

Notes from talk by Moana Jackson, Treaty Conference 2000 7 July 2000

“I am unhappy with the title of this talk – I believe that headings and titles are really important. I had to do a number of non-law papers including English’s King Lear and Edward 11. The value of the title is that it helps as a vehicle upon which to hang ideas and thoughts. Bunito Mussolini knew the value of power and labelling: he said “invention is more *powerful / useful* than the truth”.

His words link issues of the power to invent with the Treaty of Waitangi.

The Treaty has been obscured by such inventions right up to the year 2000.

It has been captured in a series of inventions & ‘fundamental truths’ of these – who have invented these ‘truths’ – whose interests do they serve? What will be the consequences?

Power: any Treaty signed is about power. – its shifting and reallocation.

Authority: is imposed on all of us & an accountability of it. Obligation and accountability by all of this land is to the Treaty vv the Crown. We lose sight of who is accountable to whom

Any arrangement is one of power.

Labelling has got to 'do' – 'do these'.

We 'do Treaty' like we 'do' Shakespearian plays.

People talk about 'doing the Treaty', that

attending one Treaty seminar or workshop is all there is to having 'done it'

When we 'do it' we walk away without much insight or understanding, or commitment.

'Treaty' fits for much of our society, which is besotted with labels. We are

branded/ marketed/ labelled. We judge Treaty by the labelling we give to it. This

view is insidious, /pervasive. It's like there's a 'genuine' or 'imitation' watch, an illustration of the importance today of the 'right' label. The 'in' label. So I wear a Casio 'Baby G shock' watch, as I was advised to by my mokopuna.

In the year 2000 we have a society captured by labelling and branding.

The Treaty has been branded, labelled and captured, whereby its essence has been manufactured and invented and the *truth/ its simplicity* ignored.

The Treaty is 'seen' through the eyes of the Crown and the courts. The Crown, lawyers, agencies of the State are master re-labellers of the Treaty. To

understand we need to know the consequences of the labelling.. There are many consequences of this.

In the course of that labelling process its inventions are 'honoured'.

As a result the treaty is decontextualised, taken out of context.

We need reclaim the Treaty, to restore its truth rather than the invention.

The Treaty of Waitangi is an instrument of colonial oppression. It becomes an instrument of colonial dispossession in a process of myth-making about what 'they' were doing to indigenous peoples.

European states labelled, mythologised/legitimising addressed issues that would have been illegitimate if they had done the acts they relabelled to themselves. Legitimate labelling: European states argued their legitimacy in a non-Christian land. Christopher Columbus was contracted by the King and Queen of Spain to 'discover' India, but came across the Americas. He relabelled the people and the land as 'Red Indians' and 'America'. These were two acts of power that ensured that the labels suited his understanding of who the people and their land were. This began the process of denying indigenous people the right of naming themselves. He exercised the right to claim land through the Christian 'Law' of 'discovery', which gave power to the 'discoverer'

to take the land. It legitimated an act that would have been illegitimate if done in Europe.

If this act had been done to the British by a foreign force it would have been illegitimate. However done to an indigenous peoples it became legitimate. Such process rejected any claims the indigenous people might make. This is the jurisprudence of dispossession.

There is a body /framework of jurisprudence of oppression that backs this legitimacy: Terra Nullius – the supposed ‘vacant land’ assumption. Land is claimable if considered to be empty. The act of Treaty -Making is an instrument in the jurisprudence of oppression.

Treaty making became the legitimisation for the colonisers as a part of the colonising process. The right to dispossess is the culture of colonisation. The right to dispossess becomes a ‘given’ as legitimate and true. The ‘right to discovery’ ceased to become a human invention. It became a legal doctrine. In assuming legitimacy for themselves the European states renamed indigenous legitimacy. And in doing so they rejected any contesting the claims of the indigenous people. If the indigenous people objected they were exposed to either military force or the slow process of colonisation.

Treaty of Waitangi myths gives an honourable sense of good faith rather than a process founded on good faith.

This relabelling and focussing on the goodwill of a few individuals becomes confused with the institution of colonisation...ie individual good will happens within a culture that is setting out to destroy a Peoples.

We have confused individual good with the inherent bad will of a culture of distancing and destroying this well being (!!).

So, for example, the Crown's 'good faith' about protection, the guaranteeing of rights and equality, needs to be seen in the context of its 'bad faith', including definitions of the inferiority of peoples and their institutions and processes.

European defines the indigenous as childlike/primitive/in need of protection and thus denies them their self-defined rights. In giving 'legal equality' to a peoples who had their own sense of equality and equity within their own society, we redefine this.

Today the Crown continues to exercise bad faith.

For example, relabelling the Treaty as a source of 'Maori Rights'.

The wellspring of Maori Rights comes from Whakapapa, not the Treaty. The Rights of birth and from this Rights of hapu and Iwi. Children are born and welcomed with rites of birth, and from those rites come the rights of being

mokopuna and the right of being part of an iwi. The centrality of the rights centres on whenua. Hence the importance of the whenua being buried in the whenua: it is the key to Maori rights. The whenua of the child is to be buried in the whenua of the land in which the child would grow.

For many years Maori health values were viewed as

‘unhealthy/unsanitary/primitive practices. So that if babies were born in state hospitals the whenua was not returned. This broke the rights of the child.

There is now again an acceptance of such practices, and the offer to return the whenua tends to be viewed as ‘quaint/ exotic’ rather than an expression of legal rights. These are independent legal rights rather than quaint cultural actions.

This symbolises the sorts of labelling that surrounds the Treaty.

The treaty was entered into as an honourable process to protect the rights of tangata whenua.

After 1840 the Treaty was not labelled as ‘honourable’, Maori tried to use it to hold the Crown to an accountability.

In 1877 Pendergrast labelled the Treaty as a ‘nullity’. In the 1970’s it was relabelled as a source of ‘partnership’ or founding constitutional document.

While this is better than 1877, what does such branding of the Treaty actually mean? Are there changes? Dispossession can come from many sources, with a

range of forces involved. There is the cultural-social legal set of beliefs – superior/ inferior dichotomy is fundamental here.

The Crown labels the Treaty in order to legitimise the need to rule.

The Queen governs and Maori are her subjects.

Out of colonisation comes the legitimatising sense of superiority and a mono-cultural fascination with other ‘mono’s’:

- Mono-sovereignty – no others or subordinate others the and
- Mono-law – one law for all.

There has been a Mono-interpretation of the treaty in the last 20 years, which is no different to the mono-mindset of the 1840s’.. In 1987 the Maori Council took their case to the Court of Appeal where it was ruled as incontrovertible that the Queen governs Maori as her subjects.

To recognise the rights of others to be here did not express our own Mono-sovereignty.

But as at 2000, what does this branding mean?

In order to challenge the legalistic labelling we need to analyse ‘Post- colonial’ theory – who invented it?

Ani Mikaire claims that colonisation has not ended: it is the under-pinning of our daily life and the culture of individuals. The issue is not with individuals but

the culture that that individual is part of, and the change of that culture, and efforts to change it.

It is a lie to suggest that colonisation has ended. 'Post-colonisation' is an invention of the colonising power. Once again, colonisation has assumed the power to name.

Parts of things coming out or that are long overdue are the value of the cultural expression of being Maori. 'Kia ora' sacking of the telephonist or the warning of TV Two's Stacey Daniels for using the word is now unlikely to be an issue. Now most gatherings begin with a powhiri and a wero. We begin and end gatherings with karakia. This is recognition of the intrinsic value of being Maori. There is an increased sense of sensitivity: if we know Maori we give effect to Maori rights. But while we sing waiata and songs of Maori freedoms the Queen still governs, and Maori are still her subjects. James Baldwin in *Cry the Beloved Country* stated that a culture couldn't for very long hold on to its essence without the majority culture having a great effect on its kernel. No iwi or hapu ever voluntarily allowed itself to become subject to another for such reasons.

The essence of legitimacy in Maori terms is that it is a gift from the tupuna to their mokopuna. The legitimacy is neither given nor can be taken away by humans. Legitimacy is exercised by humans chosen for this role, but none have the right to give it away. Humans have neither the ability nor right to take away this legitimacy. This is a cultural construct of legitimacy. To say that in 1840 the iwi and hapu gave away something as an effect outside of colonisation is part of the re-labelling of the Treaty. Many people of good will in the struggle are seduced by such labelling.

Our task now is to peel away the labels, and to put the Treaty back into the context of tangata whenua and the environment of colonisation and the colonising 'culture' then and now. Move away from the current legalistic fascination with the 'words'. If we do look at the words then it must be the Maori 'text' words.

We need to put insight to the word 'post-colonial' and 'settling' (of grievances).

We need to ask, who decided to use such words and why, as colonisation continues. The issue is a colonising culture vv some good people of good faith, then and now.

So while cultural expressions of being Maori receive some affirmation, the real issue is addressing power and accountability vv cultural sensitivity.

We have to look hard at the effort to ensure Treaty Rights that can include everything, to make Treaty rights wider and wider.

This is the test of the truth of the Treaty.

The idea of Rights and Values is better placed in a pre-Treaty source of Maori Rights. Once this is grasped, it becomes clearer that neither Maori nor the Crown knew about oil or airwaves in 1840.

The Crown states that Maori had no rights to coal, oil and the radio spectrum because Maori had no knowledge of them before 1840. Well neither did the Crown. If the Crown says that Maori don't own them, how does the Crown get to own them? Such debate distorts the Treaty.

The Consequences of the Relabelling Industry: This has led to a Crown 'capture' of the Treaty. Treaty mythology has an origin. The mythology that is created asks us to forget the origin of the stories.

Origin stories have the purpose of convincing us that the current myth is 'true'. The Box=Treaty=loophole=claim formula has more fundamental consequences and affects all of us. That invention is more useful than the truth. We condemn our mokopuna to a bleak future and an untruthful future if we do not test the truth, and condemn us to teach untruths that do not 'talk' to all. It creates a culture of 'un-reason', leading to the protagonists abusing each other

rather than listening to each other. This was written by (?) in “The Almanac of the Dead.”

Irihapeti Ramsden asks if the Colonists believe the myths about themselves?

The culture of colonisation limits talking with the assumptions that all things of the colonisers were ‘better’ – institutions, dress faith etc. This stance does not extend out from it the ideas and discussions around ‘why’. It doesn’t consider for instance the consequences of smacking children when these consequences are acted out.

Raupatu – does the power continue unchanged as the consequences of colonisation continue to shape our people. Reclaiming many things means that they have been through a process of being damaged and destroyed. But the difficult part is determining what was destroyed? Eg. the colonial impressions of the Great Migration – Elsdon Best / Percy Smith. We struggle to find the ‘Maori way’ when there was no such thing, rather a Ngati Whatua or Tuhoe way with distinct variations although similarities. Tuturu Maori is not Tuturu Ngati Whatua. The Missionaries came to destroy not to record Keith Sorrenson states. Most legends surrounding our women Atua have been lost. Monotheism sees a one male Godhead. Women Atua are ‘impossible’ so there were the conscious process to remould the cosmology and remould women. Pakeha experts defined ‘when we got here’. To our Tupuna time is not a linear

construct, but a process shaped by our Tupuna ma raro. Lots of the violence of colonisation is an internal violence.

There have been three consequences.

Power and Accountability: In general, the fundamental aspect of power and accountability fail to be addressed because to name one's own world is to define one's own destiny.

We need to assume the power to name: our mountain tops, our names of towns; to rename the Treaty as having some aspects of value to new arrivals but not at the expense of our own indigenes.

For those who struggle with the concepts of recognising the power of naming many assumptions are made: destiny is denied to those who are regarded as inferior.

Who is at the centre of the universe in regards to naming?

Take the North and South Islands. These are very unromantic names. We rejoice at the reclaiming of Aotearoa/ Te Wai Pounamu but not if at the heart of this remains the continued power of colonisers to name and to exclude.

The 'Namer of Names' encourages the colonisers to adopt more Maori names for things and to determine the legitimation of Treaty discourse. What assumptions of power do we transport from the mono-cultural legitimising?

Are we brave enough to break free? The Treaty is being re-marketed in Free Market terms. We will not effect constitutional change if we rename the treaty as the founding constitutional document and continue the imbalance of power.

The Treaty is a constitutional document rather than a founding document of This nation.

It allows newcomers to establish their order, but that came to be seen as superior. The Treaty welcomed newcomers, but not at the expense of those already here.

The Treaty is used as a justification of Crown authority to continue the process of the culture of colonisation.

Regarding Treaty training, to whom are they accountable for the training, the naming, and the descriptions of power?

There is a parallel between the branding of the A treaty and free market terminology, mono-marketing.

Maori have our cultural assured in our sense of cultural order. From here we can step back and challenge.

Before the Department of Justice was broken up they ran the prisons. There was concern expressed in the late 1980's about the large number of Maori in prisons. There was an attempt to make prisons 'more culturally sensitive'. This

included sending Maori prison staff to total immersion courses in Te Reo Maori. This intention was within the culture of colonisation. In one incident an officer (Pakeha) mihi-ed to Moana after sitting 2 Maori inmates down. He knew the inmates did not have Te Reo. This was an act of dispossession for the two inmates – saying in effect ‘I have something of yours’.

In the Treaty relationship the two parties need to know themselves. Non-Maori need to know how they are a part of the culture of colonisation.

The first commitment, the first step, is ‘know thyself.’ ”

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Moana Jackson

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ⁱ Questions about re-naming of our land and us: The renaming of geography is a first step in colonisation. The renaming brings in Eurocentric bi-polar distinctions such as independent/ interdependent up/down I mua a muri etc.

If you must insist on singing sing your own songs.

Deficit definition by state in the use of the word ‘tribe’ – lack of reason; lack of political decision-making; lack of leadership are all implied