Can the Māori and English texts of the treaty of Waitangi be reconciled?

A brief critique of Te Tiriti o Waitangi (comic book)*, by Ross Calman, Mark Derby, and Toby Morris (2018, 2021, 2nd ed.)*

Samuel Carpenter, March 2022

Introduction

A recent treaty education resource, *Te Tiriti o Waitangi* – part of which is available on the Spinoff website: Te Tiriti o Waitangi: the comic book | The Spinoff) – adopts the view that there were 'major differences' between the English and Māori texts of the Treaty/te Tiriti. The earlier pre-treaty narrative part of the booklet has a reasonably neutral tone. But that approach seems to fail at just the moment when it was most needed: when it comes to explaining the Treaty/te Tiriti texts. The text states at the beginning: 'Te Tiriti is one of the most important parts of our country's history. It's about all of us, and this means we all need to understand it'. This statement is a great place to start. But the best effort possible is therefore necessary to understand both treaty texts: while this publication rightly emphasizes the Māori text or 'te Tiriti', the English text cannot be forgotten in understanding the overall meaning and effect of the agreement.

Several critiques of the booklet's analysis are raised below.

My basic (counter) argument here is that the two language texts can be reconciled if each is given a proper reading in their context. By 'reconciled' I mean substantial agreement, rather than sameness or equivalence of meaning – impossible for languages so markedly different as English and reo Māori.

My argument is supported by recent and older scholarship, including that of Judith Binney, Michael Belgrave, and Ned Fletcher. Reports of the Waitangi Tribunal before the stage 1 report in Northland (2014) also supported a reading of the two language texts as reconcilable. The view in the comic book is supported by other scholarship, including Ruth Ross' 1972 article in the *New Zealand Journal of History*. It is a concern that a publication that has been sponsored by public funding should echo only one voice in the scholarship – indeed, a quite extreme view that there was a *mistranslation* of the draft English text into the Māori language text and that it was also *intentional and deliberate*.

View that texts are 'contradictory' requires critique

This statement in the booklet requires critique: 'It [the treaty] was written in English and translated into te reo Māori, but there are major differences between the two versions. Important words and concepts, such as sovereignty, weren't properly explained in te reo Māori. Many people now think this was done on purpose. Whatever the case, there were many contradictions'. (p. 9) Although an analysis of differences between the texts has been common since the important 1972 article of Ruth Ross, this strong version of the view that there are two different texts is surprising: not just differences but 'major differences' and 'many contradictions'. This strong version of two contradictory texts is *not* a self-evident truth: it is a later twentieth century interpretation of what 19th century historical actors were doing when they used certain words. This view is not the only possible interpretation. Therefore, its promulgation in a publication like this – intended for a wide audience to educate school children – should be questioned.

Sovereignty and Government were used interchangeably in British political thought

In the *Te Tiriti* booklet presentation, the alleged vast differences between the texts boil down to the word 'sovereignty' not being captured by the word 'kāwanatanga' (government/governorship), and

by the phrase 'possession of lands [etc]' being translated by the word 'tino rangatiratanga'. This critique focuses on the sovereignty-kāwanatanga issue. The *Te Tiriti* presentation adopts the post-1970s understanding that 'sovereignty' is a superior kind of authority to 'government', but this is a mistaken notion. From the English side, there are good linguistic and historical reasons for understanding kāwanatanga/government/governorship as an equivalent usage to sovereignty. Sovereignty is a noun for an abstract concept of power, while government or 'civil government' is a noun often used to express the form of sovereignty in the English constitution. The Queen was understood as a governor or as the 'Chief Governor' of the realm [*Quarterly Review* (1840); *The Thirty-nine Articles* (1562), R Hooker, *Laws of Ecclesiastical Polity* (16th century)]. Moreover, sovereignty was not an absolute power: as a word by itself, it suggests the highest or paramount power, but in terms of the English constitution, the Sovereign ruled according to law.

On this point of linguistic usage, see also, for example, legal historian Paul McHugh: 'Under [the Crown's] prerogative, it can acquire and erect rights of government – some form of sovereign authority …' [Brief of Evidence, Waitangi Tribunal, 2010])

Kāwanatanga/Government applied to all in the Māori text

Re sovereignty-kāwanatanga on the Māori side, the *Te Tiriti* booklet states quite categorically: 'Māori understood kāwanatanga to mean the Queen would be allowed to appoint a governor to live in New Zealand. The governor would have the power to control British subjects – meaning the Pākehā, not Māori. This would benefit Māori by protecting them from Pākehā settlers.' This is another instance of binary and simplistic logic: the Governor would only be a governor of the Pākehā, not of the Māori. There a several problems with this. The first is that the Māori preamble text itself is clear that Māori and Pākehā were living together without law ('e noho ture kore ana') and that the Queen sought to establish her Government as a solution to this absence of law and order – 'so that no evil will come to Maori and European living in a state of lawlessness' (Hugh Kawharu translation). This legal framework would necessarily apply to both peoples, as it would also need to apply to French and American citizens living within New Zealand's borders. Second, the chiefs specifically granted to the Queen in article 1 'the complete government over their land' (Hugh Kawharu translation). Third Māori were also granted the rights or 'tikanga' of the people of England in article 3 – this would be difficult to achieve if the Queen's authority through her Governor did not apply to Māori.

No inconsistency between articles 1 and 2 in Māori text

There is no necessary inconsistency between article one and two in the Maori text. It seems unlikely for a start that the rangatira (chiefs) would have agreed to an internally inconsistent document. The 'kāwanatanga katoa' of Queen Victoria would apply to all – ensuring an overarching framework of law and order and protecting the weak from the strong; the 'tino rangatiratanga' of the chiefs and iwi/hapu would continue at the local level of the tribe. In this respect, article 2 is entirely consistent with the clear expression in the preamble that the Queen wished to preserve to Maori the rangatiratanga of their lands. Without exercising a protecting authority or government, land ownership could not be protected – either from foreign threats or domestic ones. (Of course, that protecting authority broke down at key moments in our history – doing the opposite of what was intended in 1840.)

The *Te Tiriti* publication also makes an unnecessary distinction between the oral explanations of the treaty texts and the 'written text' itself. It even suggests that the oral explanations were 'misleading'. In fact, the text was read out orally at the treaty signings – often more than once – and

many chiefs (in Northland at least) could read by that time. To suggest that the 'written text' was not part of the oral discussions/explanations gives a wrong impression.

The treaty texts (in either language) did not resolve all possible future issues

The Māori-language text of the treaty was an interpretation or translation of an English-language text. There were bound to be different shades of meaning because the language-worlds were different. And the treaty texts did not clarify the issue of how the Governor's authority would relate to ongoing chiefly authority, which article two in Māori seemed to support. Note however that the express provision in article two is 'tino rangatiratanga' – 'the unqualified exercise of their chieftainship' (Hugh Kawharu translation) – over land, villages, and 'taonga', rather than 'tangata' or people *per se*. The grant of government to the Crown likewise does not refer to 'tangata' *per se*.

(The *Te Tiriti* booklet extends the direct wording of the Māori text when it states confidently, re article 2: 'Chiefs would still rule their people independently, while the Pākehā governor would control the Pākehā'. It is doubtful too whether 'rule' is the best word to explain the relationship of chiefs to people in tikanga or custom. The idea of kāwanatanga does however suggest the 'rule' of people in a Western sense of law or 'ture'.)

The wider context is also important

These comments simply focus on the texts themselves; other contextual factors are also relevant. For example, Hobson's instructions from the Crown specifically spoke of overruling inter-tribal warfare, cannibalism and inhumane practices, but otherwise he was to allow Maori custom to continue (see Normany instructions to Hobson, August 1839) – one important aspect of tino rangatiratanga.

Other issues with the Te Tiriti booklet

There are other issues with the way some later narratives are expressed. The post-1840 narrative suggests that in the Crown-purchase period (to 1865) the Crown 'often' purchased without 'the full permission of the group'. Most of the time the Crown did deal with groups in this period, often through recognised tribal leaders. Some issues did emerge in the 1850s between groups who wanted to sell and those that did not, and the Crown sometimes forced the issue, including with disastrous consequences at Waitara.

The focus should be on the treaty that was negotiated

Stepping back from this *Te Tiriti* booklet, it seems somewhat ironic that in a 21st century publication that is seeking to, in some way, promote a knowledge of the Treaty/te Tiriti as relevant to New Zealanders today, that two supposedly different texts should be such a focus of discussion. If the Treaty/te Tiriti is our 'founding document', even a 'kawenata' (covenant/ sacred compact), it is hard to see that if the narrative says the two parties had a quite different understanding of it. Even worse, how it could be a founding document if it was *deliberately* mis-translated – which at best can only be speculation. Far better to focus on *the treaty we did get* – especially the Māori version that most chiefs signed – rather than the treaty we did not get – a hypothetical treaty with other words in it.

Author Bio/Disclosure: PhD (Massey University, 2021) examining nineteenth century political ideas in New Zealand. I gave historical evidence to the Northland Tribunal on the Treaty/te Tiriti in 2010 [see here], and have worked in the Treaty sector as an historian for over a decade. This brief critique expresses my own independent historical view.