

Claims of Maori sovereignty lack validity and ability to succeed

In recent years, and particularly over the last few months, the relationship between Maori and other New Zealanders has come under scrutiny.

There has been some particularly boorish behaviour from some protesters, and there have been associated assertions of Maori Sovereignty or self determination.

We ought not to be surprised at that, even though it might make us feel uncomfortable. Every country which has an indigenous minority has similar experiences from time to time.

The simple fact is that Maori lived in New Zealand for the best part of 1000 years before European settlement began in the early part of the last century. New Zealand became a British colony only 150 years ago and did not gain full independence in a constitutional sense until 1947.

It was inevitable that there would be a clash at some time between Maori and the early settlers. Not only were their cultures so vastly different, but in many respects so too were their aspirations.

As more and more settlers arrived, Maori rightly perceived the possibility that they would be swamped and that their traditions and culture would be at risk. Hardly surprisingly, this caused considerable concern.

I rather think that the Maori chiefs who signed the Treaty of Waitangi did so in an attempt to preserve their way of life, against the inroads to it which the arrival of each ship brought. I suspect that even then Maori people realised the inevitable, although I doubt whether they thought it would happen quite so quickly.

So the Treaty of Waitangi was an attempt to ensure that both parties treated the other with respect and acted in good faith. It gave some legitimacy to the British takeover while at the same time provided some protections to Maori. And despite breaches of the treaty obligations, the treaty itself has stood the test of time remarkably well.

Over the years Maori have raised a number of arguments against the assumption of sovereignty by the British Crown.

It is said that the Declaration of Independence signed by a number of chiefs in 1835 should take precedence and is still valid; that those Maori chiefs who did sign the treaty have never given up sovereignty; that the signatories never gave up sovereignty anyway; that even those who did sign are longer bound because the Crown breached its obligations in varied ways; or that whatever the effect of the treaty, Maori who still claim sovereignty are entitled to do so.

None of these arguments has any validity. The simple fact is that the British Crown's assumption of sovereignty, assisted certainly in part by the treaty, unquestionably succeeded and it has as a matter of international law lasted. In other words, what is, is.

A revolution in New Zealand has occurred, and as Professor Brookfield in his recent valedictory lecture said: "Revolution rests upon what is done, not what is legal or necessarily moral or just."

It is then, a question of fact.

Professor Brookfield likens the British colonisation of New Zealand with the Maori colonisation of the

Maori and other New Zealanders are likened by Doug Graham, Minister in Charge of Treaty Negotiations, to "two families living in the same house". In resolving differences, "it is essential that we act as a mature nation," he says in this edited version of a speech on Wednesday to the Waikanae-Kapiti Rotary clubs.

Chatham Islands in 1835. The principle is the same. Now in some countries there may be areas where the "sovereignty" of indigenous peoples has never been extinguished as it was in New Zealand. In the frozen north of Canada for example, the Innu or Eskimo have lived there for thousands of years with minimal interference by either the provincial or federal governments. Similarly in Australia, there may be areas where the Aboriginal people might claim that their "sovereign" rights have never been extinguished.

Whether or not the Innu in Canada or the Aboriginal people in Australia could validly assert sovereign rights then is a moot point. No such possibility, it seems to me, exists for Maori.

We live in a fully integrated society. The concept of Maori having some sovereign right over non-Maori or even other Maori, seems quite untenable. There may well be many Maoris who prefer to live under the existing constitutional structure, and would be totally opposed to having their affairs governed by some Maori representative group.

All of this leads to the inevitable conclusion that it is most unlikely the claims for Maori sovereignty have any validity or any chance at all of success.

It would require the acceptance by the vast majority of New Zealanders. That is unlikely to be forthcoming.

What about the question of self-determination? This is a claim that Maori people have the right to determine their own way of life and destiny.

What is meant by self determination?

Sir Harry Gibbs, former Chief Justice of Australia, put it this way: "When it amounts to a claim by the Aboriginal people to determine their own political status, and to assert a right to sovereignty, independence, or a separate legal system, it must be rejected. On the other hand, if it is a claim by the Aboriginal people to pursue their economic, social and cultural development within the law,

and to take part in the decision-making processes which affect themselves, in the same way as other Australians may do, and within the legal structure of the nation, (then) it can only be supported. It is only reasonable that the Aboriginal people should be involved in the process of making the decisions that affect their health, education and financial position and should indeed make those decisions whenever that is practicable."

I very much doubt whether many New Zealanders would have much difficulty with this latter position.

Attempts to improve the economic and social position of the Maori should be viewed with sympathy, but when Maori seek to go outside the nation or beyond the law, those attempts go too far.

Sir Harry Gibbs went on to say: "National unity and the rule of law are assets beyond price. The old grievances, and present disadvantages, of some of

the Aboriginal people should not be allowed to be used wittingly or unwittingly to divide the nation and undermine the rule of law."

What status does the treaty of Waitangi have in New Zealand in 1995? Earlier I described it as a declaration of goodwill and a wish to act in good faith, one with the other. To the extent that the Crown has acted

in breach of its treaty obligations, there must be some redress. The honour of the Crown demands it.

For many decades, it has generally been accepted that the confiscations of land from Maori which took place during the century were unjust. The Crown

cannot simply reject claims for redress on the grounds that the events took place too long ago. The Crown has an obligation to recognise an injustice and do something about it.

There are many other events other than the confiscations of land which are difficult to justify. The creation of the Waitangi Tribunal to consider claims by Maori against the Crown has provided a valuable safety valve in allowing these matters to be aired.

It is for the claimant and the Crown to sit down and negotiate some

settlement. This is not easy. Some suggested redress might well affect public rights.

The conservation estate, for example, is held by the Crown for the benefit and enjoyment of all New Zealanders. But if that conservation estate had been confiscated wrongly from Maori, then it is hard to refute the submission "the Crown stole it — give it back".

There is a similar issue with natural resources, such as minerals, geothermal and water resources. Over the years, the Government of the day has exercised certain powers over natural resources, in order to protect and preserve them. The question then arises whether such controls should still apply to land returned to Maori.

These questions, and other which have arisen during the negotiations of grievance claims, need to be answered.

If the Government is to be fair to all claimants, it must have a consistent approach.

With that view in mind, the Government released booklets before Christmas, setting out some talking points, including the availability of the conservation estate and natural resources, and making proposals as to how they might be addressed.

Unfortunately the proposals came to be associated almost totally with the fiscal envelope, which was included in the booklets.

To show its commitment to the negotiations process, the Government decided to set aside \$1 billion over a 10-year period and to make that available to the Minister in Charge of Treaty Negotiations, to use in individual iwi or hapu settlements.

The Government is fully accountable to the taxpayer and some accounting of the cost of settlements is entirely appropriate.

How much of the \$1 billion is actually expended in settlements will depend on how many negotiations are successful. We cannot force claimants to negotiate, nor can we force them to settle. The Government has to take into account all the other demands on the public purse, yet at the same time provide sufficient to make any settlement fair and durable.

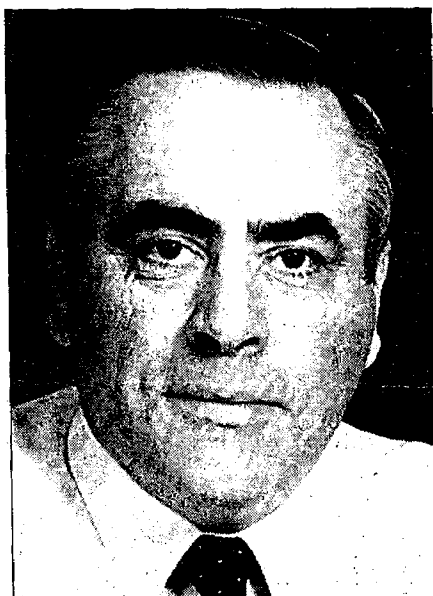
I remain optimistic that a number of settlements will be reached, and there is certainly no shortage of claimants who wish to negotiate with the Crown.

We have to recognise that wrongs were done to Maori in the past. Injustices must be addressed. At the same time, we need to ensure that Maori culture and traditions are not lost.

It is the height of arrogance to say that in every respect one culture is superior to another. So we need to continue dialogue between Maori and non-Maori.

We must also recognise that after years of assimilationist policies, the simple fact is that we are not all the same. Certainly we are one nation, but there are two families living in the same house.

As we work our way through these quite difficult issues, it is essential that we act as a mature nation. Tolerance and understanding are necessary. The rule of law will ultimately prevail, but it will do so out of the respect we have for it and for each other.



Mr Graham

We live in a fully integrated society. The concept of Maori having some sovereign right over non-Maori, or even other Maori, seems quite untenable.