

TOPICS IN CONTEMPORARY MAORI SOCIETYINSTRUCTION SUMMARYR.J. Walker
Maori StudiesTHE WAITANGI TRIBUNAL'S ROLE IN DEFINING PRINCIPLES UNDERLYING THE TREATY

(Manukau, Kaituna and Maori Language claims)

1. The status of the Treaty of Waitangi has been considerably uplifted in the life of the nation by legislation which makes the Waitangi Tribunal retrospective to 1840, and the requirement in the Environment Act and the State Owned Enterprises Act "to take account of the principles embodied in the Treaty of Waitangi."
2. Parliament did not define those principles, and so as the work of the Tribunal proceeds it extrapolates principles from each case it hears and incorporates them in its reports.
3. In the Motunui hearing the Tribunal did not shrink from laying down the principle that under their Treaty rights, the Crown had an obligation to protect the Maori interest in their fisheries from the consequences of growth and development on the land.
4. In the Manukau hearing the proceedings of the Tribunal served to uncover the history of colonial exploitation of Maori land and sea resources by unfair confiscation, growth and development, thereby enacting a socio-drama before national media indicating breaches of the Treaty by one partner.
5. The Manukau Report lays down a number of principles:
 - 5.1 The Tribunal is bound by both the English and Maori versions of the Treaty despite discrepancies between them.
 - 5.2 Both versions should be construed in the sense they would be naturally understood by the Maori.
 - 5.3 The Tribunal argues that mana is equivalent to sovereignty. Since mana and rangatiratanga are inseparable, the "Maori retained his mana without denying that of the Queen" (p91).
 - 5.4 The tribes claimed ownership of harbours and foreshores in their tribal areas. The Maori text affirms that ownership because it guarantees to the Maori people the ownership of all their
 - 5.5 taonga (p93)
 - 5.6 European New Zealanders need the Treaty too because by it the Maori people agreed that Europeans would belong (p94).
 - 5.7 The Treaty did promise the tribes an interest in the harbour. That interest is certainly something more than that of a minority section of the general public, more than just a particular interest in a particular fishing grounds, but less than that of exclusive ownership (p94).
 - 5.8 The guarantee of undisturbed possession or of rangatiratanga means that there must be a regard for the cultural values of the possessor.
 - 5.9 Taonga means more than objects of value. A river may be a taonga. Its mauri or life force is a taonga.
6. The Kaituna Claim against the scheme to pipe effluent from the Rotorua treatment plant into the river was heard in July and October 1984. The Tribunal used the hearing to extrapolate and cite the following principles underlying the Treaty.
 - 6.1 Section 6 of the Treaty of Waitangi Act declares that "any Bill, proposed regulation, order in Council or policy must be measured against the principles of the Treaty."
 - 6.2 "Far from being a simple nullity the Treaty of Waitangi has become a document of importance approaching the status of a constitutional instrument."
 - 6.3 "The Treaty of Waitangi is no longer to be regarded as a 'simple nullity', that it is now part of an Act of Parliament, that it is in the nature of a statutory instrument and not something to be taken lightly by those responsible for introducing new legislation or enforcing legislation that already exists." (p26)
7. In Te Reo Maori Claim heard in June and October 1985 the Tribunal had to decide whether the Treaty guaranteed protection for the Maori language. Again, the Tribunal used this case to identify and enunciate principles underlying the Treaty.
 - 7.1 Firstly the Tribunal determined that taonga included language. That being the case the Crown had an obligation to guarantee protection of the language (p28).
 - 7.2 The word guarantee imposes an obligation to take active steps within the power of the guarantor (p29).
 - 7.3 Tribunal cited the case Mihaka v. Police 1980 in which the Appeal Court ruled Mihaka's claim to use Maori in court was a legal point not dealt with by the Treaty. The Tribunal ruled the Maori version of "taonga" was broader than the English one of possession. Therefore the prohibition was inconsistent with the Treaty.

READING

Waitangi Tribunal Reports: Manukau
Kaituna
Te Reo Maori

Walker R.J. 1986 The Genesis & Transformation of the Waitangi Tribunal
(Unpublished Paper held in Maori Resource Centre)

LECTURE 8 THE POWER OF TAPU

1. Tapu is the sacred force emanating from the gods. The sanction behind the power of tapu is death as outlined in the Tawhaki myth when one of his slaves was forbidden to look at the sacred pa of Tongameha. The slave like Lot's wife looked and he perished.
2. There are three kinds of tapu, they are sacred, prohibited and unclean (as in the biblical sense).
3. The meeting house was tapu in the sacred sense and the consumption of food which is noa, the antithesis of tapu, was prohibited there. Valuable artifacts were imbued with tapu to prohibit children from touching them.
4. Tapu in the unclean sense applied to menstrual blood, sickness, death, and toilet facilities.
5. Personal tapu in the sacred sense served to enhance the rank of an individual. The higher the rank the greater the personal tapu. The most sacred part of the person was the head. Articles of toilet which came in contact with the head (combs, brushes, scarves, hats, towels) were tapu by contagion. It was a breach of tapu to put these on a table or in a place where food was prepared.
6. Tapu restrictions were all-pervading. Urupaa (cemeteries) and death were tapu in the unclean sense as exemplified by the custom of washing hands to purify oneself before resuming normal activities.
7. In the construction of meeting houses the tapu while the work proceeded kept women and children away so that the workers concentrated on their task.
8. Firth mentions variations in the intensity of tapu on artifacts. A war canoe had a greater amount of tapu than a river canoe. This ensured that greater care was taken of the former.
9. At the completion of a meeting house whakanoa rites were performed to remove the tapu and open the building for general use.
10. Tapu also applied to a number of places that might be termed sacred precincts. These included wai tapu (sacred waters where people bathed to remove illness) urupaa (cemeteries) sacred mountains, caves and tuahu (places of worship). The heketa (privy) was a sacred precinct which ensured that human waste was disposed of in such a way that it could not be used for makutu (sorcery).
11. Tapu also served to protect and conserve natural resources by a rahui (prohibition) or a closed season. When a rahui was in force on shellfish beds no one dared take shellfish under penalty or death. A rahui was also imposed in the event of drowning out of respect for the dead. Infringement of a rahui meant that the gods withdrew their protection and the mauri (life-force of an individual was exposed to the influence of evil spirits.
12. Maoris believed humans consisted of three parts: tinana (body), mauri (life force), and wairua (spirit). While the spirit could leave the body at will the mauri could not.
13. Associated with the mauri and personal tapu of an individual was the concept of mana (power, force, charisma). The higher the rank of a person the greater the mana. While high mana could be inherited from illustrious ancestors, an individual could increase his mana by hard work, wise rule or prowess in war, Tapu and mana helped to reinforce the leadership role of the Chief.
14. All living things were thought to have a mauri. To give expression to that mauri the tohunga concentrated the mauri of the kumara for example on a mauri stone. He prayed over the mauri to ensure crops would be abundant and then hid it away from enemies. If the crops were poor the mauri would be recovered and incantations performed over it to revive it. This procedure was also applied to the mauri of fisheries and forests.
15. Makutu (sorcery) by an enemy was capable of blasting the mauri of a person or natural resource. The only remedy lay in the power of a tohunga ahurewa (highest grade of tohunga trained in the whare wananga).

READING

- Best E The Maori As He Was
Firth R Economics of the NZ Maori