

Treaty of Waitangi and Human Rights

Contributed by Steven Young
Tuesday, 14 August 2007

School of Asian Studies, University of Auckland

Human
Rights Commission

HUMAN RIGHTS, THE TREATY OF WAITANGI AND
ASIAN COMMUNITIES -

A SYMPOSIUM

Main
Lecture Theatre

School of Engineering

13 November 2005

THE
TREATY OF WAITANGI AND HUMAN RIGHTS:

FROM
BICULTURAL TO MULTI-CULTURAL
3.0

ver.

Steven Young

"Asian"
in Britain and Europe usually means "south Asian", that is people of
Indian or Pakistani origin. In New Zealand, since at least the 1980s, the term
"Asian" as a community descriptor has also come to include people from China and also those from Japan, Korea
and the various countries of south-east Asia.

The Asian community can be broadly divided into two groups: firstly the Chinese and other "new" migrants who have been in New Zealand less than 20 years and secondly the "old" Chinese who have been here for several generations.

I think it is fair to say that at the present time, the implications of the Treaty are not well understood by some of the new migrants. This is because in the countries where they come from (China, Taiwan, Hong Kong and Korea) indigenous peoples' rights are not a major issue and certainly not a constitutional issue. Members of this group already have many other matters related to relocation which they need to resolve and, as new arrivals, are likely to accept the decision of the general community in such matters.

Among the "old" Chinese, Maori being an integral and fundamental part of New Zealand is well-accepted and the importance of the Treaty is reasonably well-understood, and as well-accepted as in the general non-Maori populations.

Thus to date, there has been a general acceptance in the Asian community of the bicultural state as it has evolved in the past 25 years.

The evolution of New Zealand as a bicultural state has had considerable support from judges and historians. Over a period of more than 25 years the legal and academic communities have developed a theoretical foundation for biculturalism that has been used by politicians and government departments to institute a range of practices in public life that have resulted in New Zealand's unique expression of its bicultural character.

This expression of biculturalism is now well accepted within the community and even within Asian communities. Thus, it is common for a Maori component to be included in the proceedings of ethnic communities when these communities publicly interface with the wider community. For example, when a group decided to mark an event of significance to the Chinese community in Wellington last month- the centenary of the murder of Joe Kum Yung in October 1905, it was deemed appropriate to lead off with a karakia. In the course of the ceremony, the Maori elders and the Mayor of Wellington and other dignitaries lit incense sticks and bowed to the tablet commemorating the name of Joe Kum Yung.

Such public expressions of respect for other cultures by the "Treaty Partners" are very welcome, yet in places where it really matters, in law and public policy, the multi-cultural reality of New Zealand has been put to one side, if not ignored.

February 2005, in the Treaty Debate Series held at Te Papa, Wellington, I asked Professor Matthew Palmer, Dean of Law at Victoria University where ethnic groups, who do not identify with either the Pakeha or the Maori side, stood in relation to the Treaty of Waitangi. His answer, (and I paraphrase): Their interests were represented by the Crown.

And indeed the Treaty discussions over the past 25 years have been between "Maori" and "the Crown" with the Crown supposedly representing all non-Maori people. In practice however, the Crown has represented the position of the majority "white" New Zealanders with little acknowledgement of its non-white citizens - who now comprise 11% of the population.

Asians are acutely aware that although they are theoretically part of the general (non-Maori) community, they are not accepted as such. This is reflected in the common question (often put to ethnic Chinese third and fourth generation New Zealanders): "Where are you from?" meaning "What country did you emigrate from?" The (friendly) implication is that "You can't be a New Zealander because you are not of European or Maori stock - so where do come from?"

If the Treaty negotiations were simply a matter of settling old grievances and righting past wrongs, this role of the Crown would be accepted by migrant and ethnic communities. These minority communities have themselves, in various ways, suffered discrimination and institutional racism in the past and can readily agree that the wrongs inflicted on the Maori should be put right.

However, in recent times, the Treaty has become specifically incorporated into legislation, often with words to the effect that "the administration of this

Act shall have regard to principles inherent in the Treaty of Waitangi."

The question of what exactly these Treaty Principles consist of is a question to be answered at another time and in another forum.

However, it is increasingly obvious from evolution of the law, that the Treaty of Waitangi is not simply a treaty between the Crown and the indigenous population of New Zealand, with past matters to be resolved, but is becoming a constitutional document that will greatly affect the future of New Zealand.

If the Treaty has de facto become a constitutional document, then the citizens of ethnic (non-white, Asian and other) communities should have access to it to the same extent that the Maori and the general (white, Euro-centric) communities have access to it as a constitutional document.

This is in accordance with basic democratic and human rights principles (that citizens should have equal access to their laws).

As a

matter of principle, ethnic communities should support the Treaty of Waitangi. The Treaty gives them, along with other non-Maori people, a historical, constitutional and legal basis for being in New Zealand.

As groups that have suffered from discrimination in the past (throughout the world), the ethnic communities should make common cause with the Maori community in their fight to have put right past injustices and for recognition of their unique cultural identity.

At the same time however, members of ethnic communities should have equal access to the laws and constitution of New Zealand including the Treaty of Waitangi - if it has become a constitutional instrument which affects the shape and form of New Zealand in the future.

Increasingly, this is being recognised by politicians, historians and academics within the broad context of constitutional development in New Zealand:

On 3 October, soon after the election, Bill English, delivering the 2005 Chapman Lecture, staked out a position subtly nuanced from his National Party leader's hard-right position delivered at Orewa. In effect he said the current interpretation of the Treaty is not set in stone and that everything is negotiable. He recognised the reality of New Zealand when he said:

"The story of two settle traditions, is at the root of our national story so far. To these two traditions, more are added as we speak. It's just a matter of time before they will add to the national story. Our shared experience of the Treaty has given us the cultural know- how to make room for newcomers. And won't we need it in this place where Asian, Polynesian, European and Maori meet globalisation at the end of the world?"

Also in
October, Professor Jeremy Waldron, Director of the Centre for Law and Philosophy at Columbia University, speaking at his alma mata, Otago University, rather controversially questioned whether the Treaty was obsolete:

"...the attitude which treats treaties as living and evolving organisms has its limits. After a while, the treaty can become a rather self-defeating and restrictive matrix on which to project flexibility in the light of modern circumstances; it can become an obstacle for updated relationships rather than a facilitator of that evolution."

Closer to home and perhaps closer to the mark, Michael King, Anthony Haas and Richard Hill, all eminent historians, academics and Treaty researchers, have all, in their own ways, suggested that New Zealand might move on from biculturalism to multi-culturalism:

From a composite paper assembled by Haas and Hill in tribute to King who died 30 March 2004, King is quoted as saying:

With

this objective [to ensure that Maori New Zealanders participated as fully in the national life - sharing its resources to the same extent, influencing the character of national culture] - largely achieved, the time is now ripe to cast a wider view over the country's cultural contours to determine whether or not there are other New Zealanders who are less than fully involved in the national life, and whether or not members of the Pakeha majority culture and the tangata whenua culture ought to make further adjustments to accommodate those who are neither Pakeha nor Maori. Another way of approaching this equation is to ask whether, having achieved a degree of biculturalism, the next logical revision of the New Zealand social contract ought to be in favour of multi-culturalism.

Hill, who heads the Treaty of Waitangi
Research Unit at Victoria
University explains:

"In short, the Maori perspective was generally to say: we welcome diversity, indeed we pioneered its welcome, but the Crown's most urgent attention needs to be paid to its relational nexus with its own Treaty partners. Once the state shows that it is prepared to make advances in finding a rangatiratanga-based partnership, then Maori are prepared to fully explore modes of incorporating the aspirations of other ethnicities. If the Crown can be persuaded to respond seriously to Maori requests for dialogue aimed at cementing in a guaranteed Treaty partnership, that dialogue can surely be joined at appropriate points by representatives of other cultures in what is increasingly a multi-cultural society in an officially bicultural land.

Haas, in his section of the paper, expands on his considerable research and thinking into multi-culturalism in relation to Pasifika people -as an example of a possible, more general multi-culturalism.

Hill has suggested factors to take into account when discussing ways of reconciling the concepts of a bicultural, Treaty-based nation with those of a country characterised by increasing multi-culturalism in everyday life.

According to Hill these factors include:

- Knowledge of the past.
- "Respectful dialogue"/Lateral thinking
- Revisioning/Reworking the social contract - that Maori grievances should be resolved first.
- Article Three of the Treaty - relating to equality under the law.
- Being community - the ongoing commitment to inter-community dialogue.
- Flexible identity - in which New Zealanders have multiple identities.
- Citizenship
 - particularly where globalisation is increasingly a reality.

From the above we can see that, far from biculturalism being fixed in stone, it is already subject to renegotiation within the national constitutional debate.

Apart from the legal implications, the current "re-negotiation" of the Treaty is also about national identity - "what is a New Zealander?" The answer surely needs to include an Asian

component.

It is up to members of the Asian community to take part in this debate, firstly informing themselves of the history of the discourse to date and making their own contributions based on their group's perspective.

Allowing Asians to be full members of a multi-cultural New Zealand need not detract from its essential bicultural character.

STEVEN
YOUNG

syoung@stevenyoung.co.nz

Steven Young is the editor/publisher of the website CHINESE IN NEW ZEALAND, (<http://www.stevenyoung.co.nz/chinesevoice/index.htm>), and a writer and commentator on NZ Chinese community affairs. He is currently the President of the Wellington Chinese Association; however the views herein are his own.