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ESSAY 5

MOVING FORWARD, KEEPING THE PAST IN FRONT OF US

Treaty settlements, conservation, co-governance and communication

GILES DODSON

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INTRODUCTION

At present there is well-established recognition in New Zealand of Māori and the Crown as constitutional partners to the Treaty of Waitangi¹ and commitment to partnership is widely articulated in official and public discourses. This essay addresses the current issue of how developments in Treaty policy and new institutions arising from settlement of Treaty of Waitangi claims can inform the development of institutions of co-governance within national conservation policy. This discussion is contextualised by an examination of currently evolving marine conservation policy. The essay argues that communication, as a discipline conventionally outside policy – especially science dominated conservation policy – has much to offer policymakers as we seek to understand best practice partnership and co-governance arrangements emerging from Treaty settlements.

Conservation policy is a key area where partnership is being expressed and instituted (Logan, 2004; DOC, 2006a, 2006b). As is clear - and increasingly recognised in public policy - tangata whenua have a fundamental relationship to and interest in the natural environment. Arguably, it is in conservation policy, governance and operations that these relationships can be most powerfully expressed, as the conservation estate contains tāonga species and significant landscapes which enable Māori to express customary and traditional relationships in ways other lands do not (Waitangi Tribunal, 2011). Although conservation policy and operations have proven over time responsive to and inclusive of Māori

¹ Although the Treaty does not possess legal status akin to a 'Constitution', it is broadly accepted that the role of the treaty is in fact constitutional. The 'principles of the Treaty of Waitangi', as articulated in government discourse are: the principle of government; the principle of self management; the principle of equality; the principle of reasonable cooperation and the principle of redress. For example see Department of Conservation *General Policy* (2005), *Consultation Policy* (2006a), *Consultation Guidelines* (2006b).

interests there remain substantial impediments to more meaningful involvement of Māori, particularly with respect of governance frameworks (Dodson, 2014). This is particularly the case with respect of marine protection frameworks, the focus of this essay.

The exercise of governance authority is a key expression of reclaimed rangatiratanga (Hill, 2009; Maaka and Fleras, 2005) and a rich area of analytical focus for social science scholars interested in making an intervention into what is hitherto a preserve of ecological and conservation sciences. On one hand, effective innovation in marine conservation governance offers the potential to satisfy Māori aspiration for greater say in conservation matters, to advance conservation strategy and provide a means for socio-ecological development in frequently rural and economically marginal New Zealand. On the other hand, examinations of partnership formation and the exercise of co-governance are therefore increasingly demanded as questions of conservation management move from being addressed through ecological or conservation science perspectives (Soomai et al, 2013; Allen et al, 2009; Berkes, 2009; Carlsson and Berkes, 2005; Lyver, 2005), and addressed as deliberative and dialogic spaces in which the 'post-Treaty settlements' relationship is negotiated (Dodson, 2014). The central contention of this essay is that policymakers need to learn from the innovations of Treaty settlement originated co-governance, as mainstream frameworks are reformed. Indeed, the operation of co-governance institutions presents a fecund field of inquiry for scholars working within communication disciplines. The rationale for co-governance may be ecological and political in origin, however in practice co-governance is about relationships and is fundamentally an issue of dialogue, deliberation and engagement.

CONSERVATION AND COMMUNICATION STUDIES

Conservation has long been informed by environmental, ecological and biological sciences (see above), however social science - particularly communication disciplines - are well placed to intervene in research, policy development and debate over conservation policy. Indeed, the question of marine protection, for instance, like other forms of ecological preservation, is no longer a scientific one, but rather a political issue. As a problem to be approached from a communication perspective, enquiry into conservation governance must be concerned with addressing several levels of engagement between stakeholders; the key issue at stake is how parties work together and reconcile different values and priorities. The first of these are the efforts of stakeholders – government agencies, iwi, other community groups – to advance and expand conservation activities. Within this process are the complexities of reconciling differing perspectives and priorities when it comes to environmental protection, negotiating the statutory process and policy framework, or actively pursuing modification or reform of existing frameworks. Processes of negotiation – of dialogic and discursive engagement – relating to conservation governance and the establishment of workable

arrangements between stakeholder groups arrangements constitute another level of intervention. Lastly, the evaluation of governance and the outcomes of devolved, adaptive and co-managed conservation operations through which conservation may be pursued to the satisfaction of stakeholders presents another key area in which communication-informed social science can contribute meaningfully. As a communication problem, progressing (marine) conservation in Aotearoa New Zealand can be usefully addressed through examining the models of co-governance and management developed through Treaty settlements and the efficacy of these models in delivering both stakeholder satisfaction and sound conservation outcomes. Structures and frameworks drawing stakeholders together, encouraging adaptive, dialogic and deliberative problem-solving and encouraging the recognition and reconciliation of fundamental cultural values and interests in a conservation context need exploration and incorporation into future policy reviews and development.

TREATY SETTLEMENTS AND CONSERVATION IN AOTEAROA

The Treaty settlements process recognises the historic exclusion of Māori from involvement and authority within conservation policy (Waitangi Tribunal, 2011). Recent settlements have included a range of innovative conservation governance frameworks and arrangements seeking to redress Māori for historic exclusion (Ngāti Pāhauwera Claims Settlement Act, 2012; Te Aupōuri Deed of Settlement, 2012; Te Rawara Deed of Settlement, 2012; Tūhoe Deed of Settlement, 2012; Waikato-Tainui Raupatu Claims Settlement Act, 2010). Such arrangements restore the opportunity for customary relationships to be upheld and establish a restored Treaty relationship. It is out of the Treaty settlements process that the most visible and important innovations with respect to conservation governance have arisen. As more and more claims are settled and Aotearoa New Zealand moves towards the post-Treaty settlement era these innovations should inform our reconsideration of conservation policy and provide decision makers with guidance in advancing and expanding conservation efforts around New Zealand. Furthermore innovative governance structures provide key communicative spaces in which Treaty-based partnership can be constituted, negotiated and developed. There is much to be gained from incorporating the innovations visible within settlement packages into conservation frameworks more generally, rather than limiting the innovations we can increasingly observe to 'one-off' settlements.

Treaty settlements, for all that governments and the general public may wish to view as 'moving beyond' historical grievance and Māori-Crown antagonism (Key, 2010), provide the basis for new patterns of interaction and cooperation between Māori and tauwiwi (non-Māori). The question of what policies and governance structures provide constructive outcomes – environmental, social, cultural and political – is fundamentally a question of examining the mechanisms being developed to deliver policy outcomes in a post-settlement era. Rather

than viewing Treaty settlements as 'solutions to problems' we must view these arrangements as a starting point for a restored relationship, which will continue to evolve as time passes. It is with this in mind that we should look to settlements and the historical wrongs they are intended to redress as providing guidance as reform is undertaken in future. In this sense we should move forward with one eye firmly on the past. This is particularly the case in relation to conservation governance – that is, the statutory frameworks that establish, manage and operate the conservation estate and the mechanisms through which greater community, particularly Māori, involvement is ensured.

As has clearly been asserted through Treaty settlement negotiations, arrangements and institutions bringing tangata whenua into positions of meaningful decision-making and governance power over conservation estates have the potential to enhance national conservation efforts in manifold ways. Māori expression of kaitiakitanga and rangatiratanga are fundamental cultural values and Treaty rights, and should be recognised and provided for in marine conservation frameworks (Kawharu, 2000). Mātauranga Māori possesses unique insights into the management and protection of the indigenous environment that compliment Western conservation sciences (Moller et al, 2009; Rotarangi and Russell, 2009). Importantly too, marine conservation efforts – specifically the network of marine reserves around coastal New Zealand – require expansion (Ballantine, 1995; Langlois and Ballantine, 2005). Tangata whenua support for expanded marine conservation often hinges on the extent to which fundamental values, rights and responsibilities are recognised within proposed governance. As has recently been the case, Māori have been critical of recent proposals for marine reserves, not in principle, but rather in part due to the inadequate recognition of Māori rights and values within a conservation framework². In other cases, such as at the Te Tapuwae o Rongokako marine reserve at Whangara on the East Coast, existing frameworks have been modified to accommodate tangata whenua interests and concerns – particularly over 'locking up' areas in perpetuity as reserves. Where the idea of reserve-level, no-take protection has been accepted, Māori are a strong, local voice for conservation (Dodson, 2014). Increased local involvement, particularly in decision-making and 'down stream' conservation activities, such as in ongoing monitoring and enforcement, and commercial opportunities, have the potential to empower local, coastal, frequently deprived communities. Marine conservation and associated visitor activities potentially offer an alternative to other forms of economic development currently being encouraged for rural and regional New Zealand, such as mining and oil and gas exploration, and intensified aquaculture production.

NEW INSTITUTIONS OF PARTNERSHIP AND ENGAGEMENT?

Partnership and co-governance discourse is a highly visible feature of resource management and conservation literature (Berkes, 2009; Campbell and Vainio-

² Tangata whenua opposition was registered to both the proposed Great Barrier Island marine reserve (Cheng, 2005) and the recently notified Akaroa Harbour Marine Reserve.

Mattila, 2003; Forgie et al, 2001). This 'idealized narrative' of conservation and resource management is frequently advanced as a means of delivering cooperation between stakeholders; social capital gains; improved decision making; and addressing social, environmental and economic issues simultaneously (Conley and Moote, 2003; Coombes and Hill, 2005). However, it is necessary to critically interrogate the notion of partnership as the normative basis for conservation-based social change in the context of New Zealand conservation politics, where management of the conservation estate is frequently overshadowed by grievances originating from historic injustice – particularly land confiscations and the exclusion of Māori and Māori values in ongoing conservation management (Mutu, 1995). As Coombes and Hill (2005) suggest in the post-colonial context ongoing mistrust resulting from historic mistreatment by state agencies needs to be addressed before partnership-based conservation can proceed – issues progressively addressed through Treaty-settlements, which establish anew the Crown–Iwi relationship. 'Cultural redress' packages in contemporary Treaty settlement agreements recognise and address the historic exclusion and alienation of Māori from the conservation estate, largely established on alienated Māori land. In the context of existing marine protection frameworks – 'no-take' marine reserve establishment also requires the discontinuation of customary rights of extraction, which for many Māori is unacceptable. Conservation partnership must therefore adequately reconcile or accommodate the redress of historic wrongs and indigenous customary rights and authority with conservation goals and structures.

The Conservation Act 1987 contains the powerful requirement that the Department of Conservation, "give effect to the principles of the Treaty of Waitangi" in its administration of the act. For Māori, the sustainable management of the environment and natural resources gives expression and life to the values and responsibilities of kaitiakitanga – a fundamental dimension of mātauranga Māori (Kawharu 2000; Waitangi Tribunal 2011). The Waitangi Tribunal (2011) has praised the efforts of iwi and DOC to forge effective, empathetic and ongoing relationships. Establishing these relationships however, has not been without difficulty and as the Waitangi Tribunal (2011, p. 298) has pointed out, positive developments and partnerships often result from warm and conciliatory local relationships and in spite of frequently unhelpful national frameworks, rather than enlightened policy. Notwithstanding the numerous constructive developments that have been achieved at a local level between Māori and DOC, there remain few examples of genuinely devolved co-governance (Waitangi Tribunal, 2011). Generally, co-governance institutions have arisen from negotiated settlements deals and accompanying legislation, rather than from within existing conservation frameworks.

The Department of Conservation's commitment to the involvement and participation of communities – particularly Māori - is articulated in DOC's community engagement policy statements, which stem from the Department's statutory obligation to uphold Treaty principles. (see DOC, 2006a). In these documents the department states a commitment to community participation

and partnership and has produced internal research publications illuminating this dimension of its operations (Logan, 2004; DOC, 2005). Unfortunately, the mechanisms through which co-governance and management of marine protected areas can be instituted remain weak and unclear³, potentially undermining a discursive commitment to the meaningful involvement of tangata whenua. Whereas the Reserves Act 1977, with respect of terrestrial conservation areas, allows for the delegation of administrative and managerial function from the Minister of Conservation to a wide range of authorities, groups and individuals. The Marine Reserves Act 1971 contains no such provisions and the authority and control of a marine reserve remains with the Director-General of Conservation, meaning different management regimes are available for 'terrestrial reserves' as opposed to 'marine reserves'. Currently, section 56 of the Conservation Act 1987, provides for the establishment of ministerially appointed 'advisory committees' to advise the department in relation to particular conservation areas, including marine reserves. Although such committees have been established and are in operation in various conservation areas, including marine reserves⁴ the 'advisory' nature of the bodies, and their limited decision-making authority arguably undermines whatever contribution to the protection of rangatiratanga the department is statutorily obliged to make – ultimate authority remains with the Department of Conservation, not the tangata whenua partner. Notably, the Marine Reserves Act 1971 provides for the preservation of distinctive and unique marine environments for specifically scientific purposes, potentially further impeding the exercise of customary relationships involving the sustainable use of environmental resources by tangata whenua for social development, central to the development of tino rangatiratanga. This legislative shortcoming can be interpreted as the persistence of exclusionary practices and injustice the Treaty settlements process is intended to address (Kawharu, 2000). Arguably, if Treaty settlements politics seeks to redress for injustice, it should consider the potential for future injustice resulting from out-dated legislation, such as the Marine Reserves Act 1971.

Increasingly however, partnership, collaboration and co-management/governance arrangements in respect of tāonga, wāhi tapu and māhinga kai and other culturally important sites are prominent features of Treaty of Waitangi settlement agreements and enacting legislation (see below). The pace of settlement appears to be quickening, as the current government seeks to achieve its aspirational goal of completing settlement of historic grievances by 2014 (Hamilton, 2014). Co-management and governance of conservation areas and other sites of tribal and national significance will therefore be a prominent feature within the post-colonial landscape, as these frameworks are recognised as means through which rangatiratanga can be pursued.

3 Section 56, *Conservation Act 1987*, provides for the establishment of ministerially appointed 'advisory committees' to advise the Department in its conservation activities.

4 Notably Te Tapuwae o Rongokako Marine Reserve at Whangara, Gisbourne is administered through a section 56 'advisory' committee with preponderant representation by tangata whenua, Ngāti Konohi.

The character and scale of authority empowered through these arrangements is varied and their number is increasing; from 'on the ground' vesting of authority over a specific resource in tangata whenua – for example the extraction of Mohaka River hangi stones in Ngāti Pāhauwera (Ngāti Pāhauwera Claims Settlement Act, 2012); to high-level co-governance frameworks of national significance, such as the Waikato River Authority (Waikato-Tainui Raupatu Claims Settlement Act, 2010), which has created a co-governance body to articulate a vision and strategy for New Zealand's most important river to which other policy and planning instruments are subservient⁵; to the full ownership and control of resources and lands by iwi, such as within the Te Arawa Lakes Settlement (Te Arawa Lakes Settlement Act 2006). Several deeds of settlement awaiting enactment in legislation also provide for other forms of co-governance, for example the Muriwhenua/Te Hiku o Te Ika iwi deeds provide for comprehensive co-governance of Te Oneroa a Tōhē (Ninety Mile Beach) in partnership with Northland local governments (Te Aupouri Deed of Settlement, 2012; Te Rawara Deed of Settlement, 2012; Ngāi Takoto Deed of Settlement, 2012). These deeds also establish a 'korowai for conservation' (cloak for conservation) recognising and providing for the special relationship of tangata whenua and the conservation estate and establishing a new Te Hiku Conservation Board for the Far North region. Recent announcements of agreement between Tūhoe and the Crown include significant co-governance arrangements over Te Urewera (Tūhoe Deed of Settlement, 2012). Settlement funds received by iwi have also been put towards the establishment of conservation and sustainable development initiatives such as the Integrated Kaipara Harbour Management Group [IKHMG], a broad partnership between iwi, local governments, conservation groups and other stakeholders focused on the management of the Kaipara harbour and catchment through both mātauranga Māori and western science perspectives (IKHMG, 2011).

The cultural redress components of Treaty settlements are highly significant developments in terms of doing conservation in Aotearoa. The settlement process, as problematic and Crown driven as it is, does offer a singular opportunity to Māori claimants to achieve structural changes that would otherwise be hugely more difficult. In this sense the settlement negotiations are a moment in which existing statutory frameworks can be leapfrogged and made subordinate to new structures, as for instance in the hugely significant Waikato River settlement or the establishment of a governance board for Ninety Mile Beach. The settlement process therefore offers the opportunity to secure localised, incremental devolution of power, authority and control – that is, mana – and in doing contributes substantially to reinvigorated rangatiratanga, the cornerstone of Māori aspiration and of the Treaty compact.

⁵ For instance, the 'Vision and Strategy' that the Waikato River Authority must articulate is deemed to be part of the Waikato Regional Policy Statement, without being subject to Schedule 1 of the Resource Management Act, 1991 (See Waikato-Tainui Raupatu Claims Settlement Act, 2010)

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An obvious effect of Treaty settlements outcomes however is to draw attention to the adequacy or otherwise of the existing frameworks in which resource management and conservation are pursued. If the process of settling historical claims of Treaty breaches ushers in a 'post-colonial' era of renewed Crown-Māori relations, then arguably a reconsideration of the statutory framework in which that relationship will develop – beyond post-settlement structures – is required. As the Waitangi Tribunal (2011) has argued, Māori should not have to seek satisfaction through the settlements process of rights and aspirations that should be recognised within the normal course of business. It is surely not satisfactory that the future Treaty-relationships will be negotiated within out-of-date frameworks, such as previously described marine protection frameworks. As others have argued, Māori expectations are that in the post-settlements era the operation of governance will be modified and the distribution of political power will be more equitably shared, reflecting more meaningfully the restored Treaty relationship. Rather than the settlement process 'drawing a line under' Māori grievance, the process provides an opportunity for broader debate and structural change with regards to governance and power in New Zealand (Bargh, 2012). It is for these reasons that insights gotten from examining the new institutions of co-governance described above should inform the review and reform of existing conservation frameworks.

Although the Waitangi Tribunal has commended DOC for its engagement with tangata whenua, establishment of authentic conservation partnerships remains legislatively problematic and particularly so in the area of marine protection. Substantial constitutional reform in New Zealand may only be realistic in the longer term. However, the very clear Māori assertions of interests and rights in relation to the conservation estate, its contents and to resource management more generally, mean that changes to conservation frameworks to accommodate Māori aspiration in the long term would be an effective reorientation of public policy. Facilitating greater involvement and participation of tangata whenua in marine conservation, has the potential to deliver high value outcomes to a range of stakeholders; to Māori as their kaitiakitanga responsibilities can be discharged and rangatiratanga exercised; to tauwiwi as conservation policy and measures receive greater support and impetus; and to DOC and other agencies as their operations are supported and enhanced through tangata whenua involvement.

Treaty settlement agreements and legislation can and should, however, provide substantial guidance with respect of developing innovative cross-cultural collaborations in conservation that deliver meaningful authority and control (rangatiratanga) to tangata whenua and are focused on delivery of sound conservation and social outcomes, and potential economic development opportunities. Research into the function and performance of the variety of co-governance entities that are being established and the deliberative processes

they engender is required to understand the most effective processes for meaningful co-governance. How the progressive features and approaches to conservation and resource management found within settlement-based co-governance arrangements can be incorporated into broader conservation frameworks – particularly marine protection – is a central area requiring examination. In this sense, the problem of conservation in the post-settlements era is fundamentally a question of seeking the most appropriate frameworks in which the restored Treaty relationship can be given effect – in which communication, relationship building and maintenance, problem-solving and adaptation can all find full expression.

The innovative governance structures contained within Treaty settlements are therefore hugely significant. Whether or not the settlements process - settling as it does all historical claims of respective iwi - provides much in the way of enduring and sustainable approaches to collaborative and shared conservation is another matter altogether. Although the inadequacies of the current marine protection frameworks are clear and Treaty settlements may provide innovations with respect of managing conservation, as the country moves into the post-settlements era, the inadequacies of the marine conservation framework remain.



CONCLUSION

The dismantling of colonial structures that in the past excluded Māori therefore proceeds in a somewhat piecemeal fashion. Although substantial progress and restitution has been made through the Waitangi Tribunal and Treaty settlements processes, whether or not these settlements provide guidance to wider policy reform is uncertain⁶. References to partnership may have a “reassuring, even progressive ring to them” (Maaka and Fleras 2005, p. 273), however, ‘partnership’, as constituted through existing structures, potentially places a curb on, “...fuller self-determination, because it is not concerned with furthering autonomy or with Māori development on its own terms, for its own purposes” (O’Sullivan, 2007, p. 30), as is the case with the current marine reserves regime. Nonetheless, the increasing recognition of tino rangatiratanga within the state necessitates a flexible, pragmatic and inclusive approach in the ‘post-colonial’ era.

While Treaty settlements are limited in the sense they are ‘one off’ opportunities for iwi and hapū to negotiate redress packages, and are restricted in scope to specific areas or rights (with the exception of national claims, such as fisheries), these agreements do provide considerable inspiration and guidance as to what shape the reformed statutory framework may assume. If the aim

⁶ For example see Ngāi Tahu Claims Settlements Act 1998 and Waikato-Tainui Raupatu Claims Settlement Act 2010.

of conservation policy is both environmental and biodiversity protection and community, especially Māori, involvement and participation in conservation, then new, more flexible and expansive structures are required. Therefore new modes of dialogic engagement and co-operation should be encouraged.

In contemporary New Zealand the recognition of indigenous rights and authority with respect to environmental management is a central issue within the politics of conservation and their reconciliation is centrally important to sustainable conservation measures being realised. Most visibly this reconciliation has been conducted through a variety of shared management and co-governance arrangements entered into by the Department of Conservation and various iwi, frequently alongside other groups, and within Treaty settlements. Nevertheless, the existing framework for establishing and managing marine conservation areas tends to exclude both Māori as decision makers and tangata whenua cultural values and needs from marine reserve rationales. Treaty settlements are particularly important as they provide claimants an opportunity to have special relationships with the conservation estate recognised and provided for – as we have seen recent settlement deeds have contained a variety of innovative governance frameworks and structures, outside of the normal policy and statutory provisions. Innovative settlements should therefore provide policymakers with much inspiration as the existing marine protection and conservation regime is reviewed. From a social research point of view much work needs doing in examining how the co-governance and devolved governance structures emerging from Treaty settlements are functioning, illuminating the positive and progressive dimensions of their function and critiquing their shortcomings. Furthermore, ongoing work is required to examine the connections between conservation and social, cultural and economic well-being and to interrogate an existing policy framework that poorly expresses the ethic of partnership and to examine the processes of engagement, dialogue and deliberation that new ‘Treaty-derived’ institutions of conservation co-governance encourage.

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Ngāti Pāhauwera Claims Settlement Act, 2012
Ngāi Tahu Claims Settlement Act, 1998
Resource Management Act 1991
Reserves Act 1977
Te Arawa Lakes Settlement Act 2006
Waikato-Tainui Raupatu Claims Settlement Act 2010

DEEDS OF SETTLEMENT

Te Aupōuri Deed of Settlement, 2012
Te Rawara Deed of Settlement, 2012
Ngāi Takoto Deed of Settlement, 2012
Tūhoe Deed of Settlement, 2012