity and self-esteem through using appropriate cultural communication and social skills, drawing on Māori knowledge systems, and “recognis[ing] the unique entitlement that whānau hold within the Treaty relationship, and that iwi and hapū hold as partners to the Treaty relationship” (M. Durie et al., 2010, sec. 5.2.2).

The Whānau Ora Report, therefore, operates under the implicit expectation that Māori whānau who do not identify culturally as Māori will be best served by an
integration into either Māori social and cultural systems (as facilitated by Whānau Ora practitioners), or mainstream Pākehā government social services.

Given the importance the Whānau Ora Report attributes to the framework of the Treaty relationship and the link between access to Māori culture and whānau wellbeing, it is perhaps not surprising that the Whānau Ora Report argues for an increase in institutional space for Māori. The Whānau Ora Report, therefore, advocates that economic and societal structures should conform to Māori cultural practices as whānau enter them. The Whānau Ora Report constructs, as the following section shows, an ideal of institutional inclusion for Māori that begins with separate societal structures such as education and government social services, and extends all the way to a distinct Māori economy.

The Whānau Ora Report is critical of past government interventions which it believes have ignored the link between social and economic development contending that,

Health and social service models of practice have been relatively silent on the promotion of whānau economic growth even though the link between economic status and successful outcomes is well known (M. Durie et al., 2010, sec. 2.4.5).

In this context, Māori wellbeing is informed by socioeconomic factors (sec. 2.3.2) – though with the important caveat that Māori cultural contexts should “run alongside” social and economic factors (sec. 2.3.12).

The Whānau Ora Report notes the greater societal inclusion whānau have gained in the past ‘two or three decades’ reflected in the current,

high uptake of early childhood education, [the] dramatic increases in Māori participation in tertiary education, increased access to a choice of health providers, a strong Māori presence within the social services, increased Māori leadership in commercial and professional ventures, and increased involvement in both the governance and management of public bodies such as local authorities and district health boards (M. Durie et al., 2010, sec. 6.2.35) (sec. 2.3.5).
This increased inclusion is not merely that whānau have entered these realms, but rather, that these institutions have increasingly conformed to Māori cultural practices as whānau have entered them. The education sector is cited by the Whānau Ora Report as an example of this phenomenon as,

Educational providers who can offer educational programmes within a Māori cultural framework, for example, have been able to achieve greater engagement with students and whānau and gain better learning outcomes (M. Durie et al., 2010, sec. 6.2.11).

The role of the Government, in this push towards Māori institutional inclusion, is that of a facilitator. It should be “flexible enough to align with and support whānau, hapū and iwi aspirations” (sec. 3.2.5). It should use, moreover, “systems, policies, processes and organisational cultures that support whānau-centred approaches and methodologies... focus whānau strengths and building on those to meet whānau needs... [and] build a collaborative relationship between providers, whānau and government agencies” (sec. 5.2.5).

It is, therefore, the considered opinion of the Whānau Ora Report that Māori culture should pervade governmental institutions with which whānau come into contact. As the single point of contact for government services (sec. 5.2.5), the Whānau Ora Report creates a framework intended to facilitate this end.

The economic argument as outlined thus far is founded on: the full inclusion of Māori in society in areas such as early childhood education, tertiary education participation, and government social services with such sectors aligning appropriately responsive structures to Māori needs. This can be viewed as similar to the Strengthening Families programme in that it seeks to gain whānau/families the benefits of governmental and societal institutions to enable better outcomes – with the important difference that such interventions are practiced within a Māori cultural paradigm. The following idea of what can be called the Māori economy extends this inclusion outside the direct realm of the State and beyond the scope of the Strengthening Families programme.
In addition to the Whānau Ora Report’s wish for whānau to gain the benefits of a greater linkage with iwi, hapū, and access to Māori culture, the Whānau Ora Report calls for whānau to be linked into the emergent benefits of belonging to the Māori economy (economic structures lived within a Māori worldview).

The Whānau Ora Report intends for whānau to be connected to the future benefits of the Māori economy in the following ways: the Whānau Ora Report argues for whānau to be connected to the future values of Māori land trusts (sec. 2.3.9); the believed future positive economic flow-on effects of Treaty of Waitangi settlements such as employment opportunities by iwi authorities and access to iwi resources - though the Whānau Ora Report notes the follow-on effects are not yet fully ‘decided’ (sec. 2.3.10); the possibility of whānau commercial use of hereditary whānau communal land (sec. 2.3.13); the potential whānau ability to access economic gains through cultural and eco-tourism (sec. 2.3.14); a proposed practical use of whānau networks to form informal cross-pollination marketing strategies (sec. 2.3.15); increased Māori employment in dedicated Māori social services - such as Whānau Ora (sec. 2.4.4); and finally, an encouragement to whānau to engage in small and medium sized business to allow for financial freedom and a better opportunity to allow lifestyles “consistent with whānau philosophies” (sec. 2.3.18).

Taken together, the social and economic argument found in the Whānau Ora Report is as follows: it is centred on a Māori cultural framework that encourages increased Māori self-determination, more whānau access to te ao Māori, stronger relationships between whānau and iwi, more ability for Māori to critique the government, culturally responsive government social service programmes allowing greater inclusion of whānau, and more structures led ‘by Māori, for Māori’. The Whānau Ora Report then builds on these cultural advances to foresee whānau economic empowerment through a hoped for expansion of the Māori economy – that in itself is leveraged off Māori cultural strengths and practices.
In encouraging an increased engagement with the Māori economy, the Whānau Ora Report does not consider that the future Māori economy will operate in isolation of the general economy nor macro government policies as it admits explicitly that:

other influences (including government policy, legislation and regulation, and international economic conditions) will also impact on outcomes at the national level and it may not be possible to attribute positive change at this level directly to Whānau Ora (M. Durie et al., 2010, sec. 3.3.14).

Given, however, the Whānau Ora Report’s focus on the Māori economy and institutional inclusion, it leaves little conceptual room for the macro economic factors listed above. The Whānau Ora Report, therefore, makes no argument for structural interventions that might make immediate difference to economically poor Māori such as the adequacy of government unemployment benefits (as shown in Chapter 2, Māori bear a disproportionate burden of unemployment in New Zealand). Likewise, no argument is made for the adequacy of income for the working poor, addressing the cost of healthcare, assessing government housing policies or critiquing the lack of intervention by the government in structuring fuller employment in New Zealand.

The Whānau Ora Report, therefore, limits its scope to the harnessing of Māori cultural practices, social systems, increasing the inclusion of whānau within the government social services, unlocking the latent entrepreneurial abilities and collective financial resources into what can be called the Māori cultured economy in the hope of growing whānau cultural and economic lives.

This chapter has demonstrated that the Whānau Ora Report can be situated at the hard end of Wright’s bicultural continuum. Consistent with the hard end of Wright’s bicultural continuum, the Whānau Ora Report advocates the creation of separate institutional space for Māori (conforming to Māori worldviews and practices), is backed by a Treaty of Waitangi-based understanding of the
relationship between Māori and the Crown – as allowing Māori to gain the benefits of self-determination. It is, furthermore, within this context of the increase of Māori institutional space that the Whānau Ora Report represents, that its link between whānau access to culture and whānau wellbeing is grounded.
5. Theorising Whānau Ora

The previous chapter established that the Whānau Ora Report represents a policy shift towards the hard end of Wright’s bicultural continuum. In particular, the Whānau Ora Report advocates an increase in separate institutional space for Māori and in doing so uses the Treaty of Waitangi-inspired concept of self-determination as justification, along with an assertion of a link between whānau access to Māori culture and whānau wellbeing.

The current chapter uses the frameworks of the four authors outlined in Chapter 3 to elaborate on the meaning of the Whānau Ora Report’s policy aspirations. In particular, this chapter asks if the policy recommendations of the Whānau Ora Report represent a mitigation of the difficulties found in the bicultural paradox and Pākehā contestation.

As none of the authors reference New Zealand in any systematic way, the extension of their frameworks in this chapter moves each of the four theories beyond their original contexts and onto the New Zealand setting in general, and the policy aspirations of the Whānau Ora Report in particular. Each of the theories used in this chapter are examples of particular theoretical perspectives and no claim is made that each of the four theorists represent a consensus of opinion within each perspective. Kymlicka’s theories are considered an example of historical-institutional analysis; Parekh’s model an example of theory that focuses on cultural legitimacy. Barry’s work is seen as an instance of class-based analysis and Young’s framework as an illustration of democratic theory. When used in this way, the extensions of the logic of Kymlicka can be seen to explain the origins and functions of the Whānau Ora Report, while Parekh, Barry and Young’s perspectives can help unpack its limits.

In this vein, an examination of the Whānau Ora Report through the historical-institutional lens of Kymlicka’s theories illuminates the way in which the Whānau Ora Report recalls the historical relationships between Māori and the State and includes a temporal link to this phenomenon into a contemporary context of the Whānau Ora Report.
The theoretical positions of Parekh, Barry and Young, in contrast, outline the limits of the Whānau Ora Report. The use of the ideas of cultural legitimacy found in the work of Parekh unpacks the difficulty of creating bicultural frameworks in a national setting that contains multiple ethnicities. The work of Barry and Young has particular relevance to the Whānau Ora Report’s aspirations to improve the social and economic lives of whānau. An extension of the class-based analysis of Barry shows the inability of the Whānau Ora Report to engage the structures of neoliberal governance, while an extension of Young’s position notes the lack of broader democratic structures thought necessary to gain the societal solidarity required to encourage more equal socioeconomic outcomes for Māori.

**Origins**

*Kymlicka*

The historical/institutional framework found in Kymlicka’s theories can be summarised as recognition of the challenging historical context in which indigenous groups have endured, and continue to endure. It is believed that as majority colonial cultures have historically removed from indigenous communities both their pre-existing self-governance structures, and consequently their access to culture (as the propagation of culture is tied to the institutions of society), the ability of indigenous groups to enjoy the liberal value of ‘equal opportunity’ within greater society is undermined. To correct this parity disparity, Kymlicka identifies the need for interventions designed by the indigenous groups themselves that allows an increase in the validation of indigenous groups and their culture through an increase in institutional self-determination.

The Whānau Ora Report advocates for a fulfilment of the above prescription when it places Māori within the context of a Treaty of Waitangi relationship with the State and because it advocates for an increase in the institutional space for
Māori. This use of the Treaty of Waitangi can be seen as early as the third paragraph of the executive summary (as discussed in Chapter 4) when it states that,

Underlying the genesis of the [Whānau Ora] framework is a wider societal context that recognises the position of Māori within New Zealand. Te Tiriti o Waitangi, the Treaty of Waitangi, remains a key instrument to guide national development. It affirms the unique status of Māori as the tangata whenua, the indigenous population, while simultaneously conferring, through Government, the rights of citizenship upon all New Zealanders (M. Durie et al., 2010, p. 6).

The above quote makes two claims here that are consistent with the historical framework outlined by Kymlicka.

First, this quote places Māori within a coloniser/colonised relationship. In particular, it links the Māori and Pākehā into a relationship that is historically bound, encompasses ideas of nationhood (as found in the reference to ‘national development’), and conceptually partitions national minorities and mainstream society.

Second, in arguing for the centrality of the Treaty of Waitangi the above quote contends that it is the Treaty that gives Māori ‘unique status’ as ‘tangata whenua’. When viewed through such a coloniser/colonised lens, the Whānau Ora Report claims of tangata whenua status for Māori recalls the historical picture of Māori as a formally self-governing society displaced by the Crown. In this context, the Treaty of Waitangi is important (not simply because it is based on an agreement), but rather that it symbolises the colonial disruption of Māori institutional society.

The above position is significant with respect to ethnic minorities as the Whānau Ora Report argues for specific groups-based regard on the basis of a historical relationship where indigenous peoples have been historically denied self-governance and not as a result of cultural uniqueness *per se*. The Whānau Ora Report, however, does prominently include an argument for the use of Māori
culture – though the use of the Treaty of Waitangi frameworks emphasises the historical mandate of the position of Māori rather than cultural grounds for this focus. In particular, the Whānau Ora Report includes an association between access to Māori culture in relational and institutional settings and whānau wellbeing. This echoes Kymlicka’s framework in that the cultural argument above is largely restricted to the context of a historical relationship between Māori and the Crown. The Whānau Ora Report, for its part, contains no reference to any other ethnicity other than Māori and Pākehā.

Returning to the way in which the Whānau Ora Report discursively places ethnic minorities, the historical/structural ideologies found in the Whānau Ora Report provide a counter to an argument to those who suggest that Māori enjoy ‘special treatment’. As the Whānau Ora Report focuses attention on the colonised history that Māori have uniquely encountered, the extension of Māori cultural frameworks into the social institutions of government is viewed as an expression of the ‘appropriate’ relationship between Māori and the Crown that takes this history into account.

With regard to the negotiation of parity for indigenous groups found in the work of Kymlicka, the above Whānau Ora Report frameworks suggest the potential for positive outcomes for Māori. The linkage between Māori and the State as found in the Whānau Ora Report is congruent with his call for indigenous communities to fashion the relationship they wish to have with the majority population based on their particular history with the State. Likewise, the linkage between access to culture within the context of its institutional setting – in particular the wish of the Whānau Ora Report to institutionalise Māori social service programmes – returns to Māori a degree of the self-determination lost as a result of the process of colonisation. The wish of the Whānau Ora Report for the Whānau Ora programme to facilitate more whānau involvement in the Māori economy and iwi activities can be viewed here as fostering further Māori-centric institutional space, such as is theorised by Kymlicka to aid in indigenous groups such as Māori gaining parity with mainstream society.
Within this coloniser/colonised framework then, the Whānau Ora Report’s concentration on the means to legitimise Māori culture in the institutions of governance is validated as a positive step to improve the parity that Māori by liberal rights should enjoy in society. Such a shift represents more than simply giving cultural confidence to indigenous peoples, but rather the means to legitimise whānau cultural expression within a State-sanctioned framework that historically has undermined pre-existing Māori institutional structures. Māori, in this framework, can be expected to gain societal parity as the institutional tools necessary to sustain Māori culture as a legitimate societal culture are wielded. Likewise, the Whānau Ora Report’s advocacy of whānau engagement with the Māori economy can be viewed as extending the reach or practice to Māori self-determination allowing Māori cultural practices to extend from government institutions to the employment environment – further extending the legitimation of Māori society within the national context.

In addition to showing the way in which the Whānau Ora Report advocates for an increase in Māori institutional space through a recourse to history, analysing the policy aspirations of the Whānau Ora Report with the theoretical framework of Kymlicka also uncovers the balancing act inherent in the Treaty of Waitangi partnership between Māori and the State.

To Kymlicka, liberal values such as freedom of speech, conscience, the right to assembly, effective participation, equal opportunity, redistribution and mutual respect represent universal moral values that should be present regardless of cultural context. It is this liberal moral foundation that Kymlicka uses to justify the provision of group rights to indigenous groups as he believes that due to colonial histories, such practice forms the best means of giving indigenous individuals access to individual liberal rights. It is Kymlicka’s underlying concern that as indigenous groups wield identity-based structures that individual rights (and by extension, the access to socioeconomic opportunity) are not constricted in the name of group solidarity or cultural purity.

It is important to mention here that Kymlicka notes the difficulty of “outsiders to assess the likelihood that self-government for an indigenous or national minority
will lead to the suppression of basic individual rights” (Kymlicka, 1995, p. 40). Kymlicka takes special note here to extend the ideals of liberal rights beyond simple concepts of democracy as the means of assessing liberal values such as effective participation, arguing that indigenous communal participatory practices of decision-making can often reach this same liberal end of effective participation.

Looking behind the obvious theme shown above of ensuring that culturally distinct mechanisms of ensuring the rights and dignity of different groups are taken into account, shows the unbalanced power dynamic between indigenous peoples and the larger mechanisms of the nation-state. In other words, it is incumbent on the State to decide the appropriateness of indigenous institutional arrangements as they are ultimately under the jurisdiction of the State. This suggests a need for programmes such as the Whānau Ora Report advocates to justify their policies to the State as the ‘ultimate’ authority. Despite, then, the Whānau Ora Report’s move towards the hard end of Wright’s bicultural continuum (and its implicit realisation of institutional space allowing for increased self-determination), Māori are locked into something like a ‘junior’ rather than equal partnership with the State.

When the above arguments are taken together, this extension of the work of Kymlicka unpacks the place of the Whānau Ora Report in a national context. This shows how the Whānau Ora Report’s recourse to the Treaty of Waitangi allows for a recognition of the historical and on-going nature of the colonisation of Māori. The link to the colonial/institutional power relationship between Māori and the State within this discursive framework legitimises the creation of separate institutional space for Māori on the basis that this returns to Māori the ability to practice a societal culture – a move that is positioned as necessary for historical restitution. Within this thought-stream, the Whānau Ora Report can be expected to allow whānau to gain cultural and institutional parity across society and therefore better allow whānau access to societal resources on an even footing with non-indigenous New Zealanders. Such structuring of the relationship between Māori and the State illuminates the hierarchy of the power
relationship as the interests of governments (such as Kymlicka’s liberal views represent) cannot be removed from indigenous desires for self-governance. This leaves the State as the ‘ultimate authority’ to decide whether Māori practices such as symbolised by ‘effective participation’ meet the requirements of the democratic ideals of the State, or (to extend this logic further), whether or not the policy recommendations of the Whānau Ora Report are funded adequately. The Whānau Ora Report, in this viewpoint, cedes ultimate authority to the State in order allow the creation of State sanctioned and funded Māori institutional space - institutional space that in itself is a replication of the colonial hierarchy between the New Zealand State and Maori. The policy recommendations of the Whānau Ora Report, therefore, will operate within a national economic and government social service context in which the State has ultimate jurisdiction.

The limits of the policy recommendation of the Whānau Ora Report as operating within New Zealand’s national context are examined in the following section through extensions of the theories of Parekh, Barry and Young.

**Limits**

*Parekh*

Applying the work of Parekh contrasts with Kymlicka by highlighting the Whānau Ora Report’s inability to create space for other ethnic minorities within the multicultural context of New Zealand. The frameworks of Parekh place the practice of culture at the centre of the experience of personhood, yielding the following logical stream: differing cultures are the fundamental divide between humans as culture affiliation defines an individual’s view of the social and moral world around them. Each culture is theorised as unique and largely incompatible with others. In the light of this essential incompatibility, societal attempts to force individuals to conform to other cultural practices are considered detrimental to the wellbeing of the recipients of such a policy as this can undermine the expression of the ‘authentic’ self. Each culture must not,
therefore, be contorted towards ‘Western’ concepts such as liberal values, but rather be accepted as equally legitimate structures of human experience. Ideally, Parekh wishes that national structures be formed to allow a forum where various cultures within a national context can negotiate a meaningful consensus within the majority culture regarding the public acceptance of minority cultural practices.

The pre-eminence of culture in the framework advocated by Parekh at once shows support for the link between access to culture and wellbeing found in the Whānau Ora Report and illuminates the ideals behind an on-going resistance to bicultural thinking first shown in chapter 2.

When using Parekh’s cultural framework to analyse the Whānau Ora Report’s policy aspirations, the pre-eminence that Parekh’s theoretical position places on culture at once explains the utility of the link between access to Māori culture and whānau wellbeing (though it is at odds with the Whānau Ora Report’s Treaty-based justification), and explains the critiques of bicultural thinking that contend it leaves little room for other ethnic minorities in New Zealand.

An extension of the logic of Parekh simply asks of the Whānau Ora Report: if there is a link between access to culture and wellbeing in the Whānau Ora Report, why does it not contain an explicit argument for other cultures?

When Parekh constructs identity along cultural lines, he does so without recourse to historical arguments. Indeed, he explicitly critiques the division Kymlicka makes between indigenous national minorities and ethnic groups arguing that this assumes that ethnic groups have chosen to leave behind their culture. This historical reference is nonsensical within the logic of Parekh as one’s culture represents a link to a defining sense of self and consequently a primary path to individual wellbeing (irrespective of historical events). To this he adds a link between a judgement-free acceptance of the validity of non-liberal cultures to the ability of such cultured individuals to socioeconomically thrive in greater society.
Through the above argument, the use of Parekh’s framework affirms the Whānau Ora Report’s explicit link between access to culture and wellbeing, but not its justification based on a ‘special’ Treaty-based relationship with the Crown. Given the primary use of cultural identity in the theories of Parekh, an extension of his logic leaves little room for an argument for Māori to enjoy a ‘special relationship’ with the State unless it includes other equally legitimate cultures.

An extension of Parekh’s framework is congruent with the stated link between the access to culture and wellbeing case made in the Whānau Ora Report - a benefit that this logic insists other cultures are equally justified in receiving. If, in other words, giving Māori increased institutional space within the government social services is considered beneficial, why would other cultures be any less worthy to receive cultural validation? Viewed in this light, the Māori/Pākehā framing as found in the Whānau Ora Report (to the exclusion other cultures) favours Māori over other cultural groups such as Pacific Islanders or Asian New Zealanders. This cultural lacuna represents, within the context of the pre-eminence of culture, an unjustified hierarchy of cultures within the State structures of New Zealand.

The above statement illuminates something of the on-going tension within the New Zealand bicultural context briefly introduced in chapter 2: that bicultural logic has yet to be extended to include the significant levels of immigrant communities (see: Bartley & Spoonley, 2004; Pearson, 2000). Within the New Zealand context, immigrant communities could be forgiven for finding no equivalency in respect of their cultures being validated to the extent that Māori are in government institutions (such as the Whānau Ora Report advocates). Confirmation of this lack of cultural regard for ethnic minorities is found in the Whānau Ora Report’s lack of reference to immigrant communities in its 76 pages.

An extension of Parekh’s cultural primacy position illuminates what Pearson (2000) has previously called the ‘in-built’ tensions when bicultural policies are instituted in an essentially multicultural national context, namely that the
historical/institutional justification of the validation of Māori culture appears in a cultural framework to be unfairly placing Māori cultural expression over other ethnic minorities. Furthermore, an extension of the cultural model of Parekh shows the lack of forum or mechanism within a bicultural framework needed to address such tensions. The problem is found in something of a biculturalism stalemate: bicultural logic does not extend itself to include ethnic minorities, but multicultural calls for the equal consideration of cultures within the New Zealand context (with their assumption of equal validity), do not easily account for the effect of colonial history on the Māori population or for the legal status of the Treaty of Waitangi in New Zealand.

*Barry*

The use of Barry’s class-based framework lends itself to a direct critique of the focus of the Whānau Ora Report.

Barry’s class framing of society and the economy concentrates on shared societal structural disadvantages over what he views as the ‘overstated’ cultural needs of differing identities. Of particular concern here is that social interventions should concentrate on the mitigation of the unequal division of society’s resources as a first priority. This focus would require a concentration on the structures of the economy, which are thought to affect the spread of resources across society (such as the adequacy of income for the working poor), over the need for culturally-specific institutional regard which are not thought to be the best means of directly ensuring the uneven spread of societal resources.

Barry builds his argument of class analysis on three assumptions. First, class-based measurements are preferable to consideration of historic and cultural identity. Second, the structures of national economies are thought fundamentally unfair – as evidenced by the uneven spread of socioeconomic resources found in Western countries. Finally, the economy is considered to be in need of direct, identity-blind interventions which concentrate on an even spread of society’s
resources. These three arguments and their specific critiques of the Whānau Ora Report’s socioeconomic arguments are expanded in turn below.

Categorising identity as fundamentally a class-based phenomenon builds a view of identity that is contrary to the historic and cultural identity frames of the Whānau Ora Report. This construction of identity is significant in relation to the Whānau Ora Report’s framings of identity as it echoes Marx’s inversion of Hegelian logic in that it places structural forces over the intimate and cultural causes of behaviour. Instead of considering the access to culture to be fundamentally linked to wellbeing (as the Whānau Ora Report does), a class analysis, in contrast, contends that the emergence of human flourishing stems from equal access to socioeconomic resources across society ‘first and foremost’.

Following Barry’s class-based logic shows that once any given group, along with all in society, are given the means to secure a socioeconomic position of parity, they are free as individuals to express themselves in culturally appropriate ways. It is believed, therefore, that cultural parity occurs in conditions of socioeconomic parity – and not by cultural validation in and of itself. Barry’s framing of identity foresees a cost to be borne by identity groups themselves when concentrating on cultural or ethnic identities. First, the focus on identity is considered to be detrimental to the societal solidarity necessary to hold the Government to account for its role in creating a fair society since it moves attention on to identity over economic structures. Second, such identity-based programmes are believed likely to create a majority public perception of their interests competing with those of identity groups - further undermining a corporate view of shared structural inequalities. Finally, such identity groups fall easy prey to political blame for their socioeconomically poor position in society moving the blame unfairly from economic structures and on to identity groups themselves. The combinations of these problems uncovered by class-based analysis suggests that identity-based programmes are likely to harm rather than help the socioeconomic position of identity groups – particularly if such policy does not contain the means to counter structural inequalities.
Barry’s framing of the economy likewise differs from that of the Whānau Ora Report. Unlike the Whānau Ora Report, he views the economy as fundamentally unfair and in need of direct non-identity-based intervention. It is the view of Barry that a current Western concern with what might be called culturalism has allowed (through a shift in focus away from societal structures) socioeconomic inequalities to grow exponentially and largely outside of view as this is thought to represent a concentration on identity over socioeconomic inequality.

The nature of the paradox of the New Zealand bicultural project which legislatively empowered Māori while neoliberal economic policies disenfranchised Māori is consistent with Barry’s assertions shown in the above paragraph. A class-based solution to this inequality is to concentrate on the uneven attainment of socioeconomic resources across society in an identity-blind practice of structural equalisations. Such solutions ideally take the form of an active government mediation of structural mechanisms such as redistributive tax structures, universal adequacy of working wage, equality of education across society, the adequacy of unemployment income, universal access to quality housing and nutrition, and a pursuit of low unemployment strategies.

The Whānau Ora Report, by contrast, in its concentration on the needs of Māori cultural wellbeing, aligns itself to the Government’s existing structural frameworks without critiquing their uneven effects beyond a concern for cultural responsiveness. As shown in Chapter 4 (p. 84), the Whānau Ora Report contains no argument for addressing the adequacy of income for the working poor, the affordability of healthcare, an assessment of government housing policies or a critique of the lack of intervention by the Government in structuring fuller employment in New Zealand. Nor does the Whānau Ora Report gain the extra funding that would be necessary to bring about these structural changes, since, as shown in Chapter 4, the Whānau Ora programme will be funding neutral (p. 76). The Whānau Ora Report, in other words, contains no immediate argument or resources necessary for governmental structural redistribution of resources to gain Māori better socioeconomic outcomes.
An example found in the Whānau Ora Report illuminates something of the different focus of the Whānau Ora Report as compared to the recommendations found in the use of class-based analysis. The Whānau Ora Report, as shown in Chapter 4, considers an increase in education of Māori to be of socioeconomic importance for whānau – with the important caveat that this must be delivered in ways that are responsive to Māori cultural values (p. 82). The recommendation of the Whānau Ora Report, then, is centred on the degree to which the State provides culturally appropriate education for whānau. What the Whānau Ora Report does not critique are structural concerns of education. In other words, the Whānau Ora Report does not concern itself directly with the funding levels of low decile schools or the environmental influences that may affect students such as nutrition, housing and neighbourhood environment. This cultural focus, to the exclusion of an examination of structural mechanisms would, within the lens of class logic, be destined for failure as it ignores the structural roadblocks to good educational outcomes in preference for what Barry might consider a symbolic gesture of cultural responsiveness over a critique of the structures of society.

With respect to the Whānau Ora Report’s long-term view of whānau gaining socioeconomic benefit from engaging in the Māori economy, an extension of Barry’s class-based analysis finds little reason for optimism unless this shift contained a concurrent argument for an even spread of resources – an argument that does not exist in the Whānau Ora Report. Indeed, the assumption held by the Whānau Ora Report (as shown in Chapter 4, p. 83) that adherence to Māori cultural values within the Māori economy would create better socioeconomic lives for whānau can be rejected using class-based logic as the Whānau Ora Report is seen to ignore the inbuilt danger of capitalistic economies to form the principle mechanism which creates unequal outcomes across society. A large-scale Māori entrance into this economic structure without explicit argument for a fair spread of its resources would result (within the scope of this class-based analysis) in socioeconomic inequalities that mirror that of the greater economy. The benefits to Māori, therefore, would likely be unevenly felt leaving the socioeconomic
benefits of the Māori economy to be out of reach for many, if not the majority of, whānau.

Using the class-based analysis frameworks of Barry, then, calls into question the ability of the Whānau Ora programme to undermine the socioeconomic disparities of which Māori currently bear the heaviest burden. The use of his theories in this chapter ask difficult (some might say unpalatable) questions of the utility of the use of culture in the Whānau Ora Report. The conclusion of this logic is that whānau would be better served by aligning themselves with social action which calls for structural changes to the economy (such as a call for universal income adequacy) over a programme designed for cultural difference that does not otherwise challenge the socioeconomic status quo. The claim of the Whānau Ora Report to possess the means to strengthen the socioeconomic position of Māori through its policy of encouraging the increasing use of Māori institutional settings (without a corresponding call to focus on the unequal spread of societal resources) can be seen in this context as missing an opportunity to critique the societal structures that have, since 1984, undermined the socioeconomic position of Māori.

Young

The democratic framework of Young, like the class-based analysis of Barry, uncovers the limits of the Whānau Ora Report. When viewed within Young’s framework, the policy recommendations found in the Whānau Ora Report can be considered unlikely to encourage sufficient societal solidarity to allow for greater interventions that would encourage more equal socioeconomic outcomes as it fundamentally underestimates the power differentials between the people, politics and the economy. Within the logic of Young’s democratic frameworks, an assessment of the ability of the Whānau Ora programme to strengthen the socioeconomic position of Māori can be distilled to this democratic question: are all who are affected (by socioeconomic inequality) given voice? Given that the Whānau Ora programme concentrates on Māori identities over others which are also affected by socioeconomic inequality, the answer is that it does not.
Young’s theories of democracy advocate for what she calls deliberative democracy – a conscious shaping of the institutions of democracies into a form that she hopes will encourage a wider and deeper democracy intended to give ‘all who are affected’ a voice. It is her contention that no current democracy allows for such a civic engagement with either politics or larger economic interests due to inequalities of “wealth, social and economic power, access to knowledge, status and work expectations and racial prejudice” (Young, 2002, p. 34). The means to create fairer social outcomes for those affected by unequal access to societal resources requires the creation of a multiple-identity consensus (what she terms differentiated solidarity) formed with the express purpose of undermining shared structural disadvantages. It is thought that only within a deliberative democratic system dedicated to actively encourage communities to debate and reach a moral consensus on the spread of resources across society, that politics can be directed to enforce State and economic adherence.

The Whānau Ora programme, when extending Young’s deliberative democratic view, forgoes the possibility of gaining sufficient differentiated solidarity with other groups in New Zealand to fundamentally critique the State in its role of creating fair conditions for both the overall population and Māori. The Whānau Ora Report’s expectation that it possesses the means necessary to strengthen the social and economic position of Māori can be thought to reflect an over-estimation of the power it exerts over the State and, by extension, the economy. It is considered by Young, in contrast, that if all who are affected (by societal inequality) have a voice, the State can then be successfully pressured into actions that constrain the ability of the economy to propagate unfair social and economic outcomes.

It is an oversimplification of Young’s theories of democratic function, however, to assume that such a framework encourages identity groups to simply join forces with other identities in order to press for fairer socioeconomic outcomes. Indeed, Young’s democratic argument calls for a fundamentally moderated framework of both identity and the place of identity groups within the democratic process from those found in the Whānau Ora Report. These two frames are examined in turn.
When Young, as shown in Chapter 3, rejects the framing of ethnicity or culture as an essential building block of identity, an extension of her theory into the context of the policy recommendations of the Whānau Ora Report sits at odds with the comparatively fixed ideal of identity found in the Whānau Ora Report.

Young critiques framings of identity that align predominantly to cultural or ethnic grouping, choosing instead a frame of identity that adheres to the multiple identifications of an individual. She contends, therefore, that ethnicity is but one of many competing and overlapping set of meanings that individuals accommodate and move in and out of according to individual agency – a framing of the individual that is more conflicted and overlapping than is suggested by the Whānau Ora Report. If, to recall the hypothetical example found in Chapter 3 of an individual with such diverse identity affiliations which are lived as ‘being’ Māori, Pākehā, male, gay, a father, an accountant, a rate payer and an Anglican, then to restrict an individual to a singular notion of identity makes little conceptual sense as this individual’s multiple affiliations form part of an individual’s self that need to be acknowledged if one is to explain and identify with the self.

The ethnic nature of the above example is borne out in New Zealand’s demographics. Currently about half of Māori (aged between 20 and 64) are in a partnered relationship with a non-Māori (Callister, 2003, p. 98). This Table rises to nearly 7 out of 10 when Māori aged between 24 and 34 are considered (Chapple, 2000, p. 105). Likewise, the recording of multiple ethnicities in census data is most commonly found in those who identify as Māori (Callister, Didham, & Potter, 2007, p. 61). Such data shows that significant portions of Māori either are in a partnered relationship with a non-Māori, or have a parent who is non-Māori. The dualistic bicultural measurement of such multi-ethnic persons and partnered relationships risks (in this framework) reifying difference between couples and within individuals - where multiple forms of identity connections are thought to exist.

The multiple framing of identity (as shown in the Chapter 3 example) does not call for a de-legitimisation of ethnic identities; it reflects, rather, a view of how
individuals experience multiple and sometimes conflicting identities. In this framing, Māori culture and identity can be considered distinct, but not essentially separate from Pākehā society as any given individual or group will likely have multiple identity affiliations that stretch beyond the boundary of Māori/Pākehā identities that inform the framework of the Whānau Ora Report.

By framing identity as individual, Young's framework allows the conceptual formation of solidarity despite the identity differences between groups in a way that the singular Māori identity frameworks of the Whānau Ora Report do not easily accommodate. More than simply reflecting self-expression, this possibility of differentiated solidarity is intended to represent the combined efforts of diverse identity groups formed with the express aim of undermining shared structural inequalities. Such solidarity is possible within the democratic framework of Young because (although identity groups may indeed be separated by identification to an ethnic or cultural identity), such groups are thought to share connections with other identities such as are found in identifications to occupation, age group, religious affiliation, sexual orientation and gender identities. Thus, a binary grouping of a population into a Māori/Pākehā identity could conceivably be redrawn into gender-based or occupational groupings. This new grouping would likely not resemble the previous Māori/Pākehā grouping but still constitute an identity group, as each individual would be placed into her or his gendered or occupational identity group. A hypothetical example such as this is not intended to assume that individuals do not order a personal hierarchy of identity, but rather that extensive commonalities exist between otherwise different identity groupings such as Māori and Pākehā.

The deliberative democratic framing of identity outlined thus far allows a validation of Māori culture, but not necessarily to the extent of assuming discrete cultural 'ways of being' that require cultural separation within the social services. Indeed, the differences between cultural or ethnic groups are not considered in this framework to be sufficiently profound as to preclude the formation of differentiated solidarity. It is this understanding of the widely
inclusive nature of differentiated solidarity that allows Young to build her ideal of deliberative democracy.

An extension of Young’s advocacy of the deliberate democratic shaping of the institutions of democracies into a form that will give voice to ‘all who are affected’ is a challenge to the meaning the Whānau Ora Report gives to the relationship between Māori and the State. Deliberative democratic framings of inclusion within a nation State is at odds with the framing explicit in the Whānau Ora Report where Māori are believed to hold a ‘special’ place in relation to the State, as evidenced by the Treaty of Waitangi. Young contends that indigenous peoples may require a ‘fuller’ formalised recognition of identity to counter the negative impact of colonial domination (a framing that in theory could recognise the Treaty of Waitangi). The use of her ideal of deliberative democracy, however, suggests a move away from the practice of a ‘separate’ Māori programme aligning directly to the State as the Whānau Ora Report intends and calls instead for Māori inclusion into the process of deliberative democracy.

Young’s argument against such direct identity group affiliation with the State is two-fold. First, this is contrary to the conditions required for the formation of consensus across identity lines. Such a framing of inclusion calls for voices and perspectives (such as represented by Māori) to be incorporated in wider democratic debates to be held outside of realm of the State. This is contrary to the Whānau Ora Report’s implicit framing of separation of Māori from Pākehā and its direct relationship with the State. The intention of deliberative democracy is considered to both expose larger majority beliefs and ideals to differing concepts and concerns in ways that may enrich and broaden the scope of possible solutions (an expanded toolbox of possible solutions), and to encourage minority communities to formulate their concerns in ways that majority groups can understand and identify with.

This democratic framing requires Māori who wish to use the Treaty of Waitangi as moral justification to particular ends, to consider majority beliefs and worldviews when making such a case. Given Young’s democratic view of individual identity as multiple and overlapping, the search for ideological and
moral common ground should prove fruitful as the overlapping identities of individuals will provide space for commonality. If the Treaty of Waitangi were used in this context as justification for increased self-determination for Māori, one might expect that the need for this to be acceptable to a wider audience in the community would necessitate its use in a way that the majority of persons could identify with. This might encourage an ideological link, for example, between the Pākehā mythology of self-sufficiency and the resultant desire to resist ‘being told what to do’ and Māori ideas of being able to do things ‘our way’ as promised in the Treaty. A resultant consensus, therefore, might be ‘deepened and extended’ by encouraging links between ideologies to form shared conceptualisations of outcomes. The Whānau Ora Report, in tying Māori directly to the State, can be considered here to steer the resources of the Māori community away from reaching a consensus with other communities around the mediation of the structural inequalities such communities share. Indeed, the lack of broad-based consultation found in the formation on the Whānau Ora Report is, in this context, essentially undemocratic.

Second, the Whānau Ora Report’s direct engagement with the State underestimates the power of politics and economic forces. Young views both politics and the economy in current democracies as exercises in authoritarian force since inequalities of wealth, social and economic power, access to knowledge and racial prejudice remove from the population the ability to reach a consensus on how the resources of society should be distributed. There is an implicit assumption that political and economic actors will perpetuate the current unequal socioeconomic outcomes inherent in this uneven distribution of power unless challenged. The opposing force to this authoritarian use of power in the political and economic spheres is conceived by Young’s theories to be differentiated solidarity wielded externally to political and economic structures. Thus, civil society united by differentiated solidarity is considered the singular means to critique politics, which in turn can regulate the economy through State mechanisms. The Whānau Ora Report’s direct engagement within the State’s social services mechanisms – in preference to an outside-of-government critique
backed up by multiple identity communities – can be considered here to be unlikely to leverage the differentiated solidarity needed to significantly undermine the power imbalances found in current authoritarian political and economic powers. Evidence of this lack of solidarity can be found in the funding neutral nature of Whānau Ora.

The Whānau Ora Report cannot, when viewed through the lens of Young’s theories, claim to give ‘all who are affected’ by socioeconomic inequality a voice (though the Whānau Ora Report does not make this claim as one of its stated goals). This lack of broad-based democratic engagement found in the Whānau Ora Report can be considered here to undermine its ability to strengthen the socioeconomic position of Māori as this fundamentally overestimates the ability of Māori programmes to critique politics and the economy. It can be argued, within this theoretical framework, that Māori would gain better socioeconomic outcomes if their interests with other identity groups in New Zealand were actively aligned with the purpose of wielding differentiated solidarity as opposed to using recourse to the Treaty of Waitangi as currently practiced, which speaks of an exclusive relationship between Māori and the State. This critique of the Whānau Ora Report represents a call for a shift in the point of Māori resistance to socioeconomic inequalities – from direct engagement with the State, to a negotiated engagement with ‘all who are affected’ by poor social and economic outcomes, with the aim of more effective pressuring of politics into constructive action. It is difficult to imagine how Whānau Ora might move beyond a funding neutral program without such a focus.
Challenging the Bicultural Paradox and Pākehā Contestation?

The use of the four theorists in this chapter raises doubts over the ability of the policy recommendations of the Whānau Ora Report to undermine the bicultural paradox and the Pākehā contestation.

Extending the theories of Kymlicka has shown the conceptual origins of the Whānau Ora Report as allowing for the recognition of the historical relationship between Māori and the State. Building on this framework, the Whānau Ora Report calls for an increase in the institutional space dedicated to Māori. This move is consistent with the legislative and government policy of empowerment of Māori found in the bicultural paradox. In calling for the increase of institutional space for Māori, however, the Whānau Ora Report ties itself to the national economic and government social service context in which the State has ultimate jurisdiction. It is this larger sector beyond the scope of the Whānau Ora Report, however, that defines the limitations of its ability to improve the economic lives of Māori, or gain Pākehā support.

The use of the theories of Barry has shown the inability of the Whānau Ora Report to address the second statement of the bicultural paradox, namely that Māori have been economically disempowered by neoliberal economics. Within this framework, the Whānau Ora Report is not seen to possess the mechanisms necessary to significantly address the uneven spread of resources that disrupt the economic lives of Māori.

With respect to the Pākehā contestation of the policies of hard biculturalism, this extension of the logic of Parekh highlights the difficulty of maintaining Pākehā support for hard bicultural practices (such as the Whānau Ora Report represents) in the multicultural setting of New Zealand. The inability of hard bicultural ideals to gain widespread Pākehā support can in part be found in the bicultural stalemate: bicultural logic does not extend itself to include ethnic minorities, but multicultural calls for equal consideration do not easily account for the effect of the colonial history of New Zealand.
The extension of Young’s democratic framework further questions the ability of the policy recommendations of the Whānau Ora Report to address the concerns of a resistant Pākehā public. This logic shows the Whānau Ora Report (with its Treaty of Waitangi-based relationship between Māori and the Crown) to be steering social action away from finding commonalities of interests between the Pākehā public and Māori, and towards the specific needs of Māori. As well as creating a perception of competing interests between Māori and Pakeha, this path of action is considered in this democratic framework to fundamentally underestimate the power differentials between the people, politics and the economy. The Whānau Ora Report can be considered here to lack the means to create the multiple-identity solidarity necessary to effectively require that politics create fairer socioeconomic conditions across national populations such as New Zealand.

In summary, the policy recommendations of the Whānau Ora Report, when measured by the theorists found in this chapter, appear unlikely to undermine the detrimental effect of the bicultural paradox and Pākehā contestation.
6. The Bicultural Present

This thesis has introduced New Zealand’s bicultural project as one marked by paradox and contestation. The bicultural paradox is found in the historical pattern of Māori gaining legislative empowerment through the insertion of the principles of the Treaty of Waitangi and Māori-specific references into legislation, while the concurrent neoliberal economic practices of successive governments disenfranchised Maori economically. The Pākehā contestation symbolises Pākehā resistance to ‘hard’ bicultural practices that encourage the allocation of institutional space specific to Māori.

Chapter 2 established the theory of biculturalism as “an idealisation of a New Zealand divided into the cultures represented by Māori (indigenous New Zealanders) and Pākehā (non-Māori New Zealanders who are alternatively called Tauiwi) and is concerned primarily with the accommodation of Māori within the majority Pākehā context”. Wright’s bicultural continuum was introduced in order to provide a framework to later contextualise the Whānau Ora Report within bicultural ideologies. The bicultural paradox and Pākehā contestation was then established within the context of past bicultural practices in New Zealand.

Having established the bicultural paradox and Pākehā contestation, this thesis asked if the policy recommendations of the Whānau Ora Report represent a mitigation of the difficulties found in the bicultural paradox and the Pākehā contestation.

Chapter 4 began this process by establishing the Whānau Ora Report as symbolising a move towards the hard end of Wright’s bicultural continuum. This shift to the hard end of Wright’s bicultural continuum is evidenced by the Whānau Ora Report’s call for an increase in the institutional space for Māori as compared to the otherwise structurally similar Strengthening Families programme. This represents a Māori institutional framework that is intended to extend beyond the Government social services and into involvement with iwi and hapū ties and the Māori economy. Given, however, the historical precedents of Pākehā resistance to hard bicultural practices, the Whānau Ora Report can be
expected to meet a Pākehā contestation informed by their sensitivity to their 'needs' being sacrificed by the politics of 'race'.

The following chapter (5) extended the work of Kymlicka, Parekh, Barry and Young (who were introduced in Chapter 3) onto the hard policy recommendations of the Whānau Ora Report. Together the use of these four theorists shows that the Whānau Ora Report is subject to the effects of the bicultural paradox and Pākehā contestation.

The use of the theories of Kymlicka show the origins of the Whānau Ora Report as building on bicultural ideals and furthering the Treaty of Waitangi enfranchisement of Māori as consistent with the first statement of the bicultural paradox. This theoretical extension illuminated the way in which the Whānau Ora Report, through recollection of the Treaty of Waitangi, allowed a view of the historical and on-going effects of colonialism, with which Māori must contend.

The Whānau Ora Report’s division of indigenous and non-indigenous society drew on this historical narrative of colonisation to validate the return to Māori of the institutional practice of Māori culture. This inclusion of a singular Māori space extends from whānau, hapū, iwi, to the institutions of society such as education and the sphere of Government social services through the ‘single point of contact’ practice of the Whānau Ora programme. If implemented in this fashion, it will allow whānau an increase in the choice of spheres within which to practice Māori culture, and in doing so extend for whānau the domains within which they can practice the institutional use of Māori culture.

The use of Barry’s theories showed an inability of the policy recommendations of the Whānau Ora Report to address the second statement of the bicultural paradox: Māori economic disempowerment. The use of Barry’s theories argue for a focus on the measurement of the spread of resources across society. As such, they push beyond the concentration on culture and on to the material means of existence, and in doing so question the ability of the policy recommendations of the Whānau Ora Report to gain Māori economic benefits. The inability of the policy recommendations of the Whānau Ora Report to improve the socioeconomic lives of Māori in this view is found in its lack of critique of neoliberal economic
practices. A significant improvement in the economic lives of Māori would require, in this view, a mediation of such structural mechanisms as the adequacy of income, the affordability of adequate healthcare and nutrition and the availability of well-paid work. These are arguments that the Whānau Ora Report fails to make. Viewed through the class-based analysis of this thesis, therefore, it would appear unlikely that the policy recommendations of the Whānau Ora Report contain the structural mechanisms necessary to improve the economic lives of Māori.

As tested by the theoretical perspectives of Kymlicka and Barry, therefore, the policy recommendations of the Whānau Ora Report are consistent with the bicultural paradox found in the empowerment of Māori through the designation of separate institutional space coupled with the lack of challenge to the Government’s neoliberal economic practices that have been implicated in the economic disenfranchisement of Māori.

Concerning the Pākehā contestation, the extension of the logic of Parekh unmasks the tensions between competing ideologies as found in biculturalism and multiculturalism. This echoes the related critiques (shown in Chapter 2) of Bartley and Spoonley (2004), Sissons (1993), and Turner (1995) which provide challenges to the identity framings of bicultural thought. The use of Parekh’s logic questioned how the direct link between access to the institutional practice of culture and individual well-being found in the Whānau Ora Report can stand unaltered in a multicultural society such as New Zealand. If, in other words, cultured identities benefit from dedicated institutional regard, why would bicultural logic separate the cultural needs of some groups over the needs of the duopoly of Māori/Pākehā identities? The result can be considered to be a bicultural stalemate: bicultural logic (such as is found in the Whānau Ora Report) does not extend itself to include ethnic minorities, but multicultural calls for the equal consideration of all ethnic minorities do not easily account for the historical relationship between Māori and the State.
The use of the work of Young also illuminates the limits of the frameworks of the Whānau Ora Report to address the Pākehā contestation of hard biculturalism. Specifically, an extension of her theories in to the Whānau Ora context shows bicultural logic to be lacking a workable model of effective democracy. The Whānau Ora Report does not possess, therefore, a conception of how Māori might convince Pākehā of the validities of their claims to institutional recognition of their culture (nor does its conception of identity encourage such behaviour).

The extension of Young’s logic questions both the comparatively limited conceptual scope of the democratic frameworks found in the Whānau Ora Report, and highlights the limitations of bicultural practice as it operates in ways that have historically undermined national solidarity (as evidenced by the Pākehā contestation of hard biculturalism). This bicultural inability to encourage solidarity can be expected to explain a lack of sway over politics. This is evidenced in the fact that the Whānau Ora Report will be ‘funding neutral’, and will not, therefore, contain extra funding to mediate the structural mechanisms, such as adequate housing or the adequacy of unemployment benefits of which Māori disproportionately suffer.

Taking the extensions of the four theorists together answers the central question of this thesis in the negative. The policy recommendations of the Whānau Ora Report do not represent, therefore, a mitigation of the difficulties found in the bicultural paradox and Pākehā contestation.

The assertions of this thesis suggest several avenues of future research. The ramifications of the use of the theories of Barry and Young in particular would be strengthened and extended by cross-contextual comparative research, as the features of neither a class-based economic analysis nor the structures of deliberative democracy are present in the current New Zealand context. Such research may gain for this thesis the benefit of grounding its assertions in the realm of practice as opposed to the purely theoretical level in which it currently
resides. In this vein, a cross-national study on the class-based ramifications of differing national means of assisting the spread of resources across society may be useful. Comparing a range of Western national contexts such as New Zealand, Norway, the United States, France and Japan may provide evidence-based data with which to argue for policy change that requires the concentration on the spread of societal resources.

Likewise, a comparative study of the workings of various participatory democratic systems could strengthen the democratic critique of bicultural practices as found in the Whānau Ora Report. Unlike the class-based example, however, no country currently conforms to a participatory system of governance such as Young proposes. The likely candidate for this research area would therefore be ‘grassroots’ participatory democratic projects such as are symbolised by deliberative, direct and consensus democratic systems.

Given New Zealand’s current demographics, it would be preferable for both of these suggested studies to measure the ability of such differing frameworks to address the needs of indigenous peoples, ethnic minorities and the ‘majority’ population.

In measuring the policy recommendations of the Whānau Ora Report through extensions of the theories of Kymlicka, Parekh, Barry and Young, this thesis has risked confining the effects of the bicultural paradox and Pākehā contestation to theoretical constructs. The United Nations Special Rapporteur on the Situation of Indigenous Rights and Fundamental Freedoms of Indigenous Peoples (first found in the introduction) does not fall into this trap when he validates New Zealand as an ‘important example’ of efforts to address indigenous on-going and historical grievances, but criticised the continued existence of ‘extreme’ Māori socioeconomic disadvantage. In defining Māori socioeconomic disadvantage as symbolised by the ‘continued and persistent high levels of incarceration of Māori individuals’, Special Rapporteur James Anaya shows the effects of Māori
socioeconomic disadvantage are not experienced theoretically, but personally embodied in constricted life-chances for Māori.

It is the finding of this thesis, however, that the policy recommendations of the Whānau Ora Report do not represent a mitigation of the above effects of the bicultural paradox and the Pākehā contestation. It is considered here unlikely, within this policy framework, that Māori will gain much-needed economic empowerment, or that the majority Pākehā public would support the substantial levels of positive discrimination that would be necessary to reach this end.

The Whānau Ora Report does not symbolise, in other words, a bicultural paradox lost, but a paradox preserved.
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Glossary

Kapa haka: (noun) concert party, haka group, Māori cultural group, Māori performing group.

Kaupapa: (noun) topic, policy, matter for discussion, plan, scheme, proposal, agenda, subject, programme, theme.

Ngāi Tahu: (personal noun) tribal group of much of the South Island sometimes called Kai Tahu by the southern tribes.

Pākehā: (loan) (noun) New Zealander of European descent.

Rangatiratanga: (noun) sovereignty, chieftainship, right to exercise authority, chiefly autonomy, self-determination, self-management, ownership, leadership of a social group, domain of the rangatira, noble birth.

Tangata whenua: (noun) local people, hosts, indigenous people of the land - people born of the whenua, i.e. of the placenta and of the land where the people's ancestors have lived and where their placenta is buried.

Taonga: (noun) property, goods, possessions, effects, treasure, something prized.

Tauiwi: (noun) foreign people, non-Māori, foreigners, immigrants.


Tikanga: (noun) correct procedure, custom, habit, lore, method, manner, rule, way, code, meaning, plan, practice, convention.

Waka ama: (noun) outrigger canoe. (in the context of this thesis it refers to outrigger canoe competitions. See: http://wakaama.co.nz/
All glossary definitions retrieved from the Dictionary cited below unless otherwise stated.

Appendices

Appendix I, the Treaty of Waitangi and Commentaries

The Māori and English versions of the Treaty of Waitangi are not, as Stokes (1992, pp. 177–178) shows below, direct translations of each other. The tensions between the two versions congregate around the degree to which Māori are guaranteed the rights of rangatiratanga alongside Crown sovereignty. Stokes puts it this way:

The central issue in interpreting the treaty is whether the crown sovereignty, kawanatanga, is fettered by the guarantees of tino rangatiratanga, Māori customary management of land and resources (1992, p. 178).

This section begins with Stokes commentary of the significance of the differences between the Māori and English translations of the Treaty of Waitangi and ends with the Kawharu English translation of the Māori version of the Treaty, followed by the English version.

Evelyn Stokes’ Treaty of Waitangi Commentary (1992, pp. 177–178)

The Treaty of Waitangi

Although other versions exist, the two official texts of the treaty are the Māori and English of the Treaty of Waitangi Act 1975 and its amendments. Neither is a translation of the other. The important issues are contained in three short Articles. In the first,

The Chiefs...cede to Her Majesty the Queen of England absolutely and without reservation all the rights and powers of Sovereignty which the said Confederation or Individual Chiefs respectively exercise or possess, or may be supposed to exercise or possess, over their respective Territories as the sole Sovereigns thereof.
A direct English translation of the Māori text (Kawharu 1989: 319-21) reads:

The Chiefs of the Confederation and the Chiefs all also [who] have not entered that Confederation give absolutely to the Queen of England forever the government of their land.

From this Article and the proclamations of 21 May 1840 derives the Crown’s right to set up a government and make laws in New Zealand. What is the nature of this right, described as ‘sovereignty’ in the official text? The missionary interpreter of the treaty, Henry Williams, used the coined word kawanatanga. This term had been used in the Māori translation of the Bible to mean governance, governorship or government. Another significant difference is the use of the term ‘cede’ as the equivalent of tūa rawa &ū-give absolutely. However, in a Māori context tuku means a gift which also includes reciprocal obligations.

The second Article made some provision for protection of Māori interests.

Her Majesty the Queen of England confirms and guarantees to the Chiefs and Tribes of New Zealand and to the respective families and individuals thereof the full exclusive and undisturbed possession of their Lands 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, but the Chiefs of the United Tribes and the individual Chiefs yield to Her Majesty the exclusive right of Pre-emption over such lands as the proprietors thereof may be disposed to alienate at such prices as may be agreed upon between the respective Proprietors and persons appointed by Her Majesty to treat with them in that behalf.

Kawharu’s reconstruction of the meaning of the Māori text is:

The Queen of England agrees to protect the chiefs, the subtribes and all the people of New Zealand in the unqualified exercise of their chieftainship over their lands, villages and all their treasures. But on the other hand the Chiefs of the Confederation and all the Chiefs will sell land to the Queen at a price agreed to by the person owning it and
by the person buying it (the latter being) appointed by the Queen as her purchase agent.

The problem of interpretation here is what is being guaranteed. The Māori version lists wenua [whenua], land; kainga, living places; and tuonga kutoa, all inherited, highly prized resources. Taonga is a difficult concept to express in the single English word ‘treasures’. As Kawharu suggested, it includes both material and non-material dimensions of a tribal group’s estate. It also implies the intangible, spiritual qualities of language and culture.

The phrase tino rangatiratanga is used for ‘the full exclusive and undisturbed possession’, and to a Māori this implies control of land and resources according to Māori custom. Rangatira is the term used for chief. Rangatiratanga is often translated as Māori sovereignty, but this is a different kind of sovereignty from kawanatanga in the first Article. It is also significant that the Māori term mana, meaning authority, status and prestige, was not used in the treaty. It is not likely that chiefs would have signed away their mana.

The central issue in interpreting the treaty is whether the Crown sovereignty, kawanatanga, is fettered by the guarantees of tino rangatiratanga, Māori customary management of land and resources (see McHugh 1989 for a discussion of rangatiratanga and sovereignty). It must also be borne in mind that ownership of property, as a disposable commodity, was not part of Māori customary forms of tenure of land and resources. There is also a difficulty in interpreting the Crown right of pre-emption which exercised the minds of both Māori leaders and colonial administrators from the 1840s on. Did this give the Crown the sole right to purchase land and sell to settlers, or was it merely a right to first offer of land?

The third Article states:

In consideration thereof Her Majesty the Queen of England extends to the Natives of New Zealand Her Royal protection and imparts to them all the Rights and Privileges of British subjects.

Kawharu’s reconstruction of the Māori meaning conveys similar words but there is a problem in the translation of tikanga-rights and duties. The Māori term
carries the implication of protection of Māori customs rather than rights and duties of British subjects in a British context. It is also relevant to note in passing that this provision gives equal citizenship rights to Māori and Pakeha in New Zealand. There is no suggestion in the Treaty of Waitangi of the concept of ‘domestic dependent nations’ which emerged in nineteenth-century American law relating to Indians.

Coping with two different texts, in two different languages with their different thought patterns, is a problem identified by Biggs (1989) who refers to Lewis Carroll: “When I use a word”, said Humpty-Dumpty, “it means exactly what I choose it to mean, neither more nor less.” Biggs concluded his scholarly study of the language, grammar and translation of the Māori and English texts with the question: ‘Could it have been better done?’ The answer is that there are better translations of the Maori, but the real problem is the translation of alien concepts from one language to the other.

In my opinion, however, it could only have been well done if definitions of the Māori terms chosen to translate such concepts as sovereignty, rights and powers, pre-emption, etc., had been included, as is done, for example, with our statutes. Only then would the meanings chosen by the British Humpty-Dumpty have been made even reasonably clear to the Māori Alice. (Biggs 1989)


**Treaty of Waitangi (English translation of Māori version - Kawharu Translation)**

Victoria, the Queen of England, in her concern to protect the chiefs and the subtribes of New Zealand and in her desire to preserve their chieftainship and their lands to them and to maintain peace and good order considers it just to appoint an administrator one who will negotiate with the people of New Zealand to the end that their chiefs will agree to the Queen's Government being
established over all parts of this land and (adjoining) islands4 and also because
there are many of her subjects already living on this land and others yet to come.
So the Queen desires to establish a government so that no evil will come to Māori
and European living in a state of lawlessness. So the Queen has appointed ‘me,
William Hobson a Captain’ in the Royal Navy to be Governor for all parts of New
Zealand (both those) shortly to be received by the Queen and (those) to be
received hereafter and presents5 to the chiefs of the Confederation chiefs of the
subtribes of New Zealand and other chiefs these laws set out here.

The first

The Chiefs of the Confederation and all the Chiefs who have not joined that
Confederation give absolutely to the Queen of England for ever the complete
government6 over their land.

The second

The Queen of England agrees to protect the chiefs, the subtribes and all the
people of New Zealand in the unqualified exercise7 of their chieftainship over
their lands, villages and all their treasures.8 But on the other hand the Chiefs of
the Confederation and all the Chiefs will sell9 land to the Queen at a price agreed
to by the person owning it and by the person buying it (the latter being)
appointed by the Queen as her purchase agent.

The third

For this agreed arrangement therefore concerning the Government of the Queen,
the Queen of England will protect all the ordinary people of New Zealand and
will give them the same rights and duties10 of citizenship as the people of
England.11

[signed] William Hobson Consul & Lieut Governor

So we, the Chiefs of the Confederation of the subtribes of New Zealand meeting
here at Waitangi having seen the shape of these words which we accept and
agree to record our names and our marks thus.

Was done at Waitangi on the sixth of February in the year of our Lord 1840.
Footnotes
1. ‘Chieftainship’: this concept has to be understood in the context of Māori social and political organisation as at 1840. The accepted approximation today is ‘trusteeship’.

2. ‘Peace’: Māori ‘Rongo’, seemingly a missionary usage (rongo – to hear: ie, hear the ‘Word’ – the ‘message’ of peace and goodwill, etc).

3. Literally ‘Chief’ (‘Rangatira’) here is of course ambiguous. Clearly, a European could not be a Māori, but the word could well have implied a trustee-like role rather than that of a mere ‘functionary’. Māori speeches at Waitangi in 1840 refer to Hobson being or becoming a ‘father’ for the Māori people. Certainly this attitude has been held towards the person of the Crown down to the present day – hence the continued expectations and commitments entailed in the Treaty.

4. ‘Islands’: ie, coastal, not of the Pacific.

5. Literally ‘making’: ie, ‘offering’ or ‘saying’ – but not ‘inviting to concur’.

6. ‘Government’: ‘kawanatanga’. There could be no possibility of the Māori signatories having any understanding of government in the sense of ‘sovereignty’: ie, any understanding on the basis of experience or cultural precedent.

7. ‘Unqualified exercise’ of the chieftainship – would emphasise to a chief the Queen’s intention to give them complete control according to their customs. ‘Tino’ has the connotation of ‘quintessential’.

8. ‘Treasures’: ‘taonga’. As submissions to the Waitangi Tribunal concerning the Māori language have made clear, ‘taonga’ refers to all dimensions of a tribal group’s estate, material and non-material – heirlooms and wahi tapu (sacred places), ancestral lore and whakapapa (genealogies), etc.


10. ‘Rights and duties’: Māori at Waitangi in 1840 refer to Hobson being or becoming a ‘father’ for the Māori people. Certainly, this attitude has been held towards the person of the Crown down to the present day – hence the continued expectations and commitments entailed in the Treaty.
11. There is, however, a more profound problem about ‘tikanga’. There is a real sense here of the Queen ‘protecting’ (ie, allowing the preservation of) the Māori people’s tikanga (ie, customs) since no Māori could have had any understanding whatever of British tikanga (ie, rights and duties of British subjects). This, then, reinforces the guarantees in article 2.


**The Treaty Of Waitangi (English Version)**

Her Majesty Victoria Queen of the United Kingdom of Great Britain and Ireland regarding with Her Royal Favor the Native Chiefs and Tribes of New Zealand and anxious to protect their just Rights and Property and to secure to them the enjoyment of Peace and Good Order has deemed it necessary in consequence of the great number of Her Majesty’s Subjects who have already settled in New Zealand and the rapid extension of Emigration both from Europe and Australia which is still in progress to constitute and appoint a functionary properly authorized to treat with the Aborigines of New Zealand for the recognition of Her Majesty’s sovereign authority over the whole or any part of those islands - Her Majesty therefore being desirous to establish a settled form of Civil Government with a view to avert the evil consequences which must result from the absence of the necessary Laws and Institutions alike to the native population and to Her subjects has been graciously pleased to empower and to authorize me William Hobson a Captain in Her Majesty's Royal Navy Consul and Lieutenant Governor of such parts of New Zealand as may be or hereafter shall be ceded to Her Majesty to invite the confederated and independent Chiefs of New Zealand to concur in the following Articles and Conditions.

Article the first

The Chiefs of the Confederation of the United Tribes of New Zealand and the separate and independent Chiefs who have riot become members of the
Confederation cede to Her Majesty the Queen of England absolutely - and
without reservation all the rights and powers of Sovereignty which the said
Confederation or Individual Chiefs respectively exercise or possess, or may be
supposed to exercise or to possess over their respective Territories as the sole
sovereigns thereof.

Article the second

Her Majesty the Queen of England confirms and guarantees to the Chiefs and
Tribes of New Zealand and to the respective families and individuals thereof 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; but
the Chiefs of the United Tribes and the individual Chiefs yield to Her Majesty
the exclusive right of Preemption over such lands as the proprietors thereof may
be disposed to alienate at such prices as may be agreed upon between the
respective Proprietors and persons appointed by Her Majesty to treat with them
in that behalf

Article the third

In consideration thereof Her Majesty the Queen of England extends to the
Natives of New Zealand Her royal protection and imparts to them all the Rights
and Privileges of British Subjects.

[signed] W. Hobson Lieutenant Governor

Now therefore We the Chiefs of the Confederation of the United Tribes of New
Zealand being assembled in Congress at Victoria in Waitangi and We the
Separate and - Independent Chiefs of New Zealand claiming authority over the
Tribes and Territories which are specified after our respective names, having
been made fully to understand the Provisions of the foregoing Treaty, accept and
enter into the same in the full spirit and meaning thereof in witness of which we
have attached our signatures or marks at the places and the dates respectively
specified.
Done at Waitangi this Sixth day of February in the year of Our Lord one thousand eight hundred and forty.
Hayward's The Principles of the Treaty as found in the Appendix section of the Waitangi Tribunal report Rangahaua Whānui National Overview.

THE PRINCIPLES OF THE TREATY OF WAITANGI

Note: This appendix was compiled by Dr Janine Hayward.
This appendix draws together some statements by the courts, the Waitangi Tribunal, and the Government in New Zealand regarding the interpretation and application of the principles of the Treaty of Waitangi. The discussion is divided into three sections. The first part investigates the principles of the Treaty according to some seminal judgments of the courts in New Zealand since 1840, with an emphasis on the 1987 Court of Appeal decision in the case of New Zealand Maori Council v Attorney-General. The second part discusses the principles identified in some of the Waitangi Tribunal reports released since 1983. The final part presents the principles established by the Labour Government in 1989.

Two important points underlief this discussion. First, the Treaty is a living document to be interpreted in a contemporary setting. Therefore, new principles are constantly emerging from the Treaty and existing ones are modified. Professor Gordon Orr of the Waitangi Tribunal has observed that it may never be possible to formulate a comprehensive or complete set of principles because the Tribunal has dealt with only a limited range of cases and has not speculated about principles relevant to cases yet to be heard. Secondly, and perhaps most importantly, the provisions of the Treaty itself should not be supplanted by the principles emerging from it. In the words of Justice Richardson in the 1987 case: much of the contemporary focus is on the spirit rather than the letter of the Treaty, on adherence to the principles rather than the terms of the Treaty. Regrettably, but reflecting the limited dialogue there has been on the Treaty, it cannot yet be said that there is broad general agreement as to what those principles are.
The attitude of New Zealand courts towards the Treaty of Waitangi has undergone significant development since 1840. This discussion is not exhaustive; rather it identifies significant cases that demonstrate an initial enthusiasm by the courts for upholding native title to land immediately after the signing of the Treaty in 1840, followed by a period from the mid-1860s well into the twentieth century during which the courts’ interpretation gave the Treaty considerably less weight. A further turning point came in 1987 with *New Zealand* Maori Council v Attorney-General.

**app.1.1 National Overview**

**app.1.1 R v Symonds (1847)**

The case of *R v Symonds* in 1847 questioned the competence of the settlers to buy land direct from Maori owners (as a departure from the Crown’s right of pre-emption stated in the Treaty). In his ruling, Justice Chapman upheld the notion of native title and observed:

> Whatever may be the opinion of jurists as to the strength or weakness of the Native title, whatsoever may have been the past vague notions of the Natives of their country, whatever may be their present clearer and still growing conception of their dominion over land, it cannot be too solemnly asserted that it is entitled to be respected, that it cannot be extinguished (at least in times of peace) otherwise than by the free consent of the native occupiers.

Justice Martin, Chapman’s fellow judge, similarly ruled that the Crown’s title to land within the colony was subject to the aboriginal rights of Maori which could only be removed through voluntary act by the native owners.
On the matter of the Treaty itself, Chapman declared that it was simply a declaration of the law the court had applied in making its judgment on this matter. He said:

It follows . . . that in solemnly guaranteeing the Native title, and in securing what is called the Queen’s pre-emptive right, the Treaty of Waitangi, confirmed by the charter of the Colony, does not assert either in doctrine or in practice anything new and unsettled.5

The courts expressed a similar attitude toward native title In re The Lundon and Whitaker Claims Act 1871 (1872). On this occasion, the court ruled that:

The Crown is bound, both by the common law of England and by its own solemn engagements, to a full recognition of native proprietary rights. Whatever the extent of that right by established native custom appears to be, the Crown is bound to respect it. But the fullest measure of respect is consistent with the assertion of the technical doctrine, that all title to land must be derived from the Crown; this of necessity importing that the fee-simple of the whole territory of New Zealand vested and resides in the Crown, until it be parted with by grant from the Crown.6

Despite judgments such as the two discussed above, the courts’ attitude towards native title was not upheld over subsequent years. In particular, it was to change when Chief Justice James Prendergast was appointed in 1875. For the 20 years he was in office, Prendergast consistently denied that aboriginal title had any legal character or that the Treaty reaffirmed or created rights enforceable in the courts. In particular, in the case of Wi Parata v The Bishop of Wellington (1877), Justice Prendergast transformed the position of aboriginal title from one subsisting at law, to one held on sufferance of the Crown. He also ruled that the Treaty of Waitangi, ‘could not transform the natives’ right of occupation into one of legal character since, so far as it purported to cede the sovereignty of New
Zealand, it was a simple nullity for no body politic existed capable of making cession of sovereignty'. This set the precedent for Prendergast’s subsequent decisions, and those of other judges. In R v Symonds (1847) NZPCC 388 par

icular, the decisions of Sir Robert Stout, as chief justice of the local courts, upheld and reinforced the Wi Parata decision. This and other decisions that denied customary Māori title to land at law and reduced or rejected the role of the Treaty will not be discussed here, but examples of unsuccessful appeals to the courts by Maori include Nireaha Tamaki v Baker (1901) NZPCC 371; (1902) AC 561; Hohepa Wi Neera v Bishop of Wellington (1902) 21 NZLR 655 (CA); Baldick v Jackson (1911) 13 GLR 398; Tamihana Korokai v Solicitor General (1912) 32 NZLR 321; Waipapkura v Hempton (1914) 33 NZLR 1065; and Hoani Te Heuheu Tukino v Aotea District Maori Land Court (1941) AC 308.

Well into the twentieth century, debate about native land rights and the Treaty within the courts reappeared, but still with little success for Maori (in particular, see Re the Bed of the Wanganui River (1963) and In re the Ninety Mile Beach (1955)). A significant development came with Te Weehi v Regional Fisheries Officer (1986), which tested the notion of customary Maori fishing rights when a Maori was charged with being in possession of paua smaller than the minimum size permissible under the Fisheries Regulations 1983.

The judge found that ‘the appellant was exercising a customary Maori fishing right within the meaning of section 88(2) of the Fisheries Act, [and in view of this conclusion] it follows that the other provisions of the Fisheries Act . . . did not affect his right to take the paua’.

app.1.3 New Zealand Maori Council v Attorney-General (1987)

In 1987, a case was brought to the High Court by the New Zealand Maori Council and its Chairman, Sir Graham Latimer, who applied (the application then being transferred to the Court of Appeal) that, despite section 27 of the State-owned Enterprises Act 1986 (which dealt with land subject to claim under the Treaty of Waitangi Act), the Crown was able to transfer to State enterprises lands that were subject to claims to the Waitangi Tribunal lodged after 18 December 1986.
(as well as claims that were not yet lodged) and that this was contrary to the principles of the Treaty of Waitangi according to section 9 of the State Owned Enterprises Act. The duty fell upon the Court of Appeal to determine the principles of the Treaty with which the Crown’s actions had been inconsistent. The court asserted the following principles.

(1) The acquisition of sovereignty in exchange for the protection of rangatiratanga Justice Cooke observed that the ‘spirit’ rather than the strict text of the Treaty should be considered. The basic terms of the Treaty bargain, according to Justice Cooke, were ‘that the Queen was to govern and the Maoris were to be her subjects; in return their chieftainship and possessions were to be protected, but that sales of land to the Crown could be negotiated’. Justice Cooke further observed that ‘these aims are partly conflicting.’ In addition, Justice Richardson stated:

There is . . . one overarching principle . . . that . . . the Treaty must be viewed as a solemn compact between two identified parties, the Crown and the Maori, through which the colonisation of New Zealand was to become possible. For its part the Crown sought legitimacy from the indigenous people for its acquisition of sovereignty and in return it gave certain guarantees.

(2) The Treaty established a partnership, and imposes on the partners the duty to act reasonably and in good faith The principle that the Treaty established a partnership and imposed on the partners the duty to act reasonably and in good faith was independently agreed to by all five members of the Court of Appeal, though it was expressed differently by each. Justice Cooke characterised this duty as ‘infinitely more than a formality’. He stated that, ‘If a breach of the duty is demonstrated at any time, the duty of the Court will be to insist that it be honoured.’ Furthermore, he said:

the duty to act reasonably and in the utmost good faith is not one-sided.

For their part the Maori people have undertaken a duty of loyalty to
the Queen, full acceptance of her Government through her responsible Ministers, and reasonable co-operation.  

Justice Richardson similarly observed the reciprocal obligations of the Treaty partners in stating that, ‘In the domestic constitutional field . . . there is every reason for attributing to both partners that obligation to deal with each other and with their Treaty obligations in good faith.’  

(3) The freedom of the Crown to govern  

On the freedom of the Crown to govern, Justice Cooke ruled that:  

The principles of the Treaty do not authorise unreasonable restrictions on the right of a duly elected government to follow its chosen policy. Indeed, to try and shackle the Government unreasonably would itself be inconsistent with those principles.  

Also, Justice Bisson observed that:  

it is in accordance with the principles of the Treaty that the Crown should provide laws and make related decisions for the community as a whole having regard to the economic and other needs of the day.  

(4) The Crown’s duty of active protection  

Justice Cooke stated that ‘the duty of the Crown is not merely passive but extends to active protection of Maori people in the use of their lands and waters to the fullest extent practicable’. This principle in particular had been identified by the Waitangi Tribunal prior to 1987 and was further discussed and developed in Tribunal reports following the court’s ruling in 1987 (see the later discussion).  

(5) Crown duty to remedy past breaches  

On the matter of remedy, Justice Cooke stated that:  

[a] duty to remedy past breeches was spoken of. I would accept that suggestion, in the sense that if the Waitangi Tribunal finds merit in a claim and recommends redress, the Crown should grant at least some form of redress, unless there are grounds justifying a reasonable Treaty
partner in withholding it – which would be only in very special circumstances, if ever.\textsuperscript{18}

(6) Maori to retain rangatiratanga over their resources and taonga and to have all the rights and privileges of citizenship

In relation to the rights of Maori under the Treaty, Justice Bisson noted:

The Maori Chiefs looked to the Crown for protection from other foreign powers, for peace and for law and order. They reposed their trust for these things in the Crown believing that they retained their own rangatiratanga and taonga. The Crown assured them of the utmost good faith in the matter in which their existing rights would be guaranteed and in particular guaranteed down to each individual Maori the full and exclusive and undisturbed possession of their lands which is the basic and most important principle of the Treaty in the context of the case before this Court.\textsuperscript{19}

(7) Duty to consult

On the question of whether the Crown has an obligation to consult Maori, Justice Cooke advised:

in any detailed or unqualified sense the duty to consult is elusive and unworkable. Exactly who should be consulted before any particular legislative or administrative step which might affect some Maoris, it would be difficult or impossible to lay down.\textsuperscript{20}

Moreover, he said, ‘wide ranging consultations could hold up the processes of Government in a way contrary to the principles of the Treaty.’ Similarly, Justice Richardson stated that:

the notion of an absolute open-ended and formless duty to consult is incapable of practical fulfilment and cannot be regarded as implicit in the Treaty . . . [however] . . . the responsibility of one treaty partner to act in good faith fairly and reasonably towards the other puts the onus
on . . . the Crown, when acting within its sphere to make an informed decision. 22

Following the 1987 Court of Appeal judgment, the Treaty principles were developed and reconsidered in a variety of cases. Some of these cases are discussed below.

app.1.4 Tainui Maori Trust Board v Attorney General (1989)

The issue at question in this case was whether the granting of coal mining rights by the Crown to Coalcorp represented a transfer of Tainui’s ‘interests in the land’ subject to the protection of the Treaty of Waitangi (State Enterprises) Act 1988. Furthermore, whether the proposed transfers of land direct to third parties would be inconsistent with the principles of the Treaty of Waitangi and the Crown’s obligation to evolve a system for safeguarding Maori claims before the Tribunal. 23

In finding in favour of Tainui on both matters, the judge ruled that:

the Crown should take no further action...in selling, disposing of or otherwise alienating the said lands until such time as the Crown has established a scheme of protection in respect of the rights of the plaintiffs [Tainui]. 24

The judge also expressed the sentiment that:

the principles of the Treaty of Waitangi . . . are taking effect only slowly but nevertheless surely. It is as well to stress also that they are of limited scope . . . As regards those Crown assets to which the principles do apply, this Court has already said in the forests case that partnership certainly does not mean that every asset or resource in which Maori have some justifiable claim to share must be divided equally. 25

Justice Cooke also acknowledged that coal did not seem to have been of particular importance to Tainui at the time of the land confiscations (in the 1860s) and that what mattered to them was the general use of their land.
However, the judge qualified this observation with the warning that any attempt to shut out in advance a claim by Tainui to be awarded some interests in the coal would not be consistent with the Treaty. For that reason, the judge explained, the interim order made by the High Court for Crown action to cease until the matter was resolved by the Waitangi Tribunal was upheld.26

app.1.5 New Zealand Maori Council v Attorney-General (1989)

Following the Court of Appeal’s decision regarding the transfer of state assets to State Owned enterprises in 1987, the Crown proposed to sell forestry rights but not the ownership of land on which exotic forests are planted. The New Zealand Maori Council subsequently applied to the Court of Appeal that the Government’s proposal to dispose of forestry assets was inconsistent with the judgment delivered by the Court of Appeal in 1987. In ruling on the matter and in considering the significance of the Treaty principles, the Court of Appeal in 1989 held that for the Government to present Maori with a forestry proposal that was a ‘fait accompli’ ‘would not represent the spirit of partnership which is at the heart of the principles of the Treaty of Waitangi’.27

app.1.6 Ngai Tahu Maori Trust Board v Director-General of Conservation (1995)

In December 1992, four appellants, collectively known as Ngai Tahu, who, at the time of the case, held permits for commercial whale watching, challenged the Director-General of Conservation’s intention to issue a further permit for commercial whale-watching (and other activities) by boats off the Kaikoura coast.28 The judge hearing the case admitted that the Director-General ought to have consulted Ngai Tahu interests, but dismissed the applicants’ claim for entitlement by virtue of the Treaty or applications of the principles of the Treaty, to a period of operation protected from competition. Ngai Tahu appealed and Justice Cooke, having heard the case at the Court of Appeal, made the following observations in his ruling.

First, it was noted that the Conservation Act 1987 required that the director-general administer the Marine Mammals Protection Act so as the give effect to the principles of the Treaty.29 In acknowledging that both active protection and
consultation were appropriate principles for the court to consider in this case, the question remaining was whether the right to conduct commercial boat tours was within the scope of the Treaty or aboriginal title. On this matter, the court ruled that the development right was not unlimited:

however liberally Maori customary title and Treaty rights may be construed, tourism and whale watching are remote from anything in fact contemplated by the original parties to the Treaty. Ngai Tahu’s claim to a veto must be rejected.

Nevertheless, the judge found in favour of Ngai Tahu that, although a commercial whalewatching business is not a taonga:

certainly it is so linked to taonga and fisheries that a reasonable Treaty partner would recognise that Treaty principles were relevant. Such issues are not to be approached narrowly . . . [and] the Crown is not right in trying to limits those principles to consultation . . . since . . . it has been established that principles require active protection of Maori interests. To restrict this to consultation would be hollow.

app.1.7 Te Runanganui o Te Ika Whenua Inc Society v Attorney-General (1994)

In 1994, a case was brought in the Court of Appeal by certain Maori against the transfer of property rights in the Rangataiki River and the Wheao River to the Bay of Plenty Electric Power Board and the Rotorua Electricity Authority, pending the resolution of a claim to the rivers lodged by Maori with the Waitangi Tribunal. While the appeal was unsuccessful, it did address the question of the limits to aboriginal title. In an earlier High Court decision on the same case, the judge had stated that:

The Treaty of Waitangi 1840 guaranteed to Maori, subject to British kawanatanga or government, their tino rangatiratanga and their taonga. In doing so the Treaty must have intended effectively to preserve for Maori their customary title. However liberally Māori customary title and treaty rights might be construed, they were never
conceived as including the right to generate electricity by harnessing water power.\textsuperscript{33}

The High Court had also observed that:

It is as well to underline that in recent years the Courts in various jurisdictions have increasingly recognised the justiciability of the claims of indigenous people either by developing the principle of fiduciary duty linked with aboriginal title . . . or in New Zealand decisions in which it has been seen, not only that the Treaty of Waitangi has been acquiring some permeating influence in New Zealand law, but also that treaty rights and Maori customary rights tend to be partly the same in content.\textsuperscript{34}

In hearing the appeal, Justice Cooke endorsed the High Court’s ruling on the matter and also dismissed the appeal, stating that:

The essence of what has been said above is that neither under the common law doctrine of aboriginal title, nor under the Treaty of Waitangi, nor under any New Zealand statute have Maori . . . had preserved or assured to them any right to generate electricity by the use of water power.\textsuperscript{35}

However, in setting these limits to customary title, the court admitted that Maori enjoy some water rights under the Treaty. In particular the court advised that if control over the rivers for the dams had been assumed by the Crown without Maori consent, that may well be the basis for a breach of the Treaty. The judgment records that ‘The Crown emphasises that it acknowledges that the appellants may well have a well-founded grievance in terms of the Treaty of Waitangi Act 1975’\textsuperscript{36} and that Maori remedy under such circumstances would appropriately lie in a claim to the Waitangi Tribunal or court-based action regarding Maori customary title or the Crown’s fiduciary duty.\textsuperscript{37}

\textsuperscript{33} Taiaroa v the Minister of Justice (1994)
This case to the High Court concerned the ‘Maori option’ which required Maori, over a limited period in 1994, to choose between enrolment on the Maori electoral and general roll. This choice and the results of the option would carry repercussions for the number of Maori constituency seats in the first mixed member proportional Parliament in 1996. Māori who brought the case to the High Court (and the subsequent appeal to the Court of Appeal) claimed that the policy was conducted unlawfully in that it was held without adequate notice, and without adequate Crown resources devoted to informing voters. In ruling on the case, Justice McGechan identified a number of principles which would guide him. He stated that he would not attempt to state the full content of tino rangatiratanga preserved in article 2, but would ‘readily accept it encompassed a claim to an ongoing distinctive existence as a people, albeit adapting as time passed and the combined society developed’. In particular, Justice McGechan advised that with regard to the Maori seats in parliament and the so-called ‘Maori option’:

there is no doubt Treaty principles impose a positive obligation on the Crown, within constraints of the reasonable, to protect the position of Maori under the Treaty and the expression from time to time of that position . . . It is a broad obligation of good faith. Maori representation—Maori seats – have become such an expression. Adding this together, for my own part I consider the Crown was and is under a Treaty obligation to protect and facilitate Māori representation.

In drawing on the principle of redress, Justice McGechan found that, ‘The Crown, as a Treaty partner acting in good faith, should recognise past error when it comes to light, and consider the possibility of remedy under present conditions.’ Despite this, the High Court rejected the complaints brought by Maori, who subsequently appealed. In hearing the appeal, Justice Cooke said:

Special obligations to the Maori people, whether arising from the Treaty of Waitangi, partnership principles, fiduciary principles or all three sources in combination, are not needed to give rise to an implication that reasonable notice of such an option is inherent in it.
Justice Cooke nevertheless also rejected the Maori argument that reasonable notice had not been given.


New Zealand Maori Council v Attorney-General was an appeal to the Privy Council against the decision by the Court of Appeal and the High Court in New Zealand that the Crown could transfer broadcasting assets to Radio New Zealand and Television New Zealand under the State-owned Enterprises Act. In making the appeal, the New Zealand Māori Council argued that the proposed transfer was illegal with regard to section 9 of the State-owned Enterprise Act, which requires that the Government not act in a manner inconsistent with the principles of the Treaty of Waitangi. The Council submitted that the transfer was inconsistent with the Treaty’s principles because it indicated that the Crown was not taking necessary steps to protect the Maori language with respect to television and radio in New Zealand. While the appeal was unsuccessful, it prompted further development by the courts of the principle of active protection.

In considering the case, Lord Woolf of the Privy Council acknowledged that:

Foremost amongst [the] principles are the obligations which the Crown undertook of protecting and preserving Maori property, including the Maori language as part of taonga, in return for being recognised as the legitimate government of the whole nation by Maori.43

He said also that:

This relationship the Treaty envisages should be founded on reasonableness, mutual cooperation and trust. It is therefore accepted by both parties that the Crown in carrying out its obligations is not required in protecting taonga to go beyond taking such action as is reasonable in the prevailing circumstances.44

In making his ruling and dismissing the appeal, Lord Woolf concluded that ‘The purpose of section 9 is not, however, to provide a lever which can be used to
compel the Crown to take positive action to fulfil its obligations under the Treaty.”

app.2 Principles Expressed in Tribunal Reports, 1983–87

The Treaty of Waitangi Act 1975 requires that claims brought to the Tribunal by any Māori or group of Maori relate to actions and policies by the Crown that were or are inconsistent with the principles of the Treaty of Waitangi. This discussion distinguishes between principles emerging from Tribunal reports released before and after the 1987 Court of Appeal decision (discussed in the previous section), thereby demonstrating the impact this ruling had on the development of the Tribunal’s Treaty principles. Not all Tribunal reports are included in this discussion, which is intended to be introductory only, and not comprehensive or exhaustive.

app.2.1 The Treaty implies a partnership, exercised with the utmost good faith

The principle that the Treaty implies a partnership, exercised with the utmost good faith, was first established in the Manukau Report, where it is stated that the interests recognised by the Treaty give rise to a partnership, ‘the precise terms of which have yet to be worked out’. Further, more extensive, references were made to this principle in other Tribunal findings following the ruling by the Court of Appeal in 1987 (see the later discussion).

app.2.2 The exchange of the right to make laws for the obligation to protect Maori interests

The Motonui–Waitara Report discussed the principle of exchange between gifts, as ‘The gift of the right to make laws, and the promise to do so as to accord the Maori interest an appropriate priority’. Later, in the Manukau Report, the Tribunal suggested that, under article 1 of the English text of the Treaty, Maori ceded all rights and powers of sovereignty to the Crown. It also stated that, under
the Maori version of article 1, Maori ceded ‘kawanatanga’, or the authority to make laws for the good and security of the country, subject to an undertaking to protect particular Maori interests.49

app.2.3 The Maori interest should be actively protected by the Crown

With regard to the matter of active protection, the Tribunal has frequently stated that article 2 of the Treaty ‘confirms and guarantees’ to the Maori their property and other rights and that the preamble to the Treaty expresses the Queen’s anxiety to protect the just rights and property of Maori. For example, the Manukau Report said that ‘The Treaty of Waitangi obliges the Crown not only to recognise the Maori interests specified in the Treaty but actively to protect them.’50 Similarly, the Te Reo Maori Report stated that in the enjoyment of their culture and language:

the word (guarantee) means more than merely leaving the Maori people unhindered . . . It requires active steps to be taken to ensure that Maori people have and retain the full exclusive and undisturbed possession of their language and culture.51

app.2.4 The needs of both Maori and the wider community must be met, which will require compromise on both sides The principle of compromise was first enunciated in the Motonui–Waitara Report, which advised that ‘It is not inconsistent with the Treaty of Waitangi that the Crown and Māori people should agree upon a measure of compromise and change.’52 The Te Reo Māori Report identified compromise of a different sort when it urged that the language of both of the partners must be recognised if the Treaty is to find expression.53

app.2.5 The courtesy of early consultation

The principle of consultation was first raised in the Manukau Report, in which the Tribunal noted that:
consultation can cure a number of problems. A failure to consult may be seen as an affront to the standing of the indigenous tribes and lead to a confrontational stance.54

This principle was further developed by the Tribunal following the Court of Appeal’s ruling in 1987 (see the later discussion).

app.2.6 The Crown cannot evade its obligations under the Treaty by conferring authority on some other body The principle that the Crown cannot evade its obligations under the Treaty by conferring authority on some other body was first established in 1983 with the Motonui–Waitara Report and was confirmed in subsequent reports. For example, within the Manukau Report, the observation was made that ‘the Crown cannot divest itself of its Treaty obligations or confer an inconsistent jurisdiction on others’. The Tribunal explained that there is a duty on the Crown not to confer authority on an independent body without ensuring that the body’s jurisdiction is consistent with the Crown’s Treaty promises.55

app.2.7 The Treaty is an agreement that can be adapted to meet new circumstances

In 1983, the Motonui–Waitara Report advised that the Treaty ‘was not intended to fossilise the status quo, but to provide a direction for future growth and development . . . as the foundation for a developing social contract’. It further stated that the Tribunal considered the Treaty ‘capable of a measure of adaptation to meet new and changing circumstances provided there is a measure of consent and an adherence to its broad principles’.56 Following the Court of Appeal decision in 1987, a modified version of the principle emerged as the principle of development, which was further developed in subsequent Tribunal reports (discussed later).
app.2.8 Tino rangatiratanga includes management of resources and other taonga according to Maori cultural preferences

The meaning of tino rangatiratanga in the Treaty was discussed extensively in the Tribunal’s early reports. The Motonui–Waitara Report stated:

We consider that the Maori text of the Treaty would have conveyed to Maori people that amongst other things they were to be protected not only in the possession of their fishing grounds, but in the mana to control them and then in accordance with their own customs and having regard to their own cultural preferences.\(^{57}\)

A similar interpretation of the rangatiratanga guarantee was noted in the Kaituna River Report in 1984.\(^{58}\) In the Manukau Report, ‘te tino rangatiratanga’ was further defined as ‘full authority status and prestige with regard to [Maori] possessions and interests’.\(^{59}\)

app.2.9 Taonga includes all valued resources and intangible cultural assets

In the Motonui–Waitara Report, the Kaituna River Report, and the Manukau Report, the Tribunal noted that taonga means ‘all things highly prized’ by Maori, which includes tangibles such as fishing grounds, harbours, and foreshores (as well as the estuary and the sea, together with the use and enjoyment of the flora and fauna adjacent to it) and intangibles such as the Maori language and the mauri (life force) of a river.\(^{60}\)

app.3 Principles Expressed in Some Tribunal Reports, 1987–95

Subsequent to the Court of Appeal ruling in 1987, the Tribunal discussed new principles, including the right of development, the right of trial self-regulation, the Crown’s obligation legally to recognise trial rangatiratanga, and the principle of options. The Treaty implies a partnership, exercised with the utmost good faith.
First established in the *Manukau Report* and reinforced in the 1987 Court of Appeal decision, the principle of partnership was reiterated in the *Orakei Report*. The Tribunal supported the court’s ruling that a leading principle was partnership between the races, inherent in which is an obligation to act towards each other (as Justice Cooke said) ‘with the utmost good faith’.61

The *Te Roroa Report* in 1992 reiterated that the Treaty is a sacred covenant entered into by the Crown and Maori ‘based on the promises of two people to take the best possible care they can of each other’ and that both parties have a common moral duty to abide by the Christian and traditional Maori values it embodies.62

The *Ngai Tahu Sea Fisheries Report 1992* advised that the Treaty signified a partnership between Pakeha and Maori requiring each other to act towards the other reasonably and with the utmost good faith.63

In the *Ngawha Geothermal Resources Report 1993*, the Tribunal’s statement on partnership was reiterated with the statement that:

> with the Treaty principle of partnership, the needs of both cultures must be provided for and compromise may be needed in some cases to achieve this objective. At the same time the Treaty guarantee of rangatiratanga requires a high priority for Maori interests when proposed works may impact on Maori taonga.64

In 1995, the *Turangi Township Report* reiterated the statement first made in the *Muriwhenua Fishing Report* that:

> It was a basic object of the Treaty that two people would live in one country. That in our view is also a principle, fundamental to our perception of the Treaty’s terms. The Treaty extinguished Maori sovereignty and established that of the Crown. In doing so it substituted a charter, or a covenant in Maori eyes for a continuing relationship between the Crown and Maori people, based upon their pledges to one another. It is this that lays the foundation for the concept of a partnership.65
Furthermore, the *Turangi Township Report 1995* argued that the responsibilities of the parties to the Treaty were ‘analogous to fiduciary duties’ or ‘of a fiduciary nature’ and had their source in the Treaty, not outside it or within the common law."66 The *Te Maunga Railways Report* had also earlier found that there was a fiduciary obligation on the Crown as a part of its obligation to protect the interests of Maori (in this instance to facilitate the return of former Maori land taken by the Crown when no longer required for the purposes for which it was taken)."67

app.3.1 The exchange of the right to make laws for the obligation to protect Maori interests

This principle had been previously discussed by the Tribunal and was further developed in the *Orakei Report*, which confirmed that:

> The Treaty was an acknowledgment of Maori existence, of their prior occupation of the land and of an intent that the Maori presence would remain and be respected. It made us one country, but acknowledged that we were two people.68

The Tribunal also stated that article 2 of the Maori text conveyed an intention that Māori would retain full authority over their lands, homes, and things important to them – their mana Maori – while the English text was limited to a guarantee of ‘the full, exclusive and undisturbed possession of lands, estates and forests, fisheries and other property’.69

The *Muriwhenua Fishing Report* similarly stated that ‘The principle that emerges is the protection of Maori interests to the extent consistent with the cession of sovereignty’.70 It went on to say:

> Maori were protected in their lands and fisheries (English text) and in the retention of their tribal base (Maori text). In the context of the overall scheme for settlement, the fiduciary undertaking of the Crown is much broader and amounts to an assurance that despite settlement
Maori would survive and because of it they would also progress.\textsuperscript{71}

In the \textit{Ngai Tahu Report 1991}, it was observed that ‘the cession by Maori of sovereignty to the Crown was in exchange for the protection by the Crown of Maori rangatiratanga.’\textsuperscript{72} Moreover, in the \textit{Ngai Tahu Sea Fisheries Report 1992}, this principle of exchange was extended to embody four principles which had previously been identified separately.\textsuperscript{73} These were the principles of active protection, the tribal right to self-regulation, the right of redress for past breaches, and the duty to consult. Subsequently, the \textit{Ngawha Geothermal Resource Report} and the \textit{Turangi Township Report 1995} also presented an overarching principle of exchange, which incorporated the principles of active protection, tribal self-regulation, redress, and the duty to consult.\textsuperscript{74}

\textbf{app.3.2 The Crown obligation actively to protect Maori Treaty rights}

While the principle of active protection was raised by the Tribunal prior to 1987, it was more widely developed following the Court of Appeal judgment. For example, the \textit{Orakei Report} stated the position previously advanced in the \textit{Te Reo Maori Report} that:

\begin{quote}
the word ‘guarantee’ meant more than merely leaving the Maori people unhindered in their enjoyment of language and culture. It required active steps to be taken to ensure that the Māori people have and retain the full exclusive and undisturbed possession of their language and culture.\textsuperscript{75}
\end{quote}

In the \textit{Mohaka River Report}, the very important principle of active protection meant that ‘the Crown is obliged to protect Maori property interests to the fullest extent reasonably practicable’.\textsuperscript{76} As mentioned earlier, the \textit{Ngai Tahu Sea Fisheries Report 1992} spoke of the Crown’s obligation of active protection within the larger principle of an exchange between the Crown’s right to make laws and its obligation to protect Maori interests. The report stated that ‘The Crown obligation to protect Maori rangatiratanga required it actively to protect Maori Treaty rights, including Maori fisheries rights’.\textsuperscript{77}
Similarly, both the *Ngawha* Geothermal Resources Report and the Turangi Township Report 1995 identified the duty of active protection within the overarching principle of exchange between Maori and Crown.\textsuperscript{78}

Finally, the *Te Whanganui-a-Orotu Report* in 1995 stated that matters arising in the claim were found to be in breach of the general overarching principle that the Crown must actively protect Maori rangatiratanga over taonga.\textsuperscript{79}

In the case of the *Ngawha Geothermal Resources Report*, the Crown’s obligation actively to protect Maori Treaty rights was seen to apply to all the interests guaranteed to Māori under article 2 of the Treaty which are not ‘confined to natural and cultural resources’.\textsuperscript{80}

Furthermore, the Preliminary Report on the Te Arawa Representative Geothermal Resource Claims found, as the *Ngawha Geothermal Resources Report* also had done, that the Crown was under a duty to protect Maori taonga, in this case the hot springs and baths.\textsuperscript{81}

While the notion of tino rangatiratanga had been summed up previously in the *Motonui–Waitara Report* and developed in the *Manukau Report*, it fell within the principle of active protection in the *Orakei Report*, with the finding that:

> The second article envisaged the retention of Maori lands by Maori people for as long as they wished to retain them and then in accordance with their customary lore and tenure. If anything other than that were intended it would need to have been expressly said.\textsuperscript{82}

\textsuperscript{app.3.3} The need for compromise by Maori and the wider community

After 1987, the Tribunal continued to develop the notion raised in the Motonui–Waitara and Manukau reports that reconciling kawanatanga and tino rangatiratanga required compromise by both Maori and the Crown. In the *Orakei Report*, for example, it was reiterated that ‘there is room for movement and scope for agreement between the Crown and Māori people which involves a measure of compromise and change’.\textsuperscript{83} The report explained that,
while the effective settlement of many claims will often depend upon the willingness of parties to seek a reasonable compromise, it follows that the mana to propose such a compromise vests not in the Tribunal but in the affected claimant tribes.\textsuperscript{84}

The \textit{Muriwhenua} Fishing Report stated that:

neither partner in our view can demand their own benefits if there is not also an adherence to reasonable state objectives of common benefit.

It ought not to be forgotten that there were pledges on both sides.\textsuperscript{85}

The \textit{Waiheke Island Report} included the proviso that ‘it is out of keeping with the spirit of the Treaty that it should be seen to resolve an unfair situation for one party while creating another for another’.\textsuperscript{86} The principle was interpreted as the principle of mutual benefit, whereby both parties expected to gain from the Treaty: Maori from new technologies and markets, non-Maori from the acquisition of settlement rights, and both from the succession of sovereignty to a supervisory State power. Neither partner, the Tribunal advised, can demand their own benefits if there is not also an adherence to reasonable State objectives of common benefit.\textsuperscript{87}

The principle of compromise was also explored in the \textit{Mangonui Sewerage Report}, which stated that:

The Treaty . . . requires a balancing of interests in some cases, and a priority for Māori interests in others. This is one occasion where a balancing is needed and some compromises must be made.\textsuperscript{88}

The Ngai Tahu Sea Fisheries Report 1992 reiterated the statement made in the Muriwhenua \textit{Fishing Report} that ‘neither partner in our view can demand their own benefits if there is not also an adherence to reasonable state objectives of common benefit’.\textsuperscript{89} In the \textit{Mohaka River Report}, this was expressed as the balancing of competing interests.\textsuperscript{90}

app.3.4 A duty to consult?
The Tribunal continued to develop its interpretation of the principle of consultation following the Court of Appeal decision in 1987. In short, the principle developed from the courtesy of Crown consultation (as discussed earlier) to the Crown’s duty to consult with Maori. For example, in the *Mangonui Sewerage Report*, the Tribunal asserted the need for early consultation, saying ‘In accordance with the Treaty, there should be consultations with the district tribes in our view, when certain local projects are proposed.’ However, at the same time, the Tribunal recognised the difficulty that often arises when the statutory body is unsure whom to consult.

The *Muriwhenua Fishing Report* advised that regard must be had to Maori interests and that may in practice require consultation in some cases. The *Ngai Tahu Sea Fisheries Report 1992* stated (within the overall principle of ‘exchange’) that ‘the duty to consult with Maori does not exist in all circumstances’. However, the report affirmed that ‘environmental matters and . . . measures of resource control as they affect Maori access to traditional food resources – mahinga kai – require consultation with the Maori people concerned’. Much the same argument was present in the *Turangi Township Report* in 1995. The *Ngawha Geothermal Resources Report* more strongly asserted (still within the broader principle) that:

> Before any decisions are made by the Crown . . . on matters which may impinge upon the rangatiratanga of a tribe or hapu over their taonga, it is essential that full discussion take place with Maori [if the obligation of active protection by the Crown is to be fulfilled].

The duty to consult has also arisen in the respect of public works takings. For example, in the *Ngati Rangiateaorere Claim Report*, the Tribunal found that the Crown’s obligation to protect Maori and their lands also involved an obligation properly to consult with them before disposing of their lands to the Crown or, by way of Crown grant, to any other party. They were not to be deprived of their lands without due legal process or by unilateral action. In that particular case, the Tribunal found that the Treaty had been breached by the Crown’s failure to consult and protect Maori. It stated that:
the Crown failed to consult with Ngati Rangiteaorere . . . in the first instance about the need for a public road, and it failed to negotiate genuinely with them to purchase the land. The Crown therefore had no right to proceed with compulsory acquisition. It was clearly in breach of article 2 of the Treaty.98

app.3.5 The Crown cannot divest itself of its obligations

The Mangonui Sewerage Report found that the principle that the Crown could not confer an inconsistent jurisdiction on others extended to the laying down of rules for local authorities and the Planning Tribunal.99 The principle that the Crown cannot divest itself of its Treaty obligations by conferring authority on other bodies reappeared in the Te Roroa Report in 1992. The report stated that the duty of the Crown extends to agents of the Crown in their official capacities, as well as individuals (which included the Native Land Court).100

app.3.6 The right of development

As early as 1983, the Waitangi Tribunal was discussing the possibility that the Treaty was able to adapt to meet new circumstances. Following the 1987 Court of Appeal judgment, this principle was significantly modified and reappeared in the Muriwhenua Fishing Report with the statement that a fishery, ‘As a property right, was not limited to the business as it was, or the places that existed, but had every facility to expand’.101 The Ngai Tahu Sea Fisheries Report also stated that:

It is common ground between the claimants, the Crown and the fishing industry that inherent in the Treaty of Waitangi is a right to development. This was recognised by the Muriwhenua tribunal in the context of a discussion of new technology and the right of development.102

The principle of development has since been developed and tested further in court decisions (see, in particular, Te Runanga o te Ika Whenua Society v Attorney-General and New Zealand Maori Council v Attorney-General, both discussed earlier).
The tribal right of self-regulation was first developed by the Tribunal in the *Muriwhenua Fishing Report* as an elaboration of the concept of tino rangatiratanga. The report explained that:

> on reading the Maori text in the light of contemporary statements we are satisfied that sovereignty was ceded [under article 1]. Tino rangatiratanga therefore refers not to a separate sovereignty but to tribal self management on lines similar to what we understand by local government.

The duty on the Crown to recognise tribal rangatiratanga was further emphasised in the *Mangonui Sewerage Report*, which stated that:

> the nub of the problem is in the omission of the Crown to recognise the tribal position and to provide the legal foundation and resources for tribes to contribute more fully to local affairs and to take all necessary steps for the protection of tribal interests.

Finally, in the *Ngawha Geothermal Resources Report*, the tribal right of self-regulation (self-management) was also considered an inherent element of tino rangatiratanga. Following this report in particular, the tribal right of self-management fell within the broader principle of the exchange of sovereignty for protection (see the earlier discussion).

The Crown’s obligation legally to recognise tribal rangatiratanga

In response to the difficulties facing the Crown in achieving effective consultation with Maori and in connection with the developing notion of tribal self-regulation, the *Mangonui Sewerage Report* explored, for the first time, the possibility that the Crown had an obligation legally to recognise tribal authorities under article 2 of the Treaty. It observed that, as a result of the signing of the Treaty, ‘traditional mechanisms for tribal controls would continue to be respected and maintained’
but that this had not happened. The problem was identified as ‘the omission of the Crown to recognise the tribal position and to provide the legal foundation and resources for tribes to contribute more fully to local affairs’.  

app.3.9 The Crown’s right of pre-emption and its reciprocal duties

From the *Orakei Report* emerged the new and important principle that, while under article 2 of the Treaty the Crown obtained the right of pre-emption over Maori land, the Crown should have left sufficient endowment for the present and future needs of Maori. In other words, according to the *Orakei Report*, the right of pre-emption was to be a limited one and did not extend to land needed by Maori.  

The report stated that:

> we find that Article 2, read as a whole, imposed in the Crown certain duties and responsibilities, the first to ensure that the Maori people in fact wished to sell; the second to ensure that they were left with sufficient land for their maintenance and support or livelihood or, . . . that each tribe maintained a sufficient endowment for its foreseen needs.

Later, in the *Muriwhenua Fishing Report*, it was explained that:

> The essential point was that the Treaty both assured Maori survival and envisaged their advance but to achieve that in Treaty terms, the Crown had not merely to protect those natural resources Maori might wish to retain, but to assure the retention of a sufficient share from which they would survive and profit, and a facility to fully exploit them.

In the *Te Roroa Report*, a similar view was expressed that the Treaty is essentially a contract or reciprocal arrangement between the Crown and Maori, a ratification of the terms and conditions on which Europeans were allowed to settle in the country whereby the Queen was to establish government and the chiefs, the hapu, and all people were guaranteed their tino rangatiratanga. It involves continuing obligations to give, receive, and return. Also, the *Ngai Tahu*
Ancillary Claims Report 1995 advised that the restoration of tribal estate demands acknowledgement of the fact that Ngai Tahu were, at the time of the report, all but landless (in breach of the principles of the Treaty of Waitangi).\footnote{111} The Tribunal recalled the words of Chief Judge Durie that fundamental to the Treaty was the expectation that:

in the colonisation process the tribes would not be left landless, and by extrapolating from that, a continuing duty to consider redress where a current state of landlessness is in itself evidence that the Crown has not maintained that intent.\footnote{112}

app.3.10 The principle of options

In the *Muriwhenua Fishing Report*, the principle of options between Maori, Pakeha, and biculturalism was first raised. The report noted that the Treaty envisaged the protection of tribal authority, culture, and customs, and also conferred on individual Maori the same rights and privileges as British subjects. Therefore, the Treaty provided an option for Māori to develop along customary lines and from a traditional base, or to assimilate into a new way. Inferentially it offered a third alternative: to walk in two worlds. Most importantly, as options, it was not intended that the partner’s choices on these matters could be forced.\footnote{113}

app.4 Government Statements of Principles of the Treaty

In 1989, the Labour Government announced the principles by which it would act when dealing with issues arising from the Treaty of Waitangi. These principles were:

(a) The principle of government or the kawanatanga principle: Article 1 gives expression to the right of the Crown to make laws and its obligation to govern in accordance with constitutional process. This sovereignty is qualified by the promise to accord the Māori interests specified in article 2 an appropriate priority. This principle describes the balance between articles 1 and 2: the exchange of sovereignty by the Maori people for the protection of the Crown.
It was emphasised in the context of this principle that ‘the Government has the right to govern and make laws’.

(b) The principle of self-management (the rangatiratanga principle): Article 2 guarantees to iwi Maori the control and enjoyment of those resources and taonga that it is their wish to retain. The preservation of a resource base, restoration of iwi self-management, and the active protection of taonga, both material and cultural, are necessary elements of the Crown’s policy of recognising rangatiratanga. The Government also recognised the Court of Appeal’s description of active protection, but identified the key concept of this principle as a right for iwi to organise as iwi and, under the law, to control the resources they own.

(c) The principle of equality: Article 3 constitutes a guarantee of legal equality between Maori and other citizens of New Zealand. This means that all New Zealand citizens are equal before the law. Furthermore, the common law system is selected by the Treaty as the basis for that equality, although human rights accepted under international law are also incorporated. Article 3 has an important social significance in the implicit assurance that social rights would be enjoyed equally by Maori with all New Zealand citizens of whatever origin. Special measures to attain that equal enjoyment of social benefits are allowed by international law.

(d) The principle of reasonable cooperation: The Treaty is regarded by the Crown as establishing a fair basis for two peoples in one country. Duality and unity are both significant. Duality implies distinctive cultural development while unity implies common purpose and community. The relationship between community and distinctive development is governed by the requirement of cooperation, which is an obligation placed on both parties by the Treaty. Reasonable cooperation can only take place if there consultation on major issues of common concern and if good faith, balance, and common sense are shown on all sides. The outcome of reasonable cooperation will be partnership.
The principle of redress: The Crown accepts a responsibility to provide a process for the resolution of grievances arising from the Treaty. This process may involve courts, the Waitangi Tribunal, or direct negotiation. The provision of redress, where entitlement is established, must take account of its practical impact and of the need to avoid the creation of fresh injustice. If the Crown demonstrates commitment to this process of redress, it will expect reconciliation to result.

4. Ibid, p 395
5. Ibid, p 390
6. In re The Lundon and Whitaker Claims Act 1871 (1872) 2 NZCA 41, 49
7. Wi Parata v The Bishop of Wellington (1877) 3 NZ Jur (NS) SC 72
9. Te Weehi v Regional Fisheries Officer [1986] 1 NZLR 680, 693
11. Ibid, p 673
13. Ibid, p 664
14. Ibid, p 682
15. Ibid, pp 665–666
16. Ibid, p 716
17. Ibid, p 664
18. Ibid, pp 664–665
19. Ibid, p 715
20. Ibid, p 665
21. Ibid, p 665
22. Ibid, p 683
23. Tainui Maori Trust Board v Attorney-General [1989] 2 NZLR 513
24. Tainui Maori Trust Board v Attorney-General, p 527
25. Ibid, p 527
26. Ibid, p 530
27. New Zealand Maori Council v Attorney-General [1989] 2 NZLR 142, 513 (CA)
29. Ibid, p 540
30. Ibid, p 541
31. Ibid, p 543
32. Ibid, p 544
33. Te Runanga o Te Ika Whenua Inc Society v Attorney-General [1994] 2 NZLR 20, 21
34. Ibid, p 21
35. Te Runanga o Te Ika Whenua Inc Society v Attorney-General, p 25
36. Ibid, p 26
37. Ibid, p 25
39. Ibid, p 69
40. Ibid, p 69
41. Ibid, p 70
42. Taiaroa v Minister of Justice [1995] 1 NZLR 513, 517
43. New Zealand Maori Council v Attorney-General [1994] 1 NZLR 513, 517
44. Ibid, p 517
45. Ibid, p 520
47. Waitangi Tribunal, Report of the Waitangi Tribunal on the Manukau Claim, 2nd ed, Wellington, Department
of Justice: Waitangi Tribunal, 1989 (the Manakau Report), p 70


49. Manukau Report, p 69

50. Ibid, p 70


52. Motonui–Waitara Report, p 52

53. Te Reo Maori Report, p 20

54. Manukau Report, p 87

55. Ibid, p 73

56. Motonui–Waitara Report, p 52

57. Motonui–Waitara Report, p 51


59. Manukau Report, p 67


66. Ibid, p 289


68. Orakei Report, p 130

69. Ibid, p 134

70. Muriwhenua Fishing Report, p 191

71. Ibid, p 194


73. Ngai Tahu Sea Fisheries Report 1992, p 269


75. Orakei Report, p 135


77. Ngai Tahu Sea Fisheries Report 1992, p 270


80. Ngawha Geothermal Resources Report, p 100


82. Orakei Report, p 135

83. Ibid, p 137

84. Ibid, p 186

85. Muriwhenua Fishing Report, p 195

86. Waiheke Island Report, ch 8

87. Muriwhenua Fishing Report, p 195

88. Mangonui Sewerage Report, p 7
90. Mohaka River Report, p 75
91. Mangonui Sewerage Report, p 47
92. Ibid, p 48
93. Muriwhenua Fishing Report, p 193
96. Ngawha Geothermal Resources Report, pp 101–102
97. Ngati Rangiteaorere Claim Report, p 31
98. Ibid, p 47
99. Mangonui Report, p 4
100. Te Roroa Report, p 31
101. Muriwhenua Fishing Report, p 220
103. Muriwhenua Fishing Report, p 187
104. Mangonui Sewerage Report, p 47
106. Mangonui Sewerage Report, p 47. The report goes on to list the detail developing the scope and nature of that right (pp 47–48).
107. Orakei Report, pp 143–144
108. Ibid, p 147
109. Muriwhenua Fishing Report, p 194
110. Te Roroa Report, p 30
113. Muriwhenua Fishing Report, p 195
Appendix II, New Zealand Governments and Prime Minister since 1984

<table>
<thead>
<tr>
<th>Government</th>
<th>Date</th>
<th>Prime Ministers</th>
<th>Leader of the Opposition (where referenced)</th>
</tr>
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<tr>
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<td>Rt. Hon. Mike Moore (1990)</td>
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Appendix III, Legislation


Treaty of Waitangi Act 1975 (as at 16 December 2010).

Below is the Waitangi Tribunals legislative mandate to measure crown actions against the principles of the Treaty as found in section 6.(d). Moreover, a result of the Treaty of Waitangi Amendment Act 1985, the Tribunal’s jurisdiction was
extended to the 1840 signing of the Treaty of Waitangi - as found in section 6 (a),
(b) & (d).

6 Jurisdiction of Tribunal to consider claims

(1) Where any Maori claims that he or she, or any group of Maoris
of which he or she is a member, is or is likely to be prejudicially
affected—

(a) by any ordinance of the General Legislative Council of
New Zealand, or any ordinance of the Provincial Legislative
Council of New Munster, or any provincial ordinance,

or any Act (whether or not still in force), passed
at any time on or after the 6th day of February 1840; or

(b) by any regulations, order, proclamation, notice, or other
statutory instrument made, issued, or given at any time
on or after the 6th day of February 1840 under any ordinance

or Act referred to in paragraph (a) of this subsection;

or

(c) by any policy or practice (whether or not still in force)

adopted by or on behalf of the Crown, or by any policy

or practice proposed to be adopted by or on behalf of

the Crown; or

(d) by any act done or omitted at any time on or after the
6th day of February 1840, or proposed to be done or

omitted, by or on behalf of the Crown,—

and that the ordinance or Act, or the regulations, order, proclamation,

notice, or other statutory instrument, or the policy or
practice, or the act or omission, was or is inconsistent with the principles of the Treaty, he or she may submit that claim to the Tribunal under this section.

Subsection (1) was substituted, as from 6 January 1986, by section 3(1) Treaty of Waitangi Amendment Act 1985 (1985 No 148).

Maori Language Act 1987 (as at 25 January 2005)

The preamble of this act is included here along with sections .3,4,6, & 7. The heading communicate the intent of each section: Māori language to the an official language of New Zealand, Māori language speakers are given the right to speak Māori at any legal proceeding, the Māori Language Commission is legally established and its functions defined.

An Act to declare the Maori language to be an official language of New Zealand, to confer the right to speak Maori in certain legal proceedings, and to establish Te Taura Whiri I Te Reo Maori and define its functions and powers


Whereas in the Treaty of Waitangi the Crown confirmed and guaranteed to the Maori people, among other things, all their taonga: And whereas the Maori language is one such taonga.

3 Maori language to be an official language of New Zealand

The Maori language is hereby declared to be an official language of New Zealand.
4 Right to speak Maori in legal proceedings

(1) In any legal proceedings, the following persons may speak Maori, whether or not they are able to understand or communicate in English or any other language:

(a) any member of the court, tribunal, or other body before which the proceedings are being conducted:

(b) any party or witness:

(c) any counsel:

(d) any other person with leave of the presiding officer.

(2) The right conferred by subsection (1) to speak Maori does not—

(a) entitle any person referred to in that subsection to insist on being addressed or answered in Maori; or

(b) entitle any such person other than the presiding officer to require that the proceedings or any part of them be recorded in Maori.

(3) Where any person intends to speak Maori in any legal proceedings, the presiding officer shall ensure that a competent interpreter is available.

(4) Where, in any proceedings, any question arises as to the accuracy of any interpreting from Maori into English or from English into Maori, the question shall be determined by the presiding officer in such manner as the presiding officer thinks fit.

(5) Rules of court or other appropriate rules of procedure may be
made requiring any person intending to speak Maori in any legal proceedings to give reasonable notice of that intention, and generally regulating the procedure to be followed where Maori is, or is to be, spoken in such proceedings.

(6) Any such rules of court or other appropriate rules of procedure may make failure to give the required notice a relevant consideration in relation to an award of costs, but no person shall be denied the right to speak Maori in any legal proceedings because of any such failure.

Compare: Welsh Language Act 1967 s 1(1) (UK)

6 Establishment of Commission

(1) There is hereby established a commission, to be called Te Taura Whiri I Te Reo Maori.


(3) The Crown Entities Act 2004 applies to the Commission except to the extent that this Act expressly provides otherwise.

Compare: Bord Na Gaeilge Act 1978 s 2 (Eire)


7 Functions of Commission
The functions of the Commission shall be as follows:
(a) to initiate, develop, co-ordinate, review, advise upon, and assist in the implementation of policies, procedures, measures, and practices designed to give effect to the declaration in section 3 of the Maori language as an official language of New Zealand:
(b) generally to promote the Maori language, and, in particular, its use as a living language and as an ordinary means of communication:
(c) the functions conferred on the Commission by sections 15 to 20 in relation to certificates of competency in the Maori language:
(d) to consider and report to the Minister upon any matter relating to the Maori language that the Minister may from time to time refer to the Commission for its advice:
(e) such other functions as may be conferred upon the Commission by any other enactment.

State-Owned Enterprises Act 1986 (as at 1 May 2011)
Section 9, 27 & 27B are included in this appendix.

9 Treaty of Waitangi
Nothing in this Act shall permit the Crown to act in a manner that is inconsistent with the principles of the Treaty of Waitangi.

27 Maori land claims
The submission in respect of any land or interest in land of a claim under section 6 of the Treaty of Waitangi Act 1975 does not prevent the transfer of that land or of any interest in that land or of that interest in land—

(a) by the Crown to a State enterprise; or

(b) by a State enterprise to any other person.


27B Resumption of land on recommendation of Waitangi Tribunal

(1) Where the Waitangi Tribunal has, under section 8A(2)(a) of the Treaty of Waitangi Act 1975, recommended the return to Maori ownership of any land or interest in land transferred to a State enterprise under section 23 of this Act or vested in a State enterprise by a notice in the Gazette under section 24 of this Act or by an Order in Council made under section 28 of this Act, that land or interest in land shall, if the recommendation has been confirmed with or without modifications under section 8B of that Act, be resumed by the Crown in accordance with section 27C of this Act and returned to Maori ownership.

(2) This section shall not apply in relation to any piece of land that, at the date of its transfer to a State enterprise under section 23 or the date of its vesting in a State enterprise by a notice in the Gazette under section 24 or by an Order in Council made under section 28, was subject to—

(a) a deferred payment licence issued under the Land Act 1948; or

(b) a lease under which the lessee had the right of acquiring the fee simple.

(3) This section shall not apply in relation to any piece of land or interest in land in respect of which a certificate issued under section 8E(1) of the Treaty of Waitangi Act 1975 has been registered.


**State Sector Act 1988 No 20 (as at 01 July 2011)**

In section 6 below is the personnel provisions of the State Sector Act 1988 that most concern this thesis.

6 General principles

(1) The chief executive of a department must—

(a) operate a personnel policy that complies with the principle of being a good employer; and

(b) make that policy (including the equal employment opportunities programme) available to its employees; and

(c) ensure its compliance with that policy (including its equal employment opportunities programme) and report in its annual report on the extent of its compliance.

(2) For the purposes of this section, a good employer is an employer who operates a personnel policy containing provisions generally accepted as necessary for the fair and proper treatment of employees in all aspects of their employment, including provisions requiring—

(a) good and safe working conditions; and

(b) an equal employment opportunities programme; and

(c) the impartial selection of suitably qualified persons for appointment; and

(d) recognition of—

(i) the aims and aspirations of the Maori people; and

(ii) the employment requirements of the Maori people; and

(iii) the need for greater involvement of the Maori people in the Public Service; and
(e) opportunities for the enhancement of the abilities of individual employees; and

(f) recognition of the aims and aspirations and employment requirements, and the cultural differences, of ethnic or minority groups; and

(g) recognition of the employment requirements of women; and

(h) recognition of the employment requirements of persons with disabilities.

(3) In addition to the requirements, specified in subsections (1) and (2), each chief executive shall ensure that all employees maintain proper standards of integrity, conduct, and concern for the public interest.

(4) [Repealed]


Section 56(2)(f): substituted, on 25 January 2005, by section 10(2) of the State Sector Amendment Act (No 2) 2004 (2004 No 114).


Education Act 1989 No 80 (as at 01 January 2012)

Section 60A, (c) is concerned with the requirement of schools to consider Māori communities, Section 155 Kura Kaupapa Māori schools.

60A National education guidelines

(c) national administration guidelines, which are guidelines relating to school administration and which may (without limitation)—

(i) set out statements of desirable codes or principles of conduct or administration for specified kinds or descriptions of person or body, including guidelines for the purpose of section 61:

(ii) set out requirements relating to planning and reporting including—
(A) scope and content areas, where appropriate:

(B) the timeframe for the annual update of the school charter:

(C) broad requirements relating to schools' consultation with parents, staff, school proprietors (in the case of integrated schools) and school communities, and the broad requirements to ensure that boards take all reasonable steps to discover and consider the views and concerns of Maori communities living in the geographical area the school serves, in the development of a school charter:

155 Kura Kaupapa Maori

(1) When establishing a State school the Minister may, by notice in the Gazette, designate the school under this section.

(2) The Minister has absolute discretion to refuse to establish a school under this section.

(3) The Minister may not establish a school under this section unless satisfied that—

(a) the parents of at least 21 people who would, if the school were established, be entitled to free enrolment there, want there to be established a school—

(i) in which te reo Maori (the Maori language) is the principal language of instruction; and

(ii) in which the charter of the school requires the school to operate in accordance with Te Aho Matua (as defined in section 155A); and

(iii) that has the special characteristics (if any) set out in its charter that will give the school a particular character (in this section called special characteristics); and

(b) if a school of that type is established, students enrolled at the school will get an education of a kind not available at any other State school that children of the parents concerned can conveniently attend.
(3A) The Minister may not establish a State school as a Kura Kaupapa Maori unless he or she has first consulted with te kaitiaki o Te Aho Matua on the ability of the school to operate in accordance with Te Aho Matua (as defined in section 155A).

(4) A notice under subsection (1) must—

(a) specify the name of the school, which must at all times begin with the words “Te Kura Kaupapa Maori o”; and

(b) state that the school will operate in accordance with Te Aho Matua; and

(c) summarise any special characteristics of the school; and

(d) specify the constitution of the board of the school.

(5) After consultation with the board, the Minister may from time to time, by notice in the Gazette, amend the name of the school (but not so as to omit the words “Te Kura Kaupapa Maori o”), its special characteristics, or the constitution of the board.

(6) Unless specifically provided otherwise, this Act and the Education Act 1964 apply to every school established under this section as if it were not so established.

(7) The board of a school established under this section must ensure that—

(a) te reo Maori is the principal language of instruction at the school; and

(b) the school operates in accordance with Te Aho Matua.

(8) The board may refuse to enrol any person whose parents do not accept that the school operates in accordance with Te Aho Matua.

(9) A school established under this section may have an enrolment scheme, but—

(a) the Secretary must from time to time, by written notice to the board, fix a maximum roll for the school; and

(b) the board must ensure that the number of students enrolled at the school is not more than the maximum roll.

Appendix IV, the Whānau Ora Report

The Report of the Taskforce on Whānau Centred Initiatives (Whānau Ora Report) as presented to the government in April 2010 is printed in full in the following pages.