

It's time to look at what treaty partnership really means

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One of the most refreshing things about Tariana Turia is her directness. There's no dissimulation to spare the sensitivities of her colleagues. No fudge to blur the media reports. It's between the eyes and from the heart.

The most recent morsel to marvel over was her "colonisation of the minds" speech to Victoria University's Te Herenga Waka Marae. Young Maori had to be on the lookout to see that their minds were not being subtly infiltrated to turn them into the new colonisers of the people.

Citing black, feminist, post-colonial theorist, poet, essayist and philosopher Audre Lorde, Ms Turia warned that "the master's tools [would] never dismantle the master's house." The nest had to be protected from the colonial cuckoo.

As reported in the media, it sounded like thrilling stuff. I rushed for the text but the dizzy heights of post-colonial theory were missing. Departmental speechwriters are apparently more nervous than their forthright minister. But it was an important speech nonetheless and it brought into sharp relief some of the incoherence that lies at the heart of the government's social thinking.

Embedded in Ms Turia's speech were three ideas – one romantic, one muddled and one remarkably sensible. They're worth teasing out.

The romantic idea (which is just about hard-wired orthodoxy in the politically correct Wellington circles in which policy is incubated) is that Maori are autochthonous – an indigenous people nurtured in the womb of the land from time immemorial. Blood, soil and land are inextricably inter-woven. It is this that leads Ms Turia to assert that "around the world it has been shown that indigenous people progress at a far greater rate when they are in control of their own development."

When we think of the extraordinary leaps people have made far from the often suffocating rigidities of deeply rooted hothouse communities, this seems questionable at least. Diasporas have been among the most dynamic and creative crucibles of human endeavour. The challenge of isolation can both intensify cultural identity and spur creative adaptation. But leave that thought to one side for a moment.

The really tricky question is whether this view of culture is compatible with Ms Turia's (and the government's) belief the Crown has "a responsibility to ensure Maori progress in the same way as other people in New Zealand."

What sort of "progress" are we talking about? If it's the sort that's measured in economic terms, there's a fundamental conflict between a marketplace that is culturally icon-

oclastic and consumer-driven, and a view of progress that must be culturally sanctioned. So much of the new wealth that is being created in societies like ours depends on a spirit of openness and risktaking to which the control Ms Turia speaks of is inimical.

In a sense, none of us is "in control" in either a political or a cultural sense. To believe any of us can create a cultural cocoon at the farthest edge of the southwest Pacific while expecting to progress alongside the rest of the peoples of the Pacific rim (and they are culturally polyglot) is, in my view, a romantic dream. Whether we like it or not, we will be caught up in the creative destruction of a global age. But are we open-minded and adaptable enough to surf that wave or be engulfed by it?

Ms Turia is not the only romantic here. Large numbers of pakeha dream of their own destiny in terms that vanished in the 1950s. We should be listening to the young Kiwis in Sydney and London before we conclude that there's a unique and separate development path open to any of us.

So much for the romantic notion. What of the muddled one? It's the old chestnut of Maori as "partners" with the Crown. There's nothing new here – every government in the past two decades has immersed itself in the warm language of partnership without knowing what it means. The problem, of course, is that the Crown is a phantasm without any independent existence. It's a disembodied entity that we wheel on to the stage every time we wish to make claims on one another.

The hard cold truth, of course, is that in terms of fulfilling any alleged obligations, this partner – the Crown – must revert to real people for its mandate – taxpayers and citizens. And, lo and behold, the Maori treaty partner finds itself on this side of the table as well. This may not have mattered when the focus of treaty settlements was on historical grievances over land and resources. But when the obligation is defined as one which involves a closing of the gaps, a serious problem arises: the same gaps in health, education and employment that Maori can point to apply to many pakeha.

We're talking about a straightforward redistribution of wealth to effect social change. That is contentious enough when applied to the population as a whole. But when it is applied specifically on ethnic lines it is potentially explosive. There is a very widely held view that if we're going to use taxpayers' funds as a means of closing socio-economic gaps, then it will have to be across the board.

People like Ms Turia don't have a treaty relationship with an abstract entity called the Crown. In practical terms they have a

relationship with a community of tax-paying citizens who have to be repeatedly convinced that the claims are good ones. To make them in a way that excludes identically disadvantaged non-Maori is not smart constituency-building. The muddling of partnership and redistribution is a potential flashpoint that the government would be wise to defuse in short order.

Finally, the sensible stuff (and there was rather a lot of it). Once we've decided how much redistribution of income is needed to secure adequate access to health and education, there's still the question of how those services should be provided. And here Ms Turia is right. There's no reason why a centrally designed system is the only way of guaranteeing good outcomes. And you don't have to be a raging right-winger to support vouchers or contracting out.

Ms Turia was the only Labour minister to question the absurd re-centralisation of health services being pursued by Annette King. During the 1990s, Maori health providers made real progress in contracting with health funding authorities to bring health services much closer to Maori communities that the monolithic system couldn't adapt to.

Ms Turia is placing great store on the "capability-building" initiative that she and her colleagues have put together. It's designed to enable Maori organisations to "build their own strategies, systems, structures and skills so that they can move forward." It sounds exactly like the sort of direction that the health reforms unleashed. She talks of "allowing communities to respond to their own needs and preferences." That sounds just like the sort of flexibility that bulk-funding of schools was designed to deliver.

We're faced with a huge irony. While Trevor Mallard and Annette King are grinding away re-centralising social delivery systems in the name of equity, Ms Turia and a host of Maori are demanding empowerment to use resources flexibly and imaginatively. As Ms Turia says, "[d]evelopment is a changing and evolving process. It should never be treated as static. Nor should the mechanisms and processes by which it is achieved."

I am convinced Ms Turia will win the third argument. The rest of us had better win it as well. Otherwise we're going to be living in a country where only Maori are given leave to use resources flexibly while the rest of us are told our treaty right amounts to no more than a duty to pay up and shut up while politicians and ministers spend our money for us.

Simon Upton's weekly political column, Upton-on-line, can be accessed at www.arcadia.co.nz

THE PRINCIPLE OF 'PARTNERSHIP'

and

The Treaty of Waitangi

a fresh look

by Bruce Mason

The Treaty of Waitangi is widely regarded as the founding document for New Zealand. Many also regard it as a 'sacred compact', whose words and interpretation are not as important as the spirit that rises therefrom. Others view the Treaty as a 'historical artifact' - a 'modest little document' that has been adorned with sentiment and well intentioned rhetoric.

Today it is hard to escape from talk of the Treaty, and related grievances and claims over land and other resources. For instance there is now greatly increased pressure on Government assets, and public lands such as National Parks, for settlement of claims. Claimants generally seek the return of the land. Some also seek shared management responsibility with the Crown.

The Government has taken upon itself the role of sole arbitrator as to its liabilities under the Treaty and the assets it may use in fulfilment of its

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perceived obligations. Many of those assets include lands held in trust for the benefit of present and future generations. Under the mantle of the Treaty and "treaty principles", Government considers it is empowered to do as it alone sees fit with the public estate.

As a consequence there is growing public apprehension that there are profound changes in store in the nature of 'public' lands, how they are managed, and for whose benefit.

Government and claimants are increasingly by-passing the Waitangi Tribunal by direct negotiation of unproven claims. The Department of Conservation is actively instigating the vesting of ownership or control over public lands to Maori interests. This is occurring under a justification of a duty under the Conservation Act "to give effect to the principles of the Treaty of

Waitangi".

The authorities assume that a principle of 'partnership' exists between Maori and the Crown.

"Partnership" is commonly interpreted as meaning that a 50:50 entitlement exists between the Crown and Maori to ownership and control of all natural resources.

Government has given impetus to high, but ill-founded, expectations by stating that Maori are an equal partner with the Crown and by implication entitled to half of every Crown-owned resource.

The prevalence of well-meaning rhetoric on the subject, mixed with a residue of guilt, means that it is politically dangerous and 'incorrect' to question the current orthodoxy. However, the implications for society of unquestioning application of currently popular political perceptions are too grave to leave unexamined and undebated.

'PRINCIPLES' OF THE TREATY AND DOC

text The 'principles' of the Treaty now have greater status under statute than the text of the Treaty itself. Definitions of the principles of the Treaty have been expressed by the Waitangi Tribunal, the Court of Appeal and the 1988 Royal Commission on Social Policy.

The major development in the concept of 'partnership' under the Treaty has been at the Court of Appeal. The 1987 New Zealand Maori Council (SOE lands case) provides the starting point for legal significance being attached to the concept of 'partnership' under the

Treaty. In the 1987 case the Court held that the Treaty signified a partnership between Pakeha and Maori requiring each to act towards the other reasonable and with the utmost good faith.

The body of the Court's decision contains no definition of what is meant by 'partnership'.

Notions of 'sharing' and 'equality' that have inevitably risen, make the Court's use of an analogy of 'partnership' surprising. The Chairman of the Court later elaborated on the meaning of a Treaty 'partnership' when he indicated

that the concept of partnership does not mean that every asset or resource in which Maori have some justifiable claim to share should be divided equally.

Another principle derived from the Treaty, that of 'equality', is of major significance. The dichotomy between a 'partnership' rather than 'equal citizenship' view of the Treaty underlies the conflict that has emerged over the Department of Conservation's interpretations of their duty to 'give effect to the principles of the Treaty of Waitangi' by way of a 'partnership' with the Maori.

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DOC sees continued ownership of lands and waters as incidental to its role as a 'steward', and the tangata whenua and its interests as indivisible. "Higher authority" for management will come from iwi rather than from the purposes set out in administering statutes. Consequently the public will not be able to call to account either the department or Minister of Conservation.

It appears that DOC has taken no notice of subsequent developments to the 'partnership' model at the Court of Appeal but has chosen to pursue its own vision, latterly reinforced by ill-founded utterances from the Minister, that Maori and Pakeha are "equal treaty partners".

The 'partnership' model is now well installed in the department, and receiving uncritical, mechanical application through all policy and operational areas.

THE 'PARTNERSHIP' MYTH

The concept of a 'Treaty partnership' arises from a perceived need for the sharing and redistribution of power and resources with Maori, rather than from the words of the Treaty itself.

In common parlance, 'Treaty partnership' is ill-defined, confused and misleading - dangerously so in regard to the Crown's obligations to all citizens and the potential for detriment to the majority of New Zealanders. There is an inherent and inescapable connotation of equality between the 'partners' that make the use of the term inappropriate in the full context of the Treaty.

As a metaphor, 'partnership' raises impossible, and unfair, expectations. In relation to the Treaty, 'partnership' between Maori, or between the Crown and Maori, is no less than a myth - more so is the notion of 'equal partnership'.

The Court of Appeal has spelt out on three occasions that there is no equality in the 'partnership'. However, the driving engines of 'partnership' within and outside the Government either haven't heard or don't care to know.

There is an irreconcilable conflict between 'partnership' and 'equal citizenship' views of the Treaty. The former has no basis in the Treaty - it is a creature of social engineers, the judiciary, and the bureaucracy captured a 'politically correct' Treaty orthodoxy.

The latter has direct expression in the usually preferentially quoted Maori version of the Treaty - all New Zealanders have the same rights and duties of citizenship.

There is a major gulf between the legislative 'preservation' purposes of national parks and other protected areas and the variously expressed 'conservation-for-utilization' preferences of many iwi. Also tribal authority over public access to and use of natural areas contrasts markedly with existing rights of access, conveyed equally on everyone. This conflict of objectives should be fully debated before any consideration is given to handing ownership or control of public lands to private interests.

The 'partnership' course is to change the essential character of public lands and who the intended beneficiaries are, by a confused and undemocratic application of the Treaty.

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