

# Exploring the Meaning of the Treaty of Waitangi for Counselling

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## Abstract

The NZAC *Code of Ethics* calls on counsellors to honour the Treaty of Waitangi. This article explores the meaning of the Treaty for counselling practice. This exploration considers but is not confined to the words used in the Māori and English versions of the Treaty. It surveys three periods of Treaty history that move from initial cooperation through division and disparity to negotiation and restitution, and shows that this history has added to the meaning of the Treaty. It explores Treaty principles and biculturalism as vehicles for meaning. It offers a broad context for the pursuit of meaning which counsellors might apply in their practice, while also arguing that the meaning of the Treaty cannot be finally decided.

**Keywords:** Treaty of Waitangi, Treaty history, Treaty meaning, biculturalism, counselling

The New Zealand Association of Counsellors (NZAC) *Code of Ethics* (2002) explicitly links counselling practice with the Treaty of Waitangi:

*This Code needs to be read in conjunction with the Treaty of Waitangi and New Zealand law. Counsellors shall seek to be informed about the meaning and implications of the Treaty of Waitangi for their work. They shall understand the principles of protection, participation and partnership with Maori. (p. 2)*

This article considers the first of these three matters that the *Code* requires counsellors to be informed about—*meaning*. It examines how counsellors might explore the meaning of the Treaty for counselling practice. An earlier article addressed the Treaty principle of partnership in relation to counselling practice (Crocket, 2009).

The repositioning of the Treaty of Waitangi as the founding document of Aotearoa/New Zealand over the last four decades has had significant political, social, and ideological effects. These effects have been visible at the national (political) level as well as in myriad organisations. NZAC (2002) has followed the calls in Aotearoa/New Zealand for social practice to be shaped by the Treaty of Waitangi. This article seeks to add to the Treaty-based counselling practice literature (for example: Abbott & Durie, 1987; Addy, 2008; Campbell, 1990; Crocket, 2009, 2012; Davies, Elkington, & Winslade, 1993; Drury, 2007; M. Durie, 1999, 2007; Hepi & Denton, 2010; Hokowhitu, 2007; Lang, 2003a, 2003b, 2004, 2007; Manthei, 1990; Mila-Schaaf, 2010; Mulqueeney, 2012; Te Wiata & Crocket, 2011; Tutua-Nathan, 1989; Wadsworth, 1990a, 1990b; Webb, 2000) by offering a précis of Treaty scholarship to support counsellors in seeking meaning that they can apply in their practice.

To understand the meaning and implications of the Treaty for counselling practice in Aotearoa/New Zealand it is important to consider the beliefs and motivations that led to its writing and signing, and the meanings that developed around it subsequently. Ultimately it is not possible to determine a *single* meaning of the Treaty (Pryor, 2008; Royal Commission on Social Policy, 1988; Turner, 1995).

### **The Treaty of Waitangi becomes a social practice metaphor**

I begin with an historical overview of political and social responses to the Treaty of Waitangi. Since the mid-1970s, when the Treaty of Waitangi Act was passed, the Treaty of Waitangi has become central to debate and discussion about both the national identity of Aotearoa/New Zealand and the culturally based identities of individuals and groups. This debate has generally had a combative character (Norval, 2007). However, although it has been at times “angry talk” (Sharp, 1997), it has also carried other dimensions, taking place in conditions:

*in which there was enough division and dissension among people to make talk of justice necessary, but conditions too where there was enough of a sense of common membership of a political society to render such talk more than the empty rhetoric of enemies.* (p. 21)

These Treaty debates, although frequently heated, have generally been positively carried on within and between groups in a national context of connected identities.

I now shift to consider the problematic language in the two Treaty versions and the history that followed its signing.

### **The emergence of Treaty discourse**

During New Zealand's history the Treaty has taken on a range of meanings. For a relatively brief time, from 1840 to 1852, it was a marker of an agreement between two peoples who approached each other with some degree of equality. Then, as the Treaty began to be disregarded by successive settler governments, it became a symbol for Māori of their unrelenting resistance to colonial domination. Since the 1970s it has come to be seen as a guide to reconciliation between the Crown and Māori (M. Durie, 1998). As I have indicated, the Treaty has also become a primary metaphor for social service practice.

Today the Treaty of Waitangi is generally seen as the founding document (Royal Commission on Social Policy, 1988; Te Puni Kōkiri, 2001) or central to the constitutional framework (Brookfield, 1999; Te Puni Kōkiri, 2001) of Aotearoa/New Zealand. This position has been hard won and was only achieved through a series of moves over the last four decades. For the largest part of the preceding Treaty history the Crown, as the institution of government, and Pākehā, as the increasingly dominant cultural group, largely ignored the Treaty.

#### *1840–1852: A time of cooperation*

The Treaty of Waitangi was signed within days of the arrival of the Crown's emissary, Lieutenant Hobson, in February 1840.

*Haste and inadequate consultation were the hallmarks of the Treaty process and there was the added complication of linguistic and cultural misunderstanding.*  
(M. Durie, 1998, p. 176)

The first two of the three articles of the Treaty presented by Hobson contain significant differences of meaning between the originally drafted English version and the subsequently translated Māori version (Orange, 1987).

Henry Williams was the missionary who translated Hobson's draft Treaty into Māori (Biggs, 1989). Williams chose to translate *sovereignty* as *kāwanatanga* rather than *mana*, which had been used in the 1835 Declaration of Independence, which he had also translated (Biggs, 1989). *Kāwanatanga* is a missionary-invented word used previously in translations of the Bible into Māori, but for Māori it had a lesser meaning than sovereignty. *Mana* more closely translates as sovereignty (Biggs, 1989). It has been argued that if *mana* had been used in place of *kāwanatanga*, Māori would not have signed the Treaty; it was inconceivable that Māori could agree to sign away their *mana* (Jackson, 1989, p. 2).

In article two, “full and undisturbed possession” was translated as *tino rangatiratanga*. Tino rangatiratanga also implies sovereignty in addition to possession because it refers to “chieftainship,” the basis of Māori sovereignty (Biggs, 1989). Today tino rangatiratanga is generally translated as either Māori sovereignty or self-determination (Maaka & Fleras, 2005).

Māori rangatira at Waitangi did sign the Treaty after extensive debate. One prominent Māori leader, Hone Heke, proclaimed that “the native mind cannot comprehend these things, they must trust to the advice of the missionaries” (Walker, 1990, p. 95). However, the missionary advice had a strong element of self-interest. Walker (1990) argues that Williams was anxious to secure sovereignty for the British at least in part to secure the extensive land holdings he had obtained to support his 11 children; his choice of particular Māori words encouraged Māori rangatira toward agreement without their full understanding of the Crown’s intentions.

With undercurrents of haste, of missionary duplicity, of Māori misunderstanding of the proposed Treaty’s purpose, and the confusion caused by inaccurate translation it might be asked why or how the Treaty has any significant status today. Sir Edward Durie, a former Chief Judge of the Māori Land Court, has indicated that this is in part because at least New Zealand *does* have a treaty (E. Durie, 1990, p. 2). The existence of the Treaty has provided a focal point for relationships between Crown and Māori with the potential to develop a justice-based rhetoric. Durie (1990) has written that the Crown saw it as a treaty of cession (of sovereignty), but that Māori:

*saw themselves as entering into an alliance with the Queen in which the Queen would govern for the maintenance of peace and the control of unruly settlers, while Māori would continue as before to govern themselves. (p. 2)*

After an initial period in which settlers and Māori cooperated for mutual benefit (M. Durie, 1998), the political landscape changed radically in the late 1850s.

#### *After 1852: Division and disparity*

In the 1850s a second period of Treaty history began that was marked by “division and disparity” (M. Durie, 1998). A rapid decline of the Māori population as a result of introduced diseases appeared to threaten Māori survival (Walker, 1990), while simultaneously the settler population was rapidly increasing, bringing an attendant clamour from settlers seeking land to farm. The transfer of Crown sovereignty from Britain to a settler government in 1852 gave settlers the opportunity to repudiate the Treaty under the mantle of legitimate government (Ward, 1999). This transfer of

power from an imperial colonial authority to a local colonial authority completed a “revolution” in which greater authority was taken by the Crown than Māori had understood to be inherent in the treaty that had legitimated the Crown claim to either sovereignty or *kāwanatanga* (Brookfield, 1999). These moves by the settler government reached a nadir with the judgement by Chief Justice Prendergast in 1877 that the Treaty “was a mere nullity” (as cited in Dawson, 2001, p. 78).

For nearly a century Prendergast’s judgement acted as a block to attempts by Māori to have the Treaty recognised as a legitimate guide to the resolution of grievances (Cooke, 1994). However, equally if not more devastating were the material outcomes of assimilationist Crown policies—war, confiscation of large tracts of land, disease, an insidious pressure to sell land, and consequent poverty and racism (Department of Social Welfare, 1988; Ward, 1995)—that marked the period between 1859 and 1975. By 1975, most of the land that had been in Māori ownership in 1859 was no longer owned by their descendants (Ward, 1999) despite strenuous efforts by Māori to resist the sale of land (Walker, 2001). These material outcomes of assimilation demonstrated growing divisions between Pākehā and Māori and an ever-widening disparity between their living conditions. Sir Edward Durie (1990) has observed that the Treaty has only survived because of the persistence of Māori in holding it up as a reality, and he has also maintained that Māori opinion about the Treaty changed over time as a product of this persistence.

*The Treaty became over the course of the struggle a sacred covenant equating the promises of God and a taonga; a treasure passed down from revered forebears.*  
(p. 2)

It is quite possible and even likely that those of their forebears who signed it did not hold the meanings ascribed to the Treaty by Māori today. Each act of resistance by Māori and each experience of colonising disadvantage for Māori contributed to contemporary meanings, which I refer to as a developing Treaty of Waitangi discourse. As Sir Edward Durie (1990) writes:

*If neither the Queen’s judges nor her cabinet ministers could bring themselves to uphold the solemn promise undertaken on the Queen’s behalf, they diminished not Māori honour but their own. Every petition and court case that failed, also succeeded in driving that point home.* (p. 2)

As Māori persisted with their calls for adherence to the Treaty, their own values became infused in an emerging (largely Māori) Treaty discourse. I choose to identify

late 19th and early 20th century Treaty discourse as “largely Māori” not only because I am seeking to show that most reference to the Treaty at this time was by Māori, but more particularly that this discourse drew more extensively on Māori beliefs and values than British or settler beliefs and values simply because it was mainly present in a Māori world. It was likely to be accessed best in the Māori language.

In this period the settler-dominated government passed many statutes that diminished Māori rights and contributed to their material and spiritual impoverishment. This legislation facilitated the alienation of land, forbade the use of te reo Māori in schools, and suppressed cultural practices (Orange, 1987; Royal Commission on Social Policy, 1988; Walker, 1990; Ward, 1995).

This period of “division and disparity” (M. Durie, 1998) lasted for over a century. For most of this time there seemed little likelihood that the colonising effects of Crown policy and Crown and Pākehā action could be successfully challenged. However, significant changes did begin in the 1970s.

#### *The 1970s: Negotiation and restitution and the Māori renaissance*

The 1975 Treaty of Waitangi Act is the Crown response that conveniently marks the beginning of a period of “negotiation and restitution” (M. Durie, 1998), characteristic of the current phase of Treaty history. It returned the Treaty to view for Pākehā, the dominant group, although it had never been invisible for Māori (E. Durie, 1990; Royal Commission on Social Policy, 1988; Walker, 1990), and followed a century in which Māori petitions had been largely ignored or denied (E. Durie, 1990). The central provision of the Act was the establishment of the Waitangi Tribunal, which was able to hear grievances about the Crown’s failure to honour the Treaty. This Act marked the Crown’s changing view of the Treaty as it began to listen to the voices of Māori.

Initially the Tribunal could only consider grievances that arose after 1975. It was not until 1985 that this time limitation was rolled back to 1840. Following this, iwi and other Māori groups began a process of lodging Treaty claims, researching, waiting, attending hearings, receiving the Tribunal’s report, negotiating with the government, and eventually settlement. The shift into “negotiation and restitution” can also be seen as a series of discursive effects across the broad society as Treaty of Waitangi discourses gained more prominence.

Part of this shift produced and was reproduced in the Māori renaissance (King, 1985), a flowering of Māori activism and redevelopment of marae communities both rural and urban. There were also many strands of developing awareness of the Treaty

among Pākehā both as individuals and as groups within a broader society that were also produced by, and then reproduced, Treaty of Waitangi discourses. Practices of distributive and individual biculturalism (Sharp, 1997) became significant. These concepts have been particularly influential in shaping the expectations placed on practitioners by NZAC, and I will explore them in a later section.

In 1985 and 1990 NZAC held its national conferences on marae (Hermansson, 1999). Many counsellors participated in anti-racism, Treaty of Waitangi, or decolonisation workshops, and counsellor education programmes began to incorporate noho marae as part of their curricula.

Another development in the late 1980s came when the Crown authorised the judiciary and the Royal Commission on Social Policy to identify “principles” of the Treaty of Waitangi (Kelsey, 1989; Royal Commission on Social Policy, 1988). The concept of Treaty principles offered a way for the Crown to articulate the intentions of the Treaty without needing to establish the legal meaning of each word in each version. Brookfield (1999) has argued that the search for the “principles” of the Treaty of Waitangi was an integral part of the “constitutional revolution” that has characterised this period of negotiation and restitution. In his view both the settlement of Treaty claims and the development of Treaty principles further cemented the legitimacy of the government established after the Treaty was signed. However, according to Pryor (2008), the concept of Treaty principles enabled the Crown agents who were empowered to define them to move beyond the restrictions of the actual words of the Treaty, as they were recognised as insufficient to contain its meaning. Treaty principles are now in wide use, especially three proposed by the Royal Commission on Social Policy (1988): partnership, protection, and participation. These principles are incorporated in the NZAC *Code of Ethics* (2002) and in an earlier article (Crocket, 2009) I explored the meaning of the Treaty principle of partnership for counselling practice.

Since 1975, when the Treaty of Waitangi Act was passed, there have been waves of publicly expressed opinion, debate, demonstration, policy development, legislation, and court cases that have helped define how the Treaty of Waitangi is understood now. It is beyond dispute that many 19th and 20th century Crown actions were unjust (Brookfield, 1999), in breach of the Treaty (Dawson, 2001; Ward, 1999), and racist (Department of Social Welfare, 1988). However, it is now evident that the positive intentions both of those Māori who signed the Treaty *and* of the British Crown (E. Durie, 1990; Orange, 1987) have left with us a document that can be seen as

aspirational (Yensen, Hague, & McCreanor, 1989), that legitimised both Pākehā (and later tauiwi) settlement, and protected the maintenance of Māori customs and practices (M. Durie, 1995, 1998, 2001; Orange, 1987; Ward, 1999).

### **The undecidability of the Treaty**

In this period of “negotiation and restitution,” the Treaty has been returned to the centre ground of constitutional life, legal life, and sociopolitical practice. Through this process, space has opened up for increasingly rich descriptions of the Treaty’s ongoing meaning. Pryor (2008) has suggested that the Treaty both “constitutes and contests a unified definition of the nation” (p. 87) because the language of sovereignty and tino rangatiratanga both imply two nations; the Treaty is also seen as the foundational document for Aotearoa/New Zealand, a single nation. She argues that even at the time when the two versions of the Treaty of Waitangi were written and discussed, the meaning of the Treaty was undecidable. It could not be confined to the words in each version. These two versions were representations of ideas held by each of the parties to the Treaty and shared by them at the time of the signing. Pryor comments that to “ask what the Treaty means supposes that there is a final ‘true’ meaning to be ascertained, if only the reader were skilled enough to determine it” (p. 100). She argues that: “the tension between unity (one nation, one people) and difference (two nations, two—or more—peoples) is fostered by the undecidability of the Treaty itself” (p. 97).

Along with the increasingly rich meanings we have for the Treaty in social and political life we have to contend with its “undecidability.” We cannot produce a final, universally agreed meaning. The two versions differ from each other. The long history of division and disparity elevated the Treaty in Māori understanding and esteem at the same time as the Crown was repudiating it. There will always be contest about the meaning of the Treaty. The last four decades have seen the beginning of a slow process of negotiation and restitution. The challenge for counsellors is how to give the Treaty meaning in our practice, and in the next section I explore the importance of biculturalism for shaping meaning and translating it into practice.

### **Biculturalism**

Invocations of biculturalism have become particularly important in the last few decades (Abbott & Durie, 1987; M. Durie, 1995; Royal Commission on Social Policy, 1988). Biculturalism indicates both that iwi and the Crown represent valid interests and that individuals might be able to relate effectively in the terms of two cultures. Following



Sharp (1997) I distinguish two forms of biculturalism: “distributive biculturalism” and “individual biculturalism.”

Distributive biculturalism (Sharp, 1997) refers to the proposition that rights should be fairly distributed between parties in a way consistent with the Treaty of Waitangi. This means that the protections guaranteed to iwi Māori in the Treaty need to be reinterpreted in the light of current circumstances, honoured, and implemented. The Treaty settlement process has been a process of distributive biculturalism: historic injustices have been carefully recognised, settlements quantified and agreed upon, and reparations made.

In the arena of social practice, the landmark government report *Puao-te-ata-tu* (Department of Social Welfare, 1988) also represented distributive biculturalism with its recommendations that Māori clients be able to access services that were culturally appropriate and were delivered by staff competent in tikanga Māori. This call was also made by Mason Durie to the NZAC conference in 1985 and repeated in recommendations about counsellor education (Abbott & Durie, 1987).

Distributive biculturalism is often expressed in terms of Māori rights and Pākehā responsibilities; however at the national level this is better phrased as iwi rights and Crown responsibilities (Royal Commission on Social Policy, 1988). When the Treaty relationship is described as being constituted as a relationship between Māori and Pākehā, what is evoked is a relationship between binary opposites with the effect that essentialised identities are constructed for both parties. This Māori/Pākehā binary produces numerous exclusions if these identities are viewed normatively and as if “Māoriness” and “Pākehāness” represent fully realisable identities. Various forms of identity effect then occur. While for some who have a combined Māori–Pākehā heritage this may produce an affirmation of identity, for others this binary produces shame, confusion, or a sense and experience of exclusion (Webber, 2008). Individuals and groups who are not able to take up either a Pākehā or a Māori identity can also feel excluded from the scope of this binary and thus potentially excluded from Treaty conversations (Lakshman, 2000). In my experience as an educator of counsellors and social workers I have met many recent migrants who have felt excluded by invocations of biculturalism in terms of a Māori/Pākehā binary.

For each of us, our personal response to the meaning of the Treaty is shaped by our cultural identity and how that identity arises from, or relates to, the Treaty. Our clients and colleagues will respond to us in terms of their perceptions of our identity.

Individual biculturalism (Sharp, 1997) creates a personal responsibility for

practitioners in engaging with Māori (see, for example, Abbott & Durie, 1987): it is a call to counsellors to develop a sufficient minimum level of skills in te ao Māori to be able to engage appropriately with Māori clients and colleagues. The concept of individual biculturalism assumes that Māori are likely to be more bicultural than most non-Māori because they have needed to be able to walk in two worlds. In the social service arena, calls for individual biculturalism follow the *Puao-te-ata-tu* recommendations that culturally appropriate services be accessible for Māori, although those recommendations were more explicitly distributive since they *did not* recommend that all staff should be bicultural. Rather, the recommendation was that sufficient staff capable of working with Māori should be appointed. Since the publication of *Puao-te-ata-tu*, which influenced policy and produced responsibilities for social practice organisations, there has also been a development of expectations that all individual practitioners are able to demonstrate bicultural abilities. This has been influenced by public policy and from professional associations such as NZAC that have adopted an individual bicultural awareness or competency “standard” for membership. In effect, non-Māori are called to become (individually) biculturally skilled to some degree. At the same time agencies are called to become more (distributively) bicultural, which might involve both non-Māori becoming more biculturally skilled and the agency employing Māori staff.

Thus both an individual’s and an agency’s moves toward biculturalism can be seen as responses to calls for distributive biculturalism. However, it is still useful to distinguish between individual and distributive biculturalism because this distinction helps elucidate the social debate and the expectations on workers that have been evolving.

The first calls toward biculturalism were for organisational or distributive biculturalism (Department of Social Welfare, 1988; M. Durie, 1995; Sharp, 1995) and suggested that a range of levels of biculturalism were acceptable. Currently the NZAC requires new members to demonstrate an acceptable minimum degree of bicultural knowledge and practice and have “an ongoing relationship with a cultural advisor/consultant/supervisor from the rohe” (McGill, 2009, p. 13).

As requirements for bicultural competence become more specific they may also appear to become less clear. Just what is an acceptable level of bicultural practice? It is hard to define an acceptable minimum level of cultural knowledge and skill. The nursing concept of cultural safety (Nursing Council of New Zealand, 2009; Ramsden, 2003; Wepa, 2005), which puts responsibility for culturally appropriate practice on the

practitioner and recognises a client's ability and privilege to determine that appropriateness, offers one way for counsellors to determine an appropriate level of cultural practice (Crocket, 2012). Our bicultural appropriateness will be judged moment by moment by our clients and all others with whom we interact.

### **Linking Treaty discourse to counselling practice**

In conclusion I return to the call in the NZAC *Code of Ethics* that directs counsellors to be “informed about the meaning and implications of the Treaty of Waitangi for their work” (2002, p. 2). In seeking the meaning of the Treaty of Waitangi for counselling practice it is important to be aware of the different meanings held at different periods of history and held differently by iwi and the Crown. Today the meaning of the Treaty is still contested; it is undecidable. However, the events of the last four decades have returned the Treaty to the centre of national life, and the response by social practice organisations and professional associations to those shifts has made it clear that counsellors need to be individually bicultural to some degree. The reference in the beginning of the NZAC *Code of Ethics* to the principles of the Treaty indicates that Treaty meanings, which were intended to frame Crown–iwi relationships, need to be honoured in counselling relationships. Partnership, protection, and participation are only possible within effective relationships. The discourse of cultural safety positions our clients and colleagues (Crocket, 2012) to judge our practice as either culturally safe or culturally unsafe. We need to ensure that we are as prepared as we can be for those judgements.

While the meaning of the Treaty can be imagined, it is ultimately “undecidable.” However, there is now a significant body of Treaty discussions to guide us as we consider what it means for us. We are all positioned in relation to the Treaty by our cultural identities. How each of us seeks to honour the Treaty will depend on our particular cultural identity or identities, and the way in which these identities relate to the Treaty both in its signing and in the following stages of Treaty history.

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