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The treaty process – we need to get it right

COMMENTARY

By JOHN BATTERSBY

THE commentary on the Waitangi Treaty settlements process by Professor Alan Ward in the *Sunday Star-Times* (October 4) contained some fair comments.

Few could deny there was a sense of frustration among Maori in the 1960s and 1970s, and that problems underlying this had to be addressed. Nothing positive could be gained by sweeping them under the carpet and leaving them to fester for yet another generation.

Ward is correct also, in stating that settlements of historic grievances for Ngai Tahu and Tainui have been effected under the current regime. We have yet to see whether these settlements will give positive benefits to those Maori who really need them. Awaiting confirmation also is the assumption that compensating historical losses will alleviate current needs. After all, both Ngai Tahu and Tainui have been settled before, and on no less equitable terms than more recent settlements.

Ward should perhaps not dismiss too readily the belief that limits should be imposed on the placing of claims. The prospect of an unfinishable process is alarming and is causing many New Zealanders to wonder at the wisdom of having opened this Pandora's box in the first place. There is now far less support for the treaty settlements process among the general public and, like Maori grievances, this needs to be addressed, not ignored. Perhaps it is simply a matter of better public relations, or perhaps limits do need to be imposed – in the interests of the ultimate success of the process.

It will not help Maori if general support of the process is diminished by treaty-weariness. That will produce an outcome that is bad for everybody. New Zealanders, Maori and pakeha, have a right to be satisfied with this process, and not to be talked down to by its supporters who tend to look past whatever faults it may have.

It would be a wondrous thing indeed if a clear, consistent, multi-party system could be developed for the swift and just settlement of all Maori claims. This statement has the agreement of Maori and pakeha right across the political spectrum. But the fact that Ward thinks it is actually possible, reveals a lack of understanding of the massive bureaucratic complexity, the cost, the time and effort consumed in, and sheer work-load of, producing a mutually acceptable settlement for just one land claimant group. A workable "one size fits all" system for Maori claims is a pipe dream.

It would probably be generally accepted that the relativity clauses in the Tainui and Ngai Tahu settlements have complicated the process. But at the time when they were agreed to, they would have been the difference (or one of them) between succeeding with a settlement or failing at one. Failure in one or both of these cases would probably have ended the settlement process altogether.

The research element of Waitangi Tribunal claims is against the quest for an ideal objective, in a much less perfect world. The supply of money to research is erratic and often misdirected; and Ward is right – it is far "too easy" for Maori groups to get lawyers and researchers, and these of varying quality. But his view that an independent research authority, made up of senior university researchers could cure the problems is again unreal.

Researchers and historians involved in treaty work are routinely faced with complex and difficult research tasks, short time-frames, limited money, and a need to interface with non-historical colleagues, superiors and clients, be they legal, official or claimant. An independent academic body would make no difference to this whatsoever.

Much of the treaty work done is sub-standard, and is undertaken by researchers insufficiently qualified to do it. As a result, it shows a lack of familiarity with the sources, poor contextual analysis and an often frustrating naivete in argument.

There has been some useful work done by academics in the process, but many do not research at the detailed, and even forensic level, that is required for treaty claims. Many too don't spend enough time researching, due to increasingly unreasonable teaching and administrative commitments. The result is that approaches to academic historians have often been met with disappointment, supposed experts have been found unaware of key source material, and unable to converse about specific instances of phenomena they routinely generalise about. In a sphere which deals with detailed events, in which the past characters and their actions are practically finger-printed, much academic work is simply unsuitable.

Most academics have had no direct exposure to Treaty research, and those who have, are generally on the side of claimants. Some are actually members of the Waitangi Tribunal. But very few have been anywhere near the Crown, for fear of being tainted by their colleagues with the brush that marks one out as not sympathetic to Maori. This is an immature assumption, Crown officials involved in this process would be horrified to be thought of as anti-Maori – after all, they are the ones doing the most to make the process work!

The result of this limited and one-sided exposure, is an almost complete academic ignorance of the treaty research, Waitangi Tribunal and negotiation of settlements process through which Maori claims pass. Without this fundamental knowledge, academics could not offer much to the small, but growing number, of experienced and competent professionals who daily overcome many of the problems discussed by Ward.

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