

## Conference 2006: a tale of two treaties

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### *A comparison of the Treaty of Limerick and the Treaty of Waitangi with reference to implications for economic and cultural well-being of the respective indigenous peoples of Ireland and New Zealand*

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As a New Zealander of European descent, my family's history only goes back in New Zealand as far as the 1850s, then reverts to Europe. Although identifying as an ethnic New Zealander, much of my cultural heritage stems from overseas. In researching my own cultural roots, especially those of Ireland, I have found strong parallels between the colonial histories of both countries. Although the dates and the indigenous peoples may be very different, the colonial policies and the effects on those peoples have been remarkably similar.

It is my view that there are cultural, political and economic parallels between Irish and New Zealand societies because they both have indigenous cultures with civil rights and cultural maintenance issues. They have both been highly influenced by British settlement. They are both island nations of similar populations that rely on the skills of their peoples for economic well-being based on export-driven economies. Because of these similarities, a comparison of the two countries may shed some light on current cultural, political and economic issues.

The first people settled in Ireland in about 4,000 BC, relatively late in European terms, with the Celtic people arriving from Europe up to about 300 BC. According to Celtic tradition, the original people were Tuatha de Danann, the children of Danu. These are taken to be real people although they are shrouded in myth. After the Celtic or Irish people settled there were successive waves of invasion, notably from the Vikings, Normans and English. These new cultures all made fundamental changes to Irish society.

One major change was initiated by the Williamite wars, which resulted in the signing of the Treaty of Limerick in 1691, several articles of which were to be written to protect the land rights and religious freedoms of the native Irish people. However, the land confiscation was rigorously applied against those who left Ireland and the penal laws from 1695 onwards, although clearly in breach of the religious articles of the Treaty, reduced Catholic owned land to about 5 per cent of the whole by the 1780s.

However, after hundreds of years of overseas rule, most of the island gained independence in 1922. After a period of little economic growth, by the 1950s prosperity was increasing. Major economic change started with the entry of Ireland into the EEC in 1972 and the tripartite agreement between the state, business and the unions which encouraged economic development.

Each of these historic processes has had profound effects on the indigenous cultures with concurrent political and economic effects.

Aotearoa/New Zealand was discovered relatively recently. In about 950 AD the first Polynesian people arrived, with the main migration in about 1130 AD. These people, the greatest navigators in the world at the time, became known as Maori. In 1642 the first European, Abel Tasman arrived, followed in 1769 by James Cook. European immigration started in the late 1700s, reaching a population of about 3,000 by 1840, when the Treaty of Waitangi was signed between the Indigenous people and the British Crown. The European population soon rose rapidly, and in the 1860s serious wars broke out between the Crown

and Maori wishing to retain the chieftainship over their land. Well over a million acres of land was confiscated by the Crown, leading to impoverishment of Maori people.

In 1975, the Treaty Waitangi Act (1975) was passed by Parliament to create the Waitangi Tribunal to hear cases where the current actions or omissions by the Crown were in breach of articles of the Treaty. In 1985 this Act was made retrospective to 1840, when the Treaty was signed. Since then, reparations of money, land and tribal authority have been made. Since the late 1960s there has been a resurgence of Maori language and culture and Maori has been made an official language of Aotearoa New Zealand. In the late 1980s, the New Zealand economy was restructured, on monetarist lines with Maori people taking much of the brunt of the changes. Since the 1990s, large numbers of immigrants have come in, mainly from China and New Zealand is now being seen as multicultural, rather than bicultural. The export-led New Zealand economy has been developing well, which has increased the general level of prosperity in the country, although regional and racial disparities remain.

An examination of historical events in more detail, shows interesting comparisons in the development of New Zealand and Ireland. Up to the 790s, Ireland was almost exclusively settled by the Irish branch of the Gaelic family of peoples. They had an aristocratic tribal, pastoral and agricultural lifestyle, with a system of minor and major kingdoms, which fluctuated fluidly, depending on the personal attributes of the incumbents. It is difficult to ascertain the exact nature of the original peoples, but the material culture evolved gradually from neolithic to bronze and iron age over about 5,000 years.

Of course one major event was the arrival of Saint Patrick in 432 AD. St Patrick was not the first Christian missionary to Ireland, but was certainly the most effective. The Western Roman Empire was defunct at this time, but St Patrick, as a Romanised Briton, had centuries of civilisation and Christianity behind him. Although Ireland remained very tribal, the Christian tradition had a huge impact, especially in making Irish the oldest written western European language. Most of the early writing was Christian, or written by clerics in beautifully illuminated manuscripts. Ireland became the centre of learning of western Europe for several centuries. Irish material and trading culture was also highly developed, especially around Limerick, where beautiful intricate artefacts of gold, silver and bronze were made.

The first major disruption to Irish high culture came with the arrival of the Viking raiders in 795 AD. The Vikings had excellent ships that could land on shallow beaches or travel up rivers, suddenly raid and depart. Churches were natural targets as they were the main depositories of material wealth. At the same time many cultural treasures, especially fine metalwork and illuminated manuscripts were either stolen or destroyed. By 828 AD chroniclers report that Vikings had over-run Ireland. However it must be remembered that although the Viking raids were devastating, that most of the raids on church property were in fact carried out by native Irish. By 841 Viking culture had changed. Because of increased resistance to their raids, and because of the supremacy of their ships, most Vikings had become settled, focusing on local and international trade. It was the Vikings who built Ireland's first cities, Dublin, Limerick, Waterford, and Wexford. Dublin became an independent Viking kingdom, often working in close liaison with the neighbouring Irish kingdom of Leinster. (O Corrain 1986).

It was in this turbulent time that Brian Mac Cinneide of blessed memory was born at Killaloe beside Lough Derg, in 941 AD. As the youngest son of the king of the Dal gCais, he had potential for leadership. He grew into a tall well-educated and very charismatic man. Although the Dal gCais were a minor power, through Brian's efforts, he eventually became the king of Munster, being crowned at Cashel of the Kings in 978AD. Through military power, he eventually staged a bloodless coup, displacing the Ui Neill line to become High King of Ireland. His intention was not just to become king in name only, but to unify Ireland in the European style as one people under one coherent government. Unfortunately in 1014 his kingdom was beset by division, and although at the Battle of Clontarf, Brian destroyed once and for all Viking military ambitions, he himself was killed at the age of 73. His oldest sons and grandson were also killed, defeating his desire for a united Ireland. (Weir, 2002).

1169 marks the start of the second major disruption of Irish culture with the arrival of Norman mercenaries in Ireland at the request of the King of Leinster. The mercenaries have been variously described as Norman, English, and Cambro-Norman, as they actually came from Wales and were French-speaking. However, the events of 1169 gave the Plantagenet kings of England, the opportunity they were looking for to gain a foothold in Ireland. Over the next hundred years, Norman influence became widespread. Major impacts on Irish culture were the bringing of the native Irish church under the discipline of Rome and the abolition of the native Brehon laws. As the Brehon laws were only allowed to be administered by certain elite tribes, these tribes had to be suppressed also. Another effect was the introduction of strict patriarchy and the suppression of women's rights. (Richter, 1986)

Many years later, on a September night in 1607, the Earls of Tyrconnell and Tyrone with ninety seven of their close families and supporters suddenly fled Ireland to go to France. This sudden event dealt a body blow to confidence of the ethnic Irish, as they had lost two of their most important figureheads and many of their other leaders. People have been at a loss to explain the cause of the sudden 'flight of the earls', but it seems that they were unable to face up to life under the constraints of the strict rule and surveillance instituted by Queen Elizabeth. As Mac Curtain (1986) says, all flight is a diminishment of inner power. When the older civilisation was challenged by a newer, self-confident one, identity became troubled. In a sense, conquest can be seen as a modernising force that releases traditional restraints on the use of land and gives a freer response to market demands. However, the economic expansion conceals the losses of the many compared with the gains of a few. Ulster had suffered a shock to its confidence and had become confused about its roots, one of which was its Gaelic past. The Earls who fled in 1607, started the diaspora, which continued unabated until the 1960s. (Mac Curtain).

The power vacuum left served Charles II very well in 1660 when he furthered the policy of James I regarding the policy of the plantation of Scottish and English settlers in order to replace the recalcitrant Irish with more loyal followers. For hundreds of years there had been voluntary migration between the north east of Ireland and the west of Scotland, a response to opportunities, rather than government inducements. However there were leaders and followers and the processes were often orderly, with the creation of estates, villages, towns and markets. In the sixteenth century, the principles of colonisation or 'plantation', became much more rigorous and structured. With Ulster in particular, government intention became the Anglicising or 'civilising' of Ireland.

Three basic principles were established: ... first, that the settler communities should faithfully recreate the structure of rural England, a numerical model of which was devised, specifying the exact mix of freeholders, copyholders, leaseholders, cottiers, artisans and others required to achieve the ideal social profile on each estate: second that these communities should be absolutely segregated from all contact with the natives; and third, that settlers should be Protestants of English birth. The intention was not merely to establish areas of control and support, but to provide a model of civilised practice which would persuade by its manifest superiority, and leaven the Irish mass by the example of its success. (Clarke 1986).

This was a frank recognition that conquest and control must involve disowning the original settlers, which was reinforced by confiscations and the penal laws. Plantation historians wrote lyrically of the sturdy, hard-working, self-disciplined virtues of their ancestors, while fixed boundaries and new property laws constrained the Irish, many of whom were to choose exile. Those who remained were hemmed in by fences and leases where they had formerly moved freely with their cattle. In the first phase settlers and natives lived side by side, but a slow sorting out process soon commenced, prime settlement areas were identified and the Irish forced onto inferior lands. In 1660, the British government also assigned inferior status to the more numerous Scottish Presbyterian settlers who then had to suffer both religious and civil disabilities. Although plantation had failed in its original terms of reference, its effect was to free the way for a migratory flow, which produced a more complex, vigorous and resilient society. At the higher level of society, the settlers became a privileged and propertied

minority, separated from the rest of society by social class and economic circumstances. Their ascendancy was expressed by their ownership of the means of production. At the lower end of the social scale, religion and ethnic affinity became the proud badges of settler superiority over the natives who they actually differed little from in terms of material circumstances. (Clarke 1986).

Irish people have had the misfortune to be involved in larger world events, including problems arising from the replacement of the Catholic Stuarts by the Protestant house of Orange. The English parliament had become increasingly dissatisfied with being ruled by the Catholic James II, and replaced him with his daughter Mary and her husband and first cousin, William of Orange. James II fled to France, and the Irish people took the Catholic, Jacobite cause in the hope of restoring their independence and their lands. This led to the Williamite wars, with the English and Dutch on one side and the Irish and French on the other. The concluding battle took place in Limerick, 1691, where the Treaty of Limerick written by Baron Godert de Ginkel was signed.

The treaty articles are of two types; 27 short term military articles for the resolution of the war and 13 civil articles guaranteeing the property and religious rights of the native Irish who chose to stay in Ireland. Many of the Irish leaders chose to leave Ireland and fight on the side of the French king – for those people their lands and properties were forfeit. For those who chose to stay, the following civil articles applied:

1. The Roman Catholics of this kingdom shall enjoy such privileges in the exercise of their religion as are consistent with the laws of Ireland, or as they did enjoy in the reign of King Charles the second: and their majesties, as soon as their affairs will permit them to summon a parliament in this kingdom, will endeavour to procure the said Roman Catholics such farther security in that particular, as may preserve them from any disturbance upon the account of their said religion.

2. All the inhabitants or residents of Limerick, or any other garrison now in possession of the Irish ... or [who] have taken protection and who shall return and submit to their majesties obedience, and their and every of their heirs, shall hold, possess, and enjoy all and every their estates of freehold and inheritance, and all the rights, titles and interests, privileges and immunities, which they and every or any of them held, enjoyed, or were rightfully and lawfully entitled to in the reign of king Charles II. ... and all persons comprehended in this article shall have, hold, and enjoy all their goods and chattels, real and personal...provided ... that no person ... shall ... refuse to take the oath of allegiance, made by act of parliament in England, in the first year of the reign of their present majesties, when thereunto required.  
(Accessed from University College Cork, Corpus of Electronic Texts /CELT)

Articles 3 through 13 give specific details in support of the above two articles.

Military articles 1 through 27 give detailed guarantees for the safe evacuation of any Irish troops who wished to leave Ireland and go to Europe.

It is interesting to compare the circumstances and text of the Treaty of Waitangi signed in 1840 between the British Crown and the indigenous people of New Zealand. Firstly, the circumstances were very different. The British Government by 1840 had little desire to add further colonies to its empire as it had found them a much more expensive alternative to free trade. In 1835, it had agreed to protect the fledgling state of New Zealand as stated in the Declaration of Independence (1835). However French and United States influences were being extended to New Zealand, which were threatening to British interests. Also very importantly the New Zealand Company, had several shiploads of settlers on their way from England, to take up land in New Zealand. Their company philosophy was very similar to the plantation policies of Charles II. The British government foresaw ensuing problems, and partly out of self interest and partly from an intent to protect the interests of the Maori people of Aotearoa/New Zealand, designed Treaty of Waitangi.

This treaty has both English and Maori language versions, a summary of which are as follows:

Tiriti o Waitangi (translation) Treaty of Waitangi

Ko te Tuatahi

The Chiefs...give up to the Queen of England forever all the Governorship (Kawanatanga) of their lands. Article the First

The Chiefs... cede to...the Queen of England, absolutely...all the powers of Sovereignty...

Ko te Tuarua

The Queen [gives] to the Chiefs, the hapu and all the people of New Zealand the full chieftainship (tino rangatiratanga) over their lands, their villages and all their possessions (taonga: everything that is held precious)... Article the Second

...the Queen...guarantees...to the chiefs and the tribes and tribes and ...families and individuals...full exclusive and undisturbed possession of the Lands and Estates, Forests, Fisheries, and other properties which they may collectively or individually possess...

Ko te Tuatoru

...The Queen...will give [the Maori people] all the same rights as those of the people of England... Article the Third

...the Queen ...imparts to [the Maori people]...all the Rights and Privileges of British subjects.

Ko te Tuawha

The Governor says that the several faiths (beliefs) of England, of the Wesleyans, and of Rome, and also Maori custom, shall alike be protected by him. Silent

A comparison of the two treaties brings out the following points:

The circumstances of the writing of the two treaties were very different; The Treaty of Limerick was written to end a war, the Treaty of Waitangi was written with the intention of preventing war.

Article One in the Treaty of Limerick is reflected by article Four in the Treaty of Waitangi. This article was agreed to on the day of signing, at Waitangi on 6 February 1840, and has important constitutional implications for freedom of religion and custom, whether practiced publicly or in private. New Zealand practice has been to be mainly tolerant and inclusive of various faiths and beliefs. This tolerance may have stemmed from this Article, or from a settler attitude of rejecting the divisions that they had left behind in their former countries. It is important to note that both the former leader of the opposition, Bill English, and the Current Prime Minister, of New Zealand both deny the validity or existence of Article Four, presumably because of the implications to the government of being bound to actively protect Maori custom..

In Ireland, de Ginkel's conciliatory attitude to Roman Catholics who were prepared to give their oath of allegiance to the Crown was soundly rejected by both Irish and British parliaments, resulting in breaches of the treaty in a series of punitive laws known as the penal laws, which gave rise to centuries of serious problems.

Article Two of the Treaty of Limerick deals with property rights. These are very similar in intention to Article Two of the Treaty of Waitangi. It is demonstrable that the English were accustomed to writing these kinds of articles as they are also similar intent to the civil liberties guaranteed by Prince John in the Charter to Limerick of 1197. Ironically it seems that monarchs needed to guarantee the civil rights and self government of cities in order that they could become strong allies against the hegemony of the aristocracy. (Lee 1997).

As previously stated, the civil articles Two to Thirteen of the Treaty of Limerick give details of the implementation of Articles One and Two.

The Military articles One through Twenty-nine are interesting as they propose a peaceful resolution of the war. Irish combatants had the choice of swearing an oath of allegiance to the Crown, and retaining all their properties and rights, or of safely removing themselves and their possessions from the situation. For those people any remaining property was to be confiscated by the Crown

This can be compared with the massive land confiscations in New Zealand after the wars of

the 1860s between the Crown and Maori tribes over sovereignty and land ownership issues. In 1861 Governor Browne demanded 'submission without reserve to the Queen's sovereignty' (in Orange 1994, p52). In effect, Maori had to swear an oath of allegiance to the Queen, or have their lands confiscated. Given the choice of loyalty to their own people, or loyalty to the Crown, most chose to refuse the oath of allegiance, resulting in instant eviction and impoverishment for themselves and their families.

On the positive side, articles Two and Three of the Treaty now have more authority through the Treaty of Waitangi Tribunal, which in 1985 was empowered to hear claims dating back to 1840. Many substantial settlements have been made, but it is a matter of debate whether the settlements have been very minimal, or whether they 'have gone too far'.

Another point of interest is the debate in New Zealand about the differences in Article One in the Maori and English versions. In Maori, the Chiefs give Government (Kawanatanga: a regular pattern of decision-making) to the Crown. In the English version, Maori cede Sovereignty (the right to make and enforce laws) to the Crown. The interpretation of these can be seen as being very different in intent and practice. Article Two in the Maori version guarantees tino rangatiratanga (absolute chieftainship) over all taonga (any possession or anything held precious). The interpretation of these articles has led to much contention. A compromise has been reached, whereby the Crown has a duty to consult with Maori over anything that may affect them. Tino rangatiratanga has been defined as Maori control over Maori things in a Maori way. Of course issues arise over what are Maori things. This debate is increased when one uses the Maori text of the treaty. Taonga, can mean, a thing, a possession or anything held precious. A bench-mark ruling was decided by the British Privy Council establishing Maori language as a taonga. This was the first no-material claim under the Treaty of Waitangi Act. This decision obliged the government to actively protect Maori language through education and through broadcast media. In the event, education of the language and in the language is voluntary, although funded by the state. Some money is allocated to Maori broadcast media, about 20% of the total state public broadcast budget.

To a certain extent both treaties can be seen as constitutional documents, setting precedents for the conduct of government. However, the Treaty of Limerick does not guarantee cultural maintenance as such. The Treaty of Waitangi, although obliging the state to actively protect Maori cultural taonga, cannot force the great mass of people to actively comply. Ultimately cultural maintenance depends on the choices of individual people. The Irish State has made language learning compulsory, the New Zealand government has decided that it should be optional.

Irish initiatives did not originate from government policy, but were based on the will of the people to preserve their culture and restore their sense of national identity.

The original Gaelic Leaguers saw themselves as conservationists whose primary objective was to keep the Irish language spoken in Ireland, by teaching the Irish language to those who knew none. This was an attempt to stem the rapid abandonment of the language by a people determined to achieve modernisation. According to Census figures; in 1841, immediately before the Great Famine, about 50% of the population of over eight million spoke Irish. Ten years later, in 1851, this had been reduced to 23.3%. In 1891, only 14.5% claimed to be able to speak Irish.

In 1893 the Gaelic League, very concerned about this situation, promoted the idea that all Irish people should become fluent in Irish. It successfully campaigned for Irish to be fully accepted at all national primary schools and for Irish-speaking children to be taught in their own language. The cause became very popular, and a major victory was in 1899 when Irish became a compulsory subject for those wanting to matriculate to the National University of Ireland. This made in effect, Irish language compulsory for all post-primary schools with students who needed this qualification. After the Irish republic became independent in 1922, Irish became compulsory in all primary and post-primary schools. However, subsequent census figures showed that although the total number of people claiming to speak Irish rose, the proportion of people speaking Irish in the gaeltachtaí, or Irish-speaking areas was continuing to fall. What is also important to remember is that when people become bilingual in

these localities, they do not use both languages, but are ceasing to speak Irish.

Thomas Davis asserted in *The Nation*, that 'a people without a language of its own is only half a nation'. In order to combat the decline, the Gaelic League had set itself a monumental task, calling for a tremendous love of the language. (McCartney1986).

From my personal observation, the Irish language is alive and well to a certain extent. Some terms are used commonly, such as Taoiseach, Tanaiste, bangarda and so on. On RTE One, there are quite a few bilingual historical and cultural commentaries. TG4, the Irish language channel has most of its programmes in Irish, with subtitles in English for the pre-recorded programmes. All Irish school children are taught Irish through primary and post primary schools. Irish radio stations demonstrate real fluency in the language and a pride in traditional Irish music.

However, there are serious reservations about the success of these initiatives. In spite of compulsory learning of the language, most people do not speak it outside the class room. After years of study, all of the 8 year-old children I have asked do not know how to say 'Hello' in Irish. Most adults I have met have said that Irish is a very difficult language to learn and confess to very little knowledge of it. The size of the Gaeltachtaí and the proportion of native speakers within is diminishing. The fluent speakers seem to be mainly in middle age, with their children seeing them as being quaint and old-fashioned.

What is the prognostication for the future likely to be? In the battle for dominance, one language almost always wins. This is based on the need for people to communicate clearly with each other on an everyday basis. In the European parliament in Strasbourg, the official language is French, but in the Eurovision Song Contest, almost all of the songs were sung entirely in English, with the Eastern Europeans singing in their native language for part of the songs. The fact is, for most people it is simpler to use English in an international situation. English then, has a tremendous status in Ireland as the main language of everyday national and international use.

It has been said that it is not the actual use of the language, but the mythology around the language that is important. In Ireland, all legal notices must be in Irish to be valid, including those regarding driving offences and notices on building sites. Throughout the country, feis and ceilidhs are regularly held, and together with singing pubs are very popular. Gaelic sports such as Hurling and Gaelic football are holding their own. Hurling/shinty matches are held with Scotland and International Rules football with Australia.

There is manifest pride of the Irish in their own culture, with Saint Patrick's Day celebrated by parades in every town in the State. The recent triumphs of Munster rugby has been seen as a triumph of 'the high kings of Ireland'. In the final of the Heineken European cup, the Millennium Stadium in Cardiff held 60,000 Munster supporters and 1,500 from Biarritz. Munster is held to have a loyalty from its supporters second to none, the supporters being known as the '16th man' on the team.

In New Zealand, various efforts have been made to preserve Maori language and culture and enhance the economic well-being of the people. Initiatives such as wananga (schools of learning), the Kohanga Reo or language nest movement, primary and post-primary schools in which Maori is the language of instruction and in which Maori culture predominates. New Zealand now has a dedicated Maori television channel as well as a proportion of Maori and cultural programmes on TV One. Although, as in Ireland, the native speaking communities are shrinking, there is a whole section of society who are very proud of their cultural traditions. People may mainly speak English, but they identify as Maori, with Maori values, customs and beliefs. Non-Maori New Zealanders have some knowledge of Maori customs and beliefs, with the haka becoming almost compulsory for international sporting events. The New Zealand National anthem, written by Irishman Thomas Bracken is now sung in both English and Maori. It is now inconceivable that it be sung in just one language.

As for the future of the Maori and Irish cultures, they remain in the care of the hands and hearts of the people themselves.

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