

THE CROWN AND TE TINO RANGATIRATANGA

Moana Maniapoto - Jackson

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In February 1984, before its instalment into Government, the New Zealand Labour Party announced its official policy which would involve 'honouring the Treaty of Waitangi'. While ~~it~~ ^{this} hardly raised an eyebrow among the Maori population, it did cause a few facial contortions among the Pakeha majority. Maori people have noticed that all prior governments have had a total lack of political consideration for anything Maori - that is unless anything Maori affected Pakeha interests.

It was at Waitangi in 1840 that Maori people displayed a sense of fairness and justice toward the Pakeha - expecting nothing more, though getting much less ^{back} in return. Through their governments and deliberate acts of policy (not neglect), the pakeha have been responsible for our present state as an almost culturally and physically dispossessed people.

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The present Labour Government is merely an extension of all those before it - all of whom have operated to impose Mana Pakeha over Mana Maori. On the odd occasion, this government has acknowledged our existence - and ~~the mass~~^{many} of ~~the~~^{the} monocultural policies which have led to our downtrodden state. But these positive steps are ^{far} outweighed by its belief that it knows best what is good for Maori people.

Many Maori groups have researched or initiated development in vital areas such as housing, child care, mental health, law and education. These positive strides in Maori development have been based on separate interdevelopment^{and} te tino rangatiratanga. Yet they have been analysed, ignored, dissected and rejected - (not necessarily in that order) - by those who claim to have ^{Maori} ~~our~~ interests at heart.

The struggle for our very soul and the restoration of our Treaty rights through Pakeha political processes has been absolutely futile. The majority-rules democratic system is totally inappropriate for an indigenous minority.

The guidelines for a socially just society were laid down in Articles one and two of the Treaty of Waitangi.

Te Tiriti o Waitangi contained three written articles and a fourth oral guarantee.

In Article One, Maori chiefs transferred to the British Crown KAWANATANGA. KAWANATANGA or governorship implied LIMITED ADMINISTRATIVE POWERS relating to law, order and security. These powers could only be conferred by those who had RANGATIRATANGA, upon an approved and legitimate Government. The Crown was honour bound, Royal honour at that, to uphold the Treaty.

Article Two acknowledged the reality of - te tino rangatiratanga a te iwi Maori. This meant SPECIFIC MAORI SOVEREIGNTY over Aotearoa, "O o ratou whenua, o ratou kainga me o ratou taonga Katoa" - that is, the Maori way of life.

The entire political/legislative/judicial machinery in operation today is in complete contradiction of the Treaty and te tino rangatiratanga a te iwi Maori.

Far from what some 'Prima Donas' would say, Article Three did not make Maori into British citizens and subjects. Instead, it recognised the continuing right of Maori as tangata whenua - to enjoy our own parallel laws, customs and lifestyle - just as British citizens enjoy their own.

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Quite clearly, Maori people intended to honour the Treaty. "It is also obvious that Maori expected to remain physically and politically in control of their own country and their own lives."

The British recognised Maori sovereignty with its 1835 Declaration of Independence. Since then, they've refused to comply with the true meaning of te tino rangatiratanga. In typical colonial fashion, the British have imposed an inferior meaning on the phrase, disregarding their own rules of international law.

For nearly 150 years, our rights as Tangata Whenua - reconfirmed in the Treaty - have been ignored. Present Pakeha power has actually been built on a DENIAL of the Treaty and te tino rangatiratanga a te iwi Maori.

Recently a far more sinister and creative strategy has been adopted. It uses the Treaty to LEGITIMISE Pakeha power and the status quo.

The Government Green Paper on 'devolution', actually left the entire phrase 'te tino rangatiratanga' out of its version of the Treaty. The Government, in that exercise, rewrote the entire Treaty to affirm and uphold Pakeha power.

It then had the cheek to CO-OPT the term "Rangatiratanga" and give it a new meaning. Somehow Rangatiratanga has been redefined, avoiding any constitutional issues, to mean "self help." They've even constructed a new word for dependency - its called devolution.

However, it is the governments strategy of actually rewriting the Treaty that is the latest danger move. The government talks not of the Treaty's literal text, but of a cosmic substance called - the PRINCIPLES.

The origins of this device lay back in 1975. ~~That's~~ when the third Labour government created the Waitangi Tribunal. The Waitangi Tribunal could make recommendations IF IT THINKS FIT, HAVING REGARD TO ALL THE CIRCUMSTANCES OF THE CASE. It's recommendations related to the PRACTICAL APPLICATION of the PRINCIPLES OF THE TREATY OF WAITANGI.

On the surface, the new Waitangi Tribunal looked good enough to stir up the rednecks AND the hopes of many Maori. However closer inspection revealed that the Tribunal was merely an advisory body - a bit of a toothless taniwha. In other words, Maori rights irrespective of the Treaty were (and still are) dependent on the goodwill of the government. It's members were government selections. And the Tribunal

couldn't consider any claims that arose before 1975 (though a new Act in 1985 gave it retrospective powers back to 1840.) Lastly and most importantly, the Tribunal must consider not the Treaty itself, but these things called 'THE PRINCIPLES'. The problem was, just HOW and WHO decided what these principles would be?

The Tribunal started off very much an agent of the government in its early years. But in 1983, there was a change of personnel. The Tribunal began to develop its own distinctive style, manner - and mana. The next three years saw the Waitangi Tribunal leading the way in defining the PRINCIPLES. The Tribunal's reports on Motunui, Kaituna, Manukau & Te Reo stressed its belief that Maori would never have ceded sovereignty. (as Ekeia understood it to be)

The Tribunal defined Kawanatanga as being "something less than rangatiratanga". Although the Tribunal's recommendations sought a way to give redress without challenging the legitimacy of the government, its findings were important in influencing public thinking. Over worked and underpaid, the tremendous work of the Tribunal was earning it a significant place in the history of Aotearoa.

In 1987, the government made moves to pass the State-Owned-Enterprises Bill. This would have resulted in the alienation of land and resources which might be subject to Tribunal claims.

Despite governments declaration of goodwill towards the Treaty, the Treaty was noticeably absent from the SOE BILL. The Waitangi Tribunal was on the ball; it notified the Government that the SOE Bill would be inconsistent with the 'principles of the Treaty' - and the Attorney General hastily added the now infamous section nine clause which reads - "NOTHING IN THIS ACT SHALL BE INCONSISTENT WITH THE PRINCIPLES OF THE TREATY". The Bill was passed immediately with the new clause.

It was due to the vigilance of Sir Graham Latimer and the NZMC that an injunction was brought against the government, halting its powers of transfer under the new Bill. So began the case of the NZMC v. The Attorney General.

During the case, the government admitted it hadn't even tried to find out whether any of the assets it was intending to transfer were subject to claims under the Tribunal.

The government said that "giving section nine overriding importance would have INCONVENIENT PRACTICAL CONSEQUENCES AND WOULD IMPOSE AN ENORMOUS PRACTICAL FETTER ON THE OPERATION OF THIS ACT'?" The government described section nine as a 'LEGISLATIVE EXHORTION TO M.Ps ABOUT HOW TO CARRY OUT THEIR FUNCTIONS, NOT AS A FETTER ON THEIR POWERS.'

The five Judges of the Court of Appeal said: 'THE COURT OF APPEAL HAS TO DECIDE WHETHER ANY ACT TAKEN OR PROPOSED UNDER THE SOES, IS INCONSISTENT WITH THE PRINCIPLES OF THE TREATY. THE COURT MUST DECIDE AS FAR AS IT NEEDS TO, WHAT THOSE PRINCIPLES ARE.' They stated that 'THE OPINION OF THE TRIBUNAL IS OF GREAT VALUE BUT IT IS NOT BINDING ON THE COURTS... THE COURTS FINDINGS ON THE PRINCIPLES... WILL BE BINDING AND SHOULD BE FOLLOWED BY THE WAITANGI TRIBUNAL AS A DECLARATION OF THE HIGHEST JUDICIAL TRIBUNAL IN NZ.

While the Judges and lawyers for the NZMC recognised that a major conflict lay between SOVEREIGNTY and RANGATIRATANGA, they failed to address the issue - confining the courts jurisdiction under section nine to - 'the PRINCIPLES'. Once again a case of avoiding the question because the answer would challenge the existence and legitimacy of Westminster-style Parliament and indeed, the Judiciary.

Back to the principles. The PRINCIPLES were to be found in the SPIRIT of the agreement, not in the actual text. The Treaty was to be seen as 'AN EMBRYO' not a fully developed set of ideas. The Judges upheld the notion of Pakeha sovereignty, contradicting the Tribunals view - and also the view of the NZMC. The NZMC believed that the Maori text

constituted the principles. The judges declared the major principle was ~~so~~ Partnership. Partnership was a new definition. The Crown as the Treaty partner had the duty to make informed decisions re the treaty. If it didn't have enough information, it could consult with selected Maori. As for te tino rangatiratanga...? FORGET IT! It doesn't have to act on the basis of the Maori's duty as partner is to be loyal to Queen and her Ministers and to co-operate with Government.

Not wanting to deal with the issue, when the court was forced to, it relied on British rules - on Hobsons proclamations, (not the Treaty) as the point of significance.

Judge Somers said, "ON 21 MAY 1840 CAPTAIN HOBSON PROCLAIMED THE "FULL SOVEREIGNTY OF THE QUEEN OVER THE WHOLE OF THE NORTH ISLAND" BY VIRTUE OF THE RIGHTS AND POWERS CEDED TO THE CROWN BY THE TREATY... AND OVER THE SOUTH ISLAND AND STEWART ISLAND ON THE GROUNDS OF DISCOVERY. THESE PROCLAMATIONS WERE APPROVED IN LONDON AND PUBLISHED IN THE LONDON GAZETTE OF 2 OCTOBER 1840. THE SOVEREIGNTY OF THE CROWN WAS THEN BEYOND DISPUTE AND THE SUBSEQUENT LEGISLATIVE HISTORY OF NZ CLEARLY EVIDENCES THAT SOVEREIGNTY IN NZ RESIDES IN PARLIAMENT".

In essence, the C.A. decision had the effect of rewriting the Treaty to uphold the Pakeha text. This case was indeed a landmark. It determined a new interpretation of the PRINCIPLES. For the first time, the Tribunal has begun talking about "a cession of sovereignty", bound as it is by the Court of Appeal decision.

If the Tribunal chose to ignore the C.A. decision, its findings could well be scrutinised in the High Court. The Minister of Justice said "There is still a right for a party to proceedings before the Waitangi Tribunal, to apply for judicial review in the High Court, on the grounds that the Tribunal has not decided a claim in accordance with proper legal principles".

Needless to say, Treasury has pounced on the decision with relish. In its 1987 Briefing Papers, Treasury declared that the Treaty 'does not imply that Maori have a special role in government - or a general role in national issues". TREASURY suggests that Maori Treaty Rights to exclusive control of resources, be limited - " That the line must be drawn on Treaty Rights where the cost is too high for government programming, Pakeha interests and the economy".

Quite clearly from these statements, Treasury is referring to the new 1987 rewritten Treaty version, not that which was signed in 1840.

Sadly, the Minister of Maori Affairs sincerely believes that this Government has done more in the last five years than all others who have preceded it in the past 140 years. He praises his governments action, and rightly so in this case, in making the Tribunals powers of consideration retrospective to 1840. This, the Minister said, had the effect of bringing forward some very old and historic claims. However the Minister did truthfully admit a " period of inactivity". Lets analyse that. In 14 years, the tribunal has completed eight full reports - there are over one hundred and fifty claims still awaiting consideration. NONE of the Tribunals reports have been fully implemented by the Government.

The Treaty Issues Division of the Department of Maori Affairs had the unenviable task of trying to get the government to implement the Tribunals decisions. It relied solely on "persuasion and public relations".

But, surprise surprise!! The government had its own fully financed Treaty of Waitangi Policy Unit. This unit researched the Crowns position on Treaty issues.

In other words, it got the Crown off the hook in Treaty claims.

Interesting to note a government announcement just after the Court case that funding to such bodies as the NZMC and WWL would be cut - because they were getting into politics.

The Minister of Maori Affairs stated that (quote) ALTHOUGH THE GOVERNMENT HAS BEEN THE TARGET OF THREE APPEALS TO THE COURTS BY MAORI GROUPS, I DO NOT REGARD THAT AS A LOSS OF FACE. RATHER, I BELIEVE IT REINFORCES THE FACT THAT OUR GOVERNMENT HAS A COMMITMENT TO THE TREATY PRINCIPLES. IT IS PREPARED TO INCORPORATE THEM INTO LEGISLATION AND BE JUDGED BY THE COURT AND ITS INTERPRETATION. THESE HAVE BEEN A MILESTONE FOR OUR PEOPLE (unquote).

Some would suggest a millstone would be a more appropriate term.

The Minister speaks of a suggestion that the Treaty be honoured by a Set of Protocols. These protocols would be a set of agreed interpretations of the principles of the Treaty. In this way, the Minister says, "they can be changed as the principles of the Treaty are being reinterpreted through time. The Treaty itself would remain unchanged".
~~Where does he get these ideas?~~

The Minister also mentioned the possibility of Government making a PARAMOUNT STATEMENT. This Statement would have the effect of ratifying the Treaty principles.

In conclusion, the pattern is quite clear. The Government pursues its economic policy, and its anti-Treaty legislation. Vigilant Maori force the Government into Court and the Court applies the "principles," not the Treaty.

The pattern continues. The Government is forced by the Court to negotiate with a handful of Maori litigants - who are meant to represent all Maori. These people are forced to negotiate a position for Maori within the Governments framework - and the governments economic policy trundles on.

Opportunist politicians, big business men and the media have a field day fuelling the ignorant majority into believing that control over the country is being lost to a radical Maori minority.

Maori are being scapegoated for the governments disastrous economic policy, in which our people are the main victims. Nowhere was this illustrated more clearly than in the Fisheries case. Seventy five per cent of the available quotas had already been transferred to only FIVE international companies - those were the very companies

responsible for over exploitation, not the Maori in the tin dinghy. And yet Maori people ended up being portrayed as the ogres in the whole affair.

Nothing in the past 150 years has displayed any sincere commitment from the Pakeha - in righting past wrongs, in restoring Pakeha honour, in delivering justice, and in recognising Maori human rights.

~~Governments rationale for dropping the Treaty out of the Bill~~
of Rights ^{of course} is interesting. True, Maori see no need for ~~its~~ *The Treaty*
incorporation into a Bill of Rights - the Treaty is the Bill
of Rights. The idea that the Government is doing so well in
honouring the Treaty ~~principles~~, that there is no need to
include the Treaty in the Bill is obviously untrue.

The Treaty of Waitangi in its short, simple manner set down the guidelines for a socially just society. There is no need to resort to anything other than the words of the text, which are clear and unambiguous.

Te Ariki, Sir James Henare implored that people talk only about the text of the Treaty. Maori people understand the text.

Many Maori groups have developed models which would ~~possibly~~ achieve a just society. The strength, optimism and hope of Maori people for the development of this country, is never ending.

That more and more Pakeha are joining Maori in that same quest is even more uplifting. "Justice delayed is Justice denied. "

We ask our visitors from overseas to note our efforts for full participation of Maori in the development of this country, in solidarity of the struggle of indigenous peoples for selfdetermination ^{through the} ~~world~~.

He aha te mea nui o tenei ao?

He Tangata, He Tangata, He Tangata.

Hon. Geoffrey Palmer: Speech July 19, 1988 - Opening of Annual Federated Farmers of New Zealand Conference.

Hon. Koro Wetere: Speech 15 February 1989 - Progress of Government in addressing Maori Policy Issues from 1984 - 1989. Prepared for the Labour Party Caucus Meeting held at Waitangi.