State of the Pākehā Nation - Joan Cook Memorial Essay 2016

The Awakening

A Reflection on the Treaty of Waitangi, Rights of Nature and our Constitution

About the author:

Carl Chenery is a Pākehā New Zealander of English, Irish and Scottish descent. He lives in Waitākere, Auckland with his wife Jennifer, their daughter Abby and son Blake. Carl was invited to write this essay to share his views on the Rights of Nature, the treaty and our constitution with a wider audience.

Kia ora tātou,

I used to think that the treaty was just for Māori. It is now my view that *our* Treaty – Te Tiriti o Waitangi – and the process those of us would go through to see it fulfilled, is the key to realising Aotearoa New Zealand as a model sustainable nation. Within our consciousness and reach, Māori, Pākehā and all Tāngata Tiriti can proudly be who they are, acknowledge the rights of nature and respond to climate change by breathing life into blueprints from the past to best prepare for the future.

Ko wai au? / Who am I?

Growing up, I was privileged. I am grateful to my parents for creating the opportunity for me to attend Auckland Grammar School. At that time I didn't identify as "Pākehā", but I learnt about striving for excellence and standing up for what I believe in. I remember fourth form social studies in 1994 where I was given a manila folder that said in the bottom right corner '*Pākehā* meant *white flea* or *white pig*'. Not a word I wanted to be associated with!

Ten years ago as part of a leadership weekend / Noho Marae at Te Rau Aroha Marae in Bluff, I was prompted to reflect on my culture and where I am from. All of us at the Noho were invited to share our ancestry. It made me reflect deeply on some important questions: who am I? where did I come from? and do I have the right to be here?

Since then, with my mother in particular, we have been tracing our ancestors and their stories. It has been enriching and has helped me understand my own connections, origins and relationships to being here.

My ancestors came out from England, Ireland and Scotland. They came out here on many ships; ten that I know of so far. On my mother's side, John Hayes came from Ireland in 1822 as a 12 year old boy with his nine year old brother. He landed in Whangaroa, a coastal settlement 60 km north of Waitangi. On my father's side, Captain William Porter arrived with his family in 1841 into the Waitematā harbour on his ship *The Porter*. Captain Porter was involved in establishing early colonial Auckland and was present at the Kohimarama Conference in 1860. I will say more on him later. My other ancestors arrived on ships to Auckland, Lyttleton and Bluff between 1855 and 1909, settling in Auckland, Hokitika and Canterbury.

Through this family history research and an understanding of New Zealand history, I have come to understand that New Zealanders cannot make meaningful progress in environmental sustainability, social justice or spiritual fulfilment without moving all these forward together.

I also came to see that if I wanted Māori to give up *their right to be angry*, I had to give up *my right to be ignorant* about what had gone on in this country. I could see that being ignorant was a right that I thought I had. I had inherited it from my forebears, teachers, politicians etc and therefore believed that I was entitled to it. This realisation shocked me.

This realisation prompted me to begin a process of *unlearning.* I had to re-examine many assumptions I had taken for granted. These included:

- That the treaty was "just for Māori" and only gave "them" rights.
- That my narrative of who Māori are, shaped by media, was objective and accurate.[1]
- The myth of Māori as "the noble savage".

It also prompted in me a process of wider *learning*. I started to develop insights into:

- The treaty giving me and my ancestors the right to be here with the privileges and responsibilities of citizenship, along with reaffirming the rights Māori already had.
- The sophisticated and entrepreneurial nature of Māori — including prior to and when settlers first arrived. I learned that in the 19th century Māori were highly profilic traders— trading, growing and exporting and feeding Sydney and California[2]. Māori were readily taking up reading and writing to a level that literacy here amongst Māori was higher than back in Europe.
- The early settlers were often utterly dependent on Māori for their survival.
- Te Ao Māori (The Māori worldview) through te reo and tikanga Māori. For example, that the word *whenua* means land *and* placenta. It is not a coincidence that they share the same Māori word; they both point the importance of land and identity.
- The treaty vs. role of the Waitangi Tribunal. The treaty was a commitment to mutual benefit on both sides. The Crown did not keep the agreement on its side. The Waitangi Tribunal settlement process involves agreeing a historical account, uncovering the Crown breaches of the treaty and providing only partial redress for the historical trauma and alienation. I recall the sentiment of Moana Jackson – ***"Treaties are not 'settled', they are honoured".***
- The nature of the settlements. I learnt that process only returns 1-3% of what the Crown acknowledges was illegally taken from Māori, and came to see that this level of generosity by Māori is largely unacknowledged and unappreciated by wider New Zealand.
- New Zealand's explicit and deliberate policy of assimilating Māori. This is now less explicit but is ongoing in our public organisations i.e. the gauges of success and wellbeing are seldom defined by Māori hapū, whānau and iwi.

Owning *our* Treaty – Te Tiriti o Waitangi

This brings me to *our treaty*. I say *our treaty* for two reasons:

Firstly, it is a single document; Te Tiriti o Waitangi, the Māori 'version', the document that Hobson signed on 'our' side (on behalf of the Crown). It is the authoritative treaty. Various NZ institutions including the education system, media, national and local governing bodies have gone to great pains to communicate a story: that there are 'two treaties', 'two texts', a Māori text and an English text (Te Papa emphasises this), that they mean different things, that this causes confusion and that we need a set of treaty principles to reconcile their differences. If the catch-cry for treaty education over the last 30 years was 'Honour the Treaty', we are now in a period of 'Understand te Tiriti'- our actual document. Understanding Te Tiriti involves coming to terms with how it emerged and its relationship with *He Whakaputanga o te Rangatiratanga o Nu Tireni* (the Declaration of Independence) in 1835. In this regard, I have found that the English translation composed by Network Waitangi Ōtautahi (Christchurch) in collaboration with other Treaty educators used in the 2016 Questions and Answers booklet[3] is a good entry point. We need to bring it to life within our institutions.

Secondly, it is ours whether by history or by our conscious choice. The treaty is what gives me, fellow Pākehā and all Tāngata Tiriti the right to be here.[i] [ii][4] It was the first immigration document for New Zealand and provides the only basis for honourable and just relationships between Māori and other New Zealanders. Something profoundly changes when we consciously own it as ours; it puts us in our history. Understanding this reshapes our thinking.

I now want to focus on our relationship with nature and how western legal systems have begun to give effect to constructive ways of relating to the natural world by recognising the worldviews of indigenous peoples.

Rights of Nature and Nature-Based Constitutions

Rights of Nature and Nature-Based Constitutions operate from the premise that an ecosystem has inherent rights. They are a way to give expression to values that recognise nature beyond property to be owned. I visited Ecuador in 2012 to learn about how Ecuador had incorporated Rights of Nature into their constitution. Since then, there have been two cases in New Zealand where Rights of Nature have been adopted through recognising the local Māori world view.

I understand that the Rights of Nature are inherent, or implied in Te Tiriti o Waitangi. The use of concepts like Tino Rangatiratanga and Taonga when understood within their cultural contexts are

[i] On the term Pākehā: I have found Mitzi Nairn's writings on adopting the term *Pākehā* helpful. *Pākehā* is a word used in the treaty (as well as the Declaration), and that being signed on behalf of the Queen it was a posh prose moment – it was not like they would say 'alright now and all the honkies...'. Mitzi instead explores the question- who as the Pākehā of the future might be? And seeks to role model herself off who she thinks Māori thought they would be getting. Sources for these are in the end notes.

[ii] *Tāngata Tiriti* was a term coined by Judge Edward Durie at Waitangi in 1989. In relationship with *Tāngata whenua,* the original people, *Tāngata Tiriti* can be 'those who belong to the land by right of that Treaty'. This encapsulates all ethnicities, including Pākehā, who have come to live in New Zealand. I like both of these terms.

about positive human relationships with other living entities. Many Tāngata Tiriti are yet to respect these relationships and/or have our own systems that sit alongside them.

At the root of these issues in our dominant pākehā culture is the illusion that people are *separate* - separate from each other and from the wider ecosystems that we are a part of. This mindset was powerfully influential in the rise of colonisation. This thinking continues to support and sustain racism and structural discrimination within New Zealand society today – illustrated by the level of acceptance and complacency about the disparity of treatment of Māori and the disparity in social and economic outcomes.

If we are to address this and take responsibility, we need to take this *projection* back off Māori and the land. The projection onto the land and Māori needs to be taken **back together**. The projection operates at all levels: personal, interpersonal, group, society, and institutionally.

This human separation from, and domination over the rest of nature is embedded institutionally in New Zealand's western legal system. All the elements of nature are treated as objects or property to be owned. Our current constitutional framework which gives direction to the legal systems and courts, legitimises and perpetuates the destruction of earth's ecosystems. Through our legal systems, we consent to the pollution of our air, water and soil. Under the Resource Management Act, we call them resource 'consents'. This objectification of the natural systems that sustain us is also embedded in our processes for redressing environmental harm. When we damage an ecosystem, we may pay a fine to the local council but full restoration often does not extend to the ecosystem in question.

When I started to see other models – other laws and cultures – that give effect to more related ways of being, it became clear how pervasive our current dominating approach is. It also became clear how trying to be more efficient within this mindset and approach is not a solution to our ecological challenges.

What happened in Ecuador?

> *'Nature or Pachamama, where life is reproduced and exists, has the right to exist, persist, maintain and regenerate its vital cycles, structure, functions and its processes in evolution.'*
>
> - Ecuadorian Constitution, Article 71[5]

In 2008, Ecuador became the first country in the world to acknowledge the Rights of Nature within its constitution. A number of contextual factors played a role in this approach. Ecuador is one of the most biodiverse countries in the world. They have felt the impacts of environmental degradation from oil spills within the Amazon basin. Acknowledging the Rights of Nature, was aligned with the worldview of the indigenous peoples of Ecuador[iii]. With these, alongside the global threat of climate change and desire for new development models, there was energy and readiness for fresh approaches.

The Rights for Nature articles in the Ecuadorian Constitution[5] acknowledge that Nature in all its life forms has *the right to exist, persist, maintain and regenerate its vital cycles*. Ecuador's Constitution

[iii] It aligned with the indigenous concepts of Sumak Kawsay - of 'good living' and of plurinationality. The Rights of Nature proposition was launched by the first meeting of the confederation of indigenous peoples in Ecuador as part of the consultation process.

allows for any citizen, community or group to demand the recognition of rights for nature before public institutions.

So far, this has been tested in one case to go before the courts and was presented before the Provincial Court of Justice of Loja on March 30, 2011. In this case, the outcome was granting a Constitutional injunction in favour of nature, specifically the Vilcabamba River, against the Provincial Government of Loja. The river *won* and reparations *went back to the river*, not as a fine to the council.

In Ecuador, significant challenges remain with the President of Ecuador subverting the rights of nature and the full prior and informed consent of local indigenous peoples in auctioning of oil drilling permits within their territories[6]. Having Rights of Nature within a constitution is not sufficient on its own. It needs to be upheld by its people and public servants, and in a context alongside a system that is conducive to and supports the basic needs of its citizens.

What has happened here in Aotearoa?

"My feeling is that the land was here first, so nobody owns it. If anything, it owns you. The water owns the water, the land owns the land. So our proposition to the Government has been, 'let us agree that Te Urewera owns itself'."

- *Tamati Kruger, Tūhoe Lead Negotiator*[7]

'E rere kau mai te Awa nui, Mai i te Kāhui Maunga ki Tangaroa, Ko au te Awa, ko te Awa ko au'
'The Great River flows, From the Mountains to the Sea, I am the River and the River is me'

- Ruruku Whakaupua – Te Mana o te Awa Tupua[8] (Document outlining agreed terms for a new legal framework for Te Awa Tupua / The Whanganui River

In Aotearoa New Zealand, there have been two cases where Rights of Nature have been recognised within western law.

In 2014 Te Urewera, a vast forested region inhabited by the iwi Tūhoe, became recognised as a legal entity. It has all the rights, powers, duties, and liabilities of a legal person[9]. The Te Urewera Act 2014 is undoubtedly a revolutionary legal shift here in Aotearoa New Zealand and on a world scale, yet it is consistent with the 800-year relationship between Tūhoe and Te Urewera. This is in spite of 150 years of assault by the Crown, summarised in Minister of Treaty Settlements Chris Finlayson's apology on behalf of the Crown.[10]

> *"These historical breaches included indiscriminate raupatu or land confiscation, wrongful killings including executions, years of scorched earth warfare, the failure to implement the Urewera District Native Reserve Act 1896 and the exclusion of Tūhoe from the establishment of Te Urewera National Park".*

Among many implications, the Department of Conservation, in collaboration with Tūhoe, will now need to adapt its management practices to reflect the new legal status of Te Urewera as its own entity rather than property to be owned, hopefully with lessons for us all.

In 2012 te Awa Tupua (or the Whanganui River) was similarly recognised as its own legal entity. This was established through a high-level agreement between the New Zealand Crown and Whanganui River Iwi and ratified in the Deed of Settlement signed on 5th August 2014. The legislation is having

its readings through parliament. Te Awa Tupua will be the first river ecosystem in the world to have its own legal standing within a western legal framework. Though setting a global precedent, this decision is an outcome of over 140 years of court action between Whanganui iwi and the Crown to have their relationship with the awa acknowledged and formally recognised.

Although not recognising the river and catchments as legal entities in the same way before the law, the Waikato River Settlement legislation sets a very high bar[11]. The legislation states that the regional policy statement must be consistent with the vision and strategy for the river. The vision and strategy is to 'protect and restore'- this is distinct from 'reduce the level of ongoing harm to'. If there is a conflict between a national policy statement and the Waikato river legislation, the Waikato river legislation prevails. The legislation established a Co-governance entity, the Waikato River Authority, to oversee the visions and strategy as well as fund initiatives to protect and restore the Waikato.

There is wider support It is worth highlighting that the Constitutional Advisory Panel reported[12] back in 2013 that *'the preservation and protection of New Zealand's natural environment and resources was a strong theme across the Conversation, especially but not exclusively amongst young people.*' The panel recommended that the government set up a process, with public consultation and participation, to explore in more detail the options for amending the Bill of Rights Act to improve its effectiveness. Suggestions included adding 'environmental rights,' 'affirming rights of the environment itself' and "referring to environmental protection as part of a right to intergenerational equity."

The Waitangi Tribunal's WAI 262 Report on Flora and Fauna entitled *Ko Aotearoa Tēnei*[13] ('This is Aotearoa' or 'This is New Zealand') is also highly pertinent. The report deals with environmental issues and Māori concern for their rights of kaitiakitanga being protected. It was the Tribunal's first report which commented on the whole of government rather than on specific departments. Released in 2011, it recommends major law reform, arguing for Crown and Māori to shift to a forward-thinking relationship of "mutual advantage in which, through joint and agreed action, both sides end up better off". The recommendations are yet to be responded to or implemented.

The need for a shift in worldview and the challenge to our governance systems ability to respond is playing out on a local level and at a much larger scale- in terms of climate change.

We need to re-frame the story: a story guided by what is needed to address the environmental challenges of the 21st century that affirms the rangatiratanga and mātauranga of diverse Māori, and recognises that a Māori world view can benefit us all.

Re-framing the story - where to from here?

I hold a vision that Aotearoa New Zealand can be a model sustainable nation - that who we are, the stories we tell others and ourselves are consistent with our values, systems and structures. These systems and structures can support a healthy society based on fairness, justice and opportunity. They can help us to live in accordance, not antagonistically, with the rest of the natural world. Our world view, structures and systems must reflect an understanding that we are intimately a part of the natural world, not separate from and somehow superior to it. An inherent part of this future is giving effect to te Tiriti o Waitangi.

We can be inspired by examples. One such example is the work of the group *Matike Mai Aotearoa – An Independent Working Group on Constitutional Transformation*. As Māori, they have been engaging with other Māori at marae around the country having kōrero on *Constitutional Transformation*[iv]. Matike Mai Aotearoa had 252 hui with Māori around the country between 2012 and 2015. The Rangatahi rōpū have had 90 hui with Rangatahi Māori. Their report is available online[14]. Looking to the future, the report states:

> *"We believe that 2040 would be a good year to set as a goal for some form of constitutional transformation. We accept that task will not be easy but what is available to both Māori and the Crown from the kōrero we have been privileged to hear is the very real generosity of spirit which our people continue to display. In spite of all that has happened there is still good will and a belief that the many obstacles to transformation can eventually be overcome and a new constitution established. It would be fair to say that throughout the last four years of discussion people did not see that as some pious hope but as a legitimate treaty expectation."*

As Tāngata Tiriti we need to digest this, to have our own conversations amongst ourselves about our shared values, about te Tiriti o Waitangi and the Declaration of Independence and about how to breathe life into these agreements for the future. I support the belief expressed that 2040, the bicentenary of the signing of te Tiriti, would be a good year to set as a goal for some form of *constitutional transformation*. My vision is for Tāngata Tiriti to be able to stand proud in what we, alongside Māori, have shifted in ourselves, our institutions, and our constitution. For us, that would represent a timeline of milestones, of learning and unlearning, and of gathering together. I see these actions as aligned with and mutually beneficial to creating a different relationship with this land and its peoples.

> *"We talk a lot about Papatūānuku but the ideals get trashed in practice whether it's global warming or the risks in something like oil drilling...a constitution that specifically set out the relationship with Papatūānuku would give greater protection and hold everyone accountable for the environment".*
>
> - *Matike Mai participant*

[iv] It is not new for Māori to be having constitutional conversations. Prior to te Tiriti, Rangatira would meet to discuss how to deal with lawless settlers disrespecting tikanga. This practice continued after te Tiriti was signed and when the agreement was largely disregarded by the Crown.

A Five year Plan for Tangata Tiriti

The Matike Mai report also includes in its recommendations that:

> *'a Māori Constitutional Convention be called in 2021 to further the discussion and develop a comprehensive engagement strategy across the country.'*

My question is: What would this look like for us? 2021 is a year we ought to aim for too as a time to gather for our own discussions. 2021 is *five years away*. In effect, this is us developing a 'five year plan' for us as Tāngata Tiriti. Most organisations have a five year plan- what if an aspect of this for all our five year plans was increasing cultural competence, our understanding of history so that we as Pākehā and all Tāngata Tiriti are in a more informed/mature position to meet and envision the future? What if we had a constitution that recognised us as a *Pacific island nation* rather than a British outpost? What would that look like? If you were sitting in 2021 looking back five years to now, what would *you* want to have happened? What would be in your and your organisation's five year plan?

I return now to my great-great-great-great-Grandfather Captain William Porter, whom I mentioned earlier. He arrived here in 1841 on his ship *the Porter*. He was a member of the first colonial parliament in 1854-55. Prior to travelling out with his family from Liverpool, he had been a captain on slave ships. Subsequently, I think he had had his own *transformation*. Back in September 1855, he moved:

> *"That, in all dealings with the natives, it is the duty of the Government to carry out the Treaty of Waitangi faithfully, honestly, and liberally, in accordance with the sense in which they (the Natives) understood it, and not according to any interpretation the Government may put upon it which they did not understand... the government had put an improper construction on the words of the treaty..."*[15]

When I speak or read that now, I hear him talking about *te Tiriti o Waitangi* - what was agreed, what was actually signed on our behalf, and not getting caught up in the attempts to conflate this with other 'texts' or 'documents'– something that is still happening today.

Parliamentary debate ended with an amendment that any decision on this would wait 'until the formation of *Responsible Executive."*[v] The environment today necessitates any r*esponsible executive* in the 21st century must operate with a different story of our ourselves *as part of Nature,* and playing our part in addressing climate change. Te Tiriti o Waitangi provides a vital means to acknowledging the rights of nature within our constitution, and a story of connection within which effective actions towards ecological sustainabilty can be promoted. Our process to get there as Pākehā – in our unlearning, learning, listening, and action alongside others – will greatly serve us and those to come.

It is not any *executive* we are waiting for, it is *ourselves*, and waiting is not a luxury we have.

Let us not wait. Let us act.

Tēnā tātou katoa.

[v] *Responsible Executive* referred to the Executive being accountable to parliament (and the people) rather than the Queen. Today, we can also understand *responsible* in a wider context.

Endotes:

[1] Kupu Taea is an Auckland-based Māori and Pākehā media research group that has studied how the media reports Māori, te Tiriti o Waitangi and Māori/Pākehā relations since 2004. http://www.trc.org.nz/alternatives-anti-maori-themes-news-media

[2] Hazel Petrie (2002) Colonisation and the Involution of the Māori Economy. A paper for Session 24 XIII World Congress of Economic History, Buenos Aires. July 2002. Accessed from: http://news.tangatawhenua.com/wp-content/uploads/2010/10/24Petrie75.pdf

[3] Network Waitangi (2015) Treaty of Waitangi - Questions & Answers. P52-55. Accessed from: http://nwo.org.nz/files/QandA.pdf

[4] Mitzi Nairn (2009) Thoughts on Social Justice: Accepting the name Pākehā. Accessed from: http://awea.org.nz/accepting-term-pakeha-mitzi-nairn ,
Mitzi Nairn (2011) What might we Pākehā aspire to be in the future? Joan Cook Memorial Essay 2011, also published in Tu Mai magazine February 2011, Issue 115, p42-44. Accessed from: http://ndhadeliver.natlib.govt.nz/delivery/DeliveryManagerServlet?dps_pid=IE3809263

[5] Rights of Nature Articles in Ecuador's Constitution. Accessed from: https://therightsofnature.org/wp-content/uploads/pdfs/Rights-for-Nature-Articles-in-Ecuadors-Constitution.pdf

[6] http://www.pachamama.org/advocacy/oil-free-amazon

[7] Quoted in third reading of te Urewera Bill by Pita Sharples https://www.beehive.govt.nz/speech/third-reading-te-urewera-tūhoe-bill-parliament-house-wellington

[8] Whakatupua – Te Mana o te Awa Tupua. Accessed from http://nz01.terabyte.co.nz/ots/DocumentLibrary/RurukuWhakatupua-TeManaoTeAwaTupua.pdf

[9] Te Urewera Act 2014. Accessed from: http://www.legislation.govt.nz/act/public/2014/0051/latest/whole.html#whole

[10] Radio NZ; Crown makes frull apology to Tūhoe. Assessed here: http://www.radionz.co.nz/news/national/252741/crown-makes-formal-apology-to-tuhoe. Full address to Tuhoe-Crown Settlement Day in Taneatua: https://www.beehive.govt.nz/speech/address-tuhoe-crown-settlement-day-taneatua

[11] Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010. Accessed from http://www.legislation.govt.nz/act/public/2010/0024/latest/DLM1630002.html

[12] The Constitutional Advisory Panel reported back to government at the end of 2013: www.ourconstitution.org.nz/Recommendations

[13] Wai 262 Reports are downloadable from the Waitangi Tribunal website. A press release on the reports is here www.justice.govt.nz/tribunals/waitangi-tribunal/news/wai-262-ko-aotearoa-tenei-report-on-the-wai-262-claim-released and a documentary is viewable online here: http://www.nzonscreen.com/title/wai-262

[14] Aotearoa Matike Mai report - http://www.converge.org.nz/pma/MatikeMaiAotearoaReport.pdf

[15] W F Porter, Hansard – NZ House of Representatives - Tuesday 4th September 1855