

With the Compliments of
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MATAMATA

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THE TREATY OF WAITANGI -

TAI TIMU TAI PARI

THE TIDE EBBS AND FLOWS.

The invitation to give a National perspective of the Treaty of Waitangi has indeed been quite some challenge. A very simple way of attacking the problem would be to tell you of the remit passed at the last National Party Conference - "That the Treaty of Waitangi be acknowledged as the founding document of New Zealand", and so it is.

Unfortunately it's not quite as simple as that. The position of the Treaty and its meaning, both with Maoridom and the rest of our society, is often misunderstood and misrepresented. There is some debate, over what the Treaty really means for modern New Zealand society. I don't believe there has been sufficient debate as yet as to the meaning of the Treaty in New Zealand today. There are excessive expectations and concerns as a result.

The National Party believes that the spirit of fairness, justice and equality embodied in the Treaty still has relevance to New Zealand today. The confusion over the meaning of the Treaty in contemporary New Zealand society is exacerbated by the differing interpretations provided by the Waitangi Tribunal, the Court of Appeal and the Government's unilateral "Principle's" document. Under a National Government we will work to resolve this issue.

There must be much wider public discussion and debate on the position of the Treaty in contemporary society. This may lead to a re-interpretation or even a renegotiation of the Treaty as we know it, but we need to show that direction, as a Government. This is a critical issue. The Treaty must become a symbol of our Nationhood, not of disunity and discord!

As archivists and historians you are no doubt all aware of the basis of the Treaty, its conflicts and its three articles. The first article - the Sovereignty (kawanatanga) or secession to the Queen; the second article - The Queen confirms and guarantees to the Chiefs, the tribes and all the people of New Zealand the unqualified exercise of their chieftainship (rangitiratanga) over their land and all their treasures. This clause also has a second half where the chiefs agreed to sell the land to the Queen or her agent at a price agreed to by both parties.

In the third article the Queen guarantees to protect all ordinary people of New Zealand and give them the same Rights and Duties of citizenship as the people of England; one could call this the Equality Article.

The wording of the various forms of the Treaty have been analysed by far more competent commentators than your current one. But one can suggest that most of the current conflict comes from what appears to be a contradiction between Article One and Article Two. The Sovereignty or Governorship to the Queen, and at the same time the guarantee of Chieftainship to the Maori.

Over the last 150 years interpretation has depended on assuming Article One or Two as the paramount article. Such are the shifting sands of public opinion over time. It was just similar shifting sands of public opinion that led to the original Treaty 150 years ago, during a fairly liberal period in British or European history. There seemed to be a symbiotic approach to the initiation of the Treaty, the wish to settle new land with relative harmony on one hand, and for some Maori concern on the impact of new technology, particularly weapons, on their own traditional power structure

Missionary conflict at the time also played quite a role. It is also interesting to note in the signing of the Treaty of Waitangi as reported by Hobson, some 20 or 30 Chiefs addressed the meeting, 5 or 6 of whom were opposed to the concepts.

The main opponents were reported as having been followers of the Catholic Bishop who had arrived 2 years earlier.

The majority of the supporters were supporting the Protestant Church Missionary Society which had been there since 1814. One of the opposing chiefs, Rewewah, was quite adamant that Hobson should be sent away and the Treaty should not be signed. He said, "Your land will be taken from you, and your dignity as Chiefs will be destroyed".

One of the supporting Chiefs, Neni, turned the whole meeting around telling them that the Europeans improved their position and how it was impossible for the Maori to "govern themselves without frequent wars and bloodshed". He suggested to Hobson, "You must be our father, you must not allow us to become slaves, you must preserve our customs and never permit our lands to be wrested from us". And with that type of contentious debate the Treaty was duly signed by over 500 chiefs around the country.

It is interesting to note that the majority of the signatories signed the Maori version. The English version was actually signed only at Manukau and Waikato Heads. Many groups were not signatories.

The British Select Committee on New Zealand in 1840 spoke of the Treaty being signed, the need to remedy the evils which now existed in a society which could only be described as one of positive anarchy.

They were predominantly concerned about settling a new colony but did state that the possessor rights of the Natives to the land should be retained in full, but that the Crown should have exclusive right of pre-emption over such lands as they may be disposed to alienate. Similar wording to that which had appeared in the Treaty several months earlier.

They also wanted to set up a reserves for the Native race, reserving special lands for the Native Chiefs. The mood of the British Parliament had changed by 1844 when the next Select Committee sat on New Zealand coming up with a conclusion that "the Treaty with its guarantee of possession of all lands was a step taken as an actual consequence of previous errors of policy and was a wrong one".

It went on that "it would have been better if no formal Treaty whatever had been made since it was clear that the Natives were incapable of comprehending the real force and meaning of such a transaction and it therefore amounted to little more than a legal fiction, albeit a very inconvenient one which was likely to still be more so hereafter".

In 1844 the Committee said that "the terms of the Treaty are ambiguous and in the sense of which they have been understood, highly inconvenient". This was principally in respect to the right of property and land.

During the next 30 years the power of the Treaty to the Government gradually declined until 1877 when Chief Justice Prendergast decided that it was a "legal nullity".

However over the whole 150 years many Maori have held the Treaty in very high esteem. It is seen as a very important document as the Queen's guarantee for their rights and privileges for the future.

The Treaty was signed in 1840 in a time when the ordinary citizen in Great Britain certainly didn't have a vote, universal suffrage was not even thought of at that stage. It was signed between the Crown and Maori Chiefs. One could go on today to say that the Crown is, through Parliament, the representative of all people of New Zealand. It is elected under our Parliamentary electoral system - of universal franchise, something that did not exist in 1840.

Maori on the other hand still tend to have a system of kinship and a ruling class based predominantly on birth. This highlights one of the problems of trying to read too much into the Treaty as it was written in 1840, and as it literally might apply to 1990 and into the 21st century.

One can understand many New Zealanders holding on very strongly to the Treaty of Waitangi, particularly when one looks at many of the activities of the Government during the period of active colonization in the middle of last century.

Today's problems however have moved on from there and relate to both a social and economic level. At the social level are the very important Maori cultural aspects which are unique to this country and deserve the active support of Government to ensure that they are retained.

The National Government has been very supportive of the revival of the Maori language and will continue with this support. Together with the language, wider aspects of culture both traditional and contemporary need active fostering and support from the Government.

At the economic level there are the obvious problems of past grievances yet to be addressed, but of greater concern is the current large proportion of Maori people who fall into the lower socio-economic group of our society. This needs an active policy by Government to address these imbalances; to start to allow a greater proportion of our Maori people an equal opportunity in our society for tomorrow.

Maori make up the largest proportion within all the wrong kind of statistics.

Infant mortality, general physical ill-health, educational failure, unemployment, welfare beneficiaries, crime, prison inmates ... the list is depressingly long.

From such a background then many young Maori are often denied the same opportunities and changes as their Pakeha age group in other socio-economic groups.

It is the exceptional Maori who can break through these social chains ... and I'm pleased to note that there are a good many exceptional Maori who have done so.

So let's look at addressing the grievances.

Waitangi Tribunal

National's policy at the 1987 election stated that, "We would work towards eliminating outstanding grievances between European and Maori, recognising the standing of the Treaty of Waitangi and the passage of history since the signing in 1840," and that is still our commitment.

The Waitangi Tribunal has been extended in numbers twice since its formation in 1975 and in 1985 the Labour Government backdated its jurisdiction from 1975 back to 1840. Whilst the Waitangi Tribunal is not a court it does possess quasi-judicial powers with its brief to hear evidence with respect to claims and recommend appropriate responses to the Government of the day.

However its conclusions relating to claims under the State Owned Enterprises Act are binding on the Government. To many, the Tribunal's additional powers granted by the Labour Government have opened a Pandora's Box. The National Government has some concerns on the power that the Tribunal possesses and its requirement to make recommendations.

It is interesting to see the Labour Government backing down in recent legislation by including an interim recommendation to Government for 90 days where the transfer of land is likely to take place in the Treaty of Waitangi (State Enterprises) Act 1988.

Without doubt much of the pent up frustration amongst some, but by no means all Maori people, has been as a result of past grievances, particularly relating to land transactions and Article Two of the Treaty. The Tribunal allows a vent for those frustrations. Its resource unit also has a particular responsibility for establishing as much factual evidence as possible on each particular claim.

The next National Government will review the operation of the Waitangi Tribunal and its future role, not with the intent of getting rid of the Tribunal, but rather restoring the ability of Parliament and the Government to make the important decisions relating to the findings of the Tribunal.

Ultimately it is the Government and Parliament which must be accountable for the cost of such decisions and for the likely outcome on the overall community, particularly in the sense of fairness and justice to all members of our society.

The Waitangi Tribunal will still have an important ongoing role in resolving quickly, in as pragmatic way as possible, the current grievances held by many Maori members of our society.

One can see mana rather than money being a key aspect of solving these problems of the past. It is interesting to note that the Government currently has set no money aside to settle Treaty claims.

The Court of Appeal.

The loose wording in the Labour Government's State Owned Enterprises legislation has in the last month resulted in a fairly historic determination by the Court of Appeal that the principles of the Treaty provide the Tainui people with the rights to coal under the ground, if their Land Claim is upheld. Not only does this judgement establish a right to claim substantial compensation for coal mining, it raises questions about Maori rights to compensation for oil, gas, geothermal steam and water currently used in hydro power generation.

As the Government gave no clear legal guidance as to the interpretation of the principles of the Treaty the Court of Appeal has determined their own and applied them.

We have the situation now with the Court of Appeal effectively writing the law as it relates to the Treaty of Waitangi. The Tainui Maori had rights to the coal together with their land. Other New Zealand citizens do not have rights to coal under any land that they might acquire.

National would ensure that the elected representatives of the people in Parliament determine the constitutional framework and with that the status and application of the Treaty of Waitangi. It is not correct that such a determination should be brought about by ad hoc judgements of the New Zealand Court of Appeal.

It is little wonder that the Government is seeking to back-track out of a mire of their own making in the Tainui case. Unfortunately the legacy of this Labour Government in this whole area of the resolution of past grievances is going to be a major challenge for the next National Government. It must be worked through, negotiated through, and be seen to be fair and just to all members of our Society.

Towards 2000.

National Government will continue to work along the lines that its policies were working prior to 1984 and if one looks at the most successful programmes currently being undertaken by Government in Maoridom, most were initiated during the last National Government.

The revival of the Maori language with the initiation of the Te Kohanga Reo movement playing a very important role in a two-fold way, firstly with the language nests promoting the revival of one of the Toanga of Maoridom, the language, and also in improving parenting skills, bringing parents and their children together during the important early childhood formal educational processes. National education policy is placing more emphasis on parents as first teachers and this will reinforce Kohanga Reo.

Kokiri Centres were another National initiative, as was Matua Whangai, providing assistance and support for recently released criminal offenders.

National will actively foster and encourage the use of Maori language for those who seek to learn and study the language and its associated culture. Such learning will not be compulsory, nor solely for young Maori.

Maori Education.

The improvement of Maori educational achievement will be the paramount focus of National's policy towards the future. There is a need to take the focus away from what is fast becoming the labour relations approach to race relations, us and them, and refocus it on the real issues of New Zealanders being able to compete in the world, regardless of race.

Education is today's international language in a way never before contemplated. Modern telecommunications and the standardisation of skills requirements in developed nations has ensured that a progressive nation must have an educated and skilled people.

Unfortunately, Maori children are being increasingly distanced from that advancement.

Last year 46% of all Maori children left school without any form of academic qualification or credential - and even a "D" in School Certificate was considered a "credential" for that survey. This compares with just 15% of Pakeha children.

Nearly one-fifth of New Zealand's primary school children are currently of Maori descent, and that percentage is growing. If the current disastrous performance of so many young Maori in our education system is combined with increasing numbers entering it - and current Government policies suggest that they will be - then race relations in New Zealand can only lead to a racial blow-out.

And there will not be any winners - just losers. Young Maori - like all of us - require a stake in society before they can feel a part of it, nurture it and build a constructive future. If that stake is denied them then we should not feel surprised by the consequences, and a quick tour of our prisons and the courts suggests the consequences are already apparent.

So in all discussion of the Treaty, of race relations, and of the place of Maori within New Zealand, the National Party emphasises, with all its vigour, that Maori education is the pathway for the future.

The National Party place that aspect at the forefront of their race relations policy, that is, to give young Maori a true stake in New Zealand society. And in doing so, we lay heavy emphasis upon the "forgotten article" of the Treaty of Waitangi - Article 3, guaranteeing equal rights and privileges to all New Zealanders.

Upon redressing the current imbalances in our society, then it will be appropriate to ensure that "all New Zealanders are equal under the law". Which is certainly not the case at present. Significant legislation actually favours those of Maori descent - Maori fishing rights, a separate Government Ministry and agencies, special Maori bursaries, scholarships and selection criteria to academic institutions. Even Maori Members of Parliament.

Affirmative legislation can only be justified whilst there are significant socio-economic inequalities. Upon redressing those imbalances National would repeal or amend all legislation with a racial bias.

In conclusion, under a Labour Government we have tended to focus on the past, we have tended to see how we can redivide the resources of this country, rather than focusing on how we can equip people to have an equal opportunity within our society, to strengthen our society and to allow us, as a country, to compete internationally in an ever increasingly competitive world.

The main thrust of National's approach to the Treaty of Waitangi after the next election will be to focus on the future, providing young New Zealanders of all backgrounds with the tools and skills to help New Zealand compete in Tomorrow's World.

Unfortunately, as inevitably happens under Labour Governments, the focus is "short term" and aimed at the redistribution of existing wealth. National has a completely different approach to this and that is to make the existing wealth grow so that all in our society are rewarded with a higher standard of living.

I look forward with optimism to the future, with a greater understanding from both Maori and Pakeha of the strengths which both can bring to our society, from the Maori people a sense of national identity, value systems and support structures of ever increasing importance in an ever quickening world and from the rest of society an increasing reality of the world as an inter-related global village and marketplace.

To get there is going to require a lot of goodwill, goodwill which is probably the real spirit of the Treaty of Waitangi. Such spirit can not be legislated for, but requires the support of all New Zealanders and leadership by a Government with a vision of the future.

Eventually we should be able to "Stand at the prow of the canoe and listen to the sound of the paddles moving together".

"Kia tu ma, koe i te ponaihu o te waka,
Kia whakaronga koe to wawara tangi waihoe."