Being fair-minded while avoiding the global guilt trap

Bruce Mason

A comic-strip view of history can lead to generalisations and prejudices as damaging as those which may be better put behind us. Over the last decade there has been a one-sided, simplified view of the Treaty of Waitangi, and of the history of Maori - Pakeha interaction.

I now know that the view of New Zealand's history that I obtained during my formative years was seriously deficient and strongly biased towards the European perspective. I, and most New Zealanders, have been poorly served by the education system in this regard. *However...*

However, in our eagerness to make amends, many are now over-compensating to the extent of adopting replacement comic-strip views of history. This requires the wearing of blinkers that shut out fact and circumstance that do not fit with the new vision. It also allows the redefinition of the meaning of words. Everything, in the words of Maori legal adviser Moana Jackson, should be "contextualised". Any consequent action, lawful or unlawful, can then be justified.

Sovereignty

Most dictionaries say that sovereignty entails the exercise of supreme, unmitigated power by nation states. Like many New Zealanders I have been bewildered by claims by Moana Jackson, Ken Mair and others demanding recognition of Maori 'sovereignty' within New Zealand. As an absolute, unqualified power residing in Parliament it appears that what they demand is a contradiction in terms. How can sovereignty reside, in a shared or any other form, anywhere else but in Parliament?

The Government has been slow and equivocal in responding to Maori sovereignty demands, greatly worsening public unease. Justice Minister Doug Graham dismissed claims of Maori sovereignty as "unlikely to succeed", but without dismissing the possibility. He further confused the issue by saying that "self-determination for Maori could only be beneficial". Health Minister Jenny Shipley has rejected Maori sovereignty as "having no basis in law", but then advised New Zealanders "to urgently form a view on the issue". If her first statement is correct, what need for the second?

Prime Minister Jim Bolger, has latterly dismissed any possibility of Government ceding sovereignty to anyone else (except perhaps to overseas investors), but has left open the prospect of some Government activities being delegated to Maori groups.

Some, like Moana Jackson, claim that Maori never ceded sovereignty to the Crown on the signing of the Treaty of Waitangi. This is on the basis that "no matter how powerful or respected a Maori leader, he or she could not give away the sovereign authority of their people". Such a view defies centuries of international history. There are no shortages of treaties between nations where leaders have done just that. True, in most cases the vanquished have signed away their sovereignty under duress from victors. Maori history is full of lost tribal sovereignty as a result of conquest by invading tribes. Is Mr Jackson saying that it is acceptable to lose sovereignty as the result of armed conquest, rather than by voluntary agreement as occurred under the Treaty of Waitangi?

Other 'Maori sovereignty' advocates have claimed that the word 'kawanatanga' (meaning "complete government"—equivalent of 'sovereignty', in Article 1 of the Treaty) was a neologism and could not have been understood by the chiefs. However the chiefs understood the power of life and death they held over their subjects and it

was this, and other rights, that they were ceding to the Crown. Many chiefs also had
extensive overseas experience to assess the British as the least bad empire, and the British legal system as their best hope for preserving their remaining chiefly rights ('rangatiratanga' of Article 2).

Others state that the 1835 Declaration of Independence by some northern North Island chiefs established New Zealand, or at least part of it, as a sovereign nation. This sovereignty is implied to have survived intact despite being superseded by the 1840 Treaty of Waitangi.

Tino rangatiratanga

Alternatively there may be a valid basis for Maori sovereignty under the Treaty of Waitangi. Perhaps there are express provisions that do allow a sharing of power, self-determination, or separatism? Does Ken Mair's interpretation of 'tino rangatiratanga' as synonymous with 'sovereignty' provide an answer?

If new constitutional arrangements are being advocated, surely as a precursor it is necessary for the wider community to understand better the deal struck between Maori Chiefs and the Crown in 1840. Why rely solely on assertions, from those with political axes to grind or public lands to occupy, as to the content and meaning of the Treaty?

The central assumption on which the claim is made that the Treaty promised Maori sovereignty is the Article 2 provision guaranteeing to Chiefs the unqualified 'tino rangatiratanga' over (all) their lands, forests and fisheries. There are also notions of 'equal governance', 'bi-culturalism', and 'equal partnership' which are claimed to flow from the Treaty. Such views are gravely flawed. They arise from very selective reading of the Treaty and redefinition of the meaning of the term 'tino rangatiratanga'.

Most definitions I have seen have 'rangatira' meaning chief; 'rangatiratanga' as chieftainship; 'tino rangatiratanga' being a superlative form of chieftainship or evidence of greatness. It is nevertheless a different and lower order of authority from the supreme sovereignty ceded to the Crown under Article 1 and enacted by proclamation. The Crown has the power to make and enforce law—to keep the peace, by force if necessary. The Crown's title to its territory is indivisible—it shares its sovereignty with no-one.

The Waitangi Tribunal is of the view that tino rangatiratanga does not refer to a separate sovereignty but to tribal self management on lines similar to what we understand by local government. "Contemporary statements show well enough that Maori accepted the Crown's higher authority and saw themselves as subjects, be it with substantial rights reserved to them under the Treaty".

reserved to hapu under the Treaty, not all lands, forests and fisheries as is almost always implied. The latter view ignores the land sales provisions of Article 2. If land and associated resources have been lawfully sold to the Crown then tino rangatiratanga is extinguished over these. I have examined the sales deeds for most of the South Island and have found that "rivers, lakes, the woods, and the bush, and all things whatsoever within those places, and all things lying thereupon" were either explicitly or implicitly sold by chiefs to the Crown.

The meaning of Article 2 has been woefully distorted by Maori separatists and by many of their liberal allies. To claim now that no valid land sales occurred is mere raving. The main point of Article 2 was to prevent (at Maori initiative) racketeering 'land sales' between a variety of dubious foreigners and 'chiefs' who were not duly authorised to sell. The pre-emptive right of the Crown to purchase any lands which the proprietors "...may be disposed to alienate..." is the main effect of Article 2. It certainly does not hint at any possible separate legal system or jurisdiction for Maori any more than for other landowners.

Aside from the content of the Treaty, the concept of bi-culturalism ignores the reality that the traditional concept of 'Pakeha' no longer fits the very diverse character of non-Maori society. New Zealand is now a multi-cultural society. It is not confined to two cultures. Recognition of multi-culturalism does not deny the right of different ethnic groups, including Maori, to retain their cultural identities. A bi-cultural model denies that diversity. Multi-culturalism, based on mutual respect, allows the celebration and enjoyment of ethnic diversity, while retaining the entitlements and powers of equal status and protection of individuals before the law, and the law makers. That is consistent with Article 3 of the Treaty. A Crown-Maori shared-power or sovereignty model is not.

Complete reading of Treaty essential

A complete reading of the Treaty is essential for a grasp of its meaning and to understand the weighting that should be given to its various (superficially conflicting) provisions.

The Treaty, in Maori and English versions, consists of a preamble, three articles, and an epilogue. To obtain full understanding of the relationship struck between Maori and the Crown, each Article must be read in its entirety, related to other articles, then to the purposes of the Treaty as set out in the preamble.

On the ceding to the Crown the right of complete sovereignty *or* government (Article 1) and the granting of exclusive pre-emptive (purchase) rights of land to the Crown (Article 2), Maori would retain ***either*** exclusive and undisturbed possession

of their lands and estates forests fisheries and other properties *so long as it is their wish to retain the same in their possession or* the unqualified exercise of chieftainship over all their lands, villages and all other treasures (Article 2). In consideration of the foregoing Maori were granted the same rights, privileges, and duties of citizenship as the people of England (Article 3). The *'either' 'ors'* arise from the different versions of the Treaty. In my view the versions don't materially differ if *all their content* is taken into account.

The proposition of 'Maori sovereignty / rangatiratanga' hinges on selective quotation from Article 2 by cutting out reference to the inseparable provision for land sales, and by ignoring the overarching right of governance / sovereignty granted to the Crown under Article 1.

The English preamble states that the Treaty was to ensure the recognition of Her Majesty's Sovereign authority over the whole of New Zealand. This is confirmed by the translated Maori version whereby the Chiefs agreed to a (single) Queen's Government being established, not dual governments. There is ample evidence that Maoris had urged this, and that the British government was very reluctant to take on any more far-flung territories.

There is an urgent need for greater public awareness of the full content of the Treaty to avoid continuation of the blinkered view that has had currency in recent times. Even the balanced and well promoted view of the Treaty presented by the New Zealand 1990 Commission has been swept aside in a wave of political correctness and radicalism.

Tolerance and equality

At the heart of the issue is the need for tolerance if we are to live together in peace and harmony. But we also need to achieve much more than this if New Zealand is to remain a comfortable place that all New Zealanders can call "home". We must be able to understand and enjoy our differences without feeling threatened.

Elevating the rights of one race (which happens to be a minority) to that of an 'equal' with the majority of society under a dual sovereignty or similar model, will create inequality between New Zealanders *as individual citizens*. A Maori individual would end up with greater civil and political influence, and worth, than individuals of non-Maori descent. Institutionalising differences of personal entitlement and power on the basis of ethnicity is, by its very nature, racism. How can this possibly honour Article 3 of the Treaty which grants all New Zealanders the same rights and duties of citizenship, or our strong, if somewhat bruised, self-image of egalitarianism? There will be disproportionately greater representation and power for Maori individuals within the institutions of government. This will hinge on ethnicity not on equal citizen representation. Proposals for shared power on an ethnic basis do not sit well with attaining equality for citizens or with the recent electoral changes to proportional representation.

'Claims' and 'grievances'

There have been numerous breaches of the Treaty by the Crown, especially by settler governments, but the current simplified view of our history does not acknowledge that there were major differences in treatment meted out to Maori from one tribe to the next. The assumption is that seizure and confiscation of land by the Crown occurred everywhere. Whereas on occasions governments *have* honoured the terms of the Treaty.

Waitangi Tribunal reports reveal Maori 'grievances' can be either real or imagined. Many commentators, and advocates for Maori, have fallen into a 'global guilt trap' whereby they assume or portray all 'claims' and 'grievances' concerning Maori as valid. A corollary is that to be Maori is, by definition, to be aggrieved. This is not a very rewarding position for anyone to be in.

It is a matter of historical fact that the Treaty is the founding document for New Zealand. Honouring and implementing its provisions requires a scrupulous regard for its content. Flights of fancy into all manner of disreputable claims of Maori sovereignty, self-determination, separatism and suchlike not only dishonour the Treaty but remove the possibility of it serving as a workable foundation for New Zealand society.

Bruce Mason is researcher for Public Access New Zealand. He was born in Otago, where he has lived ever since, with origins traced back to Scotland. He is an indigenous* New Zealander, and knows no other home. He strongly believes in egalitarian principles, the equality of rights for all people no matter their race, ethnicity, or circumstance, and the necessity for mutual respect. He is known for ruffling the feathers of those bent on advancing self-interest at the expense of others. He is best known as a defender of the Queen's Chain and advocate for public lands and access in the South Island high country. In 1993 he published a paper on the Treaty of Waitangi and the principle or 'partnership'. He concluded that under the Treaty there is not an 'equal partnership' between the Crown and Maori.

* "born or produced naturally in a region" (Concise Oxford Dictionary)

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