Over the past decade, the New Zealand Government made great strides in redressing long-standing Māori grievances, and settling the grave injustices that were inflicted on Māori in the 19th century, when they were largely dispossessed of their lands. Nevertheless, this settlement process is rather controversial for two reasons. First, the government negotiates settlements only with “tribal organisations”, whereas 80 percent of the Māori population is currently living in urban environments in which tribal connections have lost a great deal of meaning (Maaka 1994). There seems to be a growing awareness in New Zealand that somehow this group needs to be included in the settlement process, which has become particularly apparent and publicly debated in the context of the settlement of Māori claims to New Zealand fisheries (e.g., Barcham 1998, Webster 2002). Second, the socio-political organisation of Māori society has changed radically since the 19th century, which raises questions regarding the representation of descendants of the originally dispossessed Māori people. Who are the rightful heirs of the traditional owners? This question is entangled with the more fundamental questions about the nature of property rights in the 19th century. Who owned the land and other resources: extended families, sub-tribes, tribes, or super-tribes? What were the political relationships between leaders at various levels of the hierarchical kinship structure? In this essay, I address these questions in the context of analysing the Tainui settlement and controversies surrounding its implementation.

In 1995, the Tainui were the first Māori group to sign a major settlement of their historic grievances, resulting from the confiscation of their lands and natural resources in 1864. The British Monarch, Queen Elizabeth II of England, travelled to New Zealand to sign the Act that passed into law the agreement negotiated between the Tainui leadership and the New Zealand Government. The agreement included a formal apology from the Crown, which the Queen made, and provided for the return of three percent of the lands originally confiscated. The value of the returned lands was estimated at approximately NZ$170 million.
Four years later, however, Tainui assets had declined by NZ$40 million. At the same time, newspapers almost daily reported court cases involving Tainui factions, notably a group of Tainui administrators/accountants versus some representatives of the Tainui tribal leadership that has been “housed” in the Māori King Movement since 1858. In this article I examine what went wrong in the aftermath of the settlement and some of the structural causes of political conflicts within the Tainui Confederation, trying to disentangle the essentialised meanings of “traditionalist” arguments concerning tribal leadership in relation to the “modern” arguments for the introduction of democracy within the tribe. I begin with a brief excursion into the history of the Tainui and their claim.

THE TAINUI CANOE

The Tainui Māori claim descent from the crew of the Tainui waka or ‘canoe’ that sailed from Eastern Polynesia to New Zealand about 1000 years ago. The members of this canoe explored and settled in the central North Island. Over the years their population increased and they formed distinct groups or iwi, known as Ngāti Mahuta, Ngāti Haua, Ngāti Maniapoto, Ngāti Maru, Ngāti Raukawa, Hauraki and Waikato (Jones and Biggs 1995, Kelly 1949). In pre-European times, the relationship between these groups was rather loose since, like most Māori, they lived in relatively autonomous, extended family communities.

There is widespread agreement in anthropology that the hapū, usually translated as ‘sub-tribe’, was the central unit of the tribal structure of Māori society. A hapū defined itself by descent from an apical, often eponymous ancestor, and was made up of a group of kin occupying a common territory and living together in a communal settlement, and composed of a number of whānau or ‘extended families’. Several hapū made up a more inclusive group linked together by descent from a more remote founding ancestor. Such groups were called iwi, a term that is nowadays usually translated as ‘tribe’. This designation is misleading because it suggests that iwi were at the core of the socio-political organisation and from them all other units of organisation derived. Rather, the composition of iwi was loose and flexible, and iwi probably did not develop as corporate groups until in the 19th century in the context of ongoing colonisation (Ballara 1998, Firth 1959, Meijl 1995, Webster 1997,).

The highest level of the socio-political organisation of Māori society was the waka or ‘canoe’, made up of all iwi whose remote ancestors had reached the shores of New Zealand on the same canoe, such as the Tainui canoe. Political or economic co-operation between iwi probably did not take place until the beginning of the 19th century, when inter-tribal warfare erupted.
following the introduction of the musket by traders and missionaries (Owens 1981). In the battles that broke out in the 1820s, tribal associations were formed and paramount chiefs emerged, possibly for the first time in history. Military coalitions between the Waikato people led by Te Wherowhero and other Tainui tribes contributed to an unprecedented political endorsement of sentimental ties between iwi whose members traced their ancestry to the crew of the Tainui canoe. The key role that Te Wherowhero played in the development of the coalition among iwi of the Tainui canoe would later prompt his coronation as first Māori King (Jones 1959).

THE MĀORI KING MOVEMENT AND THE CONFISCATION OF THEIR LAND

In 1858 a Māori King was elected, who stood above the iwi and even all waka or canoes, as a result of a political movement that emerged in the beginning of the 1850s (Meijl 1993). Following the signing of the Treaty of Waitangi in 1840, more and more land deals between Europeans and Māori led to conflict as Māori gradually became aware that Europeans believed they had obtained and owned the land permanently. Resistance to the increasing alienation of Māori land caused various iwi to disavow their inter-tribal rivalry and discuss their common interests. Inter-tribal meetings were held throughout New Zealand to work out a common strategy in order to retain control of Māori land. In the first instance these meetings of what later was known as the movement for kotahitanga ‘oneness’ were aimed towards putting a tapu ‘prohibition’ on land sales within certain boundaries. But soon the notion of a Māori King took shape (Sinclair 1969).

To create a confederation with one chief designated as Māori King in a society of autonomous iwi was not easy. Though the kingship was offered to several paramount chiefs, many called to Potatau Te Wherowhero of the Waikato iwi. Potatau eventually consented to election as King and his coronation ceremony was held at Ngaruawahia on 2 June 1858 (Buddle 1860:13, Sinclair 1959:264). Initially 23 iwi supported the Māori King, mostly from the Waikato and Taupo districts. Other tribes refused to pledge allegiance to the King, but they did support the movement’s policy of withholding land from sale. Thus Potatau provided a focus for Māori discontent regarding European settlement.

The influence of Potatau’s new office should not be exaggerated, given that there were differences among Māori regarding European settlement. Yet, the kingship did make the New Zealand Government nervous. Potatau had the authority to withhold land from the market, so the Governor’s main problem was undoubtedly that the Kingitanga or ‘King Movement’ was substantially an anti-land-selling ‘league’ (Gorst 1864: passim). European
settlers voiced strong objections against the King, and gradually they gained
the Government’s sympathy.

In the late 1850s the political atmosphere in New Zealand was decidedly
tense and the Government was desperate to control the King Movement.
War finally broke out in March 1860 (Belich 1986, Sinclair 1961). The
Waikato area was invaded on 12 July 1863, when General Cameron and his
troops crossed the Mangatawhiri River, which demarcated the Kingitanga
territory within which no land was to be sold (Mahuta 1995a:70). The
wars lasted until the end of 1864, after which the government confiscated three
million acres of Māori land in the most fertile and cultivatable areas of the
North Island. The Kingitanga tribes lost 486,502 hectares (1,202,172 acres)
of land. Most of the forested hill country and the steep limestone valleys
of the more extreme Maniapoto tribes was left untouched. This omission
highlighted the motives of the government. The confiscations were plainly
in the service of European settlement and agricultural development and the
argument of punishing the rebels was merely a pretext.

THE LAND CLAIM OF THE MĀORI KING MOVEMENT

Most of the land confiscated in 1864 belonged to the Waikato iwi, the
main iwi of the Tainui Confederation of tribes and the iwi from which the
Māori King had been elected. Other Tainui iwi were hardly affected. As a
result, the main cause of the Māori King Movement soon became identified
with the central aim of the landless Waikato people. The second Māori
King, Tāwhiao, who succeeded his father Potatau in 1860, concentrated
his energies on seeking redress for the confiscations. For this reason, he
encountered great difficulties securing support to make the kingship a
politically effective institution for a greater number of tribes (Williams
1969:47). Nonetheless, Tāwhiao did manage to keep all those tribes united
that had been affected by the confiscations, including parts of Taranaki.

The Māori King Movement directly approached the British Crown twice
to seek redress for the confiscations. In 1884, Tāwhiao led a deputation
to England and in 1914 the fourth Māori King also presented the British
Crown with a petition asserting that the confiscations were in violation of
the Treaty of Waitangi. In both instances, the Kings were referred to the
New Zealand Government as the appropriate place to seek redress (Jones

During the First World War, the New Zealand Government sought to
conscript Māori soldiers, but in the Waikato the call to fight for “King and
Country” fell on deaf ears (Mahuta 1981:6-7). Waikato Māori refused to
be conscripted. In 1927, this refusal eventually prompted the Government
Conflicts of Redistribution in Contemporary Māori Society

to set up a Royal Commission to inquire into the confiscations, chaired by Justice Sim. One year later, the Commission concluded that the land confiscations had been “excessive” and recommended compensation by an annual payment of £3,000 (AJHR 1928, G-7:17). Subsequently, the charismatic Princess Te Puea began negotiations for a settlement. After 18 years of negotiations, the New Zealand Government and the leaders of the King Movement reached agreement on financial compensation in the form of an annual grant of £6,000 for 50 years and of £5,000 thereafter in perpetuity.

After Princess Te Puea accepted the final bid, the government moved to draft the Waikato-Maniapoto Māori Claims Settlement Bill in order to legalise the settlement and to establish the Waikato Māori Trust Board to administer the compensation funds. Interestingly, however, the Kingitanga leader Pei Jones, himself of Maniapoto descent, wrote to the Government pointing out that, although 90 percent of all beneficiaries of the compensation were members of the Waikato tribes, some other tribes of the Tainui confederation were also affected by the confiscations and that, therefore, the most appropriate name of the Trust Board was the Tainui Māori Trust Board (hereinafter TMTB). It is most likely that Princess Te Puea was behind this submission to name the future tribal authority the Tainui Māori Trust Board (Robert Mahuta pers. comm.). This request from the headquarters of the Kingitanga was clearly a ploy to keep the strongest supporters of the King Movement united under the umbrella of the TMTB, including those who had retained their land.

Although the TMTB was initially established to administer the annual grant for Tainui beneficiaries, subsequent legislation gradually widened its functions. The 1955 Māori Trust Board Act broadened the power and responsibility of the TMTB in respect of social and economic development (TMTB 1988). The turning point in the recent history of the Board and the Tainui people at large, however, was the publication of The Tainui Report by the Tainui chief Robert Mahuta and the development consultant Kenneth Egan in 1982 (Mahuta 1995b). This report highlighted underdevelopment within the Tainui region. As a result, the Trust Board took a more proactive role in development and other issues at both tribal and national levels. A positive consequence of the re-organisation of the TMTB in the 1980s was that it simultaneously prepared the Tainui people to resubmit their longstanding claim to the government when new legislation made this possible.

When, in 1986, the Labour government mandated the Waitangi Tribunal to examine all claims to violations of the Treaty of Waitangi, Tainui immediately filed a claim with the Tribunal over the confiscated lands, the Waikato River and the West Coast Harbours. In 1987, however, the Crown
made a legal mistake that allowed the Tainui people to negotiate directly with the government about their longstanding grievances, rather than going through the Tribunal process. The Government had moved to transfer lands held in Crown ownership to semi-private State Owned Enterprises and did not take into account that Clause 9 of the State Owned Enterprises Act 1986 prohibited the Crown from acting “in a manner that is inconsistent with the principles of the Treaty of Waitangi”. This legality provided Tainui with the possibility of stopping the sale of Coalcorp. In 1989, the Appeal Court finally forbid the government selling Coalcorp without proper safeguards for the Tainui people (see also Meijl 1999:275-77). Further, the Appeal Court was unanimous in its judgement that Tainui was entitled to the equivalent of a substantial portion of the coal resources in the Waikato, the exact amount being left to negotiations between the Crown and the TMTB.

The government remained reluctant to enter into direct negotiations with the TMTB, mainly because it was unprepared for the radical potential of Māori claims. Nevertheless, both the Labour governments in the 1980s and the National governments in the 1990s recognised that many of the longstanding Māori grievances were legitimate. After years of deliberation and periodic negotiations with several tribes on major claims, the National government, re-elected in 1993, finally announced its strategy for settling Māori claims towards the end of 1994. The Crown set 2000 as a target date for the settlement of Treaty of Waitangi claims, i.e., for the completion of the hearings and of the negotiation of compensation agreements with Māori iwi. At the same time, it proposed establishing over a ten-year period a settlement fund of NZ$1 billion to settle all historical Māori claims. This fund came to be known as the “fiscal envelope”. The response to the “fiscal envelope” proposal from Māori people was unanimously negative: it was rejected outright (Gardiner 1996). The fear was that the fiscal envelope would damage Māori proprietary rights under the Treaty.

Given this situation, many were surprised when on 21 December 1994, barely ten days after the introduction of the “fiscal envelope” proposal, a final settlement of the Tainui land claim was announced after a “Heads of Agreement” had been signed between Tainui leaders and the New Zealand Government. Yet, the TMTB had rejected the “fiscal envelope” proposal along with all other iwi. This was a strong political statement, because the Crown had made it clear that the amount of money available in the envelop for settling Māori claims was not negotiable. Consequently, the signing of the “Heads of Agreement” by the Tainui leadership was highly controversial and met with severe opposition from other Māori groups (Gardiner 1996:128-29).
Criticism of the TMTB did not deter Queen Te Atairangikaahu of the Māori King Movement and the Government from signing a comprehensive settlement of the Tainui people’s land grievances on the eve of the 29th anniversary of the Queen’s coronation in May 1995.9 The settlement included a formal apology from the Crown, acknowledging that it acted unjustly in dealing with the King Movement in 1863, and provided for the return of 14,165 ha (about 35,000 acres) of Crown land or about three percent of the land originally confiscated. The value of the restored lands was estimated at approximately NZ$170 million and the annual proceeds from rents and leases to amount to between NZ$7 and 14 million per annum.10 In November 1995, during her visit to New Zealand, Queen Elizabeth II signed the document, passing into law the Waikato Raupatu Claims Settlement Act.

CONTROVERSIES AROUND THE SETTLEMENT

Criticisms from Māoridom

The sheer magnitude of the Tainui settlement could not have been anticipated in the 1980s, indicative that some real progress had been made in redressing Māori grievances. Yet, the Tainui settlement was controversial right from the beginning. Initial criticisms were expressed by other iwi accusing Tainui of betraying the rest of Māoridom, believing that the Tainui settlement set a precedent within the terms of the “fiscal envelop” for negotiations with other iwi (Gardiner 1996:128-29). Tainui rejected this criticism. Its leadership argued that it had never concurred with the concept of the settlement envelop and pointed to the Heads of Agreement statement clause “that knowledge of the Crown’s proposed policy for settling natural resources claims does not reflect acceptance of that policy by Waikato-Tainui” (clause 7.1.v). Until the fiscal cap was removed after the elections of 1996—this clause notwithstanding, the government and other Māori iwi referred to the Tainui settlement as being based on these policies. This is not surprising since the automatic escalation clause included in the Deed of Settlement (see “Attachment 9”, entitled “Relativity Mechanism”), later confirmed by the Act, indicates Tainui’s acceptance of a number of Crown proposals, thus justifying the assertion that Tainui settled its claim within the framework of the “fiscal envelop”. The “relativity clause” ensures that

the Waikato settlement will always be the largest Maori settlement for the next 50 years. If another tribe receives a settlement which exceeds in value the Waikato settlement, the Crown will provide additional value to…
ensure… that the Waikato settlement is the largest maintaining its 17% values of any monies set aside by the Crown for Maori claims11 (“Attachment 9”, entitled “Relativity Mechanism”).

The figure of 17 percent was derived from the fiscal cap of NZ$1 billion.12

Disapproval from within the Tainui Confederation: representation and consultation

External criticism was always to be expected in Māori society, given the number of autonomous iwi, all with their own claims before the Waitangi Tribunal, but there was also strong internal disapproval of the settlement. Within Tainui, issues raised before and after the settlement should be distinguished. Beforehand, questions were brought up as to whether the negotiators represented the entire Tainui Confederation and critics deplored the lack of consultation with the “flaxroots” in the course of the negotiations. Criticisms were also levelled at the proposed new trust that was vested with the returned properties and that was to be controlled by the tribal leadership held by the royal family. The common denominator of both criticisms is the exclusive identification of the Tainui tribes with the Kingitanga, both in the negotiations and in the later implementation of the settlement. Subsequently, the central control held by the royal family in the new, post-settlement tribal structure is controversial too within the Tainui Confederation of Tribes.

Before discussing further internal criticisms of the settlement, what is meant by the notion “Tainui” needs to be clarified. The history of the claim suggests that the entity Tainui is in fact a recent construct. Until recently, people’s primary affiliation was to iwi (tribes), not to waka (super-tribes). The notion of Tainui, referring to the waka, only developed after the establishment of the TMTB in 1946, named thus probably at the request of Princess Te Puea.

Whether the Tainui Trust Board could keep the Tainui Confederation, including the iwi not affected by confiscations, united was always debatable; in the 1980s, however, the proclaimed unity of the Tainui Confederation appeared largely symbolic. Two Tainui tribes, Hauraki and Ngāti Maniapoto, set up their own trust boards in order to be able to administer their own development programmes (see Māori Trust Boards Amendment Act 1988, Meijl 1990:120). A proposal was made to set up a rūnanga ‘council’ to coordinate the several Tainui trust boards to maintain some political unity along with the symbolic unity engendered by the King Movement. But Hauraki soon dropped out permanently. Development was clearly weakening the unity of the Tainui Confederation.
Further disintegration of the Tainui Confederation occurred under the impact of the settlement negotiations. There were significant changes of names. Both in the “Heads of Agreement” and the “Deed of Settlement” on the “Tainui” claim, the designation of the tribal grouping concerned was “Waikato-Tainui”. But in the 1995 “Deed to Amend the Deed of Settlement” every reference to “Waikato-Tainui” was deleted and references to “Waikato” only were substituted. The “Claims Settlement Act”, too, refers only to “Waikato”. In the strict sense of the term, then, Waikato became the legal term for all the hapū affected by the confiscations, while Tainui continues to be used mainly as an ideological and symbolic concept referring to the descendants of the crew of the Tainui waka and to the contemporary adherents of the Māori King Movement. (I discuss below how the name Tainui may also be used to enhance the credibility of tribal business operations.)

The ambiguity of the notion “Tainui” also played a role in internal criticisms before the settlement was signed. People questioned whether all potential beneficiaries of the “Tainui” claim were represented in the negotiations and pointed to a lack of consultation with all concerned hapū. The negotiating team was led by Robert Mahuta, the adoptive brother of the Māori Queen, who in 1983 was appointed to the seat of the Māori Queen on the TMTB. The 15 other members representing 33 hapū were elected. As director of the Centre for Māori Studies and Research at the University of Waikato, he was the driving force behind the development of Tainui as a tribal organisation in the 1980s. Later, he also acted as the principal negotiator for the Tainui with the Crown. He had a firm and often expressed view that it was incumbent on individual Tainui persons to concern themselves with Tainui business and participate in tribal networks and forums of debate. In this regard, he repeatedly spoke of two Tainui platforms of discussion: the annual round of 28 poukai or Kingitanga loyalty gatherings and the bi-monthly meetings of Nga Marae Toopu, an association of all Tainui marae communities (Meijl 1990:279-85, 96). These informal gatherings, however, were rarely attended by more than a few hundred people, except perhaps for poukai at Waahi and Turangawaewae, which are respectively the domicile and official residence of the Māori Queen. This little attendance was one of the reasons why the claim that Tainui had its own mode of optimally operating consultation was rejected by critics as “pathetic nonsense” (Hopa 1995:36).13

This criticism was not directed to the principal negotiator personally, but was aimed at the entire operation of the TMTB. Membership of the TMTB, and many other trust boards for that matter, tends to be based more on status
than ability, thereby creating and reproducing a tribal autocracy, which
was in the case of Tainui strongly supportive of the royal family (Hopa and
Cheater 1996:13). With settlement and the possibility of some real, pecuniary
advantages for the beneficiaries of the TMTB, the “flaxroots” began
raising questions about its leadership: its representativeness, consultation,
information sharing, accountability and decision-making. One argument
was that the Trust Board should have organised proper consultation with
all its beneficiaries by circulating more detailed information about the
negotiations in written form. But there was little the critics could do to
punish the Board for neglect.

Debates about the representativeness of the Tainui leadership prompted
the TMTB nevertheless to re-organise its administration and beneficiary
records. Re-organisation had become necessary because the government
called for a referendum among the beneficiaries of the TMTB in order to
pass the Deed of Settlement into law. Then the mandate for the compensation
agreement appeared to be minimal and the figures in this respect are
revealing. When the Tainui Trust Board initiated its ambitious development
programme in 1983, the argument was that the Tainui Confederation
consisted of 120,000 people (Douglas 1982:28). Over the years, however,
the Tainui leadership reduced this first estimate of the number of Tainui
people by almost 50 percent. In 1990, it was not unrealistic to think that the
government would implement a policy of devolution of government funds
on a per capita basis. Tainui then claimed that its confederation of tribes
numbered approximately 62,600 people: 29,700 Waikato, 5,900 Raukawa,
7,600 Hauraki and 19,400 Maniapoto (Mahuta 1990). These figures were
also forwarded to the confiscations settlement negotiations.

During the negotiations formal membership became an issue. Exactly
how many beneficiaries did the TMTB have? About 20,000 were said
to be on the roll, though more people were expected to register after the
settlement was signed. Eventually, it appeared that only 11,600 people were
registered as beneficiaries of the TMTB. All these were asked to accept
or reject the deal by means of a ballot. However, out of a total of 11,600
ballots sent out, only 4,680 ballot papers were returned to the Trust Board.
Of these, 3,029 were in favour and 1,608 were against (43 ballots were
invalid). So, only 40.4 percent of the registered beneficiaries voted, a
third of whom (34.4%) rejected the proposal for a settlement. Along the
sidelines many people asserted that they had never received their ballots.
Yet, despite these low figures, the Trust Board and the Government formally
accepted the ballot outcome as an adequate mandate for the settlement
to be sanctioned by law.
THE IMPLEMENTATION OF THE SETTLEMENT

After the settlement had been signed, controversies shifted from the decision-making process to its implementation. Criticism to follow was foreshadowed in 1993, when the government intending to show its good will to Tainui handed over two properties, Hopuhopu and Te Rapa. These former military bases were vested in the Potatau Te Wherowhero Land Holding Trust, a tribal trust named after the first Māori King. Three prominent members of the Māori royal family were appointed as custodial trustees, namely the Queen, Dame Te Atairangikaahu, her adoptive brother, Robert Mahuta, and her uncle, Tumate Mahuta. The TMTB was made managing trustee of the Trust.

Hopuhopu and Te Rapa were sited on the ancestral lands of one particular hapū, and the descendants of the original occupants, if not owners, of the land did not necessarily approve of this Trust structure. Thirty-seven members of the hapū challenged the vesting of the two properties in the tribe as a whole and appealed to the Māori Appellate Court. The group of litigants claimed to be representing the whole hapū, but they were unable to file a formal claim on behalf of the collective hapū, because ‘sub-tribes’ have no legal status in New Zealand, and only iwi or waka are recognised under trust board legislation. The locals consequently lost their case against the claim of the TMTB that the lands were returned to “Waikato and not to any one individual” (Hopa 1999:115, note 24). Thus a precedent was set for the substitution of original hapū rights by a collective, tribal title under the control of the royal family.

The shift of power from hapū to iwi is indeed one of the more contentious aspects of the current government strategy to settle Māori claims. It is true that hapū and whānau ‘extended families’ are fluid, expanding and declining, and that this an inevitable consequence of ambilineal kinship arrangements (Webster 1975). Yet, some hapū are more stable and homogeneous. In the late 1980s, however, the government decided it wanted to settle longstanding Māori grievances with tribal (iwi) organisations only. A group of Māori chiefs successfully persuaded the government to focus policies on iwi instead of hapū or pan-tribal organisations (Meijl 1997). Their argument was that hapū have no formal structure, let alone legal status, that would enable them to be used as vehicles for Māori development or for the settlement of claims. For Tainui, the government contended that it wanted to ensure that the restitution of land benefited all tribal members, and that the TMTB had organised for this to occur “under the mana of the Kingitanga” (quoted in Hopa 1999:109; see also Cheater and Hopa 1997:212). The consequence of this decision was that all hapū claims to lands and natural resources were effectively extinguished.
The removal of *hapū* rights and *hapū* control of lands and resources took legal effect through the organisational structure developed to register collective ownership of the assets that were returned to the Waikato tribe and the Kingitanga in the recent past. Waikato properties became registered in the name of the Kingitanga’s deceased founder, the first Māori King Potatau Te Wherowhero, a title originally created in 1975 to register the Kingitanga’s graveyard on Taupiri Mountain. The notion of a tribal title to the collective cemetery was unique in New Zealand and initially met little opposition. But then, as noted above, it was again used when the military bases Hopuhopu and Te Rapa were returned to Waikato in 1993. Its earlier use created a precedent of sorts, but in 1993 when it was applied to the return of large amounts of confiscated property it caused controversy. The controversy concerned not only the vesting of ownership at the *iwi* instead of the *hapū* level, but also and more importantly the legal interconnection between ownership and management, and the exclusive appointment of members of the royal family as custodial trustees.

The reason for vesting the returned lands in the name of a dead ancestor was to prevent the sale of the land. No individual can succeed to the title, while the beneficiaries of the land are supposed to be the tribe as a whole, not any individual person or *whānau* or *hapū*. Alienation of land would be difficult, because, in addition to the endorsement of the three custodial trustees, 75 percent of all beneficiaries would have to agree to a sale. The Māori Queen, her adoptive brother and her uncle were originally appointed as custodians. While this structure, with trustees appointed exclusively from the royal family, was justified as preventing the possibility of future alienation of the returned properties, at the same time it elevated the Māori monarchy, making it a powerful institution in New Zealand, much more powerful than it had ever been before. The confiscated lands were effectively returned to the royal family, itself belonging to the *hapū* of Ngāti Mahuta, and changed the Māori monarchy from a landless institution into a large landowner. This also substantiated the monarchy’s submerged claim to Waikato, Tainui and even pan-Māori identity and status in the form of the Kingitanga (Cheater and Hopa 1997:212). The symbolic meaning of this claim was not new, but its institutional implications were unprecedented and caused great consternation within the Tainui Confederation, particularly within the Waikato *iwi* and among the tribal leadership, i.e., the royal family and numerous other members of the tribe. This became particularly evident through arguments that arose in the new organisational structure of the tribe.

Initially the TMTB was temporarily managing trustee of the Potatau Te Wherowhero Land Holding Trust. In 1999, however, the TMTB was
dissolved; after settlement it became outdated. The dissolution of the
TMTB was stipulated in the Waikato Raupatu Claims Settlement Act of
1995, which aimed at introducing a strict division between ownership,
governance and management. The Settlement Act hence established the
Waikato Raupatu Lands Trust as the legal body holding the Potatau Te
Wherowhero title, as noted above. The three custodial trustees of the
royal family held legal ownership of the returned properties vested in
this trust within this new structure. Governance and management of the
properties held by the Lands Trust, however, were transferred to the Waikato
Raupatu Trustee Company.

The Trustee Company was going to operate through the Kauhanganui,16
a ‘Great Council’ of 183 people representing 61 marae who signed the
covenant supporting the Deed of Settlement.17 By signing the tribal
agreement these marae also endorsed the crucial role of the royal family in
the custody of the returned properties.18 The Kauhanganui became the sole
shareholder of the trustee company and in practice was mainly concerned
with the governance of the tribal companies. The daily management, on
the other hand, was to be conducted by an executive council of 12, called
Tekaumaarua.19 Eleven members of the Tekaumaarua are elected from the
Kauhanganui and the Māori Queen is entitled to appoint the remaining
member. The executive of the Kauhanganui were also appointed as directors
of the Trustee Company. The first executive council of the new organisation
was elected in April 2000. Until then the TMTB had acted as interim
executive. The four-and-a-half year hiatus between the signing of the
Settlement Act and the election of the first executive council undoubtedly had
to do with the enormous expansion of the tribe’s business operations.

Since 1995, the Waikato tribe developed three main business interests
under the umbrella of the Tainui Group Holdings:20 property management
and development, fishing for both domestic and export markets, and, until
recently, an investment arm. The Tainui Corporation is the tribe’s property
management company, acting as landlord to properties Tainui received
from the settlement, including the University of Waikato. The Tainui
Development Limited is the tribe’s property development division and aims
at expanding the returned tribal estate, including residential and commercial
subdivisions, a four star hotel and adjacent casino in Hamilton, and a
former Air Force base to be developed into a commercial estate. Investment
in the fishing industry was in the form of shares in fishing companies.
Finally, Tainui invested in the Māori Development Corporation Investment
Holdings, the tribe’s most recognised company, charged with looking into
the tribe’s medium to longterm investments, including a rugby league team,
a holiday resort and a popular hotel in Sydney.
Alongside Waikato’s business interests, the Waikato Lands Trust proclaimed itself to be a “charitable trust”, promoting the educational, social, spiritual and cultural advancement of its beneficiaries (Hopa 1999:111). These activities are advertised broadly, but in a budget of many millions only a small percentage of the total settlement is devoted to this purpose. Not surprisingly, therefore, the Tainui leadership was repeatedly criticised for its policies of internal distribution. Responding to these criticisms, the leadership has consistently interpreted the compensation the tribe received as a “land for land” settlement. The Waikato tribe, it argues, aims at re-building a tribal estate and the commercial objectives of the tribal subsidiaries are to be understood in that light: investing money, adding value to the investment and securing the returned properties for future generations. Along the same lines, the tribal leadership argued that “[t]he Crown still has a duty to provide for proper standards of health, welfare, housing, employment and all the basic needs that Māori people along with other citizens require”.21

Criticism of the implementation of the Waikato settlement intensified when the new leadership of the tribe announced a 40 million decline in assets over the year 1999.22 The announcement inflamed critical media reports and reinforced rumours of mismanagement, obscure deals, ridiculous investments, feudal relations within the Waikato tribe and nepotism of the royal family. This was first elaborated in 1998, when the rightwing periodical, *The National Business Review*, published a scathing attack on what it described as “The New Feudalism”. It focused on the aristocratic leadership of the tribe that, according to the report, lavished huge amounts of money on itself through consultancy fees, big salaries and luxury cars at the expense of ordinary Māori (Anderson 1998). The Tainui leadership responded in great detail to most allegations made in this article.23 In view of the magazine’s reactionary reputation, many considered the details such as the cars of the Māori Queen, her adoptive brother, his wife and their daughters as unconfirmed gossip. When the big loss was announced in 2000, however, serious concerns emerged about the effectiveness of Waikato management strategies.

Public apprehension increased when a leadership crisis erupted following the publication of the financial report in 2000. The executive council sacked the Māori Queen’s adoptive brother and principal negotiator of the settlement from the tribe’s company directorships, holding that he was personally responsible for the poor performances of Waikato’s tribal business estate. The main reason given for his dismissal was “his desire to act alone” (*NZH* 2000a). Following this, the Māori Queen moved to dismiss the remaining members of the executive council by introducing a resolution...
in the Kauhanganui calling on them to quit (NZH 2000b). The Queen and her advisors, including her adoptive brother, acted by virtue of their conviction that as custodial trustees of the Lands Trusts, they were also authorised to influence the management of the Trustee Company. The executive council contended that as company directors, they had their own management responsibility and were, therefore, legally not obliged to tolerate interference in the tribe’s businesses by the Trust’s custodial trustees, i.e., the royal family. When the Kauhanganui passed the Māori Queen’s resolution, the executive council challenged the decision immediately in the High Court. The judge ruled that the Māori Queen’s resolution to sack the executive was “unconstitutional” (Waikato Times 2000).

To summon the Māori Queen to appear in court was, of course, contrary to the monarchy’s supporters’ belief in the inviolability of the head of the Kingitanga. Nonetheless, during the second half of 2000, the leadership crisis resulted in several court cases involving the Queen. They all concerned the management of the tribal companies and the question of who was entitled to make decisions about which issues at each level of the tribal structure. The royal family, supported by a loyal group of elders, interpreted the implementation of the settlement as though it had the power, as legal owners of the tribal estate, not only to hold the tribe’s properties under trust, but also to intervene in the governance of the trustee company by the democratically elected ‘Great Council’ and its daily management by the executive council. Against this, the executive council claimed the right to act autonomously in the interest of the tribal companies and rejected any interference by or on behalf of the royal custodians. In sum, the crisis of Tainui after signing the settlement concerned the ambiguity of the formal and informal separations between ownership, governance and management within the Waikato Raupatu Lands Trust and its business company.

The leadership crisis in the Tainui Confederation of Tribes, headed by the Māori King Movement, continued until the adoptive brother of the Māori Queen died in February 2001. Subsequently, the crisis could not be resolved because Māori custom prescribes that positions remain unfilled until one year after the incumbent has passed away. In fact, a lasting resolution is still not imminent. On the day of her brother’s tombstone unveiling ceremony, one year after his death, the Queen appointed his widow to the vacant position in the executive council.

Since early 2002, the leadership crisis among Tainui concerning the role of the Māori monarchy has abated. Within the tribe, all energy has been directed toward attempting to meet all debts, to balance the books and to restore confidence of lending agencies and on the stock market. Tainui appointed a new manager to regain control of the tribal companies and turn
the business into a profit-making enterprise, but he resigned a few months after taking up the job. He argued that problems within the tribe could not be resolved unless governance and management were properly separated. He effectively asked for a more reticent role for the royal family, saying that there is “an autocracy with Dame Te Ata at the top and a few families around her and the rest of the tribe are second-class citizens” (NZH 2002b).

In February 2003, a new executive council was elected, but again this was immediately challenged in court. Several Tainui elders argued that the election process was flawed. Apparently, not all beneficiaries had formally been notified that elections were taking place. In July 2003, the chairman of the executive council was dismissed, ironically, shortly after he had announced a NZ$8.3 million profit over the previous year, signalling at least a financial turnabout. The challenge he posed to the influence of the Kingitanga finally led to his removal (Waikato Times 2003c). This incident highlights again that the post-settlement crisis within Tainui is rooted in the intrinsic relationship between the Kingitanga and the tribal organisation that was set up to implement the settlement of the confiscations. Although a significant faction of families directly related to the royal family considers Kingitanga and Tainui as intricately connected, the crisis is unlikely to be resolved unless ownership and governance are unequivocally separated in an amended constitution.

* * *

In the 19th century chiefs in Maori society were principally regarded as representatives of the people, as primus inter pares or first among equals (Oppenheim 1973:105). Their position of authority in the hierarchical structure of Maori society was balanced by means of an ideology of egalitarianism (Meijl 1994), which served to prevent the development of the types of autocratic chiefdoms found in other parts of Polynesia, such as Tonga, Hawaii and parts of Fiji. The recent settlement signed with the Waikato Māori, who in the negotiations with the government were represented by the Māori monarchy, may have changed this formally and legally, at least for the Tainui people. This may be one of the reasons for the rift in the Tainui confederation between supporters and antagonists of the monarchy. This dispute is unlikely to be resolved unless there is a significant change in the structure of leadership.

A preliminary analysis of the crisis that erupted within Tainui after they signed a substantial compensation agreement with the New Zealand Government to settle their grievances about the unjust confiscations in the
19th century suggests one main conclusion. Colonial injustice is difficult to redress and in many cases creates new problems, especially regarding the internal distribution of compensation within tribal domains. The protracted dispute about the distribution of the fisheries settlement illustrates the controversy among *iwi* (Webster 2002), while the case of the Tainui settlement demonstrates that the distribution within *iwi* is also contested.

In New Zealand, the government has stipulated a legal framework within which settlements are to be negotiated. A central feature of the government’s preconditions is that compensation will only be transferred to tribal organisations with a legal status, which implies that *hapū*, the core groups of Māori society in the 19th century, become legally subordinated to *iwi* and *waka*. In addition, the government decided not to negotiate about compensation with Māori organisations in urban environments, where nowadays approximately 80 percent of the Māori population lives. Instead, the government selected a limited number of tribes with which it hopes to resolve all Māori grievances.

These general policy guidelines of the New Zealand government for the settlement of Māori grievances are peculiar against the background of the consistent rejection of the tribal organisation of Māori society in the past (see Butterworth 1988, Meijl 2003). Still, they clarify why the government opted to accept tribal proposals for the implementation of compensation agreements, resulting in diverging structures for the implementation of settlements (see note 22). Thus, they also explain why the post-settlement structure of the Tainui tribal organisation is unique in New Zealand. The ownership of the tribal estate has been vested in the royal family, the tribal business is to be governed and managed by democratically elected councils, but the royal trustees of Waikato’s properties maintain far-reaching influences, formally and informally, on the tribe’s companies. As a consequence, the compensation settlement with the Waikato-Tainui tribe marginalised *hapū* groupings and significantly enhanced the position of the royal family.

ACKNOWLEDGEMENTS

My engagement with the Tainui people began in 1982 and 1983, when I was hosted at Waahi Pa, the home *marae* of the Māori King Movement, in the course of a pilot study for a Master’s degree. In 1987 and 1988 I lived at Waahi Pa again for 16 months, during which I conducted ethnographic field research for a Ph.D. in social anthropology. In the course of my fieldwork I also operated as development consultant for the Waahi Marae Committee, the Waahi Health Committee, the Waahi Whaanui Community Training Centre, Rakaumanga Bilingual School, the Waahi Whaanui Trust, the Tainui Trust Board and the Centre for Māori Studies and
Research at the University of Waikato in Hamilton. Over the past decade I returned to the field several times to reconfirm my connections with the Tainui people. Although I have been supportive of the Tainui claims and their development goals from the outset, I have simultaneously continued to contextualise my experiences as a consultant (see Meijl 2000). This essay is one of the results of this ongoing contextualisation.

I thank the Tainui people for the permission they have given me to pursue my research and for their warm hospitality. I would like to express special gratitude to the late Sir Robert Mahuta and to Taitimu Maipi, who made my work possible. However, it is necessary to emphasise that this article has been written à titre personnel, and that I alone accept full responsibility for its contents.

Funding for my research in New Zealand has been provided by the Nijmegen University Fund for Financial Aid (1982-83), the Australian National University (1987-88, 1991), the Royal Netherlands Academy for Arts and Sciences (1994), the Centre for Pacific and Asian Studies at the University of Nijmegen (2000), and the Netherlands Foundation for the Advancement of Tropical Research (2002).

NOTES

1. Formally the settlement was between Tainui and the Crown, but during the negotiations the Crown was represented by the New Zealand government. The act passing this settlement into law, however, was signed by Queen Elizabeth II of England, the British Monarch who is Head of State of the commonwealth nation of New Zealand.

2. In Taranaki 1,275,000 acres were confiscated, in the Tauranga area 290,000 acres, and in the Bay of Plenty 448,000 acres. Altogether 3,215,172 acres of land were confiscated on the North Island (AJHR 1928:G-7).

3. A comprehensive history of the Tainui claim has been published by McCan (2001).


5. For a summary of the conflict between the New Zealand government and the TMTB about the sale of Coalcorp, see Kelsey (1990:154-61).

6. This view was first expressed in a highly confidential Treasury paper on Maori claims leaked in August 1988 (NZH 14/15 Sept. 1988)

7. The figure of one billion might seem high, but later the Minister of Treaty Negotiations admitted it was an unfounded estimate that proved to be grossly insufficient.


9. Queen Te Ata is of the fifth generation descending from the first King Potatau, but she is the first woman to lead the King Movement.

10. The full text of the form of apology and the Deed of Settlement between Her Majesty and Waikato Tainui was published in the May issue of the Maori Law Review in 1995.

12. In what has become known as the Volcanic Interior Plateau claim a group of Maori leaders is currently negotiating with the government on a settlement of NZ$500 million for the central North Island forests (NZH 2002a). Coming on top of the amount of NZ$700 million of compensation that the government has paid already or has agreed to pay in Treaty settlements, the Volcanic Interior Plateau is likely to breach the NZ $1 billion “fiscal envelop” proposed by the Bolger government in 1995. Subsequently, this will trigger further payments to both the Tainui and the Ngai Tahu tribes, which have settled their claims in 1995 and 1998 respectively on the proviso that they would receive proportionate increases if total treaty settlements surpassed NZ$1 billion.

13. See also Seymour (1997:10). Ngapare Hopa was the first Tainui person who obtained a Ph.D. She finished her graduate studies at the University of Oxford and later taught in the United States for many years until in the mid-1980s the Tainui leadership requested her to return to New Zealand and work for the Tainui cause. In the course of the negotiations about the Tainui settlement, however, she became a stern critic of the structure and the operation of the Tainui tribal organisation.


15. This construction was not only the responsibility of the Tainui leadership, but also of the government which for bureaucratic reasons only wanted to deal with large, legal entities.

16. The Kauhanganui was probably named after the “Great Council” set up by King Täwhiao in 1894 to govern the entire North Island (Williams 1969:44-47).

17. In the meantime, 65 marae have signed the covenant with the tribal leadership of Waikato-Tainui and the Kingitanga. In consequence, membership of the Kauhanganui has been expanded to 195 (three representatives for each marae) (Waikato Times 2003a).

18. Cheater and Hopa (1997:212) even suggest that support for the Kingitanga was a criterion for the disbursement of benefits to Waikato marae that have suffered from the confiscations.

19. There is an interesting analogy between the concept of Tekaumaarua ‘Twelve’ and the name of the traditional advisory council of the head of the Kingitanga made up of 12 prominent elders (in analogy with Jesus’ 12 apostles). The council evolved in the 19th century (Gorst 1864:272-80), and its main task was to advise the Maori Kings (and later Queen) on protocol and other important matters. Over the years, however, with the increasing politicisation of the cause of the King Movement’s tribes, institutions such as the Tekaumaarua were overshadowed by other bodies such as the TMTB that focused more on political affairs. In May 2003 it was announced that the Māori Queen had requested to change the name of Tekaumaarua into Te Arataura ‘Linking pathway’, since she did not have any control over the tribe’s executive council (Waikato Times 2003b)
20. A complete overview of Tainui’s business operations was published on http://www.tainui.co.nz/. See also Hopa (1999:111-12).

21. Quote from the report of Tainui’s Principal Negotiator, Robert Te Kotahi Mahuta, to the Annual General Meeting of the Tainui Maaori Trust Board in 1997, p.2 (http://www.tainui-corp.co.nz/). Lashley (2000) provides an interesting reflection on the government’s obligation to continue to provide social and economic services in addition to the restitution of property, which is based on the Third Article of the Treaty of Waitangi rather than the Second Article on which the settlement’s process is largely focussed.

22. Needless to say, this loss reinforced the controversy surrounding the implementation of the Tainui settlement. It was invariably compared with the relative successes of other tribes that had signed a compensation agreement with the government, such as the Ngai Tahu which managed to double its investments within a few years. This stark contrast also raised the question about the relationship between ownership and governance in the post-settlement structure of the Tainui tribal organisation. Contrary to Tainui, Ngai Tahu had opted to vest the returned properties in the democratically elected Te Ruunanga o Ngai Taahu (TRONT), that was especially set up in 1996 and became owner and governor of the tribe’s settlement at the same time (see also Sissons 1995, Waymouth 2003). The different types of organisational structure of Tainui and Ngai Tahu raise the question regarding the boundaries of government flexibility when dealing with different tribal traditions.