

## HE WHAKAPUTANGA AND TE TIRITI O WAITANGI

*'We have the opportunity to negotiate te Tiriti o Waitangi every day with our Treaty partners, be they Māori or non-Māori.'*

- Educator

During the late 18th century and early 19th century there was increasing interaction between Māori and Europeans trading in a range of homegrown and imported commodities. This unregulated activity created great profits for entrepreneurs on both sides. While valuing their developing global connections Māori were intent on self determination of their affairs. In support of this, in 1835, a group of Northern tribal leaders sought an alliance gaining protection from King William IV that became known as He Whakaputanga.

### He Whakaputanga

The British Resident James Busby requested that Missionary Henry Williams facilitate the drafting of this document which became He Whakaputanga o te Rangatiratanga o Nu Tireni, and was signed by iwi leaders throughout Northland, Waikato and from Ngāti Kahungunu. It is important to note that this treaty was formally acknowledged by the British, it declared Māori sovereignty and that the British would never give law-making powers to anyone else (Mutu , 2004; Waitangi Tribunal, 2014).

### Te Tiriti o Waitangi - The Treaty of Waitangi

However, despite He Whakaputanga and because of the rapid expansion of immigration both from Europe and Australia, Britain sent William Hobson as consul representing the Crown to negotiate a treaty between the Crown and representatives of Māori (Orange, 2015). According to Moon (1998), Hobson's specific instructions from Lord Normanby and the Colonial Office were to negotiate a treaty that would be fully understood by both sides and with the "free and intelligent consent of chiefs". According to Moon (1998), Māori "title to the soil and to the sovereignty of New Zealand is indisputable and has been solemnly recognised by the British Government" ( p.48). Hobson was to obtain sovereignty only if Māori were willing to cede it, and obtain land only if Māori were not disadvantaged.

While this may have been the intent of those who conceptualised this treaty, the parties who were involved came from quite different views. Those representing the Crown were strongly influenced by the beliefs within the Doctrine of Discovery and the resulting colonisation of Aotearoa became a process of the "violent denial of the right of Indigenous peoples to continue governing themselves in their own lands" (Jackson, 2021, p.1).

### Lost in translation

Despite Hobson's instructions, two conflicting versions of the Treaty were prepared, one in English and one, a translation by Henry Williams, in te reo Māori. The English text acknowledged collective Māori *sovereignty* over New Zealand which Māori agreed to cede to the British Crown. The translated Māori text on the other hand was much more acceptable to Māori for it only gave the Crown *kawanatanga* (governance) over the land, while promising to Māori "*tinu rangatiratanga* (the unqualified exercise of authority) over their lands and villages 'and all their treasures'" (Consedine, & Consedine, 2012, p.88). Māori were also promised protection and the same rights and duties of citizenship.

The Māori text was eventually signed by some 512 Māori over a period of seven months and some 39 Māori signatures were appended to an English version. That is, most Māori signatories had neither seen nor signed the English version. British sovereignty was imposed with both sides operating from different texts, different understandings and different worldviews (Consedine & Consedine, 2012). The Treaty was seen by the coloniser as a transfer of administrative authority from Māori to British

control, while the Treaty was seen by Māori as a partnership between two nations. Māori understood that Māori would determine how Māori people and Māori possessions were administered while the British would take care of the settlers.

## The dishonouring of Te Tiriti o Waitangi

Māori understood that the signing of the Māori language version of the Treaty of Waitangi would enable them, as the Indigenous people of Aotearoa, to participate equally in future decision-making processes that would help determine their own future. However, almost from the point of signing, this Treaty was not honoured. This was justified in an 1853 court case *Parata vs The Bishop of Wellington*. In this case the judge, Judge Prendergast, declared the Treaty of Waitangi 'a simple nullity' and citing the Doctrines of Discovery he found that the only valid title to land was Crown title (Katene & Taonui, 2018). More recently, the Doctrine of Discovery was cited in the 2003 Foreshore and Seabed case (*Ngati Apa vs Attorney General*) and upheld in the subsequent 2004 Foreshore and Seabed Act (Katene & Taonui, 2018; Ngata, 2019).

Without the protection of Te Tiriti and the establishment of New Zealand's first Parliament in 1852, where Māori had no representation, Māori increasingly fell victim to the 'democratic' processes of colonisation. Two early notable examples were the New Zealand Settlements Act of 1863 and the Native Lands Act of 1865 but the systemic diminishing of the rights of tangata whenua was, and continues to be, ongoing and persistent.

## United Nations Declaration on the Rights of Indigenous Peoples

In 2010 the New Zealand Government announced its support for the United Nations Declaration on the Rights of Indigenous Peoples. The 46 articles cover all areas of human rights including equality and non-discrimination, protection of lands, culture and linguistic identity, and self-determination. Article 37 specifically relates to honouring of treaties. In international law where there is any ambiguity between versions of a treaty the contra proferentem principle applies, which means that a decision is made against the party that drafts the document and the indigenous language text takes preference. Dr Pita Sharples, Minister of Maori Affairs in the coalition government that formally supported the declaration noted:

*"As Nelson Mandela had said, 'It is difficult to negotiate with those who do not share the same frame of reference'. If we are able to recognise and come to have a shared view of this political document called the Treaty of Waitangi, as our shared frame of reference, then and only then, can we perhaps say – He iwi kotahi tātou"*

Dr Pita Sharples 2006

## 2020 Education and Training Act

Despite the promises to Māori, implicit in The Treaty of Waitangi, as a charter for shared power, collaborative decision making and Māori self determination (Walker, 1990), the fulfilment of these promises are still being sought in the legal court systems today. However, the 2020 changes to the Education and Training Act has signalled a huge change within the education sector. By explicitly referring to Te Tiriti o Waitangi not The Treaty of Waitangi we are now being called to give better effect to the Māori language version of the treaty, from early childhood, through schooling into tertiary.

Section 127 of the Act requires schools, through their Boards, to give effect to Te Tiriti o Waitangi by:

- working to ensure its plans, policies and local curriculum reflect local tikanga Māori, mātauranga Māori and te ao Māori

- take all reasonable steps to make instruction available in tikanga Māori and te reo Māori
- achieve equitable outcomes for Māori students.

In addition a primary objective of all Boards of Trustees is to take all reasonable steps to eliminate racism, stigma, bullying, and any other forms of discrimination within the school.

*It's not something that we can abrogate responsibility for and leave to the politicians, or to Māori, or to Pākehā, or to someone else. It's a responsibility we each have as citizens, as adults and as educators.*

- Kaiako

*Together we can contribute to a better future for our tamariki/mokopuna but we can't do it on our own and under the Treaty we don't have to do it on our own. We each have a part to play.*

- Whānau

Perhaps a better future begins with each of us taking personal responsibility to understand and acknowledge our histories, how binding agreements unravelled and undertakings were undermined through colonisation. This ruthless and one sided process generated a legacy of inequity that is inconsistent with a society that outwardly claims to value fairness and equal opportunity. Exploring how colonisation has privileged some voices while silencing others can be uncomfortable but is essential if we are to stop talking past each other and enter into a national conversation to 're-right' our histories and relationships.



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Te Kura Toi Tangata • Faculty of Education • The University of Waikato  
101/121 Durham Street • Tauranga 3110

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