Te Wero!

Foundation documents challenge government policies

A Joint Methodist Presbyterian Public Questions Committee Occasional Paper 1994
Introduction

This paper provides the basic information about two foundation documents in the life of Aotearoa/New Zealand and indicates how they challenge a range of government policies. It also suggests a way into the future that takes the documents seriously.

The 1994 Conference of Te Hahi Weteriana o Aotearoa is being held at Whangarei, about an hours drive from Waitangi. At Waitangi two significant documents were initially signed by representatives of iwi Maori and the British Crown. Te Whakatupanga o te Rangatiratanga o Nu Tirini (Declaration of Independence), was first signed on 28 October 1835. Te Tiriti o Waitangi (Treaty of Waitangi), was first signed on 6 February 1840. These are important documents with ongoing significance for everyone living in Aotearoa today.

The Methodist Conference was an opportune time to highlight the relevance of these two documents. Each year, Waitangi Day, February 6th, together with Tino Rangatiratanga (Independence) Day, October 28th, provide further opportunities in the life of our Methodist and Presbyterian Churches, to reflect on the significance of these documents and their relevance for today. This paper 'Te Were' is circulated as an aid to such reflection and study.
Te Whakatupanga o te Rangatiratanga o Nu Tirenī/ Declaration of Independence

The quest for pan hapu unity and a Maori nation began in the 1820's with some rangatira beginning to talk about a Maori parliament. Two factors contributed to the Declaration of Independence. The first was a climate of perceived threat by both Maori and the Pakeha settlers. The second was disunity among the hapu making it difficult for them to present a united front to Pakeha demands. Maori were concerned at the increasing lawlessness of Pakeha who had settled here, together with their accelerating demands for land. This generated a growing unity amongst northern iwi who desired that Pakeha should control their own people. Traders and colonists also sought authority to control those of their own race who had settled here. Anglican missionaries sought to forestall the efforts of the French Catholics.

In 1831 thirteen rangatira of the north gathered at Kerikeri to sign a petition to King William IV. They requested the King be a "friend and guardian", to protect them from foreign threat and the misconduct of British subjects already settled here. There was no question of handing over any autonomy to Britain. Those rangatira were clear in their desire to retain their autonomy and independence.

A national flag was adopted by twenty-five northern rangatira at Waitangi on 20 March 1834. The flag an instrument for the registration of locally built ships was used by Maori in their trading offshore, principally to Australia. More importantly it was an internationally recognisable symbol of Maori autonomy and nationhood. The flag gained widespread acceptance in other area (iwi) as a symbol of Maori sovereignty. Claudia Orange states "there was also talk of a parliament house and a passport system that included deportation of undesirable Europeans." 1

On 28 October 1835 Busby assisted a group of thirty-three northern rangatira gathered at Waitangi to draw up the Declaration of Independence. It contained articles of confederation and declared the country to be independent. A confederation of tribes was formed to be known as the 'United Tribes of New Zealand'. The rangatira declared their country to be an independent Maori state (the Wenua Rangatira) with all "sovereign power and authority residing in the rangatira in their collective capacities." No legislative authority or governmental function could be exercised by other than the rangatira except as appointed by the confederation and acting under the authority of laws the confederation had enacted. They also petitioned King William IV "to be a parent to their infant state ..... its protector from all attempts upon its independence". The Declaration used two significant terms: "te mana i te wenua" (the mana is the land) and "tino rangatiratanga" (full authority and control). Neither the mana nor the tino rangatiratanga in the land and its people would be transferred to any other power. Both terms assert that the sovereignty of the country lay firmly in Maori hands. Manuka Henare states "The Declaration was a statement by Maori to both the outside world and to themselves that these islands of Aotea and Te Waipounamu were to be an independent state." 2 (See Appendix I for text of the Declaration.)

The declaration was signed by four more rangatira in 1836; three in 1837; two in 1838 and one more in 1839. Two notable southern leaders were amongst later signatories: Te Wherowhero Potatau of Waikato and Te Hapuku of Ngati Kahungunu. In effect the Declaration was being discussed and signed up to the time Te Tiriti o Waitangi was being drafted. This Maori initiative was a clear assertion of Maori sovereignty.

In later settler history the Declaration was presented as a somewhat fanciful event, organised by Busby for both Maori and British good, 'the French are coming' being the catchcry. Such an interpretation legitimised ordered colonisation. However the Declaration had a more profound meaning to Maori, being an expression of their autonomy and independence. They have consistently referred to it in this way ever since. In the present day document has begun to assume a wider significance. The Declaration has bee consistently referred to by Maori ever since. The Maori Congress in October 1993 called for universal recognition of the Declaration Of Independence of 1835. 3 It launched an educational campaign by placing advertisements in Wellington’s two daily newspapers containing the full text of the declaration in both Maori and English.

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1 Drent, Robert 'NZ a republic since 1835', Sunday Star-Times 4 September 1994.
2 Henare, Manuka, 'There is no tribal history only Maori history'. Paper to NZ Historical Association Conference, Auckland, August 1994.
3 The Evening Post 28 October 1993.
Te Tiriti o Waitangi / The Treaty of Waitangi

The Treaty of Waitangi was initiated by Governor Hobson and first signed at Waitangi on 6 February 1840, then subsequently at the Wesleyan Mission station at Mangungu (with John Hobbs acting as interpreter). It was then taken to many other venues throughout the country, ultimately being signed by 482 rangatira. Historically it is of a different order to the Declaration of Independence. It was the initiative of a foreign power whose agenda was settlement of its nationals in this land. It was necessary in order to sanction colonisation. Like the Declaration it too was about mana i te whenua and te tino rangatiratanga, being an endorsement of the Declaration of Independence. Te Tiriti guaranteed Maori their tino rangatiratanga. In the words of the English translation of the Maori version, the Queen agreed to the rangatira and the iwi retaining full power and control (tino rangatiratanga) of their lands, their villages and all their taonga including the Maori way of life. (See Appendix II for the text of the Maori version of the Treaty.)

The Maori version of Te Tiriti confirmed tino rangatiratanga or Maori sovereignty over all things Maori in article 2. It granted to the Crown in article 1, kawanatanga, which is a transliteration of governorship. Maori would have been in no doubt as to the meaning of rangatiratanga, and on the basis of its being guaranteed in Te Tiriti, willing to sign it. In 1840 Maori had no desire and no need to give away their mana i te whenua and tino rangatiratanga affirmed just a few years earlier in the Declaration of Independence. What they gave to the Crown was limited power to control new settlers. That power was kawanatanga. In retaining tino rangatiratanga it was clear to Maori that their ability to control their own destiny was not diminished. In granting kawanatanga they saw that they would benefit from limited controlled immigration and the introduction of new technology. So Maori were to retain the substance of the land while the Queen was to have the shadow. Article 3 did not make Maori into British subjects. Rather it recognised the continuing right of Maori to enjoy their own laws, customs and lifestyle, just as British subjects enjoyed their own. There was some advantage however for Maori in being regarded as British. For instance it made travel overseas a lot easier. This was reinforced in article 4 which is part of the recorded tradition of the Treaty, where the Governor agreed to protect Maori ritenga or custom; also the choice of religion with particular reference to the Church of England, the

Wesleyan Church and the Church of Rome.

However the English text of the Treaty which successive governments have relied on for their legitimacy, or their own unilateral proclamation of sovereignty, assumes that Maori gave away all their sovereign power to the Crown. Such an idea would never have been acceptable to Maori. 200,000 Maori had no need whatever to concede any power to just 2,000 settlers. They signed the Maori text because they knew what it meant. Their sovereignty was to remain intact.

When calling for recognition of the Declaration of Independence the chief executive of the Maori Congress, Te Williams stated, the Treaty of Waitangi could not have been entered into without the Declaration, because treaties were made between nation states. He went on to say that both documents provide “a constitutional basis for a respectful relationship between the Crown and Maori tribes”.

On the incorrect assumption that Maori ceded sovereignty, successive governments have set about usurping their mana i te whenua and tino rangatiratanga. A significant step was the imposition and establishment of a Westminster style parliament in the 1852 Constitution Act, which deprived Maori of the right to control their own destiny by transferring power to the settlers. The denial of mana i te whenua and tino rangatiratanga has most recently been expressed in Treaty claims settlements policy, government social and economic ideology, electoral reform, republicanism, globalisation and GATT and in discussions on a proposed United Nations Declaration on the Rights of Indigenous Peoples.

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4 The Evening Post, 28 October 1993.
Treaty claims settlements

The economic agenda wins. When the Labour government came to power in 1984 it responded favourably to a growing call for the recognition of Treaty rights by Maori, adopting strong treaty rhetoric. When the desire by Maori for the return of land, forests, fisheries and waterways unjustly acquired in violation of the Treaty was seen to clash with Rogernomics, which envisaged their transfer to the private sector, it was clear that Maori and the Crown were on a collision course. As a result Labour distanced itself from its earlier position on the Treaty. Ever since, governments pursuing the liberal economic agenda have sought to rein in the Treaty settlements process.

Waitangi Tribunal. It is important to realise that the Tribunal was established as an instrument of the state, being a court of enquiry, with all its members appointed by the government. It is also subject to the findings of a higher judicial body. There was a time when it stressed the belief that Maori never ceded their sovereignty. Following the State Owned Enterprises case before the Court of Appeal in 1987 it has spoken of a cession of sovereignty that took place with the signing of the Treaty. In 1993 government passed the Treaty of Waitangi Amendment Bill which provides that the Tribunal shall not recommend that the Crown acquire ownership of any land or interest held by any person. This was unnecessary as the Tribunal can only make recommendations which the government is free to ignore except where a private owner has bought State Owned Enterprises land with full warning of the (remote) risk of resumption if the Tribunal so orders. This action makes it clear that the Tribunal is an instrument of the Crown that will be reined in should it threaten Crown interests. Despite protestations to the contrary, it is clear the Waitangi Tribunal is being increasingly marginalised by the government. Its desire for direct negotiation with iwi, the Sealand deal, the land bank and fiscal envelope, together with a cut off date for the lodging of claims, are all evidence of a sidelining of the work of the Tribunal. It has been struggling to retain a significant role for itself. It is clear that the Waitangi Tribunal cannot deliver mana i te whenua and tino rangatiratanga to Maori.

The fisheries claims and Sealand. Early in its term of office the National government declared a goal of settling all Treaty claims by the year 2000. In mid 1992 the government was presented with a means of putting an end to fisheries claims through the Sealand deal. The Crown's view is that all Maori claims over commercial fishing are now deemed to be fully and finally settled. No case can be tested either before the courts or the Waitangi Tribunal. So the Sealand deal cannot be challenged. Traditional Maori fishing rights were protected under section 88(2) of the Fisheries Act which has now been repealed. Such rights will now be the subject of regulations determined by government. Tiriti fishing rights have been redefined to mean a share in a commercial fishing company driven by profit and which might have some trickle down benefit for some iwi, and the right to be consulted over various fisheries management decisions on the government's terms. Consultation will be with persons the government deems appropriate, with the government taking up its own mind in the end. The nature of the consultation (or the lack of it) over the Sealand Deed of Settlement has been questioned by a number of Maori. Much of it was deemed commercially sensitive and therefore unable to be discussed with iwi. The Crown saw it as an opportunity to set in place some finite limit on the Treaty settlements process. While Maori were successful in moving the settlement sum up from the $50 million the Crown wanted to settle for, and worked hard to get 50% of the quota allocation, it is significant that the Crown was able to do this for as little as $150 million - one third of the amount the Crown wrote off in the Bank of New Zealand transaction. Late in the day a clause was inserted into the Deed of Settlement by the Crown which stated, "Maori recognise that the Crown has fiscal constraints and that this settlement will necessarily restrict the Crown's ability to meet from any fund which the Crown establishes as part of its overall settlement framework, the settlement of other claims arising from the Treaty of Waitangi." (This is the origin of the fiscal cap for Treaty claims settlements.) The bill finalising the deal was rushed through parliament under urgency thereby preventing debate before a select committee. Today Maori are divided over how fishing quota will be distributed to iwi. The battle between mana moana and population based distribution is drawing energy away from other issues and pitting Maori against Maori. A classic case of the kawanatanga divide and rule strategy! Clearly the mana Maori motuhake and tino rangatiratanga of Maori with regard to fishing has been denied.

Fiscal envelopes. The latest scheme to achieve the government's election promise involves what is called a fiscal envelope which contains a sum of money which it is prepared to pay to settle all claims, widely believed to be $1 billion. Claimants will have to fight over the contents of the envelope, a policy that has its origins in the Sealand settlement. Given government commitment to budgetary restraint, Maori claimants will again be asked to accept less than just settlements. A further aspect of the fiscal envelopes policy is the 'land bank', whereby surplus Crown properties
will be used in land claims settlements. As these properties are notified, iwi will have just thirty days to lodge a claim. This is insufficient time for iwi to research a claim to that land, so further injustice may result. The government has also set a claims cut-off date of June 1996 after which no claims relating to last century, that are not registered with either the Waitangi Tribunal or the Crown will be considered. Many iwi lack the resources and organisation to prepare claims to meet such a deadline. Imposing an arbitrary cut-off date will create further injustice for Maori. Meanwhile the government will claim it has acted in good faith, has demonstrated financial responsibility and has complied with its election promise. Any failure of the policy will be blamed on Maori. (Sealord revisited!) There is no mana Maori motuhake and tino rangatiratanga here.

Leaked papers outline Crown position. A draft of the government's Treaty claims settlement policy contained in a leaked confidential document, indicates that settlements will be on the basis of how Maori used or proposed to use land and resources in 1840, rather than their present value. It will not compensate for the loss of potential from resources that had not been considered at that time. This rules out compensation for loss of resources such as coal, oil or geothermal energy, associated with land illegally taken by the Crown. In considering such claims existing private rights to the resource will be protected, including leases and resource consents. This means all benefits will have been extracted from the resource by the time it is available for claims settlement. Conservation lands will not be readily available for settlements. In the case of Tainui this means they will not get land returned for land confiscated, as over half the Crown land in its area is in the hands of the Department of Conservation. The fiscal envelope will contain a limited sum - the much guessed $1 billion. Affordability rather than justice on the basis of full compensation for resources taken unfairly, will be the basis of settlement. The total amount will be further eroded by a number of items to be charged to the fiscal envelope. These include: gifted land reclaimed by former owners; the cost of the Sealord settlement; the full cost of land and resources returned; the current market value of government assets returned to claimants, including forestry settlements and land returned by order of the Waitangi Tribunal; the cost of land banks, including their administration; the cost of claimants research, negotiation and technical assistance which have been reimbursed since 1992.5

Maori reaction. A number of concerns have been identified by Maori. Tainui's Bob Mahuta responding to the content of the leaked paper said it was, "an attempt by the Crown to keep the sordid history of illegal confiscation swept under the carpet ... there is not going to be a full and final settlement if they are going to adopt this approach."

Taranaki's claims research co-ordinator, Peter Addis, said, "with so many items coming out of the fiscal envelope there is no possibility of a one-off settlement ... the notion of a fiscal envelope is one we are not prepared to tolerate ... if they want to implement the things they say they are going to, there is no way iwi are going to be content to accept them." 6

Concern has also been expressed over the exclusion of women and youth from the settlements process as well as from any benefits that may follow. Any form of full and final settlement means that rangatahi lose their generational Treaty rights. They have responded by forming groups to protest the whole process and the role of their leaders in entering into these deals. The role of middle aged to older Maori men and their claimed mandate to represent Maori in the whole process, is increasingly being questioned. Another concern is that mana is being traded for money.

Annette Sykes has stated, "An important part of the future settlement process is that we are starting to be asked by the Crown to equate mana with money. The implication of this I find distasteful. For you can never satisfy the confiscation of taonga and wahi tapu with money or resources in kind." 7 Clearly kawanatanga is determined that it will be in control of the process and will seek to co-opt Maori to that end. There is simply no place for the recognition of mana i te whenua and tino rangatiratanga.

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5 Mana News transcript, 15 September 1994.
6 Mana News transcript, 15 September 1994.
Privatisation of power

The shift of power. In Aotearoa/New Zealand, political and economic power has traditionally been in the hands of the state. Over recent years there has been an ideological shift seeking the privatisation of the power that was once the prerogative of the state. This has led to massive restructuring of state departments and agencies. In the process there has been a significant privatisation of power. The major shifts from state to privatised power have been:

- deregulation of the financial market so that market forces rather than the state drives the economy;
- removal of trade protections, leading to the importation of cheap goods that leads to the crippling of local industries eg. clothing and footwear;
- low inflation and the reduction of public debt as the major goal of fiscal policy, despite the enormous social cost of reducing government spending in areas of social welfare, housing, education and health;
- commercialisation and privatisation of railways and forestry with massive staff lay-offs;
- transfer of control over the country’s financial, telecommunications and transport industries together with natural resources, to foreign ownership and control;
- deregulation of the labour market (Employment Contract Act) has driven down real wages, left trade unions relatively powerless and contributed to high unemployment;
- universal welfare provisions replaced by targeted benefits and minimal income support.

These and other moves facilitated the privatisation of state power by the transfer of power over resources and decision making to private capital and private individuals. Jane Kelsey states. "If deregulation of the economy vested virtually unrestrained market power in the hands of international capital, withdrawal of the state from regulating market behaviour and social outcomes bolstered the ability of certain individuals to exercise economic, social, gender and cultural domination over others." The state’s ability to shape economic policy is now limited. The determiners of our economic future are now located in off-shore financial centres.

The human cost. Who suffers most from this transfer of power into the relatively invisible and unaccountable hands of private corporations and private individuals? It is Maori, women, the poor, the young, the old, unwell and differently abled. Their suffering had been lessened but not eradicated under the welfare state. But when cuts and adjustments were made to welfare, unemployment and health benefits in 1990 and 1991, there was widespread disillusionment and anger. Pakeha felt that democracy had been betrayed and the country traded off to big business. Many Maori felt betrayed by yet more promises to redress their grievances. They were being victimised by the latest variation of an economic and political system built on their continued oppression and stolen resources.

Resurgence of nationalism. Ironically the result of the efforts of the rich and powerful to diminish the sovereignty of Aotearoa/New Zealand has been the resurgence of nationalism both among Maori and Pakeha. Pakeha want a sovereignty based on the settler nation state, with power concentrated in the hands of the heirs of the original Pakeha settlers. While for Maori self determination lies in the mana i te whenua and tino rangatiratanga of the Declaration of Independence and the Treaty of Waitangi. However there is room for alliances to be formed and built on. Constitutional reform offers just such a prospect for a better and fuller life in Aotearoa/New Zealand for both Maori and Pakeha.

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Globalisation and GATT

A new form of colonialism. Globalisation in its contemporary form heralds a new form of colonialism as the colonisation by countries during the Nineteenth and early Twentieth Centuries gives way to the colonisation by trans-national companies (TNCs) during the last half of the Twentieth Century. It is the goal of GATT and the other related agreements to make the world one single market with no barriers to the flow of goods, services and capital. This is based on two ideals; that exports are good, imports are bad; and that free trade benefits all, provided every country is involved. In practice it will be the TNCs that will gain the most, as free trade will allow them to increase their profits by selling new products and markets around the world, unhindered by regulations. Those who will lose the most are the underdeveloped countries and the indigenous peoples of the world who are already marginalised within their own countries.

Three new agreements. The Uruguay round of the GATT talks included three new agreements covering services: General Agreement on Trade in Services (GATS), the related Trade Related Investment Measures (TRIMs), and Trade Related Intellectual Property Rights (TRIPs). Also being proposed is a "free trade policing organisation", called the World Trade Organisation (WTO), to enforce the agreements after they have been ratified. TRIMs require the elimination of a range of investment controls such as requirements for local content, technology transfers, exchange restrictions, restrictions on foreign ownership etc. This would have the effect that after a phase-in period foreign firms would be treated no differently from local ones. For example it would prohibit the use of domestic subsidies or quotas to protect the local entertainment industry. This agreement protects any patent for a minimum of 20 years, copyright for fifty years, and trade marks for seven years; the last two renewable indefinitely. TRIPs promote the commodification and privatisation of knowledge that has often been stolen from indigenous peoples. This move was condemned by an international conference of indigenous peoples who signed the Mataatu Declaration on Cultural and Intellectual Property Rights of Indigenous Peoples at Whakatane in June 1993. It declares, "that Indigenous Peoples of the world have the right to self determination; and in exercising that right must be recognised as the exclusive owners of their cultural and intellectual property."

Protection of TNCs. These GATT agreements have nothing to do with free trade but every thing to do with protecting the TNCs. Some of the consequences of this agreement are; that it would make it illegal for indigenous people to use traditional plants, and medicines if they were patented; make it possible to patent life forms and human gene lines; and prevent governments from using compulsory drug licensing, drug importation from cheaper sources or generics to save money.

World Trade Organisation. Its responsibilities are to supervise the implementation of GATT agreements in member countries. All necessary steps must be taken to amend domestic laws so that they conform with the GATT and related agreements. The WTO can approve retaliation and other trade sanctions in respect of trade policies that are incompatible with GATT. In this context any country that seeks to impose environmental standards or controls above internationally agreed minimum standards may be guilty of restrictive trade practices and punished by sanctions. All member countries are entitled to participate in the WTO and have one vote, so in appearance there is democracy and equality between sovereign states. In practice this will be another arena of world politics that the rich countries of the North will dominate to the disadvantage of those countries without the political, economic, or military leverage.

Popular Sovereignty. Many of the changes required by GATT have already been implemented by the past Labour and present National governments with the consequent reduction in the health, wealth, and education of the average person, in particular the Maori. The GATT agreements will also mean that any policy return to self reliance though import controls and restrictions on foreign ownership etc, may be punishable by international sanctions, in effect making the economic policies of structural adjustment irreversible. The agricultural export gains for NZ with the ratifying of GATT as promoted by the Government may not eventuate, and if they do they are unlikely to be sufficient compensation for the consequent loss of national sovereignty.

Treaty implications. Manuka Henare says, "Maori as a nation (ie Declaration of Independence) did not have any significant input into the GATT negotiations." 9 Jane Kelsey states, "Virtually every aspect of the GATT involves a serious conflict with Crown obligations and Maori rights under the Treaty of Waitangi!" 10 These include:

- protection of taonga and wahi tapu from exploitation;
- control of land, forests, fisheries, waterways, ngawha, or pouamau;

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9 Henare, Manuka personal comment, 19 September 1994.
Draft UN Declaration on Rights of Indigenous Peoples

New Zealand government objections. Throughout the process of drafting this declaration the New Zealand government has opposed the right of indigenous peoples to self-determination. It has isolated itself among the several English speaking colonising powers, with USA, Canada and Australia all accepting the morality of this right to self determination. The New Zealand government has sought to replace the right to 'self determination' with the much more limited concept of 'self management'. It has stated, "Maori did not have a right to self-determination because we are urbanised and lack the defined territory in which self-determination vests." However in international law self determination is a right inherent in peoples, not territory. The New Zealand government has also opposed the use of the term 'peoples', preferring the term 'populations'. By labelling Maori as a population the government seeks to get around rights that exist in UN conventions such as those on civil and political rights, which are vested in peoples not populations. The government has also sought to ensure that the declaration is consistent with domestic law, despite the declaration seeking to create international norms and not domestic ones.

Fear of secession. Our government seems to be concerned that self determination might be understood as guaranteeing the right to full independence as a separate state. This is part of a fear within some governments that self determination will lead to fragmentation of nations that would be a threat to world peace, security and economic stability. However as Professor Glenn Morris of the American Indian Movement of Colorado stated, "Global conflict and tensions between peoples and states do not erupt because peoples are free to exercise their right to self determination, rather it is the absence of freedom and the denial of the rights of peoples to determine their destinies that provoke mistrust, tension and conflict ..... states must recognise that if they had seriously and consistently respected the right of indigenous self determination at any point to the present, there would be little need for this (UN) Working Group now." 12

Need to challenge the government. The position being taken by the New Zealand government is contrary to the mana i te whenua and tino rangatiratanga recognised in the Declaration of Independence and guaranteed in the Treaty of Waitangi. As Moana Jackson has said, "It is our belief that our people need to know of the statements being made at international fora by the New Zealand Government, especially when they clearly seek to deny us those rights which are consistent with both the Treaty and the developing consensus of international indigenous law. Indeed if the Declaration is to be a meaningful statement of international norms to which governments and indigenous peoples can refer, it is essential that the ideas propounded by the Crown be challenged." 13

Electoral Reform

Introduction of MMP. Growing distrust of governments and the political process produced pressure for electoral reform. This resulted in the setting up of the Royal Commission on the Electoral System which reported in 1986. It recommended a change to proportional representation so as to ensure that the parliamentary seats obtained by political parties are in proportion to the votes cast for them at any general election, provided they receive a minimum percentage of the total votes cast. This led to two referendums. The first in 1992 to indicate what form of proportional representation voters wanted. This indicated a preference for the multi-member form of proportional representation (MMP). The second binding referendum in 1993 was to determine whether first past the post would be retained or MMP introduced. The choice was for the latter and legislation to this effect was passed by parliament in early 1994.

Boycott of electoral reform referendum. The September 1992 indicative referendum on electoral reform resulted in considerable Maori comment. While some saw proportional representation as offering a better deal for Maori, it is clearly not based on mana i te whenua and tino rangatiratanga. It was for this reason that both the Maori Council and the Maori Congress urged a boycott of the referendum. The Council's view was that there was nothing in it for Maori. The Congress spoke out in favour of self-government and a Maori parliament.

The Maori electoral option. Originally Maori were to lose their four guaranteed seats in parliament under MMP. A strong reaction from Maori reversed this proposal. To take full advantage under the MMP system, all Maori would need to be registered on the Maori rolls, as the total number of Maori seats was to be based on the number registered on the Maori rolls. So Maori were given an electoral option, the opportunity in a set period of time either to register or transfer onto the Maori rolls. The lack of government funding for the promotion resulted in Maori taking a case to the Waitangi Tribunal. The Tribunal recommended increased funding as a matter of urgency but the government remained unmoved. A suggestion that the closing date for the promotion be extended was also turned down.

Despite considerable Maori energy being put into the campaign, the outcome was disappointing. The possibility of there being seven new Maori

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seats had been touted. In the event it was only one. This resulted a case being presented to the High Court for a re-run of the Maori electoral option. It also resulted in calls for a separate Maori parliament or an upper house with a guaranteed number of Maori seats.

Proportional representation fails the test. MMP will not achieve the ultimate goal of many Maori: their right to self determination or mana i te whenua and tino rangatiratanga. Electoral reform is seen to be just a variation of the imposed Westminster parliamentary system of kawanatanga which ensures domination by Tāuiwi of whatever political persuasion. No form of proportional representation reflects the Declaration of Independence or is based on Te Tiriti o Waitangi and their guarantee of mana i te whenua and tino rangatiratanga to Maori.

Consultation with Maori over electoral reform rejected. The Royal Commission on the Electoral System in recommending the change to proportional representation recognised that Maori have special rights and stand in a unique constitutional position under the Treaty of Waitangi. Accordingly they urged the government to consult with Maori on how to protect this right. While the government pressed on with a referendum and ultimately passed legislation for the introduction of MMP it chose to ignore the recommendation on consultation with Maori as to their rights.

Republicanism

A n agent of economic liberalism. The idea of New Zealand becoming a republic has recently been promoted by the Prime Minister Jim Bolger. The move to an independent post colonial state has been portrayed as a natural progression for a country that seeks to sever its colonial ties and by implication its colonial past from the ‘Mother’ country, England. It is directly linked to the desire to fully participate in the global market and to restructure internal economic and social policy. As Jane Kelsey states, “Republicanism would help secure the independence of the country, sharpen people’s drive to succeed in the competitive global economy, and liberate the individual from the despotism of the colonial state.”

Responses. Pakeha have been generally unreceptive to the idea, feeling they are losing control of their identity, their economy, their country. They see no public mandate for the massive restructuring they have suffered under. A number of Maori voiced deep suspicion at the motives for change. They saw it as a mechanism by which the Treaty could be now nullified. Also as a device to remove their access to the Privy Council.

The Maori message. Maori are aware of the valuable role the Privy Council has played in securing some of their rights in recent years. They are understandably wary of its demise. Without ties to the Crown, this highest court of appeal would be lost. The Maori response was clear. Republicanism could not be addressed without the Treaty. A genuine commitment to constitutional reform would need to precede any change to the relationship with the English Crown. The need for a constitutional review must come before any move to establishing Aotearoa/New Zealand as a republic. As Jane Kelsey says, “Any attempt to close the door on the Treaty of Waitangi and create a post-colonial republic without addressing the issue of constitutional reform is doomed to failure.”

Constitutional reform. There have been a number of calls for a reassessment of the place of Maori in the political life of Aotearoa/New Zealand. The need for a consultative dialogue between Maori and the Crown regarding constitutional reform has been taken up by churches, iwi and a variety of Maori groups. The need for such dialogue has not been taken up by the Crown. The idea of a power sharing partnership that lies at the heart of political arrangements in this country, is one that has unsettled successive governments.


15 ibid
The way ahead: constitutional reform

Mana i te whenua and tino rangatiratanga usurped. These principles affirmed by Maori in their Declaration of Independence in 1835 and acknowledged and guaranteed by the Crown in Te Tiriti o Waitangi of 1840 have long since been usurped. Today they find no place in the settlement of Treaty claims, economics of the free market, electoral reform, republicanism, globalisation and GATT, or the government’s position on the draft United Nations Declaration on the Rights of Indigenous Peoples. What is now required is a process of constitutional reform which recognises that Maori have an inherent right to their mana i te whenua and tino rangatiratanga.

Electoral boycott. In September 1990 Te Runanga Whakawhanaunga i Nga Hahi (the Maori Ecumenical Council) called “to all Maori and to all people of goodwill” not to vote in the October General Election because of 150 years of injustice in denying their mana i te whenua and tino rangatiratanga. They also stated it would not be difficult to establish a constitutional forum to resolve Treaty issues, such as mana i te whenua and tino rangatiratanga, through dialogue and negotiation and indicated they would be willing to contribute a draft proposal for such a process.

Extent of Maori non-vote increases. Maori demonstrated their continuing scepticism toward the political process at the 1993 general election which also included a binding referendum on the multi-member form of proportional representation. 36.8% of eligible voters in the Maori seats did not vote. This figure was up from 30.2% at the 1990 election. This increase came despite the lack of any campaign encouraging Maori not to vote and in spite of all the hype to get people out to vote and participate in the referendum. (In the general seats there was a 19.5% non-vote.) Moana Jackson of the Wellington based Maori Legal Service stated that the lack of participation in the present political process by Maori is a “positive sign of disenchantment, a positive sign of protest against the present imposed political system ... for Maori to decide not to be involved in that process is really an assertion of independent rangatiratanga.”

Disenchantment extends to enrolling. A Maori Legal Service survey of Maori carried out in April 1994 indicated 71% were not registered on any

roll. When asked why, 51% of those under 35 indicated they could see little point in registering as they did not believe the future of Maoridom lay in the political system, or they did not trust politicians. Moana Jackson stated, “If the poll is accurate, a cross-section of Maoridom is thinking the issue for many, especially young people, is constitutional reform.”

Maori referendum on preferred political system announced. Further disenchantment with the political system was voiced when Maori rights group Te Ahi Kaa announced that a nationwide referendum of Maori to find out what model of government they wanted, would be launched on Tino Rangatiratanga (Independence) Day, 28 October 1994. Spokesperson Annette Sykes stated, “Ahi Kaa’s principal concern is to ensure that Maori are affirmed and assert their tangata whenua status without having these institutional arrangements like MMP or talk of a republic being imposed upon us. Central to that discussion is asking ourselves as Maori whether or not we support the constitutional or governmental system being imposed upon us without our participation, and which are quite contrary to our rights as tangata whenua.”

Churches leaders respond. The message from Maori is clear: no political system that is imposed and controlled by kawanatanga is acceptable; only Treaty-based constitutional reform that recognises mana i te whenua and tino rangatiratanga is acceptable. Where then are we as churches? Church leaders have drawn attention to the failure of Westminster based political systems to recognise the right of Maori to their mana i te whenua and tino rangatiratanga. In their statement for 1990 church leaders stated “We believe their needs to be a political restructuring which recognises Maori as a people possessing te tino rangatiratanga according to the Treaty.” The Catholic Bishops’ Conference in their statement for 1990 stated that the Treaty established this country as a bicultural state and recognised the “need for constitutional supports for protecting the rights of the tangata whenua - cultural, social and political ...” The Methodist Conference in 1992 stated: “believing the September referendum on proportional representation was premature ........ Conference supports all efforts to hold a constitutional review as early in 1993.” In 1993 Church leaders in their ‘Social Justice Statement’ stated that “a primary focus for our social justice concerns must be the special relationship which exists between Maori and all other New Zealanders. It is expressed in our founding document, the Treaty of Waitangi.” They stated that after the election they would ask the government to carry out the recommendations of the Royal Commission on the Electoral System for the government to consult with Maori as to their political rights under the Treaty.

16 Mana News transcript, 2 September 1993.
17 The Dominion, 22 April 1994.
Methodist and Presbyterian responses. The Methodist Conference in 1993 gave its support to "the stand of the Conference of Churches of Aotearoa New Zealand and others calling for constitutional reform, and supports all efforts to hold a constitutional hui." A similar resolution was passed by the Presbyterian Assembly in May 1994. In its report to the Methodist Conference 1994, Te Taha Maori states: "We seek greater recognition of the Maori world view with a commitment by the wider church to the Treaty and te tino rangatiratanga and for this to be demonstrated by the whole church promoting constitutional reform."

Tauwiri and Maori working together. The current free market globalisation ideology that is driving our economic and social policies has led to many of the Pakeha beneficiaries of colonisation in Aotearoa, now being in the same position Maori have been for a very long time under colonisation. It would be to the benefit of both Tauwiri and Maori in Aotearoa/New Zealand to work together for a decolonised state based on the Declaration of Independence and the Treaty of Waitangi. This will require Maori organising as a nation so as to negotiate as one, and Tauwiri accepting the Declaration and the Treaty as the basis for a better life for all now in Aotearoa/New Zealand. Commitment to a constitutional review process needs to become a priority for us all.

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Glossary of Maori terms used in this paper:

- Aotearoa: North Island, New Zealand
- hapu: sub-tribe
- harakeke: flax
- iwi: tribe, people
- kawanatanga: governorship
- kowhaiwhai: a painted rafter pattern based on the ngutukaka
- kowhai: flower
- mana: power, authority
- motuhake: separate, extra, special, absolute
- ngawha: hot springs
- Papatuanuku: Mother earth
- pounamu: greenstone
- rangatahi: youth
- rangatira: chief
- rangatiratanga: chieftainship, control, authority, sovereignty
- rite: customs, practices
- tama: young male
- taonga: treasure
- tino: full, total, absolute, very
- toa: warrior, brave
- whenua/whenua: land
DECLARATION OF THE INDEPENDENCE OF NEW ZEALAND

(According to Manuka Henare the English text is not an exact translation. Rather Busby explains what is in the Maori text.)

1. We the hereditary chiefs and heads of the tribes of the Northern parts of New Zealand, being assembled at Waitangi, in the Bay of Islands, on this 28th day of October, 1835, declare the Independence of our country, which is hereby constituted and declared to be an Independent State, under the designation of The United Tribes of New Zealand.

2. All sovereign power and authority within the territories of the United Tribes of New Zealand is hereby declared to reside entirely and exclusively in the hereditary chiefs and heads of tribes in their collective capacity, who also declare that they will not permit any legislative authority separate from themselves in their collective capacity to exist, nor any function of government to be exercised within the said territories, unless by persons appointed by them, and acting under the authority of laws regularly enacted by them in Congress assembled.

3. The hereditary chiefs and heads of tribes agree to meet in Congress at Waitangi in the autumn of each year, for the purpose of framing laws for the dispensation of justice, the preservation of peace and good order, and the regulation of trade; and they cordially invite the Southern tribes to lay aside their private animosities and to consult the safety and welfare of our common country, by joining the Confederation of the United Tribes.

4. They also agree to send a copy of this declaration to His Majesty the King of England, to thank him for their acknowledgment of their flag; and in return for the friendship and protection they have shown, and are prepared to show, to such of his subjects as have settled in their country, or resorted to its shores for the purposes of trade, they entreat that he will continue to be the parent of their infant State, and that he will become its Protector from all attempts upon its independence.

Agreed to unanimously on this 28th day of October 1835, in the presence of His Britannic Majesty's Resident.
Appendix II

TE TIRITI O WAITANGI (MAORI VERSION)

He Kupu Whakataki

Ko Wikitoria te Kuini o Ingaran i tana mahara atawai ki nga Rangatira me nga hapu o Nu Tirani i tana hihia hoki kia tohungia ki a ratou o ratou rangatiratanga me to ratou wenua, a kia mau tonu hiki te Rongo ki a ratou me te Atanoho hoki kua wakaaro ia he mea tika kia tukua mai tetahi Rangatira - hei kai wakarite ki nga Tangata Maori o Nu Tirani kia wakaeaia e nga Rangatira Maori te Kawanatanga o te Kuini ki nga wahi katoa o te wenua nei me nga motu - na te mea hiki he tokomahae ke nga tangata o tona Iwi kua noho ki tenei wenua a e haere mai nei.

Na ko te Kuini e hiahia ana kia wakaritea te Kawanatanga kia kaua ai nga kino e puta mai ki te tangata Maori ki te Pakeha e noho ture kore ana.

Na kua pai te Kuini kia tukua ahau a Wiremu Hopihona he Kapitana i te Rolara Nawi he Kawana mo nga wahi katoa o nu Tirani i tukua alaihe a mua atu ki te Kuini e mea atu ana ia ki nga Rangatira o te wakaminenga o nga hapu o Nu Tirani me era rangatira atu enei ture ka koreroa nei.

1. Ko nga rangatira o te wakaminenga me nga Rangatira katoa hoki, kihai i uru ki taua wakaminenga, ka tuku rawa atu ki te Kuini o Ingaran i ake tonu atu - te Kawanatanga katoa o o ratou wenua.

2. Ko te Kuini o Ingaran ka wakarite ka wakaae ki nga Rangatira, ki nga hapu, ki nga tangata katoa o Nu Tirani, te tino rangatiratanga o o ratou wenua o ratou kainga me o ratou taonga katoa. Otiia ko nga Rangatira o te wakaminenga me nga Rangatira katoa atu, ka tuku ki te Kuini te hokonga o era wahi wenua e pai ai te tangata nona te wenua, - ki te ritenga o te utu e whakaritea ai e ratou ko te kaihoko e meatia nei e te Kuini hei kaihoko mona.

3. Hei whakaritenga mai hoki tenei mo te wakaetanga ki te Kawanatanga o te Kuini - ka tiaikia e te Kuini o Ingaran nga tangata Maori katoa o Nu Tirani. Ka tukua ki a ratou nga tikanga katoa rite tahi ki ana mea ki nga tangata o Ingaran.

Na, ko matou ko nga rangatira e te wakaminenga o nga hapu o Nu Tirani ka huhihi nei ki Waitangi ko matou hoki ko nga Rangatira o Nu Tirani ka

kite nei i te ritenga o enei kupu. Ka tangohia ka wakaetia katoatia e matou. Koia ka tohungia ai o matou ingoa o matou tohu.

Ka meatia tenei ki Waitangi i te ono o nga ra o Pepuere i te tau kotahi mano e waru rau e wa tekae o to tatou Arika.

(translation by I. H. Kawharu)

Victoria, the Queen of England, in her concern to protect the Chiefs and sub-tribes of New Zealand, in her desire to preserve their chieftainship and their lands to them, and to maintain peace and good order considers it just to appoint an administrator one who will negotiate with the people of New Zealand to the end that their chiefs will agree to the Queens Government being established over all parts of this land and (adjointing) islands and also because there are many of her subjects already living on this land and others yet to come. So the Queen desires to establish a government so that no evil will come to Maori and European living in a state of lawlessness. So the Queen has appointed me, William Hobson, a Captain in the Royal Navy to be Governor for parts of New Zealand (both those) shortly to be received by the Queen and (those) to be received hereafter presents to the chiefs of the Confederation chiefs of the subtribes of New Zealand and the other chiefs, these laws set out here.

1. The Chiefs of the Confederation, and all the chiefs who have not joined that Confederation give absolutely to the Queen of England for ever the complete governorship over their land.

2. The Queen of England agrees to protect the chiefs, the subtribes and all the people of New Zealand in the unqualified exercise of their chieftainship over their lands, their villages, and all their treasures. But on the other hand the Chiefs of the Confederation and all the Chiefs will sell to the Queen at a price agreed by the person owning it and by the person buying it (the latter being) appointed by the Queen as her purchase agent.

3. For this agreed arrangement therefore concerning the government of the Queen, the Queen of England will protect all the ordinary people of New Zealand, and will give them the same rights and duties of citizenship as the people of England.

So we the Chiefs of the Confederation and of the subtribes of New Zealand, meeting here at Waitangi having seen the shape of these words which
we accept and agree to record our names and our marks thus. Was done at Waitangi on the sixth of February in the year of our Lord 1840.

The Fourth Article

Two churchmen, the Catholic Bishop, Pompallier and the Anglican missionary William Colenso recorded a discussion on what we would call religious freedom and customary law. In answer to a direct question from Pompallier, Hobson agreed to the following statement. It was read to the meeting before any of the chiefs had signed the Treaty.

E mea ana te Kawana ko nga whakapono katoa o Ingarani, o nga Weteriana, o Roma, me te ritanga Maori hoki e tiakina ngatahitia e ia.

The Governor says that the several faiths of England, of the Wesleyans, of Rome, and also Maori custom, shall alike be protected by him.
The harakeke weaving forms are an emblem for the land - Papatuanuku - being an integral part of our lives.

The Tama Toa stands holding the Treaty as if he was speaking about it. He stands above a kowhaiwhai (kowhai ngatukaka) form - a reference to Papatuanuku. The weaving is used to signify the land.

Cover illustration by: Hone Ngata