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LAND LOSS AND THE TREATY
OF WAITANGI

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NGA KUPU TIMATANGA

To understand what Maori claim to be the obvious links between the Treaty of Waitangi and food is necessary to face our past - to seek some insight into the spiritual and economic threads which bound our people to the land and all that it provides: to gain some awareness of the truth in the whakatauki

"Te orange o te tangata, he whenua
Te marie o te tangata, he ngahere
Te kopu o te tangata he kai."

("The land ensures the welfare of the people, the forest-shade provides peace, and the food from both replenishes the body.")

And to understand what has happened to that ensured welfare, that sense of peace, and that ease of replenishment, it is necessary to face the reality of colonisation - to accept that the creation in this land of a capitalist economic system based largely on pastoralism was only achieved through the dispossession of Maori.

The truths of that past, both Maori and colonial, have shaped our present. They have also shaped our perceptions of the Treaty which sought to ensure continued Maori control of, and access to, the land, and the peace and food which it could give.

Such control and access was tika; it was just. Its removal by Pakeha was in breach of the Treaty. Its continued denial today confirms Maori in their landlessness and in a poverty which often makes them unable to adequately feed themselves and their families.

How that unjust situation has arisen is the focus of this Paper.

NGA WHAKAARO WHANUI

Any human society needs a land-base to survive and to provide a source of economic development through which its people can be nurtured and protected.

Our people were no different. Upon the resources of the land was built a thriving economic and trading base. From the natural resources of the forest the Maori took game, fruit, and timber; from the cultivated terraces of pa or flatlands the people took crops of kumara, karaka, and ti kouka; from the shore and marshes they wove harakeke and pingao. The land, and the waters which gave life to it, gave life to Maori.

Those resources were part of the taonga of the Maori world, and their management was strictly controlled. The rotation of crops, their distribution, and the trade in them with other Iwi was subject to the laws of both manaaki (conservation) and hokohoko (commerce).

Whether growing naturally in the forests of Te Taitokerau, planted on the terraced hills overlooking Heretaunga, cultivated in the rock-walled gardens of Te Matakitaki a Kupe, or prepared in the kouka pits of Te Waipounamu, food was a resource of both spiritual and commercial importance. In the internal affairs of an Iwi it was the literal staff of life: in the Iwi's external relations with other Iwi it was part of the staff of mana. It is not for nothing that Iwi have proverbs reflecting the bounty of their land, the control they exercise over it, and the generosity with which they share and exchange it.

But the land and its produce were of course more than economic resources that needed to be conserved and protected. The land itself was, and is, the source of life: Papatuanuku is the Earth Mother from whom we all come and to whom we all return. The placenta that nurtures us before birth, and the land that provides nourishment in life, are both whenua.

The whenua provides its gifts or taonga to us as koha - as something that must be reciprocated. The exchange is an obligation on humans to care for the earth so that its resources will continue to be available. With this obligation goes a realisation that the Iwi and the whenua are interdependent and exist in harmony only as long as their relationship is in balance.

Thus the Maori are tangata whenua. Not people in the land, or over the land; but people of it.

We did not walk the whenua to seek some Christian dominion over it. Rather, in the poet's words, we came to the land "barefoot, as befits a trembling lover", and found our place in the interwoven pattern of life on this planet.

The values which sought protection of that place and defined meaning in that pattern were handed down from our ancestors. Maori law shaped the precedents which gave substance to those values, and the exercise of Iwi rangatiratanga gave them practical force.

Because the land could not be "owned" in a common-law sense by an individual, the authority of rangatiratanga was applied to ensure a balance between the just communal needs and interests of the Iwi, and the sustainable protection of Papatuanuku herself. The result was a system of food production and distribution which was just - he waka eke noa - a waka in which all can share and to which all must give protection.

When contact with Pakeha brought exposure to new technologies and new crops, the Iwi adapted.

In the Waikato, land was cleared for wheat, and flour mills provided the ingredients for bread to feed the Pakeha settlement of Auckland. In the Horowhenua flax was cropped and treated with new technology to produce jute. In Heretaunga, karaka orchards were augmented with new crops of

apples. In Taranaki, the rotating fields of new vegetables provided a more varied diet and a source of income through trade.

Between 1800-1850, the agricultural and horticultural base of Maori expanded. At the same time, traditions of fishing developed with the introduction of steel hooks and larger boats; the arrival of livestock was used by many Maori to acquire pastoral skills; and ancient inter-Iwi trade was extended to Australia and California.

This expansion increased the economic base of the whenua but left the spiritual intact. The land was still part of the interwoven pattern of human existence; it was still the Earth Mother.

Equally important in terms of the use of the land was the fact that Maori continued to exercise their authority over it - both among themselves and in relation to tauwi. The distribution of the land's resources, and the right to use the land itself, remained within the scope of rangatiratanga.

The onset of colonisation was to change all that.

The need to establish the capitalist hegemony which underpinned British colonial policy was to be based on control of the land.

For that to succeed the land had first to be removed from Maori, and then its use had to be restructured within a framework which promoted resource distribution not on a basis of communal need, but on individual profit. The earth was to cease being the mother of us all, and the sharing of her taonga was no longer to be just.

The external consequence of that process today is the enmeshing of New Zealand's economy within an unjust world structure which ensures White control of both resource production and distribution to the detriment of the vast majority of the world's population.

Its consequence for Maori has been their alienation from the economic, and to a lesser extent the spiritual base of their ties to the land. This in turn has led to the indigenisation of poverty and the exclusion of Maori from economic decision-making.

To understand how those consequences come about it is necessary to look at the concept of rangatiratanga, its reaffirmation in the Treaty of Waitangi, and its denial in the ongoing process of colonisation.

TE KAUPAPA O TE TINO RANGATIRATANGA

In the current discussion about the notion of rangatiratanga, many people limit the korero to the Treaty. They then assume that the concept was both created by, and limited to, the

terms of Article 2. They see it as only a property right which can be limited by the Crown.

In fact, of course, the authority of rangatira and the power they wielded, had existed for centuries. The Treaty acknowledged that fact: it did not, indeed it could not, create or restrict it.

The word itself is, of course, a comparatively recent one, evidence of the change and adaptability of the reo. It is, according to Professor Bruce Biggs (Ngati Maniapoto), one of those words which takes:

"the suffix - tanga to form a new word defining the qualities of the original . . . the distinguishing feature of rangatiratanga was taking care of one's people."

While the use of the actual word in the last 150 years may be a "neologism", the concept which it represents in a Maori cultural and political context is not. It is ancient and derived from tipuna.

In 1892, Te Ataria Rarere (Ngati Kahungunu) stated at Waipatu that:

"this rangatiratanga is our mana . . . and as the water we now see at Heretaunga is limited only by the well spring at Haukunui, so our mana is limited only by the well spring of our ancestors' wisdom."

From the well spring of that wisdom came the authority which rangatira could exercise in the interests of their Iwi. It was an authority which had both temporal and spiritual aspects; an authority to wage war and maintain peace; an authority to protect and to destroy.

It was an absolute authority over life and death, an absolute authority to fulfill the obligations of care and protection of the land.

In 1922 Apirana Ngata defined chiefly authority as being:

"Law to (the) tribe. It was (the rangatira) who declared waré and who sued for peace . . . It was the chief who bespoke the land . . . They had the power even for life or death."

However, it was not an autocratic power exercised regardless of the wishes of the people. Indeed, John Rangihau (Tuhoe) stated in 1987 that:

"the role of rangatira, and hence the exercise of the power of a rangatira - rangatiratanga - was dependent upon confirmation by the people - the role of rangatira was people bestowed."

The notion of rangatiratanga was clearly expressed as a political authority in the 1835 Declaration of Independence

where the word "rangatiratanga" was used to denote independence, and "mana" was used to express "sovereign power". The inability of others to impinge upon that authority was summarised in the words:

"... they (the rangatira) will not permit any legislative authority separate from themselves ..."

The people in their respective Iwi were therefore independent sovereign nations. Rangatiratanga in a sense was the power given to certain people to lead the nation - it was a concept of "chiefly leadership".

To make that leadership effective however, it had to be underpinned by authority, by mana.

Rangatiratanga and mana were therefore the interdependent threads of sovereign nationhood. They were the nexus allowing the Iwi to be governed, and permitting the Iwi to control its resources. This latter was an inherent part of the inter-related notions of both tangata whenua and mana whenua.

As Ranginui Walker has stated, "the guarantee of chieftainship is in effect a guarantee of sovereignty because an inseparable component of chieftainship is mana whenua."

When the Iwi held mana whenua they could effectively exercise authority over all of their resources and people. The Iwi and its authority became one. Nganeko Minninnick (Ngati Te Ata) thus says simply of her people "Ngati Te Ata is our rangatiratanga: our mana is Ngati Te Ata".

This interdependence of the Iwi, its land, its people, and its authority meant that rangatiratanga was non-transferable.

The mana of an Iwi, and the authority of those entrusted with exercising it, came from tipuna and could not therefore be transferred or ceded to another.

No rangatira could give it away; no Iwi would want to do so:

"... if a tribe should lose its mana, its rangatiratanga, it has lost its soul ... all that our tupuna gave to us we must hold." (John Tangiora)

Thus Te HeuHeu refused to sign the Treaty of Waitangi, lest it be seen as a subordination of the mana of Ngati Tuwharetoa. Such a thing was not only unthinkable: in terms of Maori law it was impossible.

Such a "non-cedeable" authority was in reality a power, a consequence, of self-government.

In 1985 Hirini Mead (Ngati Awa) stated that "... te tino rangatiratanga translates ... honestly and sensibly as self-government or as home-rule" and it is mana which makes that rule accepted and effective.

Such a power of government includes all the rights and power of sovereign nations - the power to make laws and dispense justice; the power to conduct trade with other Iwi (nations); the right to regulate the use of Iwi resources (land, fisheries, etc); and the authority to pass laws protecting those resources.

In 1989 Rima Eruera (Ngati Kahu, Te Rarawa) explained this absolute and non-transferable nature of rangatiratanga by referring to teachings of the whare wananga which held that it embraces:

"... the retention of te ihi, te wehi, te mana motuhake me te tapu (the power of authority, the protection of this authority, the control of this authority, and the sanctity of this authority) over our land and sea."

Such authority, so imbued with ihi, wehi and tapu, and so wide-reaching in its efficacy, was truly the soul of a people which would not be ceded or given away.

Many argue that in the Treaty of Waitangi the Maori, of course, did just that: that in Article One of the English text they did cede their sovereignty to the Queen.

However, as Sir James Henare (Ngati Hine) said in an off-quoted statement:

"Because of the Treaty the Maori believe, right to this day, that they are equal partners and they know from experience that it's not so. But right to this day, and those Chiefs that I had the great privilege of being associated with, Runanga o te Tiriti o Waitangi, and they always said that, that they had equal rights. That is why they signed the Treaty. And lots of people ... seem to infer that those Chiefs didn't know what they were signing. They knew what they were signing, reading the Maori version. But, when it came to sovereignty in the English version what in fact they did sign was giving away all their mana and everything else to the Queen of England. Which they never believed and never intended to do so. And that's quite plain from signing the Maori version ... not sovereignty."

The consensus of Maori views found in the submissions made by Iwi on the now-aborted Runanga Iwi Act presented similar views.

Thus Ngai Tahu commented on its continuing nature:

"... tribal tino rangatiratanga is inherent in us from time immemorial, it is uninterrupted and continuing to the present day and into the future."

The Maniapoto Maori Trust Board reiterated the non-transferability of rangatiratanga:

"It is important to acknowledge that the mana or rangatiratanga of the Iwi remains with the Iwi. Therefore, there is no intention or desire to consider that mana and rangatiratanga will be transferred . . ."

Te Rarawa acknowledged the importance of rangatiratanga as the source of control over resources:

"... each tribe and each region is different, with different land and people resources and with different levels of development of those resources . . . the concept of tino rangatiratanga reaffirms that we as Maori people may determine the stewardship of our lands, forests, fisheries and of all our resources . . ."

The political and constitutional base of this sovereignty was emphasised by Te Kotahitanga o Te Tai Tokerau who quoted Sir James Henare's view that there were nation-wide Maori calls for:

"... recognition of Maori desires for self-determination under the terms of tino rangatiratanga (or mana whakahaere mai ra ano) . . . Te Kotahitanga o Te Tai Tokerau . . . again demands real self-determination for all Iwi in terms of tino rangatiratanga or, more correctly, in terms of mana whakahaere mai ra ano (the enduring right to govern ourselves . . .)."

This continuing right to govern oneself enabled Maori to develop a process of land use and distribution which could adapt to the new economic realities of the mid-19th century while retaining the ancient spiritual bases of the land.

The Treaty reaffirmed that right of self-government and hence sought to protect the ability of Maori to control the pace of economic change. However the realities of colonisation were to take away that control and with it the mechanisms designed to protect Papatuanuku.

TE RIRI PAKEHA

From the beginning of organised Pakeha settlement, New Zealand was dominated by social classes committed to links with Britain, and the creation of an economic infrastructure producing export staples.

Pastoral farming was the obvious key to that infrastructure since the topography was clearly suited to stockholding.

However another reason for an initial concentration on farming was that in Aotearoa, unlike some other colonies being subjugated at that time, there was not initially a readily exploitable indigenous labour force. Maori clearly felt that as they continued to exercise their own independence they could not be subject to somebody else: and they certainly would not be subject labourers upon their own land.

These views, and the deeper land-based values which they reflected, were of course a serious obstacle to the increasing Pakeha lust for land after 1840. So too was the Treaty.

Although a right of pre-emption for land transfers to the Crown was in Article Two, the complex communal processes inherent in rangatiratanga made this a slow method of accessing land. Even more irksome, however, was the authority of rangatiratanga itself, since it stood in the way of the ultimate base of any colonisation—the removal of the indigenous people's power and their subordination to that of the coloniser.

And so it was in Aotearoa.

Through the imposition of English law the Treaty was on one hand dismissed as a nullity, while on the other its Article One cession of Maori sovereignty in the English text was viewed as a surrender of all authority - even though Maori law forbade such surrender and the Maori text's grant of kawanatanga enabled the Crown only to exercise control over Pakeha.

Through the introduction of Christianity the spiritual ethos which underpinned Maori values and use of the land was demeaned and then dismissed. If there was to be only one (white) law for all, there could only be one (white) god for all in this land as well. And although Jesus had driven the money changers from the temple, colonial christianity seemed to accept driving indigenous people from their land as being part of the new economic order leading to civilisation.

Through military power, Iwi in various areas were driven from their land, and episodes such as the massacre of Rangiaowhia and McDonnell's march through Taranaki introduced the notion of a scorched earth policy into this land.

Through introduced diseases for which Iwi had not acquired immunity the Maori population was decimated and Papatuanuku took back more of her own in the period 1840-1990 than she had in the preceding two hundred years.

Each of these processes was part of colonisation. They attacked the indigenous soul and caused the land which nurtured it to weep. They took away the very base of Maori existence and removed the ability of Maori to adapt to new ways of sharing the gifts of Papatuanuku.

For always the settlers sought the land and saw upon and within it only economic wealth.

The military was the blunt-edged weapon of that land alienation; the law was the surgical knife.

Between 1840-1990 there have been over 100 pieces of legislation and regulation directed at removing land from Maori, and all are in breach of the Treaty. Land is one taonga specifically protected by rangatiratanga and any unilateral act by the Crown to alienate it is clearly contrary to the Treaty.

But colonisation saw no need for such Treaty niceties and the law could provide a gloss of apparent constitutionality to justify theft. In the remarkable doublespeak which characterises colonial law, the legislation's name often masked its intent - thus the 1863 New Zealand Settlement Act sanctioned land confiscation, and the 1967 Maori Affairs Act allowed sales without consent of all the owners. Sometimes though the perfidy was obvious, as in the 1894 Validation of Invalid Maori Land Sales Act.

So by war and law the substance of the land passed from Maori. Military and other Maori resistance was overcome and continues to be ignored - as in the dismissal of recent Maori efforts to stop land sales to Japan. And if war and law were insufficient, the Christian God could always be called upon to justify the alienation and its consequent economic order as divine acknowledgement of individual free-will.

In 1991, Maori continue to suffer the effects of land-loss and the economic processes which it shaped. The elite Pakeha squattocracy of the 19th century now shares power with an even more elite empire of capital which sees the land as a resource for mineral exploitation and agribusiness. That empire is in turn now part of the global network that perpetuates a situation in which 6% of the world's population consumes 55% of the world's resources.

Colonisation and the denial of Maori made it possible for Pakeha New Zealand to become part of the 6%. That is not what the Treaty intended. It is also certainly not what Maori values presume, nor what our ancestors' shared existence with Papatuanuku was designed to bequeath to our mokopuna.