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From:
To: ConstitutionalReview
Date: 5/08/2013 10:05 a.m.
Subject: Fwd: Fw: Democracy and the Constitution
Attachments: OP11 - Harding - FINAL - 14 Aug 2006.doc; FLERAS.doc

>>> Aoraki Consultant Services 3/08/2013 11:18 p.m. >>>

Kia ora Lauren

I am assuming the email herewith can be construed as constituting a submission! The two attachments - however interesting, indeed worth reading in their own right - cannot! TOR

Sir Tipene O'Regan

Christchurch
New Zealand

m.
h.
b.

----- Forwarded Message -----

From: Bruce Harding
To: Aoraki Consultant Services
Sent: Monday, 29 July 2013 1:17 PM
Subject: RE: Democracy and the Constitution

Kia ora Tipene!

I am almost missing the extended Constitution deadline, so I am cheating a little in sending you the attached plus my simply stated submission that Aotearoa/New Zealand needs a formal written constitution which enshrines Te Tiriti o Waitangi as supreme law of the land—as the core Grundnorm (Hans Kelsen) that must drive citizenship policy and our heritage as a rule of law democracy. We need to equally enshrine and entrench the Bill of Rights Act 1990, perhaps as a formal Bill of Rights document, as per the US Constitution.

We need to officially revisit the 1985 White Paper on the Bill of Rights and to entrench and 'treat' the Treaty as a secular higher law of this land in Pocockian terms as the root of Crown sovereignty. As we know, this is necessary for Article Two to actually circumscribe and qualify the Crown's assertions of Diceyan indivisible state sovereignty, as expressed in Wi Parata.

To formally constitutionalize the Treaty is to recognize Maori aboriginal title as the original radical allodial title of this archipelago. The scholarship (McHugh etc) on this point exists. The Treaty must have status as Higher Law and not remain inoperative and unjusticiable in domestic law as is currently the case (except for express and discrete statutory recognitions).

I thought the Maaka-Fleras book ***The Politics of Indigeneity*** should have been on the reading list, along with Brookfield's ***Waitangi and Indigenous Rights***. Also Niall Ferguson's 2011 BBC Reith Lectures on rule of law thinking.

Can I ask you to kindly forward this email to the relevant person at The Commission? We have been so busy with my mother's health and packing up a house for EQC.....:(

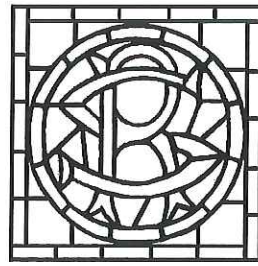
I can expand on these points but I am sure they have been well traversed by a raft of scholarly submitters.

Ka mihi nui na

Bruce

Dr Bruce Harding
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NEW ZEALAND



Number 11

***Keri Hulme's the bone people and the
problematic birth of a bi-national
New Zealand polity***

Bruce Harding

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***Keri Hulme's the bone people and the
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Bruce Harding

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Preface

In this paper, the Treaty of Waitangi Research Unit has moved outside its usual terms of reference of examining Crown-Maori relations, historically and contemporaneously, from political and/or social perspectives. Bruce Harding's exploration is one of engaged literary criticism, in which he essays melding the text and the context of Keri Hulme's award winning book *the bone people*.

Dr Harding is a literary scholar with a decided bias towards wide, cross-disciplinary and 'contrapuntal' (Edward Said) readings of Cultural Studies and, especially, the prospects of a law-literature conjunction. He gained a doctorate from Otago University for an historical investigation into trans-Tasman tropes of criminality and deviance. His subsequent legal study, and a growing interest in appropriate constitutional arrangements for New Zealand in the new millennium (in particular, the notion of bi-nationalism), led him to tackle the issues in this paper. The origins of the paper, in fact, began some years ago, with a presentation to a Pacific Islands Political Science Association [PIPSA] conference. His interest in such issues quickened when the government proposed foreshore and seabed legislation in order to override a judicial decision that endorsed Maori rights, in the face of almost universal Maori opposition.

Dr Harding is a Research Associate at the Macmillan Brown Centre for Pacific Studies at the University of Canterbury, where he lectures in Maori and Pacific literature in English, and has a particular scholarly interest in the writings of Keri Hulme. He takes a keen interest in defence, security and international issues, and is the Curator of the Ngaio Marsh House in Christchurch.

Richard Hill

August 2006

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I see a mountain overpopulated with the working class, the outcast, the drunkards, the black, the poor, the Polynesian, the white.

JOHN PUHIATAU PULE¹

We are sea-people

Come from islands the world over

Sea-people are not intrinsically gentle

Storms and waves have seen to that

Yet we try to be pacific

... Yes, we are small people from little islands

but we have sailed our hopes on the age-old path, that

wideness of life,

our birth and making zone, Te Moananui a Kiwa –

KERI HULME²

Introduction

A New Voice

On 18 February 1984, Hulme's novel *the bone people*³ was launched as a new force in Antipodean writing. Despite its status as a novel in gestation since 1966 – even its author considered it an ‘apprentice work’ – *the bone people* seemed to tap a raw nerve in the Kiwi soul.⁴ Hulme had already won the Pegasus Prize for Maori Literature and the 1984 New Zealand Book Award for Fiction, and was in the United States to promote the work when the real storm broke: her novel won the 1985 Booker McConnell Prize for Fiction in London. Among the British literary establishment, the cultural novelty and challenge of *the bone people* provoked shock and scorn. A cynical columnist, for example, noting the success of non-British Booker winners such as Hulme, Ben Okri, Kazuo Ishiguro and Michael Ondaatje, spluttered that Hulme's Booker success was entirely attributable to ‘a dash of ethnic cred’, for *the bone people* was a ‘dismal novel’.⁵ In 1990, author D J Taylor, a vehement critic of the emotional barrenness of contemporary British fiction, typified such negative reactions as ‘the usual hoots of derision from traditionalists’.⁶ Karen Lamb, an Australian critic writing about Peter Carey (whose *Illywhacker* was also short-listed for the Booker that year), opined that the controversy over *the bone people*'s win ‘demonstrates the pervasiveness of anglo-celtic superior attitudes towards writers from postcolonial cultures’, adding that ‘the reaction to Hulme's win was ungracious and adverse’.⁷

This paper will trace the striking emergence of Keri Hulme's poetic, especially in *the bone people*. It explores text to demonstrate how Hulme attempted to advance Pakeha awareness of tikanga Maori in a repressive and monocultural polity. My primary thesis is that Hulme's work is a nativist poetic, using metaphors and motifs of New Zealand/Aotearoa's ‘First People’ to advance beyond the dominant ‘Eu-romanticist’ template of New Zealand fiction. Hulme's text inscribes a productive dialectic between the praxis of life in Muldoon's New Zealand (demonstrating cruelties, racism and injustice toward minorities during 1975-84) and a prophetic vision of a bicultural journey for the New Zealand population. In historical terms, this journey began in July 1984 – some five months after *the bone people* was launched – when the Fourth Labour Government, which later gave enhances statutory recognition to the unique status of the *tangata whenua*, was elected.

Citing Graeme Turner's concept of the ‘National Fiction’, this socio-political reading of

Hulme (and of *the bone people* in particular) takes special cognisance of the fact that much of Hulme's most notable writerly endeavour occurred in the ten years between two pivotal politico-legal benchmarks: (i) the election of the Kirk Labour Government in 1972 (which established the Waitangi Tribunal under the *Treaty of Waitangi Act 1975*), and (ii) the election of the Lange Labour Government (which passed the *Treaty of Waitangi Amendment Act 1985*). The sourness and violence of Hulme's publications reflects the turbulence of the Muldoon era in New Zealand politics. The hypothesis presented in this paper is that the success of Hulme's work with the liberal reading public facilitated a tolerance and acceptance towards the expanded jurisdiction of the Waitangi Tribunal.

Signed in 1840, the Treaty of Waitangi oversaw the passing of the political sovereignty of Niu Tirenī from Maori to the Crown of England. In 1975, the *Treaty of Waitangi Act* provided for a tribunal to investigate contemporary Crown breaches of the terms of the Treaty. In 1985, the Act was amended to extend the scope of claims back to 1840. In this light, Hulme's work, which foregrounds the land as a central character, becomes proleptic, for it prefigured a string of vital and historic legal decisions from the New Zealand Court of Appeal with regard to Treaty issues during this period. That activity included relatively radical reports and recommendations from the Tribunal on contested sites, including a final, and helped to lead to an overdue settlement for Hulme's own tribe, Ngai Tahu.

The 'meta-sociological' exploration undertaken in this paper connects literature and law in New Zealand in a deliberate attempt to better understand the development of New Zealand identity in the 20 years since the appearance of *the bone people*. The controversial Foreshore and Seabed Act 2004 is also considered in tandem with Hulme's poetic (which escapes from what Leslie Fiedler once called 'the depressing pieties of the Culture Religion of Modernism'⁸), to better contemporise and contextualise the discussion. After all, Hulme's work well befits Fiedler's description of her age as one 'of myth and passion, sentimentality and fantasy',⁹ as her texts often close the gap between elite and mass culture in her use of dream-visions and constant pursuit of enlarged human potential (*ekstasis*).

I have communicated with Keri Hulme about this paper, and thank her for her willingness to correspond with me. I also thank Maureen West of the Treaty of Waitangi Research Unit for her work in preparing the manuscript for publication, and to an anonymous referee for his/her helpful comments.

Chapter 1

The Social Context of *the bone people*

True art ... clarifies life, establishes models of human action, casts nets towards the future, carefully judges our right and wrong directions, celebrates and mourns. It does not rant. It does not sneer or giggle in the face of death, it invents prayers and weapons. ... It strikes like lightning, or *is* lightning; whichever.¹⁰

Writing in 1965, Bruce Mason prophesised that 'the situation in New Zealand in the 1960's for the artist and intellectual is often so intolerable, the smugness and complacency so monumental that, paradoxically, the climate may soon be ripe for a masterpiece'.¹¹ This was precisely the period in which Hulme began to pen 'Simon Peter's Shell', the dream-story which formed the nascence of *the bone people*.

There are competing accounts of this formative period in New Zealand history. In 1966, Lady Bird Johnson, visiting with her husband President Lyndon B Johnson at the height of the Vietnam War, described her impressions of New Zealand: 'The streets were lined with Victorian houses in pastel colours that looked as if they had been the same for six decades ... A pleasant country and content, or so it seems from a few hours' view'.¹² Johnson also commented on the lack of anti-Vietnam protestors in Wellington ('few in number'). Yet Colin James has demonstrated that the 'Vietnam generation' in New Zealand possessed a robust 'spirit of independence' and a 'temperament of challenge and change'.¹³ This temperament ultimately sounded the death-knell of the stifling social consensus of 'Fortress New Zealand', and ushered in 'a quiet revolution, of attitudes'.¹⁴ In 1992, the Alliance MP (and Cabinet Minister) Sandra Lee reflected on her experience in the 1960s:

My generation saw that other countries drank coffee as well as tea, closed their hotels later than six o'clock and didn't live in weatherboard houses with butterflies on the side. And we came back with some great concerns about things like the Vietnam war and a general resistance to things that had gone before.¹⁵

The cross-currents of the sixties convulsed the New Zealand polity in the mid-to-late 1980s, as demonstrated by the unsettling political events which coincided with the publication of *the bone people*. Firstly, and ironically, the epoch-making General Election – which delivered the market revolution and transformed New Zealand from a welfare state to arguably the world's first post-welfare state – occurred on Bastille Day (14 July) in the Orwellian year of

1984. Secondly, Hulme's novel had been launched in Wellington in February, at almost the same moment as the New Zealand Labour Party's 'Proposed Economic Policy' document was unveiled to the Federation of Labour. The Policy was the first step in redesigning and dismantling the welfare state and deconstructing New Zealand's old public sector apparatus.¹⁶ Finally, Labour's visionary and counter-hegemonic Maori Affairs policy had also been released in February 1984. The three events provide compelling evidence of competing social visions and sovereignties.

For many Maori, the years after the Kirk-Rowling (Third) Labour Government of 1972-75, and the decade leading up to 1984, were especially sour. Despite the energy of the 1975 Land March, subsequent years were marked by a series of racial events which took place both within and outside New Zealand. At home, the 1975 election campaign headed by National Leader R D Muldoon used racist rhetoric (notably the infamous Hanna Barbera TV advertisements); raids were conducted on suspected Pacific Island 'over-stayers'; 1976 marked the beginning of a new phase in New Zealand and South Africa's racialised rugby relationship, with riots during the All Black Tour of South Africa. African countries boycotted the Montreal Olympic Games because of New Zealand's involvement, an issue which reappeared at the 1978 Edmonton Commonwealth Games. In 1977, New Zealand witnessed the Raglan Golf Course protest and an ugly stand-off at Bastion Point, which culminated in an Orwellian raid on a tent village in 1978. The various tensions congealed in the infamous 1981 Springbok Tour, which stretched the polity to the point of civil dissent. As self-proclaimed 'cultural oddjobsman' Hamish Keith observed, the 1981 Tour was a seminal event in New Zealand's long quest for identity:

It was a wake-up call for all of us to realise that the kind of mythic certainties that we had slumbered with previously about rural virtues and race relations and equality and justice and all those kinds of things that we took for granted along with the welfare state weren't urban realities.¹⁷

In fact, Keith understates: we discovered that those were not *New Zealand* realities, regardless of geographical or regional referents. As a case in point, in July 1976, the infamous 'Hori incident' erupted when Keith Allen, a National Party Undersecretary for Trade and Industry, riposting 'Hori, don't you know?' against Mr P B Reweti (Labour MP for Eastern Maori), during the first reading of a bill.¹⁸ The House was in justifiable uproar. Wordsmiths confirmed that the word was derogatory. The Chief Editor of the Oxford English Dictionary, New Zealand's Dr Robert Burchfield, stated that: 'this word is potential dynamite. I personally deplore its use'.¹⁹ Similar to use of the term 'wog', the term 'hori' connotes mental

deficiency or empty-headedness. At the time, Ranginui Walker highlighted the underlying issue when he warned 'Maori-pakeha unity is a pervasive theme in New Zealand society ... Today, relationships between Maori and pakeha are becoming more volatile. A wise pakeha would not tempt fate by using the word *hori* in the hearing of an urban Maori'.²⁰

The political and historical trends sketched above provide more than mere background, for *the bone people* was the product of this entire period; its lengthy development partly accounts for its prophetic qualities. Hulme's magnum opus may be viewed as a symbolic mythos as well as a realist narrative, for *the bone people* has macrocosmic reverberations as a parabolic 'national fiction'. It unpacks and allegorises the Treaty partnership for the new millennium, as well as exploring stations along that path.²¹ *the bone people* is a work which mixes social-realist narrativity with elements of social prophecy, a combination which literary critics call 'proleptic', giving teasing glimpses of a desired collective future. In Hulme's case, the mix is uncanny, for *the bone people* articulated and through fictional representation *demonstrated* present cruelties in New Zealand – a lack of compassion, racism and serious elements of injustice in the New Zealand polity – while also advancing public awareness of such fundamental Maori values (*tikanga Maori*) as *taha wairua* (spirituality), *wahi tapu* (sacred land) and *mana wahine* (power-women). The novel also managed to celebrate the vivifying Maori tradition of moral values and artistic processes, and to proffer metaphors of indigeneity for non-Maori readers, whose High Cultural writers had traditionally presented New Zealand as a negative 'anti-world' to Great Britain. As Vincent O'Sullivan stated in 1978, New Zealand fiction did not present 'the mind itself as a social event'; it lacked the gifts of sustained, intelligent conversation, of argument (a meeting of minds and philosophies) and of the play of mind over complex moral events.²² Hulme's foray into child battering as a power-parenting and existential issue (for the victim of abuse) challenged this syndrome. It is also the cardinal reason why it claimed the attention of the Booker-McConnell Prize panel. *the bone people* remains the first and to date, only, work of New Zealand fiction to garner a Booker Prize.

Radical praxis (a subversive analysis of social interaction) encompassing confrontation-dialogue along an equally troubled Maori-Pakeha spectrum is a central feature of *the bone people*. One early critic, Chris Prentice, noted that in its rejection of conventionalised sexual bonding, Hulme's novel 'is simply suggesting that bonds need not be biological, and that some of the most important bonds may not be so – a point which ... could be seen as an optimistic blueprint for future race relations'.²³ Prentice understood that Hulme's social commensalisms – modelled on the biological notion of species interdependence – might

proffer 'one solution to [New Zealand's] post-colonial crisis; the suggestion that it is possible to have the best of both Maori and Pakeha culture in New Zealand without compromise of either Maori sovereignty or a place for the Pakeha of Aotearoa'.²⁴

Chapter 2

Treaty Discourse and Hulme's Social Vision

The ethnic messages of Hulme's novel are polyvalent and complex, as it deconstructs both racist Anglo-Saxonism and mana Maori, as well as their vigorous interaction and dynamic conflict. One of the most astute American critics to appraise *the bone people*, Diane Jacobs, commented that Maori and 'their tribulations and renascence are the subtext' of *the bone people*; that the 'resonances of racial identity are deftly probed by Hulme'.²⁵ Celebrating Hulme's 'mature and provocative talent', Jacobs likened her to Alice Walker for her exploration of colonised states of being. Like Walker's, Hulme's 'ethnographer's zeal is politically resonant and always tempered by commitment to the living'.²⁶ Jacobs described *the bone people* as 'a spiritual quest, a meditation on racial identity, and a celebration of social responsibility', whose central project is apparent in the personality of the central character, Kerewin Holmes:

Kerewin's fascination with the appurtenances of Maori warrior tradition ... inspires her passionate revolt against Pakeha ecology and social hegemony in New Zealand.²⁷

Hulme's imaginative revolt against social hegemony has received little academic attention. It is noticeable that Caucasian literary critics in both hemispheres preferred, generally, to psychologise and individualise the base conflicts and stress-lines of *the bone people*. A rare exception amidst the chorus of British disapproval was Alastair Niven's 1986 prediction that *the bone people* would help to 'redefine a national culture' and thus 'will come to seem a watershed book in the development of New Zealand identity'.²⁸ The magnitude of Hulme's effort is apparent when compared to earlier depictions of New Zealand culture. The first extended fiction about New Zealand, H Butler Stoney's *Taranaki: A Tale of the War* (1861), portrayed Maori as racial out-castes, locked in ferocious nineteenth-century land grievances; the Taranaki Maori were lawless and treacherous savages. Stoney's is paradigmatic text: it embodied explicit and unapologetic nineteenth century European racism and denigration of the tangata whenua.

In contrast to Stoney's stark Maori-Pakeha division, the characters in *the bone people* elicit Hulme's vision of New Zealand Maori-Pakeha as an intermixed people. Kerewin Holmes, the 'heroine'/primary protagonist of *the bone people*, subscribes to the old rule of hyper-descent: the 'one drop of blood' approach, which argues that the offspring of a

Black/coloured person and a White is a 'Black'.²⁹ While Kerewin applies the label of 'goblin' (p 427) to the Caucasian/Celtic child Simon (the same word, *tapua*, which Maori used to describe explorer Captain Cook and his crewmen), she jests about being an 'octoroon' (p 61).³⁰ However, as Diane Jacobs has explained, *the bone people* treats its characters in a contradictory fashion. Arapera Blank illustrated this tendency when he noted that the Pakeha boy, 'the piece of [human] flotsam', Simon P Gillayley, is also:

Maui-Tikitiki-o-Taranga, the Turanga, the potiki, the youngest child of Taranga who rejected him because he was born prematurely on the seashore; the Maui who was fashioned and formed by the seaweed, squabbled and screeched over by sea-gulls, cradled in the deep, and rescued by his grandparent, Tama-Nui-Te-Rangi. The lifestyle of this boy is that of a Maui – impish, devilish, bloody infuriating, bloody-minded and wanting to be loved.³¹

Simon, a stumpy and wiry Pakeha-Maui 'brat'-waif with a 'birdboned chest' (p 17), tethered to a drunken and violent Maori foster-father, is searching for a mother. Kerewin, the isolate artist, sees herself as 'a right piratical-looking eschewball' (p 21) who talks 'loud nonsense to cover her pain' (p 25). Joe Gillayley, the ostensible 'ogre' of the novel, embodies what Peter Cleave labels the 'ethno-underclass' element, for Joe is what American Critical Race Theorists would term a 'raced' figure – embodying stereotypical criminality, irresponsibility and irrationality of behaviour, all presumed by dominant élites to be inherent features of the indigene. Even Kerewin succumbs to stereotypical and essentialised ethnic thinking, expecting Simon's father to be a 'rowdy Aryan barbarian', a 'loud and boisterous Viking type she'd bet' (p 28).

Joe beats Simon with unconscionable brutality, and hence Blank's observation that the title *the bone people* is 'quite apt' because the story forces its readers to experience 'the heart-ache of responding to the crying of many aching bones', both past and present. This extraordinary narrative, adds Blank:

... is concerned with the spiritual and emotional needs of a whanau, and the demands placed upon it by the common bonds of descent, heritage and environment. That the central character, the boy, is Pakeha makes the title even more meaningful. The writer has grasped the reality of the New Zealand situation, and that is, that Maori and Pakeha are sharing the heritage of the tangata-whenua – those people who fed, clothed and housed strangers on their shores.³²

While only Simon's foster-father, Joe is the classic 'deviant' Maori male of popular racist

hysteria and mythography. His characterisation invites readers to ponder whether as a man locked into the world of prison, heavy alcohol consumption and low-skill employment, he is unconsciously revenging himself upon a Pakeha. Cleave refers to his world as ‘a complex of negative sovereignty’; its inbuilt pathology and ‘a constant need to obliterate public success’ is a ‘steady reaction to thorough-going oppression.’³³

In this volatile clash of discourses (dominant and minority), Hulme’s over-arching project is to span the large conceptual gulf between the dominant primary cultures in New Zealand. This project is viewed in terms of the ongoing spirit of the Treaty partnership, a bicultural social myth and praxis which demonstrates Williams Crenshaw’s insistence upon both mixing and ‘the contingency of race’ as an organising concept in a race-conscious polity.³⁴ In Hulme’s own words, the heritage which Simon carries in his bones is vital to Aotearoa, ‘quite simply because nothing and nobody living here has been left untouched by that heritage. Love the fact or loathe it, the mauri of this land is now part-Pakeha’.³⁵ Hulme channelled her personal anger and frustration with New Zealand’s blinkered and racist social order into sophisticated fiction in order to challenge and, if possible, to controvert the counter-Treaty discourse that had been so ruinous to her own Ngai Tahu tribal group, and which was codified in case law from 1877 until 1987.³⁶ This pattern of counter-treaty jurisprudence forms part of what Jane Kelsey has termed ‘the logic of legal imperialism’, whereby English law was integral to the British imperial project.³⁷ By providing an alternative to this discourse, and being ultimately concerned with the spiritual and social welfare of the national community (as an expansion of *whanaungatanga*), *the bone people* is a fascinating instance of the productive interpenetration of art and politics.

the bone people is governed by a spiritual-social thematic exploration – which I refer to as the ‘Hinengaro Principle’, reflecting the Maori concept of mental well-being. It is not, therefore, surprising to discover that much of Hulme’s early writing anticipated vital issues, and common opinions and concerns, of the 1980s and 1990s. At its date of publication, *the bone people* pre-interrogated the body politic, anticipating David Lange’s 1991 comment that ‘our political system can’t stand more of the confusion of the last fifteen years’.³⁸ The excesses of the outgoing Muldoon administration had been ‘destructive of reasoned development and international viability’, and the successive Labour government used the ‘necessary removal of the Muldoon tentacles’ as ‘justification for a right wing crusade’ of aggressive Anglo-Saxon capitalism.³⁹ Lange admitted that Labour, which he headed from 1984-9, ‘had a unique chance to remake’ the New Zealand economy, but ‘blew it’ due to ‘the selfishness, stupidity

and blinkered social and political vision of the Rogernomes' who possessed a socially disruptive individualism'.⁴⁰ Hulme addressed a more attractive social vision in one of the most controversial elements of *the bone people*, the Prologue and Epilogue, which share a free-form spiralling movement and suggest a new kind 'imagined community'.⁴¹ Prophetically, they also hint at the meta-politics of the Treaty promise.

This element of *the bone people* is often overlooked; critical reaction typically focuses upon the novel's psychological aspects. Thus Anna Smith refers to the text as 'a dream in progress', which explores the dilemmas of wounded beings 'longing for love [and] who discover a measure of contentment in the prospect of a collective, if evanescent, future'.⁴² In Smith's reading, the singular meaning of *the bone people* is to articulate a vision of human love which accepts that 'our loves are indeed pathological and that the search for a cure will demand all the visionary resources we have to offer, endlessly'.⁴³ This elegant – if restricted – conclusion inscribes a narrow connotation upon Hulme's fundamental, integrative metaphor of a new-beginnings people. In political terms, *the bone people* was launched in the same year in which Professor Whatarangi Winiata released his proposal for a bicameral New Zealand Parliament: Winiata called for an Upper House of review (the 'Treaty of Waitangi House'), comprised of representatives of the two dominant tikanga groups – Maori and pakeha – who signed the compact of 1840. Like Winiata and others who sought to address equitable social planning, Hulme proffered a scenario for Aotearoa as an expanded whanau (or community of interest and concern). In Charles Handy's terms, she offered her compatriots an alternative mental model of social arrangements using revised whanau principles and second-curve (sigmoid) thinking, aspiring to free society from its existing and restrictive arrangements.⁴⁴ This visionary direction underlines the sociological intentionality of *the bone people*.

While this paper acknowledges the effect that social circumstances may have on the reception of works of art, it also seeks to explore the notion of a reverse dialectic: that a potent literary text may itself be an agent of conceptual change on the body politic. In arguing that *the bone people* both benefited from the Maori political and cultural resurgence (including the textual groundwork laid by Witi Ihimaera and the work of movements such as Nga Tamatoa in the 1970s), and yet itself contributed positively to an emerging national discourse on biculturalism, I am drawing on Alexander Solzhenitsyn's argument that great literature can become 'the living memory of the nation':

... it preserves and kindles within itself the flame of her spent history, in a form which is safe from deformation and slander. In this way, literature, together with language,

protects the soul of the nation.⁴⁵

Less soulfully, one can look to Cleave's suggestion that it is in the cultural processing of articles 'as well as other artifacts, such as novels, poems and paintings, that sovereignty issues will be most effectively resolved', and add to it the point that such works may generate constructive visions for the ongoing development of a polity.⁴⁶ Of course, pointing toward desired futures cannot be taken for granted, as the ending of Alan Duff's *Once Were Warriors* (1990) demonstrates. *Once Were Warriors* is another formative novel about Pakeha-Maori relations, and Bill Pearson's critique of this work provides insights into some of Hulme's motivations. Pearson likened *Once Were Warriors* to British social problem novels of the 1840s, commenting that Duff's first novel sidestepped the sovereignty issue which was prominent in the year of its publication, the sesquicentenary of the signing of the Treaty of Waitangi. Thus, states Pearson:

The reader ... in the end is assured that there is a solution that won't endanger the establishment, it doesn't involve revolution or Chartism or Maori separatism or repossession of land, and in the end needn't even be the reader's responsibility.⁴⁷

Duff's conservative cultural politics (competitive individualism) may be contrasted with Hulme's fictive querying of coercive institutions (eg prisons and social welfare agencies) and of the institutionalised compassion of New Zealand, which are dramatised in Simon's traumatic experiences as a ward of the state. Hulme deploys a language of nativism to deconstruct what Trinh Minh-ha has called 'White Cancer' attitudes which reflect a sense of superiority towards native peoples. This deconstructionist practice exists 'at the intersection of subject and history', and is designed to arouse the conscience of readers.⁴⁸ A clear instance of such writing may be found in Hulme's poem 'E Nga Iwi o Ngai Tahu', in which the poet offers a lament for her Ngai Tahu *tipuna* (ancestors) in places as diverse as Moeraki, Purakanui, Arahura, Okarito, Murihiku and Rakiura, noting that all of these ancestral bones are 'lying heavy on my heart' ('iwi' signifying both bones and tribe). The seven-stanza poem ends bleakly, using a crushing image to express the collective malaise of her tribe:

Where are your bones?

Aue! My bones are flour

Ground to make an alien bread.⁴⁹

While the 'alien bread' trope holds little hope for a bicultural partnership, it is the bone metaphor of ultimate belonging which has lasting significance in *the bone people*. As Hulme

has mused:

One day, as ashes or bones, I will rejoin my bones and we will be there together on the coast as long as the land endures.⁵⁰

Hulme's prognosis echoed across contemporary New Zealand society in the 1980s. The marketised state sector reforms in the mid-late 1980s meant that an exclusively Maori referent of being made into alien bread (what J K Baxter called 'the dead man's loaf') came to resonate with the experience of many New Zealanders, who began to feel like abandoned raw materials in the national socio-economic community. In Lange's crisp words, most beneficiaries and unemployed 'want to become mainstream not alienated ... They want the dignities of citizenship not the stigmata of class', while those in the middle 'want to be mothered by the state, not smothered by it or abandoned by it'.⁵¹

Central to this whole discourse is the notion of a national community which embraces its citizenry; one which subscribes to the notions of 'social capital'. From a policy standpoint, such a focus would lead to a model of interdependent empowerment, a power-sharing model of social arrangement for local and national governance. The problematics of this approach were identified in 1985, when the cultural theorist Simon During distinguished between the dispossession of the 'post-colonised' (eg indigenes who suffered the loss of their cultural authority) and, later, of the majority 'post-colonisers' whose cultural (and increasingly economic) legitimacy declined 'in the face of the increasingly irrelevant economic bases of colonialism'.⁵² The reign of economic necessity over national destiny has the potential to derail all but the most mundane experiments in state democracy and alternative internal sovereignty arrangements, regardless of how compelling they may appear in works of talented wordsmiths. As Augie Fleras and Paul Spoonley have noted, the forces of globalised, trans-national and cyberspace capital flows 'are conspiring to undermine conventional sovereignty discourses'.⁵³ Even they, while tracking the crisis of late modernity and the hegemony of the 'money myth', are arguably too sanguine about the ability of small polities to insulate themselves sufficiently to remain viable political-economic units. In fiscal terms, New Zealand struggles to possess the requisite resource base needed to promote desirable levels of social capital and health for all its citizens. Consequently meeting Maori aspirations for equality and rights is made all the more difficult.

Chapter 3

The Deep Thematics of *the bone people*

Mark Williams has stated that he reacts to *the bone people* with ‘a mixture of impressed regard, deep mistrust and sheer irritation’.⁵⁴ The book’s problematic ‘happy ending’ is a factor in such reactions; the bemused reviewer for *Time* magazine declared that the culminating event of *the bone people*, ‘the trio’s reunion[,] surpasses reality: it is a near religious fantasy’.⁵⁵ As such, Chris Prentice was probably correct when she typified *the bone people* as a fiction ‘that addresses the devastating effects of the colonial past on the present and the future’.⁵⁶ A major difficulty for some Westernised readers is that Hulme’s story-structure surges forward in a characteristic mythopoeic manner. It recalls, in this respect, *Te Hokioi*, the nineteenth-century Maori newspaper, which asserted itself politically during the wars between Crown and Maori in the nineteenth century; like *Te Hokioi*, *the bone people* is cast in the garb of dreams and in the language of prophecy. In this respect, the prophetic discourse of *the bone people* may also be related to the genre of the feminist utopian novel.⁵⁷ However, I view it as an unconscious reaction against the dysfunctional and dystopian imagined communities delineated in Samuel Butler’s *Erewhon* (1872) and in Janet Frame’s *Intensive Care* (1970), the latter which almost foretold New Zealand’s ‘recolonisation’ in the 1980s by American-influenced ‘voodoo’ (neo-liberal) economics. Despite being separated by nearly a century, it is tempting to think that Hulme was responding – via her advocacy of commensalism – to Butler’s fantasy and to his satiric thrusts against a nineteenth-century *laissez-faire* market ethic. For in Butler’s imagined community, crime is treated as a form of illness, whereas sickness, poverty and bad luck are punished as criminal states. The subtitle of Butler’s dystopian romance is *Over the Range*, thus making the setting of ‘Erewhon’ across the Southern Alps and somewhere on the South Island’s West Coast near Hokitika. Hulme’s promotion of a bicultural and communal ethic of heightened mutual responsibility, reciprocity and belonging gather momentum from an isolated beach called in the book Paeroa on the same remote and wild Westland coast. Is there, perhaps, another layer of irony in setting much of the novel at an area called Whangaroa, thus proffering a mythic reversal of the 1809 incident in Whangaroa (Bay of Islands) when Maori killed 40 Pakeha from the *HMS Boyd* and burned the vessel in the harbour? After all, Hulme’s novel tackles distressing serial violence against a land-tossed European, and is deeply concerned with the ultimate physical-spiritual guardianship of the young white ‘goblin’ Simon, who had been cast ashore from a

ketch near 'Whangaroa'. Both examples suggest that *the bone people* is a transcultural polemic.

The concern with guardianship confirms that *the bone people* is a putative national 'myth-structure', foregrounding the issue of social health and, in its 'fantasy' ending, pointing connotatively to the wide policy issue of social capital. Robert Putnam et al define 'social capital' as 'ordinarily a public good, unlike conventional capital, which is ordinarily a private good'.⁵⁸ In a world governed by utility and principles of aggregated market return, it shares the fate common to all public goods: 'social capital tends to be undervalued and undersupplied by private agents'.⁵⁹ Social capital is constellated around operations to enhance social fabric and values such as social trust, other-directed norms of reciprocity (which 'lubricate' co-operation) and networks of civic engagement. The Putnam analysis, which examines the forces which stabilise the social integrity of a culture, poses a key question: 'how does personal trust become social trust?'⁶⁰

In the communitarian civil society paradigm, permanent social consensus is, *ipso facto*, impossible; moreover, what is perceived as disharmony and virulent disagreement can have a positive social good to perform by affording creative opportunities. One is reminded of the questions of Amory Levins et al: 'are there ways to restructure economic activity that reward social enrichment and that reinvest in social systems' capacity to evolve ever more diverse and creative cultures? Can reversing the waste of resources and of money also reinforce efforts to stop wasting people?'⁶¹ Levins' project is a fruitful notion of 'Human Capitalism': how we can create 'a healthy economic, social, and ecological system that develops both better people *and* thriving nature?'⁶²

Hulme's novel follows other vigorous New World fictions – such as Ken Kesey's *One Flew Over the Cuckoo's Nest* (1962) – in which a microcosm serves as a cell of protest to focus attention on the needs of the macrocosm. Thus, in 1985, Janet Madden-Simpson viewed *the bone people* as a subversive book that 'casts a very cold eye on the British legacy as handed down to one of the far-flung bits of Empire' and noted that it presents 'a portrait and an allegory of a fractured culture'.⁶³ Another early reviewer, Claudia Tate, observed that Hulme presents 'three fiercely unique characters' who remind us that 'we are all cannibals, compelled to consume the gift of love with demands for perfection. But they, and perhaps we too, are capable of change'.⁶⁴ Tate viewed the novel from a limited perspective, critiquing it as a text about personal growth and development, and not as a work also vitally involved with nation-building. Hulme's concern with nation building is apparent in her emphasis upon the agency of the 'bone people' who are 'enchanted healers, ghosts of Maori ancestors so distant

they encircle past and future’:

They mend the three, ... they infuse them with the life force of hope and direct them homeward by empowering them with the vision of a new life.⁶⁵

While Tate is not irritated by the novel’s ending – which, to Antony Beevor, constituted a drastic reduction, transmuting ‘disturbing realism to wholemeal candy floss’ – she fails to recognise that *the bone people* is a novel about a refashioned national community as well as three refashioned lives.⁶⁶ This sociological reverberation is the locus of its deep, albeit coded, allegorical import.

In her review of *the bone people*, the American novelist Victoria Nelson neatly dissected the dilemmas of this troubled symbolic trinity which I have diagrammatised as follows:

- KEREWIN HOLMES: ‘a tough, sexually blocked young woman’; ‘a tough-talking, sexually squeamish virgin intellectual’ with ‘a gruff tomboy voice’;
[an alienated mixed-race artist]
- JOE GILLAYLEY: ‘a grieving, violent Maori man’ - a former seminarian and teachers’ college drop-out who works in a factory and binges on alcohol and violence;
[a broken man]
- SIMON P. GILLAYLEY: a white, mute foundling/foster child (a 7 year old boy) who has been treated with a disturbing admixture of fierce love and awesome brutality all of his life.
[a magpie child]⁶⁷

In dissecting these core characters, Hulme was inquiring into three colonised persons and mindsets (one Maori, one mixed-race and one Pakeha). The socialisation process has taken something precious from each: for Joe and Kerewin, that something is *Maoritanga*, and Hulme’s characterisation raises questions about the pervasive effects of colonisation. As Edward Said pointed out, ‘to become aware of one’s self as belonging to a subject people is the founding insight of anti-imperialist nationalism’.⁶⁸ Said uses the Caliban metaphor to argue for the possibility of accepting a ‘mongrel past’ without disabling future development or, further, of forging an inquiry into the ‘essential, pre-colonial self’.⁶⁹ This gesture, he notes, however quixotic it is lies behind ‘the nativist and radical nationalisms that produced concepts of *négritude*, Islamic fundamentalism, Arabism, and the like’ (including ‘Brown

Consciousness' in Aotearoa).⁷⁰ Finally, Said's statement that 'we must not minimise the importance of that initial insight – peoples being conscious of themselves as prisoners in their own land' is critical to understanding the concluding 'Moonwater Picking' segment of *the bone people*, for Said has warned against settling for simplistic nativist ideologies.⁷¹ Said insists:

Moving beyond nativism does not mean abandoning nationality, but it does mean thinking of local identity as not exhaustive, and therefore not being anxious to confine oneself to one's own sphere, with its ceremonies of belonging, its built-in chauvinism, and its limiting sense of security.⁷²

Equally, we must not fall victim to globalisation, for the wholesale adoptance of cultural globality leads to vacuousness and denies the psychic importance of being grounded in a specific place; the geographies and topographies of the mind. This need for grounding is long-recognised: in 1948, Monte Holcroft declared 'there will be no [New Zealand] novels of real importance until writers begin to share a vision of the land which places the people against true landscapes of the mind', and pleaded for 'that undiscovered vision of the country in which we live, but which is not yet ours'.⁷³ In 1984, Hulme answered Holcroft's call. Holcroft had observed the preoccupation with the land in New Zealand literature, for 'its strangeness, its emptiness, its baffling qualities and challenging appeal'.⁷⁴ *the bone people* provides a full-blown portrait of New Zealand's two dominant cultures and their life-enhancing interaction with the land and the sea. In Hulme's work, the land and the sea are essential and complementary 'characters'. The bicultural vision of postmodern ethnicities in a postcolonising world is blended homologously with the landscape, which itself bears the imprint and scars of Maori and Pakeha presence. It also proceeds on a notion of profound ethnic-cultural interconnection. In the words of Henry Louis Gates, Jr, it is a rebellion against 'the notion that I can't be part of other groups, that I can't construct identities through elective affinity, that race must be the most important thing about me', and a related assertion of the right to a politics of identity which allows people to 'experience a humanity that is neither colorless nor reducible to color'.⁷⁵

At this point one may call upon other members of the Kiwi intelligentsia as well as Holcroft. In 1954, J C Beaglehole argued for a declaration of intellectual independence, memorably asserting that 'we should think as New Zealanders', and observing that 'a war of intellectual independence is, in the region of the mind, a pretty bloody, painful and wearing thing'.⁷⁶ Having sensibly included creative writers 'of any sort' within the ambit of the notion of the scholar (as Beaglehole explained, 'for God knows the creative writer has to wrestle with the

fundamentals of thought') one may therefore enlist a diverse group of writers into this tribe.⁷⁷ They include as well as Hulme, Janet Frame, J G A Pocock, Bruce Mason, Mervyn Thompson, Ngaio Marsh, Allen Curnow, Robin Hyde, John A Lee, Witi Ihimaera, Albert Wendt, C K Stead, Frank Sargeson, John Mulgan, Maurice Gee, Alan Duff, Sue McCauley, Maurice Shadbolt, Renée and Patricia Grace. All help to effect mental and cultural change: as catalysts of 'this creeping ... self-awareness', they are mythographers of the cultural mindset of a nation.⁷⁸ However, Hulme is one of the more gifted and insightful (in Beaglehole's words) 'students of our national mentality'.⁷⁹ Perhaps her most signal contribution to the Aotearoan collective consciousness is her attempt to allow Pakeha to better recognise their grounding in landscape. As Robert Frost eloquently stated:

The land was ours before we were the land's

She was our land more than a hundred years

Before we were her people ...⁸⁰

The validation which Hulme's project received from Northern Hemisphere academics arguably helped reassure New Zealanders during the turbulence of identity experienced in the 1980s. In this decade New Zealand continued to move from a largely monocultural-assimilationist dominant of 'Eurozealand' toward what Peter Beatson calls a 'Polyzealand' model, a concept which echoes James Belich's neat summation of New Zealand as 'the smallest and most isolated neo-Europe, and the largest and most geographically diverse neo-Polynesia'.⁸¹ Hulme's social parable, while partially romanticising Maori values, ultimately deconstructs monomaniac and ethno-fundamentalist conceptions of 'First Nations' in a state of pure indigeneity. This reminds us of Dr Johnson's rather tart rejoinder in 1776 to a man wanting to travel to the South Pacific to observe men in a state of 'pure nature': 'the inhabitants of Otaheité and New Zealand are not in a state of pure nature; for it is plain they broke off from some other people. Had they grown out of the ground, you might have judged of a state of pure nature'.⁸² This is a rejection of an essentialist reading of diversity, one which, as Augie Fleras describes, 'envision[s] society as a population of ethnic groups each of which is self-evidently distinct and quasi-biologically discrete rather than constructed or internally diverse', and which leads us to categorise and treat people 'as if their thinking could be collapsed into a single identity and determined by membership in one of these groups'.⁸³ The end result of such essentialised and often ritualised ethnicity may result in cultural apartheid; a vision of cultures in static juxtaposition without any expectation of interplay.⁸⁴ Hulme's fusion of bicultural elements fittingly appears in the year in which New

Zealanders said goodbye to 'Fortress New Zealand' (in macro and micro-economic terms), and continued to farewell monocultural, integrationist policies. In Ranginui Walker's judgement, this latter had been a milieu in which 'obvious social and political disparities between Maori and Pakeha were papered over by ideological mystification and deception which descended occasionally to the level of hypocrisy', so that under 'the ideology of "one people"', state mandarins promoted New Zealand as having the finest race relation[s] in the world'.⁸⁵

Hulme's conspicuous promotion of what Timothy Brennan has termed a 'bi-polar morality' (one which expressly recognises the complex mixture of positive and negative traits in every human group/*ethne*) is her most substantive contribution to the development of a consciousness of cultural-ethnic hybridisation.⁸⁶ Pocock has termed this 'a *tangata whenua* humanism', a means of 'poetic appropriation, dreaming or imagining one's way into a relationship with the environment', and possibly, the past.⁸⁷ More specifically, he has linked this to the Ngai Tahu (Hulme's own *iwi*) claim, noting that the claim/Te Kereeme 'has been about the relations of personality to property and right: the point at which a discourse of poetics becomes a discourse of justice'.⁸⁸ Hulme's refusal to engage in ethnomania underlies the power (indeed the *mana*) of *the bone people* as a bridging 'hope-text': a National Epic or allegory. It also explains her use of emblems such as the bicultural child with the pan-eco view: Simon/Haimona, the Celtic Maui (Hulme is, after all, descended from Orkney Scots as well as Ngai Tahu), and the symbolism of Kerewin's seashore tower. Rod Edmond has helpfully argued that in Hulme's 'myth of rebirth', the broken man is healed and a new spiral-home is built. Edmond refers to the interrogation of other mythic systems, and states that Maori myth is 'reappropriated' for, *à la* Yeats, 'New Zealand is no place for towers':

In place of the tower, aloof and isolated above the land, we have the modern meeting house spreading across it.⁸⁹

While Hulme considered a tower to be her ideal kind of home, it is, in mythic terms, an Old World referent which is largely emblematic of the 'male principle' of Western critical rationalism. As C G Jung once noted:

The more critical reason dominates, the more impoverished life becomes; but the more of the unconscious, and the more of myth we are capable of making conscious, the more of life we integrate.⁹⁰

Jung wrote about the value of towers (such as the one he built at Bollingen), yet in terms of the Hulmean collective mythopoeia, the tower refers to a clutch of British writers' retreats.⁹¹

Moreover, these towers – as Jung attested – become testaments to individualisation and to the supremacy of the solitary ego. Critics of *the bone people* have made similar observations: Val Melhop has noted that ‘from the beginning there is a sinister quality about the location and the design of Holmes’s one-bedroom Tower’, for it is a ‘vast and isolating’ piece.⁹² This is, in fact, the juncture at which pure biography (Keri Hulme) and art (Kerewin Holmes) diverge: while Hulme, the solitary ‘singer’, needs a reclusive work-space, in the mythography of her work the old six-storey tower of the commanding (and essentially Pakeha) ego must be dismantled (in this case burnt) and a new communal home built on its foundations. One need not belabour the political ramifications of the necessary demise of the nuclearised settler lifestyle in favour of building a bicultural, mixed-functional structure on both Maori land and the foundations of a Pakeha structure. In this respect, Kerewin’s re-building of the Moerangi marae (pp 32, 42) and the party in the re-built tower that ends the novel are especially significant. Trevor James states that *the bone people* is part of a ‘pattern of restoring that which has been lost and of recovering a sacral vision and a harmony with the things of the earth’.⁹³ His observation answers Germaine Greer’s objection to Hulme’s work, namely, that if Hulme had been ‘true to her own imaginative vision she would have ended the book in the blackest tragedy, because it is about the rape of Maori culture and the imposition of an inadequate [European] culture which is mostly sustained by alcohol’.⁹⁴

In contrast to Greer, Otto Heim has stressed ‘the moral choice that the ending of *the bone people* urges involves a rejection of tragedy (and sacrifice) and the assumption of responsibility in recognition that one is not alone’.⁹⁵ This realisation, Heim explains, occurs in the *mauri* ‘which symbolizes the relationship of mutual protection between people and their world’, and which Maori call kaitiakitanga.⁹⁶ Despite the violence to which Greer adverted, Heim reminds us that for the protagonists (Kerewin and Joe), ‘the discovery of the mauri results in their assumption of responsibility, guardianship, and mutual caring’ – and manaakitanga, as ‘emphatically expressed in the epilogue in rebuilding, exchange and hospitality’.⁹⁷ Heim cites James Ritchie, who explicated the anthromorphic ethic of manaakitanga in terms of:

... a sense of intuitive rightness, of things coming together, of putahi, of emergent direction, of assurance, puta noa—release from the limitations of worry and concern. But there is also the requirement to be vigilant, to be constant in tuning into environmental messages.⁹⁸

The novel’s ‘upbeat’ conclusion operates on two levels: the personally and the culturally redemptive. Similarly, Kerewin’s movement from egocentricity to communion (including a

restoration of the broken bonds with her family) is demonstrated in the way she creatively uses her personal wealth for communal ends, not only in re-building the marae but also in re-building the tower – in Lawrence Jones’ words – ‘not as a lonely tower but as a socially inclusive spiral’ where the Holmes’ threesome ‘can come together as a new kind of unit, beyond the sexually-based nuclear family, widening to include Kerewin’s family and the community as a model of a new kind of social harmony’.⁹⁹ This is what is signified when Hulme bestows upon Kerewin, Joe and Simon the honour of being titleholders as *E nga iwi o nga iwi* (‘the people who make another people’). They are people who have emerged out of authentic suffering, and an encounter with what Carmel Gaffney calls ‘the heart’s intuition’, in order to create new ways of being.¹⁰⁰ One phase of this process includes the complete re-negotiation between Maori, Pakeha and the land, which gives sustenance to all.

Greer’s analysis is astray in a second area. She ignores the revival of Maoritanga, and the ongoing significance for Maori of the Treaty guarantee of *te tino rangatiratanga*, or self-determining, ‘customised’ citizenship rights. In Fleras’ words, these rights relate to autonomous political communities (nations within the unitary Nation), and move beyond commonplace notions of universal citizenship to include ‘claims upon the state for control over land, culture/language, identity, and political voice; the right to self-government and jurisdiction over matters of direct relevance; and a transfer of power from central authorities (devolution) rather than mere political representation or institutional accommodation’.¹⁰¹ In this sense, the culminating lapsarianism (ethical absolution and rebuilding of personal and social trust after outbreaks of horrendous violence and hurt) of *the bone people* – which James misinterprets as offering a ‘final millenarian vision’ – actually constitutes a reversal of assumed cultural decline and ethnic malaise.¹⁰² For, as Hulme insists:

Maori culture is not a dead thing. It is not totally suppressed. It is very lively in a lot of respects ... it’s an ongoing story and things are enlivening rather than becoming (as I think in certain Aboriginal situations) a matter of terminal despair.¹⁰³

the bone people also offers pointers of a more universalist nature in its promotion of human commensalism and values, about which Greer, also an Antipodean, has written:

Everything I learn reinforces my conviction that the only corrective to social inequality, cruelty and callousness, is to be found in values which, if we cannot call them female, can be called sororal [pertaining to sisterhood]. They are the opposite of competitiveness, acquisitiveness and domination, and may be summed up by the word ‘co-operation’. In the world of sisterhood, all deserve care and attention, including the

very old, the very young, the imbecile and the outsider. The quality of daily life is what matters, the taste of food on the table, the light in the room, the peace and wholeness of the moment. Perfect love casteth out fear. The only perfect love to be found on earth is not sexual love, which is riddled with hostility and insecurity, but the wordless commitment of families, which takes as its model mother-love. This is not to say that fathers have no place, for father-love, with its driving for self-improvement and discipline, is also essential to survival, but that uncorrected father-love, father-love as it were practised by both parents, is a way to annihilation.¹⁰⁴

This is nothing less than a full elaboration of the values implicit in Hulme's text, explaining how commensalism is a logical extension of lapsarianism (with its heightened concern for the maimed and rejected: 'the very old, the very young, the imbecile and the outsider'), and also showing why Joe's solo-parenting of Simon – the absence of a maternal figure – had such destructive effects. But the Holmes unit have now, in effect, become spiritual warriors (Hulme uses steel blade imagery), battling against personal and social extremity; what Kerewin calls 'an innate rebellion against the inevitable dooms of suffering, death, and despair' (p 330). For Kerewin, it is a 'senseless hope' (p 330), and yet, it also makes good sense, for it provides allowing a recipe of sorts for people 'to be blatant individualists' – *the* great social crime in New Zealand – 'and still love themselves at the end of it'.¹⁰⁵ Thus it is meliorism, not sentimentalism, which reigns at the last in Hulme's multi-faceted vision.

For Hulme, it is only the acceptance of this commensalist outlet which will transcend the awesome cultural proscriptions and taboos which continue to generate 'our lack of communication with one another [and] the violence that riddles both cultures'.¹⁰⁶ This is because, above all, commensalism is both socially odd and deeply radical, and thus stands in open, defiant contradiction of the arrogant and norm-blinkered intolerance characteristic of mainstream culture. To bridge the conceptual and social gulf between Pakeha and Maori requires a special kind of grace; most notably, the abandonment of fixed positions in 'the sovereignty game'. It is a grace which will be more – and dangerously – possible if the historical Treaty partners ground their core relationships in a solidarity characterised by an existential openness to the demanding and profoundly ambiguous business of being human. Thus we must locate and then celebrate the contact points which will come to define the lineaments of J G A Pocock's shared 'tangata whenua humanism', a process which calls upon the potent artistic notion of collective 'dreaming'. In this regard, there is a genre affinity between the Epilogue to *the bone people*, and the work of South American fabulists (eg Jorge Luis Borges and Gabriel Garcia Marquez), whose 'magic realism' masks strident and

oppositional politics, and who deploy ‘fantasy’ as an instrument for elaborating upon potential future socio-political arrangements (alternative models of sovereignty and of historical identity as evolving forms). In 1972, at the inception of *the bone people* (when the text was provisionally entitled *The Rocks of Whangaroa or The Book of Kerewin Joe and Simon P*), Hulme wrote a critical, but luminous, self-injunction: ‘practise looking sideways, thinking sideways’.¹⁰⁷ Hulme’s aim was well-stated by an American reviewer, who noted that as the novel closes, ‘the reader tends to lose sight of [Hulme’s trio] as whole beings, but a collective, Jungian spirit of the Maori people is invoked in a moving, lyrical conclusion’.¹⁰⁸ Does Hulme here subscribe to what Said calls a ‘naïve foundationalist ideology’?¹⁰⁹ If so, does it matter? David Stea and Ben Wisner have defined ‘Fourth World’ peoples (pre-colonial inhabitants who now constitute ‘enclaved minorities’ in their own ancestral lands) in a manner which connects well with Hulme’s depiction of traditional Maori values:

They are distinguished by their utilization of land as a common resource base, their cultural attachment to place (and the unifying force of that attachment), their fundamentally ecological view, their inherently flexible systems of economy and exchange, their adaptiveness to change (when they can control the rate of change), and their dependence upon cooperative systems of enterprise, extended kinship systems, and reciprocity.¹¹⁰

Hulme’s concluding commensalist and bicultural alternative features many of these characteristics, with the result that, as she noted, ‘at least the country in one sense shows signs of burgeoning again’.¹¹¹ Richard Hoggart once observed that the ‘ebb and flow of imaginative power within [an art-work] may reveal attitudes hidden from the writer’ but, whether s/he knows it or not, the author ‘will be testing the validity of certain ways of seeing life’. The writer will – by the choice and arrangement of materials and the temper of their treatment – be ‘implicitly saying: this is one way in which we can face experience or succumb to it or seek to alter it or try to ignore it’.¹¹² For her part, Hulme seeks to promote a transvaluation of social attitudes, yet refuses to indulge in an ethnically essentialist romanticisation. In an early draft of *the bone people*, Kerewin’s own dual heritage emerges as she conjointly celebrates the Cuchulain and Skatha (old Celtic Irish and Norse) sagas, as well as the tales of Maori heroism. In the narrator’s terms, these are the ‘spell of old tales running golden through her’.¹¹³ Moreover, Hulme’s ‘colourized’ focus on Kerewin almost emblematises her twin (or mixed-race) ancestry; she of the ‘broad *pale* face and wildly curling flurry of *brown* hair’.¹¹⁴ Again, recall the racial typology of the novel: Kerewin is Pakeha with some Maori input (yet, like Hulme, feeling intensely Maori), Joe is Maori with the addition of a little Pakeha and

Simon is Pakeha/Caucasian. These are the ‘bone people’ and ‘all together ... they are the instruments of change’ (p 4), whose cultural change is bridged with ethnic undertones.

In an early review, Peter Simpson focused with insight upon the novel’s conclusion, arguing that Hulme’s commensalist vision – of mutual hosting: a metaphor for the bicultural journey – constitutes ‘not so much a return to Maori communalism as the achievement of a precious and perilous synthesis between Maori and Pakeha, and I/We consciousness’.¹¹⁵ Living praxis and proleptic promise are both at work in the text of *the bone people*, and both find a counterpoint in the wider New Zealand/Aotearoan environment. On a more specific level, one may argue that the praxis of the Crown Apology in the Ngai Tahu Deed of Settlement [1998] for state injustices committed against Hulme’s tribe has been worked out: *tohu* (natural signs) seen from the Onuku marae before and after the historic Crown Apology represent prophetic promise for Ngai Tahu and for Te Waipounamu as a whole. Hulme has approached the issue with her customary self-effacing eloquence:

I certainly didn’t set out to create a work of national importance; I was telling a story, and I hoped that it would affect some people, some New Zealanders, and the vision I had at the end of it, in my terms, was simply that there is hope, change does happen, but it needs to take place on three different levels – within a community, within the individual and, if you like, with an alliance of ‘The Other’: the spiritual world, wairua, whatever you like. But I’m primarily a storyteller: I’m not here to explicate us and I’m not here to make sense of us.¹¹⁶

Hulme, therefore, was not purveying some kind of mystical nationalism; rather, what her novel – and especially the *mauri* element – communicates is that ‘there’s more to the land than is palpable and that is the hope that possibly some of us could look to’.¹¹⁷ This is, to an extent, a rebuke to commodified ‘Westocentric’ notions of land. Nonetheless, we ought, finally, to identify the novel’s principal promise as a ‘prophecy’; a prophecy of the recovery of tribal mana and co-sovereignty; of the awesome social potential of a transformational and inclusive politics: and, finally, of what Fleras and Roger Maaka label a ‘postcolonizing constitutionalism’.¹¹⁸

Chapter 4

Hulme's Paradigm: Politics and the Writing of *the bone people*

Much of Hulme's most potent writerly endeavour occurred in the ten years between two pivotal political markers:

1. The Third (Kirk-Rowling) Labour Government, elected 1972, which enacted the *Treaty of Waitangi Act 1975* before it was swept out of office by the juggernaut of National's Muldoonism (1975-1984); and
2. The Fourth (Lange-Palmer-Moore) Labour Government (1984-1990), which enacted the *Treaty of Waitangi Amendment Act 1985*, setting the stage for large restitutionary tribal settlements (eg with Tainui and Ngai Tahu).

The election of the Fourth Labour Government and its radical fiscal agenda of neo-conservative economics resulted in the death of the old communitarian welfarist ethic (dubbed 'state socialism' in its heyday by André Siegfried). In its place we saw the birth of a more acquisitive, ideologically monetarist ethos of the reduced state and an efficient, lean and competitive market economy: the virtual triumph of pristine *laissez-faire* capitalism. This bespoke the elevation of selfishness to a national level and the idolatrous belief that capitalism is the *telos* – not merely the tool – of Western living. In Lange's later apt metaphor, monetarism 'is chemo-therapy of the financial system which, if administered too long and too excessively, renders the patient incapable of living within the regime prescribed' because the economy 'lies helpless at the mercy of the business cycle'.¹¹⁹

With *the bone people* appearing in 1984, it was the product of the period and of pre-existing social assumptions. This paradigm needs to be borne in mind as one works to unravel and track what Patrick Evans has termed 'the effluxions set off by ... *the bone people* in 1984'.¹²⁰ It is apparent that *the bone people* anatomised the betrayed hopes of New Zealand's own 'low, dishonest decade' after the first oil shock (1973). Moreover, the novel underwent its final rewrites during a tense and conflicting era in New Zealand politics, a division characterised by the gulf between:

1. the social vision of old Labour (with its traditional valorisation of social consensus and community obligation to the common good); and
2. the excesses of the Muldoon years, when Hulme and her friends viewed Prime

Minister R D Muldoon as the ‘pig of Tamaki’ (p 243) for his hubristic fixation with the levers of power and the cult of individual rights.

I would argue that the clash between these competing value-structures both affected and inflected the production of Hulme’s text. *the bone people* enacts the gathering tension between these worldviews, which, in Hegelian terms, finally appears in virtual tandem with the terrible child (or synthesis) of that dialectic. This grim historical background has been critically assessed by Evan Te Ahu Poata-Smith in an essay on identity politics and the problematics of cultural nationalism. Cultural nationalism, Poata-Smith explains, when shorn of a major redistribution of social power, ‘cannot provide a solution to the problems that face most Maori’.¹²¹

The rise to power in 1975, and the subsequent electoral dominance, of Muldoon compounded Hulme’s strong feeling of social gloom for New Zealand, particularly her perception of a synergy between Muldoon’s mean-spiritedness and the narrowness of a prejudiced and fearful sizeable proportion of the New Zealand population. At its worst, ‘Muldoonism’ became the political expression of Kiwi intolerance and judgementalism writ large. This contrasted with Labour Party principles. As former Prime Minister Bill Rowling explained, the New Zealand Labour Party’s ‘fundamental objective’ was:

... to look after the well-being of all people and to let all people in the community develop their talents, whatever they might be, to the full.¹²²

Six years later, in July 1984, Lange was the heir apparent at the end of the Muldoon decade. Adopting the preacher’s register, he proclaimed:

We’ve got to have a different sort of country. We’ve got to have some emphasis put back on non-material things. We’ve got to have a whole new concept of what it means to be a New Zealander and the things that we value. *We’ve got to have ... a new nationalism, I think ...* Start getting a bit of joy back into the place.¹²³ [Emphasis added]

Many Kiwis shared this sentiment on election night in 1984, although the gloomy reality of New Zealand’s precarious level of international indebtedness took far longer to dispel. While the new Government embraced a robust cultural nationalism in foreign affairs (viz., the ban on visiting nuclear ships, and a fuller conception of a trans-Pacific community of interest – a New Oceania), the architects of Labour’s domestic policy were under the influence of the IMF/World Bank intellectual hegemony in the form of economic rationalism. The new Labour ministry, caught in an economic crisis, had been hi-jacked by a cadre of right-wing

cultural materialists, doctrinaire zealots who led the nation down the grim path of negative state sovereignty. Ideologically, this bespoke the dominance of negative liberties over positive ones – individualistic ‘freedom to’ rather than ‘freedom from’. Hulme’s promotion of human commensalism in no way eschews individual rights; indeed, *the bone people* is a self-styled ‘recipe’ for blatant individualism in a radically destabilised and destabilising age. Yet Hulme’s ontological individualism is predicated upon a notion of personal sovereignty which operates within a network of encompassing and sustaining communal bonds. It is not at all consonant with the acquisitive, competitive individualism of *homo consumens*.

Hulme is one of Ngai Tahu’s pre-eminent artists. As a powerful performer of the verbal arts, she is one of the servants of tribal dreaming (Te Moemoea). Sir Tipene O’Regan has used metaphor to explain tribal dreaming: by composing new songs to strengthen the confidence of the ‘flaxroots people’ and ‘readying the canoe on the beach’, a process of ‘cultural dreaming’ takes place.¹²⁴ In her loosely allegorical myth-structure in *the bone people*, Hulme portrays *aroaha* as a radically reconstitutive power which assuages human self-estrangement. This had been instanced earlier in her 1982 poem ‘He moemoea’, where Simon, the child of light, celebrates his belongingness and psychic connection on a New Zealand beach:

his hands fling laughter to the wings

for his eyes are closed

with the love in his heart

and his heart in his hands

and his feet track love in the sand.¹²⁵

Hulme is a visionary and romantic writer; her personal commitment is to a social democratic, rather than neo-liberal, model of democracy. Her most engaged work proffers an implied (and sometimes explicit) critique of cynical and atomised post-humanist economic rationalism. It operates in the spirit of Alex Haley’s observation that one cannot enslave people who know who they are, and echoes E M Forster’s remark that great literature ‘helps us to abstain from fear, from hatred, from tribal religion’.¹²⁶ Hulme has conceded that her novel ‘doesn’t offer any view of the country’s future in a definitive way’.¹²⁷ Similarly, her redemptive mythos falls short of Poata-Smith’s call for ‘a fundamental transformation of capitalist society’.¹²⁸ Yet, as a work which challenges biologicistic (racist) discourses in Aotearoa, *the bone people* proffers what Poata-Smith terms the ‘fruits’ of ‘a fundamental transformation of capitalist society and the creation of a society in which there is effective

women's liberation, gay and lesbian liberation and freedom from racism.'¹²⁹

Chapter 5

Criticism and Lapsarianism: *the bone people* as a Hope-text

Bruce Mason had early spotted Hulme's talent. In 1977 he sent her a telegram informing her – at a particularly low moment in her personal life – that '[t]wo white heron will shortly perch on your doorstep', referring to a Literary Fund and a Maori Purposes Trust Fund prizes that were being awarded to the struggling author.¹³⁰ This must have been most encouraging, inasmuch as the teenage Hulme had been greatly inspired when she received a copy of Mason's landmark play about Maori-Pakeha relations, *The Pohutukawa Tree* (1955), as a Christmas present in 1960. Mason's influence had also appeared in 1966, when Hulme began to work on *the bone people*: Mason presented a discourse on the cynical public disregard for artists in the fragmented post-modern world, a world united only by a common reverence for facts, which Mason termed 'a vast chaos of unrelated data'. Mason bemoaned that 'gone are the days when the artist's vision could be relied on to change the map of one's mind and destiny'.¹³¹

It is my contention that Hulme's *oeuvre* has, happily, confuted this pessimistic verdict. *the bone people* has worked as a profound cultural leavening influence: it is a powerful embodiment not only of Ngai Tahu spirituality and deep tribal hurt, but also a potent harbinger of social possibility in its complex but assured bicultural fusion of *taha Maori* and Modernist poetics – as a species of an indigenising modernity. The novel continues to influence the Kiwi body politic and imaginal: in 1998, New Zealand women placed it fourth amongst the 100 best novels written by women in the twentieth century.¹³² In the same year, the 'Bad Boy of NZ Lit', Alan Duff, meted out a public attack in which the feisty polemicist called Hulme 'the West Coast Goddess, the white-baitin' lit-queen' whose work 'can never be criticised, analysed, or held up to any form of scrutiny'.¹³³ Surely no other New Zealand novel has garnered so much literary-critical carping and knee-capping, especially from within its country of origin. The sustained vituperation which *the bone people* has received from the likes of as Agnes-Mary Brooke and Warwick Roger, and the polite drubbing from academics such as Karl Stead, Lawrence Jones and Mark Williams, has to be perused to be believed. In Duff's column piece *the bone people* arrived just at the time when Political Correctness 'was rapidly emerging as the *only* way for right-thinking people to think', when 'the academic world was sliding into its present decline of ideological dogma and cowardice', and thus

academics 'seized upon *the bone people* like their own Holy Grail'.¹³⁴ For him, this otherwise useful metaphor, Hulme's novel became 'a kind of literary icon' for undiscerning 'crawlers' in need of 'an idol to worship'.¹³⁵

I would make a different case for the awe-inspiring and somewhat disconcerting effect of *the bone people*. Hulme's work has an unsettling effect because it assays complex issues concerning institutional power, racially divergent subjectivities and teasing intersections of race, gender and class. It is best seen not as a transient, hyper-fashionable commodity but rather, in terms of its broader cultural significance, as a novel of great mythic form and substance, and one which reflects Marshall Sahlins' observation about the 'capacity of indigenous peoples to move freely and improvise culturally'.¹³⁶ Furthermore, *the bone people* is one of those texts which revivifies what Nathalie Sarraute called 'the old, sclerosed forms' of fiction, giving 'immediate, effective aid to the humanity of one's time'.¹³⁷ The vituperation of Duff and others seems to stem from reaction to the book's global success. Such reactions join the long line of outraged male writers making standard attacks upon talented 'outlaw' Kiwi women writers who threaten the male canon. Recent feminist thought, often identified as 'third wave' feminism, has discussed this phenomenon. In 1993, Erica Jong observed:

Like any underclass, women are denied not only their rights to parity in the arts, but the right to their own subject matter. Their anger is deemed unacceptable, their sexuality hemmed in by male definitions, their place in the academy [or literary canon] determined by males or male-identified women.¹³⁸

Novelists of vision often cast their work in a language mould which affronts the guardians of academic, Patrick White, incredibly, was ticked off for writing what Professor A D Hope termed 'illiterate verbal sludge' a few years before he won the Nobel Prize for Literature.¹³⁹ Hulme has had to contend with the likes of C K Stead, who charged that 'for reasons which are not strictly literary, the achievement of [*the bone people*] is going to be inflated beyond its worth'.¹⁴⁰ Hulme and White not only share a similar thematic territory (the politics of social 'deviance'), but theirs are also works of raw and penetrating emotional, rather than purely intellectual, power. Stead has conceded that Hulme is 'a very talented writer'. However, he opines, she 'has to rate high among the current bores of New Zealand literature', and 'there is in her writing a very strong line in whisky-induced schmaltz mixed with gratuitous violence against minors'.¹⁴¹ *the bone people*, then, provokes strong reactions, and those aspects of it which arouse admiration in some quarters arouse mocking condescension or radical disquiet in others. Stead recognises the strength of *the bone people* as a lapsarian fiction, showing how the earthy compassion of a Kerewin frees Joe (a terrible alcoholic and child-beater) from

the grip of his compulsions, yet it left Stead with 'a bitter aftertaste', a sense of 'something black and negative deeply ingrained in its imaginative fabric'.¹⁴² Stead's criticism recalls his own exuberantly cynical art-novel, *All Visitors Ashore* (London, Harvill Press, 1984), particularly in his use of towel imagery, the blood-stained mattress and the clinical attitudes surrounding an abortion for Pat Aorewa Bennett (Chapters Eight and Nine).

Despite the tartness of his criticism, Stead does identify a major concern in Hulme's work. In comparing the *bone people* to Benjamin Britten's opera *Peter Grimes* (1945), Stead observes that it is:

... a work which also presents extreme violence against a child, yet demands sympathy and understanding for the man who commits it. In principle such charity is admirable. In fact, the line between charity and imaginative complicity is very fine indeed.¹⁴³

Such an objection goes right to the heart of the lapsarian tradition itself. In Hulme's novel, the dialogue with 'lawlessness' reaches its Antipodean apotheosis, as Kerewin changes from an alienated Woman Alone to the facilitator of social joys. Her transition is fuelled by a kind of lapsarian ethical charity; for critics like Stead, it appears to condone a gross social evil. My reading of the text, however, accords with Hulme's remark that *the bone people* is 'a book of some considerable joy'.¹⁴⁴

What I have termed a 'lapsarian ethic' (one which promotes compassionate understanding for social offenders) represents a liberationist literary movement within the Australian and New Zealand literary tradition which dates from the Australian convict plays, novels and short fictions. This shared literary tradition has diagnosed a pervasive moral and social 'schizophrenia' amongst these two respective subject populations, and shares an underlying premise and concern. In drawing attention to a paradoxical mixture of tolerant and kindly impulses and a generalised distrust of authority – which is blended, incongruously, with vindictively cruel or authoritarian attitudes – their texts reflect a fierce dialectic between lapsarian ethics and negative cultural attitudes. This conflict enacts the clash between literature and the contradictions of its undergirding culture. In these terms, lapsarian textuality is a radical ethical 'movement', energised by the problems of achieving humanness and an authentic sense of community in lands whose inhabitants still seek to fix guilt on others and, perhaps even worse, to bask in the 'destruction' of social offenders.

This is not as macabre as it may sound. Properly understood, *the bone people* takes the deep cultural concerns of post-provincial New Zealand and, in its assured handling of bicultural

form and content, offers a kind of cautious 'Good News' to a nation facing the prospect of a divisive cultural impasse. That impasse is evident in the attitudes of some non-Maori critics, who have demonstrated a rationalistic incredulity towards older, more chthonic, spiritualities. Thus Joe's psychic recovery has been debunked as 'an extravaganza of romancing' which injects 'a heavyweight fantasy' and 'phoney mysticism' into a work that 'has no claims to be taken seriously as a New Zealand novel'.¹⁴⁵

Although its status as *the* masterpiece New Zealand novel remains contested, *the bone people* is more than a milestone of local fiction: it is a 'landmark', even 'benchmark' text of the New Social Consciousness.¹⁴⁶ Its liberation from vexed cultural assumptions about sexuality, gender roles, the power of human empathy and spirituality, nativism, criminal and social justice and the need for fundamental transformations of the polity, makes *the bone people* a radically hope-giving text in the canon of New Zealand literature. Moreover, while it is important to realise that although 'lapsing' is normally conceived as a metaphor of declension and depletion (lapses of taste and judgement, lapses from orthodox religious and political affiliations, and ethical lapses from received norms and values canonised by a given culture), the lapsarian ethic is an overwhelmingly positive outgrowth of the Western tradition of democratic libertarianism. Lapsarian realist authors seek what Alexis de Tocqueville called 'equality in liberty', including full liberty of conscience. Yet literary lapsarianism is also an expression of liberal bourgeois realism. It relies on the experiences of heroes or heroines (Men and Women Alone) to promote individualistic values (the 'rights of man', personal liberty and the unhindered development of personality) as against demand for cultural conformity. The inability of lapsarian writers to act as effective critics of the capitalist system becomes evident when their fictions are measured against the virtues of traditional British liberalism. As F A Hayek explained, these virtues are:

... independence and self-reliance, individual initiative and local responsibility, the successful reliance on voluntary activity, non-interference with one's neighbour and tolerance of the different and queer, respect for custom and tradition, and a healthy suspicion of power and authority.¹⁴⁷

Notwithstanding this, Australasian lapsarian authors would undoubtedly embrace the belief expressed in the nineteenth century by A G Stephens, that their existence so far from the old metropolitan centres of injustice and exploitation made it easier to render a form of art offering a truly fresh and radical perspective on human affairs:

The Australian mind is so peculiarly situated that its judgements are ... much more

likely to be sound than those penned in the heated literary atmosphere of London. ...
[The] dividing sea has almost the force of dividing time, and helps to lift its dicta
above the mists of contemporary prejudice.¹⁴⁸

Although flattering and historically compromised (given the xenophobic White Australia policy, for instance), this reading of the 'tyranny of distance' thesis can be recast in New Zealand terms as the 'distance looks our way' motif for a self-respecting nationalist project. This motif calls to mind the post-provincial thesis first espoused in 1981 by Simpson and Evans; a paradigm in which New Zealand literature achieves maturity and resonance only when its authors slough off a long-standing cultural melancholia and no longer view New Zealand as 'being on the periphery but as the centre, thereby eliminating a fundamental tenet of provincial thinking'.¹⁴⁹ The repudiation of 'cultural cringe' and of New Zealanders' view of themselves as 'the Bostonians of the southern hemisphere' goes hand-in-hand with an acceptance – and even celebration of – the local ambience, without making demeaning comparisons to works of art produced in the mother-culture or other centres of high-art.¹⁵⁰ In historical terms, this paradigm of cancelling 'periphery-cringing' follows the vision of Charles Brasch in his influential years as founder-editor of *Landfall* (1947-66).¹⁵¹

While most key statements of lapsarian ideology in New Zealand literature were made during the provincial/neo-colonial phase of national development, it is equally true that other writers (eg R A K Mason, Janet Frame and Hulme) have continued working in this mother lode well into the 'post-provincial' era. More interestingly, their adherence to lapsarianism has resulted in the deployment of narrative modes which transcend critical realism and exploit the freer modalities of modernism, 'New Realism' and postmodernism. It must be noted, however, that Simpson and Evans' use of the post-provincial schema was originally designed as a descriptive model of the development of a Canterbury poetic, not as a prescriptive interpretation of the evolution of New Zealand literature. Even given that Hulme was born and raised in Canterbury (and remains the proverbial 'dream-catcher' of Okarito, Westland), the post-provincial thesis is, in practice, an inflexible and simplistic historical and evaluative paradigm. A better analytical distinction would appear to be between colonial and post-colonial mentalities, or one based on a less restrictive concept of 'provincialism' – and thus, on a more expansive and flexible definition of post-provincialism.

In 1981, Simpson stated that Christchurch and Canterbury were not amenable to 'post-provincial assertiveness' and that they had played 'little part in the subsequent development of New Zealand poetry'.¹⁵² One year later, Christchurch-born Hulme's *The Silences Between* was published, and two years after that *the bone people* was launched. Hulme's novel

entertains much verbal ingenuity and literary experimentation, and there is no other work of New Zealand fiction which so readily and calmly adopts local habitation and names: it is, to use Percy Stephenson's words, a means of declaring that New Zealand 'means something very special, excellent, and even sacred to us - not only for what it is, but also for what we know it can become'.¹⁵³ Yet, Hulme's work also seems to confute the studied neatness of the post-provincial thesis. It displays a curiously provincial antagonism towards the constrictions of New Zealand society, without allowing its heroine to dismiss responsible participation in that society as a radical change-agent. This characteristic of *the bone people* is a matter of post-colonialism and postmodernism, rather than post-provincialism, as Leonard Wilcox shrewdly observed:

The Bone People exhibits the postmodern concerns of ethnic and female identity; as a Maori woman's perspective it provides an alternative to the hegemonic, predominantly patriarchal narratives of the Pakeha post-colonials who claim to represent an 'authentic' New Zealand.¹⁵⁴

Hulme demonstrates that lapsarianism is a reformist movement designed to advance social and ethical progress in the author's home society, not to cynically dismiss that society and its less-than-perfect constituents. Lapsarian authors promote a confluent vision, marrying radical egalitarianism to moral liberalism to show that while we are not all equally endowed, we are of equal worth existentially; and in promoting this democratic viewpoint they demonstrate real faith in their society (ie it is worth aiming for widescale change despite the obvious impediments). In other words, Hulme is pointing the way toward a whole new domain of post-colonial literature, a vision captured in her presentation of the death of the mistrusted homosexual Binny Daniels in *the bone people*, which is used to show 'how social pressures warp people into the trap of violence, the oppressed minorities in particular'.¹⁵⁵

Perhaps the egalitarian-democratic bias of these endeavours (its ethical aspect expressed in the espousal of lapsarianism) is explained by the recognition – in W H Pearson's terms – that if the authors 'alienate themselves from the people they live amongst they will etiolate [their] art'.¹⁵⁶ Thus *the bone people* culminates in an aggressive (and now vintage) phase of critical realism, and yet its recursive opening-ending raises the text onto a plateau of fictional and visionary possibility. Hulme's work addresses long-standing themes connected with the acceptance of sexual variation and a future without racial assumptions and past mistakes. It uses a narrative framework definably close to a Neo-Modernist poetic in its concern with mythical archetype, images and symbols, and yet which is also incipiently postmodern in its occasional and segmented movement away from traditional realism and humanistic

representation towards 'style, technique, and spatial form in pursuit of a deeper penetration of life'.¹⁵⁷ This latter quality, apparent in the text's free-flowing form, is intimately related to holistic systems of knowledge and belief, recalling Marshall McLuhan's celebrated definition of the work of oral societies in which the 'entire message is ... traced and retraced, again and again, on the rounds of a concentric spiral with seeming redundancy. One can stop anywhere after the first few sentences and have the full message, if one is prepared to "dig it"'.¹⁵⁸ McLuhan's certainty is dated: it may even be redundant, wallowing as it does 'in the instant quality, and overlay in depth, of electric speed'.¹⁵⁹ Other of McLuhan's comments remain pertinent, however and he rightly asserts that concentricity (the possibility of enlarging repeatedly and reflectively upon patterned artworks), which requires the 'endless intersection of planes', is necessary for insight.¹⁶⁰ 'In fact', observes McLuhan, 'it is the technique of insight'.¹⁶¹ In this drive towards a new spatialisation of form, *the bone people* recalls the words of the Russian Formalist Viktor Shklovsky:

The form of a work of art is defined by its relation to other works of art, to forms existing prior to it ... The purpose of any new form is not to express new content, but to change an old form which has lost its aesthetic quality.¹⁶²

By deploying postmodernist strategies, *the bone people* certainly proffers elements of shock and the violation of expected continuities in a largely 'malestream' and ethnocentric (Caucasian-conscious) literature. These strategies, which appear in the concluding-proleptic Chapter 12 and Epilogue, include blatantly sentimental and romantic, anti-rationalism and fantasy elements; comprising what Raymond Federman has called 'Surfiction' and 'Mythopoeic Fiction' (*Surfiction*, Swallow Press, 1975). Hulme's pun-metaphor of the divergent homes of Kerewin Holmes has been analysed by Val Melhop, who has concluded that Hulme's emblems (the 'necro' Tower and the life-enhancing spiral-house) are engineered to address the 'post-colonial crisis in New Zealand'.¹⁶³ Thus, 'through the concept of the home as the microcosmic hub of that society, Hulme challenges the dominant Eurocentric system in a desire to reinstate the indigenous culture of New Zealand and to integrate marginalised people into mainstream society'.¹⁶⁴

In Melhop's summary, Holmes' Tower 'has minimal contact with the land' and 'thus it stands in opposition to the beliefs of the indigenous people whose culture is rooted in the spirit of the land'.¹⁶⁵ Melhop asserts that the Tower is 'a threatening symbol illustrating a sick society', akin 'to an upraised fist', demonstrating 'the impact of violence and oppression' in New Zealand society; the winding spiral form of the new shell-house 'is a female image representing regeneration, a source of new beginnings'.¹⁶⁶ In Melhop's interpretation, this

lateral structure represents Hulme's alternative colonisation (p 428), 'her scheme for postcolonial harmony', inasmuch as the spiral 'moves through a series of revolutions but it always moves in a direction; it is progressive, continually advancing'.¹⁶⁷ This pattern echoes the path which New Zealand's social arrangements and priorities should take in what Fleras and Spoonley refer to as 'a post-sovereign era'.¹⁶⁸

From such a perspective, *the bone people* enacts visionary possibilities for new models of citizenship, of 'proposed patterns of constructive engagement that sharply curtail state jurisdiction while shifting the balance of cultural power', a process which Bill Renwick has defined as 'Decolonising Ourselves from Within'.¹⁶⁹ This is a new project of 'ethnopolitics', a form of 'secessionless sovereignty' emerging out of a 'politics of ethnicity as discourse and resistance', where absolute and monolithic Crown authority 'creatively enables Maori to re-engage with the Crown as a starting point for discarding colonial arrangements in exchange for Maori models of self-determination'.¹⁷⁰ Such a Crown-Maori partnership works within the existing framework to promote 'a shared yet interlocking sovereignty [that] is consistent with the realities of a post-colonising, post-sovereign society-building project'.¹⁷¹ Moreover, as Fleras and Spoonley point out, it is a legitimate aspiration, given the *de facto* sovereignty enjoyed by Maori 'because of their rangatira rights as Treaty partners'.¹⁷² This is a counter-hegemonic challenge to the doctrine of Parliamentary Sovereignty, to an incontestable State sovereignty and to Crown indivisibility discourse, all of which are increasingly untenable in a globalised world. The main features of globalisation – capital, immigration and trade flows – challenge the constructs of unitary authority, which are frequently anti-democratic and largely serve financial and political elites. While Hulme almost certainly did *not* have this large scale contrastive discourse in her mind while producing *the bone people*, she had been exposed to the doctrine of paramount Crown authority (and probably to some of the natural law dogmas which underpinned Western imperialist discourse) as a law student at Canterbury University in the late 1960s. It is also probable that she felt uneasy about, and disenchanted with, a self-serving and Eurocentric nostrum which, in the New Zealand context, vitiated the contractual underpinnings of the Treaty of Waitangi.¹⁷³

In *the bone people*, Hulme envisages the 'recalling' of Aotearoa 'as a partnership between two consenting peoples, both of whom are sovereign in their own right, yet inextricably interlocked as partners in jointly exploring post-sovereign possibilities'.¹⁷⁴ Her model of social co-existence acknowledges New Zealand 'as a bi-national society of two peoples, each autonomous in their own right yet sharing the sovereignty of Aotearoa in a spirit of layered yet interlocking jurisdictions'.¹⁷⁵ Hulme's text foreshadows the work of Roger Maaka, who

envisaged the bi-national project as 'A Relationship, Not a Problem', where 'Maori need to be part of the conversation from the start, not simply commentators after the fact'.¹⁷⁶ What should receive recognition is that the Treaty Discourse 'is not a problem to be solved but a relationship founded on mutual respect, to be continually managed and even celebrated'.¹⁷⁷ This relationship may come to focus on a shared bi-national project, one which seeks to resist the negative effects of settler hegemony. Fleras and Maaka have encapsulated this problem as 'anglo-foundational claims' to a full-blown unitary sovereignty.¹⁷⁸ Such claims, they argue, 'sought to justify settlement, to establish self-sustaining states through political domination, to divest indigenous peoples of their lands and resources, and to absorb the indigenes into society as brown-skinned 'clones''.¹⁷⁹ The result is the politicisation of identity as discourse, 'a major constitutional shift in reshaping the foundational assumptions of the contemporary nation-state', and a related challenge to 'the paramountcy of white settler governance' and erosion of the old hierarchies of superiority and inferiority.¹⁸⁰

In an era characterised by the struggle to make amends for cultural ravages imposed by colonial society-building, Fleras and Maaka recognise the difficulty of this process, for the 'reconstitutionalizing of indigenous peoples-state relations will be a laborious [one] without a sustained effort to dismantle those constitutional cornerstones that continue to (neo)colonise indigenous peoples'.¹⁸¹ Chief among these cornerstones is the faith which Anglo-normative law places in its status as a logical structure of rationality. Post-structuralist legal analysis may provide a solution to this impasse, and scholars such as Peter Goodrich have begun to explore how the historical diversity of legal forms and procedures can form the basis for critical revisions of contemporary legal doctrine and constructs of professional practice. As Goodrich has observed, 'for those who still believe in the unity and universality of law, and trust in its momentary closures, the autopoietic or self-referential quality of the legal idol or ideal rests upon a peculiarly positive form of forgetting'.¹⁸² This reality-check is particularly appropriate with regard to the relativity of legal forms/formulae and the inherent contingency of 'law' as a normative enterprise. In Goodrich's terms, it is 'the phantasmatic structure of legal practice' which post-colonising reformers need to explore and re-define for the citizens of Aotearoa/New Zealand.¹⁸³

Hulme's vision of a commensalist social order arguably encapsulates this somewhat hazy political prospect. This is a significant claim, for it lifts *the bone people* out of the narrowly 'religious' genre stereotyping and up onto the plane of a subtextually meta-political (socially and politically transformative) work of art. In this field, *the bone people* becomes a hope-text of inordinate importance to the collective 'dreaming', vital to the achievement of a mature

and truly post-colonial polity in New Zealand. Issues surrounding the role of literature in national identity were canvassed by Holcroft in a series of essays penned in the 1940s: 'The Deepening Stream' (1940), 'The Waiting Hills' (1943) and 'Encircling Seas' (1946).¹⁸⁴ In these thoughtful – if ponderous – texts, Holcroft wrote about the difficulties of projecting 'the threadbare ideas of English fiction against our own fresh background', describing New Zealand as 'a cultural appendage of Britain'.¹⁸⁵ Holcroft explored the idea of a distinctly indigenous literature which would attempt to find the local meaning of reality, insisting upon the special influences of soil, history and language in the process of discovering 'the nation's mind'. He also argued that 'hard thinking must accompany the development of our literature in its steps towards maturity'.¹⁸⁶

Many critics of *the bone people* have failed to notice that Hulme's deployment of the mauri motif functions as a powerful resonator in her quest to mythologise a post-colonised New Zealand. It also underpins the spiral colony of houses which signify Hulme's indigenous model of an 'imagined community' for the Kiwi polis.¹⁸⁷ Hulme's visionary social thinking is part of her rejection of what McLuhan terms the Westocentric 'appetite for unlimited power over man and nature'. McLuhan's warning concern the dangers of technological rationalism, of 'the wholly sub-personal and sub-human absolutism of abstract organization', noting that the 'most hopeful developments in social thought in recent decades have ... been in the direction of exploring modes of thought and feeling rather than in the quarter where mechanical efforts to tinker the good society into existence have prevailed'. In this studied rebuke to the likes of B F Skinner and the social engineers, McLuhan argued that 'unremitting observation and analysis, conversational and literary, is the indispensable propaedeutic to human revival'; that only this 'sort of patient exploration of feeling and thought can prepare the ground for community and conversation once more'.¹⁸⁸ A more exact description of Hulme's socio-literary project would be hard to find. After all, it was the juxtaposition and fusion of provocative ideas and painful emotions which garnered *the bone people* such acclaim, appearing as it did in an era riven with Cold War fears about the destruction of humanity by market ideologies and the Anglo-American 'military-industrial complex'.

Chapter 6

Competing Sovereignties and Discourses: Towards a Bi-national Polity

Hulme was forced to contemplate the unwelcome irony of her anti-consumerist and possibilist social vision being celebrated by, among others, a Labour Government committed, *inter alia*, to a return to the discredited 1930s policies of rigorous economic deflation. The result of these policies was a massive human waste, including reduced social health for almost all but the *élite* of Maori. As Jane Kelsey has observed, the years of ‘radical, theory-driven change’ amounted to ‘a threat to identity, jobs, communities, and the right to control their own lives’, and Maori suffered disproportionately from the impacts of deregulation:

The aim of successive governments and their supporters was to put ‘globalisation as ideology’ into practice. ‘The New Zealand experiment’ – the relentless pursuit of free market principles that began in 1984 – exposed a small, remote country of 3.8 million people to the full impact of international market forces. The theoretical template on which it was based treated the country’s colonial history and the contemporary reality of its social and political life as irrelevant.¹⁸⁹

This radical market reform was the legacy of the rise of New Right corporatism (expressed by neo-conservative theorists such as Mihail Manoilescu, Alfredo Rocco, Friedrich von Hayek, Michael Oakeshott and Milton and Rose Friedman) and the decline in social capital (or non-opportunistic values and behaviours).¹⁹⁰ John Ralston Saul has discussed social capital, arguing for the need to reposition society upon the base of disinterest and participation by its citizens:

The acceptance of corporatism causes us to deny and undermine the legitimacy of the individual as a citizen in a democracy. The result of such a denial is a growing imbalance which leads to our adoration of self-interest and our denial of the public good.¹⁹¹

In Ralston Saul’s terms, the West now suffers from ‘an addictive weakness for large illusions’ and for simple ideology, so that ‘now we are enthralled by a new all-powerful clockmaker god – the marketplace – and his archangel, technology’.¹⁹² In the Saulian schema it is the managerial *élite* of the technocracy who are the new corporatists, with vested interests in undermining participative governance in favour of the hierarchical Patron-Client model: an ethic of ‘clientelism’ which specifies ‘status differences and access to artificial solidarity

resources as the basis of accommodation between patron and client' in an asymmetrical relationship between social and/or political unequals.¹⁹³

Hulme's commensalist vision implicitly rejects this model; the evolution of her vision would result in communities of social trust, of localised civil society and self-governing democratic régimes operating, in all probability, on models of people's collective capitalism. Her spiral colonies are an attempt to envision new political (as well as affective and relational) structures premised upon communitarian bonds and the rejection of privatised and atomised living. These communitarian structures deny the acquisitive capitalist ethic of competitive individualism, instead relying on re-formatted whanau patterns of living which emphasise social cohesion and community development. This concept foreshadows the words of Patrick Watson and Benjamin Barber, who proclaimed 'as long as there are women and men who seek to create a free space in which to make their own lives and a common space to forge a communal destiny with others, the struggle for democracy will persist'.¹⁹⁴ In this context, I argue that Hulme's *the bone people* is much more of a 'national epic' than has been appreciated, as the battered denizens of 'hulme-space' strive to transcend not only their personal disenfranchisement from responsible living, but also seek to escape a rather cynical, limited and frankly Hobbesian role for citizens living under New Zealand's 'Leviathan'/Sovereign Assembly.

Thomas Hobbes (1588-1679) outlined his influential theory of despotic power/absolute sovereignty in *Leviathan* (1651), which justified 'Sovereignty [sic] by Acquisition, by Covenants of the Vanquished to the Victor, or Child to the Parent'.¹⁹⁵ Hobbes' notion of consenting subjects is premised on a vertical model of authority-dependency, and is very different to a programmatic and horizontal model in which politicians, governance agencies and citizens work synergistically as 'rough equals in mutual solidarity'.¹⁹⁶ Hulme's towerless new community, slaking democratically across the land, neatly images this horizontal model. Her text impliedly resists the positive rule of law, memorably described by Hobbes as one which 'they that have the Sovereignty shall think most convenient', usually an elective tyranny.¹⁹⁷ Hulme's model is premised on tribal expressions of the Treaty principle of tino rangatiratanga, which is akin to John Locke's discourse on the Sovereignty of Natural Law. Locke's *Second Treatise of Civil Government [An Essay Concerning the True, Original, Extent and End of Civil Government]* of 1690 presented the idea of a 'fiduciary' or trustee government which aims to secure the public good by putting humans 'out of a state of nature into that of a *common-wealth*', and adopted Jean Jacques Rousseau's idea of a community with an active and permanent sovereignty.¹⁹⁸

As Andrew Sharp reminds us, the Waitangi Tribunal tikanga is a body of evolving norms, indistinguishable from consent and in line with transcendent values, affirming the justice within Maori self-government. This is also a Platonic inflexion: the *de jure* principle of te tino rangatiratanga (tribal self-management under chiefly authority) places it amongst the realm of enduring universal principles and, in Sharp's assessment, embraces a Lockean view of consent leadership (whether explicit or tacit) as a normative value set which creates a language of rights. He believes that the Tribunal has deemed the tikanga surrounding tino rangatiratanga to be an unchanging, essentialist set of principles, rules and norms which cover mutual relationships between rulers and the ruled as well as cohesion. Moreover, they transcend the exercise of mere customary rights. Sharp argues that te tino rangatiratanga is a phrase sourced in the Treaty of Waitangi (not inherent in everyday Maori discourse), which was used in 1840 to describe a way of life in terms of the exercise of tribal power.¹⁹⁹

Hulme seems not to embrace the notion of small sub-polities such as a 'Ngai Tahu Nation'. Her vision seems, rather, to accede to pan-Maori ideals dominant during the long years when *the bone people* was being penned. Her spiral colony, however, encompasses the definition of Ngai Tahu Kaumatua, Sir Tipene O'Regan, that 'The Tribal Nation' is a 'kin-based Maori collective' which cleaves to the continuity of a community as a collective entity unified by the connective 'tissue' of whakapapa for the benefit of nga hua mokopuna, its children.²⁰⁰ Theorists of both the right and the left have declared the tribal grouping in terms of having an anti-democratic and exclusivist kaupapa, and New Zealand politicians have for decades worked to destroy its identity. More insidiously, as O'Regan explains, it has been a means to alienate collectively-owned tribal assets from Maori:

In New Zealand history, the destruction of the tribe as an effective social and economic entity has been at the heart of virtually all public policy to do with Maori since the beginnings of colonization.²⁰¹

Sir Tipene has led the call among 'the House of Tahu' for 'autonomy in our own place, within our rohe potae, within our traditional territory'.²⁰² Without this cultural and economic mana, 'all the other symbolism is meaningless, all the trappings of democratic framework, Treaty references are irrelevant unless you can fund your own culture'.²⁰³

Thus we return to the discourse of indivisible sovereignty and New Zealand's ongoing relationship with the English legal tradition. The crux of our problems with consensual governance in the Westminster system is that, historically, English courts used Magna Carta (1215) to assert the principle of judicial control and the over-arching sovereignty of the

people over the Crown and the Legislature until the ‘Glorious Revolution’ of 1688.²⁰⁴ After 1688, this limitation, which expressed Sir Edward Coke’s non-binding extra-judicial comment in *Dr Bonham’s Case* (1610), was radically diminished by various revisionist publications, including William Petty’s *Jus Parliamentarium* (1739) and Sir William Blackstone’s influential *Commentaries on the Laws of England* (1765), which theorised the 1688 doctrine of the omnipotence of Parliament (or ‘Legislative Supremacy’).

The influence of Coke’s *obiter* demonstrates the aporia at the heart of the doctrinally presumed clear disjunction between *ratio* and *obiter* statements. The *obiter dicta* expressed in 1610 by Coke in *Dr Bonham’s Case* have come to underpin the doctrine of judicial review in the Anglo-American jurisprudence: [is this correct – further on you say that it was rejected? See below: was it only rejected in Britain? – please clarify.]

... it appears in our books, that in many cases, the common law will control Acts of Parliament, and sometimes adjudge them to be utterly void: for when an Act of Parliament is against common right and reason, or repugnant, or impossible to be performed, the common law will controul it [sic], and adjudge such an Act to be void ... (8 Co. Rep. 107a at 118a).

This judgment had a chequered history. It was being honoured as late as 1795 (*R v Inhabitants of Cumberland* (1795) 6 T.R. 194; 101 E.R. 507) but in 1861 it was dismissed by Erle C J (in *Kemp v Neville*, 10 C.B. [N.S.] 1861 at 522). The doctrine of absolute Parliamentary Sovereignty was trenchantly proclaimed in the *Railway Cases* and, most notably, by A V Dicey in his 1885 treatise, *Law of the Constitution*.²⁰⁵ In 1947, the great constitutional scholar O Hood Phillips formally sounded the death-knell for this doctrine when he declared that the *obiter* in *Dr Bonham’s Case*, and that of Sir Henry Hobart in *Day v Savadge* (1614), ‘are now of merely antiquarian interest’.²⁰⁶

Although Coke’s powerful *obiter* was eventually rejected [in Britain?], others also feared unmediated absolutist authority. Coke believed that legislative power should be limited by reason or natural equity, *jura naturae*, a law higher than statute law. Thomas Paine’s *The Rights of Man* (1791) demonstrated how Burkean positivists had merely transposed the ‘divine right to govern’ from a Sovereign Crown to a sovereign, infallible and omnipotent ‘political church’ called Parliament.²⁰⁷ Cokean scepticism about centralised power survived into the twentieth century with the ‘pluralists’, a group of scholars (including F W Maitland, J N Figgis, Harold Laski and G D H Cole) who asserted that Parliament is limited in its powers, but who did not advocate judicial supremacy as alternative doctrine. More recently, and

closer to home, Sir John Laws has reconfigured Locke's concept of popular sovereignty (leadership upheld by popular consent) in a way which may advance notions of *tino rangatiratanga* and co-sovereignty (divisible sovereignty) in New Zealand. Sir John insists that the constitution of a modern state 'has to nourish and promote its citizens' essential characteristics or it will falter and fail', and that if it does not do so 'there is a brutish separation between ruler and ruled'.²⁰⁸ These comments reflect two legal traditions: that of Locke-Jefferson-Lincoln and that of Machiavelli-Hobbes-Austin, a debate which centres on whether citizens (*qua* individuals or ethnic groupings) ought to enjoy autonomy as participating *subjects*, or whether they ought to be *objects* of finance capital and the state and remain alienated receptors of a generally benign local autarky. In citing the 'good constitution', Sir John argues that enshrining human rights on a purely individualised basis is, *pari passu*, inadequate if we hope to develop 'a higher-order law to which even Parliament is subject'. As he explains:

A society whose values are defined by reference to individual rights is by that very fact already impoverished. Its culture says nothing of individual duty—and certainly nothing of aspiration; and therefore nothing of community.²⁰⁹

Laws makes a powerful case that the individual's autonomy 'cannot be unpacked or defined purely in terms of rights, for at its root is the fact that the individual's sovereignty belongs to his neighbour as well as to himself'.²¹⁰ This principle has ramifications for our bicultural polity. The founding document of New Zealand contains contractual guarantees of a bifurcated, shared sovereignty. The notions of a shared sovereignty is a direct challenge to the doctrine of parliamentary sovereignty and the arrangement whereby the legislature and executive hold power for the benefit of the people and therefore act as 'the guardians of the morality of aspiration'.²¹¹

Phillip A Joseph, a noted New Zealand constitutional scholar, has asserted that the Diceyan doctrine of indivisible parliamentary supremacy is just *that*: doctrine, and not an immutable constitutional 'truth'. This doctrinal field, argues Joseph, is a contested site for the ideology of British constitutionalism. At its origin, 'the modern sovereignty doctrine was a specious rationalization of the Revolution Settlement' of 1688, for the 'settlement sought to end royal abuse, not create supreme and unchallengeable legislative power'.²¹² Thus parliamentary sovereignty was a political *product* of an uncertain age, rather than, as it has been immortalised, as the foundational moment in defining the role of the modern legislature. Joseph notes that it may be 'tempting to contrive a scripture source of sovereignty doctrine in the Bill of Rights', but adds that 'disciples of the power of linguistic meaning (primacy of the

text) would despair in divining omnipotence theory from the Bill of Rights.’ Joseph also noted that:

If the text ‘speaks’, this document [the English Bill of Rights, 1689] speaks to the relations between constitutional organs, not omnipotence theory. Willful reconstruction may make it constitutive, but that is another thing. The text (the Bill of Rights) is not the source of meaning (sovereignty doctrine).²¹³

Joseph has also analysed the role of government in New Zealand and the possibility of reforming existing parliamentary supremacy. Thus, while New Zealand is subject to an historical heritage of ‘Diceyan positivism’, reconstruction of constitutional doctrine is possible without traversing ‘*a priori* reasoning from competing legal theories’.²¹⁴ To use Stanley Fish’s term, reform is to be premised upon ‘interpretive communities’. Joseph thus posits a variant textual interpretation of the reigning sovereignty discourse, using a methodology of reader-reception aesthetics/criticism which retains texts (doctrines) as stable entities but dislodges them as privileged containers of meaning, and which inheres in communal decisions about which ‘literary’ texts (or legal doctrines) still compel acclaim and value. Such an anti-formalist undertaking appears feasible in a world in which neither textual originalism nor pure historicism are possible, in rigorous epistemic terms, and Joseph balances this project while agreeing with Fish – in his own words – that ‘a community’s interpretive activities are not free and unconstrained’.²¹⁵

There are other more physical (or geo-spatial) reasons to argue for a reinterpretation of our English legal heritage. Lord Cooke, who possesses eminent judicial qualifications and vast experience, has recorded his own ‘ever-increasing awareness of the gulf in modern legal thinking between England and this South Pacific country, much smaller in population and with different problems, more egalitarian, probably more questioning, just possibly on some public and legal issues more objective’.²¹⁶ Joseph’s argument in favour of a reconstruction of our core constitutional *nostra* would exploit the ‘quite ... wide gulf’ which Lord Cooke has identified, and would build upon our own evolving and ‘truly distinctive outlook’: an Aotearoan jurisprudence.²¹⁷ The notion of a nativist legal tradition ought not to surprise, given the remoteness of this archipelago (poetically configured as ‘dry moments in a vast sea’ by Bronwen Reid), and the concomitant communitarian feeling which developed historically on these fragile islands, defined by Reid as ‘a sort of reactive radicalism, a search for new ways of shelter, an ability to change’.²¹⁸ By positioning inalienable natural or common law rights, and thus promoting judicial caution and a trammelled Parliament, we signal ‘the reconstruction, not [the] annihilation of legislative power’.²¹⁹ This prevents a polity from

witnessing the deconstruction of its grant of law-making power, yet also moves away from what Joseph calls ‘the closure or inhibition of doctrinal scholarship’.²²⁰

The reconstruction of Parliamentary Sovereignty would involve ‘critical interpretation in response to changing expectations’ in the national community, and could look to external inspiration.²²¹ Thus, for example, the historic roots of Italian republican thinking relies upon collective sovereignty, which acts ‘like a vast expanse of water and [is] therefore less subject to contamination than a small quantity’ of power-agents.²²² This is a reformulation of the mediaeval doctrine of the ‘rights of the community’; in the words of Otto Gierke, the doctrine ‘decisively recognizes an aboriginal and active Right of the group taken as a Whole’.²²³ Writing in 1900, Gierke explained that if the *Imperium* proceeded from the people in terms of a *consensus populi*, so it could also ‘escheat’, or revert, to them in accordance with a bilateral legal relationship of participation in the life of the State. As F W Maitland points out, in Gierke’s conceptualisation, sovereignty ‘is an attribute, not of some part of the State, but of the *Gesamtperson*, the whole organised community’.²²⁴

The liberal cultural critic Hamish Keith has neatly limned the competing visions of sovereignty that underpin much socio-political debate in Aotearoa today. It is, argues Keith, ‘pious flimflam’ and retrospective nonsense to advance that Pakeha were a party to the Treaty of Waitangi and ‘that it had something to do with biculturalism’.²²⁵ Of course, Keith’s position is the new orthodox (the Treaty was initiated by the British Crown as it arrogantly annexed Niu Tirenī), yet his assertion that the Treaty ‘was and is about sovereignty and property, not about cultural relationships’ is casuistic, and serves to splinter holistic indigenous mentalities.²²⁶ It also denies the Treaty’s status as a living social contract: in Pocock’s wise words, it is the originating constitutional document and ‘the precondition and occasion of the sovereignty of the [C]rown which is still the root of law in New Zealand’.²²⁷ Similarly, Sir Tipene has insisted that the Treaty ought to be treated as ‘a domestic contract’ between the Crown and signatory tribes, ‘designed to govern and control domestic relationships’.²²⁸ In 1905, William Baucke argued that Te Tiriti was a covenant between two independent polities, in which Maori surrendered their foreign sovereignty but retained their ‘personal and property sovereignty intact, sacred and inviolate’.²²⁹ It is my contention that *the bone people* is very much concerned with the *taha wairua* of such ‘personal and property sovereignty’ for all the peoples of Aotearoa. As such, Hulme’s text recalls A H McLintock’s statement that the events of 1840 constituted ‘an idealistic attempt to lay down the verbal foundations of a binational State’.²³⁰

Hulme’s view of the Treaty of Waitangi is consonant with the sociological vision of the

former Prime Minister, the late W E Rowling, who declared in 1977 that the Treaty ‘became the cornerstone of the new society we have forged in the Pacific’.²³¹ This does not negate the acknowledgement made by Her Majesty, Queen Elizabeth, at her address on Waitangi Day in 1990, which recognised that the Treaty of Waitangi ‘has been imperfectly observed’.²³² In making this admission, however, the Queen paid tribute to the New Zealand Court of Appeal, which has effectively reversed the established Treaty jurisprudence in the landmark *New Zealand Maori Council v Attorney-General* case of 1987 which relates to State Owned Enterprises and lands.²³³ As Cooke P explained, ‘this case is perhaps as important for the future of our country as any that has come before a New Zealand Court’.²³⁴ As a result of the Court’s jurisprudence, the old mono-legal regime was gradually superseded. Sir Robin Cooke’s judgment in the case of *Te Runanganui o Te Ika Whemua Inc Society v Attorney-General* ([1994] 2 NZLR 20) has been cited by Justice Baragwanath (President of the New Zealand Law Commission) as authority for the exciting proposition that:

... as the US constitution is triadic, the New Zealand constitution is duadic. As well as the predominant Pakeha legal constructs by the judges of the common law and by Parliament of legislation there is a residual set of Maori norms to which it is the duty of the Courts to give legal effect insofar as they have not been ousted by the Treaty of Waitangi’s cession or by statute: except where the original cession and subsequent statutes provide a bar the courts will give effect to Maori aboriginal rights.²³⁵

This juristic clarification has been recognised outside New Zealand. In 1994, an English law Lord declared that the Treaty ‘is of the greatest constitutional importance to New Zealand’.²³⁶ Lord Woolf was following the lead of Cooke, who had roundly asserted in 1990 that the original *Wi Parata* judgment (1877), which had deemed the Treaty a ‘simple nullity’ as regards cession, was ‘probably never was good international law.’ Cooke went on to observe that:

... no matter how it should be categorised in law, [the Treaty] has taken on in fact a vitality and potency of its own ... it has become part of the essence of the national life. Even its critics have to accept that it is a foundation document. It is simply the most important document in New Zealand’s history.²³⁷

In 1994, Lord Cooke expanded his original statement, insisting that the Treaty of Waitangi ‘must be seen’ as ‘a kind of grundnorm, a political compact as fundamental for our South Pacific country as was Magna Carta for England’.²³⁸ This increasing jurisprudential recognition of the foundational importance of the Treaty to New Zealand society echoes

Hulme's vision of social cohesion typified in *the bone people*: subsequent jurisprudence has borne out the literary vision which appeared in 1984. Thus law and literature are not only engaged in a dialectic, but Hulme's work is a prophetic statement about the path of New Zealand society in the past 20 years.

Chapter 7

Constitutional Themes for Bi-nationalism in New Zealand/Aotearoa

In 1998, Mike Moore planned to put forward a Constitutional (People's) Convention Bill in order to initiate discussion about the proper constitutional foundations of New Zealand. At the time, Moore celebrated the fact that New Zealand's uniqueness was achieved via the Treaty of Waitangi, 'where order, law, and rights were established by agreement', but he also bemoaned that 'the principles of the Treaty were violated by bayonet, baton, and bank manager'.²³⁹ In 1985, the Fourth Labour Government had tried to incorporate the Treaty into an entrenched Bill of Rights for New Zealand, producing a White Paper which noted 'it is for the Maori themselves to indicate if they want the Treaty ... to be dealt with in the Bill of Rights and in what way'.²⁴⁰

This proposal, from Geoffrey Palmer, signalled a monadic conception of Maori. However, that Paper did follow hui at Turangawaewae (September 1984) and at Waitangi (February 1985), where, as the publication recounted, 'a recurrent theme was that the Treaty should not be incorporated into ordinary statute law but should be entrenched in constitutional law as the only, or at least the principal, basis of our constitution'.²⁴¹ It would seem that the Treaty needs to 'shine' in a Constitution Act, and not be sidelined into a Bill of Rights statute. There is now also a technical problem with the proposal to entrench the Treaty as supreme law: although the *Constitution Act 1986* theoretically provides us with an 'autochthonous' Kelsenian *grundnorm* (allowing us, for instance, to jettison the British settlement of 1688 and the dogma of Parliamentary Supremacy), we are prevented from such an action by virtue of statutory recognition of the English *Bill of Rights* (1688) [1 Will. And Mar., Sess.2, c.2 sections 1 & 2] in our *Imperial Laws Application Act 1988*.²⁴²

The *Constitution Act 1986* rendered void – as operative instruments – the *New Zealand Constitution Act 1852*, the *Statute of Westminster 1931* and the *New Zealand Constitution Amendment (Request and Consent) Act 1947* (all Westminster enactments), and effected its own 'quiet revolution' by formalising the removal of a long-standing external mechanism to amend our constitution (ie that of the British Parliament at Westminster).²⁴³ Joseph declares that this Act 'was an explicit attempt to proclaim New Zealand's national sovereignty' and the formal end of our neo-colonial status, given that the 1986 instrument revoked not only the *Statute of Westminster* but 'the residual power of the United Kingdom to legislate for New

Zealand'.²⁴⁴

In 1931, Britain, via the *Statute of Westminster 1931*, proffered full legal autonomy to the Dominions. Section 2 was critical: subsection (1) revoked the operation of the *Colonial Laws Validity Act 1865 (Imp)* and subsection (2) expressly declared that no future Dominion statute would be void by reason of repugnancy to English law. Until the New Zealand Parliament requested the adoption of the *Statute of Westminster*, it had remained a non-sovereign and subordinate Commonwealth legislature. The relevance of this statute to our earlier discussion of parliamentary sovereignty, then, is more than historical interest, for once Westminster passed the *New Zealand Constitution Amendment Act 1947*, New Zealand possessed – theoretically – a totally sovereign legislature. It was capable of voiding the *British* doctrine of Parliamentary Supremacy. And yet, Joseph reminds us, that 'New Zealand has the closest adaptation of the Westminster system in the British Commonwealth'.²⁴⁵

In our duadic legal regime, the Treaty of Waitangi needs formal and binding recognition as our founding constitutional and contractual document (in Maori and English versions). Given this importance, it is difficult to fathom why the Fourth Labour Government failed to take the opportunity presented by the *Imperial Laws Application Act 1988* to incorporate the Treaty as an international treaty of cession, in which an indigenous population peacefully surrendered wider policing and 'foreign policy' powers. The *Imperial Laws Application Act* formally incorporated Magna Carta and its restrictions on parliamentary executive power into the fabric of New Zealand law.²⁴⁶ Such an enactment regarding the role of the Treaty would have declared our status as a mature, post-colonial polity (and it may yet be feasible, if there was to be an amendment to the *Imperial Laws Application Act* and/or the *New Zealand Constitution Act*). By attaining such status, we would fall in line with the long-held Privy Council view: because the Treaty has not been incorporated into municipal law, it is non-justiciable. Recognition of the Treaty as an international legal text would make provision of a written constitution simpler, a constitution which could secure Maori self-governance, just as the *Canadian Charter of Rights and Freedoms (1982)* recognises and affirms, but does not define or delimit, the 'existing aboriginal and treaty rights of the aboriginal peoples of Canada' (s 35).

Claudia Orange has observed that New Zealand's constitution has 'never effectively protected' the Treaty of Waitangi.²⁴⁷ Nonetheless, the colonisation of New Zealand proceeded on different grounds to that of other parts of the British Empire. In 1847, the Chief Justice, Sir William Martin, opined:

It is true that the colonization of New Zealand has differed from the mode pursued in many of the older colonies. As was said by the learned Attorney-General, it has been distinguished by a practical advance of the doctrine that “Power has duties as well as rights”.²⁴⁸

In *The Queen v Symonds*, Sir William advanced the contractual basis of our founding constitutional document, guaranteeing Maori tribal asset and resource control under Article II.²⁴⁹ The practical idealism and equitable judgment exercised in this ruling means that *The Queen v Symonds* is New Zealand’s primary, originating text of Treaty case law, even though that line of reasoning was later abrogated. Subsequently Privy Council judgments as to the Treaty’s functionality as a valid treaty of cession at international law, however, strengthen its constitutional mana and provide the most cogent rationale for entrenching it as the prime site of New Zealand constitutionalism.

Richard Boast believes that post-1975 attempts ‘to create a constitutionalized Treaty of Waitangi to serve as a unifying symbol for the nation can now be clearly seen to have failed’.²⁵⁰ Despite this failure, Boast concedes that the legal position today remains that of *Te Heuheu’s* case (1941) – the Treaty was ‘not a mere nullity but a valid treaty of cession’ – even though ‘the one basic principle which has dominated ... is not the common law doctrine of aboriginal title but, in fact, the principle of parliamentary sovereignty’.²⁵¹ Keith Sorrenson has noted that despite the frequency of bilingual treaties in nineteenth-century Europe, this was a rarity in the Pacific realm: ‘it is the Maori text that gives Waitangi its most distinctive quality.’ In Sorrenson’s view, New Zealanders ‘have not yet come to terms with that’.²⁵² Given F M Brookfield’s insistence that the supremacy of the New Zealand Parliament in law ‘is now based on the revolutionary *grundnorm* of 1986, rather than, derivatively, from the revolutionary *grundnorm* of 1840’, the best mechanism for enshrining the Treaty would be ‘direct enactment of the Treaty (or its principles), perhaps as part of an entrenched Bill of Rights or of a whole written constitution, the rules of lawmaking being changed to ensure its appropriate protection for the future’.²⁵³ Having that change fortified by approval of the main political parties and/or by referendum would ensure its ‘strong acceptance in the community’.²⁵⁴

Palmer’s attempt to render the Treaty an appendix to an entrenched Bill of Rights was arguably designed to underscore its Article III guarantees and status for Maori, and what might be interpreted as Article I domiciliary rights for Pakeha: ‘giving legitimacy to the presence of the Pakeha, not as conqueror or interloper, but as a New Zealander, part of a new

tangata whenua'.²⁵⁵ Yet this proposal was rejected, having been deemed to demean our constitutional document by placing it in a lowly position. For example, while Maori rights are part of the laws and usages of New Zealand which the judiciary are sworn to uphold, the Treaty *recognised* occupancy and property rights which Maori had in 1840, and certainly did not create and grant such 'common-law rights' to them. As Shane Jones has explained, for Maori the Treaty of Waitangi is an affirmation of ultimate sovereignty over their homes, lands, estates and esteemed institutions and possessions (Article II). Thus Maori rejected the Treaty's incorporation into what became the *New Zealand Bill of Rights Act* 1990 because, under the reigning ideology of liberal humanism, this formulation threatened to reduce the supreme te tino rangatiratanga rights of resource control and self-government of Maori as 'nations within' to simple cultural and linguistic ones in the public mind. The Treaty is indeed a taonga tapu (Sir James Henare), a sacred document bearing the moko of the ancestors and embodying mana Maori, and so it must not be down-graded from its unique position as the foundation of a developing social contract and of a bicultural polity. A Bill of Rights would enshrine the protection of individuals' negative liberties, and not the positive rights of a collective. Thus we await the day when enlightened citizens and policy makers can frame an embracing written constitution which enshrines the Treaty as the root of all legitimate (but divisible), bi-national authority in Aotearoa/New Zealand. As Brookfield observed in 1985:

After the centuries of generally deferring to the will of parliament, the courts are now, to say the least, most unlikely to carry out what I may call without disrespect the Coke-Cooke views so far as to spell out a detailed common law bill of rights that will limit the supremacy of parliament.²⁵⁶

How prescient Brookfield was, given the inherent and manifold operative weaknesses of our non-entrenched *New Zealand Bill of Rights Act* 1990.²⁵⁷

Conclusion

Delivering the Hope-text

Peter and Brigitte Berger and Hansfried Kellner have described ‘nativism’ as a ‘counter-modernizing ideology’ and as ‘a defensive reaffirmation of traditional symbols’.²⁵⁸ It is defensive because of the ‘cognitive contamination’ which occurs when the traditionalist defends himself/herself against modernity, and thus ‘almost inevitably incorporates elements of the latter within his [sic] own defense’.²⁵⁹ I have deployed the term ‘nativist poetic’ to describe Hulme’s complex and eth(n)ically-grounded First Nation insights, and will not resile from that non-sociological usage of the term, for one of the real strengths of Hulme’s text lies in its syncretic blending of concepts and belief systems. It is *because* of Hulme’s openness to a wide diet of ideas and traditions (without denying her fundamental commitment to the primacy of wairua Maori) that her striking vision cannot be claimed by advocates of a narrow ‘mini-nationalism’ based on restrictive canons of ethno-cultural separatism or secession. This, moreover, is why *the bone people* worked (and continues to work) so well as a hope-text.

Hulme’s novel points towards a politics of indigeneity and a new partnership, a re-engagement premised upon what Fleras and Maaka define as a non-dominating relationship of relative yet relational autonomy and power-sharing: a new constitutionalism which will end the ongoing neo-colonisation of the indigenous people of Aotearoa. As if to underscore the point, in 1990 Hulme noted that the *tauiwi* group in the New Zealand polity were gradually changing:

It’s almost as though there’s a curiously different breed of people being moulded out of all the hardship and the clashing ... The mix of Maori/tau iwi is the one that potentially holds hope for a new kind of humanity, but I don’t think of us as some kind of strange seed-bed for the rest of the world. It’s more the sense that ... ideas have a certain force, personalities have a certain force, and if you have been shaped – albeit in an unconscious way – by the very land you’re living on ..., what you do in this one small area will, like the ripples spreading out, affect larger areas.²⁶⁰

Hulme’s approach is very much in the spirit of Matiaha Tiramorehu, her ancestor from Moeraki, who, in petitioning Queen Victoria in 1857 regarding Treaty grievances of Ngai Tahu, reminded Her Majesty of the social contract begun at Waitangi: ‘that the nation be

made one, [and] that the white skin be made just equal with the dark skin'.²⁶¹

It was, then, a huge and terrible irony that *the bone people*, promoting national, communal and ethnic sovereignty, emerged at just the moment when New Zealand was forced to abandon its admittedly fragile macro-economic sovereignty, to embrace the global monetary market and embark on a full-blown privatisation programme, with its monadic promotion of self-interest and the privatisation of social responsibility. Yet, Hulme's text delivers those 'Pacific' themes of collective development and communal social responsibility which are so necessary if Aotearoan citizens are to become that 'curiously different breed of people'; moulded – like her beginning people – out of hardship and conflict, able to reassert their economic and political sovereignty and to re-think and restructure the New Zealand model of participatory democracy.

This message resonates with Antony Hooper's recent observation about 'the capacity of peoples to indigenise the forces of global modernity and turn them to their own ends', and Marshall Sahlins' argument that 'in some measure, global homogeneity and local differentiation have developed together, the latter in response to the former, in the name of native cultural autonomy'.²⁶² This is surely what Pocock meant when he aired 'the possibility of reconstituting distinctive voices that can speak across very divergent concepts, some of them not yet formulated' about the inheritance and meaning of colonial history.²⁶³ Thus, in terms of the tradition-change antithesis, while it may be viewed as legatee of the post-colonial mood of the 1980s, I would argue that *the bone people* actually helped to forge a climate of wider acceptance of the work of the Waitangi Tribunal (with its expanded powers from 1985) and of the Treaty claims process. In the 'Moonwater Picking' epilogue, Hulme's focus on what Graham Kinloch has called 'the microscopic (ie individual and interpersonal systems)' promotes a values-model for the reconceptualisation of 'the macroscopic (ie societal, colonial, economic, stratification, and power systems)'.²⁶⁴ Thus Hulme's novel recalls Xavier Herbert's *Capricornia* (1938): it is one of those rare 'talismanic works which endow us with a national idea and thus embody the national soul'.²⁶⁵ It is surely unsurprising that the closest work to approximate to the status of the mythical 'Great New Zealand Novel' – viz., *the bone people* – should recall Sir George Grey's observation of 1890 that:

Every country should have its distinctive character faithfully expressed in a literature which is the reflex of the land in which it had its birth. Such a national literature must, in each case, be greatly influenced by the nature of the country and the character of the native people with whom the early settlers came into contact. The more trying the struggles undergone by the early settlers, the sterner and more earnest, even

sometimes more melancholy the character of the national literature is likely to become.²⁶⁶

This melancholic strain would certainly be justified in 2004 (ironically the 20th anniversary of the publication of *the bone people*) with the passage of the ill-advised Seabed and Foreshore Act under urgency. This legislation has enacted a greatly disturbing revisionism into the fabric of New Zealand's constitutional and property law, impliedly reversing *R v Symonds* (1847) NZPCC 387, which affirmed the common law doctrine of aboriginal customary title in New Zealand; and it expressly over-ruled the highly principled Court of Appeal decision (CA173/01 CA75/02: 19 June 2003) which took powerful heed of a Privy Council decision of 1901 (*Nireaha Tamaki v Baker*) sanctifying *R v Symonds*'s strong assertion of Maori customary title, and Lord Cooke's *obiter dictum* that *Wi Parata* (1877) 3 NZ Jur (NS) 72 (SC) was bad law.

The new, supposedly 'remedial' legislation, constitutes a radical reversal of the enveloping Treaty law paradigm, swerving in a deeply conservative and state-absolutist direction which also over-rides nineteenth century international legal norms on indigenous ownership in a kind of paternalistic, Leninist conception that 'the Labour Party knows best' what its bemused populace needs. The Act will surely fuel appeals to the New Zealand Human Rights Commission and to the United Nations Committee on Racial Discrimination under the ICERD (article 14) and ICCPR (Article 27 including the Optional Protocol), to which New Zealand is a full signatory. Indeed, the Seabed and Foreshore Act 2004 threatens to relegate Kiwis to *de facto* membership as outlander Queenslanders, as it re-enacts the paternalism of the pre-*Mabo* Queensland legislature and given that it has been framed around Westocentric conceptions of undivided, individual and tradeable scrip. As Professor Whatarangi Winiata has pointed out, 'the foreshore and seabed collision' as 'settled' by the new Act asserts undiluted kawanatanga over seabed and foreshore and constitutes 'the second confiscation this century, the first being the usurpation of radio spectrum management rights'. It raises the issue that 'Appropriate constitutional arrangements that ensure the compatibility of kawanatanga and tino rangatiratanga have to be found.'²⁶⁷ The Seabed and Foreshore Act is 'the latest sign that the kawanatanga-rangatiratanga relationship is being lived out to the continuing disadvantage of the Maori partner' – as an Act that abuses Article I, denies Article II and rejects equality before the law (Article III). It 'will be cause for revisiting the 2004 experience for decades to come.'²⁶⁸

In March 2005 the UN Committee on the Elimination of Racial Discrimination found that the Clark Government's seabed-foreshore enactment failed to provide guaranteed right of redress

to Maori and was discriminatory, ‘particularly in its extinguishment of the possibility of establishing Maori customary title over the foreshore and seabed.’²⁶⁹ Clearly the denial of access to justice for affected iwi downgraded Maori to the status of second-class citizens, for while the Act recognises customary access rights, it places severe constrictions thereat and demolishes the possibility of testing tino rangatiratanga over takutai moana by an act of centralised legislative fiat. In asserting undiluted Crown primacy, the Seabed and Foreshore Act is a blatant attempt to orchestrate and re-install a monolegal/monodic regime by legislating into legal nullity a pre-existing pre-Treaty ancestral tikanga property right in respect of takutai moana. To extinguish these ancient common-law and separate indigenous rights of tipuna title (as vested in iwi and hapu) by legislative proclamation invites the label raupatu (confiscation), an arbitrary deprivation of property interests to give other parties mandatory usufruct rights on others’ property. This is in clear violation of the 1948 United Nations Declaration of Human Rights (which declares that ‘No one shall be arbitrarily deprived of his property’). It also constitutes a privatisation of public goods and rights vested in tribes.

A Waitangi Tribunal report (WAI 1071: 8 March 2004) found that the Act breaches the Treaty and actually inferiorises Maori. It certainly mis-applies majoritarian logic to set aside original and traditional Maori human rights, treating the beachscape as empty land without any first owners holding beneficial title to it (thus symbolically importing into New Zealand law a virtual *terra nullius* paradigm for this zone of Aotearoa).²⁷⁰ The Clark Government seems to deem ‘rangatiratanga’ exclusively in terms of access right (customary orders) and management perquisites, with Maori as tenants of the Crown landlord. In the 2003 Court of Appeal judgment Elias CJ asserted that New Zealand legislation on Maori lands ‘has assumed the continued existence at common law of customary property until it is extinguished’ by sale to the Crown, by legislation or ‘other lawful authority’, and that the ‘Crown has no property interest in customary land and is not the source of it’ (para 47). The Chief Justice cited the Anglo-American Claims Tribunal, which in 1925 held with international principle to declare that cession of sovereignty under the Treaty of Waitangi did not constitute ‘a conveyance of property’ (para 15), and Claudia Orange has observed that this ruling ‘challenged the long-held assumption that the Crown had overriding rights to the foreshore and seabed.’²⁷¹ Moana Jackson has argued convincingly that the Treaty is a constitutional document rather than a plaything of lawyers and that rangatiratanga is a constitutional right, not merely a property right.²⁷²

The Clark Government, however, decided to legislate in order to calm a (purportedly) restive

body politic, mis-representing the issue as the Crown's right to govern (*imperium*) – although when Elias and her fellow judges were merely ruling on issues of underlying title and 'ownership' (*dominium*) and the rights of Maori to a day in court to determine these. One might recall the clash in New England before the American Revolution erupted: the New Englanders were reared in an atmosphere of contracts and bargaining and believed that 'contractual imagery mingled with and colored all paternal and all superior-subordinate relationships, including those between the crown and the colonies'; they were more sceptical of unbridled state power than people in England, 'where parliamentary sovereignty was swallowing up the ancient notions of contract and natural rights.'²⁷³ A similar paradigm clash was being enacted with the foreshore and seabed legislation: for the Crown case was strained, asserting that Te Ture Whenua Maori Act 1993 jurisdiction only applies to *dry* land.²⁷⁴

Conservative jurists point back to *Wi Parata* (1877) as establishing the invalidity of tribal Maori possessing 'international legal personality' for property-holding or treaty-making despite Article Two's recognition of aboriginal customary rights to property), and they declare that the Court of Appeal did not assert that this historic judgment (1877) was *per incuriam* (ie made carelessly, ignoring important statutes or precedent case-law). The reality is that in 1877 James Prendergast CJ did indeed ignore significant Anglo-American case-law (especially that of Marshall CJ of the US Supreme Court, such as *Cherokee Nation v Georgia* 5 Pet 1, 16 [1831]) about inherent aboriginal title rights which preceded any treaties and which clearly underlay the construction of Te Tiriti o Waitangi (as recognised in London by the Whig liberal Lord Normanby and later by Sir William Martin CJ here in *R v Symonds* [1847]).²⁷⁵

In Maori land tenure conceptualisations, the roots of title as sourced in tikanga values are take raupatu (right by conquest) and take tipuna (a collective ancestral property right derived from the ancestors of the claimant owners). As long ago as 1990 Paul McHugh noted that the Prendergast judgment 'set the tone for over a century of Maori-Crown relations despite its inherent unconstitutionality: the colonial bench had licensed unfettered and arbitrary executive power over the tribes and their property. So much for the full rights and liberties of Englishmen guaranteed the Maoris in 1840.'²⁷⁶ This assessment sadly still resonated in 2004 as an incisive commentary on the seabed and foreshore *diktat*. Indeed, a more recent statement by McHugh explains the recuperation of *Wi Parata* and the suppression of alternative legal doctrine in that 2004 legislation: he noted that the 'most important juridical consequence' of *Wi Parata* remains, viz 'the establishment of the absolute sovereignty of the Crown and the incapacity of the Treaty of Waitangi to act as any form of qualification upon

that sovereignty'.²⁷⁷ Thus what I have called the post-Land Wars politics of the victors still prevail.

Another and unremarked irony is that the new law seems to over-rule Tom Te Weehi's case about traditional fishing rights upon a portion of foreshore (*Te Weehi v Regional Fisheries Officer* (1986) 1 NZLR 680 and (1986) 6 NZAR 114). According to Williamson J in this case, the New Zealand Courts had long misinterpreted the law of aboriginal title; that historically they mis-recognised a modified allodial Crown dominion due to customary activity and use-rights residing in the indigenes. This legal neglect was also demonstrated in the *In Re the Ninety Mile Beach* (1963) NZLR 461 (CA) case, which Elias CJ and Keith, Anderson and Tipping JJ later defined as 'wrong in law', being based on 'the discredited authority' of *Wi Parata v Bishop of Wellington* (1877), para 13. In *Te Weehi* Williamson J declared that the Crown assumption of kawanatanga in 1840 had not extinguished customary rights.²⁷⁸ *Te Weehi* turned on a common-law recognition of Maori fishing rights as part of an unextinguished aboriginal title over land seemingly vested in the Crown. It was these kinds of readings that Prendergast CJ was determined to silence in *Wi Parata*; and more recently just as the Clark Government has legally stymied their resurrection to 'save' a confused nation from the spectre of the forces of undead indigenes (embodied in te take tipuna) allegedly about to ruin their happy summer beach holidays. Using Bruce Mason's classic formulation, this 'Charge of the Clark Brigade' was designed at all costs to stave off *The End of the Golden Weather*.²⁷⁹ This behaviour is consonant with what Richard Hill has called 'the continually powerful role of the state and its unswerving determination – whatever the temporary concessions along the way – to pursue its hegemonic agenda'.²⁸⁰ And as Robert Tonkinson put it so pithily, in their quest for 'ethnogenesis', or nation-building, 'nation-states remain reluctant to grant separate nationhood to encapsulated indigenous minorities'.²⁸¹ The analysis of Koori historian Tony Birch, when writing of Aboriginal marginalisation, is apposite to the Seabed and Foreshore impasse. Birch properly deploys Belich's contestable use of the word 'recolonisation' as he writes of the 'political moment when the status of indigenous communities in Australia has been pushed to the margins once more, led by a federal government determined to recolonise the indigenous body within a nominally post-colonial nation'.²⁸² As with *terra nullius*, Birch's words find a troubling echo in contemporary New Zealand.

Hulme has attacked this very syndrome in her whimsical but deeply resonant and disturbing story, 'Getting It' (2004)²⁸³ – a metafictional and prophetic, metapolitical and eco-aware text which is set within the legal-mental confines of bureaucratic process as objectors try

hopelessly to win a conservancy battle at a local authority resource consent hearing which becomes increasingly surreal and threatening to the Pakeha power operators and ‘sharky-looking’ legal functionaries,²⁸⁴ who wish to despoil a unique piece of headland called The Neck for a lucrative housing subdivision. Hulme wickedly plots the destruction of their sense of reality (the dominant capitalistic-rationalistic discourse of modernity which Joyce called ‘vivisection’²⁸⁵) by deploying the *merveilleux*, as pre-human living beings wreathed in fog, sweep in to the otherwise pre-determined proceeding to challenge its whole reality principle irruptively with the power of primeval wairua.

This parabolic story pre-dated the Seabed and Foreshore ‘collision’ and seems inspired by the author’s fight, as a self-identified kaitiaki of the Okarito Lagoon and wetlands zone, to stop a developer from creating 50 sections, a backpackers’ lodge and a replica paddle-boat tourist operation at the Wharf Street road reserve (on the edge of the lagoon), and to build houses on the backdrop foothills that would mar the quietude of the small, remote township of Okarito and to place at risk its unique South Westland wetland biota. Hulme and the Okarito Community Association (OCA) vigorously resisted the freeing up of unallocated Crown land as urged by the Westland District Council (‘the council has already decided that a subdivision ... on the Neck is a Good Idea’²⁸⁶ we read in Hulme’s text). A combined front by the OCA and the Department of Conservation won the battle after much effort, time and money. In Hulme’s passionate and accurate words, Okarito ‘is an iconic place, a place that many New Zealanders – and many people from overseas – draw sustenance from.’²⁸⁷ Hulme’s clever double pun (‘getting it’ connoting both mental comprehension of unperceived, extra-human realities and a nastier sense of potential retribution towards obtuse and species-arrogant humans) also delivers a wider message about the seabed collision between rival mentalities and value-systems. Such a message was limned so well by Bruce Mason in *The Pohutukawa Tree* (1960). In Hulme there is a subtle echo for the cognoscenti, given the reference to Paddy O’Shea being the Auhei of Te Paringa: Mason’s locale of conflict was ‘Te Parenga’, the riverbank (although the primary reference here will be to the Paringa River in Kai Poutini territory near Haast).

In Hulme’s hyper-modern parable of eco-conservation and the claims of other sentient beings, the pious platitudes of earnest greenies (the ‘twig and tweet’ brigade of spider lady, a hippy clan, the Takata Whenua spokesperson and the ‘nut group’ called ‘The Flax Leaf Scribblers’, who all bore to sobs the jaded local news reporter who is the unnamed narrator of ‘Getting It’) are shown to be ineffectual in the face of bureaucratic obstructiveness – in tandem with the jaded reporter’s weary cynicism about ‘the local iwi rep rabbiting on about spiritual

importance and cultural insensitivity and a violation of manawhenua blah blah te mea te mea'.²⁸⁸ Paddy O'Shea ominously warns that if humans offend Papatuanuku ('our mother'), she 'will fight back. She will destroy you'.²⁸⁹

Using this initially distempered reportorial voice, Hulme deconstructs the get-rich-quick pragmatism and political apathy of many Kiwis and then shifts gears into a fabulistic register. Heavy, driving West Coast rain dissolves into fog, doors open to admit five non-sapient beneficiaries of the mauri of the land who signed the flax petition. They call themselves 'Te Ha o Nehera' (loosely, the breath/flavour of ancient times), the first creatures being two red-haired giants, wild-folk (a macroero and his daughter²⁹⁰) who are tall and primal (possibly coated in the powerful red ochre of legend). These creatures look hominid and are almost certainly carnivorous, as the male clutches a primate femur-flute 'with holes drilled in it',²⁹¹ from which he later plays while the female croons a melancholy but 'tuneful moaning'²⁹² signifying their wish to be undisturbed by humans.

The next duo (turehu) seem like a cross between Tolkien's Gollum and ET, one dressed in a muka cloak and the translator-turehu in a black kilt (rapaki) with a fabulous bolero of kakapo-feather ('soft and gorgeous mottled mossgreen feathers'²⁹³). There is also an unseen fifth objector, a huge ponaturi (a species of 'vicious wee ranters'²⁹⁴ who were, according to Hulme, clever seafolk inimical to humankind) representing the Poutini horde, who stands outside the meeting room but whose off-stage speech slashes, crackles and hisses, matching its large scythe-like, 'savagely pointed' nail. The ponaturi precedes the turehu and expresses the rage of its kind against all humans, Maori and Pakeha.²⁹⁵ In the turehu's translation on behalf of the harakeke-inscribers, the ponaturi has just warned those present that the Neck is an ancestral estate, 'an ancient place of refuge'.²⁹⁶ The turehu explains that this group of ponaturi have a blood-feud with humans (who have abused them in the past) and explicitly warns the proud *sapiens*:

'O sometimes, the older laws have their place. The Poutini ponaturi have delivered due warning to you. They do take everything so personally you know. A rather young and hasty folk.' The turehu can do confidential smiles too.²⁹⁷

This turehu adds the menacing detail that a local taniwha 'has officially breathed on the whole' flax text²⁹⁸ and concludes by scorning human closed-mindedness in a T S Eliot-style mode ('your kind can't stand very much reality. You much prefer your patterns and your stories and your noisy dirty trappings over everything'²⁹⁹), warning the gathering that 'I would go quite soon ... if I were you'.³⁰⁰ However, the human decision-makers continue in

their aggrandising folly and ignore this Irruption of the primal Other. The journalist and his/her friend (a Council Secretary) sell up and flee. 'Getting It' ends on an apocalyptic note, echoing Hulme's much earlier story of global warming and deluge, 'Floating Words',³⁰¹ with algal blooms, sewage problems, toxified kai moana, permanent rain and 'earthquake swarms'.³⁰² As the narrator comments dryly (recalling her grandmother's wise saws about the fairy folk), 'we hope each evening, while listening to the winds play like flutes in the far mountains and watching the flax bushes sway, we hope the Coast was enough'³⁰³ – enough, that is, of a sacrifice to the angry godlets of Te Wai Pounamu.

'Getting It' is a provocative fiction, laden with menace, and also a strategic imaginative intervention into the politically loaded context of New Zealand's all-too-often unprincipled local body and national political processes. It is a sobering text about the sheer necessity to get things right as a polity: to act ethically, in a manner grounded in our first principles and towards honourable ends that transcend the quick-fix and 'short-termism' of the profit motive and economic rationalism, in order to build New Zealand/Aotearoa's own indigenous 'Jerusalem'/Hiruharama of the imagination. That hard task will indeed require a confluence of values and competing views, along with much imagination, integrity and a spirit of honourable compromise that will lift the nation onto new plateaux of political and social possibility in the decades to come. Let us hope that we can muster the will to 'get it' right, for with a sovereign legislature enjoying full (untrammelled) plenary powers, it is equally possible to legislate national justice or injustice.³⁰⁴

In summation, I assert that in accordance with the best traditions of proleptic literature, Keri Hulme's *the bone people* of 1984 stands in prophetic judgement to interrogate the New Zealand polity and its foundational assumptions since the advent of Crown authority in 1840. It proposes an awesome imaginative challenge of moral courage and ethical fortitude for this fragile waka setting sail into the new millennium, but it is one which I earnestly hope (despite all the negative contemporary signs) that we will accept on our march to national maturity. New Zealand ought not extinguish what Solzhenitsyn once called 'the flame of her spent history', for that may very well prove to be the best resource that we have in common, and from which foundation we can build a secure and just nationhood.

Perhaps, as we reflect upon the multiple challenges of building a bi-national society (and fusing apparent opposites), the last word should be left to Walt Whitman in his 'Sea-shore Fancies'. Here he describes the tideline as:

... that suggesting, dividing line, contact, junction, the solid marrying the liquid – that

curious, lurking something, (as doubtless every objective form finally becomes to the subjective spirit,) which means far more than its mere first sight, grand as that is – blending the real and ideal, and each made portion of the other.³⁰⁵

References

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- ¹ John Puhia tau Pule, *The Shark that Ate the Sun*, Auckland, Penguin Books, 1992, pp 9-10.
- ² Keri Hulme, 'Te Rapa, Te Tuhi, Me Te Uira (or Playing with Fire)' in Ambury Hall (ed), *Below the Surface: Words and Images in Protest at French Testing on Morurua*, Auckland, Vintage New Zealand, 1995, pp 52-3.
- ³ Keri Hulme, *the bone people*, Wellington, Spiral Collective, 1983. The book was actually launched on 18 February 1984 despite the publication date provided in the book. Keri Hulme herself refers to its date of origin – in other words the date it was presented to the world – as being 1984.
- ⁴ Keri Hulme, *South Bank Show: Booker Prize Special*, London Weekend Television, 31 Oct 1985.
- ⁵ Tom Shone, 'Books: Judging flannel', *The Modern Review*, (June-July 1993), p 25. Shone added the sarcastic query: 'which luckless purchaser of a Keri Hulme novel is likely to return eagerly for more the year after?'
- ⁶ D J Taylor, 'Booker: musical chairs with quirky corners', *The Independent*, 20 Oct 1990, p 27.
- ⁷ Karen Lamb, *Peter Carey: The Genesis of Fame*, Sydney, Angus and Robertson, 1992, p 37.
- ⁸ Leslie Fiedler, 'Cross the Border – Close That Gap: Post-Modernism', in Marcus Cunliffe (ed), *American Literature Since 1900*, London, Sphere Books, 1975, p 345.
- ⁹ Fiedler, p 346.
- ¹⁰ John Gardner, *On Moral Fiction*, New York, Basic Books, 1978, p 100.
- ¹¹ Bruce Mason, 'Theatre', in A L McLeod (ed), *The Pattern of New Zealand Culture*, New York, Cornell University Press, 1968, pp 255-6.
- ¹² Lady Bird Johnson, *A White House Diary*, New York, Holt, Rinehart and Winston, 1970, p 430.
- ¹³ Johnson, *A White House Diary*, p 430; Colin James, *The Quiet Revolution: Turbulence and Transition in Contemporary New Zealand*, Wellington, Allen and Unwin/Port Nicholson Press, 1986, p 131.
- ¹⁴ Colin James, 'New Zealand's quiet revolution', *The Dominion*, 8 Dec 1986. For a discussion of the 'Fortress New Zealand' policy see Marcia Russell, *Revolution: New Zealand from Fortress to Free Market*, Auckland, Hodder Moa Beckett, 1996, pp 9-70.
- ¹⁵ Sandra Lee, *Listener & TV Times*, 25 May 1992, p 18.
- ¹⁶ FOL President Ken Douglas has noted that the February 1984 secret agenda programme 'identified GST, the movement to flat tax, the corporatisation and full-blown privatisation agenda, the 20 per cent devaluation: Russell, p 79.
- ¹⁷ Hamish Keith, cited in Russell, p 26.
- ¹⁸ 'M.P. charged with lying in House', *The Christchurch Star*, 9 Jul 1976, np.
- ¹⁹ "'Hori'" contemptuous term – O.E.D.', *The Press*, 9 Jul 1976, np.
- ²⁰ Ranginui Walker, 'Korero: Don't call me "Hori"', *NZ Listener*, 28 Aug 1976, p 19. The word signified 'George' (owing to the name of three British sovereigns) and was favoured as a proper name for Maori males from the early nineteenth century. It came to signify a stereotypical Maori or as a collective name for non-individualised Maori people: Elizabeth and Harry Orsman, *The New Zealand Dictionary: Educational Edition*, Auckland, New House Publishers, 1994, p 128.
- ²¹ See Graeme Turner, *National Fictions: Literature, Film and the Construction of Australian Narrative*, Sydney, Allen and Unwin, 1986.
- ²² Vincent O'Sullivan, 'The Writer in a Land of No Traditions', Opening Address to Symposium on New Zealand Fiction, Christchurch Town Hall, Mar 1978.
- ²³ Chris Prentice, 'Re-writing their Stories, Renaming Themselves: Post-colonialism and Feminism in the Fictions of Keri Hulme and Audrey Thomas', *Span*, 23 (Sep 1986), p 72.
- ²⁴ Prentice, p 74.
- ²⁵ Diane Jacobs, 'Search for Tomorrow', *The Village Voice*, XXX:52 (24 Dec 1985), pp 67-8.
- ²⁶ Jacobs, p 68.
- ²⁷ Jacobs, p 68.
- ²⁸ Alastair Niven, *British Book News*, Feb 1986, np.
- ²⁹ Cf Neil Gotanda, 'A Critique of "Our Constitution is Color-Blind"', *Stanford Law Review*, 44:1 (Nov 1991), p 24.
- ³⁰ Cf Peter Crawford, *Nomads of the Wind: A Natural History of Polynesia*, London, BBC Books, 1993, p 251.
- ³¹ Arapera Blank, 'We are the bone people', *NZ Listener*, 12 May 1984, p 60.
- ³² Blank, p 60.
- ³³ Peter Cleave, *The Sovereignty Game: Power, Knowledge and Reading the Treaty*, Wellington, Victoria University Press/Institute of Policy Studies, 1989, p 26.
- ³⁴ Kimberle Williams Crenshaw, 'Race, Reform, and Retrenchment: Transformation and Legitimation in Antidiscrimination Law', *Harvard Law Review*, 101:7 (May 1988), p 1385.
- ³⁵ Hulme to author, Letter, 24 Mar 1987.
- ³⁶ Cf the overview of Poutini Kai Tahu's claim regarding the West Coast in David Young, 'A plunder by stealth', *NZ Listener*, 23 Jan 1988, pp 26-9, 31. For the full narrative of the Ngai Tahu land and compensation

claim, see Harry C Evison in *Te Waipounamu: The Greenstone Island* (1993) and revised and abridged as *The Long Dispute: Maori Land Rights and European Colonisation in Southern New Zealand*, Christchurch, Canterbury University Press, 1997.

³⁷ Jane Kelsey, 'Legal Imperialism and the Colonisation of Aotearoa', in P Spoonley, C Macpherson, D Pearson and C Sedgwick (eds), *Tauīwi: Racism and Ethnicity in New Zealand*, Palmerston North, The Dunmore Press, 1984, p 34. Kelsey runs through the core legislation before and during the Land Wars (1841-72) and until 1967, through which 'British imperial and colonial legislators ... passed a sequence of laws which consistently violate[d] guarantees given to the Maoris under the Treaty' with the clear intention of achieving the almost total alienation of Maori land.

³⁸ David Lange, 'Unexploded Grenades', *The Dominion*, 6 May 1991.

³⁹ Lange, 'Unexploded Grenades'.

⁴⁰ Lange, 'Untouchable', *Dominion*, 29 Jun 1992; Lange, 'Inequality', *Dominion*, 21 Sep 1992.

⁴¹ Benedict Anderson, *Imagined Communities*, London, Verso, 1983.

⁴² Anna Smith, 'Keri Hulme and Love's Wounded Beings'; in Michele Leggott and Mark Williams (eds), *Opening the Book: New Essays on New Zealand Writing*, Auckland, Auckland University Press, 1995, p 161.

⁴³ Smith, in Leggott and Williams, p 161.

⁴⁴ Charles Handy, *The Empty Raincoat: Making Sense of the Future*, London, Arrow Business Books, 1995, Chapter 3.

⁴⁵ Alexander Solzhenitsyn, 'Nobel Lecture in Literature 1970', in Leopold Labedz (ed), *Solzhenitsyn: A Documentary Record*, Harmondsworth, Penguin Books, 1970, pp 313-14.

⁴⁶ Cleave, p 37.

⁴⁷ Bill Pearson, in Alex Calder, 'An Interview with Bill Pearson', *Landfall* 185 (New Series), 1:1 (Apr 1993), p 75.

⁴⁸ Trinh T Minh-ha, *Woman, Native, Other: Writing Postcoloniality and Feminism*, Bloomington and Indianapolis, Indiana University Press, 1989, pp 6, 11.

⁴⁹ Keri Hulme, 'E Nga Iwi o Ngai Tahu', *Te Kaea*, 1 (Dec 1979), p 16.

⁵⁰ Keri Hulme, 'Okarito and Moeraki', in Jock Phillips (ed), *Te Whenua, Te Iwi: The Land and the People*, Wellington, Allen and Unwin/Port Nicholson Press, 1987, p 9.

⁵¹ Lange, 'Class Distinction', *Dominion*, 20 May 1991.

⁵² Simon During, 'Postmodernism or Postcolonialism?', *Landfall* 155, 39:3 (Sep 1985) cited in Prentice, p 68.

⁵³ Augie Fleras and Paul Spoonley, *Recalling Aotearoa: Indigenous Politics and Ethnic Relations in New Zealand*, Auckland, Oxford University Press, 1999, p 53.

⁵⁴ Mark Williams, 'Landmarks and Signposts (3): The Novel', Concert FM radio network, 23 May 1991.

⁵⁵ J D Reed, 'Maori Spirit', *Time*, 18 Nov 1985, p 91.

⁵⁶ Prentice, p 69.

⁵⁷ An example is a science fiction work by Marge Piercy, *Woman on the Edge of Time*, New York, Alfred A Knopf, 1976; cf Peter Fitting, 'The Decline of the Feminist Utopian Novel', *Borderlines-Downsview*, 7-8 (Spring/Summer 1987), pp 17-19.

⁵⁸ Robert D Putnam, Robert Leonardi and Raffaella Y Nanetti, *Making Democracy Work: Civic Traditions in Modern Italy*, Princeton, New Jersey, Princeton University Press, 1993, p 170.

⁵⁹ Putnam et al, p 170.

⁶⁰ Putnam et al, p 171.

⁶¹ Amory Levins, Paul Hawken and L Hunter Lovins, *Natural Capitalism: Creating the Next Industrial Revolution*, Snowmas, Colorado, Rocky Mountain Institute, 1990-2000, p 287.

⁶² Levins et al, p 288.

⁶³ J Madden-Simpson, 'At a Far-Flung Bit of Empire', *San Francisco Examiner-Chronicle*, 24 Nov 1985, p 1.

⁶⁴ Claudia Tate, 'Triple-Forged Trinity', *The New York Times Book Review*, 17 Nov 1985, p 11.

⁶⁵ Tate, p 11.

⁶⁶ Antony Beevor, 'Me-Decade mutations', *Times Literary Supplement*, 25 Oct 1985, p 1202.

⁶⁷ Victoria Nelson, 'Lost souls found in a lost world', *San Jose Mercury News*, 5 Jan 1986.

⁶⁸ Edward W Said, *Culture and Imperialism*, London, Chatto and Windus, 1993, p 258.

⁶⁹ Said, p 258.

⁷⁰ Said, p 258.

⁷¹ Said, p 258.

⁷² Said, p 277.

⁷³ M H Holcroft, *Creative Problems in New Zealand*, Christchurch, The Caxton Press, 1948, pp 22, 27.

⁷⁴ Holcroft, *Creative Problems*, p 24. Holcroft noted the land-centred titles of New Zealand novels: *The Heart of the Bush*, *The Story of a New Zealand River*, *The Land of the Lost*, *The Greenstone Door and Cliffs of Fall*.

⁷⁵ Henry Louis Gates Jr, cited by Louis D Rubin Jr, 'Who Wanted to Picnic with White Folks?', *The New York*

Times Book Review, 19 Jun 1994, p 10.

⁷⁶ J C Beaglehole, 'The New Zealand Scholar', in Peter Munz (ed), *The Feel of Truth: Essays on New Zealand and Pacific History*, Wellington, A H and A W Reed/Victoria University Press, 1969, p 238.

⁷⁷ Beaglehole, p 239.

⁷⁸ Beaglehole, p 239.

⁷⁹ Beaglehole, pp 243, 245.

⁸⁰ Robert Frost, 'The Gift Outright', in Edward Connery Lathem (ed), *The Poetry of Robert Frost*, New York, Holt, Rinehart and Winston, 1969, p 348.

⁸¹ James Belich, quoted in Graeme Lay, 'Jamie Belich: Myth Maker', *North and South* (Aug 1997), p 97.

⁸² *Boswell's Life of Johnson*, London, Routledge Centenary Edition, 1891, p 269.

⁸³ Augie Fleras and Jean Leonard Elliott, *Engaging Diversity: The Politics of Multiculturalism in Canada*, 2nd ed, Toronto, Nelson Thomson Learning, 2002, pp 102-3.

⁸⁴ Alain-G Gagnon, 'Canada: Unity and Diversity', *Parliamentary Affairs*, 53:1 (Jan 2000), pp 12-26.

⁸⁵ Ranginui Walker, 'Introduction', *Nga Pepa a Ranginui: The Walker Papers*, Auckland, Penguin Books, 1996, p 11.

⁸⁶ Cf Timothy Brennan, *Salman Rushdie and the Third World: Myths of the Nation*, London, Macmillan, 1989, and his article, 'Fantasy, Individuality, and the Politics of Liberation', *Polygraph*, 1 (Fall 1987), pp 89-99.

⁸⁷ J G A Pocock, 'Tangata whenua and Enlightenment anthropology', Paper to the New Zealand Historical Association, May 1991, p 29. My thanks to Professor Pocock for sharing this text.

⁸⁸ Pocock, 'Tangata whenau ...', p 29.

⁸⁹ Rod Edmond, 'No Country for Towers: reconsidering the bone people', *Landfall* 186 [NS], 1:2 (Spring 1993), p 283.

⁹⁰ C G Jung, *Memories, Dreams, Reflections* [Recorded and edited by Aniela Jaffé], London, Collins/Fontana, 1967, p 333.

⁹¹ Cf Jung, Chapter VIII: 'The Tower'. For instance, Joyce's martello tower in *Ulysses* (1922), W B Yeats' stone Thoor [tower] Bally Lee in County Galway and Vita Sackville-West's great square tower with a spiral staircase at Sissinghurst Castle in Kent.

⁹² Val Melhop, 'The Making of Ho(l)mes: A Symbolic Reading of the bone people', *Journal of New Zealand Literature*, 17 (1999), p 99.

⁹³ Trevor James, "'Lost Our Birthright Forever?'" The Maori Writers' Re-Invention of New Zealand', in William McGaw (ed), *Inventing Countries: Essays in Post-Colonial Literatures*, SPAN 24 (April 1987), p 119.

⁹⁴ Germaine Greer, *South Bank Show: Booker Prize Special*, London Weekend Television, 31 Oct 1985.

⁹⁵ Otto Heim, *Writing Along Broken Lines: Violence and Ethnicity in Contemporary Maori Fiction*, Auckland, Auckland University Press, 1998, p 71.

⁹⁶ Heim, p 71.

⁹⁷ Heim, p 224.

⁹⁸ James Ritchie, cited by Heim, p 224.

⁹⁹ Lawrence Jones, 'Reflections on a Bumper Year in Fiction', *Journal of New Zealand Literature*, 3 (1985), p 29.

¹⁰⁰ Carmel Gaffney, 'Design in *The Bone People*', *Southerly*, 46:3 (Sep 1986), pp 293-302.

¹⁰¹ Augie Fleras and Jean Leonard Elliott, *Unequal Relations: An Introduction to Race, Ethnic, and Aboriginal Dynamics in Canada*, 3rd ed, Scarborough, Ontario, Prentice Hall Allyn and Bacon Canada, 1999, p 380.

¹⁰² James, in McGaw, p 119.

¹⁰³ Hulme to author, 21 January 1988 (Okarito).

¹⁰⁴ Germaine Greer, 'Introduction', *The Madwoman's Underclothes: Essays and Occasional Writings 1968-1985*, London, Pan/Picador, 1986, p xxvi.

¹⁰⁵ Hulme, Interview with Liz Grant, *South Bank Show: Booker Prize Special*, London Weekend Television, 31 Oct 1985.

¹⁰⁶ Hulme, *South Bank Show*, 31 Oct 1985.

¹⁰⁷ K Hulme, 'False starts, scribbles, bits & pieces 1965-c.1975 (mainly 1970-72)', Box 1, MS 189, Macmillan Brown Library, University of Canterbury.

¹⁰⁸ Book review (anon), *The New Yorker*, 61:105 (3 Feb 1986), np.

¹⁰⁹ Said, p 333.

¹¹⁰ D Stea and B Wisner, 'Introduction', *Antipode: A Radical Journal of Geography*, 16:2 (1984), p 4.

¹¹¹ Hulme to author, 21 Jan 1988.

¹¹² Richard Hoggart, 'Why I Value Literature' [1963], in *Speaking to Each Other, Volume Two: About Literature* Harmondsworth, Penguin Books, 1973, pp 11-12.

¹¹³ Keri Hulme, *The Rocks of Whangaroa*, Holographic Typescript, 1972, pp 28-9.

¹¹⁴ Keri Hulme, *Rocks of Whangaroa*, p 35.

¹¹⁵ Peter Simpson, 'Rare excellence of "Bone People"', *The Press*, 1 Sep 1984, p 20.

¹¹⁶ Hulme to author, 10 Nov 1990.

¹¹⁷ Hulme to author, 10 Nov 1990.

¹¹⁸ Augie Fleras and Roger Maaka, 'Reconstitutionalizing Indigeneity: Restoring the "Sovereigns Within"', *Canadian Review of Studies in Nationalism*, XXVII (2000), p 123.

¹¹⁹ Lange, *Broadsides*, p 89.

¹²⁰ Patrick Evans, 'Books: Filming an Explosion', *Listener*, 16 Mar 1996, p 48.

¹²¹ Evan S Te Ahu Poata-Smith, 'He Pokeke Uenuku i Tu Ai: The Evolution of Contemporary Maori Protest', in Paul Spoonley, David Pearson and Cluny Macpherson (eds), *Nga Patai: racism and ethnic relations in Aotearoa/New Zealand*, Palmerston North, The Dunmore Press, 1996, p 116.

¹²² Rt Hon W E Rowling, 'Open Pulpit', TV2, South Pacific Television, 15 January 1978.

¹²³ David Lange, 1 Jul 1984, cited in Judith Fyfe and Hugo Manson, *The Gamble: the Campaign Diary of the Challengers (Snap Election '84)*, Auckland, Australia and New Zealand Book Co, 1984, p 58.

¹²⁴ Sir Tipene O'Regan, 'Te Kereeme: The Claim', Second Macmillan Brown Lecture, University of Canterbury 15 September 1998 (author's transcript from audiotape).

¹²⁵ K Hulme, 'He moemoea', *The Silences Between (Moeraki Conversations)*, Auckland, Auckland University Press/Oxford University Press, 1982, p 14.

¹²⁶ Alex Haley to Ian Fraser, 'Living Treasures', Telecom/TVNZ, 1990; E M Forster, cited by Nicola Beauman, *Morgan*, London, Hodder and Stoughton, 1993, p 296.

¹²⁷ Hulme to author, 10 Nov 1990.

¹²⁸ Poata-Smith, p 16.

¹²⁹ Poata-Smith, p 16. For more on Hulme's challenge to sexist discourses, see Shona Smith, 'Keri Hulme: Breaking Ground', *Untold 2* (Spring 1984), pp 44-9 and Judith Dale, 'The Bone People: (Not) having it both ways', *Landfall*, 39:4 (Dec 1985), pp 413-30.

¹³⁰ Cf Don Long, 'Keri Hulme: Carving a Moko on the Face of NZ Writing', *Insight*, 2:6 (Sep-Oct 1982), p 113.

¹³¹ Bruce Mason, 'The Trapdoor Spider and the Great Leap Outwards', *Ascent: A Journal of the Arts in New Zealand*, 1:1 (November 1967), p 34.

¹³² Cf 'The Listener [one hundred]', *Listener*, 17 Oct 1998, p 44. In 2006 a readers' survey by the national booksellers Whitcoulls (the 'Whitcoulls List') showed Hulme's novel having dropped to place 26/100 amidst a wide range of global fiction and non-fiction in English. However, the company reported that 'The highest ranking New Zealand book is *The Bone People*, the Booker Prize winning title by Keri Hulme', and the first of a total of six New Zealand titles of the 100 in the list.

¹³³ Alan Duff, 'Opinion: Now I come clean about an icon', *The Press*, 3 March 1998, p 4.

¹³⁴ Duff, p 4.

¹³⁵ Duff, p 4.

¹³⁶ Marshall Sahlins, 'On the anthropology of modernity, or, some triumphs of culture over despondency theory', in Antony Hooper (ed), *Culture and development in the Pacific*, Canberra, Asia Pacific Press, 2000, p 56.

¹³⁷ Nathalie Sarraute, *The Age of Suspicion: Essays on the Novel*, New York, George Braziller, 1990, pp 145, 129 [Trans from the French by Maria Jolas].

¹³⁸ Erica Jong, *The Devil at Large: Erica Jong on Henry Miller*, New York, Turtle Bay Books/Random House, 1993, p 196.

¹³⁹ A D Hope, cited in H P Heseltine, 'Patrick White's Style', *Quadrant*, VII:3 (Winter 1963), p 61.

¹⁴⁰ C K Stead, 'Keri Hulme's "The Bone People", and the Pegasus Award for Maori Literature', *Ariel*, 16:4 (October 1985), p 107.

¹⁴¹ C K Stead, 'C. K. Stead on Great Literary Bores', *New Zealand Outlook*, 3 (May 1987), p 36.

¹⁴² Stead, *Ariel*, p 107.

¹⁴³ Stead, *Ariel*, p 108. The regenerative possibilities which may emerge from horrific acts of violence have been placed in an American context by Richard Slotkin in his essay 'Dreams and Genocide: The American Myth of Regeneration Through Violence', *Journal of Popular Culture*, 1 (Summer 1971), pp 38-59 and in his benchmark book, *Regeneration Through Violence: The Mythology of the American Frontier, 1600-1860*, Middleton, CT, Wesleyan University Press, 1973. Note that the US pattern is concerned with a catharsis whereby the demonised 'Old Enemy' is redeemed at a corporate level. Stead fails to see is that the regenerative patten in Australasian fiction is primarily reserved for the *individual* social victim or on his/her behalf. This appears in *the bone people* as Kerewin beats Joe to his senses.

¹⁴⁴ Hulme, *South Bank Show*, 31 Oct 1985.

¹⁴⁵ Agnes-Mary Brooke, 'The Bone People revisited: "sprawling, self-indulgent, crude"', *The Press*, 27 September 1986. Stead has written that Chapter Ten appeared to him, 'read either as Maori lore or as fiction, almost totally spurious' (*Ariel*, p 107), seeing it as a deeply flawed part of the novel's pattern 'in which are mixed, not always successfully, a remorseless realism with elements of the mythical, the magical and the

mystical' (p 105).

¹⁴⁶ Jones, p 30.

¹⁴⁷ F A Hayek, *The Road to Serfdom*, Sydney, Dymock's Book Arcade, 1944, p 198.

¹⁴⁸ A G Stephens, 'Red Page', *The Bulletin*, 27 Jul 1895, cited in Sylvia Lawson, *The Archibald Paradox: a strange case of authorship*, Ringwood, Victoria, Penguin Books Australia, 1987, p 170.

¹⁴⁹ P A Simpson, 'From Colonial to Provincial: The Evolution of Poetry in Canterbury 1850-1950', *Historical News*, 43 (Nov 1981), p 16.

¹⁵⁰ Frederick Sinclair, 'Notes by the Way', *Tomorrow*, 1:40 (31 Jul 1935), p 7.

¹⁵¹ See Bruce Harding, "'Man of Words': Charles Brasch – Editor Supremo, Rabbi, & Dutch Uncle of New Zealand Letters", *Journal of New Zealand Literature*, 17 (1999), pp 71-84.

¹⁵² Simpson, *Historical News*, p 16.

¹⁵³ P R Stephenson, *The Foundations of Culture in Australia: An Essay towards National Self Respect* (with introduction by Craig Munro), Sydney, Allen & Unwin, 1986, p 117.

¹⁵⁴ Leonard Wilcox, 'Introduction' to 'In-depth Section: New Zealand Literature and Culture', *Journal of Popular Culture*, 19:2 (Fall 1985), p 67.

¹⁵⁵ Hulme to author, Letter, 24 Mar 1987.

¹⁵⁶ W H Pearson, 'Fretful Sleepers: A Sketch of New Zealand Behaviour and its Implications for the Artist' (1952), in Pearson, *Fretful Sleepers and Other Essays*, Auckland, Heinemann, 1974, p 26.

¹⁵⁷ Malcolm Bradbury and James McFarlane, 'The Name and Nature of Modernism', in *Modernism 1890-1930*, Harmondsworth, Penguin Books, 1976, p 25.

¹⁵⁸ Marshall McLuhan, *Understanding Media: The Extension of Man*, 3rd imp, London, Routledge and Kegan Paul, 1967, p 26.

¹⁵⁹ McLuhan, *Understanding Media*, p 26.

¹⁶⁰ McLuhan, *Understanding Media*, p 26.

¹⁶¹ McLuhan, *Understanding Media*, p 26.

¹⁶² Viktor Shklovsky; cited by Alan Swingewood, '4: Problems of method', in Diana Laurenson and Alan Swingewood, *The Sociology of Literature*, London, Granada/Paladin, 1972, p 79.

¹⁶³ Melhop, p 99.

¹⁶⁴ Melhop, p 99.

¹⁶⁵ Melhop, p 103.

¹⁶⁶ Melhop, pp 104-5.

¹⁶⁷ Melhop, pp 107-9.

¹⁶⁸ Fleras and Spoonley, p 48.

¹⁶⁹ Fleras and Spoonley, p 48; W H Renwick, 'Decolonising Ourselves from Within', *British Review of New Zealand Studies*, 6 (1993), pp 29-53.

¹⁷⁰ Fleras and Spoonley, pp 40-1.

¹⁷¹ Fleras and Spoonley, p 41.

¹⁷² Fleras and Spoonley, p 42.

¹⁷³ Fleras and Spoonley, p 78.

¹⁷⁴ Fleras and Spoonley, p 221.

¹⁷⁵ See the analysis of Western legal doctrine and associated norms used to bolster the colonial project by Richard Waswo, 'The Formation of Natural Law to Justify Colonialism, 1539-1689', *New Literary History*, 27:4 (Autumn 1996), pp 743-59.

¹⁷⁶ Roger Maaka, 'A Relationship, Not a Problem', in Ken S Coates and P G McHugh (eds), *Living Relationships: Kokiri Ngatahi*, Wellington, Victoria University Press, 1998, p 201.

¹⁷⁷ Maaka, p 205.

¹⁷⁸ See Roger Maaka and Augie Fleras, *The Politics of Indigeneity: Challenging the State in Canada and Aotearoa New Zealand*, (Draft MS). The draft manuscript was provided to the author in 2001, and was subsequently published (Dunedin, University of Otago Press, 2005).

¹⁷⁹ Fleras and Maaka, *Politics of Indigeneity* (Draft MS), p 5.

¹⁸⁰ Fleras and Maaka, *Politics of Indigeneity* (Draft MS), p 5.

¹⁸¹ Fleras and Maaka, *Politics of Indigeneity* (Draft MS), p 10.

¹⁸² Peter Goodrich, *Law in the Courts of Love: Literature and Other Minor Jurisprudences*, London, Routledge, 1996, p 113.

¹⁸³ Goodrich, p 8.

¹⁸⁴ Cf M H Holcroft, *Discovered Isles: A Trilogy*, Christchurch, The Caxton Press, 1950.

¹⁸⁵ Holcroft, *Discovered Isles*, pp 62-3.

¹⁸⁶ Holcroft, *Discovered Isles*, pp 84, 83, 211, 196.

¹⁸⁷ Cf Anderson, *Imagined Communities*.

- ¹⁸⁸ Herbert Marshall McLuhan, 'Footprints in the Sands of Crime', *The Sewanee Review*, LIV:4 (Autumn 1946), pp 618-19.
- ¹⁸⁹ Jane Kelsey, *Reclaiming the Future: New Zealand and the Global Economy*, Wellington, Bridget Williams Books, 1999, pp 3, 8. Kelsey's latest contribution to this debate is *At the Crossroads* (Wellington, Bridget Williams Books, 2002), reviewed by Alistair Bone, 'If the left drops the ball', *Listener*, 8 June 2002, pp 60-1.
- ¹⁹⁰ Cf Tim Hazeldine, *Taking New Zealand Seriously: The Economics of Decency*, Auckland, HarperCollins, 1998.
- ¹⁹¹ John Ralston Saul, *The Unconscious Civilization*, Ringwood, Victoria, Penguin Books Australia, 1997, p 191.
- ¹⁹² Ralston Saul, p 19.
- ¹⁹³ Colin Newbury, 'Patrons, Clients, and Other Hierarchies in the Pacific Islands' (MS, 1999), p 1.
- ¹⁹⁴ Patrick Watson and Benjamin Barber, *The Struggle for Democracy*, London, W H Allen 1990, p 275.
- ¹⁹⁵ Thomas Hobbes, extract in Diane Ravitch and Abigail Thernstrom (eds), *The Democracy Reader: Classic and Modern Speeches, Essays, Poems, Declarations, and Documents on Freedom and Human Rights Worldwide*, New York, HarperCollins, 1992, p 29.
- ¹⁹⁶ Putnam, p 136.
- ¹⁹⁷ Hobbes, extract, *The Democracy Reader*, p 30.
- ¹⁹⁸ John Locke, *Second Treatise of Civil Government* (1690), extract, *The Democracy Reader*, p 39.
- ¹⁹⁹ See Andrew Sharp, 'The Govt's task to reconcile two theories of justice', *The Press*, 12 Jul 1988 and Mason Durie, 'Tino Rangatiratanga: Maori Self-Determination', *Koanga*, 1:1 (Spring 1995), pp 44-53.
- ²⁰⁰ Sir Tipene O'Regan, 'Te Moemoea: The Dream', Third Macmillan Brown Lecture, University of Canterbury, 22 September 1998, author's notes from tape of lecture. A recent book which examines the issues surrounding Kai Tahu identity is Hana O'Regan's *Ko Tahu, Ko Au: Kai Tahu Tribal Identity*, Christchurch, Horomaka Publishing, 2001.
- ²⁰¹ O'Regan, 'Te Moemoea' (author's notes).
- ²⁰² O'Regan, 'Te Moemoea'.
- ²⁰³ O'Regan, 'Te Moemoea'.
- ²⁰⁴ Cf R A MacKay, 'Coke: Parliamentary Sovereignty or the Supremacy of the Law', *Michigan Law Review*, XXII (January 1924), pp 215-47; John Underwood Lewis, 'Sir Edward Coke (1552-1633): His Theory of "Artificial Reason" as a Context for Modern Basic Legal Theory', *Law Quarterly Review*, 84 (Jul 1968); and Rodney L Mott, *Due Process of Law: A Historical and Analytical Treatise on the Principles and Methods Followed by Courts in the Application of the Concept of the "Law of the Land"*, Indianapolis, Bobbs-Merrill, 1926.
- ²⁰⁵ The British 'railway cases' consisted of *Edinburgh & Dalkeith Railway Co. v Wauchope* (1842) 8 Cl & F 710 and *Lee v Bude and Torrington Railway Co.* (1871) LR 6 CP 576 and were upheld in *British Railways Board v Pickin* [1974] AC 765, which held: 'If an Act of Parliament has been obtained improperly, it is for the legislature to correct it by repealing it.'
- ²⁰⁶ O Hood Phillips, *Thomas and Hood Phillips' Leading Cases in Constitutional Law*, London, Sweet and Maxwell, 1947, p 3.
- ²⁰⁷ Thomas Paine, *The Rights of Man: Being an Answer to Mr. Burke's Attack on the French Revolution*, 1791, [Edited by Hypatia Bradlaugh Bonner.], London, C A Watts and Co/Thinker's Library edition, 1937, pp 5-6.
- ²⁰⁸ Sir John Laws, 'The Constitution: Morals and Rights', *Public Law*, (1996), p 623.
- ²⁰⁹ Laws, p 624.
- ²¹⁰ Laws, p 625.
- ²¹¹ Laws, p 629.
- ²¹² Philip Joseph, 'Beyond Parliamentary Sovereignty', *Anglo-American Law Review*, 18:2 (Apr-Jun 1989), p 92. Joseph notes that by the time of *Bonham's* case (1610), orthopraxis declared that 'constitutional meaning equated with the rule of law as enacted by Parliament, at least where statute did not offend common law or equity or some basic concept of the constitution such as Magna Carta' but adds that 'No residue of *Bonham* could vindicate (or survive) the Stuart abuses' (Joseph, pp 116-17). Thus we see how conceptual surrender occurred and a new 'interpretive community' was formed around the new doctrine of legislative supremacy.
- ²¹³ Joseph, *Anglo-American Law Review*, p 109.
- ²¹⁴ Joseph, *Anglo-American Law Review*, pp 105, 109.
- ²¹⁵ Joseph, *Anglo-American Law Review*, p 114. Joseph has drawn extensively on Stanley Fish, *Is There a Text in This Class? The Authority of Interpretive Communities* (Cambridge/London, Harvard University Press, 1980) in which Fish interrogates the 'ontology' of literary texts. Fish insists that 'the claims of objectivity and subjectivity can no longer be debated because the authorizing agency, the center of interpretive authority, is at once both and neither', deriving from 'a public and conventional point of view' (p 14). Fish explains this in Chapter 13 of *Is There a Text in This Class?* (pp 303-21).
- ²¹⁶ Sir Robin Cooke, 'The New Zealand National Legal Identity', *Canterbury Law Review*, 3 (1987) p 182.

- ²¹⁷ Cooke, 'The New Zealand National Legal Identity', p 182.
- ²¹⁸ Bronwen Reid, 'New Zealand Seeks the Middle Ground', *Time Magazine*, 14 Mar 1994, p 42.
- ²¹⁹ Joseph, *Anglo-American Law Review*, p 120.
- ²²⁰ Joseph, *Anglo-American Law Review*, p 123.
- ²²¹ Joseph, *Anglo-American Law Review*, p 123.
- ²²² Pietro Bembo, cited by Baldesar Castiglione, *The Book of the Courtier*, 1528, Penguin Classics, 1967.
- ²²³ Otto Gierke, *Political Theories of the Middle Age*, 1900, [Trans. F W Maitland], Boston, Beacon Press, 1958, p 37.
- ²²⁴ F W Maitland, 'Translator's Introduction', in Otto Gierke, *Political Theories of the Middle Age*, Boston, Beacon Press, 1958, p xliii.
- ²²⁵ Hamish Keith, 'Viewpoint: Cultural debates', *Listener*, 19 Mar 1994, p 7.
- ²²⁶ Keith, 'Viewpoint', p 7.
- ²²⁷ J G A Pocock, 'History and Sovereignty: The Historiographical Response to Europeanization in Two British Cultures', *Journal of British Studies*, 31 (1992), p 387. Cf also J G A Pocock, 'Law, Sovereignty and History in a Divided Culture: The Case of New Zealand and the Treaty of Waitangi', *McGill Law Journal*, 43 (1998), p 481.
- ²²⁸ Sir Tipene O'Regan, 'A Ngai Tahu Perspective on Some Treaty Questions', *Victoria University of Wellington Law Review*, 25 (1995), p 179.
- ²²⁹ William Baucke, *Where the White Man Treads: Across the Pathway of the Maori*, Auckland, Wilson and Horton, 1905, p 112.
- ²³⁰ A H McLintock, *Crown Colony Government in New Zealand*, Wellington, Government Printer, 1958, p 65.
- ²³¹ W E Rowling, State Banquet for the Royal Jubilee Tour of HM The Queen, Parliament Buildings, Wellington, 28 February 1977.
- ²³² HM Queen Elizabeth II, Waitangi Day address at Waitangi, 6 February 1990 [author's transcription from broadcast].
- ²³³ Cf Richard Boast, 'New Zealand Maori Council v Attorney-General: The case of the century?', *New Zealand Law Journal*, (Aug 1987), pp 240-5, 248. The case is formally reported as *New Zealand Maori Council v Attorney-General* [1987] 1 NZLR at 641 (CA).
- ²³⁴ *New Zealand Maori Council v Attorney-General* per Cooke P at 651. The background to corporatisation and the 'SOE Case' is well covered in Chapters 11 and 17 of Russell, *Revolution*. A concise legal commentary on the major Treaty cases from 1987 to 1996 is provided by John Upton, QC in his paper 'Maori in the New Zealand Court of Appeal under Lord Cooke', in *The Struggle for Simplicity: The Cooke Era in New Zealand Law*, Auckland, Legal Research Foundation, 1997, esp pp 5-8.
- ²³⁵ The Hon Justice W D Baragwanath, 'The Treaty of Waitangi and the Constitution', Paper delivered at New Zealand Law Society's Treaty Seminar, March 1997, p 11. I am extremely grateful to Justice Baragwanath for kindly providing me with a copy of this important and erudite paper.
- ²³⁶ Lord Woolf, *New Zealand Maori Council v Attorney-General* [1994] 1 NZLR 513 at 516.
- ²³⁷ Rt Hon Sir Robin Cooke, 'Introduction', *New Zealand Universities Law Review*, 14 (Jun 1990), p 1.
- ²³⁸ Cooke, 'A Sketch from the Blue Train', p 16.
- ²³⁹ Mike Moore, 'Aiming at a fresh start for the new millennium', *The Press*, 5 Feb 1998, p 7.
- ²⁴⁰ *A Bill of Rights for New Zealand: A White Paper*, Wellington, Department of Justice/Government Printer, 1985, pp 37, 35. The proposed text of this Bill was published in mainstream media: cf, for example, 'New Zealand Bill of Rights text', *The Press*, 4 Apr 1985.
- ²⁴¹ *A Bill of Rights for New Zealand*, p 36.
- ²⁴² Cf the First Schedule (*Imperial Enactments in Force in New Zealand: Constitutional Enactments*) of the *Imperial Laws Application Act 1988*.
- ²⁴³ *The New Zealand Constitution Amendment (Request and Consent) Act 1947* was enacted at Westminster on 25 November 1947 and its *raison d'être* was that 'An Act of the U.K. Parliament is "requested and consented to" in order to confer full power of constitutional amendment upon the New Zealand Parliament with respect to the "entrenched" sections of the 1852 Constitution Act ...'; in W David McIntyre and W J Gardner (eds), *Speeches and Documents on New Zealand History*, Oxford, Clarendon Press, 1971, p 293.
- ²⁴⁴ Philip A Joseph, *Constitutional and Administrative Law in New Zealand*, North Ryde, NSW, The Law Book Co, 1993, pp 3, 165.
- ²⁴⁵ Joseph, *Constitutional ...*, pp 1-2.
- ²⁴⁶ The status of the Treaty of Waitangi/Tiriti o Waitangi at international law is the subject of intense and unresolved debate between Eurocentric conservative scholars (eg N A Foden, Philip Joseph) and modernist 'jurisprudes' (eg Sir Kenneth Keith, Paul G McHugh). The Treaty is currently not a restraint on Parliamentary sovereignty and Lord Cooke (when President of the NZ Court of Appeal), following the Privy Council praxis, refused to analyze the precise legal nature of the Treaty in domestic law in the absence of its recognition by

statute. The most crisp and enlightening *tour d'horizon* through the legal minefield of Treaty law remains Justice Baragwanath's masterly paper 'The Treaty of Waitangi and the Constitution' (1997), cited in endnote 236, in which His Honour argues cogently that the Treaty of Waitangi and the New Zealand Constitution are, *de facto*, indivisible. The argument of this paper is that we need to place that indivisibility on a *de jure* footing in the new millennium.

²⁴⁷ Claudia Orange, *The Treaty of Waitangi*, Wellington, Allen and Unwin/Port Nicholson Press, 1987, p 245.

²⁴⁸ Martin CJ, *R v Symonds* (1847) NZPCC [NZ Privy Council Cases] (SC) 387 at 395.

²⁴⁹ I have lifted the phrase absolute chiefly 'tribal asset and resource control' and 'effective local sovereignty' as fundamental to that Maori governance (rangatiratanga) guaranteed by Article II of Te Tiriti from Sir Tipene O'Regan's scoping paper for the Canadian Royal Commission On Aboriginal Peoples, *Country Study-New Zealand Indigenous Governance: Initial Paper* (1993) at sections 2.3 and 3.2. At 3.4 Sir Tipene noted that 'individual property rights were an anathema to the indigenous social fabric.' I am most grateful to Sir Tipene for providing me with a copy of this signal work.

²⁵⁰ R P Boast, 'Law and the Maori', in Peter Spiller, Jeremy Finn and Richard Boast (eds), *A New Zealand Legal History*, Wellington, Brooker's, 1995, p 129.

²⁵¹ Boast, in Spiller et al, pp 170, 172-3.

²⁵² M P K Sorrenson, 'Treaties in British Colonial Policy: Precedents for Waitangi', in William Renwick (ed), *Sovereignty and Indigenous Rights: The Treaty of Waitangi in International Contexts*, Wellington, Victoria University Press, 1991, p 29.

²⁵³ F M Brookfield, 'Kelsen, the Constitution and the Treaty', *New Zealand Universities Law Review*, 15 (December 1992), p 174.

²⁵⁴ Brookfield, 'Kelsen, the Constitution and the Treaty', p 175.

²⁵⁵ *A Bill of Rights for New Zealand*, p 37.

²⁵⁶ F M Brookfield, 'The Bill of Rights as Fundamental Law in the Light of the Canadian Experience', in *A Bill of Rights for New Zealand*, p 152.

²⁵⁷ Cf D M Paciocco, 'The New Zealand Bill of Rights Act 1990: Curial Cures for a Debilitated Bill', *New Zealand Recent Law Review*, (1990), pp 353-81; Hart Schwartz, 'The Short Happy Life and Tragic Death of the New Zealand Bill of Rights', *New Zealand Law Review*, (1998), pp 259-311.

²⁵⁸ Peter Berger, Brigitte Berger and Hansfried Kellner, *The Homeless Mind: Modernization and Consciousness*, New York, Vintage Books, 1974, pp 162, 165.

²⁵⁹ Berger et al, pp 162, 165.

²⁶⁰ Hulme to author, 10 Nov 1990. The English critic Mary Ann Hughes has crisply analysed the bicultural nature of Hulme's project in *the bone people* and rebutted C K Stead's binaristic stereotyping of Hulme's literary practice in her essay 'Transgressing Boundaries', *Span*, 39 (Oct 1994), pp 56-68. The reference to 'strange seed-bed for the rest of the world' is reminiscent of Huxley's *Ape and Essence*.

²⁶¹ Matiata Tiramorehu; cited in 'PM's apology to Ngai Tahu', *The Press*, 27 Nov 1998, p 2.

²⁶² Antony Hooper, 'Introduction', *Culture and Sustainable Development in the Pacific*, Canberra, Asia Pacific Press, 2000, p 5; Sahlins, p 48.

²⁶³ J G A Pocock, 'Nature and History, Self and Other: European Perceptions of World History in the Age of Encounter', in Alex Calder, Jonathan Lamb and Bridget Orr (eds), *Voyages and Beaches: Pacific Encounters, 1769-1840*, Honolulu, University of Hawai'i Press, 1999, p 43.

²⁶⁴ Graham C Kinloch, *The Dynamics of Race Relations: A Sociological Analysis*, New York, McGraw-Hill Co, 1974, p 5. Cf also Pierre L van den Berghe, *Race and Racism: A Comparative Perspective*, New York, John Wiley, 1967.

²⁶⁵ Stephenson, p 135.

²⁶⁶ Sir George Grey, KCB, 'Preface', in Thomas Bracken, *Musings in Maoriland*, Dunedin, Wellington and Sydney, Arthur T Keirle, 1890, p 22.

²⁶⁷ Whatarangi Winiata, 'The Reconciliation of Kawanatanga and Tino Rangatiratanga', *The Waitangi Rua Rau Tau Lecture 2005* (to listen to the lecture see: www.radionz.co.nz/waitangi/; for a transcript of the lecture see <http://www.firstfound.org/>), pp 2, 5. Sir Hugh Kawharu once neatly described 'the quid pro quo in the Treaty' in terms 'that the collective surrender to the Crown of the power to govern was made primarily in return for the Crown's protection of each chief's authority within his tribal domain' ('Sovereignty vs Rangatiratanga: The Treaty of Waitangi 1840 and the NZ Maori Council's Kaupapa 1983', a submission given to the Waitangi Tribunal on the Kaituna Claim, p 10). The laws of New South Wales were extended to New Zealand in August 1840 when the Legislative Council of New South Wales enacted 3 *Vict. No.28*. on the instructions of the Colonial Office in London. This enactment subsumed 'Niu Tireni' as a portion of the emerging British Empire (Hong Kong followed via the Treaty of Nanking (1842), when Hong Kong Island was ceded after the Opium War).

²⁶⁸ Winiata, 'The Reconciliation ...', pp 7, 8. See also Harry Evison, 'The Treaty of Waitangi: Why it was

dishonoured?', *History Now*, 10:2 (Summer 2004), pp 10-23 and Richard S Hill, *State Authority, Indigenous Autonomy: Crown-Maori Relations in New Zealand/Aotearoa 1900-1950*, Wellington, Victoria University Press, 2004.

²⁶⁹ CERD statement (Geneva); cited in Joanna Norris, 'UN criticises foreshore law', *The Press*, 14 Mar 2005, p 1.

²⁷⁰ Ian Wards has robustly propounded the 'bad-faith' view of the colonizers that '[t]he facts as they emerge from the record demonstrate conclusively enough that the Treaty was never intended to be more than an internationally acceptable step of no lasting significance': *The Shadow of the Land: A Study of British Policy and Racial Conflict in New Zealand 1832-1852*, Wellington, Historical Branch, Internal Affairs/Government Printer, 1968, p x.

²⁷¹ Claudia Orange, *An Illustrated History of the Treaty of Waitangi*, Wellington, Bridget Williams Books, 2004, p 272. There is no concept of exclusive ownership in traditional Maori law: the concept of ownership in fee simple for real property is a Western legal construct even though Dr Cullen mis-claimed that this status was at issue in the controversy.

²⁷² Moana Jackson, 'A Line in the Sand: A consideration of Maori responsibilities and obligations in regards to the seabed and foreshore', Public Lecture, 5 August 2003, Christchurch.

²⁷³ Gordon S Wood, *The Radicalism of the American Revolution*, New York, Vintage Books, 1993, p 164. See Tom Bennion, 'Maori Land', in Andrew Alston, Tom Bennion, Michele Slatter, Rod Thomas & Elizabeth Toomey, *Guide to New Zealand Land Law*, Wellington, Brooker's, 1997, pp 218-23. See also Philip A Joseph, *Constitutional and Administrative Law in New Zealand*, 2nd ed, Wellington, Brookers Ltd, 2001, section 3.10 ('Aboriginal title') and Joseph, 'Symbol for two cultures, one country', *The Press*, 6 February 2004, p 3.

²⁷⁴ Cf Hon Michael Cullen, 'Happy middle ground', *The Press*, 12 Feb 2004, p A7.

²⁷⁵ Cf K J Keith, 'The impact of American ideas on New Zealand's educational policy, practice and theory: the case of law', *VUWLR* (1988) p 327. Ian Wards refers to Normanby's final instructions to Hobson (11 July 1839) but insists that the Colonial Office were not 'initiating an experiment in practical idealism', which is difficult to square with Wards' statement that Normanby wanted to cede to the chiefs what had been promised in October 1835: 'a guarantee of rights and possessions short of sovereignty but including territorial possessions and the privileges of British citizenship' (p 28). Wards enjoys contesting Keith Sinclair and Bill Oliver for their Whiggish 'land of the long pink cloud' interpretations in his reading of CO 209/4, p 141.

²⁷⁶ Paul McHugh, 'Treating with the tribes', *Times Literary Supplement*, 2-8 Feb 1990, p 121.

²⁷⁷ Paul McHugh, 'From Sovereignty Talk to Settlement Time: The Constitutional Setting of Maori Claims in the 1990s', in Paul Havemann (ed), *Indigenous Peoples' Rights in Australia, Canada, & New Zealand*, Auckland, Oxford University Press, 1999, p 449.

²⁷⁸ This point was made earlier made by Chief Judge Francis Fenton (Chief Judge of the Native Land Court) in his *Kauwaeranga* judgment (1870), where he went even further and interpreted the thirty-year-old Treaty as establishing contractual covenants with the Crown.

²⁷⁹ Bruce Mason, *The End of the Golden Weather*, Wellington, Price Milburn, 1962. See Michael Cullen's sanguinary account of the matter in 'Happy middle ground', *The Press*, 12 February 2004, p A7.

²⁸⁰ Hill, p 267.

²⁸¹ Robert Tonkinson, 'National Identity: Australia after Mabo', in Jurg Wassmann (ed), *Pacific Answers to Western Hegemony: Cultural Practices of Identity Construction*, Oxford/New York, Berg, 1998, p 293.

²⁸² Tony Birch, 'Correspondence', *Whitefella Jump Up*, *Quarterly Essay*, 12 (2003), p 85.

²⁸³ Keri Hulme, 'Getting It', in Hulme, *Stonefish*, Wellington, Huia Publishers, 2004, pp 87-104. For an account of extinct pre-human animals, see Joan Wiffen, *Valley of the Dragons: The Story of New Zealand's Dinosaur Woman*, Auckland, Random Century, 1991. See also Hulme, 'Te Whenua Whai-Taoka', in Gerard Hutching and Craig Potton (eds), *Forests, Fiords & Glaciers: The Case for a South-West New Zealand World Heritage Site*, Wellington, Royal Forest and Bird Protection Society of New Zealand, 1987, pp 77-83.

²⁸⁴ Hulme, *Stonefish*, p 91.

²⁸⁵ James Joyce, *Stephen Hero*, London: Triad/Panther Books, 1977, p 167.

²⁸⁶ Hulme, *Stonefish*, p 90.

²⁸⁷ Hulme, cited by Kim Newth, 'Save my Hulme begs writer', *Sunday Star Times*, 13 May 2001, p A4. The Okarito region (Kohuamarua, nine miles south of Abut Head) was the site of a pa of the Ngati Wairangi tribe, according to W A Taylor, *Lore and History of the South Island Maori*, Christchurch, Bascands, 1950, p 193. The lands in question around South Westland were part of the Arahura Purchase of 1860 for £300 (see Evison, *The Long Dispute*, ch 15).

²⁸⁸ Hulme, *Stonefish*, p 89.

²⁸⁹ Hulme, *Stonefish*, pp 91-2.

²⁹⁰ Hulme, *Stonefish*, p 95.

²⁹¹ Hulme, *Stonefish*, p 92.

²⁹² Hulme, *Stonefish*, p 96.

²⁹³ Hulme, *Stonefish*, p 93.

²⁹⁴ Hulme, email to author, 28 Apr 2005.

²⁹⁵ Hulme, *Stonefish*, p 97.

²⁹⁶ Hulme, *Stonefish*, p 98.

²⁹⁷ Hulme, *Stonefish*, p 98.

²⁹⁸ Hulme, *Stonefish*, p 101.

²⁹⁹ Hulme, *Stonefish*, p 101.

³⁰⁰ Hulme, *Stonefish*, p 102.

³⁰¹ See Keri Hulme, 'Floating Words'; in Martin Goff (ed), *Prize Writing: An Original Collection of Writings by Past Winners to Celebrate 21 years of The Booker Prize*, London, Hodder and Stoughton, 1989, pp 222-33. This text is reprinted in *Stonefish*, pp 3-19.

³⁰² Hulme, *Stonefish*, p 103.

³⁰³ Hulme, *Stonefish*, p 104.

³⁰⁴ This may be what Te Maire Tau meant when he anathematised the New Zealand state, citing Oliver Cromwell's words to Charles I: 'You have sat too long for any good you have been doing. Depart, I say; and let us have done with you. In the name of God, go!': 'Oak Desk or Warehouse Special?', *Te Karaka*, 26 (Autumn 2005), p 21. Such a view is also consonant with Sir Tipene O'Regan's statement that 'the State always cheats', necessitating that we properly subject our Parliament to the rule of law to make it a reviewable executive authority (cited by John Brown and Debra Farquhar, 'Does New Zealand Have the Constitution for Reform?: A Supremely Pragmatic Constitutional Arrangement', *Te Karaka*, 26 (Autumn 2005), p 15). Finally, Tom Bennion has rightly pointed out that 'Our current constitutional arrangements, and the place of the Treaty in them, may be pragmatic, but they also hide a degree of dishonesty and they are papering over some large and growing cracks' ('Does New Zealand have the constitution for reform?: A Supremely Pragmatic Constitutional Arrangement', *Te Karaka*, 26 (Autumn 2005), p 36). Andrew Sharp has rejected this view, arguing rather unusually that 'there is actually no unjust solution possible' in New Zealand due to the divided constituency of the nation. 'Not only are we not "one people"; we do not even share a view as to what rules of right we should live under': 'The Govt's task to reconcile two theories of justice', *The Press*, 12 July 1988. Sharp adds that 'The awkwardness of the dual demands of different kinds of justice is a fact of New Zealand's intellectual, legal, moral and emotional life' but it is unnoticed by ordinary Kiwis (*The Press*, 12 July 1988). He argues for a double vision, for pursuing 'the politics of ambiguity', which will educate the pakeha 'on the grounds of grievance so that some separate rights for Maori will be accepted.' Helen Clark seems to have shifted away from this model in the foreshore and seabed debate, arguing that its resolution 'isn't about conferring special privileges; it is about accommodating each other's interests and needs' (Clark, 'Fair deal for all is Govt's aim', *The Press*, 5 February 2004, p A9), which is a highly tendentious account of what was at stake. It almost recalls Winston Peters' rhetoric about 'the central document of our internal worries – the Treaty of Waitangi' as an obsolete document that 'divides us' and will 'strait-jacket our economic and social futures' (Peters, 'My proposal for racial harmony', *The Press*, 11 August 1988). Georgina Te Heuheu, however, provided recognition (even as an ousted National Party Maori Affairs spokesperson, as Peters had been as Minister in 1991) that the Treaty 'is forward looking and finely balanced to ensure the interests of all New Zealanders, while according Maori ... special recognition' with special rights deriving from their numerical majority 'in their own land' in nineteenth century Aotearoa/New Zealand (Te Heuheu, 'Test of our nationhood', *The Press*, 13 Feb 2004, p A7).

³⁰⁵ Walt Whitman, 'Sea-Shore Fancies', *Specimen Days in America*, London, Walter Scott, 1887, p 147.

FLERAS-MAAKA JAHRBUCH REVIEW ARTICLE/ESSAY

'Rezensionen', *Jahrbuch für Europäische Überseegeschichte*, Vol.7 (April 2007), 389–394 [Yearbook of European Overseas History]

The Politics of Indigeneity: Challenging the State in Canada and Aotearoa New Zealand by Roger Maaka and Augie Fleras (Dunedin, New Zealand: University of Otago Press, 2005). \$49.95 (NZ currency).

Published in August 2005, this exciting and conceptually advanced book is the fruit of a long-running and mutually beneficial intellectual collaboration between an adoptive Canadian and a Maori scholar who met when both were teaching at the University of Canterbury (New Zealand) in the 1990s. The Canadian anthropologist Augie Fleras completed his Ph.D at the Victoria University of Wellington under the great Maori scholar Sidney Moko Mead in the 1970s and studied at first hand the remarkable resurgence of *te reo Maori* (=New Zealand's indigenous language) before eventually teaching sociology at Canterbury where he met Roger Maaka, a man of rich background, a gifted Maori language educator and at that time completing a Ph.D in Political Science on the history of Maori political structures (whilst heading up the then Maori Department at Canterbury). From this meeting a fine synergy of minds ensued which led Maaka and Fleras to co-author many cutting-edge papers and conference presentations thereafter. In 2001 and 2003 Fleras (who had by then relocated back to Canada) also enjoyed two Research Scholarships at the Macmillan Brown Centre for Pacific Studies (Canterbury) and thus maintained his links with the New Zealand 'ethnic scene' and also brought his contributions to this important book up to date while at Macmillan Brown. By a further happy synergy, both men now find themselves living and teaching in Canada (Fleras as Professor of Sociology at the University of Waterloo and Maaka as Professor of Native Studies at the University of Saskatchewan) where they have been able to combine their insights into the respective experiences of native peoples 'minoritized' within the Anglo-foundational and hegemonic constitutional discourses of these antipodal settler dominions. This extraordinary intellectual kinship and partnership between a native European (Fleras was born in Lithuania and became a displaced person at the end of World War Two) and a member of New Zealand's *tangata whenua* (first peoples) is clearly a winning combination, and this authoritative book is the splendid result of their joint immersion in the diverse (but related) 'worlds' of indigenous-Crown relations at opposite ends of the Commonwealth, where the body of Anglo-American jurisprudence acts as a binding tie upon the aspirations of the indigenous peoples of Canada and New Zealand, holding back the

recognition of indigenes as senior constitutional partners sharing their respective lands with later migrants. Unpacking the dimensions of that shared shackling and debilitating legal-constitutional burden is the key project of this important and prophetic book.

The Politics of Indigeneity offers a series of concise case studies which detail the frustrations endured by indigenous peoples and the parameters of their disempowerment but, critically, the book does not leave its analysis at the depressing level of outlining dispiriting facts. Fortunately Maaka and Fleras take their work and task more seriously than that, and for this readers and policy-makers should be grateful, for these careful and imaginative scholars propose quite daring conceptual re-framings to help to resolve and unlock some of the dilemmas and constricting attitudes which continue to bedevil relationships between the Crown and the first settlers both to the Canadian landmass and the New Zealand archipelago. That said, the combined force of these two large-scale case histories acts as a powerful indictment of the ruling discourse of indivisible and paramount 'Crown sovereignty', such that the Maaka-Fleras espousal of bi-nationalism ('nation-to-nation' dialogue) provides a timely challenge to arrogant and populist ruling discourses which use legal precedents to shut down democratic participation and access to the long-held customary rights of indigenes. In this sense the book recalls fellow Canadian John Ralston Saul's analysis of the use by state actors of political fear in countering positive forms of nationalism and civic belonging and promoting narrow 'one people and one-state' views (in his excellent 2005 book *The Decline of Globalism*).

The architecture of this book as linked sets of doubles is clear and helpful: it starts with a two-pronged conceptual opener (on taking indigenous claims seriously by engaging indigeneity's challenge to unitary state discourses and hinting at the transformations possible), then two chapters on the fate of Maori in Aotearoa (3 & 4) followed by two on the 'politics of Aboriginality' in Canada (5 & 6)—in terms of status/non-status Indians, Metis and Inuit—and two chapters (7 & 8) concluding the exploration by limning the dimensions of shifting the foundational rules for a 'constructive engagement' by the State with each nation's indigenous peoples in order to build a better, more inclusive national future premised on *real* power-sharing, autonomy and partnership (figured in terms of constitutional equality and eschewing the patronizing 'junior partner' status of first peoples in all previous negotiations, by decolonizing the terms of engagement). The book is valuable for its nuanced analysis of the tough goals of constructing a "new social contract for living together differently" which takes "the principle of original occupancy" seriously (p.103) and which also permits delimited aboriginal self-governance within the larger state framework. The case-study approach works very well in

the accounts given of critical milestones or incidents in Canada such as the Calder Decision on native title (1973), the Nunavut Land Claims Agreement for Inuit (1993), the Oka Burnt Church (First Nations) fishing rights dispute, the *Delgamuukw* ruling by Canada's Supreme Court (1997) and the Nisga'a Final Agreement (1998). When all this is paralleled by the discussion of the Waitangi Tribunal and the appalling Seabed and Foreshore *fracas* in Aotearoa, it is clear that much of the value of this book resides in what Edward Said would have called its 'contrapuntal' structure and method, in which common themes, sell-outs and blatant equivocations by the majoritarian state are discerned and may be viewed as predictable outcomes of the binary and adversarial nature of English jurisprudential and constitutional thinking. This is well summed up by a table (p.224) in which the contrasting premises of Aboriginal and Federal perspectives are sharply diagrammatized. The discussion of Canadian aboriginal title (pp.212–216) suggests that experience in that land differed greatly from the potential prospects for New Zealand Maori given the originary context of the Treaty of Waitangi, with its Article II recognition of pre-Pakeha (European) customary title. However this fine book does contain some slips, such as the assertion that "Aboriginal title has no counterpart in English common property law" (p.213) which is, *prima facie*, wrong (Isaac Thomas would clarify this point), for the very intellectual framing of *te Tiriti* gives the lie to this inaccurate assertion (well discussed in Paul Moon's work [*The Path to the Treaty of Waitangi* and *Fatal Frontiers*] and the powerful and enriching, more arcane scholarship of Paul McHugh). There is also significant evidence of Crown recognition of pre-existing customary legal title for certain Celtic landowners, such as land along beachlines in early Britain, which is not acknowledged here. More legal scholarship surrounding these kinds of claims (even in the form of qualifying foot or endnotes) would have augmented the value of this book by a huge factor. That said, the discussion of the limitations of the *Delgamuukw* ruling is valuable (if not explained as clearly as an analysis of the actual text of the decision would have ensured). The fact that this decision of the Supreme Court of Canada (not the "Supreme Court in Canada" [p.212]) failed to qualify the Crown's claims of radical allodial title for all Canadian land (p.214) testifies to judicial subservience to Crown dictates which has worked to the detriment of aboriginal peoples in Canada and New Zealand over many decades, treaties or no treaties.

As our authors so well emphasize, there is a vibrant 'politics of obfuscation' at work in the Anglo-dominant society-building project by State actors and agencies, who can always be relied upon to defuse the claims of indigeneity—such as 'neutering' these "through multicultural and bi-cultural approaches", for as Maaka and Fleras rightly insist, "The theory and practice of indigeneity threatens to unmask those foundational principles that camouflage constitutional

hegemony" (p.267) and, I would add, acts of outright oppression by agents of the Crown.

Of course no credible academic review can avoid delivering a few caveats, and *The Politics of Indigeneity* is unfortunately flawed by some regrettably unclear or confusing sourcing along with some factual errors which could have been avoided. A couple of instances will suffice: the Maori Affairs Minister in 2003 was Parekura Horomia not "Parekua" (p.144), Britain did not legally annex New Zealand "through the signing of the Treaty of Waitangi" (p.104), and I would assert that Maori acted as sovereign people with Europeans at least since the Tasman encounter of 1642 and thus well before Cook in 1769 (p.104). Further, President Nixon resigned, and then left office on 9 August 1974 and so could not remotely have "formally announced a policy of self-determination in 1975" (p.204), although he probably did announce a policy for Native Americans that *would take effect from 1975*. When one is traversing complex legal and constitutional niceties one's language has to be limpid and unambiguous in its use of prepositional phrases and syntax; and there is also in this book perhaps the ongoing echo of Maaka's old hortatory skills as a former Anglican clergyman in its occasionally formulaic sentences and mantras (especially the seemingly endless repetition of G.R. Alfred's 1995 phrase about 'land, identity, culture and political voice', which recurs less as a useful *leitmotif* than it reads, alas, like a scratched track on a CD). This is unfortunate in a book sternly dedicated to challenging slogan thinking and stereotyped arguments, and the authors could have been better served by their editors in this regard.

It must be said that this book has, at times, a preachy register and a tone of strenuous and high-minded moral exhortation, such that it reads in places like a repetitive and heavily rhetorical polemic (signalled in Fleras' penchant for the triple alliteration of nouns and verbs which almost rivals the alliterative overkill of the U.S. *noir* novelist and essayist James Ellroy). Sceptics will also drub this book as being long on vision (exhorting governments to usher in the new ethnic Jerusalem) but much shorter on constitutional-legal specifics, and this may be because neither author has a specialist grounding in legal discourse and in the intellectual underpinnings of state sovereignty and necessity doctrine (as shown in the few citations to major scholarship in these domains and the lack of engagement with the nuances thereof). Some New Zealand readers will be disappointed, for instance, that the sometimes divergent and almost always counter-intuitive and powerful postulates of Kawharu, Durie, O'Regan, Kingsbury and the always-incisive Pocock are minimally represented here, and doubtless a rejoinder would be that this book is about the *politics*, not the *law*, of indigeneity. However, such a response would

be both vacuous and evasive, given the heightened political and constitutional underpinnings of much post-colonial appellate jurisprudence and state legislation in Canada and New Zealand (and in the wider common-law world) during the 1980s and 1990s, which the authors' central premises demanded that they address and process, as the gifted sociologist and political scientist which, respectively, they are. Therefore, while the book is impressively sociologically nuanced, regrettably it has limitations for pragmatic state policymakers. This is a tremendous shame as both Maaka and Fleras are very well-informed scholars, but this reduced value of its insights is especially clear in the 'analysis' of the New Zealand 'constitutiono-legal' disaster of the Seabed and Foreshore Act 2004, a discussion which proceeds largely on the basis of the often ill-informed ventilations of newspaper columnists. The treatment of this 'landmark' issue seriously lacks context and fails to offer more than a snappy account of what in the index is worryingly mis-labelled the "Seabeds [*sic*] and Foreshore Crisis" (pp.143-46). That sloppy miscategorization (doubtless a typo) regrettably sums up the once-over-lightly handling of a critical exemplar of their 'bad faith'/colonialist State behaviour paradigm and it cannot be redeemed by Fleras' alliteratively playful and clever heading: 'Foreshore Follies: Bicultural Politics or Bi-National Society' (which arguably demanded a question-mark at the end). Again one senses that the editors have failed the authors. To argue that the annexation of New Zealand and the consequent Treaty-based assumption of 'sovereignty' (*kawanatanga*) "displaced Maori rights through the introduction of British customary rule" (p.145) is to muddy the waters considerably (the adjective 'customary' causing a *frisson* of confusion). Fleras is, however, correct to describe the constitutional challenge emanating from legally informed Maori to the effect that they contest "the Crown assumption that custom [one assumes 'customary indigenous ownership' is meant] is displaced by a change of sovereignty" (p.145). These are fearfully complex issues, but Fleras gets the Big Picture absolutely right when he asks if the New Zealand State has both the mindset—and the stomach—"for thinking outside the colonial box"(p.146). In Fleras' deft phrasing:

Crown claims for ownership are deemed a burden on Maori instead of the reverse. Rather than conceding [absolute, unfettered] Crown sovereignty and ownership of land as *a priori* and uncontested, then devising ways of recognising and implementing Maori customary rights, a post-colonial social contract will invert this assumption by acknowledging Maori customary rights as primary, then negotiate ways to incorporate Crown claims to sovereignty and ownership (p.146).

The challenge of this important 'think-book' lies in the broad thrust of (re)visionary perspective which it delivers very powerfully, inviting a liberated imagination. This book has a prophetic, quasi-spiritual cast,

and it is one of its greatest strengths as its authors plot the “seismic shift” to come, one which “embraces a new social contract involving a constitutional covenant between consenting political communities, each of which [=the Crown and indigenes] is autonomous and self-determining in their own right, yet inextricably interlocked as partners in jointly exploring a post-colonial alternative for living together differently without drifting apart” (p.300). This new contractarian, expressly covenantal language bespeaks the common exploration by Maaka and Fleras of Treaty of Waitangi perspectives, one of the dominant ones in Maoridom being that the Treaty is *he kawenata tapu* (or a sacred covenant between the white and brown people of Aotearoa). Objections will be raised that ‘the Crown’ now comprises many indigenous people in Parliament, such that the binary logic of bi-nationalism (‘nation–nation’) risks an impractical schizoid impasse or a neo-secessionist and Quebecois-style *de jure* apartheid, in spite of Fleras and Maaka’s fondest dreams and lofty visions for reconciliation and a fundamental re-conceptualization of partnership. There is, alas, no workable blueprint to achieve this on *terra firma* nor in the existing Anglo–normative *lex terrae*, and so we are dealing here, finally, with the sharing of an aspirational vision (doubtless inspiring and inspiriting to liberals and activists but very short on guides or concrete proposals or models that might guide vexed and well-intentioned policymakers towards brokerable solutions and structured pathways in the tough, cynical and vote-driven world of *realpolitik*). This is hardly surprising as these men are academics and (to the best of my knowledge) neither has experienced the compromises and equivocations of elected office. In fine, the analysis is first-rate but a clear prognosis is entirely lacking. This is not of itself a criticism of a book which explicitly thinks outside the square, but it is as well to be clear what *The Politics of Indigeneity* is and is *not* offering.

But stay and attend to what Maaka and Fleras are telling us about the potentialities for a positive nationalism in the new millennium, for it is vitally important and engaging. In many ways their project, in its ethical passion and clarity, recalls the great American texts of 19C abolitionism (the anti-slavery polemics of such luminaries as Frederick Douglass, Emerson, Sumner, etc). Another useful parallel might be made with the civil rights discourse of Martin Luther King, Jr as he excoriated his own polity for America’s purblind, uncompassionate, unimaginative and racist self-fettering, and in the way in which King the preacher called his sinful nation to account for its blatant failure to deliver on the central guarantees of Lincoln’s Emancipation Proclamation of 1863. This thoughtful and thought-provoking book adds piquancy in similarly calling Canada to account for its broad failure to engage with its indigenous populations even after the constitutional entrenchment of aboriginal title rights in s35 of its Constitution Act 1983, and *The Politics of Indigeneity* also usefully pre-

interrogates the New Zealand polity as it shall eventually face up to creating a written republican constitution and the challenge of entrenching the Treaty of Waitangi as supreme law (the actual font of Crown law in Aotearoa). In this Maaka and Fleras would agree with S.N. Eisenstadt (*Paradoxes of Democracy: Fragility, Continuity and Change* [Baltimore: Johns Hopkins University Press, 2000]) that a working constitution must demonstrate a capacity for embracing new conceptions of what a constitution is for, such that it may recognize and incorporate alternative visions from the outset. This seems to have been the peculiar strength of the Treaty of Waitangi and, given the New Zealand failure to treat that founding document with the legal force which it is owed (as a foundational state contract), *The Politics* will hopefully encourage and stimulate the Crown Law boffins and distinguished legal and political minds who will eventually draw up for New Zealand an entrenchable legal instrument that will go considerably beyond its functionalist Constitution Act 1986, in giving an explicit written rationale for the 'Treaty compact' of 1840 and of all the very best multifaceted values which have informed the jurisprudence of Aotearoa/New Zealand across the succeeding decades as we have cobbled together what Lord Cooke of Thorndon once called a burgeoning 'New Zealand National Legal Identity' (3 *Canterbury Law Review* [1987] 171ff.). In noting this I politely disagree with Richard Boast's statement that "Attempts since 1975 to create a constitutionalised Treaty of Waitangi to serve as a unifying symbol for the nation can now be clearly seen to have failed" (*A New Zealand Legal History* [Wellington: Brooker's, 1995], p.129) in that these have not been properly tried to date.

In those terms I would hope that those charged with drafting a written supreme law instrument for the new republic of Aotearoa in the twenty-first century will peruse the contents of this book very closely, especially its conceptual anchorings in Chapters 2–4 and, especially, the issues raised in 7 ('Contesting the Constitutional Terrain, Shifting the Foundational Rules') and 8 ('Indigeneity at the Edge: Constructive Engagement'). This is a remarkable revisiting and re-visioning of jurisdictional space in a brave attempt to re-imagine and re-conceptualize a social contract which factors in indigenous actors as power-players and which also seeks to avoid neo-colonial constructs of relating between the foundational ethnic blocs which comprise a 'nation' (Benedict Anderson's 'imagined community') and its core constituencies while being able to keep civil peace and provide a favourable economic environment for the benefit of all, whether they were embraced by the original 'constitutional partnership' or not. This undertaking—should it transpire—will really put to the test Lord Cooke's statement that a New Zealand jurisprudence (now more established since the tie was cut with the Privy Council as our highest appellate court) is "more egalitarian, probably more questioning, just

possibly on some public and legal issues more objective”(3 *Canta LR*, 182–83) than its English antecedent. For as Maaka and Fleras note pungently, moving beyond ‘duelling discourses’ and creating truly post-colonial constitutional arrangements entails facing the fact that “none is as constitutive of a colonial social contract than a commitment to absolute and exclusive Crown sovereignty” (p.261). In these terms Canada “has not repudiated” its “systemic internal colonialism” (p.263) and New Zealand also suffers fears of dismantling political power, both nations stalled at the behest of dominantly Anglo-Celtic political elites. As our authors note, “New Zealand’s constitutional politics are animated by the oppositional dynamics of two seemingly valid yet competing paradigms” and they concede that the prospects are not heartening of settler Canada and New Zealand being able to “shed their colonial skin and adjust their understanding of sovereignty and self-determination around a post-colonial social contract that flows from a constitutional recognition of joint sovereignty” (p.269). Maaka and Fleras remind us that “Indigenous peoples do not have needs in the conventional sense of the word, but have rights whose denial by the state has created problems and led to unmet needs” (p.273). This book makes a useful critique of European liberal pluralist discourses such as the red-herring of multiculturalism which fudge the point that indigenous ‘difference’ is premised upon “a constitutional status that confers and entitles” rights and rewards as a matter of principle (p.277). Maaka and Fleras deploy a Kantian discourse in advancing a political programme of wisdom and justice (p.297) which has as its central aim a re-priming of the social contracts of Canada and Aotearoa/New Zealand whilst recognizing that this attempt to use a constructive engagement model to escape ‘paradigm muddle’ is unlikely to occur without “substantial controversy and conflict” (p.298).

I suppose that all this is a rather roundabout way of saying that in *The Politics of Indigeneity* readers are given a mature and splendidly researched and assembled analysis-polemic which should really also be sub-titled ‘We Have a Dream’. What, in the name of all that is good, fair and just, would be wrong with that?

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