

State of the Nation 2007, a Pākehā perspective

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Speech notes for Network Waitangi gatherings at Whāngarei (5th February) & Waitangi (6th February)

2006: A mixed year

- The quiet implementation by the Labour-led government of many of the ideas featured in Don Brash's 2004 Orewa 'Nationhood' speech continues apace. National may still be in opposition, and Dr Brash may no longer be its leader, but many planks of the 'Nationhood' speech - for which it now seems (courtesy of Nicky Hager) some of the "credit" must go to Michael Bassett - are being implemented by the current 'centre-left' government. On 'nationhood' issues it is mighty hard to distinguish 'centre-left' from Brash's 'mainstream'. The 'iwi' has indeed been taken out of the 'kiwi' as National campaign hoardings urged in 2005. For example:
 - Following the passage of the Māori Purposes Bill late last year, the law now requires that all historic Treaty claims must be lodged by 1st September 2008 and that no further such claims will be able to be made after that. The government argued that this will provide "certainty" for Māori, the Tribunal and the general public. It said nothing about "justice" or "truth and reconciliation." As Rāwiri Taonui put it: "Justice is righting wrongs, however long that takes" but in Parliament only the Māori Party and the Green Party voted against that Bill.
 - The new draft curriculum for schools has proposed the elimination of Treaty issues from the education of young New Zealanders. For 13 years Treaty issues have been part of the curriculum – not well taught necessarily, but a necessary part of the curriculum for all our future citizens. When many questions began to be asked about this, the government's response was that there would be Treaty content in a new Māori studies curriculum yet to be developed. The notion that the Treaty is the basis of the constitution of the nation that is important for all NZers is thus rejected – the Treaty is marginalized as a Māori issue only, and one that is not relevant for 'mainstream' education.
 - The budget in May 2006 saw the axing of 7 Māori development funding programmes specifically aimed at whānau, hapū and iwi. These programmes of capacity building, local level solutions and whānau development came from that 'distant' past of 2000 [Closing the gaps] and 2001 [Reducing social inequalities] when Māori were funded to develop and implement their own development priorities. Such self-determination is no longer on the agenda.

Any Treaty-based relationships developed in the past are now re-interpreted as needs-based arrangements to attend to socio-economic disadvantage suffered by citizens who just happen to be Māori.

- Proposals for constitutional change reflecting the legal status of the Treaty have been put on a permanent back-burner. Thoughtful comments on this issue came from Rodolfo Stavenhagen, the United Nations Special Rapporteur on the Human Rights and Fundamental Freedoms of Indigenous People, in March 2006. One of his recommendations read: "The Treaty of Waitangi should be entrenched constitutionally in a form that respects the pluralism of New Zealand society, creating positive recognition and meaningful provision for Māori as a distinct people." His report was peremptorily dismissed by the Prime Minister as "unbalanced". In August Dr Cullen as Attorney-General complained that "critics (such as the United Nations) do not understand the importance New Zealanders as a whole attach to Parliamentary sovereignty." In other words, Parliament should always be free to trample on the fundamental rights of tangata whenua and of any minority. We do not believe in 'fundamental rights' in this country – we just trust our politicians to do what is "for the best", which now seems to mean what focus groups tell them will help them to be re-elected.

- The NZ government position in the United Nations is that the Declaration on the Rights of Indigenous Peoples is 'fundamentally flawed' and is the product of 'a deeply unsatisfactory process'. What was 'deeply unsatisfactory' in the process from 1982, and the promotion of the Draft Declaration from 1993 till now, is that delegations of indigenous peoples contributed directly to the drafting of a declaration about their own rights, rather than leaving it to the nation states like New Zealand, USA, and Russia who know best on these matters as to what sort of 'self-determination' indigenous peoples are to be allowed.

- New Treaty-based relationships between Crown and Māori have ceased, except in the fraught context of the settlement of historic Treaty claims. Even there, it is the mandating and ratification policies developed by the Crown in relation to its own definitions of 'large natural groupings' that determine the format of the Treaty relationship.

- Desperate to make progress in bringing all this Treaty-claims stuff to an end as soon as possible, rather than to take the time to deal with all claimants fairly, the government has come up with some short cuts. The lakes deal with Te Arawa saw the innovation of the 'Crown-owned stratum' in the water above the allegedly 'returned' lakebed lands. Then, rather than work with the entire 'large natural grouping' as one might have thought its own policy required, the government engaged in picking and choosing between hapū and rangatira who were prepared to sign off a 'Te Arawa settlement' for land grievances and those who did not. Amazingly, the Crown negotiators were willing to exclude Ngāti Whakaue and many other hapū of Te Arawa. To implement this deal, the government will legislate to allow it to over-ride the Crown forest assets statutory regime in a scenario that will enable the government to 'steal from Peter to pay Paul'. So FoMA and the

NZMC are back in court yet again to defend their 1989 forest assets deal against what they see as Crown depredations. "We are critical of the Crown," said FoMA "acting as Judge, Jury and determining themselves as a confirmed beneficiary to receive \$63 million in CFRT funds."

- Treaty clauses no longer appear in government Bills. Moreover, Government members voted for the first reading of the NZ First Party's 'Principles of the Treaty of Waitangi Deletion Bill'. This has caused some of us some heart-searching about whether we ought to come to the defence of the 'principles of the Treaty' because we know that the underlying approach of NZ First (despite their rhetoric) is to bury the Treaty entirely as of no relevance to modern New Zealand. Many of us have spent some years arguing for the paramountcy of Te Tiriti o Waitangi over the English text, and we have expressed grave misgivings about many of the modern inventions known as 'principles of the Treaty' in which te Tiriti o Waitangi itself is utterly invisible. On balance, though, I believe that the 'principles of the Treaty' clauses in many laws have been positive factors in keeping Treaty issues to the forefront of decision-making processes. Their deletion would only increase the pace of implementing the 'Nationhood' programme of Drs Brash & Bassett.

- Are there signs of hope after this litany of despair? Yes indeed – mine is a 'mixed report' card for the year, and not all is doom and gloom.

- The response of huge numbers of New Zealanders from all walks of life to the tangihanga for Te Arikinui Te Ata-i-rangi-kāhu brought the kaupapa and tikanga of Kingitanga and te ao Māori into focus in conversations at work and at homes throughout the country. Can anyone seriously question the importance of the plurality of cultural expressions in the rich fabric of the peoples of Aotearoa New Zealand after seeing the huge generosity of the hapū of Waikato to all who gathered at Ngāruawahia and Taupiri? Aucklanders and many others paid a great tribute to Ngāti Whātua at the passing of Sir Hugh Kawharu of Orakei shortly afterwards.

- There were government entities doing work in tauwiwi communities that raised consciousness about Treaty issues. The Human Rights Commission's 'Te Mana I Waitangi' project held symposia and community dialogues up and down the country. The Declaration of Independence / te Whakaputanga o te Rangatiratanga o Nu Tirenī Day was observed in Wellington in October, symposia were held with Pacific peoples, with Women in Business, an Interfaith Council, with local communities groups in New Plymouth, Hawera, and Nelson, I was pleased to chair a HRC symposium on 'Pākehā and the Treaty of Waitangi' at the University of Auckland in June. Facilitated community dialogues took place in Kapiti Coast, central Auckland, south Kaipara, Gisborne, Hamilton, Christchurch, Lower Hutt, Hastings, Levin, etc, etc.

- The English Department at Auckland University put on an excellent one-day seminar called "One country, Two Laws" to celebrate and comment on the films of Barry Barclay and his book *Mana Tūturu: Māori treasures and intellectual property rights*. I hope the Waitangi Tribunal members hearing

the Wai 262 claim hear the message of events like this - involving the opening out of university-based knowledge of law and the legal system to knowledge-in-community; and of legal pluralism as inclusive of all rather than a threat to national unity.

- Pat Snedden's book based on many of his 2004/5 talks – "Pākehā and the Treaty: Why It's Our Treaty Too" has been hugely influential in encouraging people who would not otherwise think about these issues to engage with them. Nothing like meeting a personable, fluent 'nice' Pākehā man to make some people - who would never read a statement from Tariana Turia or Pita Sharples – think about Treaty relationships.

- And speaking of Te Pāti Māori. What a fresh and invigorating presence their 4 MPs are on the political scene. They tackle the difficult issues, like the troubles within the Kahui whānau. They constantly proclaim the importance of the Treaty of Waitangi. They have a Māori perspective on every sort of issue, humdrum or hugely significant - tax, banking, criminal justice, Treaty settlements, health, education curriculum, the economic valuation by Sotheby's of te Tiriti as an "asset" of Archives New Zealand, geographical indications for wines, Elizabeth Kubler-Ross on death and dying, etc, etc.

- 2006 was not a good year overall for supporters of the work of Network Waitangi if one focuses on the work of Parliament and the government, but many good things did happen nevertheless.

- And so we move to this Waitangi Day, 2007. It will be different from previous years, and it will be the same as previous years. For the future, my hope is that all of us will accept the responsibility, the joy and the privilege of doing our best to see Te Tiriti o Waitangi embedded in the social and constitutional fabric of our nation in our own lifetime or in that of our mokopuna.

- Seize the time – Kia kaha, kia manawanui.