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Aotearoa - New Zealand

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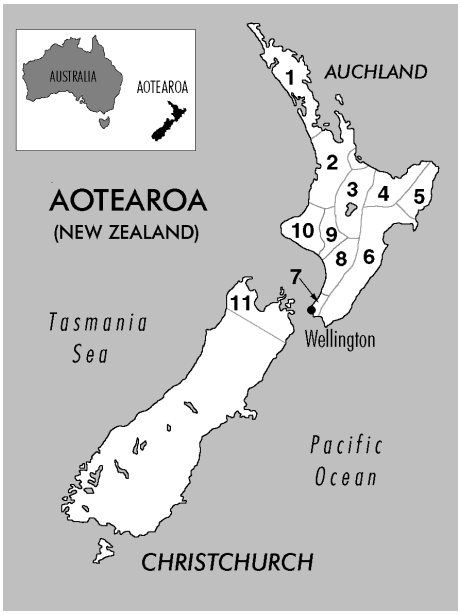
"Race relations" and the place of the Treaty of Waitangi as a blueprint for nation building were very much at the forefront of the national political agenda in 2004. The broad political consensus shared by both National and Labour-led governments in New Zealand over the past decade collapsed in the wake of the soaring political popularity of Don Brash, the new leader of the National Party, the main opposition political party in the New Zealand Parliament.

The legitimacy of policy initiatives and programmes that specifically target Māori in order to reduce the relative socio-economic disparities that exist between indigenous communities and other New Zealanders, and the role of the Treaty of Waitangi in managing contemporary relationships between indigenous communities and the Crown, have come under sustained attack.

The Treaty of Waitangi under threat

The underlying theme of Brash's widely reported speech to the Orewa Rotary Club in January 2004 was the apparent "threat" that the Treaty of Waitangi settlement process represented for the future of the country. Throughout the speech he repeatedly emphasised what he claimed was "a dangerous drift to racial separatism" which undermined "the essential notion of one rule for all in a single nation state". In a move clearly designed to tap into public resentment, Brash argued that the Treaty of Waitangi was an archaic relic of the past, and on that basis should possess no more than a symbolic role in New Zealand society. In rejecting notions of the Crown's "partnership" with *iwi*, hapū and urban Māori communities, Brash has clearly signified that a return to

1. *Taitokerau*
2. *Tainui*
3. *Arawa*
4. *Mataatua*
5. *Taira Whiti*
6. *Takitimu*
7. *Te Upoko O Te Ika*
8. *Manawatu*
9. *Whanganui*
10. *Taranaki*
11. *Te Tau Ihu*



Regional *iwi* groupings.
Source: www.takoa.co.nz

more traditional constitutional concerns is on the cards should the National Party be in a position to form a government at the next election:

> *We intend to remove divisive race-based features from legislation. The "principles of the Treaty" – never clearly defined yet ever expanding – are the thin end of a wedge leading to a racially divided state and we want no part of that. There can be no basis for special privileges for any race, no basis for government funding based on race, no basis for introducing Maori wards in local authority elections, and no obligation for local governments to consult Maori in preference to other New Zealanders. We will remove the anachronism of the Maori seats in Parliament. … Having done all that, we really will be one people – as Hobson declared us to be in 1840.*[1]

Stung by the strong public support for Brash in recent opinion polls, the Labour-led government announced a series of abrupt U-turns,

hoping to placate the concerns of the wider electorate. In a concession to the publicity generated by Don Brash, Prime Minister Helen Clark is reported as saying that the government may have moved ahead of public opinion on Treaty issues. This follows the appointment of State Services Minister, Trevor Mallard, to a new role as "Co-ordinating Minister of Race Relations" to undertake a comprehensive review of policy initiatives and programmes that specifically target Māori, and an examination of legislative references to the principles of the Treaty of Waitangi. This has occurred amidst calls for an inquiry into constitutional arrangements, including the place of the Treaty of Waitangi.

References to the Treaty of Waitangi in state legislation represent a significant concession after years of concerted struggle by Māori to combat the racism that has underpinned New Zealand society and the discriminatory practices of state institutions. The ideological battle against the specific programmes and initiatives that target Māori communities as a symbol of this victory has been raging ever since – as opponents claim the mantle of the anti-racist movement in their battle against "reverse racism" towards Pākehā. Far from a "level playing field", as opponents of affirmative action claim, racism is a pervasive force in New Zealand society. Programmes that consciously address this racism are absolutely critical.

The impact of Brash's Orewa speech, however, has been to make the expression of the bigoted and racist ideas of some New Zealanders publicly respectable. Brash has provided them with a more acceptable political figure to hide behind, while the attacks on Māori, implicit in his public pronouncements, represent a tacit coded appeal to cruder racist attitudes. It is not simply coincidental that the fascist organization, the National Front, is seeking registration as a political party for next year's elections on the basis that the "public mood is right for its militarist and anti-immigrant stance".[2]

Foreshore and seabed

On 18 November 2004, one of the most contentious and draconian pieces of state legislation was passed by 66 votes to 53 in the New Zea-

land parliament. The *Foreshore and Seabed Act* was largely a response to the controversy that erupted over a Court of Appeal decision in June 2003 that challenged the Crown's long-held assertion that it owned the foreshore and seabed. The Court found that Māori may have customary interests in the foreshore, which could lead to the granting of private title by the Māori Land Court.

Against a background of growing public hysteria, fuelled in part by cynical political opportunism and sensationalised media reports that Māori would block off public access to the beaches, the government released its initial plans for the foreshore and seabed in December 2003. The policy entailed introducing new legislation that would effectively extinguish Māori customary rights in the coastal marine area. The government then embarked on a process of "consultation". Despite the fact that Māori overwhelmingly rejected the government's proposals, the government did not alter its proposed approach.

In January 2004, the Waitangi Tribunal's Report on the Crown's Seabed and Foreshore Policy condemned the government's policy as being in substantial breach of the Treaty of Waitangi:

> *The policy clearly breaches the Treaty of Waitangi. But beyond the Treaty, the policy fails in terms of the wider norms of domestic and international law that underpin good government in a modern democratic state. These include the rule of law, and principles of fairness and non-discrimination.* [3]

Protest and the formation of the Māori Party

The lack of accountability and democracy in the negotiations over the foreshore and seabed legislation generated intense anger and resentment. On 5 May 2004, a protest *hikoi* (a walk or march) arrived in Wellington with up to 20,000 people who strongly opposed the government's plans. The *hikoi*, the largest protest since the land rights movement of the 1970s, had set off from the Far North of New Zealand's North Island thirteen days earlier, picking up thousands of supporters as it marched towards the nation's capital. The government's Māori MPs came in for heavy flak and many speakers reignited the call for a

Māori party to be established, saying it was the only vehicle for Māori political aspirations. The Prime Minister, Helen Clark, tried to marginalise the *hikoi,* describing the marchers as "haters and wreckers".

The government's proposals on ownership of the foreshore and seabed also exposed bitter internal divisions amongst the Māori members of the governing Labour Party itself. The Associate Maori Affairs Minister, Tariana Turia, announced her resignation from Parliament and the Labour Party over the issue. With growing dissatisfaction with the Labour government among Māori voters, Turia was critical in establishing a new Māori party to contest the next general parliamentary elections. As co-leader of the Māori party, Turia subsequently re-won her Te Tai Hauauru constituency (a Māori constituency stretching from Putaruru and Tokoroa in the north to Porirua in the south) in a by-election in July 2004, winning around 90 per cent of the votes cast.

Despite this, the Foreshore and Seabed Act will come into effect on 17 January 2005 and vests all parts of the foreshore and seabed not currently "subject to a specified freehold interest" in the Crown "as its absolute property". The Act has radically changed the legal situation in New Zealand in relation to Māori customary rights and customary ownership of land characterised as foreshore and seabed. It prevents Māori from access to judicial recourse by removing existing legal routes for Māori to have their customary rights and ownership in the foreshore and seabed investigated and legally recognised. The government is actively disregarding the customary rights that were guaranteed under the Treaty of Waitangi and which are also recognised in international law. In this way, the legislation represents an unparalleled attack on the rights of *iwi*, hapū and urban Māori communities. ❑

References

1 Don Brash in a speech delivered in January 2004 at Orewa Rotary Club.
2 *Sunday Star-Times*, 7 March 2004.
3 Waitangi Tribunal's Report on the Crown's Seabed and Foreshore Policy 2004: xiv.