

CAN A VOLUNTARY ORGANISATION BE A TREATY PARTNER? THE CASE OF TE WHĀNAU O WAIPAREIRA TRUST

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Abstract

The Māori of New Zealand have become one of the world's most urbanised people. They have, in common with other urban migrants throughout the world, developed numerous voluntary associations designed to ease their adaptation to urban life. For some people – the number is not known with precision – the voluntary association has replaced the tribe as a focus of their social and cultural life. Yet the New Zealand government, particularly in regard to guardianship of children under the Children, Young Persons and Their Families Act 1989 and the distribution of monies from fisheries settlements, bypassed these organisations in favour of iwi, more traditional units of Māori social organisation. This paper reviews the arguments for and against changing policy to allow Urban Māori Authorities to become partners to settlements in these areas. It adopts the position that the realities of social organisation provide a strong argument in favour of the Urban Māori Authorities.

INTRODUCTION

The movement of rural people to urban areas created one of the great social and cultural transformations of the 20th century. Anthropologists (specialists in, among other things, the study of what may be loosely termed “tribal people”) have often followed their rural informants into towns and recorded their adaptation to these new environments. Voluntary organisations quickly emerged in the literature of urban anthropology as institutions crucial to the urbanisation process. Kenneth Little (1966) noted that these associations stand “somewhere between the primary, diffuse bonds of the kinship and village network...and the impersonal institutions of complex society”.

The *raison d'être* of these organisations is to serve the particular interests of people from a specific area. Indeed, they often function as surrogate kin groups to help their members through the trials and tribulations they experience in the urban environment. However, even when engaged in activities that focus on parochial interests, the outlook of members becomes fundamentally transformed. In balance and in the long run, Little feels, voluntary associations reduce the importance of origin. Eventually, as Krause (1994) puts it, “an identity of general trustworthiness and reciprocal-giving, in other

words, a civic identity can supplant the more targeted trustworthiness of an ethnic identity”.

In New Zealand this path from kin-group member to civic identity, mediated by voluntary associations, appears to be doubling back on itself. Te Whānau o Waipareira Trust, an important urban Māori association, has recently claimed iwi (tribal) status. Why would a group so important to the urbanisation of Māori people in Auckland articulate an argument that apparently denies its true nature? This paper argues that Waipareira was – and to a significant extent still is – caught in a situation where ideology determines policy. Despite the fact that an overwhelming majority of Māori people live in urban areas, outside iwi rohe (tribal boundaries), iwi-based organisations were selected as partnership units by both the Treaty of Waitangi Fisheries Commission and the Department of Social Welfare. Government policy, adhering in these two cases to the ideology of biculturalism, bypassed groups that were not kin-based.

Under these circumstances, Urban Māori Authorities¹ could either claim to be iwi too, or challenge the notion that only kin-based units of Māori social organisation could function as Treaty partners.² In fact, Te Whānau o Waipareira Trust made both claims and made them both in the courts and before the Waitangi Tribunal. They failed in the first arena and succeeded in the second. The rest of this paper discusses the evolution of this situation and argues that the government should explicitly recognise the reality of the social transformation of Māori society and implement the recommendation of the Waitangi Tribunal that any Māori organisation capable of exercising rangatiratanga be accorded the status of Treaty partner.

THE POLICY OF BICULTURALISM

For 140 years after the signing of Te Tiriti o Waitangi, as Māori developed into a “fourth world”³ people in New Zealand, Te Tiriti was largely ignored by successive New Zealand administrations. Because treaties were considered to be agreements between

¹ Urban Māori Authorities are members of the Federation of Māori Authorities, a network of Māori organisations, such as tribal trust boards, land trusts, economic authorities, and other entities that promote Māori social and economic advancement.

² Te Tiriti o Waitangi (The Treaty of Waitangi) established the right of the Crown to govern New Zealand. It guaranteed chiefs continued control of their resources and made the Māori people British citizens. Te Tiriti was signed by 46 Māori chiefs on 6 February 1840 at Waitangi. A further 500 chiefs subsequently signed or marked either the Māori or English versions of the document in other parts of New Zealand.

³ Fourth world people are indigenous groups who, unlike the citizens of third world countries, have become minorities in their own land. Their resources have been acquired by settler governments and they are over-represented in measures of social distress. Native Americans and Aboriginal Australians are also fourth world people (Levine 1987:120).

sovereign powers, prevailing legal opinion held that, once Māori became incorporated into the Empire, Te Tiriti o Waitangi bestowed no rights to them above and beyond those of ordinary citizenship. However, in the 1980s, as a result of complex political bargaining and an actively protesting, growing and overwhelmingly urban Māori population (see Kelsey 1990, 1991), New Zealand governments began to address Māori grievances and aspirations by implementing a policy of biculturalism.

The basic tenet of biculturalism is to “implement the Treaty” (Levine 1987). That is, Māori and Pākehā were to resurrect the founding document and govern New Zealand in partnership. Despite the fact that colonial settlement, demographic change, urbanisation and proletarianisation have severely eroded pre-contact Māori social structure, biculturalism and the “Treaty process” were to operate, as mentioned above, between the government and iwi. Indeed, one of the fundamental aims of biculturalism is to make tino rangatiratanga (traditional group rights of autonomous action and management) (Waitangi Tribunal 1998:xxiii) a reality again.

Critics have noted that this “iwi fundamentalism” (Levine and Henare 1994) flies in the face of the realities of the contemporary Māori situation. Among other things, the iwi approach withholds from voluntary organisations the preferences given to tribes, even in situations where both the Tribunal and Department of Social Welfare acknowledge “a significant proportion of children and young persons do not primarily identify with kin-based groups” (Department of Social Welfare 1999:32). It is only recently that the policies that parcel such preferences, funds and other resources out to competing tribes, rather than to Māori per se, have been challenged effectively.

TE WHĀNAU O WAIPAREIRA TRUST, AN URBAN MĀORI AUTHORITY

Te Whānau o Waipareira Trust is the most well-known Urban Māori Authority. The Trust was formed by the first Māori migrants to Auckland, who arrived in the city during and just after the Second World War. A comprehensive welfare organisation, it was established to aid those “who had lost their traditional support networks” due to urban migration (Waitangi Tribunal 1998:xxiii). In addition to providing a wide range of outreach services to the Māori population of West Auckland, Te Whānau o Waipareira Trust constructed an urban marae in the 1970s that still serves as a focus for social and cultural performances and other activities.

The position that biculturalism requires the re-establishment of traditional tino rangatiratanga has posed a number of problems for this organisation and other Urban Māori Authorities. If they are not iwi, such groups cannot register for a share of the assets being claimed as tribal property. Since they do not service a population of immigrants to New Zealand, they also cannot claim funding as a “cultural social service”. Squeezed out of both property and welfare funding the Urban Māori

Authorities fought back. They went to the courts to get a share of tribal assets and, in 1998, Te Whānau o Waipareira Trust brought a claim before the Waitangi Tribunal (becoming the first non-tribal group to do so) for social services funding.

THE URBAN MĀORI AUTHORITIES AND TRIBAL ASSETS

In 1992, the New Zealand government proposed to transfer \$300 million in assets to the Māori Fisheries Commission as a final settlement of the various fishery claims that Māori had brought before the Waitangi Tribunal since the 1980s. After a national gathering and a series of meetings on local marae to discuss the offer, the Commissioners accepted the government's proposal. The Commission, now renamed the Treaty of Waitangi Fisheries Commission, was charged with the task of managing the resources delegated to it pending their distribution to Māori groups.

The issue of how to distribute the fishing assets, which consisted of quota (allowances to catch specified amounts of targeted species) and profits from the Commission's share of Sealords fishing company, proved extremely divisive. A great deal of time, effort and money was consumed in the attempt to find a formula that would reconcile the frankly opposed interests that emerged within Māoridom, as various guidelines were put forward in the search for an acceptable solution. Commissioners from coastal areas pushed through a plan called "mana moana" that parceled out resources by calculating the percentage of the coastline held by an iwi in 1840 (when the Treaty of Waitangi was signed). They argued that this plan accorded with the tikanga (custom) or traditional right of pre-contact groups to control the resources off their shores. Representatives of inland Māori and of those with small areas of coastline relative to their populations opposed the "mana moana" method. They wanted the division of assets to be made on a population basis and sought an injunction against the Commission.

The Commission also found it necessary to define the term "iwi" and justify the pre-supposition that iwi were the appropriate units to receive shares of the settlement. Māori social structure is often represented in terms of a segmentary system composed of whānau (extended families), hapū (collections of whānau that make up sub-tribes or tribes), iwi (collections of hapū that compose tribes or peoples) and waka (canoes, i.e. iwi who consider that their ancestors arrived together in Aotearoa). In August 1995, the Commission established the criteria for recognising a group as an iwi entitled to share in the settlement. The criteria stated that iwi were groups made up of the descendants of common ancestors. Iwi contained hapū, marae and a district, and were recognised as iwi by other iwi. Under Article Two⁴ of the Treaty, iwi so defined were guaranteed sole rights to the resources they owned.

⁴ The second article recognises chiefly control of property.

CHALLENGING THE FISHERIES COMMISSION

Urban Māori Authorities were among the groups that brought a long and costly series of cases before the New Zealand courts and the Privy Council in London, objecting to the Commission's planned distribution of fisheries monies to tribes. They argued that the fisheries settlement should go to all Māori and also questioned the prevailing orthodoxy that iwi were actually functioning units that could be labeled tribes at the time the Treaty was signed.

Evidence was presented in the court cases that hapū and their whānau constituted the effective corporate groups of Māori society in pre-European times. Iwi became important units of Māori-government interaction only after alienation of land, depopulation and dispersal undermined the corporate nature of whānau and hapū, and shattered pre-contact chiefly authority. In addition, the Urban Māori Authorities argued that the term "iwi" could refer to any collectivity, whether tribal or voluntary, that shared common purposes. Furthermore, since in the Māori language iwi did not only mean "tribe", and today's recognised iwi were not the traditional units the Fisheries Commission contended, other organisations representing Māori should also be party to the settlements.

Leaders of the urban voluntary associations also noted that over 80% of Māori people now lived in towns and cities. In the most recent census, 25% of Māori did not declare a tribal origin. Some Māori who did declare their (often mixed) tribal backgrounds had little or no contact with iwi territories or groups. The urban associations' position was that, since they effectively function as iwi (tribes) for many of these people, part of the fishing assets should go to them.

After initial success in the New Zealand courts, the urban authorities eventually lost their case. The Commission lodged an appeal with the Privy Council in 1997. The judges in England referred back to the High Court of New Zealand the question of whether iwi were necessarily the sole traditional units to which the Commission must distribute its assets. Noting the important functions of Urban Māori Authorities, and the fact that "they arose as a result of the dynamic or flexible nature of Māori society", the High Court nevertheless found unconvincing their argument that they "qualify as iwi". According to the judgement, an iwi was a traditional tribal group, at least for the purposes of the fisheries claim. Thus iwi alone were eligible for monies from the Fisheries Commission (High Court 1997).

THE TRUST AND THE WAITANGI TRIBUNAL

Not long after the settlement of the fisheries claim, the Trust went to the Waitangi Tribunal in an effort to receive equal treatment as a service provider under the

Children Young Persons and Their Families Act 1989 (CYPF Act). Its case before the Tribunal was very similar to the one that the Urban Māori Authorities brought to the courts. It stated that because the Crown failed to preserve traditional social structures when urbanisation occurred, those Māori who did not identify with an iwi were effectively denied their rights under the Treaty. The Trust argued that it should be recognised as a Crown Treaty partner because the “policy of approving only kin-based groups as iwi social services divides Māori in a manner which is contrary to the reality of modern Māori life and contrary to the Treaty of Waitangi” (Waitangi Tribunal 1998:163).

Arguing against the Trust, Crown counsel took the position that Waipareira’s claim fell under Article Three of the Treaty, where Māori were guaranteed the ordinary rights of citizenship. Article Two, which protects the exercise of chiefly autonomy and self-management, was only relevant to “kin-based groups exercising customary authority over resources...and not to non-tribal groups involved in social services” (Waitangi Tribunal 1998:xxiii).

Although lawyers for both the Trust and the Crown agreed that pre-contact iwi and smaller units (hapū and whānau) were kin-based, the Tribunal report provides evidence that a re-conceptualisation occurred during the hearings. The report, on page xxii, begins to call these units of pre-contact social structure “traditional iwi” and “traditional hapū”, foreshadowing the possibility that modern iwi and hapū might not be exclusively based on kinship. The argument presented in the court cases, that iwi were not functioning units of Māori social structure at the time the Treaty was signed, was raised here as well. Iwi were additionally characterised as vague and shifting hapū alliances. Indeed the term “iwi” itself, in addition to being glossed as “tribe”, was said to specifically refer to “the people of a district, the people of a country, or the people engaged in an expedition”.

Perhaps more importantly, the Trust pointed out that descent itself did not provide a total picture of contemporary Māori identity. Māori people today also conceived of Māoriness in terms of membership in voluntary organisations such as churches, sports and cultural clubs. If Māori were to retain their control over their own customs, the Crown must recognise and validate contemporary changes in social organisation. Taking iwi to mean simply “the people”, Waipareira could legitimately claim status as an iwi (Waitangi Tribunal 1998:19). In summing up, the Trust’s counsel said in closing, “Waipareira is not an iwi but is iwi” (Waitangi Tribunal 1998:6).

Contrary to the outcome in the courts, the Waitangi Tribunal validated the Trust’s position. Noting that the Treaty of Waitangi applied to all Māori, and that it was a living document whose interpretation should respond to changes in social and cultural life, the Tribunal rejected the Crown’s argument and recommended that Te Whānau o

Waipareira be granted the status of a Treaty partner. In an internal report the Department of Social Welfare (1999:8) noted that, "This application of Treaty principles to the Crown's relationship with non-kin-based groups is ground breaking and extends the understanding of rangatiratanga that the Crown has generally responded to".

IMPLICATIONS FOR POLICY

The Waipareira Report, dealing with the CYPF Act and "the only Government social service agency which currently has an explicitly iwi-based approach to Māori social service delivery", posed important issues for the Department of Social Welfare (1999:20). Their internal report to the Minister of Social Services, Work and Income focused on the Tribunal's finding that Waipareira could exercise rangatiratanga and that this supported a move from an iwi-based service delivery to a more inclusive Māori social services policy. If the change was resisted, the Ministry of Social Development (a restructured entity that includes the relevant section of the former Department of Social Welfare) might expose itself to litigation. On the other hand, the Ministry might not wish to abandon its iwi focus for fear of undermining the ethos of the kin groups that it has worked to protect and foster.

The Ministry is in an especially difficult position because "the concept of rangatiratanga is the subject of intense debate within Māoridom" (Department of Social Welfare 1999:14). This debate is occurring in informal contexts and also figures in actions before the courts. An Ad Hoc Working Group of officials from the Ministry of Justice and Te Puni Kōkiri in consultation with other major government departments (Social Welfare, Treasury, Prime Minister and Cabinet, Education, Labour, State Services Commission, Commerce, Internal Affairs, and Health) (Ad Hoc Working Group 1999:3) recommended that the Crown not take a position on whether rangatiratanga could be exercised outside of kin groups. This was because to do so would require the government to define rangatiratanga precisely and this might preempt more culturally appropriate Māori discourse on the subject. It was argued that the Tribunal's recommendation in regard to Waipareira could be accepted without generalisation. In the meanwhile, officials could monitor developments in the current debate about rangatiratanga and react accordingly.

CONCLUSIONS

Why did Te Whānau o Waipareira fail to be seen as an iwi in the eyes of the courts, yet succeed in being recognised as a Treaty partner before the Tribunal? These outcomes appear consistent when we focus on the nature of what was being contested. Resources such as fisheries were the property of traditional groups. All Māori are entitled to partake of them through the "traditional" iwi structures that Māori and government are attempting to empower (or re-empower). Social welfare funding, we may argue,

should be distributed through the service best able to do the job. As John Tamihere (formerly Director of Te Whānau o Waipareira and now a Member of Parliament) said, “There is no doubt that an ‘iwi only’ delivery mechanism would apply to Ngāti Porou in Ruatoria...If you tried the same deal in Auckland it wouldn’t work” (Tamihere 2000:1).

In anthropological terms, what does Te Whānau o Waipareira’s claim of being iwi say about Urban Māori Authorities in contemporary New Zealand? Recalling Little’s point that voluntary associations stand between the state and kin/village groups, perhaps when kin-based and village-based primary groups lose their salience for people in urban centres, then there is nothing positioned opposite the state for the voluntary association to stand between or to mediate. The processes creating a civic identity for urban Māori have made voluntary organisations themselves the “primary group” for many individuals. We should not be surprised to find that the members of these voluntary organisations employ the language of kin groups to describe them – quite independently of the fact that access to material rewards may be at stake. What is unusual from a comparative anthropological perspective is that public servants and government agencies in New Zealand, because of biculturalism, actually situate their positions in the context of Māori culture.

Whatever their long-term future as an organisation, Te Whānau o Waipareira Trust has been successful in changing the discourse about iwi. Prior to the articulation of their arguments before the Tribunal and the courts, it was taken for granted in New Zealand that iwi referred only to tribes and that chieftainship (*rangatiratanga*) was something exercised in the context of traditional groupings. Now, Parliament accepts the findings of the Waitangi Tribunal that *rangatiratanga* can be exercised by voluntary associations and that such groups function very much like iwi for their constituents (Maharey 2000:1). Of course, it requires more than just declarations of recognition to empower these groups. The amended Children, Young Persons and Their Families Bill No. 2 (which would allow groups besides iwi to exercise guardianship) remains in parliamentary limbo, apparently until a consensus is seen to emerge amongst Māori about the meaning of *rangatiratanga*.

If the fisheries situation is anything to go by, such a consensus may be a long time coming. Although the cautious approach currently recommended by internal departmental reports is underpinned by sound analysis, the argument of this paper is that the discussion neglects the fact that, discourse notwithstanding, we all live in a post-traditional world. Whānau, hapū and iwi no longer determine individual allegiance, identity and status as they once did. Like the associations of other ethnic communities in the developed democratic world, these groups now depend on the loyalty of their members more than they can demand it (Alba 1992). As important and deserving of recognition and support as such kin-based groups may be, government

policy needs to recognise and cater for the substantial number of individuals that have little or nothing to do with them.

It seems ironic that the discourse of social policy in New Zealand concerning Māori is so oriented towards issues of tradition that a major Urban Māori Authority argues before the Waitangi Tribunal and the Privy Council that it is an iwi. There is no better demonstration than this that modern government institutions provide important arenas for the codification of Māori society and culture. Rather than waiting for the hoped-for consensus about rangatiratanga to emerge, government could be actively exploring the issue of what defines a Treaty partner. Because of my perspective as an anthropologist, I am particularly concerned that whatever eventuates from this exploration should fit the current realities of New Zealand social organisation. Ultimately, I believe that will mean regularising government's interaction with groups like Te Whānau o Waipareira Trust by recognising them as Treaty partners.

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