|  |  |
| --- | --- |
|  | Speak Up - Kōrerotia  Te Tiriti o Waitangi and other human rights legislation  17 November 2021 |
| Female | This programme was first broadcast on Canterbury’s access media station Plains FM and was made with the assistance of New Zealand on Air. |
| Female | Coming up next conversations on human rights with “Speak Up” – “Kōrerotia”, here on Plains FM. |
| Sally | E ngā mana,  E ngā reo,  E ngā hau e whā  Tēnā koutou katoa  Nau mai ki tēnei hōtaka: “Speak Up” – “Kōrerotia”.    Tune in as our guests “Speak Up”, sharing their unique and powerful experiences and opinions and may you also be inspired to “Speak Up” when the moment is right.  Nau mai ki te hōtaka tika tangata: “Speak Up” – “Kōrerotia”. Ko Sally Carlton ahau. Today we’re going to be talking about Te Tiriti o Waitangi alongside other human rights legislation. How does Te Tiriti illuminate, refresh, play a role in some of these other human rights legislations that we have, both within Aotearoa New Zealand and internationally as well? And this topic actually came about having listened to Chief Commissioner Paul Hunt talk at the Network Waitangi Ōtautahi AGM earlier this year in 2021, when Paul was talking about the role of Te Tiriti in refreshing human rights for our times. That kind of got me thinking about it and so on our panel today we have Paul Hunt, Chief Commissioner of the Human Rights Commission, we’ve also got Katherine Peet from Network Waitangi Ōtautahi and we’ve also got Richard Tankersley, who will be bringing an indigenous perspective and a perspective of someone who works in the primary health care sector.  I’d really appreciate it if you could all tell us a wee bit more about yourselves and why is it that you’re taking part in today’s kōrero? Where is that your passions lie and your interests in this topic lie? Perhaps Paul, we’ll start with you. |
| Paul | Kia ora, tēnā koutou katoa, talofa lava, namaste, assalamu alaikum, good afternoon everybody. Thank you so much for inviting me, Sally. To say briefly, Sally, a few remarks about myself. I am presently the New Zealand Chief Human Rights Commissioner. I was born in Germany, I was educated in primarily in the United Kingdom, I finished my education at the University of Waikato here in Aotearoa and enroute I married a Kiwi and one of our children was born in the Waikato and we have two children who their formative years were in the Waikato. I was absent for a while working for the United Nations and doing some other stuff and really pleased to be back and very honoured to serve as the Chief Human Rights Commissioner. |
| Sally | And Paul, I think what you’re going to be bringing to today’s conversation is mainly that experience with the international human rights frameworks and documents. |
| Paul | I’m really sort of quite excited by some possibilities in Aotearoa. I see international human rights as one of the great achievements actually in the last 100, 200 years. International human rights contributed to the decolonisation movement - not yet complete but it’s contributed to that movement - international human rights contributed to the women’s movement, it contributed to thinking in the civil rights movement in the US, it contributed to the activism and some success in the Rainbow community. So I think it’s a remarkable achievement, international human rights law, but there are some weaknesses, there are some significant weaknesses in international human rights law which New Zealand has signed up to. There are these weaknesses and I think New Zealand is a promising place to strengthen those weaknesses, to address those weaknesses and maybe in a few minutes we can talk about that. |
| Sally | Ka pai. Richard, how about we hear from you? |
| Richard | Tēnā koutou katoa.  I te tuatahi, ka tuohu ki to tatou atua, tēnā koutou. Me hoki hei tuku te whakaaro nui ki a rātou mā kā aitua kua riro atu ki te Pō i tēnei rā;  haere koutou ki ō koutou tipuna, a te whakaaro tino aroha hoki ki a koutou o kā whānau pani. Kāti tēnā.  Ki te huka ora, te mihi nui ki a koe Sally, kua pōhiri mai ki a matou nei hei hono ai ki tēnei hui, me hoki ki ā tātou nei pūkorero a Paul, a Katherine, tēnā koutou. He mihi aroha hoki ki a koutou o kā rakatira e pae ana, e tau ana, e whakaroko ana mai ki a mātou nei, puta noa o te motu, nō reira, tēnā tātou katoa.  Nō reira, ko wai au?  He uri ahau no kā iwi o Te Waka o Aoraki  A Waitaha, a Kāti Māmoe, a Kāi Tahu  Ko Te Pātaka o Rākaihautū te kāika tūturu  Kei reira oku hapū o Kāti Huikai o Kāti Irakehu e tu tonu ana, hei ahi kā mo mātou.  No Ingarihi, Kōtirana, Airani, Wēra, me Amerika oku tīpuna o kā wā o mua.  Greetings. So as we gather under the watch of our celestial guardians and our ancestors, I want to acknowledge those who have recently died in our communities and in Canterbury and further afield and their whānau and friends whose grieving processes have been seriously impacted by the need to lock down and stay safe during this pandemic outbreak. **6:12**  Kia ora Sally, and thanks for the invitation to join in this exciting conversation and I’d like to greet and pay respects to my co-panellists today, to Paul Hunt and Katherine Peet. It’s very much a privilege to be in this conversation with you all and I’m very much looking forward to it.  So tribally I’m from here, from Canterbury and for us the centre of the university is Te Pataka o Rakaihautū or Banks Peninsula where my hapū of Kāti Huikai and Kāti Irakehu still keep the home fires burning for us all. My other ancestors came from England, from Scotland, from Ireland, from Wales and from North America. Back in the old days some of them were arriving before the signing of Te Tiriti. I spent my early years in Hawkes Bay and until recently, have lived the rest of my life in Canterbury.  I have held many roles in my life and some of them even actually offered payment which is a blessing. Alongside working in several iwi development and support roles, I’ve also been a Māori mental health worker, a researcher, a project manager, a team leader, a kaikarakia and a celebrant as well as a cultural advisor, cultural supervisor, cultural consultant.  I served nearly nine years as a human rights commissioner before Paul’s appointment and after that I continued in the health sector as a principal advisor Māori to the Royal New Zealand College of General Practitioners which I still hold and it was that role that I left Canterbury for Wellington and that’s where I now live. I’m passionate about Te Tiriti o Waitangi and I’m also passionate about human rights and I’m greatly interested in having national conversations about citizenship, about belonging and about equity for everyone under both Te Tiriti and under the rule of law and how those things need to intersect and interact. |
| Sally | Thank you so much for that introduction, Richard. I worked with you for many years but it’s always great to hear your intro because I learn more about you every time I hear about. So Katherine, can we hear from you please? |
| Katherine | Tēnā koutou. It’s lovely to be amongst this auspicious group of people. My background was originally as a scientist and I taught both in universities and in schools and then I married a Welshman and we went to live in a country that was called by my parents, Great Britain or sometimes the United Kingdom and we were based then initially in England and I was the one with the accent and that was a whole wakeup call for me. What that led to was an experience in a Welsh… when we went to live in Wales for some time, in a Welsh school where all the children’s first language was Welsh and the language of instruction was English and I asked the question about perhaps something like that had gone on in New Zealand. So that’s how naïve I was when I got into this work.  To cut a very long story short, I got out of that institutional education space and got into adult and community education and for the first little while I was involved primarily in the Workers Educational Association, an old organisation primarily offering opportunities to people not closely connected to their employment and as I became more and more involved with the justice issues, which is I suppose where I first picked up my particular interest in human rights, I felt the biggest injustice was the lack of understanding of Te Tiriti o Waitangi.  And so that’s what took me into the work and we were very lucky in Christchurch because, unlike a lot of other places, there was a wonderful grouping called Te Rūnaka ki Ōtautahi o Kāi Tahu which welcomed our interest and supported our work in the days before Te Rūnanga o Ngāi Tahu existed. And so we had access to wonderful people who were just so generous and welcoming and that was… I look back on that and realised how privileged we were; it wasn’t flavour of the month to be doing Treaty education in those days. And so that’s what took me into the work and I remained in it.  And so I have had that experience and I’ve again had the opportunity to link with people who are passionate about human rights and so I’m very interested to be involved in the work of the current Human Rights Commission. I really value the work that they’re doing on collective human rights thinking and so I’m pleased to be contributing to the conversation and I just want to say also, it’s lovely to be with you, Richard again, and with Paul, and thank you Sally for the invitation. |
| Sally | Thank you Katherine, that was lovely. And again, I know you so well but it was great hearing that introduction from you as well. OK we’re going to have our first song, ‘Nga Iwi E’ which Richard has said is a nice protest song to get us going and then we’ll come back and get into our kōrero. |
|  | **MUSIC – NGA IWI E** |
| Sally | This is “Speak Up – Kōrerotia” and today we’re talking about Te Tiriti o Waitangi in the landscape of other human rights documents. As we kick off our kōrero, I’d like to ask you - and it’s a very big question to start us with - could we talk about Te Tiriti as New Zealand’s founding human right’s document. What’s in it? How did it come about and why do we call it New Zealand’s founding human rights document? |
| Richard | So Te Tiriti o Waitangi was the end point of a number of activities that were going on in New Zealand after the arrival of a whole heap of people in terms of traders and whalers and sailors and sealers and other people that were off to seek their fortune in a new place, the majority of whom had come from the United Kingdom. The signing of Te Tiriti o Waitangi on the 6 February 1840, when the first signatures were applied to it, came after an earlier piece of work which needs to be referred to which was the Declaration of Independence of the United Tribes of New Zealand which took place on the 28th October in 1835.  So it was an end point but of course it was also a starting point and there are a whole heap of things that were going on that led up to the signing of the Treaty. One of those in particular was the lawlessness of the arriving people. There was no legal framework here, the British government had appointed a Resident around about 1833, I think, his name was James Busby who was instrumental in the establishment and inviting chiefs to sign the Whakapuakitanga or the Declaration.  But the Resident had no authority to do anything, he was to a large extent an observer who did really quite well at getting involved in getting alongside people and trying to act in the best interests of the British government but with absolutely no authority apart from to do just that. So there were numerous concerns that were developing within the tribal leaders. As part of the Declaration they had agreed that they would meet every year to gather to consider what was going on and to make decisions about how things were for the Confederation of the United Tribes of New Zealand.  And some of the concerns were in addition to the lawlessness of the people that were sort of arriving, they were beholden to nobody and that was a real concern. But they were also worried about shonky trading for land, there was no enforcement framework if a decision had been made to sell something, whether it was land or something else and then somebody reneged on it. There were no judicial processes to review those things happening and to come up with solutions. There were a whole heap of concerns.  And so there were petitions, really, to representatives of the British Crown to actually come to New Zealand and to take control of the situation with respect to the settling arriving peoples. Māori didn’t need a legal system, there was a clear set of processes - institutional arrangements, if you want - called tikanga that guided everything that in iwi or hapū or whānau would do in terms of the conduct of their lives but they saw no commensurate framework for the people who were arriving. No tikanga, no law, no turi, no nothing. And so those are some of the things that led up to the signing of Te Tiriti.  There are many, many players in the build-up to the signing of Te Tiriti. The chiefs of the United Tribes particularly, but also there were other agents of various organisations present in the community at that point. The missionaries had arrived from the CMS, Church Missionary Society in London from 1814 into the far north and the Wesleyans had arrived in 1823. So there were numbers of missionaries, some of whom were lettered and clergy and teachers. There were others who were tradespeople and were setting about the whole idea of Britain at that point and said you needed to civilise the people before you could Christianise them and so there was essentially a conversion attempt. But for the first 20-odd years that was really by trying to groom the people and teach them skills and move them away from their semi-nomadic lifestyles into arable farming and all sorts of things like that.  So there were missionaries there, mostly clergy who had a considerable impact on the events leading up to the signing of Te Tiriti and also particularly on the drafting and on the translation of it from English into te reo and from te reo into English. Essentially, as a document, we ended up with one that sits in three articles with a fourth spoken but undocumented unwritten article and not written into the body of the Treaty itself. We talk about those articles in terms of governance or kāwanatanga; we talk about them in terms of tino rangatirotanga is the second, or essentially self-determination; and the third in terms of ōritetanga or equality - and I would suggest also equity but that’s my point of view and some scholars don’t talk about equity in that context.  And essentially the three articles made a deal and the deal was in the view of the tribes a little bit different to how the deal was viewed by the British people and so we end up with differences of opinions and some of this is based on the differences between the text in te reo Māori and the text in English. In terms of analysing what had gone on, there were also some differences we can work out in terms of what the understanding was. So the term kāwanatanga, it comes from the transliteration of a word that came from the Bible and of course when the missionaries came in the early 1800s, one of the first things they ended up doing was translating scriptures into te reo Māori and when they wanted to talk about who the governor was in Cyrene or in various places in the historical accounts, in the gospels but also in the acts of the apostles, the word that they used for governor was ‘kāwana’ which was a direct transliteration, in that sense means that you are acting in place of somebody else which is somewhat similar to the title of governor general that we have now, where somebody is acting in place of head of state. So kāwana has a particular sense of sort of a little bit of oversight on somebody else’s behalf.  Essentially what was offered in Article 1 was for the British Crown to extend its legal framework essentially to this country, that’s essentially what it’s trying to do. The intention was always for the British Crown to take responsibility for its own citizens and so that would be about extending the rule of law, British law, here so that the citizens were no longer uncontrolled and no longer lacking in responsibility in terms of how they conducted themselves in their business. That was the first thing.  And then the second thing, in return for allowing that extension of British law in this direction, then the tino rangatirotanga article offered the protection and the retention for the iwi of all their taonga and their forests, their fisheries, their lands. Everything that was of value to the people that they wished to retain and the additional proviso in the Article the Second is that should Māori wish to sell their land in particular, then there was a restriction that they would only be able to sell it to the Crown. Prior to that there had been a number of interested parties who were wanting to buy land and they were trying to trade directly with Māori and some of those transactions took place. There were a lot of land commissions that took place after the signing of Te Tiriti and the establishment of British Crown is the kāwanatanga here. Some of the outcomes of those land commissions found that those deals were incredibly shonky and they were declared null and void and those early land sales weren’t actually on behalf of the British Crown.  Those were the tenets of the first two articles. The third article, which we refer to as the ōritetanga article, says that both the arriving people and the Māori people would be equally subject to the protection of the Crown and so that’s where my conception of this is inequity article comes through. The fourth unspoken article was essentially, by the time the Treaty was being signed we had three religious dominations in the country: the Church of England, which was the CMS, from 1814, we had the Wesleyans from 1823 and we had the Roman Catholics who had arrived in 1838. As I understand it, it was Bishop Pompellier, the Catholic Bishop, that suggested that we protect people’s religious freedom to choose, rather than having a state religion.  And so the governor announced that the governor will make sure that the diverse faiths of the English, the Wesleyans and the Roman Catholics, together with Māori spiritual tradition - not quite in those words - will be equally protected by the governor and so that’s why we talk about the fourth article as the one that talks about all religious freedom.  I think that’s a good start. Katherine, you might have a few additions and corrections and tidy ups there and some missing bits, probably. |
| Katherine | Well just a few additional points but thank you, Richard. I’d like to make the point about the context of the 1835 Declaration because I think there’s a history before that, that not a lot of New Zealanders know about and I think that pre-Treaty story is really illuminating and the pre-1835 part of it is even more illuminating I think.  I mean recently the Te Pahi medal was on show at Te Papa and that was given to Te Pahi in 1805 in recognition of the justice response of Governor King when the two young Māori boys were kidnapped in the Hauraki Gulf and taken to Norfolk Island and Governor King called in the Australian authority and said actually, that wasn’t a very British thing to do, take them home. And Te Pahi went to Sydney to say you know, that was a nice piece of justice sort of story.  So in terms of the human rights issues, Sally, I think the first human rights document that affected the people who were not Māori, may well have been the Treaty but I’m not sure that it’s the first interface with the notion of human rights. That really was changed, I think it was in 1769, when the King of England said that wherever British people were, they had to start behaving properly because there was a concern… and this was the sort of start of the lead up to the anti-slavery movement and the really big influence in the 1830s that provided the context for the 1835 statement and Wilberforce and people like that were fine characters and very associated with the Chatham Group I think it was called and that was a bunch of really strong justice workers in England.  And they hosted people like Tuai,when Tuai went to England in the early 1800s, he was welcomed and looked after. I mean, he was utterly gobsmacked by industrial England and seeing all the modern things that were going on and he really wanted to have the best of both worlds when he came back to Aotearoa. There’s quite a lot in that context leading up to the signing of the Declaration.  Te Whakaminenga I think is a very important thing for people to know about, the council that was actually, I think, formalised in 1808. To me, that’s sort of almost the start of the formalising with the relationship with non-Māori, to use that term. And the extent of travel by tangata whenua to the outside world. I mean, we know, we have documentation of 1000 Māori who travelled to the Northern Hemisphere before 1835. You know, people studying surveying at Paris University in the 1830s and things like that. So I mean that’s huge when you think about it.  We have all those stories to understand the sort of fact that this wasn’t a great white chief who came and saved the natives. The only other thing, comment I’d make about the Declaration of Rangatiratanga which is what the 1835 statement is, is that it’s a form of authority which is very different from the Westminster style of authority and that was the form of authority that Māori retained when the Treaty was signed.  For me, the work is about the regaining and retaining of tino rangatiratanga as the context which is absolutely necessary if the Treaty is to be properly honoured, in my view.  The only other thing I suppose I’d add, apart from trying to take very seriously the form of authority that was declared in 1835 and continued in the Treaty, is that I’m not sure I totally understand or maybe totally agree with the Article 3 being seen as equality for everybody. I think it was in the context of tangata whenua seeing what had happened to Aboriginal people and Torres Straight Islanders in Australia and the treatment that was being metered out to them - that wasn’t going to happen.  And so I think there’s a flavour on that Article 3 which is really more to express it in the form of Article 3 ensures that the form of authority that was coming in from Britain, in the form of kāwanatanga which was the separate form of legislative authority that was flagged in the 1835 document, sure it’s a separate form of legislative authority and Māori chose the British to do that form of authority, they didn’t choose the French - they might have but they didn’t.  And so having done that, I think what the Article 3 is really focusing on is the thought that whatever is set up by the newbies in kāwanatanga, would be accessible to tangata whenua and they weren’t to be excluded from it. So I personally think - and I think my ongoing research of this actually confirms this every inch of the way - that it was about Māori putting in the third article that sense that this was something that they were going to do together and they were taking responsibility to stand alongside but also to not be excluded from anything that was going on like the Aboriginal Australians and Torres Straight islanders had been.  In terms of Article 4, I think the reason it’s written last is because it was written last. It was spoken first but written last and because of the written culture, the written document has to put it last. I don’t think the Treaty would have gone ahead if that hadn’t been agreed. Sure, I think it was partly in an argument between the French and the English and the Catholics and the Anglicans but we need to recognise that at a formal level - and particularly at the moment with the degree of inter-faith consultation that’s going on in this country - that at the time British law recognised Islam and Hinduism, there’s no evidence of Buddhism being formally recognised. I think it’s broader than just Christian denominationalism and I think it extends to the wider faiths. I think it’s not a coincidence that the word ‘faith’ is there.  I think the main thing I’d want to pick up on is that I’m not sure that it’s the first human rights document in New Zealand. It depends how you conclude the meaning of human rights to be and where that definition comes from because it’s a much later idea. The idea of individual human rights in the United Nations declaration. |
| Sally | Paul, I wonder if you’ve got anything you’d like to add to this kōrero? Particularly around the idea of human rights dimensions to the Treaty. |
| Paul | Thanks Sally, thanks a lot Richard and Katherine, that’s super interesting. Perhaps I could just explain one reason why I think this is so important. In the New Zealand Human Rights Commission, the governing act is the Human Rights Act and in the Human Rights Act, it sets out what we’re meant to do and one of the things that we’re meant to do, it says that the Human Rights Commission is to find ways to better understand the human rights dimensions of Te Tiriti and it says in the Human Rights Act that the Human Rights Commission is to conduct research, education and discussion, to explore the relationship between Te Tiriti and domestic and international human rights law.  So it’s part of my statutory responsibility to think about the relationship between what we’ve just heard, this fantastically interesting stuff. What’s the relationship between that and Te Tiriti? It’s in the statute. OK so we’ve heard about Te Tiriti. So now just a few comments, very brief about international human rights law.  I’ve mentioned that I think this is a very signal achievement, international human rights law, deeply flawed of course, particularly in the implementation but nonetheless, it seems to me that the international human rights caucus of law and rules is very important and I want to emphasises that New Zealand has played a really significant role in developing this international human rights law. The main document is the Universal Declaration of Human Rights and New Zealand was one of the formative drafters of the Universal Declaration of Human Rights and since then, New Zealand has an honourable record in participating in the drafting of other international instruments which build on the Universal Declaration of Human Rights.  So I don’t want you to think that the international human rights is something sort of alien, they’re not. They have partly been shaped by values that we’re familiar with in Aotearoa New Zealand. I just want to mention three features of the Universal Declaration of Human Rights in particular. One of the features is that it’s a holistic approach to human rights, by which I mean international human rights law and the University Declaration of Human Rights, talk about the whole range of human rights – civil rights, political rights, workers’ rights, social rights, cultural rights and subsequently, indigenous people’s rights and the right to a safe environment. So that’s just one feature and I want to hold onto. There’s this holistic approach to human rights and I want to come back to it in a moment but that’s one feature.  A second feature of this international human rights law is actually it’s a weakness. It’s a weakness that I want to underscore because at that time in the 1940s, when the Universal Declaration of Human Rights was being drafted, there was a deep suspicion of collective for historical reasons. In the Second World War, collectives like the Fatherland had been deeply oppressive; the concept of the masses in the Soviet Union had been deeply oppressive. So when the Universal Declaration of Human Rights was being drafted, there was a deep suspicion of collectives but nonetheless, in the Universal Declaration of Human Rights and international human rights law, there is a recognition of collectives but it’s muted.  And then the third feature I want to mention briefly of the international human rights law and Universal Declaration of Human Rights is that it does talk about primarily the regulation of state power. International human rights place responsibilities on states and there are important reasons for that; however, importantly, it does recognise that other bodies have human rights responsibilities. It’s not just the state, others have human rights responsibilities as well. So there are just those three features – the holistic dimension of human rights, a suspicion about collectives and also this idea that states have responsibilities under human rights but so do others. It’s those three features where it seems to me in Aotearoa, we can benefit from Te Tiriti and when you wish, Sally, I’m happy to briefly explore that a little bit. |
| Sally | I think that sounds amazing. How about we have our next song, ‘Ehara i te mea’ and then we will jump in with a bit more discussion and debate and dialogue amongst you guys around where and how does Tiriti fit within national and international human rights legislation. |
| Katherine | In terms of ‘E hara i te mea’, that awareness of intergenerationality, if you can use that term, brings a sense of responsibility where they don’t get it any other way. Because you’ve got a planet for future generations, there is a sort of a way into people’s worlds which is where Ngāi Tahu’s use of the whakataukī “For us and our children after us” is quite a helpful framework. It is kind of connected what you’ve loosely referred to as the weaknesses of the human rights. |
| Paul | Yes and you’ve probably heard me say, I talk about the three R’s: building relationships and shared responsibilities and also rights. And when I talk about shared responsibilities, that is a shared responsibility to the environment, which means the future as your intergenerationality. Responsibilities to our neighbours, to our whānau, to our hapū and iwi when it’s appropriate for us. You know, I try to be candid about these things. I think human rights is a good thing but there are weaknesses and one of the things that excites me is that consideration of te ao Māori and Te Tiriti can actually help address some of those weaknesses and you put your finger on one of them Katherine: intergenerationality. |
| Richard | If I can offer a little bit of a kōrero on the waiata ‘Ehara i te mea’. So ‘Ehara i te mea’ is a waiata that was composed by Eru Timoko Ihaka who was from Te Kao in the far north. In 1876, he was born and he was of Te Aupōuri and this waiata talks about the handing down of traditions from generation to generation, i tuku iho i tuku iho. The waiata is in three verses and the first things that it talks about is that love is not a new thing, it has been handed down from generation to generation. The second verse talks about te whenua, the land, and it talks about the land as the wellbeing of the people and again, it says it’s been handed down from generation to generation. And then the third verse talks about three attributes - whakapono, tumanako and te aroha, which is faith and hope and love - and it says also it has been handed down from generation to generation. Nō ngā tūpuna, from the ancestors. So that’s the context of the waiata ‘Ehara i te mea’ and it’s sung frequently in schools and at marae and at pōwhiri and at whakatau right around the country. It’s one of the most celebrated waiata, there are two or three different tunes. |
| Katherine | Just talk a little bit, Richard, about ‘tuku’ because there’s something special about ‘tuku’. |
| Richard | The word ‘tuku iho’, it really is, it’s about not just giving something over but it’s actually about creating a really just a genealogical connection between the things. It means that you can trace those things right back to their source. |
| Katherine | And they can’t be commodified. |
| Richard | No, those are things that are there because they’re your inheritance. You can’t sell your whakapono, you can’t sell your faith, you can’t sell your hope, you can’t sell your love, it’s freely given and freely received. In one context it talks about the transfer of legitimate authority but it also talks about in some respects the return. So if somebody is passing away, one of the karakia that is done is the karakia Tuku Wairua which is to hand the wairua back to where it belongs as it exits its earthly life. Very interesting word. |
| Katherine | And also I’d think of it in relation to tuku whenua as well, that’s the depth of authority of tino rangatiratanga. So those are the things that are so difficult to express properly in the language of English. English has its advantages too because it can be very specific but it is a language which its hard to capture the metaphor. |
|  | **MUSIC – EHARA I TE MEA** |
| Sally | This is “Speak Up – Kōrerotia” and we’re talking with Paul Hunt, Katherine Peet and Richard Tankersley about Te Tiriti and other international and national human rights document. We haven’t even really got to the kind of main thrust of our kōrero yet, but in this section we will get there! I’d like to think now about what are the other national human rights legislation documents we have here in New Zealand, but also those international ones that Paul, you’ve already referenced. What is it that Te Tiriti can bring or illuminate or bring to life, I suppose, that may be missing? Paul, you’ve already referred to some weaknesses in some of those international human rights documents, so what is it that Te Tiriti can show us or can point to that might fill some of those weaknesses or those gaps? |
| Paul | Thanks very much, Sally. So look, just a couple of points on that. One of the weaknesses of human rights in Aotearoa in statute is that it’s not a holistic vision of human rights. So in the Universal Declaration of Human Rights, there’s a holistic vision but when you come and look at what happens in Aotearoa, outside of Te Tiriti there’s not a holistic vision of human rights. By holistic I mean there isn’t a vision of human rights for the most part in Aotearoa which encompasses civil rights, political rights, workers’ rights, social rights, cultural rights, the right to a safe environment and indigenous people’s rights. There isn’t that vision.  If you look at for instance the New Zealand Bill of Rights Act, it’s really a code of civil rights and political rights and the rights - I’m generalising a bit - the other rights are largely set aside and this really irks me. I mean the New Zealand Bill of Rights Act is a really important document, don’t misunderstand me, but it’s incomplete, it doesn’t have all the rights in it that New Zealander’s signed up to.  And one of the things that really puzzles me - and it irks me, I have to say - is that New Zealand government officials - successive governments, I’m not talking about one government in particular - pre-Covid, they fly to New York and Geneva and they talk about a holistic vision of human rights, they would affirm a holistic vision of human rights, they would affirm civil, political, economic, social, cultural rights etc., that’s in New York, that’s in Geneva, and then they get on a plane and they fly home and somewhere over the Pacific they have a severe attack of amnesia and by the time the plane rolls into the airport at Wellington, they’ve actually forgotten a lot of the stuff that they’ve been affirming in the United Nations. So I think that’s a great pity. We’ve lost sight in Aotearoa of this holistic vision of human rights.  And one of the great contributions it seems to me, one of the great things that we get from Te Tiriti is a holistic vision because Te Tiriti has a holistic vision, right. Te Ao Māori has a holistic view, an intergenerational view. It’s not just about individuals, it’s also about mother earth. So here in Te Tiriti, I think that it can help us reclaim the holistic vision of human rights which was there back in 1948 and it reappears from time to time in the United Nations but we lose it somewhere over the Pacific when the politicians and the policymakers fly home. So that, to me, is one of the great contributions of Te Tiriti to our understanding of human rights.  Look, there are others but that’s just one that strikes me as being really important. |
| Katherine | I guess I’d inevitably want to ask what we can do about it. I don’t know if you’ve got a solution. |
| Paul | Well actually I spend a lot of my time wrestling with that question. One approach - which is not the one I favour just now - one approach is to amend the New Zealand Bill of Rights Act so that it includes not only civil and political rights, which it has at the moment, but also the other rights which are in the documents that New Zealand has promised to comply with but which they haven’t put in the New Zealand Bill of Rights Act. So one possibility is to amend the New Zealand Bill of Rights Act.  I think a more promising way to proceed is as follows: I think that we should look at particular sectors of government, for instance health or education, and we should look at those sectors and see how this holistic vision of human rights can be folded into those sectors. How the holistic vision of human rights, for instance the right to healthcare and health protection, how it can be placed into the relevant legislation on health legislation that is about to go through Parliament, a huge new reform of the health system.  So this is an opportunity to insert the international right to healthcare and health protection into that legislation, into the regulations, into the institutions, into the processes. I just use health as an example but I could say the same thing about education and so on. So I think that’s a more promising route is to try and insert these human rights - I can’t over emphasise - which New Zealand has promised to respect - to insert these human rights in the relevant sectoral legislation, whether it’s health, whether it’s education, whether it’s housing or whatever.  So Katherine, that’s my favourite approach. Of course that will be a struggle but I think we’re more likely to get that than the revision of the New Zealand Bill of Rights Act. |
| Katherine | It’d be great to get some legislation which recognised Te Tiriti o Waitangi full stop. Without any principles or without anything else but that’s another issue. |
| Paul | You’re quite right. |
| Sally | When I was putting this show together, there were a few elements that occurred to me that Te Tiriti might bring and I’d be keen to hear your perspective, Paul, and Richard and Katherine as well. As well as the more holistic idea you’ve been thinking about and talking about, Paul, also the idea that Te Tiriti is not just about human rights for the individual but human rights as a collective or for the collective. Also the idea that we’ve also touched on, it’s not just the state that has the responsibility for ensuring human rights but that responsibility comes back to us as well. And the other thing was the fact that Te Tiriti has a flow or a sense of time in it, it’s not just about the present, it's also about the past and the future. So any comments you’ve got about those other points I’d be really interested to hear. |
| Paul | I’ll try and keep real brief but I’ll just get that ball rolling Richard and Katherine if that’s OK. |
| Richard | Yup. |
| Paul | So if you look at the international human rights law that you know, I’ve been promoting, there is an emphasis on an individualistic vision of society, an atomistic vision of society which does not chime with te ao Māori and it doesn’t chime with Te Tiriti. But when you unpack a little bit more closely the Universal Declaration of Human Rights and international human rights law, you do actually find elements of recognition of collectives. So for instance, in international human rights law there is the right to self-determination, well that’s a collective right. There is the right to a safe environment, well that’s a collective right. There is the right of development, that’s a collective right. There is a right to health protection. You can’t have health protection individually, it’s got a collective element in it. There is, importantly, the UN Declaration on the Rights of Indigenous Peoples which is chock full, as it should be, of both individual rights and collective rights.  So within international human rights law, there is recognition of collectives but it is a bit understated and we need to highlight it more and I think that we are assisted in that endeavour by looking at Te Tiriti which of course, by conceptions of the collective, iwi, hapū, whānau, etc., is part of the DNA of not only te ao Māori but also Te Tiriti. |
| Richard | It’s a really helpful exploration to take part in. Te Tiriti was a document that was signed between collective groups; the people that signed were in representation of collectives and that is all about collective rights and responsibilities, from my point of view. I think, you know, doing it sector by sector and experience by experience would probably be the best way, I think. When we sign something at the United Nations, we aren’t declaring that we have achieved all those human rights improvements that are contained in that document. What we’re saying is that we’re committed to these human rights and that we’re committed to, for the most part, the realisation of these human rights over time as resources become available to the country and in some cases, we’ve committed to no retrospective steps. I don’t think that’s been written into all the instruments but it is about the progressive realisation of these things and one of the best ways to progressively realise them would be to examine those human rights alongside Te Tiriti o Waitangi as we start to enact those things in our domestic legislation.  So I really like your earlier point, Paul, about do it within health, do it within education, do it within work, do it in the right to housing, shelter, all those things. We should be looking at the international human rights commitments alongside Te Tiriti as we put those things into our domestic legislation. Because it doesn’t happen just because we signed it in New York or in Geneva, it happens when we enact it and if the rule of law can sit alongside Te Tiriti as we formulate a way forward, then from my point of view that’s a really helpful way of going about it.  It might be a bit pie in the sky but it certainly brings it down from that sort of overarching idea of reinventing the Bill of Rights Act, which would be a very challenging piece of work. |
| Katherine | Paul, is there any opportunity to link this to the new Public Service Act and the commitment in that for the Public Service to have a commitment to Te Tiriti but also to open government? It seems to me that having a commitment to open government, requires the sort of capacity by public service and all the various parts of that which you’ve referred to in terms of health and education and justice and so on, that open government commitment requires you to be open, to do these things. I just think there’s something potentially there that would be really helpful to have the Human Rights Commission look at it. |
| Paul | Yes I agree with you Katherine. I think there are two things going on at the moment… well there are more than two, I’m just going to focus on two that sort of speak to what you’ve been referring to, Katherine. One is, you’re quite right, the new Public Service Act which talks about working in spirit of community and it also underscores issues around diversity and Te Tiriti. So I think that this new legislation does give us an opportunity. I think a second thing that gives us an opportunity is actually the Royal Commission of Inquiry following the terrorist attacks in Christchurch and that Royal Commission of Inquiry is a substantial document. Volume 4 is largely devoted to what it calls social cohesion. But if you unpack what it talks about in social cohesion, it’s sort of talking about the things we’re referring to: human rights and human responsibilities and diversity and inclusivity and responsibilities and so forth and so on.  There are others but at the moment there are those two things that are on people’s desks and government is trying to take them seriously and they do provide us with an opportunity. I think the window won’t be open for long so we better make the most of it while we have it. |
| Katherine | Well I think you’ve hit on something really important with the Royal Commission of Inquiry into Abuse in state care. I nearly couldn’t believe it when I read it but that’s the very first time I’ve seen a reference to the principles that are most relevant to the inquiry they’ve done, in relation to the Treaty this is as articulated by the courts of the Waitangi Tribunal: “include but are not limited to those that are stated”. Now that ‘but are not limited to’ is really new, something we really need to pick up on. |
| Paul | I was referring to the Royal Commission of Inquiry on terrorist attacks. |
| Katherine | Oh sorry, I’m sorry. |
| Paul | And you reference another Royal Commission - but you know, highly relevant and the point you make is very compelling. One has finished: the Royal Commission, we have its report, Volume 4 is all about social cohesion. And then there is the current Royal Commission which you rightly refer to which does hold some promise for the future but hasn’t yet reported. |
| Katherine | No but their terms of reference have been established and agreed. I was referring to the section in their terms of reference which talks about the principles not limiting the interpretation of the Treaty. |
| Paul | Quite right, it’s promising. |
| Sally | I think we might have to try and wind things up there. We’ve only really sort of begun, but we touched on, at least, what I was hoping we would touch on. So thank you all so much, it’s been so rich and you’ve had so much stuff to share and I’m sure everyone who is listening to this is going to go away with a lot of food for thought which is actually the aim of the show after all. Tēnā koutou, tēnā koutou, tēnā koutou katoa. Thank you so much for your time and for sharing your wisdom. |
| Katherine | Thank you Sally, for the work that you do. |
| Sally | Thank you, Katherine. |
| Richard | Likewise, Sally, thank you so much and thank you very much for the invitation to take part. I hope I’ve been able to make a useful contribution, usually I’ve been really enjoying listening to Katherine and Paul sharing their thoughts on these things. It’s been a privilege, I hope everybody stays safe and well, kia ora koutou. |
| Paul | Thanks Richard. Just my profuse thanks to Sally for including me, I really appreciate. |
| Richard | Let’s just close with a quick karakia.  **Unuhia**, **unuhia Unuhia ki te uru** tapu nui  Kia wātea, kia māmā, **te** ngākau, **te** tinana, **te** wairua i **te** ara takatā  Koia rā e Rongo, whakairia ake **ki** runga  Kia tina! TINA! Hui e! TĀIKI E! |