

that the term can encompass intangible things such as language and culture. Even where physical property such as land is concerned, differing cultural understandings as to what types of land are able to be privately owned have caused problems, as for example in the foreshore and seabed controversy.

It is clear from the Littlewood draft and Native Affairs back translation that Hobson used the word “property” in the Second Article, but this was translated by Rev. Williams as “taonga,” probably because Maori at that time had no recognition of ownership or ‘property,’ as understood by Europeans. Whatever the words, tino rangitiratanga and taonga can be construed to mean, by modern interpretations, they each are applied in the Second Article to “the chiefs and the tribes and to all the people of New Zealand”. By the Treaty, everyone became a British subject, under British laws and receiving the benefits of British citizenship. All ceded territories became British soil under the jurisdiction of Queen Victoria. ‘Rangatiratanga’ referred to chieftainship, guaranteed to be retained by the chiefs. ‘Tino Rangatiratanga’ is the name given to the Maori flag. Dr Sharples: “The Maori flag will not replace the New Zealand flag, but fly alongside it, to recognise the status of Maori as tangata whenua and their contribution to New Zealand. Flying the Maori flag symbolises the Crown-Maori relationship which has grown out of the Treaty.” He does not mention the flag as representing the movement for Maori independence. If this flag is a symbol of a push for Maori sovereignty, then it is challenges the Treaty of Waitangi and all it originally stood for. Apparently, Dr Sharples is not aware that the Crown and the people of New Zealand are also ‘not on the same page’ and that many New Zealanders of ALL ethnicities see the two flags as a symbol of national division based on race.

The Legalities of the Treaty

Under the Treaty of Waitangi Act 1975, which sets out the Treaty in both languages (Te Tiriti o Waitangi and Freeman’s version), the Waitangi Tribunal has exclusive authority to determine the meaning and effect of the Treaty.

Until the 1970s, the Treaty had been largely ignored, though from the mid 19th century, Maori frequently used the Treaty to argue for a range of issues, including greater independence and return of confiscated and unfairly purchased land. They had lost numerical superiority and generally, the control of most of the country.

In 1840, about 100,000 Maoris inhabited New Zealand, almost all in the North Island, while Europeans numbered a mere 1,000... in 1870 New Zealand had a population of 256,000, of which only 46,000 were Maoris...Before the confrontation over land in the

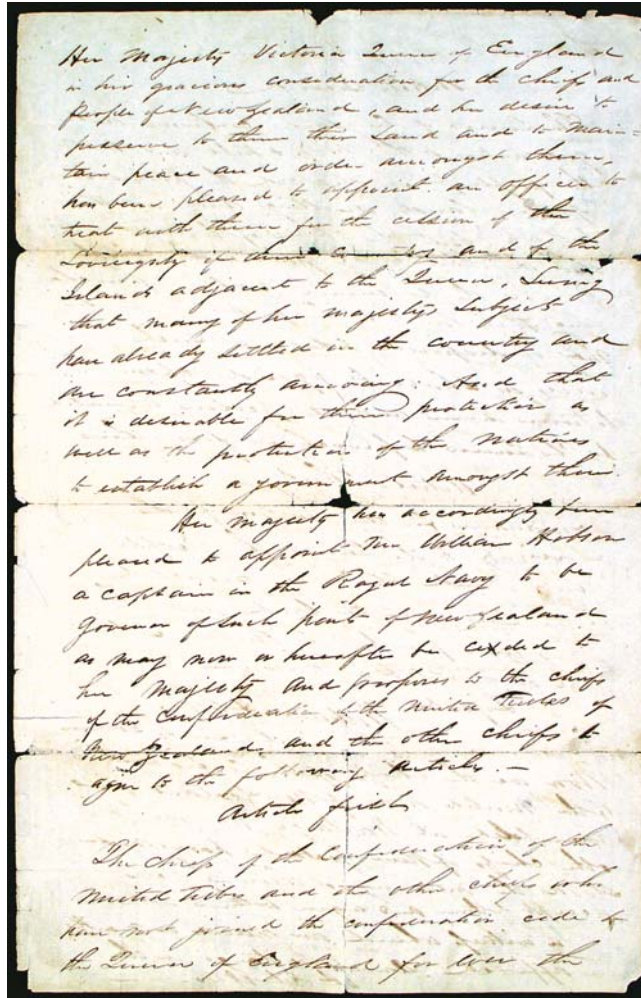
1860s the Maori was prospering materially, despite declining numbers from a high infant mortality rate...and also susceptibility to the Pakeha’s infectious diseases, such as measles, tuberculosis and influenza... (Ref. The Maori Wars by Tom Gibson, published A.H & A.W. Reed).

The question of whether the Crown is bound by the Treaty has been hotly contested since 1840 and been the point of a number of court cases. In the case of R v Symonds (1847), the Treaty was found to be binding on the Crown. However, the 1877 case of Wi Parata v Bishop of Wellington established the principle that the Treaty was a ‘legal nullity’ which could be ignored by the courts and the government. This argument was supported by the claim that New Zealand had become a colony when annexed by proclamation in January 1840, before the treaty was signed. Presiding Judge Prendergast’s judgment on the Treaty’s validity was considered definitive for many decades.

The Treaty itself has never been ratified or enacted as statute law in New Zealand, but its provisions were first incorporated into legislation as early as the Land Claims Ordinance 1841 and the Native Rights Act 1865. Later the Treaty was incorporated into New Zealand law in the State Owned Enterprises Act 1986. Section 9 of the Act said that nothing in the Act permitted the Crown to act in a manner that is inconsistent with the principles of the Treaty of Waitangi. Since the late 1980s the Treaty has become much more legally important. However because of uncertainties about its meaning and translation, it still does not have a firm place in New Zealand law. Its major influence has been on compensation claims made to the Treaty of Waitangi Tribunal.

To many New Zealanders, the Treaty of Waitangi has become a dividing, rather than a unifying force. There has still been no answer to our question: “How can a paper containing random writings of a minor clerk (Freeman) and signed unwittingly in trust by 39 chiefs outweigh the signatures of over 500 paramount chiefs on the official document?”

We also ask: “Where does New Zealand go from here as a nation when the Government seems to have no idea how deep the divide is, because of the tribunal process? Dr Sharples writes that ‘by addressing past injustices, acknowledging the diversity of our society, and striving for tolerance and understanding of each other, we will be able to move forward together as a united nation.’ For this lofty aim to realise, people will first need to experience the trust that can only come from understanding and deciding that a lengthy process involving billions in money and assets has indeed been fair and equal. But has it? ■



Picture - The Littlewood Treaty – Reversed side of Busby’s Final Draft Dated Feb 4th 1840