Elizabeth Rata: Two Treaties of Waitangi: The Articles Treaty and the Principles Treaty

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Commentary

There are two versions of the Treaty of Waitangi. The first is the 1840 Treaty – the 'Articles Treaty'. The second is what I call the 'Principles Treaty'. It dates from 1986 when the principles were first included in legislation. Astonishingly the parliamentary representatives who inserted the word 'principles' did not know what they meant. To include a word estranged from its meaning into legislation is an egregious political failure. At the very least, a democracy requires words to have an agreed meaning otherwise rational communication is impossible. Autocracies that use ideologies to control how people think can dispense with accurate meaning. Democracies cannot.

The result of parliament's failure is two versions, one of Articles – the 'Articles Treaty', the other of Principles – the 'Principles Treaty' – and the consequences – a racially divided country and a group asserting co-governance rights. How did it happen?

The 1840 Articles Treaty has a Preamble and 3 Articles that reflect the ideas, motives, and actions of the time. Similarly, the Principles Treaty is of its time and place – the 1980s. The cause of enormous confusion and conflict is because the treaty today has the words of 1840 (whether in Māori or in English) *but the meaning is late 20th century ideology*.

The meaning of the 1840 Treaty exists in the Articles. Article I recognised British sovereignty. Article II recognised the rights of Māori to hold or dispose of property. Article III recognised Māori as British subjects. In stark contrast, the inventors of the

Principles Treaty have, after decades of uncertainty, finally settled on the so-called core principles of partnership, active protection, and redress, despite these words not appearing in the Articles.

The word 'principles' first appeared in the 1975 Treaty of Waitangi Act. In that legislation, 'principles' referred directly to the meaning, value, and purpose of the Articles. The word 'principles' was tied to the Articles. It had no referent outside those Articles. It did not state the word 'partnership', nor was active protection and redress mentioned or implied.

Three events detached the word 'principles' from the Treaty Articles, leading to decades of meaning creation. They are the 1985 Treaty of Amendment Act, the 1987 Court of Appeal's 'akin to partnership' statement, and the insertion of undefined 'principles' into legislation from 1986.

The Articles-Principles detachment occurring in these three events was crucial to today's invented treaty. It enabled the principles to acquire a different meaning, value and purpose – a new referent. To reflect the word's new power, it was given a capital 'P'. From that time treaty revisionists of all ethnicities talked excitedly about the 'Principles' as though they had always existed. Like sacred text, the meaning was lying in wait in the Treaty runes. It would be revealed by those who now interpret the Word to the World – the lawyers who are the modern secular priesthood.

As the practice of legislative insertion and legal interpretation gained momentum so too did an acceptance of the erroneous belief that the Principles had authority. An authority conundrum was created. It is reasonable to believe that insertion into legislation is the act of authorisation.

After all, members of parliament authorised the insertion. However, they failed to define the Principles despite numerous and ongoing insertions. It was left to activist judges, officials and retribalists to take on the monumental task of deciding what the Principles were to mean.

In a democracy, parliamentarians represent us, the people. Yet does this authority have legitimacy when our representatives did not know what the Principles meant when they were inserted into law?

A vacancy of meaning, especially when concealed by righteous language, opens up opportunities for those with vested interests to insert their own meaning. In inventing and consolidating the Principles, advocates for a kinship-based political structure have used traditional ideology to provide a timeless, spiritually authorised quality to their very time-bound interests. The erroneous partnership Principle is given the greatest weight, opening up a wide backdoor to power. Tribal corporations can now move beyond their economic interests to demand political power – to be entrenched first as co-governance, then as tribal sovereignty.

How do you get people to believe in an invention and then to agree to its consolidation in legislation? Retribalists simply used age-old strategies.

The first strategy laid the groundwork by creating alliances with those in government and the professions, particularly in the judiciary. It didn't matter if the alignment proved to be incompatible – such as that between a racialised retribalising movement and emancipatory feminism. As a temporary alliance it served its purpose with many feminists proving to be ardent retribalists. Some later retreating in silence, unable to resolve a dilemma created by mistakenly defining equal rights and justice in identity terms. In this way, feminism was ousted by gender identity politics and women's rights were side-lined.

The second strategy is to ride on the back of current intellectual movements. Using postmodernism' mystifying and irrational idea that reality only exists in language means that if one say something is the case then it is – especially if it is said in the loud and certain tone of the righteous with prayers adding the gravitas of sacred authority. If it is stated that the Treaty has Principles, then it is for the secular priests to reveal that truth.

This emperor's new clothes strategy was supported by the righteousness of Cultural Marxism, a thriving ideology in university social science and education faculties and in

government departments staffed by those with postmodern degrees. Although the nonsensical conflation of culture and materialism would have Marx turning in his grave, it gives social justice intellectuals a site on the moral high ground from where they can do well by doing good.

The third strategy, the language game, rests on this irrational intellectual bedrock. Controlling the language that can be used when talking about the Treaty ensures that thought itself is restricted in both its expression and, more seriously its very development. How can alternative ideas be developed if they cannot be spoken? Even more seriously, once language is couched in moral terms then criticism is excluded.

The rapid inclusion of the word indigenous into New Zealanders' everyday language from the 1980s shows how effective this method is. Belief in a treaty partnership requires partners who are to live in a permanent relationship. Differences are emphasised, sometimes even created, and commonality rejected.

Embedding one of those partners in the status of indigeneity with the other partner an intruder into Arcadia expands the moral distinction into a timeless mythical realm. Romantic evocations of the evil coloniser and the indigenous colonised provide a more seductive narrative for the nation's collective memory than the more prosaic fact that, from the thirteen century to the present, all New Zealanders are settlers.

Our history is one of waves of settlers. It is a shared experience that trumps an arbitrary division into the indigenous on the one hand and all other settlers on the other. But language control is most successful when it evokes the sacred. The word indigenous does this with its suggestion of a mythological connection to the land and its creators. Those who resist the language game are accused of refusing not only the word, but the Word as revealed truth. Those who insist that truth lies in reality – that the 1840 Treaty didn't have Principles and that we are all settlers, no matter the time of arrival, are silenced by accusations of racism. Far better to be silent than to bear the racist taint suggestive of a profoundly immoral character.

It is in the revelation of sacred meaning that the fourth strategy has proved to be most effective. Today's secular priests – the activist judges, tribalist law professors, and lawyer-politicians – have claimed the authority to interpret the truth from the Treaty runes. They have won the age-old battle between the World and the Word in securing doctrinal supremacy. Made vulnerable by their commitment to the Word and their role as its interpreters to the World, lawyers tend to believe that if it is said, and especially if it is said in legislation, then it must be true. That revealed Word is now the authority.

But tribalist intellectuals, activists and lawyers aside, the group most to blame for the invention of the Principles Treaty are our Members of Parliament. The inclusion into legislation of a statute without legislators knowing what it meant is an unprecedented failure of political representation. Compounding the failure by continuing to insert the Principles does not make up for that failure. Repeating an error does not diminish or remove it, rather the error is consolidated.

The initial authority for inclusion was not given by the people. Until this occurs, or if the people refuse to authorise the inclusion, the Principles do not have the authority claimed for them. They should be removed. In the end, legitimacy is decided by the people if democracy is to work.

Those who have done well out of the invention of Treaty Principles will object to their removal. They will use the loud voices and threatening tactics that have proved so effective and led to widespread entitlement. They will be shameless in calling on the democratic ideals of universal human rights to justify a racialised future.

But an unsettled and messy time is democracy in action. Indeed a degree of conflict is to be expected given the current mess. But the message for legislators is clear. They act on behalf of the people. They must know what their legislation means before laws are passed. Officials and lawyers then interpret the law. They do not create its meaning in undertaking that interpretation.

It is in discussion with the people that our parliamentary representatives assure themselves and us that they know what they are talking about. The discussion about

whether we want Treaty Principles may be four decades late, but it must happen for the sake of New Zealand democracy.

I identify three possible choices. The first is to continue with the 1980s' invented Principles Treaty knowing it justifies co-governance and will lead to the irresolvable conflict between a kinship-based polity and a universal democratic one, one justified in a racial division of people into indigenous and non-indigenous.

The second choice is to value the 1840 Treaty of Waitangi as one of the country's most significant historical documents, but one with no practical relevance to a modern democracy.

The third choice is similar to the second but treasures the symbolic value of the historical document within the nation's collective memory. It is to regard the principles (lower case 'p') mentioned in the 1975 Treaty of Waitangi Act as referring directly to the Articles but with no meaning or application beyond those Articles.

Democracy is not just arriving at a decision. It is the act of rational communication that enables the decision to be made. For this to happen, language must be pulled apart so that meaning is exposed, and with it, the intentions of the user. There can be no language priesthood, no sacred words, no moral high ground. Those who have controlled treaty language have controlled meaning for too long. It is now time to talk critically about the Treaty.

When Alice told the Mad Hatter that she didn't think, his reply was – then you shouldn't talk. But we must talk, the alternative is silence – and anger. So let us follow the March Hare's advice – say what we mean. Language has three components – words, meaning, and the explicit connection of the word to its meaning. Ideology intrudes in the vacant space when words are detached from their meaning. That has been the case with Treaty talk since the 1980s.

Let us insist on democracy's rational communication in all its complexity and disturbing power so that we know what we mean when we speak and we can justify the meaning

in explicit argumentative logic. Let us insist that our parliamentary representatives do the same.

(Note: The ideas in this commentary are based on my article: Rata, E. (2004) 'Marching through the Institutions': The Neotribal Elite and the Treaty of Waitangi. Published in Sites, New Series, Winter, Volume 1, No. 2 https://sites.otago.ac.nz/Sites)

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