

Kokiri Nga Tahu Hui, Side by Side Seminars,
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UNDERSTANDING BICULTURALISM Mason Durie

Understanding between Maori and Pakeha in New Zealand suffers from mutual blind spots, misinformation, media preoccupation with differences rather than similarities and, above all, limited opportunities for rational debate. For that reason alone this Gisborne seminar and its Christchurch counterpart are of tremendous importance because they provide an opportunity to hear diverse views which, though not from the same orientation, are nonetheless similarly committed to examining vital issues which face our relatively young nation. The initiative taken by Te Tari Whakawhanaunga-a-iwi, the Office of the Race Relations Conciliator, and the Race Relations Conciliator, John Clarke, in arranging the seminars has I believe the potential to create new avenues for co-operative development in both economic and social arenas.

1994 is a special year for New Zealand. Along with other countries we have the chance to celebrate the family and to reflect on it as a model for the protection and nurturance of children, the sharing of resources and the inculcation of an ethic of co-operation. Sadly, family and whanau are not positive experiences for all New Zealanders; nor for that matter are families always viable in a society which places increasingly higher value on personal competition and individualism. Yet there are few other opportunities to learn about balancing the competing claims of individuals and the group, or to pass on to future generations the intangible beliefs and values of culture and the capacity to care for each other. The International Year of the Family, like the 1993 International Year of the World's Indigenous Peoples, is a timely reminder that we can no longer take for granted the very institutions upon which many of our societal values are founded.

1994 is also the final year of the Decade of Maori Development. Launched at the Hui Taumata in October 1984, a developmental decade was prescribed in the expectation that Maori people could realise greater levels of economic self-sufficiency, stronger iwi, hapu and whanau structures and improved social wellbeing. While not all goals have been attained, the decade has witnessed the emergence of innovative strategies in both political and economic fields and has been associated with a renewed determination by Maori to retain tribal structures and cultures while at the same time embracing the challenges of a global economy.

Throughout the decade Iwi development became a preferred focus for Maori development and there was a devolution of several Government functions to various tribal authorities. Matua Whangai, Mana Enterprises and Maccess training programmes were all premised on the belief that, given adequate resources, Maori were better placed to provide certain services to their own people than the State. Other programmes, such as Maori languages retention and revitalisation through early childhood education centres, Kohanga Reo, arose from Maori initiative and only

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later did they attract State support.

Two other themes emerged during the Decade of Maori Development: the Treaty of Waitangi and biculturalism and this paper explores the varied shades of meaning which have become attached to both.

THE TREATY OF WAITANGI

Until the passage of the Treaty of Waitangi Act in 1975, there was little inclination by New Zealanders to recognise the Treaty of Waitangi as a continuing signpost for contemporary New Zealand. Prendergast's judgement in 1877 that the Treaty was a "simple nullity" more or less determined official and non-official responses to the Treaty. Even after 1975 there was no guarantee that the Treaty would have a role in determining planning processes at local or national levels or that it would soon be incorporated into legislation and Government policy. It was not until 1986 that the principles of the Treaty were included in various pieces of legislation, notably the State Owned Enterprises Act 1986, and later, the Resource Management Act 1991. While Treaty settlements mainly concerned tribes on the one hand and the Crown on the other, the issues and debate quickly spilled over into the public arena. Two broad areas of contention emerged. First, there was some unease that claims under the Treaty of Waitangi might impact on private individuals who could conceivably be required to relinquish private property. It was of course a groundless fear since the Waitangi Tribunal could only ever hear claims against the Crown, and then it could only make recommendations. Cabinet made the decisions. Second, there was debate about whether the Treaty had anything to do with contemporary New Zealand even though the Royal Commission on Social Policy had argued that the Treaty was indeed relevant to current social and economic policies and that all Government policies should take into account any Treaty implications.

Maori had always felt more strongly about the Treaty and not surprisingly it became a central focus for Maori development as well as the basis for iwi interaction with the Crown. Later in the decade, however, it was accepted, however hesitantly, by the majority of New Zealanders, and the Crown as an integral part of New Zealand's history and status. Accepting the Treaty, however, was quite different from understanding its precise relevance in specific situations. Broad principles such as partnership were more or less agreed upon but often there was confusion as to who the partners were or how they should relate to each other. Nor was it always possible to identify the nature of the Treaty argument or to translate a passionate cause into policy or practice. In respect of physical resources, such as land, the environment, forests, and fisheries it was a little clearer.

But in the social areas of health, housing, education, the issues were less straight-

forward. Even now there is no reference to the Treaty of Waitangi in social policy legislation. In Whaia te Ora mo te Iwi, the Minister of Health gave some assurances that the Treaty was the founding document of New Zealand, but did not require any reference to the Treaty in the Health and Disability Services Act 1993.

There remains therefore some uncertainty whether the Treaty's relevance to all policies has actually been accepted. Legislation contains two quite different approaches to Maori issues. A Treaty rights approach is contained for example in the Resource Management Act and the State Owned Enterprises Act while in health and education, a needs approach is emphasised. There is recognition that special consideration of Maori is warranted because of the disparities existing between Maori and non Maori, not because of any inherent rights under the Treaty of Waitangi. Resource legislation, however, recognises Maori interests because of a Treaty based recognition of the indigenous status of Maori as tangata whenua .

There is also some suggestion that once claims under the Treaty have been settled then it will be no longer necessary to have regard for the Treaty in quite the same way. In that respect there remains a significant gap between Maori and Government views. Maori do not equate the Treaty's relevance only with settling Treaty claims; instead they see the Treaty as a prescription, however imperfect, for future development.

At the end of the Decade of Maori Development, there is generally a greater recognition of the Treaty as a document of importance to New Zealand but there is no firm agreement about the parameters of its application or its significance across all policies.

Table 1 shows the variable emphases which have been reflected in legislation. The Treaty is mentioned in all but the last three acts. In those, the Maori dimension is acknowledged but not necessarily on the basis of the Treaty of Waitangi. If there is a uniform position on the inclusion of a Treaty clause in legislation then it is not immediately apparent. Nor is there a single method of including the Treaty within legislation apart from the adoption of Treaty principles rather than Treaty provisions.

Section 9 of the State Owned Enterprises Act 1987 is generally regarded as the most powerful but also the most likely to invite litigation. Interestingly the wording has never been repeated.

The Acts shown in Table 1 are not a comprehensive list of statutes which incorporate the Treaty of Waitangi.

Table 1

Examples of Legislative Recognition of the Treaty of Waitangi

FOCUS	LEGISLATION
Settlement of Maori Claims	Treaty of Waitangi Act 1975 Treaty of Waitangi Act (Fisheries Claim)
National Development	Environment Act 1986 State Owned Enterprises Act 1986 Resource Management Act 1991 Crown Minerals Act 1991
A Constitutional Framework	Maori Representation Act 1867 Electoral reform Act 1993
Protection of Maori Assets	Maori Language Act 1987 Te Ture Whenua Maori Act 1993
Elimination of Socio Economic Disparities	Royal Commission on Social Policy Law Commission Act 1985 Children Young Persons and their Families Act 1989 Health & Disability Services Act 1993

BICULTURALISM

If there is some confusion about the relevance of the Treaty to contemporary New Zealand there is an even greater lack of clarity about the concept of biculturalism. To different agencies and groups it has diverse meanings and there are significantly different understandings between Maori and non-Maori.

At one level biculturalism implies an inclusion of Maori values and perspectives in the major institutions of the State; at another it suggests the development of specific Maori institutions to provide for Maori needs. Sharp describes the first type of biculturalism as bicultural reformism (adapting Pakeha institutions to meet Maori requirements), the second as bicultural distributivism (developing different and specifically Maori institutions to share the authority defined by the Treaty).

The distinction is important and reflects divergent goals based on widely different visions of national development. Moreover, unfortunate experiences occurred when the meaning of biculturalism for a particular institution was not determined prior to the commencement of programmes. Far from bringing people closer together, Te Whare Paia at Carrington Hospital, for example, became associated with conflict, recrimination and unworkable policies because perceptions about

biculturalism between Maori staff and hospital administrators were so far apart. Te Whare Paia had been intended to promote more effective mental health services for Maori and a more responsive hospital. But the reverse occurred. It is necessary therefore to have a clearer idea about the goals of biculturalism before making any commitment to it.

Bicultural Goals

Because the goals of biculturalism are varied and not always clear, they can be described along a continuum. Bicultural goals may, for example, relate to improving race relations by celebrating cultural differences, or establishing New Zealand as a bilingual nation, all citizens being able to speak (with differing levels of competence) both English and Maori. Or, outside the sphere of culture, language and tradition, the goal of biculturalism may be to reduce socio-economic disparities or to ensure greater representivity in the workforce. Further, in the view of many Iwi, the most critical goal of biculturalism is the exercise of self determination, tino rangatiratanga.

At one end of the continuum the goals of biculturalism are about the acquisition of cultural skills and knowledge - an understanding of some Maori words, familiarity with marae protocol, awareness of tribal history and tradition. At the other end, bicultural goals reflect aspirations for greater Maori independence. Between the two poles, integration (into a single framework) is the main goal.

The goals may be represented diagrammatically as a continuum

Table 2
A Bicultural Continuum
Bicultural Goals

Cultural skills and knowledge	Better Awareness of the Maori position	Greater Maori Participation in all NZ institutions	Parallel Maori delivery systems	Tino Rangatiratanga
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Bicultural Structures

At a structural level, biculturalism ranges between two poles; an unmodified monocultural mainstream institution at one extreme and an independent Maori institution at the other. Between the poles there are at least three levels of biculturalism. One has as its main objective the introduction of a Maori perspective into the culture of the institution but as an addition to the overall culture of the organisation rather than as integral part to its core business. Taha Maori programmes in schools could be classified in that category. A second level has as its main objective a more representative Maori workforce and an opportunity for a Maori component to

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develop within the central mission of the institution. Bilingual units in schools or Maori units in Government departments are good examples. The third level accepts that a single organisation cannot comfortably accommodate two quite distinct cultural approaches and opts instead for parallel institutions, both committed to the same overall aims but using different approaches and separate vehicles. Kohanga Reo and Kura Kaupapa Maori illustrate the point. Though operating within educational frameworks prescribed by the State, they have a degree of autonomy which enables them to conduct their activities entirely in the Maori language and according to Maori cultural preferences.

The bicultural continuum as it applies to structural arrangements can also be shown diagrammatically:

Table 3

**A Bicultural Continuum
Structural Arrangements**

Unmodified mainstream Institution	A Maori perspective	Active Maori involvement	Parallel Maori Institution	Independent Maori Institution
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Post-biculturalism and the Bicultural Process

Instead of focussing on goals and structures, it is sometimes more profitable to examine the processes through which Maori and other groups interact. In the earlier years of the Decade of Maori Development, emphasis was placed on incorporating Maori (people, culture, perspectives) into mainstream structures and processes. Although Maori often encouraged that approach, several concerns arose about the appropriateness of incorporating Maori into State institutions where, in the past, assimilation had been an overriding goal.

There were similar fears that the emphasis on biculturalism as a means of integrating two cultural perspectives, was threatening Maori intellectual property. Possibly

for the best reasons, Government departments acquired considerable Maori personnel and resources, often undermining Maori aspirations for greater self sufficiency and determination and reducing Iwi competitiveness with State agencies. The use of Maori protocol within Government departments was sometimes seen as a form of appropriation, even though it may have been inspired by higher motives.

A second concern was the lack of any demonstration by "bicultural" institutions of an improved responsiveness to the Maori situation even though on the surface the agency appeared more Maori friendly. Ultimately Maori, like other New Zealanders, were more concerned about sharing in the core benefits an institution had to offer, rather than cultural niceties. Too much emphasis it seemed was being placed on the latter, at the expense of improved Maori access to departmental core business.

Ironically, biculturalism appeared to be diminishing Maori control of the overall directions for Maori development. Towards the end of the Decade, in 1990, the formation of the National Maori Congress was evidence of greater Maori resolve to promote parallel Iwi development, rather than introducing Maori perspectives (and people) into mainstream efforts. Too often experience confirmed that the culture of Government departments was incapable of serious change and in the absence of clear objectives for Maori advancement, goodwill was an unreliable (and uneven) motive. So parallel development - in economic recovery, health services, education, environmental management, sports - became a preferred approach. No longer did it seem important that Government CEOs should be able to speak Maori or conduct themselves on a marae. What was important was the business of Maori development.

In the post-bicultural era what appears to matter most is Maori control over Maori resources. Relationships with the State or private organisations are defined along business lines, each party working within agreed upon frameworks - not out of any sense of obligation or cultural responsiveness but because there are mutual benefits to be gained. Maori staff in Government agencies now have more sharply defined roles in terms of delivering Maori business to the organisation, rather than teaching colleagues how to speak Maori or endure a compulsory weekend on a marae.

PARALLEL DEVELOPMENT

There is evidence that many Maori tribal groups are keen to develop their own resources in their own way. Separate Maori organisations offer a range of services geared towards the particular needs of their people and often to one side of the mainstream. This trend is apparent not only in respect of the development of physical resources, but also in the delivery of social services such as health.

Parallel systems are by no means uncommon. In the education field, Kohanga

Reo have steadily evolved since 1983, now offering over 14,000 places to under five year old Maori children. Kura Kaupapa Maori provide Maori speaking primary schools in most districts and there are three Whare Wananga approved to deliver tertiary education programmes. In health, tribal and community groups have successfully tendered for contracts to provide a range of health services to Maori clients while several Maori run rehabilitation programmes provide community services for offenders. Most are based on tikanga Maori (Maori philosophical frameworks) though are also able to account in terms of conventional outputs. Commercial ventures owned and operated by Maori are also increasing rapidly. The Maori Congress for example is shortly to sign an agreement with a trading bank to establish a Maori developmental loan facility which will take into account the realities of Maori collective ownership and investment preferences.

Not infrequently these efforts have attracted criticism and are compared to apartheid. This fear was most forcibly aired in 1988 when Moana Jackson released a report recommending a separate Maori justice system. The Minister of Justice, the Hon Geoffrey Palmer, was quick to distance himself from the recommendations and reassured the public that there would only ever be one law for all New Zealanders. Subsequently the Crown's principles for the Treaty of Waitangi referred to the principle of equality based on one law for all.

More recently, following the release of a report from the Courts Consultative Committee saying that cultural defences should be studied, another swift reaction came from the Hon. Doug Graham, Minister of Justice. In rejecting the proposal he considered that it rated no attention from his department at all. Moana Jackson criticised the rebuff, pointing out that a more accommodating approach towards indigenous systems of law was evident in other countries.

The recommendation from the Courts Consultative Committee seems sensible. Unless options are studied and alternative processes actively explored, it is unlikely that agreements will be reached. Furthermore it needs to be remembered that there are numerous examples of laws which do not apply to everyone. Under the Ture Whenua Maori Act 1993 Maori individuals who have inherited an interest in Maori land are not at liberty to sell their interests to the highest bidder; instead they must make the first offer to a hierarchy of "preferred classes of alienees". Individual freedom has been balanced by the economic and cultural objectives of retaining Maori land for future generations.

Given the extent of New Zealand's pluralism and the separate systems of justice which already exist for a variety of citizens, the Minister's immediate dismissal of the proposal for a parallel Maori system seems hasty. Students at all universities for example are subject to the law of the land as well as to the laws of the university. Even if off campus, they can be fined or otherwise censured, for bringing the

reputation of their university into disrepute. The same is true for members of the medical and legal professions who are subject to disciplinary procedures from their own professional bodies irrespective of action taken in a court of law.

Objections to separate or even parallel Maori systems on the basis that they will confer unfair advantages to Maori individuals are therefore of limited validity and fail to take full account of the complex and multiple legal systems which currently exist. Nor does the argument that separate or parallel systems will create divisions within society, acknowledge the real and harmful divisions which are only too apparent in New Zealand. It could be argued quite convincingly that Maori non-Maori disparities in all social areas have led to dangerous divisions which a single mainstream approach has been unable to remedy. Maori systems (of health, education, justice, commerce) are likely to reduce (not increase) the gaps.

TOWARDS CONSENSUS

It may not be entirely evident from this review so far that although areas of disagreement exist, considerable progress has been made. Moreover it is now possible to identify where the boundaries to consensus development lie so that even where there is no absolute agreement, the key elements of the disagreements can be isolated and debated.

For now, what follows are areas of agreement which have emerged over the past decade or so. They do not represent a complete list, nor a total statement about the excitement or the disappointments that have accompanied those who worked towards the common goal. Neither was there any sudden discovery of a consensus point. More often than not realisation was so gradual that the arrival at a point of agreement was obscured by the remaining areas of disagreement. Not everyone celebrates consensus and there are those for whom disagreement is an easier and a more profitable path to follow. Selling newspapers, or presenting a television news item is said to have wider appeal when differences are highlighted. Or so the media would have us believe.

These then are some of the consensus points which would find agreement with most New Zealanders.

- There is already substantial agreement that New Zealand's founding document, the Treaty of Waitangi, should be reflected in relationships between Maori and Pakeha and in the further development of New Zealand's natural resources. While precise Treaty implications have not been worked through for each individual policy area, or agreement reached on the necessity to include a Treaty reference in every piece of

legislation, there is no going back to the days of the Treaty as a “simple nullity”

- Because of the Treaty, but for other reasons as well, Maori can expect a greater measure of socio-economic wellbeing than they currently enjoy. Again, the fact that there is no agreement about the policies and strategies most likely to bring about equity, should not mask the fact that both Maori and the Crown agree that a situation of relative disparity is unacceptable.
- Whenever possible, agreements between Maori and the Crown should be based on a demonstration of representative support. How that support should emerge, and whether it should be based on hapu, iwi, or Maori communities of interest, is obviously a question which Maori will need to address. In the same way, the changing configuration of the Crown, and its greater interaction with third parties will require a clearer identification of the key players than in the past.
- A constitutional debate is long overdue. Proposals for a new name for New Zealand, Aotearoa, or a new flag, or even a move towards a republic need to be debated in the widest possible context and in an orderly manner. There appears to be agreement that a Maori dimension should be accommodated within the decision making framework of the nation although the arrangements which are most appropriate require further discussion. Electoral reform is only one aspect of the debate and not the most fundamental. According to a UMR Insight survey, wide acceptance of a referendum to adopt the MMP parliamentary system was not necessarily based on a clear understanding of the system, so much as a desire for constitutional change.

CONSENSUS PRINCIPLES

In reaching agreements between Maori and the Crown certain principles can be identified. For the most part these consensus principles have become evident by often bitter experience and represent the lessons learned as Maori, and Maori and the Crown have sought greater understanding.

Principle 1 Time

Relationships take time to develop and agreements take even longer. Haste is seldom a recipe for successful negotiation. The Sealords Agreement was burdened by haste, inadequate information and an inability to accommodate prolonged debate.

Principle 2 Active Commitment

Consensus requires that there be an active desire to reach agreement. In the New Zealand Maori Council, State Owned Enterprises case (1987) the judges agreed that good faith and honour were integral to success and required the Council and the Crown to meet together to devise a system which could protect Maori interests

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when Crown land was transferred to State Owned Enterprises. Unless there is a commitment to search for areas of agreement, disagreements will dominate relationships.

Principle 3 Common Goals

Consensus will be more likely if goals common to all parties can be identified. Generally Maori and the Crown agree that

- the environment must be managed in a sustainable way
- the needs of future generations must be considered
- disparities must be eliminated

Principle 4 Respect for Differences

Consensus will fail if it is confused with sameness. Unity does not mean uniformity; it can mean an agreement to disagree; it should provide for the retention of identity and culture.

Principle 5 Mutual Advantage

Consensus will be sweeter if each side is a winner. The advantages for each should be clear, though they may be quite different in nature. What is important is that a consensus agreement contain mutual benefits, within overall common goals.

CONCLUSION

In the order of things, New Zealand is a small nation with limited resources and limited influence among the world of nations. We need to make the best of what we have. Economies of scale, if nothing else dictate a need for high levels of co-operation.

As we approach the next century and look towards the year 2050, the goal must not be to exploit the environment, or each other, nor to dwell for ever on the differences that divide us as a nation, real though those difference might be.

What is needed is a commitment to seek out agreements within which Maori and Pakeha can advance, not on the basis of a single truth or a common starting point but in the belief that our goals for our grandchildren and their children are essentially the same - good health, a share in the country's wealth, justice, a right to cultural development and an expectation that as individuals and groups they will be valued by each other, by their people and by the collective state.

Consensus does not require uniformity or a melting pot type of society. But it does require honour, trust, opportunities to meet together as partners, and a determination to resolve issues constructively by perseverance and mutual regard.

For those reasons the Side by Side Seminars, Kokiri Nga Tahi, are welcome initiatives.

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