

Ayau, Edward Halealoha. 2004. Museum Policy Further Threatens Artifacts. *Honolulu Advertiser*, 8 August (a letter signed by 23 supporters from the Hawaiian community).

Bernardo, Rosemarie. 2003. Rights March Unifies Groups. *Honolulu Star-Bulletin*, 8 September.

Bishop Museum. 2004. Interim and Proposed Final Guidance Native American Graves Protection and Repatriation Act. 30 June. <<http://www.bishopmuseum.org/NAGPRAGuidelines.html>>

Boyd, Robynne. 2003. Mālama 'Āina, Kaho'olawe: Back in Hawaiian Hands. *Honolulu Weekly*, 5 November.

Creamer, Beverly, and Derick Depledge. 2004. Regents Fire Dobelle. *Honolulu Advertiser*, 16 June.

Daysog, Rick. 2004. The Dobelle Papers. *Honolulu Star-Bulletin*, 5 August.

Gima, Craig. 2004. Dobelle Fired. *Honolulu Star Bulletin*, 16 June.

Rees, Robert. 2004. The Meanings of the Dobelle Incident. *Honolulu Advertiser*, 8 August.

Viotti, Vicki. 2004. Inouye Against Museum Claim. *Honolulu Advertiser*, 14 August.

Wolfe, Faye S. 1998. Making Sense of the Relationship Between Trinity College and Hartford: The Man to Do It. *University of Massachusetts Magazine* (Winter). <http://www.umass.edu/umassmag/archives/1998/winter_98/wint98_f_trinity.html>

MĀORI ISSUES

2003–2004 has been a year of massive upheaval for Māori. In June 2003 the New Zealand government announced its intention to legislate the confiscation of the country's fore-

shore and seabed from Māori. At the time there was a furious and uncharacteristically united outcry from Māori. The level of anger among Māori against the government on this issue has increased over the past year as the government has refused not only to back down but also to enter into any meaningful consultation or dialogue with those who will be directly affected, the numerous coastal whānau (extended families) and hapū (groupings of extended families), many of whom have had rights to their own particular areas of the coast for many hundreds of years.

Māori have organized their opposition with unprecedented levels of cooperation, while the government has tried desperately to undermine them. Both the policy and the legislation have come under sustained attack as Māori have used every forum, strategy, and mechanism they could identify to try to have it removed. This included mounting the biggest protest march ever seen in the country. They also attacked the male Māori members of the Labour government caucus, including the minister of Māori affairs, labeling them as traitors when they ended up supporting the legislation and ignoring the clear and unequivocal instructions of their constituents. Two Māori women members of government who opposed the legislation drew huge support from Māori. When one of them, Tariana Turia, resigned from Parliament, forcing a by-election, voter turnout was unusually high, even though none of the main political parties offered any candidates. After setting up and then co-leading the new Māori Party, Turia took 92 percent of the vote,

returning triumphantly to Parliament with a new mandate.

But the government has remained resolute and determined to pass its foreshore and seabed legislation well before the 2005 general election, launching attacks on Māori leaders and several judges in an attempt to deflect their criticisms. Opposition parties, except for New Zealand First, opposed the legislation but made it very clear that they were not doing so to support Māori legal entitlements. Only the Green Party supported Māori. And in the midst of the foreshore and seabed turmoil, highlights on the Māori calendar—such as the successful launching of the long-awaited Māori Television Service in March 2004, the nomination of Keisha Castle-Hughes to win an Academy Award for her role in *Whale Rider*, and the launch of the Māori Party—were all seized on by Māori to assist them in their battle to stop the government's foreshore and seabed legislation.

The government decision to pursue legislation to remove Māori rights to the foreshore and seabed was a knee-jerk reaction to the Court of Appeal's unanimous decision in the Marlborough case (that is, the case of *Ngati Apa, Ngati Koata, Ngati Kuia, Ngati Rarua, Ngati Tama, Ngati Toa and Rangitane and Anor v the Attorney-General and Ors* CA CA 173/01). The decision, issued on 19 June 2003, indicated that the Crown's assertion of its ownership of the country's foreshore and seabed was not correct, and that the Māori Land Court had the jurisdiction to investigate the status of that land and to determine whether it is customary Māori land.

The decision upheld domestic law (The Māori Land Act); English common law (which recognizes that when the English colonize another country, indigenous peoples' "customary rights and title" to their lands remain and cannot be extinguished in times of peace without their consent); and international law (with respect to the rights of indigenous peoples). The decision brought huge, albeit very temporary, relief for coastal whānau, hapū, and iwi (tribal groupings) throughout the country. After 134 years of pursuing ownership of the foreshore and seabed through the courts, blockages were now removed and the court could investigate Māori property rights claims, including ownership.

Four days later, in a move that showed flagrant disregard for all constitutional conventions and due process, the government announced that it would legislate to stop all New Zealand Courts from considering cases that were already before them on the matter. The legislation would overrule the decision of the Court of Appeal and vest complete and absolute ownership of the seabed and foreshore in the Crown, confiscating it from the whānau and hapū throughout the country who hold mana whenua and hence ownership of them. (Very simplistically, mana whenua can be defined as the power, authority, control, and responsibility derived from the gods for a particular area of land.) However, the government would protect any non-Māori interests in the foreshore and seabed. So the harbor boards, port companies, and an increasing number of private individuals, many of whom

are foreign investors and speculators, would not have their property rights removed. Such a blatantly racist approach meant that the government was effectively singling out Māori and declaring war on them. The Māori response was immediate and unanimous: complete opposition and abhorrence of what the government was suggesting. But for Māori it was also simply history repeating itself. In the 1860s the government had legislated to confiscate Māori land in order to satisfy settler greed for Māori land and resources. Predictably, that led to the New Zealand land wars. This was no different. The ease with which the government could flout fundamental constitutional norms, and domestic, common, or international law, took legal scholars by surprise and brought into question the sanctity of the rule of law (Tomas and Johnston 2003; Brookfield 2004; Ruru 2004; Waitangi Tribunal 2004; Bennion 2004a, 2004b).

The powerlessness and marginalization of Māori within the New Zealand Parliament was clearly on display as their increasingly angry protests went unheeded. By August the government had published their proposal (Department of the Prime Minister and Cabinet 2003). In December its policy was released. In April 2004 the Foreshore and Seabed Bill was introduced in the House. In July, a parliamentary select committee started hearing submissions on the bill; it is scheduled to report back by November 2004. Although all ten government members of Parliament who have declared their Māori background strenuously opposed the proposed confiscation when it was first

announced (NZH, 25 June 2003), Māori were stunned and mystified when all but two of them were subsequently persuaded to support it. Their support, along with the belated support of the New Zealand First Party, would ensure its safe passage through Parliament. It was as a direct result of these betrayals that the Māori Party was set up, with a mandate that the clearly articulated wishes of the people must take precedence over the wishes of the party.

It did not take long for the sinister, anti-Māori underbelly of the Pākehā population to display itself, as reports of a poll indicated that most were happy to support the legislation (NZH, 18 Aug 2003). They were happy, it seemed, for the Crown to take ownership of the foreshore and seabed regardless of the strong Māori interests already there, or the fact that, in the Court of Appeal, the Crown had been unable to prove ownership. This theft by legislation was an easy way of getting a very substantial resource for free. After all, the high standard of living enjoyed by the great majority of Pākehā New Zealanders has always depended on their being able to gain access to Māori land and resources at little or no cost, regardless of how unfair and unjust that might be for the Māori owners, or the fact that most of those acquisitions were illegal. Just when Māori were hoping that the treaty claims processes were finally signaling an end to such discrimination, it resurfaced with even greater vigor and determination.

The opposition recognized the growing Pākehā backlash against Māori and was quick to exploit it. In January 2004, leader of the National

Party and the opposition Don Brash, to his considerable political advantage, promised to abolish “special privileges” for Māori. He portrayed the Waitangi Tribunal as delivering privileges to Māori, deliberately misrepresenting its role of identifying breaches of the Treaty of Waitangi and recommending strategies for removing the prejudice caused. When Māori and the media asked him to identify the “special privileges,” he could not do so, but it didn’t appear to matter. His ratings in the opinion polls continued to climb, ignoring the fact that, as both history and statistics show, it is Pākehā who enjoy substantial privileges in New Zealand, and Māori and their Pacific Island relations who are overwhelmingly the country’s most disadvantaged groups. Georgina Te Heuheu, who had been Brash’s spokesperson on Māori Affairs and the only Māori in the National Party caucus, was sacked after she declined to support her leader’s attacks; she was replaced by the deputy leader, who was happy to launch even harsher attacks on Māori. The attacks were unashamedly and openly racist, and the long-held pretense that most Pākehā New Zealanders do not harbor racist attitudes toward Māori could no longer be sustained. But that did not stop them from attacking one of the country’s foremost and internationally acclaimed entertainers, Bic Runga, when she told an Irish newspaper in March that New Zealand can be a racist country and that racism had been a constant feature of her childhood in Christchurch (*BT*, 26 March 2004).

The National Party’s success in

attacking Māori was quickly picked up by the government, with the prime minister announcing her own “review” of Māori programs. In fact the government had already started withdrawing funding from Māori programs, so the opposition attack allowed the withdrawal to proceed more expeditiously. Most Māori programs would have difficulty surviving without government assistance. But the unpublicized withdrawal of \$6 million from the Māori Television Service just six weeks before it was launched did not prevent it from going on the air in March and enjoying good reviews from all commentators. One of its very few detractors was the National Party, which promised to close it down. But a poll taken in June indicated good support for the service, with non-Māori making up 65 percent of its audience (*NZH*, 25 June 2004). The service is unashamedly supportive of Māori and often very critical of the government. It is unlikely that government funding will be restored, but given the quality and professionalism of the service it is expected that the private funding provided to launch and keep the service running will continue to be available.

Māori leaders were relying in part on the media in their battle against the government’s foreshore and seabed legislation, and the Māori Television Service was a welcome addition to their resources. Since July 2003 they had been organizing hui (gatherings) and running information campaigns to keep Māori and the general public fully informed on the issue. Within three weeks of the government’s first announcement they had

convened a national hui to discuss the issue. The resolutions from the 1,000-strong gathering of iwi from throughout the country signaled very strong warnings to both the government and all Māori members of Parliament not to attempt to extinguish or redefine Māori customary title or rights. Representatives returned home from the meeting to inform their communities of the outcomes and to seek instructions on measures to be taken to resolve the problem. Hui were convened by iwi groups throughout the country and a second national gathering was held at the end of August.

The August 2003 hui established a collective called *Te Ope Mana a Tai*, a name that translates approximately as “the group that holds paramount authority for the coast and seas.” It was made up of tribal leaders, legal advisors (including judges), policy analysts, media experts, and other professionals. It was headed by the iwi that had won the Court of Appeal decision and included representation from most other coastal iwi. Its mandate was to gather and disseminate information to Māori and the general public and to carry out work on behalf of Māori on this issue. The group undertook an extensive publicity campaign in an attempt to inform the country of the seriousness of the issue—and to counter the misinformation, being promulgated by the government, that if Māori ownership was given legal recognition, Māori would close off access to the country’s beaches and sell them. *Te Ope Mana a Tai* also relied heavily on decisions from the many local and regional hui convened to discuss the matter, and from the three

further national hui that they convened. Other important means of strategizing, keeping people informed, and seeking the support of non-Māori included a website <www.teope.co.nz>; e-mail groups; teleconferencing; public and conference presentations; university seminars and lectures; advertising through pamphlets, posters, and education packages; meeting with government ministers and other members of Parliament; supporting the national Hikoī (protest march); Māori radio; and mainstream news media. Several iwi also presented formal complaints before a number of United Nations committees responsible for human and indigenous peoples’ rights.

In October, *Te Ope Mana a Tai* led a claim to the Waitangi Tribunal against the government’s foreshore and seabed policy. One hundred forty-nine claimants representing almost every coastal tribal group around the country pooled their resources and expertise to bring the claim under urgency. In March the tribunal reported, upholding the claims and issuing very serious warnings to the government about the foolhardiness of proceeding in the manner announced in the policy. One commentator noted that the report “is damning of the Crown framework policy, using some of the strongest language seen in a tribunal report to date” (Bennion 2004a, 1). The tribunal noted that the government’s policy contains numerous breaches of the Treaty of Waitangi, stating that “the Government’s unilateral decision to do away with these Māori property rights . . . could only be justified if chaos or disorder would result if

there was no intervention, or if we were at war or facing some other crisis” (Waitangi Tribunal 2004, 108). It also strongly urged the government to act in fairness and recommended that the government go back to the drawing board and engage Māori in proper negotiations. According to the tribunal, there is no need for the government to implement any policy, and the law should be allowed to take its course.

Yet on the day the tribunal released its foreshore and seabed report, the government announced that it had already rejected the report (NZH, 8 March 2004). Matters covered in the accompanying press release bore little resemblance to the content of the report and there was speculation that government leaders had not even bothered to read it. The present government has rejected all recent findings of the tribunal.

Many iwi had also applied to the Māori Land Court to have cases involving their own foreshore and seabed heard as soon as the Court of Appeal decision was issued. However, when the court began to process the case in one district in March 2004, the prime minister ignored constitutional convention and launched a stinging public attack on the judge hearing the case, demanding that she not hear it because she was from the same tribe as the applicants (NZH, 13 March 2004). While it would be unheard of for a politician to launch a personal attack on a non-Māori judge, it seemed to be acceptable to attack a Māori judge. The judge formally reprimanded the prime minister in her decision.

It was the government’s ongoing

refusal to listen to any Māori advice or to consider the Waitangi Tribunal’s recommendations that led to the biggest and most successfully organized protest march ever witnessed in New Zealand. It was called the Hikoī. Whānau, hapū, and iwi from throughout the country, with their colorful tribal banners and flags, joined it on its way from Te Rerenga Wairua in the very far north, starting on 22 April, and ending in Parliament grounds in Wellington on 5 May. The number of people who were mobilized throughout the country was unprecedented. The Hikoī itself was highly disciplined, yet good-natured, and a dignified stance was maintained throughout. Police reported experiencing no trouble and there were no arrests (NZH, 6 May 2004). While many New Zealanders had become confused on the issue, the clear message of the Hikoī was that the foreshore and seabed legislation was terribly wrong and had to be withdrawn from Parliament. Māori simply would not tolerate yet another treaty breach that was so clearly illegal, immoral, and unjust.

On the final day of the Hikoī through Wellington, the police estimated there were 50,000 participants, including the several thousand kaumātua (Māori elders) who awaited its arrival at Parliament. The government tried desperately to play down both its size and impact, claiming that there were only 15,000 participants, and that it was a reaction to an attack on Māori by the leader of the opposition. However, while media reports varied hugely on size estimates (ranging between 10,000 and 30,000), they were very clear on the

message (NZH, 6 May 2004). All media reports described the march as a protest against the government's foreshore and seabed legislation. The media coverage was extensive, both locally and nationally. It also attracted significant international media attention.

The prime minister's constant criticisms of the Hikoi over the two weeks of its duration simply fueled the determination of the participants to deliver a clear and unequivocal message. As the numbers swelled, she referred to the participants as "haters and wreckers," telling the media she preferred the company of a sheep to that of iwi representatives leading the march. Yet even she was unable to ignore the Hikoi. Television cameras caught her watching from the window of her office as the marchers completely filled Parliament grounds (*Te Kaea*, 5 May 2004). Many participants could not get into the grounds and remained outside on the surrounding roads and pathways to listen to the speeches of Māori leaders, including Tariana Turia, which were broadcast from inside the grounds.

MARGARET MUTU

References

- BT, *Belfast Telegraph*. Daily.
- Bennion, Tom, editor. 2004a. *The Māori Law Review*. March.
- Bennion, Tom, editor. 2004b. *The Māori Law Review*. May.
- Brookfield, F M "Jock." 2004. Māori Customary Title in Foreshore and Seabed: Comment on the Crown's Decisions and a Reply to Bill Clayton. *New Zealand Law Journal*, Feb. Wellington: Butterworth's.
- Department of the Prime Minister and Cabinet. 2003. *The Foreshore and Seabed of New Zealand: Protecting Public Access and Customary Rights: Government Proposals for Consultation*. Wellington: Department of the Prime Minister and Cabinet.
- NZH, *New Zealand Herald*. Daily. Auckland.
- Ruru, Jacinta. 2004. A Politically Fuelled Tsunami: The Foreshore/Seabed Controversy in Aotearoa me te Waipounamu/New Zealand. *The Journal of the Polynesian Society* 113 (1): 57-72.
- Te Kaea*, Māori nightly news program, Māori Television Service.
<<http://www.maoritelevision.com/>>
- Te Ope Mana a Tai. 2003-2004.
<<http://www.teope.co.nz/>>
- Tomas, Nin, and Kerensa Johnston. 2003. Ask That Taniwha: Who Owns the Foreshore and Seabed of Aotearoa? Accessible online via *Resources for Maori Land Law*, University of Auckland Library
<<http://www.library.auckland.ac.nz/subjects/law/resources/law444.htm>>
- Waitangi Tribunal. 2004. *Report on the Crown's Foreshore and Seabed Policy*. Wellington: Legislation Direct, March. Also available on the Tribunal's website:
<<http://www.waitangi-tribunal.govt.nz>>

WALLIS AND FUTUNA

In a speech on 1 July 2003, Wallis and Futuna High Commissioner Christian Job officially announced that the institution of direct income taxation was being considered. This reform, which had been proposed by French Overseas Minister Brigitte Girardin during her visit to the territory in December 2002, would be undertaken slowly and deliberately. For indeed, Wallis