

A SUBMISSION RELATING TO THE FORESHORE AND SEABED DISCUSSION

+ P J Cullinane

Introduction

There is a perceived conflict, and potential real conflict, between on the one hand the principles of access and of protection, and on the other hand the principles of regulation and of certainty. The *underlying concerns* that are currently expressed as “principles” of access, regulation, protection and certainty, could be re-framed in terms that avoid that conflict.

The principles of access and of protection

To separate the “principle of access” from the “principle of protection”, as if these needed to be “balanced” against each other, is to presuppose some kind of opposition between these concepts. It also sets up an artificial opposition between “the public interest” and Maori, as if Maori were not included “the public interest”.

This is a very Pakeha way of thinking, and misses the point of what Maori mean by “guardianship”. Kaitiakitanga includes protection. It is not in opposition to it. Kaitiakitanga means stewardship, i.e. looking after the environment for someone else – that someone else being especially future generations. The idea of te ahi ka is similar.

Such guardianship is experienced by Maori as a moral responsibility, and even as a priestly role, not as something Maori feel free to neglect, or free to transfer out of their sphere of influence. It is, in fact, the rangatiratanga that is assured to Maori in article 2 of the Treaty of Waitangi.

Her Majesty the Queen of England confirms and guarantees to the chiefs and tribes of New Zealand and to the respective families of individuals thereof, the full exclusive and undisturbed possession of their lands and estate; forests, fisheries and other properties which they may collectively or individually possess so long as it is their wish and desire to retain the same in their possession.

Attempts to extinguish or diminish customary rights amount to attempts to suppress what is guaranteed under this article.

What is held only in trust, with resulting obligations of stewardship and obligations of hospitality (manaakitanga) already includes the idea of access by all. Customary rights simply do not mean the same as the pakeha concept of private ownership for individual gain. The government does well to look for a way of removing the language of ownership and title from the foreshore and seabed. The government may well find an alternative language in the existing custom of the Maori people.

Given the Maori concepts of kaitiakitanga and manaakitanga, is it any wonder that Maori have felt insulted and hurt by claims that they want ownership in the Pakeha sense of keeping others out, and hurt by claims that a right which they have under article 2 of the Treaty is being called “privileged based on race”?

The cultural values of kaitiakitanga and manaakitanga are intrinsic to mana tangata. Maori cannot think of themselves without including their sacred responsibility of kaitiakitanga and manaakitanga. These values are rooted not only in the Treaty of Waitangi, but in the identity of the Maori people – before there was a Treaty. These concepts are not reducible to legal determinations of particular usages or long-standing practices; they are more comprehensive, and belong to how Maori see themselves and their relationship to sea and land. This makes the whole issue very tapu in the sense that people are sacred, and respecting them is a sacred obligation.

The principles of regulation and of certainty

It is because private interests, and commercial interests, have the potential to contravene kaitiakitanga and manaakitanga that the government is surely entitled to legislate and clarify. Moreover, to do so is in accordance with article 1 of the Treaty of Waitangi.

Conclusion

I submit that in this matter it is not enough for the government to be right; it must also be seen to be right.

Hence, my suggestion that the underlying concerns currently expressed as principles of access, regulation, protection and certainty be re-framed, using categories rooted in Maori tradition, and showing how these concerns are consistent with the Treaty of Waitangi.

Yours sincerely,

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