

## *Comment*

Moana Jackson \*

Kia ora ano tatou. Ko te mea tuatahi he mihi whakamoemiti ki o tatou Atua me nga tipuna hei manaakitia mai tatou huri noa ki te ao.

Tuarua, he mihi hoki ki te mana o Te Atiawa me Nga'ti Toa, me nga tino rangatira me nga manu korero o nga ra o mua, tena koutou.

Tena hoki koutou, o tatou tini mate kua wehe atu, a, kua wheturangitia. No reira, ki a koutou kua haere atu i runga te waka mokemoke o to tatou tipuna, haere atu, haere atu, rere atu kati ake.

Kia koutou nga matua, nga rau rangatira, nga whaea o te motu, tena koutou. Anei tetahi mokopuna o Ngati Kahungunu me Ngati Porou e mihi atu nei. He honore nui tenei ki a ahau ki te tu ake i mua i a koutou katoa. No reira te paepae, tena koutou a huri noa, tena koutou, tena koutou, tena tatou.

I understood I was originally meant to be part of the panel but I hadn't realised that panelists were meant to give detailed and lengthy papers. So I've only prepared a few brief comments which are really a bit of a trawling exercise. And in light of the fact that Whai spoke earlier about fisheries, that might be somewhat appropriate.

I'd like to trawl through some thinking of some very wise people who are all quite different in their way but said equally profound things. One was a Frenchman called Napoleon Bonaparte, another is a Native American Professor of Law who has had a profound influence on the thinking of many Maori and indigenous lawyers, Professor Vine Deloria. A Native Canadian indigenous lawyer called Judy Sayers, a colonial official in Victorian England called the Marquess of Normanby. And the most important of all to me, my great grandfather.

Napoleon Bonaparte said at one stage that history is a set of lies which have been agreed upon. And it seems to me that, if we are to look at where we go now in relation to the Treaty, we have to make sense of the set of lies which history has handed down to us about what the Treaty means. I have been somewhat concerned, but not unduly surprised this morning that the illusions and pretences which have been manufactured about the Treaty since 1840 are still being maintained by the current crop of politicians.

As Gina Rudland said, I think it is unhelpful and unfaithful to the Treaty to talk in a disjunctive sense about Article I rights, Article II rights and Article III rights. Rather it is important to see the Treaty, as Maori people see all things, as inter-related threads of the same story. And those inter-related threads were that the Treaty was to be a re-

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affirmation of what was, in order that Maori could survive in the world that was to be. For hundreds of years in this land, Maori have been fiercely independent political peoples. And when they entered into discussion about the Treaty of Waitangi, they did so within that context. It was not seen as a legal document, it was seen as a political reality which had to be worked through.

Fundamental to that political understanding would be the realisation of the Maori who agreed to sign it that they did so with due political mandate from their people. The attestation of their moko on that piece of paper was a political act. I know of no fiercely independent group of people in the world in that context who would voluntarily give away their sovereign authority. For the Crown to continue to maintain that that is just what Maori did is to maintain a set of lies agreed upon in the process of colonisation. It seems to me that, if we are to move together within a framework that I believe the Treaty imposed, we need to move away from the untruths of that beginning.

Professor Vine Deloria is a Lakota Sioux who belongs to the nation of Native American people who have become most famous in recent years for the movie 'Dancing With Wolves'. Professor Deloria hates the movie for a number of reasons, not the least of which is that the dialect provided to the male characters in the movie is actually the dialect spoken by women of the Lakota Sioux nation. And it was incongruous if not humorous to him to see Native American warriors speaking a dialect reserved for women. In a recent article Professor Deloria wrote:<sup>1</sup>

Because the problem of the morality of the takeover by one people of another has no easy solutions, it must not be lost in the mists of history nor in the rhetoric of lawyers.

While I would agree with many speakers that great advances have been made in the last 15 years in relation to the Treaty and for that I pay due respect to Chief Judge Durie, there has been an increasing tendency to drown the Treaty in the rhetoric of the law. It has been emasculated of its political reality. It has become to be seen as a giant set of legal rights devoid from the political authority which makes the rights of the people live. Without the political authority, whether we call it self-determination or sovereignty, of a people to determine the destiny of their own lives, then the rights are meaningless. Rights defined and controlled by another political entity are not rights at all.

Judy Sayers, a contemporary indigenous Canadian lawyer who has considerable experience working in the United Nations, particularly in the working group on the rights of indigenous peoples which is drafting the declaration of indigenous rights that

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1 V Delona "Reclaiming Treaties" (1992) 4 World Bullentin 43.



the Minister referred to, in a paper recently presented at an international indigenous peoples' conference on self-determination wrote:<sup>2</sup>

In relation to the Canadian Government and the majority culture in Canada, the fear of change is strong within them and the fear of admitting the truths of their past is even stronger. And so I say to indigenous people, tell your stories of difference to break away from where they wish us to be. Because where they wish us to be is somewhere between being dominated and apparently equal, somewhere between laughter and tears.

As Gina said, the people who are most affected by that debate are not here. And they are the people who suffer the pain and anguish of a dispossession which has been meted out to our people in the process of colonisation. Professor Vine Deloria in another article defined the process of colonisation as that process where the people of one land, culture and law take over and dispossess the people of another land, culture and law. The attempt to isolate the Treaty of Waitangi from that political reality is to remove it from its truth. It is to confine Maori people forever to that limbo, somewhere between laughter and tears.

Another quote which I would like to refer to is from the Marquess of Normanby who, of course, was one of the officers in the Colonial Office in the period leading up to the Treaty. It is a comment that I think has some relevance today, because in discussing the Treaty of Waitangi in correspondence with Governor Hobson, Normanby said 'I agree that such engagements with them (that is the Maori) would be mere illusion or pretence.' In other words, to have a Treaty with Maori would be an illusion or pretence. One of the things that concerns me most about where we have been in the last 20 years in relation to the Treaty of Waitangi, and therefore in relation to where we will be in the next 20 years, is that the law has often succeeded in creating again the idea that the Treaty is simply an illusion or a pretence. It can claim on the one hand to be a recognition of Crown authority, yet deny the full extent of the affirmation of Maori authority which the Treaty also states.

It would be sad, it seems to me, if the ethnocentric narrow views of a Victorian colonial official were to find truth again in the 1990s. The Treaty is not an illusion of political authority, it is a re-affirmation of the rights of Maori to determine their own lives.

If I can close with a final trawl through the notions of wisdom of my great grandfather. He was a young man who was present at the Tukituki River in Ngati Kahungunu when our tipuna put their marks on the Treaty of Waitangi. He grew up through the ferment of the 1860s and 1870s and he attended and spoke at Maori Parliaments, particularly at the Maori parliament at Waipatu Marae in 1892, which is not found in any Pakeha history books or texts. When he gained the skill of writing he became, like many of our tipuna, a prolific and poetic recorder of his thoughts. For many years the notebooks which he kept were lost to our family until purely by chance

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2 See the papers of the Conference on Self Determination and Sovereignty (Poundmaker Cree Reserve, Alberta, July 1994) 31.

we discovered that they had been given to the National Museum by Elsdon Best. After a long struggle to retrieve those documents they are now again in the hands of our family. And my uncle is at present working through the beautiful and classical Maori in which they are written.

I want to read to you a quote which my great grandfather wrote just after the 1892 Parliament at Waipatu. What is interesting in his writing is that he does not refer to the colonial settlers as Pakeha or tauiwi. The term he uses is 'nga tangata whai muri', those who came after. Or when he talks about the Treaty, those who came because of the Treaty. He said:

those who came after are the ones who believed in new stories and turning new pages hoping in that way to change the way that we tell our stories to ourselves. But I will struggle on with the old stories about our tikanga, about our history, about our Treaty, about what has happened to our people since then. And I will struggle on in the hope that before those stories are finished they will have made it worth all the trouble for us now and for our mokopuna tomorrow.

If there is a message which I would give to the Crown, it is that Maori people will never stop telling the old stories. Because within the old stories are the germs of truth about who we are, about what we perceive our rights to be, and in relation to the Treaty, the re-affirmation of those rights in the modern world.

Thank you for your time. Ki a koutou, nga matua, nga whaea, tena koutou, kia ora huihui tatou katoa.