

The TREATY, The TREATY, The TREATY

Philip Temple examines the fault line running through the constitutional conference held in Wellington on 7th - 8th April



I FLEW TO Wellington for a conference that was being rated by those running dogs of capitalism Richard Prebble and the *NBR* as an elitist cabal that was intent on dividing the country into homelands, split sovereignty with the Maori or throw out the Queen - wham bang thank you Maam - in favour of a republican dictatorship. Law lecturer David Round railed in the *Christchurch Press*: "The blood of all New Zealanders, whatever their political views, should boil at the sight of this tiny group of highly-paid professionals and light-weight intellectuals attempting to subvert

democracy and reorganise our basic legal principles". Phew.

As I walked into the secret enclave of the Legislative Chamber - under the bored scrutiny of the press - and looked at the tiny group of 120, I recognised that I was, well, certainly not as highly-paid as most of them. But since I am no academic either, perhaps I was one of Round's lightweight intellectuals. I determined to concentrate hard and mostly listen in order to overcome this problem of being both financially and intellectually challenged. One thing had struck me though. Why were Prebble,

Round *et al* so deeply outraged, to the extent that Winston could hardly get a disparaging word in? It could not be that they hadn't been invited. Somehow I had to try and get to the bottom of this.

The conference participants were seated alphabetically to avoid hierarchical groupings and this made for some interesting pairings. It seemed eminently right that Graham Scott and Peter Shirtcliffe should sit together but Rod Donald and Rod Deane seemed far too close for comfort. Cath Tizard decided that I was an inappropriate neighbour and shifted early to sit

somewhere else while she did the *Electronic Telegraph* crossword. Did she know more about the purpose of this conference than I did? Because my name begins with Te, I was left with an increasing concentration of Maori in the back row. At times, I felt this was entirely the most congenial place to be, even if most of my neighbours failed to make eye contact, let alone converse. No matter what might be in my head and heart, whether my mind was open or closed, I was white. Or perhaps what had been even more beyond the pale for them was my short paper in which I had written that, in attempting to frame a new constitution, we had to recognise the validity of all mythologies in this land, whether Maori, pakeha or anyone else's: "The way forward should surely be guided by recognising, accepting and respecting the different imaginations within our country ... so that not only may we have more and better conversations with the land, but also better conversations with each other in the task of finding our way into the future". Or what Tino Pereira later described as "eloquence around our commonality".

The key tone of the conference became, in fact, a denial of this as Maori radicals threw the Treaty of Waitangi, in a variety of guises, at every issue raised and Peter Shirtcliffe seemed to sum up the business response to this by suggesting we should first work out who was Maori. If Moana Jackson and Whatarangi Winiata wanted everything currently constitutional tossed out so that we could start all over again (Maanu Paul talked about renegotiating the Treaty on terms more favourable to Maori), Roger Kerr and Prof James Allan (Law, Otago) were adamant that we shouldn't do a thing except to follow up on Rod Deane's suggestion of going back to First-Past-the-Post. Kerr opined that "if it aint broke why fix it?" This provoked an entertaining response from Sir Ross

Jansen who said that any fool replaced or serviced his car from time to time and even businessmen knew they had to install new machinery to stay ahead. Kerr had ignored the fact that Maori said it was broke anyway. One young woman student observer acutely commented that both sides seemed to be too busy thinking up what they were going to say next to listen to what was being said.

While the Maori banging on about the Treaty seemed at times to reduce the conference to a numbed silence, they were right. Any conference about what Helen Clark described as our 'quaint' constitution, including any proposal for a written one or a republic, had to cope with the Treaty. Otherwise, it was like

else constitutional would be reached at this conference, not even the conclusion to continue the debate. There seemed almost as many views or ideas about the meaning, role and place of the Treaty as there were Maori proponents. It could be embedded in a constitution. No it couldn't, it had a spiritual content that should not be sullied by anything so prosaic as law. And no it couldn't because incorporating our "founding document" in a constitution would diminish it. This view devolved from the belief that Maori signatories to the Treaty could not have ceded absolute sovereignty to the Crown because they didn't have the power to do so and, therefore, two sovereignties pertain. This is the basis for the concept

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trying to make a cup of tea without the teabag. Colin James observed that there has been only a "muted challenge" to the Maori constitutional momentum since the Treaty of Waitangi Amendment Act 1985, to a considerable extent because "A liberal consensus among the political and administrative elite in Wellington has helped keep that challenge muted". And this was why the Prebbles and Rounds were so agitated. Here was this elite gathering in one place to continue their nefarious work. To entrench the Treaty even deeper into the constitution without consulting New Zealanders at large, most of whom don't want a bar of it.

It soon became apparent that no conclusions about the Treaty or anything

of 'partnership' assiduously promoted by bureaucrats and the judiciary since Lord Cooke which is causing increasing restlessness among the white natives, even among some of those at the conference who might be deemed sympathetic to Maori interests. The ultimate expression of this equal sovereignty/partnership view lies in Whatarangi Winiata's 'three-house' model: a tikanga Maori house for Maori affairs run by Maori, a Crown house for non-Maori affairs and a Treaty house where the other two meet as equal partners to make decisions affecting all.

Not unexpectedly, a strong pakeha counter view was that the Treaty had simply conferred rights in the establishment of a British-modelled

constitution that had gained full legitimacy through long application, development and convention. It was part of our current constitution in the same way as the Magna Carta. Also, putting the Treaty into a written constitution would 'freeze' it and leave it open to later modification. Some Maori saw that much had been gained over the past 15 years by having the Treaty as a moveable feast, feeding whatever advantageous trend or opportunity presented itself.

In recent years, I have been researching and writing on a subject tangential to the Treaty (the Wakefields) and as I listened to the debate, I marvelled at the constructions that had and were being placed on a 160 year-old, three-clause document that had been cobbled

have been a good deal bloodier, as the shades of Hongi Hika or Te Rauparaha could testify. Whatever the lamentations, it was a done thing.

But I digress, and perhaps that very image of corporate man, Sir Tipene O'Regan had it right when he declared that we must "join all streams of our nation into the river of the future" which meant Magna Carta *plus* the Treaty and not *versus*. If a constitution were to be written then it must take into account "geographical, demographic and economic realities". Sir Tipene's three realities, however, tend to revolve around a good corporate capitalist model where the beneficiaries are eligible families from a certain tribe. Not based on race, of course, but whakapapa. I was

suffer from the tyranny of the pakeha majority", I told him there was a reverse tyranny — "the tyranny of the Maori moral minority", forever laying on the guilt and demanding recompense. Paul would like to see a reversal of our system where a new constitution accommodated non-Maori in the Fijian way.

Some academics expressed passionate conviction that the only way forward was a written constitution with the Treaty at its core. This made me wonder if they were hearing any of the traffic noise outside the academic tower. Especially when Prof Rajiv Vasil seemed to seriously propose the four provinces idea. It was becoming increasingly clear to me that if the views at the conference represented everything that was on offer, then we were light years away from New Zealanders agreeing on a constitution, let alone what the Treaty meant.

Perspectives on the Treaty and the constitutional debate were offered by Joe Williams (Chief Judge of the Maori Land Court). He saw the Treaty's most useful role as a device to keep us talking, even if only to argue, in the Churchillian sense that it is better to "jaw,jaw" than to "war,war". Putting the Treaty into a constitution would not alter this. Youth Court judge Mick ("Just call me...") Brown added to this view by adverting to the New Zealand tendency to think that passing laws fixed everything. He also nicely warned us with a parable about the Irish wolshound that worried and worried away at a bone, gnawing and grinding until it had been demolished, only to find that when it stood up it was left with just three legs.

From a Yorkshire coal-mining working-class background myself, I often felt closer to the Maori in their sense of powerlessness and economic deprivation than I did to the market-place braying of the Kerrs and Deanes. And this pointed up for me that much of the Maori problem is to do with class and socio-economic disadvantage, and that gaining more constitutional control for Maori

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together inside a week by a small group of people whose world view was utterly different to ours. From spending a bit of time within that world view, the Treaty has always seemed to me straightforward. It was written to establish British sovereignty over New Zealand as a Crown colony while protecting Maori ownership of their existing property including land which could be sold only through Crown agency. While Maori signatories may not have understood they had become British citizens, under British law and governance, and the country had become a colony, the British certainly did. It may have been a con and a fraud, as some Maori like to think, but the way to their hell was paved with good intentions, and as invasions go, others

irresistibly reminded of the imperatives of aristocratic English landed families.

This points to the deep and ultimate tension underlying all constitutional issues in this country. The Magna Carta was the beginning of British democracy; the Treaty is increasingly the source of separatism, the conferring of special status on one group by definition of race. This very notion is repellent to a majority of New Zealanders whose consciousness is imbued with the principles of democracy and equality, however imperfectly applied. It must be remembered that sympathy for Maori claims is based on those principles, not on claims of "first people" superiority. When Maanu Paul confronted me with the statement, "You know, us Maori

was seen by some as a way of overcoming this. When I pointed out that MMP has already achieved much better representation for Maori and there lay their political opportunity (to hold a balance of power), O'Regan stood up and declared that it was not more representation that was needed but more competent representation. Only the best people should govern. His words should warn Maori at large that any form of separate representation, on the Winiata model or not, would bring the danger of even more class, chauvinistically entrenched.

O'Regan's elitism confirmed that separate status, treatment or favouring through a radical re-interpretation of the Treaty was essentially anti-democratic, a shift that at its most dramatic ends up in Fiji: one pre-eminent law for the indigenous national group to which all others must remain subservient. So when one young Maori woman at the conference asked, "What are you pakeha afraid of, why don't you just let go?" there was her answer.

The conference was valuable in bringing constitutional debate "out from the ghettos" as chair Sir Paul Reeves put it, and setting everything out on the table. This had revealed that there was no easy way forward. Understanding that may have been the conference's most important result. My own conclusion was that demonising the pakeha, handing them the whole problem, telling them to "let go", is no route to settlement. Maori leaders and activists have to "let go" also, to stop trying to shut the rest of us out from an equal ethnic and moral place in this land. To recognise that after 160 years we are all indigenous, have nowhere else to go, and that we should treasure what we can give each other - not reserve or take. The real struggle should not be over race and cultural precedence - like all the Yugoslavias of this world - but against class, privilege and the dictatorship of corporates both

national and international. More democracy, more co-operation, within a constitution shaped by communitarian ideals is the only way New Zealand can hope to preserve something of its political, social and cultural identity. Otherwise we will continue to tell our stories, perform our haka and then wrestle with each other at the bottom of

a rich man's garden, while his guests drink cocktails and stare at us with amusement through the conservatory windows.

Philip Temple

Philip Temple is a Dunedin author with a particular interest in constitutional and electoral matters.

If you wish to examine the content of the fifty papers presented to the conference and a summary of the debate, go to the appropriate website to find out (www.vuw.ac.nz/inst-policy-studies).