

13: The Treaty is Always Speaking? Government Reporting on Maori Aspirations and Treaty Meanings

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Social policy in the 1980s and 1990s was characterised by more direct and more assertive Maori challenges than ever before. Other chapters in this collection suggest that individual social workers and public servants had previously tried to work with Maori communities and to promote Maori interests, as they perceived them. By the 1980s the Maori voice was more to the fore at a national level, and government departments struggled to appear responsive to Maori concerns. Danny Keenan, the writer of this 'think piece' is now an academic commentator on events in which he participated, and which shaped his life during the 1980s.

From Ngati Te Whiti and Te Atiawa, Danny Keenan grew up in Pungarehu in a family that placed a high value on education. After attending New Plymouth Boys' High School, he entered the public service as a clerical cadet. His experiences there took him from Treasury, to the Lands and Survey Department, the National Library and the Department of Social Welfare. He joined the Department of Maori Affairs in 1982, and so was a participant in some of the events he describes in this piece. As a policy analyst in the Department's Community Development Division, Keenan was secretary to the interdepartmental Maatua Whangai Committee chaired by John Rangihau. The Committee was involved in attempts to revitalise the Maatua Whangai programme, but a sense that the Department of Social Welfare had larger, structural problems in dealing with Maori youth led eventually to the Puao-te-ata-tu report, which Keenan comments upon here. He was also one of the team that organised the Hui Taumata in 1984 and was secretary to the Ministerial Review Committee on the Department of Maori Affairs in 1985. The period in which Keenan was travelling secretary with the He Tirohanga Rangapu exercise was an intense, high adrenalin phase in his life, involving travel up and down the country with Koro Wetere, the Minister, and meeting with large numbers of Maori leaders (past, present and future). He had a strong sense of active participation in a time of historical change. Keenan canvasses here the two reports that resulted, He Tirohanga Rangapu and Te Urepare Rangapu.

From this also came personal consequences. By the time the Department of Maori Affairs was abolished in 1989, Keenan was Regional Manager in the Department's New Plymouth office, and he, along with some 1100 other Maori Affairs staff, lost his position. A new direction followed. Keenan had completed a BA Honours degree in history over 1986-87, so in the early 1990s he started a PhD at Massey University (where he had previously studied extramurally), and eventually took up a lectureship in the Department of History there. His role now includes lectures to

students of social policy, and a conscious attempt to promote Maori history within the boundaries of the mainstream discipline.

Here Keenan casts his historian's eye over events in which he was an active participant. As governments sought to understand Maori aspirations and manoeuvre around them, a cluster of significant departmental reports addressed, with varying degrees of success, 'Maori issues', the Treaty of Waitangi and departmental reform.

In recent years, the Treaty of Waitangi has assumed more prominence in social policy and public policy debates; for a long time, it featured only rarely. It was not usual for governments to rely upon the Treaty to provide essential points of reference for the framing of Maori policy. If the Treaty featured at all, it appeared as a rhetorical device aimed at invoking an affirming if deceptive view of New Zealand's race relations history – a view with little practical policy application. It was largely left to Maori people to keep alive Treaty issues. This had certainly occurred during the nineteenth century, especially once Chief Justice James Pendergast in 1872 declared the Treaty a 'simple nullity' because it had not been incorporated into domestic law.¹ In general, from the late 1960s Maori people advanced Treaty issues largely through new organisations like the Maori Women's Welfare League, established in 1951. Annual League conferences became an important new forum for Maori women sharing views of issues like housing, health and welfare. Even the conservative New Zealand Maori Council, formed in 1962, eventually became more outspoken regarding the political and social aspirations of Maori.

Not surprisingly, from the 1960s most Maori attention was initially directed at economic and social indicators. These painted a bleak picture of the state of Maori communities, especially since the migrations from the 1940s into urban centres in search of work. Twenty years later, issues directly relating to the Treaty emerged because Maori people increasingly pointed to direct links between their negative social situation and the poor history of Treaty dealings since 1840. As a result, the Crown and New Zealand society at large began to take notice of Treaty issues, and significant debate ensued. This debate is far from over; it has been – and will continue to be – played out in many places and within many different contexts.² The debate has been especially active in the scholarly context with a growing number of many important new texts becoming available.

The Crown was initially quite lethargic in dealing with Treaty issues. But it was soon compelled to move rather more quickly than it had first thought necessary on key Treaty concerns. One small, but nonetheless important, arena within which the Crown sought to address Treaty issues lay in the production of major Maori policy reports. Various agencies and departments produced these in order that the Crown might better respond to Maori demands for organisational reform. Such reform was much needed, Maori argued, if departments were to be more responsive to their needs. As a consequence, the Crown produced a significant number of major reports in a relatively short space of time that addressed important government structural matters. Successive administrations were keen to show that they could adapt their structures to meet the changing needs of Maori.³

Increasingly however, the Crown's attention was subtly drawn away from canvassing issues about how departments might be reformed. Instead, it was compelled to address the question of how it was to achieve reform within a clear Treaty context. The issue was how to ensure that, in reorganising departments and policies, Treaty obligations were also met. In the end, this process was intellectually untidy and ultimately politically unsatisfactory. It represented incremental public policy making at its worst, driven by the Crown with little substantive Maori input.

The Crown's problem was simple. It soon realised that when producing Maori policy reports, Treaty obligations could not be continually referred to in the loose and rhetorical way it had been doing since the mid 1970s. Sooner or later, Maori would call the Crown to account and it would be asked to explain what its Treaty statements and assurances actually meant. Therefore, in the late 1980s, a number of Maori policy reports grappled directly with Treaty issues and meanings, in the context of reforming departments. In the end, the Crown devised policies and frameworks in order to make political sense of the Treaty, and its guarantees, at least, as far as the Crown was concerned; Maori people, though, were less than impressed.

In this chapter I will examine how successive governments sought to accommodate the Treaty within their 'Maori policies', as Maori were insisting that they do. I go on to assess how governments proposed to solve issues relating to the reform of its agencies. Such reforms were all about meeting the needs of Maori, while at the same time adhering to Crown obligations under the Treaty, or so the Crown was wont to claim. When it is considered how the Treaty was used in a number of key public reports, the looseness of the Crown's broader use of history can be seen, especially once it was inevitable that the Treaty would have to be faced and accommodated.

Accordingly, such considerations of the use to which the Treaty of Waitangi has been put in such Maori policy reports offers a sense of how wider issues of history are played out in the social and public policy arena. One of the most telling of recent opinions about the Treaty is also the simplest: 'the Treaty is always speaking'.⁴ Comments like this confirm the notion that, to many, the Treaty has a continuing and relevant application in changing times. The challenge is to understand the Treaty's meaning and significance in a variety of shifting policy circumstances.

Maori economic and social concerns

Throughout the 1970s, Maori people, communities and organisations became more aware of, and politically active in response to, their social and economic needs. The social and economic statistics for Maori were bleak. Social indicators in education, housing, justice, and employment all pointed to the fact that Maori were economically and socially underdeveloped. Maori had fared badly since the heady days of mid-century urbanisation. As reported by the Royal Commission on Social Policy in 1988, Maori households were larger than non-Maori, with a disproportionate number of sole parents; incomes were considerably lower; employment levels for Maori men were declining; and Maori were particularly disadvantaged in education and health.⁵

Beginning during World War II, but intensifying in the post-war decades, Maori people had moved in their thousands from the rural areas to the new urban centres, in part compelled by legislation like the Maori Social and Economic Advancement Act 1945 which had promised much. The migrations were necessary because the Crown had finally recognised that Maori rural land holdings could no longer sustain the growing Maori population.⁶ According to a 1936 estimate 91 per cent of Maori lived in rural areas, with 9 per cent residing in 'boroughs'. By 1961, this situation had changed markedly. The numbers of Maori living in rural areas had declined to 66.6 per cent, and the percentage who had moved to the urban centers had risen to 33.3 per cent.⁷ Maori loss of economic holdings since the land sales under the Liberal and Reform governments from the 1890s through to the 1920s had been enormous. As early as the 1890s, there was a prediction that if the rate of land loss continued at the current rate, Maori faced the very real prospect of losing everything and becoming 'charges on the state'.⁸

Maori were increasingly alerting the government to these negative indicators from the 1970s. They were also seeking to draw the Crown's attention to historic grievances that went back into the early nineteenth century. The question of how such a situation of disparity ever came about constantly arose. Why had Maori especially fared so badly since the 1940s? And – asked again and again – what was the place of the Treaty in all of this? Had its guarantees ever been worth anything?

Involving Maori in policy formulation

In 1984, just after the new Labour Government was elected, a Maori Economic Development Conference, or Hui Taumatua, was organised. The conference was convened in the old Legislative Chambers of Parliament and spanned three days. Maori leaders attended from far and wide. The conference gave Maori the chance to speak to each other, and to the government, about the situation that now afflicted them. Maori people spent many hours talking about the negative social and economic position of their people, and many solutions were proposed.

In the end, the conference made a clear call: 'Give us the power – give us the resources.' Maori leaders asked the government to grant more authority, and more resources, to Maori organisations so that they could deal with their situation themselves, and in their own ways. The leaders called for resources and power to a degree that governments had historically been unwilling to concede.⁹

The Hui Taumatua led to greater awareness amongst departments of Maori concerns. The conference pointed to the need to consider structural and policy changes to meet those concerns, such as allowing direct Maori input into policy formulation. It all happened rather quickly. Departments were now being advised to consult directly with Maori. The Department of Maori Affairs was the only central agency conducting any form of direct consultation with Maori communities and it was the sole agency with any understanding about how Maori networks functioned. Now, a greater responsibility fell on other departments to go out into the flax roots and consult. One good example of a department that rose to the challenge was the Department of Social Welfare. It administered huge sums to Maori in benefits, or

'negative funding'.

Before considering how Social Welfare consulted with Maori, it is important to look at what was happening in Parliament, where there is clear evidence that successive governments were acknowledging the Treaty. The Treaty of Waitangi was increasingly finding its way into legislation, putting pressure on Ministers and their departments to follow Parliament's lead, and to integrate Maori aspirations and concerns into policies and processes, and into the administration of departments.

The Treaty of Waitangi Act 1975 holds an important place here.¹⁰ This established the Waitangi Tribunal with powers to hear claims from Maori and to investigate allegations of Treaty breaches. The Tribunal was empowered to investigate all Crown actions since 1975 (but not before) that might be seen to have prejudicially affected Maori interests. Placement of claims before the Tribunal was initially slow. The first claim was heard in 1977, brought by Joe Hawke and Ngati Whatua over issues of customary access to shellfish.¹¹ In 1985, the scope of the Tribunal's investigations was extended back to 1840. As a result, the number of claims filed with the Tribunal greatly increased. All of New Zealand's colonial history was now open to judicial scrutiny in a community 'ill-prepared to handle the possible consequences'.¹² The Tribunal was also empowered to commission research and to receive as evidence reports based upon scholarly research conducted by others.¹³ Tribunal membership was expanded from three members to six, four of whom were to be Maori. The first 'new claim' lodged after 1985 was the Orakei claim, dealing with the removal of Ngati Whatua from their lands near Bastion Point in the 1950s. This claim was presented in April 1986 and the report was released in November 1987, with the Tribunal finding the Crown found 'culpable of wrongdoing'.¹⁴

Another piece of legislation with direct Treaty implications was the State Owned Enterprises Act 1986. This Act angered Maori. It seemed to facilitate the transfer of Crown land into private hands – and thus beyond the reach of Treaty claimants, since the Tribunal was not permitted to investigate issues relating to private land. State Owned Enterprises were to be new organisations, and they were effectively to be private organisations; new agencies structured around privatised, self-managed and profit-oriented models. When introduced into Parliament, the Bill contained no provisions recognising the Treaty, much less providing for Maori interests in lands to be transferred. Maori concern with the legislation grew, and the New Zealand Maori Council filed an action with the Court of Appeal. The Court's October 1989 judgment instructed both parties to negotiate. New legislation followed which placed caveats on all Crown land that might be transferred to State Owned Enterprises. Potential purchasers of such lands were to be warned that the land was under claim and might yet revert to Maori ownership. This measure was to protect lands for the purposes of claims in the event that land was sold off and could not be recovered from private hands. The Appeal Court's judgment was significant in setting new directions for the determination of Maori interests under the provisions of the Treaty, though, for some Maori, it merely signified 'another round in the long struggle to redress raupatu'.¹⁵

Other legislation also granted increased recognition to the Treaty and Maori

concerns. In 1987 Maori was made an official language of New Zealand. This measure arose from a claim lodged with the Tribunal in May 1984, by Huirangi Waikerepuru of Taranaki and others, that argued that te reo was a taonga which was guaranteed protection under Article Two of the Treaty. The Tribunal agreed and in 1986 recommended accordingly. The School Trustees Act 1989 made it mandatory for all schools at all levels to include Treaty of Waitangi protocols within their charters. The Broadcasting Act of the same year indicated that the Crown acknowledged its role to protect and cultivate the Maori language and culture through the medium of broadcasting. The Resource Management Act 1991 required, among other things, that local Authorities should consult Maori on all local resource issues, and that they should also give effect to Maori values wherever practicable. Iwi management plans of resources were also to be recognised. The Treaty of Waitangi Fisheries Act 1992 established the Treaty of Waitangi Fisheries Commission. This measure was a complex one dealing with fisheries allocation from the Crown to iwi, once the Commission had been granted fishstocks, and had negotiated an acceptable model for their transfer to iwi. The preceding fisheries discussions between Crown and iwi negotiators had been long and arduous. Central to such discussions was a Treaty debate described by Maori as one which 'exemplifies the politics of expediency and pragmatism'.¹⁶

The Treaty and social policy

The major piece of legislation incorporating the Treaty and affecting the Department of Social Welfare was the Children, Young Persons and Their Families Act 1989. This heralded major changes to the structure of Social Welfare, and required that a range of changes be made where the formulation and administering of policies to Maori were concerned. The Act significantly altered the Department's mode of social service delivery. It would be seen as one of the more important pieces of legislation passed where issues of Maori consultation, recognition of Maori aspirations, and awareness of Treaty issues were concerned, though Maori Social Work practitioners themselves were always cautious.¹⁷

The importance of the legislation lay in its genesis as a major report written after extensive consultations with Maori communities. In 1986, the Minister of Social Welfare Ann Hercus released *Puao-te-ata-tu (Daybreak)* which suggested ways that the Department of Social Welfare might reform itself in order to better address the needs of its largest client group, Maori people. The report came at the end of a special ministerial inquiry that proved to be an enormous consultation exercise involving some 60 hui throughout the country. For the Department of Social Welfare, the consultation was important as it felt itself to be estranged from its Maori clients. It was frequently accused of being insensitive to Maori and was coming under public attack because it was seen to be doing too little, too late, for Maori people who made up the overwhelming percentage of its client group. More pointedly, some Maori considered it should 'acknowledge its racism' and play a key role in preventing the 'institutionalising of Maori children'. The time had come for 'whanau decision making as a distinct social work model'.¹⁸

The inquiry team was led by John Rangihau, a highly respected kaumatua of Tuhoe, and it included a large number of officials who travelled widely and listened directly to Maori speaking of their social and economic plight. Issues of Maori non-achievement and rates of failure were extensively canvassed, as iwi groups came forward to address the consulting team. According to *Puao-te-ata-tu*, a 'litany of sound' was the result, sharp comments from Maori addressing the Department's perceived failure to perform. Typical comments were '(they) view clients as irresponsible and somehow deserving of their poverty'; 'racist from top to bottom'; and 'an institution of social control'.¹⁹ Treaty and 'power-relations' issues were also accorded full discussion; Maori submissions pointed to 'violence done to tribal structures, violence done to cultural values'; and to anger 'about powerlessness and denigration of culture and society of the people of the land'.²⁰

The resulting report, *Puao-te-ata-tu*, was written in direct and unambiguous language. It included commentary, analysis, and statistics, as well as an historical appendix that emphasised the responsibility of new settlers and the Crown in the nineteenth century when colonising and oppressing Maori. The report analyzed the recent history of Social Welfare's dealings with Maori, and concluded that the Department had fallen short. Altogether, it painted a grim picture of the state of Maori society in the mid 1980s. It urged the government to recognise the extent of Maori social and economic concern and need. And it suggested much-needed reform of the Department of Social Welfare, especially where providing for increasing consultation with Maori was concerned. Management committees of practitioners drawn from local communities were suggested; as was a network of District Executive Committees to assist in establishing national policy.²¹ *Puao-te-ata-tu* concluded that Social Welfare had served its Maori clients badly, and, in quite scathing terms, concluded further that the Crown had failed in its duty to protect Maori. In the end, the report sought greater government recognition of Maori forms of social intervention and care giving, especially for Maori children. The report emphasised the necessity of maintaining children within their customary environments.²²

The Department of Social Welfare was urged to work through and empower Maori networks, and to give greater weight to and utilise Maori ideas and ways of resolving conflict. The family was noted as an ideal site for conflict resolution, a model much employed by Maori. Finally, the report recommended that the Department should recognise the value of kinship groups and especially the personal roles of Maori, such as elders. The Children, Young Persons and Their Families Act came out of these recommendations and would enshrine some of the key issues. Importantly, *Puao-te-ata-tu* raised awareness of tikanga Maori in social policy and social work areas and this was to reverberate across the whole spectrum of social policy.

Generally speaking, the Department of Social Welfare agreed to the reforms, at least in principle, for it was difficult not to. *Puao-te-ata-tu* was the first of the major reports on Maori policy issues to be released. It was all about recognising that Maori people had needs in the social and economic areas, and that these needs had to be addressed, to the best of Social Welfare's capacity. Hence, a range of

important structural and cultural reforms within the Department of Social Welfare had to be made. The report also urged the Crown to grant more recognition of the Treaty of Waitangi. It contained thirteen recommendations that asked the Crown to acknowledge the partnership principles of the Treaty.

The Treaty lay at the core of the reforms suggested in the report: 'the Treaty of Waitangi is very much to the forefront of current Maori thinking.'²³ The authors of the report urged that the Department take the Treaty's principles on board and work actively to honour its Treaty commitments; the Department agreed to this. For its part, the Department acknowledged that it had an important duty to fulfil where the Treaty was concerned. Maori staff applauded their 'brave Minister and a brave Chief Executive who addressed the racism and attempted to get their staff to acknowledge and learn about the Treaty'.²⁴

What this meant in literal policy terms was an issue that the Department did not have to face in 1986. This was because, in the wider political context, the precise meanings of the Treaty in Crown policy terms was an issue that was brewing, but had not been faced head-on by officials in 1986. Instead, the Department focused its attention on instituting structural change. What the Treaty meant in social policy terms was not dealt with then; it was treated rhetorically. What precise obligations the Department might actually have under the Treaty – harder questions than institutional reform – would not be faced for another eight years.

He Tirohanga Rangapu

The social policy implications of the Treaty still had not been faced two years later when the government's most significant Maori policy report, *He Tirohanga Rangapu*, was released. This report was significant because it set out the basis, and justification, for wholesale reform of the longstanding government-Maori relationship. It attracted wide attention, especially because it suggested that the Department of Maori Affairs had outlived its usefulness and should be abolished.

The fourth Labour government under David Lange released this glossy report, fully entitled *He Tirohanga Rangapu / Partnership Perspectives*, in April 1988. It focussed on the Department of Maori Affairs and in that context, briefly assessed the state of the Crown-Maori institutional relationship. Because that relationship was seen to be failing Maori, or perhaps because it was no longer politically tenable in its current form, the report recommended a suite of changes that might be made to key government agencies offering services to Maori.

The report's major recommendation was to abolish the Department of Maori Affairs, so it was not well received by some Maori. Despite this, the report was undoubtedly a watershed for it offered a fresh, if highly political, assessment of the state of Crown-Maori relations. And the report flagged huge forthcoming changes to Maori policymaking.²⁵ New rules based upon changed perceptions of the Treaty of Waitangi were suggested, but no attempt was made to grapple with what the Treaty meant in policy terms. However, policy analysts and politicians were being presented with one possible policy framework within which the Crown-Maori relationship might be better mediated – or so it was hoped.

As a consequence, *He Tirohanga Rangapu* attracted huge media and public interest. Its literal and direct statements, and presumed meanings, were placed on full public view. This attracted detailed comment and full responses, in the form of submissions to the appointed team of officials, especially from Maori who felt they had most to lose (or gain) should the report ever translate into actual policy. But perhaps more elusively, the report was also interesting in an area that attracted little comment: the extent of its differences from earlier reports also dealing with perceived failings in Maori policy. In fact, *He Tirohanga Rangapu* was scarcely different at all.

He Tirohanga Rangapu was prepared by a group of government departmental officials who represented such social service agencies as Maori Affairs, Social Welfare and Education. Control agencies like Treasury and the State Services Commission were also present to ensure that the government's fiscal and management aspirations were met. Most of the officials were Maori, and at least two, Parekura Horamia and Hekia Parata, would go on to higher political office.²⁶

He Tirohanga Rangapu was released in a blaze of publicity. Maori leaders from all over New Zealand attended the special ceremony held in Parliament's ornate Legislative Chambers; the *Evening Post* carried an arresting front-page photograph of Dame Whina Cooper sitting expectantly in the front row, surrounded by a number of prominent Maori from far and wide. All were awaiting Prime Minister David Lange, who entered to huge applause and spoke of the urgent need to change the ways in which the Crown administered its policies and programmes to Maori. He said that *He Tirohanga Rangapu* proposed that the Department of Maori Affairs be abolished within two years. The Department's programmes such as housing would be diverted to other specialist agencies and a new agency would replace the policy-making and research arms – such as they were – of Maori Affairs. Lange also announced that his Minister of Maori Affairs, Koro Wetere, would embark upon a series of consultations with Maori throughout New Zealand.

Wetere, a charismatic and popular figure in Labour Party circles, put together a team of officials led by Rauru Kirikiri of Maori Affairs.²⁷ Wetere's travelling road-show traversed the length and breadth of New Zealand in what was probably the largest consultation exercise ever conducted by the Crown. Its purpose was to invite direct Maori responses to the report's somewhat radical and unexpected views on how the Crown should structure its institutional framework for Maori. Written submissions were also called for, and some twenty volumes of written submissions were finally received. The consultation exercise was a massive undertaking, and it severely taxed Wetere who throughout suffered from frequent bouts of gout. The Secretary of Maori Affairs, Tamati Reedy, was often left to lead the team onto marae in Wetere's absence. This was an absence that often drew unkind comments from the host paepae, comments which Reedy bore with great dignity.

Another team of officials, led by Wishy Jaram, then Director of Maori Affairs, Rotorua, assessed the written submissions, listened to all of the recorded taped hui or read the transcripts, and produced a report in a very short space of time.²⁸ Cabinet considered this report, and a 'follow-up' report was arranged that might preserve the

spirit of *He Tirohanga Rangapu* yet take account of the concerns of Maori.

Accordingly, yet another team of officials was assembled, this time under the leadership of Rauru Kirikiri. The team met almost full-time for two weeks before producing *Te Urepare Rangapu* later that same year. The purpose of this second report was to produce, for Maori consumption, a more palatable version of the first report that would not, however, compromise the government's intentions to do away with Maori Affairs. A much smaller consultation exercise was then undertaken, and it was clear that Maori were interested in the devolving of funds and responsibilities to iwi groups, most of which were just getting started. But the abolition of Maori Affairs would mean the loss of 1100 staff, including about 350 community officers. These officers had long acted as an 'intelligence agency' amongst Maori communities, advising the Department of needs and issues affecting Maori at the flax roots. This whole strata of Maori community officers would soon be lost to the government, along with their formidable collective memory. Even though most Maori were resigned to the fact that Maori Affairs would be abolished, they still asked government about what organisation would take its place.

The government proposed to establish two agencies to facilitate the transition to a post-Maori Affairs position. One new agency would serve as a small and lean policy advice ministry, consistent with the government's stated ideological preference for small ministries to replace large social departments. This new ministry's task would be to provide the government with policy advice dealing with Maori issues. The other agency would help Maori with Crown programmes through a transition period; this would be called the Iwi Transition Agency.

These ideas were collected into a new report, *Te Urepare Rangapu (Partnership Responses)*. Following its release in 1988, the government set about implementing its recommendations. It began to initiate the closing down of Maori Affairs; staff were informed and plans were made for mainstream agencies to pick up the various programmes run by Maori Affairs. Already restructured in 1988, the Department of Maori Affairs was abolished altogether in 1989. According to the Government, this enabled resources to devolve to iwi. By so doing, the government was recognising the call of the 1984 Hui Taumata to transfer resources and authority to iwi organisations. The Department had existed for 147 years, since its establishment as a protectorate in 1840. By 1989 the policy of devolution was acknowledged to be critical to Maori. It signalled that the government was giving serious consideration to the empowering of Maori networks.

He Tirohanga Rangapu was probably the most influential report on Maori policy-making released by the government in the 1980s. Its ambitions for Maori were huge, proposing major reforms of the Crown agencies servicing the social needs of Maori. But in the end it was only one of many reports with a similar intention that appeared in the 1980s. Each report was different with each claiming, in diverse ways, to best answer the institutional frameworks through which the social needs of Maori people might be addressed.

Ka Awatea

The next major report to address Crown dealings with Maori was *Ka Awatea*, written by a small team of Maori headed by Auckland solicitor Denise Henare, and released in 1991 by Jim Bolger's new National government.²⁹ At this time, the Minister of Maori Affairs was Winston Peters, a Maori holding a general seat. Peters had long professed opposition to the reforms as instigated by the previous Labour government. Peters often said that the policy of devolution was seriously flawed, and he compared it to the policies of termination enacted against Native American tribes in America after World War II.³⁰ Peters's opposition to devolution was due to his serious reservations about the capacity of Maori to manage, much less account for, the large resources (especially money) that the government was preparing to grant to Maori. He had earlier staked his reputation as a new rising MP by 'exposing' many cases of alleged Maori mismanagement of funds.

Prior to the introduction of the *Ka Awatea*, National had abolished the Iwi Runanga Act in 1990. This Act had been passed during the last days of the previous administration, and its purpose was to provide a uniform legislative framework through which iwi might organise themselves into authorities (to be called runanga) in a form acceptable to the government, thereby satisfying its need for proper accountability structures. The Act offered Maori enhanced status in law, and, according to the Act itself, 'acknowledged the enduring, traditional significance and importance of iwi.' It suggested a raft of 'characteristics' by which iwi might be recognised 'for the purposes of this legislation', such as established boundaries, leading committees with proper mandates in place, and strong financial accountability structures. The Act was to provide for the establishment of iwi authorities that might represent iwi in legal matters, in accordance with special charters. Peters's decision to abolish the Act on the grounds that it was too constraining found little favour amongst Maori. According to Mason Durie, with the Act's repeal a 'mandating process was lost that might otherwise have circumvented many of the difficulties associated with the negotiations between Maori and the Crown'.³¹

Yet there was considerable public and media clamour for Maori to be accountable for funds about to be granted by the Crown. Too often, intense media coverage focused on cases of Maori alleged mismanagement of funds. As a result of the need to transfer large sums of money to iwi, and of the need to ensure that this money was properly accounted for, the Iwi Runanga Act offered a framework approved by the state to which Maori could adhere with confidence.

Ka Awatea was released in 1991 but despite its grand opening it was very quickly overshadowed by the activities of Peters who, following a series of controversies, was sacked as Minister. As soon as he disappeared from Cabinet, the report seemed to follow.

Te Punga O Matahorua

The final report considered here is possibly the most interesting. *Te Punga O Matahorua* was released at the instigation of the Secretary of Social Welfare, Margaret Bazley. Once again, it was a report that focused on the issues of how

sensitive the Department of Social Welfare was to Maori clients. As with all earlier reports, this one recounted a particular failing of Crown provision of services, and continuing Maori social problems. As with *Puao-te-ata-tu*, the Department was mindful of its responsibility to provide for Maori people in the best way within the confines of its resources. As a consequence, many new strategies were suggested in the hope that the Department's services to Maori might improve and might satisfy Maori people.

There was, however, an essential difference between this report and those that went earlier. The overwhelming burden of *Te Punga O Matahorua* was not, in fact, to suggest new policies that would better serve Maori. What this report sought to do instead was to position Social Welfare policy for Maori alongside the Treaty of Waitangi. This is why the Department commissioned the report eight years after its landmark *Puao-te-ata-tu*.

It was true, as *Te Punga O Matahorua* suggested, that the reforms recommended by *Puao-te-ata-tu* had not been sustained, though the need for them in Maori social terms was well argued. All of the reforms and changes that the Department made were ultimately unable to shift the Social Welfare 'culture' which was ingrained, especially as seen by Maori. There was widespread disappointment amongst Maori that more changes had not been implemented; and this was acknowledged in the later report. Perhaps because it was written at the instigation of the Chief Executive, *Te Punga O Matahorua* was couched in less direct language than its predecessor. There was no consultation exercise, although meetings were held with staff; no specific Maori staff meetings were held. Social Welfare wanted to maintain the momentum stated by the earlier report, it was claimed.³² Thus there were no recommendations, only a set of series of strategies.

In commissioning *Te Punga O Matahorua*, the Department's Chief Executive was well aware that the basic nature of the Treaty debate had changed. Earlier references to the Treaty now needed careful qualifying. In previous years, the Treaty had been at best a shared national aspiration without necessarily any policy traction. Now, the debate had proceeded to the point where agencies had to be very careful to state just exactly what they meant, and what they did not mean, when referring to their obligations under the Treaty of Waitangi.

The Principles of the Treaty

The Treaty debate had substantially changed during the 1980s, and it had now become centre stage in policy formulation; no longer was it on the rhetorical periphery. Maori especially had very clear expectations as to what the Treaty meant. The government was now clearly asking what the Treaty meant to the Crown. What undertakings and commitments could the Crown give to Maori, or not give to Maori, in the name of the Treaty?

The overwhelming burden of *Te Punga O Matahorua* was to position Social Welfare's responsiveness to Maori somewhere within the debate. To do this, Social Welfare applied a new Crown document dealing with 'Treaty principles' to its own Maori policy. In other words, the Department sought to assert some control over the

meanings of the Treaty of Waitangi.

The 'Principles of the Treaty of Waitangi' was produced by officials in 1989 in order to spell out very clearly what meanings Crown agencies could attach to the Treaty. According to Jane Kelsey, the five principles drew on such disparate sources as the Court of Appeal, Waitangi Tribunal, Law Commission, international covenants and the Magna Carta; and even the outdated 1983 New Zealand Maori Council's Kaupapa Tuatahi. Despite Crown protests to the contrary, the principles appeared as a 'definite and cynical attempt to redefine the Treaty', Kelsey argued.³³

By producing such a document, the Crown had unilaterally answered the question of what the Treaty meant. Was the Treaty always speaking and if so, what was it saying? On these issues, the Crown was quite determined to make up its own mind; and thereafter fully intended to assert those meanings to Maori. The Crown was saying what the Treaty really meant, for the Crown. And effectively the Crown was also saying what the Treaty must mean for Maori. The government was criticised for further appropriating the language of Maori and the Treaty for its own ends, and for attempting to set in concrete what the principles of the Treaty should be. David Lange defended the principles by arguing that they did not constitute an attempt to 'rewrite the Treaty'. However Kelsey argued that it was 'difficult to conclude that its effect could be anything else, given the Government's ultimate power to determine what the Treaty would, and would not, mean in practice'.³⁴ In the end, the production of such principles did little to honour the call of Maori leaders made at the Hui Taumatua in 1984 for a renegotiating of an uneven relationship between the Crown and Maori.

Te Punga O Matahorua and the Principles of the Treaty

Te Punga O Matahorua made constant reference to the Treaty, as had *Puao-te-ata-tu*. For example, *Te Punga O Matahorua* spent some time and space explaining in detail how the Treaty might be pertinent when devising worthwhile strategies for improving the social and economic position of Maori people. Approving use of the Treaty gave the report a certain appearance of validity. Such frequent citing of the Treaty begged the inevitable question of how true to the Treaty the report's interpretations really were. For Maori, the short answer was: not very true. Unfortunately for Social Welfare, the attempts made in *Te Punga* to translate the Treaty into worthwhile strategies were all based upon a highly suspect premise: that the Crown 'Treaty Principles' constituted a valid interpretation of the Treaty of Waitangi.

Within its twenty-five pages, *Te Punga* discussed a number of the pressing issues bearing on the complex nature of race relations debates in New Zealand. One of the many issues discussed was a term much contested in policy circles: 'biculturalism'. Alongside this was some extended discussion about the 'principles of the Treaty'. If these two issues were to be juxtaposed – biculturalism and the principles – we can see the report using the Treaty in different ways, and we can appreciate why Maori considered the report overall to be seriously flawed.

With respect to biculturalism, for example, recent years have shown some intense

resistance to the notion, and especially to the idea of introducing things Maori into the bureaucratic mainstream, across the board. If there was to be an alternative to biculturalism, other than monoculturalism – which no one openly advocates – then a greater preference has often been expressed for multiculturalism. According to Paul Spoonley, a ‘multicultural mind-set appears to be firmly set in certain areas’.³⁵ This comes from the idea that political power in New Zealand ought to be ‘shared by all ethnicities’, rather than being confined to Maori and Pakeha, the two parties who signed the Treaty.

Confining race relations to two parties only – Maori and Pakeha – might suggest that the parties are equals, or partners. Many in policy circles have difficulty with the notion of Maori as equal, however. In the discourse of race relations, Maori as partner does not mean the same thing as Maori as equal; it means rather less. By way of example, *He Tirohanga Rangapu* was subtitled *Partnership Perspectives*. The report purported to advance the notion of partnership under the Treaty. However, in reality, Maori were given a severely limited if negligible opportunity to influence, as Treaty equals, a government determined to push through certain reforms of its institutional relationship with its Treaty partner.

Within the multicultural debate, race relations was more than just about Maori and Pakeha relationships, history and dynamics; it also incorporated all other ethnicities, but implicitly with Pakeha setting the rules. This debate is often played out in the news media, of course, and frequently appears in the guise of other related issues. For example, the *Evening Post* in 1999 spoke approvingly of National Party Treaty policies, which were quite reactionary and stood against the gains made in Treaty understandings achieved in the previous twenty years. The *Post* challenged the Treaty of Waitangi ‘grievance industry’, a phrase then becoming popular amongst those hostile to the Treaty and Waitangi Tribunal process.³⁶ In that context, the *Post* questioned the value of the Treaty for a country that was ‘increasingly multicultural rather than simply bicultural’.³⁷

The Department of Social Welfare acknowledged debates like this in *Te Punga*, but consistent with Crown policy, it indicated a strong preference for biculturalism: Maori as equal, Maori as partner. The report justified this preference in a fairly simple way by assigning to Maori the status of tangata whenua and Treaty partner. At the same time, *Te Punga* stated that there was no denying the right of other ethnic groups to assert their unique identities; the Department of Social Welfare needed to recognise these identities, and should give effect to multicultural diversity in appropriate policy responses. The report then highlighted two points: that Maori were the tangata whenua; and that Maori were the other Treaty partner. In *Te Punga*, policies and social objectives ‘rooted in the concept of multiculturalism’ were often used to avoid the historical and social realities of the Maori situation, and ‘these should be addressed in the context of bicultural policy’.³⁸

The Treaty was thus assigned an unqualified importance. The logic here was simple and compelling: Maori are tangata whenua and Treaty partners, though it continues frequently to escape newspapers and other media. But against the recognition of Maori as partner and the importance of the Treaty in such a seemingly unqualified

way, we might examine the report's frequent reference not to the Treaty itself, but to the 'principles of the Treaty.' A major concern of Social Welfare had been to make the Treaty relevant for everyday activity; the issue was how to focus (or refocus) the Treaty of Waitangi within its code of operations. The Treaty was often cited as the basis of affecting positive change for Maori. *Te Punga* provided a brief history of the Treaty, the purpose of which was to point to the Treaty's decline and revival since 1840. The different ways in which the Treaty had been enshrined in legislation, and most recently given formal consideration in policy terms, was also described. This highlighted the need for Social Welfare to do likewise: to incorporate the Treaty (or at least its principles) into its operations and policies. The question then arose of what the principles for the Department could actually be.

At the time of *Te Punga*'s release, there was an intense debate on the issue of Treaty principles amongst historians, lawyers and Treaty scholars. Many were critical of the way in which the Government had produced its own 'principles of the Treaty' at a time of pressing need for principles that all departments could apply to their operations. It made good sense of course: all government agencies speaking with consistency as to what the Treaty meant for them. Thus, in *Te Punga*, the Social Welfare Department was merely conforming to Crown directions where Treaty meanings were concerned; and it was seeking to recast its own programmes for Maori so that they might fit nicely within the 'Treaty principles.'

Te Punga cited these five principles at length, and they provided a Treaty frame of reference, and frame of interpretation, for that report. Spread over six pages, these Crown-defined principles were explained in detail and were then applied to a wide range of Social Welfare services and relationships with Maori. As a consequence of these principles, Social Welfare's commitment to Maori people was seen to be significantly diminished in that the Department was now clearly constrained in its capacity to respond to Maori aspirations. It was now imperative that strategies and policies be first mediated through 'crown principles'.

To illustrate this point, we might look briefly at three of these Crown principles as cited and adapted by *Te Punga*. Each appropriates a clause of the Treaty, and clearly seeks to qualify the meanings that might be attached to them. At the same time, it is worth remembering that, as many Treaty scholars have pointed out, the clauses of the Treaty should not be viewed as separate from each other; they should be read and understood in conjunction with each other.³⁹

The first is known as the 'Kawanatanga principle'. Through this, the Crown in 1989 asserted its sole right to govern; the Crown would not countenance debate that might question its absolute sovereign position. For those Maori who might assume that this issue was still open, theoretically at least, the Crown was now insisting that, as part of its resource negotiations with Maori, it would not accept argument that challenged its sovereign constitutional position. Kawanatanga was, of course, the word used on the Maori version of the Treaty, in Article One. Thus, the word was appropriated by the Crown, but with new meanings added. By signing the Treaty, Maori were ceding what they understood to mean 'kawanatanga' to the Crown; that is, a form of long-distance governorship exercised by the Governor in Australia, or by

God. It fell far short of 'sole sovereignty'. Yet, according to the Crown in 1989, this Kawanatanga principle confirmed that Maori had indeed ceded their sovereignty and thus the Crown asserted itself as possessing the sole rights to govern.

The second principle is known as the 'Rangatiratanga principle'. By this, the Crown indicated that Maori may manage their resources within the law, and that the Crown would do all it could to assist. But this principle in no way implied that Maori possessed any sovereign rights, as they had in 1840. Again, the Crown's stance substantially drained 'rangatiratanga' of almost any meaning for Maori. As cited in Clause Two of the Treaty, *te tino rangatiratanga* meant the absolute right over and possession of lands, fisheries and forests, and other things valued by Maori. It was an absolute concept that all Maori understood in 1840. And Clause Two of the Treaty in 1840 did not cede rangatiratanga to the Crown. So, the principles again were seen to be doing much less than honouring the spirit of the Treaty.

The third principle is known as the principle of equality, so named because Article Three of the Treaty conferred equality onto Maori, or so many have argued since. Article Three conferred upon Maori the right to full British citizenship, but did little else to offer protection. The third principle therefore suggested that Maori were deserving of equality but only in so far as the Crown has the sole right to govern. In other words, it was a seriously qualified sense of equality being conferred by this principle, as indeed it was as conferred by the original Article Three.

Conclusion

Throughout the 1970s and 1980s, the government grappled with how to make its institutions, and especially its social policy institutions, more receptive to Maori needs and aspirations. This became necessary once it was obvious that Maori were featuring negatively in social and economic statistics. Maori, too, were pressing for institutional reforms, and more resources. Following a number of major consultation exercises, the government agreed that its institutions should change to recognise and act on Maori needs and aspirations. Individual departments issued a range of reports, setting out the problems as they saw them and offering a range of solutions and institutional reforms.

A major component of Maori aspirations related to the Treaty of Waitangi. Maori were insisting that the government honour the Treaty – something it had failed to do, Maori claimed, since 1840. Initially, the Crown agreed that it would honour the Treaty and give best effect to it, as it went about introducing essential reforms to meet Maori aspirations. In the end, though, it became necessary for the Crown to actually define what 'giving effect to the Treaty' meant. Accordingly, a group of officials came up with the Crown principles that represented the Crown view of 'what the Treaty actually meant' in policy terms. These principles represented the Crown's 'bottom line', below which it would not negotiate with Maori.

Once the principles appeared and began to be argued, it was clear that the Crown was attempting to take control of the meaning of the Treaty for its own policy purposes. Observing this process was interesting because, as the Treaty became more prominent, a struggle ensued as to its precise meaning and application. In a

social policy sense, this 'struggle' between the Crown and Maori, as to the meanings of Treaty undertakings, became quite constraining. Social Service delivery agencies were not able to meet headlong the aspirations of Maori, in the manner that Social Welfare officials seemed willing, when *Puao-te-ata-tu* was first released; and in the manner that Maori sought. Once the Crown determined to define what Treaty principles meant, in social policy terms, limitations were placed both upon the capacity of agencies to respond to Maori social aspirations, in policy and dollar terms, and upon Treaty meanings which might otherwise have underpinned the State's commitment to the meeting these undertakings. Benefits to Maori were thus undermined.