IS THE TREATY OF WAITANGI A BILL OF RIGHTS?

Ms Ripeka Evans
Maori Economic Development Commission

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'Maori Sovereignty became an issue immediately the first musket shot was fired over the acquisition of land. There have been attempts to re-establish it in every generation. It challenges the rest of New Zealand to either put its house in order or vacate. Strong stuff - too strong I fear for many in either side of the house.'

Manuhuia Bennett.[1]

At the crux of the debate about the Treaty of Waitangi is the question of Maori sovereignty. At the crux of the debate about the Bill of Rights is the question of Maori Sovereignty too.

On the one hand, the Bill can be looked at either as an attempt to genuinely do something about an outstanding dilemma that successive Pakeha generations have traditionally ignored, or as an attempt to forestall assimilation. On the other hand it can be looked at as an appeasement of white middle class New Zealand.

Either way, the inclusion of the Treaty in the Bill, will be looked at as strong stuff for many in either side of the House but for distinctly different reasons. This paper looks at Maori opinion and the philosophical basis of that opinion. It maintains that Kaupapa Maori is the basis from which human rights should be phrased for this country and that all legislation and institutions should be consistent with Kaupapa Maori, which did not begin with the Treaty of Waitangi.

The National Hui on the Treaty of Waitangi held at Ngaruawahia in September 1984, attended by over 1,000 Maori people, concluded that the Treaty of Waitangi is a binding document that articulates our status as tangata-whenua of Aotearoa. It also concluded that our mana (as Maori people) supersedes the Treaty of Waitangi.[2]

Three sources of mana were identified,

- mana tuku iho, mana tangata:
  being mana passed down through ancestors identified through the recitation of whakapapa (geneology).
- mana wairua:
  mana emanating from a lateral association with and tracing of communal descent from supreme beings. The existence of these beings translates into a meta-physical presence that regulates the mortal and immortal realms of existence.
- mana whenua:
  mana accruing from the guardianship by mortals of the elements which supply us with immediate physical well being.

These three sources of mana were identified as a basis for our belief that we are tangata whenua of this country.

In a recent decision of the Waitangi Tribunal it is pointed out that such discussions do not represent a new awareness in Maoridom of the Treaty. One of the first nationwide meetings about the Treaty was held at Kohimarama in 1860 where the Treaty was debated and eventually affirmed. In a meeting of the Maori Parliament at Orakei in 1879 again the Treaty was confirmed. Recurring themes in the Orakei debate were that the Treaty promised Maori people the retention of mana or traditional authority and status.

As a document addressing the sovereignty of Maori people, the Declaration of Independence of October 1835 is probably more specific.

In the recent Waitangi Tribunal Manukau case,[3] the claimants felt a belittlement of our 'first nation' status to that of an 'ethnic minority.' The Waitangi Tribunal stated that,

> "The guarantee of possession entails a guarantee of the authority to control that is to say, of rangatiratanga and mana" and further that,
>
> "a failure to honour a promise may may also be policy and as such, is subject to review."[4]

The earliest attempts to 'whakamana' the Treaty itself were made in 1863 when representatives of five tribes led by Paratene Te Manu expressed their concern to Queen Victoria.

In 1882 Hirini Taiwhanga lead a further deputation to Queen Victoria. The Queens advisors told her not to receive the delegation and they were turned away.

In 1884 the first Maori King, Tawhiao led a delegation to be received by a mere Lord, Derby, the Secretary of State and was also refused an audience by Queen Victoria.

In 1924 Tahupotiki Wiremu Ratana, armed with a 40,000 signatured petition, sought an audience with King George and was refused.

The failure by Ratana to petition the Queen in fact became a springboard from which the present four Maori electorates were created. Forty years of loyalty and support by our people for one Party, and we still have not seen the Treaty successfully dealt with.

In 1972 Sir Henare Ngata was asked by the then Minister of Maori Affairs to outline what statutory laws contravene the Treaty. He described the Treaty, 'as a Charter which has influenced events in history of New Zealand over the past 100 years and more' and that 'it has been regarded as a solemn pact between (the British Crown) Queen Victoria and our people; for this reason infringements and contraventions of the Treaty have generated among our people a feeling of betrayal.'[15]

In a string of cases since Wi Parata v Bishop of Wellington, the Courts have buried the responsibility of acting in accordance with the Treaty.

Sir Henare Ngata and the Maori Council would still support the contention of betrayal in regard to the Treaty. Early findings of the Waitangi Tribunal in the Te Ati Awa case[6] recognise the claimants view that the actions of petitioned bodies were inconsistent with the Treaty of Waitangi. The Tribunals recommendation have largely been ignored.

Sir Henare Ngata, outlined contraventions under the Maori Affairs Act and Amendments, the Maori Trustee Act, the Public Works Act, the Soil Conservation and Rivers Control Act, the Town and County Planning Act, Counties Amendment Act and the Petroleum Act. He did not outline contraventions of the spirit of the Treaty in the sense of contravention of Maori human rights.

It is this area that debate and protest about the Treaty has sparked since the early 1970's. Protests, marches and a hikoi have been regular occurences at the Waitangi celebrations. In 1984 and 1985, Maoridom held two national Hui on the Treaty. A common thread in all debates, has been that the Crown, Parliament and the Courts have not ignored, but effectively buried the Treaty debate.

In the execution of their duties each of the three institutions have proven a baseline unwillingness to whakamana the Treaty. Such being the case it is a blessing for non-Maori Aotearoa that we have not upturned society as yet. As I see it, there are two broad areas of tasks which lie ahead in respect of the Bill of Rights. One area is to be addressed by the non-Maori population and the other area by the Maori population.

The onus for the non-Maori immgrant is to disprove our status as tangata whenua of this country on the basis of Maori history pre-dating 1840.

The Maori belief in our status as tangata whenua is entrenched in our traditions and recordings of our supreme creation. If we begin the argument about our sovereignty from 1840 and even 1835, we are confined to argue within the parameters of Pakeha history and its perverted sense of morality.

The other task for non-Maori Aotearoa is to prove the status of individual rights and from what basis those rights accrue. This must be scientifically proven in accordance with the spirit of the Treaty of Waitangi.

Each right must be addressed in terms of its benefit to society as a whole. The question of non-Maori identity should also be answered. The non-Maori population must also prove that the rights of the individual are paramount to the rights of a people.

The tasks for Maoridom are numerous and onerous. In the short term, the Waitangi Tribunal must be accorded Appellate Court status. The process of nomination and criteria for membership should be codified. Eighty per cent of the membership should be Maori and Maori nominated.

In several Maori Hui where the Tribunal has been discussed, there has been a tendency to overload the Tribunal with responsibilites that clearly lie with other bodies. It is a common assumption on the part of Maori people that any service that is comprised of Maori people should be able to deliver on many fronts. Part of that assumption is based on trust in our poeple first and a proven mistrust of other authorities.

The assumption is also cultural. In the Maori view of the universe, relationships between people and nature are interwoven in a series of intricate lineal and lateral dependencies. The compartmentalisation of responsibility by Pakeha authority in this country is still not adhered to by Maori people after 145 years.

Whilst it would be more consistent with kaupapa Maori to house all claims in respect of land, forests, waters and human rights, under the Tribunal, it would also be easier for the non-Maori majority to dispense with the Tribunal once it found too often in favour of Maori claimants.

It is therefore necessary to establish a parallel Waitangi Tribunal on the basis of the Teaty to deal specifically with Maori sovereign rights. This body should be established in a similiar fashion to the existing Tribunal and again with a membership nominated by the Maori population. It should deal with rights which are not specifically defined within the Treaty but which Maori people believe they have on the basis of our status as tangata whenua.

Above Parliament and the Courts there must also be created a body to ensure that legislation, procedures and practices are consistent with the Treaty of Waitangi. This idea was mooted by Professr Whatarangi Winiata, in a recent address to a Wellington Seminar on a Bill of Rights.

Preceeding such a move there must be a process of consultation within the Maori community. Presently there exist a myriad of Maori organisations both tribal and regional which operate within the gate-keeping system set up for us by the Pakeha. If such a body were established it would have to be comprised of 50% Maori. The Maori membership should be nominated by and accountable to Maori people. The Maori people should also nominate along with the non-Maori population, the remaining 50% membership.

CONCLUSIONS

It is within this generation that the Treaty must be settled. In settling the score about the Treaty we must carve out a pathway for our people away from assimilation. In all of the social economic and political forecasts, the future for Maori people is gloomy - that is if we continue to live within the 'Pakeha Death Machine' as we presently do.

In the last 12 years Maori attitudes have moved to seek ways of determining our future in our own way. The ogue all round is 'withdraw and the creation of our own institutions and to control our own affairs.

Jeronemo once said that 'it is better to die than to live on your knees'. In some Japanese traditions it also more honourable to die by your own sword that to live with the failure of your cultural traditions.

In the 1930's, Te Puea wrote in a song about the Trea ty .... 'Te Tiriti o Waitangi, e tu moke mai ra,
i waho ite moana e....'
She alikened the Treaty to a lonely lost soul, adrift at sea. Therescuing exercise has been in operation wi thin Maoridom since 1840, it is time for those that have lived here as our guests for the last 145 years to put their house in order or vacate in order for the proper order of things to be reasserted.

A piecemeal solution to the issue of the Treaty is neither desirable or possible. At the least, this generation must succeed in ascertaining a defined sta tus for the Treaty, with the creation of bodies outli ned that have mandatory and enforceable powers. Regar dless of how successful such measures may be, there will always be an independent drive within Maoridom to live according to our own beliefs within the Pakeha Death Machine and parallel to it.

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