

# The role and influence of the Waitangi Tribunal on our emerging multicultural society

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IN CONTEMPORARY MAORI SOCIETY

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The role/influence of the Tribunal on our emerging multi-cultural society.

In what ways, positive and negative has the Tribunal affected our emerging multicultural society?

1.     NZ ALREADY MULTICULTURAL

New Zealand society at present has a dominant European component, a Maori component, a

Pasifika component, and an "Asian and other minorities" component.

The latest available census shows the people self-identifying as follows:

European	79%
Maori	14%
Pacific Islands	4%
Chinese/Asian	3%

The reality is that New Zealand is already a multi-ethnic society with a significant portion of the population being neither European nor indigenous Maori.

However, New Zealand since the early 1980 has officially claimed to be bicultural.

Thus we have at least a multi-ethnic society within a bicultural state.

## 2. BEFORE MULTI-CULTURALISM

Before the concept of multiculturalism was developed we had, in effect, a kind of mono-culturalism.

Pure mono-culturalism is rare and is only seen in such extreme cases as North Korea.

However in the British territories, Australia,

Canada and New Zealand, mono-culturalism as practiced allowed certain aspects of other cultures to be displayed - even if this was only as food. In Hong Kong, the administration was based on the British model but operated by the Chinese up to a very high level in many sectors. However the major institutions of the state, such as the law and the courts, were mono-cultural.

### 3. MONO-CULTURALISM AND ASSIMILATION

In New Zealand up until the 1970s the Government dealt with other cultures by having a policy of assimilation. The English language was all-pervasive and other languages were discouraged if not banned. For example Chinese teachers were strongly discouraged or even denied entry on various grounds.

Western history and culture was taught in school and other histories and cultures were marginalized.

#### 4. ORIGIN OF MULTICULTURALISM

The origin of biculturalism and multiculturalism appears to have first appeared in Canada where policies were developed in the 1970s to accommodate the grievances of a French-speaking minority. There, the original Francophone demands for "bilingualism" and "biculturalism" as state policy was modified to "bilingualism" and "multiculturalism" to accommodate the reality that across the vastness of Canada, other ethnic groups had made major contributions to Canadian life notably the Ukrainians.[1]

Nearer home, Australia has adopted multiculturalism as state policy although the extent and success of that appears to be a subject of constant debate, as is the case of biculturalism in New Zealand.

New Zealand in the 1960s had in effect a policy for the assimilation of Maori and other minorities into the dominant European culture. Maori reacted to this and in some quarters there was a demand for "Maori sovereignty". Maori began promoting their own traditions and values and the terms "biculturalism" in the New Zealand context first appeared.[2]

## 5. WAITANGI TRIBUNAL UNIQUE IN FORMER COMONWEALTH COLONIES

The Waitangi Tribunal was established in 1975 to hear claims by Maori who believed that they have been prejudicially affected by legislation and practices of the Crown.[3] Initially empowered to review legislation from its date of establishment, in 1985 it was further empowered to review Government actions back to 1840 - the date of the signing of the Treaty of Waitangi.

Although both Canada and Australia have identifiable indigenous (First Nation and Aborigines) populations who were badly treated by the European settlers, these countries do not appear to have the equivalent of the Waitangi Tribunal.

Unique in the original white-dominated Commonwealth nations, the Tribunal serves as a standing Court to hear Maori claims of historical wrongs and hears the Crown's rebuttal of such claims.

It would appear from our class discussions that much of the documentation held by Maori and even their oral traditions relating to land loss have been largely lost. Through various means, the Tribunal facilitates historical research pertinent to the land claims which

predominate the work of the Tribunal.

The findings of the Tribunal, although generally not binding on the Government, are treated as very persuasive and are generally the basis of negotiations between Maori claimants and the Government for settlements.

However the Tribunal is severely limited by the general restriction that its recommendations cannot include the return of privately-owned land - although this restriction is being tested.

## 6. RESPONSIBLE RECOMMENDATIONS

Another implied restriction is that the Tribunal needs to have regard for the affordability of its recommendations. Although the so-called "fiscal envelope" of one billion dollars for all settlements has been repudiated, it remains true that the Tribunal needs to have regard to the cost of its settlements, their acceptability by the general population and the electoral consequences. Too "generous" a settlement would result in a political backlash with unforeseeable consequences for the Tribunal.

## 7. ECONOMIC IMPACT

Although several claims have been settled, to date in terms of the transfer of wealth and control of productive capacity, the perceived effect in New Zealand society as whole has not been large, even though for example in the settlement of the Ngai Tahu claim there was a transfer of a considerable economic base.

## 8. ATTITUDINAL CHANGE IN NZ

The main effect of the Tribunal has been to effect an attitudinal change in the New Zealand Government and its agencies and in New Zealand society generally.



It has brought the Treaty into nearly every national discourse ranging from arts management to zoology.

## 9. TRIBUNAL IN A MULTICULTURAL SOCIETY

How has the Tribunal affected the development of a multicultural society in New Zealand?

The Tribunal is perceived to be the manifestation of the Treaty, so in a sense the "Treaty" and "Tribunal" are perceived as synonymous.

The changes in NZ society wrought by the Tribunal are substantial. For example the Government's adoption of Maori aspirations, norms and customs within a "bicultural" New Zealand is comprehensive.

This has eased the acceptance of multi-cultural principles.

#### 10. LAWS INCLUDE NEED TO TAKE ACCOUNT OF TREATY PRINCIPLES

#### MIGRANTS DO NOT HAVE ACCESS TO THE TRIBUNAL

Because the Courts has found that the provisions of the Treaty can only be enforced if the Treaty specifically incorporated into legislation, the Government has added a clause in several recent Acts which says in effect that the Act shall take into account the principles of the Treaty of Waitangi. This is regarded by mainstream New Zealand and by migrant groups as controversial since to them, the "principles of the Treaty" are not very clearly defined.

Migrant groups, who make up the New Zealand's "multicultural society" do not have access to the Tribunal, and have little confidence that the "Crown" will represent their concerns adequately before the Tribunal.

(During a three-session seminar on the Treaty of Waitangi held at Te Papa 2005, I asked Prof. Matthew Palmer how the interests of the "multi-cultural" or migrant communities would be represented under such a clause in some Acts. He blithely replied that they would be represented by the "Crown". This is unlikely to inspire much confidence in the multicultural sector. )

#### 11. MISSION STATEMENTS OFTEN INCLUDE REFERENCE TO THE TREATY: WHY NOT INCLUDE OTHER CULTURES

The Government and its agencies have adopted the practice of crystallizing their cultural practices in short "Mission Statements" displayed on walls and leading their publications. These often include a promise to observe "Principles of the Treaty" and to respect "tangata whenua". These serve to remind their staff and "customers" of the agency's cultural awareness. These are outward manifestations of a cultural sensitivity engendered by the study of the Treaty and by the Tribunal.

Recently there has been protest against the adoption of Maori practices which are contrary to the dominant norms eg the seating of senior women politicians in the back row of guests during a powhiri. There is apparently a limited to what will be accepted by mainstream NZ.

Perhaps one could hope that in the future that the Government and its agencies in their practices might also recognize the cultural sensitivities of other ethnic groups in a similar way.

## 12. BICULTURAL PRACTICES EASES THE WAY FOR MULTICULTURAL PRACTICES

Adoption of "multicultural" forms is less complete and this is to be expected based, on the reduced weight of fewer numbers.

Multiculturalism manifests itself in the observance of festivals, the wearing national dress, language maintenance, respect for cultural norms (at least in their local forms), freedom of religion and belief and the acceptance of religious or cultural buildings such as churches and temples. Additional matters are respect for cultural customs in health care, birth and death.

While for migrant communities these aspects of their culture have been barely recognized, Maori experience in incorporating Treaty principles and another culture into the mainstream give an indication of what can be achieved without undue disruption to modern practice and norms.

### 13. GLOBALISATION AND THE TREATY

#### INTELLECTUAL PROPERTY

Globalisation is a trend associated with the flow and interaction of human, financial, natural resource and (international) power capital particularly where there is greater (and cheaper) interconnectivity through modern transport and communications.[4]

Among its many effects, globalisation is the cause of much increased migration as people relocate from their place of origin to new lands seeking opportunities and meeting demands for skills.

In New Zealand this has made society more multi-cultural.

There is also a worldwide increasing demand for science and technology, services and communication. These create competition for intellectual property in the form of art, information and knowledge.

Within the commercial world there is little regard to the spiritual values inherent in art and images. Unique Maori art forms, and certain plant and animals to which Maori have a customary association are under pressure for commercial exploitation.

When these two streams meet (globalization/migration and potential commercialization of Maori taonga there is tension. There is conflict between the need to satisfy demands based on western models of mass exploitation and consumption and the alternative model of indigenous ownership, conservation and spiritual values. The latter has been discussed in detail by Barry Barclay a Maori film-maker in his book Mana Tūturū.

The WAI 262 claim [5] relating Maori intellectual property in native flora and fauna, being considered by the Waitangi Tribunal, has already been discussed in this series of seminars. It is contemporaneous to similar claims being developed by other indigenous peoples. It is currently bogged down at least partly because of its complexity and potential to disturb the existing, predominantly western, framework of copyright and patents.

#### 14. TIME LIMIT ON TREATY CLAIMS SETTLEMENT

##### DEVELOPING OTHER ASPECTS OF OUR NATIONAL IDENTITY

There are signs of impatience with the long-drawn-out Tribunal process in evaluating claims; accordingly there is a move, both within both the Labour[6] and National[7] Parties, reported in the popular press, to close off claims and have them resolved with a limited time frame.

Non-Maori feel that the Treaty is taking too long and is holding up developments in New Zealand society.

#### 15. TREATY AS A CONSTITUTIONAL DOCUMENT

##### HUMAN RIGHTS ASPECT

Even if that were to happen there remains the question of the Treaty as a constitutional document.

Although the Waitangi Tribunal has considerable sway with the Government the multi-cultural movement is starting to look to the United Nations Declaration of Human Rights and the Human Rights Commission as a counter to the bicultural model.

The argument is that if the Treaty is to become a constitutional document then a part of the multicultural population is excluded from the negotiation between the people and the Crown, because the Treaty occupies all the space in the negotiation. This is somewhat contrary to some basic political rights such - being essentially the right of all to access the laws which govern them. [8]

## 17. POST-TREATY NEW ZEALAND

I would suggest that just as we have discussions of post-modernism, and post-colonialism there may be a place for the discussion of a post-Treaty New Zealand. This is not to suggest that Treaty will become irrelevant, but how New Zealand might progress after acceptance of the Treaty.



The multi-cultural sector might want to debate certain other matters:

- Do migrants have cultural and spiritual rights which need to be protected by law?

- Do Maori need to positively respect the cultural and spiritual values of other cultures in New Zealand?

- How should Maori acknowledge the treasures of other cultures?

## 18. FUTURE ROLE OF THE TRIBUNAL

It may be that the Waitangi Tribunal in the future will be a forum for debating New Zealand's national identity and the proper balance between its Maori component, its European and Western tradition and other non-Maori and non-European components.

[1] <http://en.wikipedia.org/wiki/Multiculturalism>

[2] <http://www.teara.govt.nz/NewZealanders/NewZealandPeoples/TheNewZealanders/12/en>

[3] <http://www.teara.govt.nz/NewZealandInBrief/GovernmentAndNation/1/en>

[4] <http://en.wikipedia.org/wiki/Globalisation>

[5] <http://www.waitangi-tribunal.govt.nz/resources/researchreports/wai262/>

[6] <http://news.bbc.co.uk/2/hi/asia-pacific/4744373.stm>.  
Labour wants claims to be lodged by  
2008.

[7] <http://www.national.org.nz/Article.aspx?ArticleId=5232>  
Item 5. The National Party wants claims to be lodged by the end of 2006.

[8] Young S., The treaty of Waitangi and Human  
rights: from Bi-cultural to Multi-cultural.  
Symposium on

on "Human Rights, the Treaty of Waitangi and Asian Communities", Faculty of Arts, University of Auckland, 13  
November 2005 at [http://www.arts.auckland.ac.nz/sites/index.cfm?S=M\\_asiantreaty](http://www.arts.auckland.ac.nz/sites/index.cfm?S=M_asiantreaty).  
Accessed on 9 June 2006.