

THE ESTABLISHMENT AND SUBSEQUENT EXPANSION OF THE WAITANGI TRIBUNAL: THE POLITICS OF AGENDA SETTING

AMY L. CATALINAC

Abstract:

In modern-day democratic political systems, governments are constantly presented with multiple concerns that often affect a diversity of groups. Studies of agenda setting help explain the various forces that interact to focus government attention and decision-making on a particular concern. This article examines the applicability of theories of agenda setting developed by John W. Kingdon in the American political context to two of New Zealand's most path-breaking and far-reaching policy changes: the passage of the Treaty of Waitangi Act in 1975, which established the Waitangi Tribunal, and the subsequent amendment to that legislation in 1985, which widened its powers.

While the three factors identified by Kingdon as being pertinent to agenda setting – problem recognition, changes in the political stream and the role of visible participants – provide the background for these two significant policy changes, the particular characteristics of the New Zealand politico-institutional system – noted in Buhrs' and Bartlett's work on environmental policy making in New Zealand – are necessary to account for the way in which Maori sought to draw government attention to their concerns via protest activism. Within the New Zealand political context these movements were able to create conditions that enabled the government to overcome the constraints posed by previous policy and embark in a new direction. Notions of path dependence are also utilised to provide a fuller account of the second policy change.

Keywords:

Waitangi Tribunal, New Zealand race relations, Agenda-setting

Agenda setting is crucial to understanding contemporary policymaking and is therefore the topic of much research in political science. Exactly how certain conditions come to be identified as problems upon which the government should act, and why a certain policy proposal is chosen over another, is influenced by a multitude of factors. These may include the political actors involved – politicians, bureaucrats or even citizens taking a stand – mood swings in the domestic political environment, the influence of overseas events or how the media portrays the issue. These factors can sometimes fuse in such a way as to bring about the most unlikely and unpredicted policy changes, in the process undoing previous policy and breaking out in a whole new direction. Examination of the original forces that led to the adoption of a policy proposal can also explain how subsequent changes or expansion of the policy are achieved.

This article seeks to apply the theory of agenda setting developed by John W. Kingdon in his work *Agendas, Alternatives and Public Policies* to the establishment and subsequent expansion of powers of the Waitangi Tribunal. Established by the Treaty of Waitangi Act of 1975, the Tribunal was granted the right to inquire into and make recommendations to the Crown for Maori claims that they had suffered from government action contrary to the principles of the Treaty of Waitangi. It was granted exclusive authority to determine the meaning of the Treaty as embodied in the two texts, and to decide any issues that were raised by the differences between them. This Act was followed by the Treaty of Waitangi Amendment Act, passed in 1985, which extended the jurisdiction of the Tribunal retrospectively to include consideration of unlawful confiscation of Maori land and resources from as far back as 1840, the year of the Treaty's signing.

The significance of this Act in the New Zealand political environment cannot be underestimated. It was passed against the background of over one hundred years of complete neglect on the part of the government for the rights guaranteed to Maori under the Treaty. Furthermore, the decision to allow the Tribunal to review all acts of the Crown from as far back as 1840 effectively opened up the whole of New Zealand's history to scrutiny. This invited a multitude of claims by Maori, starting a legal and constitutional revolution that has continued until today.

The article will show that the model of agenda setting developed by Kingdon provides a helpful explanation of how the interplay between many different forces achieved these two significant policy changes. The analysis also shows that certain characteristics of the New Zealand politico-institutional context – in restricting the avenues available for interest groups to achieve government recognition of their concern – must also be considered to provide a fuller explanation of agenda setting in New Zealand. Finally, notions of path dependence are also introduced to help explain the second policy change.

AGENDAS AND ALTERNATIVES

In *Agendas, Alternatives and Public Policies*, John W. Kingdon seeks to answer the question of why some subjects feature on the agenda and others do not, and why some alternatives are considered and others neglected. He notes that in politics something becomes a problem only after it has been put on the agenda. The nature of the problem itself often matters less than whether the political conditions at the time define it as a problem. Thus the prominence of an item on the agenda is explained on the one hand by the political climate in government,

and on the other hand by public receptivity to ideas of its type. It is therefore necessary to examine the conditions that facilitate this receptivity.¹

In making his argument Kingdon distinguishes between the 'governmental agenda' and the 'decision agenda'. The governmental agenda is a list of subjects to which government officials pay serious attention, whereas the decision agenda is a list of subjects that are moving into position for an authoritative decision, such as legislative enactment.² Kingdon's argument distinguishes between the forces necessary to put an item on the governmental agenda, termed 'agenda setting,' and the forces that generate policy proposals and choose which policy to adopt – the decision agenda – which is termed 'specification of alternatives.'

Kingdon identifies two categories of factors that affect both agenda setting and the specification of alternatives: participants and processes.³ Participants can consist of politicians, bureaucrats, academics, lobbyists or journalists. Within the second category of processes, three streams are identified: problem recognition, policy proposals and politics. The 'problem recognition' stream explains how a given condition is defined as a problem for which government action is needed. The 'policy proposals' stream provides for the gradual accumulation of knowledge and perspectives in a given area, and the generation of policy proposals by specialists. In the 'politics' stream Kingdon identifies changes in the political culture that can affect agenda setting such as national mood swings, public opinion changes, election results or changes of government.⁴

Kingdon finds that the participants and processes vary over the two stages of agenda setting and alternative specification. For *agenda setting* Kingdon identifies the three necessary forces as being problem recognition, politics and visible participants. First, he argues that whether or not government officials will define a condition as a problem that warrants their attention is dependent on *how* these officials hear of the problem and the *way* it is defined. Officials can hear about problems via *indicators* that assess the magnitude or change of the condition, *focusing events* such as disasters, personal experiences or powerful symbols that draw attention to the condition, or *feedback* about existing programs. Factors that facilitate the definition of these conditions as problems include whether they violate important values, whether the conditions are comparatively problematic, and the category into which the condition is classified. Problem recognition and definition, argues Kingdon, is a crucial part of agenda setting.⁵

The second force that has an impact upon agenda setting is the political stream, which is independent from problem recognition and from the development of policy proposals yet is equally important to the process. Swings in national mood, the election of a new government, a new mix in parliament or increased lobbying efforts by interest groups has a powerful effect on whether or not an issue will appear on the government agenda. He identifies *national mood* and *elections* as being potent agenda setters, significantly more so than interest groups which are less able to set agendas on their own.⁶

The third factor is the role played by visible participants. 'Visible' refers to those actors who receive considerable press and public attention, such as government leaders, party

¹ John W. Kingdon, *Agendas, Alternatives and Public Policies* (Boston: University of Michigan Press, 1984), p. 76.

² Kingdon, *Agendas, Alternatives and Public Policies*, p. 4.

³ Kingdon, *Agendas, Alternatives and Public Policies*, p. 16.

⁴ Kingdon, *Agendas, Alternatives and Public Policies*, pp. 16-19.

⁵ Kingdon, *Agendas, Alternatives and Public Policies*, pp. 206-7.

⁶ Kingdon, *Agendas, Alternatives and Public Policies*, p. 208.

members and the media. Kingdon found that the 'hidden' participants such as academic specialists and career bureaucrats affect the alternatives rather than the actual setting of the government agenda. Elected officials affect agenda setting more so than bureaucrats, academics or specialists, but on the other hand cannot always achieve the particular policy choice favored, as alternative specification is the domain of the hidden participants.⁷

For the *alternative specification* phase Kingdon argues that alternatives are generated and narrowed in the policy stream, involving hidden participants such as academics, researchers, bureaucrats and interest group analysts. He explains that policies are adopted with regard to criteria such as technical feasibility, congruence with the values of community members, anticipation of future constraints and public acceptability.⁸

Each of the participants and processes involved has the ability to act as a *constraint* on problem recognition, by either dampening consideration of a subject or by not providing conditions favorable to its being recognised as a problem; or as an *impetus*, providing conditions that boost a problem higher on the agenda.⁹ *Policy windows* provide valuable opportunities for advocates to push attention to their problems and can be opened by events in the problems stream, such as a new indicator or focusing event, or in the political stream, such as a change in national mood or administration. Visible participants can play the role of *policy entrepreneurs*: people who invest their time and resources to push their concerns higher on the agenda, coupling proposals to problems once a policy window is open. These actors try to draw attention to indicators and focusing events that highlight their problem, pushing for one type of problem definition over another.¹⁰

In their work on environmental policy evolution in New Zealand, Ton Buhrs and Robert Bartlett applied Kingdon's ideas to the New Zealand political context. Building on these ideas, they identified five main factors that help to explain why certain conditions or problems have a higher chance of reaching the political (or governmental) agenda in New Zealand. The perception of problems and their definition is foremost, dependent on whether socio-cultural factors facilitate that concern as being identified as a problem. In the case of New Zealand, national culture and symbols are associated with the natural environment, accounting for a receptiveness to nature conservation issues.¹¹

Other factors found by the authors include the relative seriousness of the problem, which can be highlighted by accidents or disasters that serve as focusing events; the economic factor, which precludes the recognition of problems whose solutions are not economically viable or would impose too great a burden on the economy; and convergence, whereby outside influences can induce countries to adopt similar policies. The latter factor may explain why problems achieve political recognition despite the absence or weakness of any domestic constituency.¹²

For the purposes of my analysis, the most important factor introduced by Buhrs and Bartlett is their suggestion that whether an issue is defined as a problem, and the relative weight it receives on the political agenda, depends to a large extent on the wider politico-institutional

⁷ Kingdon, *Agendas, Alternatives and Public Policies*, p. 209.

⁸ Kingdon, *Agendas, Alternatives and Public Policies*, p. 210.

⁹ Kingdon, *Agendas, Alternatives and Public Policies*, p. 19.

¹⁰ Kingdon, *Agendas, Alternatives and Public Policies*, p. 214.

¹¹ Ton Buhrs and Robert V. Bartlett, *Environmental Policy in New Zealand* (Auckland: Oxford University Press, 1993), pp. 55-57.

¹² Buhrs and Bartlett, *Environmental Policy in New Zealand*, pp. 58-63.

framework. All new problems are filtered through this framework, which has the capacity to act as a constraint or impetus to government recognition of a problem. This means that if new conditions cannot be made to fit existing institutional patterns, they tend to 'fall between the cracks' and are subject to non-decision making. 'A conclusive way of checking the rise of conflict is to create no public agency to do anything about it', which makes institutional change with the purpose of dealing with a new problem all the more difficult to achieve.¹³

Buhrs and Bartlett identified one particular characteristic of the New Zealand politico-institutional context that is particularly relevant to an analysis of the establishment of the Waitangi Tribunal. The authors point out that the high concentration of executive power in the New Zealand government has meant a lack of balancing powers to restrain the government in the making of policy. Unlike other political systems such as the United States where power is more dispersed and groups have many different access points to the political agenda – for instance through a bicameral Congress, the courts, and state governments – the New Zealand political system is relatively closed.¹⁴ By implication, few avenues exist for putting environmental concerns – or any concerns – on the government agenda. Environmental movements are placed in a reactive position, with their success dependent upon effective lobbying and the use of the media, which the authors argue is the most important check on the power of New Zealand governments.¹⁵

Using the three factors identified by Kingdon to explain how items reach the agenda – via problem recognition, a favorable political environment and the role of visible participants – this article will identify and explain the various forces that led to the passage of the Treaty of Waitangi Act in 1975 and the subsequent Amendment Act in 1985.¹⁶ It will also show that the ideas developed by Buhrs and Bartlett regarding the concentration of power in the New Zealand political system – as well as notions of path dependence – are necessary to provide for a fuller understanding of agenda setting in the New Zealand context.

THE TREATY OF WAITANGI ACT 1975

In October 1975 the third Labour government passed the Treaty of Waitangi Act. This Act set up the Waitangi Tribunal and directed it to hear any claims by Maori that a Crown action

¹³ Quoted in Buhrs and Bartlett, *Environmental Policy in New Zealand*, p. 59. For the view that 'organisation is the mobilization of bias', see E. E. Schnattschneider, *The Semi-sovereign People: A Realist's View of Democracy in America* (New York: Holt, Rinehart and Winston, 1960), p. 71.

¹⁴ Buhrs and Bartlett, *Environmental Policy in New Zealand*, pp. 60-61. With regard to environmental policy the authors state that parliament is controlled by the executive through strong caucus discipline; that government agencies are largely 'toothless' (with respect to environmental responsibilities); and that the courts have played a role but that their power has been limited by the absence of a written constitution in New Zealand and the ability of the government to change the law to suit their needs. The role and function of local and regional governments in environmental policy has also been limited. See also Richard Mulgan, 'New Zealand – An Elective Dictatorship?', in Hyam Gold (ed.), *New Zealand Politics in Perspective*, 3rd ed. (Auckland: Longman Paul, 1992), and R. Kent Weaver and Bert A. Rockman, 'Assessing the effects of institutions', in R. Kent Weaver and Bert A. Rockman (eds.), *Do Institutions Matter? Government Capabilities in the United States and Abroad* (Washington: The Brookings Institution, 1993), pp. 1-41.

¹⁵ Buhrs and Bartlett, *Environmental Policy in New Zealand*, p. 61.

¹⁶ This article will focus primarily on accounting for the conditions that facilitated the appearance of Maori concerns on the governmental agenda – *agenda setting* – as defined by Kingdon. Exactly why the government chose to address the problem with the establishment of a commission of inquiry (which falls under *alternative specification*) is not the subject of this article.

had been prejudicial to them and was in conflict with the principles of the Treaty of Waitangi. The Tribunal was given the exclusive right to interpret the Treaty, utilising both the English and Maori versions, and had the responsibility of making recommendations to the government on such claims. This Act was the first time that the principles of the Treaty of Waitangi had ever been incorporated into legislation. It has been heralded as marking the beginning of a post-colonial era for New Zealand, in which Maori-Pakeha relations were being transformed from Pakeha dominance to negotiation towards greater justice, equity and partnership.¹⁷

In order to account for the passing of this Act, the three factors identified by Kingdon – problem recognition, politics and visible participants – will be considered in turn. First, Kingdon argues that indicators, focusing events or feedback constitute the main ways in which government officials are alerted to a problem. Beginning after World War Two, *indicators* about the relative deprivation of Maori were beginning to shock both government and public complacency about the myth of equality of New Zealanders. The most shocking was an official report prepared in the Department of Maori Affairs in 1961 – known as the Hunn Report – which gave depressing statistics showing that Maori had a higher infant mortality rate than Europeans, a lower expectation of life, poorer standards of housing and lower educational achievements.¹⁸ Coupled with this were a higher proportion of Maori in crime statistics, especially juvenile delinquency. In 1965 over 85 per cent of Maori children left school with no qualifications. The offending rate of Maori boys under sixteen years was 5.1 times the rate of their Pakeha cohorts, and for girls it was 7.4 times higher.¹⁹

Many of these problems had been created and exacerbated by the rapid urbanisation of Maori in the period of relative economic prosperity after World War Two, which saw many Maori abandon their traditional rural lifestyles for the increased pleasure and work opportunities in the cities.²⁰ This brought many new challenges – such as the need to transplant their rural, land-based culture into the urban milieu – as well as problems – such as educational failure, juvenile delinquency, and rising crime.²¹

By bringing ‘brown face against white’, the urbanisation of Maori made the extent of their relative deprivation all the more palpable for Pakeha.²² Extensive media reporting of the problems would have served as *focusing events* for the government as well as citizens, and the extent of these social problems would have provided ample *feedback* that the current Maori policy was not in fact providing a solution to the problem.²³ However, despite the existence of this feedback, the government did not take any significant action to alleviate Maori distress in the way that Maori had always desired: via recognition of their rights under the Treaty of Waitangi. A very important factor – that of New Zealand’s *politico-*

¹⁷ Ranginui Walker, ‘The Maori People: Their Political Development’, in Hyam Gold (ed.), *New Zealand Politics in Perspective*, 2nd ed. (Auckland: Longman Paul, 1989), p. 334.

¹⁸ G. Antony Wood, ‘Race and Politics in New Zealand’, in Stephen Levine (ed.), *Politics in New Zealand: A Reader* (Sydney: Allen and Unwin, 1978), p. 335. For a detailed study of the Maori position in the 1960s see Erik Schwimmer (ed.), *The Maori People in the Nineteen-Sixties* (Auckland: Blackwood and Janet Paul Ltd, 1968).

¹⁹ Ranginui Walker, *Ka Whawhai Tonu Matou: Struggle Without End* (Auckland: Penguin Books, 1990), p. 208.

²⁰ Whereas 85 percent of Maori lived in rural areas in 1945, this had dropped to just 40 percent twenty years later. See Wood, ‘Race and Politics in New Zealand’, p. 335.

²¹ Walker, *Ka Whawhai Tonu Matou: Struggle Without End*, p. 201.

²² Wood, ‘Race and Politics in New Zealand’, p. 333.

²³ Wood, ‘Race and Politics in New Zealand’, pp. 333-6, and Walker, *Ka Whawhai Tonu Matou: Struggle Without End*, p. 208 both discuss Maori violence in the cities to the extent that it made headlines. Wood notes that newspapers from this period carried headlines such as ‘Warning of coming racial violent’, ‘New Zealand hatching own racial bomb’, and ‘Discrimination common here’. It is reasonable to assume that the government and the New Zealand public were influenced by this type of media reporting.

institutional system – is responsible both for the prolonged failure of the government to recognise and act upon Maori problems, and for the approach taken by Maori in trying to achieve recognition of their concerns. It is a critical factor in explaining how the Maori condition came to be recognised as a problem.

First, the way in which the Treaty was handled by the government over the years created politico-institutional conditions that were not conducive to responding to Maori concerns. Almost as soon as the Treaty had been signed the government began a long process of land confiscation, setting the precedent for utter disregard for the Treaty's principles and its positive provisions for Maori. A long line of judicial decisions declared that the Treaty was not part of the law of New Zealand, and the rule that treaties – as laws made by the executive branch – do not alter the law of the land unless they are incorporated into statute further served to block recognition of Maori rights.²⁴

In the mid-to-late twentieth century the government approach changed to emphasise the symbolic significance of the Treaty as the 'founding document of New Zealand.' Celebrations of the signing of the Treaty began in 1940, with the government using them as demonstrations of national pride and unity, even hanging copies of the Treaty in schools as a 'sacred re-affirmation' of the 1840 agreement.²⁵ However, by portraying the Treaty as a symbol of New Zealand nationhood – of the forming of one nation from the partnership of two races – this placed the Treaty on the agenda in a way that *prevented* any special protection of Maori rights. By emphasising the 'equal rights' guaranteed to both Maori and Pakeha under the Treaty, the government was able to reinforce its policy of assimilation, which entailed the adoption of equal, British, mono-cultural rights and values for everyone.²⁶ To this end, the adoption of any separate policies for Maori was abhorred on the grounds that it would retard their progressive assimilation into Pakeha society.²⁷

The policy of assimilation that characterised New Zealand politics and society acted as a *constraint* to the definition of Maori socio-economic problems as connected to Crown injustices committed under the Treaty. The emphasis on egalitarianism meant that explanations of Maori deprivation were usually attributed to their unwillingness to save and work hard like their Pakeha counterparts. During this period, the lack of an effective institution to address Maori concerns, coupled with the lack of legislative recognition of the principles of the Treaty, allowed it to 'fall between the cracks.'

However, the New Zealand politico-institutional context also conditioned the way in which Maori sought to draw attention to their problems – protest activism – that was eventually the most successful factor in achieving the desired recognition. As discussed above, the ability of the New Zealand government to wield considerable control over Parliament and exert strong countervailing power against sectional interests means that unlike the political system of the United States – upon which Kingdon bases his study – lobby groups have few access points from which to influence policy. Groups that represent the interests of a minority must therefore seek ways to pressure the government. They may be incorporated formally into the government, becoming 'institutionalised' groups, or seek to pressure the government from the outside.

²⁴ Geoffrey Palmer, *New Zealand's Constitution in Crisis: Reforming Our Political System* (Dunedin: McIndoe, 1992), pp. 72-73.

²⁵ Claudia Orange, *The Treaty of Waitangi* (Wellington: Allen and Unwin, 1987), pp. 236-239.

²⁶ Colin James, *New Territory* (Wellington: Bridget Williams, 1992), notes that 'Maori who migrated into the cities were expected to adopt and conform to the prevailing value system', p. 12.

²⁷ Augie Fleras, 'The Politics of Maori Lobbying: The Case of the New Zealand Maori Council', *Political Science*, Vol. 38, No. 1 (July 1986), p. 31.

In 1962 Maori concerns were incorporated in the policy process by the establishment of the Maori Council, a body designed to represent moderate Maori opinion at the national level and act as the 'institutionalised guardian' of Maori interests. However, the government was under no obligation to act upon its submissions, and chose not to when it interfered with the imperatives of the prevailing social system, which was based on mono-cultural values.²⁸ The strong submissions made by the Council against the Maori Affairs Amendment Act of 1967, which provided an extension of the powers of compulsory acquisition of uneconomic interests and was viewed as one last 'land grab' by Maori, were ignored by the government.²⁹ Maori dissatisfaction with this institutionalised pressure group was a further impetus to the rise of activist groups dedicated to achieving government recognition of Maori Treaty rights.

In his study of pressure groups in New Zealand, Harris notes that in order for 'relatively resourceless' groups – which includes Maori activists – to gain public support it is necessary for them to influence the target's – in this case, government officials – reference public. The most common method by which these groups can achieve this influence is through the use of the mass media. To this end, in order to attract the news coverage necessary to communicate with the public, these groups must take a form of direct action, usually equating to political protests, demonstrations, marches and boycotts.³⁰

One of the earliest and most successful protest groups, identified as a 'relatively resourceless' group by Harris and as an 'outside' group by Fleras, was the Auckland-based Nga Tamatoa, a group comprising a diverse range of activists from university faculty to blue collar workers, all of whom sought to arouse public anger over government mistreatment of their *tangata whenua* status. This movement gained strength from two important sources: their ability to build upon and benefit from over a century of Maori protest, and the changing status of Maori that was being brought about through urban migration and education.

As to the first, the historian Claudia Orange has shown that the Treaty, the circumstances of its making, and the principles it expresses has been the focus of Maori aspirations and protest movements since the 1860s. The groups were articulating the same grievances that had been expressed for years: the loss of land, and the loss of *rangatiratanga*, defined as the right to control their own resources and hence their own future. Government attitudes toward race relations and the Treaty, such as those expressed by Native Minister Frank Langstone – 'no other country in the world has such a good record as New Zealand' – fuelled Maori dissatisfaction with the New Zealand myth of egalitarianism.³¹

Urbanisation and improving levels of education enhanced the success of protest groups such as Nga Tamatoa – whose leaders were mostly university-educated – in raising political consciousness among both the Maori and the Pakeha 'reference public.' Consciousness-raising mechanisms used among urban Maori include the dissemination of newsletters that opposed discrimination in housing, sport, employment and politics, and that pledged to uphold the Treaty of Waitangi. To achieve the attention of the Pakeha public, the groups

²⁸ Fleras, 'The Politics of Maori Lobbying: The Case of the New Zealand Maori Council,' pp. 32-37. The author notes that one of the reasons the New Zealand Maori Council was established by the National government was to counterbalance the parliamentary advantage Labour had with the four Maori seats, signifying that it was not established out of consideration for Maori but rather for the benefit of policy makers.

²⁹ Alan Ward, *An Unsettled History* (Wellington: Bridget Williams Books, 1999), p. 22.

³⁰ Paul Harris, 'Pressure Groups and Protest', in Hyam Gold (ed.), *New Zealand Politics in Perspective*, 2nd ed. (Auckland: Longman Paul, 1989), pp. 295-303. Harris defines 'relatively resourceless' groups as those who do not have established access to decision makers and often lack funds and paid organisational assistance.

³¹ See Orange, *The Treaty of Waitangi*, and Ward, *An Unsettled History*, p. 236.

targeted the annual government-sponsored celebration of the Treaty of Waitangi, creating demonstrations that attracted more and more supporters each year, culminating in the leaders of Nga Tamatoa declaring the 1973 celebration a day of mourning for the loss of 25.2 million hectares of Maori land.³²

Mulgan has noted that engaging in this sort of action is the most powerful weapon of 'outside' groups – especially those of aboriginal minorities – as it has the potential to damage the government's reputation for social justice.³³ The groups were also able to overcome the disadvantages of this type of political action – such as the potential for the government or public to doubt the credibility or seriousness of purpose of the group³⁴ by enlisting the support of the 'institutionalised' pressure group: the New Zealand Maori Council. When the government sought advice upon how to deal with Maori activism, the Council made a submission to the government that cited fourteen statutes that contravened Article 2 of the Treaty.³⁵ This action strengthened the claims of the protest movement, and illuminated the unity of purpose among both extreme and moderate Maori.

By using the 'politics of embarrassment' to highlight the dissatisfaction of Maori with mono-cultural government policies, the protest groups were able to challenge the long-standing myth of egalitarianism held by many New Zealanders. By portraying that the disadvantaged position of Maori was due to the failure of the Crown to honour the guarantees embodied in the Treaty of Waitangi, the protest groups were able to present the Maori condition as one that violated national values, a key factor – identified by Buhrs and Bartlett – in achieving government recognition of a problem.

Returning to Kingdon's outline we can now say that the government *heard about the problem* via the 'outside' protest movements, which were strengthened by the submissions of the Maori Council. These methods were far more important than indicators, focusing events or feedback, which on their own would not have facilitated the recognition of Maori rights under the Treaty. In terms of *how the condition is defined as a problem*, Kingdon makes a very important point that the *category* of classification of the problem is the key to government recognition. In this case, the Maori protest movements were able to convey that their deprivation was a rights-based problem rather than simply a socio-economic problem.

The establishment of the Act was also facilitated by developments in the second stream identified by Kingdon: that of politics. First, the *national mood* was changing from that which acted as a *constraint* to the placing of Maori concerns on the agenda, to that which became an *impetus* for their recognition. Several factors facilitated this. First of all, urbanisation had brought Maori and Pakeha face to face, with the growing media coverage of crimes heightening Pakeha awareness of the racial inequality that existed in New Zealand.

³² Walker, *Ka Whawhai Tonu Matou: Struggle Without End*, pp. 210-211.

³³ Richard Mulgan, *Politics in New Zealand*, 2nd ed. (Auckland: Auckland University Press, 1997), p. 229.

³⁴ Harris, 'Pressure Groups and Political Protest', p. 307. While direct protest action captures the public's attention through media coverage, the difficulty of conveying a complex argument means that it usually needs to be backed up with another form of pressure to give it credibility. This type of political protest also has the effect of alienating Maori supporters who may have agreed with the group's aims but not their methods, and may also prevent the development of Pakeha sympathy toward the issue. Fleras, 'The Politics of Maori Lobbying: The Case of the New Zealand Maori Council' notes comments by the President of the Maori Council: 'activist groups such as Nga Tamatoa rightfully focused attention on "where the shoe pinches," but their method of doing so alienated public sympathy and incurred political backlash.'

³⁵ Walker, *Ka Whawhai Tonu Matou: Struggle Without End*, p. 211. These statutes ranged across a variety of legislative topics and included the Public Works Act, the Mining Act, the Rating Act, the Petroleum Act and the Town and Country Planning Act.

Secondly, academics had begun to devote attention to the Treaty and its relevance to modern-day New Zealand. New studies provided fresh insights as to why it was signed and the differences between the English and Maori versions, while legal scholars gave increasing attention to the Treaty's status in international law. This increase in public interest in the Treaty and the drift in national sentiment is epitomised by Maori academic Koro Dewes, who observed in 1968: 'there is no doubt that many New Zealanders are beginning to search for something to believe in which will credibly express their nationalism, and so the Treaty of Waitangi is becoming recognised as a symbol of our nationhood.'³⁶ The Maori activist groups were able to directly challenge how the government had treated what was coming to be regarded as New Zealand's founding document. These protest movements probably gained added salience from the influence of the American black civil rights movement and social disturbance that was occurring in the United States, another factor identified by Buhrs and Bartlett.

The second relevant factor was the *election of a new government*. In this case, the third Labour government – elected in 1972 under the leadership of Prime Minister Norman Kirk – showed unprecedented sensitivity and concern for Maori affairs.³⁷ An alliance with the Maori politico-spiritual group Ratana in the 1930s formed the original basis of the Labour party's alliance with Maori, which had delivered the four Maori seats to the Labour Party at each subsequent election. It has been stated that 'Maori policy has occupied a special place in the hearts and minds of Labour politicians.'³⁸

Despite the traditional Labour attitude and response to Maori concerns being limited to promises and token symbolic gestures, the 1960s renaissance of Maori activism and its growing national impact brought about a change in Labour policy. Reflecting this, a considerable section of Labour's 1972 election manifesto was devoted to Maori interests, with the party promising to advance Maori language and studies, consult with Maori people in decisions pertaining to them, declare the 6th of February as New Zealand Day, and 'examine a practical means of legally acknowledging the principles set out in the Treaty of Waitangi.'³⁹ The seriousness of Labour's efforts to involve Maori in policy making was also reflected in the composition of Cabinet after the 1972 election, which saw portfolios given to two of the four Maori MPs.⁴⁰ This was a factor that enabled the Minister for Maori Affairs Matiu Rata to achieve the passing of the Maori Affairs Amendment Act in 1975, an act that 'painstakingly

³⁶ Quoted in Orange, *The Treaty of Waitangi*, p. 243.

³⁷ Given that Labour had been out of power for twelve years, the election in 1972 came as a surprise to some. Labour's popularity and credibility with the public had increased under its leader Norman Kirk, while the National government had run into a host of problems ranging from inflation, rising unemployment and a foreign policy towards Vietnam that was proving increasingly unpopular. The Labour Party slogan – 'it's time for a change' – was an accurate reflection of the public mood. See Michael Bassett, *The Third Labour Government* (Palmerston North: Dunmore Press, 1976), pp. 11–13 for the election details, and also Michael Hirschfeld, 'Retrospect: Labour Now and Then' in Ray Goldstein and Rod Alley (eds.), *Labour in Power: Promise and Performance* (Wellington: Price Milburn, 1995), p. 13.

³⁸ Palmer, *New Zealand's Constitution in Crisis: Reforming Our Political System*, p. 79.

³⁹ See Paul Harris and Stephen Levine et al (eds.), *New Zealand Politics Source Book*, 2nd ed. (Palmerston North: Dunmore Press, 1992), p. 163 for a copy of the manifesto. The overall tone was of national pride and community, epitomised by the 'moral' foreign policy stance taken towards the Vietnam War and French nuclear testing in the Pacific, and the cancellation of the Springbok Tour, all issues that divided New Zealand.

⁴⁰ David Tabacoff, 'The Role of the Maori MP in Contemporary New Zealand', in Stephen Levine (ed.), *New Zealand Politics: A Reader* (Melbourne: Cheshire Publishers, 1975), p. 379. The author notes that – as Labour MPs – the four Maori MPs had been excluded from exerting any influence on the formation of Maori policy during National's long tenure in office.

repairs the invasion of the rights of the Maori people brought about by the legislation of 1967'.⁴¹

Adding to this changing political mood, the third factor in agenda setting is the role played by visible participants. In this case, the influence of Prime Minister Norman Kirk accounts for his role as *policy entrepreneur*. Possessing a strong vision for New Zealand, Kirk was preoccupied with building a strong sense of New Zealand national identity, an identity within which the Treaty of Waitangi – as the nation's most important document, relevant to *all* New Zealanders – would form the core. Not only did this mean publicising the importance and relevance of the Treaty among all New Zealanders, but it also meant recognising the importance of this document in legislation. In 1973 Kirk stated that 'the focus and dignity of that agreement should and will be recognised by Parliament in a form that signifies and symbolises the importance of that Treaty to every New Zealander'.⁴²

Kirk's concern for Maori was also reflected in his contributions to land development, Maori education and cultural preservation during his period in office. This was against the background of the other initiatives – including attempts to strengthen Maoritanga, check the alienation of Maori land, and consult with Maori – undertaken by the Labour government in this period.⁴³

In summary, the role of the protest movements in drawing government attention to the problem and creating a national mood receptive to government action was an extremely important one. The prevailing political and social ideology and institutional arrangements meant that indicators, feedback and focusing events were simply not enough to achieve this recognition. The ability of the protest movements to link Maori problems to New Zealand's national values and conception of identity also assisted government and public recognition of the problem. Against this changing national mood, the election of the Labour government in 1972 provided policy entrepreneur Norman Kirk with a *policy window* whereby he could agitate for his particular policy proposal.

TREATY OF WAITANGI AMENDMENT ACT 1985

The Minister of Maori Affairs Matiu Rata claimed that the 1975 Treaty of Waitangi Act was a 'milestone of social and political advancement', which finally achieved the 'longstanding Maori wish to have the Treaty incorporated into legislation.' However, the Act was severely criticised by Maori activist groups and other Members of Parliament as being nothing but 'window dressing'.⁴⁴ Reflecting the cautiousness of the Labour approach – by which Labour was willing to 'look to the future but not dwell on the past' – the Waitangi Tribunal was awarded no power of retrospective inquiry. This effectively excluded any examination of

⁴¹ Michael Bassett, *The Third Labour Government*, p. 189. The Act widened the definition of Maori citizen and introduced measures that made it more difficult to sell off Maori land.

⁴² From Kirk's speech to the nation at Waitangi in 1973. Quoted in Bill Jeffries, 'Kirk's Prime-ministership, 1972 - 1974', in Margaret Clark (ed.), *Three Labour Leaders* (Palmerston North: Dunmore Press, 2001), p. 111. See Koro Wetere, 'Norman Kirk and Maori', in Margaret Clark (ed.), *Three Labour Leaders*, pp. 120-121, for the view that Kirk 'never went away from the Treaty as being the major input to the constitutional arrangements of New Zealand'.

⁴³ Richard Thompson, 'Race Relations', in Ray Goldstein and Rod Alley (eds.), *Labour in Power: Promise and Performance* (Wellington: Price Milburn, 1995), p. 99.

⁴⁴ *New Zealand Parliamentary Debates* (NZPD) 1975, pp. 5407-8.

the past wrongs that constituted the bulk of Maori claims.⁴⁵ Its powers were furthermore confined to 'hearing and enquiring' and 'reporting and recommending,' with no power of legal enforcement.

However, the passing of the Treaty of Waitangi Amendment Act in 1985 reflected an abrupt change in government policy. Sponsored by the Minister of Maori Affairs, Koro Wetere, this Act expanded the powers of the Waitangi Tribunal in three main areas, strengthening its political and legal power significantly. Its membership was increased from three to seven, with a quota of at least four Maori members; it was given increased funding to research claims; and most importantly, its jurisdiction was extended retrospectively, enabling it to investigate claims as far back as 1840. By ensuring that all past *and* future Crown actions and inactions could be tested against the principles of the Treaty, this Act considerably widened the purview of the Tribunal. Over the years this has come to have a huge impact upon New Zealand society, politics and constitutional arrangements, and has facilitated reforms and policy that have advanced Maori rights in many different areas.⁴⁶

The same three factors pertinent to agenda setting as specified by Kingdon will be applied here. First, government recognition of the problem was achieved on the one hand by increased Maori protest, which showed the government that the Tribunal had not solved their problems and had not met their needs, and on the other hand, by the policy recommendations made and actions taken by the Tribunal itself.

For Maori, the lack of retrospective jurisdiction of the Tribunal made it a big disappointment. Many felt that the Tribunal was vastly inadequate to tackle the deep-seated historical grievances that were at the centre of their protests. These concerns were given substance by the palpable lack of enthusiasm of the National Party – elected in 1975 – towards the Tribunal: it was not convened until 1977 and was not given much support.⁴⁷

At first, Maori dissatisfaction with the Tribunal seemed justified by its very first ruling. Charged with illegally taking shellfish for a tribal hui, Joe Hawke from Ngati Whatua claimed to be exercising a tribal fishing right under the Treaty. The Tribunal ruled against the claim on the basis that the fisheries regulations already provided for the granting of permits to take fish for hui. This gave the impression that the Tribunal was not a particularly sympathetic forum. These initial Maori misgivings about the effectiveness of the Tribunal were compounded by the formal, legal and 'Pakeha' manner in which the Tribunal considered its claims. Its first hearing, for example, was held in a 'glitzy' Auckland hotel. For many Maori, these 'Pakeha' judges and surroundings could hardly be expected to deliver decisions that would reflect the spirit of the Treaty.⁴⁸

The reaction of many Maori was to continue to draw attention to their dissatisfaction through further protests and demonstrations. The social disturbance that followed remains etched into the minds of many New Zealanders, many of whom had been previously unaware of the seriousness and scale of Maori concerns. While debates were being held in the House over the 1975 Act, protest groups such as Nga Tamatoa, Kotahitanga and the Maori Organisation of Human rights succeeded in raising Maori political consciousness across the

⁴⁵ Ward, *An Unsettled History*, p. 26.

⁴⁶ See Andrew Sharp, 'The Treaty, the Tribunal and Law: Recognising Maori Rights in New Zealand', in Hyam Gold (ed.), *New Zealand Politics in Perspective*, 3rd ed. (Auckland: Longman Paul, 1992), pp. 123-142 for a description of the various ways the Treaty has been incorporated into New Zealand's political and legal system.

⁴⁷ Andrew Sharp, *Justice and the Maori*, 2nd ed. (Auckland: Oxford University Press, 1997), p. 75.

⁴⁸ Sharp, *Justice and the Maori*, p. 76.

country to form a powerful Maori land rights movement. The largest Maori protest movement known as the Matakite led a Maori land march of over 30 000 people to Parliament under the banner of 'not one more acre of land' [to be alienated]. Converging on Parliament on the 13th of October, the leaders presented the then Prime Minister Bill Rowling with a Memorial of Rights, which sought the protective principle of entrenchment over Maori land, and demanded that clauses in the law to take, alienate, designate or confiscate Maori land be repealed.⁴⁹

By stopping at marae overnight during the march, the leaders of the movement were able to spread the aims and cause of the movement, which facilitated the politicisation of North Island Maori in a unity of purpose. This unity of purpose and increasing resolve was also evident in the occupation of Auckland's Bastion Point in 1977.⁵⁰ In 1979 a new group known as the Waitangi Action Committee set up branch committees throughout the country to continue to raise Maori consciousness, and began to mount demonstrations against the annual Waitangi Day celebrations. In 1984 these groups coalesced to form a 3000-strong 'peace march', which marched to Waitangi to disturb the Treaty celebrations. Adding to the momentum and support for the movement was the network of alliances created with Pakeha activist groups, perhaps the most significant being the National Council of Churches, a group which supported the aims of the protest movements and was promoting studies of the Treaty.⁵¹

To promote a unified approach to the Treaty, the Maori Ecumenical Council of Churches and the New Zealand Maori Council sponsored a major gathering at Turangawaewae marae at Ngaruawahia in September 1984. This was attended by over 1000 people, and resulted in a forceful resolution calling on the government to make the jurisdiction of the Waitangi Tribunal retrospective, and to give it the added resources that would be necessary. This was followed by a government-sponsored hui in 1985, which reiterated the same points. These protest movements – and their demands for a retrospective jurisdiction – provided clear *feedback* that the simple establishment of the Tribunal had not solved Maori problems. Maori activists were not 'gulled into supine acceptance of a Waitangi Tribunal as a panacea for Maori grievances when it had no retrospective power.'⁵²

The second important element that had an impact upon problem recognition was the actions of the Tribunal itself. From an extremely rocky start – whereby its first President, Sir Graham Latimer lamented that it 'operated out of a billy can' and had difficulty coping with its workload – the Tribunal gained prominence and authority with the appointment of Edward Taihakurei Durie to the position of Chief Judge of the Maori Land Court in 1981, who becomes ex-officio Chair of the Tribunal. Being described as a 'very capable judge, a brilliant and a subtle advocate and a man of marked political skill', Judge Durie was able to increase the prestige of the Tribunal in the eyes of both Maori and Pakeha.⁵³ He carried out considerable procedural changes, which included the capacity for hearings to be conducted on maraes, with full observation of Maori protocol, and provided for submissions to be expressed in the Maori language.⁵⁴

⁴⁹ Walker, *Ka Whawhai Tonu Matou*, p. 214.

⁵⁰ For details of the 506-day occupation, see Walker, *Ka Whawhai Tonu Matou*, p. 214.

⁵¹ Walker, 'The Maori People: Their Political Development', p. 331.

⁵² Walker, 'The Maori People: Their Political Development', p. 334.

⁵³ Sharp, *Justice and the Maori*, pp. 74-77.

⁵⁴ Paul Temm, *The Waitangi Tribunal: The Conscience of a Nation* (Auckland: Random Century New Zealand, 1990), p. 5.

The most significant contribution made by Judge Durie was that he was able to use the principles of the Treaty as expressed in the Maori version – with their Maori interpretation – to widen the Tribunal's scope for enquiry, investigation and comment. This approach was first embodied in the Tribunal's report on the Motonui claim, a claim that was brought by the Te Atiawa people in 1981 and was concerned with the pollution of traditional Maori fishing reefs by town sewerage and oil extraction. The report of the Tribunal drew on Maori cosmology and traditional world-view to highlight the nature of Maori rights and interests in the reefs, signalling a rediscovery of the Maori language version of the Treaty, especially the words *taonga*, *kawanatanga* and *rangatiratanga*.⁵⁵

For Maori, seeing their deeper cultural values being recognised by a state institution was a new experience, and this created positive encouragement for them to participate in and support the institution.⁵⁶ Maori elders who had previously stood aloof from the radical protest groups began to exhibit growing support for their objectives due to the Tribunal's activities. The former Chief Judge of the Tribunal Sir Graham Latimer, in fact a member of the National Party, began to express his views that the Treaty should be honoured, Maori control over Maori resources restored, and breaches of the Treaty by governments since the 1850s redressed.⁵⁷ The Tribunal's sophisticated interpretation of the Treaty's principles in this way not only contributed to the growing unity of cause among Maori, but also gained respect from politicians and judges. This focused government attention on the problem.

In the *political stream*, three factors facilitated the agenda setting of this issue: the resignation of Matiu Rata in 1979 from the Labour Party and his formation of a rival political party, 'Mana Motuhake'; the changing national mood; and the election of the Labour party in 1984.

Labour's loss of the 1975 election, coupled with Cabinet's refusal to allow a retrospective clause in the Treaty of Waitangi Act, had a profound influence on Matiu Rata. It led to his realisation that despite being a member of the supposedly 'Maori' party, Maori interests were *always* going to be subjected to Pakeha interests.⁵⁸ His increasing identification with the growing Maori activism was apparent in his speech of resignation from the Labour party in May 1979: 'the 139-year experience of the "we are one people" concept has been, for the Maori, an abject failure. We have as a people never felt more let down, more insecure and more economically and socially deprived. We will no longer tolerate policies that take no account of our language, customs and lifestyle. We will master our own affairs, we must command our own destiny and we want every acre of land wrongfully taken from us back.'⁵⁹

Rata commenced a tour of his Northern Maori constituency soon after his resignation and explained that his political motive was to achieve government recognition of the Treaty of Waitangi in legislation. He managed to gain support from many tribal elders, including the well-respected Sir James Henare, who had been influenced not only by the radical Maori protesters, but also from sympathisers among the Pakeha population.⁶⁰ Building on this growing popularity, Rata formed a political party – Mana Maori Motuhake – whose 1980

⁵⁵ Ward, *An Unsettled History*, p. 28.

⁵⁶ Jane Kelsey, *A Question of Honour? Labour and the Treaty 1984-1989* (Wellington: Allen and Unwin, 1990), pp. 56-57.

⁵⁷ James, *New Territory*, p. 127.

⁵⁸ Walker, 'The Maori People: Their Political Development', p. 332. This realisation was compounded by Rata's demotion from the front bench and Labour's non-appointment of a spokesperson on Maori affairs.

⁵⁹ Quoted in the *Auckland Star*, 10 November 1979.

⁶⁰ James, *New Territory*, p. 127.

election manifesto assured the public of its commitment to extending the jurisdiction of the Tribunal. After capturing 38 percent of the vote for Northern Maori in the parliamentary by-election (which he lost), Rata went on to establish over 100 branches nationwide, soon claiming a membership of 15,000. The Labour Party viewed the rise of Mana Motuhake as a direct threat to its committed constituency of Maori activists, which greatly increased the importance Labour attributed to the problem.⁶¹

The protest demonstrations also affected the national mood, creating public opinion that *something* needed to be done to quell the protests. By pinpointing occasions such as Waitangi Day celebrations to be the target of protest demonstrations, Maori activists were ensuring that their cause would receive ample media coverage. Many long-standing issues such as land confiscations of the 1960s, disturbance of Maori burial sites, rights to rivers and foreshores, and devious land purchases were the subject of protests and media campaigns.⁶² Logically, these campaigns were compelling and appealed to New Zealanders' sense of fairness and equality.⁶³

Another factor that influenced the national mood was the period before the election of the fourth Labour government in 1984, whereby New Zealand society had experienced sharp divisions of opinion regarding many policies undertaken by the Muldoon government, then in its third consecutive term. Public opinion had been divided on issues such as the massive police and military dispersal of the occupiers of Bastion Point, and on the issue of the South African rugby tour of 1981. Despite public hostility to apartheid, Prime Minister Robert Muldoon was determined to persist with the tour, which brought unprecedented civil disturbance to New Zealand society and undoubtedly a new ideological edge to the race relations debate. The environmental damage wrought by the 'Think Big' policy of the Muldoon government also spawned a rising concern about the environment. Many of the newly-created groups supported the Tribunal's report on the Te Atiawa claim. By working together they were able to secure the government's acceptance of some of its recommendations.⁶⁴

Not only did these government policies contribute to creating the conditions – or national mood – conducive to public recognition of the legitimacy of Maori claims, they also paved the way for the election of the fourth Labour government in 1984. For their part, Labour politicians had been influenced by the growing intensity of the Maori protests and had come to see an amendment to the legislation as a 'convenient way to deal with the welter of Maori protest' and as a way to shore up its grip on the Maori seats that were threatened by Mana Maori Motuhake.⁶⁵ Labour was similarly aware that the recommendations of the Tribunal in the Motonui claim corresponded with the aims of the conservation movement, and that the Tribunal's recommendations about the need to preserve the Maori language also commanded a good deal of public support. Labour thus went into the 1984 election committed formally to extend the Tribunal's jurisdiction back to 1840.⁶⁶

A necessary factor which provided the final impetus – the push – for the inclusion of such a commitment in Labour's election manifesto is found in the third factor identified by

⁶¹ Walker, 'The Maori People: Their Political Development', p. 334.

⁶² Ward, *An Unsettled History*, p. 28.

⁶³ James, *New Territory*, p. 127.

⁶⁴ Ward, *An Unsettled History*, p. 28.

⁶⁵ Ward, *An Unsettled History*, pp. 129–130.

⁶⁶ See James, *New Territory*, p. 127.

Kingdon, that of *visible participants*. The most important political actor that influenced Labour's decision to address Maori affairs in this way was the Deputy Prime Minister and Minister of Justice, Geoffrey Palmer. Palmer is the one credited with turning the Labour party's formal attention to redressing Maori grievances on the basis of the Treaty rights. His attention to the constitutional basis of the Treaty has been called a 'superb example of the capture of a position that few in the Party cared much about.'⁶⁷

As a constitutional lawyer, Palmer was aware of the limitations posed by the New Zealand political system for protecting the rights of minorities. His experiences studying in the United States during the civil rights movement enabled him to understand the potential for social disorder if a significant minority defined by race was allowed to develop grievances that are ignored by the government. He displayed a genuine concern for the rights of Maori and advocated measures to address both the social deprivation and the injustice, proposing that the Treaty should be recognised formally as New Zealand's founding document.⁶⁸ He reasoned that a quasi-judicial process like the Waitangi Tribunal would be able to research old grievances and recommend a course of action that the government of the day would be free to consider and decide upon. At the same time, it would give Maori an outlet for their grievances.⁶⁹ It was Palmer who announced Labour's Maori policy on the 2nd of February 1984.⁷⁰

In his quest for Maori justice and equality, Palmer was also supported by the Minister for Maori Affairs, Koro Wetere, who had been a Member of Parliament during the third Labour government and had helped with the passage of the Treaty of Waitangi Act. It has been argued that in terms of Maori relationships with Pakeha, these two 'revolutionary' figures achieved the most important constitutional developments since the signing of the Treaty itself.⁷¹ The existence of these two *policy entrepreneurs*, particularly Palmer, constituted the final impetus for the passing of the Amendment in 1985.

An important factor in the second change – which is not addressed in Kingdon's theory – is how the notion of *path dependence* can condition agenda setting and policy change. Pierson defines path dependence as occurring when 'preceding steps in a particular direction can induce further movement in the same direction.'⁷² He applies this concept to that of institutional change, stating that the existence of *increasing returns* and *positive feedback* can encourage actors to 'focus on a single alternative and to continue movement down a particular path once initial steps are taken.'⁷³ The concept of *increasing returns* includes considerable start-up costs and self-reinforcing processes such as *learning effects*, whereby

⁶⁷ Tipene O'Regan, 'The Labour Party and the Treaty', in Margaret Clark (ed.), *The Labour Party after 75 years* (Wellington: Department of Politics, Victoria University, 1992), p. 31.

⁶⁸ Palmer, *New Zealand's Constitution in Crisis*, pp. 74–78.

⁶⁹ Palmer, *New Zealand's Constitution in Crisis*, p. 81.

⁷⁰ See Kelsey, *A Question of Honour? Labour and the Treaty 1984–1989*, p. 47 for an outline of Palmer's Maori policy with regard to the Tribunal and the Treaty. His Treaty policy had three components: 1) a revision of how Waitangi Day would be celebrated after consultation with Maori 'to make it more appropriate to the spirit of the Treaty'; 2) an expansion of the powers of the Tribunal by increasing its membership from three to seven, with a stronger Maori representation, the provision of more resources, and the extension of its jurisdiction to empower it to hear grievances dating back to 1840; 3) the incorporation the Treaty of Waitangi into Palmer's proposed Bill of Rights. His policy was incorporated virtually unchanged into Labour's 1984 manifesto.

⁷¹ O'Regan, 'The Labour Party and the Treaty', p. 30.

⁷² Paul Pierson, 'Increasing Returns, Path Dependence and the Study of Politics', *American Political Science Review*, Vol. 94, No. 2 (June 2000), p. 252.

⁷³ Paul Pierson, 'The Limits of Design: Explaining Institutional Origins and Change', *Governance*, Vol. 13, No. 4 (October 2000), p. 492.

as time goes on the individuals involved may develop specialised skills, and the institution itself a particular social or political identity. This makes reversal of course, or even consideration of an alternative that deviates from the established course, highly unattractive as *exit costs* are high.⁷⁴

Exactly why enlargement of the powers of the Tribunal was chosen as the preferred policy option is not the subject of this article; however, we can surmise that the growing popularity of the Tribunal among Maori, its proven ability to apply the principles of the Treaty to the modern setting, and the appropriateness of it – as a quasi-judicial commission of inquiry – in the context of the New Zealand political system would have limited consideration of any alternative policy options. It provided the increasing returns and positive feedback for policy entrepreneur Geoffrey Palmer and ensured that exit costs would have been high.

Perhaps more relevant to our study is the suggestion by Pierson that an individual's understanding of our political and social world is also susceptible to notions of path dependence. Once established, Pierson argues that 'basic outlooks on policies, ranging from ideologies to understandings of particular aspects of government or orientations toward political groups or parties are tenacious. They are also path-dependent.'⁷⁵ It is possible that this path-dependent way of thinking – built up over years of allegiance with the four Maori MPs – conditioned the Labour party's view that Maori policy was *their* domain, one upon which they should act. This may have also influenced the National party's view of Maori policy: primarily as the preserve of the Labour party. Comments by Wetere somewhat confirm this stance. He stated that 'we got so far [in 1985] because we were able to go back to those policies [initiated during the third Labour government] and build on them.'⁷⁶ This implies that the policy was possible because of the growing tolerance and receptivity of Labour politicians to the Maori cause.

CONCLUSION

This article has attempted to apply Kingdon's theory of agenda setting to the enactment of two major pieces of New Zealand law-making – the Treaty of Waitangi Act in 1975, and the Treaty of Waitangi Amendment Act in 1985. It has also made use of ideas developed by Buhrs and Bartlett in their analysis of environmental policy making in New Zealand, as well as notions of path dependence.

In each instance, protest movements were a key factor in achieving problem recognition by the government. It was far more influential than indicators, focusing events or feedback, which on their own proved insufficient. By exposing the falseness in the official claims of national unity and egalitarianism embodied in the annual Treaty celebrations, the protesters were able to directly challenge many of the most important national values held by New Zealanders. By conveying that Maori deprivation was due to the failure of the government to protect Maori Treaty rights – thus classifying the problem as a *rights* problem, rather than simply a *socio-economic* problem – the protest movements were able to break through the barriers provided by the 'closed' New Zealand political system and achieve government

⁷⁴ Pierson, 'Increasing Returns, Path Dependence and the Study of Politics,' pp. 259-260.

⁷⁵ Pierson, 'Increasing Returns, Path Dependence and the Study of Politics,' p. 260.

⁷⁶ Wetere, 'Norman Kirk and Maori', p. 117.

action. Clearly, the role of protest movements in the context of parliamentary democracy highlights a gap in Kingdon's theory, which was based on the American political context.

Alongside problem definition, events in the political stream – most notably changes in national mood and the election of the Labour government – were also instrumental in the agenda setting process. However, the importance of the protest movements is again reinforced when one considers that both the transformation in public mood and the more accommodating attitudes of Labour party politicians were both, to a certain extent, products of this activism. It is likely that overseas events, such as the well-publicised civil rights movement in the United States, added to the ability of protestors to convince the public and the government of the relative seriousness of the problem, and of the need to act.

The final impetus for change came from politicians acting as 'policy entrepreneurs', pushing for recognition of the problem as an issue related to Maori rights rather than socio-economic deprivation. The political climate within the Labour party – especially the relatively high priority placed on Maori policy, as reflected in the inclusion of Maori in Cabinet – enhanced the ability of these actors to push for government action.

Alongside the relevance of the New Zealand politico-institutional system, ideas about path dependence help to explain the way in which policy change builds upon previous policy innovation. The article suggests that the increasing returns supplied by the Tribunal ensured that the costs of exit from the policy were too high, which conditioned the government's response to expand the Tribunal's powers.

The approach to agenda setting developed by Kingdon, and the revisions made in this article to account for the New Zealand politico-institutional context and notions of path dependence, retain their relevance for understanding how the government and individual political parties approach the issue of the Treaty and the Waitangi Tribunal today. The capacity for a previous policy, or even previous attitudes toward a policy, to lock a government, or a party, or even individuals or the public as a whole, into adopting or approving a particular policy remedy should not be underestimated. While change can occur, it will be bounded and will take place within a set of choices already narrowed by previous policy decisions. These ideas help to explain other, subsequent amendments to the Treaty of Waitangi Act – which have further expanded its powers – and even the inclusion of references to the Treaty and its 'principles' in other New Zealand statutes.

This article also shows that while drastic change in government policy is possible, it is dependent upon the timely interaction of a multiple of factors, including changes in national mood and politics, but also interest group activity that targets the public and is able to convince them of the credibility of their cause. While the New Zealand parliamentary system of government lends itself to frequent criticism for its centralisation of legislative power and lack of access for 'outside' interest groups, the ability of Maori protest groups to achieve government recognition of their problems highlights the availability of channels which may not have the same impact in other political systems. By acknowledging Maori claims to special rights under the Treaty of Waitangi, the government was able to overturn the colonialist mentality that had prevented the recognition of these rights, displaying a responsiveness that belies these accusations.⁷⁷

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