

A place in the circle

Tim Howard

Two public moments on Friday 14 November, 2014.

The stage one report in response to the Waitangi Tribunal claim named as Te Paparahi o te Raki is to be released by the Waitangi Tribunal at Te Ti Marae at Waitangi. After all the years, the moment comes for director Julie Tangaere to stand and announce the Tribunal's conclusion. She re-states the key question, "did (the rangatira) cede sovereignty to the Crown?" and the descendants of Rāhiri shout back in answer, "Kao! No!!" She goes on to affirm that, indeed, by signing Te Tiriti o Waitangi²⁸ in February 1840 the rangatira of the north did not cede to the English Crown their "authority to make and enforce laws over their people and within their territories." Rāhiri's people, Ngāpuhi, knew that, and had been consistently saying that for 175 years.

On Radio New Zealand's Checkpoint programme that afternoon, the Crown's Minister for Treaty Negotiations Chris Finlayson reaffirms the Crown's claim of continued sovereignty over New Zealand. "Nothing will change. New Zealanders can rest easy in their beds tonight and wake up in the morning happy in the knowledge that the Queen still reigns over us and that the government still rules over us" (Wilson, 2014).

Two personal moments, the same day.

A line of Pākehā Tiriti educators in the crowded tent at the lower marae at Waitangi are overwhelmed with emotion at the announcement of the Tribunal's conclusion. They too – echoing Ngāpuhi and other hapū knowledge – have been saying this for many years. Ngāpuhi didn't cede sovereignty in 1840 or since. But to hear it from the dedicated agency set up, populated, resourced, ruled by the Crown...!

Later, cars bearing two of these educators pass at Onerahi airport, Whangarei – and they note each other's grim face as their radios carry Finlayson's bluntly dismissive words.

But this judgment, that Ngāpuhi did not cede sovereignty, is not so easily dismissed. Matching Ngāpuhi's knowledge, and what the majority of responsible Treaty scholarship has been saying for at least twenty years, the Tribunal in its own 'Pākehā way' has laid down what is in effect the new 'establishment truth.' Though England intended to gain sovereignty over New Zealand, the document it presented for signing did not include that intention. Its representatives did not explain such an intention to rangatira, nor did they gain the free assent from rangatira to hand over their sovereignty as they were instructed. Rather, rangatira were told they would retain their tino rangatiratanga, their independence and full chiefly authority. And they agreed to Te Tiriti on the basis that they and the governor would be equals, each administering laws for their own people.

An anchoring place to imagine the future

This reflection is consciously made from my personal perspective as a Pākehā, writing primarily to Pākehā and as a commentary on the dynamics of the Pākehā nation. We Pākehā have been in many ways the framers and doorkeepers of the dominant ideology, and so inherit particular responsibilities. The reflections may be largely relevant to other tauwiwi too, and of interest to Māori.

To secure the historical anchor of tāngata whenua sovereignty in our imaginations, I think it is worth briefly recapping here two intertwined strands of living history. Both reflect the Māori nations' sophisticated willingness to adopt strategic alliances that would be of mutual benefit for their peoples. I think of these strands as being symbolised as a 'circle,' and as a 'handshake' mirrored in the ongoing conversation between rangatira and the Crown.

From at least 1807, and probably earlier, rangatira and peoples from the North, and from beyond, would gather at the gardens at Taiāmai near Kaikohe each autumn. The gathering would often include rangatira from as far as Ngāti

Kahungunu in Hawkes Bay, from Tūwharetoa in the Central North Island, from Tainui peoples in the Waikato; these nations were each allocated their own land base at Taiāmai within the rohe of Ngāpuhi. The gatherings, reflected in the ongoing relationships between hapū – known collectively as Te Wakaminenga – would be times for harvesting and of trading. They planned, for example, large joint ‘transnational’ fishing expeditions. And they were times for rangatira to discuss matters of political importance, particularly that of the implications of Pākehā newcomers arriving in their lands. This ‘circle’ of rangatira increasingly became the basis for a new type of political organising, beyond the traditional authority each rangatira had within their own nation. This development led to them stating what might be called a Declaration of Independence when they promulgated He Wakaputanga o te Rangatiratanga o Nū Tirenī in 1835, a statement of collective sovereignty. “E kore e tukua e mātou te wakarite ture ki te tahi hunga kē atu” – we allow no other person (than ourselves) to make laws.

A specific aspect of the strategic alliance the rangatira engaged in as Te Wakaminenga was the ongoing conversation between the rangatira – often collectively – and the English Crown. The classic elements in Polynesian encounters and forming formal alliances are the handshake and the exchange of gifts. When Hongi Hika and Waikato representing Te Wakaminenga (with Waikato as ‘secretary general’ of Te Wakaminenga, this circle of ‘the United Nations of Aotearoa,’ as it were) met to shake the hand of King George and exchange gifts in 1820, a formal alliance was established. This was a mutually beneficial and respectful relationship of equals and the beginning of an ongoing conversation. The power of that alliance was reinforced over time – by the letter of the rangatira sent to George’s brother King William IV in 1831; by William’s reply, and his sending of Busby as his representative, carrying his speech; by the English endorsement of Te Kara, the Māori national flag, and by the English acceptance of the declaration by the rangatira in He Wakaputanga.

The 1835 declaration is the constitutional foundation of Aotearoa. There was no need for any further treaty between the rangatira and the English Crown; the handshake and particularly its reconfirmation in He Wakaputanga were sufficient. Te Tiriti o Waitangi, five years later, instigated by the new Queen Victoria, could be said to be in large part ‘unnecessary’ to Māori, as they already had the handshake, the relationship – but their partner had requested it. That said, the Tiriti did one thing particularly – it introduced the representative of the English Crown to that older circle of power. It gave the Crown a place in the circle as one amongst equals, with responsibility to look after their own non-Māori people – though clearly with no power to make laws over Māori. Hobson’s handshake with the rangatira sealed the terms of the relationship from then on.

What has been heard over time from Ngāpuhi and its claimants (their voices having been heard at the Tribunal hearings and gathered in the independent report Ngāpuhi Speaks), endorsed specifically by Tainui, and now by the Tribunal, refers explicitly to the iwi and hapū of the Tai Tokerau, the North. Ngāpuhi did not cede sovereignty. And neither arguably did the other iwi and hapū of Aotearoa, many of whom had also later on signed the constitutional document He Wakaputanga o te Rangatiratanga o Nū Tirenī – Tūhoe, for example, as late as 1921.

This context is significant when we address relationships now. The ‘circle’ of rangatira, the ongoing handshake and conversation, the agreement within limitations to share power with the Crown... all provide an historical anchor for us for the creative imagining and organising of us who are tauīwi and Pākehā. What shifting arrangements should be made now to honour that sharing of power?

Voices in response

The Tribunal’s formal announcement in November 2014 that they accepted the claimants’ main position – after which no-one could honestly say that Ngāpuhi ceded sovereignty in February 1840 – confirmed that the historical anchor was well secured.

Ngāpuhi leaders were immediately positive in response to the Tribunal’s report (Dinsdale and Graaf, 2014). Hokianga kaumātua and scholar Patu Hohepa is quoted as saying that the English version of the Treaty was “fraudulent and absolutely not a translation” of Te Tiriti, which confirmed hapū rights to make their own laws. Ērima Hēnare, Ngāti Hine kaumātua, said the report’s implications were “tremendously huge.” He said that, in the worst case, the Crown might do nothing, which meant the sovereignty issue could end up in court. Co-chair of Te Kotahitanga o ngā Hapū Ngāpuhi, Pita

Tipene, said hapū and whānau were elated, their case having been vindicated.

From a Pākehā perspective of how the Pākehā nation often operates, the Crown response is significant. It is deliberate and strategic.

The relevant Minister Chris Finlayson, while saying he had only had one day to absorb the Tribunal report, evidently knew what he had planned to say. It is interesting to note that the first letter in the Tribunal report, addressed to Finlayson and to Minister of Māori Affairs Te Ururoa Flavell, is dated one month prior to the launch (Coxhead, 2014). Finlayson and his spin doctors had all that time to come up with the 'rest in our beds' line, a dog whistle signal to non-Māori that there is indeed something to fear (Wilson, 2014).

There is no question that the Crown has sovereignty in New Zealand. This report doesn't change that fact," said Finlayson. "The Tribunal doesn't reach any conclusion regarding the sovereignty the Crown exercises in New Zealand. Nor does it address the other events considered part of the Crown's acquisition of sovereignty, or how the Treaty relationship should operate today (Chapman, 2014).

He went on to say that the Government would consider the report as it would any other Tribunal report, and would focus on completing Treaty settlements "in a just and durable manner."

Finlayson alluded to ways other than the Treaty that the Crown has gained sovereignty. He didn't spell these out, but his reference triggered my memory of a mid-90s Op Ed piece in the Dominion by Minister of Justice and Treaty Negotiations Douglas Graham, where he had acknowledged rightly that the Treaty was not an ethical basis on which Crown sovereignty could be claimed, but its basis was 'military conquest' and 'continued administrative authority.' Maybe this, alongside other 'legal' instruments, was what Finlayson meant.

Not a Crown voice, but one that feels to me like as an aspect of the establishment response, was that of Paul Moon. This historian is often singled out by media as an 'expert' for 'authoritative responses' to Treaty issues. Moon came out with his own media release twenty three minutes after the embargo on the Tribunal's own release was lifted. He strongly attacked the tribunal report, saying it distorted significant aspects of history (Kenny, 2014)²⁹.

Prime Minister John Key went a step further than Finlayson (Key cited by Su, 2014). While reasserting that the report didn't affect the Crown's authority to rule over New Zealand, he claimed on Te Hiku Radio that New Zealand was one of the few countries that had been settled in a peaceful manner. His failure to note the thousands of Māori deaths as a result of Crown invasion of their lands is being parodied on social media.

What was the Crown strategy then? While Key probably went further than Finlayson would have liked expressed, it would seem that the strategy was to ignore and invisibilise both Ngāpuhi and Tribunal voices, and if necessary deny. That said, Finlayson probably knew that any attempts on their part to reconstruct history would likely fall flat when faced with what might be seen as the establishment's own history of record now, that articulated in the Tribunal's report.

What were the other Pākehā voices? On social media there has been a number of ill-informed and even nasty responses, amongst others more open and generous. I won't dwell on them. Observing these responses, blogger and bicultural educator Graham Cameron assessed that "a large body of Pākehā get very angry when the discussion turns to Te Tiriti o Waitangi, sovereignty, co-management, co-governance and partnership... (because) consciously or subconsciously, they are aware that their sovereignty is not the only sovereignty in this country" (Cameron, 2014). Another blogger, No Right Turn, observed that "The biggest effect (of the report) will be psychological... Pākehā are going to have to confront the fact that our history is a bit more complex and far less comfortable than we like to pretend or not. Given past practice, this is likely to result in a surge of racist anger at Māori for upsetting our myths, then a return to comfortable ignorance" (No Right Turn, 2014).

In another vein, blogger Morgan Godfrey usefully distinguished between de facto (in reality, in practice) and de jure

(legally based) sovereignty. He saw the Crown as confident in its de facto sovereignty - though some of us would note that this 'in practice' sovereignty and related colonising actions have been resisted and contested consistently over the centuries by tāngata whenua and some others, so would question how much confidence the Crown should really have. He went on to say that now the Crown "must have the burden to prove it's de jure sovereignty... whether out of constitutional, political or emotional necessity. Meanwhile, hapū and iwi can agitate for a new Treaty relationship – one more like a nation to nation relationship than citizenry to state relationship" (Godfrey, 2014).

One of the claimants' lawyers at Waitangi on 14 November, when reminded of Douglas Graham's dictum cited above, responded critically, "If the Crown did not gain sovereignty by the signings in February 1840, at what point, by what mechanism, can the Crown claim to have gained and Ngāpuhi ceded sovereignty? At what point in time?" He was implying that the Crown cannot prove its legal authority to rule over all.

Entrepreneur and new Treaty commentator Gareth Morgan, in a recent New Zealand Herald opinion piece, called the Tribunal 'one-sided,' meaning that it locked out Pākehā perspectives (Morgan, 2015). A number of people, this writer included, would agree that the process was indeed one-sided, but not as Morgan meant that term. As kaumatua Nuki Aldridge had submitted to the Tribunal, the rules of engagement which the Tribunal was following in these hearings – in terms of making the processes agreed to by Ngāpuhi something more legalistic and lawyer-dominated, the bombarding of Ngāpuhi tikanga with foreign processes, the appointment of Tribunal members and officials by the Crown, the emphasis on the Tribunal's independence being further controlled by government limiting resources, and more – were indeed 'one-sided'; one-sided against Ngāpuhi sovereignty and Māori perspectives. Yet, against those odds, the Tribunal still supported the substantive claim of the Maori claimants.

A number of legal commentators admitted that Crown legal assertions of sovereignty, like that by the English authorities in December 1840, were based on false grounds – for example, on the understanding that Ngāpuhi and other North Island tribes had ceded sovereignty by signing the treaty and that the 'empty' South Island was legitimately claimed by right of discovery. At the same time, there were allusions in the same commentaries to the Crown having sovereignty simply because it claimed sovereignty – and by that the courts are bound. Hmmm.

Usefully, in a blog in November, legal academic Andrew Geddis (2014) noted the challenge that the Tribunal report lays down. This is where we might start. Geddis stated: "The third response, then (after two untenable ones), is to accept that the Treaty did not function to transfer sovereignty to the Crown and so the way our society has developed has failed to keep to the original promises made in it... If we do accept that picture, then it really poses a challenge to us... It calls for a more radical reworking of the sharing of power over at least some aspects of New Zealand between the Crown and Māori in order to make good the Treaty's original vision... The Tribunal's Report [implies] that if we want to be true to the Treaty as it was formed, then something more radical is needed than just saying sorry and paying over some money" (Geddis, 2014).

Responding now

What might our response be to that challenge? How do we use this historical anchor well – the anchor of knowing that Ngāpuhi (and other iwi and hapū) did not cede sovereignty – to imagine and work towards another future? What are the occasions where we directly respond to the calls for support from hapū and orient ourselves towards them? – and when on the other hand is it best that we work more with our own people so that we together increasingly become people of honour and respect?

Our first responsibility, as Pākehā particularly but also other tauīwi, must be to put pressure on our representative in the circle, the Crown, to act as an honourable party to the 'handshake' and Te Tiriti. The Crown's current strategy is clear. On the other hand, many of us, Pākehā and tauīwi, would like to see a society in Aotearoa based on something more moral than 'military conquest and continued administrative authority' or on 'the Crown simply claiming sovereignty is sufficient.' We could imagine a different society based rather on our collective place as one seat in the circle of equals. And, once that dream is seized upon, there's the challenge for us to work together to shift the Crown towards a position of integrity.

Whatever is required to achieve that.

At first instance this would mean we call on the Crown to respond to the Tribunal report ethically, and not with the dismissive tone that is evident to date. Such invisibilising or minimising is evident in Crown behaviour in relation to Te Tiriti o Waitangi – as well as echoed in other areas of current policy and practice. I would suggest that our peoples, tauwiwi as well as Māori, would like to see the Crown act with integrity rather than hear sheer restatements of their power, the approach of a bully.

Beyond that - and it would be great if more people absorbed some of the stories and voices included in the Independent Panel's report Ngāpuhi Speaks (Healy, Huygens, Murphy, 2012, p335-339) - the recommendations in that claimant-based report present a set of directions that we could well be demanding from the Crown. They are clear and far-reaching. "That the Crown formally acknowledges its fundamental misrepresentation... That the Crown work with hapū representatives from across the country to develop rules of engagement..." and more, worth considering well.

It is true that in a few instances the Crown has moved positively to share power to some degree with hapū and iwi. There have been some gains in power-sharing between hapū and the Crown in the Waikato River Authority; in the Tūhoe settlement and its unique Mana Māori Motuhake redress dimension, aimed at healing relationships; in the agreed status of Te Urewera; in the Whanganui River settlement, and in particular in the legal entity that gives recognition to the Whanganui River. These gains could well be developed further, openly promoted and used for example as inspirations for other arrangements around the country between hapū and Crown-authorised bodies like local government. It is important too, however, that we lobby government to ensure that, when they speak of 'treaty settlements,' they give no room for settlements to be misconceived by people as a process to wipe out Te Tiriti o Waitangi. Te Tiriti still speaks – now.

Second, however, it is not just a matter of us waiting for government to come to the party. It's about us informing ourselves, and acting, wherever we are. Sharing these living histories in our families and communities, and the images of a circle of shared power, and of a handshake between Ngāpuhi and the Crown that needs to be honoured now. Sharing a recognition that tāngata whenua have been gracious in granting settlers a place on their lands. Encouraging media to contact appropriate Māori sources on issues affecting hapū, and Māori in general. Our contributions towards changing our collective 'arrangements' are relevant in all sorts of places where we find ourselves.

In encouraging our councils to move towards more mutually beneficial relationships with Māori – in which local hapū are more than citizens but collectives to be effectively engaged in decision making. So the councils know the implications of once again overriding tāngata whenua in consent issues, for example. Or so they embrace planning that assists papakāinga development.

In issues like oil exploration and hardrock mining – where tāngata whenua perspectives must have real influence in decision-making. Currently, tokenistic consultations of tāngata whenua characterise government and industry approaches to extractive capitalism – quoted when it suits the 'powerbrokers,' but when a kaumatua and whānau throw over the table and tell the oil company to leave the rohe, ignored. Rather, then, let's see tāngata whenua heard as the people of the circle of Te Wakaminenga.

In social matters like housing – where the harm from the loss of practical authority by Ngāpuhi and other iwi and hapū over their peoples, lands, spirituality, resources, is reflected in almost every social indicator. Here we Pākehā have a daily role alongside Māori, if only to ensure our Pākehā practices do not drown out Māori assessments and Māori solutions.

In education particularly – where in so many ways we prefigure how we will shape our society. Education that is grounded in the real history of Aotearoa, with useful resource material, from primary to tertiary levels and in many informal contexts, is sadly lacking at present. Where are the stories of Ngāpuhi heard in schools and universities above the comfortable versions of Treaty history? In very few places, I would suggest. But education has the potential to sow seeds that will grow well, and new generations will be in a position to exercise their own knowledge and creativity. Then, younger people will be in more of a position to review how we Pākehā can be better in our relationships with tāngata whenua. More

broadly, we will perhaps learn how together we will shape a society in which people are more to the fore than profits and the needs of capital. “He tangata, he tangata!” Now that is worth working for. The opportunities are for us to play our part are many, and at hand.

The anchor

An anchor can function as an instrument to hold one's ground with surety amidst the flux of changing times. It can also provide a still place in order to dream of and plan for another future. This clear historical anchor, laid by Ngāpuhi and endorsed by the Tribunal, with its images of power shared amongst respected equals for mutual benefits, is hugely valuable. It presents opportunity, challenge, hope. An anchoring place for us Pākehā to get organised... so we might be adequate to our place in the circle, by acting as the Pākehā (and tauīwi) with whom the rangatira thought they were signing Te Tiriti o Waitangi.

To continue that ongoing conversation.

References

- Cameron, G. (2014, November 14). *So yeah, that thing you say about us signing over sovereignty... Stage 1, Te Paparahi o te Raki inquiry*. [Blog] Retrieved January 29, 2015, from <http://firstwetakemanhattan.org/2014/11/>
- Chapman, P. (2014, November 14). New Zealand's Māori 'did not cede sovereignty to Britain', *The Telegraph*. Retrieved January 29, 2015, from <http://www.telegraph.co.uk/news/worldnews/australiaandthepacific/newzealand/11230323/New-Zealands-Maori-did-not-cede-sovereignty-to-Britain.html>
- Coxhead, Judge C. (2014, October 14). Letter to Ministers. In *He Whakaputanga me Te Tiriti, The Declaration and The Treaty: The report on stage 1 of the Te Paparahi o te Raki inquiry*. Retrieved January 29, 2015, from <http://www.justice.govt.nz/tribunals/waitangi-tribunal/Reports/he-whakaputanga-me-te-tiriti-the-declaration-and-the-treaty-the-report-on-stage-1-of-the-te-paparahi-o-te-raki-inquiry/preliminary-pages>
- Dinsdale, M. and de Graaf, P (2014, November 15). Claimants predict a radical shake-up, *The Northern Advocate*. Retrieved January 30th 2015 from http://www.nzherald.co.nz/northern-advocate/news/article.cfm?c_id=1503450&objectid=11358792
- Geddis, A. (2014, November 14). Kereru, meet felis catus, *Pundit*. Retrieved January 29, 2015, from <http://www.pundit.co.nz/content/kereru-meet-felis-catus>
- Godfrey, M. (2014, November 19). History isn't always written by the winners, *E-Tangata*. Retrieved January 29, 2015, from <http://e-tangata.co.nz/news/history-isn%E2%80%99t-always-written-by-the-winners>
- Healy, S., Huygens, I., & Murphy, T. (2012). *Ngāpuhi speaks*. Whangarei, New Zealand: Network Waitangi Whangarei, Te Kawariki.
- Kenny, K. (2014, November 14). Māori did not give up Sovereignty: Waitangi Tribunal, *Stuff*. Retrieved January 29, 2015, from <http://www.stuff.co.nz/national/politics/63196127/Maori-did-not-give-up-sovereignty-Waitangi-Tribunal>
- Morgan, G. (2015, January 7). One sided Tribunal process recipe for ongoing tension, *New Zealand Herald*. Retrieved from http://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=11382652
- No Right Turn, (2014, November 14). *There was no cession in New Zealand* [Blog]. Retrieved January 29, 2015, from <http://norightturn.blogspot.co.nz/2014/11/there-was-no-cession-in-new-zealand.html>
- Su, R. (2014, November 21). John Key says New Zealand settled 'peacefully' despite Tribunal report findings, *International Business Times*. Retrieved January 29, 2015, from <http://au.ibtimes.com/john-key-says-britain-settled-new-zealand-peacefully-despite-tribunal-report-findings-1390580>
- Waatea.com (2014, November 19). Interview with Moana Jackson. Retrieved January, 30, 2015, from http://www.waateanews.com/waateanews/x_story_id/ODM3Mw==/Moon-ignoring-Maori-accounts
- Wilson, M. (2014, November 14). Chris Finlayson on Waitangi finding [Audio], *Radio New Zealand*. Retrieved January 29, 2015, from <http://www.radionz.co.nz/national/programmes/checkpoint/20141114>



Photo: Heather Came

Tim Howard, like some other essayists in this series, is a Pākehā Tiriti educator and activist who was mentored by Joan Cook. With his partner Carol and their extended family, Tim lives on a family farm and orchard on the outskirts of Whangarei in Northland.

Tim is employed as a community development worker with Northland Urban Rural Mission, Joan Cook's home group in Whangarei, where he works on a range of community development, social justice and environmental issues within a framework of Tiriti justice. Particular areas he works in include Māori and community housing, organised opposition to mining and oil exploration, welfare advocacy, child poverty, community economic development, Tiriti education, and development of the Tāngata Whenua Community Voluntary Sector at local and national levels. All of these contexts involve applying Te Tiriti in different ways. He is active in Network Waitangi Whangarei, and has been involved for twenty years in national Tiriti educators' networks.

Tim is also one of the co-founding trustees and tutors with Kotare Trust which, through participatory education and research, supports activist groups and broader coalitions in their work for Tiriti, environmental and social justice. Previously, Tim worked as a Catholic priest in New Zealand and the Pacific with particular involvement in social justice, community and youth work. He continues to be active in a number of international solidarity movements supporting liberation struggles particularly in East Timor, Philippines, West Papua and Palestine.

