NEW ZEALAND'S TE UREWERA ACT 2014

A Trans-Tasman perspective on Indigenous governance of lands and water: the legal personality solution

Summary and discussion of Dr Jacinta Ruru's recent seminar by Arisha Arif[1] with approval by Dr Ruru

National park lands encase the…homes of Indigenous peoples. Today, the law reflects a new societal goal that seeks to reconcile with Indigenous peoples for the past wrongs of taking their lands and denying them the very means to be true to themselves, their ancestors, and their grandchildren. National parks have the potential to play an instrumental role in committing to this reconciliation journey. National parks are symbolic of our national identity and our future, and the parks contain Crown lands that thus enable the Crown to lead in implementing a new way of thinking about owning and managing lands.

In her seminar in Canberra at the Australian National University, on 19 February 2015, Dr Jacinta Ruru reflected on this passage from her PhD with some nostalgia. Three years ago, Dr Ruru, now Associate Professor of Law at Otago University in Aotearoa New Zealand, could not have predicted the monumental legal change that has taken place.

An expression of this change is in the enactment of New Zealand's Te Urewera Act 2014 (the Act). Te Urewera is an area of the central North Island of Aotearoa New Zealand that is the historical home of the Tuhoe Maori *iwi* (tribe). The area was named a national park in 1954 and has been managed as Crown land by the Department of Conservation since. However, with the recent passage of the Act, Te Urewera is now a legal entity with 'all the rights, powers, duties, and liabilities of a legal person': s 11(1). This is the first instance of the removal of a national park from Crown ownership in New Zealand. It is also a potentially revolutionary step in conservation management and indigenous reconciliation worldwide.

In her presentation, Dr Ruru explored the concept of legal personality as a solution to indigenous ownership, management and governance of land and water. Undoubtedly, for many schooled in the Western legal tradition, the legislative reform is conceptually challenging. In common law legal systems, a trust is a relationship bound by obligations of good conscience.[2] The trustee manages the trust property on behalf of the beneficiary, who must be a legal entity (a person or a corporation). If a trust is established for a charitable purpose, the trustee administers the trust property to fulfil this purpose.[3] The trust's objects (beneficiary/charitable purpose) are separate to the subject of the trust (the trust property). Te Urewera blurs this distinction.

Above: Dr Jacinta Ruru
Centre: Mokau Falls, Te Urewera

Indigenous peoples throughout the world often view natural landscapes and the people, plants and animals supported by it as a sentient being where traditional owners have a cultural role in taking care of it.[4] The new legal arrangement created for Te Urewera reflects that ontology. Under the Act, Te Urewera is managed by a board whose members act as its trustees. The board implements Te Urewera's management plan (similar to other national parks) and is designed with a view to move to a larger, predominantly Tuhoe membership. It is guided 'to act on behalf of, and in the name of, Te Urewera'' (s 17(a)) and may 'consider and give expression to Tuhoetanga [and] Tuhoe concepts of management

such as rahui, tapu me noa, mana me mauri, and tohu' (s 18(2)).

The concept of trusts in the management of Indigenous held land and seas in the Australian context is expressed in the formation of Registered Native Title Bodies Corporate (RNTBCs), who hold native title rights and interests in trust on behalf of recognised claimants. However, the obligation of the trustee is to the beneficiary

traditional owners, not to country. For Te Urewera, where the latter is the case, the ability of the Tuhoe to speak for country is centralised in the board. The guidance given to this board is of enormous significance. It challenges the tight rules for managing national parks that Dr Ruru highlighted as having failed to recognise the cultural and spiritual importance of the lands to Maori peoples across New Zealand. These rules privileged a monocultural perspective of the significance and value of the land in contrast to the new Act, which is woven throughout with Tuhoe concepts of cultural and spiritual importance.

There have been similar tensions between conservation and Indigenous interests in Australia. The debate over Wild Rivers in Queensland is just one example where conservation efforts have attracted criticism for operating against the interests of Indigenous peoples. However, the joint or co-management of national parks and other protected areas has come to be seen as the minimum standard expected by many Australian conservation managers and Indigenous peoples.[5] These arrangements were first introduced in the Northern Territory between 1979 and 1989,[6] and have increased in number with the emergence of native title claims.[7] Indigenous peoples have also substantially contributed to the growth of Australian national protected areas through 'voluntary declarations of their intent to manage their lands in perpetuity for conservation and associated ecosystem services and livelihood outcomes'.[8]

Such institutional arrangements have been slower to take place in New Zealand. A long-running inquiry by the Waitangi Tribunal into the Tuhoe claim had, in 2012, concluded that Te Urewera was the most appropriate situation for 'title return and joint management arrangements [such as] have been carried out successfully for national parks in Australia'.[9] Yet, as Dr Ruru noted, none of the Australian arrangements met the Tuhoe criterion of unencumbered title — and the Tuhoe would not settle for anything else. Another solution was needed and, in 2014, another solution was realised.

Te Urewera's new legal personality solution may have particular significance in Australia, where the success of joint or co-management arrangements is limited by exigencies, such as historic power imbalances,[10] and many groups continue to aspire to sole governance.[11] The Act overturns what Dr Ruru described as a presumption of sovereignty over the natural world. But, more than that, it demonstrates that a new way of thinking *is* possible and often necessary to settling long-standing grievances and redressing injustice.

---

1 Aurora Intern, Native Title Research Unit, Australian Institute of Aboriginal and Torres Strait Islander Studies.

2 Thomas Lewin 1837 *A Practical Treatise on the Law of Trusts and Trustees*. Maxwell, United Kingdom, 2: '*the parents of the trust were Fraud and Fear, and a court of conscience was the Nurse*'.

3 Alun A Preece, *The Laws of Australia* (at 1 October 2014) WestlawAU [15.30.20].

4 Rodney Harrison and Deborah Rose 2010 'Intangible Heritage'. In Tim Benton, *Understanding global heritage and memory*. Manchester University Press pp 238-276: 250.

5 H. Ross, C. Grant, C.J. Robinson, A. Izurieta, D. Smyth, and P. Rist 2009 'Comanagement and Indigenous Protected Areas in Australia: achievements and ways forward'. *Australasian Journal of Environmental Management* 16(4): 242–252.

6 S. Woenne-Green, R. Johnston, R. Sultan, and A. Wallis 1994 *Competing interests: Aboriginal participation in national parks and conservation reserves in Australia: A review*. Melbourne, Australian Conservation Foundation.

7 Toni Bauman, Chris Haynes and Gabrielle Lauder 2013 'Pathways to the co-management of protected areas and native title in Australia' 32 *AIATSIS Research Discussion Paper* 59.

8 Phil O'B. Lyver, Jocelyn Davies and Robert B. Allen 2014 'Settling Indigenous Claims to Protected Areas: Weighing Maori Aspirations Against Australian Experiences' *Conservation and Society* 12(1) 92.

9 Waitangi Tribunal 2012 'Te Urewera: Pre-publication, Part III' *Wai 894 - Combined Record of Inquiry for the Urewera District Inquiry* 3: 890.

10 Bauman et al, above n 7, 62.

11 Ibid, 63.