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Globalisation, Neo-liberalism and the Struggle for Indigenous Citizenship*

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Using indigenous citizenship as a frame, the article examines the deeply ambiguous effects of globalisation for indigenous peoples in the Antipodes. We demonstrate that processes of economic globalisation have had an impact upon New Zealand Maori and Australian Aboriginals in ways that have heightened their vulnerability and undermined their citizenship entitlements. However, we also argue that Maori and Aboriginal peoples have used the reforms of state practice brought about by globalisation to gain greater control over their existence.

Introduction

In the last 15 years indigenous activists have been remarkably successful at using national and international arenas to press their claims for a distinct form of citizenship. The period since the beginning of the 1990s has been marked by a codification and strengthening of the rights of indigenous peoples in international instruments and these have created new benchmarks for former colonial states. At the same time, processes of economic globalisation (which states participate in as active agents) have impacted upon the Keynesian–Fordist framework in New Zealand and Australia in ways that have heightened the vulnerability of indigenous people and undermined their citizenship entitlements. The Leftist tendency to caricature this shift to neo-liberalism in terms of the ascendancy of the market has, however, tended to obscure the complex and sometimes deeply ambiguous nature of this new rationality of government. In this article we draw on the governmentality literature in order to examine the ways in which neo-liberal ideas and practices have simultaneously

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enabled and disabled attempts by indigenous people to gain greater control over their conditions of existence.

Constructing Indigenous Citizenship

For some time now the concept of citizenship has been a key site of contestation between indigenous peoples and the state (Cairns 2003). In many of its earliest manifestations, the struggle for indigenous rights was effectively a struggle *for* citizenship. Given the discriminatory regimes that indigenous people were subjected to during the colonial period, the pursuit of equal citizenship rights represented a legitimate, if not radical, political aspiration (D. Pearson 2002, 998). As Cairns (2003, 500) points out, however, the achievement of 'common citizenship', in which indigenous people were finally accepted as full members of the political community and granted the same rights and responsibilities as other citizens, did not amount to a genuine form of decolonisation. Not only did it fail to recognise the unique identity of the indigenous inhabitants of settler societies, it undermined their historical claims as self-governing peoples. To become a citizen (understood in these terms) was to forfeit the possibility of being recognised as 'sovereign' nations (Rowse 2000, 93). Citizenship (when it finally came) was therefore an ambiguous achievement. At the same time that it released indigenous people from the intrusive systems of 'protection' to which they had been subject, it conferred legitimacy upon the colonial state that had been the agent of their dispossession (Kingsbury and Gover 2005).

The tensions inherent in this situation have made the very concept of citizenship part of the contested terrain in the struggle for indigenous rights. Against the idea of common citizenship, indigenous peoples have sought to construct a notion of 'indigenous citizenship' that recognises their status as independent nations. On one reading, as the Canadian notion of 'citizens-plus' (Cairns 2000) suggests, this alternative conception of citizenship is based on a simple logic of supplementation. Indigenous people are deemed to be entitled to certain collective rights *in addition to* those individual rights available to other citizens in recognition of their cultural differences. To the extent that the concept of indigenous citizenship also implies a form of 'sovereignty',¹ however, it presents a much more radical challenge to the postcolonial state. By claiming a right to 'self-government' as part of their citizenship entitlements, Indigenous peoples set up a paradoxical relationship with the politico-legal structures of their 'host' societies. According to this, almost self-contradictory, concept of citizenship, recognition is demanded from the state at the same moment that its authority is disavowed (Cairns 2003, 498). Indigenous peoples, who proclaim themselves sovereigns, have to resort to the legal structures of the state in which they are enclosed in order to pursue greater self-determination (Dodson 1999, 6).

As with other contests over 'citizenship', that between indigenous people and their host states is increasingly shaped by global dynamics and played out on a global stage (Kingsbury and Gover 2005). One of the effects of the latest 'wave' of globalisation has been the emergence of 'post-sovereign' forms of governance in which

¹We have placed the word 'sovereignty' in inverted commas because its meaning in this context is not equivalent to the one generally assigned to it in international law. For a discussion of the different meanings that 'sovereignty' assumes in this context see Behrendt (2002); Rowse (2003); Te Puni Kokiri (2001, 49–60).

international norms set standards of legitimacy for states. Historically these have been of limited value for indigenous people because the most important norm from their perspective—the right to self-determination—has been equated with statehood (Mulgan and Sanders 1996, 130). A new significance has, however, become attached to the global arena as a consequence of the UN Draft Declaration on the Rights of Indigenous Peoples. Although it would not be binding on states, the Draft Declaration promises to fill an important gap in the existing international instruments by decoupling the concept of self-determination from statehood without at the same time reducing it to a supplementary right to be granted (or withheld) by the postcolonial state (Keal 2003, 220). Because it begins from the premise of indigenous sovereignty, the Draft Declaration reverses the logic of the colonial relationship. Instead of special concessions or exemptions granted by the host state, indigenous rights are now deemed to derive from the pre-existing indigenous polity (UNHCR, 1994/45).

The economic globalisation of the Antipodes would, however, appear to have created an uncongenial environment for either the recognition or realisation of this notion of self-determination. This, at least, is the general impression created by critics of the global neo-liberal ideology embraced by New Zealand and Australia during the 1980s and 1990s. By promoting market or quasi-market regimes in policy domains previously regulated in other ways, the Antipodean state is taken to have undermined social cohesion and contributed to a general devaluation of citizenship (Bell 1997; Pusey 1998; Kelsey 2005). In the case of New Zealand, for instance, most of the literature that examines the impact of the reforms focuses on the enormous damage done to the socio-economic position of all but the most privileged. Stewart-Harawira's view can be taken as indicative:

while the World Bank, the *Economist*, the OECD and others praised NZ as an example to the rest of the world . . . statistical evidence provides documented confirmation that the NZ experience [of the reforms] was an unmitigated social disaster with virtually no economic gain other than for a very small and elite minority. (Stewart-Harawira 2005, 186)²

In this rationalised environment, the situation of indigenous people, often the most vulnerable sector in terms of its labour market position and reliance upon social welfare, inevitably became especially precarious.

While these claims are not without merit, they rely on a rather flat reading of the reform process. As Wendy Larner has recently argued, the conventional critique of neo-liberalism focused on the demise of the Keynesian–Fordist framework has not paid enough attention to ‘the *different variants* of neoliberalism, to the hybrid nature of contemporary policies and programmes, or to the *multiple and contradictory aspects* of neoliberal spaces, techniques and subjects’ (Larner 2003, 509, emphasis in original). In this article we seek to set aside the conventional ideological critique in favour of attending to the practices of advanced liberal governance and their many unintended effects in the arena of indigenous affairs. From this perspective it becomes apparent that the neo-liberal rearticulation of the relationship between market, state and citizen was enabling as well as disabling of indigenous attempts to

²This correlates with Michael Pusey's analysis: ‘the big winners from the restructuring so far have been corporations, and the losers, at least in relative terms, have been government programmes, public sector employees, and the broad middle 70% of wage and salary earners’ (Pusey 1998, 54).

acquire greater collective control over their conditions of existence. While the point is clearly contested (and contestable), we argue that indigenous peoples in Australia and New Zealand were able to use the opportunities opened up by the reforms to achieve a kind of citizens-plus status. At the same time, however, we recognise that the gains made by indigenous people were highly vulnerable to re-colonisation. This is especially true, as the Australian case highlights, where they were not backed by a national treaty that supports collective rights. This precariousness underscores the symbolic importance of the international norms embodied in the Draft Declaration.

New Zealand: Neo-liberalism and Boutique Autonomy

The globalising of the New Zealand economy and more especially the reforms of the state sector from 1984 through to the mid-1990s radically changed the face of policy involving Maori in New Zealand (Boston et al 1996; Boston, St John and Dalziel 1999; Durie 1998; Sullivan 2003). These changes released global forces that devastated the social and economic worlds of Maori, but, paradoxically, released a myriad of political possibilities that Maori grasped with both hands. The first conclusion, noting that Maori were victims of the changes in the state, is unremarkable in the literature (Durie 1998, 88; Sullivan 2003, 507). Strangely, linking globalisation with the tremendous explosion of Maori political successes from the 1980s onwards, as the second conclusion does, is much rarer. Instead, the globalisation literature vigorously argues that the reforms were not an opportunity for Maori but another colonisation, another reassertion of the Crown's ability to change the laws, economy and society in which Maori live (Kelsey 2005; Stewart-Harawira 2005). For instance, in Kelsey's view, the

new model of economic development that neo-liberalism offers to Maori[,] empowers the same colonial state fronted by the Maori affairs bureaucracy, to continue dictating the model of development that Maori should follow . . . At the domestic level, that state's supreme authority to regulate economic, social and political life within New Zealand remains effectively unchallenged. (Kelsey 2005, 98)

Kelsey is right in so far as the state's colonial control over the legal system allowed it to reform its structures in ways devastating to the socio-economic status of Maori. Concentrated in the industries that were hardest hit by the reforms, Maori unemployment during the reform period went from 10.8% in 1986 to 27% in 1992 (non-Maori rates were 3.3% and 7%, respectively) (Durie 1998). Unsurprisingly, other socio-economic indicators of Maori health and education outcomes deteriorated also (Durie 2001, 87–92, 2005, 37–43). This does not mean, as Kelsey would have it, that the globalisation of the New Zealand economy was another colonisation. Effect does not necessarily imply intention. For instance, introducing reforms so quickly and without regard to the consequences can easily be read as simply indicative of the government's callous disregard of all its citizens during the reform period; Maori, terribly, being the most affected (Chapple 2000). In confusing the intention and effect of globalisation in New Zealand, scholars such as Kelsey confine Maori to victimhood.

From the perspective of 2005 it is relatively easy to suggest that Maori reconfigured their citizenship during the reform period in New Zealand, and negotiated, with varying degrees of success, some rights that Cairns (2003) would see as

'plus' rights. At a symbolic level, Maori argued for and succeeded in reconfiguring an indigenous rights framework drawing on global indigenous rights and law. At the same time, Maori took full advantage of the substantive policy changes of New Public Management (Boston et al 1996), which allowed Maori organisations to contract with the state for service provision; both tribal and urban entities emerged to take control of service provision to communities. Many new Maori organisations also were created or grew for the purposes of Treaty claims and settlements. The new organisations all provided scope for the assertion of the key citizens-plus right: self-determination (Gover and Baird 2002). Scholars have labelled the devolution to Maori organisations of control over Maori lives as 'the Maori experiment' in self-determination (Macklem 2002, 1), and in terms of the boutique autonomy it created, have even suggested that New Zealand is engaging in 'democratic experimentalism' (Gover and Baird 2002, 57).

Similar indigenous political developments around the world have led Kingsbury and Gover (2005, 16) to suggest that the 'essentially oppositional' view of indigenous and state relations may need updating; Indigeneity is now increasingly embedded in democratic settler states. They agree with scholars like Kelsey who suggest that such states 'remain overwhelming strong vis-à-vis indigenous peoples', and that wars do occur, but argue that 'in general, the relations ... are more pacific, albeit often fraught'. The choice of peaceful relations with colonising populations by indigenous people is just one of the many facets of indigenous agency in the face of global change silenced by focusing on their victimhood (O'Malley 1998, 157). In New Zealand historiography, Lyndsay Head has already noted this phenomenon of neglecting Maori agency, arguing that scholars that cast Maori as victims are silencing Maori just as they begin to speak (Head 2001, 102).

Kelsey's point that Maori are always subject to the larger legal sovereign remains, of course, but we must call into question her claim that globalisation meant that issues of Maori sovereignty were 'quarantined by a de-politicised and de-contextualised approach to development' (Kelsey 2005, 99). For Maori, on the contrary, it provided the space and rhetoric for an emerging sense of Maori citizenship, whether antagonistic to, or desiring reform of, the New Zealand state. In Pocock's memorable phrase it became possible 'to speak of a [Maori] contestation with law within the law' (Pocock 1998, 503). For instance, while the chief executive of Ngai Tahu³ acknowledges the difficult position of the tribe when engaging with a state that sees itself as the supreme legal authority, he rejects suggestions that Ngai Tahu Maori have become re-colonised victims. Potiki argues that it is only by engaging with the globalised economy via 'a dynamic investment company that is able to produce revenues for iwi [tribe]' that the tribe is able to stand tall in negotiations between iwi and the New Zealand State over rights of self-determination. For Potiki it is the ability of Maori to engage with the global economy that makes possible that contest with the state, a contest the state may think Maori take up with alarming regularity.⁴ Thus scholars of globalisation should be careful to ensure for whom they speak: neo-liberalism

³The South Island tribe whose historic claims against the government were finalised via the Ngai Tahu Settlement Act 1998. Their 2005 annual report recorded total tribal assets at NZ\$515.9m, with revenues of NZ\$174.5m.

⁴Witness *Te Runanga o Ngai Tahu Ltd v Durie* (1998) 2 NZLR 103; *Ngai Tahu Maori Trust Board v Director-General of Conservation* (1995) 3 NZLR 553.

may be open to critique from many academic fields, but co-opting indigenous people for that critique may be an indulgence Maori cannot afford.

One of the first ways in which Maori political action reconfigured, or embedded, Maori citizenship in New Zealand during the globalising processes was to win the right to check the government's reform process where it might affect Maori property rights. The Maori protests in the 1970s and early 1980s had already questioned the fairness of the acquisition of land during the colonial period by the Crown (Poata-Smith 1996; Walker 1992). When the property transfers involved in selling state assets were posited it was a relatively small step for the government to realise that such reforms could be significantly slowed by Maori political action through protest and the Waitangi Tribunal.⁵ Maori political action was prompted by Maori concern that land they wished to reclaim through the settlement process would be privatised, and thus beyond the government's ability to return to them. The Waitangi Tribunal's capacity to contest government action came from its ability to publish reports on any claim, by any Maori, that government actions (or inactions) were contrary to the *principles* of the Treaty of Waitangi. The Tribunal had to decide on the principles it would adopt and give them substance, and it called, as would the courts later, on the Treaty itself, and jurisprudence of Aboriginal rights, but also on the rhetoric of the global indigenous rights movement.⁶ In haste to push through the corporatisation of Crown assets, the government sought to assuage Maori concern and avoid possible Tribunal claims by inserting a clause into the enabling legislation which asserted that nothing could be done 'contrary to the principles of the Treaty'.⁷ In turn, a pan-Maori grouping successfully sued the government for ignoring those principles when selling state assets. The resulting judgment, borrowing from the Waitangi Tribunal's work, brought 'the principles of the Treaty of Waitangi' into New Zealand jurisprudence and subsequently Maori have continually used that legislative clause to ensure that their interests are protected during reforms of the state sector.⁸

The case was, in the words of a later Prime Minister, Geoffrey Palmer, 'a constitutional revolution' (Palmer 1992, 70). The courts had overturned the long-held assumption that Maori property interests included in the Treaty were non-cognisable in British courts, and merely an encumbrance on the British Crown.⁹ The case ensured that Maori were to be finally considered citizens of the New Zealand state, who could contest its decisions, not wait as its grateful dependants. For Maori this ability to contest was important, because it recognised not only their status as citizens but also their status as tangata whenua or first peoples. Maori were not just an ethnic minority but signatories of a Treaty that acknowledged their prior ownership and sovereignty. In Treaty settlements those rights that extended from that prior ownership, Cairns's citizens-*plus* rights, were given substance. In the varying settlement statutes (each settlement is a parliamentary

⁵Established by the Treaty of Waitangi Act 1975, the Waitangi Tribunal is a permanent commission of inquiry charged with making recommendations to government on claims brought by Maori regarding breaches of the Treaty of Waitangi.

⁶For a complete guide to that jurisprudence, see Te Puni Kokiri (2001).

⁷S. 9 State-owned Enterprise Act 1987.

⁸*New Zealand Maori Council v Attorney-General* (1987) 1 NZLR 641 *Lands*. *New Zealand Maori Council v Attorney-General* (1989) 2 NZLR 142 *Forests*. *New Zealand Maori Council v Attorney-General* (1992) 2 NZLR 576 *Broadcasting*.

⁹See, for example, *Wi Parata v The Bishop of Wellington* (1877) 3 NZ Jur (NS), SC 72.

statute) Tribes have negotiated a multitude of management rights (exclusive or in combination with various government entities), and complex governance arrangements with the state that allow them to continually assert their new position.¹⁰ For instance, under the Ngai Tahu Claims Settlement Act 1998, Ngai Tahu have formal management rights over land throughout the South Island, management agreements over many other resources with various local and central government agencies, and first right of refusal over all Crown land sales in that area. To give some idea of the scale of the Treaty of Waitangi settlement process, there are over 1000 claims before the Tribunal, over 15 tribes in negotiation, and 18 settlements worth over \$650m.¹¹

The citizens-plus rights of Maori became so embedded into law via the Treaty that the Treaty came to be regarded as having the 'greatest constitutional importance to New Zealand'¹² and as a guide in the interpretation of legislation.¹³ Eddie Durie, then chairman of the Waitangi Tribunal (and now Appeal Court judge), summed up the indigenous position in the early 1990s:

It seems to me no Canadian, Australian, United States or New Zealand constitution would be valid that does not reflect the reality that ... [there] were pre-existing rights of property and society that existed, and still exist, amongst the original people ... The question is not whether they should be recognised as such, for that is what they are. *The question is how formal recognition should be.* (Durie 1993, 4, emphasis added)

Durie's question of the formality of the recognition of indigenous citizenship has dominated Maori politics in New Zealand since the end of the reforms in the mid-1990s, because it requires defining the substantive range of Maori citizens-plus rights. What rights can Maori claim as indigenous people? For example, while Maori won concessions from the Crown during its selling of broadcasting assets (a Maori Television Station), and its Fisheries (around \$700 m in assets and cash), the courts found such citizens-plus rights did not extend to some mining rights.¹⁴

Complicating the exact boundaries of Maori citizens-plus rights is that their implementation generates fundamental issues about Maori identity and the coherence of Indigeneity as a political concern. For example, while the Fisheries Settlement—worth around \$700 m and comprising 37% of New Zealand's tradable fishing quota—was finalised in 1992, it was not allocated to Maori until 2004 because of competing claims amongst Maori groups. Its enabling legislation, the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992, was not explicit about whether the rights for which compensation was paid belonged to each individual Maori or belonged to traditional Maori bodies such as iwi and hapu (sub-tribe), or to whichever organisations Maori felt were entitled to exercise their self-determination (Waitangi Tribunal 1992). Any settlement was thus subject to endless criticism from any group of Maori who felt themselves to be deserving.

¹⁰For the diversity compare the following bills: Ngatia Turangitukua Claims Settlement Act 1999; Ngati Ruanui Claims Settlement Act 2003; Nga Rauru Kiitahi Claims Settlement Act 2005.

¹¹Office of Treaty Settlements, 2005.

¹²*New Zealand Maori Council v Attorney-General* (1994) 1 NZLR 513 *Broadcasting Assets*, per Lord Woolf at 516.

¹³*New Zealand Maori Council v Attorney-General* (1987) 1 NZLR 641 *Lands*, per Justice Cooke P at 655–6.

¹⁴*Tainui Maori Trust Board v Attorney-General* (1989) 2 NZLR 513 *Coal*.

Notwithstanding such difficulties, in contrast with Australia, New Zealand government institutions such as the Tribunal, and the courts, and ministers were and are negotiating with Maori over varying forms of Maori self-determination.¹⁵ Given the tendency in the globalisation literature to homogenise indigenous populations, it is important to stress that Maori are a diverse peoples with a diverse range of wants, and so their quests for self-determination or citizens-plus rights vary enormously (Gover and Baird 2002; Boston et al 1996, 159).

Usually such diversity is frowned upon by a state wishing to contain indigenous voice to its own institutions. Maori affairs (and service provision), for instance, had been constrained to one department within the public service. Globalisation in New Zealand meant the destruction of that monopoly. The New Public Management reforms focused on policy outputs, made 'goals and outputs transparent' and allowed managers to decide how best to perform government functions (Kettl 2000). Such transparency allowed many government services to be contracted out where community organisations could deliver services more efficiently and effectively. Primed by the decision at an important Maori development summit in 1984 to advocate for 'by Maori, for Maori' service provision, many Maori seized upon the opportunity to take over provision of services to Maori and non-Maori in health, education and social welfare.

The success of this strategy is now clearly apparent. For instance, 600 Maori organisations (competing for students with non-Maori entities) deliver total-immersion Maori-language schooling at pre-school to 35% of Maori in early childhood education (Te Puni Kokiri 2002, 45). At the primary levels of education there are over 60 Maori primary schools (King 2001), and at the tertiary level there are three institutions, one of which is the largest tertiary provider in New Zealand. In health, over 300 Maori providers contract with the government (Te Puni Kokiri 2002, 49). Both tribal and urban¹⁶ Maori organisations contract with government to provide social services to Maori and non-Maori, and in some areas such as West Auckland they offer everything from employment skills training to dental care. Finally, by 1999, 17 Maori organisations (tribal and non-tribal) were delivering welfare services to children and young people, and seven had the ability to take over wardship of children (Te Puni Kokiri 2000, 10). By these means, Maori have reconfigured their citizenship to such an extent that they have reduced the structural inequalities that existed prior to the globalisation of the economy. For instance, Maori life expectancy has finally started to improve relative to non-Maori for the first time in two decades (Otago 2004) and since 1991 Maori attainment of educational qualifications has improved more rapidly than non-Maori (Te Puni Kokiri 2002, 14).

Australia: From Citizens-plus to Citizens-minus?

A similar story about the development of indigenous citizenship could be told about Australia before the election of the Howard government in 1996. Although Indigenous Australians never enjoyed the protections of the Treaty of Waitangi, the principle of self-determination or self-management has been a cornerstone of Australian

¹⁵For discussion within Treaty discourse see Te Puni Kokiri (2001) and in application, Waitangi Tribunal (1992, 1998).

¹⁶The 1996 New Zealand Census found that 80% of Maori live outside their traditional tribal area and 20% do not affiliate with a tribe.

government policy since 1972 (Robbins and Summers 2002, 510). The clearest manifestation of this policy was the series of attempts to set up a national representative body that culminated in 1990 with the formation of the Aboriginal and Torres Strait Islander Commission (ATSIC). As Tim Rowse has argued persuasively, however, the most significant legal expression of self-determination was not the ATSIC Act of 1989 but the more mundane Aboriginal Councils and Associations Act (ACA Act) of 1976. By enabling Indigenous incorporation, the ACA Act created a communal Indigenous agent (or collection of communal Indigenous agents) with whom agreements could be made and to whom authority could be devolved. Originally used to provide Indigenous communities with a legal entity that could receive funding for employment and other purposes, the ACA Act acquired additional significance during the 1980s and 1990s. Partly because governments took the neo-liberal path of outsourcing governmental functions and partly because the Native Title Act (1996) required incorporated bodies to lodge claims and act as trustees for native title holders, the Indigenous community legally constituted itself and became governable 'as an ensemble of corporations, councils, land trusts, "representative bodies" (in the terminology of the *Native Title Act*), and other associations' (Rowse 2000, 96). Despite the fact that talk of a treaty fell off the political agenda in the 1980s, Indigenous people were able to reinvent their citizenship as a set of communal, rather than simply individual, capacities and rights (Rowse 1998, 98, 2003, 35).¹⁷

If it would be wrong to equate this kind of self-determination from below with a fully realised sovereignty, it would be equally wrong to underestimate the openings it created for Indigenous people to govern themselves according to their own principles. As Michel Foucault has pointed out, it is characteristic of liberal governance that it seeks to 'rule through freedoms' (Gordon 1991, 47). This involves constituting the subjects of rule, whether individuals or groups, as active participants in their own regulation (Valverde 1996, 357; O'Malley 1998, 158; Hindess 2001, 93). One of the ways in which advanced liberalism achieves this is by appropriating pre-existing structures of governance at the community level and aligning them with its own agenda. This allows the government to fulfil its objectives while creating the impression (which is not simply an illusion) that the community is governing itself. As O'Malley has pointed out, however, this kind of 'government at a distance' is quite vulnerable to the Trojan horse effect. Because systems of liberal governance must work with what is already there, they run the risk of incorporating alien practices and assumptions (O'Malley 1998, 159). In the case of 'self-determining' Indigenous corporations and councils this included ways of 'doing business' that were out of keeping with liberal views of corporate governance. In the remote desert communities that O'Malley examines, for example, Aboriginal Councils set up systems of 'distributive justice' according to status markers—kinship, age, gender, and possession of sacred knowledge—that contravened liberal principles of impartiality, formal equality and meritocracy (O'Malley 1998, 160–1). In seeking to appropriate Indigenous corporations for the project of rule, therefore, governments made space for customary laws and practices that were inconsistent with their own liberal principles.

As O'Malley is quick to point out, however, there is a point at which the internal tensions and contradictions generated by the incorporation of these foreign systems of governance begin to tilt towards instability. Governing at a distance works best

¹⁷There are now around 2800 bodies incorporated under the ACA Act nationally.

or, conversely, is least susceptible to uncertainty and subversion, with subjects who are already autonomous in the liberal sense. Yet, in this instance, the 'subjects of self determination were not liberal subjects already primed with the taken-for-granted assumptions, knowledge and practices of the populace of urban, white Australia' (O'Malley 1998, 161). As a strategy for governing Indigenous people, therefore, self-determination was (and is) inherently unpredictable. It is liable to 'fail' in liberal governmental terms, not only where Aboriginal communities lack effective structures of governance, but also (as is often the case) where such structures are too robust. In these circumstances, according to O'Malley, a different, somewhat darker side of liberal rule tends to reveal itself. Hence the tendency for officials to valorise those aspects of Indigenous governance that produce administratively desired effects, while trying (as far as the law allows)¹⁸ to neutralise or bypass the rest as counterproductive to the project of rule (O'Malley 1998, 161–2). Under a neo-liberal regime, in other words, the only thing that prevents Indigenous systems of governance being displaced in favour of other, supposedly more efficacious, ones is a national treaty or a political commitment to self-determination.

This potential for neo-liberalism to undermine Indigenous forms of citizenship has been increasingly revealed over the last 10 years as this political commitment to self-determination has waned.¹⁹ Since gaining office in 1996, the Howard government has attempted to delimit the unpredictable nature of self-determination by placing tighter controls on Aboriginal corporations and refashioning Aboriginal subjects as economically self-reliant individuals. Not only has the government continually opposed suggestions that a 'Treaty' be negotiated between Indigenous peoples and the Australian state (Langton 2001, 34), it has dismantled or reconfigured existing institutions of collective Indigenous rule and their enabling legislations. In 2004, after a long series of reviews and restructures designed to enhance accountability, it finally decided to abolish ATSIC, the national representative body of Indigenous people.²⁰ In the same year, it announced its intention to reform the ACA Act, primarily to 'allow for modernised corporate governance practices and accountability standards' (ORAC 2005). Alongside this attempt to strangle Indigenous corporate citizenship, the government introduced a range of new initiatives that interpellate Indigenous people as a collection of failed liberal individuals who need to be encouraged (by 'carrots and sticks') into taking greater responsibility for themselves. In this category it would be possible to put all those measures introduced in the guise of 'practical reconciliation'—shared-responsibility agreements (SRAs), inducements to draw Indigenous people into the 'real economy', the removal of exemptions for people in remote communities from mutual obligation arrangements and the reconfiguration of land rights as individual rather than communal title—aimed at building

¹⁸ As Virginia Watson (2004, 591) has argued, the ACA Act was designed 'to support specifically *Aboriginal* modes of association'. So long as it survived in its original form, therefore, the legislation placed a legal limit on attempts to make Aboriginal Councils operate according to liberal principles. Watson attributes the various attempts, dating back to 1992, to bring the act more in line with the mainstream Corporations Act to the despotic tendency in liberalism.

¹⁹ 'Australia was the only government delegation to speak unequivocally against the inclusion of the principle of self determination in the draft UN declaration [at the fifth session in October 1999]' (Pritchard 2000, 32).

²⁰ This paved the way for more than \$1bn of former ATSIC-AITSIS programs to be transferred to mainstream departments.

'capacities' by giving the civilising powers of the market greater purchase in Indigenous peoples' lives.²¹

This shift to an ethos of 'capacity building' at both the corporate and individual level has been legitimated by a discourse of crisis that makes a series of assumptions about the nature and causes of the problems faced by Indigenous communities, particularly in remote areas. The indices of this crisis are found in a permissive mixture of socio-economic disadvantage (infant mortality, education, health, housing, life expectancy) and forms of socio-cultural dysfunction (addiction, truancy, domestic violence). The precise weighting that commentators give to these indices as well as the extent to which the statistical evidence supports the idea of a crisis is deeply contested both within and outside the Indigenous community.²² Although Indigenous Australians still compare poorly with non-Indigenous Australians on virtually all the socio-economic indicators, it is also possible that *some* of these discrepancies in outcomes (eg in education and employment) represent a choice by Indigenous people to live differently. The Howard government has, however, tended to ignore the complexities of this situation, assuming not only that the crisis is beyond question but that it can be attributed to welfare dependency. The basic presupposition here is that state intervention in the form of 'sit-down' or welfare money has acted as a barrier to Indigenous people achieving (non-Indigenous standards of) economic self-reliance and domestic self-regulation.

By designating Indigenous communities as zones of crisis, the government has been able to adopt practices of governance that might otherwise be considered inconsistent with liberal principles. As Mariana Valverde (1996) has argued, liberalism can no longer make use of ontological criteria like race in order to mark certain subjects out for 'special treatment'. Claims about the exceptional characteristics of certain *spaces* are, however, much easier to justify. In this case, the demarcation of remote communities as zones of crisis makes it possible to differentiate spaces of rule and to allow contradictory modes of governance to coexist within a liberal framework (Valverde 1996, 368–9). While ruling through freedom continues to be the primary strategy deployed with regard to (fully constituted) liberal subjects, therefore, those inhabiting the crisis zone are subject to an entirely different (and much more coercive) set of practices. Thus, under the SRAs, the common citizenship rights of Indigenous people in remote communities have become contingent upon behavioural changes (better hygiene and greater diligence) designed to inculcate forms of liberal self-reliance. The most publicly controversial of these agreements was signed in 2004 by the Mulan Aboriginal community, and required parents to wash their children's faces twice a day in exchange for the installation of two petrol bowsers. Responding to criticisms from Indigenous leaders that the agreement was racially discriminatory, the then Minister for Aboriginal Affairs, Amanda Vanstone, exemplified the neo-liberal reduction of governance to administrative results: 'A community gets what it wants—a petrol bower ... And the kids get

²¹For an outline of these measures see Grattan (2004, 2005) and Yunupingu (2005).

²²One could compare, for instance, Noel Pearson (2002) with Larissa Behrendt (2002). Research undertaken by the Centre for Aboriginal Economic Policy Research (CAEPR) suggests that Indigenous health, education, housing and, with certain qualifications, employment all improved between 1971 and 2001. Between 1991 and 2001, for instance, unemployment rates decreased from 30.8% to 20.0% and the proportion of adults with post-school qualifications increased from 9.5% to 18.2% (Altman, Biddle and Hunter 2004). Altman concludes from this 'that [the] broad policy settings have been favourable' (Altman 2004, 2).

better health outcomes. Who could complain about that?' (quoted in McCausland 2005, 9).²³

While there is clearly an authoritarian dimension to this new policy regime, it does not, as some have claimed, represent a reversion to an older form of tutelary colonial power (Carr 2004, 17). The attempt to reduce welfare dependency and health risks by encouraging (and, where necessary, punitively re-enforcing) greater self-reliance is more consistent with a decline in the willingness and capacity of the neo-liberal state to maintain public services and infrastructure than with a renewed 'paternalism'. Despite the impression created by its critique of welfare, neo-liberalism does not necessarily mean that populations are being governed less. As Rebecca Lawrence has recently pointed out, the other side of the neo-liberal rollback of the welfare state is the targeting of those sectors of society, such as Indigenous populations, who continue to burden government by failing to act in a 'responsible manner' (Lawrence 2005, 41). While remaining critical of excessive intervention, the neo-liberal state makes an exception of those individuals whose contact with the market is seen to have been too circumscribed or distorted to allow for the cultivation of economic virtues like prudence, diligence, punctuality, and self-control (Hindess 2002, 135). One of the ways in which the current government has sought to overcome this deficiency is through alliances between government agencies and private enterprise (as, for instance, in certain employment and training programs) that seek to transform Indigenous people into 'job-ready' subjects (Lawrence 2005).

Under the Howard government, then, the significance of Australia's anomalous legal status as the only British settler society without a history of treaty making or constitutional recognition has been exposed once more. Unlike New Zealand, whose neo-liberal agenda has been limited and in some ways reshaped by the Treaty of Waitangi, Australia has been able to pursue a largely unrestrained policy of rationalisation in Indigenous affairs. To the extent that even the common citizenship rights of Indigenous people are now contingent upon behavioural change, their status might better be described as citizens-minus than citizens-plus (Dodson 1996; Mercer 2003). It is quite possible that this situation will increase the significance of international instruments like the Draft Declaration as vehicles of protest. As John Chesterman has pointed out, 'it was a mixture of domestic activism and international exposure that forced Australia to grant civil rights to Indigenous Australians. Indigenous activists know this and are once again asking the world to judge Australia' (Chesterman 2001, 221). This task will, however, be more difficult with the dismantling of peak Indigenous organisations. It is doubtful that local communities will have the institutional muscle to lobby against the federal government in the international arena with the same effectiveness that ATSIC has been capable of in the past (Behrendt 2003, 29; Robbins and Summers 2002, 521). This will make it easier for the government to disregard emerging global norms concerning Indigenous rights in its attempt to foist a certain model of economic development on Aboriginal people.²⁴

²³Although Indigenous leaders like Noel Pearson and Pat Dodson initially embraced the concept of SRAs on the basis that they resonated with Aboriginal notions of 'reciprocity', they have interpreted the notion of obligation in very different way from the government (Dodson and Pearson 2004).

²⁴The government already has a track record of reacting unfavourably to international censure of its Indigenous policy. In March 1999, the UN Committee on the Elimination of Racial Discrimination (CERD) expressed concern that the Howard government's Native Title Amendment Act (1998) was racially discriminatory and in breach of Australia's obligations under the International Convention

Conclusion

The recent phase of economic globalisation did not always work against attempts by indigenous people to obtain greater control over their lives. Provided there was an effective treaty or underlying commitment to self-determination in place, the introduction of neo-liberal systems of governance in New Zealand and Australia *could* create opportunities for indigenous people to extend the scope of self-determination. At the same time, certain presuppositions about the subject of rule made these liberal and neo-liberal systems of governance an uncertain ally in the struggle for indigenous citizenship. This has become particularly pronounced in Australia, where Indigenous people do not have a treaty framework to fall back upon when their collective rights are threatened. It is by no means self-evident, however, that legal rights will be sufficient to safeguard Maori from the darker side of liberal governance. While the Treaty of Waitangi allowed Maori to harness economic globalisation and move to a model of citizens-plus in which their status as tangata whenua was recognised, recent politics suggests that this 'plus' will always, perhaps inevitably, be contested. There is something ominous about the New Zealand government's recent reaction to an Appeal Court finding that Maori may have customary or Aboriginal title to the foreshore.²⁵ In a move reminiscent of Howard's Native Title Amendment Act of 1998, the government pushed through legislation that declared the foreshore a public domain. It then set up a political (as opposed to a court) process to decide upon Maori rights and determine whether compensation was owed for the loss of due process.²⁶ As in the Australian case, the state was fully prepared to challenge indigenous rights created by its own courts where it deemed the 'plus' in citizens-plus a step too far.²⁷

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²⁵*Ngati Apa v Attorney-General* (2003) 3 NZLR 643.

²⁶New Zealand Foreshore and Seabed Act 2004.

²⁷CERD, 66th Session, 17 February–11 March 2005, Decision 1 (66): 'the legislation appears to the Committee, on balance, to contain discriminatory aspects against the Maori'.

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