

Whangarei and Waitangi, for Waitangi Day 2006

David James

My mountain is the White Horse Hill, my river is the Upper Thames.
I came here to the North as a complete stranger, 45 years ago.
Māori and Pākehā, you took me in and taught me how to live here.

Te Tiriti o Waitangi, the state of the nation, constitutional change

I could talk about legal, political, historical matters, as I often do.
But today I'm starting from two places:

Moana Jackson, at a seminar I attended, was challenged about the kind of constitutional change he wanted. He responded by saying that we need to think first about tikanga, the values we share and want to see reinforced by a constitution, and only after that to talk about the kawa, the processes and machinery;

And I want to respect the fact that Ngāpuhi, as the guardians of Te Tiriti, have said from the start to the present that they see it as a sacred kawenata, a covenant.

In Te Ao Māori, the Māori world, as I've understood it, everything hinges on relationships. Some are inherited through whakapapa. Other relationships are newly built, and then have to be maintained so that they stay sound and balanced.

And kawenata, covenants, *are* exactly relationships. So it's worth talking a bit about covenants in the world of the tāngata tiriti, and seeing if we have a common understanding with the tāngata whenua about them.

I find the work of Douglas Gwyn helpful here. He's a historian who's written a major work on covenant through history and in the present. He says that some covenants are spoken or written, and others are just understood. There are covenants at every level of society. Friendship is a covenant, relationships such as marriage are covenants. Gwyn suggests that covenant – faithful, promise-keeping relationship – is what really holds society together – not contracts, not law, not government. These covenants carry and maintain values such as fairness, compassion, and honesty.

When a covenant is a formal one, it's been described as a voluntary agreement made by mutual promises between people. They agree to act cooperatively together, respecting the integrity (we might say 'mana') of all those who are involved. 'Every covenant involves consenting, promising and agreeing. Most are meant to be of unlimited duration.'

That's a definition by an American political scientist who's probably never heard of Te Tiriti o Waitangi, but it seems to describe exactly what Ngāpuhi and others have always talked about in relation to the Treaty.

Right up until the middle 1860s, Māori kōrero about the Treaty was about a relationship between the rangatira (as the spokespeople of the hapū) and the Governor. In the early years the missionaries were also part of that relationship. As Michael Belgrave puts it, 'The Treaty of Waitangi was not seen by Māori as a legal document at the time of its signing, and was still considered to be a general agreement which guaranteed Māori rights without necessarily spelling them out as a text. The treaty remained for Māori more of a tripartite alliance between missionary, governor and Māori.' At Kohimarama in 1860, the first national gathering of iwi called

by the Governor, 'the treaty was often discussed, and was generally seen as simply a part of this relationship.'

From the middle 1860s, the missionaries are out of the picture. And the figure of the Governor of the time, someone you could know and build a relationship with, fades into the background. Governor Grey drinking tea on the verandah at Selwyn Wilson's ancestral home at Taumarere, that's in the past. It's replaced by impersonal governments and the courts, especially the Native Land Court. The personal relationship disappears and the sense of alliance. And to be heard in these new arenas, Māori spokespeople and their lawyers begin a new *kōrero*. It's based on the written text of Te Tiriti o Waitangi, not the oral treaty, and they focus on protecting the rights that were being invaded. It gets treated more as a contract, where the wording is all-important and the parties don't have any obligations that aren't clearly spelled out on paper. However, the talk of relationship continues on the marae, behind the public scenes.

What about the other party? Did the Governors, and the governments that replaced them, *ever* think of the Treaty as an alliance, a relationship, a covenant? Almost certainly not. They came from a world and a time when colonial capitalism was on the rise. Land in New Zealand was a commodity to be exploited, and government was tuned to the same drive. So the ideas of partnership, honour and good faith that the Court of Appeal read into the Treaty come from Te Tiriti and the Māori covenant response to it, and today are still not in the thinking of major government or Opposition parties. Don Brash's first Orewa speech, and equally the disastrous foreshore and seabed legislation, made that clear enough. So does our government's determined attempt to water down the Draft Declaration on the Rights of Indigenous Peoples at the UN. A safe future for Aotearoa New Zealand and for constitutional change has to alter that government thinking, and bring it to the point of taking the Tiriti relationship seriously.

If that can't be done, we face a grim future. In the late twentieth century capitalism became multinational, with corporations more powerful than most governments. and that market culture has created global exploitation, a spiritual desert, and environmental decay in every nation. And the global media have made us all consumers of their product, and left ordinary individuals feeling isolated and powerless.

That mix of huge forces at work, and disempowered groups and individuals, has led to wars in many countries, and social violence in almost every country. We are no exception. We experience a low-level civil strife that comes out in domestic violence, child abuse, road rage and looking for scapegoats. The tone is set by Parliament and the media. As Douglas Gwyn says of the US, 'A surly, defensive posture has come over all racial groups, and hate crimes are on the rise.' There are parallels here, for example in the public reaction to the Treaty settlement process. Even attempts to restore traditional place names and spell them right in te Reo create great waves of resentment. And it seems to me, though I can't prove it, that some of that ugliness goes right back to our colonial past. We as *Tauīwi* seem easily threatened by Māori asserting themselves as *hapū* and *iwi* or as a people, perhaps because, even when we deny it, we have at some level a sense of the injustices they have experienced.

To overcome that alienation of individuals from the wider world, that sense that if we're helpless to change things then we might as well go shopping, we need to be

part of groups that engage with the larger world, reliable human groups, to give us meaning and help us make sense of the bigger issues. They nurture us, and they give us ways to act together to change things. The internet can do a lot, but it's no substitute for that sense of community networks, *kanohi ki te kanohi*. Some groups will be predominantly *Tauiwi*, some predominantly *Māori*, some mixed. They need to be held together by something more than temporary interest – some shared values, or long-term commitment to each other.

Some of them will be able to network with others, and over time build alliances that can by-pass the big businesses or change the culture of government. Some examples:

*At basic level, marriage and other relationships bring together *Māori* and *Tauiwi* partners into one kind of covenant that involves their wider *whānau* and families, and create a great reservoir of mutual understanding and goodwill that we sorely need.

*The way the *Māori* Party is operating has quite thrown the media and other political parties in Parliament. They've been ready to talk non-defensively to everyone else, to walk alongside some fairly unlikely colleagues, and to speak clearly but without putting others down. It could catch on, and would be a major cultural change for Parliament.

*At the time of the *Pakaitore/Moutoa* Gardens occupation in *Whanganui*, the local Quaker group, with hardly any *Māori* members, saw a role for ourselves and a broader group of *Tauiwi* well-wishers as allies for the *iwi's* goals. That alliance has continued through a number of events and actions since that time, with some quite practical results.

*The late *Niko Tangaroa* of *Te Atihaunui*, following the occupation, started on a deliberate strategy of befriending and dialoguing with significant individuals from the opposite side in that struggle.

*A few local government bodies have shown themselves willing to go well beyond what the law tells them they *must* do, and have established real relationships with *iwi* in their districts.

These are just a handful of examples, and there are plenty of others. They are small-scale, not dramatic. We need media strategies – perhaps every *iwi* does, as well as *Tauiwi* groups – to tell the good news and gradually change that culture too. *Mana* magazine and *Mana News* are examples, and *iwi* radio, but those stories need to be in majority media too, at peak times. Newspapers and TV news and current affairs, following the demands of the market culture, are still one of the main stumbling blocks to a healthier future.

So what about constitutional change and *te Tiriti*? I come back to *Moana Jackson*. Yes, we need constitutional change for everyone's sake, but to try to work out the machinery before being clear about the values we want to promote, to put *kawa* before *tikanga*, will doom any change to failure.

Mai Chen has said she believes we will eventually have a written constitution as a safeguard. The reason she gave was that we no longer have trust – in our politicians or in groups we don't belong to. She seems to assume that we shall go on without changing that culture of distrust, and that the constitution will be a limited and enforceable contract, but not a covenant. But if that's all it is, it won't deal with the bigger issues we face.

But Mai Chen also says that the Treaty will have to be recognised in the constitution, because otherwise it's hard to show how our government can claim to be legitimate. That would give Te Tiriti o Waitangi the firm base in government and the courts that it hasn't had so far. Geoffrey Palmer and others have said the same.

However, that alone means that constitutional change is in the future, not an immediate prospect, because the majority of our peoples are still ignorant of Te Tiriti and its history and would reject a stronger place for it as things are now. It could take a generation to change that, and to rebuild a spirit of covenant at all levels of our society, but only that rebuilding can make the changes real. It would be a disaster to rush into change regardless, because as David Williams has said, once a new constitution's in place it will be a very long haul to alter it again.

There's perhaps some hope in the 2005 report of Parliament's Constitutional Arrangements Committee. It notes that a planned process of public education on constitutional issues would be needed before any change could be made. It says that hapū and iwi would have to be engaged in almost any constitutional change, and that legally and politically there would have to be broad support for the change from tangata whenua.

Your analysis may be different from mine, and I hope I don't sound merely timid, but I don't think the revolution is tomorrow, and I don't think it's the kind of revolution that replaces one group of people with another who will simply be corrupted in their turn by the same forces in society. It won't be quick or easy, and the forces ranged against us are formidable. We can't win over them, but we can hope to win them over, or enough people in them to make the changes. We'll need each other and our friendships and alliances, and not to expect that everyone involved will think just the same, operate in the same way, or use exactly the words we think are right. It's about rebuilding trust and making our organisations and our institutions trustworthy, in both the worlds that are represented in Te Tiriti. And at times it will also involve confrontation, to make it more comfortable for the powerful to come to the table than to stay away.

Thank you for the challenge of speaking here today, and through you to all my friends of Te Ao Maori for the gifts and patience and aroha I've experienced over the years.