

Treaty of Waitangi

Questions and Answers

Ex Maori Independence Site <http://aotearoa.wellington.net.nz/>

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Note these questions and answers were designed for Pakeha
to give them a better understanding of Treaty issues

- WHAT CONTACT DID MAORI AND PAKEHA HAVE BEFORE 1840?
- WHAT FOREIGN POWERS WERE INTERESTED IN NEW ZEALAND?
- WHAT WAS BRITISH POLICY BEFORE 1840?
- WHAT WAS THE DECLARATION OF INDEPENDENCE?
- WHO CONTROLLED THE COUNTRY?
- WHY WAS A TREATY NECESSARY?
- WHAT IS THE TREATY OF WAITANGI?
- WHO WROTE THE TREATY?
- THERE ARE TWO TEXTS ONE IN MAORI ONE IN ENGLISH, ARE THEY BOTH THE SAME?
- WHICH TREATY IS THE RIGHT ONE?
- DIDN'T MAORI SIGN AWAY THEIR SOVEREIGNTY TO QUEEN VICTORIA?
- SO WHAT DID MAORI CEDE UNDER THE TREATY OF WAITANGI?
- WHY ARE THERE DIFFERENCES IN THE TWO VERSIONS?
- WHY WERE THE BRITISH INTENTIONS OF GAINING SOVEREIGNTY NOT FULLY EXPLAINED AT THE TREATY SIGNINGS?
- HOW DOES THE TREATY RECOGNISE MAORI AS TANGATA WHENUA (PEOPLE OF THE LAND, THE INDIGENOUS PEOPLE OF AOTEAROA)?
- WHAT ABOUT LANDS THAT WERE UNOCCUPIED BY MAORI TRIBES?
- WHAT IS THE "FOURTH ARTICLE" OF THE TREATY?
- THE TREATY IS CALLED A COVENANT. WHAT DOES THAT MEAN?
- WHERE WAS THE TREATY SIGNED?
- WAS ANY NOTICE EVER TAKEN OF THE TREATY BY THE CROWN?
- BY WAR OR BY LAW?
- HOW CAN A DOCUMENT OVER 150 YEARS OLD HAVE RELEVANCE FOR TODAY?
- MAORI PEOPLE HAVEN'T DONE ANYTHING BEFORE - THEY'RE JUST JUMPING ON A BANDWAGON.
- WHY IS THERE SO MUCH TROUBLE ABOUT THE TREATY NOW?
- WHY CAN'T WE THROW IT OUT AND START AGAIN?
- WHY CAN'T WE JUST GET ON WITH LIVING LIKE ONE PEOPLE?
- WHAT ABOUT SEPARATE OR PARALLEL DEVELOPMENT? ISN'T THAT APARTHEID?
- WHAT DOES THE TREATY HAVE TO DO WITH PAKEHA AND TAUWI?
- DID THE TREATY ALLOW FOR IMMIGRATION TO NZ FROM OTHER COUNTRIES APART FROM BRITAIN?
- WHAT IS THE PLACE OF OTHER RACIAL GROUPS APART FROM MAORI AND PAKEHA IN RELATION TO THE TREATY OF WAITANGI?
- HAVEN'T OTHER GROUPS APART FROM MAORI SUFFERED FROM RACISM?

many interesting arguments but most challengeable
Notable omissions about Treaty content + selective history

- WHY CAN'T MAORI PEOPLE LOOK AFTER THEIR LANGUAGE AND CULTURE IN THE SAME WAY THAT OTHER RACIAL GROUPS DO?
- DOES HONOURING THE TREATY OF WAITANGI MEAN GIVING MAORI ALL THEIR LAND BACK?
- IS THE TREATY LEGAL?
- WHAT ABOUT THE WAITANGI TRIBUNAL?
- HAVEN'T MAORI PEOPLE GAINED FROM HAVING EUROPEANS
- HERE WITH MODERN TECHNOLOGY AND OTHER MATERIAL BENEFITS?
- WHY DO MAORI SAY THEY WANT THEIR LAND BACK WHEN THEY DON'T ACTUALLY USE IT AND JUST LET IT GO TO WASTE?
- WHERE IS THE TREATY RECOGNISED AS IMPORTANT?
- MAORI PEOPLE THEMSELVES ARE DIVIDED. MOST ARE CONTENT WITH THE STATUS QUO. ISN'T IT JUST A FEW RADICALS STIRRING UP TROUBLE?
- WHAT IS ABORIGINAL (NATIVE) TITLE?

WHAT CONTACT DID MAORI AND PAKEHA HAVE BEFORE 1840?

By the time the Treaty was signed in 1840, British and Maori were no strangers to each other. After initial contact with European explorers, Abel Tasman (1642) and Captain Cook (1769), British and American sealers and whalers began commercial activity in this region. After 1800 this contact became more regular, with European seamen coming to NZ harbours to take on supplies and for rest and recreation. Commercial activities extended to timber, flax, shore-whaling, ship-building and general trading in the mid 1820's. By the mid 1830's some traders had taken permanent residence on the coast. After the sealers and whalers came the missionaries. The Church Missionary Society, established its first station in 1814 in the Bay of Islands. They were followed by the Wesleyans in 1822. They expanded north and south in the 1830's. Although there had been many transients, there were only 2000 permanent settlers by 1839, mostly in the north.

WHAT FOREIGN POWERS WERE INTERESTED IN NEW ZEALAND?

British interests in the area were certainly the strongest, but American and French activities were increasing. The Americans appointed a consul to New Zealand in 1839. They had many trade interests and had been treaty making in the Pacific since 1826. Bishop Pompallier set up a French Catholic mission in the Hokianga in 1838 and there were regular naval visits to support the French missionaries and traders. Maori generally distrusted them, because of the massacre of 250 Maori in 1772 when the French retaliated for the killing of Marion du Fresne and his crew. It would be true to say that as much as the British chose to enter into a contract with the Maori people, so the Maori people chose the British as the people with whom they wished to increase their links.

WHAT WAS BRITISH POLICY BEFORE 1840?

Up until the 1830's the official British policy towards New Zealand was one of reluctance to intervene formally. However, in 1831, a petition was sent to King William IV from thirteen Maori chiefs and the missionary, Samuel Marsden, requesting that he become a "friend and guardian of these islands". The petition outlined their concerns of takeovers from other nations and asked that Maori people be protected from the misconduct of the British people who had come to New Zealand. The lawlessness of British subjects was reaching alarming proportions by this time with incidents occurring around the country. Among these were the murders of a Maori chief and his family in the South Island. Partly for humanitarian reasons, but primarily to protect British trade interests, the British Government appointed James Busby to act as British Resident in New Zealand. He arrived in May 1833 and set up a Residency at Waitangi. Busby had ideas of establishing an independent Maori government. One of his first tasks was to call together Maori

✓ chiefs in 1834 to select a national flag so that New Zealand ships would be registered and therefore have ~~duty-free entry into Australia and be protected under British law.~~

WHAT WAS THE DECLARATION OF INDEPENDENCE?

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By 1835 Busby's concerns had grown over the interest of other nations in New Zealand particularly when he learnt that Baron Charles de Thierry, a Frenchman, planned to come to New Zealand and set himself up as a sovereign leader. De Thierry also claimed that he had bought a large amount of land in the Hokianga. Busby called the chiefs together to sign the Declaration of Independence in October 1835, which declared this country an independent state. It stated that all sovereign power and authority would reside in the hereditary chiefs and tribal leaders who asked King William IV "to be the parent of their **infant** state... its protector from all attempts upon its independence". The Declaration's signatories, thirty four chiefs, called themselves the United Tribes of New Zealand and agreed to meet at Waitangi in the autumn of every year to frame laws for the peace and good order of the country. There was also an invitation for the Southern chiefs to sign the Declaration and in all, fifty-two chiefs signed. Further signings were held up because of tribal disputes and a heavy winter in 1836. Busby remained concerned about other countries' interest in New Zealand and saw the Declaration of Independence inhibiting other agreements between these countries and the Maori chiefs. (Click here for the Declaration of Independence)

WHO CONTROLLED THE COUNTRY?

Throughout this time New Zealand was still firmly under Maori control. The cultural framework of New Zealand in 1840 was still essentially Polynesian, all European residents absorbed Maori values to some extent; some Europeans were incorporated, however loosely, into a tribal structure; and the basic social divisions were tribal, not the European divisions of race, class or sect. The history of these years is of tribal societies interacting with each other and with European societies still traditional but undergoing major cultural change." (J.M.R. Owens in The Oxford History of New Zealand, p. 29) Maori economic development expanded rapidly from the 1820's through to the 1860's. By the mid-1830's wheat and butter were traded extensively, particularly from the Waikato and Northern tribes Agriculture flourished through to the 1850's with Maori people supplying most of the foodstuffs for the Europeans and **exporting their surplus to Australia. Maori started up a ship-building industry because of their extensive exports to Australia.** "In 1857 the Bay of Plenty, Taupo and Rotorua natives - being about 8,000 people - had upwards of 3,000 acres of land in wheat, 300 acres in potatoes, nearly 2,000 acres in maize, and upwards of 1,000 acres of kumara. They owned nearly 100 horses, 200 head of cattle, 5,000 pigs, 4 water-power mills, and 96 ploughs, as well as 43 coastal vessels averaging nearly 20 tons each (R. Firth, Economics of the New Zealand Maori, p. 449) There was a strong desire by Maori to gain the literacy skills of the Europeans. Maori tribes encouraged missionaries to settle in their areas to acquire these skills. This not only gave them increasing standing with other tribes, but opened up further trade links with other Europeans.

WHY WAS A TREATY NECESSARY?

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During his six year term of office Busby was often criticised for his ineffectiveness, particularly in dealing with the misconduct of the settlers. His requests for assistance, in the form of troops and a warship, were turned down. **He had no power of arrest because he was appointed as a civilian.** His role became that of a mediator and negotiator between the Maori and British. By the late 1830's speculative land purchases of dubious legality were taking place around the country. In 1838, the more law-abiding settlers, traders and missionaries petitioned the Crown asking for more effective government in New Zealand. Busby himself proposed to the Colonial Office that a British protectorate was needed in New Zealand, with the Crown running affairs for all inhabitants. Busby's report also described the appalling state of Maori health and blamed some of this on the impact of the Europeans. The Aborigines Protection Society in Britain had a reasonable influence at the time and their concerns were mainly on the impact of colonisation on indigenous peoples. The New Zealand Association (which later became the NZ Company) were concerned with settlers'

interests and planned to set up a New Zealand colony on the principles of Edward Gibbon Wakefield. Primarily to protect their trade and economic interests in New Zealand, the British finally accepted the calls for colonisation and sent Lieutenant Governor William Hobson to New Zealand. He had instructions from Lord Normanby from the Colonial Office to acquire sovereignty over New Zealand. His instructions included the recognition of New Zealand as a "sovereign and independent state" and went on in an almost apologetic way about the necessity of British intervention. Because Britain had recognised Maori rights in the Declaration of Independence and this was "binding on the faith of the Crown", no claim could be made on New Zealand without Maori agreement. Hobson arrived in New Zealand on 29 January 1840. (Click here for the Treaty of Waitangi)

WHAT IS THE TREATY OF WAITANGI?

The Treaty of Waitangi is an agreement which forms a compact or covenant between the Crown and Maori. It was signed in 1840. It recognised the prior occupation by Maori people of New Zealand. It enabled the peaceful acquisition of land for settlement purposes and ensured that immigrants could come and live here in peace. It allowed the Crown to set up a government to establish laws. In return the Crown were to guarantee and actively protect Maori tribal authority over their lands, fisheries, forests, villages, treasures and culture and extend to them the status and rights of British citizens.

WHO WROTE THE TREATY?

Captain William Hobson on written instructions from the Colonial Secretary the Marquis of Normanby; with the Official Resident James Busby and Hobson's secretary Freeman. The English draft was then translated into Maori by Rev. Henry Williams, a missionary who had been in the country for some years, and his son Edward Williams.

THERE ARE TWO TEXTS ONE IN MAORI ONE IN ENGLISH, ARE THEY BOTH THE SAME?

No. In Article I the English version states that the Maori ceded sovereignty to the Queen. The Maori version does not use the nearest Maori equivalent to sovereignty, ("mana" or rangatiratanga') but kawanatanga (governorship), an improvised word in missionary useage. It did not mean a transfer of authority from Maori to British, but enabled the setting up of a government by the British. This was the first time the term had been used. Article II: The Maori text, in exchange for the protection of the Queen, gave Maori people unqualified exercise of their chieftainship (te tino rangatiratanga) over their lands, villages and all their treasures (Taonga)". They were guaranteed full control and authority, and in Claudia Oranges's view: "The explanations given at treaty signings support the conclusion that though the Maori expected the treaty to initiate a new relationship, it would be one in which Maori and Pakeha would share authority.... Maori were encouraged to believe that their rangatiratanga would be enhanced... and that Maori control over tribal matters would remain." (The Treaty of Waitangi, Claudia Orange, p. 42) The Maori text with the use of "te tino rangatiratanga" has a much wider meaning than the English text, which guarantees to the Maori: "the full, exclusive and undisturbed possession of their lands and estates, forests, fisheries, and other properties". The word "taonga" in the Maori text is not limited to property and possessions, as stated in the English text, but includes all things held precious, for example language and culture. Article II also proposed a method for the buying and selling of land. In the English text, the Maori who wished to sell their land, had to sell exclusively to the Crown. The Maori text did not mention exclusiveness, but used the tern "hokonga", which simply meant that the Treaty allowed the Crown to enter into buying, selling or trading of land. This was interpreted by many Chiefs that they had to offer first option to the Crown, but if the Crown did not want to buy, then they would be able to sell to other willing buyers. Article III: Gives Maori the same rights and privileges as those of British subjects, in both texts. This not only means that Maori people were accorded the same status as British subjects, but also that Maori customary rights, spirituality and tribal lore would be protected.

WHICH TREATY IS THE RIGHT ONE?

The Waitangi Tribunal (established in 1975) is instructed to have regard to both texts, as both have signatures. If there is any ambiguity, the International law principle of contra preferentum applies. This means that a provision should be interpreted against the party who drafts it and that the indigenous language text takes precedence.

DIDN'T MAORI SIGN AWAY THEIR SOVEREIGNTY TO QUEEN VICTORIA?

No, the English text intended that Maori cede their sovereignty but the majority of chiefs (540) did not sign this text. Thirty-nine chiefs did sign the English text in Waikato in April, but lengthy explanations were given in Maori. It is quite clear from the Treaty signings and from subsequent events that Maori did not and would never have given away their sovereignty.

SO WHAT DID MAORI CEDE UNDER THE TREATY OF WAITANGI? Kawanatanga or governorship was given to Queen Victoria. They retained their own tribal sovereignty or rangatiratanga in Article II. The Queen or the Crown as her representative was to have the power of governorship alongside their sovereignty as chiefs.

WHY ARE THERE DIFFERENCES IN THE TWO VERSIONS?

The differences occurred in the translation of the English version into Maori. The translator, Henry Williams, would have known that if he had used the Maori terms 'rangatiratanga' or 'mana' in Article I, which are closest to the meaning of the term sovereignty used in the English text, that the chiefs would never have signed the Treaty. They would not have given up their rangatiratanga or mana. In fact, one of the reasons many chiefs agreed to sign was that their rangatiratanga was guaranteed in Article II. Williams certainly wanted the Treaty to be signed and there have been many opinions about why he used ambiguous words: One view is that Williams believed that Maori welfare would be best served if they accepted British sovereignty. Another view is that Williams may have believed like other missionaries of his time, that Maori could not claim sovereignty in any international sense, and so in including rangatiratanga in the second Article was safeguarding what they did have which was their chiefly authority, their land, villages and all their treasures. Many missionaries including Williams had a vested interest in land. After the Treaty, Williams had confirmed legalised title to 9,000 acres of valuable land. "Whatever Williams intended, it is clear that the treaty text, in using kawanatanga and rangatiratanga, did not spell out the implications of British annexation." (The Treaty of Waitangi, Claudia Orange, p. 42)

WHY WERE THE BRITISH INTENTIONS OF GAINING SOVEREIGNTY NOT FULLY EXPLAINED AT THE TREATY SIGNINGS?

Because the British knew the Maori would never agree. The missionaries and Hobson concentrated on the protection and guarantees offered to Maori people by the Crown. When discussing the setting up of a form of British authority, they spoke of it in relation to the Pakeha lawlessness in the country. British people would now be required to live by the laws of Britain. Williams softened the impact of the British intentions of gaining sovereignty by putting it into the context of the Queen wishing to make a personal tie with the Maori people. It should also be noted that it was the Maori text that was discussed. Sovereignty was not ceded in this text, and the chiefs who signed on Feb 6th 1840 and in all other places except the Waikato, signed the Maori text. It is ironic that the only person who did not understand the text he was signing was Governor Hobson himself, when he signed the Maori text. Much discussion took place on the retention of Maori lands and the continued protection of Maori tribal authority and status. These issues were of most concern to the Maori chiefs as many of them had experienced land hungry settlers entering into land purchases that were to the detriment of Maori people. The Treaty clearly spelt out that Maori tribal authority was not only confirmed but would be further enhanced by the Crown. Hobson presumed sovereignty had been ceded and made a unilateral proclamation of sovereignty over the North Island on 21 May 1840 on the grounds of the

cession given in the English text of the Treaty. Major Thomas Bunbury, who had been appointed to gather Treaty signatures in the south, made two proclamations of sovereignty; one on 5 June 1840 at Stewart Island which was claimed on the grounds of Cook's discovery, the second on 17 June 1840 over the South Island after the signing of the Treaty by some South Island chiefs.

HOW DOES THE TREATY RECOGNISE MAORI AS TANGATA WHENUA (PEOPLE OF THE LAND, THE INDIGENOUS PEOPLE OF AOTEAROA)?

In the preamble the Treaty recognised the prior occupation of New Zealand by Maori people and acknowledged an intent that the Maori presence should remain and be protected. The whole Treaty is a recognition of indigenous Maori rights, and those rights would be further enhanced and guaranteed by the Crown.

WHAT ABOUT LANDS THAT WERE UNOCCUPIED BY MAORI TRIBES?

The instructions given to Hobson by the Colonial Secretary, Lord Normanby, recognised that Maori people held title to all land in New Zealand: "... Maori title to the soil and to the Sovereignty of New Zealand is indisputable, and has been solemnly recognised by the British Government". Hobson was requested to purchase those lands not occupied by the Maori, with an important proviso that he did not purchase "... any Territory the retention of which by them would be essential or highly conducive, to their own comfort, safety or subsistence". The first two Governors continued to acknowledge that the Treaty recognised Maori title to the whole of New Zealand, and it wasn't until the 1840's with increasing pressure from settlers that unoccupied land were classified "wastelands" and was taken by the Crown.

WHAT IS THE "FOURTH ARTICLE" OF THE TREATY?

At the signing of the Treaty, two churchmen - Bishop Pompallier, a Catholic, and William Colenso, an Anglican missionary - recorded a discussion on religious freedom and customary law. In answer to a direct question from Pompallier, Hobson agreed to the following statement. It was read to the meeting before any of the chiefs had signed the Treaty: E mea ana te Kawana ko nga whakapono katoa o Ingarani, o nga Weteriana, a Roma, me te ritenga Maori hoki e tiakina ngatahitia e la. Translation: The Governor says the several faiths (beliefs) of England, of the Wesleyans, of Rome, and also the Maori custom shall alike be protected by him.

THE TREATY IS CALLED A COVENANT. WHAT DOES THAT MEAN?

A covenant is a term used to describe a binding spiritual relationship. In the Old Testament of the Bible, a Covenant was made between God and the people of Israel. In the New Testament, a Covenant was made between God and the church. In Maori tradition the Treaty is seen in the same light. Whereas the Bible is called the sacred book, the Treaty is called the sacred covenant. A contract is a thing of this world and is witnessed by people with the state as guarantor. Covenants are witnessed by God with God as the guarantor. Contracts exist within a legal framework. The Treaty of Waitangi is seen as a living document with a much wider context. Although the Treaty is also a contract, there is increasing concern that it is being taken into the narrow legal framework of lawyers, and the spiritual living element of the Treaty as a covenant is being ignored.

WHERE WAS THE TREATY SIGNED?

On February 6th 1840, at Waitangi, the Treaty was signed by about 43 chiefs. It was then taken around the country and another 500 signatures were gathered from 39 areas throughout the North and South Islands.

WAS ANY NOTICE EVER TAKEN OF THE TREATY BY THE CROWN?

The terms of the Treaty were kept initially, mainly because of the overwhelming power of the well-armed Maori majority. New settlers required the assistance of the Maori people, particularly for food. For example the tribes around Auckland supplied the town with nearly all its requirements of fruit, pumpkin, maize ,

potatoes, kumara, pigs and fish. Maori trade and economic interests extended into the 1840's, and by the 1850's the greater part of the tax revenue came from Maori. Until the 1852 Constitution Act, the Treaty was regarded as operative and enforced in the courts. The Colonial Office continued to insist that the terms of the Treaty should be observed through letters to Governors Hobson, Fitzroy and Grey. There was growing concern about the pre-emption clause of the Treaty of Waitangi, (English text), which required that Maori who wished to sell their land, sell only to the Crown. The Crown was buying land and selling it at much higher prices. The Crown was also refusing to buy some land off willing Maori sellers and would set fixed prices which went against Article II of the Treaty - "at such prices as may be agreed upon" (English text), "subject to the arranging of payment which will be agreed to by them", (Maori text). Maori understanding of the Treaty was that they should be able to give first offer to the Crown, but if the Crown refused, they should have free access to other willing buyers. Settlers also put pressure on the Governor because they were having difficulty buying land, and had to pay greatly inflated prices when buying land from the Crown. In 1844, Governor Fitzroy waived the restriction of the Crown being the sole purchaser of Maori land, on the condition that 10 shillings per acre was paid to the government; each sale had to be checked by Protectors, and certain sacred sites were not to be sold. He later changed the fee to 1 penny per acre, and whereas 600 acres had changed hands with the 10 shilling fee, 100,000 acres went with the 1 penny fee. The Colonial office were unhappy with these waivers, because the profits made through the buying of land and selling it at higher prices had dropped. Secondly they feared a decrease in the power of the Crown if the Maori entered into competition with them over the selling of land. Grey was directed to restore the Crown as the sole purchaser of Maori land, when he took office in 1845, with the Native Land Purchase Ordinance of 1846. This law further undermined Maori rangatiratanga. From 1845 to 1854 Grey had "bought" 32 million acres of land for fifty thousand pounds, mainly in the South Island and sold some of it at inflated prices. This and other land dealings put the colony on a sound financial basis. Pressure increased from settlers for land through the 1840's and 1850's. Many Maori were refusing to sell and the Maori King Movement had started in the Waikato in the early 1850's. The settlers' insatiable desire to acquire land by any means possible led to the land wars which were a deliberate violation of Article II of the Treaty of Waitangi. At the same time, the agricultural prices, particularly for wheat, took a nosedive and the markets collapsed. Pastoral farming showed more advantages, and this further intensified the demands for Maori land. (Click here for a History of the Taranaki Land Wars) (Click Here for the Taranaki claim process) (Click here for History of Waikato)

BY WAR OR BY LAW?

What has happened in New Zealand since 1840 has been a process of colonisation by successive Pakeha controlled governments through the use of laws to: * alienate Maori land (which had a direct effect on their security and economic base, their values and self esteem). * impose systems based on English law. * undermine the practices of Maori law, religion, education, health, language, and culture.

HOW CAN A DOCUMENT OVER 150 YEARS OLD HAVE RELEVANCE FOR TODAY?

Just because something is old doesn't mean it is not relevant. Our present day laws are based on the Magna Carta which was signed in 1215 A.D. The Treaty has been described as a living document whose basic principles can be applied to any age. In the 1987 Maori Council Case against the Crown, the five judges of the Court of Appeal (all of whom are Pakeha) talked about positive approaches to the Treaty for today's world. The two parties to the Treaty, the Crown and the Maori, entered into a solemn commitment, based on justice and recognition of Maori as the prior inhabitants of this country. Justice can never be outdated. New Zealand history shows that this commitment was not honoured by the Crown. Only recently has the Waitangi Tribunal been established and it has a key role to relate the Treaty to what is happening in the country today. They have said about the practical application of the Treaty for the modern world: "Any impracticality today results not from the Treaty but from our failure to heed its terms. The important point is that there was and still is, room for an agreement to be made." (Muriwhenua Fishing Report) Had the Treaty been honoured from the time it was signed this country would be a very different place today. Pakeha New Zealanders of

this generation have not before had to face what the implications of the Treaty might mean for them. Some Pakeha are fearful of change, thinking of the losses that they believe they will incur. Other Pakeha are trying to honour the Treaty in positive ways. Organisations that are taking seriously the commitments of the Treaty have found that both Maori and Pakeha have gained from the process (Download Muriwhenua Fishing Report)

MAORI PEOPLE HAVEN'T DONE ANYTHING BEFORE - THEY'RE JUST JUMPING ON A BANDWAGON.

Maori people have tried every possible avenue during the last 150 years in order to have their Treaty claims heard. They have directly petitioned the Queen and the Governor-General. They have worked through the courts - even after the 1877 judgment dismissing the Treaty. They have worked through Parliament - by attempting to introduce legislation (like a Bill of Rights in 1894), by petitioning and lobbying members. In 1932, the first Ratana member to enter Parliament, Eruera Tirikatene, presented a petition containing over 30,000 signatures. It asked that the Treaty be made statutory. No action was taken. Maori people have set up their own systems - health and education, political and spiritual movements like Kingitanga, Ringatu, Ratana and Kotahitanga - which form the basis for current Maori developments. They have been prepared to take direct action. Hone Heke signalled his anger at the breaking of Treaty promises when he cut down the flag-pole at Kororaraka. Maori people fought back when settlers called in imperial troops to take over Maori land by force. At Parihaka, Te Whiti used passive resistance tactics against the settler militia. More recently, Te Matakite o Aotearoa saw thousands of people march in protest about land - from the tail of the North Island to Te Upoko o Te Ika (Wellington). There have been protests at Waitangi, occupations of Bastion Point, Raglan golf course Pakaitore, Takahue, Rotowhio, Waikaremoana and the list goes on. The courts have usually ruled against them because, they said, they lack jurisdiction over Treaty issues. Parliament has paid little heed. When the MP for Tai Tokerau tried to introduce a Maori Bill of Rights in 1894, the Pakeha MPs all left the chamber so there was no quorum and proceedings just halted. The long history of attempts to be heard are detailed in many of the Waitangi Tribunal claims. The Orakei report details all the efforts Ngati Whatua made through the courts, through Parliament, through royal commissions and through direct action. The Muriwhenua report lists the efforts made through the courts, through petitions to Parliament (93 all told, one was on behalf of 11,976 people) and through various major hui since the 1860's. The Treaty of Waitangi has been a real and living document for Maori ever since 1840. Pakeha have consistently failed to listen. (Click Here for Raglan Links) (Click here for History of Parihaka)

WHY IS THERE SO MUCH TROUBLE ABOUT THE TREATY NOW?

The "trouble about the Treaty" isn't a recent event. Since 1841 Maori leaders have tried many avenues to get the Crown to honour the Treaty. Some of these are described in the answer to the previous question. One of the common myths still held by some New Zealanders is that divisions are being created now, because of the focus on the Treaty of Waitangi. In fact, when we begin to look at the truth of our history, it is clear that the divisions have existed for many years. All the social and economic statistics that place Maori at the bottom of the ladder have been present since the 1860's. Disregarding the Treaty has created the divisions in our society. Since the Waitangi Tribunal was formed in 1975 through our own Systems, Pakeha have had to learn more about the injustices that have occurred and the divisions are finally beginning to be addressed. Even that can be mere speculation at times

WHY CAN'T WE THROW IT OUT AND START AGAIN?

There is nothing in the Treaty to suggest it was only a temporary commitment. The Treaty was entered into in good faith by two parties in 1840. If this contract is to be rescinded, then it will take the agreement of both parties. If the Government bow to the wishes of some people who want the Treaty thrown out, then this will provide no solution at all. The grievances of Maori will not be removed, simply swept under the carpet to emerge at a later date.

WHY CAN'T WE JUST GET ON WITH LIVING LIKE ONE PEOPLE?

We began as two peoples, agreeing to share one country for our mutual benefit. Since then, the Treaty has been broken by one party, the party which subsequently became more numerous and more powerful. The name of "New Zealand" belongs to that group. The country was already known to its previous inhabitants by a number of other names, of which Aotearoa would seem to be the most commonly used today. New Zealand will become unified when the cultures of the two parties who signed the Treaty, Maori and the Crown, have equal status and power. Many of the calls for us to be one people, or for us to all be New Zealanders need to be challenged. What makes a New Zealander? Is it a person who only speaks English, operates only along Pakeha cultural lines, and does not value or allow recognition in REAL terms (not just tokenism) of Maori cultural development? Many of the people talking about us all being New Zealanders would find themselves in this position. On the other hand, many Maori people operate in both worlds, speaking both Maori and English, and respecting the place of other cultures.

WHAT ABOUT SEPARATE OR PARALLEL DEVELOPMENT? ISN'T THAT APARTHEID?

No, apartheid is a political system where one race holds all the power and strictly enforces and imposes total separation of different races, in order to maintain that power. Separate development practices in New Zealand are being implemented as a Maori response to monoculturalism, because most New Zealand institutions are controlled by the Pakeha majority and are culturally inappropriate for Maori people. Separate development is a positive process towards self-determination in a particular sphere. Separate development models do not necessarily exclude members of other cultural groups. Some people confuse apartheid, with separate development described above. In apartheid it is the powerful group that enforces separation. In separate development, as it is occurring in New Zealand, it is the powerless group that has chosen to separate.

crap WHAT DOES THE TREATY HAVE TO DO WITH PAKEHA AND TAUWIWI? Everything. It established the right of Pakeha to settle in this country. It is the Treaty that gives Pakeha the right to be here. All our rights here are derived from that Treaty -our rights to work, our rights to health care, education, justice, housing and so on. The rights that we were promised under the Treaty have been honoured. What hasn't been honoured are the rights Maori people were promised. The Treaty is about Pakeha honour. To be able to describe ourselves as honourable people, we need to address the wrongs of the past and work to make this country a Treaty-driven society. The Treaty is a legal agreement between two equal parties, one of which was the Crown representing British immigrants. The culture which has evolved from these immigrants is unique to this country and has come to be defined by the word Pakeha, to represent the European and particularly British immigrants. The word Tauwiwi represents all cultures who have come here since 1840. Since the Treaty is the foundation document of this country, it applies to all peoples who live here. Tangata Tiriti is another term for the people whose right to be here is determined by the Treaty of Waitangi.

DID THE TREATY ALLOW FOR IMMIGRATION TO NZ FROM OTHER COUNTRIES APART FROM BRITAIN?

The Treaty made arrangements for other British people to come to New Zealand, in other words it could be called our first immigration act. When the settler government took over, immigration policies to New Zealand came under Crown control. For the Crown to presume the right to make further immigration acts without consulting the tangata whenua was a breach of the Treaty of Waitangi. It has been the Crown, rather than a joint agreement between the Crown and Maori, that has decided who will come to New Zealand, from what countries they will come and under what conditions they will be given status here.

WHAT IS THE PLACE OF OTHER RACIAL GROUPS APART FROM MAORI AND PAKEHA IN RELATION TO THE TREATY OF WAITANGI?

Other racial groups apart from Pakeha and Maori need to examine their role in relation to the Treaty of Waitangi. Because the Treaty has not been honoured, other racial groups have had no option but to relate only to the Crown. If the Treaty promises were formally established, the relationship would have been with a joint authority, the Crown and Maori. However, it is the responsibility of Pakeha to right the past breaches of the Treaty, because it is the Crown, acting on behalf of Pakeha, that have caused the injustice to continue.

HAVEN'T OTHER GROUPS APART FROM MAORI SUFFERED FROM RACISM? Yes, because New Zealand is essentially a monocultural society, other racial groups are the victims of racism and prejudice. Pacific peoples have in particular been scapegoated for our racial and economic problems more than any other settler group that has come to New Zealand. "Pacific peoples were brought here largely because industry in the 1960's needed cheap labour. Today they are blamed for many of the ills of unemployment and homelessness. We forget that, as Pakeha, we are descended from migrants. How long do Pacific Islanders have to be here before they lose the stigma of migrant? We forget too, the relationships which have existed between the white New Zealand Government and the peoples of the Pacific." [Click Here for Mana Pasifika](#) (Poor New Zealand, Ros Coventry and Charles Waldegrave. p. 67)

WHY CAN'T MAORI PEOPLE LOOK AFTER THEIR LANGUAGE AND CULTURE IN THE SAME WAY THAT OTHER RACIAL GROUPS DO?

The short answer is that Maori people should have their culture enhanced, nurtured and protected every day, without having to ask for it. That's what the Treaty promised. Other racial groups come to New Zealand knowing that the culture of this country will be different. Most of them make a free choice to come here (refugees are one exception). They are prepared to adapt to some of the cultural ways of this country, just as we do when we travel overseas. They are able to adapt because their culture and ways of life will be protected in the country they came from. For example, there is a whole nation protecting Greek culture and there is a whole nation protecting Indian culture. If Indian or Greek people lose some of their culture, it will not lead to the decline of that culture on a world scale. New Zealand is the only place where Maori culture can survive. Maori people not only have to live within a system that promised to enhance and protect their culture and doesn't, but also have to fight for the very survival of their culture in the world. Other cultures apart from Maori have not suffered the colonial process in this country. Enormous amounts of energy from Maori people has been diverted into defending the survival of their culture. This continues to the present day, with the monocultural institutions, policies and attitudes that still exist. Many people do not understand the pressure this puts on the Maori community.

DOES HONOURING THE TREATY OF WAITANGI MEAN GIVING MAORI ALL THEIR LAND BACK?

Honouring the Treaty means returning land and other resources that were taken illegally OR giving adequate compensation. It is not always practicable to return land illegally taken in the past and the Waitangi Tribunal states in the Orakei case: "The resolution of one injustice should not be seen to create another." Honouring the Treaty also means that Maori people have control and authority over things that are theirs, and a genuine say in decisions that affect all New Zealanders.

MAORI PEOPLE ARE ONLY 15% OF THE POPULATION, WHY ARE WE TALKING ABOUT EQUAL PARTNERSHIP?

Equal partnership is based on the fact that the Treaty was signed by two parties - the Crown and the Maori. This has nothing to do with the numbers of either party. In fact, when the Treaty was signed in 1840, Maori people outnumbered settlers by at least 50 to 1. They agreed to the Treaty which was based on reciprocal rights and responsibilities and established that two peoples would make up this new nation. Today, that

partnership has implications for all levels of society, in our government departments, parliamentary systems, voluntary and community organisations.

IS THE TREATY LEGAL?

Yes, but like other treaties, the Treaty of Waitangi is not directly enforceable by the courts unless Parliament has so directed in an Act of Parliament. These include: Treaty of Waitangi Act 1975, Environment Act 1986, Conservation Act 1987, State Owned Enterprise Act 1987.

WHAT ABOUT THE WAITANGI TRIBUNAL?

The Waitangi Tribunal was set up in 1975 to sift through claims of breaches of the Treaty of Waitangi from 1975 onwards. In 1985, the Act was amended so that claims back to 1840 could be examined. The Tribunal has the authority by Parliamentary statute to determine the meaning of the Treaty for today, and find practical solutions to acknowledged grievances. It makes recommendations to Government on what action should be taken. The Government then has the final decision on what will happen to the recommendations. (Click here for the Waitangi Tribunal)

HAVEN'T MAORI PEOPLE GAINED FROM HAVING EUROPEANS HERE WITH MODERN TECHNOLOGY AND OTHER MATERIAL BENEFITS?

Yes, there have been gains from European technology coming into New Zealand. However, the colonial process has resulted in far more disadvantages for Maori people. Before 1840, Maori had long established systems of social, economic and cultural well-being. The Treaty guaranteed that these would be protected and further enhanced. The breaches of the Treaty have meant that Maori systems were deliberately broken down. This has resulted in disparities between Maori and non-Maori in health, housing, employment, educational achievement, income levels, wealth, land holdings and so on. It could also be argued that if the British had not formed a colony in New Zealand, the Maori people would have developed like any other nation where indigenous people are in control. They had extensive communication with the outside world before 1840 and were already taking on and seeking out new technology and adapting it to their own cultural ways of operating. This process of adaption was set back by colonisation. No longer were they free to adapt the technology to their culture, but were forced to assimilate to the British systems.

WHY DO MAORI SAY THEY WANT THEIR LAND BACK WHEN THEY DON'T ACTUALLY USE IT AND JUST LET IT GO TO WASTE?

Maori did use their land for agricultural and production purposes, for centuries before 1840 and up until the mid 1850's. History shows that they were forced off their land confiscation, through illegal land deals and parliamentary statute. Until recently, Maori who retained land were unable to receive the developmental and rural grants that were available to Pakeha farmers. One of the official criteria was holding individual title. Much of the land that Maori tribes retained was marginally farmable, with all the best land being taken by the settlers, or the Crown with legislation like the Settlements' Acts. Planning legislation, like the Town and Country Planning Act, has worked against Maori communities operating according to their own ways. In addition, Maori and Pakeha have different attitudes to land use, to economic activity and to the relationship between human beings and nature. Maori reasons for wanting their land back may include spiritual and ancestral connections.

WHERE IS THE TREATY RECOGNISED AS IMPORTANT?

Maori tribes and organisations base their work on what the Treaty says. Community, church and many recognise the Treaty in decision-making processes. The High Court and the Court of Appeal have been required to consider the validity of government actions in the light of the Treaty. Because of constant and consistent pressure from Maori the Government is now obligated to consider Treaty implications. The Governments position on the Treaty is still quite vague because in this way it does not clarify its liability.

The Waitangi Tribunal of course has the Treaty as its base document for all work. Although in legal terms it is objective and impartial its purse strings are still controlled by Government. The Waitangi Tribunal recommendations are not binding on Government.

MAORI PEOPLE THEMSELVES ARE DIVIDED. MOST ARE CONTENT WITH THE STATUS QUO. ISN'T IT JUST A FEW RADICALS STIRRING UP TROUBLE?

"Radical" has become a bit of a label to pin on anybody who makes challenging statements about our society. Some of these "radical Maori" have perceptive ideas about what is happening and where we are as a country and how we could go into the next decade. Many of the "radical" things that have been said recently are by older Maori people such as Dame Whina Cooper, Sir Graham Latimer, Mira Szaszy and the late Sir James Henare. New Zealand society expects all Maori people to be saying the same thing and criticises them when they differ in their views. But Pakeha society is also divided into a wide range of groups, views and beliefs. Another thing that divides Maori people are policies created by monocultural institutions. When this happens, Pakeha people use this as an excuse not to listen to what Maori people are saying.

WHAT IS ABORIGINAL (NATIVE) TITLE?

The legal doctrine of Aboriginal (native) Title is derived from English common law principles and is recognised in international law. Applied to the New Zealand situation, the doctrine states that the Crown is bound to recognise Maori customary tribal rights in respect of lands, forests and fisheries. These rights remain until they are legally extinguished. This can be done in two ways - (i) purchase by the Crown, (ii) legislative action. However, extinguishment of these rights must be done in accordance with common law principles, that is, with the consent of the owners and on payment of compensation. Unless these principles are complied with, the native title remains. The title to fisheries, forests and land in Aotearoa are thus drawn into question. Maori can claim under common law principles ownership of fisheries, forests and some land. The courts cannot deal with the principles deriving Treaty unless the Treaty is mentioned in legislation. But the courts can act on common law principles.