Maori firms as enablers of Maori self-determination: What lies beyond the corporate horizon?

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Introduction
Knowledge is the foundation of the future for New Zealand’s indigenous Maori peoples. Knowledge is empowering, for it was knowledge that empowered the Takimoana hapu (tribe) to constitute their own government with powers that superseded those of the British Monarch and its New Zealand administration.

The Takimoana government is much more than just a system of Maori rulership conceived within a human rights and Treaty of Waitangi context. It is the manifestation of the long-held dreams and aspirations of an indigenous people living within the confines of a colonizing State, towards the restoration of their tino rangatiratanga (political sovereignty) over their traditional
lands. It is the manifestation of the legitimate exercise of the right to self-determination being explicitly guaranteed to all the world’s indigenous peoples under various international human rights instruments. Above all, the Takimoana government is the world’s leading example of how revolutionary change can assist indigenous populations around the globe in overcoming their struggle to control and preserve their lands, resources, and way of life.

If there is one lesson to be taken from the Takimoana government experience, it is that there is a direct correlation between the strategic capability of a Maori people and the success of their endeavours to effectively rule a territory. The receiving of Treaty settlement assets by Maori post settlement governance entities provides both opportunities and threats in shaping the future Maori world. On the one hand, Treaty settlements provide renewed impetus for Maori to accelerate Maori economic development; grow the Maori knowledge economy; and generate Maori wealth to improve Maori social positioning. But on the other hand, in the hunt for Maori corporate success there lurks the inherent risk that Maori will lose sight of their aspirations for self-determination, forever. As the Waitangi Tribunal (1996) has cautioned, “if the drive for autonomy is no longer there, then Maori have either ceased to exist as a people or ceased to be free.”

Maori wealth generation should be looked upon not as an ends in itself, but as a means to a greater ends. What is that greater ends? That ‘greater ends’ (in my view) is the capacity for Maori peoples to enforce their own law-making. For it is only through the capacity to enforce Maori law can the Maori right to self-determination be fully realized. If Maori peoples truly desire to emerge from beneath the shadow of colonial domination to take charge of their own destinies, then there needs to be a mind-shift that must happen now before it is too late. The purpose of this essay is to inspire that mind-shift by arguing that Maoridom must re-evaluate the role of the Maori firm in the post Treaty settlements era. In a world where Maori political disempowerment is seen by the Pakeha Parliament as key to suspending the pendulum of power firmly in its favour, as knowledge disseminators and wealth generators, Maori firms have great potential to be effective enablers of Maori self-determination.

Maori self-determination
Essentially, the Maori right to self-determination is the right of a hapu to determine its own destiny. It is an inherent and fundamental human right that derives from the Creator of all things, and not from any law or Treaty of man (although the right is protected by the Treaty of Waitangi and recognized at international law). By virtue of that right, hapu have a collective right to freely determine their political status and to freely pursue their economic, social and cultural development (Parker, 2000).

There are three bases (in my view) which give rise to a hapu possessing a right to self-determination. The first basis is by virtue of a hapu’s “de-colonization mandate.” Other ethnic groups or communities within New Zealand society such as New Zealand European, other European, Pacific Islander and Asian, do not possess a right to self-determination based on a de-colonization mandate. Parker (2000) explains that “the principle of self-determination is generally linked to the de-colonization process that took place after the promulgation of the United Nations
De-colonization, therefore, is a remedy to address the legal need to remove an illegitimate power (Parker, 2000). A de-colonization mandate arises in a situation where in a colonial regime, the people of the area (having a history of independence, a distinct culture, and a will and capability to regain self-governance) are not in control of their own governance. In these situations there is another sovereign, an illegitimate one, exercising control (Parker, 2000). In what Parker (2000) calls a “perfect de-colonization” situation, the colonial power leaves and restores full sovereignty to the people in the territory. In these situations, the people have their own State and have full control of their contemporary affairs, with a seat in the United Nations and all other attributes of a State in international law. In a situation that Parker (2000) calls “imperfect de-colonization,” the colonial power fails to restore full governance to a people having the right to self-determination. (I argue later that hapu are subject to the circumstances of imperfect de-colonization which gives rise to their right to overthrow the Pakeha legal order.)

The second basis is a hapu’s status as an indigenous people of New Zealand. As with all the world’s indigenous peoples, a hapu’s right to self-determination is enshrined in the United Nations Declaration on the Rights of Indigenous Peoples. Other ethnic groups or communities within New Zealand society cannot rightfully claim the status of being an indigenous people of New Zealand.

The third basis is a hapu’s status as a sovereign people. In traditional Maori society, political sovereignty (the right to rule or tino rangatiratanga) was vested in each hapu. The legitimate version of the Treaty of Waitangi did not effect a transfer of sovereignty to the British. That is why hapu who signed the Treaty (by virtue of their signatory representatives) and those who did not, remain sovereign peoples today. Other ethnic groups or communities within New Zealand society cannot rightfully claim the status of a sovereign people.

So while a hapu’s de-colonization mandate; its status as an indigenous people; and its status as a sovereign people, each give rise to a hapu’s right to self-determination, whether or not the right should be exercised, and if so, in what manner (through a revolution for example), is a matter of choice that belongs exclusively to the hapu and no one else. Hence, self-determination outcomes can manifest in a variety of forms from hapu to hapu ranging from full integration at the national or state level, to absolute political independence. The importance lies in the right of choice, so that an outcome of a hapu’s choice, should not affect the existence of the right to make a choice (Unrepresented Nations and Peoples Organization, 2006).

The right to self-determination is recognized in international law as a right of process (not of outcome) belonging to peoples and not to states or governments (Unrepresented Nations and Peoples Organization, 2006). As well as being a prominent feature of the United Nations Charter (Parker, 2000), the right is also guaranteed by various international human rights instruments including those supported by the New Zealand State government. These include the International Covenant on Civil and Political Rights, and the United Nations Declaration on the Rights of Indigenous Peoples.

Since the colonial era, the concept of Maori self-determination has been a powerful one. To Maori, respect for Maori
autonomy was the only basis for peace. To governors of the day, the proposition was an invitation to war (Waitangi Tribunal, 1996). Maori self-determination continues to evoke emotions, expectations and misplaced fears, in the present. These fears are largely founded on widespread ignorance fuelled by State government propaganda aimed at creating mass confusion over Maori rights in order to protect the State government’s own power base. In this sense, the effective transfer of knowledge regarding Maori rights throughout New Zealand society can be seen as a critical phase of the Maori self-determination process.

By virtue of the Treaty of Waitangi and by virtue of New Zealand’s membership of the United Nations, Maori rights cannot be contemplated in isolation of the Queen of England’s and the New Zealand State government’s obligations to respect, protect, and actively fulfill Maori rights. Maori ignorance of their right to self-determination and the protectorate obligations that bind the Queen of England and the New Zealand State government, is itself a significant psychological barrier to the free exercise of that right. Pakeha ignorance of such matters frustrates the free exercise of that right, and is a primary source of racial tension within New Zealand society. As the ancient Greek philosopher Socrates once said “there is only one good, knowledge, and one evil, ignorance.” Therefore, knowledge truly is the foundation of the Maori future. Knowledge is a powerful tool that Maori peoples can use to break through the mental, capability and political barriers to self-determination. (I talk more about these barriers later.) The essential question posed by this essay is whether or not Maori firms, as knowledge disseminators and wealth generators, have a role to play in supporting Maori peoples in overcoming those barriers.

Maori self-rule or Maori rulership: is there a difference?
In the New Zealand context, scholars are yet to debate the question of whether there is a difference between Maori self-rule and Maori rulership. Although both are outcomes of the exercise of the Maori right to self-determination, there is an important distinction between the two concepts.

Ballara (1998) states that later twentieth century scholarship has emphasized the role of the hapu in the era before European contact as the largest effective corporate group which defended a territory or worked together in peaceful enterprise. The term “sub-tribe” to define the hapu had been dropped since this time, as it hardly fits with the new understanding of the hapu’s perceived role as the effective, independent political unit of pre-contact Maori society (Ballara, 1998). In his provisional analysis of Maori legal and constitutional orders, Brookfield (2006) refers to Maori legal orders (in the plural) because “each hapu, as the basic political unit, would have had its customary legal order and basic norm,” and because “the hapu clearly appear to have constituted a miniature international community of ‘many small principalities’ in which the relations between hapu were governed by the customary rules of a miniature international legal order with its own basic norm” (p. 86). Therefore, in traditional Maori society, Maori political sovereignty or the right to rule (tino rangatiratanga) was vested in each politically independent hapu.

In that context, the concept of Maori self-rule denotes the notion of a hapu, or confederation of hapu (iwi), having absolute government over themselves within an

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identifiable territory, but not over others within that territory. A Maori self-rule scenario will essentially entail the proposition of different laws for different peoples. Brookfield (2006) does not support the separatism of dual legal systems within New Zealand, supporting his point with the practical illustration of joint offending by New Zealanders of Maori and Pakeha descent (p. 8). Nevertheless, self-government as an outcome of self-determination is a matter of choice that does not belong to the constitutional theorist. The right of choice belongs to each hapu.

The concept of Maori self-rule is consistent with the international term “aboriginal self-government” which describes the right of indigenes to constitutional status as first peoples, and their rights to manage their own policy, resources, and affairs, within minimum parameters necessary for the proper operation of the State (Waitangi Tribunal, 1996). In an effort to bridle the concept of tino rangatiratanga with State imposed controls, the Waitangi Tribunal (1996) wrongly approximates ‘aboriginal self-government’ with ‘tino rangatiratanga.’ Yet this cannot be the case because the exercise of ‘tino rangatiratanga’ is constrained only by basic norms (founded on cultural values) accepted by each hapu in which tino rangatiratanga is vested. The concept of tino rangatiratanga, therefore, is not subject to some overriding Pakeha authority that sets ‘minimum parameters necessary for the proper operation of the State.’

The concept of Maori rulership on the other hand, denotes the notion of a hapu or an iwi, being in the position of a ruler. The practicable effect of holding such a position is having absolute government over all peoples within an identifiable territory. The closest approximation to the concept of ‘Maori rulership’ is the concept of ‘tino rangatiratanga.’ Thus, a Maori rulership scenario will essentially entail the proposition of one law (Maori law, or Maori sanctioned law) for all peoples within the territory. The Takimoana government is the only example in modern-day New Zealand of Maori rulership in action.

The Queen’s protectorate obligations under the Treaty of Waitangi
The first duty of the sovereign is to protect the society from the violence and invasion of other independent societies (Smith, 1776). Ward (1997) makes the point that given the way effective sovereignty had been distributed in Maori society before 1840, and given the terms of the Treaty of Waitangi and the manner in which the chiefs’ signatures had been collected, the Treaty was not a compact between two parties only, one British and one Maori, but a contract between the Crown and many chiefs and hapu.

Informed Maori reject the version of the Treaty of Waitangi 1840 (written in English) relied on by the Pakeha Parliament for its legitimacy to rule tangata whenua. That version ceded Maori sovereignty to Queen Victoria of England. In 1995 United Nations Special Rapporteur Martinez reported that he “found no proof whatsoever that the Maori have accepted the authenticity of the document which the Pakeha Parliament has designated as “authentic”” (Martinez, 1995).

Under the legitimate version of the Treaty of Waitangi (written in Maori), the signatory Chiefs, as representatives of their hapu, gave over to Queen Victoria of England the authority to control British subjects but only on British soil.
(kawanatanga) and the first right of refusal over such lands that the Maori owners desired to sell. In exchange, the Queen guaranteed Maori sovereignty (tino rangatiratanga) over tribal lands, communities, and treasures, and accorded to Maori the same rights and privileges as British subjects (without turning Maori into British subjects). So whilst the status of Maori as indigenous peoples accords to them ‘self government’ as a chosen outcome of self-determination, it is their status as sovereign peoples that accords to them ‘Maori rulership’ as a chosen outcome of self-determination.

It is by virtue of the legitimate version of the Treaty of Waitangi (its express terms and its principles of active protection and good faith dealings), that Queen Elizabeth II as guarantor for Queen Victoria of England, and Her Majesty’s agents such as the New Zealand State government, have a duty under the covenant to respect, protect, and actively fulfill the Maori right to self-determination. This duty requires more than mere constructive and meaningful engagement with hapu or iwi claiming self-determination. It requires the actual provision of necessary support (resources and competences), aimed at removing all impediments to the desired outcome. It matters not, whether the desired outcome is Maori self-rule, or Maori rulership. The failure or refusal to discharge this duty is a breach of the active protection and good faith principles of the Treaty of Waitangi. Hence, it is entirely plausible for Maori peoples claiming self-determination to lodge claims with the Waitangi Tribunal if they have suffered prejudice as a consequence of the Crown’s failure to actively protect their right to self-determination. However, the prospects of success of such claims is doubtful given that

the role of the Pakeha judiciary (which includes the Waitangi Tribunal) is to act as a safety valve for more radical Maori claims by rewriting the Treaty via its principles in order to avoid the contradictions between the Maori and English versions of the texts, and the dilemma of applying rules of Treaty interpretation which would give paramountcy to the Maori text, and hence Maori sovereignty. In short, the State government’s flawed methodology on determining the meaning and effect of the Treaty of Waitangi has been deliberately manufactured to protect the State government’s bottom line of Crown sovereignty and to redefine tino rangatiratanga as a limited form of property management right. (Or to use Jane Kelsey’s words “a heavily subordinated form of self-determination amounting to self-management” (Kelsey, 1995, p. 344).)

So has the British Monarch and its agents faithfully discharged their Treaty obligations and duties owed to hapu claiming self-determination? We will examine that question later.

New Zealand’s obligations as a member State of the United Nations
The New Zealand State government is a member of the United Nations. The United Nations works on a broad range of fundamental issues including human rights. The United Nations Charter states that one of the purposes of the United Nations is to develop friendly relations between nations based on respect for the principle of equal rights and self determination of peoples.

One of the most significant recent developments to come out of the United Nations concerning indigenous rights is the Declaration on the Rights of Indigenous Peoples (the declaration) which was adopted by the United Nations General

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Assembly in 2007. In 2010 New Zealand’s Minister of Maori Affairs Pita Sharples announced New Zealand’s belated support for the declaration before the United Nations Permanent Forum on Indigenous Rights, which is an advisory body to the United Nations Economic and Social Council. By virtue of the declaration hapu have the right to self-determination (Article 3). In exercising their right to self-determination, hapu have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means of financing their autonomous functions (Article 4).

It is by virtue of its membership of the United Nations, and not by virtue of its declared support for the declaration, that the New Zealand State government has assumed an obligation and duty to respect, protect and to fulfill the right to self-determination as recognized in the declaration. The obligation to respect means the State government must refrain from interfering with or curtailing the enjoyment of the right to self-determination. The obligation to protect requires the State government to protect hapu from abuses of their right to self-determination. The obligation to fulfill means the State government must take positive action to facilitate the enjoyment of the right to self-determination (United Nations, n.d.).

So has the New Zealand State government faithfully discharged its international human rights obligations and duties that it owes to hapu claiming self-determination? We will examine that question later.

The right to revolt
Where an imperfect de-colonization situation prevails (i.e. where the illegitimate colonizing regime refuses to restore full governance to the people of a territory), what of the hapu that chooses Maori rulership as an outcome of self-determination? Does the hapu possess a right to overthrow the prevailing Pakeha legal order through a quiet revolution? From the perspective of a self-professed revolutionist, I say yes.

Brookfield (2006) posits that a revolution “may be widely defined as the overthrow and replacement of any kind of legal order, or other constitutional change to it – whether or not brought about by violence (internally or externally directed) – which takes place contrary to any limitation or rule of change belonging to that legal order” (p. 13). In particular, Brookfield’s definition applies to a situation inter alia “where the constitutional change, even if preceded by revolutionary violence, is the peaceable and formal means of making a complete or partial constitutional new beginning, or has that effect (the ‘quiet revolution’)” (Brookfield, 2006, p. 15). Brookfield (2006) explains that according to Kelsen’s theory of the hierarchy of norms, the legal scientist who observes a purportedly legal order of norms which is ‘by and large effective,’ presupposes a basic norm upon which the order is founded and which is the reason for its validity (p. 17). Brookfield (2006) posits that identifying the basic norm of the New Zealand legal order is complex and involves a statement of the supremacy of Parliament as well as the present monarchial base of the constitution and of the authority of the common law (p. 17). When a revolution occurs, and a new constitution is established in place of the old, there is a new legal order, a new basic norm being presupposed (Brookfield, 2006, p. 17). Brookfield treats the Crown’s assertion of power over New Zealand as
revolutionary. He asserts that “the Crown’s revolution was that, in the seizure of power that it began in 1840, it took more than was ceded by the Treaty of Waitangi by taking more than kawanatanga from the signatories and taking from the hapu who, not being parties to the Treaty, had ceded nothing” (Brookfield, 2006, p. 136).

So what legalizes a post-revolutionary legal order? According to Brookfield (2006) “revolutionary change is legally validated by its general effectiveness without regard to the moral or ideological values of the revolutionaries” (Brookfield, 2006. p. 17). However, there are difficulties surrounding the vexed question of who decides whether the test of ‘success and effectiveness’ has been sufficiently met and how the test should be properly applied following a purported revolution. Brookfield (2006) proffers the idea that if a Court created under the pre-revolutionary order were to assume a ‘supra-constitutional jurisdiction’ to decide the question, and refused to recognize a revolutionary regime claiming power on the ground that the test of success and effectiveness has not yet been complied with, the consequence might be that the regime will if it can simply complete or supplement the revolution by replacing the judiciary (p. 31). (Or in the case of the Takimoana regime, to simply over-rule the Court’s decision or to declare the Court’s decision ultra vires.)

Another difficulty that I perceive is whether the test of ‘success and effectiveness’ is the right test to determine revolutionary legality in the New Zealand context, and if so, how should the test be applied. In the New Zealand Court of public opinion, through Pakeha eyes the test of success and effectiveness of the Crown’s revolution which began in 1840 might be best measured against the yardstick of law enforceability. Pakeha may therefore view the Crown’s revolution as legally valid because the government is generally effective in enforcing laws and maintaining social stability. But through Maori eyes, the test of success and effectiveness of the Crown’s revolution might be best measured against the yardstick of Treaty adherence. Thus, Maori might view the Crown’s revolution as unlawful because the government is less than generally effective in adhering to the Treaty of Waitangi, given that the guarantee of tino rangatiratanga remains unsatisfied. Is the Crown’s Treaty settlements programme, therefore, nothing more than part of a master plan designed by the Pakeha establishment to legalize, in the eyes of Maori, a Crown revolution which began in 1840?

In my view, the jurisdiction to determine the legality of a purported revolution that is founded on human rights grounds should be conferred upon the United Nations principal judicial organ, the International Court of Justice. The test of success and effectiveness should be supplanted with a new test of whether the purported revolution restores to the revolutionaries their rights suppressed under the pre-revolutionary order.

The question of whether a post-revolutionary legal order is ‘legitimate,’ according to Brookfield (2006), is a separate and distinct matter from the question of its legality (p. 34). While the test of “success and effectiveness” is generally sufficient for revolutionary legality, “considerations of morality and justice” may still deny the post-revolutionary legal order full legitimacy (Brookfield, 2006, p. 34). Brookfield (2006) postulates that for those who seize power, whether for ideological reasons or in assertion of a legal right, legitimation is immediate (p. 41). But for

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the losers who did not share the ideology of the victors or admit their legal claim, or for any other reason did not support them, time at least partly legitimates the revolution and the revolutionary legal order (Brookfield, 2006, p. 41).

Such considerations of illegality, injustice or oppression are thus relevant to the continuing legitimacy of any legal order and of the government exercising power under it (Brookfield, 2006, p. 42). Brookfield (2006) cautions that if perceived serious enough by enough citizens and if not remedied by constitutional and legal means, ‘injustice’ may prompt the revolutionary overthrow of the regime responsible and of the legal order to which it belongs, and begin the process of the legitimation of a new revolutionary regime and legal order (p. 42). For many of the losers in a revolution, the legitimacy of the new order may remain deficient to the extent that the new institutions and the regime in exercising power fail to fulfill the expectations of justice which the losers entertain despite their defeat. If those expectations are not fulfilled, and as a consequence the losers seek the restoration of their pre-revolutionary rights (such as those protected and guaranteed by the Treaty of Waitangi), then, as Brookfield (2006) states, “no solution is likely to be open to them other than a counter-revolution establishing a new legal order” (p. 45).

Brookfield (2006) asserts that “the triumph of revolutionaries in any particular revolution may in whole or in part be an ideological one” (p. 57). In some cases the desire for power and wealth may be the principal motivation. Whatever the ideology or motivation of the victors, for the losers, the passage of time and the durability of the new order may induce a sufficient acceptance and thus legitimate the new order. Brookfield (2006) goes on to make the all important point that “perceptions of injustice on the part of the losers, despite any partial recognition of their pre-revolutionary rights in the new order and often strengthened by ideological considerations, may lead in turn to a further revolution, perceived if it occurs soon enough as counter to the first” (p. 57).

Is the Pakeha State government banking on addressing perceived injustices held by Maori through Treaty settlements as a means of legitimating itself, and to quell any potential for a counter revolution? If this is indeed the case, then the Pakeha State government is doing a dismal job at it because the Treaty settlement process is causing further injustice for vulnerable Maori claimant groups. In the case of the Ruawaipu Iwi for example, the Pakeha State government made a settlement with the Ngati Porou Iwi and included Ruawaipu claims within the scope of the settlement without the free prior and informed consent of Ruawaipu claimants. The legislation enacted to legalize the settlement (The Ngati Porou Claims Settlement Act 2012) was “vehemently” opposed by the Ruawaipu Iwi (Ruawaipu Iwi Te Tiriti Claims Settlement Authority, 2011, p. 2). A principal aim or effect of the settlement Act (its section 13(4)) was to remove the jurisdiction of the Waitangi Tribunal from inquiring into Ruawaipu historical Treaty claims. Amongst those claims was the Wai 1288 Ruawaipu tino rangatiratanga claim which essentially challenged the legality of the Pakeha legal order (Koia, 2008a, p. 10). In protest against the legislating away of their right of access to justice (i.e. the blocking of the Waitangi Tribunal from hearing Ruawaipu claims) Ruawaipu subsequently declared inter alia
“their rejection of the Ngati Porou Treaty settlement as a valid settlement of Ruawaipu historical Treaty claims;” declared their refusal to recognize the settlement Act; declared their historical Treaty of Waitangi grievances against the Crown as unresolved; declared the government’s refusal to recognize Ruawaipu as a “distinct tribal entity as separate from Ngati Porou” as a human rights breach; declared the settlement Act to be in breach of Articles 7, 9, 15, 18, 19, 20, 25, 26, 28, 32 & 33 of the United Nations Declaration on the Rights of Indigenous Peoples; and declared the pressing need for the United Nations to “sanction and coordinate the establishment of the New Zealand Maori Protectorate” to protect Maori rights. As a consequence of those declarations, Ruawaipu resolved *inter alia* “to fight the Queen of England and Her Majesty’s New Zealand settler administration forever and ever and ever, until justice to Ruawaipu is seen to be done; the authentic Treaty of Waitangi is duly recognized and honoured; and Ruawaipu human rights enshrined in the United Nations Declaration on the Rights of Indigenous Peoples are realized and respected” (Ruawaipu, 2012). If Ruawaipu’s expectations for justice are not fulfilled, then is Brookfield (2006) right in his assertion that no solution is likely to be open to them other than a counter-revolution establishing a new legal order? (p. 45).

So whilst Brookfield (2006) offers a definition of the meaning of a revolution and an explanation of what legalizes and legitimates revolutionary change, do hapu which are subject to the conditions of imperfect de-colonization posses a right to revolt? I take the position that the hapu does possess such a right for in an imperfect de-colonization situation the denial of the right to revolt is tantamount to a denial of the right to self-determination.

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**Figure 1:** A model depicting the right to revolt in an imperfect de-colonization situation
Figure 1 is a model I have developed that depicts the right to revolt in an imperfect de-colonization situation. Given the military prowess of the Pakeha regime, how does the hapu go about exercising its right to revolt as a means to restoring its sovereignty? What I offer is a set of my ideas which I have developed and called the theory of revolutionary tribalization. The theory of revolutionary tribalization is applicable to indigenous tribal societies which are subject to the conditions of imperfect de-colonization. The theory asserts that the supremacy of tribal power must be a pre-condition of the realization of self-determination; that in an imperfect de-colonization situation, self empowerment through revolutionary change is the only way of realizing the pre-condition of power supremacy; and that the process of self-empowerment will require the overcoming of the mental, capability, and political barriers. I will elaborate on my theory of revolutionary tribalization later.

The Takimoana government: A revolutionary outcome?
Mainstream New Zealand is still oblivious to the fact that New Zealand’s constitutional arrangements altered markedly when in June 2008 an East Coast hapu, with their free, prior and informed consent, constituted their own government with powers that supersede those of the British Monarch and its New Zealand administration.

The Takimoana government is not a reference to an organization or entity. It is a reference to a system of Maori rulership that is based on the ‘Koia model of Maori government’ (Koia, 2008a, p. 73) and its underlying principle that “it is entirely a matter for the whanau / hapu to determine what type of government system would best meet its present day needs and support its ongoing functioning within the modern world” (Koia, 2008a, p. 55).

Conceived within a human rights and Treaty of Waitangi context, from the perspective of the human rights advocate, the Takimoana government might be seen as an outcome freely chosen by an indigenous people in the exercise of their right to self-determination, and in particular, their right to freely determine their political status. From the perspective of the Treaty rights advocate, it might be seen as an outcome of the free exercise of Takimoana tino rangatiratanga (Takimoana political sovereignty) which the Queen of England and Her Majesty’s agents are duty bound to protect. From the perspective of the constitutional theorist who accepts Brookfield’s definition of a revolution (Brookfield, 2006, p. 13), it might be seen firstly, as the outcome of a revolution given that its establishment is not accommodated by existing rules of the Pakeha legal order. And secondly, as symbolic of the failure of the Pakeha legal order to obtain a sufficient legitimacy to extinguish ideologically based counter-claims to hapu independence. And finally, from the perspective of the revolutionaries (of which I consider myself one) it might be seen simply as the manifestation of the legitimate exercise of their right to rule their own territory.

So whilst the Takimoana government is a system of Maori rulership, its primary aim is to provide for and maintain a social order within the Takimoana territory that seeks to attain various ends which can be drawn from the written Takimoana Government Deed of Constitution (Takimoana governing council, 2008a). These ends include (but are not limited to) “advancement of the social, political, economic and cultural wellbeing” of the indigenous people Te Whanau-a-
Takimoana; the “throwing off of the New Zealand government and imposter sovereign so as to bring an end to the long train of abuses and usurpations perpetrated against Te Whanau-a-Takimoana which has lead to their political disempowerment and dispossession of their tribal lands and resources;” and “the promotion of authentic biculturalism, social progress and better standards of life for all New Zealanders” (Takimoana governing council, 2008a).

The written constitution establishes the Takimoana governing council as the principal governing organ. A key feature of the written constitution is its Article 5 provisions which confers power upon the Takimoana governing council that supersedes the power of the British Monarch and its New Zealand administration. This includes the power to strike down any enactment of the Pakeha Parliament that the Takimoana governing council deems injurious to Te Whanau-a-Takimoana.

Perhaps one of the most innovative aspects of the written constitution is its Chapter nine transitional provisions. These provisions essentially bind the Takimoana people to the laws of the Pakeha Parliament until such time as the Takimoana governing council, in its opinion, is capable of full and independent government. However, by virtue of the constitution’s Article 23, the transitional provisions do not constrain the Article 5 power conferred upon the Takimoana governing council to strike down any particular Parliamentary enactment in the interim. Thus, the transitional provisions, when read together with Article 23, allow for continuity of social order and stability while allowing the Takimoana governing council to set its own strategic priorities having regard to its strategic capability, and to pursue those strategic priorities in its own time. The Takimoana governing council did not have to concern itself with complex issues such as building its military capability in order to defend the society, or with establishing and funding a replacement judicial system. Te Whanau-a-Takimoana had already been guaranteed protection and access to justice by virtue of the third law (article 3) of the legitimate version of the Treaty of Waitangi (i.e. the same rights and privileges as British subjects).

This does not mean that the Takimoana governing council did not have a list of strategic priorities at its inception. For it did. For example, at the time of its first session, the immediate strategic priority for the Takimoana governing council was legitimizing the Takimoana government’s constitutional foundation. In pursuit of this strategic priority, on 22 June 2008 the Takimoana governing council declared its jurisdictional borders (Takimoana governing council, 2008b); declared the independence of Te Whanau-a-Takimoana (Takimoana governing council, 2008c); and invalidated William Hobson’s 1840 proclamation of sovereignty (Takimoana governing council, 2008d).

A further strategic priority was regaining ownership and control of the Takimoana foreshore and seabed. In pursuing this strategic priority, in 2008 the Takimoana governing council struck down the then Foreshore and Seabed Act 2004 (Takimoana governing council, 2008e), and ordered the vesting of the Takimoana foreshore and seabed in the Takimoana governing council as its absolute property (Takimoana governing council, 2008f). In 2009 public access to the Takimoana foreshore and seabed was proclaimed (Takimoana governing council, 2009a); the Office of
Warden of the Peace was established as enforcer of Takimoana law (Takimoana governing council, 2009b); and the Takimoana Removal of Trespassers Regulations 2009 were passed which essentially regulates for the protection of the Takimoana foreshore and seabed and its environs (Takimoana governing council, 2009c).

A more recent strategic priority was regaining ownership and control of minerals (including oil and gas) within Takimoana borders. This was achieved in April 2012 when the Takimoana governing council struck down the Crown Minerals Act 1991 (Takimoana governing council 2012a); proclaimed Takimoana governing council ownership of minerals (Takimoana governing council, 2012b); proclaimed prohibition of mineral extraction related activity (Takimoana governing council, 2012c); and conferred special powers upon the Warden of the Peace to enforce prohibition (Takimoana governing council, 2012d).

Te Whanau-a-Takimoana, by virtue of their tribal government, is the only hapu within New Zealand that owns and controls its minerals outright. This in itself does not relieve the State government of its duty as an agent of the British Monarch and a member State of the United Nations to respect, protect and actively fulfill the right of the Takimoana people to develop their oil and gas resources. Ownership and control of oil and gas resources is an outcome that other tribes cannot afford to ignore any longer, especially at a time when the State government is revving up its efforts to open up large tracks of East Coast land for petroleum exploration. Turanga tribes Te Aitanga-a-Mahaki, Te Whanau-a-Kai, Rongowhakaata and Ngai Tamanuhiri will all be affected (Walsh, 2012).

Takimoana government control of the Takimoana foreshore and seabed and minerals were achieved without major disruption to daily life within the Takimoana territory. This demonstrates that Maori rulership over metropolitan areas that are densely populated with Pakeha can still work if the right model is adopted. This is significant because it moves Maori past the current ideology espoused by the Waitangi Tribunal that Maori control must be limited by what is “practicable and reasonable” (Waitangi Tribunal, 1998).

The Takimoana governing council’s written rules of procedure is an important feature of the decision making process (Takimoana governing council, 2008g). So whilst the written constitution is the source of power, the rules of procedure regulate the manner in which that power is to be exercised.

New Zealand’s State democracy is based on the principle that the people should have the opportunity to determine who should govern. Takimoana democracy is based on the principle that sovereign Maori peoples living within the confines of a colonizing State should have the opportunity to rule their own territories.

Refitting the constitutional arrangements
New Zealand’s constitutional arrangements might be seen as the arrangements by which government is conducted in New Zealand (McDowell & Webb, 1998, p. 98). In reflecting on the work of Jock Brookfield (Brookfield, 2006), Lawyer Tom Bennion (to whom I am indebted for his helpful critique of a draft of this essay) poses the valid question: - “How does your iwi authority ‘fit’ in terms of current constitutional arrangements. [I]nside or outside or alongside them?” (T. Bennion, personal communication, 2012, December 6).
In order to maintain social order, a society must have a system that regulates power and control over its members. In modern New Zealand society, power and control over citizens is regulated by a legal system. At the core of that legal system is a central government with lawmaking and law enforcement functions. This legal system “has largely developed from its colonial heritage” and operates on the basis that “Parliament has supreme lawmaking powers that cannot be challenged” (McDowell & Webb, 1998).

Figure 2 is a basic model I have developed of New Zealand’s legal system depicting the power and control relationships between the Pakeha Parliament (as supreme lawmaker) and various institutions within New Zealand society. Figure 2 gives rise to two points of intrigue. The first is the power and control relationship between Parliament and the sovereign. The second point of intrigue is the power and control relationship between the Pakeha Parliament and the institution of the marae. Te Ture Whenua Maori Act 1993 (the Maori Land Act 1993) empowers the Maori Land Court to inter alia recommend that land be set aside for a marae. The Maori Reservations Regulations 1994 define (and therefore constrain) the powers of marae Trustees. In short, the Pakeha Parliament controls the institution of the marae. (However, by virtue of rule 26 of the Takimoana Governing Council Rules of Procedure (Takimoana governing council, 2008g), the Maori Reservations Regulations are deemed to be “suspended” for the duration of any session of the Takimoana governing council that is held on a marae.)

Figure 2 also depicts the power and control relationship between the Pakeha Parliament and the Kingitanga. A Maori King

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movement based on pan-tribal unity centered on the Tainui iwi that had arisen in the 1850s, Hill (2004) sees the Kingitanga as representing a “significant experiment in the search for ‘realistic’ methods of pushing for self-determination within state parameters” (p. 34). The point to be taken is that any push for self-determination from ‘within state parameters’ necessarily entails the recognition of parliamentary supremacy. It is for Tainui and their King to consider whether the present Pakeha legal order supports Tainui self-determination, or whether Tainui self-determination might be better served through revolutionary change.

In 2008, the arrangements by which government is to be conducted within the Takimoana territory underwent revolutionary change (accepting Brookfield’s definition of a revolution (Brookfield, 2006, p. 13)). The Takimoana governing council was established with powers that superseded those of the Pakeha Parliament and the British Monarch (the sovereign). The revolutionary change did not entail a complete abolition of the Pakeha legal order. By virtue of the transitional provisions of the new written constitution (Article 23), the Pakeha Parliament and its power to make laws survived, except that power was no longer supreme (by virtue of Articles 5 & 25).

The retention of aspects of an overthrown legal order is nothing new. In discussing the ideology of western imperialism and its legacies, Brookfield (2006) notes that “when imperial rule established by revolutionary conquest is in its turn overthrown by revolutionaries, some of the institutions and principles of that rule and the legal order that it imposed may in substance survive the overthrow and become part of the legal order created by this further revolution” (p. 70).

Figure 3 is a model I have developed of the post-revolutionary Takimoana legal order depicting the power and control relationships between the Takimoana governing council (as supreme lawmaker) and the same institutions shown in figure 2.

Jane Kelsey (1995) explains how in the mid 1990s there were “mounting demands for constitutional dialogue to establish a system of governance in which Maori would exercise sovereignty and self-determination over their lives and their lands” (p. 342). She posits that “this is what … the 1840 Treaty of Waitangi with the English Crown confirmed” (Kelsey, 1995, p. 343). Drawing on Kelsey’s work, we might identify three alternative systems of governance for satisfying Maori claims to tino rangatiratanga (i) ‘sovereign Maori authority over the entire country’, (ii)
‘complete Maori independence from the colonial state’, and (iii) ‘co-existent and co-operative polities of equal status within one nation’ (Kelsey, 1995, p. 343, Brookfield, 2006, p. 178). Although still falling within the general theme of Maori exercising control over their own, the Takimoana government system (in terms of its current evolution) does not sit nicely under any of these proposed alternative systems. Instead, it suggests a fourth alternative system of governance (iv) co-existing polities where kawanatanga is subordinate to rangatiratanga.

A legal order whereby kawanatanga was subservient to rangatiratanga is what the Treaty of Waitangi envisages. As Ani Mikaere (n.d.) states, “The facts surrounding the signing of the Treaty of Waitangi reveals a clear Maori intention to create a space for the Crown to regulate the conduct of its own subjects, subject to the overriding authority of the rangatira.”

To answer Tom Bennion’s valid question (how does the Takimoana government ‘fit’ in terms of current constitutional arrangements – inside, outside, or alongside them?) my answer is that the Takimoana government fits outside the Pakeha legal order. The Takimoana government is the central aspect of a constitutional new beginning brought about by way of a quiet revolution whereby the Pakeha legal order that prevailed over the Takimoana territory has been overthrown and replaced with a new legal order and a new basic norm being presupposed. (That basic norm being ‘Takimoana rule the Takimoana territory and that one ought to behave in accordance with the new constitution.’) It is no different really, than to ask the question of where does the Australian Parliament sit in terms of New Zealand’s constitutional arrangements.

In short, the constitutional arrangements that now prevail over the Takimoana territory have been refitted to better align with the legitimate version of New Zealand’s founding document. As Ani Mikaere (2008) opines, “the reality is that Te Tiriti [the Maori text of the Treaty of Waitangi] ... is the only document that can legitimately serve as the basis of the modern state of Aotearoa.”

The colonizer’s response to claims of Maori self-determination

In accordance with the Treaty’s reciprocal obligations of good faith dealings between the Takimoana tribe and Queen Elizabeth II as Queen Victoria’s guarantor, in 2008 I informed Queen Elizabeth II of the establishment of the Takimoana government (Koia, 2008b). In response Her Majesty requested the Buckingham Palace Private Secretary to thank me for my correspondence, and to advise me that “this is not a matter in which Her Majesty would intervene, the letter has been passed on to the Governor General of New Zealand so that this approach to Her Majesty may be known and consideration given to the points raised in the letter” (Buckingham Palace, 2008). Although I never heard back from the Governor General, the Queen’s response was bizarre. Putting aside the fact that I made no request for the Queen’s intervention in the matter, the implication made was that the Queen will not intervene in matters concerning the exercise of Maori rights apart from referring the matter on to the Governor General. What happened to the Treaty promise of guaranteeing Maori sovereignty? There is absolutely no legitimate basis to the proposition that Queen Elizabeth II, as guarantor for Queen Victoria, is mandated to absolve herself of her Treaty obligations by conferring those
obligations to the public office of Governor-General without the free, prior and informed consent of the Maori Treaty parties.

In 2009, Minister of Maori Affairs Pita Sharples said to me: “In my capacity as Minister of the Crown, I am unable to recognize an institution such as the Takimoana Government.” The Minister’s rationale was that: “Constitutionally, the New Zealand Parliament is the law making body of New Zealand” (Sharples, 2009).

On my return from a visit to the United Nations in October 2011, I wrote to the Prime Minister requesting that he, amongst other things, state his government’s position on the Te Whanau-a-Takimoana declaration of independence (Koia, 2011a). Having heard nothing from the Prime Minister, in August 2012 I sent him a follow-up letter requesting a response by 21 September 2012 (Koia, 2012b). In violation of the Prime Minister’s Treaty obligations of good faith dealings, I have still heard nothing from the Prime Minister.

The Queen’s instructions to Her Majesty’s Private Secretary, Minister Sharples’ words, and Prime Minister John Key’s silence, sum up the stance taken by the British Monarch and the New Zealand State government on Maori self-determination. The Takimoana government’s papers leave a long trail of evidence that clearly establishes that the State government has chosen to adopt a policy of non-engagement with the Takimoana government. In addition, the State government works hard at the highest level to play on public fear in order to build mainstream distain towards Maori sovereignty claims by dressing up the notion of Maori independence as an extremist and separatist ideology. This is despite the legitimate version of the Treaty of Waitangi envisaging a social order based on authentic biculturalism where two peoples are able to coexist in one land. For instance, Prime Minister John Key has clearly stated that there is no room for separatism in New Zealand (Young, 2010). In proffering the notion that “shared and equal aspirations” is the only basis for unity and the way forward for all New Zealanders, John Key’s 2010 Waitangi day speech (Key, 2010) reeks of an assimilationist ideology that is deeply rooted in our colonial past.

This type of response from the Queen of England and Her Majesty’s New Zealand State government, whilst being completely at odds with their human rights and Treaty of Waitangi obligations, comes as no surprise. The literature warns that the possible outcome of the exercise of self-determination will often determine the attitude of governments towards the actual claim by a people. Thus, while claims to cultural autonomy may be more readily recognized by states, claims to independence are more likely to be rejected by them (Unrepresented Nations and Peoples Organization, 2006).

What underpins the New Zealand government’s prevailing attitude towards Maori claiming self-determination is its refusal to relinquish total power. When I met privately with United Nations Special Rapporteur James Anaya in 2011 in Geneva, I pressed upon him my view that power is the number one impediment to the realization of Maori rights to self-determination. I went on to explain that the New Zealand government has the power to determine some of the most fundamental issues regarding New Zealand’s constitutional arrangements, and in particular, the meaning and effect of the Treaty of Waitangi and its practicable

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application. When Maori protest in defiance of the Pakeha’s Treaty interpretation, Maori have no one to turn to. Maori self-empowerment (in my view) must be the pre-requisite for the realization of Maori self-determination.

The theory of revolutionary tribalization: Moving the pendulum of power

The supremacy of State power is the number one impediment to Maori self-determination. State power is really Pakeha power that has become manifest in the form of the Pakeha Parliament which controls the Pakeha judiciary and the executive branches of the Pakeha government. (Jason Koia makes the point that “parliament supremacy is self proclaimed, they could beat us up with their army, but it does not make them a legitimate supreme law maker” (J. Koia, personal communication, December 5, 2012)).

Given the dynamic nature of traditional maori social organization, in pre-European times, the pendulum of power supremacy was constantly moving between hapu, as a consequence of political changes that were happening for contemporary, social and environmental reasons. Treaty dishonour, colonial terrorism and constitutional fraud, are the bases upon which power was able to be wrested from the hands of Maori peoples by the Pakeha. For the time being, the pendulum of power supremacy remains suspended in favour of Pakeha.

Given New Zealand’s current political conditions of imperfect de-colonization, what must precede the free exercise of the right to Maori self-determination, is Maori self-empowerment that results in the supremacy of Maori political power. The key to removing the number one impediment to Maori self-determination (the supremacy of Pakeha Power) is to move the pendulum of power supremacy in favour of Maori peoples. How can this be done? What I offer as an answer to this question is a set of ideas that I have developed and called the theory of revolutionary tribalization. In developing the theory I have built on my ideas articulated in the book ‘Kawanatanga Takimoana: A blueprint for Maori government on New Zealand’s East Coast’ (Koia, 2008a); taken account of my first-hand experience in facilitating the establishment of the Takimoana government and my experiences in my current official role as Kaitiaki of Foreign and Intergovernmental Affairs (which I have held since June 2008); and I have had regard to the literature and in particular Professor Brookfield’s contribution to the literature on revolutionary change (Brookfield, 2006).

The word “tribalization” can be defined as “unification on a tribal basis” (Farlex Inc, n.d.) Tribalization as a concept, however, can be further developed and extended to include unification on a tribal basis for a purpose. In traditional Maori society, the main reason for tribal unification was to strengthen the tribal unit so that the tribe could better defend itself from external threat. Therefore, the concept of tribalization encapsulates the notion of empowerment. In that sense, the word tribalization takes on the broader meaning of unification on a tribal basis for the purposes of tribal empowerment. Revolutionary tribalization, therefore, denotes the notion of a tribal people acting in unison to empower themselves through revolutionary change.

Revolutionary tribalization theory is based on the fundamental idea that tribal societies that are subject to the conditions
of imperfect de-colonization must, through a process of self-empowerment, attain political supremacy as a precondition to the free exercise of their right to self-determination. In the New Zealand context, the argument that underpins revolutionary tribalization theory is based on the following premises and conclusion:

(1) Maori peoples have the right to self-determination.
(2) Pakeha power is manifest in the form of the Pakeha Parliament.
(3) The Pakeha Parliament is the supreme power in New Zealand (albeit self-proclaimed).
(4) The Pakeha Parliament refuses to empower Maori peoples so that Maori peoples may freely exercise their right to self-determination.
(5) The main impediment to the free exercise of the Maori right to self-determination is the supremacy of Pakeha Power.
(6) Therefore, the supremacy of Maori power must be a pre-condition in which Maori peoples may freely exercise their right to self-determination.

Revolutionary tribalization theory asserts that the process of Maori self-empowerment must be geared towards attaining the supremacy of Maori political power (in other words, power that supersedes that of the Pakeha Parliament). The theory asserts that in the process of empowering themselves towards the outcome of Maori supreme power, Maori peoples will have to overcome three consecutive barriers; the mental barrier; the capability barrier; and the political barrier. Revolutionary tribalization theory builds upon the theory of imperfect de-colonization where an illegitimate sovereign fails to restore full governance to a people having the right to self-determination. Revolutionary tribalization theory is based on a forward moving ideology where, rather than wait for the colonial regime to relinquish power (as in a perfect de-colonization situation), hapu claiming self-determination take control of a revolutionary process in order to restore their own political sovereignty.

Figure 4 models my theory of revolutionary tribalization, as it applies in the New Zealand context.

**Overcoming the mental barrier**
Overcoming the mental barrier requires empowering Maori peoples with the psychological capacity to freely determine fundamental issues of constitutional significance for themselves, and to act in accordance with those determinations whether the State government likes it or not. When reflecting on past endeavours by Maori towards their political empowerment, Cox (1993) makes the crucial point that “by recognizing the mandate of Parliament and seeking its validation for their own structures, they provided the Crown with a means to defuse Maori initiatives.”

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When a hapu has broken through the psychological barrier, its members are universal in the frame of mind that their hapu has a right to self-determination, a right to choose a range of outcomes that include self-government and Maori rulership, and that the Queen of England and Her Majesty’s New Zealand State government are obligated to protect, respect and fulfill their hapu’s right to self-determination.

The key to overcoming the psychological barrier is through the dissemination of knowledge about Maori rights and the protectorate obligations and duties that bind the Queen of England and Her Majesty’s New Zealand State government. Maori firms, as knowledge disseminators can have a vital role to play in assisting Maori peoples in overcoming the psychological barrier to Maori self-determination.

**Overcoming the capability barrier**

Revolutionary tribalization theory asserts that once a hapu overcomes the mental or psychological barrier to self-determination, the next barrier that it will have to overcome is the capability barrier. The converting of a frame of mind into actions to produce self-determination outcomes of self-rule or Maori rulership, requires capability in the form of both resources and competences. If a hapu aspires to self-government or Maori rulership as an outcome of self-determination then it will require competences (knowledge) in order to develop a model (such as the Koia model of Maori government (Koia, 2008a, p. 56)) and resources in order to establish a body politic based on the developed model. Capability is a barrier that Te Whanau-a-Takimoana had to overcome in establishing the Takimoana government. Capability is still a barrier that limits the Takimoana government’s strategic choices.

The reality is that all governments require capability in order to govern. There is a direct correlation between the wealth of a hapu or iwi, and its strategic capability to effectively exercise Maori rulership. With British colonization depriving hapu and iwi of great wealth potential through the systematic economic marginalization of Maori peoples, taxing the new society in order to generate government revenues is not feasible and unworkable unless the State government is prepared to honour its obligations and cooperate. Nevertheless, in the case of the Takimoana government, significant milestones were able to be achieved given the competences (knowledge) available for its disposal, even though it possessed minimal physical resources (capital and technology). In time the transition to total independence (should that remain a key objective of the Takimoana governing council) will rely wholly on the Takimoana government’s ability to generate revenues to build its resources. Enforcing the Takimoana Removal of Trespassers Regulations 2009 (Takimoana governing council, 2009c) and the Proclamation Conferring Power to Enforce Prohibition of Mineral Extraction Related Activity (Takimoana governing council, 2012d) will require ongoing resourcing. But the point to be taken is that ownership and control of the Takimoana foreshore and seabed, and Takimoana minerals (including oil and gas) were key milestone achievements in strengthening the Takimoana government’s strategic position. Strengthening the Takimoana government’s strategic position within its environment means more options when evaluating future strategy (i.e. the Takimoana government’s future direction).
While many post Treaty settlement iwi are getting on with the job of growing their commercial assets for the purposes of delivering economic, social, and cultural benefits to their people, there is little evidence to suggest that Maori political empowerment is a commonly shared strategic outcome across the board. An exception is Tuhoe. Working towards a Treaty settlement worth approximately $170 million, Tuhoe have expressed their clear intention to transition to self-government. According to the Tuhoe Blueprint (Tuhoe Establishment Trust, 2011), “the integrity of Tuhoetanga relies upon the dedication of Tuhoe people to be self governing, paying and earning their own way, not beholden to others, not enslaved by another ideology.” It is not clear from the Blueprint’s detail as to whether Tuhoe rulership (as distinct from Tuhoe self-government) is the ultimate aim for Tuhoe. Perhaps it is Tuhoe’s choice to secure greater authority and control of their own affairs whilst remaining subservient to the supreme rule of a colonial regime (a self-government scenario). If that is Tuhoe’s choice, then the State government has an obligation to respect, protect and fulfill Tuhoe’s right to self-government. What can be gleaned from the Blueprint is that Tuhoe are gearing up to strategically position themselves to better enable Tuhoe to successfully achieve Tuhoe aspirations for self-determination. Building Tuhoe strategic capability will, of course, entail the procuring of competences (knowledge, or skills in knowledge acquisition) to compliment the iwi’s resources (capital and technology). For it is competences, rather than resources, that will ensure that Tuhoe will become nimble footed. What we can learn from the Takimoana government experience, is that a hapu or iwi seeking self-government or rulership as outcomes of the self-determination process, will need to be nimble footed in order to successfully navigate the gauntlet of political obstacles that will be thrown down by the State government.

**Overcoming the political barrier**

According to Revolutionary tribalization theory, once a hapu overcomes the mental and capability barriers, then the final barrier to overcome is the political barrier. Breaking through the political barrier is essentially about attaining legal recognition at the international level of a hapu’s body politic claiming power over its territory. Breaking through the political barrier does not necessarily hinge on the New Zealand State government’s recognition of the post revolutionary legal order.

The Takimoana government has been engaging with various United Nations bodies and mechanisms for some time in an effort to gain United Nations recognition of the Takimoana governing council as a legitimate governing institution. These bodies and mechanisms have included the Expert Mechanism on the Rights of Indigenous Peoples (EMRIP) which was established in 2007 as a subsidiary body of the United Nations Human Rights Council, the United Nation’s main human rights body (United Nations Office of the High Commissioner for Human Rights, n.d.). EMRIP provides the Human Rights Council with thematic advice, in the form of studies and research on the rights of indigenous peoples as directed by the Human Rights Council. Of importance is EMRIP’s mandate to “suggest proposals to the Council for its consideration and approval” (United Nations Office of the High Commissioner for Human Rights, n.d.). Sitting outside its mandate is its obligations as a United

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Nations body under Article 42 of the Declaration on the Rights of Indigenous Peoples to “promote respect for and full application of the provisions of this Declaration and follow up the effectiveness of this Declaration.” In my official capacity as the Takimoana government’s Kaitiaki of Foreign and Intergovernmental Affairs, in October 2011 I wrote to EMRIP requesting that it conduct a case study on the Takimoana government as part of its (then ongoing) study on indigenous peoples and their right to participate in decision making. I suggested that a particular focus of the case study be on establishing whether the Takimoana government model is a ‘best practice’ for attaining the goals of the United Nations Declaration on the Rights of Indigenous Peoples (Koia, 2011b). Having heard nothing from EMRIP, in July 2012 I again wrote to EMRIP expressing my concern over EMRIP’s seemingly lack of response to my earlier request that it conduct a case study on the Takimoana government (Koia, 2012a). In addition I advised EMRIP that the Takimoana government had made huge inroads into addressing the issues raised by James Anaya (the United Nations Special Rapporteur on the Rights of Indigenous Peoples) regarding the impact of extractive industries on indigenous peoples by taking control of all mineral extraction related activities within Takimoana borders; cautioned EMRIP that the longer it took to report on the Takimoana government model to the Human Rights Council as part of EMRIP’s work programme, the greater the opportunity cost to indigenous populations around the world, especially for those who are desperate for solutions that promote the legitimate exercise of the right to self-determination and how to combat the adverse affects of extractive industries; and urged EMRIP to urgently conduct the case study requested in October 2011. In September 2012 EMRIP submitted to the Human Rights Council its follow-up report on indigenous peoples and the right to participate in decision-making, with a focus on extractive industries (EMRIP, 2012). Regretfully, (and disappointingly given EMRIP’s express mandate and its obligations under the Declaration) there is no mention of the Takimoana government in its report. The point to all of this is to provide some insight on where the United Nations currently stands on supporting self-driven initiatives by indigenous peoples towards the implementation of the Declaration on the Rights of Indigenous Peoples. At least from the view of an official of the Takimoana government (my view), EMRIP’s lackluster response has done little to encourage confidence in the United Nations as an effective intervening mechanism for upholding the right to self-determination.

Although engagement in the United Nations system remains a key focus for the Takimoana governing council over 2013, Parker (2000) warns of the “politics of avoidance” where the principle of self-determination has been reduced to a “weapon of political rhetoric.” Parker (2000) claims, therefore, that the international community has abandoned people who have the claim to the principle of self-determination, and insists that the international community address those situations invoking the right to self-determination in the proper legal way.

One solution to promote meaningful Maori participation in the United Nations system is to establish a central or pan-tribal Maori protectorate office that has the mandate to advance the recognition of Maori rights. Maori firms, as knowledge
Maori firms as enablers of Maori self-determination

Researchers for Mana Taiao Limited concluded that Maori values are integral in defining a Maori organization (Mana Taiao Ltd, 2006). However, values do not define a Maori organization. Firstly, Maori values are capable of being conceptualized, and as concepts they are not unique to the Maori culture. For example, Kaitiakitanga as a concept can be approximated to the concept of the British Crown’s fiduciary duty to protect Maori peoples and their resources from harm or exploitation. Secondly, there is no hard and fast rule that binds Maori firms to a prescribed bundle of values, and to impose such a rule serves only to further constrain Maori firms in their pursuit of sustainable competitive advantage. Whilst Maori traditional values are integral to shaping organizational culture and strategy formulation within Maori firms, a Maori organization can be defined simply as any organization that self-identifies as a Maori organization.

What can be drawn from the literature is that it is difficult, even incomprehensible, for Maori organizations to separate themselves from traditional Maori values. Because of this, Maori firms can be looked upon as effective enablers for the realization of the Maori right to self-determination given their natural propensity to adhere to the values of kaitiakitanga, manakaakitanga, awhinatanga, whanaunatanga, kotahitanga, and, most importantly, tikanga (righteousness).

So how can Maori firms realize their potential as effective enablers of Maori self-determination? One of the first things Maori firms can do is consider the values they deem most important to them as a Maori organization, and to re-evaluate how they perceive their place in the modern world and whether supporting Maori aspirations for self-determination is a business activity that is consistent with that place in the modern world.

Three key business activities that are geared towards supporting Maori aspirations for self-determination are:

(1) Knowledge dissemination: Facilitating the internal and external flow of knowledge of Maori rights and the protectorate obligations and duties that bind the British Monarch and the New Zealand State government. This can be achieved through the design and delivery of Maori rights education to target stakeholders, such as employees; post settlement governance entity beneficiaries; or shareholders in Maori land incorporations. A simple and cheap way for every person who reads this essay to make a contribution to empowering Maori through the process of knowledge dissemination is to pass this essay on to at least one other person; and

(2) The provision of resources: Providing resources to support Maori self-determination initiatives. Resources can come in various forms, such as a monetary grant to assist in administration costs or by offering the use of corporate physical assets to support hapu or iwi political decision making (i.e. offering the boardroom to hold hapu / iwi government meetings); and

(3) Political lobbying: To advocate for the respect, protection and fulfillment of Maori rights and interests by influencing public and government policy at all levels (local, national and international). Consideration should also be given to championing the establishment of a national or pan-tribal Maori protectorate so that Maori peoples
across the board can have a greater voice within the United Nations system.

Since Maori firms are creations from within the Pakeha legal order, by supporting a revolution in the pursuit of Maori self-determination, do they become revolutionaries themselves? On the other hand, if Maori firms do not support a Maori revolution or are indifferent in their stance on Maori self-determination, then are they not, by default, assisting with the legitimation of the Crown’s own revolution which it began in 1840? These are questions which I leave for Maori firms to ponder.

**Conclusion**

New Zealand’s indigenous Maori peoples have the right to self-determination by virtue of their de-colonization mandate; their status as indigenous peoples; and their status as sovereign peoples recognized and protected by the Maori version of the Treaty of Waitangi.

Queen Elizabeth II as guarantor for Queen Victoria of England, and the New Zealand Pakeha Parliament have both failed or refused to honourably discharge their obligations and duties they owe to Maori to respect, protect, and fulfill their right to self-determination.

The supremacy of Pakeha power, which is manifest in the form of the Pakeha Parliament, is the primary impediment to the free exercise of the Maori right to self-determination. The theory of revolutionary tribalization asserts that moving the pendulum of power supremacy from the colonizing regime to an indigenous people of a territory is a precondition to the free exercise of their right to self-determination. At the broadest level, revolutionary tribalization theory concerns the self-empowerment of tribal societies which are subject to imperfect de-colonization, and models a process for this to occur. Knowledge is the central element of that process. In the New Zealand context, Knowledge is the gravity that will swing the pendulum of power supremacy in favour of Maori. Knowledge truly is the foundation of the future for New Zealand’s Maori peoples.

Maori firms, as knowledge disseminators and wealth generators have huge potential to fulfill a vital role as enablers of Maori self-determination given their propensity to adhere to traditional Maori values and their capacity to support all phases of the self-empowerment process espoused by revolutionary tribalization theory.

As Maori peoples near the dawning of the post Treaty settlements era, there is an inherent risk that Maori will lose sight of their aspirations for self-determination as Maori firms become fixated on becoming respected players within a larger Eurocentric economy. Now is the time for Maori firms to take a time-out, and reflect on what their place is in the modern world, before it is too late.

The purpose of this essay is to inspire a mind-shift within Maoridom by arguing that Maoridom must re-evaluate the role of the Maori firm in the post Treaty settlements era. The challenge I lay at the feet of Maoridom is to look through the haze of the Treaty settlements hype and see what lies beyond the corporate horizon. Business modeling, sustainable competitive advantage, and profit maximization, must never be allowed to become the epicenter of Maori aspirations.
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