

Across the Post-colonial Divide: Reflections on the Treaty of Waitangi

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Vannakkam

Kia ora koutou

Good afternoon

My citizenship in New Zealand is the result of a compact between the New Zealand crown and my ancestors. In 1974, my parents entered into an agreement with the New Zealand government to provide their professional skills here, and in return had their passage from Sri Lanka paid and citizenship granted. But I'm not sure if this qualifies me to provide a "South Asian" view on the Treaty of Waitangi, despite what the programme says.

This is mainly because I don't think I could present a "South Asian" view on anything. So let me state from the outset that I won't attempt to summarise the views of 1.5 billion people on a contract that most of them haven't heard of, or even the views of the 100,000 or so New Zealanders who might be described as "South Asian" even if most of them wouldn't identify with such labelling. However, you'll note that I'll still use "us" and "we" and "our" in this presentation, and that who I mean by the "we" or "us" will constantly change.

I think the revelation of today is the open recognition that New Zealanders like me might have an opinion on the Treaty. For most of my life in New Zealand we were officially "Other", not really the sort of people you asked for opinions on anything. I came back from four years away to find that I had officially become "Asian", which I have to say was a bit of a shock. But this change in naming didn't seem to make much difference to our status as citizens. Lots of people still don't see us as New Zealanders in a full sense – the echo of "where are you from?" stills hangs over many of our introductions. Political

parties offer us token candidates without much thought and the media speculates on how we will vote, because of course we all think the same. If you think I'm sounding paranoid, I can only relate how a JP recently asked me how long I had been in New Zealand as she was performing her statutory duty in certifying a copy of my New Zealand birth certificate.

The Treaty is a very important part of our nation, but it's fair to say that some in our communities are confused by the Treaty and that for many of us, the Treaty doesn't seem to have a major impact on our daily lives. But this applies to many New Zealanders, and not just those in our communities.

For those of us who do engage with the Treaty, and many of our younger members in particular do, there is ambivalence. That said, as Manying noted, I no longer count as a young "Asian", so I probably wouldn't know. Still, for us, the question is, if the Treaty is the founding document of this nation, where do we fit in? The Treaty is a contract and partnership between indigenous and coloniser, Māori and Pakeha. We are obviously not indigenous or Māori. Some argue that we are on the Pakeha or coloniser side. Well, I know I'm not Pakeha, even though a Samoan colleague once suggested I have a Palagi nose. But, seriously, I have a very specific knowledge of my own whakapapa, culture and ethnic identity, and it's not Pakeha. It also stretches the imagination to suggest we are part of the colonising culture, given that it's not our cultural norms and institutions which dominate this country. As Sri Lankans, we actually know quite a lot about colonisation, as we were privileged to experience three different versions with the attentions of first the Portuguese, then the Dutch and finally the British.

It's not just people like me who think the Treaty may exclude us. Professor Ranginui Walker and others have made the claim that the wording of the preamble to the Treaty – something that doesn't seem to get much attention – only legitimises immigration from Europe and Australia, and thus that any other immigration is illegal. But I don't feel particularly illegal.

I think there are two issues here. The first is that the Treaty was written in 1840, and we need to acknowledge that it wasn't written with the consideration that people like us

would eventually be citizens of this country, even if people like us in fact actually started becoming New Zealand citizens pretty soon after the Treaty signing. The second is that it is therefore problematic to base our citizenship on the Treaty. In fact, I have a problem with this perceived need to base our citizenship on anything beyond our existence in this country, especially given the existence of universal human rights. Why do we need to prove our citizenship? Why do some New Zealanders need to prove this more than others? Actually, why do I have to prove my citizenship to customs officials about every second time I re-enter the country with an interview most other passengers don't get? If there really is this need for proof, perhaps we could talk to David Blunkett and Lord Tebbit in the UK and institute citizenship tests. After all, some of us are supposed to be quite good at passing tests.

This rejection of the Treaty as the basis of, at least, **our** citizenship doesn't mean that we reject its significance outright for us or its significance for this country. As a contract between Māori and the Crown, we can see the injustices that have been wrought by the non-adherence of one partner to the agreement. Many of us know the path that violation of such covenants leads to. In my case, I could list for you the spiral of agreements that were broken in Sri Lanka on the path to civil war, and the agreements that continue to be broken. We understand the alienation from political processes that such breaches of faith cause, and moreover the harm to health and human rights that ensues. We don't want to see this happen in New Zealand so we recognise the importance of redressing past wrongs. But we don't see our presence in New Zealand as a wrong or as incompatible with the Treaty. And we think there is more to citizenship and our rights as New Zealanders than the wisdom of the Treaty.

This may sound like a challenge to the importance of the Treaty in New Zealand, but it's not. I think, however, it is important to separate the Treaty as a contract from the Treaty as symbol. All I've said up to now really is that I don't think we're included in the Treaty as a contract, and that this doesn't necessarily detract from our citizenship. The Treaty as a symbol is a whole other matter.

This symbolic value of the Treaty reflects its positioning as founding document and de facto constitution of New Zealand. It's pretty hard to disagree with the symbolic

principles derived of participation, partnership and protection for all peoples in New Zealand. But in the absence of a formal constitution, there's often a lot of over-reaching about the influence or application of the Treaty.

This is often seen in my sector of health. The Treaty is often cited as some sort of panacea or oracle for our practice ethics and knowledge. Health is all-encompassing and political systems obviously have huge impacts on health. So of course in New Zealand the Treaty is a major health determinant and its symbolic values are very important. But its principles are not a complete proxy for every health document, such as, for example, the Ottawa Charter for Health Promotion, as I've heard someone claim. Or, as health professionals, our stimulus to respect our patients, involve them in their health-care and do our utmost to improve their health in a holistic way does not derive purely from the Treaty. Hippocrates and our Ayurvedic masters, amongst others, might have made a small contribution. Even for Māori, I don't agree, as some argue, that the most important reason we should prioritise improving Māori health first is because of the Treaty. I think the most important reason we should all do this is based on social justice – that Māori live on average ten years less than non-Māori, that Māori children die more often than non-Māori, and that these differences are independent of the amount of money people have. These things are unfair.

Fairness does not only derive from the Treaty, just as the human condition did not come into being only in 1840. The Treaty may facilitate all of these things, but to give it primacy for these human rights suggests that these rights to health apply to specific groups in New Zealand more than others. This is at odds with the idea of universal human rights and counter-productive because it sensitises other groups to approaches, such as prioritising Māori health, which are amply justified on more universal principles, and blurs the issue on what should be universal social and economic entitlements.

For our communities, it also suggests that any deficiencies in human rights which might arise for us lack a mechanism for being addressed, without the focus of the Treaty from which we are excluded. It might be argued that the symbolic use of the Treaty intentionally imbues it with things it might not actually say, but which are thought to be desirable and reflective of its spirit and societal wishes. But I suppose the reason I'm

sensitive to what I see as over-reading of the Treaty as a symbol, is that, currently, even in this fictive sense, there is no space in this Treaty discourse for people like me. You might say that this is what today is about, to start to create such a niche. But I feel that there is an increasingly fixed sense of what the Treaty means in New Zealand and there is not a great deal of sympathy to widening its meaning to include us. This is understandable because it continues to be a battle for Māori to get the Treaty as contract acknowledged and redressed in good faith. But it poses a problem for our communities.

Many people from our communities, though, perhaps construct a straw man when they feel uneasy about the Treaty on the basis that it grants differential rights to Māori. This unease is understandable given that many of our communities have experience of discrimination on the basis of ethnicity or purported “race”. This was often the major driver for their - or their ancestors’ - settlement in New Zealand. So the prospect of there being differential rights in New Zealand on a seemingly similar basis is unnerving for many. However to be so alarmed is to be in some ways to be ensnared by those who claim to speak for the “mainstream” in New Zealand, because we can be quite sure that they do not aim to speak for us. It is Māori who have suffered most in New Zealand from discrimination, and even today this continues in that social and economic deprivation are the most potent ways to deny people their human rights.

A similar “straw man” perhaps is the unease of many of our communities about the model of biculturalism, derived from the symbolic discourse of the Treaty. I have to admit that I always used to find biculturalism problematic, because it seemed to extend the lack of space in the Treaty for people like me across the whole of New Zealand society – it seemed to imply, that we, and our cultures, didn’t exist here. Many people in our communities prefer the concept of multiculturalism. But having lived in Australia and the United Kingdom, I’ve revised my opinion.

I still think there are problems with biculturalism and I think that as a model it will be increasingly inadequate to describe the myriad plural identities of 21st century New Zealand. But we should be grateful to biculturalism, and thus the Treaty, because it has unmasked the dominant culture. In New Zealand, Pakeha are generous enough, through biculturalism, to now recognise that there is more than one norm in New Zealand, and

that their institutions and ways are culturally specific. Biculturalism, then has “unmasked” them. In New Zealand, biculturalism has begun to be operationalised with the realisation that different systems can be tolerated and even promoted. Māori health providers, for example, are very much at the vanguard of this process, although there is no doubt that there is still a long way to go.

In Australia, multiculturalism delivers far less than it promises. I attended a so-called “diversity in health” conference recently in Melbourne. The Australians call people like me CALD, which stands for “culturally and linguistically diverse”. In terms of translation services for health care for minority groups, and as with many other things, in resourcing, they are in many ways far ahead of New Zealand. But beyond the rhetoric of how many languages are spoken or the wheeling out of diverse costumes and musics for the opening of functions, in Australia multiculturalism operates as a veneer for the systematic monoculturalism of healthcare there and the continued invisibility of the majority culture. So our communities in New Zealand, in seeking multiculturalism, should be careful what they wish for. Biculturalism, and Māori, have provided us with a template and an opportunity to seek and construct systems that truly engage our needs, and have placed Pakeha in a context whereby they may even support us in this enterprise. So even if we’re not in the Treaty, it is still of tremendous value to us even in a material sense.

To conclude, current Treaty discourse does not, I believe, accommodate the reality of modern New Zealand and in particular fails to account for New Zealanders like me. There is the option, perhaps, of creating new discourse around the Treaty to rectify this, which if the Treaty functions as a de facto constitution is necessary because it does not seem tenable to have a constitution which omits increasing numbers of a nation’s citizens. This will require an openness to debate about the Treaty that today’s symposium hopefully embodies. The other option would be for us to enshrine the Treaty as part of a new written constitution. Personally, I suspect that the latter option might work better, not because the Treaty’s place in New Zealand should be decreased, but because I suspect that it might be starting to creak to accommodate the realities of even modern Māori and Pakeha, let alone our communities. Because I think New Zealand has long passed being able to view itself through the narrative lens of two peoples originating from the Treaty.

And because the Treaty has not proved as yet a sufficient vehicle to satisfy Māori rights to equity and full citizenship fast enough, despite the progress that has been made.

I remember being told by Tama Iti at Ruatoki, on a medical student marae trip, that despite my claims and affection for the peaks of Rangitoto and Maungawhau as emblematic of my sense of home, this was not my country, but that my home would always be the north of Sri Lanka of my ancestors, somewhere I have never lived - and not seen, due to civil war, for twenty-five years - because Aotearoa was the land of Māori. But it's always a bit more complicated than that. A colleague, who is Tuhoe, suggested when I told him this that I might have asked Tama Iti who powhiri'd his people when they arrived on the shores of the Bay of Plenty.

We need to continue to celebrate the Treaty and to honour it. As non-Māori, non-Pakeha we need to understand its significance as New Zealanders, even if we seem excluded from it, and appreciate the lessons we can learn from it for our own specific goals as communities. In particular, we need to build better links with Māori and dispel any notion that we are somehow in competition. We might like to compare our experiences of colonialism, and thus avoid falling into the trap of adopting the racism towards Māori that sometimes surrounds us.

But, along with all New Zealanders, I think we also need to move beyond the idea of two essentialist identities being capable of representing the diverse citizens of Aotearoa. I think we need to create the space to acknowledge all New Zealanders, in their increasing diversity, as full citizens despite their differences. We seem to have finally recognised in this country that under-valuing and diminishing the citizenship of tangata whenua diminishes everyone. Given that people like us have lived in New Zealand for over a hundred years now, perhaps it's about time we got the same break.