

**MĀORI PERSPECTIVES ON THE FORESHORE
AND SEABED DEBATE: A DUNEDIN CASE STUDY**

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The area between high and low tides is known as the foreshore-takutai moana. It has some features of the land it borders and some characteristics of the sea beyond, but essentially its ecosystems, ecology, geology, and its mauri are unique. The foreshore is a gateway to the bounty of the sea, a playground for countless land dwellers, a source of food and wealth, and a site where local knowledge, tradition, and custom have evolved over the centuries.¹

¹ Mason Durie, *Ngā Tai Matatū: Tides of Māori Endurance*, (Auckland: Oxford University Press, 2005) p. 83

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Glossary

atua	divine ancestors, gods
Arai Te Uru	Dunedin's Urban Marae
hōhā	blasé, indifferent
kaiwhakahaere	director
kaiwhakapaoho Māori	Māori news reporter
kaitiaki	guardians, stewards
kaitiakitanga	guardianship, stewardship
kaupapa	cause
“Ka whawhai tonu mātou”	“The struggle continues”
kotahitanga	unity, solidarity
kūpapa	Māori who fought with the Crown during the New Zealand Wars
mana	prestige, power
mana moana	The right to hold responsibility for the sea and its resources
mana tūpuna	rights and authority passed down from ancestors
Manawhenua	The people who exercise kaitiakitanga and possess mana whenua in a geo-political area.
mana whenua	The right to hold responsibility for land or resources
rangatira	chief
rangatiratanga	Māori autonomy or self development.
rohe	tribal land
take	The right to have an interest in land or resources.
takiwā	tribal land, region, district
Tangaroa	Atua of the sea and fish
taonga	treasures, treasured possessions
tautoko	support
Te Hau Tikanga	The Māori Law Commission
Te Rito	The council of Te Roopū Māori
Te Roopū Māori	The Otago University Māori Students' Association

Te Rūnanga o Ngāi Tahu	The Ngāi Tahu iwi authority
Te Tau Ihu	Eight iwi, Ngāti Apa, Ngāi Kōata, Ngāti Kuia, Ngāi Rārua, Ngāti Tama, Ngāti Toa and Rāngitāne, who, with Te Atiawa Manawhenua Ki Te Tau Ihu Trust, petitioned the Court of Appeal to determine whether the Māori Land Court had the jurisdiction to declare the foreshore of Te Tau Ihu o te Waka as customary land.
Te Tau Ihu o te Waka	The wider area around Marlborough Sounds.
Te Tumu	The School of Māori, Pacific Islands and Indigenous Studies
tikanga	customs, rules
tūpuna	ancestors
whanaunga	relatives
whanaungatanga	kinship, relationships

Preface

Personal contextualisation

Ko Aoraki te maunga

Ko Waitaki te awa

Ko Ngāti Pākehā, arā Ko Ngāti Cossack, Ko Ngāti Mouat, ko Ngāi McDonald ōku iwi

I feel it is important to begin this dissertation with a personal contextualisation in order to introduce myself and demonstrate my motivations for undertaking this research. My name is Abby Suszko. I am of Scottish, Ukrainian, English, Irish and Tongan descent, and identify as Pākehā. I have lived my whole life and completed all my schooling in Dunedin. I am currently in my final year of my LLB/BA(Hons) double degree at the University of Otago. I have always been interested in Māori-Crown relations, and so it was natural for me to study Māori and New Zealand History throughout high school. I continued on to study these at University, where I also picked up Law. Unfortunately I couldn't continue on with History, but I have been able to focus my study on New Zealand history by taking both Māori and Law papers which contain historical exploration.

My passion however lies with the Treaty of Waitangi, which I most sincerely believe is the founding document of our nation. Consequently I have structured my degrees to incorporate papers which focus on the Treaty. As a result I have also been lucky enough to study a Treaty Politics paper through Political Studies. I have become very interested in Indigenous rights and the concept of aboriginal, or native, title. It was while I was studying these concepts that the Court of Appeal released a decision which focused directly on the doctrine of native title in this country. I was therefore a witness, and even a participant, to the debate which ensued.

I was fortunate enough to study the foreshore and seabed debate in my classes, and became educated on the political and legal viewpoints surrounding the debate. I also watched the debate unfold in the mainstream media and became very disillusioned with the comments I heard reported from those termed as 'mainstream' New Zealanders. This disillusion turned to

outright shock at what I could only perceive as racism emerging following Don Brash's Orewa Speech on 27 January 2004.

Throughout all this I spoke to Māori friends and colleagues about their perspectives on the debate. To me it was obvious that their views were not being portrayed in the mainstream media. This dissertation is therefore an attempt to capture those views in one specific area: Dunedin, and in turn relate them to perspectives expressed in the wider Aotearoa/New Zealand context.

Abstract

On 19 June 2003, the Court of Appeal ruled that the Māori Land Court had the power to decide foreshore and seabed claims lodged by Māori and to determine ownership. The decision also ruled that the Crown's assumption of sovereignty was radical and thus it did not extinguish Māori title to land, including the foreshore and seabed.

Although not a revolutionary decision, the Court's ruling launched the nation into a fierce debate, bringing up the issues of beach access and ownership, public interest, customary usage, rights and title, aboriginal, or native, title, Indigenous rights, 'the public domain', Crown authority and the Treaty of Waitangi. All these arguments became entwined with political considerations. The mainstream media widely broadcast claims that Māori would restrict access, alienate the foreshore and seabed and veto development, resulting in fear from many Pākehā that they had lost their right to go to the beach. The Government reacted severely, choosing to change the law so to place the foreshore and seabed in Crown hands.

Although the mainstream media acknowledged that the majority of Māori were against the proposed legislation, the reasons for this were never explained. Through this dissertation I will show that there is a plethora of reasons for Māori dissension. I also argue that for Māori, the key issues in the debate are not those portrayed in the mainstream media.

Dissertation summary

Chapter One

Introduces the topic and outlines the aims, theoretical basis and hypothesis of this dissertation. The methodology employed is explained and initial descriptions of the classes of participants are provided. The parameters of the debate, Māori relationships to the foreshore and seabed and key terms are also defined.

Chapter Two

Analyses the different perspectives of Māori from outside Dunedin on the foreshore and seabed debate. Creates a discussion tool for investigation of Dunedin Māori perspectives in Chapter Three.

Chapter Three

Describes the Dunedin Māori participants and details their perspectives on the debate under the three classes of participants: Manawhenua, Community Māori and University Māori. Submissions, press releases and articles containing other Dunedin Māori perspectives substantiate the participants' perceptions.

Chapter Four

Establishes a case study of Dunedin Māori perceptions on the debate. The consistencies and differences between the participants' perspectives are evaluated. The findings produced are measured against the perspectives of Māori from outside Dunedin. Whether Māori in Dunedin hold similar views to other Māori, or whether some views are unique to Dunedin Māori, are assessed and possible reasons for difference of opinion are suggested.

Chapter Five

Evaluates the validity of my hypothesis and ends with a review of the research in light of whether it has achieved its aims.

Conventions used

Te reo Māori will not be treated as ‘another’ language, instead it is given equal status with English as required under the Maori Language Act 1987. Therefore, words in te reo are neither italicised nor underlined. As Jim Williams asserts in his PHD thesis,

This is in line with current trends, particularly amongst Māori academics (for examples see: Broughton 1993, Yates-Smith 1998). It is also consistent with Wallace and Hughes’ remark in the recent update of their style book for New Zealand writers: “In New Zealand contexts, it is customary *not* to italicise Māori expressions” (Wallace and Hughes’ 1995:80, their emphasis).²

Care will be taken to ensure that there is no ambiguity between words that appear in both languages, for example the word ‘take’.

The words ‘Manawhenua’, ‘mana whenua’ and ‘rangatiratanga’ are fundamental to this dissertation, and therefore are explained in Chapter One. All Māori words used in this dissertation, except those of common knowledge, are set out in the glossary and given direct English equivalents.

As the majority of participants and sources are not from Kai Tahu, I have used generic te reo throughout this dissertation. Therefore, when referring to Manawhenua I describe them as Ngāi Tahu rūnanga, except for when Manawhenua themselves say otherwise. Consequently, with one Manawhenua Participant, I talk about his rūnaka as this is how he expresses himself. I also state Aotearoa/New Zealand when referring to New Zealand, as this is consistent with the practice in Te Tumu: School of Māori, Pacific and Indigenous Studies.

In line with Te Tumu and University of Otago policy and practice, long vowels in te reo are denoted by a macron, except direct quotations where the original will be copied exactly. English possessives will be used with proper names, for example ‘Ngāi Tahu’s’, but elsewhere English plurals are not employed. Thus, for example, ‘Māori’ is both singular and plural.

² Williams, “‘e Pakihi Hakinga a Kai: An examination of pre-contact resource management practice in Southern Te Wāi Pounamu” PHD Thesis, (University of Otago, 2004) p. xv

The style used in this dissertation follows that employed in Te Tumu. Case names and titles of works are italicised. All quotations correspond exactly with the original. Where infelicity appears in the original document, the Latin [sic] is added. Quotations less than three lines are incorporated in the text with double quotation marks, while longer quotations are single-spaced without quotation marks, justified and indented at both margins forming a block that stands out from the text.

The referencing style also follows that employed within Te Tumu, which is adapted from the University's *Handbook for Masters Degrees*.³ Footnotes are utilised as the preferred style of referencing. Again, the Bibliography follows the style recommended in Te Tumu, which is the method used by Kate L. Turabian in *A Manual for writers of terms papers, theses, and dissertation*.⁴

³ (Dunedin: University of Otago, 1997) pp. 56-61

⁴ 5th edn. (Chicago: University of Chicago Press, 1987)

Chapter One: Introduction

[The debate is] about recognition of rights and about the role and relationship that Māori have to the land. Not just the land, but all aspects of...our geographic...whether it be land or sea or lakes, rivers...It's because we have a culture in New Zealand that anything to do with Māori that can be twisted to look like some sort of rip off...That's what the media does with it. And it's...always happened.⁵

Although the foreshore and seabed debate was extensively documented in the media following the release of the Court of Appeal's (the Court) decision in June 2003, and has continued into this year with coverage of the United Nations (UN) Committee on the Elimination of Racial Discrimination's (CERD) findings on the Foreshore and Seabed Act 2004 (the Act), there is very little literature providing Māori perspectives on the debate.

Instead, the mainstream media portrayed the debate as centring on the issue of public access, and claimed Māori would deny access and veto development should their rights in the foreshore and seabed be recognised. Māori perspectives tend to be grouped together under a collective heading that shows they oppose the Government's actions, but the reasons for this opposition, and the range and diversity of Māori arguments and perceptions are not explained.

This dissertation is therefore an endeavour to reveal the different Māori perceptions on the foreshore and seabed debate in one area: Dunedin. I contend that by analysing and comparing the different perceptions in Dunedin, and in turn contrasting and evaluating these perceptions with documented perceptions from Māori outside Dunedin, this dissertation will act as a microcosm of the larger national foreshore and seabed debate.

⁵ University Māori participant H.

Aims

First I aim to record what the foreshore and seabed debate means to Māori within Dunedin. Secondly, I plan to produce a case study that will highlight whether there is diversity or coherency of opinion on the issues. Thirdly, I shall produce research that examines Dunedin Māori perceptions of the debate, sets out the key issues and events, what feelings emerged and explains what has influenced their opinions. Lastly, I aim to compare these findings with recorded Māori perceptions from outside Dunedin.

Theoretical basis

I have chosen to employ the mainstream media's characterisation of the debate as the theoretical basis for my dissertation. Therefore, throughout my dissertation I will compare and contrast my findings against the mainstream media's portrayal of the debate.⁶

Hypothesis

My first hypothesis is that Māori will have a very different perception of the debate to that represented in the mainstream media, specifically, they will not view the debate as centring on the issue of public access to the beaches.

Secondly I hypothesise that perceptions amongst participants will differ. I propose this will be so because the participants' perceptions will be coloured by their involvement in the debate, whether they have studied the topic, whether they went on the hīkoi, wrote submissions etc and whether the legislation directly affects them. Specifically, I propose that members of the Ngāi Tahu rūnanga in Otago will have different perspectives to the other participants because the legislation may adversely affect their land. I also propose that the University participants will be more informed on the legal and Treaty issues due to study in that area, and this in turn will affect how they view the debate. I also believe that those who

⁶ The mainstream media's representation is simply a yardstick to compare my findings against; it is not the focus of my research. For that reason I will not conduct a detailed analysis of what the mainstream media specifically said.

participated on the hīkoi will be more informed of the issues and subsequently the hīkoi will have had a major influence on their perceptions.

Lastly, I hypothesise that because of historical differences, Manawhenua in Dunedin will have a different perception to local Māori from outside Ngāi Tahu. I believe this will be most evident in the feelings and memories that emerged following the Government's actions. I suggest that for those whose whanaunga have experienced confiscation there will be a direct comparison to previous confiscation legislation, bringing back deep injustices of the past, whereas it is my contention that Ngāi Tahu rūnanga members may feel different injustices resurfacing.

Manawhenua and mana whenua

Before proceeding further it is necessary to define Manawhenua and the concept of mana whenua. Manawhenua are the people who exercise kaitiakitanga and possess mana whenua in a geo-political territory. Mana whenua operates at various levels and is always local. It is inextricably linked with rangatiratanga.⁷ It must be stressed that Māori do not hold mana whenua over land, for that would be tantamount to claiming mana over Papatūānuku.⁸

Manawhenua who hold mana whenua in an area that is bordered by the sea also possess mana moana.⁹ Thus Manawhenua possess mana whenua and mana moana rights in the foreshore and seabed.

Methodology

In order to address this issue I have approached my dissertation in three parts. Chapter Two analyses Māori perspectives on the foreshore and seabed debate, from outside Dunedin. The

⁷ Williams, “e Pakihi Hakinga a Kai” pp. 80-81. Rangatiratanga will be defined later in this chapter.

⁸ Williams, “Papa-tūā-nuku: Attitudes to land” in Tānia M. Ka'ai, John C. Moorfield, Michael P. J. Reilly and Sharon Mosley (eds.) *Ki te Whaiao: An Introduction to Māori Culture and Society* (Auckland: Pearson Education New Zealand Limited, 2004) p. 50

⁹ The concept mana moana emerged relatively recently due to Manawhenua interaction with the Crown. (John C. Moorfield, “Te Kōhure” *Te Whanake Series*, no. 4, 2nd edn, (Auckland: Pearson Education New Zealand, 2004) pp. 239-240)

chapter is structured as an analysis of secondary sources and of submissions, press releases, journal, newspaper and internet articles, letters to the editor and television documentaries. In order to capture the wide spectrum of Māori perceptions, I conducted my research in two parts. First I compiled data that specifically incorporated Māori viewpoints on the debate from the media sources specified above. Then I focused on two newspapers, one a mainstream newspaper: *The New Zealand Herald*, and the other a Māori newspaper: *Te Karere Maori*, selecting articles and letters to the editor which mentioned Māori views.

Chapter Three focuses on perspectives on the debate from Dunedin Māori. The first step in my oral research was to contact potential participants.¹⁰ I was then able to arrange a time to interview them. Thus, the main data for my dissertation comes from these interviews. The interviews themselves were used as the primary source of recording information, with submissions, press releases and secondary sources as support.

The interviews were conducted with three classes of participants. These are: Manawhenua, members from the two local rūnanga, Te Rūnanga o Ōtākou and Kāti Huirapa Rūnanga ki Puketeraki; Community Māori, affiliated to Arai Te Uru and those not associated; and University Māori, comprising of both students and staff.¹¹

I chose to interview participants from Manawhenua as they have the take¹² for Ngāi Tahu in Dunedin.¹³ I elected to interview Māori in the community, in order to make sure my research is representative of all Dunedin-based Māori. Their viewpoints are essential to obtaining a comprehensive analysis of what the debate meant to Māori in Dunedin as the majority of Māori residing in Dunedin are of iwi from outside the area.¹⁴ Lastly, I have decided to interview University Māori, because the University of Otago plays a major role in the identity of Dunedin, and thus Māori students have an impact on the town.

¹⁰ For a detailed account of how I approached my participants, see Appendix Two.

¹¹ A more in-depth description of the participants is carried out in Chapter Three.

¹² “Even to be entitled to discuss an issue one needs take” (Williams, “e Pakihi Hakinga a Kai” p. 82)

¹³ This reasoning was reaffirmed to me by one of my Community Māori participants, D, who acknowledged that she is living in Ngāi Tahu’s area, and therefore always listened to what they had to say on a topic.

¹⁴ This fact was conveyed to me by another Community Māori participant, C, who noted that Māori from outside Dunedin outnumber Ngāi Tahu by three to one.

For all but one participant I adopted an open-questioning technique where I utilised a questionnaire format but allowed for other questions to develop as the interview progressed. My guide consisted of some short answer questions about what may have influenced their perceptions, and then the discussion questions that related to the participants perception of the debate.¹⁵

These interviews have allowed me to investigate the degree of differences, or alternatively consistencies, there are in the interviewees' perceptions, and what has influenced their opinions, thus allowing a sense of what the foreshore and seabed debate means to Māori in Dunedin.

Chapter Four is the discussion. In this chapter I analyse and compare the consistencies and/or differences between my participants' perspectives, then compare these findings to Māori perspectives from Māori outside Dunedin.

The parameters of the debate

Although some Manawhenua have been petitioning to have their rights recognised in the foreshore and seabed for over a century,¹⁶ and customary claims to the foreshore and seabed have been proceeding through the courts since 1957,¹⁷ this dissertation will focus on the debate when it exploded into the mainstream media. Specifically, the parameters of the

¹⁵ See Appendix Three. For the Community Māori participant who wished to complete a questionnaire, the questions were essentially the same as those for the interviews, however I added some follow up questions along the lines of those that I had been asking in the interviews (see Appendix Four).

¹⁶ Hauraki Māori first petitioned the Crown to have their rights in their foreshore and seabed, Te Kapa Moana, recognised in 1869, through Te Moananui, on behalf of Ngāti Maru, Ngāti Tamatera and Ngāti Whānaunga, following the Crown's decision to reverse *The Gold Fields Amendment Act 1868*, which though section 9 recognised Te Kapa Moana belonged to Māori. (See John McEnteer and Toko Renata, "Foreshore & Seabed Government Consultative Hui: Matai Whetu, Thames 11 September 2003" Te Ope Mana a Tai-Maketu, *View Key Submissions from the Crown Consultation Hui*. PDF file-61kb. 11 September 2003. Online. Available: <http://www.teope.co.nz/pdf/submissions/HMTBThames.PDF> (13 April 2005))

¹⁷ In 1957 the Māori Land Court accepted the Te Rarawa and Te Aupouri claim that Ninety Mile Beach was customary land. However, following appeals through to the Court of Appeal, this was overturned in 1963 where the Court of Appeal ruled that the foreshore and seabed belonged to the Crown. (See *In Re Ninety Mile Beach* [1963] New Zealand Law Reports 461 (CA))

debate in the context of this dissertation begin with the Court's decision in *Ngāti Apa v Attorney-General*¹⁸ and continue to the present day.

The Court decision occurred because eight iwi, collectively known as Te Tau Ihu from the region known as Te Tau Ihu o te Waka were shut out of the marine farming industry, and consequently took a claim to the Māori Land Court (MLC) in 1997 to declare the foreshore and seabed around the Marlborough Sounds to be customary land. Judge Hingston released a preliminary decision in December 1997, where he found the MLC could enquire into customary title over the foreshore and seabed. The Crown appealed to the Māori Appellate Court, who referred eight questions to the High Court. There Justice Ellis found that the MLC could not enquire whether the foreshore and seabed was customary land. Te Tau Ihu and Te Atiawa Manawhenua ki te Tau Ihu Trust petitioned the Court. Chief Justice Elias delivered the five justices unanimous decision on 19 June 2003, finding that the MLC did have jurisdiction to determine title in the foreshore and seabed.

Māori relationship to the foreshore and seabed

“Land and water is one entity: our earth mother”.¹⁹ In a Māori world view, Māori are not just joined to the land; they are an integral part of nature with a relationship to every other living thing. This relationship is defined by whakapapa, and from it comes the requirement for kaitiakitanga, where people must guard and protect natural resources for the future.²⁰ Thus, Māori have kaitiakitanga duties in respect to the foreshore and seabed.

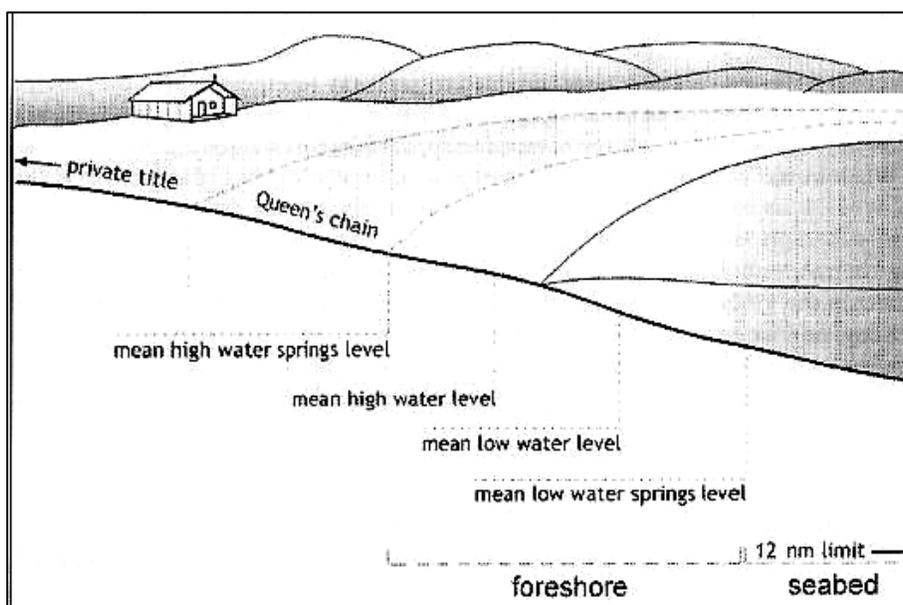
¹⁸ [2003] 3 New Zealand Law Reports 643 (CA)

¹⁹ Jacinta Ruru, “A Politically Fuelled Tsunami: The Foreshore/Seabed Controversy in Aotearoa me Te Waipounamu/New Zealand” *The Journal of Polynesian Society*, vol. 113, no. 1, (Auckland: Polynesian Society (Inc), March 2004) p. 58

²⁰ Williams, “Papa-tūā-nuku: Attitudes to land” p. 50

Key terms defined

The foreshore and seabed²¹



The foreshore

The foreshore is neither always wet nor always dry, due to the ebb and flow of the tide. The dry land boundary can be as high as the ‘mean high water springs’, the land covered by the highest spring tides of the year, or alternatively as high as the ‘mean high water mark’, the average level of all high tides. Similarly, the sea boundary can be as low as the ‘mean low high water springs’ or the ‘mean low water mark’.²²

The seabed

The seabed is permanently covered by water, and commences where the foreshore ends. Its limit is defined by national and international law, where the Crown claim territorial sovereignty to twelve nautical miles from the low water mark, and a more limited control out to two hundred nautical miles.²³ Some Māori claims to the seabed claim control beyond the

²¹ Tom Bennion, Malcolm Birdling and Rebecca Paton, *Making Sense of the Foreshore and Seabed*, (Wellington: The Māori Law Review, 2004) p. 6

²² *Ibid*, p. 5

²³ *Ibid*, p. 6

twelve nautical miles, however it seems to be accepted that only the twelve nautical miles are in issue.²⁴

Mainstream media

In this dissertation, this term encompasses all media not published by Māori or Māori groups or specifically aimed at a Māori audience.

Rangatiratanga

Throughout this dissertation rangatiratanga will be analogous to Māori autonomy or self-development.²⁵ As Māori view dry land and land under water the same way, it is essential that this dissertation recognises rangatiratanga over the foreshore and seabed in a similar way to rangatiratanga over dry land. To provide a different or lesser meaning in the context of the foreshore and seabed is inappropriate to the integrity of a Māori world view, and denies Māori the right to exercise tino rangatiratanga over their taonga, as affirmed in Article Two of the Treaty.

Therefore only Manawhenua have the right to make decisions about their foreshore and seabed and the resources contained within it.

²⁴ Ibid

²⁵ The authority for this definition is the Waitangi Tribunal, who state

...Maori authority is pivotal to the Treaty and to the partnership concepts it entails. Its more particular recognition is Article 2 of the Maori Text. In our view it is also the inherent right of peoples in their native territories. The international term 'aboriginal autonomy' or 'aboriginal self-development' describes the right of indigenes to constitutional status as first peoples, and their rights to manage their own policy, resources and affairs, within minimum parameters necessary for the proper operation of the State. Equivalent Maori words are 'tino rangatiratanga' as used in the Treaty and 'mana motuhake' as used since the 1860s. (*Taranaki Report, Kaupapa Tuatahi*, (Wellington: Legislation Direct, 1996) p. 5)

Chapter Two: Analysis of primary and secondary sources

Maori belong to the foreshore, the foreshore belong to Maori...The key issues that need to be considered in this debate is [sic] the intimate relationship that Maori have with these things and it's a relationship born of respect and making sure that those things are there for future generations.²⁶

As the above quotation recognises, the key issues for Māori in the foreshore and seabed debate are fundamentally different to those portrayed in the mainstream media. To Māori, the foreshore and seabed debate encompasses a wide range of issues, relationships and perceptions; it is not a case of Māori asking for new rights of exclusive ownership and restricting access.

Using the mainstream media's portrayal of the debate as a theoretical basis, this chapter attempts to compile Māori perspectives from primary and secondary sources: books, articles, newspaper articles, submissions, press releases and surveys. It will act as a discussion tool to guide analysis of Dunedin Māori perspectives in Chapter Three.

How the debate is characterised

Many Māori perceive that blatant misrepresentation of the issues curtails the debate. Thus, it became dominated by the issue of access, which Māori repeatedly acknowledge is not at risk and, more importantly, is not even at issue. This misrepresentation caused considerable social tension.

To many the debate is discriminatory. Māori are singled out as the only ones affected. For some, the debate itself is an attack on Māori. Many Māori feel that they are being treated as second class citizens, as only their rights are being denied, while the mainstream media

²⁶ Annette Sykes, Interview with Paul Holmes, 1ZB (21 July, 2003), quoted in Jason Pou, "Out of Sight" in International Research Institute for Maori and indigenous Education (IRI), *Te Takutai Moana*, Economics, Politics and Colonisation Series 2003. vol. 5, 2nd edn, (Aotearoa/New Zealand: The roopu Tino Rangatiratanga, 2003) p. 48

portrays them as greedy and asking for something that is not theirs. As Ranginui Walker explains, Māori feel tyranny of the majority are triumphing over Māori and their rights.²⁷

Angeline Greensill asserts that many Māori perceive inherent racism emerging in the debate.²⁸ For many, the debate is polarised between Māori and Pākehā, pushing discussion away from the fundamental rights being affected.²⁹

The debate is characterised in the context of the wider race relations debate, where Māori feel they are under attack from all sides.³⁰ Some Māori view the debate in the context of wider iwi-Crown relationships.³¹ Interestingly, the media also portrays the debate in a wider race relations context. However, while Māori are concerned about the impact to their guaranteed rights and their relationship to the foreshore and seabed, the media portray this in the same way they portray the Treaty grievance settlement process: just another handout to Māori.

Many Members of Parliament (MPs) are seen as fuelling racial tension and hatred towards Māori.³² To some, the Government is wilfully inducing strong emotive opinions by misrepresenting the issues and Māori objectives, infringing on the integrity of a Māori world view, and turning the public against things of cultural significance to Māori.³³

²⁷ Walker, *Ka Whawhai Tonu Matau: Struggle without end*, 2nd edn, (Auckland: Penguin Books, 2004) p. 382

²⁸ Greensill, "I gave you my bucket and spade, now you want the whole sandpit" *Pacific Ecologist*, issues 7 and 8 (Autumn-Winter 2004) p. 55

²⁹ Buddy Mikaere, "The year that was - and what's ahead" *Mana: the Maori news magazine for all New Zealanders*, issue 61 (December 2004/January 2005) p. 31

³⁰ See Moana Jackson, "The need for change" *Mana: the Maori news magazine for all New Zealanders*, issue 57 (April/May 2004) p. 66; Chen Palmer and Partners, *Wellington Watch: A Weekly Bulletin of Parliamentary and Political Information*, issue 2004/16 (7 May 2004) p. 3

³¹ Richard Boast, "Foreshore and seabed: latest developments" *The New Zealand Law Journal* (Wellington: Lexis Nexis, 2003) p. 405

³² Adele Carpinter and Department of the Prime Minister and Cabinet, *The foreshore and seabed of New Zealand: Report on the analysis of submissions*, (Wellington: Department of the Prime Minister and Cabinet, 2003) p. 6

³³ See Jackson, "An enduring memory" *Mana: the Maori news magazine for all New Zealanders*, issue 58 (June/July 2004) p. 49; Maui Solomon, "Worse than ever" *Mana: the Maori news magazine for all New Zealanders*, issue 57 (April/May 2004) p. 67; *New Zealand Herald* (Auckland) 24 June 2004, p. A14 (Letter to editor); For examples of this sentiment expressed during hui and in submissions see Carpinter and Department of the Prime Minister and Cabinet, p. 6

For some Māori, the debate is contextualised within an environment where Pākehā do not understand the major issues.³⁴ Consequently the debate is moulded by the ignorant whims of the majority. For others it is skewed by the Government's lack of understanding of the main issues and the range of rights encompassed in 'customary rights'. The Government's inability to represent the Māori point of view accurately and the continued misinformation represented through the mainstream media is considered to distort the debate.

Those Māori with a working knowledge of the marine environment tend to view the Crown as dishonest, concealing their agenda.³⁵ For some, the Crown wishes to establish ownership over the foreshore and seabed in order to meet obligations under international treaties. Others see the Crown as requiring ownership so that it can commercially expropriate the foreshore and seabed.

A large number of Māori perceive the mainstream media as inciting the debate by feeding off Pākehā fears, provoking racial discord, and failing to adequately capture the essence of Māori reaction.³⁶ There is wide consensus that the mainstream media misrepresent Māori relationships with the foreshore and seabed. This enhances the belief that Māori will alienate their rights, deny access and veto development. In particular, the mainstream media promote the idea that Māori want to lock Pākehā out. As Mason Durie observes, Māori are somewhat offended by implications in the media and by politicians that they would be unduly restrictive to the public.³⁷

³⁴ Walker, *Ka Whawhai Tonu Matou*, p 382; Jackson, "‘Like a Beached Whale’: A Consideration of Proposed Crown Actions over Maori Foreshore" in International Research Institute for Maori and Indigenous Education (IRI), *Te Takutai Moana*, Economics, Politics and Colonisation Series 2003. vol. 5, 2nd edn, (Aotearoa/New Zealand: The roopu Tino Rangatiratanga, 2003) p. 13; Ani Mikaere, Nin Tomas, and Kerensa Johnston, "Treaty of Waitangi and New Zealand Land" *New Zealand Law Review* (Auckland: Legal Research Foundation, 2003) p. 463; Maui Solomon, "Worse than ever" p. 67; Kui Paki "Claims neither new or outrageous" *Tū Mai Magazine-Offering an Indigenous New Zealand Perspective*, vol. 46 (September 2003) p. 19

³⁵ See John Mitchell, quoted in Walker, *Ka Whawhai Tonu Matou*, p. 381; Jackson, "‘Like a Beached Whale’" pp. 13-14; Jackson "An enduring memory" p. 49; Ironically the Crown has already sold thirty percent of land adjoining bodies of water. (Walker, *Ka Whawhai Tonu Matou*, p. 385)

³⁶ See Jackson, "The year that was" p. 66; Jackson, "An enduring memory" p. 49; Maui Solomon, "Worse than ever" 67; Buddy Mikaere, pp. 31, 32; James Brown, quoted in *Te Karere Maori*, vol. 3, no. 137, (2004) p. 3

³⁷ Durie, p. 102. He cites Ngāti Kahu as an example. This iwi has adopted a firm policy of acting as kaitiaki of the beaches allowing all those who chose to enjoy them. Ngāti Kahu did not anticipate that their tradition of hospitality would change. (p. 103)

For many Māori, the debate is essentially a poll driven incentive.³⁸ Consequently, the Government's actions are perceived to be for political expediency, rather than to engage with Māori.

What the debate is about

“People are all assuming this is about their barbeque on the beach rights. This is a much more complex issue. It's about everyone's property rights”.³⁹

It's about rangatiratanga

For Manawhenua, the foreshore and seabed has always been under the jurisdiction of iwi and hapū, and decision-making over it rests with hapū and whānau. They are adamant that the foreshore and seabed belongs to them and that they are guaranteed rights over it under the tino rangatiratanga in Article Two.⁴⁰

Subsequently, the debate centres on the concept of rangatiratanga and the Government's attempt to restrict and define what this rangatiratanga should entail.⁴¹ Durie, along with many others, asserts that control and ownership over the foreshore and seabed is not the new issue the media portray it as.⁴²

...although for many New Zealanders the debate had not been heard before, the issues were not new to Māori or, for that matter the courts. Indeed, because the ownership of the foreshore was a central aspect of a Māori world

³⁸ Maui Solomon, “Worse than ever” p. 67

³⁹ Tīpene O'Regan, cited in Walker, *Ka Whawhai Tonu Matou*, p. 385

⁴⁰ The Paeroa Declaration, resolution one; see also Te Whakapuakinga: Taranaki Declaration; The Hauraki Declaration; Second National Foreshore and Seabed Hui-Omaka Hui Resolutions; Te Pakira Resolutions; Hongoeka Resolutions; Waipapa Hui Resolutions; Richard Ogden, “The foreshore and seabed issue” *The New Zealand Law Journal*, (Wellington: LexisNexis, 2004) p. 15. As Leslie Tiki Koroheke explains, “No one ‘owned’ the foreshore or the seabed in terms of what the colonisers’ concept of ownership is. But using their concept of ownership then we do own it! It irrevocably belongs to us”. (Koroheke, “Submission on the Foreshore and Seabed Bill” Te Ope Mana a Tai-Maketu, Submissions to the Fisheries and Other Sea Related Legislation Select Committee-July 2004, PDF file-48kb. 2 July 2004. Online. Available: http://www.teopeco.nz/pdf/Leslie_Tiki_Koroheke.PDF (13 April 2005) p. 3)

⁴¹ For some, rangatiratanga means that Māori never ceded sovereignty, and thus the Crown has no right to interfere with Manawhenua control of the foreshore and seabed. See Paul Cavanagh, “The Foreshore and Seabed Controversy” *The New Zealand Law Journal* November 2003 (Wellington: LexisNexis, 2003) p. 429

⁴² Durie, p. 83 Some Manawhenua have been trying to have their rights determined for a number of years, such as Te Tau Ihu iwi in the Marlborough Sounds and Hauraki iwi in the Bay of Plenty.

view, threats of alienation had often been met with court cases and, later, claims to the Waitangi Tribunal.⁴³

Māori have always insisted that, before the passing of the Act, hapū ownership of the foreshore and seabed was never explicitly extinguished.⁴⁴ Many Māori feel the Court's ruling recognised what they always knew, that their relationship to the foreshore and seabed is akin to an ownership relationship.⁴⁵ Maui Solomon agrees, stating the Court's decision "...reinforces our view that the legal rights of iwi to the foreshore and seabed have never been extinguished".⁴⁶

The Government's actions also endanger the status of tāngata whenua. Educational material compiled by northern marchers on the hīkoi indicates that to Māori the debate also centres on their status as tāngata whenua, and how the Government purports to reduce that status to nothing more than other minorities.⁴⁷ As Moana Jackson contends, "...the injustice felt by Maori was drowned in misleading assertions of minority privilege".⁴⁸

Thus, while the mainstream media purports that Māori claim special rights based on race, many Māori continue to view the debate as the Government redefining tino

⁴³ Ibid, p. 84

⁴⁴ Ibid, pp.84-87

⁴⁵ Marcia Stenson, *The Treaty: Every New Zealanders Guide to the Treaty of Waitangi*, (Auckland: Random House, 2004), p. 132

⁴⁶ Maui Solomon, quoted in *The New Zealand Herald* (Auckland, 20 June 2003) p. A3

⁴⁷ Educational material summarised in Mana Magazine, "We can't just roll over" *Mana: the Maori news magazine for all New Zealanders*, issue 57 (April/May 2004) p. 68

⁴⁸ Jackson, "An enduring memory" p. 49

rangatiratanga as a minority interest and distorting Treaty rights and relationships.⁴⁹ Jason Pou highlights that the debate is about the Government's need to define rights and fit them into "...artificial templates".⁵⁰

It's about kaitiakitanga

Māori across all sectors of society believe the debate fundamentally centres on the need to protect the foreshore and seabed for future generations and to sustain the resource to benefit the nation as a whole.⁵¹ Thus, many perceive the only way to ensure preservation is to maintain Māori control. One such person is Sean Ellison.

Why does the Government want to change what has been operating perfectly well for time immemorial, and has historically been handled very capably and faithfully by the Māori people? Are they able to protect the sanctity of our sacred sties, the customary practices of the foreshore, and the resting places of our ancestors so they are not abused by other people, either in ignorance or otherwise? To me, we have been ordained by the gods and by our ancestors as the custodians, guardians and protectors of our ancestral lands, what right has anybody to dispute what they have put in place?⁵²

⁴⁹ See Jackson, "Like a Beached Whale" p. 14; Greensill, p. 57; Annette Sykes, personal comment in Hikoi: Inside out [Video Recording] (Aotearoa/New Zealand, AKA Productions, 21 July 2004) at 5mins, 40secs; Te Ope Mana a Tai, "Foreshore and Seabed Bill: Submission from Te Ope Mana a Tai" Te Ope Mana a Tai-Maketu, *Submissions to the Fisheries and Other Sea Related Legislation Select Committee-July 2004*, PDF file-351kb. July 2004. Online. Available: http://www.teope.co.nz/pdf/TOMAT_Submission.PDF (13 April 2005) p. 9; Treaty Tribes Coalition, "The Foreshore And Seabed Of New Zealand: Protecting Public Access And Customary Rights – Government Proposals For Consultation" Te Ope Mana a Tai-Maketu, *View Other Written Submissions on Crown Proposals*, PDF file-130 kb. 10 October 2003. Online. Available: <http://www.teope.co.nz/pdf/submissions/TTC%20submissions%203.10.03.pdf> (13 April 2005) p. 2; Te Rūnanga o Te Rarawa, "TE RUNANGA O TE RARAWA SUBMISSIONS - GOVERNMENT PROPOSALS ON FORESHORE AND SEABED" Te Ope Mana a Tai-Maketu, *View Other Written Submissions on Crown Proposals*, PDF file-155 kb. 3 October 2003. Online. Available: <http://www.teope.co.nz/pdf/submissions/Te%20Rarawa%20Foreshore%20Seabed%20submission%203%20Oct%202003.pdf> (13 April 2005) p. 3

⁵⁰ Pou, p. 49

⁵¹ See Joanna Wane, "Mutu makes stand to fight on the beaches" action, research and education network of aotearoa, *The Foreshore and Seabed is Maori Land!* 29 August 2004. Online. Available: <http://www.arena.org.nz/sbmutu2.htm> (18 April 2005); Te Kani Williams, personal comment on State of the Nation [Video Recording] (Aotearoa/New Zealand, Showtime, 10 June 2004) at 67mins, 9secs; James Brown, quoted in *Te Karere Maori*, vol. 3, no. 137, p. 3

⁵² Sean Ellison, quoted in Greensill, p. 58

To many Māori, the Government cannot be trusted not to sell.⁵³ Sale of past assets strongly suggests this. Manawhenua vehemently dismiss the mainstream media's claim that they will alienate their rights, ensuring the foreshore and seabed is protected for future generations.⁵⁴

The main issues

...the core issues at heart were about land theft; lack of consultation and agreement to the provisions of the legislation and the most importantly the realization that the legislation was reminiscent of land confiscations in our life times.⁵⁵

A 21st century confiscation⁵⁶

...the legislation is a confiscation of things which the Treaty see belong to Māori under the full, exclusive and undisturbed possession of our whenua. It's a confiscation of things which the common law recognises as part of our aboriginal title, and it's a confiscation of things that under the Human Rights norms are internationally recognised as belonging to Indigenous Peoples.⁵⁷

Across all spectrums of Māori society, with the exception of some of the leadership of Ngāi Tahu,⁵⁸ the key issue is that a confiscation is occurring. As Buddy Mikaere explains, the most obvious view Māori hold is that the legislation is "...tantamount to the confiscation of land..."⁵⁹ For many, this confiscation is another Treaty breach in a long line of Treaty breaches and injustices towards Māori.

⁵³ Te Runanga-a-Iwi o Ngāti Kahu, "Public Notice" Press Release, (Kaitaia, No date provided); Geensill, p. 57; Vicky Reti, quoted in *New Zealand Herald* (8-9 May 2004) p. A2; *Dominion Post*, (Wellington, 1 May 2004) Front page

⁵⁴ For a good summary of Manawhenua concerns see Te Ope Mana a Tai, "Submission on the Crown's proposals to protect public access and customary rights" p. 6

⁵⁵ An anonymous hīkoi participant, quoted in Martin Lang and Bay of Plenty Times, "Maori Hiko Through City Stops Traffic" action, research and education network of aotearoa, *The Foreshore and Seabed is Maori Land!* 29 April 2004. Online. Available: <http://www.arena.org.nz/hikurangi.htm> (18 April 2004)

⁵⁶ This phrase was coined by Te Ope Mana a Tai, the Te Tau Ihu Working Group, Chairman Matiu Rei, quoted in Stenson, p. 139. It is stated as a modern day confiscation by many Māori.

⁵⁷ Jackson, personal comment in Hiko: Inside Out, at 4mins, 53secs

⁵⁸ Mark Solomon, quoted in *Press*, (Christchurch, 4 December 2004) p. A5; *Press* (6 May 2004) p A4

⁵⁹ Buddy Mikaere, p. 32. For Ngatiwai, this confiscation will leave a significant imprint on the record of history. (Laly Haddon, "Ngatiwai Trust Board Statement to the Foreshore and Seabed Hui, Whangarei, 16 September 2003" Te Ope Mana a Tai-Maketu, *View Key Submissions from the Crown Consultation Hui*, PDF file-36.5kb. 16 September 2003. Online. Available: http://www.teope.co.nz/pdf/submissions/ngatiwai_trustboard.PDF (13 April 2005) p. 3)

The introduction of the Foreshore and Seabed Bill (the Bill) seems to many Māori a new form of confiscation, akin to nineteenth century raupatu.⁶⁰ Haami Piripi articulates this view stating “The bill as it stands is a manifestation of 19th century confiscation values”.⁶¹ Jackson concurs, asserting that the Government’s actions are

...certainly based on the same dubious assumptions and rationalisations that underpinned the raupatu of the 19th century. They draw upon old colonising legal precedents which vested a self-defined power in the Crown to determine or deny indigenous rights.⁶²

Māori perceive the debate as a confiscation on several fronts. It is described as a physical confiscation of land.⁶³ Conversely it is depicted as a confiscation because rights in the foreshore and seabed are eliminated.⁶⁴ It is also a confiscation for the reason that the right to due process is removed, essentially resulting in a removal of rights in the foreshore and seabed. Alternatively, it is considered a confiscation as iwi are denied the participatory rights in decisions pertaining to the foreshore and seabed.⁶⁵ On the other hand, it is also regarded as a confiscation since future claims to the foreshore and seabed are prohibited.⁶⁶

⁶⁰ Claudia Orange, *An Illustrated History of the Treaty of Waitangi*, (Wellington: Bridget Williams Books, 2004) p. 275; Pita Sharples, quoted in Hawkes Bay Today, “Foreshore Law Boosting Opposition Says Maori leader” action, research and education network of aotearoa, *The Foreshore and Seabed is Maori Land!* 16 April 2004. Online. Available: <http://www.arena.org.nz/sbkahun1.htm> (18 April 2005)

⁶¹ Haami Piripi, oral submission to the Select Committee, 4 August 2004, cited in *Press* (August 5, 2004) p. A9 (Opinion article)

⁶² Jackson, “Like a Beached Whale” p. 14

⁶³ Sykes goes even further to describe it as a confiscation of iwi authority through the confiscation of land. (Sykes, “Analysis of the Foreshore and Seabed Bill” action, research and education network of aotearoa, *The Foreshore and Seabed is Maori Land!* 2004. Online. Available: <http://www.arena.org.nz/sbannett.htm> (18 April 2005))

⁶⁴ Ngāti Raukawa, Ngāti Toa Rangatira, Ngāruahine, Te Aitanga-a-Hauiti, Te Whānau a Kai, Ngāti Hineuru, Ngāti Tionga hapū of Ngāti Rangitīhi and Ngāti Oneone perceive the main issue to be the Government confiscating their property rights and giving them to Pākehā marine farmers. (Baden Vertongen, quoted in Unattributed media source, “Just two and a half minutes each for iwi to present submissions” action, research and education network of aotearoa, *The Foreshore and Seabed is Maori Land!* 11 August 2004. Online. Available: <http://www.arena.org.nz/sb2mins.htm> (18 April 2005))

⁶⁵ Iwi leaders particularly see it as a confiscation of iwi rights to participate in the management of the marine environment. See unattributed media source, “Northern maori unhappy with foreshore proposals” action, research and education network of aotearoa, *The Foreshore and Seabed is Maori Land!* 18 December 2003. Online. Available: <http://www.arena.org.nz/sbreact.htm> (18 April 2005)

⁶⁶ Gabriele Belz, personal comment, posted on Tū Mai Magazine-Offering an Indigenous New Zealand Perspective, “Feedback” *Tū Mai Magazine-Offering an Indigenous New Zealand Perspective*, 2 September, 2003. Online. Available: <http://www.tumai.co.nz/feedback.htm> (25/04/2005)

In stark contrast to the majority of Māori, John Tamihere believes the issue is not about confiscation. He perceives it as primarily about upholding property rights and the rule of law. Something which he believes the Crown has achieved through its legislation.⁶⁷

Legislative theft of land

...how less destructive, how less demoralising, or how less unconscionable, this Bill is compared with earlier colonist legislation that removed our property rights, - like for example the New Zealand Settlement Act 1863.⁶⁸

For many, this issue ties into the concept of confiscation. For those who experienced confiscation in the past through such acts as the New Zealand Settlement Act 1863, what is happening here is perceived as essentially the same principle. In 1863, thousands of acres of land were legislatively stolen under the guise of establishing mechanisms for settlement. For many Māori, the Act is achieving essentially the same thing, stealing the foreshore and seabed from Māori under the pretence of protecting public access.⁶⁹

An extinguishment of rights

Another major issue for Manawhenua and for those working within academic or legal circles,⁷⁰ is that Māori rights in the foreshore and seabed will be extinguished. Once again, Māori definitions of these rights differ. To Manawhenua it is an extinguishment of their specific mana whenua/mana moana rights.⁷¹

⁶⁷ Quoted in *Press* (December 18, 2003) p. A11

⁶⁸ Te Runanga o Ngāti Tama, "Submission" Te Ope Mana a Tai-Maketu, *Submissions to the Fisheries and Other Sea Related Legislation Select Committee-July 2004*, PDF file-77kb. 2 August 2004. Online. Available: http://www.teope.co.nz/pdf/Greg_White.pdf (13 April 2005) p. 2

⁶⁹ See *ibid*, p. 2; Koroheke, pp. 2, 3

⁷⁰ Such as Margaret Mutu and Jackson, although both submitted on behalf of their respective iwi, Te Rarawa and Ngāti Kahungunu.

⁷¹ As Te Aupouri Maori Trust Board explains, there is an extinguishment of "...all existing Te Apourī customary/property rights and ownership relating to the foreshore and seabed..." (Stephen Allen, "Te Aupouri Māori Trust Board: Submission on the Foreshore and Seabed Bill" Te Ope Mana a Tai-Maketu, *Submissions to the Fisheries and Other Sea Related Legislation Select Committee-July 2004*, PDF file-82kb. 9 July 2004. Online. Available: <http://www.teope.co.nz/pdf/TeAupouri.PDF> (13 April 2005) p. 1) Other iwi and hapū feel similarly.

For others, it is an extinguishment of property rights. Some contend it is an extinguishment of their ownership rights, whether recognised through Crown title or not.⁷² Others believe although property rights are extinguished, these however do not amount to exclusive title.⁷³

Consequently, some Māori view the extinguishment as a breach of standard practices of English Law, which dictates a person's property right cannot be removed without due compensation.⁷⁴

Others perceive the legislation as extinguishing customary rights. Again there is a differing opinion as to the extent of these rights. There is also divergence in beliefs as to how these customary rights transpire.

For those who view customary rights emerging out of tikanga, the majority being Manawhenua, the removal of these rights impacts on tikanga, and denies them the ability to practice mana whenua and to determine rights in the foreshore and seabed. Alternatively, Māori also argue that their rights as kaitiaki, and their right to practice kaitiakitanga, are infringed.⁷⁵

⁷² This is especially true for areas such as Nelson, where Ngāti Tama's exclusive title to an estuary has been recognised and issued. (Bruce Ansley, "Foreshore's Lament" *New Zealand Listener*, vol. 189, (9 August 2003) p. 20)

⁷³ In the Waitangi Tribunal process the Tribunal noted that "Maori are aware of the anxiety about access and most do not want exclusive possession. There is room to manoeuvre" (Stenson, p. 132)

⁷⁴ Takutai Moana Poneke Collective, "Anniversary Day Marks Past and Present Theft from Maori" Press Release, (Wellington, 24 January 2005); Ngāti Kahungunu, "STATEMENT BY NGAI KAHUNGANU ON THE GOVERNMENT PROPOSALS ON THE FORESHORE AND SEABED. Omahu Marae, September 12, 2003" Te Ope Mana a Tai-Maketu, *View Key Submissions from the Crown Consultation Hui*, PDF file-59kb. 12 September 2003. Online. Available: http://www.teope.co.nz/pdf/submissions/NgatiKahungunu_Omahu.PDF (13 April 2005) p. 3

⁷⁵ Jackson, "There Are Obligations There": A consideration of Maori Responsibilities and Obligations in regard to the Seabed and Foreshore" in International Research Institute for Maori and Indigenous Education (IRI). *Te Takutai Moana, Economics, Politics and Colonisation Series 2003*. vol. 5, 2nd edn, (Aotearoa/New Zealand: The roopu Tino Rangatiratanga, 2003) p. 30; Te Rūnanga-a-Iwi o Ngāti Kahu Charitable Trust, "Submission on the Foreshore and Seabed Bill 2004" Te Ope Mana a Tai-Maketu, *Submissions to the Fisheries and Other Sea Related Legislation Select Committee-July 2004*, PDF file-1.66mb. 15 July 2004. Online. Available: <http://www.teope.co.nz/pdf/nga629-14-101.pdf> (13 April 2005) p. 2

Similarly, Treaty rights are also perceived to be extinguished.⁷⁶ Not only are Article Two ownership rights removed, but also the right to practice tino rangatiratanga over the foreshore and seabed. As one whānau submits, clause 3(a) of the Bill

...is the reason our people have been objecting to the whole foreshore issue because it shows that the Bill's purpose is to take away or extinguish our tino rangatiratanga over the foreshore and seabed.⁷⁷

A breach of fundamental rights

For many Māori, not only are some rights extinguished, but other fundamental rights are breached. Some perceive breaches of rights acknowledged by Te Ture Whenua Maori Act 1993 (TTWMA) and the Resource Management Act 1991 (RMA). For others, the process violates fundamental rights guaranteed to all New Zealanders under the New Zealand Bill of Rights Act 1990 (NZBORA) and the Human Rights Act 1993 (HRA) and the Universal Declaration of Human Rights 1948. A few also perceive a contravention of rights held by Indigenous Peoples at international law, such as those recognised in the UN's Draft Declaration on the Rights of Indigenous Peoples and the International Convention on the Elimination of All Forms of Racial Discrimination⁷⁸ and the International Covenant on Civil and Political Rights.⁷⁹

More than just a Māori issue

The extinguishment of Maori customary rights without tangata whenua agreement raises serious doubts about the ability of the Crown in Parliament to govern in the interests of tangata whenua, and all other people in Aotearoa.⁸⁰

⁷⁶ For a good summary of submissions which state Māori Treaty rights are breached see [Department of the Prime Minister and Cabinet](#), "Introduction" in Department of the Prime Minister and Cabinet, *Foreshore and Seabed Bill Departmental Report*, (Wellington: Department of the Prime Minister and Cabinet, 4 November 2004) pp. 8, 9

⁷⁷ Anonymous, "Te Takutai Moana Submission" Te Ope Mana a Tai-Maketu, *Submissions to the Fisheries and Other Sea Related Legislation Select Committee-July 2004*, PDF file-110kb. 9 July 2004. Online. Available: <http://www.teope.co.nz/pdf/TeTakutaiMoana.PDF> (13 April 2005) p. 6. Clause 3(a) of the Bill vests "the full legal and beneficial ownership of the foreshore and seabed in the Crown to ensure that the public foreshore and seabed...is preserved in perpetuity for the people of New Zealand"

⁷⁸ Ratified by New Zealand in 1972

⁷⁹ Ratified by New Zealand in 1978. For a good summary of these views see [Department of the Prime Minister and Cabinet](#), pp. 11-12

⁸⁰ Ani Mikaere et al, p. 473

Thus some Māori believe that this issue is more than simply Māori rights versus Pākehā rights. Huirangi Waikerepuru explains, “It’s about Maori and Pakeha versus the Government on human rights and breaching the Treaty of Waitangi.”⁸¹ As one hīkoi marcher notes, the foreshore and seabed issue concerns all New Zealanders, because if Helen Clark can legislate away Māori rights so easily, the Government can do it to anyone.⁸²

The removal of due process

The issue is being denied the right to have their case heard. That is the issue. The issue is that these people were proceeding under the law passed by the Pākehā Parliament, and then because somebody panicked and they decided “Gee, there’s this potential result that could be ugly, we’ll change the law”.⁸³

For Ngāi Tahu, and the other iwi of the Treaty Tribes Coalition,⁸⁴ the main issue is the removal of the right of Māori to go to court and to have their rights concerning the foreshore and seabed determined.⁸⁵ As Ngāi Tahu kaiwhakahaere Mark Solomon asserts, the major issue for Ngāi Tahu is that Māori access to the MLC to prove customary rights is being eradicated.⁸⁶ He testifies that Ngāi Tahu always believed the Court’s findings should stand.⁸⁷ He describes the Ngāi Tahu stance as

...right from the start, was that the Government was acting without regard to the due process of law...all we wanted was access to the courts on exactly the same basis as everybody else.⁸⁸

Even though Ngāi Tahu profess to perceive the main issues in the debate differently from most iwi,⁸⁹ others hold similar views. John Mitchell notes that Te Tau Ihu had simply

⁸¹ Quoted in unattributed media source, “Taranaki Trust Board Lodges Human Rights Complaint” action, research and education network of aotearoa, *The Foreshore and Seabed is Maori Land!* 22 December 2003. Online. Available: <http://www.arena.org.nz/sbtarak1.htm> (18 April 2005)

⁸² Unattributed media source, ““Hikoi grows as marchers cross harbour bridge” action, research and education network of aotearoa, *The Foreshore and Seabed is Maori Land!* 27 April 2004. Online. Available: <http://www.arena.org.nz/sbhikrpt.htm> (18 April 2005)

⁸³ Derek Fox, personal comment in State of the Nation, at 71mins, 28secs

⁸⁴ Of which Ngāi Tahu is a member.

⁸⁵ Treaty Tribes Coalition, *ONE RULE OF LAW FOR ALL NEW ZEALANDERS: A Submission by the Treaty Tribes Coalition on the Foreshore & Seabed Issue*. (Christchurch: Treaty Tribes Coalition, 2004) p. 3

⁸⁶ *Press* (6 May 2004) p. A4

⁸⁷ *New Zealand Herald* (13 December 2003) p. A2

⁸⁸ *Ibid*

⁸⁹ Quoted in *Press* (4 December 2004) p. A4

exercised their Article Three Treaty right to pursue due process through the courts like any British subject. This is now being removed.⁹⁰

Others support Mitchell, noting that Māori utilised the Government's own legal system and when confronted with a judicial decision they found unsuitable, the Government simply changed the law to remove the MLC's jurisdiction to determine customary title in the foreshore and seabed. To many Māori, the Crown simply changed the rules of the game. "All of a sudden the goalposts were moved and the goal already scored was discounted".⁹¹

Prominent Māori legal professionals also recognise this as a key issue. For Jackson, the removal of due process breaches the human right to go to court.⁹² Maui Solomon, supports this stating the removal of due process is a denial of "...the right of natural justice to go to the courts to have their case heard".⁹³ For Te Hau Tikanga, the removal of due process denies Māori the fundamental Magna Carta right to go to court.⁹⁴

The idea that this issue is central to the debate is not reserved to only those informed on the legal issues. In a Marae DigiPoll, conducted in the first week of August 2003, the majority of one thousand Māori voters surveyed believed that Māori should be able to take claims for their customary title in the foreshore and seabed to the MLC.⁹⁵ They may not have been able to articulate which legal rights were being infringed, but they knew instinctively that denying access to the courts is not acceptable.⁹⁶

⁹⁰ *Press* (23 December 2003) p. A15 (Opinion article)

⁹¹ *Press* (5 August 2004) p. A9

⁹² Jackson, personal comment in *Hikoi: Inside Out*, at 38mins, 37secs

⁹³ Maui Solomon, "Worse than ever" p. 67

⁹⁴ The roopu Tino Rangatiratanga, "Nga Patai (Reproduction of 'A Foreshore Primer' prepared by Te Hau Tikanga-The Maori Law Commission)" in International Research Institute for Maori and indigenous Education (IRI), *Te Takutai Moana*, Economics, Politics and Colonisation Series 2003. vol. 5, 2nd edn, (Aotearoa/New Zealand: The roopu Tino Rangatiratanga, 2003) p. 7

⁹⁵ Jane Young. "Maori: Hands off foreshore" action, research and education network of aotearoa, *The Foreshore and Seabed is Maori Land!* 11 August 2003. Online. Available: <http://www.arena.org.nz/sbpoll.htm> (18 April 2005)

⁹⁶ My point here is supported by Hone Harawira who states that "Many Maori were not really clear on what the detail was all about, but most knew that something was wrong" ("We're Marching..." Press Release, (Aotearoa/New Zealand, 13 April 2004))

The removal of the current test for customary rights

For Māori with legal knowledge, the Crown's assumption that the law in the field of customary rights is not well-developed is an admission of ignorance, and perhaps a complete denial, of the test established under section 123(2)(a) of TTWMA, where the test for customary title is "Land held in accordance with tikanga Maori".⁹⁷ Following the Court's decision under section 131(a) the MLC had the jurisdiction to determine the customary title in the foreshore and seabed. The Tribunal found that this test is being circumvented by a new test that provides for a lesser 'customary title' than that available under TTWMA, while the test for use rights is higher.⁹⁸ Māori lawyers, Andrew Erueti and Annette Sykes both concede that this new test is the most restrictive test available for determining customary rights.⁹⁹

Of major concern is the fact that rights will no longer be based on whakapapa and that few hapū will be able to prove rights under the new test.¹⁰⁰ For Manawhenua, this issue acquires added meaning. In many cases hapū cannot show continual use because Crown acts or omissions have prevented them from exercising their rights in the foreshore and seabed. Therefore, by requiring Māori to prove continual use since 1840, the Crown is essentially able to benefit from past injustices.¹⁰¹

⁹⁷ Jackson, "DECOUPLING THE TREATY AND THE IWI: A BRIEF SUMMARY ANALYSIS OF THE GOVERNMENT'S FINAL FORESHORE AND SEABED LEGISLATIVE FRAMEWORK AS RELEASED ON 7 APRIL 2004". action, research and education network of aotearoa, *The Foreshore and Seabed is Maori Land!* 8 April 2004. Online. Available: <http://www.arena.org.nz/sbmoana6.htm> (18 April 2005); Margaret Mutu, "Submission on the Foreshore and Seabed Bill" Te Ope Mana a Tai-Maketu, *Submissions to the Fisheries and Other Sea Related Legislation Select Committee-July 2004*, PDF file-60.8kb. 15 July 2004. Online. Available: <http://www.teope.co.nz/pdf/Prof%20Margaret%20Mutu.PDF> (13 April 2005) p. 5

⁹⁸ Waitangi Tribunal, *Report on the Crown's Foreshore and Seabed Policy*, (Wellington: Legislation Direct, 2004) p. 109

⁹⁹ Sykes, "Analysis of the Foreshore and Seabed Bill"; Erueti, "Translating Maori customary title into a common law title" *The New Zealand Law Journal*, (Wellington: LexisNexis, 2003) pp. 421-423

¹⁰⁰ See Ibid, p. 423; Treaty Tribes Coalition, "The Foreshore And Seabed Of New Zealand: Protecting Public Access And Customary Rights" Treaty Tribes Coalition, "The Foreshore And Seabed Of New Zealand: Protecting Public Access And Customary Rights – Government Proposals For Consultation" Te Ope Mana a Tai-Maketu, *View Other Written Submissions on Crown Proposals*, PDF file-130 kb. 10 October 2003. Online. Available: <http://www.teope.co.nz/pdf/submissions/TTC%20submissions%203.10.03.pdf> (13 April 2005) p. 2; Te Ope Mana a Tai, "Foreshore and Seabed Bill: Submission from Te Ope Mana a Tai" p. 17; Jackson, "DECOUPLING THE TREATY AND THE IWI"; Sykes, "Analysis of the Foreshore and Seabed Bill"; Te Rūnanga o Ngāti Whātua, "Submission Foreshore and Seabed Bill" Te Ope Mana a Tai-Maketu, *Submissions to the Fisheries and Other Sea Related Legislation Select Committee-July 2004*, PDF file-446kb. 26 July 2004. Online. Available: http://www.teope.co.nz/pdf/Runanga_o_Ngati_Whatua.PDF (13 April 2005) p. 4

¹⁰¹ Te Ope Mana a Tai, "Foreshore and Seabed Bill: Submission from Te Ope Mana a Tai" pp. 15-17

Many Māori believe they should not have to prove rights in the first instance, rather that the burden of proof lies with the Government to prove that customary rights have been legitimately extinguished.¹⁰² In a summary of iwi and hapū concerns expressed during Crown consultation hui, Te Ope Mana a Tai notes that there is

Concern about the suggestion that tangata whenua should have to repeatedly prove the existence and the relationship, rights and obligations to the foreshore and seabed, as opposed to the onus being on the Crown to produce evidence that it has fairly acquired or properly extinguished those rights.¹⁰³

Impact on relationships in the future

For those iwi who have settled claims with the Crown, a major issue is that the Crown is reneging on their apologies in those settlements.¹⁰⁴ These iwi therefore perceive the debate as irreparably damaging the relationships formed between themselves and the Crown. Many of these iwi cannot fathom interacting with the Crown if they cannot trust them to keep their word.

For those interacting with the Crown at a local, hapū level, there is real concern at how their relationships with crown bodies and local government are to be managed under the new regime.¹⁰⁵ For some there is a fear that relationships already established will be weakened or

¹⁰² These concerns were raised at all consultation hui. See Te Ope mana a Tai's summary of the main issues raised by iwi and hapū during consultation hui, set out in Te Ope Mana a Tai, "Submission on the Crown's proposals to protect public access and customary rights" p. 6. Other Māori also express this sentiment, see *Press* (23 December 2003) p. A15 (Opinion article)

¹⁰³ Te Ope Mana a Tai, "Submission on the Crown's proposals to protect public access and customary rights" p. 6

¹⁰⁴ Such as Ngāi Tahu, Ngāti Tama in North Taranaki and Te Arawa. See Mark Solomon, "Ngāi Tahu response to Government Consultation hui: Rapaki 18 September 2003" Te Ope Mana a Tai-Maketu, *View Key Submissions from the Crown Consultation Hui*, PDF file-68kb. 18 September 2003. Online. Available: http://www.teope.co.nz/pdf/submissions/NgaiTahu_18Sept.PDF (13 April 2005) p. 2; Greg White, "Taranaki Whānui. Foreshore and Seabed Proposal: OWAE MARAE, 23 September 2003" Te Ope Mana a Tai-Maketu, *View Key Submissions from the Crown Consultation Hui*, PDF file-55kb. 23 September 2003. Online. Available: http://www.teope.co.nz/pdf/submissions/NgatiTama_Owae.PDF (13 April 2005) p. 3; Te Kotahitanga o Te Arawa Fisheries Trust Board and the Te Arawa Māori Trust Board, "Submission by Te Kotahitanga o Te Arawa Fisheries Trust Board and the Te Arawa Māori Trust Board on the Crown Foreshore and Seabed Proposals" Te Ope Mana a Tai-Maketu, *View Other Written Submissions on Crown Proposals*, PDF file-202kb. 3 October 2003. Online. Available: <http://www.teope.co.nz/pdf/submissions/Te%20Kotahitanga%20o%20Te%20Arawa%20&%20Te%20Arawa%20Maori%20Trust%20Board%20submission.pdf> (13 April 2005) p. 2

¹⁰⁵ Greensill, p. 55

destroyed. Others see a weakening of Māori relationships with the land. As Greensill notes, the Government

...decided that territorial authorities would be the managers of our [Māori] spaces thereby impacting on our relationship with our Atua [sic] and taonga.¹⁰⁶

The main events

The Court of Appeal decision and the Government's reaction

Many commentators believe that the general Māori perception of the Court's findings is that it recognised they had customary title in the foreshore and seabed.¹⁰⁷ However, while some perceive the decision this way, others either realise that the findings simply are that Māori have the right to have their rights determined,¹⁰⁸ or the Government's overreaction in deciding to legislate confirms that property rights must exist for the Government to react in such an extreme fashion.¹⁰⁹ Thus there is a mixture of perceptions as to whether the Court affirms Māori rights or simply gives them the opportunity to have them determined.

In the first instance, the Court's decision is a major event for Te Tau Ihu, because it acknowledged their long-standing aspirations to exercise their traditional claim as the owners and guardians of the Sounds and reinforced what Māori had always believed, that it was only dry land that had been confiscated or sold.¹¹⁰

Initially, the decision signalled the possibility of new working relationships in the marine arena. For some it was a chance to have the courts determine what rights existed, and

¹⁰⁶ Ibid, p. 56

¹⁰⁷ Chen Palmer and Partners, *Wellington Watch: A Weekly Bulletin of Parliamentary and Political Information*, issue 2003/31 (Aug 22 2003) p. 4; Ogden, pp. 14-16; Ani Mikaere et al, p. 462

¹⁰⁸ Grant Powell, quoted in *Mana Magazine*, "We can't just roll over" p. 70; Treaty tribes Coalition, *ONE RULE OF LAW FOR ALL NEW ZEALANDERS*, p. 6; Te Ope Mana a Tai, "Foreshore and Seabed Bill: Submission from Te Ope Mana a Tai" pp. 7, 25

¹⁰⁹ See Orange, p. 271; Powel, quoted in *Mana Magazine*, "We can't just roll over" p. 70

¹¹⁰ *Press* (28 June 2003) p. A4

therefore could create some much needed certainty. Others saw it indicating the possibility of Manawhenua being granted commercial and development opportunities.¹¹¹

Just four days after the Court's decision the Attorney-General (AG) announced that the Government would legislate to 'reassert' Crown ownership over the foreshore and seabed.¹¹² Many Māori view the announcement as an overkill solution to the hyped up fiction about Māori restricting coastal access.¹¹³ For others, the decision to legislate is a deliberate colonising tactic, subordinating Māori rights below that of the majority.¹¹⁴

The Paeroa hui

On 12 July 2003, over a thousand reps from tribes in both islands attended a national assembly at Paeroa. The significance of this hui was overlooked by the mainstream media.

Despite its misrepresentation in the media, many Māori view this hui as a major event.¹¹⁵ The hui showcased iwi unity and through The Paeroa Declaration crystallised a number of guiding principles: that iwi and hapū have always regarded the foreshore and seabed within their boundaries, as belonging to them; that a declaration of iwi or hapū rights is not a denial of public access; that the foreshore and seabed are vested in the authority of rangatira, which may be called tūpuna title, an ancestral birthright; that implicit in tūpuna title is the kaitiaki obligation of iwi and hapū over the resources of their foreshore and seabed; that the right of access to and use of these resources resides in the rangatira through the collective will of the iwi and hapū.¹¹⁶

¹¹¹ Ngāti Rārua kaumatua, Wiremu Stafford, felt that if Māori successfully had their customary rights or title determined, they would share in either the Crown's income from the seabed and foreshore resources, or be granted a share of the water space. (Quoted *Press* (28 June 2003) p. A4)

¹¹² The AG announced this policy on 23 June 2003.

¹¹³ See Robertson, p. 6; Powel, quoted in *Mana Magazine*, "We can't just roll over" p. 70

¹¹⁴ See Sykes et.al, pp. 27-28; Jackson, "There Are Obligations There" p. 30

¹¹⁵ Walker, *Ka Whawhai Tonu Matou*, pp. 383-384

¹¹⁶ The Paeroa Declaration 2003; see also *ibid*, p. 383

The release of the Government’s discussion and policy documents

Before the release of any concrete documents, the Government discussed their proposed policy with the Māori Labour MPs. For Māori these discussions are merely a case of the Government talking to itself, rather than engaging in a Treaty-based dialogue with iwi.¹¹⁷

On 18 August 2003, the Government released their discussion document *Protecting Public Access and Customary Rights: Government Proposals for Consultation*. This is viewed as the next major event in the debate. For many the document is unfair. In submissions and during consultation hui at this early stage, Manawhenua claim the document purports to reduce tino rangatiratanga to the whim of the Crown, reducing Māori to mere tenants of the foreshore.¹¹⁸

The announcement of the Government’s policy document, *The foreshore and seabed of New Zealand, Government Proposals for Consultation*, on 17 December 2003 is a key event. Not only did it spark an urgent Tribunal hearing, but it also confirms that, in ignoring Māori concerns and failing to implement the various alternatives they suggested throughout out the consultation and submission process, the Government is not willing to treat Māori with respect.

The policy announcement is major for Māori in the sense of not only is the Government preparing to breach the Treaty, but they are removing Māori rights without their consent and failing to treat them as equal Treaty partners.¹¹⁹ Jackson, along with others, views the framework established by the policy document as deceptive, dishonest and adding complexity to the issue.¹²⁰

¹¹⁷ See Walker, *Ka Whawhai Tonu Matou*, p. 383; Sykes et al., p. 27

¹¹⁸ For a good summary of submissions expressing this concern see Carpinter and Department of the Prime Minister and Cabinet, p. 70; See also Jackson, ““Like a Beached Whale”” p. 14

¹¹⁹ It is now well established legal doctrine that both parties to the Treaty have a duty to act reasonable towards each other in utmost good faith as a characteristic obligation of the partnership established through the Treaty. See *New Zealand Maori Council v Attorney-General* [1987] 1 New Zealand Law Reports 641, p. 644 per President Cooke.

¹²⁰ See Jackson, “An enduring memory” p. 49; Te Ope Mana a Tai, “Submission on the Crown’s proposals to protect public access and customary rights” p. 7; *New Zealand Herald* (19 December 2003) p. A21 (Comment article)

However, in contrast to the prevailing views, there are those in Government who view the policy as a step in the right direction. It should be noted here that Tariana Turia felt so strongly that this policy was not in her constituents best interests that she resigned from Labour. Therefore the viewpoint that this policy is on the right path is held almost entirely by the remaining Māori Labour MPs. Dover Samuels feels it is the best deal Māori can hope for.¹²¹ Tamihere sees it as a compromise,¹²² and later describes it as a balancing act, with concessions that need to be made.¹²³ Parekura Horomia believes the policy is on the right track.¹²⁴

Don Brash's Orewa Speech

For Māori across a broad spectrum of society, Don Brash's speech at the Orewa Rotary Club on 27 January 2004 is perceived to be one of the major events in the debate. It is viewed as the catalyst to Pākehā reaction, spreading misinformation and untruths about Māori and their relationship to the foreshore and seabed, as well as perpetrating the view that Māori would deny access or veto development.¹²⁵ For many, this speech wrongly informed the general Pākehā population that Māori were asking for special rights in the foreshore and seabed, rather than simply wishing to have the rights they already possess recognised.¹²⁶

The speech lifted the lid on Aotearoa/New Zealand's race relations, exposing Māori to attack over wider race issues, leaving many Māori feeling under siege. It created a platform for Pākehā backlash against Māori, their rights and those things of cultural importance to them.¹²⁷ For some Māori this just reaffirms that racial discontent is always present.¹²⁸

¹²¹ Samuels, quoted in *ibid*

¹²² Tamihere, quoted in Stenson, p. 139

¹²³ *Dominion Post* (26 August 2003) p. B4

¹²⁴ Horomia, quoted in unattributed media source, "Northern maori unhappy with foreshore proposals"

¹²⁵ See Tom Bennion et al, p. 4; Jackson, "An enduring memory" p. 49, Derek Fox, "A disturbing land" *Mana: the Maori news magazine for all New Zealanders*, issue 56 (February/March 2004) p. 49; Buddy Mikaere, p. 32; Shane Jones, quoted in *Te Karere Maori*, vol 3, no. 137, p. 6; Jones, quoted in *Sunday Star Times* (Aotearoa/New Zealand, 1 February 2004) p. A4; *Sunday Star Times* (9 May 2004) p. C4

¹²⁶ Te Rūnanga o Ngāti Tama, p. 6

¹²⁷ See Jones, quoted in *Te Karere Maori*, vol. 3, no. 137, p. 6; Mark Solomon, quoted in *Press*, (6 May 2004) p. A4

¹²⁸ Te Rūnanga o Ngāti Tama, p. 6

The hīkoi

The hīkoi is considered to be of huge significance and thus another major event in the debate. It became the biggest show of Māori unity and strength since the historic 1975 Land March.¹²⁹ For many Māori, it is of great importance because it showcased Māori determination to stand up and be heard over this issue. As Hone Harawira acknowledges, the onus is on this generation to send a clear message.¹³⁰

...you just can't sit back and watch the government steal your lands, take away your rights, without doing something. You've got to act. You have an obligation to future generations to do something.¹³¹

The hīkoi signified Māori fortitude to fight for what they believe is theirs and demonstrated the depth of feeling Māori have over the issues.¹³² Heather Thompson of Matakotako Marae notes, “Our people instinctively knew the kaupapa... They knew they needed to be there to support, so the importance of what was happening could not be dismissed in the media”.¹³³

However, for the majority of Māori the hīkoi was driven by a sense of injustice and by the need for public affirmation of Māori strength in the face of widespread hostility over Māori claims.¹³⁴ The hīkoi was more about Māori demonstrating the fact that they are “...sick and tired of being kicked in the guts all the time as a political football”.¹³⁵ As Thompson concedes, the hīkoi

...wasn't really about the seabed and foreshore. That was part of it, but it was the beating our people have taken over the recent months to maintain the popularity of certain politicians in the polls.¹³⁶

The hīkoi is also important to Māori because it showcased their ability to organise and protest.¹³⁷ For many it is an exhibition of Māori power and strength. For others it showcased

¹²⁹ See unattributed media source, “Hikoi grows as marchers cross harbour bridge”; Kay Robin and Rene Babbington, quoted in *Pīpīwharaura*, “Opinion” *Pīpīwharaura*, vol. 12, no. 5 (May 2004) p. 6

¹³⁰ Quoted in Pitman, Mereana et al, “There’s a message here” *Mana: the Maori news magazine for all New Zealanders*, issue 58 (June/July 2004) p 38

¹³¹ Hone Harawira, “We’re Marching...”

¹³² See Chen Palmer and Partners, issue 2004/16 p. 3; Orange, p. 275; Stenson, p. 144; Jackson, “An enduring memory” p. 49; Tere Harrison, personal comment in *Hikoi: Inside out*, at 43mins, 10secs; Shane Jones, quoted in *New Zealand Herald* (10 May 2004) p. A10

¹³³ Quoted in Pitman et al, p 42

¹³⁴ Orange, p. 275

¹³⁵ John Tamihere, quoted in Pitman et al, p. 45

¹³⁶ Quoted in *ibid*, p 42

the best part of Māori society, an ability to respond peacefully to such a huge betrayal, to show respect for their Treaty partner by the way they brought the issue to the public. For Shane Jones, the hīkoi is "...a statement of Maori renaissance and Maori pride, Maori power, and that power comes from that identity".¹³⁸

The introduction of the Foreshore and Seabed Bill and the passing of the Foreshore and Seabed Act 2004

The acceptance of the Foreshore and Seabed Bill into Parliament is a continuation of the way Pakeha law has been used to confiscate our resources and deny the authority of iwi and hapu, for the past 164 years. Maori have been stripped of what is theirs not primarily through war, but through law.¹³⁹

Even though Māori vehemently protest the Bill's introduction, clearly oppose Crown ownership; disagree with the process for finding territorial customary rights and the lack of guarantees on redress; view ancestral connection orders as having little effect or alternatively disrupting existing consultation processes; and resist the tests for and limits on customary rights orders,¹⁴⁰ the Government remained determined to pass the Act.

Māori describe the Bill and the Act as substantially unfair and discriminatory, requiring that only Māori lose their rights in the foreshore and seabed, while guaranteeing private title owners their rights.¹⁴¹ For the majority of Māori, both are clear breaches of the Treaty, subordinating customary and Treaty rights to mere interests.

¹³⁷ See Jackson, "An enduring memory" p. 49

¹³⁸ Quoted in *The New Zealand Herald* (10 May 2004) p. A20

¹³⁹ Sykes, "Analysis of the Foreshore and Seabed Bill"

¹⁴⁰ Department of the Prime Minister and Cabinet, p. 4

¹⁴¹ See Richard Boast, "Constitutional crisis over foreshore and seabed in Aotearoa" *Pacific Ecologist*, issues 7 and 8 (Autumn-Winter 2004) p. 63; Waitangi Tribunal, *Report on the Crowns Foreshore and Seabed Policy*, p. 134; Greensill, p. 57; *Press* (23 December 2003) p. A15 (Opinion article); Treaty Tribes Coalition, "The Foreshore And Seabed Of New Zealand: Protecting Public Access And Customary Rights" p. 2; Te Kotahitanga o Te Arawa Fisheries Trust Board and the Te Arawa Māori Trust Board, p. 12; Te Rūnanga-a-Iwi o Ngāti Kahu Charitable Trust, pp. 1, 14; Te Rūnanga o Ngāti Awa, "SELECT COMMITTEE SUBMISSION". Te Ope Mana a Tai-Maketu, *Submissions to the Fisheries and Other Sea Related Legislation Select Committee-July 2004*, PDF file-22.5kb. 15 July 2004. Online. Available: <http://www.teope.co.nz/pdf/Ngati%20Awa.PDF> (13 April 2005) p. 2. Others go as far to describe the Bill as racist: See Te Rūnanga o Ngāti Tama, p. 13

Māori lawyers view the Act as deviating from constitutional and social norms, which would entitle the courts to determine the matter.¹⁴² To other Māori, the legislation strips Māori of their status as tāngata whenua and is an attack on their cultural identity.¹⁴³ For Manawhenua already engaged in the marine environment, the Act increases uncertainty as to what their rights will now entail, while purporting to create certainty for the public over access.¹⁴⁴

Māori lose their rights to live in peace and dignity and their right to control and protect their own lands.¹⁴⁵ To some, by introducing the legislation, the Government is flagrantly disregarding human rights. Consequently a few view the legislation as a breach of international treaties.

Feelings that emerged

The foreshore and seabed debate is a very emotional process for many Māori. Therefore, some very real and powerful feelings surface throughout the debate.

For those Māori whose tūpuna and whanaunga experienced past confiscations, powerful, painful memories are universal. The emotion tends to be even more ubiquitous amongst those Manawhenua who are living on land affected by confiscation, or consequently are unable to live on their land which had been appropriated by the Crown through confiscation.

Māori are desperately unhappy with the debate's processes, and that the outcome creates a new grievance. Thus, there is added sadness that this generation will endure a loss on a scale

¹⁴² Bennion et al, p. 5

¹⁴³ *Dominion Post* (12 May 2004) p. A2 (Opinion article)

¹⁴⁴ See Tariana Turia, speech at the second reading of the Foreshore and Seabed Bill, reproduced in Tariana Turia, "The Next Hikoī" action, research and education network of aotearoa, *The Foreshore and Seabed is Maori Land!* 6 November 2004. Online. Available: <http://www.arena.org.nz/sbtari.htm> (18 April 2005); Maniapoto Māori Trust Board, "Statement of Objections to the Foreshore Seabed Debate 2003" Te Ope Mana a Tai-Maketu, *View Other Written Submissions on Crown Proposals*, PDF file-27kb. July 2004. Online. Available: <http://www.teope.co.nz/pdf/submissions/Ngati%20Maniapoto%20Objections%20to%20Foreshore%20Seabed%20proposals.pdf> (13 April 2005) p. 2; Ngāti Kahungunu, p.6; Te Rūnanga o Ngāti Tama, p. 4

¹⁴⁵ Ted Tamati, quoted in unattributed media source, "Taranaki Trust Board Lodges Human Rights Complaint"

of that faced by previous generations. There is also a deep sadness in the understanding that future generations will have to deal with the consequences of the legislation.¹⁴⁶

There is real fear that this debate will damage race relations to such a degree that all the advances of the last thirty years will be undone.¹⁴⁷ For Sykes, Pou, Carl Mika and Kirsty Luke

In an era where recognition is being given to the serious impacts of unjust confiscations carried out by the crown and the entrenchment of poverty that this has caused within Maoridom, it is repugnant to consider that this is a cycle that the crown are unwilling to break.¹⁴⁸

For some, there is disbelief that this debate, which sparked reactions reminiscent of colonial thinking, could surface within Aotearoa/New Zealand, a country held up by others as an example for post-colonial interaction.¹⁴⁹

For others, their feelings are even stronger. There is a disdain towards the Government for not listening to, nor addressing, the concerns of Māori.¹⁵⁰ This disbelief, disappointment, and disdain all culminate into hurt and anger at the realisation that no matter how much Māori protest, write submissions or march on Parliament, there is nothing they can do to stop the Government legislating.¹⁵¹

¹⁴⁶ See Orange, p. 270

¹⁴⁷ Walker, *Ka Whawhai Tonu Matou*, p. 382

¹⁴⁸ Sykes et al, p. 28

¹⁴⁹ John McEnteer believes that this will subsequently lower Aotearoa/New Zealand's status in the eyes of other countries. (Quoted in *New Zealand Herald* (6 May 2004) p. A3) Te Aupouri Māori Trust Board are adamant that the Government will be criticised internationally. (Allen, p. 6) See also Manaiapoto Māori Trust Board, p. 3; Te Rūnanga o Ngāti Tama, p. 5

¹⁵⁰ See Titewhai Harawira, quoted in Stephen Forbes, "We'll fight them on the beaches' – Titewhai" action, research and education network of aotearoa, *The Foreshore and Seabed is Maori Land!* 23 August 2003. Online. Available: <http://www.arena.org.nz/sbtitewh.htm> (18 April 2005); Laurayno Ngawhika, quoted in *New Zealand Herald* (7 May 2004) p. A6; Leo Te Kira, "Submission on the Foreshore and Seabed Bill" Te Ope Mana a Tai-Maketu, *Submissions to the Fisheries and Other Sea Related Legislation Select Committee-July 2004*, PDF file-74.9kb. 15 July 2004. Online. Available: <http://www.teope.co.nz/pdf/Rev%20Leo%20Te%20Kira.PDF> (13 April 2005) p. 1; Te Rūnanga o Ngāti Tama, p. 8; Manaiapoto Māori Trust Board, p. 3

¹⁵¹ See Tū Mai Magazine, "The Crown will own the Foreshore and Seabed" *Tū Mai Magazine-Offering an Indigenous New Zealand Perspective*, vol. 53 (May 2004) p. 14; Te Rūnanga o Ngāti Tama, p. 4

Anger surfaced throughout the debate and is directed at the issue and situation itself as well as at specific groups participating in the debate. There is anger expressed at all the matters already discussed, in addition to anger because many believe a different outcome is possible.¹⁵² Over and above this emerges anger at the Government's inability to learn from the past, and anger that history is repeating.¹⁵³

A great deal of anger is fixed on the Government's procedures. The Government's interference with the judicial system and its predetermination of court cases through legislative enactment is outrageous to many Māori.¹⁵⁴ Māori also feel a substantial amount of anger at the lack of time in which to submit to the Fisheries and other Sea-Related Legislation Select Committee (the Select Committee) and the restriction on those able to present oral submissions.¹⁵⁵

Anger is also directed at the Government itself. For some this anger manifested itself in a deep sense of betrayal.¹⁵⁶ A few express anger at the Government's attitude throughout the debate. Many are incensed at what they perceive as a 'we know best' approach. Māori are

¹⁵² See Bennion et al, p. 5; Turia, "The Next Hikoi"; Buddy Mikaere, pp. 31, 33; Treaty Tribes Coalition, *ONE RULE OF LAW FOR ALL NEW ZEALANDERS*, pp. 2-3; Jackson, person comment in Hikoi: Inside out, at 41mins, 51secs; Tame Iti, quoted in *New Zealand Herald* (8-9 May 2004) p. A2; McEnteer, quoted in *New Zealand Herald* (6 May 2004) p. A3; Mitchell, quoted in *New Zealand Herald* (19 November 2004) p. A5; White, p. 1; Harry Mikaere, "Submissions to the Hauraki Hui 11th September 2003" Te Ope Mana a Tai-Maketu, *View Key Submissions from the Crown Consultation Hui*, PDF file-15kb. 11 September 2003. Online. Available: <http://www.teope.co.nz/pdf/submissions/Harry%20Mikaere.PDF> (13 April 2005) p. 1

¹⁵³ See McEnteer and Toko Renata, p. 4; Ngāti Kahungunu, p. 2; Harry Mikaere, p. 1; Te Rūnanga o Ngāti Tama, pp. 2-3, 8, 13; Ōraka Aparima Rūnaka, "Foreshore and Seabed Bill 2004" Te Ope Mana a Tai-Maketu, *Submissions to the Fisheries and Other Sea Related Legislation Select Committee-July 2004*, PDF file-131kb. 15 July 2004. Online. Available:

<http://www.teope.co.nz/pdf/Oraka%20Aparima%20Runaka%20submission.pdf> (13 April 2005) p. 5

¹⁵⁴ Including Ngāi Tamanuhiri, who feel this is repugnant to the concept of justice. (Raihanian, "[Ngai Tamanuhiri. Whangara Hui](#)") Te Ope Mana a Tai-Maketu, *View Key Submissions from the Crown Consultation Hui*, PDF file-117kb. July 2004. Online. Available:

http://www.teope.co.nz/pdf/submissions/Ngai_Tamanuhiri.PDF (13 April 2005))

¹⁵⁵ See unattributed media source, "Just two and a half minutes each for iwi to present submissions"; Willie Jackson, "Foreshores Comment: National Urban Maori Authority" Press Release, (Aotearoa/New Zealand, 18 August 2003); Turei, quoted in unattributed media source, "Oral submissions on Foreshore and Seabed Bill cut to 350"; Greensill, p. 56; Durie, p. 95. For a good summary of submissions that express anger at the speed of process and extent of genuine consultation see: Department of the Prime Minister, p. 8

¹⁵⁶ Orange, p. 270

also angry at the Government's for inciting the debate and fuelling hatred towards Māori through their actions as well as their inability to present the correct issues to the public.¹⁵⁷

There is also a great deal of anger directed at individual politicians. A degree is directed at Clark, and her failure to meet Māori face to face on the issue.¹⁵⁸ Brash is also singled out as a target for Māori anger for stirring the debate and augmenting hatred and racism towards Māori.¹⁵⁹

However, a substantial amount of anger is focussed at the male Māori members of the Labour Government. For a few, these feelings of anger presented themselves in a reaction of disgust and contempt.¹⁶⁰ Others tend to focus their anger at the MPs' resolve that this is the best deal Māori can get, which is considered to be a lot better than what would be presented under a National lead government¹⁶¹.

Interestingly, two specific issues have arisen from the September 17 election. First, Labour overwhelmingly received the party vote in the Māori electorates, and second, four Māori electorate seats went to the Māori Party. Thus, anger at the Labour Government seems to have given way to a more focused and specific anger at the male Māori MPs. Analysis at a later date may well disclose a close relationship between this dissatisfaction with the Māori MPs and their stand on the foreshore and seabed issue.

¹⁵⁷ See Carpinter and Department of the Prime Minister and Cabinet, p. 6; Irimana T. N. K. Gemmell, personal comment, posted on Tū Mai Magazine, 25 April 2004; Te Kira. p. 2

¹⁵⁸ See Bertha Nikoa, quoted in Pīpīwharauora, "Opinion" p. 6; Maxine Edmonds, quoted in *New Zealand Herald* (8-9 May 2004) p. A2; *New Zealand Herald* (6 May 2004) p. A3; Jackson, quoted in *ibid*

¹⁵⁹ See Orange, p. 276; Fox, p. 49; Jones, quoted in *Te Karere Maori*, vol 3, no. 137, p. 6; Te Rūnanga o Ngāti Tama, p. 6

¹⁶⁰ Unattributed media source, "Tribes expect MPs to demonstrate constituents' views" action, research and education network of aotearoa, *The Foreshore and Seabed is Maori Land!* 15 December 2003. Online. Available: <http://www.arena.org.nz/sbmpmtg.htm> (18 April); Buddy Mikaere, pp. 33; Ngawhika, quoted in *New Zealand Herald* (7 May 2004) p. A6; *New Zealand Herald* (6 May 2004) p. A3; White, pp. 10, 11; Te Rūnanga o Ngāti Tama, pp. 3, 14

¹⁶¹ The strongest voice of anger arose out of Taranaki.

We note your sales pitch that the Labour proposal is a better option than those of other political parties. Our response to you is that we totally reject the notion that we need accept your abuse in preference to the despotic stuff threatened by others. (White, p. 2. See also Te Rūnanga o Ngāti Tama, p. 3)

Māori also project anger at the mainstream media for inciting the racial discord through blatant misrepresentations. However, this is tempered by a sad realisation that the media do not inform.¹⁶²

Nevertheless, some very positive emotions also emerged. A huge sense of unity is apparent. For the majority, this is an issue that has unified Māori across all sectors of society in a manner not experienced since the historic 1975 Land March.¹⁶³ A sense of pride in being Māori has also emerged, especially from hīkoi participants.¹⁶⁴ As Tui Faye Robin exclaims, it is “Mean to be Māori”.¹⁶⁵

Conclusion

The foreshore and seabed debate to Māori is vitally different to the debate represented through the mainstream media. For Māori the debate is much more complicated than simply maintaining public access; land is being taken and fundamental rights are being removed.

¹⁶² See Bennion et al, p. 4; White, p. 4

¹⁶³ See Robinson, quoted in Pīpīwharauora, “Opinion” p. 6

¹⁶⁴ See Tama Poata, quoted in Jackson, “There’s a message here” p. 32; Fane Feleti Tangiria, quoted in *New Zealand Herald* (8-9 May 2004) p. A2; Jones, quoted in *New Zealand Herald* (10 May 2004) p. A20; Koroheke, p. 2

¹⁶⁵ Quoted in Pīpīwharauora, “Hīkoi mō te Takutai” *Pīpīwharauora*, vol. 12, no. 5 (May 2004) p. 6

Chapter Three: Dunedin Māori perspectives

This chapter examines Dunedin Māori perspectives on the foreshore and seabed debate. This information has been primarily obtained by interviewing a range of Māori residing, or studying, in Dunedin. Those interviewed fall into three classes: Manawhenua; Community Māori; and University Māori. The perspectives of Dunedin Māori are explored, in particular: the debate as a whole; the main issues and events; and feelings that emerged during the debate.

The participants

Manawhenua

I interviewed one member from each of the local rūnanga. For the purposes of this dissertation they will be known as A and B. One participant is a delegate to Te Rūnanga o Ngāi Tahu (TRONT).¹⁶⁶

A was appointed to access various viewpoints about the issue and he sought out a wide range of information on the debate. By his own admission he “...managed to eventually get a fairly wide spectrum of view points about it, about the issue”. He read the Court case and Government information including the Act. He also received a lot of information from TRONT, which he declares as one of his major sources of information. He also read several of their articles in *Te Karaka*, the iwi magazine. He acknowledges that he “...picked up quite a lot of...viewpoints from various people, such as Moana Jackson”. He attended a few lunch time debates at Otago University and participated in hui at his marae, as well as being involved in the development of the Ngāi Tahu iwi submission. He also admits the general Pākehā response to the debate influenced his perception, stating “...that affected...our little community, how we sort of all of sudden felt in siege mode again”.

¹⁶⁶ This would suggest that his views are more informed than the average rūnanga member, and therefore do not necessarily give an accurate account of overall Manawhenua perceptions. However, as will be highlighted later in this chapter, the similarities between the perceptions of the two Manawhenua participants validate his perceptions as representative of many Manawhenua perspectives.

B concedes he chose not to have any direct input into the processes of the debate but indirectly kept abreast. This included following the debate through the news media and talking with different people, including Edward Ellison, Te Rūnanga o Ōtākou representative and former deputy chairman of TRONT, who B admits was "...deeply involved in it from a Ngāi Tahu iwi perspective". He also discussed the debate with others on his marae, although there were no formal hui held on the topic. He commented however no matter how much he was involved in the debate, including whether or not he went on the hīkoi, his perception would not have changed.

Both A and B perceive that the legislation will affect their respective rūnanga, while B believes the legislation will also affect his whānau land.

Community Māori

The four participants from the wider Dunedin community represent a range of iwi: Ngāpuhi, Ngāti Kahunungu, Ngāti Kurī, Ngāti Porou and Te Arawa. For the purposes of this dissertation, these four participants will be known as C, D, E and F. Three of the participants are associated with Arai Te Uru, and two of these spoke for both members of Arai Te Uru and themselves. Both these participants point out that there has been no formal discussion about the foreshore and seabed held on the marae.¹⁶⁷ One participant is a University of Otago graduate.

Two participants are in their seventies, while another is in her thirties and the other in his early twenties. All have lived in Dunedin for the majority of their lives, with one living here for nearly fifty years, another for forty something years and another for twenty-two years on and off. One participant was born and grew up in Dunedin.

¹⁶⁷ One of the two stated that if it was an issue that directly affected the marae, such as a question of "How many poupos [sic] are we going to have in the wharenuī? Who are they going to be?" And then everybody rises up... you find a big debate there". But topics such as the foreshore and seabed are put to one side as many members perceive it does not affect them and therefore has no relevance. The other conceded that those at Arai Te Uru just approached the debate from a family perspective. This participant stated that politics are not discussed on the marae, and no-one searched into the foreshore and seabed issues because they either could not be bothered or didn't have the know-how.

All four kept themselves informed through news coverage of the debate, while C, E and F engaged in discussions with others.

C feels the majority of information he received about the debate originated through contacts in the wider Dunedin Māori community, including local Māori organisations. He also kept himself informed through Māori media, such as the television programme *Marae*, and by receiving information from the Ratana Church. When asked if he had studied any of the documents in the debate, he stated that he had but did not elaborate any further. He also believes the legislation will affect his hapū land.

D kept herself informed by listening to the Ngāi Tahu point of view, and related it to what Te Arawa and Ngāti Tūwharetoa went through in eventually having title to their lake beds returned.¹⁶⁸ She concedes that the legislation does not directly affect her as her iwi already had their claim settled with the Crown.

E read information put out by her iwi and participated on the hīkoi, but notes that these documents and the hīkoi just affirmed what she already believed. She admits that she is not directly affected by the legislation.

F did not study any of the documents or participate in the debate's processes. He confesses that he did not follow the debate closely.

University Māori

The four Otago University participants represent a range of iwi: Ngāti Awa, Ngāpuhi, Ngāti Kahunungu ki Wairoa, and Ngāti Raukawa ki Manawatū. The participants comprise two post graduate students, in their thirties, who are also lecturers, and two undergraduates, in their late teens. One participant is a member of Te Rito. Another is a past law student. One participant studied in Dunedin in the 1990s and has lived in Dunedin permanently since 2001. Another resides in Dunedin only while studying and

¹⁶⁸ The bed of Lake Taupo was returned to Ngāti Tūwharetoa in 1992. In 2003, the Government agreed to return the lake beds of 14 Rotorua lakes to Te Arawa.

travels home for the holidays. One has lived in Dunedin for ten years. The last was born and grew up in Dunedin and identifies as Urban Māori.

For the purposes of this dissertation, these four participants will be known as G, H, I and J. All four followed the debate through the media, with H paying particular attention to news items. All involved themselves actively in discussions with others. H involved herself in discussions with staff and students.

G read the Court case itself and also the Government's discussion documents. He did not participate in the processes of the debate. His iwi, hapū and whānau land will be affected by the legislation in a positive way.¹⁶⁹ This outcome has in no way affected how G perceives the debate; he is still strongly opposed to the legislation.

H admits she hasn't studied the debate from an academic position, and therefore concedes she hasn't looked into it deeply. However she did read the policy. She also spoke with Manawhenua in Taranaki and helped write a submission which she states "...definitely informed me more than I had been before". She doesn't have close connections with her iwi, but presumes their land will be affected by the legislation. However she notes they are a predominately inland iwi, therefore not affected as severely as coastal iwi.

I read the Māori Party's information on the internet and listened to their candidates speak at the University. She helped organise a group from Te Roopū Māori to go on the hīkoi.¹⁷⁰ She also participated in the Dunedin hīkoi and hui at Te Roopū. Her whanaunga currently have a claim before the Tribunal and therefore she believes that her iwi, hapū, and whānau land will not be affected by the legislation.

¹⁶⁹ Previously he had investigated the title and found that the foreshore and seabed was no-longer owned by his whānaunga as it had passed into Crown ownership through past confiscations. Now he acknowledges that he can apply to the High Court or the Māori Land Court to have their customary rights declared. In his words "So we got something out of nothing. Yeah. But the something is still only very little".

¹⁷⁰ She was prevented from going on the hīkoi due to assignments.

J read opinion pieces on the internet. She also read part of the Bill and listened to MPs debate. She participated in the hīkoi. Her whānau land is right on the beach and may be affected by the legislation.

Manawhenua perspectives

This section discusses the perspectives held by A, B, and their respective rūnanga as observed by the participants themselves. Perspectives expressed in written material from other Manawhenua are also examined.

The debate as a whole

A views perceives the debate from a Treaty rights perspective, codified against legal issues which reinforce his perception. He believes that the rūnanga primarily view the debate from an Article Two rights basis; and understand the underlying principle, but concedes that there is no cohesive viewpoint. Interestingly, he notes there is a divisive sector of the rūnanga who question why Māori reacted, believing radical Māori provoked the debate. Other members studied the issues and reserved their view until they were better informed. A also admits that the younger people generally wanted to demonstrate their opposition.

B contends the equivalent for his rūnaka,¹⁷¹ with different members maintaining different standpoints rather than the rūnaka forming a position.¹⁷² B himself views the debate from a traditional standpoint. He also utilises a hapū perspective.

Nevertheless, A observes that for his rūnanga the issue of rights interweave with legal concepts. They also tentatively support the iwi's position, and those Ngāi Tahu who went on the hīkoi.

¹⁷¹ I use the southern dialect when discussing B's perceptions, as this is how he expresses himself.

¹⁷² Edward Ellison believes this is true at the iwi level. He notes that Ngāi Tahu members have different layers of interest in the foreshore and seabed. Those who tend to be extremely vested in the debate are those in coastal areas adjacent to customary land the Crown sold in violation of the Treaty, such as the Ōtākou and Taieri Blocks around Dunedin (*Otago Daily Times* (Dunedin, 19 August 2003) p. 2)

A elucidates that at first the rūnanga perceived the Court's decision to add flesh to rangatiratanga and give more effect to kaitiakitanga, thus creating a higher platform to interact with various Government departments, territorial and local authorities.

For both A and B, along with their respective rūnanga, the affect on their land shapes their attitude to the debate. As I will now discuss specific rūnanga land, I will not refer to my participants as A and B so they remain anonymous.

For Kāti Huirapa Rūnanga ki Puketeraki, investigation into the land sales of the 1850s highlighted inconsistencies that signal in some places the foreshore and seabed was not sold. They understand that their tūpuna were recognised as sovereign. Thus the participant acknowledges the debate is about ownership to the extent that in some cases rangatiratanga and kaitiakitanga rights over the foreshore and seabed were never relinquished. More specifically, the rūnanga maintain a Taiapure Reserve. In the beginning, when considering the debate in the context of what it meant for this reserve,¹⁷³ they felt it potentially meant that they possessed kaitiakitanga and rangatiratanga right down to the mean low water springs level.

For the Te Rūnanga o Ōtākou participant the debate is about ownership. In essence he perceives that the Government jumped in without giving any thought to the outcome or what the real situations are. He testifies it is a fact that Te Rūnanga o Ōtākou own the foreshore and seabed of their Ōtākou Block and that they have always understood that their ownership extends to the low tide mark.¹⁷⁴ Evidence from other rūnanga members supports his contention. Ellison points out that his grandfather, Teiwi Ellison, installed boundary posts in the harbour bed at low tide to prove his title over the foreshore.¹⁷⁵ Paul Karaitiana, Natalie Karaitiana and Aaron Riwaka, the trustees of a 56 hectare Ōtākou

¹⁷³ Interestingly, because of constant Crown assertions that they owned the foreshore and seabed, until the Court decision reversed that assertion, this participant and members of his rūnanga believed the Crown owned the foreshore and seabed of that reserve.

¹⁷⁴ For a detailed analysis of ownership of the Ōtākou Reserve see Susan Hanham "Where land meets water": rights to the foreshore of Otakou Reserve." M.A. Thesis, (University of Otago, 1996)

¹⁷⁵ *Otago Daily Times* (5 October 2004) p. 4; Howard Keene, "Ngāi Tahu goes to the UN" *Te Karaka*, (Koanga, 2004) p. 23. See Hanham also for other Te Rūnanga o Ōtākou members relaying similar memories of their tūpuna installing boundary posts at low tide.

block that extends to the Otago Harbour and includes Te Rauone Beach, possess pictorial and written proof that their ownership rights continue down to low water.¹⁷⁶

The rūnanga members also consider that their long and peaceful exercise of customary rights over coastal areas of the Otago Harbour is under threat.¹⁷⁷ For Ellison they now face confiscation of customary areas under unconstitutional legislation that breaches due process and human rights.¹⁷⁸ He also remarks that even though his rūnanga will probably be able to prove customary title under the legislation, this would be unnecessarily onerous as they already have title.¹⁷⁹ For the Karaitianas and Riwaka, the Government is ignoring their mana moana/mana tūpuna ownership. They hold a very real concern that their management and control over their resources at Ōtākou will be eroded as more people desire properties on the waterfront and tourism increases.¹⁸⁰

A describes the debate as a tidal wave. He believes that the misinformation that Māori would deny access was broadcast widely by the mainstream media, and as it gained traction politicians raved about it. Therefore “...it took on a life of its own. Just ...like a tidal wave. Got momentum and that was it. Nothing was stopping it”.

According to B, members of his rūnanga express similar sentiments, believing the debate to be blown out of proportion. They blame misreporting in the mainstream media for this.

B personally believes the debate is an attention grabbing exercise by the Government’s. He also believes the Government are playing up to the general perspectives of non-Māori. To him it became a political issue because the Government were trying to score political points at the expense of Māori. A, the Karaitianas and Riwaka concur.¹⁸¹ B contends

¹⁷⁶ *Otago Daily Times* (5 August 2004), p. 1; *Otago Daily Times* (6 August 2004) p. 4.

¹⁷⁷ *Otago Daily Times* (5 October 2004) p. 4

¹⁷⁸ Oral submission to the Fisheries and Other Sea-Related Legislation Select Committee, quoted in *Otago Daily Times* (5 October 2004) p. 4

¹⁷⁹ Ibid

¹⁸⁰ Karaitianas and Riwaka, “Submission on the Foreshore and Seabed Bill” Te Ope Mana a Tai-Maketu, *Submissions to the Fisheries and Other Sea-Related Legislation Select Committee July 2004*, PDF file-71 kb. 9 July 2004. Online. Available: <http://www.teope.co.nz/pdf/KaraitianaRiwaka.PDF> (13 April 2005) p. 5

¹⁸¹ Karaitianas and Riwaka, p. 2

So it had nothing to do with retaining the...foreshore or anything else for the general use of [the] public, or the seabed, or to do with ownership or anything else. It was just a...political ploy.

Ellison summarises the debate as an example of the power of the state to override its own principles in the name of political expediency.¹⁸² Thus the debate highlights how all the previous gains are able to be snatched away at Parliament's whim.¹⁸³

Manawhenua do not view the debate in isolation. A views the debate as yet another Māori bashing opportunity. The Kariatianas and Riwaka note that the Government's actions build on its failure to educate the general public of the tino rangatiratanga rights and powers of tāngata whenua.¹⁸⁴ Ellison sees the debate as symptomatic of the plight of Indigenous Peoples.¹⁸⁵

Both participants view the debate as a lost opportunity. For A it is a lost opportunity to take Treaty issues to another level in societal terms and in interacting with Government agencies or decision making procedures. He considers informed rūnanga members initially perceived the debate as a platform for the next level of national growth. For B and his rūnaka, it is a lost opportunity to strengthen the relationships between Treaty partners and to strengthen the Treaty.

To the Kariatianas and Riwaka, the Government's policy is fostering conflict in the community, and is disempowering and disenfranchising Māori to the disadvantage of the whole country.¹⁸⁶ A concurs, noting that his small community feels under siege.

A views the debate as a salient state of reality. "Forget the warm fuzzies, this is how it really is. Yeah, democracy works for the majority". B agrees, stating

We can all talk about our marvellous country that we live in and everything else, but there's a degree of racism that does go on, whether it's intentionally or unintentionally, or deliberate or not deliberate.

¹⁸² *Otago Daily Times* (2-3 July 2005) p. 5

¹⁸³ *Otago Daily Times* (25 August 2004) p 28

¹⁸⁴ Karaitianas and Riwaka, p. 1

¹⁸⁵ Keene, p .25

¹⁸⁶ Ibid

Both A and B possess clear viewpoints of the mainstream media's role in the debate. Both contend the mainstream media are approaching the debate in the same way they approach every issue concerning Māori. B indicates that they simply broadcast their viewpoint without interviewing anyone else. For him, the sad part of the debate is that people believe the mainstream media are reporting all the facts, but the public are simply being told what they want to hear. Everything is sensationalised and the real issues are not presented; misinforming the public rather than informing them.¹⁸⁷ A agrees, stating that this misinformation provided fuel for the debate.

Manawhenua are adamant the debate is not about access. A sees the mainstream media as generally mischievous, portraying the debate as “The Māori boogie if you like...The dark malevolent Māori stopping the ordinary New Zealanders from going to the beach”.

B expresses resentment at the allegation, stating it is an “...absolute load of nonsense”. He does not know of any Ngāi Tahu person who has restricted access. Ellison declares “The suggestion that the foreshore and seabed legislation was required to protect public access rights is offensive, and in the case of Otakou, unfounded”.¹⁸⁸

A refutes the claim that Māori are out for all they can get, as no-one from his rūnanga saw the Court's decision as a means of financial gain. Still, along with Ellison,¹⁸⁹ he believes the Government's actions undermine “...mana ki te whenua”,¹⁹⁰ resulting in a loss of possible benefit from royalties.

A believes the Government saw Māori rights in the foreshore and seabed as a huge threat to their public credibility, and that they feared opposition parties would gain ascendancy. Consequently, they decided to legislate to ensure public access.¹⁹¹

¹⁸⁷ He uses the way they misjudged the MLC as an example of this.

¹⁸⁸ Oral submission to the Select Committee, quoted in *Otago Daily Times* (5 October 2004) p. 4

¹⁸⁹ Expressed in address to the Forum on Economic and Social Development, reported in Keene, p. 23

¹⁹⁰ mana whenua

¹⁹¹ It is with a sense of irony that A points out that once the legislation was passed the Government announced that they were in discussions with several overseas company's concerning applications surrounding the foreshore and seabed on the west coast of the North Island.

B and his rūnaka feel the Government made a hash of the debate and could have managed it better with a bit of forethought and genuine will. He believes "...the Government come [sic] across with a big stick..." and simply declared what was to happen. He contends iwi would have happily sat down with the Government to negotiate. The Karaitianas and Riwaka suggest Taupo and Okahu Bay as a precedent for negotiation, where Māori ownership interests are recognised while providing for others' interests; a model that could have been utilised as a starting point for finding a happy medium between the interests of tāngata whenua and the general public.¹⁹²

B describes the Māori MPs as very imaginative and clever in maintaining their political presence by twisting things to suit themselves and justify their position. He also says that the Māori MPs are the only Māori he knows who support the Government's position.

A also perceives the new determination amongst informed, educated Māori as a positive outcome of the debate, creating a dynamic, articulate Māori view. For him, this fashioned a resolve that manifested itself in the formation of the Māori Party. B views the Māori Party's formation as a positive outcome of the hīkoi.

The main issues

A articulates that for Ngāi Tahu the debate hinged on the issue of democracy, and arising out of that is that this is an undemocratic act, legislating away rights which are given some substance without any means of challenge, and that it is prejudicial to Māori interests.¹⁹³ A personally believes that the central issues are this fundamental democratic

¹⁹² Karaitianas and Riwaka, p. 2

¹⁹³ Edward Ellison unpacks Ngāi Tahu's position further, stating that the legislation breaches the human rights in denying Māori the right to test ownership in the courts, (quoted in *Otago Daily Times* (4 February 2004) p. 4) and that the Government intends to extinguish Māori property rights, irrevocably severing Māori customary relationships to the foreshore and seabed, (quoted in *Otago Daily Times* (13 May 2004) p. 3) while overriding the rule of law and breaching the principles of non-discrimination and equity. (expressed in address to the Forum on Human Rights, reported in Keene, p. 23) At The Permanent Forum on Indigenous Issues, where he presented Ngāi Tahu's concerns on the 13 May 2004, he highlighted other important issues: that the legislation requires Māori to meet a test that bears no relation to tikanga Māori and that customary rights will be restricted and made subservient to others' practices. (expressed in address to the Forum on Human Rights, reported in Keene, p. 23)

right, the loss of potential for economic advantage and how the debate is "...a window into where we're at in terms of race relations in New Zealand".

The main events

For both participants, the UN initiative is perhaps the most important event. B acknowledges it shows how strongly Ngāi Tahu feels. He also believes the way the contingent was received, and that they were given the opportunity to speak, is incredibly important. Ellison agrees, adding the release of CERD's report, which condemns the foreshore and seabed legislation, is a major event because it signals a substantial victory for Ngāi Tahu and Māori.¹⁹⁴

Both participants feel the hīkoi is important for Māori. For A it is important in terms of showing unity that has not been apparent for some time. He describes the demonstration of solidarity as extremely powerful, causing politicians to consider the impact of that. B notes that it was extremely successful and raised the issues.

Kāti Huirapa Rūnanga ki Puketeraki view the Court's decision as major because it overturns their previous belief that the Crown owned the foreshore and seabed and could override rangatiratanga.¹⁹⁵

In A's view, the Government's statement of intent, and the subsequent parliamentary debates, are significant because they tended to make the debate about race. He also cites Don Brash's Orewa Speech as major because it opened up the debate and

¹⁹⁴ Quoted in an unattributed media report, "UN report blasts foreshore ruling" arena-action, research, and education network of aotearoa, *The Foreshore and Seabed is Maori Land!* 2005. Online. Available: <http://www.arena.org.nz/sbhm.htm> (13 April 2005). The report itself was released on 11 March 2004 and condemns the foreshore and seabed legislation as discretionary against Māori, found that the legislation extinguishes the possibility of Māori establishing customary title over the foreshore and seabed and that it fails to provide a guaranteed right of redress, despite the Government's obligations under the International Convention on the Elimination of All Forms of Racial Discrimination.

¹⁹⁵ This previous belief had left kaumātua feeling incredibly disempowered in past interactions with territorial departments.

...it became okay to come out and openly attack Māori, and in terms [that] hadn't been used for a decade...They tapped an underlying feeling [of] resentment in Pākehā society...

Lastly, he, along with others, views the Act's passing as another substantial event.¹⁹⁶

To B the Government's lack of dialogue with their Treaty partners is substantial. He also believes the Government's decision to stop the MLC proceeding with test cases ignited Māori reaction. As he sees it, the Government is legislating over people's rights, and people get upset about that.¹⁹⁷

Feelings that emerged:

Initially A felt outrage at the lack of adherence to democratic principles, and despondency for where the debate was heading, tempered by what he admits is a pragmatic view. Now cynicism prevails. Meanwhile B admits he and his rūnaka possess negative feelings.

A acknowledges that the interests and feelings of rūnanga members waned as the debate progressed, and apathy and cynicism tended to triumph. He admits that at first there was a degree of trepidation, followed by a sense of frustration and despondency. Now he concedes there is a core sense of ultimate resolve that this battle will be re-initiated in the future. As one kuia said to him, "Might not happen this generation, but it will happen".

Community Māori perspectives

This section analyses the perspectives held by C, D, E and F, and views expressed in written material from other Māori in the Dunedin community. F's perspectives are discussed separately at the end of this section because they are so vastly different to the others'.

¹⁹⁶ Paul Karaitiana quoted in *Otago Daily Times* (6 August 2004) p. 4 and *Otago Daily Times* (13 May 2004) p. 3; Edward Ellison quoted in *Otago Daily Times* (17 July 2004) p. 4; *Otago Daily Times* (17 July 2004) p. 25

¹⁹⁷ See similar reasoning from Edward Ellison, quoted in *Otago Daily Times* (25 August 2004) p. 28

The debate as a whole

C and E approached the debate from a viewpoint grounded in the relationship they have to the foreshore and seabed. D tried to consider the debate from a Ngāi Tahu perspective in respect to her living in their area. She then related this to the struggle Te Arawa and Ngāti Tūwharetoa went through to have title to their lake beds returned.

All three perceive the debate in the context of the wider race relations debate, and in a Treaty context. C explains that anything to do with Māori lies with the Treaty. C and E also highlight that this debate cannot be viewed in isolation; it is another example in a long line of Government actions that remove Māori rights. E emphasises that Māori have been disenfranchised for so long that they had to react. C also feels that the debate underlines the fact that Māori can progress to a point, but once they are deemed to go too far “Chop!”

E perceives the debate as the use of legal and political means to undermine her people’s rights as tāngata whenua, guaranteed under Article Two. She is extremely disturbed that the Government can simply overturn its own mandate when iwi are found to be legally within their rights to make this claim.

D holds a slightly different viewpoint. To her, Māori are in a defence stance where they don’t really understand what they are fighting about, but still intrinsically know that something is wrong and show their support.¹⁹⁸ She believes Māori, including those not affected by the legislation, support those challenging the Government because they are Māori. C tends to support D’s assertion, as he believes Māori automatically oppose the Government’s actions because it’s a threat to their relationship to the foreshore and seabed, and they will not back down.

D and E have negative views of the mainstream media’s role in perpetrating unfounded incorrect views and issues in the debate. D admits that the media sometimes plays a role

¹⁹⁸ However she commends the Ngāi Tahu stance in the debate, which she views as a methodical look at all the issues rather than simply jumping up and down saying the Government is trying to take their land.

in directing peoples thinking. E is slightly more cynical, believing that the mainstream media perpetuates a Pākehā viewpoint and never explains Māori connections to land.¹⁹⁹

C and E assert that the mainstream media's portrayal that access is a factor is incorrect. C maintains all people have the right to access the foreshore and seabed; it's just that in doing so they must respect the Māori viewpoint and accept that Māori have customary rights. E adds that Māori have always protected the foreshore and seabed. This perception is in stark contrast to the mainstream media's contention that Māori are claiming something new.

C and E insist that the mainstream media's representation of the debate as about ownership is deceitful. C explains "You are part of the land and the land is part of you". For him, while Māori have a responsibility to the land, there is no such concept as ownership. Because it can never be owned E maintains it can never be sold. Māori are kaitiaki not owners.

However, D views ownership as key. She contends that some Pākehā farmers also have rights to this land, and some of the comments from Māori are unfair. For her the real question is why has this issue of ownership surfaced now after years of people sharing the foreshore and seabed?

C and D believe the Government could have approached the debate differently. C describes the Government as arrogant and acting with no principles. He declares that iwi are getting nothing out of the Government's processes, and are being denied the chance to speak. To him the Government has stacked everything against them and holds all the answers. He believes the Government made their decision before starting consultation. D contends that the change in law should have been brought in slowly rather than in one

¹⁹⁹ For her the mainstream media fixated on Don Brash's Orewa Speech, which was reported from a Eurocentric "Us versus them" attitude. She also believes the mainstream media's reports on the hīkoi tried to cause more problems, as they focused on the 'haters and wreckers' comment and deliberately underreported the numbers on the hīkoi to down play Māori feeling.

foul swoop. For her the debate arose politically very fast. The Government simply went bang! “We gonna [sic] do this”, and Māori reacted, exclaiming “Right, lets fight!”

D observes that some people are confused and this has resulted in some being turned off from enquiring into the issues whereas others simply don't care. She believes many Māori are not interested because the debate is too “...Pākehāfied”, focusing on non-Māori concepts. She also perceives the debate as hard on those who affiliate as both Māori and Pākehā.

C and E describe the Māori Male MPs as kūpapa. However as a Māori woman, E is extremely proud of the stand that Tariana Turia and Nania Mahuta made.

The main issues

C believes a major issue is that people do not accept Māori possess customary rights in the foreshore and seabed. He feels the Government understands the Māori viewpoint, but will not accept it.

For D the major issue is who owns the foreshore and seabed and why? She believes all New Zealanders have the right to own it, and therefore is confused as to why the nation is fighting over it.

E recognises that Māori and non-Māori have different perspectives on the main issues. She believes that for Pākehā it is a question of ownership and the ability to buy and sell to the highest bidder, but for Māori the key issue is ensuring kaitiakitanga of Tangaroa and his realm as well as ensuring the protection of the rights and culture of tāngata whenua for now and in the future.

Other community sources view the Act's removal of due process, reversal of common law norms and international human rights, and violation of the Treaty as major issues.²⁰⁰

The main events

For C the crucial turning point was when Māori were called to Parliament to make submissions to the Select Committee and these were cut in number and time. He feels this action incensed Māori and created the resolve not to back down.

E perceives Brash's Orewa Speech as a major event. To her it was the catalyst for the debate, and its propaganda, transmitted by the mainstream media, added fuel to the debate. As a result, Labour was labelled as too pro-Māori,²⁰¹ and consequently felt they had to quell those feelings.

For all three participants, as well as other Māori in the community, the hīkoi is a fundamental event.²⁰² For C the hīkoi is a major event because of the amount of youth involved and how it showcases the concept of tautoko. Emerging from the hīkoi is the Māori Party which he also sees as important.

For E, the hīkoi is the ultimate event. She believes the hīkoi was a way to stand up for herself and actively express her beliefs. She also highlights the sheer numbers involved, which added to its importance.²⁰³ But for her the real reason why the hīkoi is so significant is because it united Māori. As she herself professes, "...even though we are from different iwi and were strangers to each other-we weren't. We are Māori".

²⁰⁰ See Taora McQueen Senior, quoted in *Otago Daily Times* (18 October 2004) p. 1; Ngāi Tahu Law Center's submission made to Select Committee summarised in Department of the Prime Minister and Cabinet, (2004) *Foreshore and Seabed Bill Departmental Report*, Wellington: Department of the Prime Minister and Cabinet, 4 November, ch. 5, p. 8; Tracy Johnston, "Dunedin Hīkoi – Foreshore and Seabed" Press Release, (Dunedin, 10 October 2004). Tracy Johnson maintains that the issues are essentially the same as those present in the late nineteenth century confiscations, and that the foreshore and seabed is being confiscated using the same principles. (Quoted in *Otago Daily Times* (13 October 2004) p. 5) For Reitu Cassidy, these issues highlight that the legislation is a far cry from the favouritism Māori are supposed to be receiving. (Quoted in *Otago Daily Times* (3 May 2004) p. 3)

²⁰¹ She notes the irony in this as all the Māori seats in Parliament were Labour's.

²⁰² Interesting to note here is that when asked, F had no feelings about the hīkoi at all.

²⁰³ She remarks that while she was marching it was impossible to see the front or the back of the hīkoi.

Feelings that emerged

Feelings of shock and disappointment are most prevalent for C, and he believes Māori right across the board hold these same feelings. He feels Māori do not appreciate Helen Clark's statement that the land was in Crown ownership. To him, a lot of Māori are disappointed with the Labour Government, who got into power through the Māori vote and who are not protecting Māori interests.

Essentially C is upset with the Government's procedure. He has been a Labour supporter his whole life and the most disappointing aspect for him is how quickly the Government pushed through the legislation. He is extremely disappointed that Māori were not given enough time to debate the proposed legislation and that the opportunity to be heard was denied to many. He reasons many Māori are shocked that the submissions were cut.

For E, the debate is history repeating. She feels that Māori are being "...ripped off again" and she also feels this debate is a reminder of days gone by "...when unjust laws were made by the government for personal gain of the Pākehā to alienate Māori from our culture [and] our lands".²⁰⁴

She also perceives the stronger emotion of anger emerging from within the Māori community. She believes Māori are angry that their, their ancestors and their future generations' rights, mana and kaitiakitanga, are being trampled on. However, she notes that for those participating on the hīkoi, this anger was quickly replaced with a sense of whanaungatanga and kotahitanga.

She also observes that Māori are disheartened with the mainstream media coverage of the debate, which reports from a Eurocentric stance.

²⁰⁴ She cites The Validation of Invalid Land Sales Act 1894 as example of one of these laws.

F's perceptions

F's perspectives are in stark contrast to those expressed by the other Community sources. Although D mentions that there is an element of people in the community who are hōhā over the debate, F goes a step further in seeing the debate as a waste of time.

F perceives the debate exactly how the mainstream media portrays it; that Māori are asking for something that is not theirs by right and that they will alienate the foreshore and seabed if they are granted exclusive title. It is his perception that the debate is about Māori "...trying to get more and more free things and tryna [sic] sell them off for a bigger profit..."

Like D, he views the debate as centring on ownership, and believes the foreshore and seabed belong to everybody. But unlike D, who sees that Māori may have ownership rights, F avows "I completely and utterly disagree that we're entitled to anything".

In his eyes "...certain individuals and tribes...are just trying to get something for nothing". He concedes that he cannot understand how the foreshore and seabed can be specific hapū land, and continues on to state "How anyone wants to try and argue that...it's theirs in the first place just seems ludicrous".

He believes the the debate exploded because of stubbornness on both sides, and people approaching the debate with essentially opposite views. F perceives the general Māori reaction to be that of anger and a feeling of being robbed again. These feelings are those exhibited by E, but while E explains that her feelings arose because her people's rights' and status are being undermined, F can see no justification for these feelings. He concedes it's good to see that sort of passion, but states it is being exhibited for the wrong reasons. He states the debate has made him feel ashamed to be Māori.

He feels that the media is pretty neutral in their portrayal of the debate, and even though they have a major role in televising the debate, they do not force opinions on anyone.

F's perspective is a minority of one out of ten. This finding therefore raises the question: if I had interviewed one hundred participants, would I have found another nine with similar perspectives? F admits that his views are in the minority. He states that his father believes likewise; however he acknowledges that he has never heard any other Māori person express the same viewpoint as him.

University Māori perspectives

This section explores and analyses the perspectives held by G, H, I and J, as well as views expressed in written material from other Māori at the University of Otago.

The debate as a whole:

G and I view the debate from an emotional viewpoint. However for G this viewpoint was primary and what followed is a legalistic viewpoint. In contrast I looked to the Treaty first. H also approached the debate from a Treaty rights basis. J simply viewed the debate from her own standpoint.

G perceives the debate as people overreacting and the situation just spiralling out of control. As he sees it, in the beginning the Court simply said that

...the Māori Land Court has jurisdiction to investigate. It said nothing that we own the foreshore and seabed. And so I thought, "Okay, that's...what that case is about". And then I thought to myself, "Look at all these people overreacting: the media, the politicians, members of the New Zealand general public". And then of course the next thing is Māori reacting. And it just spiralled out of hand. It was going crazy".

Jacinta Ruru, a lecturer at the Faculty of Law, contends the same, noting that the Court simply found the MLC has jurisdiction to determine the status of land, not that Māori have rights in the foreshore and seabed.²⁰⁵

²⁰⁵ *Otago Daily Times* (2 July 2003) p. 17 (Opinion article)

J, along with Ruru, views the debate as unfair. Ruru asks the question, “On what basis can you distinguish, or not allow one group of people to have property rights just because of race?”²⁰⁶ For J, basic human rights are at stake as no other ethnicity is being stopped from owning the foreshore and seabed, only Māori. In her eyes, it is unethical to give a people the power to do something and then take it away.

G feels similar, revealing that prejudice characterises the debate. He states, “But it’s the flow on effects as well. Foreshore and seabed raised racial issues; it brought prejudice to the surface in New Zealand”.

J sees the Act as a plan by the Crown to rip off Māori. To her the debate is patronising and the Government’s actions are underhanded. She is of the opinion that the Government did a lot of things they were not allowed to, such as changing the law in retrospect.²⁰⁷ Ruru believes that in amending the law in reaction to a Court decision they do not like, the Government is undertaking a serious constitutional change.²⁰⁸

Jim Williams, a lecturer at Te Tumu, adds another dimension. He perceives the debate as

...more to do with the Māori right to participate in decision-making than it is to do with the denial of access. And of course to ensure that Māori are not ourselves denied continued access to seaside resources...²⁰⁹

For J, the debate is not just about Māori. I observes that some Pākehā view the debate as more than just a Māori issue as it affects them also. J also views the debate to be about more than just the foreshore and seabed. To her this debate is simply acting as a catalyst for wider issues, with other Māori grievances resurfacing. As both H and J contend, the notion that Māori and Pākehā are equal and there is more tolerance is nonsense, as inequalities still exist. Ruru agrees, stating

²⁰⁶ *Otago Daily Times* (21 August 2004) p. 110

²⁰⁷ In Aotearoa/New Zealand, the doctrine of Parliamentary Sovereignty in essence allows the Government to make, or unmake, any law. Thus, technically, Parliament can make retrospective law. Although the passing of retrospective law is legal, it is viewed as extremely unconstitutional and in violation of the rule of law.

²⁰⁸ Ruru, p. 66

²⁰⁹ *Otago Daily Times* (16 July 2003) p. 11 (Opinion article)

...we as a country are still threatened by our legal, political and cultural history and the possibility of sharing just a little control with the first peoples of this country.²¹⁰

H and I view this debate in the context of the wider race relations debate where the majority tend to be anti anything Māori. For H the key factor is that there is a culture in Aotearoa/New Zealand where anything Māori is twisted to look like a rip-off, and she believes the mainstream media embellishes that culture. For J the increasing build up of actions against Māori over the past few years means that Māori feel they have to react.

Following that, J feels this debate highlights that Māori can progress to a certain point, but if they are deemed to go too far they are quickly put back into their place. For her, at the end of the day Māori are being put down. Whether Māori wanted the land or not, they are being told “You can’t have it coz [sic] you are Māori”.

While I states that racism emerged through the debate, Ruru does not go that far. She admits the debate stumbled close to racism, but it also raised questions about the role of the courts and Parliament. She likens the debate to a “...politically fuelled tsunami”, generating more heat than light and may be a potentially dangerous turning point for Aotearoa/New Zealand.²¹¹

Both H and I believe the mainstream media portrays Māori issues negatively in order to score points, to sell newspapers or to entice people to watch their programmes. For H, this engineered the debate to explode. G contends that the mainstream media broadcast the belief that Māori can claim ownership of beaches and the general public believed that to be true. Therefore they perceive the Government’s legislation as a good thing because they do not want Māori owning the beaches. I reasons that Pākehā do not want Māori ownership recognised because they believe Māori will slow development.²¹²

²¹⁰ *Otago Daily Times* (9 February 2005) p. 15 (Opinion article)

²¹¹ Quoted in *Otago Daily Times* (24 August 2004) p. 110

²¹² In I’s opinion, Māori and Pākehā view land and money differently and she believes that Pākehā do not understand Māori connections to the land.

H vehemently denies that the debate is about ownership, it is about recognition of rights and the role and relationship Māori have to the land. J agrees, stating that Māori want to ensure the foreshore and seabed is protected rather than to own it.

H believes the mainstream media conjured up fears that Māori would deny public access to the beaches. She notes that hapū who maintain rights in the foreshore and seabed have never denied access, and is frustrated by the many examples of private land holders denying access which the general public ignore. J supports this noting that it is Pākehā, usually those from overseas, who block access.

H believes the mainstream media's concept that Māori will alienate and sell their rights in the foreshore and seabed arises because that's what non-Māori would do. J repeats this sentiment, stating that whether or not Māori sell is irrelevant because if the Government had the chance they would sell.²¹³

For J, the idea that Māori will alienate their rights in the foreshore and seabed proves the Government doesn't understand that Māori brought up in a Māori world have feelings towards the land and would never sell. I contends the same for non-Māori, where the majority are ignorant about Māori connections to the land

In his dissertation, Riki Kotua states there is a history of Māori claims to the foreshore.²¹⁴ Thus for Māori this is not the new issue the mainstream media portrays it to be. For H, the media is just representing the popular culture idea that Māori are claiming something they are not entitled to. J notes, the

...news caters to the mainstream public. And what they want to hear is not that Māori are being dicked; it's that Māori are trying to take what's not theirs. And so that's what they hear and that's what they want to believe.

²¹³ J notes the Government insinuates that they are trying to preserve the foreshore and seabed for all New Zealanders when in actual fact they have already sold some of it off to investors. She believes the Government would have continued selling if they hadn't been caught.

²¹⁴ Kotua, "Maori Territorial Rights in the Foreshore and Seabed Bill" Honours dissertation, (University of Otago, 2004) p. 58

H believes Pākehā don't understand any of the debate. In her and J's opinion, Māori are entitled to claim rights in the foreshore and seabed. To H, for many Māori it is a confiscation because these rights, that have never been relinquished, are being removed.²¹⁵

I also believes that Pākehā do not understand the Māori viewpoint. She believes that the mainstream media portrays Māori as simply protesting for protests sake. She and J are of the opinion that the mainstream media purposely portrays Māori as aggressive.²¹⁶ Brett Ellison, kaiwhakapaoho Māori for *Critic*, the Otago University Students' Magazine in 2004, acknowledges that mainstream media coverage of Māori should be "...taken with a large grain of salt".²¹⁷

J admits the public just don't know the real issues. Anyone not informed takes the majority opinion that Māori are just land grabbing. In her opinion, people are misinformed and are simply being told what to think, yet they believe they are right because they see it on the news and read it in the newspapers. This in turn means that Brash is able to make untrue statements because it is what the general public is thinking.

However, for G, what really added insult to injury is that this is being enacted by a Labour Party that Māori supported. He contends that if it were a National lead government then Māori would expect it, as National are perceived to be anti-Māori.

Ellison believes there is a growing perception of Labour as arrogant.²¹⁸ J is even more direct, stating that the Government is "...very George Bush-either with us or against us".

²¹⁵ H notes that for some Māori, especially Ngāti Porou who are closely related and associated to the sea, kaitiakitanga over the foreshore and seabed has ever been relinquished. She continues on to state that some hapū have maintained rights throughout, despite facing the consequences of colonisation.

²¹⁶ J cites the example of how the mainstream media did not portray and consequently the public did not understand the political significance of the haka performed at the hīkoi. She also believes that the hīkoi was portrayed as violent, and although she admits there was a lot of passion, no-one on the hīkoi wanted to hurt anyone. Also she feels those who go against the Government's position, such as Tariana Turia, are seen as rebels. I notes that media coverage of the hīkoi simply shows Māori as scary, and that the haka etc. that they were performing was a bad thing, rather than viewing it as a normal part of Māori challenges.

²¹⁷ Brett Ellison, "Te Year" *Critic: te arohi 2004*, vol. 27 (October 2004) p. 24

²¹⁸ Brett Ellison, "Tariana's tribe" *Critic: te arohi 2004*, vol. 18 (August 2004) p. 22

Along with Ruru,²¹⁹ she contends this hard line was the reason for the debate's explosion.

...because they did things the way they did it became a lot bigger and brought a lot of kind of buried emotions and buried ang[er] to the surface. And that kind of culminated in the hīkoi...

G also stresses that Labour made a huge political decision without any analysis. I agrees, asserting that the Government underestimated Māori feelings concerning land and failed to predict that Māori would react. For her it is simple: "...land comes from Māori first, you just say it is and you feel it is. Its land Māori are supposed to look after". She also believes the Government underestimated the role that the Treaty plays in Māori lives.

G also believes the Government could have handled itself in another way. J concurs, stating that the Government should have sat down with Māori and discussed the issues in order to decide who is best suited to looking after the foreshore and seabed, or alternatively working out a way to care for the land together. Ruru also believes this, highlighting that the Tribunal noted a consensus already exists between the Government and Māori on fundamental points such as access and non-alienation.²²⁰

G, J and Ruru,²²¹ believe the claims should have been allowed to run their course in the courts, and that few hapū would have actually been successful in gaining title. J notes that even if Māori received a decision they didn't like they wouldn't complain as they would have had the chance to be heard in the courts.

For J, there is also an element in the Māori community who believe that the issue should be left alone. She concedes a lot of Māori just want to let it go because they didn't know much about it. However the other participants do not mention this fact and G states the opposite, acknowledging that Māori tend to be better informed on the issues.

²¹⁹ Ruru, p. 64

²²⁰ *Otago Daily Times* (3 May 2004) p. 17 (Opinion Article)

²²¹ *Otago Daily Times* (2 July 2003) p. 17 (Opinion Article)

I considers that the Government chose to legislate in order to gain and maintain overseas buyers for the foreshore and seabed. She exclaims, “Can’t tell foreign buyers you don’t want them anymore”.

G believes the Government dictated and controlled the process, and that it turned out to be a “...railroad”, highlighting the speed in which the legislation was pushed through.²²² He stresses that the Government failed to listen when thousands wrote in to the Select Committee and, along with I, points out that the Government was unmoved by the twenty thousand who marched to Wellington.²²³

G can see that the Māori MPs were unhappy with the Government’s stand, but concedes they had to toe the party line.²²⁴ While I recognises this, she also believes that they did not carry Māori well, and should have voiced that it is a negative issue rather than stating it is positive for Māori. Both she and J expected them to show that they understood and supported what Māori did, even though they were unable to do anything.

The main issues

H believes,

That the biggest issue...is that we live in a country of people who are ignorant of...something that they’re very willing to make comment on, and pass their opinion on, all the time. Even though they don’t know anything about it

For H, at issue is the lack of understanding from one side and trying to get a voice for the less powerful group. Thus she acknowledges that this issue ties into the larger issues of broadcasting and education.

For both her and G, another major issue is that this is a confiscation. G angrily states “This is a bloody confiscation. It can be nothing but a confiscation”. H explains that this

²²² Ruru supports this contention, see Ruru, p. 65

²²³ For G, this was the reason he did not personally involve himself in the processes of the debate. In his words “What’s the point?”

²²⁴ Although he accepts that Turia and Mahuta wavered, following what their constituents wanted.

is a major issue because it undermines how far Aotearoa/New Zealand has progressed and removes the sense of security and progression from Māori. Thus there is a real threat to Manawhenua and a threat to the mana of the tribe. For I, what is at issue is that the land will be lost to people overseas.

J maintains whether or not Māori are entitled to the foreshore and seabed is irrelevant, the key issue is that they are not being given the chance to try. The right to be heard and to place a claim is removed. For her, while the debate started off being about land, it has essentially become a human rights issue. Ruru contends similarly. She notes that the debate entails an overriding of rights held in accordance with tikanga Māori.²²⁵

The main events

For G the AG's announcement that the Government would legislate is significant because it sparked Māori reaction. To G, Māori are not just going to "...roll over and accept it", they will react. Ruru concurs, stating

The Government is unilaterally proposing to take away a people's property right—a right to property. No other sector in this country would tolerate such action. So why should Māori?²²⁶

G, J and Ellison, also view the announcement of the National Party's policy at Orewa as a major event because it brought prejudice out into the open. In Ellison's opinion, the speech polarised society into those who knew the truth and those who couldn't be bothered. He also concedes it lifted the top on political correctness, allowing the public to ignore the facts and allege that Māori are getting it too easy.²²⁷

²²⁵ Ruru, p. 68. She also describes a major issue in that the Bill and subsequent legislation creates serious hurdles for hapū to be able to prove rights in the foreshore and seabed. Māori will have to expend more time and energy and incur court costs just to receive what they already have under the RMA and they must prove a connection since 1840. This is a major issue for many hapū who identify strongly with the foreshore and seabed but did not escape colonisation, land confiscations and MLC procedures will have little chance of success. If they are able to prove rights, these will also be frozen as they were at 1840. (*Otago Daily Times* (3 May 2004) p. 17 (Opinion article); *Otago Daily Times* (9 February 2005) p. 15 (Opinion Article); Submission made to the Select Committee summarised in Department of the PrimeMinster and Cabinet, *Foreshore and Seabed Bill Departmental Report*, ch. 7, p. 9)

²²⁶ *Otago Daily Times* (2 July 2003) p. 17 (Opinion article)

²²⁷ Brett Ellison, "Te Year" p. 24

H contends the empowering and uniting factors about the formation of the Māori Party, the hīkoi and Turia's stand make them major events. For her, Māori may all have their differences, but they are all united on this.²²⁸

For both I and J, the hīkoi is the definitive event. J explains that on the hīkoi every one worked together, no matter who they were. For both participants it showcased how much pride Māori still have. I sums up the feeling surrounding the hīkoi as “Ka whawhai tonu mātou”, highlighting that Māori still hold onto the customs that connect them with the land. She remarks that the hīkoi brought back memories of the 1975 Land March, and also a sense of being betrayed again. For J the hīkoi was peaceful, but at the same time it shows Māori resilience. Alternatively, J notes that the hīkoi is a major event because it became the focal point for media coverage.

For both I and J, Clark's failure to face the protesters at Wellington is a key event because it conveys to Māori exactly how the Government feels about them. To J, this was disrespectful, signalling to those present that they are not important. I believes it reflected badly on Clark herself, showing her as weak and cowardly. For I, when Māori challenge they expect the opposition leader to be present. Thus this “Put her down in mana points”.

Feelings that emerged

G feels angry and betrayed by Labour. H has always been a Labour supporter and is shocked at the direction some of their policies have taken.²²⁹ Both he and H are disturbed that a confiscation is taking place, something they perceive to be a thing of the past. G, along with I, believes the debate brought painful memories to the surface for those who experienced past confiscations.

²²⁸ Brett Ellison expresses similar sentiments, adding that the hīkoi showcased unity in the face of public ignorance and fear which had been whipped up from the racial rhetoric of some politicians. (See *ibid*, p. 25)

²²⁹ She admits she would expect these policies from Rodney Hide or Brash.

H is frustrated at people's ignorance. She expresses further frustration, and J expresses anger, at the fact only Māori are singled out as the ones who would deny access. Adding to this, H is shocked at how racist society is.

I feels betrayed again, and possess a real sadness for her grandmother who has spent a long time fighting for their land. Most University Māori she has spoken to also express feelings of betrayal.

For I, the Government's continual refutation of Māori protests has left her feeling despondent, and wanting to progress with the hope it can be sorted out in the future. She also concedes a lot of University Māori are angry because their protests fell on deaf ears. Thus many have begun to feel it is all a waste of time.

J believes that Māori are angry because the Government are telling Māori to play the game by their rules. She admits that she, and other Māori, feel pushed down and disrespected. She expresses disbelief at what the Government has done through the Bill.

J was excited to be a part of the hīkoi, but she regrets that it had to eventuate. She states that for all involved it was an awesome feeling. However she is incredibly angry that Clark did not show up. Essentially at first J was angry at the mainstream media and the fact that it is Pākehā who block access, not Māori. She then felt extreme sadness, tying into the past loss for her whānau, and a realisation that a lot of people who will lose their land. Now she feels really proud to be Māori, and is proud at how Māori have reacted.

Two participants also concede that feelings amongst Māori fluctuate depending on how the legislation will affect them. For H, coastal iwi feel things more deeply than inland iwi, although inland iwi are often empathetic and supportive.²³⁰ I concurs, observing that East Coast iwi and South Island iwi feel their property is being removed.

²³⁰ She uses two people's reactions to the debate, one from Tūhoe and the other from Ngāti Porou, to highlight her point. The Tūhoe person is not as passionate as the Ngāti Porou person, but is empathetic, supportive, understanding and believes in the kaupapa. While the Ngāti Porou person feels the same, this person also exhibits feelings of gusto and passion because it affects her more deeply.

Chapter Four: Discussion

Using the mainstream media's portrayal of the debate as a theoretical basis, this chapter compares and contrasts the perspectives already compiled in the previous two chapters. First, the different Dunedin Māori perceptions, discussed in Chapter Three, are evaluated and weighed against each other. Then, using this data, the collective perspectives of Dunedin Māori are measured against the perspectives of Māori in the wider Aotearoa/New Zealand community, as recorded in Chapter Two. Therefore, by assessing whether Māori in Dunedin hold similar views to other Māori, or whether some views are unique to Dunedin Māori and suggesting possible reasons for difference of opinion, this chapter serves to establish an accurate case study of Dunedin Māori perspectives on the foreshore and seabed debate.

Analysis of Dunedin Māori perspectives

Influences

Although there is some deviation between participants' perceptions, overall, with the distinct exception of F, there is much coherency of opinion. As a group, the University participants seem to be more informed on the legal and Treaty issues underlying the debate. This may be result of study and working in legal fields, but it also seems to be an outcome of personal endeavours to inform themselves on the topic. Both Manawhenua participants are also well informed, and have pursued further information in order to understand how the debate and its outcome will affect their land.

However, both Manawhenua participants concede that members of their rūnanga involved and informed themselves to varying degrees. Both participants admit that some members are happy for others to take the lead and have not bothered to enlighten themselves on the issues; however A notes that they all understood the underlying premise. The two participants from Arai Te Uru concede that the majority of the marae's members are not informed on the issues, particularly because they do not feel the debate concerns them. Interestingly, J also acknowledges that there are Māori in the wider community who fit this description. A

possible reason for this indifference may be that these people feel they do not have the take to carry the issue further.

For D, Māori intrinsically support those challenging the Government because they are Māori. However, she also observes that some people are confused and are turned off from enquiring into the issues, whereas others simply don't care. All these concessions are in total contrast to G's assertion that Māori are generally well informed on the issues.

A notes that there is a divisive sector in his rūnanga who question why Māori are reacting. This is the very standpoint that D seems to approach the debate from.

As a group the Community participants represent the greatest variance of opinion. Ranging from F who believes the debate is a waste of time, across to E who views the debate from a rights basis that embraces legal, Treaty and aboriginal rights.

With the exception of E, the Community participants are the least informed on the legal issues, and consequently rely on discussions with others and the media's broadcast for information. Therefore, as a group, they are less sceptical of the mainstream media's intentions behind their representation of the debate. This is in sharp contrast to Manawhenua and University participants who view the mainstream media's portrayal of the debate as deceptive and highly influential.

Perception of the mainstream media

Seven of the participants feel the mainstream media are misleading, and responsible for inciting racial conflict. The majority are of the opinion that the debate is simply another example of how the mainstream media distorts anything Māori. B, his rūnaka, A and G believe mainstream media blew the debate out of proportion.

The Manawhenua participants appear to intrinsically distrust the mainstream media. This is perhaps because their positions are regularly misrepresented to the general public.²³¹

The University participants seem to be sceptical of the mainstream media as a result of study they have undertaken examining the mainstream media's influence. This is particularly true for J, who admits that before taking a media studies paper, she believed the mainstream media were representative of all views. Consequently, she now asserts they simply portray what the general public wish to hear. E supports J's point, describing the mainstream media's representation of the debate as Eurocentric. For these reasons, most participants declare that the general public believe they are informed, but the mainstream media is misinforming them and telling them what to think.

Perceptions and the mainstream media's representation

All participants, except F, demonstrate very different perceptions of the debate to that represented in the mainstream media. Specifically they all agree that the debate is not about access and are incensed that the mainstream media perpetuated the belief that Māori will deny access. Three of the four University participants refer to instances of Pākehā denying access. Manawhenua support this contention, with examples of Pākehā denying access around the Otago Harbour.²³²

The majority of participants explicitly state that Māori have rights in the foreshore and seabed. Therefore this cannot be a new issue brought about by the Court's decision. Māori are not simply jumping on the bandwagon and claiming something new.

H notes that many hapū maintain rights in the foreshore and seabed. This is evident in Dunedin, where Te Rūnanga o Ōtākou maintain ownership rights over the foreshore and

²³¹The participant from Kāti Huirapa Rūnanga ki Puketeraki cited an example of this occurring when he spoke about his rūnanga filing for a Taiapure Reserve. Edward Ellison highlights how Ōtākou Māori are misrepresented; noting the claim that they will deny access is unfounded and offensive as they have never denied access to their foreshore and seabed. (Oral submission to the Select Committee, quoted in *Otago Daily Times* (5 October 2004) p. 4)

²³²The participant from Te Rūnanga o Ōtākou states specifically that the only person who denies access to the beach, foreshore and seabed on the Ōtākou Block is a Pākehā.

seabed of the Ōtākou Block. However, interestingly, Kāti Huirapa Rūnanga ki Puketeraki felt that they had lost rights in their foreshore and seabed until the Court decision overturned that assumption. This however is not to say this is a new issue for them; they fought for recognition of their rights in the foreshore and seabed as early as the 1950s.

J highlights that the mainstream media portrayed the notion that Māori are trying to take what they are not entitled to. The majority of University sources clearly believe Māori are entitled to claim rights in the foreshore and seabed. E supports this, adding, that as tāngata whenua, Māori have specific rights in the foreshore and seabed.

Although no-one specifically says so, the majority's responses, that Māori have rights in the foreshore and seabed and are entitled to claim to have these rights recognised, shows they refute the mainstream media's portrayal that Māori are greedy and out for all they can get. A expressly states that no-one from his rūnanga saw the Court's decision as a means of financial gain. This is in stark contrast to F's belief that iwi are trying to get something for nothing.

H, I and J are all adamant that the mainstream media's concept that Māori will alienate and sell their rights in the foreshore and seabed is false. For all three, the reason this perception arises is because that's what non-Māori would do. Along with C and E, they are obstinate that Māori will not sell.²³³

The mainstream media portray the debate as being about ownership, in particular that Māori are claiming exclusive title. Here, the greatest amount of difference of opinion amongst participants occurs over whether or not the debate is about ownership. Both Manawhenua participants perceive the debate in terms of ownership in so far as their specific rūnanga land includes the foreshore and seabed, or past sales to the Crown exclude the foreshore and seabed.

²³³ Paul Karaitiana, Natalie Karaitiana and Aaron Riwaka are proof that Māori will not sell; their trust's foreshore and seabed has not changed hands for 136 years. (*Otago Daily Times* (6 August 2004) p. 4; *Otago Daily Times* (5 August 2004) p.1)

Community responses are less homogeneous. C and E both view the debate from a Māori world view, and exclaim that the land cannot be owned. Instead they state Māori have kaitiaki responsibilities to the foreshore and seabed. Conversely, D and F both believe the debate centres on ownership. Once again F's perceptions are in stark contrast to Manawhenua, as he does not believe Māori are entitled to any ownership rights.

Overall, the majority of University participants feel the debate is not about ownership.²³⁴ For them, the debate is more about the recognition of rights and the role and relationship that Māori have to the land.

The majority of sources state that the debate is about rights, not race. Specifically, it is fundamentally not a case of Māori getting it too easy or receiving special favours based on race.

Overall perceptions

The majority of participants do not view this debate in isolation. For the two rūnanga, the debate is contextualised within the milieu of their past interactions with the Crown and the actions of their tūpuna. Apart from one Community participant, whose whanaunga had been awarded title over their lake beds, and two University participants, one whose whanaunga had experienced confiscation and another whose whānau had lost land under the Government's perpetual leases, the rest of the participants do not relate the Government's actions to past experiences. However, even the three mentioned above did not look at past encounters over the foreshore and seabed.

Instead the majority of Community and University participants view the debate in the context of wider race relations. For both C and E the debate cannot be removed from the Treaty context. E and J are in agreement that Māori are reacting to the continual build up of actions against Māori. J essentially believes the debate is about more than the foreshore and seabed. She is also in agreement with C that this debate highlights how Māori advancement is only

²³⁴ However, some University participants concede that for some iwi, especially those on the east coast of the North Island and those in the South Island, the debate centres on ownership.

tolerated to a certain point, and once they go too far they are pushed back. H believes the debate ties into the wider issues of broadcasting and education and a need to give a voice to Māori as an under-represented group.

Manawhenua also draw attention to a number of wider connotations emerging out of the debate, such as the plight of Indigenous Peoples and the Government's failure to educate the general public on tāngata whenua rights.

Sections of all groups perceive the debate as a threat to their customary rights in, and their relationship to, the foreshore and seabed.

Manawhenua have two distinct perceptions that the other groups do not share. First, they believe the debate exposes the true state of race relations in Aotearoa/New Zealand. A possible reason for this perception may be because they have had to fight against these prejudices in the past,²³⁵ and consequently are not surprised at the beliefs expressed by the general public, the mainstream media and politicians alike.

Secondly, Manawhenua view the debate as a lost opportunity to strengthen relationships between Treaty partners. At the local Dunedin level, Manawhenua are already interacting with Government agencies, and therefore will be aware of the problems with the existing system. For that reason they tend to approach the debate from a practical standpoint. Participant A supports my contention, admitting his viewpoint is tempered by a pragmatic view. Therefore, when the Court announced its decision, Manawhenua saw possibilities to amend the original system and to create a new platform in which to interact with the various Government departments and authorities.

University Māori also have some distinct perceptions. J and Jacinta Ruru²³⁶ both perceive the debate as unfair and discriminatory in that only one ethnic group are being denied ownership

²³⁵ Such as when Kāti Huirapa Rūnanga ki Puketeraki applied for a Taiapure Reserve.

²³⁶ Quoted in *Otago Daily Times* (21 August 2004) p. 110

rights in the foreshore and seabed. G states that the debate raised racial issues while I notes that racism also emerged.

However, for Ruru, the essential factor is that the debate raised questions about constitutional issues, specifically the role of the courts and Parliament.²³⁷ For her the Government is embarking on a serious constitutional change.²³⁸ Edward Ellison agrees, summarising the debate as an example of the power of the state to override its own principles in the name of political expediency.²³⁹ B concurs, viewing the debate as a political ploy, with the Government playing up to the view of the general public in order to score political points at the expense of Māori.

For a number of sources the debate fosters conflict within the community. A concedes his rūnanga feel under siege. D adds another side to this argument, stating that Māori automatically went on the defensive, adding to the conflict.

All participants, except F, are upset and hurt that the Labour Party put forward the initiative to legislate. Many are Labour supporters, and are incensed that Labour, a party that actively seeks Māori support, would act this way.

All groups feel that the Government could have handled the debate differently. Many participants feel that the Government had made up its mind and simply told Māori what was going to happen. They also suggest that the debate could have been resolved another way. To some sources, had the Government decided to negotiate iwi would have happily come to the table. Others suggest there are already precedents that the Government may have chosen to follow.

The majority of sources believe the claims should have been allowed to run their course in the courts. Many contend that few hapū would have been successful in gaining title.

²³⁷ Ibid

²³⁸ Ruru, p. 66

²³⁹ *Otago Daily Times* (2-3 July 2005) p. 5

Although C believes the Government completely understand the relationship Māori have with the foreshore and seabed, the University participants stress that the debate illustrates that the Government, along with the mainstream media and Pākehā, do not understand where Māori are coming from. For H and J, the majority of non-Māori are ignorant about Māori views and their connections to land. J adds that Pākehā do not understand the key issues in the debate.

The majority of participants express emotive descriptions of the male Māori MPs and their actions during the debate. C and E display the most contempt in describing the MPs as kūpapa. B is not as descriptive, describing them as imaginative and clever in justifying their position.

On the other hand, the majority of the University participants recognise that the MPs are constrained by their party's policies. However, in stating that, both I and J feel the MPs could have shown more support for Māori, especially during the hīkoi.

The main issues

Both Manawhenua participants concede that they and their respective rūnanga support the Ngāi Tahu iwi position. Other Manawhenua sources also concur with this viewpoint. However, this view of the key issues is not held by Manawhenua alone. Community sources also view the legislation as removing rights and disrespecting due process. For some, a major issue is that the legislation violates Treaty rights. Others add that the legislation reverses the current legal route and is inconsistent with the common law and international human rights norms. E describes the undermining of her people's rights as tāngata whenua as a major issue.

University sources also articulate similar perceptions. J maintains the key issue is a human rights issue; that the right to be heard is removed. Along with Ruru,²⁴⁰ J describes the fact that only Māori property rights are being removed while the property rights of freehold title

²⁴⁰ *Otago Daily Times* (9 February 2005) p. 15 (Opinion article)

holders are protected as another major issue. Ruru also contends the overriding of Māori rights held in accordance with tikanga Māori is a major issue.²⁴¹

Interestingly, only two participants describe a confiscation taking place. Both are University participants, one whose whanaunga has experienced land confiscations.

As only two participants mention confiscation as an issue, and the majority follow the Ngāi Tahu position, I pose the question: does the longer you live away from your iwi's rohe result in losing touch with your iwi's position or are you simply influenced by the Manawhenua viewpoint where you live?²⁴²

C, E and H have individual perceptions not expressed by the other participants. C feels the fact that people cannot accept Māori possess customary rights is a major issue of the debate.

While several participants mention kaitiakitanga to varying degrees, it is only E who explicitly states a major issue is that of ensuring the protection of the foreshore and seabed for future generations.

H is the only participant to articulate the need to give Māori a voice as a major issue. This view severely contradicts F's assertion that Māori have too much voice, and also D's assertion that it is often the loudest Māori voice that influences others. One possible reason why H holds this perception is perhaps because she works within the education field and is therefore conscious of the need for a Māori voice to be adequately represented in education.

The main events

All participants, excluding F, along with a number of written sources, view the hīkoi as a significant. For E and J, who participated in the hīkoi, along with I, it is the definitive event.

²⁴¹ Ruru, p. 68

²⁴² D adds support to the latter, noting that she made an effort to listen to the Ngāi Tahu perspective because she is living in their lands.

All perceive the hīkoi as important in terms of showcasing Māori unity. Many also view it as empowering. Manawhenua believe it successfully raised the issues in the debate and left a strong impression on parliamentarians. They also see the formation of the Māori Party as a positive emerging out of the hīkoi, a belief C and H also exhibit.

I and J also see the hīkoi as a key event because it highlights Māori pride. I remarks that it also brought back memories of the 1975 Land March, and also a sense of being betrayed again. Helen Clark's failure to show up is significant as this conveys that the Government does not view Māori as important.

Sources from all groups cite Don Brash's Orewa Speech as a major event, enabling the public to disregard 'political correctness' and exposing Māori to attack. However, overall, only 4 participants mentioned the speech as a noteworthy event, though some others alluded to it.

Only the Manawhenua participants perceive Ngāi Tahu's journey to speak before the UN and CERD's subsequent report as major events.²⁴³ This may be simply because they are Ngāi Tahu, but it may also be because one participant is a member of TRONT and Ellison, who represented Ngāi Tahu at the forums, is a member of Te Rūnanga o Ōtākou. Therefore, it is very likely that rūnanga members are highly informed about that initiative and perceive it as more important than other events because it directly involves their iwi.

Kāti Huirapa Rūnanga ki Puketeraki are the only people to articulate that the Court's decision is momentous because it overturned their previous belief that the Crown owned the foreshore and seabed. This perception is very different from the Te Rūnanga o Ōtākou members' assertion that they have always owned their foreshore and seabed.

Some participants express distinct, individual perceptions of the significant events. A notes that the parliamentary debates following the AG's announcement are significant because they

²⁴³ B believes that not many outside of Ngāi Tahu are even aware of the initiative. However J did mention it in passing.

focused the issues on race. A also specifically states the passing of the Act as a major event. B feels the Government's lack of discussion with iwi as substantial.

Participants disagree as to the event that sparked Māori reaction. For G, it was the AG's announcement that the Government would legislate to ensure Crown ownership of the foreshore and seabed that ignited Māori reaction. For C, it was the shortening and restriction on oral submissions. B believes the Government's refusal to allow the MLC to proceed with its test cases is the event that incensed Māori.

Feelings that emerged

For some participants, their feelings shifted and changed during the debate. In the first instance A felt outrage, but is now very cynical and despondent. He perceives that initially his rūnanga members felt a degree of trepidation and then frustration and despondency. Now he believes apathy and cynicism prevails, although he notes there seems to be a sense of resolve that this fight is not over. E notes that she was angry, but this quickly turned to feelings of unity when participating in the hīkoi. J concurs, however she notes she is still angry that Clark did not turn up to face the protestors. She summarises her feelings as anger in the beginning, and then sadness. Now she feels proud to be Māori, and is proud at the way Māori have reacted.

Others exhibit specific feelings toward the Government and the general public. B, and his rūnaka, possess negative feelings about the Government and general public's stance. Ellison²⁴⁴ and G feel anger and dismay at the Government actions, while H and C are shocked and disappointed. H is frustrated, and J is angry, at the claim Maori will deny access. H is also frustrated at the general public's response and their lack of knowledge about the issues, and is shocked at how racist people are.

While D has no personal feelings on the debate, E, along with I, feel like they are returning to days gone by. I also feels despondent as nothing can be done to stop the Government

²⁴⁴ *Otago Daily Times* (14 May 2004) p. 3; *Otago Daily Times* (25 August 2004) p. 28

proceeding on their course. J is angry because she feels disrespected. Both I and J feel a sense of pride in being Māori. In stark contrast to that, Community participant F feels ashamed to be Māori.

The participants also have definite views on the feelings of the general Māori public. A believes most Māori feel despondent at the state of race relations, while B believes Māori are pretty shaken up by the debate. C supports B's contention, noting that Māori are shocked and disappointed over the Government's actions. E and F both perceive the general Māori feeling to be that of anger and a feeling of being robbed again. J also believes Māori are angry, but because they are being told what to do and are being disrespected. E also believes Māori are disheartened at the mainstream media's portrayal of the debate.

Participants also express opinions on the feelings of specific groups in the debate. Both H and I concede that Māori will have different levels of feeling, depending on whether the debate affects them or not. I also concedes that a lot of University Māori are angry because all their protesting is in vain.

Comparison of Dunedin Māori and other Māori perspectives

As the previous section established, for Dunedin Māori, the foreshore and seabed debate encompasses a wide range of issues, relationships and perceptions. This section is an attempt to compare and contrast these perceptions with those recorded Māori perspectives in the wider Aotearoa/New Zealand community discussed in Chapter Two. The purpose of this section is to highlight differences, or alternatively consistencies, in perception so to establish an accurate case study of Dunedin Māori perspectives and determine whether Dunedin Māori express general Māori views or whether there are perspectives unique to Dunedin.

Māori perceptions and the mainstream media's representation

Overall, Dunedin Māori exhibit perspectives similar to those outside Dunedin. They all have vastly different views of the debate to that portrayed in the mainstream media. They are adamant that the key issue is not access, with some from outside Dunedin admitting that

access is not even an issue. Yet, because it is such a focal point for the mainstream media, politicians and non-Māori alike, in order to justify their position, Māori continuously assert that they will not deny access.²⁴⁵ Ranginui Walker, in an open letter to the Crown, articulates a typical response:

This remnant coastline is sacred to me. It is mine and I will not concede it to you who represent the Crown...I will not sell one millimetre of my coastline, and I will always continue to share it, as I have always done, with those who love kaimoana as I do.²⁴⁶

The majority of participants implicitly agree that it is not a case of Māori being greedy and asking for all they can get. Recorded perceptions from outside Dunedin explicitly express this. As Angeline Greensill contends, New Zealanders are misled into believing that Māori are only interested in being compensated in monetary terms. She asserts that this is not so, observing that during the consultation hui,

...those of us from whanau and hapu who attended were focussed more on the impacts of this policy on our relationship with our coastal places and our various Atua [sic].²⁴⁷

Coastal Manawhenua agree with Dunedin Manawhenua's assertion that the debate is not the new issue it is made out to be in the mainstream media. Some Māori academics also recognise this as a fact. It should be noted here that no Community or University participants acknowledged this. The same pattern can be attributed to Māori outside of Dunedin, where the focus on this fact predominantly comes from Manawhenua.²⁴⁸

Like Dunedin Māori, those outside Dunedin also disagree as to whether the debate is about ownership. Again this tends to relate to whether Māori have land that will be affected and

²⁴⁵ This is evident with the participants. When asked what they perceived are the main issues, the majority were quick to point out that it is not access, even before they continued on to state what they view are the main issues.

²⁴⁶ Walker, "Dear Crown: An open letter to Helen, Peter, Janet and Jim FROM RANGINUI WALKER" *The New Zealand Listener*, vol. 190 (4 October 2003) p. 35

²⁴⁷ Greensill, p. 58

²⁴⁸ During the debate, several iwi presented evidence that they had been fighting to have their rights in their foreshore and seabed recognised. Hauraki iwi are one such iwi. John McEnteer, explains that his people first petitioned the Crown over rights in their foreshore and seabed in 1869, and they have been fighting to have their rights acknowledged ever since. (McEnteer, "Act Foreshore and Seabed Conference" Te Ope Mana a Tai-Maketu, *View Other Written Submissions on Crown Proposals*, PDF file-108 kb. Online. Available: <http://www.teope.co.nz/pdf/submissions/John%20McEnteer.pdf> (13 April 2005) pp. 1-7; See also McEnteer and Toko Renata, p. 1; McEnteer, personal comment in Hikoi: Inside out at 8mins, 58secs)

whether they believe land can be owned or not. For those who hold exclusive title over their foreshore and seabed, the debate most certainly rests on the concept of ownership.²⁴⁹

Investigation into Dunedin Māori perspectives highlights a section of the Māori community whose voice is not transmitted in the recorded perceptions; that of those who agree with the mainstream media's representations. Although the current Labour Māori MP's views show support for the Government's position, these are removed from, and contradictory to, the views expressed by the Māori community. In contrast, F shows that there is a segment, however small it may be, of the Māori community in Dunedin, and therefore by analogy a section of the wider Māori community, who believe Māori have no rights in the foreshore and seabed, are just being greedy and will deny access and alienate their rights.

Several participants also draw attention to another section of the Māori community not represented in the recorded perceptions; those who are hōhā about the debate. Consequently these people are indifferent as to whether the debate is what the mainstream media portray it as or not. One possible reason why their perceptions are unrecorded may be because these people have not involved themselves in the debate and therefore have not made submissions or written to the paper etc.

Overall perceptions revisited

Māori in the wider community possess many of the perceptions that Dunedin Māori express. Overall there is agreement that blatant misrepresentation of the issues curtails the debate, and that the debate cannot be viewed in isolation.

Like a large proportion of the recorded perceptions, Dunedin Māori as a group also perceive the mainstream media as inciting the debate, feeding off Pākehā fears, provoking racial discord, and failing to adequately explain Māori reaction. Just as Mason Durie observes with

²⁴⁹ For example Ngāti Tama, who possess exclusive title over their estuary. (Ansley, p. 20)

Māori in the wider community,²⁵⁰ Ōtākou Māori are offended by implications that they would be unduly restrictive to the public.²⁵¹

To varying degrees, Dunedin Māori possess the same perspectives as Māori outside Dunedin on the following: that the debate is discriminatory; that racism emerged throughout the debate; and that the Government and Pākehā do not understand the major issues in the debate. However C believes the opposite on this last contention. He feels the Government understands precisely the Māori position, but merely ignore it.

The majority of Dunedin Manawhenua sources also concur with some Māori outside Dunedin who perceive the debate as essentially a poll driven incentive.

For the majority of Māori outside Dunedin, especially those who participated in hui and the submission process, the debate is perceived as not only substantially unfair, a view held by some University Māori sources, but also procedurally unfair. C essentially describes this when he discusses the Government's inappropriate behaviour in cutting the submission process. A also implies this perception when he notes that the Government bypassed participatory democracy. Both Manawhenua participants also concur with Māori outside Dunedin who perceive the Crown as acting in bad faith towards their Treaty partner.

The majority of Dunedin Māori sources also agree with a large proportion of the outside sources who believe the Government could have handled the debate differently and another solution could have been sought. Specifically, the majority of sources agree that the court process should have been allowed to proceed. J explicitly states that if Māori were able to go to court to have their rights determined, even if they didn't have their claim substantiated, they would accept it because justice would have been done. This is the exact opinion of the Treaty Tribes Coalition, who state

If the case were to proceed through its natural course, and should the Māori Land Court or any subsequent appeal court ultimately rule that the successful appellants do not have rights and interests in the foreshore and seabed, that

²⁵⁰ Durie, p. 102

²⁵¹ *Otago Daily Times* (5 October 2004) p. 4

would have to be accepted by Māori. This would bring the matter to a conclusion that may be welcomed by many New Zealanders, but one which would not leave a bitter taste in the mouths of Māori. It would be a fair and final legal determination reached according to the rule of law.²⁵²

Although the majority of Dunedin sources feel MPs fuel the debate, they do not go as far as other Māori to state that the Government wilfully induced strong emotive opinions.

Māori outside Dunedin with a working knowledge of the marine environment perceive the Crown as dishonest in concealing their agenda.²⁵³ While D questions the reasons why the Government is suddenly interested in owning the foreshore and seabed after all this time, it is only I who believes the real reason the Government is pushing for ownership is so that it can sell the foreshore and seabed off to foreign buyers.

While Manawhenua declare in the Paeroa Declaration that the foreshore and seabed has always been under the jurisdiction of iwi and hapū, as guaranteed in Article Two,²⁵⁴ Te Rūnanga o Ōtākou have a slightly different viewpoint. They believe they have jurisdiction over the foreshore of their Ōtākou Block because they hold title over it. For Kāti Huirapa Rūnanga ki Puketeraki, it was not until the Court decision that they realised they may have authority over their foreshore and seabed.

Subsequently Manawhenua in Dunedin view the debate as being about rangatiratanga in terms of strengthening relationships with the Crown authorities rather than how other Manawhenua view the debate to be about their rangatiratanga rights.

Only E perceives the debate as affecting the status of tāngata whenua; a consequence a number of sources from the wider community specifically state.

²⁵² Treaty Tribes Coalition, ONE RULE OF LAW FOR ALL NEW ZEALANDERS, p. 2

²⁵³ John Mitchell, quoted in Walker, *Ka Whawhai Tonu Matou: Struggle without end*, p. 381; Jackson, “Like a Beached Whale” pp. 13-14; Jackson, “An enduring memory” p. 49; Robertson, p. 4; Te Rūnanga o Toa Rangatira Incorporated, p. 4

²⁵⁴ The Paeroa Declaration, resolution one; see also Te Whakapuakinga: Taranaki Declaration; The Hauraki Declaration; Second National Foreshore and Seabed Hui-Omaka Hui Resolutions; Te Pakira Resolutions; Hongoeka Resolutions; Waipapa Hui Resolutions; Ogden, p. 15

While a number of outside sources believe the debate to be about kaitiakitanga and preservation of the foreshore and seabed for the future, less than half the participants mention this. A possible explanation for this may be that the majority of participants are living away from their rohe, and therefore are not directly involved in the preservation of their foreshore and seabed.

The main issues revisited

Here is where the greatest difference of opinion occurs between Dunedin Māori and other Māori. The majority of sources from outside Dunedin view the major issue to be that a confiscation is taking place. However, overall the majority of Dunedin Māori sources follow the Ngāi Tahu position, that the major issue is a removal of due process and subsequently an extinguishment of rights.

Dunedin sources who perceive a removal of their rights occurring, their views on the origins of these rights and what these rights entail are spread across the range discussed in Chapter Two.²⁵⁵

While a number of Dunedin participants view the removal of the right to go to court as a breach of human rights and subsequently a major issue, it is only Ruru who specifically notes that rights held in accordance with tikanga Māori under TTWMA are being overridden.²⁵⁶ She works in this field and therefore has an intimate knowledge of the RMA, enabling her to perceive the debate in this way. However, no participants view the debate as a breach of rights recognised under TTWMA, RMA, NZBORA, HRA and international UN treaties.

Only I mentions that the debate is more than a Māori issue. This therefore follows the pattern of those outside Dunedin, where only a minority of sources perceive this as a major issue.

²⁵⁵ The Karaitianas and Riwaka feel the same as Te Aupouri (Allen, p. 1); they believe their mana whenua/mana moana rights are being extinguished. (Karaitianas and Riwaka, p. 1)

²⁵⁶ Ruru, p. 68

Dunedin Māori perceptions also mimic the perceptions of the wider community in another way; where only Māori with a legal background express the removal of the test for customary rights under TTWMA as a major issue.²⁵⁷

For those iwi, including Ngāi Tahu, who have settled Treaty claims with the Crown, a major issue is that the Crown is renegeing on their apologies in those settlements.²⁵⁸ For Ngāi Tahu, the actions of the Crown do not reflect the undertakings made towards Ngāi Tahu in their apology.²⁵⁹ Surprisingly neither participant from the local Ngāi Tahu rūnanga, nor other Manawhenua sources, mention this as a major issue.

The possible impact on relationships between local government authorities and hapū is only mentioned in passing by A, who admits society will have to wait and see how the new regime works out. Community and University sources do not mention this as a major event, perhaps because they are removed from the practical aspect of interacting within the Treaty relations context. However both C and E are concerned about the possible impact the outcome of the debate will have on their relationship to the foreshore and seabed.

The main events revisited

For the majority of sources from all sections of Māori society, the hīkoi is a major event in the debate. Some even go as far as to state that the hīkoi is the definitive event. The majority of Dunedin Māori sources are in complete agreement with the views of outside Māori perceptions of the hīkoi discussed in detail in Chapter Two.²⁶⁰ Specifically, sources agree that the hīkoi showcases Māori unity, pride and organisational skills. Many sources also concur that it brought the core issues to the fore, highlighted the depth of Māori feelings and influenced the politicians.

²⁵⁷ Ruru, who specialises in Māori Land Law, is the only source to mention this. (Ruru, p. 68)

²⁵⁸ Such as Ngāi Tahu, Ngāti Tama in North Taranaki and Te Arawa. See Mark Solomon, p. 2; Te Rūnanga o Ngāti Tama, pp. 1-2; Te Kotahitanga o Te Arawa Fisheries Trust Board and the Te Arawa Māori Trust Board, p. 2

²⁵⁹ Part of this apology was for past breaches of the Treaty against Ngāi Tahu and a failure to recognise Ngāi Tahu's rangatiratanga. Yet, Ngāi Tahu perceive the Crown's actions during the debate as further unconscionable and repeated breaches of the principles of the Treaty in their dealings with Ngāi Tahu. Ngāi Tahu therefore question whether the Crown's apology was worthless.

²⁶⁰ It is only F who does not view the hīkoi as significant to some degree.

Like Māori in the wider Aotearoa/New Zealand community, Māori across all groups in Dunedin view Brash's Orewa Speech as another major event in the debate. The speech lifted the lid on this country's race relations, exposing the racism that B believes has always been present. By expressly stating that his community feel under siege, A lends weight to the argument presented by both Māori inside and outside Dunedin, that, following this speech, Māori feel under attack over wider race issues.

Those from Dunedin who see the Court's decision as a major event agree with the section of the wider community who view the decision as a declaration that the MLC has jurisdiction to hear Māori claims to the foreshore and seabed. This contrasts with the perception from some in the wider community who believe the decision acknowledges that Māori have rights in the foreshore and seabed. However, A and his rūnanga are the only ones to analyse the decision in terms of how it affects Crown assumptions. Instead, other sources tend to focus on what the decision means for Māori, or more specifically iwi and hapū.

For some Māori in the wider community, in particular various Manawhenua, the decision initially signalled the possibility to create new working relationships in the marine arena. As Tariana Turia stated at this early stage "People with interests in the seabed and foreshore might find this a good time to get into discussions with tangata whenua about joint ventures and partnerships..."²⁶¹ Even though the Manawhenua participants do not explicitly express this, it can be argued that at first the members from both local rūnanga viewed the decision as a chance to create new relationships because they subsequently view the debate as a lost opportunity to create these relationships.

A number of Māori, both inside and outside Dunedin, believe that the Government's decision to legislate is a major event. However, Dunedin Māori do not go as far as others in claiming the decision to legislate is a deliberate colonising tactic.

Although a few participants mention the release of the Government's consultation and policy documents, none possess the view of some in the wider community that their release is an

²⁶¹ Quoted in *The New Zealand Herald* (24 June 2003) p. 1

important event. Instead some participants focus on the process surrounding these documents. A notes the parliamentary debates are significant, whereas B and C view the lack of consultation following the consultation document's release as important.

A is the only participant to view the passing of the Act as a major event. However, several written sources perceive the legislation as a breach of Māori rights, similar to the perspectives stated in the wider Aotearoa/New Zealand community. Thus, it can be argued that just as for other Māori, some Dunedin Māori perceive the legislation's introduction is a signal that the Government is prepared to override Māori rights. I, and from her own admission, other University Māori, possess the same view as some other Māori; that the passing of this Act underlines that no matter how much Māori protest, they will not be listened to.

Not one Dunedin Māori source mentions the hui at Paeroa as a major event. A possible reason for this may be that no-one associated with the local rūnanga were involved, or subsequently because it is so far removed geographically from Dunedin. Notably, whereas Dunedin Manawhenua intrinsically perceive Ngāi Tahu's trip to the UN as an important event, most sources from outside Ngāi Tahu do not mention it.

Feelings that emerged revisited

For Dunedin Māori, as for other Māori, the foreshore and seabed debate is a very emotional process. For those Māori whose tūpuna and whanaunga experienced confiscation in the past, painful memories are universal. For one Dunedin Māori participant this is true, however even those whose whanaunga have not experienced confiscation relate the legislation to confiscation legislation of the past.

Many Māori outside Dunedin feel a deep sadness that this generation will endure a loss on a scale of that faced by previous generations, and that future generations will have to deal with the consequences of the legislation. Some Dunedin Māori express this sadness, however A

notes that the sense emerging from his rūnanga is that Māori will face this another day. Therefore, according to his rūnanga, this is not over yet.

Whereas Māori in the wider Aotearoa/New Zealand community feel disbelief, disappointment, distain, hurt and anger at the Government and their actions, Dunedin Māori possess a spectrum of feelings, ranging from shock and disappointment to dismay and anger. Dunedin Māori also generally express feelings of shock that it is a Labour Party that is determined to remove their rights.

In a similar way to other Māori, some Dunedin Māori sources are angry at the Government's attitude. However, while the majority of those outside Dunedin who exhibit this anger are angry at the Government's 'we know best' approach, Dunedin Māori tend to be angry at the arrogance of the Government in simply telling Māori what is going to happen.

Like Māori in the wider community, Dunedin Māori also express anger towards individual MPs. However they exhibit a degree of disappoint in them as well. Like some from outside Dunedin, I and J are angry that Clark failed to face Māori during the hīkoi.

For Māori in the wider community, a substantial amount of anger is focussed at the male Māori members of the Labour Government. As Ngāti Tama asked

Has the colonial leopard changed its spots? Are our property rights as protected as claimed by the Labour government, and in particular its male Maori members, with their grand sound-bites of tutae that seem to be stuck on their tongues.²⁶²

For a few, including Tame Iti,²⁶³ these feelings of anger presented themselves in a reaction of disgust and contempt. Community Māori participants C and E, in describing the MPs as kūpapa, express feelings similar to Iti. Many Māori are angry that these MPs did not follow Turia's lead and cross the floor, and others believe that by not making a stand they were not representing their constituents. C tends to agree, stating that the MPs who chose to support

²⁶² Te Runanga o Ngati Tama, p. 3

²⁶³ Quoted in *New Zealand Herald* (8-9 May 2004) p. A2

Labour's stand are only out for themselves, and will do whatever they are told so to maintain their position, with possibility of moving up within the party.

On the other hand, some Manawhenua participants and the majority of University participants recognise that these MPs are constrained by their party's policies. This reflects the view of some in the wider community who subsequently focus their anger at the MPs' resolve that this is the best deal Māori can get.²⁶⁴ Both I and J express similar feelings, noting that the MPs at the very least could have acknowledged that they understand where Māori are coming from.

Māori, both inside and outside Dunedin, project anger at the mainstream media for their role in inciting the racial discord through blatant misrepresentations. Many, however, temper their anger by a sad realisation that the mainstream media do not inform. Some Dunedin Māori exhibit frustration that the mainstream media is just there to make money, and the most profitable outcome are exhibitionist headlines playing to Pākehā fears. The majority of participants also feel that the mainstream media simply approached their coverage of the debate the same way they approach anything Māori, misrepresenting the Māori viewpoint and misleading the public.

Nonetheless, Dunedin Māori also follow other Māori in expressing positive emotions. A huge sense of unity is apparent from almost all Dunedin Māori participants, as it is from wider community sources dating after the hīkoi. Both I and J express a pride in being Māori, which a number of other Māori, especially those who participated on the hīkoi, also articulate.

Conversely, some participants express feelings not recorded in wider community sources. A concedes that his rūnanga have settled on a feeling of ultimate resolve. They realise that life must go on. Other participants mention that there is feeling of indifference amongst a segment of the community. However F displays the complete opposite feeling to that of pride expressed by many other sources. He feels ashamed to be Māori.

²⁶⁴ Once again Taranaki Māori their anger at this.

While I expect the customary, "tut tut tut we have done our best," rebuke from our Maori MPs, the fact remains however, that Iwi around the country have extremely deep seated traditional views that are opposite to yours, and even a retard politician should know how futile it is trying to push your proverbial up hill. (White, p. 10)

Conclusion

Dunedin Māori express a wide range of concerns, relationships and perceptions concerning the foreshore and seabed debate. Overall, with the distinct exception of F, there is general coherency of opinion. The majority are adamant the debate is not what the mainstream media portray it to be and tend to demonstrate a Ngāi Tahu viewpoint on the major issues.

However, there is also a degree of deviation between perceptions. Both Manawhenua and University Māori express unique group views. Individuals also express unique views.

Overall, Dunedin Māori exhibit perspectives similar to those outside Dunedin, in that they all have a vastly different view of the debate than that portrayed in the mainstream media. In addition to that there is agreement that blatant misrepresentation of the issues curtails the debate, and that this debate cannot be viewed in isolation. The majority of Dunedin Māori perceptions on the main events and their feelings surrounding the debate are in line with perceptions from Māori outside Dunedin, with some variance. However, the greatest amount of difference of opinion occurs in the different perspectives of the main issues. The majority of sources from outside Dunedin view the major issue to be that a confiscation is taking place. On the other hand the majority of Dunedin Māori sources follow the Ngāi Tahu position, that the major issue is a removal of due process and subsequently an extinguishment of rights. Conversely, investigation into Dunedin Māori perspectives has brought forward perspectives that are not represented in recorded material from outside Dunedin; that of Māori who are indifferent about the debate, or even those, apart from the remaining Māori Labour MPs, who support the Government's initiatives.

Chapter Five: Conclusion

This chapter summarises Chapters Two, Three and Four, relating the data collected in Chapter Four to my hypothesis as outlined in Chapter One. The validity of my hypothesis is evaluated. Lastly, this chapter considers whether or not this dissertation has achieved its aim of acting as a microcosm of the wider national foreshore and seabed debate.

Hypothesis revisited

This dissertation authenticates my first hypothesis; overall Māori have very different perceptions of the debate to that represented in the mainstream media. The majority of Dunedin Māori sources are adamant that the debate does not centre on the issue of public access to the beaches. The majority also explicitly state that Māori have rights in the foreshore and seabed and are entitled to claim to have these rights recognised. These views are also reflected in the recorded sources from the wider community.

However, exploration into Dunedin Māori perspectives has also highlighted a sector of the Dunedin Māori community, and indeed the wider Aotearoa/New Zealand community, who are not represented in documented perceptions; those who perceive the debate exactly how the mainstream media portray it. F holds this viewpoint, and while from his own admission he is in the minority, he is proof that some Māori, however minute in number, possess this view. Several participants also revealed that a segment of the Māori community are indifferent to the debate, and thus hold no perceptions on it at all.

This dissertation also supports my second hypothesis; that perceptions of the participants are quite different. As evidenced in Chapter Four, the degree to which the participants are involved in the debate colours and influences their perceptions. However, while perspectives are different amongst participants as individuals, and in some cases distinct patterns can be drawn across participants' perceptions from the distinct groups, there is a large amount of coherency of opinion.

As hypothesised, the Manawhenua participants exhibit different perspectives to the other participants: they see the debate, to a degree as centring ownership, and have the distinct perceptions that the debate exposed the true state of race relations and that the opportunity to strengthen Treaty relationships is lost. Manawhenua are also unique in that they are the only group that perceives Ngāi Tahu's journey to speak before CERD, and CERD's subsequent report, as major events.

However, the Manawhenua perspectives are not completely constant. Te Rūnanga o Ōtākou have always considered they own the foreshore, whereas, prior to the Court's ruling, Kāti Huirapa Rūnanga ki Puketeraki understood the Crown to be the sole owner of the foreshore.

Although Manawhenua have some distinct perspectives of the debate, they also share a number with the other participants. Specially, all participants share the view that the debate centres on the concept of rights, not race. The majority of participants do not view the debate in isolation and feel the Government could have handled the situation differently, specifically that they should have allowed the legal system to run its course. As Labour supporters, the majority are incensed that a Labour Party, and particularly the Māori MPs, would initiate legislation to remove the rights of their supporters. This dissatisfaction was expressed on a national scale in the recent election where Labour lost Māori electorate seats to the Māori Party.

Participants across all groups also possess similar perceptions of the main issues. In particular, the majority of sources articulate a viewpoint akin to the Ngāi Tahu position; that the right to due process is removed and rights are infringed.

The majority of Dunedin Māori sources perceive the hīkoi as a, if not the, fundamental event of the debate. Don Brash's Orewa Speech is also either explicitly expressed, or implied, to be another major event.

Even though the majority of University participants are informed on the legal and Treaty issues due to study in that area they are not necessarily more informed than other

participants. Both Manawhenua participants have detailed knowledge of the legal and Treaty matters, and A is well-versed in these issues due to being involved with TRONT. Community participant E also demonstrates knowledge about these aspects.

Following on from this, only two University participants study or work in legal or Treaty fields, and therefore knowledge on these matters cannot be solely attributed to study. In fact A, E and J's understanding highlights that knowledge of the legal and Treaty issues tends to result also from personal endeavours to research up on the topic.

Interestingly, this dissertation has disproved my hypothesis that those who participated on the hīkoi will be more informed on the issues and that subsequently the hīkoi will have a major influence on their perceptions. Although the majority of Dunedin Māori sources perceive the hīkoi as a highly significant event, those who participated are no more informed on the issues than others. As E explains, for her the hīkoi re-enforced what she already believed. B supports this, admitting that even though he did not participate on the hīkoi, his feelings remain the same regardless.

My final hypothesis, that Dunedin Manawhenua will have a different perception to those from outside the area because of historical differences, is only substantiated to a degree. It is clear from the Manawhenua participant responses that Manawhenua view the debate in the context of their past interactions with the Crown. However, a number of the other participants also used the experiences of their tūpuna and whanaunga with the Crown as a context in which to base their perceptions. In saying that, Dunedin Manawhenua contextualise the debate in terms of past land sales, which had been forced upon them, and in all but one occasion,²⁶⁵ do not perceive a confiscation taking place.

Then again, while G, H, and the majority of sources from outside Dunedin perceive a confiscation to be taking place, with many of them relating the Government's actions to the actions of past governments; this is not the only view from the wider community. Many

²⁶⁵ See Edward Ellison, oral submission to the select committee, quoted in *Otago Daily Times* (5 October 2004) p. 4

outside sources perceive the debate in a similar way to Dunedin Manawhenua, regardless of past experience. Community and University participants' viewpoints, which are largely in line with Manawhenua perceptions, further support this contention.

Therefore, while the historical experiences of the local rūnanga shape their perceptions of the debate, and may have contributed to why, generally, they do not perceive a confiscation occurring, these historical differences cannot be said to be the only basis for Dunedin Manawheua perceptions as many other iwi and individuals hold similar perspectives.

A microcosm of perspectives in the larger national debate?

In many ways this dissertation has achieved its aim to act as a microcosm of the larger national foreshore and seabed debate. Both participants and written sources have articulated a number of the perceptions from recorded sources in the wider Aotearoa/New Zealand community as discussed in Chapter Two.

This dissertation also acts as a microcosm of the wider debate in revealing that which the recorded perceptions fail to mention. For instance, this dissertation exposes possible influences that shape perceptions. Following on from that, this dissertation enables feelings, and the reason for these feelings, to be brought to light. For example, where recorded sources from outside Dunedin simply underline that Māori feel anger towards the Government, the participants reveal a whole range of reasons for this anger, including the fact that they are Labour supporters who have been let down by a party that actively seeks their support.

This dissertation also acts as a microcosm to the wider debate in exposing sectors of the Māori community who are not represented in recorded sources; those who are indifferent to the debate. This dissertation also draws attention to the fact that there are Māori who support the Government and agree with the mainstream media's representation.

Conversely, this dissertation emphasises that Dunedin Māori perceptions are not entirely representative of perceptions from the wider Māori community. This is evidenced by the fact

that the main issue for Dunedin Māori is that rights are being removed rather than a confiscation is taking place. So while two participants perceive a confiscation to be occurring, it is not the same focal point that it is for Māori outside Dunedin. Historical differences and geographical dislocation from ancestral land may be reasons for this divergence of opinion.²⁶⁶

Secondly, this dissertation uncovers some perspectives that are unique to Māori in Dunedin. One example that Manawhenua explicitly state, and other participants elude, is that Ngāi Tahu's journey to the UN is viewed as a major event, while this is rarely mentioned in outside sources. Alternatively, no Dunedin source mentions the Paeroa Declaration as a main event, while several outside sources specifically refer to it.

Nonetheless, this dissertation is a microcosm of the wider national debate in that it confirms that Māori do not view the debate as portrayed in the mainstream media. It is not about access. It is not about race. For Māori the debate encompasses a whole range of issues. Specifically for Dunedin Māori, the debate is about rights and their removal.

²⁶⁶ This aspect is analysed in detail in Chapter Four.

Appendix One: Ethical Approval Form and Participant Consent Form

ETHICAL APPROVAL AT DEPARTMENTAL LEVEL OF A PROPOSAL INVOLVING HUMAN PARTICIPANTS (CATEGORY B)

NAME OF DEPARTMENT:

Te Tumu: School of Māori, Pacific and Indigenous Studies.

TITLE OF PROJECT:

Dunedin Māori Perspectives on the Foreshore and Seabed debate.

PROJECTED START DATE OF PROJECT:

March 2005

STAFF MEMBER RESPONSIBLE FOR PROJECT:

Dr. Jim Williams

NAMES OF OTHER INVESTIGATORS OR INSTRUCTORS:

Abby Suszko (Undergraduate, completing a double degree: LLB/BA (Hons) (Māori).

BRIEF DESCRIPTION OF THE PROJECT:

I am seeking ethical approval for the participation of human participants, namely six to eight Dunedin Māori, who will participate as interviewees for the basis of my dissertation.

This dissertation will look at how Māori in Dunedin perceive the issues and debate surrounding the Foreshore and Seabed controversy. The aim of this dissertation is firstly to capture and record what the Foreshore and Seabed debate meant to Māori within Dunedin. Secondly, to produce a case study in Dunedin that will highlight whether there is diversity or coherency of opinions on the issues. Thirdly to compile research that examines Dunedin Māori perceptions on why the issue exploded in the way it did and what the key issues were, as well as to uncover how Dunedin Māori felt during the debate and what influenced their opinions. Lastly, this project aims to compare these findings with recorded Māori perceptions in the wider Aotearoa/New Zealand context.

In order to address this issue, this dissertation will be approached in three parts:

- In the first part, Māori perspectives on the Foreshore and Seabed debate within the Aotearoa/New Zealand context will be analysed. This will require a literature review, as well as analysis of submissions, press releases, letters to the editor etc.

- The second part will focus on Dunedin Māori perspectives of the debate. This section requires human participants for which I am seeking ethical approval. Interviews will be utilised as the primary source of recording information, with submissions, press releases and secondary sources as support.
- The last part will be a discussion, analysing and comparing the consistencies and/or differences between the Dunedin Māori participants, and in turn comparing these findings to Māori perspectives in the wider Aotearoa/New Zealand context.

DETAILS OF ETHICAL ISSUES INVOLVED:

Ethical issues surrounding research in respect of Indigenous Peoples.

-I have resolved this by recognising that I am a mere vehicle for the expression of Indigenous knowledge in the academic context, and I agree to honour the principles of the *Mataatua Declaration on Cultural and Intellectual Rights of Indigenous Peoples (1993)* and to follow the guideline set out by Professor Tānia Ka'ai on pages 18 to 19 of the *Otago Postgraduate Prospectus: Te Tumu, School of Māori, Pacific and Indigenous Studies (2005)*.

ACTION TAKEN

- | | | | |
|--------------------------|--|--------------------------|---|
| <input type="checkbox"/> | Approved by Head of Department | <input type="checkbox"/> | Approved by Departmental Committee |
| <input type="checkbox"/> | Referred to University of Otago Human Ethics Committee | <input type="checkbox"/> | Referred to another Ethics Committee
Please specify: |

.....

DATE OF CONSIDERATION:

Signed (Head of Department):

DUNEDIN MĀORI PERSPECTIVES ON THE FORESHORE AND SEABED DEBATE

CONSENT FORM FOR PARTICIPANTS

I have read the Information Sheet concerning this project and understand what it is about. All my questions have been answered to my satisfaction. I understand that I am free to request further information at any stage.

I know that:-

1. my participation in the project is entirely voluntary;
2. I am free to withdraw from the project at any time without any disadvantage;
3. the data [*video-tapes / audio-tapes*] will be destroyed at the conclusion of the project but any raw data on which the results of the project depend will be retained in secure storage for five years, after which it will be destroyed;
4. this project involves an open-questioning technique where the precise nature of the questions which will be asked have not been determined in advance, but will depend on the way in which the interview develops and that in the event that the line of questioning develops in such a way that I feel hesitant or uncomfortable I may decline to answer any particular question(s) and/or may withdraw from the project without any disadvantage of any kind.
5. the results of the project may be published and available in the library but every attempt will be made to preserve my anonymity.

I agree to take part in this project.

.....
(Signature of participant)

.....
(Date)

Appendix Two: Approaching my participants

Approaching University Māori participants proved to be incredibly easy. They all knew me, having either taught me or having been involved in activities together, and readily agreed to participate in my project.

In order to obtain Manawhenua participants I initially contacted the two local rūnanga by phone. I outlined my dissertation research and sought their assistance in recommending people who may be interested in participating in my project. Both rūnanga were very helpful, each asking for an e-mail to further outline my project, which I promptly provided. Within days the Rūnanga Council of Kāti Huirapa Rūnanga Ki Puketeraki had discussed my project, and I was advised to contact a person whom they had mandated to provide their rūnanga position. I contacted this person via e-mail, who gladly agreed to talk with me. The administrator at Te Rūnanga o Ōtākou was also very accommodating, advising me that my e-mail had been distributed to the rūnanga members and those interested would contact me directly. Unfortunately this never eventuated. Keen to make sure I adequately represented Manawhenua perceptions by including a Te Rūnanga o Ōtākou voice, I contacted a member of the rūnanga by phone. This person cheerfully agreed to talk with me, and was also quite comfortable talking about the perspectives held by other members.

In approaching participants from the wider Dunedin community, I initially contacted two people over the phone, one who was referred to me by a staff member at Te Tumu: School of Māori, Pacific Island and Indigenous Studies, and the other I knew through a friend. Both willingly agreed to participate in my project; however one did not wish to be interviewed but agreed to complete a questionnaire.²⁶⁷ I also wished to represent the Dunedin urban marae voice in my research, and therefore contacted the chairman of Arai Te Uru who referred me to two people. After contact by phone, both enthusiastically agreed to talk to me about their own perspectives and those held by the rest of their community.

²⁶⁷ See Appendix Four for a copy of the questionnaire.

Appendix Three: Interview Topics for Participants

Some short answer questions to start before we discuss how you perceived the debate.

- What viewpoint did you approach the debate from?
- *What viewpoint did the rūnaka/rūnanga approach the debate from? (Manawhenua participants only)*
- Have you studied the debate?
- Have you been personally involved in the debate?
- *Has the rūnaka/rūnanga been involved in the debate?*
- Are your whānau, hapū, iwi or you yourself personally affected by the legislation?
- *Are your rūnaka/rūnanga, or you yourself, personally affected by the legislation?*
- How did you keep yourself informed of the debate?
- Did the media play a role in your understanding of the debate?
- Do you feel anything you have mentioned influenced your perception of the debate?
If so, how?
- Was there anything else that influenced your perception of the debate? If so what?

Now we shall proceed with the discussion questions.

- What is your overall perception of the foreshore and seabed debate?
- *What was your rūnaka's/rūnanga's overall perception of the debate?*
- Why do you believe the issue exploded the way it did?
- What do you perceive were the key issues in the debate?
- *What does your rūnaka/rūnanga perceive as the key issues in the debate?*
- What do you perceive were the key events in the debate?
- *What does your rūnaka/rūnanga perceive as the key events in the debate?*
- What was your reaction to these issues and events?
- *What was your rūnaka's/rūnanga's reaction to these issues and events?*
- What do you believe was the general Māori reaction to these issues and events?
- What role do you believe the media, politicians, the general public, Māori groups played in the debate?

Appendix Four: Questionnaire

Short answer questions

1. What viewpoint did you approach the debate from?

(Did you approach it from a Legal framework, Treaty framework, Rights basis etc. Or did you approach it from an emotional viewpoint?)

1a. Why did you approach it from this viewpoint?

(You may have studied the legal side or have a working knowledge of the Treaty and Treaty relationships etc)

1b. How do you feel this viewpoint influenced your perception of the debate?

2. Have you studied the debate?

(Have you read the Court Case, the policy, discussion documents, consultation documents, Tribunal Report, the Bill, the Legislation? Please state what you may have read etc.)

2a. Do you believe looking at any of these documents affected your perception of the debate? If so, how?

3. Have you been personally involved in the debate?

(Did you write submissions, go on the hīkoi, participate at hui etc. Please state what you participated in.)

3a. Did participating in the way you have described affect your perception of the debate? If so, how?

4. Could you please describe your experiences on the Hīkoi. Why you went on the Hīkoi; what reasons you had for participating; why you felt you had to go; what it was like; what it felt like being there; what emotions were brought up while participating; and anything else you would like to comment on concerning the atmosphere at the Hīkoi.

4a. Do you believe being on the Hīkoi affected your perception of the debate? If so, how?

4b. How do you believe people on the Hīkoi viewed the debate? Why do you feel they participated on the Hīkoi? What feelings do you think the Hīkoi brought up for them?

5. Are you, your whānau, hapū, runanga, iwi etc affected by the legislation? If so, how?

5a. If you are affected, how has this influenced your perception of the debate?

6. How did you keep yourself informed about the debate?

(Did you have discussions with others, read information documents, watch the news etc.)

7. Did the media play a role in your understanding of the debate? If so, how?
8. Was there anything else that influenced your perception of the debate? If so what?

Main questions

9. What is your overall perception of the foreshore and seabed debate?
10. What feelings emerged for you during the debate?
11. Why did these feelings emerge?
12. Why do you believe the issue exploded the way it did?
(People out there claiming that if it were perhaps left to the Courts, it may well have fizzled out. In your opinion, why did it become such a huge issue?)
13. What do you perceive were the key issues in the debate?
14. What do you perceive were the key events in the debate?
15. What was your reaction to these issues and events?
 - Why did you react that way?
 - How did these issues and events make you feel?
 - What feelings emerged?
16. What do you believe was the general Māori reaction to these issues and events?
 - Why do you believe Māori reacted that way?
 - What feelings resurfaced/emerged?
17. What role do you believe the media, politicians, the general public, Māori groups played in the debate?
- 17a. What feelings emerged from their actions?
18. If you could sum up the debate in a short paragraph, what would it be?

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