

~~Paper to be presented by PROFESSOR JOHN MORTON to the Conference of~~
Environment and Conservation Organisations of NZ Inc. (ECO) at the
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"It was the best of times; it was the worst of times". Dickens' refrain kept recurring to me as I flew between our "Two Cities", Auckland and Wellington. Is it a true evaluation of our conservation scene? You'll be asking, what can he find that's best in today's conservation prospect?

First, that we have a conservation movement that is - over many fronts - one of the most articulate, energetic, various and untidy we've ever known. And that we have ECO whose special role is to tie it all together ... though not too tidily, nor too federally or centrally.

It could also cheer and revive the crusading spirit to observe that the counter-conservation initiative ... our friends in Federated Futures - has failed to take off with the eclat predicted for it. We must of course wait and see. But if it does turn out to be a damp firework, the lesson could be that it takes more than the part-time ministrations of company lawyers and the good offices of public relations men to found a national movement with a sharp-honed edge. It takes passion, warmth, a sacrificial quality, a full-time dedication that a generation younger than mine is today producing. We shall remember these "best" days ... and all who have been together in them.

What else have we that could possibly be called "best"? We have a Minister for the Environment who is a man dedicated to, and enjoys the wide respect of the conservation movement. Ian Shearer thinks and reads as we do (although we're not always at the same point) ... and he doesn't need to have science or the environment explained to him.

He has had a very largely pragmatic effect and has always so operated. He has gained a number of tangible things for the environment. Some that we didn't at the moment expect ... that continue to be as surprising as his own appointment.

He has carried an environment climate into counsels and caucus of Government and a style that political history will have cause to take some note of. He seems to enjoy in an unusual way the respect of his colleagues for a sort of stubborn unworldliness and integrity of purpose. This is how - it seems - we has been able to bring quite a number of things off.

It is good that a Minister is today prepared to operate pragmatically. Because his role is at present one of influence, and creating a climate, solely that. He is himself responsible for no decision that he can issue from his own desk. And ideologically, there is in neither political party today much understanding even of what the conservation movement is about. (Elworthy - Birch - Friedlander).

It is apparent that the nation still knows too little of the stresses and dangers to the living environment and that Government would want them to know less.

Too often the assumption still seems to be made ... when environmental matters are litigated ... that Government is in a natural coalition ... symbiosis ... with the developers, the polluters, the "think-biggers" ... in a predictable alignment together, to defend the right to exploit resources with minimum cost in protection to the environment.

And all this against the disrupting machinations of those in a radical conservation movement ... that many would assume "left-wing inspired". It is taken for granted - by right-thinking interests - that the conservation movement can reasonably feel itself satisfied (in the P.M.'s phrase) if allowed to have "its day in Court". But it is quite unthinkable they should be regularly allowed to win substantial points, or to any notable extent allowed to obstruct development ... to the discouragement of offshore finance. And it is still quite unheard of - to Government - that the conservation movement (in their guardian role) should receive any subvention or legal aid out of public funding ... or even (until recently) an unequivocal right to full information.

So that the conservation movement is by itself carrying a heavy burden ... self-funded (in time, money and talents). And it is even right these pressures and responsibilities should be there ... for it is this tension the movement has been shaped by, and grown through. But there are very few on either side of present day politics that understand the movement's priorities and needs, and the role it is performing for New Zealand.

Today's conservation dilemma could be illustrated from any of a whole number of habitats or jurisdictions ... seashore, forests, mining, the urban scene, the ocean and islands, Antarctica, clean air. I will for a few minutes use the example of effluent discharge into freshwater and the sea, with reference especially to Taranaki. A conservation debate has centred on the Taranaki coastline earlier this year. It has shown up the want of understanding, and the intellectual poverty (in the conservation field) of both the main parties (and the small one); the predicament of a Maori people, passionately concerned and yet unable to get together a viable response; and the lack of any regulatory body with the research resources and the public profile called for by the fast-happening events.

When the synthetic petrol outfall was located at Motunui, no adequate advance work would seem to have been done on effluent planning. The first reaction of Mr Friedlander (as Works Minister ... and New Plymouth M.P. too) was summarily to reject the Waitangi Tribunal's findings and plea. The argument heated up ... the Prime Minister entered the scene ... confusion began to mount. What was the real quantity and quality of the effluent ... who knew? At one stage the P.M. claimed a ponding system had now been discovered within the design and process pathway. Then there came the switch ... an adroit but very obvious political reflex, recovering from an embarrassing political predicament. No suggestion the decision was made on any knowledge of the environmental constraints. But the Maori members were cleverly brought into the party ... the present Bill was introduced ... and the Opposition homed in on the party too.

The decision - (with whatever lack of clarity it had in the minds of members on either side of the House) - in my own opinion could not have been more wrong-headed and misguided. The Waitara outlet is a bad one ... with the offshore environment already badly degraded. Nothing is known of the cumulating or the "synergistic" effects of the whole mixed cocktail of new effluents that would be put through it. Most serious, the set of shore currents is such that the discharge at Waitara will inevitably carry back outfall over the Motunui shore beds. (Government is in the undignified posture of excreting into the wind!). This was a superb shore - once a clean and exhilarating shore ... with its resources of mussels ... paua ... that have been lost to the Maori people and to New Zealand already.

The issue has shown up the ultimate want of ready environment policy in any of the parties in the House; the inadequacy of the regulatory and advisory bodies; the want of design planning; and the poverty of resources at present open to the Maori people and their representatives who have intervened bravely and meant well.

New Zealand today has no considered or consistent procedure for conservation of coastal or inland water. Let me try to suggest a scenario of the history of man the aquatic polluter, and just "where we are" in that scene at the present day.

Stage I. The crude 19th century procedure of emptying waste straight into the sea. Not much difference whether it involves tipping cans of nightsoil off the wharf, as in Hokitika of the 1860's - or running Auckland sewage down the Ligar Canal of Queen Street, Auckland; and the more discreet and occult ways sewage is let out at Hokitika, Wellington, Hastings, Waitara (or Victoria Island in Hong Kong ... today!)

Stage II. Realisation of the consideration ... deference ... that the public will insist ought to be paid to clean waters. Water rights procedures are set up: licensing begins. Elaborate codes for classification are developed. These things don't always get applied. The facade is taken for the deed. It will be said, "Oh, we are spending all this money on environment protection". Or, "It's not fair to crucify us ... we are observing all the conditions of the right, except BOD!" Or that there's "no scientific proof that this or another pollutant is doing any harm". There is (in the annual report of the North Island Wildlife Conservancy) "the usual black discharge from Tasman" ... or the effluent from Caxton Mills, which can be "bright red, green, or white". And this from Mr Warren Gibson, "though the colour of the river was concerning local people, the colourants themselves were not toxic"! Or Mr Nicholson of Tasman: "there has to be a degree of trade-off between the creation of wealth and pollution".

Stage III. A maturer and a more achieving state of water protection can be attained where not only is money being spent and effort applied ... and where there is a real reduction of pollution. For all that has been said of its want of perfection, Auckland's Mangere sewage treatment plant is doing this. America is much better at these achievements than ourselves ... if that country has led the world in pollution, she has shown the way to significant recovery ... like the Biblical woman who having sinned much can be forgiven much.

Stage IV. The ultimate maturity of achievement will be by taking advanced thought, so to design our industrial or municipal systems as wholly or largely to save the need for putting effluent out at all. To ask, whether processes could be envisaged and carried out in fundamentally different ways. What a radical change could be possible in England at the present time, when renewal of midland and northern sewerage after 150 years massively comes up. With the billion dollar expenditure looming, do they really need to mix human effluent (both sorts of it) in a dilute form in water ... and spend all that ingenuity in getting it out, and waste its energy and nutrients? Where the Victorians could have gone wrong was in so summarily washing away nastiness (like sin) out of sight with water. "Prostituting" natural waters to do with them the things that would not openly be done in the light of day!

The State of Victoria, Australia, as early as 1970, determined to progress along this scenario. They received an Environmental Protection Agency. The product of principle and pragmatism. The principle was concern for

the environment, being widely expressed. The pragmatism was Sir Henry Bolte's progressive policy aimed at outer suburbanites, concerned with Port Phillip Bay, to win the 1970 State election.

The way that EPA has fallen by the wayside was in 1978 recounted by Peter Russ and Lindsay Tanner in their book "The Politics of Pollution". It was a revelation of what can happen in eight years when a regulatory body lacks finance, staffing, independence, and the enthusiasm of committed people. From the time of its beginning, EPA became no longer an independent watchdog, but was drawn gradually into the state bureaucracy. It became dominated by a conservative bureaucracy ill-equipped to deal with the dynamic nature of environment protection. Staff morale fell to a low ebb, and the best people that had joined it early on in its days were ultimately to leave it.

Would the same things happen in New Zealand? We have today no means to know. Because we have not yet even set up the regulatory agency that Victoria embarked on as early as 1970. All this history we have still to travel through in our own course. Today we are far behind a real beginning as Victoria was in 1970. The EDS, and others with them, have been pressing for a separate environmental agency, with powers and resources and independence adequate to the task. The present Commission for the Environment doesn't want this or see the need for it. They realise its political impracticality - today - is such as not to make it worth pursuing. The present Minister for the Environment concedes it might be the pattern of the future but believes it is neither needful nor realistic now.

Even if such an independent watchdog were to be promised by Government and brought into being, it would need the comprehensive means to tackle polluters head-on. To fall short of this would merely - in Russ and Tanner's words - make it "an irritant to the polluter and a rickety facade for public inspection and approval". A pollution control system would comprise several stages. There would be:

- FIRST: The conduct of environmental research and planning.
- SECOND: The drafting of environment protection policies for each segment of the environment.
- THIRD: Issue of licences to dischargers of waste.
- FOURTH: Enforcement of those licences through the investigation of complaints, the monitoring of compliance with licence conditions, and the prosecution of offenders.

I want to cite an outstanding example of research and standards building where New Zealand has fallen behind: that of the classification applied to coastal and inland waters.

The 1971 Amendment to the 1967 (Waters) Conservation Act made a classification of waters in its first to tenth schedules. This was applied and operated in the early 1970's; and the action of the Water Resources Council was challenged by the Southland Skindivers Club Inc. First the Town & Country Planning Appeal Board (as it then was) upheld their objection, and the W.R.C. appealed in 1975 to the (then) Supreme Court.

In July 1975 Mr Justice Cooke delivered his now classic decision in favour of the Skindivers Club. In a piece of prose that makes as enjoyable reading as some of the great American Supreme Court judgements, he found that the Water Resources Council had misapplied the classification and misconceived the purposes of the Act.

Its principal inadequacy of criteria was to allow the classification of Class D for large bodies of water where general uses predominate ... and to allow the reduction of actual quality to the minimum standards specified by the classification ... licence to pollute down. Rather, the process of classification called for by the Act requires first an inquiry into the existing quality of the water being classified, including the prospect - where feasible - of its being improved.

The inaction of the Water Resources Council has since been a by-word; a case of administrative vacuum, so far as the administration of an Act concerned with a comprehensive water classification.

When I was Chairman of the Nature Conservation Council, back in 1976, we made a submission to NWASCO, of which I have heard nothing since, advocating a functional and ecologically relevant classification of natural waters. We were concerned about stop-gap measures that might be used to patch up the system of classification in the existing Statute. That system suffers from the lack of any planning and management context which would bring out the relationship between water controls and other aspects of land and water resource management. Its water quality classes were rigid, arbitrary, limited in number and bore no relation at all to the uses or values or existing quality of natural waters.

It should be asking: what is this piece of water now? Is it stream or river (fast or slow), pond or lake; swamp, bog or marsh, underground water; estuary, harbour, sheltered coast, open coast or beach? What are its beauties? ... its present ecological role? What are the water quality characteristics and guidelines that we should - in such a situation - look for and conserve?

These enquiries need research ... and the results of these findings should then be applied at regional and local level, with public input at early stages in the process.

This would leave with Regional Water Boards the prime responsibility to formulate resource management policies, given guidelines and support from the national level.

Don't conclude from this that I believe the role of decision should be removed from Executive Government to Tribunal, judges, quangos, guardians ... anyone but Ministers to whom it must finally belong. Still for Executive to make the decisions on the use of N.Z. resources ... living and physical systems ... and on natural economic goals, and allocations and priorities.

Today, the objection is not that Government is doing this, but that it's doing it without public scrutiny; and that neither Ministers nor the great majority in Parliament can be trusted for their insight or understanding of what the environment debate and anxieties are really about.

Ministers act virtually without restraint or fearless independent advice. Constitutionally New Zealand has no separation of powers: legal system and personal liberties aside (and anxiety there, too) there are not powers but one power. The Executive is monolithic. It has nothing to fear. Parliament - (even with close balance of parties) is cosmetic and remote from the events. Government fears only its own Caucus ... and debate goes on (God knows what it's like) behind-closed doors. In environmental matters, Government doesn't even fear a largely uninformed electorate, or real challenge from the other side.

Look for a moment at New Zealand's political structures. There is little or no place at all for independent review. There is (for the first example) no independent economic inquest of the nation: no social contract ... not even

for a consensus as to what follows wage-price freeze (and any such hopes for people sitting down together one Minister has been trying to wreck). There is no separate environmental inquest or jurisdiction now existing. FAST TRACK put a final end to any autonomy of the Town and Country Planning and the Soil and Water jurisdictions ... in the very areas that matter most and where most harm can be done to the environment. The Tribunal in its ordinary jurisdiction, too, can be legislatively over-ruled ... in the now notorious Clyde dam legislation. The Tribunal knew in advance they would be ... I still cannot understand why in such circumstances they agreed to sit!

The regulatory agencies for the environment are manned from within the State Service structure and ministerial jurisdiction. They are in jeopardy and ultimate executive control ... no-one can say the N.Z. system is free of the ills the Victorian one developed. The watchdogs can at times develop affinities with the wolves. I'm not talking - you must understand - of malpractice, of which the N.Z. system has been singularly free ... but of sympathies, symbiosis even, that works the wrong way ... towards those interests that they were set up to regulate.

And far too often, instead of to regulate, they get told off to educate ... this - good in itself - could have become too exclusively the function of the Commission for the Environment, the Nature Conservation Council, and the Environmental Council ... none of which (be it understood) have any more ultimate power in the system than you and I.

All this is why we find in the public bodies a PRIESTHOOD of environment ... with rules, rites and the convention of political "conversation"; and the PROPHETIC voice and function out with the activists ... with ECO.

If there is ever to be an independent jurisdiction for environmental regulation, let us look at the things that will be needed. Environmental protection agencies ought to have the standard of independence from the Executive enjoyed by the Ombudsman or Controller and Auditor-General. And to enjoy something of the security of a University body, in the finance and the facilities to research and publish their findings, and recommend protective codes and standards.

Such independence is not a pipe-dream ... but the natural and minimum condition that a lively and effective jurisdiction must enjoy in order to do its work. This independence must also entail the training and building up of a core of men and women to serve the system. Their calibre and career opportunities must be attractive to the best crop of graduates ... like those that are today drawn into Treasury or Foreign Affairs as well as to University Faculties.

Not only in the interest of the ENVIRONMENT is such a jurisdiction needed ... but also in the economic debate ... assembling (with their influence and voice) the representatives of industry, the unions, farming, importing, and the consumer. Such a move towards a "social contract" I've been talking of for years ... but this is not the time to advocate it here, save to show that if ever New Zealand is to become an effective democracy ... with more than the cosmetic facade of Parliament ... these are the structures we must be looking for.

In all this - be it made very clear - I'm not claiming that the Executive Government wouldn't ultimately decide. But in matters touching environment, they must decide only after policies have been formed in public view and the hazards and risks exposed. There must be standards laid down ... research-based ... in response to discernible, revealed policies. If these standards or policies are to be breached (for reasons Government think economically expedient ... to encourage growth or offshore investment) the people - taught to understand these issues - must be shown at what price Government is coming in

to act. These things would no longer be done by decisions made without public involvement, outside public scrutiny or knowledge; but by a Government no longer able to deny or push aside the environmental objections; but having (if that is their will) to ride in the face of them.

The "Politics of Pollution" - (Russ and Tanner's Australian book) ends with a strong passage for the environment by David Phillips, talking about heavy metals in Port Phillip Bay: (I'll give Phillips the pride of peroration to conclude my address):

"I do not particularly care if the politicians decide they want to pollute the environment of this country. But I do care very much if they do not tell the truth about it. I would like to see more truth and less lip-service; and it is time in this place that people got up and said: 'We are going to have an open industrial drain: we are going to have a polluted bay, and that is how it is going to be, because we do not want it any other way.' "
