

A Labour Party view

Hon David Caygill*

I TREATY CLAIMS: THE UNFINISHED BUSINESS

Where to from here?

Any consideration of how best to address outstanding Treaty claims at the present time is dominated by the so-called "fiscal envelope". Of course in one sense this is just one aspect of the "Crown Proposals for the Settlement of Treaty Claims" which the Government released at the end of last year. But that single aspect has overshadowed the rest of the Crown's proposals. And the unilateral, take it or leave it nature of the fiscal envelope in the minds of many characterises the Crown's proposals as a whole. That this may be unfair is irrelevant. That it is a great shame seems an understatement. Whether it proves a tragedy is yet unclear.

Along with almost everyone else Labour rejects the fiscal envelope as unworkable, unfair and unnecessary. My biggest fear is not that this arbitrary limit on settlements might actually be imposed on Maori. As the Government rightly says no one can be forced to reach agreement. Ultimately I am convinced that the fiscal envelope will be abandoned - like a koha that no one bothered to pick up. No, my fear is that the anger and rejection that this concept is currently generating risks swamping or overshadowing the resolution of other difficult issues. Such as the resolution of the distribution of fishing quota by the Treaty of Waitangi Fisheries Commission or the enactment of the Maori Reserved Leases legislation. Certainly the fiscal envelope runs the risk of impeding the settlement of other Article Two claims in the near future.

Nevertheless, I am an optimist. Labour's industrial background reminds me that at some point all disputes settle. And 150 years have demonstrated that the claims are not going to disappear. Sooner or later each claim will need to be addressed. Returning then, as I believe we must, to each area separately, I offer the following comments.

II THE REMAINING ARTICLE TWO CLAIMS

Three claims predominate:

- (a) Tainui
- (b) Ngai Tahu
- (c) Taranaki

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The Tainui raupatu settlement awaits confirmation of their provisional acceptance. Assuming, as seems likely, that this is still forthcoming there should be ceremonial acceptance in May of the settlement already negotiated. Legislation is likely to follow. Labour will support this with as much enthusiasm as Tainui. Perhaps this will give others confidence that settlements are possible notwithstanding the enduring disagreement over the overall settlement pool.

Ngai Tahu may be next in line, even though their negotiations with the Crown appear to have been broken off. The fiscal envelope has emphasised the gulf between the Crown and claimants as to the amount required for settlement. The position may be complicated by Ngai Tahu's view of their legal alternatives:

- (a) They could claim South Island forests via the Crown Forest Assets Act.
- (b) Similarly they might bring a claim under the Treaty of Waitangi (State Enterprises) Act.
- (c) Even more dramatic would be a claim at common law for breach of the original land purchase contracts.

It strikes me that neither the courts nor the Waitangi Tribunal are bound by the fiscal envelope.

Taranaki are due to bring their claim to the Waitangi Tribunal. As with Ngai Tahu's hearing, the Tribunal may prefer declining to set a quantum. That would leave Taranaki still to negotiate with the Crown in the light of the Tribunal's findings on the merits of their claim. Once again, the fiscal envelope may prove a deterrent.

Smaller Claims

There are a number of smaller claims, but actually much less than the 400 figure often cited. It is highly desirable that the number of discrete claims is clarified and the picture dispelled of a seemingly endless task. I know at one stage the Government was thinking of procedures whereby smaller claims might be facilitated. Again the fiscal envelope seems to have overshadowed such alternative procedures.

Maori Reserved Leases

These might easily have been the subject of a Treaty claim, but finally after many investigations and reports we may see real progress. Presumably legislation on this matter will come before Parliament this year. The key to the Government's approach is its emphasis on the parties negotiating their own solutions. Personally I attach more significance to two other aspects of the Government's recent announcements:

- (a) That legislation will provide a backstop
- (b) That compensation is being put on the table

III THE REST OF THE TREATY

Article Three is equally part of the Treaty. It is often overlooked, partly because it is unclear what "all the rights and privileges of British subjects" means in contemporary New Zealand. Also the claims that might be made under Article Three are arguably less specific, less tangible and perhaps less deeply felt than the historic grievances relating particularly those relating to the loss of land. But it cannot be the case that Article Three has no meaning at all.

Similarly with Maori aspirations for self governance (deriving from the promise of te tino rangatiratanga). Who knows what this might mean, practically, in the 21st century? It seems to me that Maori have a perfect right to raise these matters or to put it another way, that the Prime Minister cannot be the only person entitled to propose fundamental constitutional changes.

Perhaps the real unfinished business is less how to settle Treaty "claims" and rather more how to give the Treaty contemporary meaning. That is Maori's most fundamental claim. The Treaty of Waitangi accorded Maori a special status as an independent people ceding sovereignty but not their chieftainship. The question is do we continue to pay lip service to this special status or do we seek to make it real? If the latter, how?