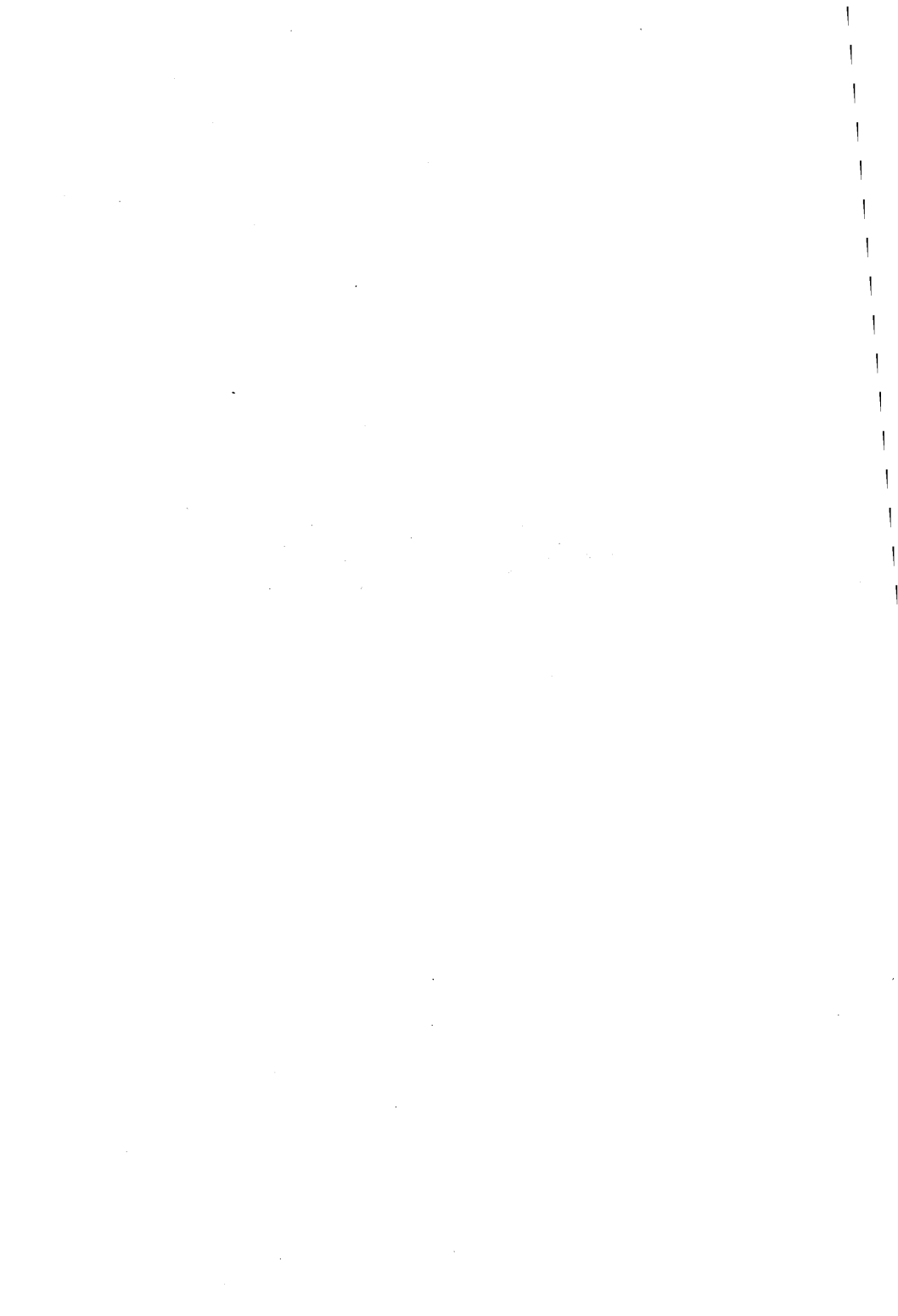


# **THE BILL OF RIGHTS AND TE TIRITI O WAITANGI**

**Mr Shane Jones**  
Maungarongo Centre, Te Kopuru



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Shane Jones.

### INTRODUCTION:

In Maori society stories are regarded as valuable learning devices for the teaching of human history, human endeavour and human folly. These stories or more correctly allegories, are known as korero whakarite. It is with one of these korero whakarite handed down by our tupuna that I introduce to you this paper regarding the Bill of Rights and the Treaty of Waitangi.

The story concerns the mako or shark and the kahawai, two fish which abound in our coastal waters. The shark had a neurotic sense of tidiness and an unquenchable longing for order. To satisfy this compelling need the shark suggested to the less powerful kahawai, "Let us unite together and be one". The kahawai who was quite content and did not share this great urge for conformity replied, "Mehemea ehara au i te mango me pehea tenei". (How can this be achieved ? I am a kahawai not a shark). The shark eager to seize the opportunity replied. "Oh it is really very simple ! All you must do is allow me to swallow you and we will be one forever !".

This like all our kerero whakarite has various senses. It has a literal sense, an ethical and a mystical. The images and emotions it evokes are exceedingly rich yet readily understood. It illustrates what former minds have feared. A time when the Maori will have melted so completely into the Pakeha mainstream that opposition will disappear for lack of objects.

### SCOPE OF ADDRESS:

The purpose of this paper is to delineate the nature of Maori opposition to the Bill of Rights. It will include a particular interpretation of the guarantees given in the Treaty of Waitangi. This interpretation is one which conflicts with others however, I consider it to be an accurate interpretation of the guarantees given by the Crown to the Maori people. The paper also considers the subject of national self-determination. A failure to consider this subject will yield a distorted understanding of the rationale which underpins some of the opposition to the Bill of Rights and much of contemporary Maori political thought.

## WHAT DOES THE PROPOSED BILL OF RIGHTS OFFER ?

At the beginning of the White Paper we are told that a Bill of Rights for New Zealand is based on the idea that New Zealand's system of government is in need of improvement. A sentiment which the Maori have carried and expressed for the last 145 years. This Bill of Rights will be a form of supreme law which will provide greater protection for the general rights and freedoms vital to the survival of New Zealand's democratic and multi-cultural society. Furthermore it states that since no supreme law for New Zealand can be contemplated unless it contains appropriate recognition of the Maori as tangata whenua o Aotearoa, the Bill of Rights proposes to recognise and affirm the Treaty of Waitangi. The government sees the Bill of Rights as an appropriate and unique opportunity to remedy the failures of former governments to fully honour the Treaty of Waitangi as part of and as one of the foundations of this country's law. This we are told will all be done in a manner that will accord with the sentiments of the Maori.

## THE GUARANTEES OF THE TREATY:

There are several versions of the Treaty. Whilst we are conscious of the English versions the basis of our interpretation of the guarantees comes from the Maori version. This is the version which was actually signed by both the Crown and the Maori. In this version there are several ambiguous terms which have been widely misunderstood. This has arisen as a result of the translators, the missionaries' unwillingness to state precisely what was to be ceded and what was to be retained. I shall consider two of these terms, Kawanatanga and tino rangatiratanga.

In Article 1 the Maori signatories were requested to cede to the Crown something known as kawanatanga. This as Ranginui Walker has pointed out was a term coined by missionaries to translate an unknown concept of governance. It was also used to translate things such as a geographical area, a province, a governor and a prince. However it is the term 'governance' that is the most likely meaning of 'kawanatanga' in this context. The signatories, especially those in the Far North, would probably have understood the term in the context in the order of the morning services :-

"That all our doings be ordered by our governance".

This innocuous term was used to conceal a concept well understood by the Maori. The concept I refer to here is of course sovereignty. The word 'mana', which the missionaries were familiar with, would have been a far better choice to express sovereignty. Mana refers to a powerful concept of past and present Maori society. Mana conveys the essence of sovereignty, i.e. supreme authority. We believe the missionaries were familiar with this term because of the widespread usage it enjoys throughout the New Testament which had been translated before 1840. So in this article in which the Crown gained sovereignty the missionaries both failed and succeeded at the same time. They failed to use the appropriate Maori term thus successfully misleading and obfuscating the Maori signatories as to the true meaning and purpose of this article.

The term 'tino rangatiratanga' appears in the second article. We understand the word rangatiratanga to mean authority, power, jurisdiction. The function of the adjective 'tino' is to transform the quality and grade of the power, it elevates it to the level of final authority or supreme power. Thus for us this article guaranteed the continuation of Maori sovereignty, the exercise of Maori control and power over their lands, homes, estates, valued possessions and institutions.

Rangatiratanga has been interpreted from a number of angles. There has been a general failure however to treat the word in the context of political power and social organisation which is the basis of article II. Attention has been paid as to how the word is used in the Lords Prayer. Consequently it has been defined as kingdom, as it expresses "Thy kingdom come". There are however other references in the New Testament where this term 'rangatiratanga' is used to express models of political power such as jurisdiction. Chapter 20, verse 20, in the book of Luke is one such reference where an attempt is made to trap Jesus Christ and deliver him to the jurisdiction of the governor. References of this nature illustrate that rangatiratanga was capable of expressing power and authority other than that which flowed from an omnipotent God.

So for us the Treaty is an affirmation of Maori sovereignty over their homes, their lands, estates and esteemed institutions and possessions. It alone is the formula that expresses how power and authority is to be distributed and limited between the Pakeha and the Maori.

## THE BILL OF RIGHTS AND MAORI ACTIVISM:

Contemporary Maori political movements are striving to break a pattern of subordination that has forced the Maori to perceive progress within the Pakeha social and political framework. The suggestion that the Treaty of Waitangi be honoured within the bounds of the Bill of Rights confirms that this oppressive ethnocentric framework is still very much intact.

What has been the nature of Maori opposition so far to the proposed Bill of Rights in relation to the Treaty? The opposition incorporates a range of perspectives. The first one which I shall examine is commonly known as that which puts the Maori between the devil and the deep blue sea. In the past Maori groups seeking to use the Treaty for legal effect have been told that it cannot be taken into account by the courts until it has been made a part of municipal law by incorporation in a statute. Whilst a move of this nature accords the Treaty legal recognition it makes the Treaty vulnerable. The Treaty may be changed or nullified by the very process that establishes it as a permissible tool of defence.

Despite the passage of 145 years and many indignities that have been heaped on the Treaty it is still regarded as a taonga tapu, a sacred possession. Sir James Henare reminded the Turangawaewae Hui of this in his letter which conveyed some of his feelings about the Treaty. He stated, "Ko oku whakaaro ake mo te Tiriti o Waitangi, he taonga tapu". This sentiment stems from several factors. For some such as Sir James and many of his generation the Treaty is tapu because it bears the marks of the moko, the facial tattoo of the ancestors. The moko was used to signify assent to the conditions of the Treaty in cases where the signatory could not write. Many folk also feel it is sacred because it embodies the concept of mana, i.e. power and authority. This power and authority in a Maori sense is viewed as coming from the Gods and delegated to human agents. The possibility of political parties regarding such a taonga as a plaything to be used for temporary political advantage means only further indignity.

Underlying these sentiments is the feeling of distrust. This feeling of distrust is more clearly discernable in the opposition of the rangatahi, the younger Maori critics. Many of the rangatahi speakers present at Waitangi this year expressed their disbelief of Pakeha sincerity and their suspicion

of Pakeha initiatives such as a Bill of Rights. They warned that the purpose of the Bill of Rights is only to confuse the issue of honouring the Treaty. It hopes to lead people away from the central issue of authority and power. Newspaper and media coverage of this perspective was clumsy and inadequate consequently the nature of this opposition was misrepresented and misunderstood.

So what of this confusion which groups such as Kotahitanga, Waima Topu and Te Kawariki warned of ?

This envisaged confusion can be best understood by comparing the types of rights which the proposed Bill of Rights seeks to affirm and protect. The Bill of Rights is concerned with the general civil rights and freedoms. These rights imply assimilation or integration into Pakeha society. The bill will define the rights of a citizen to participate in society, it will not entrench the freedom of a nation, of a people to remain distinct or separate from it.

Thus the dichotomy between the article II of the Treaty and the Bill of Rights. The essence of article II is the guarantee of Maori sovereignty, the right to national self-determination, the right to control, administer and decide our own destiny. The Bill of Rights has not been designed to honour such a guarantee.

It is for this reason that groups such as the Kawariki stated the Treaty should be the sole basis upon which the government honours the guarantees given to the Maori. These were guarantees given by one sovereign partner to another. The suggestion that the Treaty be honoured as part of a document designed to protect general rights and freedoms of the New Zealand citizenry is a negation of the basic guarantee of tino rangatiratanga, of Maori sovereignty. This guarantee has to be acknowledged at the highest constitutional level or publicly denied to all Maori people. This is the only constitutional status that will accord with the Treaty's mana as I perceive it.

TINO RANGATIRATANGA, THE BILL OF RIGHTS AND THE FUTURE:

'Kokonga whare e kitea, kokonga ngakau e kore e kitea'. This whakatauki or proverb expresses the truism that the intentions of the heart are not discernible. It embodies an important principle which holds that what is important is not so much what a person does but why they do it. So, why is the Treaty of

Waitangi to be affirmed and recognised as part of New Zealand's Bill of Rights ?

The Bill of Rights is a very subtle device which will affirm and popularize a brand of political philosophy and morality which the Pakeha find secure and agreeable. It is another way of regulating ideological perspectives and reducing reality to dimensions that are not threatening to the Pakeha power holders. The Bill of Rights will try to render these dimensions as unchallengeable and part of the natural order of things. For the Maori this particular instrument may be new but the process is old and has been occurring since 1840. Ruling Pakeha elites alone have set the agenda and direction for society. This process is carried out by moulding the consciousness of people to perceive the existing order as perfectly normal and simply common sense. When the Bill of Rights is enacted people will be inculcated to use this existing order as the yard-stick to grade alternative political models and ideas. Thus for us it will be merely another measure of social control. It will condition people to perceive the obligations in the Treaty as simple cultural and linguistic rights. Rights of this nature do not constitute tino rangatiratanga which is the guarantee we were given in the Treaty. A guarantee that poses a threat to the structure that affords Pakeha agenda makers their power.

The incorporation of the Treaty of Waitangi into the Bill of Rights presses Maori people to regard the Treaty guarantees within the limits of existing power structures. The White Paper shows that while individual citizens will be protected against unlimited executive power, the Crown, i.e. the government, has no intention of limiting its power and control over the Maori. It will not surrender this power to the rightful holders who according to the Treaty are the Maori people.

The attempt to restore rangatiratanga has been a part of Maori politics since the 1840's. In contemporary politics parlance we refer to this attempt as the struggle for self-determination. The Pakeha have responded to this call in several ways. The most common response has been to conjure up the spectre of apartheid. We have found that any attempt to introduce alternative power structures and forms of government to suit Maori needs are dismissed as destructive and approaching the white racist policies of South Africa. This response is a political strategy to divert people away from the central



principles of the Treaty that Maori people have been guaranteed the right to control their resources and govern themselves. Self determination is not about oppression it is a liberating force. It frees Maori people to redefine the meaning of power, authority and progress. It allows them to guide and control the destiny of their nation.

The most inane response has been to insist that Maori activists are advocating a regression to pre-colonial society, to a frozen point in the past. Such a response does not deserve any consideration other than a few basic comments. We, before all other people, know that it is not possible to return to our traditional societies as they have been destroyed by colonization. We do not seek to replicate all pre-colonial political, cultural and economic forms. Instead we intend to extract the values which inhere in these forms and readapt them on our terms to contemporary society, thus creating new indigenous forms for the exercise of power. Forms that will express our ethos and preserve our dignity. We do not seek to fossilize time. We simply want our society to exist, and flourish without having to constantly justify why it should exist. This can only happen when our rangatiratanga is acknowledged and restored.

Probably the most pernicious response is that which attacks the bearer of the message rather than the content of the message. Maori youth are concrete confirmation of the truism which holds that when people meet they sometimes fight but they always mate. The Maori in this generation exhibit a great diversity of facial types and skin pigmentation. However the common methods of classification have not moved to cope with this diversity. If our physical features defy methods of classification then we are classified as part Maori or 'not real Maoris'. Rather than confront the content of the message the mixed ancestry of the bearer is highlighted and attacked. This type of thinking is a thin mask which disguises racist attitudes. It implies the unequal worth of blood and that blood has psychological, social and cultural correlations.

The call for national self-determination is not a novel feature in the field of Maori politics. Political movements such as Kingitanga, (Maori King Movement) and Kotahitanga, (Maori Parliament) are past examples of how the Maori sought to persuade the Pakeha to relinquish their control and honour article II of the Treaty. Thus when contemporary activists reject

the suggestion that we can assimilate and retain our heritage as a romantic empty philosophy it, as with their call for Pakeha agenda makers to surrender their monopoly of control, is rooted in a long rich tradition.

#### ALTERNATIVES TO THE BILL OF RIGHTS ?

The White Paper notes that the Bill of Rights will need to be supplemented by other measures to promote the rights of the Maori. In this section the White Paper excels. It acknowledges that there are steps other than the Bill of Rights that can be taken to put the guarantees of the Treaty into practice. In this regard the recommendations of the Report on the Treaty of Waitangi National Hui should be consulted. The Report offers many suggestions about where the government should begin implementing affirmative measures. The government could possibly start by returning Te Rerenga Wairua an area of immense spiritual significance to all Maori people regardless of their tribal origins. It was once planned to use the area for defence purposes. Perhaps the Labour government with its novel approach to matters relating to defence can make another novel move and return the land to us.

#### CONCLUSION:

If supreme laws are to be enacted in this land the process must begin with the entrenchment of the Treaty of Waitangi by itself without the baggage of a Bill of Rights as the foundation of this country's constitution. For it was in this document that the two sovereign partners, the Crown and the Maori people, laid down the scope of each partner's law-making power. It described and guaranteed what authority was to be retained by the indigenous Maori and what law-making power the colonizers were to enjoy. The fact that Kawanatanga has come to mean total Pakeha monopoly on authority and power at the expense of tino rangatiratanga does not change the nature or the essence of the guarantee.

Whereas the Treaty urges us to strive for self-determination the Bill of Rights is a strategy to proclaim the existing distribution of power and authority between Maori and Pakeha as inviolable. It is a denial of the Crown's guarantee in article II of tino rangatiratanga, of Maori sovereignty. It seeks to make

what is morally wrong politically right.

Just as the Treaty inspired our tupuna to defend their mana it inspires us to recover and restore our usurped rangatiratanga. Without this we are merely skirting around the periphery of the issues concerning the honouring of the Treaty. Thus the Labour government's present overtures must be rejected and handed back as a wholly inadequate response.