New Zealand Herald reports on the on-going Anglican contribution to Constitutional Reform

CHURCH POINTS TO RACE RELATIONS

NZ Herald, 27th March

An upper house of parliament to deal with Treaty of Waitangi claims is among the Anglican Church ideas for the constitutional reform of New Zealand.

The church has reformed its own rules to ensure its minority Maori and Pacific Island congregations cannot be swamped by the European Church and is now working on a proposal for the whole country.

The move was announced by the new Bishop of Auckland, the Rt. Rev John Paterson at his installation on Saturday. He said it was clear from the debate over the Government's Fiscal Envelope proposal that Maori has done some hard thinking about the legitimacy of the state and the rule of law.

"*It is just as clear to me that others who live in this nation need to be thinking clearly and carefully about the same issues. They are far too important to be left to official policy makers in the Treasury, in Government departments, in ministerial advisory offices and in the hands of politicians*", he said.

The Church would propose a model of constitutional reform for the country embodying similar principles to its own partnership and perhaps an upper house for consideration of Treaty of Waitangi claims.

Bishop Paterson said the Church's system was working well. "*The nation could learn from what we are doing. It has created a trust and co-operation that wasn't there before*".

THE HIRANGI HUI

The first major Hui in response to the "Government's Proposals for the Settlement of Treaty Claims" was held at Hirangi Marae, Turangi on 29th January 1995 at the call of Sir Hepi Te Heuheu. Over 1000 people attended the Hui representing major tribes from both the North and South Islands.

After looking at the Crown's proposals and finding them inadequate the Hui proposed an alternate approach. It reads as follows:

"Constitutional Change

Although the 1986 New Zealand Constitution Act officially set New Zealand free to decide its own laws and make its own constitutional arrangements, until recently there has been no move to make any major changes to the system imposed by the British parliament in the 1852 New Zealand Constitution Act.

A Treaty Based Constitution

The need for a clear constitution was reiterated at Hirangi. According to those making submissions Maori are not content to depend on the goodwill of successive Governments or to be exposed to inconsistent policies developed to suit the needs of Pakeha. Progress in one decade all too frequently must be revisited a decade later. Despite repeated calls for the Treaty of Waitangi to be entrenched as a constitutional document, it dangles precariously in front of Governments who have other agendas and often little sympathy with Maori aspirations. The Hui concluded that greater certainty was needed. As the nation gears itself for a debate on major constitutional reform (republicanism, a new flag, a N.Z. Honours system, the implementation of M.M.P.) it is an opportune time to develop a constitutional covenant based on the Treaty of Waitangi. Until that occurs Maori identity and security will forever run the risk of being compromised.

The Development of a Constitution for New Zealand

The terms of the Government's proposals for the settlement of Treaty of Waitangi claims give little reason to believe that there has been any fundamental move away from a colonial mind set and towards a system of laws and policies which encompass modern New Zealand's unique heritage and origins. Were it to be guided by a Treaty based constitution, the Hui considered that the Crown (or its republic equivalent) might not necessarily assume ownership over the beds of lakes or rivers or model a New Zealand common law exclusively on the British system or even conclude the sovereignty could not be shared between the Crown and Maori.

N.Z. HERALD
4th January 1995

Treaty only second statement of rights

By TONY CHADWICK, of Te Kaha, a board member of Te Runanga o te Whanau

Your correspondent Malcolm Bailey deems the Treaty of Waitangi Act 1975 to be based on misinterpretation of the treaty, claiming that the English draft specifies "all the people of New Zealand" as being under crown guarantee.

This means, he says, that there are no exclusive Maori rights, hence no need for the Waitangi Tribunal or for any "fiscal envelope."

Mr Bailey is himself misinterpreting the treaty. For a start, it has to be read as the second statement of "rights," the first being the 1835 declaration of independence signed eventually by 52 chiefs and referred to in the 1840 document.

The treaty gave the Maori people nothing except certain pledges and offers by the British; Maoris had full sovereignty, were already modernising flat out and in 1840 had very substantial military power.

The Christian chiefs were keen to ally themselves to Britain, since English influence was strongest and there were important Australian trade considerations, and were quite prepared to recognise the British Sovereign as "chief of chiefs," as it were.

This did not mean vassalage however: chiefs had their own mana and rangatiratanga — full independence and authority — and the whole of New Zealand was covered by these.

New Zealand was a homogeneous commonwealth of autonomous tribal "states," whose boundaries, like those of Europe, fluctuated somewhat but were well known.

Mana was not included in the treaty since it was not an issue: rangatiratanga (government) was stated clearly to be the province of the "tangata whenua" or "the people of New Zealand."

All foreigners resident in New Zealand at the time were properly "subjects" of the local leaders, but of the 2000 estimated to be here around 1839, fewer than 300 could be considered genuine settlers.

They are all referred to as "Her Majesty's subjects" in the English version, and "nga tangata no tona iwi" in the official treaty written in the New Zealand language.

The Maori dilemma was that while they could quite easily under old "rangatira rules" have wiped out all the troublemakers overnight, the new Christian ethic forbade this.

Hence the dialogue with the British and directly with King William, and the request for a "lawmaker" who could help to codify appropriate laws. Unfortunately the King died and the new sovereign, teenager Victoria, was putty in the hands of a new Tory Government.

Captain Hobson himself told the Hokianga chiefs that he was sent to bring British law to bear on the troublemakers and land thieves. He had in fact two warrants in his pocket — one of Lieutenant-Governor if Maoris bought the proposal, the other of British Consul if they did not.

Since he was already terming himself Governor before he set foot in the country, there is no doubt which job he was after.

Missionary advisers coined the term "kawanatanga" to describe the proposed relationship between the Maori people and the Crown. This has traditionally been taken to mean "government" but a study of the Maori texts, being those officially recognised in international law, show that what was meant was "governance" which is not the same thing.

Kawana can well be a transliteration of governor, but in Maori it has connotations of ceremonial procedure or "kawa."

Every iwi has its kawa which sets down the way things are done.

"Na" is a word signifying belonging or possession, and "tanga" signifies putting things in their rightful place or state of readiness. To non-English-speaking rangatira, the Maori connotations would be those of significance.

If we look at kawanatanga as "belonging to the formal process of getting things properly organised," one can see that the signatory chiefs were basically agreeing to the appointment of an executive officer; they were not handing New Zealand over to the Poms.

New Zealand was fully Maori, and those who wanted were offered the opportunity to become part of a new Maori society; there was no question of a set of non-Maori "rights" being instituted.

The concept of "race" mentioned by Mr Bailey just was not an issue, except in the heads of some Europeans. New Zealand rights were Maori rights — that is what the term "Maori" is all about, a people's "normal" expectation that the status quo would continue.

Article Three demonstrates the later subtle twisting of what was actually agreed to by Maoridom. English versions (which are translations or drafts, not the actual document signed by some 530 chiefs) tell us that "the Queen imparts or allows [Maoris] all the rights and privileges of English subjects."

This language suggests that the Crown has gathered Maoris into the fold.

But the treaty says that the Queen of England offers the people of New Zealand the customary rights of the English people. Here again is the freedom of choice for Maoris. (And one must point out that no "customary right" is more dear to said English than the right not to be ordered about by foreigners.)

New Zealand as it is today, and the Commonwealth itself in fact, is exactly what our tipuna were on about. The Queen of England has a symbolic position but has in fact no say about what goes on here.

We have a Governor (General) who presides over the "kawa" or formalities of government, but it is the people of New Zealand who (theoretically) run this country.

As Te Rarawa Chief Nopera stated: "The shadow goes to the Queen, the substance stays with us." Nothing could be more clear between persons of honour, though one observer's remark about "the shadow being more substantial than Maoris realised" indicates that crown duplicity was already a matter of comment.

Concern about migration was raised in the very first sentence of the treaty, and it was a very clear indication to the Maori that immigration was to be proscribed or strictly controlled under Maori "rangatiratanga" procedures.

Some major chiefs distrusted the whole treaty process and refused to sign the documents. Since Maori independence had already been recognised by the Crown (and by the United States Government), they maintained their stand under the 1835 declaration, which they were quite entitled to do.

When the British Parliament refused to accept the treaty, late in 1840, legally the negotiations should have gone back to square one. This is how it is under any contract — you do not just write out your own version then move in on someone else's property.

What the British did in 1841, by declaring New Zealand a crown colony, smacks uncomfortably of the nazi "ein Volk, ein Reich, ein Fuhrer" (one people, one government, one leader) doctrine of a century later.

Is that what William Hobson meant by his phrase "he iwi tahi tatou — we are one people"? If so there was nothing non-racial about it.

The point is, either we do not have a treaty, in which case the Crown is an illegal occupier and usurper, or we do — in which case the Crown has committed gross errors and injustices, has failed its "duty of care" and has robbed the Maoris of their acknowledged rangatiratanga.

Pussy-footing around with the Clayton's concept of "acknowledging the principles of the treaty" is just not good enough. Either the Crown formally recognises the treaty, and the legal status of its partners (the iwi), or it should do the honourable thing and pack its tents — after paying its dues.

Perhaps New Zealand could then have a Maori republic, including Ngati Pakeha as full partner, with an iwi congress (as in the 1835 model) alongside a fully democratic House of Representatives which would no longer require "Maori" electorates.

It could have worked with the 60 or so role-dominant iwis of 1840, but it would take some juggling, and a miracle or two, to make it operable today.

Many Maoris, however, make a distinction between the mana of Her Majesty Queen Elizabeth II, and what is termed "the Crown," which they see as little more than a smokescreen for whichever bunch of devious Pakeha politicians happens to have captured the Government benches at the time.

Nevertheless, the "fiscal envelope" is going to have to be considerably expanded to include some effective management sharing before it can be viewed as any sort of Maori-friendly policy to take our country into 2001.

What is Kawanatanga?

At the hui held in Turangi in January 1995 as a response to the Crown proposals for the settlement of Treaty of Waitangi Claims - the so-called Fiscal Envelope the following resolution was passed unanimously.(There were over a thousand people present).

The following be reaffirmed as a basis for tino rangatiratanga:

a) The Treaty of Waitangi is the constitution of New Zealand.

b) From 1840 the right of the Crown to exercise kawanatanga depended on not breaching tino rangatiratanga reserved perpetually to Maori.

c) Any change to tino rangatiratanga or kawanatanga as provided for by the Treaty requires the prior consent of all iwi.

In defining tino rangatiratanga in this resolution the boundaries of kawanatanga are also defined.

In Article I of the Treaty of Waitangi the chiefs gave to the Queen (Crown) the right of governorship(kawanatanga), but only where it did not impinge on the full chieftainship (tino rangatiratanga) of the chiefs of the tribes as described in Article II.

That meant that any decisions made by the governor, representing the Queen, would have to be made in agreement with those exercising tino rangatiratanga, that is the chiefs, hapu and all the people.

However, as we know, the negotiating and appropriate decision making only occurred on a very limited scale and the settler government and the Governor very soon took control and started making all the decisions about the running of the country unilaterally.

In approaching the issue of Constitutional Reform it has become obvious that to be able to negotiate with Maori who are calling for this and looking at how it could be achieved the Pakeha signatories to the Treaty need to be able to offer an honourable kawanatanga.

A number of groups and individuals have been working on this issue. As well as trying to define what an honourable kawanatanga would be like the people involved are taking steps to try and achieve it.

It seems clear that the people who are governing at present are not prepared to consider the idea of constitutional reform or any sort of power-sharing and are therefore not speaking or acting for a number of non-Maori, who believe this should be happening.

The Kawanatanga Network which is one of the groups trying to do something, has made a number of approaches to the Minister in charge of Treaty negotiations but he does not seem prepared to discuss the subject.

In the meantime educational work needs to continue so that more of us understand the need for change.

We need to support the return of land to Maori to ensure an economic base, urge the government to strengthen and adequately fund the Waitangi Tribunal, and work for a fairer economic system.

EDITORIAL

The sovereignty agenda

BY JEREMY ROSE

IT'S time for Pakehadom to decide what in the hell it is we want. Do we want Roger Douglas's free market or Ken Douglas's socialism? Old fashioned family values or laissez-faire sexuality? Fish and chips or tofu?

The non-entities who attempt to fill Pakehadom's leadership vacuum are incapable of agreeing on anything – anything, that is, other than that Maori should hurry up and find one leader who can articulate exactly what it is 350,000 Maori want done to put more than 150 years of grievances to rest.

Furthermore any solution that the new leader comes up with should mirror those proposed by the county's power elite and in no way threaten the status quo.

That's what's so disturbing about the peaceful occupation of Pakaitore Marae – formerly known Moutoa Gardens. A group of 300-plus Maori are very clearly saying what they want is "sovereignty". And that's not on the Government agenda.

The occupiers argue that article two of the Treaty of Waitangi, which Wanganui Maori signed at Pakaitore Marae 155 years ago, guarantee them that sovereignty.

Maori, like Pakeha, will never speak with one voice, but if the Government was serious about trying to settle treaty grievances it would begin by listening to what the Whanganui iwi have to say.

If there's one thing neither Pakeha nor Maori have to fear it's meaningful dialogue. And the sooner the talking starts the better.

The picture coming out of Pakaitore is a blurred one. The occupiers' mistrust of the press, based on what they claim to be grossly inaccurate reporting, has meant journalists are in the main covering the event from outside the former gardens.

The instructions on the importance of passive protest given to all visitors and the half page advertisement placed by local Pakeha in the *Wanganui Chronicle* supporting the occupation go all but unreported by a media transfixed by conflict.

And the possibility of violent conflict has become real enough with the Wanganui City Council voting last week to use the power of the state police force to end the occupation. The almost inevitable arrest and imprisonment of protesters refusing to acknowledge the authority of the Crown is nothing if not violence.

The occupiers have said in a press release: "The tolerance and patience that has traditionally been one of the hallmarks of Whanganui Iwi, since European settlement, has come to an end."

It's time for Pakeha tolerance to begin. One hectare of land has been occupied. For the last month any Pakeha wanting to visit the former Moutoa Gardens have had to do so under the sole condition that they accept Whanganui Iwi protocol. There are plenty of other places in Wanganui to view the river, sniff flowers or walk the dog – the council and Pakeha from around the country can afford to be patient.

The Whanganui Iwi have made it plain they're prepared to negotiate – what they're not prepared to do is have the terms of those negotiations dictated.

Whether we like it or not, what we have in Wanganui is a clash of sovereignties. When Mayor Chas Poynter visits the marae it is to offer a compromise – not negotiate one.

When he refuses a kaumatua the right to speak at a council meeting with the words, "I've recognised your protocol now you recognise ours," he ignores the fact that his forum is backed up by the power of the state.

The term sovereignty sends shivers down politicians' spines. It's not that they're against dividing up control of the country – after all they've been auctioning off the nation's strategic assets for more than a decade. The problem is the term sovereignty challenges their very legitimacy.

But few New Zealanders wouldn't defend the right of the East Timorese, the Palestinians or Kanaks to self determination and virtually none would oppose the continued existence of the dozens of Native American Nations within the USA; sovereign nations with their own legal systems. So why should Pakeha New Zealand object to the idea of Maori asserting sovereignty over their lands and lives?

The fear often expressed by Pakeha is that of "reversed apartheid." The fear that Pakeha will find themselves governed by a minority Maori Government. How, or why, 10% of the population would want to find itself governing close on three million disgruntled non-Maori is rarely elaborated on.

The fact that Maori live in a country ruled by an entirely Pakeha Government and are regularly judged by all-Pakeha juries is also rarely mentioned.

The issue of sovereignty is an extremely complicated one but it can't be shied away from. A significant group of Maori have clearly signalled over many years that it is what they want.

The massive resources spent trying to sell Maoridom a fiscal envelope – clearly marked return to sender – would be better put to use funding hui and workshops among Maori and Pakeha exploring and debating what sovereignty for Maori iwi might mean.

In the early days of the occupation it was described as a celebration – and there's still plenty to celebrate. On the day I visited Pakaitore Marae a group of Wellington gang prospects turned up to offer their services with security. Quite possibly for the first time in their lives they were part of a political process. They had become part of a community attempting to take control of their own lives.

It's something both Maori and Pakeha should be celebrating.

• Nion (Not in Our Name – a non Maori group opposed to the fiscal envelop) ph 385 8596.

City Voice 30 March 1995

METHODIST CONFERENCE 1994

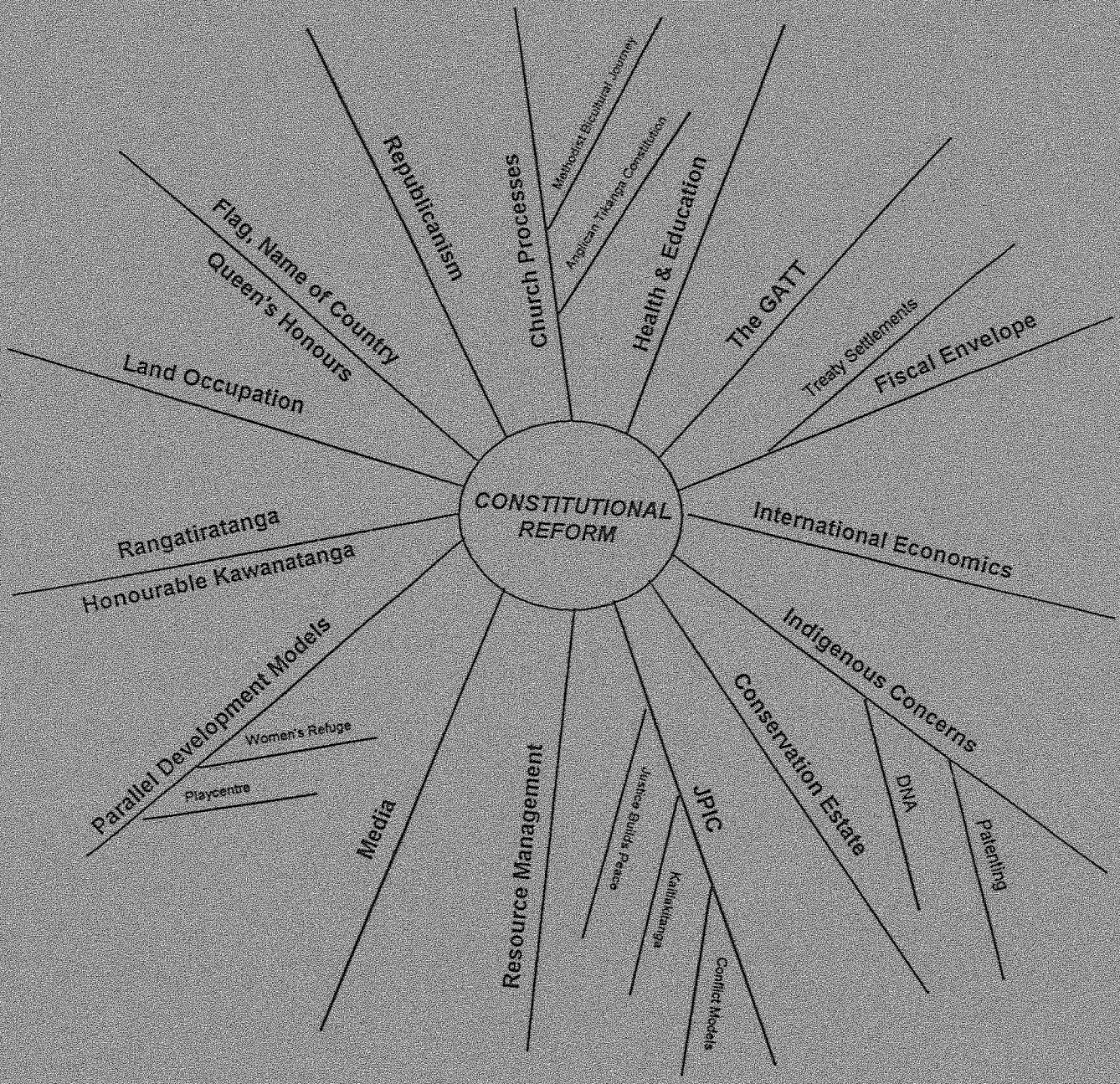
CONFERENCE CALLS:

a) On all Parishes and Circuits to give priority in 1995 to a study of the need for constitutional reform using the Public Question's paper 'Te Wero! foundation documents challenge Government policies'.

b) On the Methodist Church to seek to forge alliances with other groups who have a similar vision and goal for constitutional reform in Aotearoa that stems from a firm acceptance of the Declaration of Independence 1835 and Te Tiriti o Waitangi 1840 as the basis for our nationhood.

c) On government to make the matter of constitutional review on the basis of the Declaration of Independence 1835 and Te Tiriti o Waitangi 1840 a priority, by entering into a process of widespread discussion through Hui with Te Iwi Maori, beginning in 1995.

ENTRY POINTS INTO CONSTITUTIONAL REFORM



All roads lead to Constitutional Reform.

SUGGESTED FURTHER READING

The following are generally available - ask at your local library

Jane Kelsey 'A Question of Honour? Labour and The Treaty 1984-1989' (Published in 1990)

Claudia Orange 'The Treaty of Waitangi' (1987)
'The Story of a Treaty '(1990)

Yensen, Haig, McCreanor 'Honouring the Treaty '(1989)

Alan Davidson 'Christianity in Aotearoa' (1991)

Alan Ward 'A Show of Justice '(1974)

Report of the Royal Commission on the Electoral System(1986)

N.Z. Political Review Issue of April/May 1995

Margaret Wilson 'Justice and Identity'

From Replay Radio Insight '95 Programme of Sunday, 21st May
P O Box 123, Wellington ($20)

Available from the CCANZ National Office, P O Box 9573, Newmarket

He Korero Mo Waitangi, Report of the 1984 Ngaruawahia Hui

Bicultural Report of the Methodist Conference 1990

Selwyn Lecture, "Justice, Peace and the Integrity of Creation", Mitzi Nairn 1990

Covenant People of Aotearoa, Noelene Landrigan (1989)

Tino Rangatiratanga in the 1990's, Jane Kelsey

Treaty of Waitangi, Questions and Answers, Network Waitangi