

Understanding Treaty Issues Today. Talk to 'Top of the South '5.5.24

"Let us assimilate," said the shark to the whitebait. But the whitebait turned out to be difficult to swallow.

Assimilation was once official government policy in New Zealand, as it has been in Australia and in some other colonised countries. Each country has had different circumstances and thus has had different results. Here in New Zealand we have had the Treaty of Waitangi, the bone that stuck in the throat – and still does.

Assimilation as an official government policy did not last long in New Zealand but other measures were taken to acculturate Māori into European ways; in language, religion, law, and other social norms. So, as Māori became more and more outnumbered, they had to adapt to the new culture, the new world view. But underneath, the old culture, the old world view, the old certainties about themselves and the world remained. Thus it is with all cultures and peoples who have been colonised, for however many years since – think of Ireland, and more immediately, Palestine.

Authority is the key. Who, meaning which culture, has the authority? How much is the authority shared? How much, in a modern, representative democracy can it be shared?

Fair-minded Pākehā don't want to appear or to be racist but don't always understand how Māori, as individuals or as a group, can claim special rights in a democracy in which they are only about 15 or 16% of the population. Does democracy mean strict proportional representation, or can special needs and interests be addressed? To some extent, of course, MMP does do that, and in several countries, as well as in New Zealand, 'affirmative action' is taken to address social disparities or special needs.

There are two types of rights - Individual Rights and Group Rights. Some Indigenous people in the westernised liberal democracies of New Zealand, Australia, Canada and the United States signed a treaty. Treaties involve group rights. For example, Canada's written Constitution includes the 'Rights of First Nations'. Several treaties called the Numbered Treaties were signed there, so now Indigenous rights are protected in their Constitution. Interestingly, two other group rights in that Constitution are those of Anglophones and Francophones.

In 1966 the United Nations adopted two Covenants that dealt with Group Rights. These apply to all its member countries, not just those that have been colonised. One Covenant is about civil and political rights and the other is about economic, social and cultural rights. An example of a cultural right is that of a particular group to act in a certain way, for example to worship, associate or express themselves culturally,

unhindered by outsiders. Treaty rights are in this category. Examples of the other type of group right are the rights of a class of people in society, like the rights of trade unions, of children, of prisoners, and of commercial groups. These are legal rights that operate to ensure a smooth-running and just society.

A person in a society can hold both a group right, and an individual right such as the democratic right to vote or the right to health care or to free speech, along with say, being a policeman with special police group rights.

Successive governments here in New Zealand have put in place significant initiatives to address Māori Rights as a group. One example of this is the right to speak Te Reo. Māori language has become an official language, and consequently is much more visible in public signage and heard in broadcasting, even in Parliament. It is also used and heard much more freely and widely by both Māori and Pākehā in ordinary public life. Many in the New Zealander public, however, have been uneasy at this change, having seen it as undermining the culture they're used to, as being undemocratic.

This chorus of public unease and suspicion about the visibility of Māori language came around the same time as a perception of governmental high-handedness over covid mandates. These public concerns gave some political parties in the recent election a significant voter base which resulted in them gaining considerable power in a governing coalition. Now, some of the parliamentary acts and judicial judgements taken over years to address Māori disadvantage are being challenged by these parties and arbitrarily overturned.

The unfortunately inflammatory term recently used for initiatives to give Iwi Māori some say in public affairs was 'co-governance'. This became a particular flashpoint for public unease, with terms like 'separatism', 'apartheid' and even 'a take-over by Māori elites' having wide currency.

At that time Tāmāti Kruger, negotiator with the Crown for the Tūhoe tribe and their land in Te Urewera said, "Co-governance 'is not our term, 'Mana Motuhake' (self-determination) is. So we are committed to washing away dependence on the Crown and raising the maximum authority for Tūhoe people. I don't see co-governance as the answer. But I think it is the next bus-stop in a journey that has to be made. It's everyone's journey. It's like gravity, you can't defy it. It's on its way".

So he goes further than so-called 'co-governance'. What has led up to him being so sure that Mana Motuhake is inevitable? Nowhere has government, or even the most inflammatory statements by Māori, suggested that they take over complete control of the country, as people like Julian Batchelor have stated. What has been said for many years by Māori is, "We want to row our own boat".

But rowing their own boat has been too hard for the government to agree to, and is seen to present difficulties, with an ethnically mixed population widely dispersed

over the country, unlike some countries where the indigenous population is concentrated in a specific area and so to a degree can govern themselves. But many Māori, particularly young Māori today, see themselves as a nation, albeit a re-constituted one. Now, all aspects of Māori culture are being recovered, the customs of a distinct and whole culture and society are being adapted and renewed to meet modern circumstances. For this cultural re-establishment to continue, it is believed by many that the swamping process of cultural assimilation has to stop.

This recovery of cultural and societal cohesion has been made possible by positive government responses to Māori protest particularly over the last 40 or 50 years. Two things in particular have pushed the government into implementing these changes. The first was the vigorous protest led by young, educated Māori in the late 1970s and early 1980s who said that the terms of the Treaty had not been honoured. And in the State Enterprises Act in 1987 the Court of Appeal said the Treaty expressed a 'fiduciary' relationship, a partnership based on an actual relationship between the Crown and Iwi Māori. As such, Iwi Māori should be allowed to participate more in decisions that affected them, and, because one Treaty partner had become significantly stronger than the other, the power relationship had become unbalanced, so protection of the other partner's rights was necessary. Subsequently, the government enacted the principles as it interpreted them. As a consequence, affirmative moves were made to put together the culture fractured by years of cultural domination in education, in health, in broadcasting, and in Iwi development.

Another thing that had made the government take action to address Māori concerns was the United Nations Declaration on the Rights of Indigenous People. After some hesitation, New Zealand signed this in 2010. One of its clauses asserted the right of indigenous people to self-determination – Tāmami Kruger's 'mana motuhake'.

While this United Nations Declaration was not legally binding, it was not a good look for New Zealand to ignore it, especially after other countries, including the United States and Australia had signed it. But 'self-determination' or 'mana motuhake' for its indigenous population was obviously very hard to implement in any country but particularly so in New Zealand with its integrated population. So the government ignored it. Instead, consecutive governments agreed to Māori having inclusion in some areas of environmental management, those areas particularly important to Iwi to whom it had belonged.

These were the lakes, rivers, mountains, parks, forests of their traditional tribal rohe or area. Waikato and Whanganui rivers, Rotorua lakes, the volcanic cones in Auckland, Te Urewera National Park, and Taranaki, Aoraki, and Ruapehu mountains are some of the prominent ones. These are now managed by joint Boards consisting representatives of government and Iwi and sometimes local bodies. To have a say in the management of these natural features is important to Iwi and to individuals who still identify themselves by their mountain, their river, their harbour, the importance and intimacy of which is expressed in the saying of Whanganui Iwi, 'Ko au te awa,

ko te awa ko au”, “ I am the river and the river is me”.

To have a say in these features 'management or governance restores the mana of that particular feature as well as that of the Iwi and the individual. It also means that they can express their concern about the growing environmental degradation of them and take a part in their restoration.

These co-management arrangements have been successful and have not raised a lot of public protest. However, having tribal representation on local Councils definitely has. This was when the term 'co-governance 'rather than 'co-management 'came into general use. Again though, the concern of Iwi in each area was the management of their local land, waters and resources. But the mandatory inclusion of Iwi representation in a public body was seen by the general public as undemocratic. Despite it taking several attempts by successive governments to get the bill through, several councils have now elected to have a Māori Ward. However, the new government has just indicated its intent to make councils with Māori Electoral Wards put it to a public referendum.

The recent Labour Government formulated a plan of action that would go to some degree toward implementing the terms of the United Nations Declaration on the Rights of Indigenous People, particularly the Right of Self Determination. They set up a working group which came up with a document called He Puapua, a plan to include Iwi Māori more in the more general management of the country. It had five key areas: 1. Establish Māori Electoral Wards. 2. Establish a Māori Health Authority. 3. Reform the educational curriculum, particularly in regard to teaching New Zealand history. 4. Reform water infrastructure, and 5. Instigate land reform, especially including Iwi management in Conservation land.

The first item on this plan of action, establish Māori Electoral Wards, as previously mentioned, was put in place in some areas but now may be subject a referendum. The second one, establish a Māori Health Authority, was done, Te Aka Whai Ora, but was short lived. It was disestablished as soon as the Coalition Government was established, with the stated emphasis now being on need, not race. It was replaced by Iwi Māori Partnership Boards which is one of several Community Health Providers in local areas, with the ultimate control held by Health New Zealand. Another legislation with relevance to Māori health was the Smoke Free legislation. It was also disestablished. The third plan was to reform the educational curriculum in regard to New Zealand history. This has resulted in the wider community as well as school children gaining a greater awareness of our shared New Zealand history. Now it is seen as 'needing balance'. The fourth proposal, about infrastructure and water, called 'The Three Waters', hit the fan of public anger well before the recent election. It was about then that the term 'co-governance 'became widely used. Rather than inclusion in decision-making or co-management of natural features and resources as before, it was seen as an undemocratic power grab. So the Three Waters model was abandoned last year and now local councils are struggling region by region to find an alternative

structure to address their serious water problems. Number five, to instigate land reform, did not have time to get off the ground.

However the most far-ranging move to take authority from Māori is ACT's Treaty Principles Bill. It proposes to replace the Principles of the Treaty of Waitangi, as determined by the Court and which now find expression in many Acts of Parliament, and to replace them with a new translation by the ACT party. If Parliament accepts this, which may not happen as National has said it will not support it past the first reading, it will go to a public referendum, and if agreed to by the majority of the general public, all references to the Principles of the Treaty will be deleted. The agreement between the British Crown and Māori will become an agreement between the British Crown and all New Zealanders.

An essential to understanding ACT's stance is that they are a libertarian party. Theirs is a strongly held belief that it is the role of government above all to protect the freedom of the individual. To give Māori rights as a group or class of people is seen as racist. They believe in treating all people equally. However, as in the economic belief that the rising tide lifts all boats, without addressing reasons for the initial inequalities, the differences will remain. And while addressing need rather than ethnicity sounds fair, it ignores cultural difference. The authority is put back firmly in one culture's hands.

Then there is the constitutional issue. New Zealand does not have a written Constitution. Our unwritten Constitution consists of Acts of Parliament and Court decisions taken over time, and also what is known as Common Law - that inherited from Britain. If we had a written Constitution, with the Treaty of Waitangi defined as Aotearoa New Zealand's founding document in it, as has been suggested for some years by academics and legal experts, it could not be redefined arbitrarily by ideologically-driven governments. At this time however, the constitutional issue would appear to be held over for its necessary inclusion in the future debate about New Zealand becoming a republic. What this will require is determining what the text of the Treaty actually says, not just the Principles inferred from it.

Returning to the initial quote from Tāmami Kruger, if shared decision-making, either termed as co-governance or formally expressed in a legal Principle, is so difficult for the public to accept or the government to implement, the fulfilment of his hope of self-determination for Tūhoe seems a long way off. But I would add, watch this space, as things will move on from here. Neither Māori nor many Tauīwi nor the Parliamentary Opposition will be silent. I think we have come too far.

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