Story: Te ture – Māori and legislation

Page 5 – Restoring Māori customary law

(Taonui, R., 2012c)

Sense of injustice

In the 1970s a wave of protest actions such as the Māori land march in 1975 and the 1978 occupations of Bastion Point and Raglan golf course drew public attention to the Māori people's sense of injustice. From 1980 annual protests on Waitangi Day impelled successive governments to make changes to legislation affecting Māori. Some of those changes gave greater recognition to Māori traditional law and custom.

Status of Children Act 1969

One of the earliest law changes to reflect Māori custom was the Status of Children Act 1969. Previously a child's birth parents were considered the natural guardians. This was inconsistent with Māori custom, which regarded children as equally precious to all members of their wider family. The Status of Children Act 1969 removed the legal distinction between 'legitimate' and 'illegitimate' children. This law applied to both Māori and non-Māori, so the European law changed to reflect Māori practice.

Treaty settlements

The Waitangi Tribunal was formed in 1975 to investigate contemporary breaches of the Treaty of Waitangi. From 1985 the Tribunal could also investigate historical treaty breaches. The Tribunal's findings upheld some major treaty claims, leading to substantial settlements for the iwi concerned. Special acts were passed to give effect to these settlements. Two examples are the Waikato Raupatu Claims Settlement Act 1995 and the Ngāi Tahu Claims Settlement Act 1998.

Principles of the treaty

From the 1980s, an increasing number of new statutes referred to the principles of the Treaty of Waitangi. These include:

- the State-Owned Enterprises Act 1986, section 9
- the Conservation Act 1987, section 4
- the Resource Management Act 1991, section 8
- the Energy Efficiency and Conservation Act 2000, section 6.

Even if a statute does not make specific reference to the treaty, treaty principles may be a relevant consideration in its enforcement. The legal application of treaty principles has, in some cases, made it easier for Māori to enforce traditional customs and practices.

Exercising a right

A landmark case in 1986 established that traditional Māori fishing rights could override European laws. Tom Te Weehi was convicted in the District Court of taking undersized paua. He appealed to the High Court, claiming Māori customary rights. The judge found that he was exercising a customary fishing right, that this exempted him from certain requirements of fishing laws, and that he did not therefore commit an offence. 'The customary right involved has not been expressly extinguished by statute and I have not discovered... any adverse legislation or procedure which plainly and clearly extinguishes it.'[1]

Resource Management Act 1991

Until the passing of the 1991 Resource Management Act, environmental legislation took little account of Māori historical, spiritual and cultural concerns. Legal actions by Māori to protect traditional lands, waterways, reefs and other resources were seldom successful. The new act explicitly recognised Māori spiritual and cultural values and the principles of the Treaty of Waitangi. Under this act, environmental developments required consultation with iwi, and applications for resource consents had to be sent to iwi authorities.

Te Ture Whenua Māori 1993

Te Ture Whenua Māori Act 1993 represented a significant change in the direction of Māori land policy. For the first time, the importance of the relationship of land to Māori and the need to promote land retention was acknowledged in law. Under this act the Māori Land Court was required to assist Māori landowners to promote the use, development and control of Māori land. The act emphasised retention of Māori land for the benefit of its owners, their whānau, their hapū and their descendants.

Foreshore and seabed legislation

Since 1997 several pieces of legislation, including the Marine and Coast[illegible] Moana) Act 2011, have attempted to resolve contradictions between Mā[illegible] claims to the foreshore and seabed, and European marine law. These law[illegible] Māori claims of traditional rights to marine areas and resources. The claims [illegible]ased on

Indigenous property rights

In 1870 Francis Fenton, a former chief judge of the Māori Land Court, acknowledged the legal principle of indigenous property rights: 'Where native, native family, or tribe, have established as a matter of fact the exclusive exercise of rights of fishing in any locality, and have maintained it against others in the old days, that is before British law was established in the Island, then we have given a title to those rights as an easement.'[2]

indigenous property rights – the principle that before European law was imposed Māori already practised their own laws and customs which could not be entirely overruled by later laws.

Footnotes:

1. Te Weehi v Regional Fisheries, p. 690.
2. Quoted in Fergus Sinclair, 'Kauwaeranga in context'. *Victoria University of Wellington Law Review* 29, no. 1 (January 1999), p. 14.

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