

MAORI LAW SOCIETY CONFERENCE

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E nga mana, e nga reo, e te Hunga Roia Maori o Aotearoa tena koutou tena koutou, tena ra tatou katoa.

I appreciate very much the invitation to address this gathering. It is very great pleasure to have opportunity to spend time with the members of the Maori Lawyers Association. But it is especially an honour to be here, in this place, 175 years after the signing of the Treaty of Waitangi.

This has been a year for anniversaries. I was asked a few weeks ago to speak at a Bar Association conference held to mark 25 years since enactment of the New Zealand Bill of Rights Act. The President, Paul Mabey QC suggested I should weave in mention of two other anniversaries of significance for lawyers. The first has been marked throughout the common law world. It is of course 800 years since Magna Carta was sealed by King John in a meadow between Windsor and Staines in England. Although Paul Mabey did not mention the 175th anniversary of the Treaty of Waitangi, the second anniversary he mentioned was that it was 40 years since the Treaty of Waitangi Act. I had overlooked that. Probably because the inspired idea of that amazing man, Matiu Rata, seems to me to have happened just yesterday– which just goes to show how old I have become. But it set me thinking about cross-references and fundamentals – and how although there is always something shiny and new to attract our attention, we keep returning to points of reference that stay constant.

My assigned topic today is the meaning and purpose of the Treaty of Waitangi, past present and future (a daunting enough assignment in itself you might think). My view as a common lawyer is necessarily conservative and Anglo-centric. My earthbound perspective will show to great disadvantage in a panel with Moana Jackson. He is one of the seriously imaginative and challenging thinkers of our time. And it is a great privilege to share a platform with him.

I want to say immediately that my thoughts are tentative. I am someone who believes with Learned Hand that the spirit of the law is a spirit that is not too certain.² And I do not aim to do more than throw out some thoughts preconditioned by my background in law. By law, I mean not the enactments and case-law of the day, but the principles and values behind them. They are values which underlie many of the claims for justice made at Runnymede and at Waitangi. If power in any society is not to be

¹ The Rt Hon Dame Sian Elias, GNZM, Chief Justice of New Zealand.

² Learned Hand “The Faith We Fight For” *NY Times Magazine* 2 July 1944 at 26.

arbitrary, it has to be organised by and subject to law. I love law. That probably makes me a romantic.

Since I see law everywhere, I see the Treaty of Waitangi as law. As Magna Carta is law. Of course, the Treaty is not only law. It is a covenant of biblical proportions. It is also history. And politics. It has lots of stories behind it and after it. I do not minimise the importance of these perspectives. But I wonder whether we need to pay more attention to the Treaty as law. It may be something of an irony that the Tribunal jurisdiction, which I come on to suggest has operated as a bridge for legal claims may be at present something of an impediment to them. That is partly a measure of the success of the jurisdiction and the Treaty settlement programme. But it is also because it is being argued that Treaty issues are political and non-justiciable because Parliament has provided a bespoke procedure for addressing them.

The past – ancient and modern

The past, it has been said, “is a foreign country; they do things differently there.”³ Texts such as the Treaty have to be viewed in contemporary context, rather than viewed through the lens of today and skewed by what appears convenient to meet modern problems. The danger is not only that we project into the past values which were unknown to those who entered into such covenants. Our questions may also do injustice to those in the past because we assume that they did not see as clearly as we see, in part because we reflect back attitudes that may have held sway more recently. We may be too quick to see dupes and duped and to ascribe attitudes that emerged later.

It is interesting to note that in Magna Carta some of the promises granted by the King were to respect the different laws of Scotland, the Marches and Wales. And to remember that claims for plurality remain alive and well in the United Kingdom, 800 years on. All of this shows that we should not expect that the matter of the Treaty is yet played out. But it does require us to engage with our history to question assumptions that have become habitual. And it challenges us as lawyers to be imaginative in response.

Some of the risks of reflecting backwards may be illustrated by recent scholarship about both Magna Carta and the Treaty of Waitangi.

In England, centuries of neglect of Magna Carta during the period of the late Middle Ages and Reformation when kings consolidated power undreamt of in 1215, led historians until recently to dismiss the importance of Magna Carta as romantic thinking invented in the 17th century by Edward Coke as a weapon in the struggle between Parliament and the King. Opinions to that effect, which suited the positivist mood of the late eighteenth century, were orthodox until challenged by very recent scholarship. This new work draws on contemporary

³ The opening line of LP Hartley’s 1953 novel “The Go-Between”.

and later 13th century sources now much more accessible to scholars in the digital age and documents misfiled for centuries which have turned up in archives being digitally captured. These sources have demonstrated the strong hold Magna Carta exerted over popular thinking and cases in the courts throughout the 13th century.

In New Zealand, modern legal history scholarship has been spurred to fresh reappraisal of the Treaty of Waitangi after years of neglect following its consignment to what we thought for a long time was legal oblivion and the twilight world of morality and politics. *Wi Parata*⁴ and its progeny arose in the same climate of positivism that was dismissive of Magna Carta. As with Magna Carta, the most recent reappraisals of the Treaty have been greatly assisted by the more readily accessible digital reproduction of material such as the contemporary Colonial Office records and newspapers and pamphlets published in New Zealand and in England.

Some of this work suggests that Maori and British expectations of the Treaty at the time may not originally have been very different. It considers that British intervention in New Zealand was to establish government over British settlers, for the protection of Maori. British settlement was to be promoted only to the extent that Maori protection was not compromised. Maori were to be recognised as full owners of their lands, whether or not occupied by them, according to custom. Maori government under their own customs was to be maintained. British sovereignty was not seen as inconsistent with plurality in government and law.

An examination of the mid-19th century views of the Treaty shows that the ideas we still grapple with were known and debated in the mid-nineteenth century. We have forgotten too much of our own history. The eclipse of original understandings of the Treaty, both Maori and non-Maori, was strongly contested all the way until the New Zealand Company views became orthodoxy in 1877 with *Wi Parata*.

Even before then, the arguments first advanced by the Company had convinced first the courts and then the legislature in the system of land tenure imposed on Maori, in misapplication of doctrines of title borrowed from North America and selectively promoted by the New Zealand Company. In 1877 the Court of Appeal, relying on the US Supreme Court decision in *Johnson v M'Intosh*⁵ held that Maori had insufficient social organisation upon which to found property rights recognisable by the new legal order. Although the approach was repudiated by the Privy Council which said that it was "rather late in the day" for it to be said there was no customary law of the Maori of which the courts of law could take cognisance,⁶ the local courts eventually saw the Privy Council off.

The full implications of this misapplied imported doctrine may not ultimately have been of great direct significance in relation to Maori land. That was

⁴ *Wi Parata v Bishop of Wellington* (1877) 3 NZ Jur (NS) SC 72.

⁵ *Johnson v M'Intosh* 21 (US) (8 Wheat) 543, (1823) 5 L Ed 681.

⁶ *Nireaha Tamaki v Baker* (1901) NZPCC 371 at p 382 per Lord Davey for the Committee.

because of the ruthless programme of land purchases undertaken by the Crown in the 1850s and then the equally ruthless conversion of customary property into Crown granted title by the Land Court. But in the meantime, it may be that the tough line taken by the New Zealand courts in applying *Johnson v M'Intosh* could have affected the terms of land purchases and the attitude of the settler government in dealings with Maori, to their detriment. And the conflation of sovereignty with property continued to influence the shape of legislation. Maori were prevented by legislation from asserting customary property against the Crown.⁷ Native proprietors were denied access to the courts to eject trespassers (leaving it to the Crown to take steps to protect the proprietors under a provision which "deemed" the land to be Crown land).⁸

The legislation was substantially the product of Sir John Salmond, perhaps New Zealand's most famous jurist and the author of widely regarded works on jurisprudence and torts, well received in the United States and in England. Salmond was the sort of person who presented his arguments as though there was no other point of view. He considered that the Crown's proprietary interest was burdened with the native interest, but thought that was a political obligation for Parliament to address.⁹ That has been an enduring thread in New Zealand thinking from the New Zealand Company onwards. Modern commentators in this tradition regard accommodation for the indigenous New Zealanders as a political or moral claim, rather than a legal one. The attitude continues to linger.

The denial of legal status to the Treaty ensured that it could not be the source of limits to the kawanatanga transferred under the Treaty. And after initial preparedness to look at a measure of plurality, the legal order settled into monolithic rigidity. Or at least, that is what I and many others have believed. I wonder, however whether that view is entirely accurate. Indeed, when reading for *Paki*¹⁰ (No 2), it was interesting indeed to find that our predecessors as judges knew much more than my contemporaries about the Treaty and Maori society. I put large extracts from the old cases into my judgment in both *Paki* decisions because I thought they deserved pulling out of the mothballs and being made more accessible.

From the middle of the 20th century, my impression is that the Treaty of Waitangi hardly intruded on the consciousness of Pakeha New Zealanders. That did not change till the land march and the protests of the 1970s. They led to the enactment of the Treaty of Waitangi Act in 1975. The Tribunal did not have immediate impact. That changed with the appointment of Sir Edward Durie as Chairman and with the appointment of people of the calibre of Sir Graham Latimer and Monita Delamere and the lawyers Max Willis and Paul Temm as members of the Tribunal and with the publication

⁷ Native Land Act 1909, s 84.

⁸ Native Land Act 1909, s 88.

⁹ A Frame *Salmond: Southern Jurist* (Wellington, Victoria University Press, 1995) at 125-126.

¹⁰ *Paki v Attorney-General* [2012] NZSC 50, [2012] 3 NZLR 277 (SC); and *Paki v Attorney-General (No 2)* [2014] NZSC 118, [2015] 1 NZLR 67.

of the Motunui Report¹¹ in 1983, followed by the Kaituna and Manukau reports.¹²

It is really hard to recapture now the impact those decisions had. When I asked for a show of hands at the annual general meeting of the Legal Research Foundation in 1985, not one of the 100-odd lawyers present had ever read the text of the Treaty. I had not myself read it until I appeared in the Manukau claim and read the text in the schedule to the Treaty of Waitangi Act. It was never referred to in my time at Auckland Law School. Although I had practised in the area of public law and written a dissertation on human rights protection, I had never encountered it. What the Motunui Report and those that followed it did was reveal to us that the Treaty text and the ideas it expressed were part of our legal order. The Reports provided a bridge to understanding and prompted insights that have profoundly changed the New Zealand legal landscape in the last 30 years.

The Treaty today

I am much happier thinking about the meaning and purpose of the Treaty in the past or in the future. It is the present that is hard to get a grip on. I find it very difficult to assess the position of the Treaty in the New Zealand legal order today. In part, that is because a snapshot is almost impossible to get. The subject is in constant motion. And it's scary because this time is the responsibility of you and me who are living through it.

Already some of the advances of just a few years ago, seem timid or even wrong today. I give two examples, although you will have many more. I would include as a wrong direction identification of Maori custom with English local custom with the straitjacket of immemorial observance. In adaptation of the common law to meet New Zealand conditions, observance of custom rather becomes part of the common law of the land. And as common law, the law of the land, custom is able to adapt and change according to its own precepts. My other example is uncritical borrowings from other jurisdictions, without sufficient appreciation of differences and in particular without sufficient emphasis on the Treaty.

As someone directly implicated in the response of law to the Treaty, I may not be sufficiently detached to offer a sound perspective. But I do think we need to take great care. I have already referred to the view that is widely held that claims of right based on the treaty are excluded by the political process provided by Parliament under the Treaty of Waitangi Act the direct negotiations between Crown and iwi which appear to be the Crown's preference at the moment. The role of the courts in direct Treaty matters is unclear and certain to be the site of contest for some time. There are perils here not only for the litigants but also for the courts, given the fragile position of the courts under our unwritten constitution and the high political stakes. And we cannot expect

¹¹ Waitangi Tribunal *Motunui-Waitara Report* (Wai 6, 1983).

¹² Waitangi Tribunal *Kaituna River Claim Report* (Wai 4, 1984); and Waitangi Tribunal *Manukau Report* (Wai 8, 1985).

cases which touch on the fundamentals of the legal order to be settled all at once. Such matters are the work of many years. So I think we can expect the principal role for courts at the moment to be in supervising the processes around the preferred forums for Treaty resolution and indirect application of the Treaty purposes when supervising executive decision-making.

Where we are at today may be 175 years on from the signing of the Treaty, but 40 years from the enactment of the Treaty of Waitangi Act is not very long. I had reason to reflect on that when, at the High Court Judges conference earlier this year David Williams talked about the *Huakina* case.¹³

Huakina, as you will know, was decided by Sir Muir Chilwell, who died last year much mourned by all of us who knew that decent and brave judge. The case concerned an appeal against an award of costs of \$200 against Nganeko Minhinnick by the Town and Country Planning Tribunal. The costs order was made because Nganeko, despite a number of admonitions, had taken another objection to the discharge of effluent from a cowshed into a tributary of the Waikato River. The Tribunal had held, as it had in other cases, that there was nothing in the Water and Soil Conservation Act that permitted it to take into account Maori customary values in considering whether to grant a right to discharge effluent into natural water. My friends in law were aghast that I should be taking a case to the High Court about \$200 and the discharge from a cow shed. But Nganeko had said she would go to gaol rather than pay the costs award and so I felt there was no option but to plough on.

As a young lawyer, I was very nervous about how my argument based on the Treaty of Waitangi would be received. When Nganeko rang me the day before the hearing to find out when she would be able to get into the court to set out the mattresses for the kuia who were attending, I told her firmly that I had enough on my hands with the Treaty and that the mattresses could wait for another case. I am very relieved that in subsequent cases she seemed to forget about the mattresses.

I had never heard of the Treaty being cited in a New Zealand court. I went through the early volumes of the NZLRs and the GLRs to find any such references. It seems hard to imagine now, but there were in those days no indexes to draw on to find references to the Treaty in the Law Reports and no ability to search. I had to flip through all the reports. I was amazed. There were many cases. I came to think of them as all those old tears. But the point I want to make is that as lawyers then we had no tools, or at least, we did not know where to look to find them. There were no texts which mentioned the Treaty. In desperation we read histories, some of them long out of print,. We read through the bound volumes of the early ordinances and statutes of New Zealand (a surprisingly fertile source of ideas). We read books on legal philosophy, we read constitutional texts, we followed up clues to search the appendixes to the Journals of the House of Representatives. We looked everywhere for stray ideas to spark the imagination. To this day it amuses me to read citations in magisterial texts or arguments of authorities or references

¹³ *Huakina Development Trust v Waikato Valley Authority* [1987] 2 NZLR 188 (HC).

we had discovered in unlikely places quite by accident. Benjamin Cardozo once said that in the higher reaches shaping legal arguments is a process of creation. And it felt pretty creative, if in the “look Ma, no hands” style. At least we were unhampered by bad teaching or received wisdom. (And I think that fashions in thinking are one of the traps we have to watch out for today.) But I still shudder to think how random and accidental it all was.

Today, I worry about arguments that are overbold or ahead of their time. And decisions of courts that are too definite, leaving no room for movement in the future. I would like us to get over the present. It is too risky. But in the meantime, it is high time to get our ideas in order and to think more creatively. We need to understand that when dealing with fundamentals of the legal order, we need to think constitutionally. And constitutional thinking requires fluid tendencies and room for second thoughts. To ensure that the solutions of our times can continue to evolve safely, they need the legitimacy of the skeleton of principle that holds the whole together. Narrow specialisation is dangerous. That means that we have to be very good lawyers, the best we can be. We also have to talk about these things. Because with an unwritten constitution, what is fundamental can be lost sight of if it is the preserve only of lawyers.

A good place to start in the present is with the Treaty itself. I do not think we have paid sufficient attention to it. As Sir James Henare said in his affidavit in the *Lands* case,¹⁴ it repays study in its own terms and as a whole. Such study suggests arguments and directions we should continue to develop if the Treaty is to be a living foundation of our society rather than an artefact of how we got here. We need to continue to read books on legal philosophy and the works of great thinkers while using the tools available in the wonderful resources now accessible. The huge treasure troves of custom preserved in the records of the Native Land Court and the Maori newspapers are examples of materials we need to take on board.

In the Treaty claims today, those appearing as counsel for people who have been disempowered and judges deciding matters affecting them need to be very careful not to create further disempowerment by pre-empting their concerns or taking their voices. All of us have to be respectful and open to ideas that may seem inconvenient. We need to leave room for movement. I want to return at the end to saying something, perhaps a little impertinently, about your position as Maori lawyers today.

The Treaty and the Future

In looking into the future, I think we can expect to see change in the status of the Treaty as domestic law and perhaps as an acknowledged part of the New Zealand constitution. It is possible that we will see increasing pluralism within the New Zealand domestic legal order in fulfilment of the Treaty guarantees. The role of law in Treaty recognition may well evolve. And I expect that you, as

¹⁴ *New Zealand Maori Council v Attorney-General* [1987] 1 NZLR 641 (HC & CA).

Maori lawyers, will be at the forefront of a transformation of New Zealand law. I deal with these in turn.

The Treaty in domestic law

The orthodox view of legal status of the Treaty of Waitangi is that it remains an unincorporated treaty in domestic law. To the extent it is recognised in statutes it has some direct effect but is not the source of independent rights and obligations. Sir Kenneth Keith, raised a number of questions about this orthodoxy more than 30 years ago.¹⁵ He pointed out that, to the extent that recognition of indigenous property on acquisition of new territory is a principle of customary international law, the Treaty may be declaratory of customary international law and applicable as part of the common law.

More directly confronting the orthodoxy, he has questioned whether the authorities denying the domestic effect of treaties are appropriate in considering a treaty of cession. He points to considerable injustice if such a treaty is neither enforceable in national law or in international law (on the basis that the previously sovereign body has lost its sovereignty by the treaty). He asks why the Treaty of Waitangi cannot be enforced as a contract.¹⁶

The modern statement principally relied upon in denying the domestic effect of the Treaty is that of Lord Atkin in *Attorney-General for Canada v Attorney-General for Ontario*.¹⁷ He said there that a treaty does not have domestic effect if it *alters* municipal law.¹⁸ A treaty of cession, it might be argued, does not alter municipal law, but is constitutive of it. We need to engage with these ideas.

Treaty constitutionalism

The legal status of the Treaty may come to be seen as constitutional. After all, Sir William Martin expressed the view that the Treaty of Waitangi qualifies the sovereignty acquired by the British Crown.¹⁹ While there seems no appetite for such acknowledgement, it cannot be assumed that the New Zealand constitution, revolving at present around the twin poles of Parliamentary sovereignty and the rule of law, will remain constant. We are exceptional in our pared down constitution. And, all over the world, there are pressures for federation to achieve measures of self-government.

In the 800th anniversary of Magna Carta, it is worth remembering that the ideas set loose at Runnymede still animate constitutional thought. Magna Carta established that the King is made by the law and is bound by the law. Its importance today demonstrates how deep the roots of the rule of law are in one

¹⁵ KJ Keith 'International Law and New Zealand Municipal Law' in JF Northey (ed) *The AG Davies Essays in Law* (London, Butterworths and Co., 1965) 130 at 146.

¹⁶ At 146.

¹⁷ *Attorney-General for Canada v Attorney-General for Ontario* [1937] AC 326.

¹⁸ At 347–348.

¹⁹ Sir W Martin, DCL, *The Taranaki Question* (London, WH Dalton, 1861) at 10.

part of our legal tradition. The Treaty is consistent with that tradition because it promises limits to power. Sir John Baker said of Magna Carta that it made no difference that Magna Carta was not entrenched. He said, “Magna Carta, though not in any sense a written constitution, [is] morally entrenched”.

Moral entrenchment is the world of the Treaty today. How secure is moral entrenchment? It would be nice to think that it is as secure as formal entrenchment. But that can only be if there is widespread understanding and willingness to work harder at maintaining what is essential in our mostly unwritten constitution in which the rule of law shadows but is unequally matched to the legislative supremacy of parliament.

If constitutional reform is ever in prospect in New Zealand, it is certain that the Treaty cannot be ignored. Before we recoil from suggestions that the Treaty of Waitangi might be part of New Zealand constitutional law, we should remember not only the work of such scholars as Sir Kenneth Keith but also some of the arguments made at the beginning of New Zealand. In the 1840s and early 1850s there was considerable support for the view that the Treaty of Waitangi was a foundation of New Zealand law and able to be applied by the domestic courts. James Busby, who had as much to do with drafting the Treaty as anyone, staunchly maintained that it was equivalent to the 1706 Treaty of Union between England and Scotland and was foundation law in New Zealand.²⁰ Editorial writers of the day supported his claims which were, unfortunately, never resolved authoritatively by the Privy Council as was attempted.²¹ Today, this remains a long-term project, a work in progress.

Plurality in the legal order

Self government arises in two different ways, as Canadian judges have pointed out. It may be inherent and political: a claim to stand outside the wider polity for particular purposes and to a greater or lesser extent. But claims to self-government may also be property-based where property is communally owned. In that case, legal ordering by the community itself is necessary and inevitable. The Treaty provides a basis for both types of self-government. We have at present some movement on the first, not for the first time in our history, with the Rangatahi Courts. We can expect the regulation of property to adapt although perhaps the challenge will be to adapt the modern property holding mechanisms now employed to retain government that is consistent with Maori preferences.

The place of law

There is, as I have indicated, a strong strand of New Zealand thinking about indigenous issues that the Treaty of Waitangi is principally a political pact and

²⁰ Ned Fletcher and Sian Elias “A Collusive Suit to ‘Confound the Rights of Property Through the Length and Breadth of the Colony’?: *Busby v White* (1859) (2010) 41 VUWLR 563 at 583.

²¹ At 599.

that addressing the place of the indigenous people who entered into it is a political exercise in which law has little part to play.

There is measure of truth in the view that adjusting the interests of the wider state and its indigenous peoples must always be an intensely political interest, even where there are rights, such as in treaties or other agreements, which are in recognisable legal form and may have some legal force. But I do not think it follows that law has no role. There are two main reasons. The first arises out of the circumstance that dealings with indigenous peoples in post-colonial societies has almost always been based on law. As Stuart Banner makes clear in relation to the native Indians of the United States, no settler acquiring land from Indians in the 17th and 18th centuries thought he was acting outside the law.²²

In New Zealand, land was taken according to law, although the law was fashioned by the settlers and was increasingly adverse to native interests. Challenging authority is a claim to legitimacy. And legitimacy is substantial prize even if ultimately the accommodation to meet the underlying claim must be political. That is demonstrated in New Zealand by the litigation in the 1980s.

Secondly, the deliberative processes and necessary justification of judicial method are critical in themselves in explaining the claims of indigenous peoples to the wider polity. The quasi-judicial processes of the Waitangi Tribunal and the 1980's litigation in New Zealand were pivotal in a revolution in attitude. Legal method requires justification for what has been done and tells the stories the wider polity needs to hear. And it makes both justification and stories accessible to the whole of New Zealand.

So I expect recourse to law to continue.

An Association of Maori lawyers.

I want to conclude my peep into the future by referring to your role as Maori lawyers. I think there are parallels between your association and association of other groups which have traditionally been disempowered. Those I am most familiar with are association of women lawyers and I use them as illustration.

What I want to remind you of is that, to the suffragettes, getting the vote was not the end. It was a means to transform the world. Those in positions of leadership of groups who have traditionally been disempowered have I think obligations to promote change and to acknowledge their difference.

In launching the Australian Association of Women Lawyers, Mary Gaudron was absolutely right to say that its formation was an assertion of the right to be different.²³ It was not enough to break down the doors and be admitted as

²² S Banner *How the Indians Lost Their Lands: Law and Power on the Frontier* (Harvard University Press, Cambridge, Massachusetts, 2005) at 4.

²³ Mary Gaudron "Speech to Launch Australian Women Lawyers' Association (1997) 72 ALJ 119.

“honorary men”. They should dare to be women lawyers. The ambition of access was too limited. As Mary Gaudron said, the aim must not be to give women – more accurately, affluent, well-educated women – “a better share of the spoils”, but to improve law and the administration of justice for all.²⁴

It does not matter in what area of work you are in. If the positions you achieve do not lead to changes for better justice in our societies for Maori, there is no point. To make a difference in this way you have to be the best lawyers you can be. And you have to talk about the Treaty and be a bridge in your lives for those who do not have your advantages.

Conclusion

On more than one occasion when wrestling with questions about the Treaty and our legal order, I have thought about the English Cabinet Minister lost in a fog on Exmoor. Eventually, after stumbling around for some time, he came across a local and asked which way he should go to get to London. The local stared. “If I was going there”, he said, “I wouldn’t start from here”.

Well, we have to start from here. Here is where we are. It is a good place to start from if we recognise the history behind us and the principles we can draw from all the heritage we have to keep our law responsive to the changing needs of New Zealand society set up under the Treaty.

Justice is a rocky path. It has to be worked at. But there is a long course to be run. And in the end what matters more than the lapses along the way is the expectation with which we start out and to which we return. In this place, in talking of the Treaty, we should acknowledge that no country can ever have been launched in such beauty and with such expectations of law. As I said at my swearing in as Chief Justice, that is a great tradition in which to serve in law.

No reira, tena koutou, tena koutou, tena ra tatou katoa.

²⁴ Mary Gaudron “Speech to Launch Australian Women Lawyers’ Association (1997) 72 ALJ 119.