

Constitutional status of the Chinese in New Zealand to 1940

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Literature Review

THE
CONSTITUTIONAL STATUS OF THE CHINESE IN NEW ZEALAND TO 1940

Refer also to the notes for my workshop presentation:

My proposed research essay for MNZS 510 entitled The Constitutional Status of the Chinese in New Zealand to 1940 is intended to lay the groundwork for my proposed thesis to be entitled The Chinese in New Zealand and the Treaty of Waitangi.

The history and constitutional basis for European settlement in New Zealand is, in a sense, commonplace and forms the background to New Zealand Studies.

The history and constitutional status of Chinese settlement in New Zealand is rather less well-known and seems worthy of study in view of the recent large influx of Chinese in the last 17 years and the further large increases projected for later in the C21st . This is especially so because of the increasing importance of the Treaty of Waitangi in public policy and public debate and as a quasi-Constitutional document. The feelings, aspirations and position of immigrant communities such as the Chinese in a political landscape in which the Treaty looms large needs to be explored further and better understood. Contrary to the views of prominent (European) authorities in this field, the needs and aspirations of such group cannot simply be subsumed into "the Crown" as one of the Treaty partners.

A first step is to learn and to understand the constitutional status of the Chinese in New Zealand to 1940. There may be opportunities to explore the

situation for this group during and after the period of the Second World War.

An important resource for my research has been Nigel Murphy's A Guide to Laws and Policies relating to the Chinese in New Zealand. This was commissioned by the New Zealand Chinese Association in 1993 as a follow-up the Murphy's "world famous in New Zealand" research report entitled The Poll-Tax in New Zealand which documents the history of the eponymous tax.

Murphy's report on the poll tax was the catalyst for the old settler Chinese community to approach the Government for redress. That report's detail and scholarship was an important factor in the Government accepting that a serious injustice had been done to the Chinese. In 2002 the Prime Minister made a formal apology for the imposition of the Poll Tax and other discriminatory measures and subsequently consulted the Chinese community before negotiating a reconciliation package which has been widely accepted. Murphy's report, the community consultation process, the negotiation for the reconciliation package and undoubtedly the prospect of money from a Trust funded by the Government has stimulated community and academic interest in the history of the Chinese in New Zealand. This is obvious from the interest in the original material collated and published in my website The Chinese in New Zealand (<http://www.stevenyoung.co.nz/chinesevoice/index.htm>).

Murphy's later A Guide to Laws and Policies Relating to the Chinese in New Zealand is much less well-known mainly because it has only been circulated in manuscript form. It is the fruit of three years research, commissioned by the New Zealand Chinese Association. The work which has gone into this Guide would seem to far exceed the value of the modest honorarium which might have been paid.

The Guide consists of an Introduction which briefly reviews the history of the Chinese in New Zealand in

the context of various phases in New Zealand's evolving attitude to this group, in particular in relation to immigration. An important point highlighted is the limitations on what a New Zealand government could do at the time in the light New Zealand's status as a colony, with laws effectively subject to Colonial Office review. In the introduction Murphy also reviews New Zealand's immigration policy in relation to other non-European groups; its laws relating to economic factors (the workplace, employment and the regulation of business) and also moral (sexuality, drugs, gambling)

The Guide

also includes a number of Essays on a number of topics including:

- The Poll Tax,
- Naturalisation
- Thumb Print and Education Test.
- Certificates of registration, Temporary and permanent permits.
- Business Managers, students, women
- War service

together with various aspects of current law affecting migration.

The bulk of the Guide consists of a Chronological List of Acts, Regulations and Policy Decisions affecting the Chinese in New Zealand from 1871 through to 1997 a period of 125 years and running to 195 pages.

This is followed by Appendices including:

- Short Chronology of Government Policy and Legislation toward Chinese.
- Chronological list of Legislation Affecting Chinese
- Chronological list of Legislation Relating to Chinese Immigration
- Alphabetical List of Legislation relating to Chinese

Also included in the Appendices are:

- Chronology of the 1881 Chinese Immigration Act
- Immigration Restriction at a glance
- Chronology of Policy by Political Parties
- Ministries (Administrations)
- Ministers of Immigration
- Chinese population figures

Finally in the Appendices are a list of Customs Department Circular Memos and Petitions. It is proposed to include copies of Immigration forms in the final publication.

Taken as a whole, the Guide represents a considerable effort of scholarship, Murphy having exhaustively located, examined and commented on nearly every Bill, Act, regulation, and policy decision relating to the Chinese in New Zealand to say nothing of the ten or so essays on topics on such matters as the Poll Tax and Naturalisation which have been informed by his research.

Because Murphy's work exists only in MS it has not received wide circulation. One suspects that it has been received by the New Zealand Chinese Association, made available to those who expressed an interest and filed. The MS requires minor work such as indexing and the insertion of photographs before it can be published. Lack of funding is possibly a reason for delay in committing to this final stage of publication.

Amazingly, it has not even been offered for consideration and recognition in an academic setting.

In my view (as someone somewhat involved in local Chinese community affairs) Murphy's Guide is a resource which needs to be made accessible to the wider community and in

particular the world-wide academic community, possibly on a website. I know from my experience of inquiries which I receive nearly every week (and sometimes several times a week) from my own website on the Chinese in New Zealand, that such material, if available as a full-text document, would receive considerable attention. Not only would the information therein provide an established framework for research on the history of (discrimination against) the Chinese in New Zealand, it would provide a framework for scholarly research on the history of the Chinese in other countries of the British Empire and Commonwealth as well as related jurisdictions such as the United States.

Just as there is currently often "harmonisation" of legislation between New Zealand and Australia (and to a lesser extent, Britain, Canada and the United States), so in the past similar or even coordinated discriminatory laws have been passed in these "white" jurisdictions in an attempt to solve perceived problems with the Chinese. For example there was a so-called Inter-Colonial Conference in Chinese Immigration held in Melbourne in 1880-81.

A complete chronological list of legislations, regulations and policy decisions for New Zealand, as provided in the Guide, would be a very valuable indicator of the possibility of similar laws in these other countries at these times. If such laws did not exist it would be interesting to study the reasons for the difference.

An important point identified by Murphy is that from about 1920, legislation no longer directly targeted the Chinese by name; instead legislation simply gave powers to the Executive to make certain decisions, and the responsible Minister exercised his powers in a racially discriminatory manner - beyond the purview of Parliament and the public scrutiny of, for example, Members of the Parliament or Executive Councillors, with less racist inclinations.

Murphy's research, however has been centred on anti-Chinese racial discrimination and in particular its effect at the personal level. Thus he is interested in the effect of legislation which gave rise to married Chinese men living "bachelor communities"; the right of Police to enter any Chinese household on the pretext of checking for opium, the effect that denying naturalisation to any Chinese for 57 years had on their (non-) participation in the political process in general, in jury service and in many occupations.

While racial discrimination probably cannot be eliminated entirely, in New Zealand overt racial discrimination is now a thing of the past. What is increasingly important is the participation of Chinese in the political process in the wider New Zealand community at a time when China looms large on the horizon of countries in the Asia Pacific region and indeed the rest of the world. Understanding their constitutional status in the past would help them carve out a positive position in the future.

Almost as a whimsey I reviewed the 1942 Treaty of Nanking between China and Britain (signed two years after the Treaty of Waitangi in New Zealand) This was the first of the so-called "Unequal Treaties" imposed by western powers on a very weak China and inter alia required China to cede Hong Kong to the British.

We have no access to the original documents, although interestingly, the Treaty of Nanking was among the first to be photocopied.

Several web versions perpetuate typographical errors indicating that their webmasters or their clients have not bothered to read that Treaty. The errors

include a duplication of Art. 5 in Art.1.

ARTICLE I.

There shall henceforward be Peace and Friendship between Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, and His Majesty the Emperor of China, and between their respective Subjects, who shall enjoy full security and protection for their persons and property within the Dominions of the other.

Compare Article Three of the Treaty of Waitangi:

ARTICLE THE THIRD

In consideration thereof Her Majesty the Queen of England extends to the Natives of New Zealand Her royal protection and imparts to them all the Rights and Privileges of British Subjects.

One might suppose that among the Chinese miners in New Zealand when the Chinese Immigrants Act Amendment Act, 1888, when enacted 46 years later, few would have made the link with Article I of the Treaty of Nanking, yet in the Petition of Chinese residents of Auckland "The petitioners protest against any legislation that imposes, or may hereafter impose restrictions on the immigration and resident of Chinese of Chinese in this Colony, pleading that such legislation is not only unjust and impolitic in itself. But that it constitutes a violation of treaties now in force between the British and Chinese Empires (AJHR 1888 I-1 p.3 as quoted in Murphy)

In reviewing Murphy's work, it is interesting to note that where a Bill has been passed and received the Royal Assent to become law, references to it may be found on the internet; however when it was rejected there is often no reference to it, even on the internet, except that Murphy has found reference to the Bill in the records of the House itself.

OTHER INSIGHTS

In almost all case before 1907, whenever an anti-Chinese law was about to be enacted, members of the Chinese community would petition the Governor. When a Chinese consul was appointed in 1907, he assumed responsibility for communicating with the New Zealand Government of the day. For the greater part of the period from 1840, China was in a weakened state, embroiled in internal rebellion, revolution and civil war and, one supposes, in no position to protest anti-Chinese laws in New Zealand. Yet in 1910, the Imperial Government of China, almost on the eve of the Revolution

which would overthrow it, protested the passing of the proposed Immigration Restriction Amendment Act 1910 and succeeded in having merchants, tourists and students exempt from the Poll Tax and from other anti-Chinese measures in that Act.

It is significant that when anti-Chinese measures were promoted as Bills in the House by the likes of Reeves and Seddon, these measures were often not supported in the House and the Legislative Council and had to be amended and re-submitted at a later date. On other occasions the Royal Assent was withheld presumably on the advice of the British Government. For whatever reason, there were a significant number of New Zealand and British officials in power who opposed anti-Chinese legislation in New Zealand.

PRELIMINARY CONCLUSIONS

Any respect or considerations which might have been due to Chinese in New Zealand by New Zealand law-makers arising from the unequal treaties with Britain were ignored. This was probably because for the period in consideration, China was economically and politically weak and could be ignored.

Worldwide and certainly in the British Empire, including New Zealand measures were taken to prevent their further Chinese migration using unjust, degrading and oppressive laws and regulations, including the Poll Tax. These efforts were coordinated by various governments.

Migration was controlled by administrative means authorised by legislation rather than by overtly racist legislation, for example a permit system for which there was no redress.

Civil rights for the Chinese were circumscribed by requiring citizenship for full participation, then withholding citizenship and the right to naturalisation for long periods.

The State was empowered to intrude into the private lives of the Chinese through drug, gambling and anti-miscegenation-inspired laws.

DIRECTION FOR RESEARCH

While a framework for research is in place, it remains to examine the primary sources (such as Parliamentary records, newspapers and the like) for more detailed insights into the constitutional status of the Chinese in New Zealand in the period before 1940. It also remains to review the status of Chinese and other "Asiatics" in other jurisdictions in the same period.

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