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# The New Zealand Maori and the Waitangi Tribunal

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The thesis of this paper is that New ZealandÕs Treaty of Waitangi promises Maori what human rights conventions have yet to, the recognition of Maori as a separate and indigenous people with rights accruing to them in those capacities. Despite recent advances under the Treaty however, through the courts and the Waitangi Tribunal, the maintenance of Maori rights remains overly susceptible to political expedience and, in the absence of constitutional protections, there is need to develop appropriate international human rights sanctions.

## 1. Maori Status

Whakarongo te taringa ki te hau raki e pupuhi nei, i takea mai i Hawaiki nui ...

Listen to the north wind blowing from the great Hawaiki ...

The New Zealand Maori descend from South East Asian voyagers who peopled the Pacific some 3,500 years ago, spreading across as many miles of ocean until in the last millennium, Aotearoa (New Zealand) was settled too.

The Maori are an adventurous race whose penchant for history and genealogy has fashioned their strong sense of identity and destiny as a people. They recount the ancient voyages as though they were yesteryear, recalling to mind that the winds that brought the Maori to Aotearoa made their country a part of the Polynesian homeland. Polynesia, or Òmany islandsÓ, belies the customary view that conceptualizes the islands as one home, Hawaiki, and the people as belonging to one family, the family of Hawaiki - or Hawaii, Savaii or Havaiki, as it is variously called.2

Theirs is a developed sense of place and belonging, encapsulated in their description of themselves as tangata whenua, the people of the land. The concept pervades the Pacific, through ÒwhenuaÓ is ÒvanuaÓ in Vanuatu, as ÒtangataÓ is ÒkanakaÓ for the Kanaks of New Caledonia. The feel for a historical belonging to the land of oneÕs birth is emphasized in the Maori metaphorical manner of speaking. ÒWhenuaÓ, or land, means also after-birth, or that which one is born out of.

From belonging comes identity, an identity here established against daunting odds across vast ocean expanses. It is said then, by one tribe, with reference to the place of its origin in Hawaiki:

E kore au e ngaro; he kakano i ruia mai i Rangiatea.

I will never be lost; I am the seed sown from Rangiatea.3

From this understanding of themselves as a people, Maori claim dual status in the modern State, now dominated by persons of another kind, as citizens on the one hand, and as a distinct group with inherent self-governing rights on the other.

What is the authority for such an opinion? Sir Monita Delamere has responded:

Ko te mana kei a tatou ano, he iwi hoki tatou.

The authority is in ourselves, we are a people.4

Sir Monita expresses the historic Maori position that as a matter of mana, their independent status as a people should be upheld. If the constitutional structures of the State cannot cope, it is primarily a problem for the State, that it should be so out of harmony with reality.

So also no natural order can decline the admission of Maori to the family of peoples that comprise humankind. If Maori lack full entry to the family of nations as well, that is a problem for its institutions that they cannot then claim to represent humanity.

It is as a people that Maori should be acknowledged, through at the domestic level they stand according to their numerous kin group associations. Such divisions do not deny a Maori identity when dealing internationally. Despite the western image of Maori led by hierarchical hereditary chiefs within defined tribes, there are in fact few other peoples of greater republican persuasion where the main authority is vested in local family units. Consequentially however, there is no limit on the extent of collectivization.

2. The Significance of the Treaty of Waitangi

The British annexation of New Zealand in 1840 was preceded by a Treaty secured over several months with the leaders of the numerous tribes. It is called the Treaty of Waitangi, after the place where the first meeting was held.

By this treaty it was intended Maori would cede sovereignty, and in return, the Crown would protect them in the ownership of those lands and fisheries they wished to keep, ensuring as well full rights of citizenship.

The Treaty is remarkably brief, and quite properly so considering the cross-cultural circumstances. Its brevity indicates that it is directed to principle rather than detail, and that, like many Oriental transactions, it is founded not on legalism but on a philosophy of good faith.

There is much evidence of the Imperial GovernmentÕs sincerity, influenced as it was by the humanitarian movement of the times. With or without annexation the settlers were coming, and experience had shown the deleterious impact on the natives in the absence of proper controls.5

That same evidence fleshes out the TreatyÕs bare bones. They describe, for example, an intention to regulate land buying to ensure that each tribe retained a sufficient land endowment for its likely future needs.

Accordingly, though the Treaty may be variously seen, it was not the sham some settlers contended it to be.6 Assuming for the moment a western perspective, it may rather be seen as illustrating an early commitment to internationally accepted standards. It acknowledges the international law that no country may take the territory of another without agreement, and the common law rules fir indigenous peoples expounded in North American courts in the preceding 1830s.7

This needs emphasis. Some Commonwealth opinion had predicated a shift to an international common law, as the courts turn increasingly to the standards prescribed by the international community.8 This must question whether the international norm setting process will displace the need for such treaties as that of Waitangi within a StateÕs domestic law.

Many would welcome that prospect, since the status of the Treaty is not secure and its opponents portray it as archaic and imprecise. There is however, another view of the Treaty by the other party to it, and it is presumptuous to consider a cross-cultural treaty from the opinion of one side only. The Maori view casts doubts on the efficacy of any moves to displace the Treaty within the foreseeable term. It has become the talisman of their cause, and is seen to require the recognition of their status as a necessary antecedent to the definition of their rights. It is, for them -

## 3. The PeopleÕs Treaty

The Treaty of Waitangi has enormous significance for Maori. There is little point in talking with them of human rights if there are no prior obesiances to it. It is more than symbolic. It is he kawenata tapu, or sacred covenant,9 and any challenge to it may be read as an unfriendly act.

Why? The answer is that the Treaty is seen as having acknowledged and affirmed their status as a people; not only because of the words used, but because the event itself provided confirmation of their polity. That recognition in 1840 has not since been given. From then to today, both nationally and within the representative institutions of the world, their recognition as a people, with rights accruing to them in that capacity, has been lacking.10 The historical development of the Maori has rather been characterized as a battle to uphold their independent sovereignty against every endeavour to subdue it.11

Talk of Maori sovereignty was treasonable to earlier generations of Caucasian settlers. Maori were declared rebels and their lands confiscated. It is less threatening today and new attitudes abound, but for Maori the Treaty remains the only document that specifically acknowledges their particular status. Human right norms also abound now, but none is seen to give to Maori the recognition the Treaty provides, and there are no international covenants to which they as a people have been called upon to subscribe.

But did the Treaty of Waitangi in fact give this recognition? The standard western view is that any such recognition was momentary, for while the independent sovereignty of Maori was acknowledged from 1836, in 1840 the Treaty took it away?12

That is not the Maori understanding. How Maori viewed the Treaty at the time it was signed is necessarily speculative but it has not generally been seen by them as ceding sovereignty. Such record as exists of what Pakeha thought Maori have said, points naturally to a range of opinion and expectations.13 From the Maori text however,14 read in light of the culture and the peopleÕs subsequent conduct, it is doubtful Maori saw themselves as ceding sovereignty, or of understanding what that culture-laden concept meant.15 It seems rather Maori saw themselves as affecting an alliance in which the queen would govern for the maintenance of peace while Maori would continue as before to govern themselves.16 Certainly it seems doubtful, having regard to the Maori character, that Maori would have accepted any Treaty that was thought to diminish their own mana or status.

Courts and politicians now characterize the relationship as a partnership, denoting the joining of distinct persons in common enterprise for mutual benefit.17 This is closer to the Maori view of the Treaty as an alliance. Such a concept was unthinkable earlier, since the maintenance of State sovereignty, in the sense of absolute, ultimate power, was seen as essential. Future discussion on the relationship between Maori and the Crown need no longer be restricted by fundamental legal views on sovereignty however, as increasingly State sovereignty is constrained by the reality of world economics, political and economic alliances, ratification of United Nations conventions and the introduction of domestic constitutional instruments. The concept of a partnership has since been adopted in numerous Government publications and policies, and there are now some statutory utterances in support of it too.18

Not all Maori are enamoured of these opinions of course and there is a continuing debate. The point here, however, is that the Treaty is seen as providing more than a bagatelle of individual rights. It gives instead the recognition of Maori as a people, and, by virtue of their prior occupation of the land, a special relationship with the State beyond that which might be claimed by other citizens. Though it is less explicit, still it provides for Maori that which is but a proposal with the United Nations Working Group

on Indigenous Populations. It further creates a situation in which Maori rights are seen to flow from their circumstances as a group, where their culture has dignity on that basis, and where Maori as a people can advocate the greater recognition of group rights, as an antidote to the deleterious impact of the current emphasis given to individuals. Unless and until human rights catch up, the Treaty will likely maintain priority in the hearts and minds of Maori.

It does not follow that there should be a Treaty rights - human rights contest, for the TreatyÕs vulnerability suggests the maintenance of one may depend on the influence the other can provide.

4. Post-Treaty Changes

The Treaty lost profile in New Zealand at the time that the Maori numerical superiority was reversed (in the mid 1850s). It was also then that Britain passed responsibility fro self-government to the colony.19 War was the immediate result, and, with it, native land confiscations.20 The allotment of the remaining lands in dispersed parcels fragmented the peopleÕs former solidarity.21 Amalgamation policies, well known to indigenous people throughout the world, followed quickly, and were continued into current times. Nonetheless, a massive State machinery for cultural displacement did as much to evidence the resilience of the native order as it did to achieve its purpose.

The historical process exposed the fragility of the Treaty without special sanctions. For well over 100 years, Maori pleaded their treaty-based cases to no avail, before every judicial, political and popular forum available. The courts held the Treaty had no legal status without Parliamentary ratification, and Parliament was unwilling to intervene.22

A remarkable feature of the last decade is that the Treaty has been resurrected from its former obscurity as a declared Òlegal nullityÓ, and has taken a position of pre-eminence in national affairs. Jurists and politicians now describe it as a document of fundamental constitutional importance. It has been depicted as the most important document in New ZealandÕs history, as that which marks the foundation of our modern State and as that which gives legitimacy to the GovernmentÕs right to govern.23

This change of heart may be due to the growing awareness of human rights principles as well the work of the Waitangi Tribunal. Equally significant, New ZealandÕs new Treaty consciousness has been taken to the schools and the general public, due in large part to the centrality given to the Treaty by 1990 Commission, a body established by the Government to co-ordinate New ZealandÕs sequi-centennial celebrations.

Despite all that however, the incorporation of the Treaty into particular statutes and its acknowledgment in modern court decisions, the TreatyÕs position remains vulnerable. The reality is that it is not entrenched in the domestic law, and an attempt by the then Minister of Justice in 1985 to incorporate the Treaty into a Bill of Rights failed for want of public support. The need for the international acknowledgment of the rights of indigenous peoples in colonized countries is still very much apparent.

5. Current Position and the Waitangi Tribunal

The statutory provisions for the Waitangi Tribunal represent the New Zealand GovernmentÕs resolve to recognize the distinctive position of the indigenous New Zealanders.24 It falls short of the recognition given aboriginal tribes in entrenched and constitutional documents in Canada and the United States, but the Treaty has had an impact nonetheless. Shortly it will be considered why that might be so.

The Tribunal was founded in protest. Demonstrations in the 1960s and Ô70s drew attention to the extent of Maori land losses and grievances. An erudite Maori leadership spoke also of the destruction of the tribal economic base

and of the impact of enforced change on cultural maintenance and social stability. Once more, the Treaty was argued as authority for an alternative order where two societies stood alongside.

The protests engendered some public sympathy, which, in coalescence with a growing concern with the low Maori socio-economic status, was sufficient to goad the Government to promise some relief.25 In 1975 it established the Tribunal, with its authority at that time limited to reporting on claims that the Treaty was not being honoured in current or proposed government policies and laws. It was not empowered to deal with those old land claims that were the main source of unhappiness.

With limited powers of recommendation only, few claims were put to the Tribunal in the first eight years. Change came in 1983 when the Tribunal reported on a complaint of prejudice to a tribeÕs fishing grounds from certain major industries that the government was promoting.26 Its findings that the Treaty promised Maori a priority of consideration in areas of conflict and cast a duty on the Crown to actively protect their interests, led to conclusions that the Crown had failed to live up to its treaty obligations, and to recommendations for major scheme changes.

Those recommendations won public acclaim. Aided by the coincidence of interests with environmental and economic lobby groups, the recommendations were adopted by the Government, and though it had earlier been sceptical of the TribunalÕs role and of any priority of treaty for indigenous people.

A new Government the following year professed greater sympathy for Maori claims, now linked in many minds to environmental matters, and to opine that the findings of such an independent and expert body as the Tribunal ought generally to be followed. More claims came in, moving beyond environmental concerns to aspects of central and local administration, and to such matters as national policies affecting the status and promotion of the Maori language.

Through the handling of these claims the Tribunal came to acquire a better image. In 1985 its membership was increased and its jurisdiction extended to enable it to deal with those outstanding old claims that had been the main source of Maori grievance.

Several factors contributed to the enhancement of the TribunalÕs standing. It appeared the power of recommendation should not be underestimated, at least when supported by a balanced assessment of exhaustive research and an honest endeavour to find practical solutions. There is also a sense in which the reporting and recommendatory role has an advantage. Effectively the public, not opposing legal counsel or a court of review, becomes the TribunalÕs target audience, leading to reports in suasive rather than legal style, and hopefully, increasing public awareness of the issues and of the data base on which decisions must be made.

It has assisted further that the Tribunal is comprised of both Maori and Caucasian members, in roughly equal numbers, each holding professional or leadership positions. Matters about the Treaty, history and current policy thus fall to be determined by representatives of both Treaty partners. Accordingly, in portraying both Maori and Pakeha perspectives on any issue, the Tribunal has promoted the growth of a bicultural national development, exposing Maori culture, practice and history to an increasingly receptive white audience. A move to bicultrualism is now encouraged and provided for in schools and in the public service.

It follows further that the Tribunal adopts both Maori and western protocols in the conduct of its inquiries, never assuming that only Anglos have laws and legal processes. The claimantÕs case is usually presented on traditional marae, the proceedings following customary laws under conduct of the TribunalÕs Maori members. Likewise the general public may be heard in public halls, and the Government response and legal argument in courtrooms so that all are heard by the rules and in the surroundings of their choice.

Significant too is the TribunalÕs quasi-judicial character and its relationship with the general courts in the development of a treaty jurisprudence. This embraces more than the fact that the Tribunal is presided over by judges and that a number of retired judges and lawyers are included in its membership. The Tribunal is structured as a Commission of Inquiry, able to organize research to lay the facts bare and to promote bicultural understandings about them. Although it cannot make binding orders, except in a special class of case,27 it makes important findings of fact and interpretation. Those findings, arrived at judicially and open to challenge in a court of review, are an essential step in the disposal of complex historical and cross-cultural issues. They serve to settle matters that might otherwise remain in contention, just as the TribunalÕs reports ensure that the facts, the range of opinions and variety of options for the provision of redress are fully and sensitively described and made known.

The general courts are also involved indirectly through interpolating the Treaty, examining the public interest, and directly where Parliament has required consideration of the Treaty in the implementation of specific statutes.28 The courts have significantly influenced the public Treaty debate, lending weight to the TribunalÕs operations. Nonetheless, though they have the power the Tribunal lacks to make final orders, the opportunities for judicial intervention are more limited than in Canada, for example, where claimants have recourse to a Charter of Rights and Freedoms. They have also used final orders sparingly, no doubt aware of the practical exigencies, and instead, through injunctions and the retention of a supervisory role, have sought to goad the parties to realistic settlements.29

6. Current Issues

An essential feature of the court and Tribunal role is that the resolution of native claims is related to the delivery of justice and the maintenance of a fair society. That may be an assumed position in some countries, but not so in New Zealand where, until recently, those matters were dealt with solely at a political level, very much to Maori prejudice, and settlements were effectively on a take it or leave basis. Time has proven graphically that justice for Maori cannot depend on political whim alone, or reasonable settlements reached with a gross inequality of bargaining power. I do not think it has been or is appreciated by most New Zealanders that Maori have been denied recourse to the courts for their particular grievances, and have thus been denied rights that other New Zealanders take for granted.

The sad irony is that now legal rules are insufficient to deal adequately with the variables that time and changed circumstances have imposed, so that political solutions are still necessary. Large-scale land returns are impracticable in New Zealand, and the economy does not permit of the full monetary amends the law would require. There must be a compromise, a negotiated settlement that is in fact a second best. It then becomes nonsense to talk of compensation or full and final settlements if full legal recompense cannot be given. Long term strategies for a better future are rather to be sought, and claims must be resolved not so much to end the past, even assuming that can be done, but to create a new beginning.

Recent government policy has given cause for optimism. For the first time, following a century of Maori pleas, Government has provided a statutory base for tribal self-management,30 which, though primarily intended for the devolution of government services through tribal bodies, dovetails well with the claims-settlement process, offering the structure for compensation to provide the independent economic base for tribal development programmes. Those programmes may benefit the nation as much the Maori in the future, and represent a cost-saving in the longer term.

The catch is that the will to promote reasonable settlements remains dependent on political motivation. Through its recommendations the Tribunal provides pressure, and services the essential role of removing the

determination of facts and the proof of a claim from the political or bureaucratic arena. In reality, however, the Tribunal itself is reliant on government policy for its own continuance. It currently exists in an environment where limitations on its role, and the termination of the recent provisions for tribal self-management, have been proposed by members of the new Government elected in October 1990. While those opinions may or may not be effectuated by the new Government, they serve nonetheless to show the uncertain status of the New Zealand native claim process.

Should it be part of our modern world ethic that indigenous minoritiesÕ claim to justice should so depend on domestic political circumstance? I do not think so. In the absence of constitutional safeguards, or satisfactory conventions on indigenous peoplesÕ rights in domestic law, Maori must seek a role in developing the common law of humankind. It is that which promises the greater influence on local political action.

It does not follow, that their reliance on the Treaty of Waitangi is misplaced. Its new found status in domestic law could prove tenuous, but its existence cannot be denied and as such it proclaims standards the international community has yet to aspire to. Those who see a contest, however, miss the point. The Treaty provides concrete evidence for Maori of the value of the norm setting process to condition national governance. The international criteria provide in addition the force of persuasion the Treaty may be seen to lack. Both may work in concert to provide for the more equitable participation of Maori in the national life.

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1 Chief Judge of the Waitangi Tribunal, Wellington, New Zealand.
2 For this perception of Maori as a part of the Polynesian family see Sir James Henare in The Polynesian Heritage Trust (1984).
3 From Ngati Raukawa, which includes the author, and who descend from Hoturoa, captain of the Tainui canoe that left from Rai-atea in the Cook Islands about 1350. The soil carried from there is now at Rangiatea church in New Zealand.
4 Sir Monita Delamere, Maori elder and Waitangi Tribunal member, in Hui Manawhenua, brochure for an indigenous peoplesÕ gathering in New Zealand in February 1990 to mark the 150th anniversary of the Treaty of Waitangi.
5 Annexation was influenced by the Report of the Aborigines Committee of the House of Commons, 1836, sought by humanitarian and evangelical lobbyists. The report emphasized the dangers of uncontrolled colonization for aboriginal people. The British GovernmentÕs concerns are spelt out in the instructions for a Treaty from the Colonial Office, 14.8.1839.
6 The Treaty was described as a sham by prominent settler, E G Wakefield. Others gave similar descriptions.
7 For an opinion that the Treaty expresses the common law doctrine of aboriginal title and a review of the North American decisions. See P G McHugh The Aboriginal Rights of the New Zealand Maori at Common Law 1987 Thesis (Ph.D), University of Cambridge.
8 The development of an international common law is presaged in England by Sir John Donaldson MR in DST v Raknov [1987] 2 All ER 769, 777-9, in New Zealand by Sir Robin Cooke in Dynamics of the Common Law, the opening paper to the 9th Commonwealth Law Conference 1990, and possibly by Professor Weeramantry of Australia in a paper to the same conference.
In NZ Maori Council v Attorney-General, [1987] 1 NZLR 641, 655-656, Sir Robin further considered that Ò... the Treaty (of Waitangi) is a document relating to fundamental rights; (and) that it should be interpreted widely and effectively as a living instrument taking account of the subsequent developments of international human rights norms ...Ó.
9 The late Sir James Henare, a notable Treaty proponent of recent times, regularly referred to his forebears description of the Treaty as a sacred covenant. That opinion was adopted in a resolution of some 1000 Maori at the Ngaruawahia treaty hui in 1984.
10 That perception may soon change. New Zealand has now ratified the Optional Protocol to the International Covenant on Civil and Political Rights with effect from August 1989. Articles 1 and 27 of the Covenant give some recognition to the rights of peoples within a State, and the Protocol

would appear to enable Maori to make claims as Maori to the Human Rights Committee. At present, however, Maori appear more interested in the revised ILO Convention 169 on Indigenous and Tribal Peoples in Independent Countries (though the Convention, and the preceding Convention No. 107, have never been ratified in New Zealand) and in the Drafts for a Universal Declaration on the Rights of Indigenous Peoples proposed by the United Nations Working Group on Indigenous Populations.

11 See for example, MPK Sorrenson, historian and Tribunal member, in A History of Maori Representation in Parliament, appendix to the Report of the Royal Commission on the Electoral System (1986), GovnÕt Printer, Wellington, NZ.

12 Maori leaders executed an 1835 Declaration of Independence, following which the Colonial Office acknowledged their independent sovereignty in 1836. It made the Treaty a pre-requisite to annexation.

13 Recorded Maori views at the many signings are collated by Claudia Orange in The Treaty of Waitangi (1987), Allen and Unwin NZ Ltd.

14 There are English and Maori texts of the Treaty and one is not an exact translation of the other. The Maori version was probably based on an English draft then modified to fit Maori expectations. It received little official attention in the past, but (with one exception) was the text that was taken about the country and signed, and is the text on which Maori have relied. The Tribunal is required to consider both texts, the Governor relying on the English version.

15 The Maori text gives a right of national governance (kawanatanga) to the Crown on an undertaking to uphold the independent authority (rangatiratanga) of Maori.

16 The classic Maori position was expressed by Paora Te Ahura in 1857 with reference to the establishment of a Maori King - ÒThe [Maori; King on his piece, the [English] Queen on her piece, God over both and love binding them to each otherÓ. See New Zealander 6.6.1857.
Maori may also have expected however that they would govern not just themselves but settlers resident in their districts - see Rigby-Koning Report to the Waitangi Tribunal (1990) in the Muriwhenua Land Claim.

17 The Treaty relationship between Maori and the Crown was characterized as a partnership by the Court of Appeal in NZ Maori Council v Attorne-General [1987] 1 NZLR 641 following historical evidence from Claudia Orange. The Waitangi Tribunal used similar descriptions in Manukau Report [1985] 8.3 and Te Reo Maori Report (1986) 4.2.8.

18 See s2 Treaty of Waitangi Amendment Act 1988.

19 At 1840 there were probably about 2,000 British and 100,000 Maori. By 1858, Maori were outnumbered 59,000 to 56,000 disease reducing one, migration swelling the other. In 1896, after the wars, Maori were estimated at 42,000 but numbers have consistently increased since. Maori are now 294,000 or about 12% of the population. Non-Maori are overwhelmingly of British stock.

20 The main wars were 1860-1867. Confiscation of the lands of ÔrebelÓ tribes was provided for in the New Zealand Settlements Act 1863.

21 Native land legislation from 1862 to the present day has so insisted on title individualization that now no Maori land is held in the communal ownership customarily preferred. Maori were generally opposed but unable to stop the process. The object was stated plainly in Parliament Ò... to destroy, if were possible, the principle of communism which ran through the whole of their institutions, upon which their social system was based, and which stood as a barrier in the way of all attempts to amalgamate the Maori race into our social and political systemÓ [1870 IX NZPD 361]. It also helped the sale of Maori land, removing the tribal veto that had been the bulwark to settler land acquisition.

22 The authoritative case is Te Heuheu Tukino v Aotea District Maori Land Board [1941] NZLR 590 (Privy Council).

23 For the Treaty as NZÕs most important historical document, see, eg Sir Robin Cooke, President of the Court of Appeal, Vol 14 No 1 NZULR 1 (June 1990); as the foundation of our modern State, see Minister of Justice White Paper on a Draft Bill of Rights presented 1985; and as legitimizing the GovernmentÕs right to govern, see Prof. F M Brookfield inaugural lecture on appointment as Dean of the Law Faculty, Auckland University, 1985.

24 See Treaty of Waitangi Act 1975.

25 In socio-economic terms Maori rank as underprivileged - more than twice as likely to be unemployed or totally welfare dependent and only half as likely to own their own homes. Those earning earn less (80% of the national average). Only 4% Maori men are self-employed compared with 21% non Maori men. 63% Maori as cf 28% non Maori leave school without formal qualifications and Maori are less than 1% of those in professions or major business.
While the number of non Maori indicated in the courts doubled between 1961 and 1984, the Maori increase was six-fold, and Maori now comprise nearly half the prison population.
Maori land holdings have been substantially eroded, less than 5% the total land area. Much is on poorer country, about 7% being undevelopable. The spread of ownership is uneven so that some tribes are landless, contributing to a substantial move to towns. Maori in urban areas were in 1936 - 11.2%, and in 1981 - 79%.
26 Motunui Report, Waitangi Tribunal, 1983.
27 Where a claim is proven, the Tribunal may order that Crown land or forest assets sold after 1986 be reclaimed for Maori ownership - see Treaty of Waitangi (State Enterprises) Act 1988 and Crown Forests Assets 1989.
28 Recent intervention by the courts is reviewed by Sir Kenneth Keith in The Treaty of Waitangi in the Courts and by E Taihakurei Durie and Gordon S Orr in The Role of the Waitangi Tribunal and the Development of a Bicultural Jurisprudence in Vol 14 No 1 NZULR (June 199).
29 This is apparent, for example, in two Court of Appeal decisions, NZ Maori Council v Attorney-General [1987] 1 NZLR 641, and Tainui Maori Trust Board v Attorney-General [1989] 2 NZLR 513.
30 See Runanga Iwi Act 1990.