

## **HUMAN RIGHTS, THE TREATY OF WAITANGI AND ASIAN COMMUNITIES—A SYMPOSIUM**

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Sunday 13 November 2005

### **OUR TREATY TOO? --- a Chinese view.**

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Before addressing the issue of the Treaty of Waitangi and Asian Communities, I'd like to point out that the Treaty can be discussed at three different levels: the letter of the Treaty, the implications of the Treaty, and the spirit of the Treaty. I would suggest that the 'Chinese view of the Treaty' is shaped and conditioned by various factors operating at all three levels.

There are a couple of basic facts about the Treaty that most people agree on and recognise:

1. It was signed between the Crown representative and 453 Maori chieftains in 1840
2. The Treaty established a partnership between the Crown and Maori, and formed the basis of NZ biculturalism.

However, if anyone ventures beyond these facts, then there is a maze of disputed histories, not to say different legal interpretations, and highly-charged social theorisations, claims and counterclaims. As yet there exists no definitive interpretation of the Treaty, especially how it should be applied to the contemporary scene.

The Treaty has often been a subject of controversy between Pakeha and Maori. **'In the absence of an accepted definition of the relationship between Maori and the Crown, citizens become uncertain ...Many non-Maori are timid about discussing race issues while others feel there is little space for constructive dialogue on the topic.'**(1996 Race Relations Office Report).

I would say that **the unease and timidity is specially acute if an Asian person starts to join in a discussion about the Treaty**, he/she would receive strange glances, telling them that they are speaking out of order, as if there is no place for them to speak on the topic.

However, the Treaty is widely regarded as the ‘foundation document of the Nation’. It is a ‘living document’ that underpins our nationhood and regulates our race relations. As rightful citizens of New Zealand, shouldn’t the Chinese, and other non-Maori non-Pakeha immigrants, be included in the dialogue about the Treaty?

### **The letter of the Treaty**

We all recognise that there are significant differences between the Maori version and the English version of the Treaty.

- a) In Article 1, the Maori version records the granting of *Kawanatanga* (*governance*) to the Queen while the English version uses the sweeping term of ‘sovereignty’.
- b) In Article 2, The Maori version reserves to the Maori signatories *te tino rangatiratanga* (the highest chieftainship). The English version renders it as ‘full exclusive and undisturbed possession, of their lands and estates forests fishers and other properties’.

The discrepancies are obvious, and the English version purportedly gave the Crown more, and secured to the Maori less, than the Maori version.

There were other complications: one example was that not all the chiefs signed the Treaty, either in Waitangi or in the subsequent later signings.

However, the Treaty is more than a historical document, but largely because many of its terms haven’t been honoured, litigations about restitutions have been ongoing, while the Treaty becomes an ongoing social contract.

In 1993, the Chinese new immigrants translated the Treaty (based on the English version) into Chinese. They further supplemented it with the background history, noting the controversies arisen because of the different versions. (See powerpoint

slide 9) Copies were sent to every known Chinese household nationwide. This remarkable community effort is testimony to the new immigrants' desire to know more about the Treaty. They want to know the background of the Waitangi tribunal claims. But most importantly they want to know what the Treaty meant to the Chinese. To most new immigrants, it looks like that these articles written in 1840 are continually being interpreted to define the relative rights of ethnic groups. The new Chinese felt very vulnerable in spite of what the Human Rights Act was to guarantee all rightful citizens equality and non-discrimination.

### **Implications of the Treaty**

'The Treaty gives legitimacy to the presence of the pakeha, not as a conqueror or interloper, but as a New Zealander, part of a new tangata whenua.' (Government white paper *A Bill of Rights for New Zealand* 1985) But various problems exist: 'The Treaty articulates democracy, and underpins the sense of belonging and citizenship' But what does it do to Asians, the stigmatised and marginalised groups?

The conventional wisdom in New Zealand argues for the Pakeha presence in this way: Pakeha came, acquired lands, and generations were born and raised in this land. They are settlers, pioneers, and over the period, earned the veneration of those who 'stayed put'.

As for the Chinese who came not so much later, they used to be looked upon as 'yellow sojourners', with locust image: extracting all its resources and then leaving. The popular stereotype of the 19<sup>th</sup> Century was that they 'all wish to return to the Flowery Land'. (Nothing was said about the fact that they were denied citizenship, subjected to a poll-tax, and their families were denied entry). In the 21<sup>st</sup> century, they are often criticised as 'lacking commitment to New Zealand.'

Added to all these factors, there is the sensitive environmental issue:

In the mid 1990s, Asians were accused of (in the words of Tau Henare) 'raping New Zealand's coast', because 'their culture is to take everything'. (Slide 5) Asians were greedy, it was alleged, they took too much shellfish, and it was not for the *hui*.

In the words of Prof. Walker ‘The immigrants themselves have escaped from overcrowded, traffic-congested, pollution-plagued homelands...to a land which is idyllic in comparison...should we continue the policy being followed now and...then it is only a matter of time the conditions from which the immigrants have escaped will be replicated here.’ (Walker 1995)

Asians were seen by some as a threat to Maori wishing to seek redress for their Treaty rights:

‘There is a very real danger that Maori claims on natural resources and their status as tangata whenua will be wiped out under the influence of this massive influx...they threaten the efforts of Maori people to regain their independence.’ -- *Treaty Times*, 1991.

### **Some Treaty Discourse unsettling for Asians**

How about the legitimate basis for Asian presence? Maybe the episode below can illustrate:

As reported in “Immigration: New Laws Threaten Maori” (Headline in Slide 5) *In November 1991, the Aotearoa/NZ Action Campaign (ANZAC) hit the headlines when it opened an immigration office in Tamaki Makau Rau (Auckland). The idea ..was to get people to sign an immigration register, giving them Maori approval to settle in Aotearoa-NZ...prospective immigrants of all nationalities were asked to swear allegiance to the Treaty of Waitangi...take an environmental and cultural sensitivity test... and finally ...have their passport stamped by the Maori immigration office....”* Apparently, the process put in place by the Government immigration service was not deemed vigorous enough.

Then below are the opinions of various legal experts and social scientists. I would argue that each of them can be sources of anxieties for the Chinese and other Asians.

- “If pakeha presence in New Zealand is under sufferance (Brookfield), then all subsequent migrants would be in the same boat”.

- The Treaty is the ‘first immigration document of the country’. Only ‘her majesty’s subjects’ i.e. migrants from Britain are legitimate (Walker).

Dr Walker further states “The present generation of Maori leaders abide by the agreement of their ancestors to allow immigration ...from the countries nominated in the preamble to the Treaty, namely Europe, Australia, and the UK. But for any variation of that agreement to be validated, they expect the govt to consult with them as descendants of the Maori Treaty partner.”

- Successive government policies (Rogernomics, the new Right..) have been controlled by majority electorate opinion and the dictate of international economic forces.
- “The structural goals of government was to shift resources and control from the Crown to the private sector...The interests of capital would be left more secure while Maori would remain economically and politically destitute.”  
(Kelsey)

In a democracy, the composition of the ‘*demos*’ counts. When more Asians arrive, it marked a shift of power balance. Asians are the new kids on the block, would they be allowed to join in?

Asians have been continually put on the back foot whenever Treaty issues were raised. There is often uncertainty, bewilderment, and a feeling of being vulnerable and very threatened. Many Chinese found the controversies centred around Treaty rights highly confusing and unsettling.

In the streets, anti-Asian feelings are often translated into shouts against Asians: “Go back where you come from!” and the abuse was often directed against the local-born (over 25% of the Chinese are local born).

If the Treaty is mentioned, then the favourite dictum is “Asians should be taught the Treaty!” However, no one really specifies what aspect of the Treaty should be specially taught to the Asians.

**I would argue that many Asians would have basic knowledge of the history of the Treaty and the circumstances under which it was signed. This knowledge would be on a par with that of most non-Asian New Zealanders. What should be ‘taught’ is probably the relevance of the Treaty to contemporary New Zealand.**

When explaining a document upholding bi-culturalism in a multicultural reality, **a clear message has to be relayed to all non Maori non Pakeha groups: where do they all fit?**

### **Chinese Anxieties**

In the public mind, much of the negative views of the Treaty comes from the so-called ‘Treaty industry’, or the abuse of rights supposedly bestowed by the Treaty. The long drawn out Treaty claim process, the perceived privileges accorded to Maori, plus **the race card played by some prominent Maori politicians further gave rise to a profound sense of anxiety.**

The modern day legal interpretation of the Treaty is supposedly straight-forward: Pakeha or not, the Chinese are represented by ‘the Crown’, just as ‘immigration is always the prerogative of the elected government of the day.’ However, the Chinese know, and have witnessed at first hand, how such assertions can be challenged.

Nothing illustrates Chinese anxieties more than the 1995 case of the Chinese church group which paid \$165,000 on deposit and legal fees to buy the former Tamaki Girls College for their congregation, not knowing that the local iwi disputed the right of the Ministry of Education to sell it, on account that they had unsettled land claims.

Maori protestors occupied the site and barricaded the grounds. There were ugly scenes of frightened Chinese congregation members surrounded by protestors when they went to inspect the property. The Chinese bowed out, to the delight of iwi and praises of liberal Pakeha. They proclaimed ‘victory’. The New Zealand public never asked how the Chinese church group fared after they lost the money and the church they wanted to build. They were just forgotten.

Earlier on, some Chinese asked the question: Are the Asians ‘Pakeha’? It only led to two levels of debate:

- Linguistic debate (white fairies, white flea... non-Maori)
- social debate (in modern day NZ, would a Chinese be designated Pakeha?)

The answer to both was, no, the Chinese (and other Asians) are definitely not Pakeha. First, Maori has another name for Chinese ‘*hainimana*’—a transliteration from ‘Chinamen’. Second, socially, no one ever regard Chinese or other Asians as Pakeha anyway.

**Asians inevitably feel like ‘the odd one out.’** In the words of one interviewee, they feel like ‘Guests who arrived at a party’ when the hosts are quarrelling.

**They feel like uninvited guests and gate-crashers, uncertain and embarrassed—** should they just retreat, or pretend that they don’t see the heated quarrel?

**If the Treaty is indeed the foundation document of the Nation, then as legitimate citizens of New Zealand, everyone should be engaged in the ongoing discussion. Historically, Chinese were denied citizenship, left out in the cold, deprived of a voice, disenfranchised and totally marginalised. In spite of their considerable achievements in all walks of life over the century, their aspirations to play meaningful parts in New Zealand were stunted. The Chinese were made to feel that they didn’t belong. That should not happen anymore---not in the 21<sup>st</sup> century.**

In the last twenty years ever since the Treaty debate was rekindled, the rights and obligations of the two signatory parties were continually contested, but Asians didn’t even have a place in this process. ‘[There is]...A deep gulf separating the British subjects from the ‘aliens’ (Aliens had both legal connotation and socio-symbolic meanings)---stigmatised and prevented from full participation of society’. (Pearson )

## **Conclusion**

**The future status of the Treaty, and its relationship to Maori, Pakeha, Asians and others should be a matter of continual debate, negotiation, and intelligent**

**discussion.** Maori and the Crown in 1840 were different from the Maroi and the Crown in 2005.

‘The Treaty is the founding document of our nation. It provides the basis for good relation b/t all citizens of Aotearoa, it sets out how resources will be managed for the betterment of all and it provides the framework for an ethical and inclusive society.’--  
-- Hone Harawira, Maori Party MP speech reported in NZ Herald Sept 15 2005. The utterance of Hone Harawira is generous in spirit and should be welcomed by Asians.

Our collective challenge is : how does an evolving bicultural document support the multicultural reality of New Zealand?

**Reality calls for inclusiveness, tolerance, and indeed the incorporation of Asians.** The principle of Human Rights should endorse the rights of Chinese and other Asians to be fully involved. **To accommodate Asian aspirations does not mean diminishing Maori mana or Pakeha rights.** We must be visionary enough to stop viewing ‘Rights’ as a zero-sum.

**For the ongoing process to arrive at a satisfactory outcome, the Treaty needs to be everyone’s Treaty. Making cultural diversity work is everyone’s business. As a living document, the Treaty is ours, too.**