

Honour the Treaty — Sir James Henare

An appreciation of the real nature of the Treaty of Waitangi must take into account the many perceptions of that agreement.

From 1840 until the present, attitudes of Maori and European have become at variance, mainly because of a fundamental difference in the perception of both regarding the relationship between the Crown and the Maori people deriving from the treaty.

Because of this divergence of attitudes, Europeans and Maori have tended to make use of the treaty in varying ways to further what each considers to be their legitimate interests and to validate rights in relationship to each other.

Two factors

Generally speaking, there were two main factors leading to official British moves into New Zealand.

The first involved a growth in the activity of British nationals in the country over a period of some 40 years before 1840.

Much of this activity was an expansion of British interests from New South Wales and comprised sealers, whalers, traders, escaped convicts, missionaries and settlers.

Briefly, New Zealand became a frontier of European enterprise outside of the restraints of European law and order.

In common with all such frontiers there were the usual culture and contact clashes between European and the Maori people aggravated by increased settlement and hunger and greed for land.

Two years before 1840 saw an unprecedented rush of land sharks and speculators from New South Wales.

The British Government, although aware of the situation, was reluctant to adopt measures that would increase expenditure and possibly encourage further settlement. Britain chose not to act in spite of appeals.

Instead, it adopted political and diplomatic expedients by James Busby, the British resident, forming an embryonic

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Maori Federated Assembly of the United Tribes of the North, which declared its independence was duly recognised by the British.

When Britain decided to intervene in New Zealand (a decision forced by the New Zealand company's Colonisation schemes) it was considered necessary to abrogate British recognition of Maori sovereignty that had been made regardless of its status.

Sovereignty negated

The Treaty of Waitangi served to negate Maori sovereignty, thus allowing Britain to assume sovereignty over these islands.

Only three articles of the treaty drafted by Captain Hobson, Mr Busby and the missionaries were translated

Rangatira Sir James Henare pleaded for the legal status of the Treaty of Waitangi to be resolved when he addressed Government MPs at Wellington recently.

After his speech - part of a Government move to educate MPs on treaty issues - Sir James said he had been surprised to find many MPs, on both sides of the House, were not familiar with historical perspectives relating to the treaty. He requested publication of his address in full to inform the public about this important issue.

Sir James is the sole surviving member of the Ngapuhi Council of Chiefs of the Treaty of Waitangi. For 48 years he has been a member of the Waitangi National Trust Board which administers the Waitangi National Reserve for on behalf of New Zealand's people.

The treaty signed at Waitangi was the text in the Maori language and was regarded by Hobson as the de facto treaty.

Indeed, more than 500 chiefs subsequently signed the Maori text and 39 signed the English version.

A comparison of the Maori and English versions of the treaty indicates a substantial difference between the two.

The Maori text granted the Crown Kawangatangā, or rights of governing and the first right of purchase, but confirmed Maori chieftainship over their lands.

On the other hand, the English version secured all rights of sovereignty over the entire country to the Crown.

In acknowledgement of this, Crown guaranteed Maori possession both collectively and individually of lands, forests, fisheries and other properties and conferred upon the Maori the rights and privileges of British subjects.

From the time the treaty was signed up to the present there were problems of interpretation.

By 1880 attitudes to the treaty had polarised into two broad divisions: Those who believed colonisation and the treaty were incompatible and those who adhered to the belief that the Crown had incurred an obligation to uphold the agreement.

Wakefield, of the New Zealand Company, described the treaty as a fraud on ignorant savages and J. Somes, in a letter to Lord Stanley, Secretary of State, described it as a praiseworthy device for amusing and pacifying savages for the moment.

Ratified agreement

The Oxford dictionary defines a treaty as a formally concluded and ratified agreement between nations or states.

The legislature has never ratified the treaty, therefore the legal opinion of lawyers and the courts is that the treaty has no legal validity in both international and domestic law.

Therefore, whenever Maori have brought claims against the Crown on the grounds that their rights as promised and guaranteed by the treaty had been transgressed, they have been consistently rejected by the courts, or the government of

In fact, one Chief Justice referred to the treaty as a mere nullity.

Successive governments in New Zealand have enacted laws which violated both the treaty and its principles.

Here are some examples names but a few - the Fisheries Act, Mining Act, Public Works Act, Petroleum Act, and the Town and Country Planning Act.

For over the 145 years the Maori people have been protesting about violations of the treaty by way of wars, petitions to governments, to the Privy Council and to the Crown, to no avail.

It is only last year, 1987, that our New Zealand courts have begun to take notice of the treaty.

In the matter of the New Zealand Maori Council versus the Crown on state-owned enterprises, the five separate decisions of the justices monumental change of attitude toward the position of the treaty in domestic law, and there is an imperative duty on the Crown to ensure it acts in the utmost good faith towards the other partner to the treaty.

Unless the legal status of the treaty is addressed and resolved, then I am afraid we shall continue to face litigation after litigation and infinitum at what cost financially and in human strife and degradation.

Simply put, the legal status of the treaty depends entirely upon the political will of the government of the day no matter how temporarily.

The problem for the Maori is compounded further by the political process and the political impotence and powerlessness of Maori members of Parliament, highlighting the monocultural, monovalue criteria which applies to the creation of domestic law.

Partnership on equal terms was something the Maori people expected to result from the treaty. But all they received were broken promises.

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Sir James Henare.

Partnership, good faith and mutual trust. Partnership implicitly includes co-operation in its meaning and requires volition or the actual acts of making a partnership come about. Collectively, however, the three terms embody a degree of feeling in human relationships which are extremely powerful and they can be thought of as virtues, they are also the very essence of the Treaty of Waitangi.

Therefore, the violations of the terms of the treaty throughout the years make it more imperative to pursue these virtues relentlessly.

By both parties living out these inherent principles, the Treaty of Waitangi yet could reveal itself as a covenant of justice, peace and harmony and a social map for the burgeoning bicultural journey.

A word of warning though - the word partnership should not be used loosely by politicians and others as part of their treaty rhetoric that promises so much yet delivers so little.

Negative response

Britain has gone to war over treaty transgressions, but there has been a negative response and attitude to the Treaty of Waitangi.

Somehow or other New Zealand must recognise clearly the old common law doctrine that a right without a remedy is null and void.

We must firmly grasp the fact that measures should be taken to back up good faith in the observance of the treaty. The worth of treaties depends purely upon the good faith with which they are executed.

And it is indefensible, indeed mischievous folly, to enter into treaties without providing for their proper execution. And what is worse, entering into them if they ought not to be executed. So far the Treaty of Waitangi is in this category.

In the long run there can be no justification for the dominant race managing or controlling another, unless it be exercised in the interests of the other race.

In spite of the imperfections, the Maori has always recognised the treaty as their Magna Carta. Indeed, it is their only tangible bill of rights - without it all is lost.

ity, but differ in their emphasis and attitudes.

Europeans, by contrast, have tended to regard the treaty as an historical event and a document that embodied ideals that lead to a better bicultural society.

If this tendency on the part of the two parties to the treaty continues, then it (the treaty) will be a potentially divisive matter catapulting our peoples into a dangerous situation.

It is essential, indeed imperative, that the treaty and its subsequent history, are treated to a deeper appraisal and more honest action by honourable men and women in Parliament.

The approach to the treaty and its ultimate recognition should be bipartisan and not used by Members of Parliament as a political football.

Let us look for guidance to the principles of true democracy which are enduring because they are right, and invincible because they are just.

When things happen in other countries such as Russia, South Africa and more recently in Fiji, we tie ourselves in knots, gnash our teeth and rush into homilies over the horrors of arbitrary rule and satisfy ourselves by the recollection that we are not as other nations, hardened political sinners.

Much polemics have been abroad recently and uninformed disputations levelled at Maoridom, the Treaty of Waitangi and the Waitangi Tribunal by political gymnasts,

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both inside and outside of Parliament, aided by vested interests, no doubt edifying their own consciences.

Some people are petitioning Parliament for a referendum to be taken on the treaty - others are saying the treaty is an ancient document and not relevant to this day and age. Some members of Parliament are asking who is a Maori and suggesting the treaty should be scrapped or updated.

True Democracy?

Perhaps it is an opportunity