Conclusion

What is is essential to achieve at the political level, it is also essential to achieve at every other level of life in this nation.

Tino Rangatiratanga is the Treaty issue for the 1990s.

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TINO RANGATIRATANGA:

A PUBLIC QUESTIONS CONTRIBUTION: an update of a Paper prepared in 1990.

This booklet is about tino rangatiratanga, expressed in Article 2 of the Treaty of Waitangi, which is at the very heart of the Maori understanding of the Treaty. It refers to Maori control of all things of significance to Maori. It equates to Maori sovereignty. Tino rangatiratanga stands in contrast to kawanatanga which Maori have always seen as giving only limited power to the Crown. For the Maori tino rangatiratanga was not affected by Article 1 of the Treaty. But history has seen the displacement of tino rangatiratanga by a form of kawanatanga which assumes that the Crown has absolute authority over all people and all matters in this land.

The National Government has no place for tino rangatiratanga in its policies. Neither had the Labour Government. Both have acted on the mistaken assumption that Maori ceded their sovereignty, and so their form of kawanatanga will reign. The Courts have reflected this view, interpreting the Treaty in a way that upholds Crown sovereignty and rules out tino rangatiratanga. The Waitangi Tribunal has found itself bound by the Court of Appeal, with its findings now based on a cession by Maori of their sovereignty. The Labour Government went further in its 'Principles for Crown Action on the Treaty of Waitangi' (1989) where it reduced tino rangatiratanga to a concept of resource management. This was followed through in its devolution policy and the Runanga Iwi Act. Things are no different under a National Government where kawanatanga National style is now supreme.

The failure to recognise tino rangatiratanga has led to the continued subordination of Maori. But the resistance movement is growing with the increased assertion of tino rangatiratanga, which is the Treaty issue for the 1990s.

Introduction

In 1989 the Conference of the Methodist Church passed a resolution relating to 'tino rangatiratanga'. The resolution was in two parts. The first expressed "full and unqualified support for 'te tino rangatiratanga o o ratou wenua o ratou kainga me o ratou taonga katoa' o nga iwi Maori as expressed in Article 2 of the Te Tiriti o Waitangi (Maori Version)". The second expressed the concern of the Conference at the continued erosion of te tino rangatiratanga by successive governments and the Courts since 1840. Leaders of the Churches in their 'Statement for 1990' said that they accepted the challenge to work in ways which honour the Treaty, including recognition that Maori possess tino rangatiratanga. The Joint Methodist-Presbyterian Public Questions Committee agreed to make consideration of the meaning and significance of tino rangatiratanga a priority in 1990. It has been the major focus of its bicultural work group.

The Meaning of Tino Rangatiratanga

The word rangatiratanga comes from the word rangatira which is most often translated as chief. Rangatiratanga which refers to chieftanship, approximates to oversight, responsibility, authority, control, sovereignty. It is a word used in the Lord's prayer for kingdom, which is a word very close in meaning to sovereignty. The word tino is an intensive or superlative, meaning variously; very, full, total, absolute. So tino rangatiratanga approximates to total control, complete responsibility, full authority, absolute sovereignty.

The term tino rangatiratanga was used in the Declaration of Independence of 1835 which recognised Nu Tireni (New Zealand) to be a sovereign and independent nation where power and authority rested with the rangatira. The English version of that declaration stated that "all sovereign power and authority resided entirely and exclusively" in the rangatira.

Te Tiriti o Waitangi of 1840 also used the term tino rangatiratanga with the promise that it would be guaranteed to

up an official's group to restate those principles to conform with its own policies. This confirms that the Crown is still seeking to rewrite Te Tiriti so as to reaffirm it's own view of constitutional supremacy. This attempt to restate the principles of Te Tiriti is in part being undertaken to facilitate the settlement of iwi claims. However such claims are based on Te Tiriti and not Crown defined principles. So what is needed is not a set of principles to circumvent Te Tiriti, but a clear process for the settlement of claims, and not merely their redefinition or deferral. When the National Government has finished rewriting its principles of the Treaty of Waitangi, te tino rangatiratanga will still be strenuously denied Maori.

The Need for Political Restructuring

Attempts to have tino rangatiratanga recognised by the Crown and the Courts have failed. This has enforced Maori dependency. But the struggle goes on. What is required in these days is a process of political reform which recognises that Maori have an inherent right to their tino rangatiratanga. To achieve this the supremacy of Crown sovereignty must be relinquished so that we can recognise two co-existing constitutional entities within one nation, one representing tino rangatiratanga and the other representing kawanatanga. These two entities must of necessity exist in a new Treaty (Maori Version) based relationship with each other.

The church leaders have recognised the need for this. In their 'Statement for 1990' they asserted, "We believe there needs to be a political restructuring which recognises Maori as a people possessing te tino rangatiratanga according to the Treaty". Te Runanga Whakawhanaunga I Nga Hahi (the Maori Ecumenical Council) has called "to all Maori and to all people of goodwill" not to vote in the October General Election because of 150 years of injustice in denying te tino rangatiratanga. They also state it would not be difficult to establish a constitutional forum to resolve Treaty issues such as te tino rangatiratanga through dialogue and negotiation and indicate that they would be willing to contribute a draft proposal for such a process.

Zealand". The Tribunal was now bound by the Court of Appeal's findings.

In its subsequent reports on claims, the Tribunal began to state that a cession of sovereignty had taken place with the signing of the Treaty. By August 1988 the Tribunal was writing about "a cession of [Maori] sovereignty and Pakeha settlement rights that cannot now be denied". The Tribunal was now a mechanism to deny tino rangatiratanga and uphold the Court's Treaty principles. The Tribunal had now been pulled back into the mainstream Pakeha legal system

Tino Rangatiratanga and the Principles of the Treaty

In recent years there has been a concerted effort to focus discussion not on the Treaty of Waitangi, but on the principles of the Treaty. The Waitangi Tribunal has always operated on the basis of defining Treaty principles. The Labour Government legislated for principles of the Treaty in the Treaty of Waitangi Act, and in the S.O.E. Act. The Court of Appeal has enunciated its principles of the Treaty which are now binding on all levels of the judiciary. The Labour Government too produced its own set of principles.

In its 'Principles for Crown Action on the Treaty of Waitangi', the Labour Government established a "kawanatanga principle" and a "rangatiratanga principle". The so called kawanatanga principle reaffirmed the notion of cession of sovereignty by Maori and assumed that they gave up their right to self determination. Both of these have been constantly refuted by Maori. The so called rangatiratanga principle redefined rangatiratanga as a concept of resource management which excludes ideas of social, economic or political power for Maori. Others of these principles limit rangatiratanga to a power subject to the authority of the Crown, require reasonable co-operation with the Crown and justify the imposition of English Common Law as a basis for equality. In other words, recognition of tino rangatiratanga is strenuously denied.

The National Government has decided to rewrite Labour's 'Principles for Crown Action on the Treaty of Waitangi'. It has set

Maori. In the words of the English translation of the Maori version of the Treaty, the Queen agreed to the rangatira and the iwi retaining full chieftanship (tino rangatiratanga) of their lands, their villages and all their taonga including the Maori way of life.

Rangatiratanga and Kawanatanga

The Maori version of the Treaty of Waitangi clearly confirmed tino rangatiratanga or Maori sovereignty over all things Maori (Article 2). It granted to the Crown kawanatanga, a word which is a transliteration of the word governorship (Article 1). Maori would have been in no doubt as to the meaning of rangatiratanga and, on the basis of its being guaranteed in the Treaty, willing to sign it. In 1840 Maori had no desire and no need to give away their tino rangatiratanga. What they gave to the Crown was limited power, to control new settlers. That power was kawanatanga. In retaining tino rangatiratanga it was clear to Maori that their ability to control their own destiny was not diminished. In granting kawanatanga they saw that they would benefit from limited controlled immigration and the introduction of new technology. Article 3 of the Treaty did not make Maori into British subjects. It recognised the continuing right of Maori to enjoy their own laws, customs and lifestyle, just as British citizens enjoyed their own. This was reinforced in Article 4 (unwritten) which stated that the Governor would protect Maori ritenga or custom.

However, the English text of the Treaty which successive governments have relied on to this day for their legitimacy, or their own unilateral proclamation of sovereignty, assumes that Maori gave away all their sovereign power to the Crown. Such an idea would never have been acceptable to Maori. 200,000 Maori had no need whatever to concede any power to just 2,000 settlers. They signed the Maori text because they knew what it meant. Their tino rangatiratanga was retained.

On the incorrect assumption that Maori ceded sovereignty (tino rangatiratanga), successive governments have set about usurping tino rangatiratanga. The denial of the right of tino rangatiratanga since 1840 has been expressed in legislation,

decisions of the Courts and most recently in attempts to rewrite the Treaty in the form of principles.

Tino Rangatiratanga and the Labour Government

When the Labour Government came to power in 1984, two forces were to the fore. One was termed the Maori Renaissance, which brought with it a heightened awareness of Treaty of Waitangi issues. The desire for political and economic autonomy by Maori required the return to Maori control of key resources, lands, forests, fisheries, minerals, waterways - which had been acquired by successive governments in violation of the Treaty. The other force was economic and was termed deregulation and the freedom of the market place. It was to take the form of Rogernomics and would include the transfer of significant economic power to the private sector. But these were the same assets Maori were laying claim to under the Treaty. The two forces were on a collision course. One of these forces was motivated by the desire for the restoration of tino rangatiratanga. The other was based on the Crown's claim to absolute sovereignty.

The Labour Government initially expressed strong Treaty rhetoric, stating a commitment to recognise the Treaty. But when Maori contested the transfer of state owned assets to the private sector it increasingly distanced itself from its earlier Treaty stance. Maori objections to economic policies were ignored, forcing them into costly and ongoing litigation.. The Government was only partially defeated in the Courts. But this was enough to cause it to back right off its commitment to the Treaty. It even began to publicly criticise statements of the Court. Government finally responded by rewording the Treaty in the form of 'Principles for Crown Action on the Treaty of Waitangi'. It established a new structure (in addition to the Waitangi Tribunal) for the handling of Treaty injustices, the Crown Task Force on Waitangi Issues, a Standing Committee of Cabinet. All of these were unilateral actions designed to ensure that Crown sovereignty would be supreme. It spoke now of symbolic settlement of Treaty issues. There was no place for tino rangatiratanga.

When the Government demonstrated reluctance to consult Maori over privatisation of State Forest and Coal Corp, Maori went back to court. While the Court found in favour of Maori, all that Maori secured was a promise to return assets if in the future the Waitangi Tribunal ordered it to do so. The Court stated that partnership did not mean the equal division of assets or resources. Later in the case of the Maori Fisheries Act (1989) it was stated that that legislation may well provide a sufficient expression of traditional Maori fishing rights in present day circumstances.

The effect of recent Court findings has been to seriously undermine the bargaining power of Maori in negotiations over government assets and resources. The Treaty has been reduced to terms compatible with Crown sovereignty. Tino rangatiratanga simply does not have a place so far as the Courts are concerned.

Tino Rangatiratanga and the Waitangi Tribunal

When the Waitangi Tribunal was established it was seen as a source of hope by Maori. However, it was later to become clear that it was established under Crown supremacy, not tino rangatiratanga. It could only recommend solutions to Maori grievances. Maori Treaty rights were still dependent on the goodwill of the Government. Tribunal members were Government selected and they were required to consider not the Treaty but the principles of the Treaty.

In its early years, however, the Tribunal's reports stressed the belief that Maori would never have ceded their sovereignty as successive governments had deemed they had. Kawanatanga was defined as something less than rangatiratanga and the challenge of rangatiratanga to Crown sovereignty was upheld. But following the S.O.E. court case the Tribunal made a dramatic turn around on the crucial question of tino rangatiratanga or sovereignty. The Court of Appeal stated that it would determine what the principles of the Treaty were. While the views of the Tribunal might be of assistance to the Court, they were not binding. Only the Court's findings could be binding and it stated "should be followed by the Waitangi Tribunal as a declaration of the highest judicial tribunal in New

Other changes have also come under National. The National Government is seeking to fast track some Maori claims in its own interests e.g. railways land. Increasingly such negotiations are being conducted with the fledgling Maori Congress which has still to develop its skill in this role, and to which not all iwi belong. Once again the Crown with all its resources has the upper hand

Tino Rangatiratanga and the Courts

From 1840 till 1988 both the legislature and the Courts had ignored the Treaty of Waitangi. In 1877 Chief Justice James Prendergast declared the Treaty to be a "legal nullity". Since it had not been written into legislation, it was of no consequence to the Courts. This was the position of the Courts for more than a hundred years.

When in 1987 the Labour Government set about passing the State Owned Enterprises Bill, the Waitangi Tribunal drew its attention to the fact that it took no account of the need to address Treaty of Waitangi concerns. As a result a clause was added stating that nothing in the Act shall be inconsistent with the principles of the Treaty. The Bill was then passed.

Subsequently the Maori Council brought a case against the Government. This case and subsequent cases involving fishing, forests and coal, have been acclaimed as victories for Maori. However their implications for tino rangatiratanga were quite serious. The Court of Appeal avoided the Treaty guarantee of tino rangatiratanga. It seized upon the reference of the S.O.E. Act to the principles of the Treaty which it said involved the 'spirit', of the Treaty (rather than its words) adapted to the present day changed circumstances. Partnership based on reasonableness and good faith, it said, was the essence of the Treaty. The Government was recognised as having sovereign power to govern. While it had a duty to take into account Maori Treaty rights, and if necessary to consult with Maori, the final decision, the Court said, remained with the Government. Further, Maori were to be loyal to the Crown, recognise the Government and be reasonably co-operative. The Court of Appeal confirmed two things: Crown sovereignty and Maori subordination.

Tino Rangatiratanga and the National Government

Prior to the 1990 General Election the National Party saw the Treaty of Waitangi as a document relating to the past that had little relevance to the present or future The Maori Affairs spokesperson, Winston Peters stated that he would relegate the importance of the Treaty of Waitangi to that of an historical document, and reduce the Waitangi Tribunal to being a research body on Maori claims, which is what it became in the latter years of the Labour Government. National's policy stated that it would resolve the relevance of the Treaty of Waitangi by establishing a nationwide consensus on the future role of the Treaty. The Party itself said that the Treaty was a touchstone for co-operation between Maori and other peoples of the country. Full and final settlement of land claims would be sought by direct negotiation with the iwi. It was clear that National adhered to the view that Maori do not have and would not be given their tino rangatiratanga. All sovereignty rested with the Crown.

Upon taking office following the 1990 General Election the National Government's Minister of Maori Affairs, Winston Peters, commissioned the 'Ka Awatea' Report. This report is about Maori socio-economic disadvantage rather than how to recognise te tino rangatiratanga. The report states that the goal of tino rangatiratanga is to ensure the unique place of Maori as a people free to organise and express their own needs and goals, and the Maori have the right of equality in all social, economic and political activities. But it also says that the Government has the right to govern and make laws, which means Government will always have the final word. This is not a Tiriti based report. In concerning itself with economic disadvantage and not te tino rangatiratanga, it deals with the effects and not the causes of 150 years of colonisation upon Maori. In the final analysis it leaves Maori dependent on the goodwill of the Pakeha Government.

Despite this the report received widespread support amongst Maori, being seen as a step in the right direction rather than the final solution. However it met with considerable opposition in the

Cabinet as it promoted a heavily interventionist approach to Maori socio-economic disadvantage at a time when Government was withdrawing from its social and economic responsibilities. The report's main points of principle were finally accepted although the details remained vague. In response to the widespread socio-economic disadvantage portrayed in the report, a new Ministry of Maori Development was proposed to replace the existing Ministry of Maori Affairs and the Iwi Transition Agency. These latter have since been disbanded and the new Ministry is now in place. However the direction it will take remains unclear.

The enacting legislation for the Ministry of Maori Development makes no reference to Te Tiriti o Waitangi, which is basic to any Maori understanding of Maori development. Rather the legislation sees Maori as having special needs that must be addressed, while ignoring the issue of Maori having Tiriti rights, namely te tino rangatiratanga. It does little more than restructure Government bureaucracies in order to further promote the Government's own agenda. The Ministry of Maori Development does not give Maori the power to determine the course of their own development.

Before the Ministry of Maori Development Bill was passed by Parliament, the Prime Minister 'dumped' the Minister of Maori Affairs, Winston Peters. Alarm bells began to ring in Maoridom. While not an advocate of te tino rangatiratanga the Minister had been listening to and showing signs of responding to the voice of Maori leaders. There was in fact considerable support for the Minister's initiatives by Maori. His 'dumping' and replacement by Pakeha, Doug Kidd, was to Maori a retrograde move. The Prime Minister's refusal to reinstate Winston Peters in response to Maori protests was taken to be a sign that the Prime Minister does not want to take Maori seriously and will listen to them only on a selective basis.

So what is the difference between the Labour and National Governments on the issue of te tino rangatiratanga? In reality there is little difference between them. Crown sovereignty is still supreme, only now it is National's style of sovereignty, not Labour's.

The devolution policy of the Labour Government was set out in a green paper 'He Tirohanga Rangapu' (Partnership Perspectives) and a yellow paper 'Te Urepare Rangapu' (Partnership Response). Both documents were part of a process of rewriting Te Tiriti o Waitangi. Article 2 of Te Tiriti was said only to place a responsibility on Government to protect Maori interests and where necessary redress grievances; a clear denial of tino rangatiratanga. The Department of Maori Affairs was to be abolished and a number of its functions mainstreamed into other Government Departments. Iwi organisations would implement and administer Government programmes but would have to operate under strict rules set by Government. While Maori supported the devolution of resources and authority to the iwi they questioned Government control of the process and sought retention of the Department of Maori Affairs. The Labour Government however proceeded with the abolition of the Department of Maori Affairs replacing it with the Iwi Transition Agency and the Ministry if Maori Affairs. The 'Runanga Iwi Act' which legislated for these changes was widely rejected by Maori as not recognising the tino rangatiratanga of the iwi, for it sought to recreate the iwi in a Pakeha image under the name runanga and only gave iwi the powers which the Crown deemed appropriate. Once again Crown sovereignty was supreme.

The National Government dropped Labour's policy. The 'Runanga Iwi Act' has been repealed and the 'Ministry of Maori Development Act' passed. The 'Ka Awatea' report sees devolution as meaning the right to self development. In terms of iwi development. this means that the iwi should be able to use their resources as they want without Government interference. If taken seriously this could put an end to the divide and rule approach which ensued from Labour's policy. It should mean that iwi are not told who they are and how they can function. For this reason there was considerable Maori support for the repeal of Labour's 'Runanga Iwi Act'. But they will still have to become 'Pakeha' legal entities before they can obtain government funds to deliver services to their people. Whether in the end the iwi will be free to focus on their tino rangatiratanga and not be distracted by Government schemes, remains to be seen.