

The undermining of a national myth

the Treaty of Waitangi 1970 - 1990

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The Treaty of Waitangi is having a second coming, one in which Maori understandings of its significance are as important as those of Pakeha. An earlier myth of the Treaty has been found, like the emperor, to be without clothes. The arguments and confusions of the last twenty years are signs that New Zealanders are beginning to develop a post-colonial mentality.

During those years two very different aspirations collided. One was predominantly Pakeha,

the other predominantly Maori. The first was a search for totems of New Zealand's national identity. The second was a determination to have the Treaty honoured in terms of Maori understandings of the duties it imposed on the Crown. Both aspirations focused on Waitangi.

But where, for purposes of national symbolism, the Pakeha interest centred on the event that was the founding act of a new nation, the Maori interest was in recapturing what had actually been transacted between Maori rangatira on the one side and Queen Victoria's consul on the other. For Maori, as for Pakeha, the signing of the treaty

was a solemn event and Waitangi a revered place. But Maori also had a consuming interest in what the Treaty signified, particularly in its Maori version. To most Pakeha the Treaty itself was a closed book. Few had read it. Fewer knew that it existed in a Maori as well as an English text.

Maori leaders had been as enthusiastic as Pakeha in their efforts to make Waitangi the symbol of nationhood. Sir Apirana Ngata was a foundation member of the Waitangi Trust Board. He masterminded the building of the magnificent carved

meeting house - Te Tiriti o Waitangi - to stand beside the Treaty House and give symbolic expression to Maori standing side by side with Pakeha. It was opened during centennial festivities at Waitangi in 1940 at which Maori tribes played a prominent part. And it was largely through the initiatives of



Maori members of Parliament that 6 February, New Zealand's national day, was given the status of a public holiday in 1973.

Maori aspirations coincided with other stirrings for overt expressions of a growing sense of national identity. With the end of empires, many new nations had emerged after the Second World War. New Zealanders came to think of themselves less in their imperial relationship with Britain and more in terms of their own national identity. But

Above: The Challenge: the opening ceremony of the 1990 Commonwealth Games, Auckland. [Courtesy, New Zealand Herald]

they did not have a national day. New Zealanders living abroad became particularly aware of this. There was only one day that would fill the void: the anniversary of the signing of the Treaty of Waitangi.

There were some matters of emphasis on which Labour and National politicians differed but there was a central core of sentiment which they shared. They saw the Treaty as the founding act of a new nation in which two peoples from widely differing cultural backgrounds were working out their destiny together. In signing the Treaty, Maori had ceded their collective powers of sovereignty to Queen Victoria. In return, they had been guaranteed

protections for their lands and the rights and privileges of British subjects. This was a unique historical transaction, made possible by British humanitarian concern. In the course of more than a century there had been tensions and

misunderstandings, and Maori interests had not always been adequately protected. But these were not of the essence of the unfolding relationship. What stood out was the commitment to racial equality - legal, political and social - and the extent to which Maori had benefited from it. As a result two peoples were merging into one nation. New Zealand was an example to the rest of the world of good race relations. The standard contrast was with apartheid in South Africa. The Hon. R.M. Algie, for example, expressed views which were widely shared in the 60s when, referring to Maori, he said: 'Let them grow up with us, as part of us. That is what the Treaty was aimed at. That is what we would celebrate if we had a day of thanksgiving. And what we are all looking forward to is the building of a New Zealand race, a fusion of Maori and European, with no distinction whatsoever, with everything open to each according to his ability'.

The ethnocentrism of this view was seldom noticed at the time. Pakeha ways of doing things

set the norms for Maori as well as Pakeha. Not stated, but clearly implied, was the assumption that all the benefits flowed one way. That, in Pakeha rhetoric, was what the Treaty made possible. There was no acknowledgement that it was through the Treaty that British settlers were given the right to be in New Zealand. From soon after it was signed the Treaty had been dubbed the Magna Carta of the Maori people. Lindsay Buick used the phrase approvingly in his book *The Treaty of Waitangi* and it became a regular feature of Waitangi rhetoric. Sir Apirana Ngata tried to correct the record by referring to the Treaty as the

Magna Carta of New Zealand, but the view that took hold in the Pakeha mind was that Maori were the beneficiaries.

The conceptual framework within which the Treaty was discussed had been put together by Pakeha scholars and commen-

tators and had provided taken-for-granted views which were regularly expressed by public figures. Furthermore, when politicians, Maori as well as Pakeha, referred to the Treaty it was to the English text. When the Waitangi Day Act 1960 was passed, a copy of the Treaty was printed with it, but only in the English version. In 1971 Matiu Rata proposed, as a Private Member Bill, the New Zealand Day Bill, with the aim of legislating for a public holiday. He attached the Treaty to his Bill but, again, only in the English version. When, in 1973, as a minister in the third Labour government, he was successful in getting his New Zealand Day Act passed, the schedule to that Act still included only the English text of the Treaty. It was not until he piloted the Treaty of Waitangi Act through Parlia-



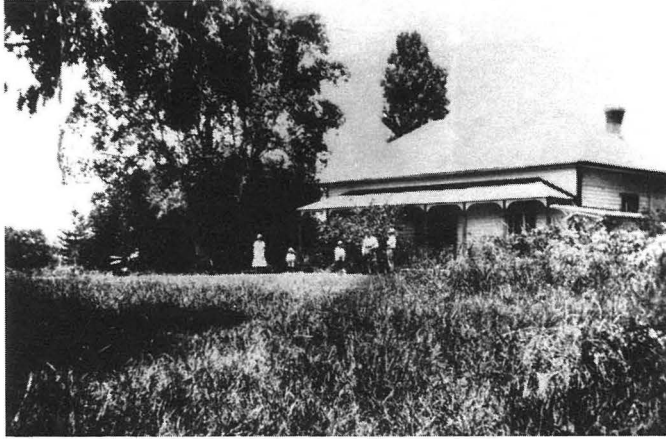
Above: Marcus King's impression, painted in 1940, of the signing of the Treaty of Waitangi. [Courtesy, Alexander Turnbull Library]

Opposite: The Busby House at Waitangi before restoration [Courtesy, Auckland Institute and Museum Ref. C1803]

ment in 1975 that the Maori version of the Treaty appeared in its schedule with the English text. Even then, the Maori text was discovered to have a serious omission and spelling errors.

So the mind-set that surrounded discussions of the Treaty in the Pakeha world until the early seventies was one that had been formed from readings of the English text. The Maori version had disappeared from Pakeha sight. It was not thought to raise any important problems of interpretation. Buick had apparently put any doubts to rest in 1914 when, referring to the Maori version of the English text, he wrote: '[T]he excel-

lence of its rendering may be judged from the fact that though it has been tried many times by the most accomplished of Maori scholars, the translation has never been shaken, and stands today a perfect native reflex of the



European mind conveying in all probability a clearer view to the Maori of what the Maori meant than the English version has done to the average Pakeha'.

It was not until 1972 that Ruth Ross challenged that comfortable conclusion in a seminal essay which analysed the way the English and Maori versions of the Treaty had been drafted. Much that had previously been taken on trust, and particularly the relationship between the Maori and English texts, became problematic. And by 1972 a Maori protest movement had emerged which was making disturbing assertions about the Treaty. Wall graffiti announced: 'The Treaty is a Fraud'.

By 1970 Maoridom was responding to transformations that had gathered pace during the fifties and sixties. From being predominantly rural, the Maori population was rapidly becoming urbanised, with increasing numbers concentrated in parts of Auckland and Wellington, the two main

cities. It was also heavily weighted to the under-fifteen age groups. Increasing numbers of young Maori were coping with urban living.

There was a widespread Pakeha perception that the country had a 'Maori problem'. To people who prided themselves that they lived in a society with exemplary race relations, this was an unwelcome discovery. In 1960, the Hunn report had for the first time documented Maori inequalities in income, health, housing and education. A decade later these inequalities were widening and more Maori were experiencing them. Maori men and youths were also being convicted for crimes and

imprisoned out of all proportion to their numbers in the total population. The first street battles between urban gangs had erupted, and the public was trying to fathom what the future would hold if the wild young men who were members of the

Storm Troopers, Black Power, Mongrel Mob, and other gangs with equally frightening names, were allowed to rampage. The public rhetoric of 'one people' was becoming difficult to believe.

Nor were New Zealanders able to deal with these concerns in isolation from the rest of the world. Television had come to New Zealand in 1960. Maori as well as Pakeha viewers watched the unfolding drama of the American civil rights movements. Freedom marches, teach-ins, public demonstrations, and politically motivated episodes of civil disobedience became familiar viewing. These techniques were used in New Zealand in the sixties in protest movements against the Vietnam War and sporting contacts with South Africa. All that was needed were leaders who were able to exploit television to rivet public attention on their discontents. And by 1970 there were activist leaders who were ready to make their challenge. Some, such as Whina Cooper and Eva Rickard were already acknowledged leaders who drew their authority from their tribal groups. But

most were from the small but growing number of well educated, articulate younger Maori.

One who has played a pivotal role during the last twenty years is Dr. Ranginui Walker. In 1970 he was appointed to the staff of University of Auckland and to the Auckland District Maori Council. He was in his early 40s, and the changes that these appointments made to the course of his life are typical of the personal experience of a great many Maori during the same years. 'By education and training', Dr Walker has recently written, 'I was an upwardly mobile member of mainstream society. I held conservative views, I had security and a comfortable life. My only ambition was to do well in my profession and to benefit my family. I was an intensely shy and private person with no aspirations to politics or public life. But I was also Maori. I inhabited a

dual world of two social and cultural landscapes. As long as those two landscapes were kept discrete, I could shuttle back and forth between the two with ease as a bicultural person. For the first twenty years my career goals were achieved on schedule. Then, in 1970, my life changed as career and community involvements put me at the interface of cultural politics between Maori and Pakeha'.

In 1970 a disquieted New Zealand Maori Council decided to bring Maori leaders together to exchange views with younger Maori about the problems of urban living. Ranginui Walker organised the Young Maori Leaders Conference at the University of Auckland. It was widely representative of Maori organisations. It endorsed a comprehensive set of recommendations which became central to all later Maori political activity. Even more important, it sparked the formation of Nga Tamatoa, the young warriors, an activist group which vigorously set out to protest Maori concerns. It made cogent, hard-hitting submissions

to Parliamentary select committees. It campaigned successfully for the introduction of annual Maori language weeks into the education system to heighten public awareness. But its name, its reminder of the Maori fighting warriors of the nineteenth century, and its public activities were deeply disturbing to most Pakeha. Nga Tamatoa and other Maori protest groups used wall slogans, bumper stickers, sit-ins, street marches, and well advertised confrontations at public events to publicise their radical message. Their language was deliberately inflammatory, and, like Pakeha activists, they carried civil disobedience to the limit of

the law on occasion. But the modern Maori protest movement kept with-in the late nineteenth century Maori tradition of non-violent opposition, so Armed struggle was ruled out.

The Maori land march of 1975, led by Whina Cooper was for the

Pakeha a prolonged, bewildering media event. It started at Te Hapua with fifteen people and ended in Parliament grounds a month later with 3000 marching behind the banner 'Not one more acre of Maori land'. It was a dignified demonstration of Maori frustration and anger. The problem it posed for the sympathetic Pakeha was: What could be done about it 135 years after the signing of the Treaty?

Land grievances continued to claim media attention, especially the occupation of Bastion Point which lasted 506 days during 1978-79 and was ended by police force. But the annually recurring focus of protest became Waitangi Day and the Treaty grounds. The third Labour government had unwittingly provided a perfect target for activists when it passed the New Zealand Day Act



Above: *Te Tiriti o Waitangi House and stone monument built at Te Tii marae in 1881. [Courtesy, Auckland Institute and Museum]*

Opposite: *Waitangi in 1912. [Courtesy, Auckland Institute and Museum]*

in 1973. Waitangi Day became New Zealand's national day, a public holiday and a day of celebration and thanksgiving. Annual national day ceremonies were held on the historic lawn at Waitangi, one in the morning, the other at dusk, both of them televised to the nation. The third National government restored the name Waitangi Day for these celebrations in 1976, once again emphasising the historic connection between the signing of the Treaty and New Zealanders' sense of their national identity. Waitangi Day became the occasion of mounting protest, at first to brand the Treaty a fraud but later to urge that it be honoured.

Nor was the protest movement confined to Maori activist organisations. Opposition to the shameful Springbok rugby tour of 1981 brought together a broad spectrum of New Zealanders, Pakeha as well as Maori, opposed to racism. New Zealanders had never

been so bitterly divided. When the tour ended, the organisations that led the protest, HART and ACORD, switched their attention from sporting contacts with South Africa to Maori rights under the Treaty. More important, the main church denominations, whose spiritual leaders blessed the formal Waitangi Day ceremonies at Waitangi itself, had become uncomfortable. Their voices were joined to those who were publicly searching for ways of honouring the Treaty. Among the established leadership in Maoridom, too, there were similar moves. After a decade of debate on marae through the country, tribal elders had separated what their younger kin were saying from the ways they often went about publicising it. After much debate, the New Zealand Maori Council produced its Kaupapa on the Treaty in 1983.

Each year from 1980 to 1985 the Waitangi Day ceremonies were tense and confrontational. Most Pakeha were dismayed by the visible evidence of discord and anger. Many Maori elders grieved when the mana of the sacred ground of Waitangi

was trampled on. The country seemed to be locked into an annual ceremony that pitted New Zealanders against each other when it should be bringing them together.

When Labour returned to power in 1984 it decided to shift the official national day ceremony away from Waitangi. The main ceremonies in 1986-9 were held in the banquet room of the Beehive, the centre of executive government in Wellington. Annual ceremonies continued at Waitangi, but as a scaled-down, local affair. It was a policy of retreat. Had it not been associated during the same years with substantive changes in the



way the Government, the courts, and Parliament were dealing with issues relating to Maori rights under the Treaty, it would not have defused the protest activity that had come to be associated with Waitan-

gi Day. Protests continued, but in a lower key. Instead of protesting, Maori found themselves more often advocating and negotiating. This took them off the streets and away from television cameras, and into the Waitangi Tribunal, court rooms, the committee rooms of Parliament, and the offices of Ministers of the Crown. As this happened the initiative passed from activist leaders to the tribal leaders of Maoridom. Both, however, were united in insisting on Treaty rights guaranteed to them as tangata whenua, the original people of the land.

Then, amid much apprehension, and as the only appropriate way of commemorating the 150th anniversary of the Treaty, the Government decided to return to Waitangi for the official 1990 festivities. Queen Elizabeth II was present for the occasion. She came to Waitangi as the great-great grand daughter of Queen Victoria, on whose behalf the Treaty had been entered into. She had asked that descendants of Maori rangatira who had signed the Treaty be present, too, and she

held a reception for them. It was an historic moment. New Zealanders were greatly relieved when, except for one incident, protest activity was orderly and not overtly disruptive. Indeed, the voice of protest became part of the ceremony itself through the address of the Anglican Bishop of Aotearoa, Whakahuihui Vercoe.

For his address before the Queen of New Zealand and the head of the Anglican community, Bishop Vercoe took his text from Psalms 137: 'By the waters of Babylon we sat down. There we wept when we remembered Zion'. 'Some of us have come here to celebrate', he said, 'some to commemorate,

some to commiserate, but some to remember that the treaty was a compact between two people. But since the signing of that treaty you have marginalised us. You have not honoured the treaty. We have not honoured each other in the promises

we made on this sacred ground. Since 1840 the partner that has been marginalised is me - the language of this land is yours, the customs are yours, the media by which we tell the world who we are are yours'.

For those who, over the years, spoke for the Crown as the other treaty partner there had also been decisive changes of sentiment. As recently as 1978, in his Waitangi Day statement the Governor General, Sir Keith Holyoake, had said: 'The real significance of Waitangi Day lies, not so much in its commemoration of the declaration of British Sovereignty ... as in its symbolising of the equality between Maori and Pakeha being side by side, with each respecting the contribution the other is making to the enrichment of our nation ... Captain Hobson's historic statement: "He iwi tahi tatou!" (We are all one people) stressed the symbolic significance of the treaty ... The best way to accomplish [He iwi tahi tatou] is to eliminate any

form of distinction between Maori and Pakeha - without depriving any group of its culture. Citizens of our country' should not be described as being Maoris, Pakehas, Islanders or Britons. Citizens of this beautiful country are all New Zealanders.'

But by 1981, the next Governor General, Sir David Beattie broke the tradition of such statements. 'I am of the view', he said, 'that we are not one people, despite Hobson's oft-quoted words, nor should we try to be. We do not need to be'. His successor, The Most Rev. Sir Paul Reeves, was the first person of Maori descent to become Governor

General, and his understanding of the Treaty combined Maori and Pakeha perspectives. In his speech on Waitangi Day 1987, for example, he said: 'Te Tiriti o Waitangi has given us a framework for this nation, a framework in which two cultures struggle to grow and develop.

So whether we like it or not, the Treaty belongs to the heritage of all New Zealanders... Maoris must be able to develop their culture and institutions just as non-Maoris have done, and to use the resources of the nation for that purpose'.

And Queen Elizabeth II, in her speech at the 150th anniversary, gave the weight of her symbolic authority to a positive, forward-looking view of the Treaty. 'Today', she said, 'we are strong enough and honest enough to learn the lesson of the last 150 years and to admit that the treaty has been imperfectly observed. I look upon it as a legacy of promise. It can be a guide to all New Zealanders of goodwill, to all those whose collective sense of justice, fairness and tolerance will



Above: Haka party at the centennial celebrations at Waitangi. [Courtesy, Alexander Turnbull Library Ref. No. 4510]

Opposite: The occupation of Bastion Point, January, 1977. [Courtesy, New Zealand Herald]

shape our future. Your Court of Appeal has declared that the obligation on treaty partners is to show each other the utmost good faith'.

The Queen's reference to the Court of Appeal was a word to the knowing. In June 1987 the Court had handed down its decision in *New Zealand Maori Council v. Attorney General*. It was a landmark decision, arguably the most important court decision this century. It was the first of what has become a series of declarations on Maori Treaty rights under statute law in New Zealand. These decisions are legitimating a radically new way of looking at the Treaty. They are an outcome of the Treaty of Waitangi Act of 1975, and the reports of the Waitangi Tribunal it authorised.

The Waitangi Tribunal was the fruit of the Hon. Matiu Rata's efforts. He had

two objectives associated with the Treaty. When he became Minister of Maori Affairs in the third Labour Government (1972-75) he achieved one and laid foundations for the other. The New Zealand Day Act 1974 enshrined Waitangi Day by making it New Zealand's national day and focusing annual celebrations on Waitangi as the cradle of the nation. His other objective was to find a way of giving the Treaty authoritative standing in New Zealand law. As he saw it, these two changes, if taken together, would reinforce each other. One would strengthen the emerging sense of national identity. The other would make it better informed by having the nation face up to Maori grievances which for some tribes had been smouldering for nearly a century and a half.

The Treaty of Waitangi Act 1975 was the result. It provided for the 'observance and confirmation of the Treaty of Waitangi' and established the Waitangi Tribunal to investigate claims brought by Maori who considered they had been prejudicially affected by actions - or lack of action - by the

Crown that were inconsistent with the principles of the Treaty. The tribunal was to have regard to both the Maori and English texts and to differences between them, and "determine the meaning and effect" of principles it deduced from them. Unlike other tribunals, however, the Waitangi Tribunal would make recommendations, not binding decisions. Nor was it (at first) given retrospective powers. It was to deal with grievances against the Crown after 10 October 1975, when the Act came into force.

The Waitangi Tribunal came into being almost without notice and it was given, at best, a tepid reception by Maori leaders. It was slow to get started, and its first hearings gave no hint of what was to follow. It was not until March 1983, when its Motunui report was made public, that even well informed New Zealanders knew of its existence or what



it had been set up to do. Since then it has been at the very heart of all public debate about Treaty issues. Its contribution has been essentially conceptual. The intellectual revolution New Zealanders are living through would not have happened were it not for the explanations and interpretations of the Tribunal's reports. The practical implications are enormous.

In the Tribunal's explanations, the Treaty is first and foremost a contract entered into by two sovereign entities. It is thus to be interpreted in ways appropriate to treaties between independent states. It is a treaty between a European nation and the leaders of an indigenous people and, unusually, it exists in the languages of the two parties. It was entered into in good faith on both sides, and both expected to benefit from it. 'It made us one country', the Tribunal said in its *Motunui* Report, 'but acknowledged that we were two people'. There was an exchange of gifts. Maori ceded to the Crown a right to govern in the expectation that they would no longer be harried

by unruly Pakeha or marauding tribes. Pakeha were given the right to settle and, in return, Maori had their property rights guaranteed, they received the Crown's royal protection, and all the rights and privileges of British subjects.

The Tribunal's task was made vastly more difficult in 1985 when the fourth Labour government (1984-90) extended its jurisdiction to claims dating back to the signing of the Treaty itself. All its reports turn on the continuing tension between sovereignty and te tino rangatiratanga. If these are to be resolved, new ground rules must be established for relations between the Crown and its Treaty partner.

It is only in the spirit of the Treaty itself, the Tribunal believes, that workable answers can be found to what in terms of abstract principle can be irreconcilable issues. The two peoples entered into a partnership in 1840, and it is in the spirit of partnership that they must now shape a shared future. For there are limits to the practical solutions now available to resolve grievances, particularly so for grievances over the loss of tribal land and other natural resources. The Tribunal has laid it down as a working rule that the resolution of one injustice should not create another. These readings of the Treaty were made public between March 1983 and July 1985 in the Tribunal's *Motunui*, *Kaituna* and *Manukau* reports.

All New Zealand governments since the early 1970s have struggled against adverse, and worsening, economic circumstances. The fourth Labour government took a radical approach to the role of Government itself, and devolved on to public companies a number of activities previously administered by Ministers and public servants. The State Owned Enterprises Act 1986 authorised these changes. Included among the assets to be made over to public companies were

lands, forests and waterways that were, or could be, subject to Maori claims before the Waitangi Tribunal. The Act recognised these claims and contained a clause which said: 'Nothing in this Act shall permit the Crown to act in a manner that is inconsistent with the principles of the Treaty of Waitangi'. But the New Zealand Maori Council was not convinced that the detailed provisions of the Act fully protected Maori rights and filed a case asking the courts to make a declaratory judgement on the meaning of the Act. The Court of Appeal's decision in June 1987 confirmed the Maori Council's doubts. It also gave its authoritative

interpretation of the principles of the Treaty and what they imply as duties for the Crown in its administration of the State Owned Enterprises Act. That was the decision alluded to by the Queen in her speech at the ceremony to mark the 150th anniversary of the signing of the Treaty.

The Court of Appeal's obiter dicta in that and some later cases have transformed public discussion of the meaning and significance of the Treaty of Waitangi. This it has done first by upholding the interpretations of the Treaty made by the Waitangi Tribunal in its reports. People who were disposed to dismiss what the tribunal had said had to take notice when essentially the same message was contained in the unanimous decision of five judges sitting in the highest court in the land. Secondly, the Court of Appeal has spelt out the duties that the signatories to the Treaty owe each other if its principles are to have continuing effect. Thirdly, the Court has left it open for Maori to return to the Court if further questions about the meaning of the law arise where the Crown is required to act



Above: Whina Cooper at Bastion Point, January, 1977. [Courtesy, New Zealand Herald]

Opposite: Police removing protestors from Bastion Point, May 25, 1978. [Courtesy, New Zealand Herald]

consistently with the principles of the Treaty. Governments have been pointedly reminded that they must act lawfully when they exercise the powers of the Crown on matters involving Maori rights under the Treaty.

The Treaty, as the Court of Appeal reads it, is a solemn agreement between two parties. It was entered into in good faith and records the reciprocal obligations that were entered into. 'For its part the Crown sought legitimacy from the indigenous people for its acquisition of sovereignty and in return it gave certain guarantees'. The Treaty itself 'has to be seen as an embryo rather than a fully developed and integrated set of ideas'. It created relationships between the partners that are best thought of as 'fiduciary' - of trustees who have the legal responsibility to act for others to protect their interest. One of the part-

ners, furthermore, is the Crown and in the way its agents carry out their duties under the Treaty, the honour of the Crown is always at stake. 'The duty of the Crown is not merely passive, but extends to active protection of Maori people in the use of their lands and waters to the fullest extent practicable'.

These words are full of implication. They are legal concepts that are part of the very fabric of judicial discourse in the courts of the English speaking world of which New Zealand is a member. They reverse assumptions and arguments which during the previous 110 years had dismissed the Treaty of Waitangi as a legal nullity. The Treaty is still not part of statute law but it is now being used as an aid to the interpretation of statute law. The Court had given legal meaning to the requirements of a statute to act consistently with the principles of the Treaty. In doing so it set standards that the Government would have great difficulty in applying steadily and consistently.

Labour had taken the high moral ground at the 1984 election. 'Ignorance and apathy', it said, 'by what may well be a majority should not deter or detain a proper solution' of Treaty issues. What it did not bargain on was the extent to which its policies for honouring the Treaty and restructuring the economy would conflict. Nor, apparently, had it foreseen the widespread unease and active hostility that its Treaty policies would provoke among the Pakeha majority. In contrast with the early 80s, when Maori were protesting against institutional oppression, it was Pakeha fears that



dominated public argument and sparked political responses in the second half of the decade. There was a widespread perception that the Government was bowing to demands that would lead to, if they were not based on, Maori separatism. Policies that acknowledge rights from which only

Maori could benefit were attacked as reverse racism. They flew in the face of the central tenets of Pakeha egalitarian beliefs. Instead of being one people living under the same rule of law, all eligible for the same rights, distinctions based on the most dubious of all grounds - race or cultural identity - were setting Maori and Pakeha against each other.

The Waitangi Tribunal's *Muriwhenua Fishing Report*, published in June 1988, further inflamed these views. Instead of confirming the taken-for-granted Pakeha assumption that the seas surrounding New Zealand were the domain of the Crown out to the international limit, the Tribunal argued that Maori customary rights to the sea, declared by the Treaty and guaranteed under its protections, had never been extinguished. This was a startling conclusion and it was received with utter disbelief by most Pakeha. It pitted Maori Treaty rights against the nation's interest in

the fishing industry. No one could foresee the outcome, but the prospect of dividing fishing grounds on racial lines was deeply disquieting to a great many Pakeha, particularly those living in fishing communities.

The 'one people' belief which most Pakeha thought to be inherent in the Treaty came to be used as an argument for dismissing the Treaty itself as of mere historical interest. The Opposition spokesperson on Maori affairs, Winston Peters, MP, argued that it was unrealistic for New Zealanders to try to live in an '1840s time warp'. Because the government had to pilot several pieces of legislation through Parliament to enact its Treaty policy, there were numerous opportunities for fiery debate.

Opinions differ on how well Labour delivered on its Treaty policy. Members of its cabinet and Parliamentary caucus were clearly

pulled in different directions in the confused, acrimonious public debate, but there can be no doubt that the years 1984-90 brought far-reaching changes in the basic concepts in relation to which Crown policies on Treaty issues were formed and carried out. For the first time since 1840 a government set out to be responsive to the Maori as well as the English text of the Treaty, and, in the exercise of the powers of government it derived from article 1, to acknowledge the guarantee of rangatiratanga declared in article 2.

It is too soon to say how far these initiatives will continue under the fourth National Government. The zeal with which some of its leading members harried the Labour Government gave grounds for thinking that National might want to halt or reverse the main changes that are now in train. But the mood of the country was quieter and more accepting on Treaty issues in 1990 than it had been during the previous five years. Public opin-

ion surveys showed higher percentages of respondents feeling favourably towards the Treaty. The National Party at its annual conference in July 1990 endorsed a Maori affairs policy which, among other things, 'would establish a national consensus on the future role of the treaty'. National campaigned for the election in October 1990 on a platform of bringing the country together again. On becoming Prime Minister, Rt. Hon. Jim Bolger vowed to practise 'the politics of inclusion', and in his speech at the 1991 Waitangi commemorative service he pledged his govern-

ment unequivocally to the redress of Maori grievances under the Treaty. Matiu Rata's political intuitions are being confirmed. A more mature sense of national identity is to be achieved only by coming to terms with the previously hidden history of the Treaty and then setting out on a



new path that acknowledges the rights and interests of both Treaty partners. New Zealanders have entered a new era in their history: the Treaty is speaking in both languages.

The changes New Zealanders are living through could not have entered their present constructive phase through the processes of cultural politics alone. Indeed, there were disturbing signs during the years 1980-84 that the Maori rights protest movement and the political establishment were in perpetual check to each other. What was needed were ideas and analyses capable of offering a context for the justifiable concerns of both Treaty partners to be approached from a new perspec-

Above: Protest activity increased in 1982. [Courtesy, New Zealand Herald]

Opposite: Police moving in on a home-made smoke bomb, February 6, 1982. [Courtesy, New Zealand Herald]

tive.

The Waitangi Tribunal was the institutional forum through which those reconciling ideas and analysis were articulated and made available to a wider public. The tribunal is bi-cultural in its mandate, its composition, and its ways of working. The educative value of its reports has been quite as important as the settlements it has recommended for the claims it has so far reported on. Not that its reports are to be found on the coffee tables of the nation. They are directed primarily at a small élite of men and women who exercise the powers of the Crown and who are learning what it means to act reasonably and in good faith towards Maori in the role of the Treaty partner. They are also of great interest to Maori tribal and other organisations, to the legal profession, a growing number of specialists and commentators on



Treaty issues, and to members of church and other voluntary organisations. They have undoubtedly been a positive influence on the ideas and attitudes of these people since 1983 and, through their actions, on the way public power is being exercised. The tribunal's leadership in ideas has been helped by the supportive policies of the fourth Labour government. And the endorsement by the Court of Appeal of its main findings has added greatly to its mana.

It has become clear, indeed, that the Waitangi Tribunal is an institution whose time had come. Its active life has coincided with a growing international awareness of the rights of indigenous peoples. Maori concerns are not, as was commonly thought, confined to New Zealand and New Zealanders. They are part of a wider historical experience which Maori share with Australian Aborigines, Indians in the Americas, Inuits and

Sami (Lapp) in the northern polar regions, and other indigenous peoples. All these peoples have had their rights trampled on by immigrant populations and have been reduced to a marginal status in their own lands. They are establishing their status as the first nations of the fourth world and, increasingly during the last two decades, they have been making common cause. The World Council of Indigenous Peoples was formed in 1975. Since 1983, the UN Human Rights Commission and the UN Committee on the Elimination of Racial Discrimination have become increasingly active. In association with the ILO, the

UN Working Group on Indigenous Populations has produced the Draft Universal Declaration on the Rights of Indigenous Peoples which is now under consideration by all UN member states.

This heightened international concern with the rights of indigenous peoples is having a direct influence on the way the legal profession in New Zealand is beginning to think about Maori rights under the Treaty and in common law. Opinions which were orthodox for more than a century have been challenged by academic lawyers who are applying new canons of scholarship to the origins of the Treaty in British colonial policy and its status in New Zealand law. Paul McHugh's researches have placed the Treaty in the context of British colonial law as it applied to indigenous peoples when they came under the British empire. David Williams has examined the use of law in the process of colonisation and argued that Maori experience had parallels elsewhere in the empire, and for similar reasons. Frederika Hackshaw has shown how the doctrine of legal positivism denied a legal status to the Treaty and, in *Wi Parata* and later court decisions, deprived Maori claimants of any legal basis for

protecting their rights under it. Benedict Kingsbury has considered the Treaty in the context of developing international norms for the protection of the rights of indigenous peoples.

These and similar studies are at the cutting edge of legal research and commentary. McHugh's research, presented in evidence in hearings on the Kaituna claim, made a decisive impact on the Waitangi Tribunal. His early journal articles influenced Williamson J's landmark decision in *Te Weehi v. Regional Fisheries Officer*, which revised the judgements of more than a century in com-

parable cases turning on Maori fishing rights. McHugh, Williams, and Hackshaw have undermined *Wi Parata* and, in doing so, knocked away the central prop of a legal orthodoxy that lasted 110 years.

These were esoteric studies which, in another decade, might not have sparked any interest outside a small circle of judges, practising lawyers and legal historians. In the mid 1980s they made a vital contribution to discussions about the legal first principles that should be applied to the Treaty when considered from Maori as well as Pakeha perspectives. But the scholar who did more than any other to help New Zealanders to relate themselves to their bi-cultural past is the historian Claudia Orange, whose *The Treaty of Waitangi* was published in 1987. It achieved the kind of distinction usually reserved only for books by television chefs and sporting heroes. Not all of the 25,000 who have bought it, or had it given to them, will have read it from cover to cover. But sales of that order are a clear sign of a public hunger to be informed. Her book is to this generation what Lindsay Buick's was for the fifty years after 1914. His was an exposition of the English text of the Treaty and of Pakeha sentiment about its place in New Zealand history. Claudia Orange's study is rooted in both texts, traces the history of Maori as well as Pakeha understandings, and explains why Maori and Pakeha have been talking

past each other on treaty issues since 1840.

Since 1987 there has been a growing spate of publications examining the place of the Treaty in contemporary New Zealand society. A notable feature is the number commissioned by government departments and Crown agencies. The Treasury 'Brief to the Incoming Government on Government' in 1987 had an important chapter on implications of the Treaty of Waitangi. The Royal Commission on Social Policy applied the principles of the treaty both in the way it conducted its enquiry and in its report and recommendations. The report of the Royal Commission on Electoral Reform has valuable discussions of the electoral and constitutional implications of taking the treaty guarantees seriously. The Planning Council held an influential seminar on Pakeha perspectives on the



Treaty. The Ministry of the Environment's consultative processes and publications during the review of resource management legislation set new standards for the consultation of Maori opinion. The Law Commission's study of The Treaty of Waitangi and Maori fisheries is a definitive account of the development of statute law on this vital but contentious subject. The studies of Maori and the criminal justice system, conducted and written by Moana Jackson and published by the Department of Justice, raise basic questions of justice and equity in a bi-cultural society.

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Above: Security was stepped up for the Governor General in 1983. [Courtesy, New Zealand Herald]

Opposite: Smiles ease the tension as the Governor General, Sir David Beattie, waits to receive a deputation from Kotahitanga on 6 February, 1984. With him are Hewi Tauroa and the late Sir James Henare. [Courtesy, New Zealand Herald]

and specialists in health, social welfare and in public policy generally. At a more popular level the implications of living in a bi-cultural society are showing in a growing interest in symbols of national identity, such as the flag, and the name by which the country should be identified.

These are signs of New Zealanders searching for new idioms for the expression of their sense of national identity. Not that those seeking to speak with a new voice have it all their own way. The myth of the Treaty they are trying to exorcise has a life of its own

and, because it answers to some basic notions in the belief system of many Pakeha, it still has many adherents. One example will illustrate this. As part of its policies for devolution and the enhancement of the authority of Maori tribal organisations, the fourth Labour government



sought public comment on a proposal that all local governing bodies should have Maori advisory committees to advise on aspects of their responsibilities that have implications for Maori rights under the Treaty. Many local bodies already have such committees, and many of those that do not have one support the intent of the proposal. But a few opposed it, arguing that all New Zealanders, regardless of origin, race, colour, or creed should have exactly the same rights and none should be singled out for special treatment.

Until less than a decade ago the monocultural belief that New Zealanders are 'one people' was a taken-for-granted Pakeha belief. New insights, changing attitudes, and a deeply felt desire for people of the two main cultures to build their relationships on a solid foundation of understanding and cultural respect are leading increasing numbers of New Zealanders to prefer different formulations. Pakeha are learning to recognise the unconscious racism that has shaped their

understanding of New Zealand history since 1840, the most symbolic feature of which has been the Treaty of Waitangi.

The Treaty, furthermore, exists in an English and a Maori version, and it is to be interpreted in ways that respect the different cultural perspectives of its signatories. Pakeha whose understandings have been formed by the English text are discovering that articles 1 and 2, when read together, have very different cultural meanings from the ones they have in the Maori text. The statements about *kawanatanga* and *tino*

rangatiratanga are both strong. The object of all public argument about the Treaty, 150 years after it was entered into, is how to conceive, order, and relate these separately sanctioned powers to each other. And the essential message of the recent Court of Appeal

decisions is that the Crown is not free to settle these matters by itself, consulting only its own conscience. Both parties entered into the Treaty in good faith. Both have a right to expect the other to keep its promises. They are bound by the Treaty to deal with each other responsibly and in good faith. And because the Crown is one of the signatories, the honour of the Crown is always involved. Instead, then, of being referred to as the *Magna Carta* of the Maori people, the Treaty is coming to be recognised as the founding document of the New Zealand nation. This is an essential move in the direction of a post-colonial mentality.

From a seminar at the Stout Research Centre, which was originally presented as a paper at the American Ethnological Society Spring Meeting, Charleston, South Carolina, 1991.