

Partnership myth an invention of our time

By REUBEN CHAPPLE



Only in the past decade has it been treated as an established fact that the Treaty of Waitangi created a partnership between Maori and the Crown. For almost 150 years, this view was almost unheard of. Moreover, there is not an iota of evidence that the British authorities intended to establish such a partnership or that the chiefs saw this as the treaty's object.

Lord Normanby's 1839 instructions to William Hobson clearly demonstrate that the Crown's purpose was not "partnership" but "sovereign authority over" those of the "accepting aborigines of New Zealand" who would agree to place themselves "under her Majesty's dominion."

Modern-day revisionists claim that the Maori understanding of the treaty was that "chiefly authority" would be preserved under the "governorship" of the Crown. The Maori version of the treaty supposedly failed to convey the meaning of the English version and the treaty negotiations failed to clarify the difference.

That the chiefs were victims of crown duplicity is not supported by the facts. The chiefs of coastal tribes had lived and worked alongside Europeans for more than two decades. Maori had travelled to British colonies all over the world in British ships, observed British sovereignty in operation and returned to tell the tale.

The words of the chiefs themselves disclose a full awareness that their acceptance of Governor Hobson would place him in authority over them. Te Kemara observed that the effect of signing the treaty would be for "the Governor to be up, and Te Kemara down." Under the Governor, he could be "judged and condemned" and even "hung by the neck" should he behave badly enough.

Piko, a chief at Coromandel, rejected the treaty because he could "see no necessity for placing himself under the dominion of any prince or queen, as he was desirous of governing his own tribe."

Mananui Te Heuheu of Tuwharetoa also refused to sign, stating, "I will never consent to the mana of a woman resting upon these islands. I myself will be chief of these isles: therefore begone!"

The partnership fallacy came about because the 1984 Labour Government placed references to "the principles of the Treaty of Waitangi" into most of the legislation it passed. What many would regard as a deliberate failure to define these "principles" in statute then allowed the Waitangi Tribunal and activist judges on the Court of Appeal to usurp the proper law-making function of Parliament.

The source of the partnership myth can be traced to an erroneous decision of the Court of Appeal in a 1987 case involving the New Zealand Maori Council. It is founded upon what researcher Alan Everton describes as "nothing more than the opinion of five judges who combined a lamentable ignorance of New Zealand history with a willingness to ignore the constitutional principle that they are appointed to apply the law, not make it."

As Mr Everton says, "The treaty was a treaty of cession, and like all such was concerned with rights and territory; with defining what rights and territory were held or ceded by the contracting parties."

Article I ceded sovereignty to the Crown "absolutely and without reservation." Furthermore, if the use of "te tino rangatiratanga" in Article II of the Maori treaty text meant that chiefly authority was to be preserved under the Crown's governance, surely the relevant clause would have mentioned only "chiefs."

In fact, the treaty guarantees "Te tino rangatiratanga/full authority over their lands, forests, fisheries and other property [the correct translation in 1840]"

not only to the chiefs, but to "ki nga tangata katoa o Nu Tirani," that is, "to all the people of New Zealand." Of course, from the moment the treaty was signed, "all of the people of New Zealand" also meant non-Maori.

Correctly construed, Article II contains the same undertaking in both English and Maori: a guarantee of property rights to "all the people of New Zealand" through the exercise of the sovereign power acknowledged as henceforth prevailing in Article I.

Any right to "manage their own affairs" which Maori enjoy stemming from Article II is the same right accorded to all New Zealand citizens: the right to ownership and control of personal property.

Should doubt remain that the treaty did not form a "partnership," Article III grants to the "Natives [not just to the chiefs] all the rights and privileges of British subjects." Clearly, individual Maori could not be availed of all the rights of the English and yet continue to be ruled in tribal style by chiefs.

In 1922, Sir Apirana Ngata summarised the effect of the Treaty of Waitangi in these terms: "Article I of the treaty transfers all chiefly authority to the Queen for ever, and the embodiment of that authority is now the New Zealand Parliament. For that reason, all demands for absolute Maori authorities are nothing more than wishful thinking."

There can be no possibility that the Treaty of Waitangi formed a sovereignty partnership. Having signed the treaty, the chiefs became not partners but subjects of the Crown, as did all other Maori. As subjects of the Crown — that is, New Zealand citizens — all those descended from the tangata whenua are today entitled to the same rights as non-Maori citizens: no less, and certainly no more.

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