

State of the Nation 2006 Speeches

[four speeches included below]

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Te Tiriti o Waitangi, Ethics and Environmental Governance

February 5th 2006

Presentation at Whangarei by Betsan Martin, at meeting hosted by Network Waitangi, Whangarei

He mihi nui ki a koutou.

Greetings to Ngati Wai and Ngati Hine, Ngati Hou and Te Parawhau

All strength to you in your kaitiakitanga responsibilities

Greetings to Network Waitangi Whangarei and all of you who keep the fires of te Tiriti o Waitangi alight. The courage and strength of your leadership inspires us to undertake all that we can in our time.

It is a priority to come to the flapping tail of the fish at this time. We are reminded of the organic relationship between those from the tail who give momentum to the way ahead, and those at the head who make decisions for the whole. Over the years I have had a good deal of time in the heart of the fish, Lake Taupo, and will speak from the heart of my experience there.

Te Tiriti o Waitangi, Governance, Environment

In the introduction there is mention of the fast I did for the foreshore. The fast was to signal Pakeha support for customary titles to the Foreshore, and for government to abide by Te Tiriti agreements, and at least to follow the direction of the High Court.

The Crown has always asserted sovereign authority over matters of national interest. In doing so Te Tiriti provisions for two forms of governance. In Te Tiriti o Waitangi, Crown authority is to be exercised alongside indigenous tribal systems of governance, known as tino rangatiratanga. This means hapu-based governing authority over matters concerning the tribes. These provisions have always been over-ridden by the Crown through the assertion of indivisible sovereignty. I want

to assert again that sovereignty *can* be divided. There is legal precedent for this in Canada and the US. Chief Justice Sian Elias has opened a door to the legal means for divided or shared sovereignty in a not very well known paper on the NZ constitution.

Alongside the technical legal means by which the Crown has claimed this doctrine to assert dominance is that our majoritarian democracy supports this position, so we have to work on the political will to support a new framework. As a matter of national interest and respect the founding agreement of Aotearoa-New Zealand, many see the way forward through a Te Tiriti based constitution. An aspect of national interest is the environment and systems for resource management. My focus tonight is on caring for the environment through a Te Tiriti o Waitangi framework.

Te Tiriti provides for hapu authority over matters pertaining to tangata whenua. At present we have no systems or structures for this to be given effect. Under the RMA there are provisions for recognizing cultural forms of environmental practice, such as kaitiakitanga, and there are requirements for consultation. A way of moving forward with shared governance at local community levels is through co-management.

Co-management provides for bringing together the knowledge, experience and traditions of tangata whenua and hapu with the knowledge and responsibilities of crown-derived agencies. Co-management brings opportunities for ethical processes of collaboration in land and water management. It would involve iwi management plans being implemented in co-operation with council, regional government and conservation management plans. Some research has been done on co-management as a framework and can be referred to for further detail. Here my focus is on philosophical considerations for ethical practice and on some local community initiatives where there is collaboration between tangata whenua and community agencies for environmental enhancement. A section on the wider context of Aotearoa-New Zealand as a Pacific nation and the priority of indigenous people's leadership in environmental responsibility.

I am speaking of an ethic of environmental responsibility rather than a rights approach, such as rights of access and recreation. If we think about it all rights have corresponding responsibilities. An ethic of responsibility moves from conflict and struggles for power to respectful relational process.

Responsibility, obligation and duties expand and balance a human rights approach to ethics. Responsibility brings a collective orientation to balance some of the individual emphasis of rights. Responsibility addresses itself to positions of privilege. In Treaty terms responsibility engages the onus of obligation on the Crown to protect the agreements of Te Tiriti. In environmental terms, the crown has responsibility to protect the resources of land and sea, and the integrity of the natural world for future generations. Even though there is talk of sustainability, the effects of trade agreements and rights of access of

corporates and multinationals to resource exploitation are driven by the priority of short term economic interests. The complexity and difficulties of legislating for the Kyoto protocols show the priority of commercial interests in resource use.

The Seabed and Foreshore may have appeared to be about access, but it was about assets and resources. This is verified in noting the applications for iron sands mining since the Foreshore legislation. There are applications from multinationals for most of the west coast of the north and south islands, and for Golden bay, near Nelson. The responsibility of the crown to safeguard the environment and ensure sustainable resource use needs to be done in a te Tiriti framework.

Philosophy for Te Tiriti frameworks and Co-management of the environment

In order to explore a Te Tiriti framework for environmental governance, I will explore some of the conditions that could make that possible.

Te Tiriti o Waitangi provides for tribal governance to continue alongside Crown governing responsibilities. In very broad terms I am referring to a system which underwrites two world views, two traditions, two legacies of peoples who have adapted to their geographic contexts : indigenous and western world views, which, in my view are profoundly different world views.

The western world view is shaped by a legacy of private property, the pre-eminence of the individual, a patriarchal history. It is shaped by a church and state where a sovereign god, a sovereign state became transposed into the concept of sovereign individuals. We can remember that these were fought for by our ancestors and forbears for liberative purposes – to free people to have a say in government, to be entitled to the products of their work, and to pursue knowledge. Transplanted as Westminster democracy in New Zealand they have had the effect of oppressing indigenous systems and world views.

Our task is to give priority to traditions evolved in response to this place in environmental and resource management. These express the wisdom of centuries of navigating this ocean and sustaining life here. In preparation for coming to Whangarei and Waitangi I re-read Justice Eddie Durie's paper 'When will the Settlers Settle?' It is an exposition of Maori ancestral law and land tenure. It corresponds with my own quest to make provision for the co-existence of two world views; for indigenous governance along with the Crown, as handed down to us in te Tiriti o Waitangi.

Many of us are in a process of reworking western systems and the world view we come from and are part of. From our knowledge of colonial history we seek to regenerate what can be thought of as our liberal legacy to bring forward an appreciation of what it means to live in Aotearoa as later settlers, respectful of tangata whenua. We do so as part of becoming calibrated to live and work respectfully of tino rangatiratanga and kaitiakitanga.

In the swell of responsiveness to the environmental crisis our quest must be to heal the split between nature and culture.. Ecology is a system which recognizes the interconnectedness of all life forms. Interdependence and the health of the ecosystem comes from understanding that if the gecko / moko no longer appears, it is because the rivers are polluted and therefore the fish will be endangered, and food sources threatened.

Hapu Environmental Leadership

After years of working with Te Tiriti o Waitangi in education, an opportunity was brought to me to be associated with a hapu initiative for environmental enhancement and kaitiakitanga - caring for land and people.

I was introduced to a landscape I had never seen. The guiding tikanga comes from Rongomai, the atua of cultivation and harmony. Pihanga, is the female mountain, who shapes the contours of the land, with nearby hills as her fingers and the flatter fields as the palm of her hand. Her extended hand of welcome, referred to as the 'ringa powhiri', expanded the female symbolism to convey the karanga, the calling of women to initiate the protocols of meeting between hosts and guests. From her palm water flows to the lake. This is Earth the mother.

My observation became trained to observe a landscape in danger - sluggish turgid water in streams, no sound of the ruru, smelling sewerage and seeing the signs of black water seeping into a lake.

This is a hapu that is undertaking environmental enhancement on ancestral land – restoring a wetland by planting indigenous trees, growing kai mara / organic produce, installing sustainable energy systems in the whare kai under construction, no main grid electricity or council water systems. Kaitiakitanga practice is not only for the people of the hapu, for whom the vision is to become self-sustaining, but for the wider community by being open to community participation to support the practices and by providing active responsibility for the waterways by careful practices on adjacent land.

The word enhancement is a deliberate proactive concept to account for degradation in a scenic place where native fish are replaced by trout, management of fisheries by hapu is replaced by DoC, and pine forests are everywhere. My wonder in the scenic environment of Lake Taupo has been redirected to seeing the sewage plant too close to the lake and listening to kuia's accounts of the refusal of the council to make and implement plans for a system that is safe for the lake.

When there is talk of Te Tiriti it is always framed in terms of the exercise of tino rangatiratanga by hapu. Always there is the chart to course between a relational world view where shared commitments, generosity and inclusiveness guide visions and strategies, and the 'landscape of loss' [as I have heard elsewhere]. I

say to myself often – what on earth would it take for us to establish trustworthy agreements and implement governance shared governance?

A Te Tiriti Framework: Hapu and Crown

Nearby another activity is going on between a committee of hapu and Corrlands, the arm of Corrections which manages the prison estates. A protocol has been in place for 7 years after about 25 years of negotiation, and against a background of the theft of land and desecration of wahi tapu during milling operations. What has been noticeable in researching the parties to the protocol and the programme of land management has been that this is about forging a relationship. The driving force was to achieve a process of respect and protection of taonga tapu through an environmental enhancement programme. Those who created the protocol were well aware that a framework of taonga tapu does invoke the Treaty, and the dimension of Crown obligation.

Corrlands have environmental obligations in their land management under the RMA, and obligations to protect taonga under several acts, such as the Historic Places. Under the protocol where ever taonga are found, logging ceases and a process of planting the area on native trees protects the ancestral, historical and the environmental taonga. The protocol provides the system and structure. However the personnel are a key to the effectiveness – the manager said to me ‘well its all Maori land anyway! Here we can see the evolution of co-management through a practice of collaboration and mutual respect in a local site. It happens in many parts of NZ. What is still needed is policy frameworks to establish this in all resource management.

It is important to say that the protocol has been transgressed with government failure to consult with this committee, which was signed by the Minister of Justice in 1989 over the expansion of the prison. The committee are objecting to the expansion on environmental grounds – the pressure on the lake environment and water systems, on the biodiversity of birds with the introduction of more toxic materials.

So there are some examples of local hapu centred initiatives for which we have no national structure or systems to drive implementation.

Aotearoa-New Zealand in a Pacific context

In the story from Turangi we see what is being played out in Pacific nations – the effect of commercial resource exploitation which over-rides the rights and responsibilities of indigenous people, and conflict that comes of it.

A recent Colloquium in Samoa brought my attention to the Pacific and to governance and the environment and resources of the liquid continent. In many Pacific nations Westminster systems introduced to exert western interests in the Pacific are a not in accord with systems that derive from indigenous traditions.

In Pacific countries, including Aotearoa-NZ, land and sea are under more and more stress from the escalating scale of deep sea trawling, logging of indigenous forests and mining, the poisoning of water and reefs from transnational corporates and foreign companies. In Bouganville, Solomon Islands, Fiji and Papua commentators refer to the exploitation of natural resources lying behind many of the political conflicts and the breakdown in national security. The mining activities and environmental damage (of Conzinc Rio Tinto) in Bouganville, the exhaustion of hardwood forests through logging in the Solomon Islands, Fiji, Samoa, and mining in New Zealand, such as at Waimangaroa near Westport point to the wider context of globalized economic pressure and impact.]

Urgent regional action for governance of transnationals and for safeguarding for the sustainability of the region is required. We need Pacific indigenous people with knowledge and experience of Te Moana Nui a Kiwa to lead this process. Alongside indigenous leadership we need environmental responsibility to be driven by wisdom of ecology. Commercial exploitation cannot be the guide of provisions for environmental governance.

Collective ancestral indigenous governance of land and sea is still being exercised in many parts of the Pacific, a system that continues in fragmented ways in New Zealand but always in the shadow hostility from the Crown. The world view of the land and sea being in continuity and all to be managed to sustain biodiversity and the ongoing viability of the community is in juxtaposition with far bigger forces of rights to property, unencumbered entitlements to research and exploit resources, the imperative of commerce, trade and profit, and multinational corporates unrestricted by procedures of ethical governance.

Conclusion

Conflicts over the resources of land and sea need to be removed from contestations for power, particularly on the crown side. The future lies in ethical relationships of respect for difference from which collaboration can proceed. Efforts to implement Te Tiriti, such as in provisions for co-management, must be made through ethical process, processes of engagement that respect of the mana of tangata whenua and that step aside to make space for tino rangatiratanga in governance and in environmental management.

It is often said that supporting rangatiratanga is good for all New Zealanders. The Treaty provision in the SOE legislation meant that our forest lands weren't sold (even though cutting rights have been sold). In Chile, multinationals have bought most of the Mapuche land, and planted pines and eucalyptus, so that the Mapuche have little remaining land, and the water table is so low they cannot grow native trees or food. The health of the environment is broken, with ill consequences for the Mapuche as well as for Chile as a nation.

In many of our experiences, where we follow our ethical responsibility to support tangata whenua and hapu in the exercise of rangatiratanga, or hapu authority,

an ethic of generosity and shared wisdom, come into play. The future open through the settlement of Treaty claims process is that we will evolve into becoming people of Te Tiriti and New Zealanders of the Pacific.