

Being fair-minded while avoiding the global

A comic-strip view of history can lead to generalisations and prejudices as damaging as those 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 the vague view of New Zealand's history I obtained during my formative years in the 1950s and '60s was seriously deficient and strongly biased towards the European perspective. I, like most New Zealanders, have been poorly served in this regard.

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 wearing blinkers to shut out fact and circumstance not

Guest Comment



With Bruce Mason

fitting with the new vision. It also allows re-defining 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.

Most dictionaries say sovereignty

entails the exercise of supreme, unmitigated power by nation states. Like many New Zealanders, I have been bewildered by claims by Jackson, Ken Mair and others demanding recognition of Maori "sovereignty" within New Zealand. As an absolute, unqualified power residing in Parliament, what they demand appears to be 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 increasing public unease. Justice Minister Doug Graham dismissed claims of Maori sovereignty as "unlikely to succeed," but without dismissing the possibility. Prime

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... Institutionalising differences of personal entitlement and power on the basis of ethnicity is, by its very nature, racism.

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 Jackson, claim 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 Jackson saying it is acceptable to lose sovereignty as the result of armed conquest, rather than by voluntary agreement as occurred under the Treaty of Waitangi?

Others state 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.

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 Mair's interpretation of "tino rangatiratanga" as synonymous with "sovereignty" provide an answer?

The central assumption on which it

is claimed the treaty promised Maori sovereignty is the Article 2 provision guaranteeing to chiefs the unqualified "tino rangatiratanga" over 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 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.

The matters and resources that should be subject to tino rangatiratanga are those reserved to hapu under the treaty, not all lands, forests and fisheries as is almost always implied. The latter view ignores the land sales provision 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,

The Independent 8 September 1995

guilt trap

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 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. 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.

The English preamble states 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 Maoris had urged this, and that the British government was 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 presented by the

New Zealand 1990 Commission has been swept aside in a wave of political correctness and radicalism.

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, granting 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.

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 there were major differences in treatment meted out to Maori from one tribe to the next. The assumption is that seizure and confiscation of the 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 a workable foundation for New Zealand society. ■

Bruce Mason is a recreation and conservation researcher from Dunedin. He is a public access and public lands advocate best known as a defender of the Queen's Chain. In 1993 he published a paper on the Treaty of Waitangi and the principle of "partnership," concluding that under the treaty there is not an "equal partnership" between the Crown and Maori.

* While the Treaty 'founded' New Zealand as one political entity, being part of a much larger British entity, this does not convey constitutional status, as is often stated or implied.

New Zealand has a constitution, but it is not set out in one all-inclusive document -- it consists of a series of formal legal documents (which the treaty is not) decisions of the courts, and conventions (BM, March 2000).

Ref:
<http://www.gov-gen.govt.nz/intro/constitution.html>