Nation as Partnership: Law, "Race," and Gender in Aotearoa New Zealand's Treaty Settlements

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This article uses postcolonial theory to analyze the dynamic convergence of two significant international trends in Aotearoa New Zealand: the movement for reparations for historical colonial injustices, and the economic reform process known as "structural adjustment," or Reaganomics in the United States, which was intended to produce a competitive nation of individual entrepreneurs. It argues that analysis of the interrelationships of law, "race," gender, and nation in this convergence illuminates the reproduction and reshaping of colonial tropes, or historical racial configurations produced through colonization, in these current trends. In Aotearoa New Zealand, claims by indigenous Maori activists for self-determination and redress of historical injustices spurred the emergence of alternative imagined communities with the potential to transform the nation. These alternative visions for the nation were shaped and limited by the economic law and policy reform of structural adjustment, producing a new official nationalism of partnership, implemented in settlements of breaches of the Treaty of Waitangi 1840. These partnerships resulted in a new individual identity of Maori men as entrepreneurs in a competitive nation. It produced a symbolic alliance of men across race that silenced and erased Maori activists' demands, and the leadership of Maori women, at the national level. The high profile partnerships, the erasure of Maori women, and relentless media attention to claims of sexism in Maori culture reproduced colonial tropes with images of the "progress" of the partnerships "saving" brown women from the sexism of brown men and "traditional" cultures. In this complex process the settlements were rational exercises of agency by the new Maori entrepreneurs with the goal of achieving economic autonomy, and worked to silence and erase the leadership of Maori women at the national level, even while women continued to be recognized as leaders at the local and regional levels. This analysis suggests that realization of the transformative potential of claims for redress of historical racial injustices requires attention to the repetition of raced and gendered dynamics of imagined communities that shape and limit that potential.

This article analyzes the dynamic interrelationships of law, "race," gender, and nation in the convergence of two significant international trends. Aotearoa[1] New Zealand has been at the

I would like to thank the University of California Humanities Research Institute for the invitation to participate in the Comparative Multiculturalisms research project as a Resident Fellow. Thanks also to Wayne Rumbles for research assistance, and to my colleagues at the University of Waikato School of Law for support generally and for comments. Finally, thanks are due to the anonymous referees of this article and to the editors of *Law & Society Review*, who all provided helpful and insightful comments and feedback. Please direct correspondence to Nan Seuffert, University of Waikato School of Law, Hamilton, New Zealand; e-mail: nan@waikato.ac.nz.

[1] *Aotearoa* is a Maori term for New Zealand. It is usually translated as "land of the long white cloud."

Law & Society Review, Volume 39, Number 3 (2005)

https://doi.org/10.1111/j.1540-5893.2005.00232.x Published online by Cambridge University Press

forefront of the recent movement for reparations for historical colonial injustices (e.g., D. Bell 1987; Matsuda 1987; Tsosie 2000; Yamamoto 1998) with a state-sponsored process of "settling" claims by the indigenous Maori people for breaches of the Treaty of Waitangi 1840 (the Treaty), signed between some Maori leaders and the Crown. This Treaty settlements process is a specific example of the more general international trend of redressing historical racial injustices. The second international trend is "structural adjustment," the economic reform process known in the United States as Reaganomics, in the United Kingdom as Thatcherism, and in New Zealand as Rogernomics. Using the tools of postcolonial theory and the insights of postcolonial studies, this analysis focuses on the dynamic positioning, and interrelationships, of several strands of national and individual identity produced by the convergence and reshaping of these two trends. It rejects any analysis of Maori or non-Maori as one monolithic group, instead focusing on the dynamic positioning of a complex series of groups and the shaping of the identities of these groups. Rather than assuming that the term *postcolonial* refers to a period following on and progressing from colonization, this analysis reveals colonial tropes in a reading of current law, policy, and media documents. It cautions against easy assumptions that historical race and gender configurations are not reproduced, and indeed do not contribute significantly, to the shape of current attempts to find justice.

The invention of "race" was crucial to Western imperialism and colonialism, shaping the emergence of the modern industrial nation and building notions of domination into concepts such as progress, evolution, modernity, and development (McClintock 1995:1–5; Spoonley 1993:1–11). Gender power dynamics were also fundamental to the success of the imperial enterprise (McClintock 1995:7). Colonial imaginaries, tactics, and struggles, in which race and gender come into existence relationally, and *in and through* each other, are therefore imbricated in the particular shapes and limits of societies, relations of domination, and imaginary horizons across both the West and areas impacted by imperialism (Stoler & Cooper 1997). These colonial imaginaries and tactics, or colonial tropes, "traveled" throughout the colonies of European states, taking particular forms in response to complex geographical and historical locations, and facilitating relationships of domination integral to imperialism (Stoler & Cooper 1997:11–8).[2] Postcolonial theory and studies include analyzing the repetition and reshaping of colonial tropes in current political, law, and policy developments. In this analysis, therefore, the term *postcolonial* does not refer to a

[2] See Numbers (1999) (analyzing local responses to Darwinism throughout the English-speaking world).

https://doi.org/10.1111/j.1540-5893.2005.00232.x Published online by Cambridge University Press

period after colonization, or to progress beyond colonization, but rather to the identification of colonial tropes in the present and throughout the geographical and cultural areas impacted by the ideas of Western imperialism (McClintock 1997:9–17).

Reading the law, policy, and media documents of the Treaty settlements process in Aotearoa New Zealand for stories of national identity reveals the reiteration of a number of historical racial and gender configurations. In the context of structural adjustment and claims for redress of Treaty grievances, a new identity of Maori entrepreneurs emerged, shaped and assumed by some Maori men, including the *Maori negotiators* of the first large Treaty settlements. Some of these men became the principal negotiators of agreements with the Crown to fully and finally settle Treaty breaches, extinguishing claims to full legal and political self-determination in return for monetary amounts that were small fractions of the estimated value of the claims. This dynamic reproduced the colonial trope of encouraging self-entrepreneurship among colonized men (Merry 2000:46) and, at the symbolic level, reproduced the more general racial configuration of alliances of men across race, necessary to the dominant group when a nation is under threat (Flax 1998:125; Merry 2000:12–3). Further, the settlements process operated to assimilate the new identity of Maori entrepreneurs to the new enterprise nation resulting from structural adjustment, all part of a "progressive modernity" (Merry 2000:16; McClintock 1995:359). The colonial trope of assimilation produced an identity that was almost the same, but not quite (Lloyd 1991; Bhaba 1997:153). The mark of race remained, and it operated in the settlements process as a high level of scrutiny and criticism of the business judgment of the Maori negotiators.

Most analyses of the Treaty settlements process in Aotearoa focus on the dynamics of race, neglecting to analyze the law and policy process for gender, especially using postcolonial theory.[3] The government-controlled Treaty settlements process largely ignored the varied roles of Maori women as leaders in Maori society and as activists for full political self-determination. The struggle to make gender visible in this analysis required reading beyond the formal law and policy documentation into stories of the imagined community of the nation, filtered through wider media coverage.[4]

[3] Some Maori women critiqued the process generally. See "Gender and Treaty Settlements: Erasing Maori Women as Leaders," later in this article. See also Mikaere (1997) and Milroy (2000).

[4] In the United States, there has been some recognition that in order for law- and policy makers to act on reparations there would need to be some "success in the courts of public opinion," support from white Americans, or a shared vision of social justice (Hopkins 2001:2534; Cook 2000:994). The idea that reparations would entail a national rebirth has been floated, and an argument for a shift to a binary economy, democratizing capital and fostering the equitable distribution of wealth, has been made (Tsosie 2000:1665; Cook 2000:960).

In these stories the leadership, as well as the political activism and claims for self-determination of Maori women, were erased and silenced at the national level and replaced with attention to the high-profile Treaty settlements process, even while Maori women continued to act in leadership roles at the local and regional levels. The law, with its claims to rationality and reason, is enticing as a tool in part because it suggests that the user, the subject of law, reflects and encompasses these traits and is thereby rational, reasonable, and modern (Merry 2000:48; Stychin 1998:16–9). The new identity of Maori entrepreneurs mobilizing the law and the settlements process as reasonable, rational, regulated subjects contrasted with the demands of Maori activists, including some Maori women, who refused to participate in the settlements process and demanded full political self-determination. This contrast supported the derogatory labeling of these Maori activists, ensuring their erasure at the national level in the law and policy process, and in the media as serious political subjects (Flax 1998:50).[5]

At the same time as many Maori women leaders and activists were ignored and silenced at the national level, the media focused relentless (mis)recognition on the critiques of Maori culture as sexist by a few Maori women. This dynamic of erasure and (mis)recognition left Maori women with little space to speak within the national imaginary (Spivak 1988:306–8). In a repetition of another colonial trope, this dynamic also created an interpretation of the settlements as agreements between Maori men and white men that bring progress as enterprise, "saving" Maori women from the sexism of "brown" men and "traditional" cultures (Spivak 1988:299; Merry 2000:21; Mohanran 1999:61–4). The colonial strategy justifying the push to "modernize" or "civilize" indigenous peoples is repeated.

My reading of the law, policy, and media treatment of the Treaty settlements process for the repetition of historical, colonial configurations of race, gender, and national identity begins with a discussion of nations as imagined communities. I then track the law and policy reform integral to two shifts in Aotearoa's national identity, from monoculturalism to biculturalism and from a caring (Hazeldine 1993) to a competitive-enterprise society. It was the collision, or reconciliation, of these two strands of national identity that produced a new official nationalism of "partnership" between Maori and non-Maori, or between the Crown and Maori. Partnership was implemented in the commodified legal "settlements" of

[5] See Mikaere (1997:454) (the New Zealand settlements are a cheap payout to silence Maori protest in the short term; "full and final" settlements present strong barriers to future Treaty claims).

https://doi.org/10.1111/j.1540-5893.2005.00232.x Published online by Cambridge University Press

Treaty breaches, structured as privatized corporate deals between the Crown and some Maori *iwi*.[6] The next section advances the argument that at the symbolic level the settlement partnerships were temporary alliances of men across race (Flax 1998:125). I go on to argue that the stories of imagined community told through the settlements process silenced and erased Maori women as leaders and activists in the national imaginary. At the same time, critiques of Maori culture and protocol as sexist received extended play, reproducing a colonial configuration where these alliances across race were open to interpretation as progress beyond these "traditional" sexist cultural configurations.

Nations as Imagined Communities

Nations are imagined political communities (Anderson 1991:6; Bhaba 1990:1–8; Stychin 1998:1–8). A nation is *imagined* because no member can ever know all of those who make up the nation, and therefore each carries a fictional image of the nation. It is an imaged *community* in the sense that all members of the nation are imagined as part of a fraternity. This part of the fiction typically masks various forms of inequality, exclusion, and exploitation (Anderson 1991:7). The nation is also imagined as a sovereign state, territorially limited, internally united, and free of interference from other nation-states. As imagined communities, nations are the stories that are told about collective identities, which also shape the stories that are available for individual identities.[7] The foundation stories of nations are particularly important as stories of inclusion and exclusion in these collective identities. The inclusion of some identities occurs at the expense of the exclusion of others, and identifying particular national identities serves to repress other possibilities for both national and individual identities, as well as collective and individual differences within the nation (Davies 1996:74–7). Both national identity and individual identity participate in the Eurocentric logic of identity; nationality, race, and gender are meaningful within a system of differences, in opposition to what they are not (Mohanran 1999:58). According to the Eurocentric logic of identity, the unmarked subject (or citizen), the white European male, enjoys a wide range of possibilities in constructing his identity: "[m]embership in the dominant group . . . is legally marked by a convenient lack of interdiction, by unlimited

[6] *Iwi* is the Maori word for nation or people, commonly translated as "tribe" (H. W. Williams 1997:80).

[7] See Harris (1996) (the philosophies of the Enlightenment and the Romantic opposition "shape not only the stories we tell about our individual identities, but also the stories we tell about collective identities" [213]).

https://doi.org/10.1111/j.1540-5893.2005.00232.x Published online by Cambridge University Press

possibilities" (Guillaumin 1998:41; Mohanran 1999:58). Creation of this unmarked subject relies on the logics of race, class, and gender for the displacement of these "marks" onto inferior "others" (Pateman 1988:116–53). For example, within this logic of gender white women are one of the necessary symbols of the local and particular against which the unmarked universal subject is measured. The logic of gender constructs white women as those responsible for raising the citizens of nations, as the bearers and reproducers of Eurocentric cultures, and as a civilizing presence within the nation, although not as citizens (Mohanran 1999:59; Bland 1992:43–50; Else 1991:1–13).

As imagined communities, the foundation stories and identity stories more generally of nations can be multiple and shifting, although one or some stories may be dominant and may become entrenched, and remarkably "durable" (Stychin 1998:2). At any given time, the "prevailing narrative of [a nation's] founding *is* its founding" (Flax 1998:6). Stories of national identity, or of the nation as an imagined community, circulate widely through news media (Anderson 1991:46), may be implicitly or explicitly contained in government policy documents and legislative debates, and may be reflected in legislation and cases.[8] Stories of national identity promoted by the state, or official nationalisms, may arise in response to emerging stories of national identity that threaten the power of dominant groups (Anderson 1991:46, 101). Cases, especially those brought as part of political action challenging prevailing stories of the nation, may result in decisions that contain stories of official nationalism.[9] Law and policy reform are therefore integral to the creation and maintenance of both national and individual identities.

This article tells a story of challenges to an illusion of a unified nation and the sidelining and containment of those challenges. It is a story of the reconfiguration and re-entrenchment of that illusion. It is also a story of the disruption and haunting of that illusion by the ongoing calls of activists for full political self-determination, and by the continued leadership and commitment of Maori women.

National Identity and Law

The shifts in two stories of Aotearoa New Zealand's national identity that I track, from monoculturalism to biculturalism and from caring to competition, while clearly identifiable, were neither

[8] "[i]n *Bowers v. Hardwick,* Justice White, writing the opinion of the Court, tells ... a story about America as a nation" (Harris 1996:214; citations omitted).

[9] "White's opinion [in *Bowers v. Hardwick*] can be seen as the formulation of an 'official nationalism' – a nationalism promoted by the state that represses alternative stories among its citizenry for the purpose of maintaining the power of current elites" (Harris 1996:214).

linear nor uncontested. Demands for biculturalism in its strong form, as discussed below, challenged the sovereignty of the state. The weaker state-sponsored forms of biculturalism contained these challenges. The official nationalism of caring masked exclusions from the state's beneficence, especially at the intersections of race and gender. Radical changes to law and policies necessary to implementing the shift to competition were passed with a blitzkreig approach and were contested in the courts.

Law and National Cultural Identity: From Monocultural to Bicultural

The prevailing narrative of the founding of Aotearoa New Zealand has been a simple one of cession of sovereignty by the indigenous Maori people to the British in the English version of the Treaty of Waitangi 1840, resulting in a monocultural, unified British New Zealand. In the original English version of the Treaty, Maori clearly ceded sovereignty to the British. However, most Maori leaders did not see the English version of the Treaty and instead signed a Maori "translation," or "appropriative mistranslation" (Constable 1996:634–5) of it. The Maori "translations" (there were several, which were taken to various parts of the country for signatures) of the Treaty, written by British missionaries, did not cede sovereignty to the British (Walker 1989). Historical analysis suggests that in the Maori versions of the Treaty, Maori people agreed to the British coming into the country to govern the British while Maori retained their traditional control over their land and people, explicitly recognized in the guarantee of *te tino rangatiratanga*, or Maori self-determination (Walker 1989:278; D. Williams 1989). The signed Maori versions of the Treaty were left out of the traditional British version of Aotearoa New Zealand's founding story. An English version of the Treaty became the official version. The traditional versions of the foundation of New Zealand as a unified British colony therefore depended on ignoring or repressing the power-sharing envisioned by the Maori versions of the Treaty (Binney 1981:16). The idea of New Zealand as a monocultural nation may therefore be seen as an illusion, and the repression of the Maori versions of the Treaty as necessary to maintaining this illusion (Seuffert 1998:78, 94; Culpitt 1994:50).

The repression of the Maori versions of the Treaty and the illusion of monoculturalism have been continually challenged throughout Aotearoa New Zealand's history. At two early moments of crisis for the unstable colonial nation, courts refused to recognize the Treaty (Seuffert 1998), concluding in 1877 that the Treaty in any language was a "simple nullity. . . . [because] No body politic existed capable of making session [*sic*] of sovereignty. . . ." (*Wi Parata v. The Bishop of Wellington* 1877). This case both created and buttressed an

https://doi.org/10.1111/j.1540-5893.2005.00232.x Published online by Cambridge University Press

official monocultural story of the foundation of New Zealand as a British colony in which the only recognizable law was British and the only legitimate legal system was the colonial British system. This approach to the Treaty was confirmed in 1941 by the Privy Council in *Hoani Te Heuheu Tukino v. Aotea District Maori Land Board*, holding that rights conferred by the Treaty were unenforceable in New Zealand courts unless they were specifically incorporated into legislation.

Although repeatedly challenged, and sometimes reshaped, this story of a monocultural national identity prevailed at least until the 1970s:

> New Zealanders have been reared to think in terms of a constitutional Leviathan . . . an absolutist and singularized if beneficent concept of authority importing the domesticated pacification of the public space and supposing the cultural uniformity of an undifferentiated [whitened, homogenized] population. (McHugh 1996:501, 522)

This was an official nationalism of monoculturalism through the lenses of legal theory: one culture, one sovereign, and one homogenous undifferentiated public space. It was entrenched and durable; in 1977, as part of a comparative historical survey of race relations in Australia and New Zealand, it was argued that there were increasing signs of non-Maori resistance to accepting any Maori cultural identity that did not conform to European conceptions of that identity and to the predominant mores of the white population (Howe 1977:82–3). This resistance enacted a fantasy of political community that marginalized and erased Maori people.

Demands for strong forms of biculturalism emerged out of the most recent challenges to this monocultural official nationalism, challenges that began to gain momentum in the 1970s. Political activism on the part of Maori, often initiated and led by Maori women, increased and diversified (Henare 1994:126–36; Kelsey 1990:20–2; Jenkins 1986:16–23). Protests often focused on the Crown's failure to honor the Treaty's guarantee (in the Maori version) of te tino rangatiratanga, or Maori self-determination (Awatere 1984; Kingsbury 2000, 2002). These protests were made in a local context of "whiter than white" immigration policies throughout the nineteenth and first half of the twentieth century, which produced a largely homogeneous, non-Maori, British population (Brooking & Rabel 1995:23). The protests were framed internationally by a wave of claims for reparations (Bittker 2003),[10] discussions of multiculturalism (Tulley 1995), and indigenous claims for self-determination (Trask 1993; Sterba 1996; Cunneen & Lib-

[10] It has been argued that black nationalists in the United States (as opposed to integrationists) focused on separation and reparations as appropriate remedies (Magee 1993:868–71).

esman 1995). In this context the 1984 Labour Party promised prior to the election to honor the Treaty and to settle Treaty grievances (Kelsey 1997:23). After its election, the government's policy approaches to these issues occurred initially in terms of multiculturalism and even broader equity considerations (Sharp 1997:227–31).

The broad discussion of equity and multiculturalism was not satisfactory to many Maori people. It was argued that a focus on multiculturalism was an excuse for "doing nothing" and a means by which the state could silence Maori demands and placate mainstream New Zealand (Jenkins 1994:153). Biculturalism was seen as the appropriate relationship for Maori and non-Maori under the Treaty of Waitangi (Sharp 1997:225–36). Perhaps the most eloquent and powerful explication of a strong form of biculturalism appeared in Jackson's 1988 report *The Maori and the Criminal Justice System*, which critiqued both the system's basis in a monocultural philosophy and the resulting substantive outcomes of criminal convictions (Jackson 1988:235–75). Consistent with the Treaty's guarantee of a unique Maori law and the Treaty's guarantee of te tino rangitiratanga, Jackson concluded that parallel legal systems for Maori and non-Maori in Aotearoa were mandated by the Treaty (1988:265). Jackson's report spurred demands by many Maori and some *pakeha*[11] for a shift in national identity from monoculturalism to biculturalism (Sharp 1997:235–45).

The ideas informing Jackson's argument for parallel legal systems were implemented in the governance models of some feminist community groups. For example, in response to demands from Maori women, the National Collective of Independent Women's Refuges (NCIWR), which runs shelters and provides other services to female survivors of domestic violence, adopted a governance structure that it termed "parallel development" (NCIWR 1993). Parallel development was implemented with separate refuge houses for Maori and non-Maori women, and a national core group for governance, which included four Maori women elected from the Maori women's refuges and four elected from the non-Maori women's refuges. Parallel development also included two national coordinators and two national trainers, Maori and non-Maori, and involved sharing control over resources.[12] Both the Ministry of

[11] *Pakeha* is a contested Maori term, sometimes defined as "a person of predominately European descent" (H. W. Williams 1997:252; A. Bell 1996:144–58).

[12] While parallel development meant that the governance body focused on two groups, diversity was recognized within both groups. For example, Maori women recognized iwi (tribal) differences in approaches to domestic violence and its response, and non-Maori women established houses for Pacific Island women and a caucus for lesbians. Methods for determining group membership, based on self-identification and providing Maori women with some veto power, were intended to redress colonial relations of domination.

https://doi.org/10.1111/j.1540-5893.2005.00232.x Published online by Cambridge University Press

Women's Affairs and the Anglican Church also adopted limited forms of parallel development, which allocated some decisionmaking power and resources to Maori caucuses (Spoonley 1995; M. Durie 1998).

In contrast to Jackson's proposal for recognition of Maori self-determination in parallel legal systems, state-sponsored moves in the direction of shifting official nationalism from monoculturalism to biculturalism were much more limited. These moves included passing the 1975 Treaty of Waitangi Act, which established the Waitangi Tribunal (the Tribunal) to hear Maori claims for Treaty grievances. The Tribunal was initially given jurisdiction only to hear claims arising after 1975.[13] In response to protests at the absurdity of its failure to address Treaty breaches during the entire period of colonization, legislation was finally passed in 1985 to provide the Tribunal with jurisdiction dating back to 1840 (Treaty of Waitangi Amendment Act (1985): Sc. § 3(2); Kelsey 1990:228–32). The Tribunal was also initially empowered only to make recommendations to the government with respect to claims, not to order redress binding on the government.[14] Kelsey has cogently argued that the Tribunal process channeled the energy of claims for recognition of the right to full political self-determination into a cumbersome, expensive, and largely ineffectual apparatus that operated to legitimate the government's supreme authority without placing any obligation on it to act (Kelsey 1990:234–5).[15] The Tribunal therefore represented a shift in official nationalism that superficially responded to strong forms of emerging biculturalism while simultaneously preserving the underlying monoculturalism of the British legal system.

The Tribunal spurred the production of a vast body of historical research necessary to substantiate and contest a claim, as well as a type of juridical, or Tribunal history, written in the reports of the Tribunal in the process of its findings and conclusions (Byrnes 2003:252). These histories provided a context for growing Maori demands for justice in the form of a shift in official nationalism. The decisions of the Tribunal, both judicious and controversial, enhanced its credibility and power in the legal arena beyond what

[13] Treaty of Waitangi Act 1975 § 6(1)(a), amended by Treaty of Waitangi Amendment Act 1985 § 3(2).

[14] Treaty of Waitangi Act 1975 § 5(1)(a), amended by Treaty of Waitangi (State Enterprises) Act 1988 § 3. In 1988 the Tribunal's jurisdiction was extended to empower the Tribunal to order the return to Maori of land vested in a state-owned enterprise in some situations. Treaty of Waitangi Act 1975 § 8A; New Zealand State Owned Enterprises Act 1986 § 27B.

[15] Arguments regarding the potential of reparations legislation in the United States to become a hegemonic device to preserve the status quo have been made (Yamamoto 1992:229).

could have been contemplated by the government creating it, and at times they fueled public debate on the shifting sands of national identity. Thus, as the quote and the discussion of the Tribunal's role in spurring the amendment to the New Zealand State Owned Enterprises Act 1986 (SOE Act) below illustrate, at times the Tribunal forged its own path and contested the official nationalism that shaped its foundations (Sharp 1997:77–85, 117–20). For example, in one early report the Tribunal stated:

> Maori law is . . . the original *lex situs*; it springs from the earth. Other races depend for the recognition of their law upon some valid importation. . . . This distinguishes Maori from other minorities whose concerns are reflected in such human rights instruments as the International Covenant on Civil and Political Rights. Maori are a domestic constitutional entity entitled to special recognition. (E. T. Durie 1995:34; emphasis in original)

This quote reflects a concern to distinguish the position of the indigenous Maori people from other minorities without denying rights to these other minorities. The argument is that Maori have both a distinctive geographical connection to New Zealand and a unique law that arises from that connection. These statements also support arguments, based on stories of shared cultural heritage pre-dating colonization, that Maori are a political community within the nation, or a nation within. This nation might be made up of a complex set of interacting organizations at the local, regional, and national levels, including iwi, community, government, and church organizations (M. Durie 1998:228–33; O'Malley 1997). A number of these organizations were founded or revitalized as a result of the shift to biculturalism. In addition, proposals for Maori participation in law- and policymaking at the national level also emerged, including for a Maori house in Parliament (Temm 1990:110–2; M. Durie 1998).

In these examples, Aotearoa New Zealand was imagined as two communities, Maori and non-Maori, and the relationship between the two was to be determined by the international Treaty. Other minorities were to be dealt with within the category of non-Maori. This recognition of two imagined communities, like Jackson's argument for parallel legal systems, posed a challenge to a monocultural nation imagined as one homogeneous whole, shifting its national identity to biculturalism.

Law and National Socioeconomic Identity: From Caring to Competition

This section tracks the shift in another strand of Aotearoa New Zealand's national identity, from caring to competition. Between the 1930s and the 1970s, the official national socioeconomic iden-

https://doi.org/10.1111/j.1540-5893.2005.00232.x Published online by Cambridge University Press

tity of New Zealand was based on social democratic politics and welfare-state economics. More so than in many other developed countries, the image of the nation as a caring community, the government as benevolent, and the state as a collectivity responsible for its members from cradle to grave was prominent. This identity was ensconced in law and policy. New Zealand's welfare state was based on the New Zealand Social Security Act of 1938, which aimed to "[cover] everybody against every risk, and [redistribute] income downward" (Kingfisher 1999:2–3). This welfare philosophy was encapsulated in an often-quoted passage from the 1972 Royal Commission on Social Security. The welfare state should "ensure . . . that everyone is able to enjoy a standard of living much like that of the rest of the community and thus is able to feel a sense of participation and belonging to the community" (The New Zealand Royal Commission on Social Security 1972:65). This philosophy corresponded to a national identity in which the motto "we take care of each other" was prominent and in which the imagined community was caring (Hazeldine 1993).

The prominence of caring in the national identity corresponded to a state that might have been described as socialist, providing free education through the tertiary level, a comprehensive national health system, and an extensive state housing system primarily consisting of single-family dwellings. The state also owned railways, power generators, television and radio, universities, airlines, many coal mines, most forestry, some hotels, a shipping line, a ferry service, and a number of farms. It wrote wills, administered estates, and operated banks and the largest contracting business in the country (Palmer 1979:5–6). Its welfare philosophy resulted in unemployment benefits, student living allowances, domestic purposes benefits (paid to single parents raising children), disability benefits, and superannuation payments that were generous by the standards of many developed countries (Boston 1999:9).

However, this official identity operated, like other official national identities, to protect the interests of dominant groups (Hunn 1961; Howe 1977;77–81). The identity of care was written in an agricultural economy with images of farmers and neighbors, typically middle-class Pakeha, all pitching in to help each other in difficult times (Thomson 1998; Green 1996). Caring that fell outside this paradigm tended to be much more limited, or nonexistent. The caring was raced and gendered in particular manners (Culpitt 1994:50; Fraser 1989:144–60). For example, the welfare state commitment to dignity and a decent standard of living did not extend to married women; it was generally assumed that women were properly provided for as the dependents of men (Novitz 1987; Saville-Smith 1987:198). Other benefits, such as those paid to single mothers, carried a stigma and were accompanied by a

level of surveillance not attached to the widow's benefit or the unemployment benefit. Some welfare state policies at the intersection of race and gender, such as adoption, were problematic from Maori perspectives.[16] The inclusions, exclusions, and particular shapes of welfare state policies were based on assumptions that men most appropriately supported women and that only British culture was relevant. The most appropriate subject/citizen of New Zealand's caring welfare state was therefore the farmer in crisis or the temporarily unemployed Pakeha male, unmarked by gender, race, or culture.

In the early 1980s, New Zealand embraced the international economic and ideological trend known as structural adjustment, Reaganomics, Thatcherism, or, in New Zealand, Rogernomics (Kelsey 1997:15–27; Easton 1989).[17] The stated aim of structural adjustment was to make New Zealand markets (including its labor market) and products globally competitive (Kelsey 1997). Competition became the buzzword, and the benefits of competition were continually espoused (Kelsey 1993:252). The centrality of competition to the law and policy reforms used to restructure the state spurred a corresponding reimagining of New Zealand's national identity from a caring to an enterprise society, emphasizing self-sufficiency, individual responsibility, and individual competition in the domestic and global marketplaces.

The goal of bringing competition to markets, institutions, government, and individuals required sweeping changes. Commercial and financial markets were deregulated to allow market competition. The New Zealand Commerce Act (1986) was passed with the sole objective being to "promote competition in markets within New Zealand" (Bollard 1994:678). The public governmental sector was "downsized" and privatized to break up its monopolies and open it to market competition and the associated assumed efficiencies.

The SOE Act restructured government-owned assets and utilities from monopolies into businesses intended to operate in a competitive market, with a view to their eventual sale (New Zealand Department of the Treasury 1984:293–4). Consistent with the new enterprise society, the businesses were to be run on a commercial

[16] "Maori Women's Welfare League remits over the past 35 years provide ample evidence of the depth of concern over adoption, custody and access laws and practices which totally disregarded whanau, hapu and iwi structures" (The New Zealand Royal Commission on Social Policy 1988:164; Else 1991:180; Mikaere 1994:136, note 51). *Hapu* is sometimes translated as a section of a large tribe. *Whanau* may be translated as offspring, or a family group.

[17] Structural adjustment refers to a group of neoliberal economic theories known as monetarism, public choice theory, managerialism, agency theory, transaction cost economics, and free trade liberalism, and a group of law and policy reforms related to these theories.

https://doi.org/10.1111/j.1540-5893.2005.00232.x Published online by Cambridge University Press

basis, achieve efficiencies through competition in free markets, and have as their primary goal the production of profits for the government owner (New Zealand State Owned Enterprises Act 1986: Sec. 4). As a result of an interim report on the Tribunal and political pressure from Maori activists, a last-minute amendment to the SOE Act added Section Nine, which required the Crown to act in a manner consistent with the principles of the Treaty. This amendment ensconced the "principles" of the Treaty in legislation, providing the mechanism for highlighting the inconsistencies between biculturalism and the enterprise society, discussed below.

Structural adjustment also involved the implementation of laws and policies that tended to constrain identity possibilities for individuals to the new enterprise society. The New Zealand Employment Contracts Act (1990) (ECA) encapsulated the shift from caring to competition in labor law. It embraced the fiction of equality of bargaining power between employers and individual employees (Wilson 1997:92–4, 96), severely undermining collective unions with an emphasis on individual employment contracts. Competition for jobs, resulting in at least short-term wage restraint and possibly real-wage declines, was integral to the policy informing the ECA (New Zealand Department of the Treasury 1990:10–1). The national identity represented by these changes was specifically aimed at "encouraging and enabling people to work smarter, produce more, and compete harder in the international arena," encouraging and producing an individual identity of enterprising entrepreneurs (New Zealand Government 1991:B6).

The shift from caring to competition was also a shift from egalitarianism to wealth stratification that was raced and gendered. Unemployment and domestic purposes benefits, community grants, training programs, and Maori development and legal aid all faced cuts (Boston 1999:10; Kelsey 1993:84). These cuts were similar to some of the welfare cuts in the United States (Kingfisher 1999). It was argued that these cuts were necessary to restore integrity to the system and to provide incentives for beneficiaries to find work (Stephens 1999:238). The incentives did not include setting a decent minimum wage, offering training, up-skilling, or child care services. Rather, the level of benefits was reduced to provide incentives for people to enter or return to the workforce (New Zealand Department of the Treasury 1990:112).

The competition embraced by this law and policy reform resulted in the whirlwind stratification of wealth: the few entrepreneurs got rich, while the remainder lost out (Podder & Chatterjee 1998:25–6; Kelsey 1999:368). Among the hardest hit were Maori and women. Prior to 1987, Maori had lower unemployment rates than Pakeha. By 1999, the unemployment rate for Maori was 19%, while it was less than 6% for Pakeha. The increasing feminization of

poverty fell especially upon elderly women and single parents (Kelsey 1999:370–2). The state's retrenchment shifted many responsibilities for "caring" back to families, where they were borne disproportionately by women (Bunkle & Lynch 1992; Else 1992). For many women, the shift from caring to competition meant that the burden of caring was privatized into individual households, to be carried by them.

Structural adjustment shifted Aotearoa New Zealand from one of the most highly regulated to one of the least regulated countries in the Organisation for Economic Co-operation and Development (OECD), and from a national ethos where collective responsibility was prominent to an official national identity based on individual competition through innovation and enterprise in national and global markets (Kelsey 1997:85–9; Eggers 1999; Larner 1996). Politicians labeled this new society the "enterprise society" (Kelsey 1993:22):

> [f]or 40 years, New Zealand tried to build a civil society in which all its people were free from fear or want. That project has now lapsed. In its place is only a vague exhortation for individuals to go and get rich. (Kelsey 1997:8)

This quote encapsulates the way in which the national enterprise identity produced parallel possibilities for individual identities; in this imagined "community" individuals would compete in global labor markets and, in particular, as global entrepreneurs (Larner 1998:604). The whirlwind stratification of wealth suggests that only a minority who embodied the new entrepreneurship benefited from the new identity. The majority lost out, with women and Maori losing disproportionately.

Partnership as National Identity: Alliances of Men Across Race

There were significant tensions between the shifts in national identity from monoculturalism to biculturalism and from caring to competition, and both shifts were contested legally and politically.[18] The first section of this part argues that these tensions were partially reconciled in *New Zealand Maori Council v. Attorney General* (1987) (*NZMC v. A-G*), in which a new official nationalism of "partnership" emerged, which was given effect in the government's subsequent policy and process of settling Treaty claims with Maori through direct negotiation. In this partnership biculturalism was shaped in the image of, and subordinated to, the enterprise society. The second section of this part argues that the stories of

[18] See, e.g., *Fox v. Douglas* (1988) (minority shareholder challenge to the sale of government shareholding in Petrocorp, formally state-owned petroleum assets).

https://doi.org/10.1111/j.1540-5893.2005.00232.x Published online by Cambridge University Press

national identity told about the partnership of Treaty settlements operated to produce a new individual identity of Maori entrepreneurs and to assimilate some Maori men into this new identity. The third section of this part argues that the logic of assimilation left the residue of this new identity, its difference from the new enterprise society more generally, as a mark of race that remained, for example, in the labeling of these men as "corporate warriors." The mark of race was also displaced onto those Maori who refused to settle by labeling them as unreasonable, positioning them outside of the national fraternity.

Reconciliation: National Identity as Partnership

In *NZMC v. A-G*, the New Zealand Maori Council (the NZMC) sought a court order that would interfere with state restructuring by stopping the government from privatizing state-owned assets under the SOE Act. The NZMC argued that such assets were potentially subject to future Tribunal claims and therefore that selling them to private owners was inconsistent with the principles of the Treaty in contravention of Section Nine of the SOE Act. The case highlighted the tensions between the two emerging strands of official national identity: the privatization of the new enterprise society and demands for biculturalism as recognized in the Tribunal process.

The Court of Appeal's decision reconciled those tensions by creating a new official nationalism, an imagined community as a "partnership" (1987, at 664) between the Crown and Maori. This new partnership consigned the colonial abuses of Maori by the Crown to the past (1987, at 668); the Court also stressed that "[t]he Maori people have succeeded in this case," using the word *victory* (1987, at 661). However, a close reading of the case raises issues about the extent to which the decision made a break with the colonial past.

As discussed, the SOE Act specifically required the Crown to act in a manner consistent with the principles of the Treaty in Section Nine. The Treaty had therefore been incorporated into legislation and, consistent with the Privy Council decision in *Hoani Te Heuheu Tukino* (1941), the Court of Appeal was authorized to take it into account. *NZMC v. A-G* was therefore simply another case in a line of consistent precedent, rather than a break with that precedent. Despite the new partnership, the Maori version of the Treaty was irrelevant to the decision in *NZMC v. A-G*, and the Treaty was no more enforceable by the courts than it ever was.[19]

[19] The appropriative mistranslation of the Treaty is brushed aside by the Court; "[t]he differences between the texts and the shades of meaning do not matter for the purposes of this case" (*NZMC v. A-G*, 1 NZLR 641, at 663 (1987).

https://doi.org/10.1111/j.1540-5893.2005.00232.x Published online by Cambridge University Press

Further, the Court identified the relationship between Maori and Pakeha under the Treaty as a partnership after 150 years of brutal colonizing tactics perpetrated by the Crown on Maori, which failed to produce a level playing field for the two "partners." In spite of this, or perhaps because slippage in the meaning of the term *partnership* helped consign colonization to the past, *partnership* quickly became a buzzword with government and others, and the relationship between the Crown and Maori was often described as a partnership. The slippages in the meaning of the term allowed it to operate to bridge the tensions in the two emerging national identities, the bicultural nation and the enterprise society. For many Maori, the term signaled parity with non-Maori (Walker 1995:284), or a version of biculturalism that could encompass law and policy developments such as parallel legal systems. In mainstream New Zealand at that time, the term *partner* was the well-established progressive, or politically correct, reference to the two people in an intimate relationship, often used for heterosexual, gay, and lesbian relationships. The term was used to avoid the historical sedimentation of sexist and homophobic assumptions embedded in *wife* and *husband*. A Treaty partnership might therefore invoke the caring relationship of an intimate partnership reflective of New Zealand's disappearing national identity, while masking the historical sedimentation of the subordinate position of *wife* (Mikaere & Milroy 1998:469). At the same time it invoked legal and business partnerships reflective of the focus of the new enterprise society on running the country as a business. Common assumptions that such partnerships were "equal" also operated to mask the sedimentation of inequality between the Crown and Maori as the result of the brutal history of colonization.

The Court in *NZMC v. A-G* required the government to come to an agreement with the NZMC to protect state-owned assets subject to Tribunal claims in the process of privatization, and it indicated that some very limited protections would be sufficient (1987, at 660, 665–8). The government and the NZMC agreed on a system of protection, which was given effect in the Treaty of Waitangi (State Enterprises) Act (1988) (the TOW(SE) Act). The agreement included amending the SOE Act to provide that if land was transferred to an SOE (and then to a third party) and the Tribunal later recommended its return to Maori, that recommendation would be compulsory on the government.[20]

Soon after the TOW(SE) Act was implemented, the government demonstrated its lack of commitment to both the new partnership and the Act. Its position was that the TOW(SE) Act applied

[20] New Zealand State Owned Enterprises Act 1986 § 27B(1); Treaty of Waitangi Act 1975 § 8A.

https://doi.org/10.1111/j.1540-5893.2005.00232.x Published online by Cambridge University Press

only to Crown land and waters transferred to SOEs. It therefore did not apply, for example, to using an SOE as an agent to sell the cutting rights to the trees on forest land subject to Tribunal claims directly to third parties (*New Zealand Maori Council v. Attorney General* 1989:150). In presenting this agency proposal to Maori groups, the Minister of State Owned Enterprises explicitly recognized the clash between biculturalism and the enterprise society, stating:

> I state again the Crown's basic dilemma. On the one hand we realise that there are Maori claims about breaches of the Treaty of Waitangi that involve much of the Crown's afforested land. If these claims are found to be valid, return of the afforested land may be an appropriate method of compensation.
> On the other hand, the Government's policy is to sell the Crown's commercial forestry assets to pay off some of the enormous debt we inherited from previous governments. . . . If purchasers are not guaranteed security from resumption of their forestry rights there will be two seriously negative effects. First, Government and taxpayers will not gain the true value of the resource, as purchasers will discount their bids because of uncertainty. Second, purchasers will not be prepared to make investments in New Zealand's forestry industry that could otherwise generate many jobs and economic activity. (Letter from Minister of State Owned Enterprises to Maori Groups, January 13, 1989, quoted in *New Zealand Maori Council v. Attorney General*, 2 NZLR 142, 150 [1989]).

The first paragraph of the Minister's statement provides brief recognition of Treaty claims, and therefore biculturalism, in a manner that suggests that they are specific to Maori, and do not involve the country as a whole, or national identity. In contrast, the second paragraph emphasizes the importance of policies of privatization to all New Zealanders, highlighting the harm to taxpayers, jobs, and economic activity generally that might occur if the privatization exercise is in any way impaired. The reference to debt inherited from previous governments suggests that this government was in a difficult position due to the fault of others and deserved sympathy in its attempts do the right thing. This characterization of the dilemma signals that the policies of structural adjustment and the accompanying enterprise society would be privileged over policies of biculturalism.

Following *NZMC v. A-G*, Maori challenges to the SOE Act[21] and claims for the return or transfer of state assets in the Tribunal continued (Mahuta 1995:79; Kelsey 1993:258). These claims

[21] *Mahuta and Tainui Maori Trust Board v. Attorney-General* 1989; *Love v. Attorney-General* 1988; *New Zealand Maori Council v. Attorney-General* 1989.

https://doi.org/10.1111/j.1540-5893.2005.00232.x Published online by Cambridge University Press

continued to highlight the clash between the two new strands of Aotearoa New Zealand's national identities. The claims represented a practical obstacle to the structural adjustment agenda, as it was difficult to sell the assets that were the subject of claims, and they represented a potential catalyst for political action in resistance to privatization (Kelsey 1997:322). In response, the government developed a policy of negotiating Treaty claims with Maori groups directly, with the goal of settling them efficiently, and fully and finally. This particular configuration of the new national identity of partnership operated to reconcile the tension between biculturalism and the enterprise society by shaping biculturalism in the image of enterprise, or assimilating biculturalism into the enterprise culture, and by assimilating one strand of individual identity for Maori men into the enterprise society as Maori entrepreneurs.

Assimilation Through Partnership: Treaty Settlements

The logic of identity in dominant Eurocentric discourses means that members of dominant groups, unmarked by race, gender, or culture (Frankenburg 1993:16), enjoy the choice of a wide range of identity possibilities. The logics of race, gender, and culture displace these "marks" onto "others" (Pateman 1988:116–53). The logic of assimilation of these "others" into the position of the unmarked subject operates in two steps. The first step recognizes the sameness of the assimilated subject. The second part of this logic resists the incorporation of difference, leaving the mark of difference as "the primitive, the local, or the merely contingent" unassimilated (Lloyd 1991:73; Bhaba 1997). This logic also structures the assimilated sameness hierarchically over the unassimilated difference (Lloyd 1991:73).

The recognition of sameness is the first part of the logic of assimilation (Gatens 1996:25). This requirement of sameness suggests that the parties to the Treaty settlements might mirror the new national identity of entrepreneurs in an enterprise society. According to the then prime minister, the settlements would create for Maori "the responsibility and opportunity—which I'm sure they will enjoy, to compete and to succeed alongside New Zealanders" (Stone 1992:1). This statement positioned Maori as not New Zealanders, defined New Zealanders as competitors, and set the goal for Maori as assimilation into that competition.

Some senior and influential Maori men embraced the new enterprise society at its inception in 1984, positioning themselves at the forefront of the reconstruction of Aotearoa New Zealand's national identity (Kelsey 1993:246–70). They formed a corporation called Maori International Ltd. (MIL). Subsequent to *NZMC v. A-G*, MIL proposed to establish a Maori SOE that would "act as

https://doi.org/10.1111/j.1540-5893.2005.00232.x Published online by Cambridge University Press

financial manager, advocate, negotiator, business advisor, commercial developer, lender and manager of trading operations owned by Maori investors'' (Kelsey 1990:250). The reference to an SOE, an integral part of the new enterprise society, and the economic enterprise focus of the proposal reflect the move to an enterprise society. The proposal also positioned the directors of MIL themselves as business entrepreneurs and contributed to shaping a new identity of Maori entrepreneurs. The Maori SOE was opposed with arguments that it would leave Maori ''subordinated to colonial economic and political structures'' (Kelsey 1993:248), and the proposal was not implemented. However, the directors included some of the men that the government turned to in its efforts to settle Treaty claims, including the principal negotiators of the most high-profile settlements discussed below, and they became known as ''the Maori negotiators.''

Assimilation of one strand of identity for Maori men into the enterprise society paralleled the conformation of Treaty settlements to that identity. The Minister of Treaty Negotiations was clear that the economic emphasis of the settlement process was intended to redefine Maori claims for political sovereignty in economic terms:

> Calls for Maori sovereignty will wane when Maori grievances are resolved. . . . Treaty settlements will to some extent re-establish an economic base for Maori people. Economic power leads to political power and . . . there will [not] be such clamours for Maori sovereignty if they have the ability to look after their own people in their own way. (Young 1995:5)

Political power here was exercised through the existing economic framework. Political self-determination did not feature in this economic discourse; settlements of past grievances were achieved within the dominant legal, political, and economic framework.

In contrast to the government's limited economic focus within the dominant economic and political framework, it has been argued that the goal of ''almost all'' Maori for their economic future included ''Maori control of a Maori economy, built upon Maori structures, values and priorities, using available pakeha technology and knowledge to Maori advantage'' (Kelsey 1993:245). This Maori consensus reflected a robust interpretation of biculturalism that included political self-determination (Kelsey 1997:364–71).

The first large settlement, which became known as the Sealord Deal, reflected the dominance of the story of a nation as a community of business entrepreneurs. It was negotiated to provide redress for breaches of the Treaty's guarantee of protection for Maori fisheries, identified by the Tribunal, which included the establishment of a private quota system used to distribute rights to

https://doi.org/10.1111/j.1540-5893.2005.00232.x Published online by Cambridge University Press

catch fish (Waitangi Tribunal 1986:xx, 228). In response, the Maori Fisheries Act (1989) created a Maori Fisheries Commission (Sec. 4) in which 2.5% of the quota was lodged (Sec. 40). The Commission was created as a corporation with corporate capacity (Sec. 4(1)), and the ministerially appointed commissioners included several of the directors of MIL (Kelsey 1990:250; M. Durie 1998:225). The functions of the Commission included facilitating the entry of Maori into the business of fishing, forming a public company, holding the shares in the company, and transferring at least 50% of the Commission's quota to the company (Maori Fisheries Act 1989, Sec. 5). In 1992, as part of the settlement of further Treaty breaches identified in a subsequent Tribunal report (Waitangi Tribunal 1992: Sec. 14.3), the Maori Fisheries Commission and Brierley Investments Ltd. (BIL), a foreign investment company with a notorious reputation as an asset stripper (Kelsey 1990:265; Horton 1993), entered into a joint venture to purchase Sealord Products Ltd. (Sealord), a subsidiary of Carter Holt Harvey (CCH), one of the country's largest transnational companies, that held the largest single share of the fisheries quota (Treaty of Waitangi [Fisheries Claims] Settlement Act 1992, Sec. 2, 5, 20). The commercial structures involved in the deal, and the language required to describe it, reveal its imbrication in global corporate structures: "[t]he Commission is requiring that Maori give up their traditional ways of recognizing hapu and iwi, and adopt Western methods in order to fit with the Western Corporate model," reflecting the new enterprise society rather than Maori "custom or tikanga (the right way of doing things . . .)" (Milroy 2000:77).

The resulting Deed of Settlement with the Crown reflected the power imbalances between the parties. It purported to be a full and final settlement of all commercial Treaty fishing rights for all Maori, even those who did not sign (Treaty of Waitangi [Fisheries Claims] Settlement Act 1992, Sec. 9). Both the Tribunal and the courts were to be stripped of jurisdiction to hear Maori claims for both commercial and noncommercial fishing rights. Noncommercial fishing practices were to be developed through consultation by the Minister of Fisheries with Maori (Treaty of Waitangi [Fisheries Claims] Settlement Act 1992, Sec. 10[b]). This extinguishment of Treaty rights clarifies the high price of recognition of sameness in the first part of the logic of assimilation. Assimilation of Maori into the enterprise society involved exchanging a founding claim to full political and legal self-determination for money, a depleted fishing quota, and regulation of customary fishing practices by the Minister of Fisheries (Milroy 2000:69).

Some Maori noted that both the deal and the commissioners conformed to the government's economic and structural adjustment agenda: "[t]he composition of the board ensured that the

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management and direction of Maori participation in the fishing industry would fit the capitalist model of development and be compatible with Government economic goals" (Walker 1992:111). The assimilation of this strand of identity as Maori entrepreneurs was evident in characterizations as "wheeler-dealer, BMW driving, cell phone carrying entrepreneur[s]" (Kelsey 1990:338; Larner 1996:47). These men were widely described as entrepreneurs and as "middle-aged, media addicted men . . . [with a] tendency . . . to mimic the behaviors of government that have been roundly criticised by Maori" (Parata 1994:4). The reference to *mimic* evokes the colonial trope of mimicry, which suggests that occupying the assimilated position of both sameness and difference produces anxiety and operates as a menace to the legitimacy and authority of the colonizers (Bhaba 1997:153–8). As discussed below, this anxiety was reflected in the high level of scrutiny directed at the Maori negotiators as businessmen.

Further, in response to the government's choice of the Maori negotiators to represent Maori in the Sealord Deal, the Nga Kaiwhakamarama I Nga Ture (Maori Legal Service) conducted a survey of readers to identify Maori leaders. The survey revealed that leadership was firmly located at the local and regional level (not in the so-called national figures chosen by the government as negotiators). Only three Maori leaders gained more than 10% recognition outside of their iwi borders, two of those were women, and the third was not a negotiator of the Sealord Deal (Mikaere 1994:148). Both the fact that leadership operated at the local level and the leadership of the women who gained national recognition were ignored in the government's choice of negotiators for the Sealord Deal. This point foreshadows the discussion below of the role of women in the national imaginary produced by the government-controlled settlements process.

Subsequent to the Sealord Deal, the government pursued individual settlements with Maori iwi with an intention to settle *all* Treaty claims quickly and for a total amount of $1 billion.[22] The government then settled Treaty grievances with two major iwi: Waikato-Tainui and Ngai Tahu.[23] These high-profile, politically visible settlements, referred to by the Crown as "benchmark settlements" (Mikaere & Milroy 1998:476), became the models for subsequent negotiations. Both iwi settlements were negotiated by tribal trust boards, which were created by statute with members appointed by the Minister of Maori Affairs (M. Durie 1998:225). Sir Robert Mahuta and Sir Tepene O'Regan were the principal

[22] This amount included the Sealord Deal and various other amounts, leaving approximately $650 M for all other settlements.

[23] Waikato Raupatu Settlement Act 1995; Ngai Tahu Settlement Act 1998.

https://doi.org/10.1111/j.1540-5893.2005.00232.x Published online by Cambridge University Press

negotiators for, respectively, the Waikato-Tainui settlement and the Ngai Tahu settlement. Both men had been directors of MIL, Fisheries Commissioners, and negotiators of the Sealord Deal. O'Regan is described as "the best known example of the new breed of Maori capitalist leaders" (Horton 1993:14). Mahuta is described using the classic "rags-to-riches" myth that legitimates capitalism (Flax 1998:15) as leaving "his job as a freezing worker [in a meat freezing factory] to go back to school and [ending] up with a master's degree from Oxford" ("New knight Mahuta's vision praised," *Dominion*, 3 June 1996, p. 2). The fact that Mahuta's degree is actually from Auckland University reveals the mythical aspect of the story (Tainui News 1999). In the rags-to-riches story that legitimizes the capitalist nation, the logic of assimilation means that Mahuta is "almost the same but not quite" or "[a]lmost the same but not white" (Bhaba 1997:156).

Consistent with the Sealord Deal, these settlements mirrored the privatized corporate forms produced through structural adjustment by:

> lock[ing] Maori resources into corporate ventures, which the entrepreneurs [Maori negotiators] often help to run at considerable personal gain. In line with "free market" thinking the benefits are meant to trickle down to the people as financial dividends over time. (Kelsey 1997:366)[24]

The structure of the Treaty settlements was shaped by New Zealand's ongoing process of structural adjustment. The government's terminology reflected its approach to Treaty claims as "settlements" of business disputes negotiated among businessmen, without reference to disparate bargaining power, consistent with the emphasis on the structural adjustment of balancing the budget by paying off national debt. The government arbitrarily (Field 1997) predetermined the monetary amount of the settlements, which was a tiny fraction of the estimated value of the claims (Mikaere 1997:450; Mahuta 1995:79), and many of the terms and conditions. The policy requirement of the use of "proper legal structures" within the existing legal system for the management and administration of settlement assets (Rumbles 1998:72; Mikaere 1997:452–3) worked to reproduce Maori organizations in corporate and other capitalist forms, also consistent with the privatization of government assets more generally.

The convergence of a carefully controlled, economically driven Treaty settlement policy and the emergence of a new identity of Maori entrepreneurs resulted in Treaty settlements structured as corporate deals. Symbolically, these deals told a story of an alliance,

[24] Tainui Maaori Trust Board (1998).

https://doi.org/10.1111/j.1540-5893.2005.00232.x Published online by Cambridge University Press

or partnership of men across race. The Minister of Treaty of Waitangi Negotiations' introduction of the Waikato-Tainui Raupatu Claims Settlement Bill (1995) included these statements:

> We now have the maturity as a nation to recognise an injustice, to acknowledge wrong done, to provide fair redress . . . and to restore the honour of the Crown. Maori and non-Maori can work in harmony for a common future. . . . It [the Bill] represents the beginning of a new era for the Crown and Waikato-Tainui, a new relationship in terms of the Treaty of Waitangi, and a determination to work together for a better future for the hapu of Waikato-Tainui and all other New Zealanders. (Hansard 1995:8319)

This language emphasized the connections, or alliances, forged by the settlement between Maori and non-Maori and between the Crown and Waikato-Tainui. It masked the gendered aspects of the settlements process while it highlighted the restoration of the Crown to its dominant position. At a moment when the emerging strong form of biculturalism as a national identity most threatened New Zealand's established monoculturalism and the groups that had gained dominance through the process of colonization, this alliance restored stability in their dominant positions.

As Flax has argued with respect to the (U.S. Supreme Court Justice) Clarence Thomas hearings:

> [in response to a threat to the nation's integrity] [o]nly fraternity could restore civility and decency to the public world, and this heroic task might require the provisional admission of some black/males into the pale of propriety. In moments of such danger, their inclusion is worth the risk. Some subordinates had already made considerable effort to signify their loyalty. When a nation is at war, it is willing to arm reliable black/males and induct them into the military. (Flax 1998:125)

The re-emergence of political activism and the court challenges to privatization compromised the project of structural adjustment and threatened the prevailing monocultural story of the founding of New Zealand. The decision in *NZMC v. A-G*, followed by the Treaty settlement process, shifted the official national identity to a nonthreatening form of biculturalism as a partnership that was subordinated and incorporated into the new enterprise society, ensuring the maintenance of the dominant groups in power and the continuing unified sovereignty of the state. This process involved the emergence of a new identity of Maori entrepreneurs, which allowed the inclusion of some Maori men into the new enterprise society or, in Flax's words, the "pale of propriety." Mahuta and O'Regan had placed themselves at the forefront of the shift to the enterprise society, and the stories told about them assimilated

https://doi.org/10.1111/j.1540-5893.2005.00232.x Published online by Cambridge University Press

them into the new identity. Their knighthoods (Aldridge 1997), granted after the two settlements, highlighted their inclusion as partners in propriety and symbolized the neocolonial aspect of that propriety. The settlement partnerships, or alliances across race, portrayed them as reasonable, realistic, and deserving of knighthood.

Some have argued that self-determination requires economic self-sufficiency, and that the settlements were a first step toward self-determination. However, others argue that the settlements came at great cost (Rumbles 1998:75–7). They were negotiated solely in monetary terms at tiny fractions of the estimated amounts of the claims, were structured consistent with neoliberal economic theory, and ignored issues of self-determination and political power-sharing, such as Jackson's claim for parallel legal systems (Young 1995:5), forfeiting future claims to te tino rangatiratanga.

At the Boundaries of the Enterprise Society: The Mark of Race

The first part of the logic of assimilation provided recognition for a new identity of Maori entrepreneurs as partners in the law and policy reform of structural adjustment. The second part of this logic left the residual differences of this identity, especially the mark of race, unassimilated:

> the process of assimilation ... requires that which defines the difference between the two elements to remain over as a residue. Hence, although it is possible to conceive formally of an equable process of assimilation in which the original elements are entirely equivalent, the product of assimilation will always necessarily be in hierarchical relation to the residual, whether this be defined as variously, the primitive, the local, or the merely contingent. (Lloyd 1991:73)

The title *corporate warriors* for the Maori entrepreneurs symbolizes the operation of this assimilative logic (Kawariki 1995:48): "[t]here has been growth in what have become popularly known as corporate warriors, predominately Maori men, who sit on countless boards of directors and fisheries committees and make decisions which will impact on all Maori" (Mikaere 1997:447). This title signals both assimilation as the reflection of the dominant "corporate" partner in the new global enterprise society and difference as the "warrior" marked local and primitive, and raced other. This identity has also been encapsulated in titles such as the Business Brown Table, or just the Brown Table (Horton 1993; MacFie 1997:101), as a reflection of the New Zealand Business Round Table. Similarly, the Ngai Tahu central corporation, Te Runanga O Ngai Tahu has been dubbed the "brown-faced Brierleys" (MacFie 1997:102).

https://doi.org/10.1111/j.1540-5893.2005.00232.x Published online by Cambridge University Press

These appellations reproduce in the neoliberal economic terms of global enterprise the colonial marking of the assimilated "other" as "just like a white man" or as a "black Englishman" (Lloyd 1991:85).

The colonial trope of mimicry, the recognition of sameness leaving a residue of difference, pays homage to the dominant identity of "white man" and disrupts the authority of that identity by continuing to carry the residue, or mark of race. This disruption, part of the logic of assimilation, is a menace to the legitimacy of colonization, resulting in anxiety in dominant groups, which is reflected in media statements assuming Maori business incompetence and commercial naïvete (Kelsey 1993:250). For example, the *National Business Review* stated that the Waikato-Tainui settlement was "lavish[ed] . . . on fat pay packets, flash cars, jobs for the boys and questionable investments" (Anderson 1991:22; Ramsden 1994:254). These assumptions are also reflected in the high level of scrutiny to which the use of settlement proceeds is subjected—"a level of public scrutiny that most listed public companies would find challenging" (MacFie 1997:99). Conspicuous consumption by white European entrepreneurs indicates success, leadership, and moral superiority (Flax 1998:125). The supposed conspicuous consumption associated with the new Maori entrepreneurs is portrayed negatively as moral inferiority:

> The tone of recent media attention on Tainui is disturbing. On one level non-Maori driving sports cars around Remuera are considered a sign of economic success, while in Hamilton conspicuous consumption by Maori is taken as prima facie evidence of nepotistic corruption. . . . Unfortunately Maori will always be subject to unusual scrutiny. Some people are uncomfortable with anything Maori. The thought of having to treat successful and confident Maori as equals is something quite horrifying and terrifying. (Horton 1993:14)

The menace of mimicry, creating anxiety, is captured here as "horrifying and terrifying." The media comments reflect resentment of the possibility of a Maori elite, clarifying that the subject/citizen position in the new enterprise society is reserved for white males. Further, while the quote challenges the tone of media scrutiny, it accepts the assumption of conspicuous consumption. In fact, both O'Regan and Mahuta have replied that they have worked extremely hard for many years with modest compensation, never drawing the level of salaries regularly paid to business executives in comparable positions (Tainui Maaori Trust Board 1998; Aldridge 1997). This heightened scrutiny indicates that the assimilation of the identity of Maori entrepreneurs is not complete. Those

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portrayed as part of the new identity endure continued scrutiny as a result of their unassimilated differences.

The production of a new identity of rational and reasonable Maori entrepreneurs who settle claims on the government's terms allows those who refuse to settle on similar terms to be portrayed as unreasonable and unrealistic:

> Mr Graham has offered $40 M to the Whakatohea tribe in the Bay of Plenty to settle claims arising from the Crown's military invasion. The confiscated land today might be worth billions, says Mr Graham, "but there are only 8000 of them (in the tribe) and the idea that somehow they should get all of that money is unrealistic." (Hubbard 1997:2)

The Whakatohea's rejection of the government's limited offer resulted in immediate stigmatization; they were told that they would have to go to the end of the line and wait for their case to come up again to renegotiate with another government (*The Press*, 28 Dec 2000, p. 6). Further, their negotiating team was portrayed as incompetent and unable to lead, and it was blamed for the settlement failure (Rumbles 1998:75–6).

The refusal of many Maori to settle on the government's terms haunts the new national identity of partnership and the assimilation of the identity of Maori entrepreneurs into that partnership (Gordon 1997:22–4). This haunting is symbolized by the "Maori activists" or "radicals," who include Maori women. In the next part, I analyze the gender dynamics of the new partnership and the new Maori entrepreneurs in that partnership.

Displacing Gender and Culture: Silencing Maori Women Within the Nation

I have argued that law and policy reform in Aotearoa New Zealand has been integral to shifting two strands of national identity, from monoculturalism to biculturalism and from caring to competition. Tensions between these two strands of identity were partially resolved in a new national identity of partnership and through assimilation of the new Maori entrepreneurs into that identity. The logic of the modern nation as an imagined political community rests on both stories of origin of a shared communal past, and progress forward as agents of modernity. Gendering this Eurocentric logic reveals women as symbols of the authentic, traditional past and men as the forward-thrusting agents of progress (McClintock 1995:358–60). Similarly, the logic of assimilation, or mimicry, which recognizes sameness, has also required displacing residual differences, the marks of gender and culture, left from the new Maori entrepreneurs, onto "others,"

https://doi.org/10.1111/j.1540-5893.2005.00232.x Published online by Cambridge University Press

particularly women. In the Treaty settlements process, as the Maori negotiators forged into the new enterprise society as entrepreneurs, if the logic of the dominant culture was operating, it suggests that the identity possibilities for Maori women would be limited to bearers of traditional culture (McClintock 1995:355). However, in reality, both colonial and neocolonial attempts to conform Maori women to the role of bearers of culture were met with the materiality of the varied roles of Maori women and with their resistance. The first section of this part introduces my argument by analyzing the intersection of the Eurocentric logic of gender with colonization in Aotearoa New Zealand. Using this analysis, I outline my argument for the remainder of this part at the end of the first section.

Maori Women and Colonization

Any reference to a unitary or static "Maori culture" is likely to be misleading (Hall 1996:210–2; Kapur 2001:341–2). Maori protocol, and the roles of Maori women, have varied on a local or regional basis. Historical research suggests that the traditional roles of Maori women tended to encompass a range of powerful and influential positions and possibilities (Mahuika 1992:87; Binney 1992:12). Prominent Maori women scholars have pointed out that there is much evidence that traditionally Maori women assumed a whole range of leadership roles (Mikaere 1994:125–49; Sykes 1995:40). There is "unmistakable evidence that women's lives were richer and more varied than has ever been suggested in the 'received' anthropological literature," and "[a]ll Maori women enjoyed a better status than that being experienced by women in Europe at the time" (Binney 1992:14; Hoskins 1997:32).

The dominant colonial perception of Maori women tended to ignore any leadership roles or status that they enjoyed. Consistent with the Eurocentric logic of gender, Maori women were perceived "either in family terms as wives and children or in sexual terms as easy partners. Women who had 'chiefly' roles were considered the exception to the rule, not the norm" (Smith 1992:48–9). One early example of colonial attempts to limit the roles of Maori women involves the Treaty. British emissaries collecting signatures to the Treaty refused to recognize many Maori women leaders by refusing to allow them to sign, attempting to consign them to positions of subordination to Maori men (Sykes 1995:41). Despite this colonial attempt to subordinate them, a number of Maori women leaders signed on the insistence of the groups that they represented (Orange 1987:90; Rei 1993:8–9; Sykes 1995).

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Creating empire required the production of domestic space. Interior domestic spaces filled with items from England created "home," in contrast with the exterior "foreign" landscape of the colony, emphasizing the penetration of imperialism into new territory and creating a familiar space for the exercise of patriarchy and the reproduction of imperial gender dynamics (Mohanran 1999:158–63; Merry 2000:15–16). White missionary women operated within this logic of colonization and gender, fostering the image of women as bearers of culture and the civilizers of the indigenous culture's "savagery." They promoted the idea that Maori girls bore the "hope of salvation" of the "savage" race, their influence "one of the most helpful agencies in bringing about moral and spiritual reform" (Brookes & Tennant 1992:41–2). Colonial schooling, implemented by British women acting (and reacting) as the "civilizers" of the culture (McClintock 1995:6; Laing & Coleman 1998:4), taught Maori girls to be proper "wives" and "domestic servants" (Smith 1992:44; Merry 2000:15).

The intersection of the dominant logic of gender and colonization involved reshaping the leadership and other roles of Maori women as subordinate to Maori men, reconstructing local practices and protocols (Hoskins 1997:32; Binney 1992:14). For example, it has been persuasively argued that the version of Maori cosmology set out by nineteenth-century Pakeha anthropologists "destroyed the balance between female and male elements" of the Maori creation stories (Milroy 1996:88; Mikaere 1995a). This version was from a localized Ngati Kahungunu cult and it was chosen by anthropologists as being closer to Christian creation stories precisely because it privileged the male elements. The reification of this localized story as *the* Maori cosmology by these anthropologists rendered Maori women in "passive roles, thereby neutralizing their power" (Mikaere 1995a:83), and was an integral part of the process of colonization of Maori practices and protocols through the sexist lenses of Eurocentric culture (Yural-Davis 1997:13; Ramsden 1994:255).

The complex process of reshaping varied Maori protocols to reflect the logic of gender of the dominant Eurocentric culture was an integral part of the justification of colonization:

> when the power of women is erased . . . what sticks on the surface is confirmation of a powerful stereotype: that Indigenous women are the social pawns of Indigenous men. . . . the domination of men over women is [then] taken as an index of [the Indigenous' culture's] savagery . . . the logic of this imagery of gender relations is that the coloniser appears as a savior who will rescue Indigenous women from the ills or evils of their own society. . . . which must be changed in order to co-exist in the contemporary world. (Rose 1996:12)

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In this colonial dynamic, indigenous women were saved from the sexism of male-dominated indigenous culture by the "progress" toward civilization offered by white men through colonization (Spivak 1988:299; Mohanran 1999:61). In the next two sections I explore this dynamic in relation to Aotearoa's Treaty settlement process. I argue that the government's approach to the process ignored the leadership and power of Maori women, both in the emerging strong form of biculturalism and more generally. The resulting absence of Maori women in these high-profile national stories told in the settlements process repeated the Eurocentric logic of nation and identity, conforming identity possibilities for Maori women to "traditional" roles, even while they continued to be recognized as leaders at the local and regional levels. Maori women who refused these "traditional" roles, in some cases by protesting against the settlements, were labeled as "activists," "radicals," and "theatrical." One notable exception to the erasure of Maori women as leaders in the national imaginary was the relentless attention focused on critiques by Maori women of Maori protocol as sexist. The erasure of Maori women as activists and leaders at the national level paralleled these repeated assertions of the sexism of some Maori protocols. This dynamic repeated the historical colonial justification of colonization as saving indigenous women from the sexism of Maori society, this time through a symbolic partnership of men across race.

Gender and Treaty Settlements: Erasing Maori Women as Leaders

While Maori women have continued to play key leadership roles in Maori society, government and media at the national level have continued to ignore, repress, and resist recognizing those roles. Maori women have been central to the revitalization of Maori culture over the past two decades (Evans 1994:64). Many also occupy powerful and influential positions within Maori culture and society, and "have maintained a vanguard position on Treaty issues and debates with the Crown" (Rangiheuea 1995:108). Maori women have been the leaders of many protest actions against the injustices of Treaty breaches (Henare 1994:126). In 1975, Dame Whina Cooper organized and led a land march of more than 30,000 people to Parliament to highlight grievances of Maori based on the Treaty (Kelsey 1990:20–2). The protests of the 1980s included claims to absolute Maori sovereignty made by a number of vocal, articulate, and powerful Maori women (Awatere 1984). Maori women often marched in the front lines of protest against the Springbok Rugby Tour of New Zealand in 1981, to protest the fact that the South African rugby team was not racially integrated and that Maori members of the New Zealand team had been

https://doi.org/10.1111/j.1540-5893.2005.00232.x Published online by Cambridge University Press

refused permission to tour South Africa. As already discussed, Maori women have also been active in deconstructing and reconstructing colonization and Maori culture. Maori women founded Te Kohunga Reo, an early childhood program taught exclusively in Maori, out of which has emerged an "active and politically aware generation of Maori women" (Smith 1992:45). Further, as discussed above, Maori leadership is located at the local and regional levels, where women feature prominently in leadership.

The varied leadership roles filled by Maori women have not been recognized by the government with participation in the benchmark Treaty settlements (Hunt 2002:56–62):

> Maori women's role in decision making processes, particularly within Maori institutions such as trust boards, councils, commissions and iwi authorities, is negligible . . . The Sealords deal and the fiscal envelop [*sic*] have amplified the need for Maori women to reassert their decision-making processes. (Rangiheuea 1995:107–8)

Many of the institutions referred to here, such as iwi trust boards, have members appointed by the government. Dame Mira Szasy, one of the women who received recognition as a leader outside of her iwi borders in a Maori Legal Services survey, spoke for the Maori Women's Welfare League:

> As Maori women we are deeply concerned about the direction the Treaty claims are going. . . . Maori women have allowed themselves to be marginalized and excluded from the Treaty resolution process for too long. Perhaps we have assumed our quiet persistent voices will be heard. They have not been. (Szasy 1995:110)

This quote suggests that not only are the leaders recognized by the government male, but that Maori women's voices are not heard in the settlements process through any mechanism that might overcome this gender exclusion. Further, there is some suggestion from Maori women scholars that the dynamic of consigning them to roles as bearers of traditional culture is operating:

> There is no system of guarantee of a place for Maori women within our own institutions or within the new organisations which have evolved to manage our assets. Any talk of structural change sends the Government and our Maori men into a tailspin. (Rangihuea 1995:108)

This dynamic may result in consigning Maori women to static "traditional" roles while reshaping the roles of some Maori men as part of their assimilation into the new national identity; "[t]he changes being made to our culture are freeing up the role and status of all men, Maori and Pakeha whilst petrifying, meaning ceasing to change or develop, the role and status of Maori women" (Irwin 1992:18). This analysis suggests that the gender "spin" on

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the settlements process is that fluidity, and modernization, is appropriate for the roles of Maori men. In contrast, women's roles remain static. In other words, it might be suggested that Maori women carry, or symbolize, "traditional" Maori culture (Mohanran 1999:105–10). The important point here is that this dynamic, if it is operating, repeats the colonial trope of failing to recognize leadership and thereby consigning Maori women to a "traditional" private realm. Ignored in the national imaginary and Treaty settlements process as leaders, Maori women are left to roles as bearers of a "traditional" culture, invisible in the modern dynamic of moving the nation forward (McClintock 1995:352–7). In the new national imaginary, the identity of the Maori entrepreneurs as unmarked subjects may be constructed in opposition to the local, particular, and primitive represented by the colonized "traditional" culture imposed on Maori women.

Maori women who voice protests against the settlements, and especially against compromising claims for full political self-determination, may be labeled as "Maori activists" in the national imaginary and may be represented as "theatrical" (Kelsey 1997:231; see Te Aho 2001:211, 222–9). One example involves Eva Rickard, who was famous for her work recovering confiscated land from the government. Her opposition to the Waikato-Tainui settlement was described in a media report on the celebration of the settlement in these terms: "The joy of yesterday's ceremony was slightly marred by the theatrical Eva Rickard and a small band of protestors opposed to the settlement" (*The Evening Post*, 23 May 1995, p. 6). Here "theatrical" evokes images of drama and fantasy, and combined with "band" produces perhaps an image of a traveling gypsy band of performers, the classic outsiders to the modern nation. In the article this image is contrasted with the government's "goodwill" and the "reasonable" conclusion that "the debt has been paid and that must be recognized" (*The Evening Post*, 23 May 1995, p. 6).

Angeline Greensill, Eva Rickard's daughter, and others challenged the Tainui Maaori Trust Board's mandate to settle the Waikato-Tainui grievances in *Greensill v. Tainui Maori Trust Board* (1995) by seeking an interlocutory injunction on the basis of irregularities in appointments of board members and the fact that only 3,029 of 11,600 beneficiaries in a postal referendum voted in favor of the proposed settlement. The High Court dismissed the claim, in part by accepting the Crown's statement that it accepted that the Trust Board had a mandate (*Greensill v. Tainui Maori Trust Board* 1995: 11). The court stated that the proposed agreement was "an opportunity to Tainui, and the country, to address [an] historic wrong. . . and that would be to the enduring betterment and mana [influence, prestige, power] of both Tainui and this country as a whole," (*Greensill v. Tainui Maori Trust Board* 1995:14–5) and

https://doi.org/10.1111/j.1540-5893.2005.00232.x Published online by Cambridge University Press

concluded with respect to the overall interests of justice that "there is a compelling national interest in moving forward" (*Greensill v. Tainui Maori Trust Board* 1995:14–5; see Mikaere 1995b:154–5). Opposition to the proposed settlement was, by implication, not in the national interest or to the enduring benefit of the country as a whole. The plaintiffs were asking for the Court to put "the clock back several years" (*Greensill v. Tainui Maori Trust Board* 1995:14) rather than move forward into the progressive, modern future. Labeling opposition to the settlements and claims for full political self-determination as "backward" and "theatrical" in opposition to the "realistic" national interest in moving forward and bettering both Maori and the country as a whole operates to maintain the legitimacy of the myth of the illusion of national unity (McHugh 1997:199).

Contradictions: (Mis)Recognition of Maori Women at the National Level

Simultaneous with the erasure of Maori women as leaders in the Treaty settlements process at the national level, relentless attention has been focused on a few critiques of Maori protocol and society as sexist. One issue of Maori protocol that has received national attention involves women speaking on the *marae atea* (space in front of the meeting house) on important occasions (Irwin 1992:13). While protocol for speaking on marae varies locally and regionally, it is often assumed that Maori women traditionally were not permitted to speak on the marae at all (Irwin 1992:6). Recently Maori women have contested this assumption, arguing that there is generally only one type of speaking in which women do not participate, that traditionally at least some women performed even this type of speaking on at least some marae atea, and that traditionally women often engaged in other types of speaking and spoke during other parts of protocol on the marae more generally (Irwin 1992:12–8). They have also argued that Maori women have fulfilled other, equally important roles on the marae. Finally, they have critiqued the focus on this issue by national media and pakeha feminists. However, these points are rarely mentioned in debates in the national media about women "speaking on the marae."

The national media debate on this issue has revolved around Waitangi Day, a national holiday intended to celebrate the signing of the Treaty. In 1998, the pakeha female leader of the Labour Party was invited to speak on a marae atea at Waitangi on Waitangi Day. No Maori woman was invited to speak. Titewhai Harawira, a Maori woman member of *tangata whenua* (people belonging to the place), criticized her iwi for this flexibility regarding cultural roles for a pakeha woman, while the roles for Maori women remained

https://doi.org/10.1111/j.1540-5893.2005.00232.x Published online by Cambridge University Press

static, preventing them from speaking (Barnao 1998:7). Harawira's critique is most often portrayed generally as an issue of women speaking on the marae, without recognition of the subtleties of the debate ("Delamere Says Full Tribe Should Vote on Deal," *New Zealand Herald*, 4 May 1997, p. 3). Her critique is used to contrast a sexist Maori culture "mired in the past" with a progressive pakeha culture in which "[f]emales have more dominant roles than ever before" (Watkins 2000b:7). Harawira's critique received extensive national media coverage, and the issue resurfaces every year as Waitangi Day approaches.

Similarly, extensive national coverage was provided for the debate sparked by a group of Maori women who attempted to carry out the wishes of Eva Rickard after her death. It was reported that Rickard had requested, prior to her death, that a friend "push for the right of Maori women to speak on marae" (Te Anga 1997:3). Initially, the request of a group of women, including this friend, to speak at her *tangihanga* (funeral) was denied, but after a delay it was granted. The event was widely reported with little analysis of the details of protocol, speaking rights more generally, regional variations, or the subtleties of the debate, leaving the impression of conflict among Maori and particularly between Maori men and women, and of sexism in Maori society. Thus, relentless attention has been focused on claims that Maori culture and protocol are sexist, at the same time as the activities of Maori women as leaders within Maori society have been ignored.

The relentless attention to these images of Maori protocol as sexist does not equate to recognition of the women involved within the nation. The most obvious example of this is Harawira. While her critiques receive national media attention, she is repeatedly characterized as unreasonable and placed outside the national imaginary. To list just a few examples, she has been called an "outspoken agitator" (*Waikato Times*, 29 January 2000, p. 6), "inexcusably vulgar and aggressive" (Watkins 2000b:7), a "big mouth" (Watkins 2000a:7), a cultural hypocrite (*Daily News*, 10 August 2000, p. 6), a Maori activist (Watkins 2000a), and a contender for the most hated woman in New Zealand (Bain 2001). The effect of this labeling is to highlight her critiques of Maori culture as sexist while erasing her as a serious political subject within the nation.

Ignoring Maori women as leaders at the national level of Treaty settlements, and constraining their identity possibilities at that level to bearers of reconstructed traditional cultures, silences their political activism and claims for self-determination and reproduces the racist stereotype of indigenous cultures as sexist. This stereotype is perpetuated by relentless (mis)recognition of the critiques of Maori culture by a few Maori women. This dynamic of erasure and (mis)recognition leaves Maori women with little space to speak

within the national imaginary (Spivak 1988:306–8), facilitating the repetition of the colonial strategy justifying the push to "modernize" or "civilize" indigenous peoples. At this particular moment in Aotearoa New Zealand it justifies the pressure to assimilate Maori people and "modernize" Maori society through the ongoing process of Treaty settlements, conforming both to a new enterprise national identity.

Conclusion

This article has analyzed the dynamic interrelationships of law, race, gender, and nation in a current, specific process for redressing historical racial injustices. Using the tools of postcolonial theory and the insights of postcolonial studies, it eschews any analysis of the indigenous Maori as one undifferentiated monolithic group, instead focusing on the dynamic positioning, and interrelationships, of a complex series of groups, both Maori and non-Maori. Rather than assuming that postcolonialism is a period following on and progressing from colonization, it unveils colonial tropes through a reading of current law and policy documents. It cautions against easy assumptions of progress beyond historical race and gender configurations, highlighting the repetition of these configurations in current attempts to find justice.

This analysis, and its identification of colonial tropes in the Treaty settlement process in Aotearoa New Zealand, is performed retrospectively, after the major settlements creating the model for settlements more generally were completed. From this distance it is relatively easy to analyze and critique what was, at the time, a complex set of circumstances on a rapidly shifting terrain, in which the players, especially the Maori negotiators, who were operating in a context where the Treaty settlements process was "the only game in town" to respond to historical injustices, could only move into an uncertain future. New possibilities for individual identities emerged as stories of national identity were remolded. The agency of all of the participants, as well as the availability of these identities, contributed to shaping both national and individual identities, to the repetition of colonial tropes, and to the potential to move beyond those old dynamics. The Treaty settlements both operate as rational exercises of agency by the Maori negotiators to achieve some economic self-sufficiency, potentially leading to self-determination, and work to silence and erase the claims of activists to full political self-determination. In this process, Maori women have been both silenced at the level of national discourse and continue to be recognized by Maori as leaders at the local and regional levels.

https://doi.org/10.1111/j.1540-5893.2005.00232.x Published online by Cambridge University Press

Viewing the Treaty settlements process at the national level through the lenses of postcolonial theory reveals the continuing power of the idea of the modern nation, and stories of national identity, in shaping and repeating "race" and gender configurations. Law, the modern nation, and colonization were and are intricately bound (Fitzpatrick 2001). This view suggests that realization of the transformative potential of reparations for slavery and other historical racial injustices requires attention to the raced and gendered dynamics of the imagined communities that make up nations, and shape and limit that potential. In particular, any process of reparations will need an awareness of historical gender dynamics, and an explicit response to those dynamics, in order to avoid reproducing historical gender injustices in the process of addressing historical racial injustices.

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https://doi.org/10.1111/j.1540-5893.2005.00232.x Published online by Cambridge University Press