

Founding Cultures:

The cultures of Cook's and
Kupe's peoples in modern
New Zealand

Justice Joe Williams,
Te Toanga mai o Te Ra Symposium
Tauranga Monday 23 April 2012



Two founding cultures...

- ▶ **Kupe's people**
- ▶ Culture based on whanaungatanga
- ▶ That culture evolved in response to this land
- ▶ People became kaitiaki
- ▶ And so became Maori



Two founding cultures...

▶ **Kupe's people**

- ▶ Culture based on whanaungatanga
- ▶ That culture evolved in response to this land
- ▶ People became kaitiaki
- ▶ And so became Maori

▶ **Cook's people**

- ▶ Relate to environment through property rights and each other through contract
 - ▶ Acquire knowledge through empirical science and deductive reasoning
 - ▶ Protect rights through rule of law
-
- ▶

Two founding cultures meet...

- ▶ **The Treaty promise**

- ▶ *Partnership/rangatiratang
a*

- ▶ **The reality**

- ▶ *One culture privileged*
- ▶ *The other sidelined*



The Wai 262 claim...

- ▶ **The place of Maori culture in modern NZ**
- ▶ **Who owns and controls...**
 - ▶ *The Maori culture*
 - ▶ Maori World view
 - ▶ Cultural concepts
 - ▶ *Products of culture*
 - ▶ *Sources of culture*



Our findings: *Ko Aotearoa Tēnei...*

- ▶ **About contemporary relationships**
- ▶ **Development, not compensation**
- ▶ **Place of Maori culture now and in future**



Our findings: *Ko Aotearoa Tēnei...*

▶ **Treaty interests**

- ▶ *Control is key*
- ▶ *Kaitiaki interests
balanced alongside
others*

▶ **NZ at a crossroads**

- ▶ *Economic disparity*
- ▶ *Growing Māori population*
- ▶ *A choice about the Treaty
relationship*



Perfecting the partnership

- ▶ **A way forward for the Treaty relationship**

- ▶ *Beyond grievance and 'original sin'*
- ▶ *To an ongoing partnership based on good will and bringing mutual advantage*
- ▶ *We win or lose together*
 - ▶ *Mai i nga Kuri a Whareki Tihirau*
 - ▶ *I Aotearoa nui tonu*



Taonga works

- ▶ **Who owns and controls**
 - ▶ *Taonga works*
 - ▶ *Taonga-derived works*
- ▶ **Kaitiaki relationships**
- ▶ **IP system and IP rights**



Taonga works

- ▶ **Law should:**

- ▶ *Protect against offensive and derogatory uses*
- ▶ *Protect against unauthorised public and commercial uses*
- ▶ *Commission to facilitate*



- ▶ **Opportunity to**

- ▶ *Protect Maori and NZ culture*
- ▶ *Take a global lead*



Taonga species

- ▶ **Who owns and controls**
 - ▶ *Genetic resources*
 - ▶ *Biological resources*
 - ▶ *Traditional knowledge about species*
- ▶ **Kaitiaki relationships with species and traditional knowledge**
- ▶ **IP system and IP rights**



Taonga species

- ▶ **Law should provide:**
 - ▶ *Reasonable degree of protection for kaitiaki relationships*
 - ▶ *Reasonable control over uses of traditional knowledge*
 - ▶ *Balanced alongside other interests*
- ▶ **Treaty does not guarantee ownership, nor veto in all cases**



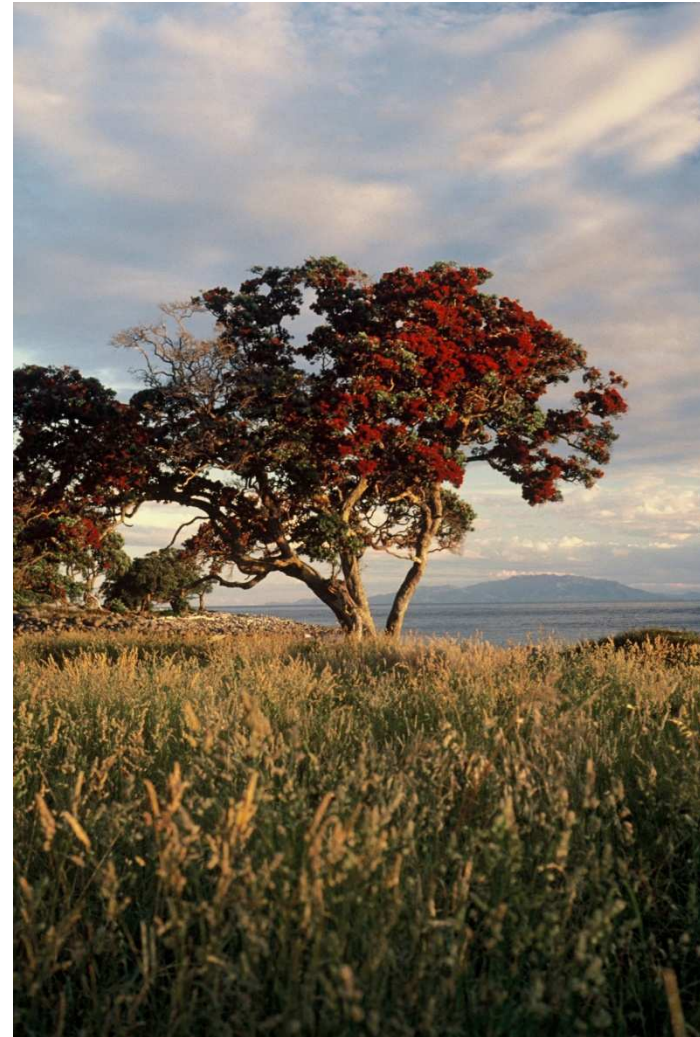
Resource management

- ▶ **Kaitiaki relationships with environment are a source of Maori culture**
- ▶ **RMA gives local authorities and other Crown delegates control of those relationships**



Resource management

- ▶ **Ownership of fungible resources is largely a cultural distraction**
- ▶ **Law should deliver kaitiaki:**
 - ▶ *Control...*
 - ▶ *Partnership...*
 - ▶ *Influence...*
 - ▶ *Through a fair and transparent balancing process*
- ▶ **Existing RMA mechanisms not used**
- ▶ **Some Treaty settlements deliver this**
- ▶ **but inconsistently**



Iwi Resource Management Plans

- ▶ Iwi involvement compulsory, formal, pro-active
- ▶ Funded capacity building
- ▶ Formal and compulsory DC and RC negotiation
- ▶ Agreed portions binding rules and policies
- ▶ Un-agreed portions appealable or left to influence



Council Accountability

- ▶ MfE and councils to account for use (or non-use) of ss33, 36B and 188 to Parliament via PCE

Commitment to Capacity Building

- ▶ MfE to fund IRMP capacity building

National Policy Statements

- ▶ Need for NPS on Maori participation in RMA to give firm guidance to councils and MfE



Department of Conservation

- ▶ **DOC controls surviving remnants of pre-Treaty environment**
 - ▶ *Conservation of places*
 - ▶ *Conservation of wildlife*
 - ▶ *Customary use*
 - ▶ *Commercial opportunities*
 - *contracts and concessions*



Department of Conservation

- ▶ **DOC is required to interpret its legislation to 'give effect to' Treaty principles**
- ▶ **But policies and practices 'write down' this provision**
- ▶ **Control usually stays with DOC**



Department of Conservation

- ▶ **Partnership is the starting point**
 - ▶ *Survival of species is paramount*
 - ▶ *Tangata whenua have the right to exercise kaitiakitanga*
- ▶ **Amend conservation and wildlife laws**
- ▶ **Move towards 'kaitiaki conservation'**
- ▶ **Already done in settlements**



Other matters

- ▶ **Te reo Maori**
- ▶ **Crown in the position of kaitiaki**
 - ▶ *Education and science*
 - ▶ *Arts and culture*
 - ▶ *Museums, archives and libraries*
 - ▶ *Broadcasting*
- ▶ **Rongoa**
- ▶ **Making of international instruments**



The Challenges

- ▶ The Navigator's Vision: Island A or Island B

