Nature on Statute Books

—

The following article by Graham E Anderson describes how the **Law of Nature** is already instilled in many of our Acts of Parliament.

“By the law of nature these things are common to mankind —the air, running water, the sea and consequently the shores of the sea”
— Institutes of Justinian 500AD

The Crown holds the Foreshore and Seabed in trust for all the people of New Zealand irrespective of race, colour or creed, therefore the Government of the day has no right to grant exclusive rights to any single individual or entity. Giving ownership or rights to an individual or entity would breach the Law of Nature and infringe on the publics right to access and use the resources.

PANZ Monograph Number 4
ISBN 0-9583363-4-2

The Queen’s Chain

Graham E. Anderson.
Extracted from The Landscape December 1977

“…by natural law itself these things are the common property of all:
air
running water
the sea

and with it the shores of the sea."

Justinian, some 1500 years ago

The introduction and development of the principle of public access to the sea, lakes, and rivers of New Zealand has been of some considerable interest to me.

My research has put together a sequence of events and administrative decisions which show a clear and firm intent on the part of the legislators to provide reserves and access which is quite remarkable, given the vociferous opposition to such ideas from those who stood to lose, and for which I have not been able to find the origin.

Land legislation was introduced in New Zealand only after a great deal of private trading had taken place, and the legitimising of prior claims, as well as the control of future purchases, provided a great deal of difficulty for those whose job it was to implement the law, so that the matter of access to the water's edge often got overlooked in the process.

Nevertheless, the threads leading to the introduction of coastal reserve legislation in New Zealand are clearly discernible, even if it is not yet established who first decided to include such a requirement. Several people, including Sir George Gipps, Governor of New South Wales, Sir James Stephen, Lord John Russell, and Lord Normanby, the latter three Colonial Secretaries at one time or another during the period when New Zealand was "erected into a Colony", had views and experience of a kind which might have led them to put such requirements into effect, but despite access to the manuscript drafts of several relevant documents in the Turnbull Library I have as yet been unable to ascertain just who did.

As did other colonial territories, New Zealand suffered the avarice of land grabbers in its first few decades of European settlement; not least from those who were supposed to be

administrators of justice in such matters, one of whom claimed to have bought some 2,000,000 acres from the Maoris for the usual pittance, another some 50,000 acres.

In Australia similar land problems had occurred, particularly in New South Wales where Governor Gipps administered New Zealand as a dependency. Gipps himself has also, in 1835, reported to the British Government on land purchase control in Canada, where he was sent to investigate the matter.

Captain Hobson, who had accepted the position of New Zealand Consul in February 1839, received on his embarkation for New Zealand, a letter from Lord Normanby, the then Secretary for the Colonies, which read in part:

“Her Majesty is not unaware of the great natural resources by which that country (NZ) is distinguished…On the other hand the Ministers of the Crown have deferred to the advice of the Committee appointed by the House of Commons in 1836…in thinking that the increase of national wealth and power promised by the acquisition of NZ would be inadequate compensation for the injury which must be inflicted on a numerous and inoffensive people whose title to the soil in indisputable…”

“The Governor of NSW will, with the advice of the legislative council, be instructed to appoint a Legislative Commission in investigate and ascertain what are the lands in NZ held by British subjects under grants from the Natives…and it will then be decided by him how far the claimants…may be entitled to confirmatory grants from the Crown and in what conditions such confirmations ought to be made.”
How to cope with the undoubted rights of the Maoris to the land, and the urgent desire of the Europeans for it, was exercising the minds of the Colonial Office to such an extent that it was to be end of 1840 before the final draft of the Queen’s Instructions to Governor Hobson had been thrashed out at the Colonial Office in England, and in the meantime a “New

Zealand Land Bill" was prepared in New South wales, clause 5 of which read:

"…no grant of land is to be recommended which exceeds 2560 acres, unless specially authorised…; or which shall comprehend and headland, promontory, bay, or island, that may hereafter be required for any purpose of defence or for the site of any town or for any other purpose of public utility; not of any land situated on the sea shore within 100 feet of high water mark…"

All this took place in the face of claims by such people as Busby (50,000 acres), Wentworth (2,000,000 acres!) and the New Zealand Company, all of whom had made private deals with the Maoris.

In the Queen 's Instructions dated 5 December 1840, clause 43 reads:

"And it is our pleasure and we do further direct you…to report…what particular lands it may be proper to reserve…as places fit to be set apart for the recreation and amusement of the inhabitants…or which it may be desirable to reserve for any other purpose of public convenience, utility, health or enjoyment…and it is our will and pleasure, and we do strictly enjoin and require you, that you do not on any account, or on any pretence whatsoever grant, convey, or demise to any person…any of the lands so specified…nor permit or suffer any such lands to be occupied by any private person for any private purpose."

On 16 April 1941 the new Secretary for the Colonies, Lord John Russell, wrote to Hobson informing him that the NSW New Zealand Land Bill had been disallowed (because New Zealand had become an independent colony prior to its passing) and that Hobson was to propose a new law on the subject to the NZ Legislature "subject to variations to meet exigencies the experience of Hobson may have brought to light." The NSW Act was to be followed as "a safe and proper guide."

In June 1841 Hobson repealed the NSW Act and authorised the Governor of the New Zealand Colony to appoint Land Commissioners with certain powers, and clause VI of his proclamation reads the same as clause 5 of the NSW Act with the addition of the words “or village reserves” inserted after the words “any town.”

The need for coastal reserves, the desire to create them, and their purpose,was clearly well established by the New Zealand administration within its first year of operations, and the powers necessary to bring them about had been created. What remained to be established was the willingness to recognise the obligation on the part of those who had already purchased land, the realisation of the right of coastal access on the part of the growing population, and the necessary zeal on the part of the administrators as land was sold.

In many places in New Zealand the Queen’s Chain, as the coastal reserve became known because of its nominal width, has been the foundation of coastal land subdivision, but in others it has not. The fault, then has lain with our lack of diligence as the years have gone by, and the varying degrees of willingness on the part of successive administrators to insist on the observation of the original intentions –not in the absence of laws in the first place. Various men, and various Acts, provided the framework for such reserves –we just neglected to fill in the spaces.

Thomas Cass, in 1851, as Chief Surveyor to the Canterbury Association,decreed that one chain from high water mark and one chain from the surveyed edges of lakes and larger rivers should be reserved as road.
J. T. Thompson, in 1861, Chief Surveyor for the Otago Province, required surveyors to provide a 100 link (one chain of course) reserve adjacent to navigable rivers.

The Land Act of 1877, in Section 144 stated:

“The Governor may…reserve from sale, and Crown lands which in his opinion are required for…docks, quays, improvements of harbours, landing places…bridges, ferries, canals, or other internal communications whether by land or water, or for the health recreation convenience or amusement of the people…”
Under the Land Act of 1885, the Survey Regulations of 1886 read, in part:

“Suitable sites for school are to be reserved…Also at least 100 links frontage to all navigable rivers and coasts, making the traverse lines if possible the boundary of such reservation.”
The Native Land Purchase Act of 1892, in Clause 100 required that:

“There shall be reserved from sale or any other disposition a strip of land not less than 66 feet in width along all high water lines of the sea, and of its bay, inlets, or creeks, and along the margins of all lakes exceeding 50 acres in area, and along the banks of all rivers and streams of an average width exceeding 33 feet…”
The Survey Regulations of 1923 required that a landowner, when subdividing his land for residential purposes, and where the subdivision was situated on a river or sea shore, must provide “an esplanade reserve of suitable width”.

The 1924 Land Act, in Section 14 read:

“Notwithstanding any sale or other disposal of any unsurveyed rural or pastoral lands in any manner whatsoever at any time previous to the approval of the plan of the survey of the same by the Chief Surveyor of the District, the General Governor shall have the right without liability to pay compensation, to exclude from such sale or other disposal any road lines which may be required through or over any such lands, and to reserve any of the said lands which are situated on the seashore or on the margins of any lake or on any river bank…”
And section 129 stated:

“There shall be reserved from sale or other disposition a strip of land not less than 66 ft in width along all high water lines of the sea, and of its bays, inlets or creeks, and along the margins of all lakes, exceeding 50 acres in area and along the banks of all rivers and streams of an average width of not less than 33 feet and in the discretion of the Commissioner, of not less than 33 feet.”

In the current 1948 Land Act, Section 58 requires a 20 metres coastal reserve, but allows this to be reduced to not less than 3 metres if the Minister of Conservation thinks such would be sufficient. (S 58 now repealed by Conservation Law Reform Act 1990).

So, in New Zealand, we have a situation where not even the (Department of Survey and Land Information) can tell with any precision just how much coastal reserve we have (nor even just how long our coastline is), and where successive Governments, Acts, regulations, and Administrations have given varying emphasis to the implementation of Queen Victoria’s Instructions to Governor Hobson.

But there can be no doubt, even in the minds of those who own land on the coast where the provision was omitted, that the omission was the exception, and that the general intention was, and still is, for all of us to have rights of access and passage along and above the water’s edge.

As the 1948 Act recognises, the continued (and continuous!) existence of the coastal reserve is what is important, and its width may well vary a great deal, and may depend on circumstances of topography, exposure, population numbers, etc, etc, but hopefully not just on the avarice of the adjacent landowner.

The fault lies not in the laws but in ourselves that we have crowded the coast, and the Queen’s Chain concept is as appropriate right now to the new idealism of environmental

management as it was to the nineteenth century problems of land grabbing, coastal shipping by sail, river communication, and lack of roads, not to mention the idealism of at least some of those who had before them the squalor and injustices of industrial England as they attempted to frame legislation for a new very raw colony.

The One New Zealand Foundation believes this Bill must be amended to read:

The Crown must retain the Foreshore and Seabed in trust for all the people of New Zealand but any area that a group of New Zealand Citizens can prove to be of significant wahi tapu/sacred value must be respected by the public and protected by the Crown.

The End.