

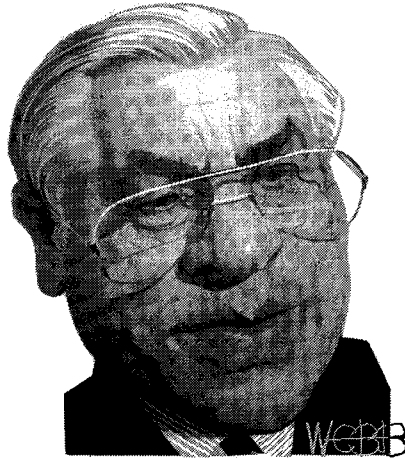
Maori sovereignty may negate rights under Treaty of Waitangi

The New Zealand Maori Council has stated it will lobby Apec countries to recognise Maori sovereignty based on the Declaration of Sovereignty 1835. I suspect they will not be remotely interested. Not only is it nothing to do with them but the declaration has already been judicially considered by the courts.

In 1993, Justice Temm stated, "Its full significance is a matter of interest to historians but is no longer of any relevance to lawyers in New Zealand. Its effect, such as it was, was overtaken by the course of events when the Treaty of Waitangi was signed in 1840, when Governor Hobson issued his Proclamation of May 21 in that year and when the Royal Proclamation ratifying the Treaty was published in the *Gazette* on October 2, 1840. From that year on, the writ of English law began to run in New Zealand but it had not operated here before."

The declaration was a document signed by 35 chiefs with the encouragement of well-intentioned and concerned missionaries. It was recognised by London as evidence of the existence of a sovereign people, which prompted London to negotiate the treaty under which the right to pass laws was given to the British Crown. Once the treaty had been confirmed, sovereignty, as it is

The Minister in Charge of Treaty of Waitangi Negotiations, SIR DOUGLAS GRAHAM, says the implication of separate sovereignty for Maori is the forfeiture of all rights under the treaty.



Sir Douglas Graham

commonly understood, passed from Maori to Britain.

If Maori are still sovereign, as some claim, then Maori have effectively terminated the treaty and have no rights under it. They cannot have it both ways. In light of the claimed rights under the treaty, and the settlement of Crown breaches of it, it would be surprising if

Maori want to rescind it.

But what actually is the "sovereignty" being claimed by the Maori council? Is it that Maori should have the sole right to pass laws binding on all New Zealanders, or just on Maori? The first is simply fanciful and the second would depend on Maori support. Where is that support?

Do all Maori wish to be subject somehow to Maori-generated laws but no others? How would it work? Would Maori living in Auckland be subject to laws that are different to those applying to the non-Maori living next door? New Zealand is quite different to Canada, where Indians enjoy limited self-government on reservations. Here Maori do not live on reservations — they are fully integrated.

Not only does the Declaration of Independence of 1835 have no standing whatever, not only was sovereignty transferred by the treaty, not only has Her Majesty's Government lawfully exercised that "sovereignty" for more than 150 years but, from a practical view, any "Maori sovereignty" is totally inconsistent with today's world.

Neither the common law nor the treaty permit "Maori sovereignty". The English common law could not and did not recognise a challenge to the authority of the Sovereign.

The treaty did not include any concept of "joint government" and continued reference to the

treaty as a "partnership" is misleading. Maori and the Crown were parties to the treaty and the treaty created obligations on each, similar to those partners have in a partnership.

But it certainly did not create a partnership to govern the country. That function passed to the Crown. The treaty guarantees to Maori may restrict the exercise of absolute sovereignty by the Crown but even that is debatable.

The Maori council's assertion of Maori sovereignty has no legal basis. It would, if accepted, be a rejection of the treaty itself. It is unlikely to be contemplated by the vast majority of New Zealanders, including many Maori. It could not be put in place anyway.

It is a concept which requires a pretence that the past 200 years have not happened.

It would be much more constructive if those arguing the case devoted their time to working through the practical difficulties of blending two cultures which have much to offer each other.

At the same time, they should be prepared to accept the law as pronounced by the courts. A great deal is still to be done to address the valid grievances of Maori from past breaches of the Crown's treaty obligations. When that is done, Maori will have the chance to close the disparity gap and join the rest of us. We should all work towards a united, peaceful country rather than promote separatism and division.