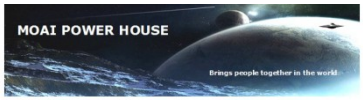
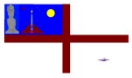




The High Sheriffs' Association of England & Wales

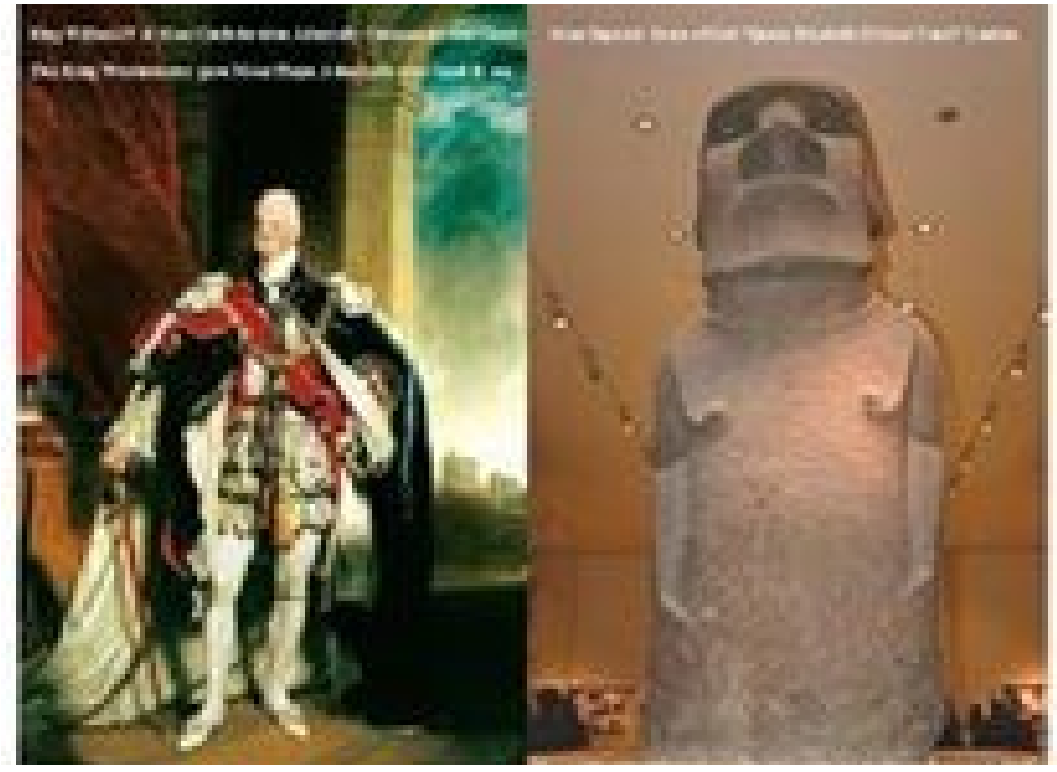
Wednesday September 2, 2015

Moai Crown King William IV Admiralty County Courts

Commonwealth of Aotea New Zealand Pacific World UK NZ

Westminster Parliament England U K 1820 to 1834 Flag Law

King William IV Fixed Flag Contract with “Moai Crown” Lore



Magistrate and High Court of Admiralty Martial Law 1820 - 2022

Kings Bench Property Search Control Seizure Arrest Warrants

CONFEDERATION OF CHIEFS WORLD NATIVE MAGISTRATE KINGS BENCH COURT OF UK NZ

OF KINGS AND OFFICERS — THE JUDICIAL DEVELOPMENT OF PUBLIC LAW AND FEDERAL LAW REVIEW

Bradley Selway

1/ William Conqueror 1066 2/ King William III 1694 3/ King George III 1766 4/ King George IV 1823 5/ King William IV 1834 6 King Ernest Augustus 28/3/19

1/ Black cross Navy Military Protectorate against Pirates Satan 2/ 4 x St Patrick 8 Pt Star N E S W 3/ Red Cross 7 Kings Blood Lines Continuity of Sovereignty 4/ Big Red Cross of St George of England King George I to VI 5/ Sea of Admiralty & Sky Blue Law 6/ 1834 Declaration of War Emergency Court Martial Law

The Confederation Chiefs Executor John Wanoa Jurors and Paramount Chief Tira Waikato Wharehere Manukau Pungapunga Tribal Members in the Waikato Region of Arapuni Karapiro

From the Confederation of Chiefs and 50 Indigenous Surname "Native" Chiefs Descendants

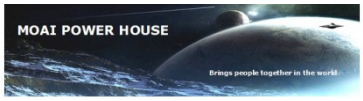
To

Your Excellency The Right Honorable Dame Cindy Kiro, GNZM, QSO

Governor-General of New Zealand

Government House
Private Bag 39995
Wellington Mail Centre
Lower Hutt 5045

You wear our St Patrick 8 Pt Star Kings Flag Contract a Prosecuted Offence



"PRIVATE PROSECUTOR AND INVESTIGATIONS"

Government House
Private Bag 39995
Wellington Mail Centre
Lower Hutt 5045

12-4-2018 to Saturday 24-9-2022

MOAI POWERHOUSE GROUP
Proposed Operations in London

NA ATUA E WA AOTEA LIMITED
Hamilton 3200 New Zealand

"Moai Crown" Westminster City England Creditor

NA ATUA E WA AOTEA LIMITED New Zealand

MOAI POWERHOUSE GROUP London England

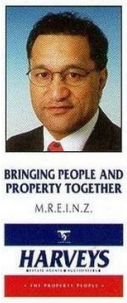
"Moai Powerhouse Bank" Westminster City England

"Moai Royal Bank" New Zealand and Pacific World

KING ERNIST AUGUSTUS V REGENT

Moai Confederation State King William IV Flag of Admiralty Law Jurisdiction a Sovereign State 1835 Declaration of Independence & British Constitution

Moai Crown State Default Convictions of Private Prosecutor Superior Courts King William IV Sovereign Flag Jurisdictions!



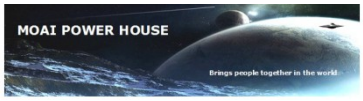
John Wanoa
SALES QUALITY RESIDENTIAL

09-520-4546 Business
025-592 245 Mobile 24 hours

REMUERA
HARVEY CORPORATION LIMITED
393 Remuera Road, P.O. Box 28223, Remuera, Auckland, New Zealand.
Fax 09-520-4547

Your Excellency The Right Honourable Dame Cindy Kiro, GNZM, QSO
Governor-General of New Zealand

I am writing to you today to express my lawful legitimate and legal position as a Surrogate King George IV 1823 Contract and Surrogate King William IV 1834 Flag Sovereign Nations Founding of New Zealand British "Crown" Legal Authority and Appointed President of the Confederation of Chiefs at Kororareka Bay of Islands with the British 1834 Confederation of Chiefs Flag Commercial Contract Legal Inheritance to the British "Crown" CORPORATIONS Two Party Private Contract locked to the INDIGENOUS SURNAME CHIEFS of KORORAREKA on the RAWHITI NATIVE LAND BLOCK this date 11 March 1834 King William IV made Extant forever more in his Statute Law in Westminster Parliament you have Usurped for your New Zealand "Crown" Government "MAORI" CORPORATIONS CONTRACT since 1837 Queen Victoria Reign historically linked to **Okiato Native Magistrate Kings Bench Court Bank** British Origins as **NATIVES OF NEW ZEALAND** and **not "MAORI**" as you have Illegally Published in Government Legislation as "MAORI were here in 1769 as FALSE WHAKAPAPA History Tampering with British Government Press Documents of the CUSTOMARY NATIVE LAND TITLES of **Paramount Chief Rewharewha Manukau buried above Rawhiti Township** Manawhenua over these "NATIVE" LANDS registered under the Freemasons Glasgow Native Magistrate Court Land Records Scotland Sale of Uetaua (Pukekohe Waiuku West Coast to Bombay Hills to Clevedon to Maraetai Beach East Coast) to Queen Victoria 11 March 1862 linked to Awaroa Native Magistrate Kings Bench Court Bank in Helensville West Auckland linked to Paramount Chief Tira Waikato Whareherehere Manukau of Pungapunga Marae Arapuni Maungatautari Mountain Pa Site "NATIVE"

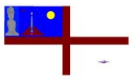












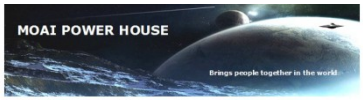
LAND TITLE TRANSFER to KING GEORGE IV Manawhenua over New Zealand Country Title sold to King George IV British Crown in 1823 by Chief Tira Waikato Whareherehere Manukau LAND DEEDS

I am telling you Governor General **Cindy Kiro** your Government and **IWI MAORI TRUSTEES** are very mischievous to use our **BRITISH Confederation Flag** as a **Whakaputanga Maori Flag** of Third Party Contracts to Queen Victoria Violation of our **King William IV Chiefs of the Confederation First Party** to British "Crown" Contract originally set up in the **Okiato Magistrate Court** in Kororareka Russell Bay of Islands is a **Threat to our Chiefs British Kings Commercial Trading Bank Flag** that established the founding of New Zealand confirmed by Captain James Cook that King William IV Founded New Zealand First and not your **New Zealand "MAORI" Government** cut your Sovereignty to Westminster Parliament and you are trying to steal our 1832 to 1834 King William IV Contract Flag while you limited 1840 Treaty Claims to 1840 so that's where your Corrupt Jurisdiction lies and not 1834 Confederation Flag Jurisdiction or **FAKE "MAORI " Tribe 1840** Treaty of Waitangi **you are LOCKED to that date CONTRACT 6 February 1840 FIXED in STATUTE LAW** cannot use our 1834 FLAG as Chiefs **1835 WHAKAPUTANGA FLAG** because our **"NATIVE" Chiefs surnames** I have listed here are Second Party to King William IV First Party Commercial Contract while your **QUEEN ELIZABETH II** Severed your Sovereignty Ties to Westminster Parliament So now you are sending the Retired Speaker of the House **TREVOR MALLARD to Ireland** to Steal the Republic of Ireland Parliamentary Laws to use in your Corrupted Fraud Governments Jurisdiction wont work because we the Confederation of Chiefs Executors have the Dutch King William III 8 Point Star of St Patrick Municipalities Act I made Public Notification Claims to these 6 Dutch Kings Legal Authority of Admiralty Law over the top of you and your Corrupt Government that it is an **Offence for you to go to Kororareka HARATU MARAE t**o use your own KIRO Whakapapa with your IWI MAORI "CROWN" PAKEHA EUROPEAN WHAKAPAPA to try to overpower **our "NATIVE" CHIEFS INDIGENOUS SURNAME WHAKAPAPA CUSTOMARY NATIVE LAND TITLES** is on the Records in Westminster So I say to you CINDY KIRO to Cease and Desist from going to Kororareka to claim the 1835 Whakapunga Flag Sovereign Authority is Fraud and Corruption of our Contract Agreement and that **"MAORI" is a Conflict of Interest on our "MOAI CROWN" "NATIVE CHIEFS LISTED HERE WHAKAPAPA** that **you Corrupted** I tell the **TRUTH in this FORMAL LETTER TO YOU to tell you WHO I AM on these NATIVE LANDS with the "NATIVE CHIEFS I chose as a CUSTOMARY NATIVE LAND ASSESSOR you must REFUTE.**

Zoom Court Hearing Agenda Saturday 17 September 2022 you must Refute or it becomes LAW

Letter of warning to you Governor General **Cindy Kiro violating our King William IV 1834 King Flag** Commercial Contract between the Paramount Chiefs of Kororareka and King William IV Land Transfer Deeds from the British "Crown" **does not belong to "Maori" IWI Tribe Corporation**s and the New Zealand Crown Government Private Corporations The Native Customary Land Title belongs to the 3 Successors of these 50 surviving indigenous surname Chiefs successors of Kororareka Russell and **Paramount Chief Rewharewha Manukau buried in Rawhiti Township Maunga** I chose 3 Named successor Chiefs from Russell Rawhiti Boundary area and I chose from 97 indigenous surnames of the chiefs of the Waikato area of Maungatautari Mountain Pungapunga Marae Arapuni Paramount Chief Tira Waikato Whareherehere Manukau British Land Transfer Title in Edinburgh Magistrate Court Scotland to King George IV1823 for the Sale and Purchase of New Zealand Country "Crown" Leases

You Governor General **Cindy Kiro** has Kiro surname ancestors on Rawhiti Land block but no chief over the area yu are going to steal the real NATIVE SURNAME Manawhenua Land Title NOT MAORI TITLE EUROPEAN SURNAME Titles over all the indigenous surname Chiefs NATIVE SURNAME First Nations CHIEFS I am naming as the Manawhenua over the Bay of islands 3 selected Chiefs I

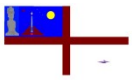












choose as the NATIVE LAND ASSESSOR on 13 September 2022 for Maori IWI Marae at Kororareka which is a threat to the indigenous Native Customary Land BRITISH CROWN TITLES Matching what I chose and not MAORI Choosing their Chiefs Titles in REAL ESTATE FREEMASONS LAND SURVEY Transfer of Lands from a NATIVE SURNAME CHIEF to a White Skin EUROPEAN BRITISH "CROWN" AGENT is a British New Zealand Land "Crown" Conflict of Interest with a QUEEN VICTORIA QUEEN ELIZABETH II KING CHARLES Corrupted Foreign Corporation Government Company breaking our British Kings Emperor Contract Laws and Rules of our Kings Emperors Partnership Contract 1834 King William IV Flag Ship and King George IV "Crown Contract sale of New Zealand Country to King George IV as Final Argument Un-refuted Affidavits in this Court Hearing Saturday 17 September 2022 at 6 pm New Zealand time 7am UK time 9am EU 12 Midnight Canada becomes CONTRACT LAW

You Governor General **Cindy Kiro** is mischievous to use the Confederation Flag as a Whakaputanga Maori Flag of a Third Party Contracts to Queen Victoria and Queen Elizabeth II is a **Violation of our King William IV Chiefs of the Confederation Contract in Okiato Magistrate Court in Kororareka** Russell Bay of Islands 1832 is a Threat to our Chiefs British Kings Commercial Trading Bank Contract Confederation Flag direct to Westminster Parliament our interpretation Flag is that it established the founding of New Zealand confirmed by Captain James Cook that is on the Records in Westminster So I say to **Cindy Kiro you must Cease and Desist** from going to Kororareka to claim your "MAORI" 1835 Whakapunga Flag Sovereign Authority that Flag belongs to the Confederation of Chiefs is Fraud and Corruption of our Contract Agreement and that **"MAORI" NZ Australian Governments Private** Corporations Corrupt Fraud Land Transaction **Fabricated "MAORI WHAKAPAPA"** is an Invented Tribe Legacy of the New Zealand "Crown" Offshore Foreign Business is a Conflict of Interest to our "NATIVE" British Land Titles original Contracts of King George IV and King William IV and me and the Living Chiefs I choose 3 Chiefs from Bay of Islands and Waikato shall be the True Sovereign Laws over this NATIVE LAND Country of New Zealand **CINDY KIRO** your Photo is in this Native Magistrate Court for **Committing Treason and Corruption of our Kings Laws of the Land "CROWN" Business** with Britain UK you area a fifth party in this **Contract Agreement with the British "Crown"**

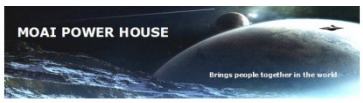
Other matters of the Court are for 77 Cook Street Seizure Notice to the Police and Government Prime Minister all your photos and ID are in this Court charged Prosecuted and Convicted of Treason Genocide Mass Murder and Bio weapons Bank Wars on our Sovereign People of the world witnesses

John Wanoa

021 078 2523

moaienergy@gmail.com

Queen Elizabeth II Wealth she Stole off the Countries she and her Corrupted Criminal Organization Rothshchils "City of London" Corporation "Bank of England" Fake Fraud "Fiat Pound Note USD Stole off the Sovereign Confederation of Chiefs Public Population of New Zealand and Sovereign People of Britain UK and the Worlds Native Populatons shall return back to them in this Native Magistrate Kings Bench Court toda Saturday 17 September 2022 at 6 pm New Zealand 7 am UK time 9 am EU time Here is what the Court and Sveregn People of the World wants back from this Un Royal Family of Pirates and Treasonous Bank Fraudsters for their own Selfish Families https://fb.watch/fAB1ToFA38/ We the Sovereign People in 250 Countries Clainm and Proclaim this Stolen Wealth belongs to us the People direct this Court to Cash the Moai Pound Note Legal Instruments over this our Valued Wealth

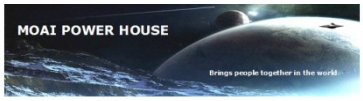


King William III King George III King George IV King Earnest Augustus I King Earnest V Pound Note

Moai Pound Note Debtor Instrument over Governor General Cindy Kiro-Prime Minister Jacinda Ardern

Governor General Cindy Kiro I know that you are going to “HARATU MARAE” in Kororareka on 28 October 2022 as a “MAORI” to “CLAIM” the WHAKAPUTANGA FLAG of “MAORI” Interpretations of you New Zealand Invented “MAORI” Tribe that is a FICTIONAL ILLUSION TRIBE Your NZ CROWN predecessors Created to FOOL NEW ZEALANDERS into thinking you can GET AWAY with FRAUD THEFT STEALING our KING WILLIAM IV 1834 CONFEDERATION OF CHIEFS 8 POINT STAR OF ST PATRICK CHURCH FLAG JURISDICTION THAT YOU WEAR ON YOUR “CROWN” CLOTHES AS OFFENSIVE TO US WHILE YOU DONT HAVE THAT LEGAL AUTHORITY IN FRONT OF THE DESCENDANT NATIVE SURNAME CHIEFS to be operating your ILLEGAL FRAUD CORRUPTED CORPORATE PRIVATE Government Business with your 1902 FLAG JURISDICTION as a THREAT to our 8 POINT STAR ST PATRICK FLAG that has these 4 stars of our Corporate Business in 4 Corners of the World is NOT ANY OF YOUR FOREIGN COMPANY'S BUSINESS to Offend us the CHIEFS of this KING WILLIAM IV FLAG that you and your Governments have USURPED its Power and 8 POINT STAR AUTHORITY MUNICIPALITIES ACTS of KING WILLIAM III and KING WILLIAM IV Acts of Westminster Parliament since 1837 we now BILL CHARGE DEBTOR-D YOU FOR ALL 185 YEARS since King William IV died in 1837 this Court Bill you 185 years of your Governments Corrupt business now owes the Sovereign People of New Zealand what I determine as the Prosecutor of this Native Magistrate Kings Bench Court says you carry on your Head the same Charge as PM Jacinda Ardern GBP Moai Pound Note £100 Trillion on your head today CINDY KIRO by Default Contract of Queen Elizabeth II Criminal Fraudster we bill debtor d her **£970 Million Trillion Trillion GBP Moai Pound in this Court again today** as a Consequence of your Criminal Organisation we Charged you under Pope Francis **“MOTU PROPRIO” ORDERS as COURT “COUNTS” DEFAULT CONTRACT**

I am telling the People of New Zealand today that you are going to KORORAREKA to JOIN YOUR “MAORI” “CROWN” NEW ZEALAND Government Parliament PRIVATE CORPORATION Business to your “IWI MAORI” “CROWN” Private Corporate Business “PAKEHA” on their “HARATU MARAE” in Meetings with Local PAKEHA MAORI Community in KORORAREKA to try to STEAL our 1834 KING WILLIAM IV Flag your NZ Government now calls the WHAKAPUTANGA is ILLEGAL for you to STEAL our KINGS FLAG given to “NATIVE CHIEFS” and not “MAORI” CHIEFS you Illegally Compromised the word “NATIVE” to “MAORI” as if “MAORI” was here in 1769 and 1831 you BREACHED the UK NZ BRITISH CRIMINAL CODE of Altering British Government Printing Office Documents which is a Major Fraud this Court and Jury charged you today for this **Serious Offence £970 Million Trillion Trillion**

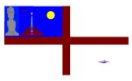












as a great part of the Great Criminal Organization we Find Prosecuted you guilty of this Crime of many Crimes of Church and State and shall today **Cash** the Moai Pound Note against your Head with Prime Minister Jacinda Ardern caught in the **ACT of TREASON** against us the Chiefs of this Country New Zealand we hold the Titles over you as you have no proof of Title Ownership to New Zealand Country.

I am warning you to stay away from Kororareka Flag and stop what you are planning to do with the **"MAORI" WHAKAPUTANGA Fake Authority of that Flag** that you have **No Legal Ownership** in our **Commercial Contract with Britain UK Direct** while you cut your Sovereignty off to Westminster Parliament and POPE FRANCIS Holds our Birth Certificate SOVEREIGNTY BOND SECURITY OF INVESTMENT while you are a SERVANT SLAVE to us the SOVEREIGNS OF NEW ZEALAND and we **FORBID you** and your PRIVATE CORPORATION COMPANY "Her Majesty the Queen In Right of New Zealand" or any other Private Corporation that you operate on these Lands we CHIEFS want you and your CRIMINAL ORGANISATION BANISHED off our HAPU "NATIVE" CONFEDERATION OF CHIEFS LANDS because **we hold the TRUE REAL ESTATE LAND TITLE OWNERSHIP INSTRUMENTS To this country** while you only Govern the Country with your FOREIGN Government we want you RID OFF THE LAND arrested and Locked up for Treason Genocide Murder Fraud War Mongering Corruption Bio Weapons Theft of DNA Land Children and Money Wealth for your own Self Interests. **This is a Lawful Legal Court of Law that your Prime Minister failed to REFUTE My AFFIDAVITS which became a DEFAULT CONTRACT** same for you I write this Letter to you as an AUTHORITY PARAMOUNT CHIEF LEGAL ADVOCATE LAW ENFORCEMENT PROSECUTOR and JUDGE with a JURY here on ZOOM and the entire WORLD Audience watching and witnessing these Court Hearings are directed at you criminals on Trial in this Court administering a Criminal Business

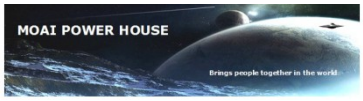
You will find here 19 Court Hearings extended from MARAE COURT HEARINGS to REAL TRUTH VIRTUAL ONLINE ZOOM BAR-LESS-DOCK LESS COURT HEARINGS because we have this KING WILLIAM IV DRY LAND 1834 FLAG Given to hold Court Hearings anywhere in the World without having a SEA FLAG "BAR" and "DOCK" to TRY YOU IN and it is your Legal responsibility to respond to mine and the COURTS Prosecution of you in PUBLIC VIEW wth your PHOTOGRAPH to show its YOU whom I am accusing is a PIRATE THUG CRIMINAL operating a SCAM FRAUD CORRUPTED Corporate Business against us the Sovereign People of New Zealand who STOP YOU from committing More CRIMES while having NO QUEEN now you have CHARLIE Inheriting QUEEN ELIZABETH II Criminal Organization WE STOP YOU RIGHT HERE AND NOW with these CHIEFS I have Signing the Country back to the "NATIVES" CHIEF SUCCESSORS and Sovereign People of New Zealand making this CLAIM collectively today Saturday 17 September 2022 and beyond today

We Charged you under "MOTU PROPRIO" LAW here below and in all the Documents and 18 VIDEO AFFIDAVITS on your Head "CINDY KIRO" and on "JACINDA ARDERN" Head today we the COURT ENFORCED the KING WILLIAM IV FLAG OF ADMIRALTY LAW JURISDICTION and "POPE FRANCIS" LAW and LORE OF "MOAI CROWN" COURT TRUTH on your HEADS TODAY in front of New Zealand Britain UK and the World Watching and Witnessing this historic Event you must Pay up and Lose all your Property Home Valuables Land Bank Investments we warn you and your THUGS and PIRATES that the people have had enough of your Anthony Fauci BS fake C V I D JAB Weapons.

MOTU PROPRIO LAW KING WILLIAM III, IV LAW ACTS MOAI CROWN LAW ENFORCED on you

Jacinda Kate Laurell Ardern £100 Trillion Pound Bounty on your Head and NZ "Crown" Corporation

Cindy Acylon Cynthia Kiro £100 Trillion Pound Bounty on your Head and NZ "Crown" Corporation_



CINDY KIRO and JACINDA ARDERN CHARGED with altering BRITISH CROWN DOCUMENTS and ILLEGALY CHANGING THE WORD "NATIVE" into "MAORI" as if it was in 1825 and 1831 so the NATIVE COURT identified your WAITANGI TRIBUNAL Words as FRAUDULENT CLAIMS that Corrupted the WHAKAPAPA LAND TITLES and HISTORY of NEW ZEALAND "MAORI is a MYTH

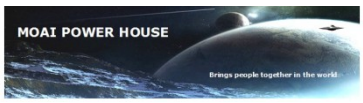
4 LAWS ENFORCED IN THIS NATIVE MAGISTRATE KINGS BENCH "MOAI CROWN" COURT

Zoom Court Sat 24 Sept 2022 British Confederation Flag versus NZ Govt Whakaputanga Flag

He Whakaputanga me te Tiriti The Declaration and the Treaty: The Report on Stage 1 of the Paparahi o Te Raki Inquiry (waitangitribunal.govt.nz)

Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz **He Whakaputanga me te Tiriti The Declaration and the Treaty** 296 same circumstances warranted the Crown establishing authority in areas where British settlement was already under way. The author of the report was Captain William Hobson. The imperial authorities considered their position within the context of significant changes that were then occurring both at home and abroad. The domestic political scene had been for some time preoccupied with electoral reform. After the passing of the Reform Act **1832**,1 this had taken a different trajectory through the Chartist movement, which advocated universal suffrage. Alongside these political developments, ongoing industrialisation had spurred a massive increase in migration to Britain's settlement colonies in North America, South Africa, and Australia. Increasing migration gave rise to new colonies of settlement, including South Australia, which was established in **1834** under Wakefield's model. It also coincided with increasing calls from existing settlement colonies to be granted self-governing powers. Two armed uprisings in the British North American (Canadian) colonies in late 1837 underlined the need to address these issues. A Parliamentary Committee was convened in **1838** to inquire into the situation there. The Committee's chair, Lord Durham – a long-time advocate of organised colonisation, including of New

deliberate and methodical scheme for leading a savage people to embrace the religion, language, laws, and social habits of an advanced country, – for serving in the highest degree, instead of gradually exterminating, the **aborigines** of the country to be settled ... This ... is not a plan of mere colonization ; it has for its object to civilize as well as to colonize ; ... to preserve the New Zealand race from extermination.27 The exact plan laid out in The British Colonization of New Zealand was for the Association to acquire land from **Māori** who were 'already **disposed to part with their land and sovereign rights'.** British government would then be established, which would in turn extend to **Māori** the benefits of British subjecthood. Other **Māori** would observe the advantages of British government and would progressively seek to join in. 'By degrees, then,' it was explained, 'and by the desire of the native inhabitants, **British** sovereignty and laws would be extended over the whole of New Zealand'.28 At the same time as the Association was setting forth its views, the CMS was busy generating publicity of its own. On 27 November **1837**, Coates wrote a letter to Glenelg that was printed and widely distributed as a pamphlet entitled The Principles, Objects and Plan of the New Zealand Association Examined. 29 In it, he argued that colonisation was inevitably injurious to indigenous peoples and that the Association was simply motivated by profit, though it did not admit it. It was, he wrote, too high wrought, too Utopian, to believe that a miscellaneous body of men will expatriate themselves, to a savage land 6.2.3 Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz The British Move towards Annexation 301 at the antipodes, merely out of a benevolent regard to the civilization and moral improvement of the **Natives** ... Coates doubted that **Māori** would willingly sell land, let alone cede sovereignty (or indeed understand the proposition). He claimed that the Association's scheme would disrupt the work of the missionaries and inevitably lead to 'collision and warfare with the **Natives'**. He suggested instead that the Resident's status be upgraded to that of the consular agents proposed in the select committee's report, with magisterial powers that operated within New Zealand and a **native police**

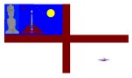












YOU ARE PROSECUTED CONVICTED CHARGED CAN'T HIDE FROM GODS TRUTH LORE You failed the Sovereign People of New Zealand over 187 years its the end for you now that your FRAUD TAMPERING of BRITISH GOVERNMENT LEGAL DOCUMENTS are EXPOSED in this NATIVE MAGISTRATE KINGS BENCH COURT Today caught in your Fraud WAITANGI TRIBUNAL COMMITTEE all Photographed here Today Saturday 24 September 2024 on Record

Prime Minister' at a time when Melbourne's Government faced potential defeat over its handling of Canadian affairs. Durham thus gave the advocates of systematic colonisation in New Zealand some real leverage. He had, as mentioned previously, been chairman of the **1825** New Zealand Company, and it seems that body had tried to resurrect itself under his leadership in **1834**. A condition of his chairmanship of the Association was that the prior investment of the original New Zealand Company be recognised.24 The Association's book was entitled The British Colonization of New Zealand and was authored in large part by Wakefield.25 Loveridge thought it 'best . . . described as a 423-page version' of the Statement. He noted, though, that it laid much greater emphasis upon the **supposed benefits to Māori** of systematic colonisation, with an entire chapter dedicated to the 'Civilization of the New Zealanders'. Here, the Association set out the injury to **Māori** caused by uncontrolled British settlement, and indeed quoted extensively from the **1837** select committee report to make its point.26 It concluded that what was needed in response was not a form of Māori self-government, as promoted by the missionaries – which it suggested would fail owing to **Māori** lacking, for now, the requisite 'higher degree of intelligence' – but an approach much like that promoted by the Association : a deliberate and methodical scheme for leading a savage people to embrace the religion, language, laws, and social habits of an advanced country, – for serving in the highest degree, instead of gradually exterminating, the **aborigines** of the country to be settled . . . This . . . is not a plan of mere colonization : it has for its object to civilize as well as to colonize : . . . to preserve the New Zealand race from extermination.27 The exact plan laid out in The British Colonization of New Zealand was for the Association to acquire land from **Māori** who were 'already **disposed to part with their land and sovereign rights'.** British government would then be established, which would in turn extend to **Māori** the benefits of British subjecthood. Other **Māori** would observe the advantages of British

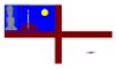
Moai Solid Hydrogen Fuel Energy, Water, Gold, Currency © **Patent Brand Name**, Moai Crown King William IV Sovereign State Authority Seals



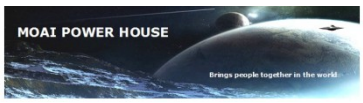








Zealand. The Statement foresaw **Māori** happily selling their 'unused' lands for nominal sums and being willingly 'brought to adopt the language, usages, laws, religion, and social ties of a **superior race'.** It also saw a need to obtain **Māori** consent, through a treaty, prior to the formation of any settlements, since **Māori** national independence has been virtually, not to say formally acknowledged by the British Government . . . [by] the appointment of a Resident at the Bay of Islands, and the recognition of a New Zealand flag. Baring, however, also contended in a letter to the Prime Minister, Lord Melbourne, that Captain James Cook's discovery and **Macquarie's 1814 proclamation** (which, as we saw in chapter 3, referred to New Zealand as a dependency of New South Wales) meant that **Britain had rights over New Zealand** 'as against other European nations'. The Statement set out the object of obtaining parliamentary approval, explaining that a Bill had been drafted which would grant the Association's leaders a charter to colonise. Essentially, the Association was offering the Crown a British colony at no cost, in return for the **Association having the power to make laws and acquire and sell land, using the profits to fund further emigration.**9 The Association's second meeting, a week after the first, was well attended and full of optimistic speeches. At the next meeting, a committee was elected which included no fewer than 10 Members of Parliament. Much publicity was generated in the Spectator and the **Colonial Gazette.** Burns concluded that, 'On the whole, it would be hard to find an organisation which began in a more feverish state of excitement than the New Zealand Association.'10 No sooner had the Association come to prominence, however, than its opponents went on the attack. The Church Missionary Society (CMS), under the leadership of its lay secretary, Dandeson Coates, immediately focused its lobbying in opposition to the Association. Once

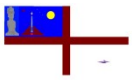




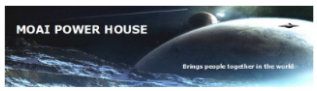








You Face the Native People of New Zealand and of the World you decieved wont escape Moai Gods Truth Lore and what fabricated 187 years of History in your Waitangi Tribunal Statements











purchase a million acres from the original New Zealand Company. The Association maintained that it could establish the colony at no expense to the public, and that its members had forsaken 'all notion of private speculation'. But the Government wanted its founders to put up their own money, because it reasonably feared the Association would fold, leaving the government to bear its expenses.56 On 30 March 1838, the Earl of Devon proposed the appointment of a

House of Lords select committee 'to inquire into the present state of the Islands of **New Zealand'**,

as this would assist consideration of any proposed legislation. Glenelg supported the motion, which was successful. He favoured the committee reporting quickly, for the Government itself intended to take some action on the matter.57 Then, in May 1838, the Association received some unexpected support, in the form of the first annual report of

the **Aborigines'** Protection Society, which had been formed by five members of the **1837** select committee 'to watch over and protect the interests of the **natives**'.

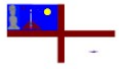
58 With regard to New Zealand, the report stated that : the question is not now whether any Colony at all shall be attempted there, for that question is settled by the fact of such large numbers of **British** subjects being already there, as to demand some legislative interference in the way of controul [sic]. It will not be friendship to the **Aborigines** to leave them a prey to the unprincipled and lawless, under the plea of the injustice that might be done them by the establishment of a British colony among them.



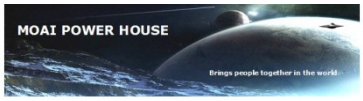








so'.17 As it transpired, Baring submitted the Association's proposed Bill to Lord Melbourne in mid-June 1837. But **King William IV's death on 20 June** meant that Parliament would have to be dissolved and elections held, stalling any advance the Association hoped to make. The Association suffered a much more significant setback shortly afterwards with the publication of the final Report from the Select Committee on **Aborigines** (British Settlements). This **committee, which began hearing evidence in 1833** – including that of Coates and his counterpart from the Wesleyan Missionary Society, John Beecham – and was chaired by a prominent abolitionist, concluded that : It is not too much to say, that the intercourse of Europeans in general, without any exception in favour of the subjects of Great Britain, has been, unless when attended by missionary exertions, a source of many calamities to uncivilized nations. Too often, their territory has been usurped ; their property seized ; their numbers diminished ; their character debased ; the spread of civilization impeded. European vices and diseases have been introduced amongst them, and they have been familiarized with the use of our most potent instruments for the subtle or the violent destruction of human life, viz. brandy and gunpowder.18 As one of its general suggestions, the Committee recommended that settlers not be given governing responsibility over **indigenous peoples,** with whom they would invariably be in dispute over land : The **protection of the Aborigines** should be considered as a duty peculiarly belonging and appropriate to the Executive Government, as administered either in this country or by the Governors of the respective Colonies. This is not a trust which could conveniently be confided to the local Legislatures. . . . [T]he settlers in almost every Colony, having either disputes to adjust with the native tribes, or claims to urge against them, the representative body is virtually a party, and therefore ought not to be the judge in such controversies.19 For New Zealand in particular, the Committee proposed the appointment there of 'consular agents', who could prosecute British subjects committing offences

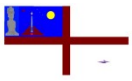






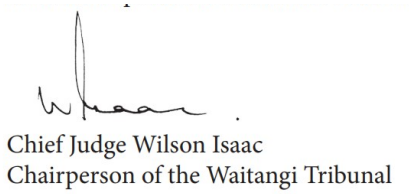


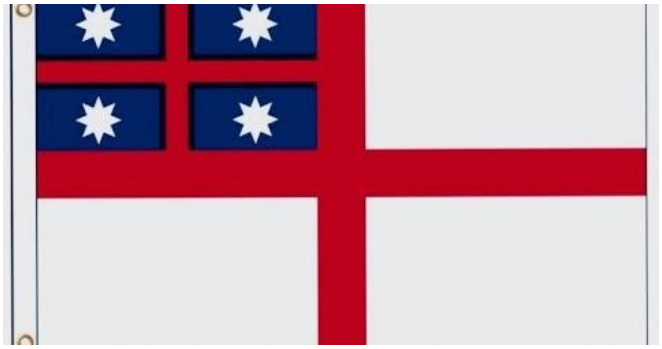




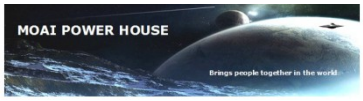
The challenge for the Tribunal has been to provide an independent, impartial, public, and accessible forum to which claimants can bring their claims alleging breaches of the principles of the Treaty of Waitangi and have them heard and reported on in a timely manner. I am confident that the Waitangi Tribunal has provided a high-quality inquiry process and authoritative reports that continue to add real value to the integrity and durability of Treaty settlements. There is still much to be done. We must finish the large district inquiries, which bring together many hundreds of claims. In addition, more than a third of registered claims await action. They include historical claims filed too late to be heard in a district inquiry ; issue-focused or kaupapa claims affecting Māori in general ; and contemporary claims from the last two decades. Our overarching aim is to provide inquiry pathways tailored to the aspirations of all remaining claimants who wish the Tribunal to consider their claims. This means comprehensively tackling all claims before us and those yet to be filed. To that end, we have adopted a long-term strategic framework that sets out the main components of the Tribunal's future inquiry programme. This includes both established forms of inquiry, such as the district inquiries under way, and innovative, new pathways to deal with remaining historical claims, kaupapa claims, and contemporary claims. Achieving the strategic goals outlined in this document will enable the Tribunal to transition by the mid2020s to a focus primarily on contemporary claims as they are filed, including new kaupapa claims raising nationally significant issues as well as claims seeking urgency. During this transition and beyond, the Tribunal will remain committed to its core objective : to advance a Treaty-based Crown–Māori relationship and thereby sustain the political, social, and cultural fabric of Aotearoa/New Zealand. Strategic Direction 2014–2025 (waitangitribunal.govt.nz)

Chief Judge Wilson Isaac Chairperson of the Waitangi Tribunal





Isaac Wilson this **"Moai Crown" Native Magistrate Kings Bench Court Bank** and Confederation of Chiefs King William IV 8 Point Star of St Patrick Church King William III 1882 Municiplities Act and King William IV 1835 Municipalities Act Money 1834 Flag Jurisdiction and Authority found you guilty of conspiring to Defraud the Confederation of "NATIVE" Chiefs and people of New Zealand Sovereigns by your Corrupted Writings here as you make publicly that "MAORI " were in existence in 1825 1831 1837 when the British clearly states that the Settled Inhabitants were Indigenous "NATIVE" Aborigines on their BRITISH Government Print DOCUMENTS you altered to Change the whole Government System of New Zealand we have caught you out here and the Court Prosecuted Convicted and Charged you and your New Zealand **"Crown" Crimnal Organzation Each GBP £100 Trillion** Moai Pound Notes the higher of the value balance to **King Charles British "Crown"** Criminal Organization Fraudsters Inheritors of Queen Victoria Rothschild Scam Pound Note USD Fiat Money Scam Business

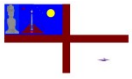






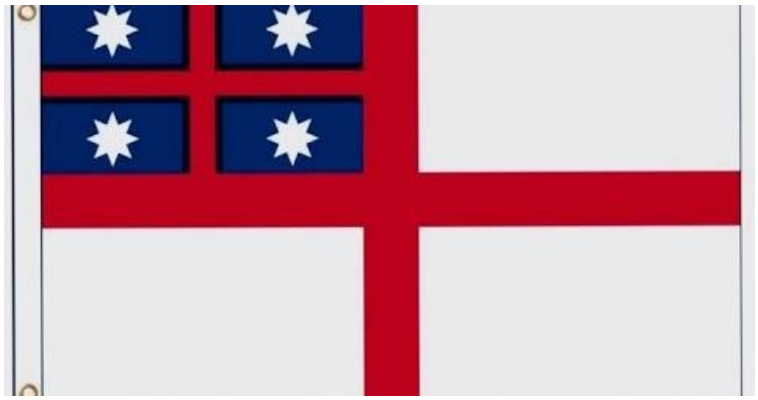




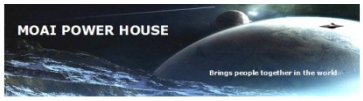


The Waitangi Tribunal Unit is pleased to have been given the opportunity to contribute to the development of this new strategic direction for the Waitangi Tribunal. The strategic direction provides a clear platform upon which the unit will develop and implement a range of initiatives and processes to support the Waitangi Tribunal to achieve its strategic objectives through to 2025. Achieving the Tribunal's strategic goals will require both the Tribunal and the unit to work collaboratively together to explore opportunities to implement a new and innovative future operating model which improves business processes and enables the Tribunal to achieve the timely completion of claims for its claimants. The Ministry of Justice's business strategy and focus to improve customer service and service delivery by reducing time to deliver services by 50 per cent by 2017 are well aligned with the Tribunal's overall strategic intentions. The Waitangi Tribunal Unit is committed to working proactively with the chairperson, presiding officers, and members of the Tribunal to do this and will shortly commence work to further develop the strategies that will be required to contribute both to the strategic priorities of the Tribunal and to the Ministry's business strategy. The launch of the Waitangi Tribunal's strategic direction will signal a new pathway for the unit and one that we are ready to embrace Inheritors of Queen Victoria Rothschild Scam Pound Note USD Fiat Money Scam Business

Julie Tangaere
Acting Director of the Waitangi Tribunal Unit

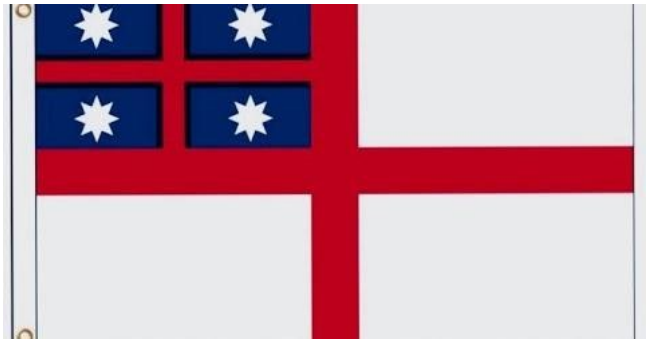


Julie Tangaere this "Moai Crown" Native Magistrate Kings Bench Court Bank and Confederation of Chiefs King William IV 8 Point Star of St Patrick Church King William III 1882 Municiplities Act and King William IV 1835 Municipalities Act Money 1834 Flag Jurisdiction and Authority found you guilty of conspiring to Defraud the Confederation of "NATIVE" Chiefs and people of New Zealand Sovereigns by your Corrupted Writings here as you make publicly that "MAORI " were in existence in 1825 1831 1837 when the British clearly states that the Settled Inhabitants were Indigenous "NATIVE" Aborigines on their BRITISH Government Print DOCUMENTS you altered to Change the whole Government System of New Zealand we have caught you out here and the Court Prosecuted Convicted and Charged you and your New Zealand "Crown" Crimnal Organzation each GBP £100 Trillion Moai Pound Notes the higher of the value balance to King Charles British "Crown" Criminal Organization Fraudsters Inheritors of Queen Victoria Rothschild Scam Pound Note USD Fiat Money Scam Business



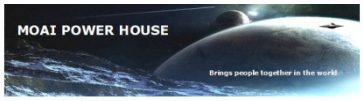
“Moai Crown” Native Magistrate Kings Bench Court Bank and Confederation of Chiefs

King William IV 8 Point Star Flag of St Patrick Church King William III 1882 Municiplities Act and King William IV 1835 Municipalities Act Money 1834 Flag Jurisdiction and Authority found you guilty of conspiring to Defraud the Confederation of **“NATIVE”** Chiefs and people of New Zealand Sovereigns by your Corrupted Writings here as you make publicly that **“MAORI“** were in existence in **1825 1831** 1837 when the British clearly states that the Settled Inhabitants were Indigenous **“NATIVE”** **Aborigines** on their **BRITISH** Government Print **DOCUMENTS** you altered to Change the whole Government System of New Zealand we have caught you out here and the Court Prosecuted Convicted and Charged you and your New Zealand “Crown” Crimnal Organization each GBP £100 Trillion Moai Pound Notes the higher of the value balance to King Charles British “Crown” Criminal Organization Fraudsters Inheritors of Queen Victoria Rothschild Scam Pound Note USD Fiat Money Scam Business Pope Francis use Motu Prioprio and enforce adequate Laws to combat your Fraud



The Waitangi Tribunal at the Waitangi Tribunal Members’ Forum, March 2014

Back row (from left) : Ronald Crosby, Dr Ann Parsonson, Judge Michael Doogan, Basil Morrison, Dr Aroha Harris, Dr Rawinia Higgins, Dr Grant Phillipson, Judge Stephen Clark, Judge David Ambler, Judge Layne Harvey, Tim Castle, Nicholas Davidson, Dr Monty Soutar Front row (from left) : Joanne Morris, Judge Sarah Reeves, Professor Pou Temara, Sir Tamati Reedy, Deputy Chief Judge Caren Fox, Chief Judge Wilson Isaac (chairperson), Sir Hirini Mead, Miriama Evans, Dr Robyn Anderson, Dr Angela Ballara Absent : Judge Stephanie Milroy (then deputy chairperson), Judge Patrick Savage (deputy chairperson), Judge Craig Coxhead, John Baird, Professor Richard Hill, the Honourable Sir Douglas Kidd, Kihi Ngatai, Tania Simpson, the Honourable Paul Swain, Professor Ranginui Walker, Kaa Williams

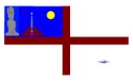












The Waitangi Tribunal ы The Waitangi Tribunal comprises a chairperson and up to 20 members appointed by the Governor-General, with Māori Land Court judges able to serve as inquiry presiding officers. Legally qualified members may also preside. ы The Tribunal's Governance Group, convened by the chairperson, provides strategic direction and reviews the progress of the Tribunal's work programme. ы The Ministry of Justice provides operational support to the Tribunal through the Waitangi Tribunal Unit, which delivers a comprehensive range of registrarial, event management, research, report writing, and administrative services.

ILLEGAL Fraud Tampering of British NATIVE INDIGENOUS ABORIGINAL Land Title Ownership

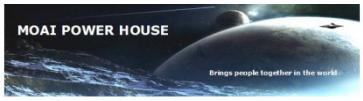
DECREE 1 Evidence of British calling NATIVE ABORIGINAL INDIGENOUS People

Britain's experience of empire continued to galvanise humanitarians ; after the abolition of slavery in the British Empire by legislation in 1833, humanitarian organisations, particularly missionary societies, turned their attention to the experience of indigenous peoples.**2** The Parliamentary Committee on **Aboriginal** Tribes convened for two years **(1833 to 1835)** and reported in **1837,** the same year that the **Aborigines'** Protection Society was formed. **These developments all had a significant bearing upon the Colonial Office as it came to reconsider – from the first approaches of the New Zealand Association in 1837 – Britain's position in New Zealand.**

DECREE 2 Evidence of Fraud Tampering calling MAORI Chiefs People in 1825 to 1837 not True

MISCHIEF PAKEHA & MAORI MAKING "MAORI" AS IF THEY EXISTED IN 1825 TO 1837

Zealand Association. 6.2.2 Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz He **Whakaputanga** me te Tiriti The Declaration and the Treaty **298 committee included a number of members of Parliament who were very sympathetic to his message, among them William Hutt and Francis Baring, and its highly favourable report reflected this. Wakefield's performance at the select committee is generally credited as the inspiration for the formation of the New Zealand Association the following year.8 6.2.3** The New Zealand Association and its opponents A meeting was thus held in London on 22 May **1837, with Wakefield himself in the chair, to discuss the founding of a Wakefieldian colony in New Zealand. A publication had already been printed, entitled A Statement of the Objects of the New Zealand Association. The** meeting **duly resolved to form a society by this name to pursue the object of systematic colonisation in New Zealand.** The Statement foresaw **Māori** happily selling their 'unused' lands for nominal sums and being willingly 'brought to adopt the language, usages, laws, religion, and social ties of a **superior race'. It also saw a need to obtain Māori** consent**, through a treaty, prior to the formation of any settlements, since Māori** national independence **has been virtually, not to say formally acknowledged by the British Government . . . [by] the appointment of a Resident at the Bay of Islands, and the recognition of a New Zealand flag. Baring, however, also contended in a letter to the Prime Minister, Lord Melbourne, that** Captain James Cook's discovery **and** Macquarie's **1814** proclamation **(which, as we saw in chapter 3, referred to New Zealand as a dependency of New South Wales) meant that** Britain had rights over New Zealand **'as against other European nations' CITE DECREE AFFIDAVIT FRAUD DOCUMENTS**

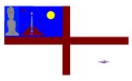












4 LAWS ENFORCED IN THIS NATIVE MAGISTRATE KINGS BENCH "MOAI CROWN" COURT

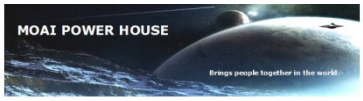
Zoom Court Sat 24 Sept 2022 British Confederation Flag versus NZ Govt Whakaputanga Flag

NZ CROWN AGENTS DEBTORS OFFENCES He Whakaputanga me te Tiriti The Declaration and the Treaty: The Report on Stage 1 of the Paparahi o Te Raki Inquiry (waitangitribunal.govt.nz)

Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz **He Whakaputanga me te Tiriti The Declaration and the Treaty** 296 same circumstances warranted the Crown establishing authority in areas where British settlement was already under way. The author of the report was Captain William Hobson. The imperial authorities considered their position within the context of significant changes that were then occurring both at home and abroad. The domestic political scene had been for some time preoccupied with electoral reform. After the passing of the Reform Act **1832**,1 this had taken a different trajectory through the Chartist movement, which advocated universal suffrage. Alongside these political developments, ongoingHi Bil industrialisation had spurred a massive increase in migration to Britain's settlement colonies in North America, South Africa, and Australia. Increasing migration gave rise to new colonies of settlement, including South Australia, which was established in **1834** under Wakefield's model. It also coincided with increasing calls from existing settlement colonies to be granted self-governing powers. Two armed uprisings in the British North American (Canadian) colonies in late 1837 underlined the need to address these issues. A Parliamentary Committee was convened in **1838** to inquire into the situation there. The Committee's chair, Lord Durham – a long-time advocate of organised colonisation, including of New Zealand – made a series of recommendations, including provision for self-government. Although Durham's recommendations for Canada were not immediately accepted, the transition towards colonial self-government soon commenced in various guises across the settlement colonies. This transition occurred alongside the consolidation of Britain's supreme position as an imperial power after the Napoleonic Wars. Britain's supremacy, however, did not mean that the imperial authorities had ceased to pay attention to the actions of other nations : France had begun to assert its imperial ambitions once again (taking control of Algeria in 1830), and its renewed activity in the Pacific did not go without comment. At the same time, **CITE DECREE AFFIDAVIT FRAUD TAMPERING**

Britain's experience of empire continued to galvanise humanitarians ; after the abolition of slavery in the **British Empire** by legislation in **1833**, humanitarian organisations, particularly missionary societies, turned their attention to the experience of **indigenous** peoples.2 The Parliamentary Committee on **Aboriginal** Tribes convened for two years **(1833 to 1835)** and reported in **1837**, the same year that the **Aborigines'** Protection Society was formed. These developments all had a significant bearing upon the Colonial Office as it came to reconsider – from the first approaches of the New Zealand Association in **1837** – **Britain's position in New Zealand**. **CITE DECREE RULE**

6.2 Wakefield's Scheme for Colonisation 6.2.1 Early plans for organised settlement In chapter 3, we outlined some early proposals to establish small settler colonies in New Zealand. These included plans endorsed by New South Wales Governor Lachlan Macquarie in 1810 and 1816 to establish settlements for flax production, although these came to nothing. In 1823, in England, Edward Nicholls proposed a military settlement, but the Colonial Office was not interested. In due course the first New Zealand Company was founded in London in **1825** under the chairmanship of John Lambton (later Lord Durham) and deputy chairmanship of Robert Torrens. It planned to establish a **colony** based on

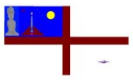




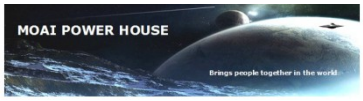








timber and flax production, but this idea was abandoned after a financial crash in London later that same year. Nicholls's proposal was revived in 1826, but the Colonial Office remained uninterested. What all these early schemes had in common was their **commercial** focus on the exploitation of natural resources, such as flax and timber. 6.2.2 Systematic colonisation The advocacy for organised settlement assumed an altogether different character from the late 1820s, however, with the rise to prominence of Edward Gibbon Wakefield and his theories of systematic colonisation. While serving a three-year term in Newgate Prison for abducting an heiress in 1826, Wakefield – well-off thanks to the inheritance of his deceased wife, whom he had also once abducted – began to think about colonisation. He justified his theories on the basis of what he regarded as the deficiencies of English civilisation, particularly the gap in the fortunes of rich and poor, arguing that emigration 6.2 Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz The British Move towards Annexation 297 was a way out of poverty and crime for the masses. The business of colonisation arguably also offered Wakefield a new career path now his conviction had dented his plans to become a member of Parliament.3 In any event, Wakefield's ideas followed a general increase in migration that began in **1815**, and coincided more specifically with an upsurge in British migration to the Australian colonies from the late 1820s. As such, Professor James Belich has written, 'Wakefield was riding the wave of public opinion, not creating it.' 4 Wakefield outlined his plans in a series of publications, including Sketch of a Proposal for Colonizing Australasia and Outline of a System of Colonization in 1829. He argued that settlers could too easily spread out through a colony because of an abundance of cheap land, and this left a shortage of labour for men of capital. Moreover, under such a scenario there could be no centres of 'civilised' society, which he regarded as essential to successful colonisation. Instead, as he felt had happened in North America, there would be frontier lawlessness and debauchery. Wakefield contended that the Crown or a colonisation company should acquire the land cheaply and then on-sell it at high prices only, with the proceeds being used to fund the emigration of British labourers. These workers would not initially be able to buy their own land, so the colony's labour supply would be assured, although in due course they would be able to improve their position in society through land acquisition. The speculation involved in colonies would belong not to land-sharks but to the investors in colonisation schemes. As Dr Patricia Burns put it, 'Edward Gibbon Wakefield's plan was an example of emigration "by private speculation" – and a profitable speculation it could prove.' 5 Wakefield's theories were employed soon enough in the colonisation of South Australia when settlement commenced in **1836**, although Wakefield considered that the land put on sale there was still too cheap for his principles to work. He parted company from the colony's promoters, believing they had made too many compromises in order to appease the British Government. He now began to look instead to New Zealand, where he saw an opportunity to apply his theories in their purest form : here, wrote Burns, 'the Wakefield system would be established in its perfection'.6 In 1836, Wakefield testified about the virtues of systematic colonisation before the House of Commons Select Committee on the Disposal of Land in the **British** Colonies, which had been appointed in part to inquire into his theories. He named New Zealand as a great prospect – 'the fittest country in the world for colonization' – albeit one that was currently being colonised in 'a most slovenly, and scrambling, and disgraceful manner' (the opposite, in other words, to his vision of what Professor Erik Olssen described as 'a civilized society in a new land, a civilized society predicated upon the capacity of Britons to co-operate and to govern themselves' 7). The Edward Gibbon Wakefield, 1823. Wakefield's theories about systematic colonisation inspired the formation of the New Zealand Association. 6.2.2 Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz He **Whakaputanga** me te Tiriti The Declaration and the Treaty 298 committee included a number of members of Parliament who were very sympathetic to his message, among them William Hutt and Francis Baring, and its highly favourable report reflected this.

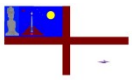








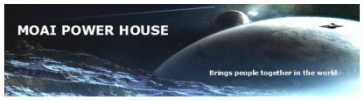




Wakefield's performance at the select committee is generally credited as the inspiration for the formation of the New Zealand Association the following year.8 6.2.3 The New Zealand Association and its opponents A meeting was thus held in London on 22 May **1837**, with Wakefield himself in the chair, to discuss the founding of a Wakefieldian colony in New Zealand. A publication had already been printed, entitled A Statement of the Objects of the New Zealand Association. The meeting duly resolved to form a society by this name to pursue the object of systematic colonisation in New Zealand. The Statement foresaw **Māori** happily selling their 'unused' lands for nominal sums and being willingly 'brought to adopt the language, usages, laws, religion, and social ties of a **superior race'.** It also saw a need to obtain **Māori** consent**,** through a treaty, prior to the formation of any settlements, since **Māori** national independence has been virtually, not to say formally acknowledged by the British Government . . . [by] the appointment of a Resident at the Bay of Islands, and the recognition of a New Zealand flag. Baring, however, also contended in a letter to the Prime Minister, Lord Melbourne, that Captain James Cook's discovery and Macquarie's **1814** proclamation (which, as we saw in chapter 3, referred to New Zealand as a dependency of New South Wales) meant that Britain had rights over New Zealand 'as against other European nations'. The Statement set out the object of obtaining parliamentary approval, explaining that a Bill had been drafted which would grant the Association's leaders a charter to colonise. Essentially, the Association was offering the Crown a British colony at no cost, in return for the **Association having the power to make laws and acquire and sell land, using the profits to fund further emigration.**9 The Association's second meeting, a week after the first, was well attended and full of optimistic speeches. At the next meeting, a committee was elected which included no fewer than 10 Members of Parliament. Much publicity was generated in the Spectator and the **Colonial Gazette.** Burns concluded that, 'On the whole, it would be hard to find an organisation which began in a more feverish state of excitement than the New Zealand Association.'10 No sooner had the Association come to prominence, however, than its opponents went on the attack. The Church Missionary Society (CMS), under the leadership of its lay secretary, Dandeson Coates, immediately focused its lobbying in opposition to the Association. Once the CMS committee had been able to read the Association's Statement, it promptly resolved that 'all suitable means' be used to stop the plan from 'being carried into execution'.11 The CMS's opposition was based on several grounds. First, it believed that Parliament had no business supporting land transactions in a country where the British had no legitimate claim to sovereignty. It would appear from this that the CMS placed no faith in the Association's stated intention to acquire Māori consent. Secondly, it pointed to the '[u]niversal experience' of 'uncivilized Tribes' that came into contact with European colonisers : the suffering of 'the greatest wrongs and most severe injuries'. Thirdly, it considered that any significant colonisation would from its unavoidable tendency . . . interrupt, if not defeat, those measures for the Religious Improvement and Civilization of the

Natives of New Zealand which are now in favourable progress through the labours of the Missionaries. **CITE DECREE AFFIDAVIT DOCUMENT TAMPERING FRAUD**

12 But neither was the Association guaranteed a warm reception from the Government. The Colonial Office was already overstretched, dealing with more than 30 colonies located around the globe, and its staffing numbers were unable to keep pace with the rate of colonial expansion.13 Dr (later Professor) Paul Moon put it this way : the larger agony of managing the almost unmanageable Indian sub-continent, and the struggle to rein in disobedient or incompetent colonial officials, shunted Britain's less significant colonial possessions very much into the background of official priorities.14 6.2.3 Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz The

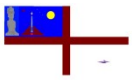












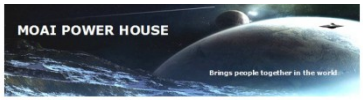
British Move towards Annexation 299 Moreover, the officials and political masters of the Colonial Office included a number of men with strong connections to the CMS or sympathies with its aims. Lord Glenelg, the Secretary of State for War and the Colonies, had been a vice-president of the CMS. His junior minister, George Grey, the Under-Secretary of State for War and the Colonies (not to be confused with the later New Zealand Governor of the same name), had been a member of the CMS committee. So too had the senior official in the Colonial Office, James Stephen, the Permanent Under-Secretary.15 That did not mean – as we shall see – that these men simply sided with the CMS, but it did mean they had an inherent antipathy towards the colonising aims of the Association. As **Dr (later Dame) Claudia Orange** observed, for example, Glenelg was 'reluctant to admit that colonisation in any form was desirable for New Zealand'.16 Dr Peter Adams noted likewise that 'on more than one occasion Stephen doubted his impartiality towards Wakefield and the New Zealand Company and said so'.17 As it transpired, Baring submitted the Association's proposed Bill to Lord Melbourne in mid-June 1837.

But **King William IV's death on 20 June** meant that Parliament would have to be dissolved and elections held, stalling any advance the Association hoped to make. The Association suffered a much more significant setback shortly afterwards with the publication of the final Report from the Select Committee on **Aborigines** (British Settlements). This **committee, which began hearing evidence in 1833 CITE DECREE AFFIDAVIT**

– including that of Coates and his counterpart from the Wesleyan Missionary Society, John Beecham – and was chaired by a prominent abolitionist, concluded that : It is not too much to say, that the intercourse of Europeans in general, without any exception in favour of the subjects of Great Britain, has been, unless when attended by missionary exertions, a source of many calamities to uncivilized nations. Too often, their territory has been usurped ; their property seized ; their numbers diminished ; their character debased ; the spread of civilization impeded. European vices and diseases have been introduced amongst them, and they have been familiarized with the use of our most potent instruments for the subtle or the violent destruction of human life, viz. brandy and gunpowder.18 As one of its general suggestions, the Committee recommended that settlers not be given governing responsibility over

indigenous peoples, with whom they would invariably be in dispute over land : The **protection of the Aborigines CITE DECREE AFFIDAVIT "MAORI" FAKE PAKEHA TRIBE**

should be considered as a duty peculiarly belonging and appropriate to the Executive Government, as administered either in this country or by the Governors of the respective Colonies. This is not a trust which could conveniently be confided to the local Legislatures. . . . [T]he settlers in almost every Colony, having either disputes to adjust with the native tribes, or claims to urge against them, the representative body is virtually a party, and therefore ought not to be the judge in such controversies.19 For New Zealand in particular, the Committee proposed the appointment there of 'consular agents', who could prosecute British subjects committing offences and who would be supported by the periodical visits of British naval ships. It added : Various schemes for colonizing New Zealand and other parts of Polynesia have at different times been suggested, and one such project is at present understood to be on foot. On these schemes Your Committee think it enough for the present to state, that regarding them with great jealousy, they conceive that the Executive Government should not countenance, still less engage in any of them, until an opportunity shall have been offered to both Houses of Parliament of laying before Her Majesty their humble advice as to the policy of such

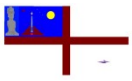












an enlargement of Her Majesty's dominions, or of such an extension of British settlements abroad, even though unaccompanied by any distinct and immediate assertion of sovereignty.20 As Dr Donald Loveridge drily observed, 'on the face of it the New Zealand Association was unlikely to draw much comfort from this Report'.21 6.2.3 Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz He Whakaputanga me te Tiriti The Declaration and the Treaty 300

Adams noted that the **1837** select committee report has often been regarded by **historians** as 'the highest **expression** of nineteenth-century humanitarian idealism towards **indigenous peoples**' **CITE DECREE AFFIDAVIT**

.22 The committee was effectively attempting to resurrect the scheme provided for in the South Seas Bill in 1832, which had been defeated in Parliament. The reasons for the defeat of that Bill still held – there was little appetite among politicians to establish British jurisdiction in New Zealand. **With the King's death**, the Association saw that, for its part, nothing could be achieved until the next parliamentary session. It busied itself in the meantime with self promotion. The committee members resolved at their 10 July meeting to strengthen the Association 'by laying their views before the public, and adding to their numbers'. The Association thus embarked on writing a book and, in September 1837, recruited Lord Durham – the newly returned ambassador to St Petersburg – as its chairman. Wakefield hoped that Durham would be able to persuade the new

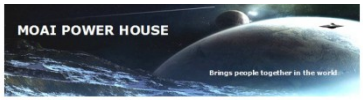
Queen Victoria to allow the book to be dedicated to her, thus providing a de facto royal endorsement,

although no such dedication appeared when the book was published in November.23 Regardless, Durham's appointment was significant for the Association. As a leading figure in the reform movement, he was 'the only man who could ensure continued Radical support of the Whig Government and the Prime Minister' at a time when Melbourne's Government faced potential defeat over its handling of Canadian affairs. Durham thus gave the advocates of systematic

colonisation in New Zealand some real leverage. He had, as mentioned previously, been chairman of the **1825** New Zealand Company, and it seems that body had tried to resurrect itself under his leadership in **1834**. **CITE DECREE AFFIDAVIT**

A condition of his chairmanship of the Association was that the prior investment of the original New Zealand Company be recognised.24 The Association's book was entitled The British Colonization of New Zealand and was authored in large part by Wakefield.25 Loveridge thought it 'best . . . described as a 423-page version' of the Statement. He noted, though, that it laid much greater emphasis upon the

supposed benefits to Māori of systematic colonisation, with an entire chapter dedicated to the 'Civilization of the New Zealanders'. Here, the Association set out the injury to Māori caused by uncontrolled British settlement, and indeed quoted extensively from the **1837** select committee report to make its point.26 It concluded that what was needed in response was not a form of Māori self-government, as promoted by the missionaries – which it suggested would fail owing to **Māori** lacking, for now, the requisite 'higher degree of intelligence' – but an approach much like that promoted by the Association : a deliberate and methodical scheme for leading a savage people to embrace the religion, language, laws, and social habits of an advanced country, – for serving in the highest degree, instead

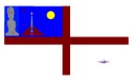












of gradually exterminating, the **aborigines of the country to be settled**

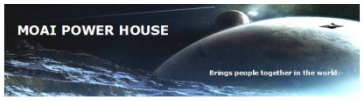
CITE DECREE AFFIDAVIT

. . . This . . . is not a plan of mere colonization : it has for its object to civilize as well as to colonize : . . . to preserve the New Zealand race from extermination.27 The exact plan laid out in The British Colonization of New Zealand was for the Association to acquire land from

Māori who were 'already **disposed to part with their land and sovereign rights'.** British government would then be established, which would in turn extend to **Māori** the benefits of British subjecthood. Other **Māori** would observe the advantages of British government and would progressively seek to join in. 'By degrees, then,' it was explained, 'and by the desire of the native inhabitants, **British** sovereignty and laws would be extended over the whole of New Zealand'.28 At the same time as the Association was setting forth its views, the CMS was busy generating publicity of its own. On 27 November **1837**, Coates wrote a letter to Glenelg that was printed and widely distributed as a pamphlet entitled The Principles, Objects and Plan of the New Zealand Association Examined. 29 In it, he argued that colonisation was inevitably injurious to indigenous peoples and that the Association was simply motivated by profit, though it did not admit it. It was, he wrote, too high wrought, too Utopian, to believe that a miscellaneous body of men will expatriate themselves, to a savage land 6.2.3 Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz **CITE DECREE AFFIDAVIT**

The British Move towards Annexation 301 at the antipodes, merely out of a benevolent regard to the civilization and moral improvement of the **Natives** . . . Coates doubted that **Māori** would willingly sell land, let alone cede sovereignty (or indeed understand the proposition). He claimed that the Association's scheme would disrupt the work of the missionaries and inevitably lead to 'collision and warfare with the **Natives'**. He suggested instead that the Resident's status be upgraded to that of the consular agents proposed in the select committee's report, with magisterial powers that operated within New Zealand and a **native police force formed to support him**.

A small ship of war would also be stationed permanently in New Zealand, and British subjects tried for misdemeanours.30 Wakefield responded promptly on behalf of the Association, sending a letter of his own to Glenelg on 12 December 1837. This also appeared as a pamphlet. In it, Wakefield contended that Coates had understated the negative consequences for **Māori** that unregulated European settlement was already having in New Zealand. He argued that colonisation could not be stopped, and that systematic colonisation would be much more preferable for Māori than the status quo. He also questioned Coates's claim that **Māori** would not sell land, pointing to the missionaries' own claims to have purchased a considerable amount. He accused Coates of deliberately ignoring those parts of The British Colonization of New Zealand that demonstrated – through careful development 'by some of the wisest and best men in this country' – 'that there is a mode of colonization by which the savage peoples of a thinly populated country . . . may be preserved from the horrors of lawless colonization'.31 6.3 The New Zealand Association Negotiations 6.3.1 The deputations of December **1837** As **Adams** put it, by mid-December **1837**, '[t]he war of pamphlets gave way to the war of deputations', as first the Association and then the CMS met with members of the Government.32 At its 13 December audience with Melbourne and Glenelg, however, the Association received a hostile response from the latter. According to Wakefield, Glenelg objected to the Association's plan 'on every

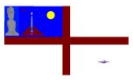








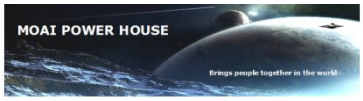




possible ground almost', although he promised to meet the Association again a few days later and give a final answer.33 He subsequently set out his views in a memorandum to the Association of 15 December, in which he made what amounted to an official acknowledgement of **Māori** sovereignty : It is difficult or impossible to find in the History of British Colonization an Example of a Colony having ever been founded in derogation of such **Rights**, whether of Sovereignty or Property, as are those of the Chiefs and People of New Zealand. They are not Savages living by the Chase, but **Tribes** who have apportioned the country between them, having fixed Abodes, with an acknowledged Property in the Soil, that Great Britain has no legal or moral right to establish a Colony in **New Zealand**, without the free consent of the **Natives,** deliberately given, without Compulsion, and without **Fraud**. To impart to any Individuals an Authority to establish such a Colony, without first ascertaining the consent of the New Zealanders, or without taking the most effectual security that the **Contract** which is to be made with them shall be freely and fairly made, **CITE DECREE AFFIDAVIT**

would, as it should seem, be to make an unrighteous use of our superior Power.34 Glenelg does not appear to have expressed a particular concern about the propriety of private individuals – who were not putting at risk their own capital – establishing a colony and effectively, through their land purchases, extending the formal boundaries of the British Empire, although these were particular concerns of Stephen's. Undeterred by Glenelg's rejection, Wakefield met with Melbourne on 15 December and again on 16 December, when he presented a petition signed by 40 businessmen engaged in whaling in New Zealand, urging colonisation as a means of safeguarding British commercial interests. The CMS organised its own deputation and requested a meeting with Glenelg on 20 December (the day Glenelg was to give the Association his final answer), and the Wesleyan Missionary Society secured a meeting for 27 December.35 6.3.1 Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz He **Whakaputanga**

me te Tiriti The Declaration and the Treaty 302 6.3.2 Busby's dispatch and the Government's response The Government, for its part, had a difficult task in responding to what Adams accurately described as the CMS and Association's 'tug-of-war' for official approval. Melbourne and Lord Howick, the Secretary at War, had been generally encouraging when meeting the Association in June, and Howick had offered some criticisms of the Association's draft Bill. Melbourne had even approved these before they were sent to the Association. Howick prefaced his comments, though, with the warning that they were merely his opinion. In fact, while sympathetic to the Association's objectives, he shared Stephen's estimation of its plans as 'so vague and so obscure as to defy all interpretation'. But the Association, which had approached Melbourne in June because it expected Glenelg to be hostile, proceeded on the basis that it had the requisite support.36 The deputation that met Melbourne and Glenelg on 13 December declared themselves betrayed by the former's non-commitment, and volubly expressed their outrage. As Adams observed, there were no reasonable grounds for such indignation.37 But despite the Association's over-confidence, both this reaction and Wakefield's lobbying were beginning to pay dividends. On 16 December, Melbourne wrote to Howick : 'So many people are engaged in this New Zealand business, that they have a right to an answer & I hope you will make up Glenelg's mind on the subject.' Pondering Wakefield's arguments about the situation in New Zealand, he added, If we really are in that situation that we must do something . . . it is only another proof of the fatal necessity by which a nation that once begins to colonize is led step by step over the whole globe.38 When Glenelg met the Association's representatives at the Colonial Office on 20 December, they cannot have been particularly confident of a favourable outcome. As the meeting went on, Glenelg indeed gave them no cause for optimism, as he reiterated all the reasons for the

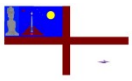












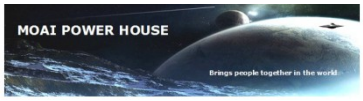
Government's position. But then he said this : The intelligence which Her Majesty's Government have received from the most recent and

CITE DECREE AFFIDAVIT BRITISH & NATIVES OF NZ EFFECTIVE AUTHORITY

authentic sources justifies the conclusion that it is an indispensable duty, in reference both to the natives and to British interests, to interpose by some **effective authority** to put a stop to the **evils and dangers** to which all those **interests are exposed**,

in consequence of the manner in which the intercourse of foreigners with those islands is now carried on.39 As Adams noted, this could conceivably have been leading on to an announcement that Busby was to be replaced or the Resident's powers increased. But any prospect of that was laid aside by Glenelg's explanation that the Government considered the select committee's idea of consular agents 'inadequate to meet the existing evil'. Rather, he said, preventing injury to **Māori** could 'be accomplished only by the establishment of some settled form of government within that territory, and in the neighbourhood of places resorted to by British settlers'. His point was ultimately this : Colonization to no small extent is already effected in these islands ; the only question, therefore, is between a colonization desultory, without law, and fatal to the **natives**, and a colonization organized and salutary. Glenelg thus told the Association that the government was willing to consent to the **incorporation,** by a Royal charter, of various persons, to whom the settlement and government of the projected colony . . . would be confined. This would be based on 'precedents of the colonies established in North America by Great Britain in the sixteenth and seventeenth centuries'.40 This was certainly an unexpected development : as Adams put it, the Association 'appeared to have won a decisive victory'. While Wakefield wrote some years later that Melbourne had brought Glenelg into line, this appears not to have been the case. As we have seen, the Prime Minister merely asked Howick to help the rather 6.3.2 Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz The British Move towards Annexation 303 indecisive Glenelg make up his mind. Howick saw Glenelg as weak and not up to the job of Secretary of State for War and the Colonies, and probably did try to persuade him to support the Association – not least because Durham's support was so vital to the Government. But there was an altogether much more important factor in Glenelg's about-face : Busby's 16 June **1837** report, which reached the Colonial Office on 18 December **1837**, almost on the eve of Glenelg's meeting with the Association at which he had promised to deliver his final answer. This was the 'intelligence' Glenelg was referring to.41 We have already discussed this dispatch in chapters 4 and 5. Its importance to this chapter lies in the profound impact it had on the chain of events in London that led to the British Government's eventual decision to acquire sovereignty in New Zealand. In fact, historians generally regard the **20 December 1837** meeting between Glenelg and the Association as a pivotal moment.42 Before the arrival of Busby's report, the likelihood – although not the certainty – was that Glenelg's response to the Association would be 'no'. Adams even argued that 'For a few crucial days in the winter of 1837 the immediate future of New Zealand hung in the balance.' 43 But **CITE DECREE AFFIDAVIT**

Busby's dire description of **Māori** disease and mortality – including even on mission stations, where Māori were meant to be protected from European vices – appeared to strike a fatal blow to the arguments of those opposed to state-sponsored colonisation. While Glenelg had concerns for both **Māori** and The Church Missionary Society's training college in Islington, London, **1827.** In the late 1830s, the Society fought an ideological battle with the New Zealand Association over the latter's

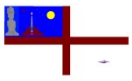












plans to colonise New Zealand. 6.3.2 Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz **He Whakaputanga** me te Tiriti The Declaration and the Treaty 304 British interests, Adams summed up his views on protecting **Māori** in this way : Up until the middle of December **1837**, Glenelg had favoured the argument of the **protestant** missionary societies : that colonization by whites invariably destroyed indigenous races ;

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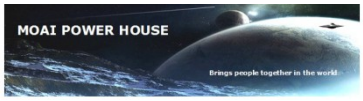
that this could be prevented in New Zealand if the country was left to the missions, backed by the Government ; and that therefore the New Zealand Association must be opposed. At a stroke Busby's report destroyed the middle term of this argument. Haphazard white colonization of New Zealand was already occurring, accompanied by disastrous results for the Maoris. More important, the missions had failed to lessen the impact of this colonization, for the disastrous results were just as apparent among the Maori population subject to their immediate influence as elsewhere.44 Glenelg had little option but to back down by proposing terms on which a charter would be offered. But by no means did he do so entirely, because his offer came with important conditions. Among these, as set out in a letter to Durham of 29 December **1837**, were : the colony could not be established without **Māori** consent, freely given ; the Crown could veto nominations to the governing body and overturn any of its laws ; Crown officials would vet all land transactions with Māori ; other chartered colonies could potentially be established elsewhere in New Zealand (that is, there was no guarantee of a monopoly for the Association) ; and, perhaps most importantly, the founder members of the venture would need to invest their own capital through forming a jointstock company. Durham objected to these conditions but took particular umbrage at the last. The Association's committee members had 'expressly stipulated that they shall neither run any pecuniary risk, nor reap any pecuniary advantage' from the venture, and he argued that investment of their own money would conflict with their governing duties in New Zealand.45 6.3.3 The Church Missionary Society remains opposed The CMS met Glenelg, Grey, and Stephen on 4 January 1838. Prior to this, Coates had borrowed Busby's report from Glenelg and written to him to dispute some of the Resident's claims, such as the decline of Māori on mission stations. Adams described Coates as 'unable to square the incontrovertible facts with his own idealized conception of the missionaries as saviours of the Maoris in this world, as well as in the next'.46 Coates also suggested that Britain might deviate 'from the strict letter of the law of nations' in New Zealand to obtain the sovereignty over one or two enclaves, and thus facilitate the introduction of British law. Loveridge considered that the suggestion that Britain acquire sovereignty over any land in New Zealand represented 'a significant departure from the previous policies of the missionary societies', and showed again the impact of Busby's dispatch. Coates recommended, however, that the enclaves be under 'the entire administration of the [British] Government', and exclude both colonisation and commerce.47 At the 4 January meeting itself, the CMS deputation could not help but suspect that the Association was to receive a charter. The offer was eventually confirmed in a letter from Grey to the CMS on 25 January 1838, although he stressed that CMS objectives would be safeguarded. In reply, Coates wrote that no conditions under which a Charter could be granted to that Association for the colonization of New Zealand could . . . effectively guard against the evils to be apprehended both to the Society's Mission and to the **Natives** from such a proceeding if it should be adopted.48 In other words, the CMS's objection was based on the principle that any form of colonisation would have destructive consequences. Coates's Wesleyan Missionary Society colleague Beecham next took up the war of words in a pamphlet produced in early February **1838**. As Loveridge remarked, its contents were predictable : 'the Association and its plans were found wanting in all respects'. But Beecham did make the point that the only measure taken in New Zealand to counter the

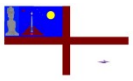






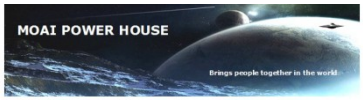






impact of ‘our immoral countrymen’ had been to appoint a Resident who had been little more than ‘a mere spectator’. Now the Government was contemplating going ‘from one extreme 6.3.3 Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz The British Move towards Annexation 305 to another’. He advocated an intermediate position, such as the idea of consular **agents**.49 Hobson’s own August **1837** dispatch, which we discussed in chapter 4, arrived in London on 1 February 1838. In sum, Hobson proposed that ‘factories’ be established in specific locations where European settlers had congregated, with the consent of local **Māori** obtained by means of treaty. In these British enclaves, which would be dependencies of New South Wales, a ‘factor’ would rule over **Māori** and British subjects alike, police and courts of law would eradicate the issue of frontier disorder, and Māori would be exposed at first hand to the workings of civil government.50 Hobson’s dispatch and Busby’s June **1837 CITE DECREE AFFIDAVIT**

report were published together on 7 February 1838. Beecham seized on Hobson’s view that Busby’s grim account of New Zealand conditions went too far, and – as Loveridge put it – ‘rushed back into print’ with another pamphlet that set out the Government’s options for New Zealand : namely, colonisation, Busby’s protectorate, consular agents, and Hobson’s ‘factories’. Inevitably, Beecham rated consular agents first and colonisation last. His key criticism of the Association was that it would be ‘impossible for any private commercial company’ to deal adequately with New Zealand’s difficulties. Instead, the situation could ‘only be met by a Government measure, to be entrusted, as to its execution, to public officers whose sole business it shall be to carry it into full effect’.51 6.3.4 The 1838 impasse As it transpired, the negotiations between the Association and the Government collapsed over the latter’s requirements for an input of funds by the founders and its refusal to allow the colony to encompass the whole of New Zealand (thus leaving open the possibility of a rival colonising venture). Glenelg announced that the Association would not be awarded a charter. Durham decided instead to attempt again to prepare a Bill for consideration by Parliament. Glenelg did not object to this plan, although he warned that the Government’s support was by no means guaranteed. Reflecting on these events, Wakefield reasoned that Glenelg and the Colonial Office were under the sway of the CMS, and that the joint-stock condition had been insisted upon principally because it was known the Association would reject it and the negotiations would break down accordingly.52 This line of thought was maintained by Dr Alexander McLintock, who wrote in 1958 that Coates was trusted ‘implicitly’ by Glenelg, who turned to him routinely for advice : Had Glenelg been left to his own devices, the course of events might have proceeded differently and more happily. As it was, he gave way [to Coates] on all counts and the Association was doomed, leaving to Wakefield the unenviable task of creating a new design from out of the wreckage of the old.53 Writing two decades later, Adams contended that it would be wrong to exaggerate the extent of CMS influence, even over Glenelg. He noted the ways in which the CMS was routinely rebuffed, and observed that ‘[s]uch treatment reveals the Colonial Office’s dislike of amateur advice and interference’, regardless of where it came from. He added that Glenelg, Grey, and Stephen ‘were all wary of Dandeson Coates, who was by no means on the intimate terms with them or with the Colonial Office files that has sometimes been supposed’.54 Into 1838, therefore, there was now relative uniformity of opinion in Britain among the missionaries, colonisers, and the Government as to the necessity for the establishment of an official British presence in New Zealand beyond that already represented by the British Resident. What remained in dispute was the form this enhanced presence should take. As the year went on, the CMS and the Association continued to vie for the Government’s favour. In a way, the two bodies had some aspirations in common. As Belich put it, ‘both wanted just enough intervention to facilitate their goals, but not so much as to impede them’.55 Adams usefully summed up the impasse like this. The CMS’s primary weakness was that it refused to see that its solutions – such as preventing all colonisation (save for

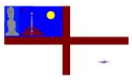












the families of missionaries), and convincing Parliament to increase the Resident's power and give him naval support – were impractical and outdated now that informal 6.3.4 Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz He Whakaputanga me te Tiriti The Declaration and the Treaty 306 colonisation was well under way. Aspects of its case were also 'blatantly self-interested'. **CITE DECREE AFFIDAVIT FRAUD PUBLICATION**

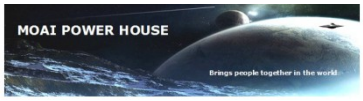
But the Association too was, of course, driven by self-interest. It wanted to buy **Māori** land 'for a song' and resell it at a considerable profit to bring out thousands more settlers. Its financial planning was also irresponsible – it anticipated raising money in England on the strength of having bought the 'right' to purchase a million acres from the original New Zealand Company. The Association maintained that it could establish the colony at no expense to the public, and that its members had forsaken 'all notion of private speculation'. But the Government wanted its founders to put up their own money, because it reasonably feared the Association would fold, leaving the government to bear its expenses.56 On 30 March 1838, the Earl of Devon proposed the appointment of a

House of Lords select committee 'to inquire into the present state of the Islands of **New Zealand'**,

as this would assist consideration of any proposed legislation. Glenelg supported the motion, which was successful. He favoured the committee reporting quickly, for the Government itself intended to take some action on the matter.57 Then, in May 1838, the Association received some unexpected support, in the form of the first annual report of

the **Aborigines'** Protection Society, which had been formed by five members of the **1837** select committee 'to watch over and protect the interests of the **natives**'. **CITE DECREE AFFIDAVIT**

58 With regard to Zealand, the report stated that : the question is not now whether any Colony at all shall be attempted there, for that question is settled by the fact of such large numbers of **British** subjects being already there, as to demand some legislative interference in the way of controul [sic]. It will not be friendship to the **Aborigines** to leave them a prey to the unprincipled and lawless, under the plea of the injustice that might be done them by the establishment of a British colony among them. The non-interference has now gone on too long, not to justify and demand immediate interference.59 The authors followed up this comment by stating that they could not see 'any obviously essential defects' in the Association's plans and did not accept that colonisation per se was injurious to native peoples. If a colonisation scheme had flaws, they said, 'Let these be corrected, and the evils must be diminished.'60 The Association's Bill – for 'the Provisional Government of British Settlements in the Islands of New Zealand' – was tabled on 1 June 1838. It professed the intention of protecting and benefiting Māori by preserving them from injury, 'diffusing amongst them the blessings of Christianity, and promoting their civilization and happiness'. It allowed for the appointment of 16 commissioners who could enter into any contracts to obtain Māori land. Any territory gained thereby would be considered 'part of Her Majesty's foreign possessions'. Treaties could also be entered to extend British legal jurisdiction over lands not so surrendered, and a 'Protector of Natives' was to oversee Māori interests in all these matters.61 The Bill was heavily defeated in the Commons. As soon as Baring moved its introduction, a member opposed it on the basis that Britain 'had no right to establish a colony in a part of the world which was as independent of Great Britain as France or any of the nations of Europe'. Another contended that establishing colonies was strictly the business of the Crown. The CMS also petitioned against the Bill, arguing that Māori would soon – through missionary work – be

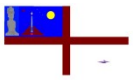




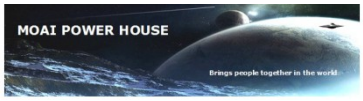








able to govern themselves, and that colonisation would be very harmful. In moving the second reading on 20 June, Baring railed against the CMS, the ineffectiveness of the missionaries, the flaws in Busby's and Hobson's proposals, and the sheer expense to the Crown of establishing a colony itself. But he met with considerable opposition from those who opposed the Association's financial model (that is, of using borrowed money rather than the founders' own funds), from the supporters of the missionaries, and from those who thought that colonisation was solely a government prerogative. A second reading was denied by a majority of 92 to 32.62 William Gladstone, later British Prime Minister, remarked that : There was no evidence that the chiefs of New Zealand had parted with any of their rights of sovereignty, and it behoved the House to be extremely cautious how they consented to 6.3.4 Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz The British Move towards Annexation 307 any scheme for dispossessing them by underhand means . . . There was no exception to the unvarying and melancholy story of colonization.63 The Association was effectively 'stumped', as Adams put it. In the face of adversity, its members claimed the latest setback to be a 'temporary failure' and resolved to continue to assure 'to the inhabitants of New Zealand the blessings of Christianity and civilization and to this country the advantages of a sel[f] regulated system of colonization'.64 But this 'despairing' resolution proved to be the Association's final recorded action. The occasion of its Bill had been the moment for it to change course, with the Government remaining committed to establishing some form of increased official presence in New Zealand. But the Association refused to meet the Government's insistence on a joint-stock company. What Adams described as its 'over-sanguine interpretation of the Government's approval in principle' meant its opportunity was lost. But nor, as noted, could the CMS take advantage of the situation. It continued to advocate a consular agents scheme, despite the lack of official interest.65 The Government, for its part, had become somewhat passive, as if waiting for the right scheme to be brought to it. The Colonial Office's search for an alternative was, wrote Adams, 'pursued with neither energy nor haste' and 'occupied almost the whole of 1838'.66 In the meantime, the Lords select committee's 'report' (of a mere halfdozen lines) on New Zealand was released in August 1838. It essentially concluded that the expansion of the formal Empire was a matter for the Government : RESOLVED, – THAT it appears to this Committee, that the Extension of the Colonial Possessions of the Crown is a Question of public Policy which belongs to the Decision of Her Majesty's Government ; but that it appears to this Committee, that Support, in whatever Way it may be deemed most expedient to afford it, of the Exertions which have already beneficially effected the rapid Advancement of the religious and social Condition of the Aborigines of New Zealand, affords the best present Hopes of their future Progress in Civilization.67 Adams read this brief comment as a firm rejection of private enterprise as 'an instrument of imperial expansion', and indeed as a further parliamentary vindication – after the 1837 Commons committee report on aborigines in British settlements – of the arguments of the missionaries.68 Orange and Moon both made the same assessment.69 But Loveridge disagreed, arguing that the committee members had simply been unable to agree and had 'sought refuge in a Report which did nothing but toss the proverbial ball back into the Government's court'.70 6.4 The Government Takes Initial Steps 6.4.1 The decision to appoint a consul The favoured option among government officials had for some time been Hobson's factories scheme. Adams noted that positive Colonial Office opinions about the scheme were expressed in February, May, and August 1838. The scheme appealed to officials as a viable solution, and had the benefit of avoiding any mention of systematic colonisation. Loveridge added, however, that 'little thought had been given to the practicalities' of its implementation. Moreover, while Glenelg had accepted the idea of replacing Busby with an official with greater powers in June or July 1838, no candidate had been identified by the end of parliamentary recess five months later.71 Glenelg advised New South Wales Governor Sir George Gipps on 1 December 1838 that an officer would soon be appointed British Consul in New Zealand.72 Professor Paul McHugh noted that use of the term 'consul' signified 'an intention at least to obtain

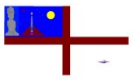




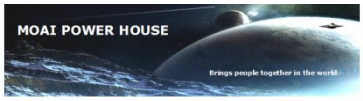








consular jurisdiction' over British subjects in New Zealand.73 Glenelg's decision, therefore, was to embark upon a scheme in which British authority would be exercised over British subjects only. This differed from Hobson's factories scheme, in which full authority would be exercised over all people, including Māori, in pockets of British territory. Loveridge speculated that Glenelg's announcement may have been prompted by a letter Coates sent Glenelg on 30 November 1838, which warned that the impact of 'immoral' British subjects on Māori was severe and there was a pressing need 'to avert still heavier calamities'. Coates 6.4.1 Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz He Whakaputanga me te Tiriti The Declaration and the Treaty 308 urged the Government to apply without delay 'such remedies as the case may admit to secure the natives from the wrongs under which they now so severely suffer'.74 Glenelg's timing may, however, also have been because the Association, 'phoenix-like', was now 'rising from its own ashes', as Adams put it. In August, some of its members formed a new joint-stock company called the New Zealand Colonisation Association (the irony being that these same men had previously refused to accede to the Government's requirement for the formation of such a company), and by November 1838 they had purchased the Tory and were planning a preliminary expedition to New Zealand. Most particularly, though, Glenelg's announcement that he would appoint a consul was probably connected to the letter from the Admiralty received on the same day as Coates's letter, which responded favourably to the Colonial Office request for an increase in the frequency of warships visiting New Zealand.75 The principal reason for the Colonial Office's lack of attention to the New Zealand situation in 1838 was that it continued to have a lot on its plate. In March 1838, Stephen described the previous two months as the busiest and most troubling of his career – but he did not mention New Zealand among his anxieties.76 As Adams noted, with respect to 1838 generally : New Zealand was not particularly important compared with the progress of Durham's mission in Canada, the termination of apprenticeship in the West Indies, the problems of jurisdiction and race relations created by the Boers trekking northwards from the Cape Colony, the demands for self-government and an end to transportation in New South Wales, and the financial and economic difficulties which faced both West and South Australia.77 However, one problem that persisted irrespective of the demands of running an empire was Glenelg's indecision. Stephen expressed frustration at Glenelg's procrastination on more than one occasion, and Howick encouraged Melbourne to dismiss him in December 1837 and again in August 1838. The Colonial Secretary's critics made mirth of his inactivity, with one suggesting the Canadian crisis had given him 'many a sleepless day' (emphasis in original).78 Soon after his letter to Gipps, Glenelg wrote to the Foreign Office, requesting that it consider 'appointing an officer, invested with the character and the powers of British Consul, at New Zealand'. Lord Palmerston, the Secretary of State for Foreign Affairs, approved the appointment later the same month, and on 28 December Hobson was Lord Glenelg, 1820. Glenelg was the Secretary of State for War and the Colonies from 1835 until February 1839. He strongly opposed the proponents of systematic colonisation in New Zealand, although in December 1837 James Busby's reports led him to believe that disorganised and 'desultory' colonisation was already taking place and that organised colonisation might be better. 6.4.1 Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz The British Move towards Annexation 309 offered the position.79 It was the Government's wish, Hobson was told, to confer the appointment on some one who may possess some previous knowledge of the peculiar character of the Society in New Zealand : and from the report which you furnished to the Governor of [New South] Wales while commanding HMS Rattlesnake on that Station Lord Glenelg is induced to inquire whether it would suit your views to accept the appointment.80 Hobson confirmed his interest on 1 January 1839 but, as Loveridge observed, he 'was quite familiar with the difficulties Busby faced' and 'no fool'. He naturally asked what kinds of means and powers he would have in performing his duties : how, for example, would he repress crime and settle inter-racial disputes ? Would relations between Māori and the British

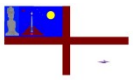




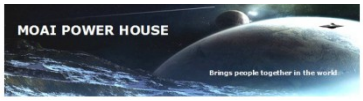








Government change ? 81 Hobson was invited to London to discuss these matters personally with Glenelg. As he recalled, Glenelg explained ‘the reluctance with which Her Majesty’s Ministers interfered with the affairs of New Zealand, but that the force of circumstances had left them no alternative’. Those circumstances were the ongoing emigration to New Zealand of ‘depraved’ characters, as well as the activities of a society advancing the cause of ‘still further emigration’. It had thus become necessary for the interference of Government, to avert evils which must result both to the Aborigines and to the settlers, if unrestrained by the necessary Laws and Institutions. However, Hobson was rather taken aback to learn that Glenelg had given little thought to how a factories scheme would be implemented in New Zealand. In fact, Hobson himself was invited to provide those details, which he did in writing on 21 January 1839.82 In this 1839 update, Hobson retreated somewhat from his 1837 report. He explained that his earlier proposal had been ‘one of expediency, rather than of choice’, because it would leave lands beyond the factories open to interference from foreign powers like France and blighted by unscrutinised land transactions and ensuing disorder. Moreover, he had been under the ‘impression that Government had resolved to treat the States of New Zealand as an independent nation’. At the time, his own preference had been for something ‘preparatory to a permanent connection between Great Britain and New Zealand’, and he had suggested the factories idea because it was ‘the only measure, short of actual assumption of Sovereignty by Great Britain, that is calculated to afford protection to our fellow subjects who settle in New Zealand’ (emphasis in original).83 We assume by the phrase ‘actual assumption of sovereignty’, Hobson meant the assumption of sovereignty over the whole of New Zealand. His view now was that if his 1837 proposal were to be pursued, the extent of the Factories should not be limited, but that it should remain discretionary with her Majesty’s Government to affix these boundaries and extend them as circumstances may require. In order to secure the means of carrying this proposal into full effect, considerable tracts of Land should be purchased by Government, beyond the contemplated limits of the Factories.84 Hobson then related the detail of how the factories scheme would work. A Superintendent, who would also be Consul General, would control all British settlements and interact with the united chiefs and with junior officers serving as Factors, Vice Consuls, and Justices of the Peace. Hobson had a rough idea of how order would be preserved and revenue raised, but he conceded that he was ‘unaccustomed to consider such cases in all their bearing, and to examine the possible effects of every proposal’. And he concluded by pointing out the flaws in the entire factories approach – principally the lack of control over lands and people between and around the factories. The only real solution to this situation was for : Her Majesty’s Government [to] at once resolve to extend to that highly gifted Land the blessing of civilization and liberty, and the protection of British Law, by assuming the 6.4.1 Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz He Whakaputanga me te Tiriti The Declaration and the Treaty 310 sovereignty of the whole Country, and by transplanting to its Shores, the Nucleus of a moral and industrious population.85 As Loveridge noted, Hobson’s preferred remedy for New Zealand in January 1839 was therefore ‘[a]nnexation and large-scale colonization’.86 6.4.2 The first draft of the instructions to Hobson This did not necessarily mean, of course, that Hobson’s solution became the preference of the Government. The same day that Hobson submitted his updated proposals, Stephen produced what Adams called ‘the first official exposition of the intentions underlying the consular appointment’.87 This was a memorandum written for the Crown’s renewed negotiations with the Association (or at least its successors).88 Stephen set out that the Government’s representative (who would eventually become Governor) would negotiate with Māori for the cession of ‘such parts of New Zealand as may be best adapted for the proposed Colony’. Provision was made for systematic colonisation by a joint-stock company under Government supervision. Three days later, however, on 24 January, in the first set of draft instructions to Hobson, Stephen made no reference to chartering a colonisation company.89 Adams put this amendment down to Glenelg’s intervention. Indeed, in his

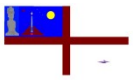




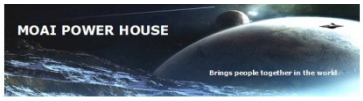








covering note to the instructions, presented to Cabinet on 12 February 1839, Glenelg stressed that the plan was ‘not one for the encouragement of an extended system of colonization, but for the establishment of a regular form of government, urgently demanded by existing circumstances’.90 The instructions themselves described Crown intervention in New Zealand as ‘indispensable’ given the current growth in British settlement.91 As Stephen had put it : Whatever might be our views as to the wisdom of extending the Colonial Dominion of the British Crown in this direction, or as to the propriety of bringing the Civilized Natives of Europe into contact with the Aborigines of New Zealand, the course of events has reduced us to the necessity of choosing between an acquiescence in the growth of a British Settlement there without the restraints of Law, and the formation of a Colony in which lawful authority may be exercised for the protection of the Natives and the benefit of the Settlers themselves.92 The 24 January instructions set out that Hobson was to ascertain which ports and districts should – because of existing British settlement, trade promotion opportunities, and the need to protect Māori – have British sovereignty established over them. The Bay of Islands was named as one such likely location. The leading chiefs of these places would then need to be identified and persuaded to cede their sovereignty voluntarily to the Queen, in exchange for alliance with the Crown and varying payments depending on the value of the land. Stephen told Hobson to be honest and protective in his dealings with ‘these ignorant and helpless people’.93 As an inducement, the chiefs were to be offered assistance in protecting their unceded lands from external enemies (Grey noted that such a promise might be ‘hazardous’ if it committed Britain to resist any incursion by the French or Americans). Hobson was also authorised to give the chiefs presents as ‘the price’ of sovereignty.94 Hobson’s commission as Governor would commence as soon as the sovereignty of any areas had been acquired. Lands that the Crown then purchased in these sovereign areas were not to be disposed of by free grants, but rather sold at minimum prices set in London. Stephen summarised that : Within the British Territory in New Zealand you [Hobson] will possess the character & powers of a British Governor. Beyond that Territory you will be invested with the rights and privileges of a British Consul. The powers of either Class will be used for establishing and enforcing Law and Order amongst the British Inhabitants and for protecting the Natives from violence and injustice.95 Loveridge observed, ‘This was, more or less, Hobson’s first “factory” plan reconfigured as concrete instructions.’ 96 In other words, Hobson’s response to the initial 6.4.2 Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz The British Move towards Annexation 311 proposal to establish a British Consul had shifted Glenelg some way towards Hobson’s preference for the establishment of British sovereignty over at least some of New Zealand. As we have seen, Glenelg emphasised the limited ambit of the scheme in his note to Cabinet. British authority would be restricted, he said, to ‘certain defined portion or portions of Land the portion or portions being those where the British are already settled’.97 Hobson was then given the draft instructions, both for comment and presumably to help him decide whether to take up the position. He had been hoping to secure a naval command but, when this fell through, he accepted on 14 February 1839.98 6.4.3 Glenelg’s resignation In early February, however, Glenelg had been forced to resign over his handling of the Canadian crisis. Both Howick and Lord John Russell, the Home Secretary, had threatened to quit the Ministry over the matter, and Melbourne had no option but to express a lack of confidence in him.99 Glenelg was replaced on 20 February by the Marquis of Normanby, who had previous experience as both Governor of Jamaica and Lord Lieutenant of Ireland. But Normanby was not inclined to prioritise the New Zealand question, directing in mid-March 1839 that a set of briefing papers on the subject (including the draft instructions) ‘be put by for his Lordship’s future reference whenever this question should be ripe for decision, which at present it is not’. This must have been a surprise to Hobson, who had been expecting to be sent to New Zealand soon after his appointment.100 At some point the Colonial Office drew up another document that has usually been regarded as a second set of draft instructions and identified as originating at various points after

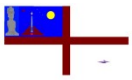












Glenelg's resignation, between February and May 1839. McHugh, for example, argued that Stephen and Grey prepared the document in early March, while Adams was sure it was written after 18 May 1839.101 Loveridge, however, contended that this rather long and rambling document could 'by no stretch of the imagination be described as a complete set of instructions' and that it was almost certainly written by James Stephen in December of 1838 or early January of 1839 as a rough compilation of ideas, after Hobson was selected for the position of Consul and before the Under Secretary wrote the 24 January draft instructions.102 It read, wrote Loveridge, 'more like a first stab at articulating the rationale for and scope of British intervention than anything else'.103 The document, if we accept Loveridge's identification, is noteworthy for showing Stephen's thinking in the first draft of the instructions. It focused heavily on why it was necessary for sovereignty to transfer from **Māori** to the Crown, while acknowledging, implicitly, the departure thereby from the select committee's report on **aborigines** of **1837**.104 Despite the **Māori** population's separation into disunited tribes and the lack of 'possession by any of them of the Civil polity, or social Institutions of civilized Communities', Stephen wrote : The **Queen** disclaims any pretension to regard their **lands** as a vacant Territory open to the first future occupant, or to establish within any part of New Zealand a sovereignty to the erection of which the free consent of the **Natives** shall not have been previously given.105 Stephen was also careful to rule out the acquisition of sovereignty over all of New Zealand :

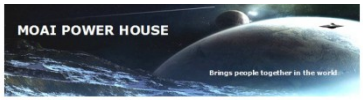
In some views the most simple and effectual measure would be to obtain from the Chiefs the Cession to the **Queen** of the **Sovereignty** of the Whole Country. But for the present at least such a measure would be a needless encroachment on the rights of the **Aborigines**.106 Sovereignty was first to be obtained over those parts where **British** subjects were living.

With the cooperation of a confederation of chiefs CITE DECREE AFFIDAVIT

– obtained through a guarantee of their sovereign and territorial rights, as well as annual gifts – indirect British control could be extended over the rest of the country.

This, Stephen thought, would 6.4.3 Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz He Whakaputanga me te Tiriti The Declaration and the Treaty 312 be to **Māori** advantage, **CITE DECREE AFFIDAVIT AGAINST THE WAITANGI TRIBUNAL**

introducing to them gradually 'the blessings of civilised society'.107 Stephen also noted that representative government was an impractical option for New Zealand, in that the Māori population so heavily outnumbered the settlers. Yet parliamentary approval would be needed to establish a colony that was not based on this principle. He realised it would not be possible to pass prospective legislation before Hobson left, and the wait for confirmation from Hobson that sovereignty had been ceded before legislation could be passed (with the further delay in communicating this back to the other side of the world) would leave New Zealand without lawful government or a court system for a year and a half. Stephen decided, however, that this lengthy delay was manageable.108 Irrespective of the timing of this document, Glenelg's departure resulted in a significant delay in government action. Soon enough, too, there was another change of personnel in the Colonial Office, with Henry Labouchere replacing Grey as Under-Secretary. There matters stood, with Labouchere admitting in April 1839 that the Government 'had not been able fully to consider the New Zealand Question'.109 Not only was Normanby proving as indecisive as Glenelg – Howick and Russell had quickly formed the opinion that he was not up to the job – but the Colonial Office was also dealing with 'smouldering

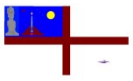




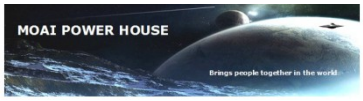








fires' across the globe. Quite apart from the challenges in the West Indies, Canada, and West Africa, in September 1839 Normanby listed a range of additional trouble spots in Malta, the Ionian Islands, Gibraltar, Ceylon, and the Australian and South African colonies. But none of this compared to the possibility of a confrontation with France over developments in the Middle East. Stephen complained in September that he had been 'living for the last six months in a tornado'. As Adams observed, 'New Zealand was only a minor eddy in that tornado'.110 6.5 The Colonisers Finally Provoke Action Soon enough, however, Normanby was forced into action by the proponents of systematic colonisation. In late 1838, some members of the 1825 New Zealand Company, including Robert Torrens, had presented a plan to colonise New Zealand under the new banner of the New Zealand Society of Christian Civilization. The plan was to combine a chartered company with a British protectorate. But the idea found little favour in the Colonial Office, where Glenelg's preference remained the establishment of factories. Moreover, the momentum among the systematic colonisers had sat first with the New Zealand Association after Durham joined it in 1837, and thereafter with its successor, the Colonisation Association.111 More significant, therefore, was the Colonisation Association's approach to Normanby as soon as he took office on 20 February 1839. Its secretary, William Hutt, told the new Secretary of State for War and the Colonies that the requirements for a charter laid down by Glenelg had now been met. He asked Normanby for a meeting on the subject. Hutt said a million acres of land had been purchased in New Zealand (a reference to the claims of the 1825 company), as well as a ship, and the would-be colonists were prepared to go there whether the Government offered them protection or not. Adams thought the letter 'served fair warning that the colonizers had reached the end of their tether'.112 The Colonial Office was not minded to act by this threat. Instead, it told the Colonisation Association on 11 March 1839 that the original offer of a charter was now withdrawn and the new colonising body was in any case rather different from its predecessor – as indeed were the known circumstances in New Zealand. The Colonisation Association changed its tone and Normanby granted it an audience on 14 March 1839. What transpired at this meeting is debated. Wakefield, who was not present, claimed that Normanby gave the colonisers his support and told them all obstacles to their plans had now been removed, but that he wrote to condemn their plans less than 48 hours later, having been influenced by his officials. Labouchere, who was at the meeting, said that Normanby had been sympathetic but had added that nothing could be done until New Zealand was British in whole or in part. Labouchere reported Normanby as saying that until then he could not even recognise the Colonisation Association's proceedings. Adams thought other evidence generally supported Labouchere's version.113 6.5 Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz The British Move towards Annexation 313 The following day Stephen wrote to Labouchere and expressed the view that, short of annexation and a selfgoverning colony, there were only two viable methods of establishing a formal colony in New Zealand. The first and preferred option was that which had been put to Durham by Glenelg at the end of 1837 (but which Glenelg had more or less retreated from ever since) : a chartered joint-stock company. He reasoned that it would be necessary to offer the charter to a different group from those involved with the Association in order to placate the CMS, whose objection to colonising New Zealand would prove 'fatal'. If a charter could not be offered in practice, then the other option was 'Lord Glenelg's second, or substituted scheme' : Hobson's factories.114 While Wakefield and his associates initially chose to regard Normanby's stance as an invitation to proceed immediately, they were forced privately to acknowledge two days after the 14 March meeting that this was not so. No letter has been located, but Adams guessed that the rebuff might have come in a verbal response from Labouchere to Hutt about the draft Bill that the latter had sent to the Colonial Office on 12 March. Even by his own account, Wakefield knew soon after the meeting with Normanby that the Colonial Office had not given any goahead. And, all the same, he chose to continue the pretence that it had.115 Adams thought Wakefield's reasoning for this would have been that it had now become vitally important for the

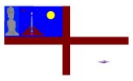




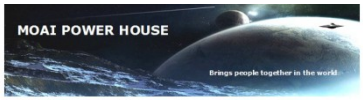








company to purchase land in New Zealand before the Government's authority was established there. Nothing was to be lost by flying in the face of the facts and claiming government approval for action which had become necessary anyway.116 Indeed, one thing Labouchere had told Hutt was that the Government would secure itself a monopoly over the land trade in New Zealand, and Hutt had duly reported this back to the Colonisation Association on 20 March.117 Hutt knew that this would force the colonisers to purchase land from the Crown at 500 times the price it could be bought from Māori. Wakefield's response at this time is often quoted. He said : send off your expedition immediately – acquire all the land you can – & then you will find that Govt. will see the absolute necessity of doing something. Until something has been done by the Company or a Company the chances of success to Americans – the French or the Missionaries – are equal – either one or the other may colonise in their own way – there is no power to dispossess them. Possess yourselves of the soil & you are secure but if from delay you allow others to do it before you – they will succeed and you will fail (emphasis in original).118 His colleagues took the message on board. The 20 March meeting had been called in the wake of the rebuff given at the 14 March meeting, to discuss winding up the Colonisation Association, but Wakefield's words had the opposite effect. The organisation was turned into a public joint-stock company, the New Zealand Land Company ('the Company'), and on 29 April Hutt told the Colonial Office that the Tory would sail the following week.119 Adams ascribed a great deal of cynicism and greed to the colonisers. Not only did Wakefield perpetuate an incorrect interpretation of the 14 March meeting, but he also then deliberately advised that a preliminary expedition set out to obtain plenty of cheap land from the Maoris and get secure possession of the soil before the Government pre-empted it. Then the Government would have to follow with courts and protection. The colonizers acted hastily not primarily to force the Government to intervene, but to grab Maori land before it did so.120 These developments radically shifted the ground. Loveridge wrote that they 'lit a fire' under Normanby and his officials, while Adams described Hutt's letter about the Tory sailing 'as something of a bombshell' – although he suggested that the Company's intentions had been reasonably well spelled out in letters from Hutt on 20 February and from chairman Standish Motte on 4 March, and that officials had not taken proper heed.121 The Government's first reactions were to warn Hutt that there was no guarantee the Company's land titles would 6.5 Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz He Whakaputanga me te Tiriti The Declaration and the Treaty 314 be recognised by the Crown, and to set about implementing the factories plan. On 18 May 1839, Stephen wrote a list of urgent tasks. These included : ы commissions for Hobson from, respectively, the Foreign Office (for his posting as Consul) and the Queen (for his role as New Zealand's first Governor) ; ы Treasury approval of expenses ; ы final instructions for Hobson ; and ы dispatches to the Australian Governors explaining the state of affairs and instructing them to assist Hobson. Mainly, however, Stephen noted the need for legislation to allow for the creation of a system of courts, police, and other arms of government. Should this – which was his preference – not be possible, the Crown lawyers would need to be consulted about what Hobson could legitimately establish 'by the mere Royal prerogative'. Either way, Stephen feared the whole process could take 'some months'.122 Then, at some time in the second half of May 1839, somebody in the Colonial Office (it is not clear who) had the idea of simply making New Zealand a part of New South Wales. Altering a colony's boundaries could potentially be achieved via the Royal prerogative, and doing so in this case would instantly overcome the risk of a drawnout parliamentary process, during which settlers could continue to buy up significant amounts of land. Given that there was already a government in New South Wales, its authority could be automatically expanded to encompass New Zealand. As Loveridge put it, the idea marked a 'major innovation in the long process of deciding what was to be done about New Zealand'.123 On 30 May Normanby sought confirmation from both the Attorney-General and the Solicitor-General that the governing authority of New South Wales could be extended to encompass New Zealand once Māori had ceded sovereignty. The Law Officers' response, of 4

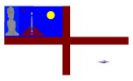




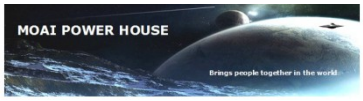








June, represented the authoritative legal opinion of the British Crown. They regarded the authority vested in the New South Wales legislature as encompassing newly dependent territories, and concluded therefore that 'her Majesty may lawfully annex to the Colony of New South Wales any territory in New Zealand, the Sovereignty of which may be acquired by the British Crown'. As a result, a new commission was drawn up for Hobson, with Letters Patent signed by the Queen on 15 June 1839. These amended New South Wales's boundaries to include any territory which is or may be acquired in sovereignty by Her Majesty . . . within that group of Islands in the Pacific Ocean, commonly called New Zealand.124 With legal approval obtained, Stephen wrote to the Treasury on 13 June about securing funding for the new colony. Financial authority was obtained on 22 June and formally set out in a minute of 19 July, in which the Treasury advised that the funding advanced would need to be repaid from colonial revenue. It added that annexation of New Zealand should be strictly contingent upon the indispensable preliminary of the territorial cession having been obtained by amicable negociation with, and free concurrence of, the native chiefs.125 The Treasury also contemplated the possibility that Hobson might fail to obtain the chiefs' consent to a treaty of cession, in which case lack of ensuing revenue from New Zealand might necessitate the British Government covering any expenses Hobson had incurred.126 Foreign Office approval was then obtained and, on 30 July, Hobson's commission as Lieutenant-Governor over territory 'which is or may be acquired in Sovereignty in New Zealand' was signed by Normanby on behalf of the Queen. On 13 August Hobson was also commissioned as Consul with the responsibility of negotiating with Māori for the recognition of British sovereignty in New Zealand. Hobson was anxious to know about his salary switch from that of a Consul to that of a Lieutenant-Governor. On 13 August he asked the Colonial Office : May I beg to be informed how my Salary is to be drawn when my consular duties cease, which I assume will terminate with the cession to Her Majesty of the Sovereignty of New Zealand. 6.5 Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz The British Move towards Annexation 315 Loveridge noted that Hobson's assumption appeared here to be that he would acquire sovereignty over the entire country.127 Coates was given a private briefing about these preparatory developments by Labouchere on 18 June 1839. Loveridge thought this was undoubtedly designed to ensure CMS support for Hobson's mission. Labouchere stressed that the Company's plans had not been approved and indeed that the whole idea of chartering a company had been abandoned. If Loveridge is correct, then this meeting had the desired effect, for on 17 July the CMS committee wrote to its missionaries in New Zealand, requesting their full support for Hobson.128 Coates wrote to Hobson the same day, offering him information respecting the New Zealand Tribes and their country which may I think prove useful to you in prosecuting an object, to which I believe you attach much importance, the carrying into execution the interesting mission with which you are charged by Her Majesty's Government in the vigorous way conducive to the welfare of the Natives of that country.129 In an attempt to counteract the publicity the Company was now generating, Labouchere arranged for a CMS supporter to ask a question about New Zealand in the Commons. In answer to this, on 25 June 1839, Labouchere explained that the Government had come to the determination of taking steps which would probably lead to the establishment of a colony in that country ; but . . . those measures were still under consideration . . . A number of persons had gone out to New Zealand, and in order to protect the aborigines, and for the maintenance of good order among the inhabitants, it was thought fit that measures should be taken to establish law and peace.130 He added that the Company's actions had not been approved of, and in any future step which the Government might take in reference to New Zealand, they would not consider themselves bound to recognise any title to land set up which might appear to be fraudulent or excessive. Māori were 'unable properly to protect their own interests' and it was 'the duty of the Government to protect them, and to see that no title to land should be set up of the kind he had described'. Loveridge regarded this statement as 'one of the first public indications that British policy towards New Zealand

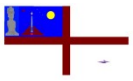




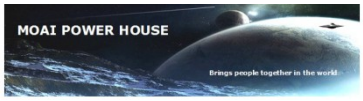








had altered, and that direct intervention was in the wind'.131 6.6 Normanby's Final Instructions 6.6.1 Key features of the instructions The preparation of Hobson's final instructions began in July 1839, while the requisite approval from the Law Officers and the Treasury was being obtained. Stephen completed the draft on 9 July ; it was then approved in turn by Labouchere and Normanby over the following two days. On 28 July, Hobson asked to see the instructions and was given a copy before the end of the month. He raised certain questions on 1 August.132 Rather than respond to these matters via an amendment to the existing set of instructions, Normanby provided Hobson with a separate reply on 15 August. The formal instructions themselves had been provided to Hobson the day before, on 14 August, and had not been amended in any significant way from the July draft. Normanby's 15 August letter is effectively an addendum to the instructions.133 Hobson's instructions are generally regarded as the key statement of British intentions in New Zealand prior to the signing of te Tiriti, and have thus been accorded significant importance in a variety of Tribunal reports. The Orakei Tribunal, for instance, quoted the first half of them practically in full and discussed them at great length.134 A decade later, the Muriwhenua Land Tribunal declared that the instructions 'so illuminate the Treaty's goals that, in our view, the Treaty and the instructions should be read together'.135 Whereas most accounts cite the final instructions of 14 August, Loveridge – who perused the Colonial Office file – traversed the initial July draft, noting, for example, the alterations made to Stephen's draft by 6.6.1 Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz He Whakaputanga me te Tiriti The Declaration and the Treaty 316 Labouchere.136 Because the draft remained largely intact, we – like the Orakei Tribunal – will quote here from the final instructions as published in the British Parliamentary Papers.137 We note any significant departures from the draft text below. Normanby began by acknowledging Hobson's prior experience in New Zealand, thus relieving Normanby 'from the necessity of entering on any explanations on that subject'. It sufficed instead for Normanby to remark that a very considerable body of Her Majesty's subjects have already established their residence and effected settlements there, and that many persons in this kingdom have formed themselves into a society, having for its object the acquisition of land and the removal of emigrants to those islands.138 His Government, said Normanby, had watched these developments with interest and acknowledged that a colony in New Zealand would have considerable advantages : We have not been insensible to the importance of New Zealand to the interests of Great Britain in Australia, nor unaware of the great natural resources by which that country is distinguished, or that its geographical position must in seasons, either of peace or of war, enable it, in the hands of civilized men, to exercise a paramount influence in that quarter of the globe. There is, probably, no part of the earth in which colonization could be effected with a greater or surer prospect of national advantage.139 However, Normanby stated, ministers had been 'restrained by still higher motives from engaging in such an enterprise'. They had concurred with the report of the Commons select committee on aborigines in British settlements that the increase of national wealth and power, promised by the acquisition of New Zealand, would be a most inadequate compensation for the injury which must be inflicted on this kingdom itself, by embarking in a measure essentially unjust, and but too certainly fraught with calamity to a numerous and inoffensive people, whose title to the soil and to the sovereignty of New Zealand is indisputable, and has been solemnly recognized by the British Government. We retain these opinions in unimpaired force ; and though circumstances entirely beyond our control have at length compelled us to alter our course, I do not scruple to avow that we depart from it with extreme reluctance.140 The circumstances Normanby referred to were said to be as follows. By 1838, more than 2,000 British subjects had settled in New Zealand and amongst them were many persons of bad or doubtful character – convicts who had fled from our penal settlements, or seamen who had deserted their ships ; and that these people, unrestrained by any law, and amenable to no tribunals, were alternately the authors and the victims of every species of crime and outrage. It further appears that extensive cessions of land have been obtained from the natives, and

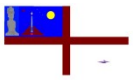




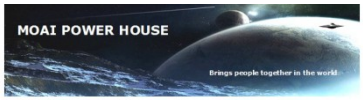








that several hundred persons have recently sailed from this country to occupy and cultivate those lands. The spirit of adventure having been thus effectually roused, it can no longer be doubted that an extensive settlement of British subjects will be rapidly established in New Zealand ; and that, unless protected and restrained by necessary laws and institutions, they will repeat, unchecked, in that quarter of the globe, the same process of war and spoliation, under which uncivilized tribes have almost invariably disappeared as often as they have been brought into the immediate vicinity of emigrants from the nations of Christendom. To mitigate and, if possible, to avert these disasters, and to rescue the emigrants themselves from the evils of a lawless state of society, it has been resolved to adopt the most effective measures for establishing amongst them a settled form of civil government.141 Establishing this 'settled form of civil government', Hobson was instructed, was 'the principal object of your mission'. Normanby went on to explain that, while the Government recognised Māori sovereignty, it would be in their own interests for Māori to come under the protection of the Queen, so incapable were they now of maintaining that independence : 6.6.1 Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz The British Move towards Annexation 317 I have already stated that we acknowledge New Zealand as a sovereign and independent state, so far at least as it is possible to make that acknowledgement in favour of a people composed of numerous, dispersed, and petty tribes, who possess few political relations to each other, and are incompetent to act, or even deliberate, in concert. But the admission of their rights, though inevitably qualified by this consideration, is binding on the faith of the British Crown. The Queen, in common with Her Majesty's immediate predecessor, disclaims, for herself and for her subjects, every pretention to seize on the islands of New Zealand, or to govern them as a part of the dominion of Great Britain, unless the free and intelligent consent of the natives, expressed according to their established usages, shall be first obtained. Believing, however, that their own welfare would, under the circumstances I have mentioned, be best promoted by the surrender to Her Majesty of a right now so precarious, and little more than nominal, and persuaded that the benefits of British protection, and of laws administered by British judges, would far more than compensate for the sacrifice by the natives, of a national independence, which they are no longer able to maintain, Her Majesty's Government have resolved to authorize you to treat with the Aborigines of New Zealand for the recognition of Her Majesty's sovereign authority over the whole or any parts of those islands which they may be willing to place under Her Majesty's dominion. I am not unaware of the difficulty by which such a treaty may be encountered.142 This was what McLintock – no fan of 'higher motives' – referred to in 1958 as 'a classic exposition of the philosophy of trusteeship and an official apologia for reluctant action'.143 Moon, too, noted that Normanby had both apologised for and justified British intervention, asserting Māori rights and then following this with 'a series of qualifications which, bit by bit, chipped away at this noninterventionist façade'.144 Orange thought this wording reflected the difficulty the Colonial Office faced in appeasing both the colonisers and their opponents : Normanby had to recognise Maori independence, even a sovereignty of sorts, but he also had to negate it ; he had to allow for British colonisation and investment in New Zealand, yet regret its inevitability ; and he had to show that justice was being done the Maori people by British intervention, even while admitting that such intervention was nevertheless unjust. As various government sources had noted, a move to nullify or infringe upon New Zealand's independence had to make allowance for the feelings of foreign powers, humanitarians, missionaries, and the Maori themselves.145 Notably, the final version of the instructions – with their reference to 'the whole or any parts' of New Zealand – contained the first official acknowledgement that the Colonial Office was contemplating acquiring sovereignty over the entirety of the country. Hobson had preferred this course for some time, and it can be assumed that the CMS now pressed for it too (Coates certainly urged it, no doubt as the best means of thwarting the colonisers). What seems to have swayed the Colonial Office was the understanding that systematic colonisation was going to lead to large numbers of settlers in New Zealand in the near future, and that

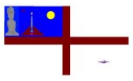




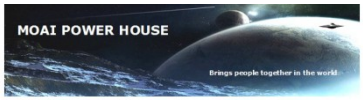








only partial control of the country would be inadequate in the circumstances. Settler interaction with Māori outside British territory held the potential for threatening the peace. Still, as can be seen, much was left to Hobson's discretion.146 Normanby noted that Māori might regard a treaty with some suspicion, since on the face of it there was the prospect of 'the appearance of humiliation on their side, and of a formidable encroachment on ours'. Hobson was to bear in mind that Māori ignorance of a treaty's inherently technical terms might 'enhance their aversion to an arrangement of which they may be unable to comprehend the exact meaning, or the probable results'. He was instructed, therefore, to overcome these impediments 'by the exercise, on your part, of mildness, justice, and perfect sincerity in your intercourse with them'. Normanby thought the missionaries would prove 'powerful auxiliaries' in Hobson's support because they had 'won and deserved their [Māori] confidence'. So too would the 'older British residents', who had 'studied their character and acquired their language'. But he added that Hobson had been selected for his own 'uprightness and plain dealing'.147 6.6.1 Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz He Whakaputanga me te Tiriti The Declaration and the Treaty 318 In summing up this part of the instructions, Normanby impressed upon Hobson the need to provide a full account of British intentions : You will, therefore, frankly and unreservedly explain to the natives, or their chiefs, the reasons which should urge them to acquiesce in the proposals you will make to them. In doing so, as McHugh noted, Normanby instructed Hobson to place particular emphasis on the protective benefits that Māori would receive from agreeing to recognise Crown sovereignty.148 Normanby wrote : Especially you will point out to them the dangers to which they may be exposed by the residence amongst them of settlers amenable to no law or tribunals of their own ; and the impossibility of Her Majesty extending to them any effectual protection unless the Queen be acknowledged as the sovereign of their country, or at least of those districts within, or adjacent to which, Her Majesty's subjects may acquire lands or habitations.149 Normanby permitted Hobson, however, to win Māori consent through 'presents or other pecuniary arrangements' if necessary. Loveridge noted that the only significant section of text in the July draft that did not make it into the final instructions was located at this point. Stephen had included a paragraph that stated : I am induced to believe that the New Zealanders neither understand, nor are able to appreciate, the distinction, so familiar to ourselves, between the rights of Sovereignty, and those of property ; but that regarding them as identical they suppose that the Lands they have already ceded have passed from their own Dominion and that a general acknowledgement of the Sovereignty of the Queen would involve a Cession of the Lands which they still retain.150 This omitted text continued by stating that Hobson would, therefore, need to explain that ceding sovereignty did not extinguish property rights. However, if Māori did believe they would lose their property rights upon ceding sovereignty, and consent for British sovereignty was acquired, then this might work to Hobson's advantage in that cession under that misapprehension could 'abridge the difficulty of establishing a British Sovereignty coextensive with the British Possessions in the Island'. The implication is that if Māori ceded their sovereignty believing they were also ceding their property rights, then there would be less difficulty making and enforcing laws throughout the whole country regardless of the state of land transactions. In any event, Hobson would have to insist on 'the principle, that all Lands possessed by the Queen's Subjects in New Zealand, are within H[er] M[ajesty]'s Dominion'. Loveridge noted that Labouchere remarked in the margin that the whole of this paragraph should be omitted but did not explain why. Ian Wards thought it likely to be because it would be 'not politic' to admit publicly that Māori did not understand the distinction.151 Either way, Loveridge thought it improbable that Hobson would have seen the omitted text.152 In the final instructions, Normanby then moved to the need for a Crown monopoly over land purchasing. This represented a significant development that was designed to circumvent the activities of the Company. We note that, at no point in communicating all this, did Normanby use the word 'pre-emption'. He told Hobson that the chiefs 'should be induced, if possible, to contract with you, as representing Her Majesty, that henceforward

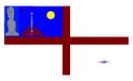




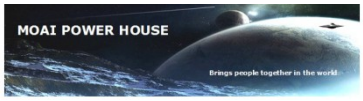








no Lands' should be sold or otherwise transferred 'except to the Crown of Great Britain'. Allowing Māori to sell to settlers at nominal prices would have the same effect as the Government giving land away : On either supposition, the land revenue must be wasted ; the introduction of emigrants delayed or prevented, and the country parcelled out amongst large landholders, whose possessions must remain long unprofitable, or rather a pernicious waste. Immediately upon his arrival, Hobson was therefore instructed to 6.6.1 Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz The British Move towards Annexation 319 announce, by a proclamation addressed to all the Queen's subjects in New Zealand, that Her Majesty will not acknowledge as valid any title to land which either has been, or shall hereafter be acquired, in that country which is not derived from, or confirmed by, a grant to be made in Her Majesty's name, and on her behalf. You will, however, at the same time take care to dispel any apprehensions which may be created in the minds of the settlers that it is intended to dispossess the owners of any property which has been acquired on equitable conditions, and which is not upon a scale which must be prejudicial to the latent interest of the community.153 Normanby did not doubt that enormous 'purchases' of land had already taken place, and he told Hobson that the 'embarrassments occasioned by such claims will demand your earliest and most careful attention'. In due course, he continued, the Governor of New South Wales would appoint a 'Legislative Commission' to inquire into purchases made before the issue of the proclamation. The commissioners would report to the Governor, who would then decide 'how far the claimants, or any of them, may be entitled to confirmatory grants from the Crown, and on what conditions such confirmations ought to be made'. Any 'uncleared lands' so awarded would then be made subject to an annual tax, deterring successful claimants from owning lands they could not actually use. Tax arrears would see the land forfeited to the Crown. These methods, said Normanby, would obviate 'the dangers of the acquisition of large tracts of country by mere landjobbers'. We note that, here, 'the dangers' referred to were that the Crown would lose revenue by being deprived of control over the trade in land. Having set out how the Crown should prevent settlers acquiring land directly from Māori in future, or retaining too much of what they had already purchased, Normanby then turned to Hobson's own forthcoming dealings in land. In doing so Normanby adopted something of the rationale (if not quite the language) of systematic colonisation. He explained that it will be your duty to obtain, by fair and equal contracts with the natives, the [purchase by] the Crown of such waste lands as may be progressively required for the occupation of settlers resorting to New Zealand . . . Such purchases were to be conducted through a Protector of Aborigines, and the resale to settlers of lands acquired was to provide the funds for further purchases. Normanby envisaged Crown land-purchasing would thus be inexpensive and self-funding. He acknowledged that the price to be paid to the natives by the local government will bear an exceedingly small proportion to the price for which the same lands will be re-sold by the Government to the settlers. However, he continued, Nor is there any real injustice in this inequality. To the natives or their chiefs much of the land of the country is of no actual use, and, in their hands, it possesses scarcely any exchangeable value. Much of it must long remain useless, even in the hands of the British Government also, but its value in exchange will be first created, and then progressively increased, by the introduction of capital and of settlers from this country. In the benefits of that increase the natives themselves will gradually participate.154 Despite Hobson needing little more than 'the original investment of a comparatively small sum of money' to initiate land-buying, then, he was still instructed to act in protection of Māori interests : All dealings with the aborigines for their lands must be conducted on the same principles of sincerity, justice, and good faith, as must govern your transactions with them for the recognition of Her Majesty's Sovereignty in the Islands. Nor is this all : they must not be permitted to enter into any contracts in which they might be the ignorant and unintentional authors of injuries to themselves. You will not, for example, purchase from them any territory, the retention of which by them would be essential, or highly conducive, to their own comfort, safety or subsistence. The acquisition of land by the Crown for the future settlement of

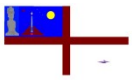




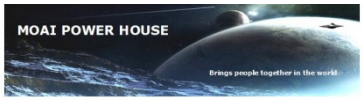








British subjects 6.6.1 Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz He Whakaputanga me te Tiriti The Declaration and the Treaty 320 must be confined to such districts as the natives can alienate, without distress or serious inconvenience to themselves. To secure the observance of this, – will be one of the first duties of their official protector.155 Normanby also outlined the other advantages that he thought would accrue to Māori through the establishment of Crown Colony government. The missionaries had already done much for Māori religious instruction, he said, and one of Hobson's immediate duties to 'this ignorant race of men' would be to 'afford the utmost encouragement, protection, and support, to their Christian teachers'. Setting up schools for teaching Māori to read would be 'another object of your solicitude'. Normanby went on : until they can be brought within the pale of civilized life, and trained to the adoption of its habits, they must be carefully defended in the observance of their own customs, so far as these are compatible with the universal maxims of humanity and morals. But the savage practices of human sacrifice, and of cannibalism, must be promptly and decisively interdicted. Such atrocities, under whatever plea of religion they take place, are not to be tolerated within any part of the dominions of the British Crown.156 The foregoing matters comprised approximately half of the 14 August instructions. The second half addressed what Normanby described as the manner [in which] provision is to be made for carrying these instructions into effect, and for the establishment and exercise of your authority over Her Majesty's subjects who may settle in New Zealand, or who are already resident there . . . Normanby thought it initially best that New Zealand be ruled externally, from Sydney. It had therefore been decided, he explained, that any territories acquired in New Zealand would become a dependency of New South Wales. Normanby acknowledged there might be objections to this measure, but, after the most ample investigation, I am convinced that, for the present, there is no other practical course which would not be opposed by difficulties still more considerable, although I trust that the time is not distant when it may be proper to establish in New Zealand itself a local legislative authority.157 Normanby then expanded on the reasons why it was best for New Zealand to become at first a dependency of New South Wales : It is impossible to confide to an indiscriminate body of persons, who have voluntarily settled themselves in the immediate vicinity of the numerous population of New Zealand, those large and irresponsible powers which belong to the representative system of Colonial Government. Nor is that system adapted to a colony struggling with the first difficulties of their new situation. Whatever may be the ultimate form of Government to which the British settlers in New Zealand are to be subject, it is essential to their own welfare, not less than that of the aborigines, that they should at first be placed under a rule, which is at once effective, and a considerable degree external.158 He emphatically ruled out New Zealand serving as a penal colony, however : 'no convict is ever to be sent thither to undergo his punishment'. Normanby explained that a number of offices would be created immediately, including those of 'a judge, a public prosecutor, a protector of the aborigines, a colonial secretary, a treasurer, a surveyor-general of lands, and a superintendent of police'. Normanby set out that legislation would be passed in the British Parliament enabling the New South Wales Governor and Legislative Council to make all necessary provision for the establishment in New Zealand of a court of justice and a judicial system, separate from, and independent of, the existing Supreme Court. The Governor and Legislative Council would enact laws that 'may be required for the government of the new 6.6.1 Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz The British Move towards Annexation 321 colony'. 159 Apart from the position of Protector of Aborigines, no reference was made to how these arrangements might be applied to Māori. Normanby concluded by setting out how Hobson should select his staff, raise a colonial revenue through the imposition of duties on the import of goods, report back on his activities, and so on. In addition to the manner of land purchasing set out in the first half of the instructions, Normanby stressed that : Separate accounts must be kept of the land revenue, subject to the necessary deductions for the expense of surveys and management, and for the improvement by roads

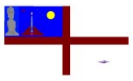




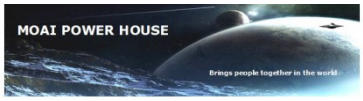








and otherwise, of the unsold territory ; and, subject to any deductions which may be required to meet the indispensable exigencies of the local government, the surplus of this revenue will be applicable, as in New South Wales, to the charge of removing emigrants from this kingdom to the new colony.160 Normanby's final word was to emphasise the extent to which Hobson would have to rely both on his own judgement and on the advice of Gipps : Many questions have been unavoidably passed over in silence, and others have been adverted to in a brief and cursory manner, because I am fully impressed with the conviction, that in such an undertaking as that in which you are about to engage, much must be left to your own discretion, and many questions must occur which no foresight could anticipate or properly resolve before-hand. Reposing the utmost confidence in your judgement, experience, and zeal for Her Majesty's service, and aware how powerful a coadjutor and how able a guide you will have in Sir G Gipps, I willingly leave for consultation between you, many subjects on which I feel my own incompetency at this distance from the scene of action to form an opinion.161 6.6.2 Hobson's response and Normanby's addendum When Hobson saw these instructions (in draft form) at the end of July 1839, he was – quite naturally – eager for a few points of clarification before he departed and became dependent on both Gipps's and his own discretion. In his letter to Normanby of 1 August 1839,162 he pointed out that no distinction had been made between the northern and southern islands. However, The declaration of the independence of New Zealand was signed by the united chiefs of the northern island only (in fact, only of the northern part of that island), and it was to them alone that His late Majesty's letter was addressed on the presentation of their flag[.]163 Hobson thought Māori in the southern islands, by contrast, much less advanced 'towards civilization'. He assumed that Britain was able to exercise much greater freedom in a country over which it possesses all the rights that are usually assumed by first discoverers, than in an adjoining state, which has been recognized as free and independent. Accordingly, Hobson effectively asked to be excused from obtaining the consent of South Island Māori : with the wild savages in the southern islands, it appears scarcely possible to observe even the form of a treaty, and there I might be permitted to plant the British flag in virtue of those rights of the Crown to which I have alluded . . . Hobson then went on to suggest that the proclamation he would issue upon landing in New Zealand be written in London before his departure, 'in order to convey exactly the views of the Government'. He expressed full support for Gipps appointing the land claim commissioners and for the commission reporting to New South Wales, as this would relieve him from all interference in matters of dispute, which would have a tendency to place me at issue with so large a number of persons over whom I am appointed to preside. However, Hobson added, 'I am at a loss to know to what point I am to direct my attention, beyond the mere preservation of the peace'. He then went on to ask for a 6.6.2 Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz He Whakaputanga me te Tiriti The Declaration and the Treaty 322 more specific definition of the role of the Protector of Aborigines, as he feared that he and the appointee might have 'very different ideas' about Māori welfare. Turning to the instruction that he 'interdict the savage practices of cannibalism and human sacrifice', Hobson sought further particulars. 'Shall I be authorised', he asked, after the failure of every other means, to repress these diabolical acts by force ? And what course am I to adopt to restrain the no less savage native wars, or to protect tribes who are oppressed (probably through becoming Christians) by their more powerful neighbours[?] Continuing in this vein, Hobson inquired whether he would have the power 'to embody and call out militia, or to direct the movements of the military force'. He also asked whether he would have the power 'to execute or to remit the punishment of criminals'. Hobson concluded his letter as follows : No allusion has been made to a military force, nor has any instruction issued for the arming and equipping of militia. The presence of a few soldiers would check any disposition to revolt, and would enable me to forbid in a firmer tone those inhuman practices I have been ordered to restrain. The absence of such support, on the other hand, will encourage the disaffected to resist my authority, and may be the means of entailing on us eventually difficulties that I

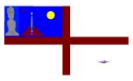




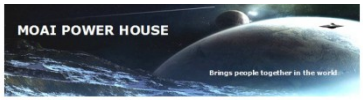








am unwilling to contemplate.164 As noted, Normanby provided what was in effect an addendum to the instructions on 15 August, two weeks after Hobson's response.165 He wrote to Hobson and confirmed that his instructions had related to the North Island only. The Colonial Office did not have sufficient information about the South Island to be definite on the matter, but if the island really was, as Hobson supposed, uninhabited, except but by a very small number of persons in a savage state, incapable from their ignorance of entering intelligently into any treaties with the Crown, I agree with you that the ceremonial of making such engagements with them would be a mere illusion and pretence which ought to be avoided.166 Normanby went on to suggest how Hobson might act : The circumstances noticed in my instructions, may perhaps render the occupation of the southern island a matter of necessity, or of duty to the natives. The only chance of an effective protection will probably be found in the establishment by treaty, if that be possible, or if not, then in the assertion, on the ground of discovery, of Her Majesty's sovereign rights over the island. But in my inevitable ignorance of the real state of the case, I must refer the decision in the first instance to your own discretion, aided by the advice which you will receive from the Governor of New South Wales.167 As well as replying to Hobson on a range of sundry matters, Normanby addressed what were arguably Hobson's key concerns about the repression of 'savage practices' and the use of military force. On the first point, Normanby's implication was that Hobson should first attempt 'the arts of persuasion and kindness'. Should this fail, he was of the view that 'abhorrent' and 'calamitous' practices should indeed be repressed by force 'within any part of the Queen's dominions'. Normanby seemed to imply, however, that it would not come to this, because the common revulsion 'in the minds of all men, the most ignorant or barbarous not excepted', would soon see them 'checked with little difficulty'. He thought that Māori would 'probably yield a willing assent to your admonitions, when taught to perceive with what abhorrence such usages are regarded by civilized men'. This answer appeared to give advance indication of Normanby's response on the issue of military force. On this, he indeed told Hobson that it was 'impossible, at the present time, to detach any of Her Majesty's troops to New Zealand', and Hobson would have to raise a militia if an armed force were needed. 6.6.3 An overview of Normanby's instructions These, then, were the sum of Hobson's written instructions before his departure for the antipodes. In this section we 6.6.3 Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz The British Move towards Annexation 323 set out the way historians and other commentators have portrayed the instructions. We give our own view on them in chapter 10. We will say here, however, that for the tasks of negotiating a treaty, facilitating the entry of British subjects, and the preservation of peace, they were rather vague, notwithstanding the recourse Hobson would have to the advice of Governor Gipps (a man who had never set foot in New Zealand) before arriving in New Zealand. Modern historians are generally in unison on the instructions' limits. While others have excused the lack of a treaty draft as allowing Hobson flexibility, Moon considered this the 'most glaring omission' of all.168 He also thought that Normanby's agreement with Hobson on the South Island to be emblematic of how poorly informed the Colonial Office was on some of the most basic elements of New Zealand's indigenous social and political make-up, and as an extension of this deficit in understanding, it revealed the enormous confidence that the British installed in an official of very modest abilities.169 Adams thought Normanby's response on the South Island to be expedient and a reflection of the late shift to a policy of actually colonising New Zealand ; it was also one made despite Colonial Office opinion that claims based on Cook's discovery could not be relied upon.170 Loveridge identified another key omission from the instructions as any explanation of whether and, if so, how British law would be extended over those areas not acquired in sovereignty. The instructions, of course, accepted that the Māori cession of sovereignty might be partial only. Yet, notwithstanding Hobson's January 1839 concern that a lack of jurisdiction over adjoining territories was one of the key drawbacks of the factory scheme, not even Hobson raised a concern about this in his 1 August letter. As Loveridge noted, the instructions seemed instead to suggest that the acquisition of sovereignty

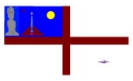




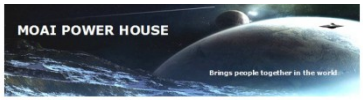








over tribal areas would follow almost automatically after that of the main areas of existing settler occupation. As we have seen, the Colonial Office had by now accepted Hobson's view that the acquisition of sovereignty over the whole of New Zealand, and not simply parts, was a distinct option.171 Certainly, in the case of the South Island, Hobson was given licence to proclaim British sovereignty on the basis of discovery if he thought southern Māori incapable of entering a treaty with the Crown.172 Along with the 1837 select committee report on aborigines, the instructions have in the past been seen by New Zealand historians as another high point of enlightened British humanitarianism in the late 1830s. William Pember Reeves, whose work The Long White Cloud had an immediate and lasting impact, referred in 1898 to 'the noblest and most philanthropic motives' that led the British to guarantee Māori their land rights.173 In 1914, T L Buick called the instructions 'statesman-like',174 while in 1958 McLintock, with some disapproval, described the 'humanitarian motive' as 'dominant'. McLintock thought the Government had come down far too heavily on the side of Māori 'rights and privileges' at the expense of the colonisers' aspirations, and that the subsequent treaty was therefore 'an expression of unbalanced idealism, the epitome of principle divorced from practice'.175 Dr (later Professor) Keith Sinclair, writing the previous year, had by contrast extolled this very humanitarianism, describing the treaty as 'a sincere attempt to found a new colony on a just footing'.176 This orthodoxy was challenged by Wards, whose The Shadow of the Land was published in 1968. This book emphasised the military might that underpinned Britain's expansion around the globe, and how that was applied in the New Zealand context. He suggested that historians had concentrated on the nobler aspects of Colonial Office determination to preserve the Maoris from the seamier side of organised colonisation, and have thus presented the acquisition of New Zealand as a deliberate attempt to salvage a native people and to initiate an experiment in practical idealism . . . However, this narrative had ignored the realities of the situation and, 'through over-emphasis and uncritical repetition, hindered our understanding of this area of New Zealand's history'. Moreover, it had 'falsely represented the situation to five generations of Maori people'. The situation 6.6.3 Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz He Whakaputanga me te Tiriti The Declaration and the Treaty 324 Wards referred to was 'the threat of intervention by a third party', by which he meant the French (or possibly the Americans) rather than the New Zealand Company (see the discussion on the French 'threat' below).177 Whether Wards was correct about the French threat is debatable, because the Colonial Office appears to have seen the Company as a far greater threat than a foreign power in mid-1839. But historians today would generally agree on external pressures being decisive in motivating the Crown to act. As Wards noted, the content of the first draft of the instructions most likely to ensure active missionary support was carefully preserved in the final version, even though – in his view – the object had shifted from the acquisition of sovereignty over parts of New Zealand to the whole. Partly as a result of this, Historians have not recognised the ambivalence of the Colonial Office position, and have so successfully established the concept of a deliberate experiment in practical idealism that it is tantamount to denying a heritage to explain the day to day processes in other terms.178 In the 1970s, more historians looked afresh at the instructions, just as they did at the treaty itself (as we shall see in chapter 8). In 1973, Dr (later Professor) Alan Ward called the instructions 'inadequate', 'inappropriate', and 'naïve'. He argued that the humanitarian agenda had not been lost with a sudden decision in mid-1839 to acquire sovereignty over all of New Zealand, but rather that 'the humanitarians' confidence of success had ebbed proportionately' as settlement increased and intervention loomed.179 Adams also backed away from crediting the instructions with high-minded idealism. He found the proposal that intervention was necessary to prevent Māori annihilation and rescue the settlers from the evils of lawlessness contained 'a certain amount of myth-making'. As he pointed out, the 1837 select committee's report on aborigines had been set aside by the Colonial Office as early as December of that year, when the decision was made in principle to establish a more formal presence in New Zealand than the consular

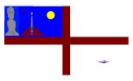




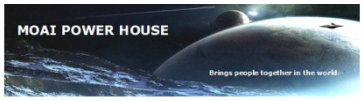








agents the report had proposed. Thus, Normanby claiming an ongoing reliance on that report to explain the Colonial Office's delay was 'disingenuous'. Rather, the tardiness had everything to do with the failed negotiations with the colonisers, and with 'political indecision'.180 Adams also thought there was in fact a difference between what Hobson was instructed to tell the Maoris and what the Colonial Office actually meant. Hobson was told to explain to the chiefs that Britain was intervening 'especially' on their behalf because there was no other way to protect them. The Colonial Office meant that Britain was intervening partly to protect the Maoris, but also to protect the British settlers in New Zealand and the interests they had created. Hobson was not directed to emphasize this, nor to explain the Government's new willingness to promote the systematic colonization of New Zealand. The Maoris were to be told only half the story.181 The instructions to Hobson, Adams wrote, were 'consciously oriented towards persuading the Maoris that their protection was the main object of intervention'.182 We bear this in mind in later chapters, as we deal with how Hobson actually communicated his message to the chiefs at Waitangi. Orange, in her seminal work of 1987, continued the criticism. She found Normanby's 'insistence on the upholding of Maori rights deceptive, for along the trail of decisionmaking those rights had already been severely restricted'. She noted the lack of any provision for Māori government, despite the fact that this very option had previously been in view. It was, she wrote, as if the perception of Maori capacity in this respect had diminished as the government moved towards accepting that New Zealand was destined to be a British settler colony. No longer were they considering a Maori New Zealand in which a place had to be found for British intruders, but a settler New Zealand in which a place had to be found for the Maori.183 Orange also considered much of the content of the instructions to be 'exaggeration, giving a distorted impression of an enfeebled Māori race and a secured British 6.6.3 Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz The British Move towards Annexation 325 ascendancy'. But even if a more accurate picture of Māori strength had been depicted, she continued, 'British intervention could scarcely have been justified'.184 In a similar vein, Belich concluded in 1996 that the Colonial Office was just as susceptible as the missionaries, traders, and settlers to wanting the 'myths of empire' – such as inevitable European dominance – fulfilled as quickly as possible. As he put it, 'They were predisposed to believe that what myth taught would happen was happening', and thus saw fatal impact and a pressing need for British intervention.185 The instructions have been treated by this Tribunal with considerable respect, and have obviously been an important context for interpreting the treaty's terms and the principles flowing from them. The Orakei Tribunal, for example, wrote : It is axiomatic in construing the provisions of a Treaty such as the Treaty of Waitangi between the head of a highly civilised nation and representatives of a relatively unsophisticated and powerless native people that the utmost good faith must be imputed to the British Crown.186 The Tribunal accordingly took issue with Adams's suggestion that pre-emption was designed to facilitate the on-sale of land to settlers at great profit : this, it said, was 'an oversimplification of Lord Normanby's instructions' which overlooked 'the critically important fact' that Normanby also stressed the protective function of pre-emption.187 In a similar vein, the Muriwhenua Fishing Tribunal in 1988 referred to Normanby's expression of 'the high ideals of his time', while the Muriwhenua Land Tribunal in 1997 remarked upon his 'elegant phraseology'.188 As former chairperson Chief Judge Edward Durie (as he then was) commented in 1991, 'it is appropriate to read the Treaty in the light of such . . . things as Lord Normanby's extremely significant instructions'.189 Unsurprisingly, the Court of Appeal also referred to the instructions in the 1987 Lands case, with Justice Somers invoking Normanby's words to stress the obligations of good faith owed by the treaty partners to one another.190 Justice Richardson did likewise in the context of arguments about the 'honour of the Crown'.191 We have already noted Loveridge's observation, as a witness appearing for the Crown, that the instructions made no mention of whether and how British law would be extended over areas not acquired in sovereignty. Yet, by and large, the Crown's evidence tended to portray the instructions in a favourable light. Notwithstanding his

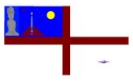






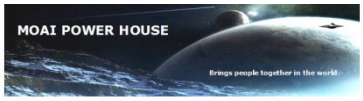






criticisms in 1974 (see above) – as well as a further list of flaws noted in his 1999 book An Unsettled History 192 – Ward found much to commend in the instructions. He did acknowledge that Normanby's depiction of a weak Māori society characterised by little more than nominal control was 'inaccurate to say the least'. But he argued that such an understanding depended on hindsight, and given the reports the Colonial Office was receiving from New Zealand in 1837 to 1839 'there were good and proper reasons for Stephen and Normanby to think and plan as they did'.193 Overall, he thought the instructions indicated considerable thoughtfulness in the planning of Hobson's mission, and should be noted in mitigation, at least, of apparently 'minimal' preparations to ensure proper Maori understanding.194 6.7 Hobson Departs and the Instructions Leak While Hobson was still en route to Australia, those parts of Normanby's instructions dealing with land policy were leaked to the press, and to mixed reaction. The Colonial Office's plans were supported by the Globe newspaper but criticised by the Colonial Gazette, which thought that the process for establishing the validity of pre-1840 land transactions was too vague and that settlers would be encouraged to dissuade Māori from ceding sovereignty. The paper called the whole affair 'a complete mess'. It urged the Government to go back to the basis of British sovereignty having been established by Cook in 1769 and 'formally asserted by the Crown of England in 1814' (a reference to Macquarie's order that described New Zealand as a 'dependency' of New South Wales – see chapter 3). Thus 'the knot of a thousand difficulties' – the phrase Loveridge took for the title of his research report – would be cut.195 6.7 Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz He Whakaputanga me te Tiriti The Declaration and the Treaty 326 The idea that **Cook's 'discovery'** gave Britain sovereign rights had been asserted regularly by those promoting the colonisation of New Zealand in previous years. Loveridge called it a 'favourite theme' of the Association in 1837 and the Company in 1839. But even The Times – which had taken a strong line against the Association's plans – asserted in December 1838 that New Zealand was the 'colonial property of the British Crown . . . by dint of discovery and claim', and that recognising **Māori sovereignty** was an act of 'pure grace' on Britain's part. The Sydney press said the same in early 1840 – indeed, even after te tiriti was signed the Sydney Monitor argued that the Queen's rights to New Zealand were still based on Cook's discovery and the 'subsequent occupation by British subjects'.196 Joseph Somes, the Deputy-Governor of the Company, wrote to the Secretary of State for Foreign Affairs, Lord Palmerston, on 7 November 1839, arguing that both the leaked instructions and the published Treasury minute of 19 July 1839 – which affirmed that Māori would need to cede sovereignty before British authority over New Zealand could be asserted – had been welcome news in France. They were, he said, 'calculated to invite foreign pretensions, which otherwise would never have been imagined'. In his view,

British sovereignty over New Zealand had been clear until 1831, 'when a series of proceedings commenced, by which the sovereignty of Britain may perhaps have been forfeited' (and even transferred to the missionaries in 1834, and from them on to Māori in 1835).197 The Colonial Office responded by stressing the repeated acknowledgement of Britain's lack of sovereignty. On 16 November 1839 Stephen told Russell, who had replaced Normanby as Secretary of State for War and the Colonies only a matter of days after Hobson had left for New Zealand, **that the evidence showed 'that Great Britain has recognized New Zealand, as a Foreign and Independent State'**.198 In March 1840 Stephen reiterated these points in a memorandum that was provided to Lord Palmerston. This set out, among other things, that legislation of 1817, 1823, and 1828 had made clear that 'New Zealand is not a part of the British dominions' ; that

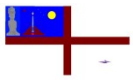












King William IV had, via Lord Goderich's letter in response to the chiefs' 1831 petition, made 'the most public, solemn and authentic declaration, which it was possible to make, that New Zealand was a substantive and independent State' ;

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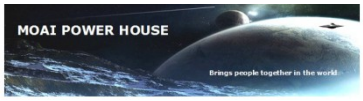
that **Governor Bourke's 1833 instructions to Busby had assumed 'the independence of New Zealand' ; that HMS Alligator had fired a salute of 21 guns to mark the raising of New Zealand's first 'national flag' in 1834 ; and that the King had subsequently recognised the New Zealand flag.**

199 The dispute between the Company and the Government spilled further into 1840, when a parliamentary select committee Captain William Hobson, circa 1839. When Hobson visited New Zealand in 1837, he favoured establishing pockets of sovereignty or 'factories'. By 1839, however, he favoured the full acquisition of sovereignty. 6.7 Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz The British Move towards Annexation 327 was appointed to inquire into the Government's policy with respect to New Zealand.200 As it transpired, the committee finished its work only a month before Hobson's May 1840 proclamations of sovereignty over New Zealand were received and gazetted in London in October 1840. Russell hoped the proclamations would bring 'an end to all disputes' between the Company and the Government. But as Loveridge observed, this just 'moved all existing controversies into a new and different context'.201 6.8 The Process Adopted by the British for Acquiring Sovereignty What, then, was the 'sovereignty' that Hobson was instructed to acquire from Māori ? And what role did the British envisage for a treaty with Māori in the process of establishing British sovereignty in New Zealand ? We pause to consider these very important questions in light of the events we have already canvassed, before proceeding – in the following chapters – to discuss the treaty itself. Normanby's final instructions to Hobson reflected several presumptions about the constitutional arrangements that the British intended to establish in New Zealand, and about the process by which these arrangements could be achieved. In particular, the instructions demonstrate what British authorities saw as a need to balance the rights of settlers and Māori, within the constitutional restraints that had been set by Imperial precedent. The history of British colonisation of territories of British settlement in which the sovereign capacity of the indigenous inhabitants was recognised had established clear principles about how sovereignty was to be acquired and a local government established. McHugh argued that, in the debate about what to do in New Zealand, the British authorities considered these principles to be binding on the Crown.202 The British government's plan began to take clear shape during 1839, once the British decided that the most appropriate method of governing New Zealand would be through the Crown Colony model. We have already encountered the model of Crown Colony government in New South Wales. In such a colony, the Crown appointed and instructed a governor, in whom legislative, executive, and judicial powers were combined and concentrated. Governors in a Crown Colony had very considerable authority, its exercise depending on the resources with which they were provided. They worked initially only with advisory councils, and then later with nominated executive and legislative councils.203 While settlers had little power over such governors, distance and difficulty communicating meant that the Crown also found it hard to exercise active oversight over its governors as the 'men on the spot'.204 As James Stephen remarked in 1830, their 'proximity to the scene of action . . . would more than compensate for every other incompetency' ; Stephen himself, by contrast, acknowledged he had no choice but to 'distrust my own judgement as to what is really practicable in such remote and anomalous

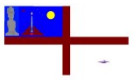




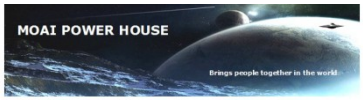








societies’.205 This also meant that, despite the best efforts of the Colonial Office, the requirement to submit colonial law for review was neither always observed nor strictly enforced.206 The net effect of the large scope of powers that were granted to governors in a Crown Colony, and the lack of Imperial oversight of their behaviour, meant that much depended on the competency and suitability of those governors. Through Crown Colony government the British intended to reconcile what Stephen described (in his briefing to Labouchere in March 1839) as the ‘two cardinal points to be kept in view in establishing a regular Colony in New Zealand’. These points were ‘first, the protection of the Aborigines, and, secondly, the introduction among the Colonists of the principle of self-Government’.207 Crown Colony government would achieve the first of these points, Stephen argued, because from the outset Māori would have the protection of British law, and would eventually gain the full rights of British subjects. Stephen was (according to McHugh) ‘scathing of American law’, which ‘denied tribe members status as citizens of the republic and left them as a collectivity described as “domestic dependent nations”’.208 McHugh stressed that Stephen saw British subjecthood as ‘the true means of protecting Maori . . . by giving each individual the protection of British law’.209 6.8 Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz He Whakaputanga me te Tiriti The Declaration and the Treaty 328 Māori would, however, require a period of transition before they were capable of fully (and peacefully) protecting their own rights and interests as British subjects. During this period, there would be some form of temporary accommodation for Māori customary law. Despite such accommodation, McHugh wrote, it was accepted from the outset that Crown sovereignty over all inhabitants meant that all Māori were notionally amenable to English law (even if the reality of enforcing that was highly problematic and ridden with practical as well as political difficulty).210 On the other side of Stephen’s equation was a key right possessed by settlers as British subjects in settlement colonies : government by representative assembly. By this time, McHugh explained, the belief had become ingrained that colonies of British subjects in non-Christian lands took English law with them as their birthright, and with it both subjection to the Imperial Parliament and entitlement to representative legislative institutions.211 No such entitlement existed in ‘conquered’ or ‘ceded’ colonies. The initial establishment of such institutions in settler colonies was delayed primarily because of concern about the relationship between settlers and indigenous peoples. Crown Colony government allowed for a period of transition until a representative assembly could be safely established. McHugh noted that it had been ‘rare’ for colonial authorities to be given power to ‘conduct relations with the surrounding tribes’ upon their establishment.212 The first draft of the instructions to Hobson of 24 January reflected these views in noting that a representative assembly ‘would be wholly unsuited to the infancy of such a Settlement’. Stephen expanded on this view in his briefing to Labouchere, as further justification for his two cardinal points, noting that ‘calamity would prevail between the European and the Aboriginal’ should government by a representative assembly be granted to British settlers upon the foundation of the colony.213 Normanby’s final instructions were formal instruments that contemplated significant acts of state : entering into a treaty, and annexing new territory into the British Empire. They set out the Crown’s definitive reasons for not immediately allowing settlers the powers of a representative assembly, which we set out again here : It is impossible to confide to an indiscriminate body of persons, who have voluntarily settled themselves in the immediate vicinity of the numerous population of New Zealand, those large and irresponsible powers which belong to the representative system of Colonial Government. Nor is that Lord Normanby, 1836. Normanby was Secretary of State for War and the Colonies from February 1839, and it was with his instructions that William Hobson sailed to New Zealand to acquire sovereignty for Great Britian. 6.8 Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz The British Move towards Annexation 329 system adapted to a colony struggling with the first difficulties of their new situation. Whatever may be the ultimate form of Government to which the British settlers in New Zealand are to be subject, it is essential to their own

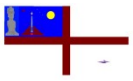




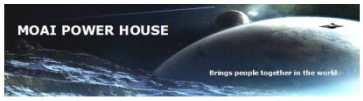








welfare, not less than that of the aborigines, that they should at first be placed under a rule, which is at once effective, and a considerable degree external.214 Crown Colony government was required to protect Māori from potential injustice at the hands of the incoming settlers, thereby avoiding 'calamity' in the form of warfare that unregulated interaction could provoke. In sum, through the Crown Colony model of government the Crown would possess the power to make and enforce laws over all people – including Māori – in the places where sovereignty had been established. Through concentrating control in the person of the Governor, the Crown would provide the 'external' power that could balance the rights of both settlers and Māori. The Governor would exercise those powers until further arrangements for settler representative government had been made, and some accommodation for Māori rights and interests had been reached. In doing so, peace and good order would be established in the new colony. As we have seen earlier in the chapter, the British authorities consistently stated that no authority could be established in New Zealand without a prior cession of Māori sovereignty.215 McHugh argued that the British authorities saw this as a legal necessity, stemming both from long-standing British imperial precedent, and the 'scope of jus gentium, the law of nations'.216 While acknowledging that this law 'was not enforceable as between independent states', McHugh argued strongly that this 'was not regarded as impairing or lessening the sense of obligation that British imperial authorities felt to follow that law'.217 It was the particular combination of the circumstances just described – the perceived civilising advantages of Crown Colony government for Māori, the perceived need for peace and order between and within the Māori and settler communities, the entitlement of settlers in a settled colony to a representative assembly, and the need for a cession of Māori sovereignty – that determined the process adopted by the British authorities for establishing sovereignty in New Zealand. McHugh argued that the authorities did not apprehend any incompatibility between the designation of the prospective colony as 'settled' and 'the strong insistence upon Māori consent to Crown sovereignty'.218 However, he noted, the courts had determined that, in 'settled' colonies, the Crown had to provide British settlers with representative government unless it gained legislative authority from Parliament to do otherwise.219 The British authorities therefore planned to negotiate with Māori to gain their consent to a cession of sovereignty, and subsequently introduce a bill to Parliament which, once passed, would establish New Zealand as a settled colony under Crown Colony government. However, we have already seen that the departure of the Company ship Tory in mid-1839 forced an immediate response, and so posed a dilemma, as the British had no time to negotiate a treaty and then introduce legislation to Parliament. As we have noted, a way out of this dilemma was found when it was realised that New Zealand could be added to the existing Crown Colony in New South Wales.220 This avoided the need for Imperial legislation to establish government in a new colony. Lord Normanby's instructions reflected not only the constitutional arrangements the British envisaged for the new colony but also significant aspects of the process by which British sovereignty would be established in New Zealand. Hobson was to 'treat' with Māori in the recognition of Her Majesty's sovereign authority over the whole or any part of those Islands which they may be willing to place under Her Majesty's dominion. Whichever territories may be 'acquired in sovereignty by the Queen in New Zealand' would then become a 'dependency to the Government of New South Wales'. At the conclusion of this process, 'the powers vested by Parliament in the Governor and Legislative Council of the older settlement' would be 'exercised over the inhabitants of the new colony'. McHugh argued that this was a process that envisaged British sovereignty being established through a 6.8 Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz He Whakaputanga me te Tiriti The Declaration and the Treaty 330 series of 'jurisdictional measures'. These were, in other words, measures designed to establish British authority to make and enforce laws over 'different segments of the islands' inhabitants', including 'those who were its subjects already' and other Europeans in New Zealand, as well as 'those that were not but about to agree to enter those ranks (Maori)'.221 Entering into a treaty with Māori would meet Britain's self-imposed

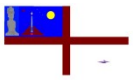




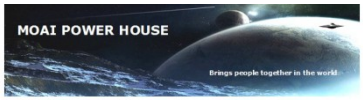








condition prior to asserting sovereignty, but the assertion of sovereignty itself would be an entirely independent step. Through this process, McHugh argued, the power to make and enforce laws would be established over all people in the territory where British sovereignty had been established. Exactly what part a treaty would play in this process would remain to be seen. We note, however, that while British plans envisaged that Māori would be theoretically subject to the Crown's law-making authority, Normanby's instructions to Hobson placed more emphasis on the need to control British settlers. McHugh noted that this was the critical message Hobson was to convey to Māori when convincing them to agree to the recognition of Crown sovereignty : The instructions made it plain that sovereignty, whether over parts or perhaps the entirety [of New Zealand], was pressed less by considerations of the active management of Maori internal affairs. Lawless British subjects were a key concern and the protection of Maori from them . . . necessitated their consent to British sovereignty.222 McHugh referred to the portion of the final instructions, quoted earlier in the chapter, in which Hobson was told to point out to Māori 'the dangers to which they may be exposed by the residence amongst them of settlers amenable to no law or tribunals of their own'. There would be no possibility of offering 'any effectual protection unless the Queen be acknowledged as the sovereign of their country'.223 In other words, in explaining the meaning and effect of a treaty, Hobson was to tell Māori that what mattered most to the Crown was the authority to make and enforce laws over Europeans. All this says nothing, of course, about the Māori understanding of te Tiriti, and the way that Hobson and the missionaries went on to communicate what the British meant by 'sovereignty'. We deal with these matters in subsequent chapters. 6.9 The French 'Threat' – Impetus for Action? After its defeats in the Seven Years War (which concluded in 1763) and the Napoleonic Wars (which concluded in 1815), and the loss of many of its colonial possessions, France hoped to re-establish itself as a leading imperial power. It could not match Britain's naval or trading might, but in some parts of the globe it held its own, for instance with its 1830s whaling fleet in the South Pacific. It signalled its ambitions in the Pacific in other ways too, both sponsoring scientific voyages (such as that of Dumont D'Urville from 1826 to 1829) and helping establish Catholic missions. The first such mission in New Zealand was founded in 1838 by Bishop Jean Baptiste Pompallier. More broadly, France was endeavouring to establish a network of shipping bases around the world as a potential springboard for further imperialism.224 These activities definitely unsettled British settlers in the South Pacific ; we have already described the 'French scare' occasioned by the visit of a French corvette, La Favorite, to the Bay of Islands in 1831 (see section 3.8.3). As noted, Wards, writing in 1968, considered that the catalyst for Colonial Office action in 1839 was the threat of French intervention in New Zealand. In addition to the ongoing interest in New Zealand from the likes of Baron Charles de Thierry, he noted that the French Government had its first discussions about the formation of a company to colonise New Zealand in June 1839. A French whaler, Jean François Langlois, had 'purchased' land at Banks Peninsula and sold his claim to the Nanto-Bordelaise Company which, in turn, formally approached the French Government for support in October 1839. Wards thought France was running on a 'remarkably parallel' track to Britain in this regard, albeit 'behind in the race'. The discussions between the French colonisers and government were reported in the French press and, in Wards's view, clearly had an impact in London.225 He contended that the 6.9 Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz The British Move towards Annexation 331 shift in plan by the Colonial Office in mid-1839 for how government was to be established in New Zealand (from presenting a Bill to Parliament to instead using the Royal prerogative to extend the jurisdiction of New South Wales) was entirely explicable in term of this French threat : The reason for this, it seems undeniable, was that a Bill would mean a debate, which would attract the attention of France in particular and the United States more remotely. Interference by either, in New Zealand itself, could put an end to the peaceful acquisition of New Zealand. There was no other threat from any quarter to the plans being formulated. Moreover, in the evidence that has survived only the fear of French intervention can

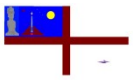




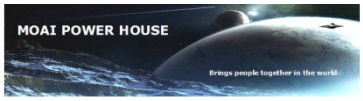








reasonably be adduced to explain the decision itself, and at the same time Hobson's complementary procedures later in New Zealand.226 Wards noted as further evidence on this point that all drafts of Hobson's instructions mentioned the possibility of interference by a foreign power.227 Subsequent scholars downplayed the idea that French interest in New Zealand provided the impetus for British action.228 Ward, in 1973, argued that Wards's belief that this was the case was based 'on tenuous evidence'. Wards should have focused on 'the despatch of the New Zealand Company's ships to Cook Strait', he implied.229 A few years later, Adams rejected the idea that the Colonial Office feared French attention being drawn by the publicity that would flow from a parliamentary debate. Instead, he argued (as we have noted above), that Stephen proposed – and Normanby agreed – in early June 1839 that publicity be courted in order to counter the advertisements being placed by the Company, and the Colonial Office arranged with Coates that a question be asked in Parliament about the Government's plans for New Zealand on 25 June. 'The real reason', wrote Adams, 'the idea of a Bill was discarded in favour of letters patent [the idea of establishing British sovereignty through an extension of New South Wales] was simply that the change achieved the Colonial Office's purpose' more quickly than would otherwise have been the case.230 Dr John Owens, writing in The Oxford History of New Zealand in 1981, likewise concluded that Fears of French or American intervention, actively canvassed in New South Wales and by the New Zealand Association in Britain, do not appear to have played much part in the calculations of British officials.231 Dr Sonia Cheyne reiterated this position in 1990, maintaining there was 'no evidence' that fears of French intervention played any part in the Government's actions.232 Whatever the truth of this matter, the idea of a 'race' between Britain and France to acquire New Zealand has nevertheless had an enduring appeal, because it makes for such a good story. Belich, in 1996, made much of this in the introductory paragraph to his chapter dealing with the treaty in Making Peoples. He began by describing the 1839 plans of a colonisation company in an unnamed great European power to set forth for New Zealand and make a treaty with Māori, who would be civilised by land purchase and the application of European laws. He told of the secret plans designed 'to steal a march on a rival power', and of the company's first ship setting sail and planting the colony in New Zealand. The denouement is that the reference is in fact not to the British in Wellington but the French at Akaroa.233 Belich considered that it was both the Company as well as 'the new, real, French threat [that is, the 1839 colonisers rather than de Thierry] that triggered the shift from partial to full sovereignty'.234 McHugh echoed this conclusion in his evidence, stating that the annexation of the whole of New Zealand arose as an option mainly because of 'the impulsive action of the New Zealand Company spreading and intensifying British settlement to the southern parts' but also because of 'anxieties over the designs of the French'.235 In his evidence presented to us, Ward reiterated that officials were not influenced by fears of French intervention during 'the six crucial months of policy formation regarding New Zealand' from April to September 1839. However, he added that fears of such intervention were very much alive among British settlers and missionaries in the region, and the British public was quickly excited by any evidence of it. These attitudes could not have been unknown to Hobson and Gipps.236 6.9 Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz He Whakaputanga me te Tiriti The Declaration and the Treaty 332 French plans to colonise the South Island have been given the fullest attention by Professor Peter Tremewan. In his book French Akaroa, Tremewan considered not whether French ambitions had influenced Britain to act but whether British plans had spurred on or deterred the French. He contended that there was a race, and that, if not 'for a few delays in the implementation of French plans, New Zealand could have had a British North Island and French South Island'. Ultimately, while the race was 'quite . . . close', the French had been too slow, and were already defeated before their colonising ship arrived in July 1840, weeks after Hobson's proclamations.237 So was the French 'threat' a motivation for the British Government to set out in 1839 to acquire sovereignty in New Zealand ? We consider that, while the Company's venture was the most

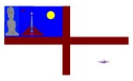




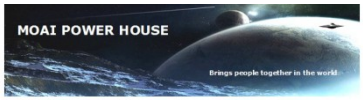








immediate and significant impetus, the backdrop of French ambitions was an important contextual factor. This conclusion reflects the current consensus among historians, which was not challenged by the witnesses who appeared in our inquiry. The first encampment of French settlers at Akaroa, 1840. The prospect of French colonisation was a common fear in pre-treaty settler society. 6.9 Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz The British Move towards Annexation 333 6.10 Conclusion The two years following the formation of the New Zealand Association in early 1837 had seen a marked shift in British policy towards New Zealand. Initially, the opposition mounted by the missionary societies – emboldened by the recommendations of the Select Committee on Aborigines – was met with approval by the Colonial Office and its political masters. Glenelg in particular agreed that the Association, and its Wakefield-inspired plans for systematic colonisation, should not be granted official approval, leaving New Zealand instead to the work of the missionaries. Busby's 16 June 1837 dispatch, however, was a gamechanger : on its arrival in Britain in December 1837, even Glenelg was inclined to agree that a significant increase in British authority in New Zealand would be needed. The question was what form this would take and whether systematic colonisation would play any role in British plans. For a full year, a range of possibilities for an increased British presence in New Zealand appeared to be on the verge of implementation. Busby's dispatch had swayed Glenelg to contemplate the offer of a charter to the New Zealand Association, though with strict conditions. But once that possibility evaporated, and the British Parliament had firmly rejected the Association's Bill, the Government was left with a problem that had no clear solution. Glenelg eventually broke the deadlock by fixing upon a scheme involving the exercise of jurisdiction over settlers, headed by a British Consul – a solution that contemplated significantly less British authority than the terms he had earlier offered to the Association. It was ironic, then, that this decision was immediately undermined by the man he proposed to appoint as Consul : Captain William Hobson. When approached, Hobson argued that nothing less than Britain's acquisition of sovereignty over the whole country, coupled with a plan for systematic colonisation (in effect, if not in name), would do. When the Tory set sail, the British authorities saw greater reason to agree with Hobson, who was after all to be their man on the ground in New Zealand. Britain's shift to adopting a plan for the establishment of a settlement colony in New Zealand was a development of the utmost significance. Not only had the British Government abandoned its long-held reluctance to bring New Zealand within its formal empire, and the more limited goal of exerting just enough authority to control wayward subjects, but it had also abandoned any practical opposition to systematic colonisation. Yet, rather than endorse the New Zealand Company, the Government had done something quite different : its plan to establish Crown Colony government in New Zealand included provisions for sovereignty to be established across the entire country and for progressively expanding colonisation by its own hand. However, a consistent thread of British policy throughout this entire period was that any form of jurisdiction established in New Zealand would require the consent of Māori, who were recognised as possessing some form of sovereign capacity. Britain had previously acknowledged New Zealand's independence, and this remained the case after the British Government decided to establish a Crown Colony in New Zealand. Hobson was thus instructed to treat with the aborigines of New Zealand for the recognition of Her Majesty's sovereign authority over the whole or any part of those Islands which they may be willing to place under Her Majesty's dominion. The instructions declared that any cession by Māori of their sovereignty and recognition by them of British sovereignty were essential precursors to the establishment of Crown Colony government in New Zealand. Their plans envisaged that – through the exercise of that form of government – the Crown would possess the authority to make and enforce laws over all people in territories where sovereignty had been ceded, though there would be a period of accommodation for customary law as Māori eased into their new status as British subjects. Although Normanby stated in the instructions that he was 'not unaware of the difficulty' Hobson would encounter in obtaining consent, he did not acknowledge failure as an option. In the following chapters,

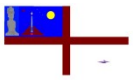




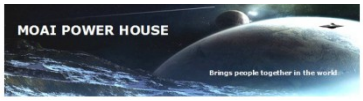








we look at how Hobson went about conveying Britain's intentions to the rangatira of the Bay of Islands and Hokianga, and how far an agreement was reached through the treaty into which they entered. 6.10 Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz He Whakaputanga me te Tiriti The Declaration and the Treaty 334 Notes 1. The Reform Act was the common name for the Representation of the People Act 1832, which broadened access to the franchise to significant numbers of the English and Welsh middle class. 2. Document A18, p97 3. Ibid, p88 ; Patricia Burns, Fatal Success : A History of the New Zealand Company (Auckland : Heinemann Reed, 1989), pp23–25 ; Erik Olssen, 'Mr Wakefield and New Zealand as an Experiment in PostEnlightenment Experimental Practice', NZJH, vol 31, no2 (1997), p204 4. James Belich, Replenishing the Earth : The Settler Revolution and the Rise of the Anglo-World, 1783–1939 (Oxford : Oxford University Press, 2009), p147. On page 184, Belich wrote that 'Australia's first [settlement] boom began in 1828, after improved knowledge of prevailing winds cut sailing time from Britain and the East India Company's monopoly began to crumple.' 5. Document A18, pp88–89 ; Burns, Fatal Success, pp28–29 ; Olssen, 'Mr Wakefield and New Zealand as an Experiment in PostEnlightenment Experimental Practice', NZJH, vol 31, no2 (1997), pp205, 208 ; Philip Temple, A Sort of Conscience : The Wakefields (Auckland : Auckland University Press, 2002), pp130–131 6. Document A18, p89 ; Burns, Fatal Success, pp40–41 7. Olssen, 'Mr Wakefield and New Zealand as an Experiment in PostEnlightenment Experimental Practice', p211 8. Document A18, pp89–90 ; Burns, Fatal Success, p42 9. Document A18, pp90–93 ; see also Burns, Fatal Success, p43 10. Burns, Fatal Success, pp43–44 11. Document A18, p96 12. Ibid 13. Burns, Fatal Success, pp31–33 14. Paul Moon, Te Ara kī te Tiriti : The Path to the Treaty of Waitangi (Auckland : David Ling Publishing, 2002), p18 15. Peter Adams, Fatal Necessity : British Intervention in New Zealand, 1830–1847 (Auckland : Auckland University Press, 1977), pp114–115 16. Claudia Orange, The Treaty of Waitangi (Wellington : Bridget Williams Books, 1987), pp25–26 17. Adams, Fatal Necessity, p90 18. Document A18, pp97–98 ; see also doc A18(g), p1079 19. Document A18(g), p1087 20. Ibid, p1096 ; see also Matthew Palmer, The Treaty of Waitangi in New Zealand's Law and Constitution (Wellington : Victoria University Press, 2008), p42 21. Document A18, pp98–99 22. Adams, Fatal Necessity, p93 23. Document A18, pp95, 99–100 24. Adams, Fatal Necessity, pp99, 105–106. Concerning the negotiations between the Company and the Association in late 1837, see Burns, Fatal Success, p48. 25. Edward G Wakefield and John Ward, The British Colonization of New Zealand ; Being an Account of the Principles, Objects and Plans of the New Zealand Association, together with Particulars concerning the Position, Extent, Soil and Climate, Natural Productions, and Native Inhabitants of New Zealand (London : John W Parker, 1837) 26. Document A18, pp95–96, 101 27. Ibid, p102 28. Ibid, pp102–103 29. This letter was sent the same day as a separate one to Glenelg from Dr Thomas Hodgkin, a leading physician who had just played a key role in the formation of the Aborigines Protection Society. Like Coates, he argued that the Association's plans for New Zealand would inevitably attract more settlers and see Māori subjugated : doc A18, pp105–106. 30. Dandeson Coates, The Principles, Objects and Plan of the New Zealand Association Examined, in a Letter to the Right Hon Lord Glenelg, Secretary of State for the Colonies (London : Hatchards, 1837), pp3–9, 13, 16–17, 33–35, 39 (http ://www.recoveredhistories.org/pamphlet1.php ?catid=194 accessed 1 September 2014) ; see also doc A18, pp106–108 31. Document A18, pp108–111 32. Adams, Fatal Necessity, p102 33. Ibid, pp99–100 34. Document A21, pp44–45 ; see also doc A18, pp111–112 35. Adams, Fatal Necessity, pp101, 103 36. Ibid, pp94–99 37. Ibid, pp99–100 38. Ibid, p101. Adams took the title of his book Fatal Necessity from this remark. In 1996, Belich commented, with regard to Melbourne's statement, 'It was a big "if ". There was no "fatal necessity", but the imperial government came to believe that there was.' See James Belich, Making Peoples : A History of the New Zealanders from Polynesian Settlement to the End of the Nineteenth Century (Auckland : Allen Lane, Penguin Press, 1996), p187. 39. Adams, Fatal Necessity, p103 40. Ibid, pp103–104 ; doc A18, pp112–113 ; doc A18(e), p692 41. Adams, Fatal

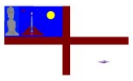




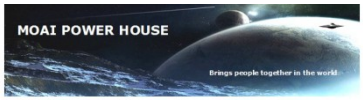








Necessity, pp104–106 42. Professor Alan Ward, for example, observed that 'historians concur that a key shift of thinking occurred in mid-December 1837' : doc A19, p49. With regard to the 20 December meeting, he added (p50) : 'From this point on the die was cast. Some kind of British controlled colonisation of New Zealand, from England, was going to be promoted.' 43. Adams, Fatal Necessity, p102 44. Ibid, p107 45. Ibid, pp110–111 46. Ibid, pp111–112 47. Document A18, pp114–115 48. Ibid, p115 49. Adams, Fatal Necessity, pp112–113 ; doc A18, pp115–116 50. Adams, Fatal Necessity, p86 ; doc A18, p122 51. Document A18, pp116–117 ; doc A19, p40 52. Document A18, pp117–118 ; Adams, Fatal Necessity, pp113–114 53. Alexander H McLintock, Crown Colony Government in New Zealand (Wellington : Government Printer, 1958), pp36–37 54. Adams, Fatal Necessity, pp114–115 55. Belich, Making Peoples, p183 6-Notes Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz The British Move towards Annexation 335 56. Adams, Fatal Necessity, pp115–117 57. Document A18, pp121–122. Loveridge dated the Earl of Devon's proposal as 30 May, but this must have been inadvertent, as he referred to evidence presented in April and May and had the date 30 March in his footnote. 58. Adams, Fatal Necessity, p93 59. Document A18, p118 60. Ibid, pp118–119 61. Ibid, pp119–121 62. Ibid, pp123–126 63. Palmer, The Treaty of Waitangi, p46 64. Adams, Fatal Necessity, p120 ; doc A18, p127 65. Adams, Fatal Necessity, pp120–122 66. Ibid, p118 67. Document A18, p123 68. Adams, Fatal Necessity, pp123–124 69. Orange, The Treaty of Waitangi, p26 ; Moon, Te Ara kī te Tiriti, p94 70. Document A18, p123 71. Adams, Fatal Necessity, pp123, 125 ; doc A18, p133 72. Document A18, p131 73. Document A21, pp52–53 74. Document A18, p131. Adams took a different view, suggesting that Coates's letter was 'unlikely [to have] stimulated the announcement, since it contained nothing very new' : Adams, Fatal Necessity, p125. 75. Adams, Fatal Necessity, pp121, 124–125 76. Ibid, p118 77. Ibid, p130 78. Ibid, p131 79. Adams, Fatal Necessity, pp125–126 ; doc A18, pp131–132 80. Document A18, p132 81. Ibid, pp132–133 82. Ibid, pp133–134 83. Document A18, p134 ; see also Adams, Fatal Necessity, p126 84. Document A18, p134 85. Ibid, p135 86. Ibid, pp134–135 87. Adams, Fatal Necessity, p126 88. Document A18, p137 89. Ibid, pp135–137 ; Adams, Fatal Necessity, pp126–127 90. Adams, Fatal Necessity, p127 91. Document A18, p137 92. Ibid, p138 93. Ibid 94. Adams, Fatal Necessity, p128 95. Document A18, p139 96. Ibid, pp138–139 97. Ibid, p139 ; Adams, Fatal Necessity, p128 98. Adams, Fatal Necessity, p126. In Paul Moon, Hobson : Governor of New Zealand 1840–1842 (Auckland : David Ling Publishing Ltd, 1998), p45, Moon remarked that : 'How much this unwillingness to accept the appointment was a case of game-playing by Hobson is difficult to say, but what is certain is that the alternative to the appointment to New Zealand – an early retirement – would have left him financially much worse off.' 99. Adams, Fatal Necessity, pp129, 131 ; doc A18, p141 ; Ged Martin, 'Grant, Charles, Baron Glenelg (1778–1866)', in Oxford Dictionary of National Biography, http ://www.oxforddnb.com/view/article/11249, accessed 12 May 2014 100. Document A18, p141 101. Document A21, pp56–57 ; Adams, Fatal Necessity, pp127, 148–149 102. Document A18, p140 103. Ibid. Ward, who had the benefit of reading Loveridge's report before filing his own, referred to the document as an 'uncirculated draft' probably of late December 1838 : doc A19, pp54, 56. 104. Document A18, p140 ; doc A17, p125 105. Document A21, p57 106. Ibid, pp56–57 107. Adams, Fatal Necessity, pp149–150 108. Ibid, p150 109. Document A18, p142 110. Adams, Fatal Necessity, pp134–135. There were also difficult domestic issues that must have caused significant distraction, including the resignation and reinstatement of the Melbourne Government in May 1839. The ministry had resigned after failing to gain sufficient support for its Bill to suspend the Jamaican constitution, whereupon Queen Victoria invited Sir Robert Peel to form a new government. However, he asked that the Queen replace some of her ladies in waiting, a number of whom were the wives or relations of leading Whig politicians (including Normanby's wife). The Queen refused and Peel declined the invitation, allowing Melbourne to return to the prime ministership : Palmer, The Treaty of Waitangi, p47 ; Adams, Fatal Necessity, p134 ; John Prest, 'Sir Robert Peel', in Oxford Dictionary of National

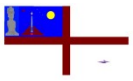




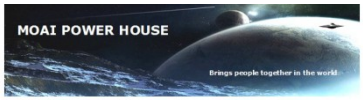








Biography, http ://www.oxforddnb.com/view/article/21764, accessed 21 August 2014. 111. Document A18, pp128–129 ; Adams, Fatal Necessity, pp136–137 112. Adams, Fatal Necessity, p137. It should be noted that the Colonisation Association was not the only such organisation circling New Zealand at this time. As Loveridge remarked, interest in New Zealand 'intensified as it became more and more likely that the British Government would . . . probably impose the Crown's authority over British settlements (at least)'. One such example was 'The Scots New Zealand Company', which issued a prospectus in August 1839 : doc A18, p145 n411. 113. Adams, Fatal Necessity, pp137–138 114. Document A18, pp141–142 115. Adams, Fatal Necessity, pp138–139 116. Ibid, p139 117. Ibid, pp139–140 118. Ibid, p140 119. Ibid, pp140–141 120. Ibid, p140 121. Ibid, p141 ; doc A18, p145 122. Adams, Fatal Necessity, p141 ; doc A18, p146 6-Notes Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz He Whakaputanga me te Tiriti The Declaration and the Treaty 336 123. Document A18, pp147–148 124. Ibid, pp148–150 ; Palmer, The Treaty of Waitangi, pp47–48 125. Palmer, The Treaty of Waitangi, p48 ; doc A18, pp149–150 126. Adams, Fatal Necessity, pp151–152 127. Document A18, p150 n423 ; doc A21, p60 ; Palmer, The Treaty of Waitangi, p48 128. This message did not in fact reach New Zealand before Hobson did, but the CMS missionaries in New Zealand had received the news before his arrival via Bishop Broughton in New South Wales and through the corresponding message reaching their WMS counterparts : doc A18, pp151–152. 129. Ibid, pp150–151 130. Ibid, p152 131. Ibid 132. His letter to Labouchere is simply dated 'August 1839', but through deduction Loveridge concluded that it must have been written on 1 August : doc A18, p154 n438. McHugh thought that the letter was written on or around 1 or 2 August : doc A21, p59 n138. 133. See doc A18, pp153–162. The course of this correspondence has been the cause of some confusion. The Orakei Tribunal, for example, wrote that 'Lord Normanby's Instructions were dated 14 August 1839. Immediately on receiving them Captain Hobson wrote to the Under Secretary of the Colonial Department seeking elucidation on some aspects. Lord Normanby responded to Hobson's enquiries the following day, 15 August 1839.' See Waitangi Tribunal, Report of the Waitangi Tribunal on the Orakei Claim, 2nd ed (Wellington : Brooker and Friend, 1987), p193. 134. Waitangi Tribunal, Report on the Orakei Claim, pp193–196 135. Waitangi Tribunal, Muriwhenua Land Report (Wellington : GP Publications, 1997), p117 136. Document A18, pp154–159 137. The Marquis of Normanby to Captain Hobson, 14 August 1839, BPP, 1840, vol 33 [560], pp37–42 (IUP, vol 3, pp85–90) 138. Ibid, p37 (p85) 139. Ibid 140. Ibid 141. Ibid 142. Ibid, pp37–38 (pp85–86) 143. McLintock, Crown Colony Government in New Zealand, p50 144. Moon, Te Ara kī te Tiriti, pp109–110 145. Orange, The Treaty of Waitangi, p30 146. Adams, Fatal Necessity, pp155–156 147. The Marquis of Normanby to Captain Hobson, 14 August 1839, BPP, 1840, vol 33 [560], p38 (IUP, vol 3, p86) 148. Document A21, p60 149. The Marquis of Normanby to Captain Hobson, 14 August 1839, BPP, 1840, vol 33 [560], p38 (IUP, vol 3, p86) 150. Document A18, pp155–156 151. Ian Wards, The Shadow of the Land : A Study of British Policy and Racial Conflict in New Zealand, 1832–1852 (Wellington : Government Printer, 1968), pp28–29 152. Document A18, p156 153. The Marquis of Normanby to Captain Hobson, 14 August 1839, BPP, 1840, vol 33 [560], pp38–39 (IUP, vol 3, pp86–87) 154. Ibid, p39 (p87) 155. Ibid 156. Ibid, p40 (p88) 157. Ibid 158. Ibid 159. Ibid, p41 (p89) 160. Ibid 161. Ibid, p42 (p90) 162. Captain Hobson to the Under Secretary of the Colonial Department, 1 August 1839, BPP, 1840, vol 33 [560], pp42–44 (IUP, vol 3, pp90–92). The letter was dated simply 'August 1839' but, as Loveridge pointed out (doc A18, p154), other correspondence from the time shows that it was written on 1 August. 163. Captain Hobson to the Under Secretary of the Colonial Department, 1 August 1839, BPP, 1840, vol 33 [560], p42 (IUP, vol 3, p90) 164. Ibid, p44 (p92) 165. The Marquis of Normanby to Captain Hobson, 15 August 1839, BPP, 1840, vol 33 [560], pp44–45 (IUP, vol 3, pp92–93) 166. Ibid, p44 (p92) 167. Ibid 168. Moon, Te Ara kī te Tiriti, p115. Dr (later Professor Dame) Judith Binney thought the omission was probably designed `1to allow Hobson 'full flexibility' : Judith Binney, 'The Maori and the Signing of the Treaty of

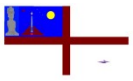




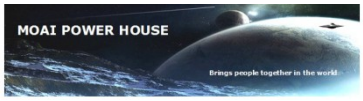








Waitangi' in Towards 1990 : Seven Leading Historians Examine Significant Aspects of New Zealand History, ed David Green (Wellington : GP Books, 1989), p25. The year before this, in 1988, the Muriwhenua Fishing Tribunal wrote that Normanby 'quite properly' believed that the development of the treaty's terms 'required local advice' : Waitangi Tribunal, Report of the Waitangi Tribunal on the Muriwhenua Fishing Claim (Wellington : Waitangi Tribunal, 1988), p177. 169. Moon, Te Ara kī te Tiriti, pp115–116. McLintock even criticised Hobson's judgement on this point because 'In some ways the southern Maoris were more civilised than those of the north.' McLintock, Crown Colony Government in New Zealand, p52 n4. Belich, for his part, noted the inevitable ability of far-flung correspondents to manipulate the Colonial Office – whose 'officials saw through specific misinformation' but which was 'ultimately a blind giant' – into believing colonial myths : Belich, Making Peoples, p186. 170. Adams, Fatal Necessity, p157 171. Ward thought it 'unlikely' that officials would not have communicated this view to Hobson : doc A19, p58. 172. Document A18, pp159–162 173. William Pember Reeves, The Long White Cloud : Ao Tea Roa (1898 ; repr Auckland : Golden Press, 1973), p146 174. T Lindsay Buick, The Treaty of Waitangi : Or, how New Zealand became a British Colony (Wellington : S and W MacKay, 1914), p61 175. McLintock, Crown Colony Government in New Zealand, pp51, 53 6-Notes Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz The British Move towards Annexation 337 176. Keith Sinclair, The Origins of the Maori Wars (Wellington : New Zealand University Press, 1957), p28 177. Wards, Shadow of the Land, pp22–23, 25–26 178. Ibid, pp29–30 179. Alan Ward, A Show of Justice : Racial Amalgamation in Nineteenth Century New Zealand (Auckland : Auckland University Press, 1973), p33 180. Adams, Fatal Necessity, p154 181. Ibid, p166 182. Ibid, p167. Moon argued the same in 2002, albeit from the perspective that Britain sought authority only over its own settlers anyway, even in the treaty itself. He cautioned, in this regard, against what he said would be misinterpretation of Normanby's remark that Māori would benefit from British law applying to them. Here, he said, Normanby was referring to national independence rather than tribal sovereignty – that is, the statement amounted merely to confirmation of the British right to enter New Zealand and control its own subjects. As he put it, 'The mana and sovereignty of each tribe and sub-tribe undoubtedly remained unaffected by these statements.' That was because 'No national system of rule was in operation by Maori at this time, so the British were essentially asking for permission to acquire a type of sovereign rule which Maori would not have to sacrifice, as they did not possess it' : Moon, Te Ara kī te Tiriti, pp110–112. 183. Orange, The Treaty of Waitangi, p31 184. Ibid, p31 185. Belich, Making Peoples, p186 186. Waitangi Tribunal, Report on the Orakei Claim, pp146–147 187. Waitangi Tribunal, Report on the Orakei Claim, p145 ; Adams, Fatal Necessity, p199 188. Waitangi Tribunal, Report on the Muriwhenua Fishing Claim, p177 ; Waitangi Tribunal, Muriwhenua Land Report, p117 189. Edward TJ Durie, 'The Treaty in Maori History', in Sovereignty and Indigenous Rights : The Treaty of Waitangi in International Contexts, ed William Renwick (Wellington : Victoria University Press, 1991), p163 190. New Zealand Maori Council v Attorney-General [1987] 1 NZLR 641 at 692–693 191. Ibid, at 682 192. Alan Ward, An Unsettled History : Treaty Claims in New Zealand Today (Wellington : Bridget Williams Books, 1999), p76 193. Document A19, p71 194. Document A19(a), p77 195. Document A18, pp165–166 196. Ibid, pp166–168 197. Ibid, pp168–170 198. Ibid, p170 199. J Stephen to John Backhouse, 18 March 1840, BPP, 1840, vol 33 [238], pp68–69 (IUP, vol 3, pp116–117) ; see also Palmer, The Treaty of Waitangi, p57 200. Document A18, pp178–180 201. Ibid, p183 202. Document A21, pp3–4, 12–17, 24–25, 44–47, 82–88 ; PG McHugh, 'The Aboriginal Rights of the New Zealand Maori at Common Law' (PhD thesis, University of Cambridge, 1987), fol 6 203. Document A21, p21 ; Peter Burroughs, 'Imperial Institutions and the Government of Empire', in The Oxford History of the British Empire, ed William R Louis, 5 vols (Oxford : Oxford University Press, 1998–99), vol 3, p185 204. Burroughs, 'Imperial Institutions and the Government of Empire', p176 205. Ibid, p177 ; see also Gavin McLean, The Governors : New Zealand's Governors and Governors-General (Dunedin : Otago University Press, 2007), pp20–21 206.

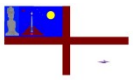




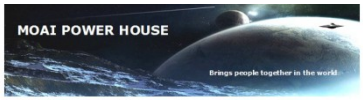








Andrew Porter, ‘Introduction’, in The Oxford History of the British Empire, vol 3, pp17–18 ; Andrew Porter, ‘Trusteeship, Anti-Slavery, and Humanitarianism’, in The Oxford History of the British Empire, vol 3, p205 ; Lauren Benton and Lisa Ford, ‘Magistrates in Empire : Convicts, Slaves, and the Remaking of the Plural Legal Order in the British Empire’, in Legal Pluralism and Empires, 1500–1850, ed Lauren Benton and Richard J Ross (New York : New York University Press, 2013), p184 n59 207. Stephen to Labouchere, 15 March 1839, CO 209/4, pp326–327. McHugh interpreted the statement as : ‘on the one hand, the protection of Maori and recognition of their rights of sovereignty and ownership, and, on the other, facilitation of British sovereign authority over and within the British community’ ; doc A21, p90. 208. Document A21, p91 209. Ibid, p75 210. Ibid, p77 211. Ibid, p86 212. Ibid, p19 213. Ibid, p89 214. The Marquis of Normanby to Captain Hobson, 14 August 1839, BPP, 1840, vol 33 [560], p40 (IUP, vol 3, p88) 215. Document A21, pp80, 90 216. Ibid, pp7–17 217. Ibid, p15 218. Ibid, pp88–89 219. Ibid, pp46 n 101, 58 ; McHugh, ‘The Aboriginal Rights of the New Zealand Maori at Common Law’, fols 124, 132–144 ; Stanley A de Smith, Constitutional and Administrative Law, 3rd ed (1971, repr New York : Penguin Books, 1977), pp113–115. In his evidence, McHugh noted that Stephen acknowledged the accepted interpretation of the law – established in the 1774 decision Campbell v Hall – that only Imperial legislation could ‘enlarge the constituent power to include a non-representative assembly for the Crown colony’ ; the Crown’s prerogative powers could be used to erect a representative assembly once sovereignty in a territory had been acquired, but no more. 220. The Marquis of Normanby to Captain Hobson, 14 August 1839, BPP, 1840, vol 33 [560], pp38, 40 (IUP, vol 3, pp86, 88) 221. Document A21, p81 222. Ibid, p60 223. Ibid 6-Notes Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz He Whakaputanga me te Tiriti The Declaration and the Treaty 338 224. Ian C Campbell, Worlds Apart : A History of the Pacific Islands (Christchurch : Canterbury University Press, 2003), p169 ; Belich, Making Peoples, p135 225. Wards, The Shadow of the Land, pp16–17, 23 226. Ibid, pp25–26 227. Ibid 228. Earlier scholars had also rejected the idea of French activity prompting British intervention. In 1948, for example, John Ward wrote that ‘There is no evidence in Foreign Office or Colonial Office papers to suggest that fear of French action played any part in inducing the British decision to establish a government in New Zealand’ : Ward, British Policy in the South Pacific (1786–1893) : A Study in British Policy towards the South Pacific Islands Prior to the Establishment of Governments by the Great Powers (Sydney : Australasian Publishing Co, 1948), p114. 229. Ward, A Show of Justice, p33 230. Adams, Fatal Necessity, p152 231. JMR Owens, ‘New Zealand before Annexation’, in The Oxford History of New Zealand, ed William H Oliver with Bridget Williams (Wellington : Oxford University Press, 1981), p51 232. Sonia Cheyne, ‘Act of Parliament or Royal Prerogative ? James Stephen and the First New Zealand Constitution Bill’, NZJH, vol 24, no2 (1990), p189 233. Belich, Making Peoples, p179 234. Ibid, p187 235. Document A21(a), p2 236. Document A19, pp60, 70 237. Peter Tremewan, French Akaroa : An Attempt to Colonise Southern New Zealand (Christchurch : Canterbury University Press, 2010), pp13–15, 309 6-Notes Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz 339 Chapter 7 The Negotiation and Signing of te Tiriti 7.1 Introduction In this chapter, we describe the key events in the process of drafting, debating, and signing the treaty at Waitangi, Waimate, and Mangungu in February 1840. Effectively, three negotiations took place. The first was between Captain William Hobson and his assistants over the drafting and finalisation of the English and Māori texts of the treaty. The second was an oral debate between Hobson and his missionary agents, on the one hand, and the rangatira assembled both at Waitangi and Mangungu, on the other. Lastly, the rangatira also debated among themselves whether they should sign Hobson’s treaty. Significantly, there was no negotiation between the rangatira and the representatives of the British Crown over the wording of the treaty itself. Very little is recorded in documents about what the rangatira said to each other about the treaty. However, reasonable yet imperfect records exist about both how the treaty was drafted and what was debated between the

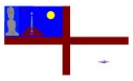




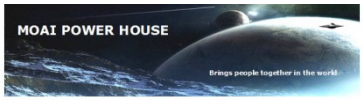








rangatira and the officials. In this chapter, we allow the recorded voices and actions of the participants to the treaty to speak for themselves as much as possible. We defer discussing interpretations of what was said and done to chapters 8 and 9. We make our own conclusions about was said and done in chapter 10. We conclude the chapter by briefly describing two matters that followed the initial signings of the treaty. The first is the further acquisition of signatures after February 1840. The second is Captain Hobson's proclamation of sovereignty over both islands in the middle of this process, in May 1840. We also note Governor Sir George Gipps's attempt, in February 1840, to persuade rangatira then in Sydney to sign a treaty (in English) he had prepared after Hobson's departure for New Zealand. While these chiefs were Ngāi Tahu, this episode is relevant to our considerations because it sheds light on Gipps's likely advice to Hobson over the content of the latter's own treaty text. Finally, we discuss the translations of the Māori text back into English1 that were made both soon after te Tiriti was signed and in the following years and decades. 7.2 Hobson's Time in Sydney, 24 December 1839 to 18 January 1840 Equipped with his final instructions, Hobson sailed for New Zealand on board HMS Druid on 25 August 1839, arriving in Sydney on Christmas Eve after a voyage of 121 days. The New Zealand Company's ship the Tory, which had left England on 12 May, made the journey to New Zealand in a record 96 days.2 Thus, when Hobson was setting sail, Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz He Whakaputanga me te Tiriti The Declaration and the Treaty 340 Colonel William Wakefield was already initiating his land 'purchases' with Māori in the Cook Strait area. By the time that Hobson reached Sydney, the first of the New Zealand Company's fleet of six immigrant ships, the Aurora, was less than a month away from arriving at Port Nicholson. It was private land transactions that preoccupied Hobson upon his arrival. He reported with his instructions to Gipps, who had been growing concerned about the consequences of the claims of various Sydney businessmen to have acquired vast tracts of New Zealand land. On 6 January, Gipps scuttled an auction in Sydney of 2,000 acres of Bay of Islands land by warning that the Crown might not recognise any purchases made. A week later, Hobson met a deputation of indignant colonists, who demanded to know what right the British Government thought it had to interfere in 'a free and independent state'. Hobson replied that the 1835 declaration had not been understood by Māori at the time, had never been put into effect, and applied only to the northern part of the North Island. But, while it was 'an experiment wh[ich] had failed', the British Government of course still recognised the chiefs' independence. Moreover, Hobson reassured the deputation – as Secretary of State for War and the Colonies Lord Normanby had instructed him to – that the Government had no intention of dispossessing any purchasers whose land had been obtained fairly. When asked if there was an intention to 'colonize the whole of New Zealand', he said he hoped that it 'might be accomplished'.3 Gipps then acted upon Normanby's instructions by drawing up three proclamations, dated 14 January 1840.4 These were not issued until after Hobson's departure for New Zealand several days later so that they might be announced more or less concurrently on either side of the Tasman.5 They declared that : ы the boundaries of New South Wales were expanded to include 'any territory which is or may be acquired in sovereignty by Her Majesty . . . within that group of Islands in the Pacific Ocean, commonly called New Zealand', as provided for in the Letters Patent issued in Britain on 15 June 1839 ; ы Gipps had sworn Hobson in as Lieutenant-Governor on the basis of the latter's commission, issued in Britain on 30 July 1839, to act in that capacity over any such territory so acquired ; and ы the Crown would recognise no private purchases of land made from Māori after 14 January 1840, and would not accept the validity of any purchases made prior to that date until an investigation had taken place and a Crown title issued.6 The Sydney land speculators were most alarmed by these statements. New Zealand was not yet a British possession and Hobson was, in the words of historian Edward Sweetman, who wrote about these events in 1939, a 'purely theoretical Lieut[enant]-Governor'. The land buyers resorted to Sydney's leading lawyers, who concluded that bona fide purchases in a foreign country made prior to such a proclamation could not be invalidated.7

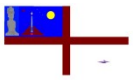




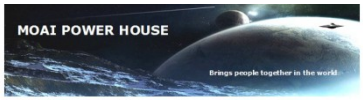








We return in chapter 10 to the Crown's intentions behind these proclamations, and the date upon which the British considered sovereignty technically passed in New Zealand. Suffice it to note here that, despite subsequent events, the date of 14 January continued to have a particular status. In all, while awaiting the preparation of HMS Herald, his onward ship to New Zealand, Hobson remained in Sydney for nearly four weeks. Normanby had instructed him to select the individuals he needed as subordinate officers from amongst the New South Wales or New Zealand settlers. Gipps obliged by providing Hobson with four police troopers, a sergeant, and what Peter Adams called 'a threadbare establishment of second-rate New South Wales civil servants' to serve in his colonial administration – a far cry from the 67 members of staff Hobson had requested.8 The officers provided were George Cooper (Treasurer), Felton Mathew (Surveyor-General), Willoughby Shortland (Police Magistrate), and James Freeman (Chief Clerk). This party sailed for New Zealand on 18 January, with another clerk, Samuel Grimstone, following in March, along with five further mounted police.9 7.3 Hobson's Arrival in the Bay of Islands HMS Herald entered the Bay of Islands on the morning of 29 January, Mathew noting Hobson's anxiety at the possibility that they might encounter a French warship : 7.3 Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz The Negotiation and Signing of te Tiriti 341 Just beyond [Paihia] the harbour, that is to say, the anchorage, is shut in by Kororareka Point, which rises abruptly from the water, and on its summit is another flagstaff ; with the French Tricolor flying. The sight of this made our Governor look rather blue, for he begins to fear that the French may have anticipated us, and that perhaps L'Artemise is lying at anchor in the harbour. If it should prove so, Lord help us, for if it came to a squabble L'Artemise would sink us in a moment . . .10 The Herald anchored off Kororāreka and Busby came on board soon after. Hobson handed him a letter from the British Government announcing that the position of British Resident was terminated. Busby nevertheless dutifully assisted Hobson with his immediate tasks, composing invitations first to the Europeans of Kororāreka to gather the following day to hear Hobson read his commissions and proclamations, and second to the confederated chiefs to meet Hobson at Busby's residence the following Wednesday (5 February).11 Whereas Normanby had envisaged Hobson landing as British Consul, and progressively proclaiming himself Lieutenant-Governor over any lands acquired in sovereignty from the chiefs, Hobson decided to assert this higher status from the outset. This may have stemmed from his knowledge of Rete's 1834 'cession' to the Crown of 200 to 300 acres near Busby's Waitangi residence (see chapter 3). Hobson appears to have believed that through this cession – though the land was now reoccupied by Māori – British sovereignty had been established in one (admittedly small) corner of the country.12 In any event, Busby disapproved, telling Hobson that 'the land was not ceded in that sense by the natives' and that Hobson should act as Consul until he had obtained a cession of territory 'by amicable negotiations with the free concurrence of the native chiefs'.13 Captain Joseph Nias of HMS Herald also refused to fire the 13-gun salute for a lieutenant-governor to mark Hobson's arrival on shore in his gold lace, instead firing the 11 guns befitting a consul.14 But Hobson, while irritated by this, was undeterred, and proclaimed before 300 settlers and 100 Māori assembled at the Kororāreka church that his duties as Lieutenant-Governor had begun.15 He referred to himself in this proclamation as 'His Excellency William Hobson, Esq, Lieutenant-Governor of the British Settlement in Progress in New Zealand'.16 Hobson's preference to be seen as a lieutenant-governor rather than a mere consul was viewed by Samuel Martin, a would-be land purchaser in New Zealand and a fierce government critic, as motivating Hobson to acquire sovereignty. As Martin wrote in a letter of 25 January 1840 : Captain Hobson is required by his instructions to endeavour to obtain the cession of sovereignty with the intelligent consent of the natives ; and it is understood that if he cannot obtain it in that manner, he is not to assume the functions of Lieutenant-Governor, but merely those of British Consul, in New Zealand. In the event of obtaining the cession of sovereignty, New Zealand is to become a dependency of this Colony [New South Wales] ; – Sir George Gipps being, as he now is, Governor-in-Chief ; and Captain Hobson, LieutenantGovernor

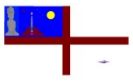




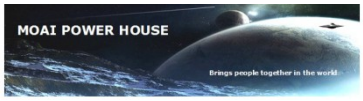








of New Zealand, to act under Sir George Gipps' instructions. The difference between Governor and Consul is so great, both in point of salary, dignity, and power, that there is very little reason to doubt that Captain Hobson will, right or wrong, endeavour to place himself in the former position ; and, being a naval man, he is not likely to be very nice as regards the means.17 At the Kororāreka church, Hobson also declared that the boundaries of New South Wales were extended to include any parts of New Zealand which 'is or may be' acquired in sovereignty. In a second proclamation he announced – in accordance with Gipps's Sydney edict – that no land titles would be recognised by Britain as valid unless derived from or confirmed by a grant from the Crown, and that henceforth private land purchases from Māori would be regarded as null and void. As in Sydney, the local land purchasers reacted with dismay, but they were partly reassured in this instance by Busby, who was himself a considerable purchaser of Māori land. Busby advised them to have faith in the fairness of the British Government. Some settlers, however, sought to undermine Hobson's work by telling local Māori the Kāwana 7.3 Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz He Whakaputanga me te Tiriti The Declaration and the Treaty 342 planned to make them taurekareka (slaves) of the Queen.18 This was a recurrent theme : we saw in chapter 3 how Europeans suggested to the rangatira that plans to enslave Māori lay behind the establishment of Marsden's mission in 1814 and Busby's arrival as British Resident in 1833. In the meantime, Busby had circulated an invitation to each of the confederated chiefs to meet Hobson at Waitangi on 5 February (see above). The letter explained that 'Tenei ano tetahi kaipuke Manawa kua u mai nei, me tetahi Rangatira ano kei runga, no te Kuini o Ingarani ia, hei Kawana hoki mo tatou', which was a translation of 'A war ship has arrived with a chief on board sent by the Queen of England to be a Governor for us both'. The fact that the invitation was addressed to 'nga Rangatira o te Wakaminenga o Nu Tireni' suggested to Dr Donald Loveridge that Hobson had been given 'firm orders to remove the Confederation from play as the first step in the treaty process'.19 In fact, the Confederation provided Busby's Invitation to Chiefs to Attend the Waitangi Hui No te 30 o nga ra o Hanuere, 1840. E taku hoa aroha, Tenei ano taku ki a koe ; na, tenei ano tetahi kaipuke manawa kua u mai nei, me tetahi Rangatira ano kei runga, no te Kuini o Ingarani ia, hei Kawana hoki mo tatou. Na, e mea ana ia, kia huihuia katotia mai nga Rangatira o te Wakaminenga o Nu Tireni, a te Wenerei i tenei wiki tapu e haere ake nei, kia kitekite ratou i a ia. Koia ahau ka mea atu nei ki a koe, e hoa, kia haere mai koe ki konei ki Waitangi, ki taku kainga ano, ki tenei huihuinga. He Rangatira hoki koe no taua Wakaminenga tahi. Heoi ano, ka mutu taku, Naku, Na tou hoa aroha, Na te PUHIPI 30 January 1840 My dear friend, I make contact with you again. A war ship has arrived with a chief on board sent by the Queen of England to be a Governor for us both. Now he suggests that all the chiefs of the Confederation of New Zealand, on Wednesday of this holy week coming, should gather together to meet him. So I ask you my friend to come to this meeting here at Waitangi, at my home. You are a chief of that Confederation. And so, to conclude, From your dear friend, Busby.1 the British with a convenient starting point in trying to acquire a cession of sovereignty. But Hobson's report to Gipps shows that he did wish the invitation to be extended to chiefs who had not signed he Whakaputanga.20 7.4 The Drafting of the Treaty and te Tiriti Having issued his proclamations, Hobson's next task was to prepare the agreement to place before the chiefs at the 5 February meeting. It does not appear that either the Colonial Office or Gipps provided Hobson with a draft to work from. We note, however, Loveridge's view expressed in 2006 that there was a 'good case to be made that [Gipps] provided Hobson with a rough outline of a Treaty before the latter left Sydney'. Loveridge reached this conclusion on the basis of the similarities between the initial English drafts of the treaty and Gipps's own attempted treaty with Māori visiting Sydney in February 1840 (see section 7.11) : 7.4 Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz The Negotiation and Signing of te Tiriti 343 It is difficult to believe that Hobson in New Zealand in early February, and Gipps in Sydney in mid-February, independently

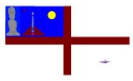




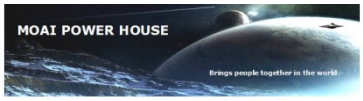








arriv[ed] at exactly the same format, formula and (to a significant extent) wording for a treaty with Maori. Lord Normanby's instructions obviously played a major role in shaping both of these draft treaties, but they alone cannot account for all of the parallels between the two documents.21 In any event, it is clear that Hobson and Busby knew by and large what the treaty should contain. Its eventual articles bore a striking similarity to those in earlier agreements negotiated with tribal rulers in west Africa, such as the 1825 Sherbro treaty in Sierra Leone (where the CMS and the Clapham Sect 22 had established a refuge for emancipated slaves). Writing in 1991, Professor Keith Sorrenson observed that 'there is very little in the Treaty, at least in its English text, that had not already been expressed in earlier treaties or statements of British colonial policy'.23 In our inquiry, by contrast, Loveridge thought that there was a lack of evidence that the west African treaties had 'any direct influence on New Zealand's' and that there was 'in fact no need to go beyond Normanby's instructions when seeking the origins of the English text'.24 But other scholars endorse the idea that Hobson was well aware of the African precedents. Dr (later Professor) Paul Moon concluded in his biography of Hobson that it was beyond chance that the Treaty of Waitangi followed so closely from these examples [Sherbro and the 1826 treaty with Soombia Soosoos and Tura]. Hobson, at some point, would have been made familiar with them, probably while in Australia in 1839/40.25 Dr Matthew Palmer concurred, reasoning that, Given the similarities to the English version of the Treaty of Waitangi, I suspect that a text of the Treaty of Sherbro made its way informally to Hobson through one of the myriad linkages between the CMS, the Clapham Sect and the Colonial Office.26 While these observations may be true of articles 1 and 3, it must be noted that the article 2 text that very closely resembled the Sherbro treaty came from Busby – and it is not clear when and where Busby was made familiar with such clauses. In any event, we agree with Sorrenson's conclusion that there was 'what one might call a treaty language that was in fairly widespread use, ready to be applied wherever a crisis on one of the frontiers of empire needed to be resolved' through cession.27 A number of researchers have sifted through the Waitangi treaty's convoluted drafting. Two of the most notable efforts have been those of Ruth Ross, in her 1972 New Zealand Journal of History article 'Te Tiriti o Waitangi : Texts and Translations', and Dr Phil Parkinson, The Reverend Henry Williams, 1850s. The task of translating the Treaty into Māori on 4 February 1840 fell to Williams, who was the senior Anglican missionary in the Bay of Islands. His translation of key terms remains a defining controversy about the treaty. 7.4 Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz He Whakaputanga me te Tiriti The Declaration and the Treaty 344 some three decades later, in his 2005 publication entitled 'Preserved in the Archives of the Colony' : The English Drafts of the Treaty of Waitangi. Ross was perhaps the first historian to grapple with the authorship and textual changes across several drafts of the English version, while Parkinson undertook what he described as a 'forensic' examination of material that had appeared in the years since Ross's article was published, making use in part of 'the principle of filiation, the derivation of one text from another by descent'. His work was prompted in part by the discovery of the so-called 'Littlewood' treaty document in 1992 (see section 7.12) and the need to establish its provenance.28 That there remains no perfect unanimity amongst scholars about the drafting process only reinforces the complexity of any aspect of the treaty's history. Beyond a certain point, however, a summation of the intricate detail is for our purposes not vital. With that in mind, we offer the following summary. Initially it seems that Hobson dictated a first draft of the treaty to Freeman while both were on board HMS Herald. Ross and Dr (later Dame) Claudia Orange considered that Hobson then penned a second draft preamble himself, although Professor Dame Anne Salmond and Parkinson believed that this occurred later in the process.29 In any event, Hobson became too ill to leave the ship, and on 31 January had Cooper and Freeman deliver the prepared notes to Busby, along with a request for his view as to their suitability. Busby thought them inadequate – there was no land guarantee, for example – and, with the officials' encouragement, he made some amendments. His main contribution was

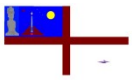




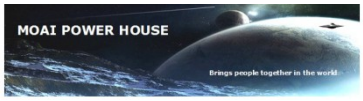








indeed to article 2 ; he had no hand at all in the preamble. Busby resubmitted this draft to Hobson on either 3 or 4 February.30 Busby's article 2 changes were retained intact, although Hobson and his officials removed his rather wordy explanatory clause that followed the third article (and which had included a limitation of the treaty's application to the area north of Hauraki). According to Parkinson and Salmond, Hobson now also considerably extended his own preamble so that it referred to the rapid increase of immigration and the dangers of lawlessness.31 In later years, Busby let it be known that he had essentially drafted the treaty, a statement which Ross found to be a distortion. His reputation was later redeemed somewhat by Orange, who concluded that 'it becomes clear that the essentials of the English text of the treaty came from Busby and that his claim that he "drew" the treaty is not altogether an exaggeration'. But Parkinson echoed Ross, and called Busby 'an untrustworthy witness' and 'by nature a self-promoter', and in 2006 Loveridge argued that Busby's claims to have been the principal author of the treaty were 'more or less a complete fabrication'. Parkinson did allow, however, that Busby was almost entirely responsible for the English text of article 2.32 At 4 pm on 4 February, Hobson then took the new draft to Henry Williams. He asked him to produce a Māorilanguage version and bring it the next morning to Busby's residence, where it would be read to the assembled chiefs at 10 am. Sorrenson noted that indigenous-language versions of treaties were not used in British (or American) treaty-making in North America, Africa, or Asia, although some were in the Pacific.33 Presumably, the local tradition of rendering important documents into Māori (such as he Whakaputanga), as well as the missionaries' efforts to advance Māori literacy, made the production of a written, Māori text axiomatic. In any event, Parkinson wondered why Hobson sought out Williams rather than Busby for this job. He noted that Busby was perfectly competent in te reo for the task, and pondered whether Williams seemed 'less compromised' than Busby, given the latter's speculation in land. Alternatively, Parkinson wondered whether Hobson felt that the 'courtesies to Busby had gone quite far enough'.34 Whatever the reason, Hobson chose Williams, who was assisted by his 21-yearold son Edward, who, having been raised in New Zealand, was a fluent speaker of the local dialect. The translation, however, was a particular challenge : Williams himself later recalled (somewhat enigmatically) that 'it was necessary to avoid all expressions of the English for which there was no expressive term in the Maori, preserving entire the spirit and tenor of the treaty'.35 Williams was nevertheless ready and willing to take up the challenge. The Bishop of Australia, William Broughton, had written to him on 10 January 1840 as follows : 7.4 Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz The Negotiation and Signing of te Tiriti 345 You will without doubt have heard of the arrival of Captain Hobson, and of his destination for New Zealand, where he is to exercise, it is supposed, more ample powers than were conferred upon the British resident. . . . Among his first duties will be that of endeavouring to obtain from the Chiefs a voluntary recognition of Her Majesty's sovereignty over the territory ; and so far as that endeavour shall prove successful, the clergy of the United Church of England and Ireland who may be resident within the limits of that territory will belong to the Diocese of Australia, and be subject to the jurisdiction of the Bishop . . . Upon the fullest consideration my judgment inclines me very strongly to recommend to you, and through you to all the other members of the mission, that your influence should be exercised among the chiefs attached to you, to induce them to make the desired surrender of sovereignty to Her Majesty.36 Busby inspected Williams's translation in the morning and made only one amendment, substituting the word 'whakaminenga' for 'huihuinga' to describe the confederation.37 Williams readily accepted this. Williams's sonin-law and biographer, Hugh Carleton, told the House of Representatives in 1865 that an alteration was made to the Māori version during the discussion at Waitangi on 5 February, and that the missionary Richard Taylor had written out a new copy that evening ; this was the one signed the next day. We do not know what change was made, as Williams's original draft – which Taylor wrote he kept 'for my pains' – has not been located. It may well have been the change suggested by Busby and agreed to in the morning.38 As we shall see in

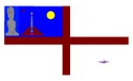




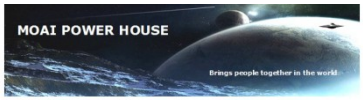








chapter 9, some claimants contended that the change stemmed from the rangatira rejecting the proposed cession of ‘mana’ in a first draft of te Tiriti. Much greater confusion surrounds the ‘official’ English version. Hobson forwarded four copies to his masters in Sydney and London. Two copies were dated 5 February and included the preamble contained in the draft dictated to Freeman ; the other two were dated 6 February and had Hobson’s separately drafted preamble. One of the first two versions made no mention of forests and fisheries, but otherwise all four versions had the same articles, drawing heavily from Busby’s draft. Ross concluded that the fact that these various composite texts were forwarded at different times to Hobson’s superiors (to Gipps and the Secretary of State for War and the Colonies in February, and to the latter again in May and October 1840) – in each case as if they were the official version that was translated into Māori or was itself translated from the Māori – ‘suggests a considerable degree of carelessness, or cynicism, in the whole process of treaty making’.39 Parkinson, who explained the theoretical process for sending dispatches and duplicate copies of documents – and how regularly this was departed from, with confusing results – agreed with Ross, and added that ‘there may also have been an element of too many cooks spoiling the broth’.40 The full texts, in Māori and English, are set out below. The versions we give are taken verbatim from schedule 1 to our governing legislation, the Treaty of Waitangi Act 1975, although we reverse the order in which they appear in the legislation (where the English text is set out first). The English version is the same as the sheet signed at Waikato Heads and Manukau in March and April 1840, and the Māori version is the same as that signed at Waitangi (as well as elsewhere in the north), although in both instances there are minor discrepancies. These are case differences, variations in Hobson’s name and title, spelling differences, and differing uses of commas.41 A scribal error by Taylor in the first line of the Waitangi sheet (‘taua’ instead of ‘tana’) has been ignored in all reproductions of the text that we have seen.42 The treaty text first appeared in legislation in the schedule to the Waitangi Day Act 1960, but in English only. That version is practically identical to that in the Treaty of Waitangi Act 1975.43 The New Zealand Day Act 1973, which replaced it, followed suit, and it was not until the Treaty of Waitangi Act 1975 that the Māori text was included. However, the text was poorly copied and contained a series of errors.44 As a result, section 4 of the Treaty of Waitangi Amendment Act 1985 substituted the current Māori text in its place, as set out on page 346.45 Ultimately, these small discrepancies are not important, for the debate about the meaning and effect of te Tiriti and the Treaty hinges on more substantive issues than these. 7.4 Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz He Whakaputanga me te Tiriti The Declaration and the Treaty 346 The Treaty of Waitangi – the Text in Māori Ko Wikitoria, te Kuini o Ingarani, i tana mahara atawai ki nga Rangatira me nga Hapu o Nu Tirani i tana hiahia hoki kia tohungia ki a ratou o ratou rangatiratanga, me to ratou wenua, a kia mau tonu hoki te Rongo ki a ratou me te Atanoho hoki kua wakaaro ia he mea tika kia tukua mai tetahi Rangatira hei kai wakarite ki nga Tangata maori o Nu Tirani-kia wakaaetia e nga Rangatira maori te Kawanatanga o te Kuini ki nga wahikatoa o te Wenua nei me nga Motu-na te mea hoki he tokomaha ke nga tangata o tona Iwi Kua noho ki tenei wenua, a e haere mai nei. Na ko te Kuini e hiahia ana kia wakaritea te Kawanatanga kia kaua ai nga kino e puta mai ki te tangata Maori ki te Pakeha e noho ture kore ana. Na, kua pai te Kuini kia tukua a hau a Wiremu Hopihona he Kapitana i te Roiara Nawi hei Kawana mo nga wahi katoa o Nu Tirani e tukua aianei, amua atu ki te Kuini e mea atu ana ia ki nga Rangatira o te wakaminenga o nga hapu o Nu Tirani me era Rangatira atu enei ture ka korerotia nei. Ko te Tuatahi Ko nga Rangatira o te Wakaminenga me nga Rangatira katoa hoki ki hai i uru ki taua wakaminenga ka tuku rawa atu ki te Kuini o Ingarani ake tonu atu-te Kawanatanga katoa o o ratou wenua. Ko te Tuarua Ko te Kuini o Ingarani ka wakarite ka wakaae ki nga Rangatira ki nga hapu-ki nga tangata katoa o Nu Tirani te tino rangatiratanga o o ratou wenua o ratou kainga me o ratou taonga katoa. Otiia ko nga Rangatira o te Wakaminenga me nga Rangatira katoa atu ka tuku ki te Kuini te hokonga o era wahi wenua e pai ai te tangata nona te Wenua-ki te ritenga o te utu e wakaritea ai e ratou ko te kai hoko e meatia nei e te

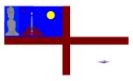




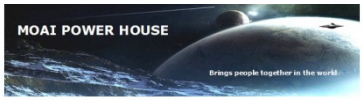








Kuini hei kai hoko mona. Ko te Tuatoru Hei wakaritenga mai hoki tenei mo te wakaaetanga ki te Kawanatanga o te Kuini-Ka tiakina e te Kuini o Ingarani nga tangata maori katoa o Nu Tirani ka tukua ki a ratou nga tikanga katoa rite tahi ki ana mea ki nga tangata o Ingarani. (Signed) WILLIAM HOBSON, Consul and Lieutenant-Governor. Na ko matou ko nga Rangatira o te Wakaminenga o nga hapu o Nu Tirani ka huihui nei ki Waitangi ko matou hoki ko nga Rangatira o Nu Tirani ka kite nei i te ritenga o enei kupu, ka tangohia ka wakaaetia katoatia e matou, koia ka tohungia ai o matou ingoa o matou tohu. Ka meatia tenei ki Waitangi i te ono o nga ra o Pepueri i te tau kotahi mano, e waru rau e wa te kau o to tatou Ariki. Ko nga Rangatira o te wakaminenga. 7.4 Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz The Negotiation and Signing of te Tiriti 347 The Treaty of Waitangi – the Text in English HER MAJESTY VICTORIA Queen of the United Kingdom of Great Britain and Ireland regarding with Her Royal Favour the Native Chiefs and Tribes of New Zealand and anxious to protect their just Rights and Property and to secure to them the enjoyment of Peace and Good Order has deemed it necessary in consequence of the great number of Her Majesty's Subjects who have already settled in New Zealand and the rapid extension of Emigration both from Europe and Australia which is still in progress to constitute and appoint a functionary properly authorised to treat with the Aborigines of New Zealand for the recognition of Her Majesty's Sovereign authority over the whole or any part of those islands – Her Majesty therefore being desirous to establish a settled form of Civil Government with a view to avert the evil consequences which must result from the absence of the necessary Laws and Institutions alike to the native population and to Her subjects has been graciously pleased to empower and to authorise me William Hobson a Captain in Her Majesty's Royal Navy Consul and Lieutenant Governor of such parts of New Zealand as may be or hereafter shall be ceded to her Majesty to invite the confederated and independent Chiefs of New Zealand to concur in the following Articles and Conditions. Article The First The Chiefs of the Confederation of the United Tribes of New Zealand and the separate and independent Chiefs who have not become members of the Confederation cede to Her Majesty the Queen of England absolutely and without reservation all the rights and powers of Sovereignty which the said Confederation or Individual Chiefs respectively exercise or possess, or may be supposed to exercise or to possess over their respective Territories as the sole Sovereigns thereof. Article The Second Her Majesty the Queen of England confirms and guarantees to the Chiefs and Tribes of New Zealand and to the respective families and individuals thereof the full exclusive and undisturbed possession of their Lands and Estates Forests Fisheries and other properties which they may collectively or individually possess so long as it is their wish and desire to retain the same in their possession ; but the Chiefs of the United Tribes and the individual Chiefs yield to Her Majesty the exclusive right of Preemption over such lands as the proprietors thereof may be disposed to alienate at such prices as may be agreed upon between the respective Proprietors and persons appointed by Her Majesty to treat with them in that behalf. Article The Third In consideration thereof Her Majesty the Queen of England extends to the Natives of New Zealand Her royal protection and imparts to them all the Rights and Privileges of British Subjects. W HOBSON Lieutenant Governor. To page 348 7.4 Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz He Whakaputanga me te Tiriti The Declaration and the Treaty 348 7.5 Te Tiriti and the Treaty : The Language We proceed here through te Tiriti and the Treaty article by article, noting the most important features of the language drafted or approved by Hobson (in English), and chosen by Williams (in Māori) to convey its meaning and intent. At the same time, we also make use of six modern back-translations of the Māori text to convey a clearer sense of Williams's choice of words. These are those of Professor Sir Hugh Kawharu from 1989, which is well known and often cited ; 46 Salmond and Merimeri Penfold from 1992, which was commissioned by the Tribunal in its Muriwhenua Land inquiry ; Manuka Henare in his 2003 doctoral thesis ; McCully Matiu and Professor Margaret Mutu in a book in 2003 ; 47 and Dr Patu Hohepa and Rima Edwards in their 2010 evidence before us.48 Henare

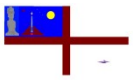




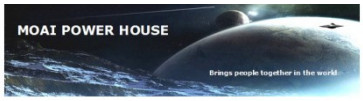








as well as Salmond and Penfold referred to their translations as ‘historical-semantic’, meaning they attempted to capture the sense made of it by the chiefs at the time. We consider earlier back-translations – particularly those made in the 1840s – at the end of this chapter. We make this preliminary review as a preface to our more substantial consideration of the treaty’s language in chapters 8 and 9. The significance of the words used in both texts has been subject to intense analysis in recent decades, and we summarise this debate in those chapters. We note at the outset Hohepa’s description of the text in Māori as a relatively simple document for the chiefs to understand, notwithstanding the fact they did not have access to written copies before the 5 February meeting : Because the Māori draft was read out in the morning of 5th February, and explained, and chiefs’ reactions permitted, then again that night, and then again the next morning, the 6th February, and again the draft was discussed, they would have understood what had been written and read. Let me lay out the linguistic reality of what they discussed. It was a draft of 20 sentences, with less than 400 words and particles. Only 13 words, all nouns, were transliterations from English and either already understood or would be simple to understand : Wikitoria, Kuini, Ingarani, Nu, Tirani, Kawanatanga, Wiremu, Hopihana, Kapitana, Roiara, Nawi, Kawana and Pepuere. Such a draft would hardly be a matter that needed two days of intensive wananga to comprehend.49 Before proceeding, it is important to acknowledge that no translation of a substantial text from one language to another – especially languages as different as English and Māori – is straightforward. As Professor Bruce Biggs put it with respect to sovereignty, ‘How can one hope to translate, in a word or phrase, a concept which lawyers require whole books to define ?’ 50 Biggs explained that translators tend to follow one of two common strategies to overcome the challenges : first, they might use a word in the target language that has a distinct meaning and redefine it to Now therefore We the Chiefs of the Confederation of the United Tribes of New Zealand being assembled in Congress at Victoria in Waitangi and We the Separate and Independent Chiefs of New Zealand claiming authority over the Tribes and Territories which are specified after our respective names, having been made fully to understand the Provisions of the foregoing Treaty, accept and enter into the same in the full spirit and meaning thereof : in witness of which we have attached our signatures or marks at the places and the dates respectively specified. Done at Waitangi this Sixth day of February in the year of Our Lord One thousand eight hundred and forty. [Here follow signatures, dates, etc.] 7.5 Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz The Negotiation and Signing of te Tiriti 349 fit the meaning of the word in the source language. Biggs called this the ‘Humpty-Dumpty principle’ in reference to that character’s statement in Lewis Carroll’s Through the Looking Glass : ‘When I use a word it means exactly what I choose it to mean, neither more nor less.’ An example of this might be the missionaries’ use of the word ‘muru’ for the English ‘forgive’. Secondly, translators might introduce into the target language a word derived from the source language, rather than searching for an equivalent. Williams of course did this with ‘kawanatanga’.51 As Biggs showed, both approaches have difficulties. The difficulties are exacerbated, of course, because – as Hohepa explained – English and Māori are not linguistically or geographically connected in any way, and are ‘as radically different as chalk and cheese’. He made this point through a detailed structural linguistic comparison. We do not relate that here but accept his point that the two languages have almost nothing in common grammatically.52 7.5.1 The preamble As Orange put it, the preamble as drafted in English by Hobson was a convoluted expression of the Queen’s desire to protect the Maori people from the worst effects of British settlement and to provide for her own subjects, by appointing Hobson to obtain ‘sovereign authority’, and to establish a ‘settled form of Civil Government’. Dr Grant Phillipson noted that the preamble reflected Normanby’s instructions and made similar expressions of ‘paternal protection’ to those made previously in the name of William IV. 53 Williams’s translation of it into Māori is notable for several reasons. First, ‘just rights and property’ was rendered as ‘o ratou rangatiratanga, me to ratou wenua’, which Kawharu, Salmond and Penfold, and Hohepa

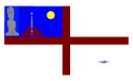




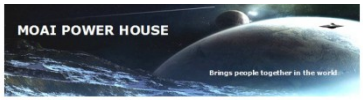








translated back into English as ‘their chieftainship and their land’.54 Henare, by contrast, put it as ‘their full authority as leaders and their country’, and Matiu and Mutu similarly called it ‘their paramount authority and their lands’.55 Edwards, who in this part of his evidence was offering a summary explanation rather than a word-for-word translation, put it as ‘their authority and their lands’.56 The word ‘functionary’ was translated by Williams as ‘kai wakarite’, which Kawharu and Hohepa translated back as ‘administrator’, Salmond and Penfold as ‘mediator’, and Henare as ‘negotiator or adjudicator’. Edwards did not offer a specific translation, but described Hobson’s role as sitting with the rangatira ‘to make decisions together’.57 Williams also used the verb ‘tuku’ three times to convey equally the Queen’s sending of Hobson and the chiefs’ cession of territory, and the word ‘ture’ to refer both to the law generally and the treaty’s articles specifically. We return to the significance of these terms in chapter 9. Perhaps most importantly, both ‘sovereign authority’ and ‘Civil Government’ were translated by Williams as ‘kawanatanga’. Kawharu and Hohepa translated this back in both cases as ‘government’ ; Henare and Salmond and Penfold used ‘Governorship’, and Matiu and Mutu used ‘governance’.58 Edwards translated ‘kawanatanga’ back in both instances as ‘Parent Governor on the basis of love’.59 Ross argued that Williams’s translation of these terms represented the problems he faced as translator and showed how adequately (or otherwise) he overcame them, and Orange described it as an example of his simplifications.60 7.5.2 Article 1 The English text described an unreserved and absolute cession of sovereignty by the chiefs (from both the confederation and independent tribes) over their lands, while the Māori version had them conveying (‘tuku rawa atu’) ‘te Kawanatanga katoa o o ratou wenua’. As with the preamble, this was translated back by Kawharu as ‘the complete government over their land’, by Henare as ‘all the Governorship of their country’, by Salmond and Penfold as ‘all the Governorship of their lands’, by Matiu and Mutu as ‘the complete governance over their land’, and by Edwards as ‘Parent Governor on the basis of love’. But in this case, Hohepa used governorship (‘total governor-ship of their lands’) rather than ‘government’.61 Williams’s use of ‘kawanatanga’ to translate ‘sovereignty’ here and in the preamble is probably the single most important and controversial aspect of the entire treaty. 7.5.2 Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz He Whakaputanga me te Tiriti The Declaration and the Treaty 350 Suffice it for us to make the following comments at this juncture. The word ‘kāwanatanga’ is formed in the usual way from the combination of a stative – the transliteration of governor, ‘kāwana’ – together with the nominalising suffix, ‘tanga’, to form an abstract noun.62 Kāwanatanga was therefore a neologism, although, as Phillipson pointed out, Māori familiarity with the concept of a ‘kāwana’ stretched back to the first encounter with Kāwana Kingi in 1793.63 By 1840, of course, Bay of Islands and Hokianga rangatira had dealt with the New South Wales kāwana on many occasions (see chapter 3). The chiefs were also familiar with the term ‘kāwana’ from the New Testament, where it was used to describe the Roman prefect Pontius Pilate.64 In fact, the word ‘kāwanatanga’ had been in use by the missionaries during the 1830s as a translation for both ‘governance’, in the order for morning service, and ‘authority’, in 1 Corinthians 15 :24.65 But while ‘kāwana’ or ‘kāwanantanga’ had been used by the missionaries to convey notions of God’s power and authority, so equally had ‘rangatiratanga’, particularly in the context of the ‘kingdom of God’ or the ‘kingdom of Heaven’. Phillipson noted that the complex use of these words in the Bible and Anglican liturgy had not yet been the subject of thorough study, and perhaps should be.66 As it happens, Waiohau Te Haara, the former Bishop of Te Tai Tokerau, provided us with evidence on the subject in 2010. He calculated that ‘kāwana’ or ‘kāwanatanga’ was used in about 160 verses in the Bible, and generally meant a role subordinate to a higher ruler such as a king or a prince. The term usually used for such a ruler, he found, was ‘rangatira’.67 Another precedent for ‘kāwanatanga’ was, of course, its use in he Whakaputanga to translate ‘function of government’. As we explained, this was understood by the rangatira as a power which could only be exercised under their authority (see section 4.7.2). We return to the implications of the use of ‘kāwanatanga’ in he Whakaputanga for te Tiriti in chapter

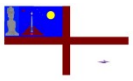




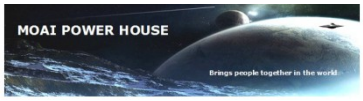








10. 7.5.3 Article 2 In the English text the full, exclusive, and undisturbed possession of various physical (as well as 'other') properties, including forests and fisheries, was guaranteed not only to the chiefs but also to collectives (families and tribes) and individuals, with ownership allowed to be either group-based or individual. The 'proprietors' could choose to sell their lands at an agreed price to the Queen, on whom the chiefs had conferred the 'exclusive right of pre-emption'. As Phillipson pointed out, the vague reference to 'proprietors' avoided any presumption as to who had the actual authority to sell.68 In the Māori text, 'te tino rangatiratanga' over whenua, kainga, and 'o ratou taonga katoa' was likewise guaranteed to rangatira as well as hapū and 'tangata katoa'. Kawharu translated this authority back into English as 'the unqualified exercise of their chieftainship over their lands, villages and all their treasures' ; Salmond and Penfold cast it as 'unfettered chiefly powers' over 'their lands, their dwelling-places and all of their valuables' ; Henare called it 'full authority and power of their lands, their settlements and surrounding environs, and all their valuables' ; Hohepa translated it as 'the absolute unfettered chieftainship over their lands, villages and treasures' ; Edwards called it 'the absolute governance of all of their lands their homes and all that belongs to them' ; and Matiu and Mutu called it 'the unqualified exercise of their paramount authority over their lands, villages and all their treasures'.69 Writing in 2010, Mutu added that 'chieftainship' was 'not a good translation' of rangatiratanga because it was too literal.70 Williams translated pre-emption, which was a 'tuku' to the Queen, as 'hokonga', a word commonly used to mean buying and selling (or trading). Kawharu back-translated Williams's pre-emption text simply as the chiefs agreeing to sell land to the Queen at agreed prices, rather than being able to sell land only to the Queen. Salmond and Penfold put it in similar terms, as a 'release' to the Queen of 'the trading of those areas of land whose owners are agreeable'. Henare called it 'the exchange of those small pieces of land, which the proprietors of the land may wish to make available according to the custom of the exchange of equivalence'. Hohepa referred to the Queen's 'right to have those lands the owner agrees to exchange at a price agreed to' by the seller and the Queen's agent. Edwards said the chiefs 'let to the Queen the purchase of those 7.5.3 Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz The Negotiation and Signing of te Tiriti 351 pieces of land that the person who owns the land agrees to and for the price as agreed to'. And Matiu and Mutu put it that the chiefs would 'allow the Queen to trade for [the use of] those parcels of land which those whose land it is consent to', at an agreed price.71 As we shall see, the Crown's assumption of an exclusive right of purchase arising from article 2 is another of the more controversial aspects of the treaty. Ross also contended that Hobson failed to convey the message properly in English, arguing that 'pre-emption' means a right to make the first offer, rather than the sole right to buy.72 We return to the issue of the English meaning of 'pre-emption' in chapter 8. 7.5.4 Article 3 The third article extended to all Māori ('the Natives of New Zealand') the Queen's 'royal protection' and imparted 'all the Rights and Privileges of British Subjects'. Williams rendered this in Māori as a tuku to them by the Queen of 'nga tikanga katoa rite tahi kia ana mea ki nga tangata o Ingarani'. Orange felt that article 3 presented Williams with the 'least difficulty' and that his translation was 'a reasonable equivalent of the English'. Kawharu translated the Māori back into English as 'the same rights and duties of citizenship as the people of England', and Hohepa cast it as 'all the rights, duties laws and obligations exactly the same as those she gives the people of England'.73 Salmond and Penfold put it as 'exactly the same customary rights as those she gives to her subjects, the people of England', and Henare's translation was very similar.74 Matiu and Mutu translated as 'all the same entitlements [according to British law] as her people of England', while Edwards cast it as 'all the customs similar to those of her people that is the people of England'.75 In other words – unlike Kawharu and Hohepa – Salmond and Penfold, Henare, Edwards, and Matiu and Mutu did not consider that a sense of having duties or obligations, as well as rights or entitlements, had been conveyed. Orange's view appears to align with the latter perspective, because she commented that the wording was silent on the responsibilities that went with rights, like obeying laws

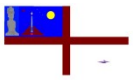




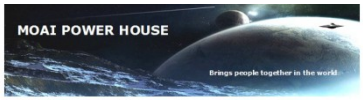








and paying taxes. She drew a parallel with the pre-emption clause, in that much clearly depended on how the written text was explained verbally.76 For the extension of protection, Williams used the verb 'tiaki'. Kawharu, Henare, and Matiu and Mutu translated this back into English simply as 'protect', but Salmond and Penfold used 'care for', as Salmond argued that being a 'kaitiaki' had added significance. Hohepa and Edwards both used 'look after'.77 We return to Salmond's point below. 7.5.5 Postscript The English text concluded with a statement to the effect that the chiefs fully understood the Treaty and entered their signatures or marks 'in the full spirit and meaning thereof '. There is no particular significance in Williams's translation of this. Salmond saw important symbolism in the use of tohu or marks on the document – another subject we return to in chapter 9.78 7.6 Ngā Whaikōrero o Waitangi 7.6.1 The scene In anticipation of the following day's hui at Waitangi, groups of Māori began assembling at the Bay of Islands from 4 February. At nine o'clock on the morning of 5 February, which dawned beautifully fine, Hobson arrived at Busby's residence with Nias. He made his way directly into a meeting with Busby and Williams to examine the latter's translation. At this time waka were converging on Waitangi from all directions. Across the Bay, too, settlers were arriving by boat, and many vessels adorned with the flags of their respective countries stood at anchor. On the lawn outside Busby's house, sailors from HMS Herald had erected a large marquee – perhaps measuring 150 feet by 30 feet – using ships' spars and sails. It too was decorated with bunting. As the conference proceeded inside the residence, Māori grouped according to their hapū affiliation sat in discussion. The New South Wales police troopers paraded in full uniform, settlers mingled, and vendors offered the crowd a variety of refreshments including liquor, pies, meat, and bread. The Union Jack fluttered above the tent. It was, in the words of William Colenso, who wrote the fullest account of the day's proceedings, a 'spectacle of the most animated description', where 'Everything 7.6.1 Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz He Whakaputanga me te Tiriti The Declaration and the Treaty 352 . . . wore the appearance of cheerfulness and activity.' 79 Phillipson noted that the scene must have been reminiscent of both the day in 1834 when the New Zealand flag was adopted and the 1835 signing of he Whakaputanga.80 Only one change was made to te Tiriti as a result of the discussion of Williams's translation. As noted, Busby suggested replacing the word 'huihuinga' with 'whakaminenga' to more accurately describe the confederation of chiefs, and this Williams agreed to. Busby evidently felt it important that there be consistency with the wording of he Whakaputanga. Hobson let it be known that he was not to be disturbed during his conference with Busby and Williams, and had two police troopers posted on the door to this effect. But at 10.30 am the French Roman Catholic bishop, Jean Baptiste Pompallier, bedecked in his ecclesiastical robes, swept past them and into the house. He was followed by one of his priests, Father Louis-Catherin Servant. This event caused a stir among the watching Māori, one of whom was heard by Colenso to say, 'Ko ia ano te tino rangatira ! Ko Pikopo anake te hoa mo te Kawana' (which Colenso translated as 'He, indeed, is the chief gentleman ! Pikopo (Pompallier) only is the companion for the Governor'). This comment was no doubt designed to be heard by the CMS missionaries, who were deferentially standing aside. It certainly did provoke them, given the intense inter-mission rivalry between the Catholics and Protestants, as we discussed in chapter 5. Colenso thus gathered his colleagues together to go inside the house and demonstrate to the watching Māori their equality with the Bishop.81 Before they could do so, however, an announcement was made that Hobson would hold a levee inside the house to meet any settlers who had not yet made his acquaintance, with a line to pass in one door and out the other. This event was over soon enough but caused the missionaries further consternation, because they could not bring themselves to file past while the Bishop remained inside.82 They faced a further dilemma when Hobson emerged from the house and, arm in arm with Nias, walked behind the troopers to the tent, for Pompallier and Servant quickly fell in behind him. Taylor tried to place himself in between, but the Bishop kept too close to Hobson. The missionaries could not tolerate walking behind Pompallier ; Taylor asserted, for example, that he would 'never

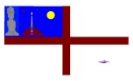




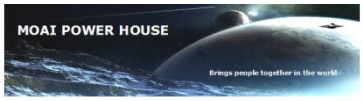








follow Rome'. They then faced further humiliation inside the tent, where Pompallier and Servant took up seats to Hobson's and Busby's left, leaving them with mere standing room behind Williams, who sat William Colenso in his late fifties, 1868. Colenso wrote the fullest eyewitness account of the proceedings at Waitangi on 5 and 6 February 1840. He described his own interjection, when he asked Hobson whether 'these Natives understand the articles of the treaty which they are now called on to sign'. 7.6.1 Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz The Negotiation and Signing of te Tiriti 353 to Hobson's right. Indeed, they were persuaded to take up this position in support of Williams only on the prompting of Police Magistrate Shortland.83 Colenso described the scene inside the tent as 'interesting and impressive'. At one end were a raised platform and a table covered with the Union Jack. (The flag flying outside had been lowered when the meeting began, which Orange thought a recognition that the chiefs were yet to cede authority to the Crown.) At noon, Hobson and Nias took their seats on the dais, with the others arranging themselves around them. Aside from those aforementioned, Taylor stood beside Williams ; the Wesleyan missionaries Samuel Ironside and John Warren, who had arrived late, found a place next to Pompallier ; Hobson's officials and the officers of HMS Herald 'stationed themselves as best they could – some here and there on the platform and some immediately before it' ; and Shortland acted as master of ceremonies. Hobson, Nias, and the officers were all in full uniform ; the CMS missionaries in plain black dress ; and Pompallier was resplendent in his buttondown purple cassock, gold Episcopal cross, and ruby ring. The Pākehā settlers, for the most part well dressed, stood around the sides of the tent, with national flags strung up above them.84 Amongst them were the land-jobbers, who looked 'like smugglers foiled in a run, or a pack of hounds lashed off their dying prey'.85 Aside from a five-yard clear space reserved for orators in front of the table, Māori sat on the ground in the middle. As Colenso put it : In front of the platform, in the foreground, were the principal Native chiefs of several tribes, some clothed with dogskin mats made of alternate longitudinal stripes of black and white hair ; others habited in splendid-looking new woollen cloaks of foreign manufacture, of crimson, blue, brown, and plaid, and, indeed, of every shade of striking colour, such as I had never seen before in New Zealand ; while some were dressed in plain European and some in common Native dresses.86 Felton Mathew also found the scene remarkable, writing that he would remember it all his life. He estimated that some 400 people were crowded into the tent, their numbers evenly split between Māori and Pākehā.87 7.6.2 The speeches As noted, the fullest written account of the proceedings at Waitangi on 5 and 6 February 1840 was made by William Colenso. His notes taken at the time (which he said were checked by Busby the following month88) were published by him much later in life, in 1890.89 There are other eyewitness accounts by the likes of Williams, Hobson, Busby, Mathew, Taylor, Ironside, William Baker, Robert Burrows, James Kemp, John Bright, Captain Robertson, Pompallier, and Servant, but none approaches that of Colenso – who understood both languages – for detail. Yet, there is still much that is clearly missing from Colenso's notes. Loveridge, in summing up the problems confronting the historian of the Treaty signing, referred to : the lack of reliable, let alone complete records of what Hobson and the missionaries actually said to Maori at Waitangi on the 5th and 6th of February in 1840. It is in my opinion abundantly clear that Colenso's account of their statements, questions and answers is seriously inadequate in the extent of its coverage, and that some of the material given is not dependable. Comparison with other accounts, such as they are, makes this clear, but these accounts do not remedy the deficiencies in Colenso's notes. To some extent they compound the problem, as in the case of Henry Williams' report that an informal meeting took place on the evening of the 5th at which the missionaries explained the proposed Treaty to a number of chiefs 'clause by clause, showing the advantage to them of being taken under the fostering care of the British Government', and Bishop Pompallier's reports that he had discussed with chiefs the idea of Maori recognising 'a great European chief '. We have no record whatsoever of these discussions other than these brief references. As far as Waitangi is concerned,

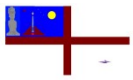




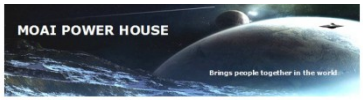








we are left with little more than a very rough outline of what happened. I have not dealt in detail with the other northern meetings, at Waimate, the Hokianga and Kaitaia, but the European records in relation to these hui appear to be little better and often worse than those for Waitangi, and (as Dame Anne Salmond found when commissioned by the Muriwhenua Tribunal to investigate the question) there are no contemporary records in Maori or by Maori of these events.90 7.6.2 Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz He Whakaputanga me te Tiriti The Declaration and the Treaty 354 Similarly, Salmond made the following observations about the written reports of the speeches at Waitangi, which she noted were 'produced in two ways' : First, some reports (Colenso's, for example) were made from notes jotted down at the time in longhand, and subsequently expanded, in which case those problems associated with retrospective accounts – accuracy, loss of detail, subsequent interpretation or elaborations – arise. Second, others were written from memory later that day or perhaps several days, weeks or in some cases years after the event (as in the case of Henry Williams's reminiscences). All of the accounts of the speeches, as I have mentioned, appear to be synoptic paraphrases, rather than literal transcripts. None of the usual rhetorical flourishes of Maori oratory (tauparapara, waiata, whakatauki, for example) are evident in any of the translations, and yet is inconceivable that they were not part of the speeches on this important occasion. To further complicate matters, some reporters (eg Colenso), having 'written up' their original jotted notes in a first draft form, later added extensive material from their own memories of what had been said, or from those of other Europeans who had been present. In Colenso's case, his amended, expanded and edited draft was also edited again for publication many years later. Furthermore, some of the reporters condensed the content of the speeches far more than others, and the accounts by different reporters on the essential arguments made by particular speakers do not always agree.91 Before proceeding, we need to say more about Colenso's account. For a start, there are a range of differences between his 1840 notes (which were not available to researchers before 1981, when the manuscript was purchased at auction by the Alexander Turnbull Library) and his 1890 published history. Salmond summed up the differences between the two versions, which in the 1890 history included more formal language, added context and details, and elaborated rhetoric in the speeches. Importantly, in our view, they also included the following : ы Comments supportive of Busby and the missionaries have been added to the chiefs' speeches in a number of places ; . . . . . ы Comments and one entire speech by Busby have been added, evidently as the result of edits added by Busby at Colenso's invitation, which Colenso 'faithfully copied (ipissima verba), inserting them where Mr Busby had placed them', on a manuscript copy other than the one that has survived ; and a speech by Henry Williams, perhaps also added as the result of a similar invitation.92 Overall, however, Salmond believed that none of these changes 'seriously altered the gist of any of the speeches that were given, with the exception of those by Busby and Williams, and possibly those by Heke and Nene'.93 The differences between the two documents were also considered by Loveridge, who set out a full comparison of the two texts.94 He concluded from this that the 1890 history was 'a fairly accurate transcript' of the 1840 notes.95 Notwithstanding this conclusion, Loveridge in particular urged caution in the use of Colenso's account, despite it being 'more or less the only one by an insider which describes the proceedings on the 5th and 6th of February from beginning to end'. As we have seen, he regarded it as unreliable in places, and remarked that 'Just because Colenso does not mention something, does not mean it did not happen.' 96 That Loveridge exercised this caution in his report is evident in his comments such as 'or so Colenso recorded this speech' or 'So Colenso's account would have us believe'.97 Salmond did not adopt the same sceptical tone, but did – in noting the differences between Hobson's and Colenso's accounts of Tāmati Waka Nene's kōrero (see below) – suggest that this was 'another useful reminder of the futility of expecting Colenso's manuscript or published accounts to literally replicate what was said at Waitangi'.98 We add that the claimants have their own oral tradition of the events at Waitangi, including an account of a meeting held between Williams and

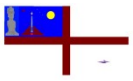




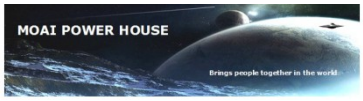








the chiefs at which the former submitted a draft that had the chiefs ceding their mana. We discuss the claimants' kōrero of these events in chapter 9. Here, then, with the general point about the gaps in the written record still in mind, we proceed through the accounts of the verbal negotiation at 7.6.2 Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz The Negotiation and Signing of te Tiriti 355 Waitangi, noting any major inconsistencies or deficiencies in the evidence as we do so. Hobson began by addressing the chiefs, with Williams interpreting sentence by sentence. Colenso recorded Hobson's statement as follows : Her Majesty Victoria, Queen of Great Britain and Ireland, wishing to do good to the chiefs and people of New Zealand, and for the welfare of her subjects living among you, has sent me to this place as Governor. But, as the law of England gives no civil powers to Her Majesty out of her dominions, her efforts to do you good will be futile unless you consent. Her Majesty has commanded me to explain these matters to you, that you may understand them. The people of Great Britain are, thank God ! free ; and, so long as they do not transgress the laws, they can go where they please, and their sovereign has not power to restrain them. You have sold them lands here and encouraged them to come here. Her Majesty, always ready to protect her subjects, is also always ready to restrain them. Her Majesty the Queen asks you to sign this treaty, and so give her that power which shall enable her to restrain them. I ask you for this publicly : I do not go from one chief to another. I will give you time to consider of the proposal I shall now offer you. What I wish you to do is expressly for your own good, as you will soon see by the treaty. You yourselves have often asked the King of England to extend his protection unto you. Her Majesty now offers you that protection in this treaty. I think it not necessary to say any more about it, I will therefore read the treaty.99 Hobson himself told Gipps in his dispatch written that evening that he had explained to [the rangatira] in the fullest manner the effect that might be hoped to result from the measure, and I assured them in the most fervent manner that they might rely implicitly on the good faith of Her Majesty's Government in the transaction. I then read the treaty, a copy of which I have the honour to enclose ; and in doing so, I dwelt on each article, and offered a few remarks explanatory of such passages as they might be supposed not to understand. Mr H Williams, of the Church Missionary Society, did me the favour to interpret, and repeated in the native tongue, sentence by sentence, all I said.100 In an April 1840 letter to Major Thomas Bunbury, Hobson similarly wrote that he had explained in the fullest manner the reason that Her Majesty had resolved with their consent to introduce civil institutions into this Land[,] that the unauthorized settlement of British Subjects here had rendered such a measure most essential for their Benefit, and I offered a Solemn pledge that the most perfect good Faith would be kept by Her Majesty's Government that their Property their Rights and Privileges should be most fully preserved. I then read the Treaty and explained such parts of it as might not be very intelligible to their untutored minds and I invited the Chiefs to offer any observations or remarks, or to ask explanation of any part they did not clearly understand.101 Despite his claims to have been comprehensive, it appears that Hobson's opening explanation was relatively brief for such an important occasion. He then read aloud the English text of the Treaty. Writing to his wife the following day, Mathew described Hobson's speech as 'fustian' 102 – a departure from the usually solemn and respectful accounts of Hobson's address. He gave the following account of this address in his journal : He [Hobson] set forth briefly but emphatically, and with strong feeling, the object and intention of the Queen of England in sending him hither to assume the government of these Islands, provided the native chiefs and tribes gave their consent thereto. He pointed out to them the advantage they would derive from this intercourse with the English, and the necessity which existed for the Government to interfere for their protection on account of the number of white people who had already taken up their abode in this country. He then caused to be read to them a treaty which had been 7.6.2 Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz He Whakaputanga me te Tiriti The Declaration and the Treaty 356 prepared, by which the native chiefs agreed to cede the sovereignty of their country to the Queen of England, throwing themselves on her

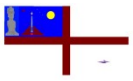




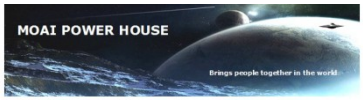








protection but retaining full power over their own people – remaining perfectly independent, but only resigning to the Queen such portion of their country as they might think proper on receiving a fair and suitable consideration for the same.103 Phillipson stressed the importance of Mathew's description of Hobson's speech, as we shall see in chapter 9. When Hobson had finished reading the English text, he turned to Williams and asked him to read out (in Colenso's words) 'the translation of the same'. Williams described this moment as follows : In the midst of profound silence I read the treaty to all assembled. I told all to listen with care, explaining clause by clause to the chiefs ; giving them caution not to be in a hurry, but telling them that we, the Missionaries, fully approved of the treaty, that it was an act of love towards them on the part of the Queen, who desired to secure to them their property, rights, and privileges. That this treaty was as a fortress for them against any foreign power which might desire to take possession of their country, as the French had taken possession of Otiaiti [Tahiti].104 Colenso made no comment about Williams's 'clauseby-clause' explanations ; neither did Mathew, who could follow only what was said in English. In fact, the closest we get to some detail on exactly what Williams said is his own explanation in 1847 to Bishop Selwyn, who, as a result of the ongoing furore about the meaning of 'pre-emption', had requested 'in writing what you explained to the Natives and how they understood it'.105 Williams wrote : Your Lordship has requested information in writing of what I explained to the natives, and how they understood it. I confined myself solely to the tenor of the treaty. That the Queen had kind wishes towards the chiefs and people of New Zealand, And was desirous to protect them in their rights as chiefs, and rights of property, And that the Queen was desirous that a lasting peace and good understanding should be preserved with them. That the Queen had thought it desirable to send a Chief as a regulator of affairs with the natives of New Zealand. That the native chiefs should admit the Government of the Queen throughout the country, from the circumstance that numbers of her subjects are residing in the country, and are coming hither from Europe and New South Wales. That the Queen is desirous to establish a settled government, to prevent evil occurring to the natives and Europeans who are now residing in New Zealand without law. That the Queen therefore proposes to the chiefs these following articles : Firstly,—The Chiefs shall surrender to the Queen for ever the Government of the country, for the preservation of order and peace. Secondly,—the Queen of England confirms and guarantees to the chiefs and tribes, and to each individual native, their full rights as chiefs, their rights of possession of their lands, and all their other property of every kind and degree. The chiefs wishing to sell any portion of their lands, shall give to the Queen the right of pre-emption of their lands. Thirdly,—That the Queen, in consideration of the above, will protect the natives of New Zealand, and will impart to them all the rights and privileges of British subjects.106 As Phillipson noted, however, this account does not explain how, or even whether, Williams explained kāwanatanga, pre-emption, and other matters.107 Years later, Busby gave his own account of events at Waitangi. His summary of what was said by Hobson and Williams grouped the two men's messages together : Captain Hobson through Mr Williams explained to the Chiefs, that it was not in the power of the Queen to prevent her subjects coming to New Zealand and settling there if they felt so disposed – nor was he able, as long as the Sovereignty belonged to the natives to control the excesses of Her subjects, or to regulate their conduct, that the only way in which this could be effected, was by their ceding their rights of Sovereignty to the Queen who would then be able to afford protection to them, as well as to her own subjects, 7.6.2 Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz The Negotiation and Signing of te Tiriti 357 and through him as her Lieut. Governor to put an end to the evils which had so long existed. The Missionaries present, both of the Church and Wesleyan Societies, as well as the late Resident [Busby], advised the Chiefs to accept the proposal and to execute the treaty.108 After Williams had finished, the floor was opened for the chiefs to respond. Before they did so, they greeted Hobson by shaking hands. Busby took his opportunity, and made a brief speech in which he assured the chiefs that Hobson had come not to take their land but to secure them in possession of what they

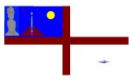




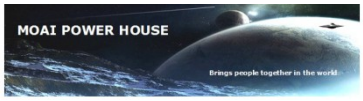








had not already sold. He added that any land found not properly to have been acquired from them would be returned. Phillipson described Busby's words as 'far-reaching assurances' about the Crown's intentions in respect of pre-treaty transactions, but insufficient to quell Māori discontent on the subject, as we shall see.109 The first chief to speak was, as per custom, Te Kēmara of the host Ngāti Rāhiri hapū.110 Te Kēmara was a senior Ngāpuhi tohunga who had signed he Whakaputanga in 1835. As Mathew put it : After a while one ferocious looking chief started up and commenced a long and vehement harangue, in which he counselled his countrymen not to admit the Governor, for if they did so they would inevitably become slaves and their lands would pass from them. Then, addressing the Governor, he said :— If you like to remain here it is well, but we will have no more white people among us lest we be over-run with them, and our lands be taken from us.111 In Colenso's account, Te Kēmara suggested that Hobson might be welcome to stay if he was on an equal footing with the chiefs, not that he demanded that no more settlers should arrive : If thou stayest as Governor, then, perhaps, Te Kemara will be judged and condemned. Yes, indeed, more than that – even hung by the neck. No, no, no ; I shall never say 'Yes' to your staying. Were all to be on an equality, then, perhaps, Te Kemara would say 'Yes ;' but for the Governor to be up and Te Kemara down – Governor high up, up, up, and Te Kemara down low, small, a worm, a crawler – No, no, no.112 Having thus rejected the idea of Hobson's supremacy, Te Kēmara then switched his attention to his loss of land : O Governor ! my land is gone, gone, all gone. The inheritances of my ancestors, fathers, relatives, all gone, stolen, gone with the missionaries. Yes, they have it all, all, all. That man there, the Busby, and that man there, the Williams, they have my land. The land on which we are now standing this day is mine. This land, even this under my feet, return it to me. O Governor ! return me my lands. Say to Williams, 'Return to Te Kemara his land.' Thou' (pointing and running up to the Rev H Williams), 'thou, thou, thou bald-headed man – thou hast got my lands. O Governor ! I do not wish thee to stay. You English are not kind to us like other foreigners. You do not give us good things. I say, Go back, go back, Governor, we do not want thee here in this country. And Te Kemara says to thee, Go back, leave to Busby and to Williams to arrange and to settle matters for us Natives as heretofore.'113 Te Kēmara's request for Hobson both to go and to return the lands stolen by Busby and Williams was, on one level, contradictory,114 and was even more so in Colenso's published account than in his notes. The latter did not include the reference to leaving Busby and Williams 'to arrange and settle matters for us Natives as heretofore'115 – an odd request, when Te Kēmara was also asking Hobson to make Williams return him his land. But perhaps both these apparent contradictions are explicable if Te Kēmara had the power to influence Williams and Busby, and if his reference to the arrangement applying 'heretofore' was to he Whakaputanga. In any event, Colenso's 1890 memory of Te Kēmara's statement seems correct. As Captain Robertson told the Sydney Herald a couple of weeks after te Tiriti's signing, Busby pointed out that the best proof of the goodwill of the Natives towards himself [Busby] and Mr Williams, was expressed by the very Chief 7.6.2 Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz He Whakaputanga me te Tiriti The Declaration and the Treaty 358 who had caused the discussion, who was of opinion that the country should remain as it was, and he would be satisfied to be guided, as heretofore, by the advice and counsel of Mr Williams and himself (Mr B).116 Te Kēmara's speech was the first of a number of barbs directed at land purchasing by the missionaries.117 The next speaker, Rewa, was similarly forthright. Rewa was a senior chief of Ngāi Tawake, who in 1831 had brought home rumours from Sydney of an imminent French invasion (see chapter 3). He had signed both the 1831 petition to William IV and he Whakaputanga in 1835, and was closely linked to Pompallier. After opening in English with a humorous 'How d'ye do, Mr Governor ?', he reverted to Māori and spoke more bluntly : This is mine to thee, O Governor ! Go back. Let the Governor return to his own country. Let my lands be returned to me which have been taken by the missionaries – by Davis and by Clarke, and by who and who besides. I have no lands now – only a name, only a name ! Foreigners come ; they know Mr

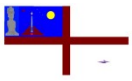




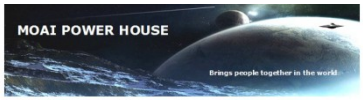








Rewa, but this is all I have left – a name ! What do Native men want of a Governor ? We are not whites, nor foreigners. This country is ours, but the land is gone. Nevertheless we are the Governor – we, the chiefs of this our fathers' land. I will not say 'Yes' to the Governor's remaining. No, no, no ; return. What ! this land to become like Port Jackson and all other lands seen [or found] by the English. No, no. Return. I, Rewa, say to thee, O Governor ! go back.118 In his dispatch written to Gipps that evening, Hobson recorded that Rewa had said Send the man away ; do not sign the paper ; if you do you will be reduced to the condition of slaves, and be obliged to break stones for the roads. Your land will be taken from you, and your dignity as chiefs will be destroyed. Hobson suspected that Rewa's opposition was inspired by Pompallier, whose influence over the proceedings we will discuss at section 7.6.4.119 As Loveridge pointed out, Hobson's account of Rewa's speech accorded more with other observations than with Colenso's. Captain Robertson of the Samuel Winter, for example, also referred to unnamed chiefs being worried that, if they signed the treaty, they would become slaves, hewers of wood and drawers of water, and be driven to break stones on the road . . . their greatest apprehension was that they would be made slaves, and that soldiers would be sent among them.120 Busby also recalled that some of the rangatira 'brought up the old story' that signing te Tiriti might lead to them having to 'break stones on the road', and Williams wrote closer to the time that The Popish Bishop has been endeavouring to poison the minds of the Natives but has not succeeded. Many of the Chiefs hung back for some time having been told that they would be sent to break stones as the convicts of Port Jackson & to labour as they do.121 Pompallier himself conveyed to Captain Lavaud of the French Navy (who was en route to Akaroa to act as the representative of the French colonists from the NantoBordelaise Company about to arrive there) in July 1840 that Rewa had said (as translated from the French) : Chase away this white chief ; what has he come here to do ? To take away the freedom which you now enjoy. Do not believe in his words, do you not see that henceforth you will be mere slaves ? That soon he will be employing you to make roads and break stones on the highways ? 122 The next speaker was another important northern alliance chief, Moka, the younger brother of Rewa and Wharerahi, based near Kororāreka. He was the only chief known to have been present when Hobson read his land proclamation in the church on 30 January.123 He echoed the first two speakers' concerns about land loss, but unlike them portrayed Hobson as powerless to intervene : 7.6.2 Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz The Negotiation and Signing of te Tiriti 359 Let the Governor return to his own country : let us remain as we were. Let my lands be returned to me – all of them – those that are gone with Baker. Do not say, 'The lands will be returned to you.' Who will listen to thee, O Governor ? Who will obey thee ? Where is Clendon ? Where is Mair ? Gone to buy our lands notwithstanding the book [Proclamation] of the Governor. Upon hearing Williams's translation of this, Hobson felt it necessary to interject. He contended that all lands unjustly held would be returned ; and that all claims to lands, however purchased, after the date of the Proclamation would not be held to be lawful. Williams translated this back into Māori, whereupon Moka continued : That is good, O Governor ! That is straight. But stay, let me see. Yes, yes indeed ! Where is Baker ? where is the fellow ? Ah, there he is – there, standing ! Come, return to me my lands. Moka stepped up to the platform, where Charles Baker stood, awaiting a reply. Baker's response was, 'E hoki, koia ?', which Colenso translated as 'Will it, indeed, return ?' Moka thereupon announced, 'There ! Yes, that is as I said. No, no, no ; all false, all false alike. The lands will not return to me.'124 At this point in the proceedings, a settler stepped Hakiro, Tāmati Waka Nene, and Rewa, probably early 1840s 7.6.2 Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz He Whakaputanga me te Tiriti The Declaration and the Treaty 360 forward and complained that Williams's translations of the words of both the rangatira and Hobson were incomplete. He suggested that a Mr Johnson, whom Colenso noted was 'an old resident' of Kororāreka and a 'dealer in spirits, &c', could do the job instead.125 Hobson invited Johnson forward, and questioned him about both his knowledge of te reo Māori and the words that

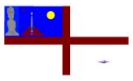




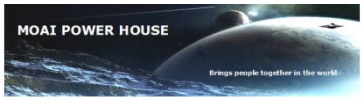








had not been interpreted. Johnson begged to be excused, saying that the missionaries could translate very well. But he did request that Williams speak more loudly, so that those at the back of the tent could hear, and that he translate everything the chiefs were saying, since ‘They say a great deal about land and missionaries which Mr Williams does not translate to you, Sir’. In his published account in 1890 (but not in his notes taken at the time), Colenso added in a footnote that this latter comment can only have referred to the chiefs’ ‘immense amount of repetition’, because Williams ‘translated fairly’.126 With the leave of Hobson, Williams and Busby then addressed the settlers in English, and defended their land purchases. Williams’s justifications for his sizeable holdings were that : ы the title would be investigated by the commissioners and that others would do well to have ‘as good and honest titles . . . as the missionaries’ ; ы the missionaries deserved some reward for having ‘laboured for so many years in this land when others were afraid to show their noses’ ; ы his 11 children were all born in the colony ; and ы when he died it would be seen that there was not very much to go around his large family. Busby then denied that Te Kēmara and Rewa had accused him of ‘robbing’ them of their land, as a settler had just alleged. His own justifications were that he had bought only land which Māori had pressed him to buy ; that his income during his government employment had been scarcely enough to provide for his family ; that he had not made any ‘extensive purchase’ until he was out of office and had found that, after 15 years’ government service, no further provision was to be made for him and his family ; and that he had set aside inalienable reserves – 30 acres for each individual of the families from whom he had bought – for Māori ‘habitations and cultivations’.127 There is no suggestion in the written record that anyone translated these protestations of innocence into Māori for the benefit of the assembled rangatira. After this interlude, two southern alliance chiefs from Kawakawa spoke in support of Hobson, and thus in direct contrast to the three northern alliance rangatira who had preceded them. As Phillipson noted, this was the reverse of the earlier pattern, in which it was the northern alliance under Hongi Hika that had pursued an alliance with the Crown.128 In any event, the first of the Kawakawa chiefs to speak was Tamati Pukututu of Te Uri-o-Te-Hawato, who had previously signed he Whakaputanga : This is mine to thee, O Governor ! Sit, Governor, sit, a Governor for us – for me, for all, that our lands may remain with us – that those fellows and creatures who sneak about, sticking to rocks and the sides of brooks and gullies, may not have it all. Sit, Governor, sit, for me, for us. Remain here, a father for us, &c. These chiefs say, ‘Don’t sit,’ because they have sold all their possessions, and they are filled with foreign property, and they have also no more to sell. But I say, what of that ? Sit, Governor, sit. You two stay here, you and Busby – you two, and they also, the missionaries.129 The second Kawakawa chief to speak was Matiu, of Te Uri o Ngongo. Salmond believed him to have been literate and mission-trained.130 He said : O Governor ! sit, stay, remain – you as one with the missionaries, a Governor for us. Do not go back, but sit here, a Governor, a father for us, that good may increase, may become large to us. This is my word to thee : do thou sit here, a father for us.131 The respite for Hobson was brief. Opposition to him continued in the speech by Kawiti of Ngāti Hine, a powerful southern alliance chief who had signed he Whakaputanga and was a staunch opponent of selling land to Pākehā. But his concern was not with land sales so much as with who would have authority, and the dangers Māori faced from the potential arrival of British troops : 7.6.2 Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz The Negotiation and Signing of te Tiriti 361 No, no. Go back, go back. What dost thou want here ? We Native men do not wish thee to stay. We do not want to be tied up and trodden down. We are free. Let the missionaries remain, but, as for thee, return to thine own country. I will not say ‘Yes’ to thy sitting here. What ! to be fired at in our boats and canoes by night ! What ! to be fired at when quietly paddling our canoes by night ! I, even I, Kawiti, must not paddle this way, nor paddle that way, because the Governor said ‘No’ – because of the Governor, his soldiers, and his guns ! No, no, no. Go back, go back ; there is no place here for the Governor.132 The next chief to speak was Wai of Ngāi Tawake, who had also signed he Whakaputanga.133 He very much doubted

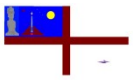




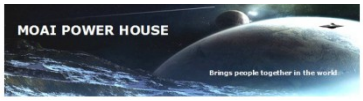








Hobson's ability to control Pākehā settlers, whose insults he had suffered only recently : To thee, O Governor ! this. Will you remedy the selling, the exchanging, the cheating, the lying, the stealing of the whites ? O Governor ! yesterday I was cursed by a white man. Is that straight ? The white gives us Natives a pound for a pig ; but he gives a white four pounds for such a pig. Is that straight ? The white gives us a shilling for a basket of potatoes ; but to a white he gives four shillings for a basket like that one of ours. Is that straight ? No, no ; they will not listen to thee : so go back, go back. If they would listen and obey, ah ! yes, good that ; but have they ever listened to Busby ? And will they listen to thee, a stranger, a man of yesterday ? Sit, indeed ! what for ? Wilt thou make dealing straight ? 134 At this juncture, three Pākehā (a hawker and pedlar from Kororāreka named Jones, a young man, and the man who had previously complained) all spoke up from different parts of the tent, calling both for the speeches to be interpreted for the settlers to hear and for them to be interpreted correctly. The reluctant Johnson was again asked to come forward, and this time – with Hobson's approval – he interpreted Wai's speech, after first stating that 'it was great lies'. Again, there is no suggestion that his interpretation was translated back into Māori for the benefit of the chiefs. The next rangatira to speak was Pumuka of Te Roroa, based at Te Haumi. In Salmond's view he was the first chief of 'major importance' to speak in favour of Hobson. He said : Stay, remain, Governor ; remain for me. Hear, all of you. I will have this man a foster-father for me. Stay, sit, Governor. Listen to my words, O Governor ! Do not go away ; remain. Sit, Governor, sit. I wish to have two fathers – thou and Busby, and the missionaries.135 Pumuka was followed by Wharerahi, a leading northern alliance chief, the elder brother of Rewa and Moka, and a signatory of both the petition to King William IV and he Whakaputanga. Unlike his siblings, Wharerahi echoed Pumuka in support of Hobson. In Salmond's view, this helped to 'turn the tide of the debate', given his status as tuakana to two of Hobson's leading opponents. Wharerahi said : Yes ! What else ? Stay, sit ; if not, what ? Sit ; if not, how ? Is it not good to be in peace ? We will have this man as our Governor. What ! turn him away ! Say to this man of the Queen, Go back ! No, no.136 Next, an unnamed Waikare chief attempted to make a speech along the same lines as Wai, to the effect that Pākehā were cheating Māori when bartering for pigs. But he was rather overlooked while a 'commotion and bustle' took place as Tāreha and his son Hakiro, of Ngāti Rēhia from Kororāreka, attempted to clear space in front of the platform. As Colenso put it, they were seeking to make room to give their 'running speeches in, à la NouvelleZélande'. Hakiro spoke first – not for himself but on behalf of the great Ngāti Rēhia chief Titore, who had died in 1837 : To thee, O Governor ! this. Who says 'Sit' ? Who ? Hear me, O Governor ! I say, no, no. Sit, indeed ! Who says 'Sit' ? Go back, go back ; do not thou sit here. What wilt thou sit here for ? We are not thy people. We are free. We will not have a Governor. Return, return ; leave us. The missionaries and Busby are our fathers. We do not want thee ; so go back, return, walk away. 7.6.2 Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz He Whakaputanga me te Tiriti The Declaration and the Treaty 362 Hakiro's powerful speech was more than matched by the performance of his father, not least because Tāreha was such a big man and formidable presence, with a 'deep sepulchral voice'. But Tāreha also dressed for effect, wearing what Colenso described as 'a filthy piece of coarse old floor-matting, loosely tied round him, such as is used by the commonest Natives merely as a floor mat under their bedding'. The purpose behind this was, in Colenso's view, 'to ridicule the supposition of the New-Zealanders being in want of any extraneous aid of clothing, &c, from foreign nations'. To this effect, Tāreha also held a bunch of dried fern root. He said : No Governor for me – for us Native men. We, we only are the chiefs, rulers. We will not be ruled over. What ! thou, a foreigner, up, and I down ! Thou high, and I, Tareha, the great chief of the Ngapuhi tribes, low ! No, no ; never, never. I am jealous of thee ; I am, and shall be, until thou and thy ship go away. Go back, go back ; thou shalt not stay here. No, no ; I will never say 'Yes.' Stay ! Alas ! what for ? why ? What is there here for thee ? Our lands are already all gone. Yes, it is so, but our names remain. Never mind ; what of that – the lands of our fathers alienated ? Dost thou think we are poor, indigent, poverty-

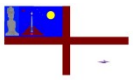




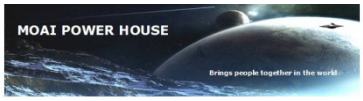








stricken – that we really need thy foreign garments, thy food ? Lo ! note this. (Here he held up high a bundle of fern-roots he carried in his hand, displaying it.) See, this is my food, the food of my ancestors, the food of the Native people. Pshaw, Governor ! To think of tempting men – us Natives – with baits of clothing and of food ! Yes, I say we are the chiefs. If all were to be alike, all equal in rank with thee – but thou, the Governor up high – up, up, as this tall paddle (here he held up a common canoe-paddle) and I down, under, beneath ! No, no, no. I will never say, 'Yes, stay.' Go back, return ; make haste away. Let me see you [all] go, thee and thy ship. Go, go ; return, return.137 A particularly colourful account of Tāreha's speech was given by the traveller John Bright : There was a rush, and a wide space cleared, and in bounded a huge mass of flesh, enveloped in a dirty mat of native manufacture ; his eyes blearing with age, tall, erect, but, oh ! so corpulent ! and one who was of a noble race of carrion ancestors. It was he of the puissant arm (ten pounds to the square inch), Tarry-ah (the old Na-poo-ee chief, whose tribe were followers of the Pi-ky-po) ; not he, he did not tarry long before his ire bellowed forth, and yet in compass as if the pipes had been narrowed by asthma. He made no welcomes, although great in – and out. 'Why should the Mow-rees be tou-rakaraka (ie slaves) ? Why was (what I may word as) he to be the Great Little, that the Par-kee-ah chief might be the Little Great. He wanted no governor ; let him go home. Did he not know that Busby (the former representative of England) had close to him the gun of the Mow-ree ? (Mr B was shot at by the natives.) Could not guns shoot now as then ?' and much more complimentary matter, which I verily thought made the captain's uniform look a shade bluer ; then the leviathan stamped about, and foamed at the mouth like an unemptied tankard : he verily resembled a piece of animated boiled beef, which, had it threatened in ire an offender's head, full soon had 'Hope withering fled, and Mercy sighed farewell.' 138 Although he did not name him, Mathew also appears to have recorded aspects of the translation of Tāreha's speech. Mathew wrote that an unnamed chief had told Hobson : Go, return to your own country. Mr Busby has been shot at. You will be shot at, perhaps killed. Mr Busby could do nothing, but you are a Man of War, Captain, and if you are killed the soldiers will come and take a terrible vengeance on our countrymen.139 Tāreha was probably recalling the bloody retaliation by the likes of the French in 1772 and the whalers who wounded Te Pahi after the Boyd was burned in 1809. He may also have been thinking of more recent incidents, such as the revenge wrought by soldiers from Sydney on board the man-of-war HMS Alligator in 1834 for the earlier attack by Ngāti Ruanui on (and kidnapping of) survivors of the wrecked Harriet in Taranaki (see section 3.9.4). Captain Robertson also described Tāreha as having 'worked himself up to a frenzy'.140 The next chief 's speech, however, was in sharp contrast. Rāwiri Taiwhanga, a 7.6.2 Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz The Negotiation and Signing of te Tiriti 363 literate and pro-missionary Christian convert of Ngāti Tautahi at Kaikohe, spoke cheerfully in favour of Hobson. Like Rewa, he began in English, saying 'Good morning, Mr Governor ! very good you !', then continued in Māori : Our Governor, our Father ! Stay here, O Governor ! Sit, that we may be in peace. A good thing this for us – yes, for us, my friends, Native men. Stay, sit. Do thou remain, O Governor ! to be a Governor for us.141 Despite this show of approval, Phillipson felt that the mood of the hui, galvanised as it was by Tāreha's kōrero, was still running firmly against Hobson. The next series of speakers, however, all spoke in favour of Hobson and his Tiriti, and are generally regarded as having changed the course of the debate decisively. The first of these speakers was another literate Kaikohe and Ngāti Tautahi rangatira, Hōne Heke, also a signatory to he Whakaputanga in 1835.142 Colenso recorded his speech as follows : 'To raise up, or to bring down ? to raise up, or to bring down ? Which ? which ? Who knows ? Sit, Governor, sit. If thou shouldst return, we Natives are gone, utterly gone, nothinged, extinct. What, then, shall we do ? Who are we ? Remain, Governor, a father for us. If thou goest away, what then ? We do not know. This, my friends,' addressing the Natives around him, 'is a good thing. It is even as the word of God' (the New Testament, lately printed in Maori at Paihia, and circulated among the Natives). 'Thou to go away ! No,

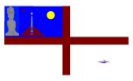




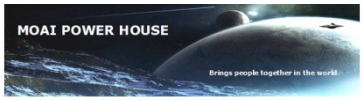








no, no ! For then the French people or the rum-sellers will have us Natives. Remain, remain ; sit, sit here ; you with the missionaries, all as one. But we Natives are children – yes, mere children. Yes ; it is not for us but for you, our fathers – you missionaries – it is for you to say, to decide, what it shall be. It is for you to choose. For we are only Natives. Who and what are we ? Children – yes, children solely. We do not know : do you then choose for us. You, our fathers – you missionaries. Sit, I say, Governor, sit ! a father, a Governor for us.' Colenso noted that Heke's final words were pronounced 'with remarkably strong and solemn emphasis, well supported both by gesture and manner'. Such was the stir around the tent after his speech that the words of Hakitara, a Te Rarawa chief who spoke next in favour of Hobson, were rather drowned out.143 We should note, however, that there is an element of doubt as to whether Heke's speech was in favour of Hobson or not. Burrows wrote that Heke 'gave a lot of trouble' at Waitangi, and the Wesleyan missionary Samuel Ironside said that Heke was violent in his harangue against Captain Hobson, vociferating repeatedly in his native style, 'Haere e hoki' ('Go, return'). Tamati Waaka came to me and said his heart was pouri Hōne Heke, 1846. Heke was the first rangatira to sign te Tiriti, although there is some uncertainty over the meaning of what he said on 5 February. 7.6.2 Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz He Whakaputanga me te Tiriti The Declaration and the Treaty 364 (grieved) with Heke's violence, and the way Captain Hobson was being treated. 'Well', I said, 'If you think so, say so['] : whereupon Tamati sprang up and made his speech.144 William Baker, the eldest son of the missionary Charles Baker, would have been about 11 years old in 1840.145 In 1865, when a Native Department official, he attempted to compile an accurate list of Tiriti signatories ; and in 1869 he wrote : I remember distinctly being present during the whole of the meeting, that Hone Heke Pokai was very violent in his language, though he is not mentioned by Captain Hobson. . . . A war of words ensued between Tamati Waaka Nene, who came in at this crisis, and Heke, the result of which was that Waaka 'removed the temporary feeling that had been created'.146 Salmond suspected that Colenso, who was 'not fully versed in the rhetorical conventions of Maori oratory, simply misunderstood the import of Heke's speech'. She suggested that Heke's words may have been intended ironically, and that he should perhaps 'be counted amongst those who spoke against the Governor, and not for him'. The issue is difficult to resolve. Busby, as we shall see, was confident enough about Heke's feelings to call him forward first to sign the document the following day. Williams, looking back, recalled that Heke told the people that 'he fully approved, as they needed protection from any foreign power, and knew the fostering care of the Queen of England towards them. He urged them to sign the treaty.' Taylor also recorded Heke as having spoken in favour of Hobson (even describing him as the first to do so), although he was presumably reliant on Williams's translation.147 More so than even Heke, however (if we accept that Heke spoke in te Tiriti's favour), the next speaker is regarded as having swung the mood at Waitangi behind Hobson and his Tiriti. This was Tāmati Waka Nene, a powerful rangatira of Ngāti Hao at Hokianga but with great influence too at the Bay of Islands, who had signed both the petition to King William and he Whakaputanga. Along with his elder brother, Patuone, he had arrived during Heke's kōrero.148 Because of its perceived importance, a number of witnesses took careful account of Nene's speech. Colenso's version was as follows : 'I shall speak first to us, to ourselves, Natives' (addressing them). 'What do you say ? The Governor to return ? What, then, shall we do ? Say here to me, O ye chiefs of the tribes of the northern part of New Zealand ! what we, how we ?' (Meaning, how, in such a case, are we henceforward to act ?) 'Is not the land already gone ? is it not covered, all covered, with men, with strangers, foreigners – even as the grass and herbage – over whom we have no power ? We, the chiefs and Tāmati Waka Nene. Nene is usually regarded as having made the decisive speech at Waitangi, influencing the rangatira in favour of signing te Tiriti. 7.6.2 Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz The Negotiation and Signing of te Tiriti 365 Natives of this land, are down low ; they are up high, exalted. What, what do you say ? The Governor to go back ? I am sick, I

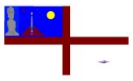




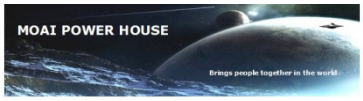








am dead, killed by you. Had you spoken thus in the old time, when the traders and grog-sellers came – had you turned them away, then you could well say to the Governor, “Go back, ‘and it would have been correct, straight ; and I would also have said with you, “Go back ;” – yes, we together as one man, one voice. But now, as things are, no, no, no.’ Turning to His Excellency, he resumed, ‘O Governor ! sit. I, Tamati Waka, say to thee, sit. Do not thou go away from us ; remain for us – a father, a judge, a peacemaker. Yes, it is good, it is straight. Sit thou here : dwell in our midst. Remain ; do not go away. Do not thou listen to what [the chiefs of] Ngapuhi say. Stay thou, our friend, our father, our Governor.’149 Hobson’s account of Nene’s speech was quite different : At the first pause Neni came forward and spoke with a degree of natural eloquence that surprised all the Europeans, and evidently turned aside the temporary feeling that had been created. He first addressed himself to his own countrymen, desiring them to reflect on their own condition, to recollect how much the character of the New Zealanders had been exalted by their intercourse with Europeans, and how impossible it was for them to govern themselves without frequent wars and bloodshed ; and he concluded his harangue by strenuously advising them to receive us and to place confidence in our promises. He then turned to me and said, ‘You must be our father ! You must not allow us to become slaves ! You must preserve our customs, and never permit our lands to be wrested from us !’150 Mathew gave another significant account of the speech : Things had thus assumed a very unfavourable appearance and the current was running strongly against us,151 when a powerful chief named ‘Nina’ [Nene] rushed into the tent attended by other chiefs and followers, and commenced an address to his countrymen in a strain of fervid and impassioned eloquence such as I never before heard, and which immediately turned the tide in our favour. He commenced by saying :— Let the Governor remain. Say to him, ‘You are welcome.’ The English have long been settled amongst us and we like them. They give us clothes and other things which we require, and since they have been here they have put a stop to the bloody wars which we used to have, and preserved us from eating each other. The English have more power and dignity than we have, and we shall derive dignity from them settling amongst us. If we do not let the English remain and acknowledge Queen Victoria, other white people – the French, or Americans – will come amongst us and make us slaves. We do not like the French or Americans, we will not have them. Therefore my speech is, Let us take the English who will protect us. Let us say to the Governor, ‘Remain, you are welcome.’ This speech produced a great effect, and was followed by others in the same strain which caused a complete revulsion of feeling amongst the natives and an evident inclination in our favour.152 Bright provided a fourth notable version : Soon after this large fire had gone out [a reference to Tāreha’s speech], a mild-looking, middle-aged man, with a deportment as if he felt he was a gentleman, quietly entered the arena, and rested awhile on a wooden spear, which was the Mow-rees’ ancient weapon ; he smiled on all around. The storms were laid still, and a general calm suppressed the rising excitement. He looked as if he felt glad to see those he looked upon, and as if wishing them well. It was Nay-nay, a chief from Ho-ki-an-ga ; esteemed by the white men, and to his own race known as one who dared to fight as well as to talk of peace. His voice was slow at first ; nor needed he to raise it high, no sound intruded on it. ‘Friends ! whose potatoes do we eat ? Whose were our blankets ? These (his spear) are thrown by. What has the Mow-ree now ? The Par-kee-ah’s gun, his shot, his powder. Many moons has he been now in our war-rees (houses) ; many of his children are also our children. He makes no slaves. Are not our friends in Port Yackson (Sydney) ?– plenty of Par-kee-ahs there ; yet make no Mowree slave there. What did we before he came – fight ! lots of fight ! Now we can plant our grounds, and he will bring plenty 7.6.2 Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz He Whakaputanga me te Tiriti The Declaration and the Treaty 366 of trade for Mow-rees ; then keep him here, and all be friends together. I’ll sign the book-a, book-a.’ Not much opposition occurred after he stepped forward and shook the captain’s hand.153 Obviously, the intent of Nene’s speech needs to be discerned from a consideration of all four of these accounts. He shed some further light on it himself 20 years later at

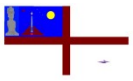




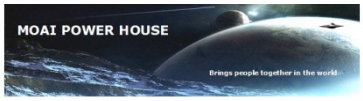








the government-convened Kohimārama conference of 1860, where he explained that My reason for accepting Governor Hobson was to have a protector for this Island. I thought of other nations – of the French . . . If the Governor had not been drawn ashore (the Queen's protection solicited) then our lands would have become the Pakeha's by purchase. Each man would have said, Here is my land. He would have had a knife as payment, and the land would have become the Pakeha's. But when the Governor came, the land was placed under the protection of the law, as it was enacted that he alone should purchase . . . My object in accepting the Governor was that I might have a protector . . .154 Nene was followed as speaker at Waitangi by his brother Patuone, another signatory of both the petition to King William and he Whakaputanga.155 He also spoke emphatically in favour of Hobson : What shall I say on this great occasion, in the presence of all those great chiefs of both countries. Here, then, this is my word to thee, O Governor ! Sit, stay – thou, and the missionaries, and the Word of God. Remain here with us, to be a father for us, that the French have us not, that Pikopo [Bishop Pompallier], that bad man, have us not, Remain, Governor. Sit, stay, our friend.156 While he may possibly have been confusing Patuone with Nene,157 Lavaud (on the basis of information from Pompallier) provided extra particulars of Patuone's address in a report to the French Government in 1843 : Finally he arrived, and spoke at length in favour of Mr Hobson, and explained, by bringing his two index fingers side by side, that they would be perfectly equal, and that each chief would similarly be equal with Mr Hobson.158 The speaking rights now returned to the hosts, and so Te Kēmara rose again and said : No, no. Who says 'Stay' ? Go away ; return to thine own land. I want my lands returned to me. If thou wilt say, 'Return to that man Te Kemara his land,' then it would be good. Let us all be alike [in rank, in power]. Then, O Governor ! remain. Patuone, as drawn after his death. Patuone spoke in favour of te Tiriti, and is said to have indicated his understanding that each rangatira would be equal with Hobson by bringing his two forefingers together side by side. 7.6.2 Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz The Negotiation and Signing of te Tiriti 367 But, the Governor up ! Te Kemara down, low, flat ! No, no, no. Besides, where art thou to stay, to dwell ? There is no place left for thee.159 Busby noted here in Colenso's account that he (Busby) had interposed at this point and said 'my house would be occupied by the Governor'. Busby added that this had 'served to produce the change in his demeanour', since Te Kēmara was the local rangatira.160 Colenso continued : Here Te Kemara ran up to the Governor, and, crossing his wrists, imitating a man hand-cuffed, loudly vociferated, with fiery flashing eyes, 'Shall I be thus, thus ? Say to me, Governor, speak. Like this, eh ? Like this ? Come, come, speak, Governor. Like this, eh ?' At this moment, according to Hobson, Te Kēmara was reproached by one of the chiefs and his attitude instantly changed.161 Colenso recorded : He then seized hold of the Governor's hand with both his and shook it most heartily, roaring out with additional grimace and gesture (in broken English), 'How d'ye do, eh, Governor ? How d'ye do, eh, Mister Governor ?' This he did over, and over, and over again, the Governor evidently taking it in good part, the whole assembly of whites and browns, chief and slave, Governor, missionaries, officers of the man-o'- war, and, indeed, 'all hands,' being convulsed with laughter.162 Hobson himself remarked that the conclusion to Te Kēmara's speech 'occasioned amongst the natives a general expression of applause, and a loud cheer from the Europeans, in which the natives joined'. It was now 4 pm, and the hui had been under way for around six hours.163 Mathew recorded that the decision to break up at this point came from the rangatira, who wanted to discuss matters privately. One of the chiefs told Hobson, 'Give us time to consider this matter. We will talk it over amongst ourselves. We will ask questions and then decide whether we will sign the Treaty.' Hobson then announced that the meeting would reconvene two days hence, on Friday 7 February. He was given three cheers, and all dispersed.164 7.6.3 The evening of 5 February Hobson and the officers of HMS Herald made their way from Busby's house down to the beach, where their launch was pulled up on shore. Colenso accompanied Hobson, and they discussed the printing of the treaty. As they reached the boat, an elderly Māori who had just arrived from the interior rushed up

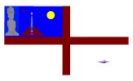




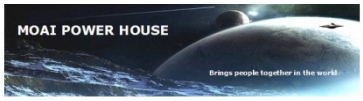








to Hobson and stared at him, exclaiming, ‘Auee ! he koroheke ! Ekore e roa kua mate’. Hobson demanded to know from Colenso what the man said, and while Colenso at first fudged a response, Hobson pressured him into a truthful answer. Colenso wrote : So, being thus necessitated (for there were others present who knew enough of Maori), I said, ‘He says, “Alas ! an old man. He will soon be dead !”’ His Excellency thanked me for it, but a cloud seemed to have fallen on all the strangers present, and the party embarked in silence for their ship.165 That afternoon, according to Colenso, a rather botched gifting of tobacco was made to the assembled Māori, who themselves took over the distribution from the officer in charge. The result was, as Colenso put it, that ‘some got a large share, and some got little, and others none at all’, and the whole incident led to a great deal of ill feeling. Indeed, Colenso described the mood as so tense that some participants left the hui early, fearing a repeat of the bloody fight that broke out during an unsuccessful mediation hosted by Busby at Waitangi between Te Hikutū and Whananaki Māori in 1836 (see chapter 4).166 That evening the rangatira camped on the Paihia side of the Waitangi River mouth at Te Tou Rangatira (where Te Tii Marae is now located), and debated whether to sign te Tiriti.167 The grog-sellers and traders of Kororāreka did their usual best to turn them against it. But the chiefs looked to the missionaries for advice, and Williams and his colleagues readily provided it. Williams recalled that There was considerable excitement amongst the people, greatly increased by the irritating language of ill-disposed Europeans, stating to the chiefs, in most insulting language, that their country was gone, and they now were only taurekareka (slaves). Many came to us to speak upon this new 7.6.3 Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz He Whakaputanga me te Tiriti The Declaration and the Treaty 368 state of affairs. We gave them but one version, explaining clause by clause, showing the advantage to them of being taken under the fostering care of the British Government, by which act they would become one people with the English, in the suppression of wars, and of every lawless act ; under one Sovereign, and one Law, human and divine.168 Samuel Ironside may have been one of the missionaries present. He wrote in his diary on 10 February that The Governor’s proposal was to me very fair, & calculated to benefit the natives, so I gave it my sanction believing a regular colonization by government certainly much better than the irregular influx of convicts & runaway sailors, which infests the country at present.169 Others besides the missionaries may have attempted to persuade the chiefs to sign te Tiriti. United States Consul James Clendon, for example, told a visiting American naval commander the following month that he had advised the chiefs accordingly, and ‘it was entirely through his influence that the treaty was signed’.170 In the meantime, the missionaries were becoming concerned that the chiefs would all leave Waitangi without signing te Tiriti because of a shortage of food. The large group camped by the river mouth had brought with them little to eat, and the food distributed to them at the end of the first day’s meeting had gone only so far. Colenso wrote that some rangatira were saying they would be ‘dead from hunger’ if they had to wait at Waitangi until the Friday for the signing. The missionaries were anxious that the crowd not disperse, particularly as a trip to Kororāreka in search of fresh supplies would bring them into contact with Pākehā eager to turn them against the treaty. Taylor therefore sent Hobson a message suggesting that the hui reconvene the following day. In his reply, Hobson appeared to Taylor to concur, in part perhaps because he attached the existing rough sheets of te Tiriti and asked Taylor to copy out Williams’s translation onto one new, large sheet of parchment. As we have noted, Taylor recorded that he then ‘sat up late copying the treaty on parchment and kept the original draft for my pains’. With Hobson’s approval apparently obtained, a message was also sent to the rangatira to convene in the morning.171 7.6.4 Pompallier’s influence It is not clear whether Pompallier’s advice was sought on the evening of 5 February, but we do know that he spoke with several chiefs before the Waitangi meeting convened. On 14 May 1840, he wrote (as translated) to his superior in the Church that The natives wanted to ask me what they should do, whether to sign or not sign. Here I would enlighten the chiefs about what was involved for them and then leave them to make

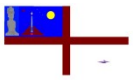




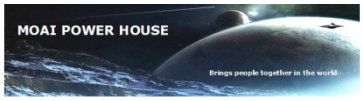








their own decision, remaining politically neutral myself, telling them that I was in this country with my men to work for the salvation both of those who would not sign and those who would sign. When someone proposed to buy land from them and they consulted me about whether or not to sell, I would tell them that it depended on what they wanted. Now they were asking me if it was good to cede or not cede their independence, it is theirs, once again it depends on their wishes.172 According to Lavaud : A few Catholic chiefs, before the assembly, went often to consult him [Pompallier] and to ask what they ought to do, but he was extremely reserved about this matter ; he limited himself to answering thus : 'It is for you to consult your material interests and decide ; if it concerned the salvation of your souls, then I would direct you ; but here it is only a question of knowing whether it is preferable for you to recognize and obey a great European chief, rather than to live as you have lived until now. I am not sent among you to become involved in such questions. I will add, however, that you must give mature consideration before deciding, for the Europeans are strong.'173 It seems, however, that Pompallier was not quite the disinterested observer he made himself out to be. As we have noted, that was certainly Williams's and Hobson's suspicion. In his dispatch to Gipps written at the end of the day's proceedings on 5 February, Hobson wrote : 7.6.4 Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz The Negotiation and Signing of te Tiriti 369 It was evident, from the nature of the opposition, that some underhand influence had been at work. The chiefs Revewah [Rewa] and Jakahra [Hakiro ?], who are followers of the Catholic Bishop, were the principal opposers, and the arguments were such as convinced me they had been prompted.174 Indeed, when Rewa finally signed te Tiriti the next day (see section 7.6.5), he told Hobson that Pompallier 'had striven hard with him not to sign'.175 Dr Peter Low, who studied the evidence concerning Pompallier's involvement, concluded that it was 'very likely that when "enlightening" the chiefs Pompallier had said that signing would mean loss of independence and reduction of power'. His 14 May letter and comments to Lavaud certainly suggest he was far from neutral. In this letter Pompallier wrote that the treaty was 'nothing other than a crude [attempt ?] by England to take possession of New Zealand' and that 'the request for signatures was only a pretext, the annexation was decided on'. Lavaud noted Pompallier's fear 'that under the new regime his mission would be compromised', and described Hobson's declaration of sovereignty over the South Island, for which the French had their own plans, as a 'tour d'escamotage' or 'conjuring trick'. Lavaud also noted Pompallier's belief that Williams 'did not always – and this was doubtless deliberate – convey well the thoughts of the people speaking', and that after Te Kēmara had spoken, 'a chief from the Williams party was prompted to follow' him to 'combat' his contentions.176 Orange's overall view on Pompallier was similar. She concluded that, 'Even allowing for Maori exaggeration and national or sectarian jealousies, there was some justification for suspecting the French Bishop.' But she clearly felt that Pompallier's advice provided a useful counterpoint to that of the CMS missionaries. As she put it, 'It is not surprising that the Kororareka chiefs, with Pompallier as their adviser, had demonstrated a more accurate grasp of the nature and effect of the treaty than most.'177 7.6.5 Waitangi, 6 February – the signing of te Tiriti At 9.30 am on 6 February, the missionaries set out from Paihia on the mile-and-a-half walk to Waitangi. There they found some 300 to 400 Māori 'scattered in small parties according to their tribes' – a smaller gathering, in Colenso's estimation, than the day before, but still a fair number.178 Colenso heard them 'talking about the treaty, but evidently not clearly understanding it'. At this stage, there was no sign of Hobson and no indication on board the Herald that his arrival was imminent. At noon, a boat came ashore from the Herald with two of Hobson's staff on board. They were most surprised to be informed that everyone onshore was waiting for Hobson, saying, 'His Excellency certainly knew nothing about a meeting to be held there this day.'179 There had clearly been a misunderstanding, or a breakdown in communication, notwithstanding Taylor's impression the previous evening that Hobson had not only agreed to completing the meeting in the morning but had also asked that the treaty be written out anew that night in anticipation. Hobson was quickly fetched

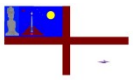




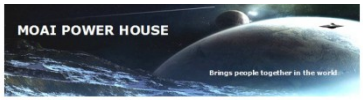








from the ship, and arrived without the attendance of any of the ship's officers. Other than his hat, he was dressed in civilian clothes rather than his naval uniform of the previous day.180 He assured the missionaries that 'he had not the least notion of a meeting to be held this day'. He said, however, that he was willing to accept the signatures of any chiefs who had attended the previous day's meeting, but that he would still need to follow through on his announcement that there would be a public meeting the following day. His hurried arrival was prompted in part by his fear that refusing the chiefs' request 'would probably have rendered nugatory the whole proceeding, by the dispersion of the tribes before they had attested their consent by their signatures'.181 The party then proceeded to the tent, and everyone took their places. The table at which the chiefs would sign te Tiriti was arranged, and Hobson stood and announced, 'I can only receive signatures this day. I cannot allow of any discussion, this not being a regular public meeting.' At this point a message was received that Pompallier and his assistant, Father Servant, wished to be present at the meeting and were waiting at Busby's house. Hobson sent for them, and they duly took the same seats they had occupied the previous day.182 As he took his seat, Taylor noted, Pompallier 'professed much pleasure in giving his aid' ; 7.6.5 Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz Hobson's landing at Waitangi for the Treaty signing. In this depiction, a group of Māori appear to wait for Hobson near the beach below Busby's house. Owing to a misunderstanding, Hobson did not realise that the hui had reconvened on 6 February, and he left everyone onshore waiting till the late morning. Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz He Whakaputanga me te Tiriti The Declaration and the Treaty 372 nonetheless, Taylor felt 'assured he came either as a spy or to get himself acknowledged as an important personage before the natives, which I think he succeeded in doing'.183 Williams then read te Tiriti aloud to the rangatira from the new parchment copy made by Taylor. According to Mathew, two unnamed chiefs then stated that 'yesterday they had not understood the matter, but that now they had made enquiry and duly considered it, and thought it was good, and they would sign it'. But before this could happen, Pompallier asked Hobson if some guarantee could be given of freedom of religious worship in New Zealand. Hobson turned to Williams and said : The bishop wishes it to be publicly stated to the Natives that his religion will not be interfered with, and that free toleration will be allowed in matters of faith. I should therefore thank you to say to them that the bishop will be protected and supported in his religion – that I shall protect all creeds alike. Williams, who was infuriated by Pompallier's 'effrontery', at first protested to Hobson that there was no point in such an announcement 'if all are to have protection alike', but Hobson requested that he indulge Pompallier's request. Williams thus began interpreting for the chiefs but then hesitated, and Colenso urged him to 'write it down first, as it is an important sentence'.184 Williams concurred, and took up a pencil and paper, coming up eventually with the words 'E mea ana te Kawana, ko nga whakapono katoa, o Ingarani, o nga Weteriana, o Roma, me te ritenga Maori hoki, e tiakina ngatahitia e ia'. This meant 'The Governor says the several faiths [beliefs] of England, of the Wesleyans, of Rome, and also the Maori custom, shall be alike protected by him'. Colenso wrote that he himself had persuaded Williams to include the words 'me te ritenga Maori hoki' ('and also the Maori custom') as 'a correlative to that "of Rome"' – or, as Phillipson put it, 'to stress the pagan apostasy of Roman Catholicism by equating it with Maori religion'. The subtle insult may have bypassed Pompallier, for when he was handed the piece of paper he said, in English, 'This will do very well.' Williams recorded that he in turn 'read out this document, which was received in silence. No observation was made upon it ; the Maories, and others, being at perfect loss to understand what it could mean.' Pompallier then left the meeting, no doubt wanting to dissociate himself from the rest of the proceedings.185 The sentence has become known as the 'fourth article' of te Tiriti, even though it was not included on the parchment copy. The chiefs were invited to step forward and sign, but none made any move to do so. Busby then

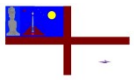




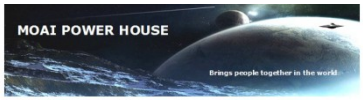








hit upon the idea of calling out the rangatira to sign by name, and began with Hōne Heke, whom Colenso considered to be Bishop Jean Baptiste Pompallier, 1848. Pompallier was the head of the French Catholic mission at Kororāreka and was an influential figure among the local chiefs. He is best remembered at Waitangi for his request for a guarantee of freedom of religious worship – sometimes referred to as the 'fourth article' of the treaty. 7.6.5 Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz The Negotiation and Signing of te Tiriti 373 'the most favourable towards the treaty' of those present. Heke was advancing towards the table when Colenso made his own remarkable intervention in proceedings. He recorded his exchange with Hobson as follows : Mr Colenso : 'Will your Excellency allow me to make a remark or two before that chief signs the Treaty ?' The Governor : 'Certainly, sir.' Mr Colenso : 'May I ask your Excellency whether it is your opinion that these Natives understand the articles of the treaty which they are now called on to sign ? I this morning' – The Governor : 'If the Native chiefs do not know the contents of this treaty it is no fault of mine. I wish them fully to understand it. I have done all I could do to make them understand the same, and I really don't know how I shall be enabled to get them to do so. They have heard the treaty read by Mr Williams. Mr Colenso : 'True, your Excellency ; but the Natives are quite children in their ideas. It is no easy matter, I well know, to get them to understand – fully to comprehend a document of this kind ; still, I think they ought to know somewhat of it to constitute its legality. I speak under correction, your Excellency. I have spoken to some chiefs concerning it, who had no idea whatever as to the purport of the treaty.' Mr Busby here said, 'The best answer that could be given to that observation would be found in the speech made yesterday by the very chief about to sign, Hoani Heke, who said, "The Native mind could not comprehend these things : they must trust to the advice of their missionaries."' 186 Mr Colenso : 'Yes ; and that is the very thing to which I was going to allude. The missionaries should do so ; but at the same time the missionaries should explain the thing in all its bearings to the Natives, so that it should be their own very act and deed. Then, in case of a reaction taking place, the Natives could not turn round on the missionary and say, "You advised me to sign that paper but never told me what were the contents thereof."' The Governor : 'I am in hopes that no such reaction will take place. I think that the people under your care will be peaceable enough : I'm sure you will endeavour to make them so. And as to those that are without, why we must endeavour to do the best we can with them.' Mr Colenso : 'I thank your Excellency for the patient hearing you have given me. What I had to say arose from a conscientious feeling on the subject. Having said what I have I consider that I have discharged my duty.' 187 Once again, there is no suggestion anywhere that this discussion was translated for the benefit of the assembled chiefs. Loveridge found it odd that no other witnesses mentioned this exchange, noting particularly its absence from Felton Mathew's relatively full account. He speculated that the conversation might in fact have been a more private discussion between Colenso and Hobson than Colenso's account suggested. However, he acknowledged that it must indeed have taken place, since Busby and another CMS missionary read Colenso's notes shortly afterwards and did not contradict them. Also, Colenso wrote to the CMS secretary in England on 13 February that I believed, & do believe that the Natives did not fully understand what they signed ; believing this & finding no other person would, I took upon me to address His Excellency at the Public Meeting, when the first person was called up to append his Name to the document I asked His Excellency whether His Excellency supposed that the Native Chiefs knew what they were about to do ? &c &c His Excellency in reply stated, that he had done his best to enable them to understand the same &c &c.188 Moreover, it seems that it would have been entirely in keeping with Colenso's character to speak out at such a moment. His recent biographer, Peter Wells, wrote that, even though Colenso was merely a catechist and 'unimportant . . . in the scheme of things', he 'often spoke up' and 'effectively ruined his own career trajectory by continually speaking up'. According to another biography, Colenso was 'inflexible', 'self-righteous', and an uncompromising critic of the missionary hierarchy. His debate with Hobson no doubt greatly displeased Williams ; Colenso wrote in his journal

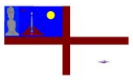




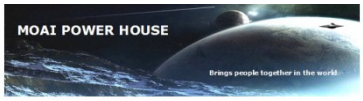








that he (Colenso) spoke ‘much against the wishes of my missionary brethren’. Williams himself later wrote, perhaps in reference to Colenso’s interjection, 7.6.5 Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz The Negotiation and Signing of te Tiriti 375 that ‘After some little discussion and trifling opposition’ the treaty-signing began. He added, ‘No chief raised any objection that he did not understand the treaty . . . though some held back under the influence of the Romish Bishop and his priests’.189 With Colenso having backed down, Hōne Heke at last stepped forward and signed te Tiriti. He was followed by approximately 42 to 45 other chiefs (it is difficult to be certain from the marks and signatures on the parchment how many signed on 6 February itself 190), including some who had not been present during the previous day’s proceedings. Three were women : Takurua, Te Marama, and Ana Hamu.191 Williams noted that ‘Certain chiefs under the influence of the Popish Bishop and Priests stood aloof ’, and Hobson privately expressed his fear that they would not sign. But Williams ‘cautioned him against showing any anxiety’.192 Eventually, both Te Kēmara and Rewa signed. When Te Kēmara came forward, he explained to Hobson that Pompallier had told him ‘not to write on the paper, for if he did he would be made a slave’ (‘kei tuhituhi koe ki te pp [pukapuka] ki te mea ka tika taurekarekatia koe’). Rewa proved even more reluctant, but was eventually persuaded to sign by fellow rangatira and some of the CMS missionaries. As noted, he too told Hobson when he signed that Pompallier had strenuously counselled against it.193 Rewa must have soon regretted adding his mark : a short while later, he was credited by Captain William Symonds with dissuading chiefs from signing te Tiriti at a hui at Manukau Harbour, where he ‘exerted all his influence’ against the agreement.194 While the signings took place, two chiefs, Marupō and Ruhe, maintained concerted and expressive speeches against te Tiriti, although both in due course came forward and signed. As all of the chiefs did so, Hobson shook his hand and uttered the famous words, ‘He iwi tahi tatou’ (which Colenso translated as ‘We are [now] one people’). Carpenter felt sure that Hobson had been coached to say this by Williams.195 The meeting closed with Patuone presenting Hobson with a greenstone mere ‘expressly’ for Queen Victoria (no doubt as a gift from one rangatira to another) and three cheers being given for ‘the Governor’. At Hobson’s request, Colenso arranged the distribution of gifts to all the signatories. This went much better than the previous day’s handing out of tobacco, with Colenso giving each signatory two blankets, some potatoes, and a quantity of tobacco.196 Overall, Colenso noted the absence of many chiefs ‘of the first rank’ amongst the signatories. Indeed, those whose names remained notably absent included Wai, Kawiti, Pōmare, Te Ururoa, Waikato, Wharepoaka, and Tāreha (although Tāreha’s son Mene appeared to sign on his behalf – see chapter 9 on this matter197). Colenso also noted that none of the signatories had come from anywhere further away than Hokianga or Whangaruru. This was not enough to suppress Hobson’s sense of achievement. After dining on board the Herald with his officials and Patuone that evening, he gleefully wrote to Gipps that, As the acquiescence of these chiefs, 26 of whom had signed the declaration of independence, must be deemed a full and clear recognition of the sovereign rights of Her Majesty over the northern parts of this island, it will be announced by a salute of 21 guns, which I have arranged with Captain Nias shall be fired from this ship to-morrow.198 As it transpired, it was as well for Hobson that the hui reconvened on 6 February, for the next day was extremely wet – so torrential was the rain, in fact, that it precluded even anyone leaving the ship. Colenso did not think a hui could have been held in such conditions and, if it had been necessary to wait until 8 February to resume proceedings, many of the chiefs would have given up and returned home. The 21-gun salute Hobson had requested had to be delayed until 8 February – Nias’s log recorded that the salute was fired at 1 pm ‘to commemorate the cession to Her Majesty of the rights of sovereignty of New Zealand’.199 The idea of holding a further public meeting at Waitangi was quietly abandoned. The importance Hobson I A reconstruction of the signing of the Treaty of Waitangi, 1840. The painter, Leonard Mitchell, endeavoured to capture details of the scene recorded by Colenso, such

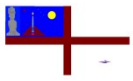




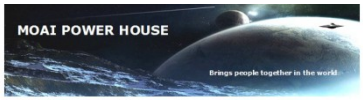








as the chiefs' dogskin cloaks, Marupō (in the foreground) urging the assembled rangatira to reject the treaty while the signings went on, and Hobson's lack of a uniform. 7.6.5 Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz He Whakaputanga me te Tiriti The Declaration and the Treaty 376 placed upon the signing at Waitangi is evident in the letter he wrote Bunbury on 25 April : The treaty which forms the base of all my proceedings was signed at Waitangi on the 6th February 1840, by 52 chiefs, 26 of whom were of the confederation, and formed a majority of those who signed the Declaration of Independence. This instrument I consider to be de facto the treaty, and all the signatures that are subsequently obtained are merely testimonials of adherence to the terms of that original document.200 7.7 The Signing of te Tiriti at Waimate In search of further signatures, Hobson and his official party – including Nias, Henry Williams, and Charles Baker – rode inland from Waitangi on the morning of 10 February. They covered the 15 miles to the CMS mission station at Waimate by lunchtime, and were met by Taylor, the mission head, and his assistants George Clarke and Richard Davis. That evening a meeting was held at which six further rangatira signed te Tiriti.201 There is no record of anyone explaining the treaty's contents, but it is likely The signing of the Treaty of Waitangi, 6 February 1840. Such depictions often conflate the events of 5 and 6 February – here, for example, Hobson is incorrectly shown in his naval uniform. In 1950, the painter, Marcus King, revisited the scene, on that occasion putting Hobson in civilian clothes. 7.7 Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz The Negotiation and Signing of te Tiriti 377 that those Waimate chiefs who had signed at Waitangi on 6 February (including Reweti Atuahaere, Wiremu Hau, and Hara) had already given an account of its provisions to those who had remained at Waimate.202 7.8 Ngā Whaikōrero o Mangungu The next morning, Hobson and his party – without Williams and Baker, but now joined by Taylor and Clarke – set out for Hokianga. There, at the Wesleyan mission station at Mangungu on the upper reaches of the harbour, a large hui had been notified for the following day (12 February). The party's journey from Waimate took them across cultivated land and through dense bush until they reached the settlement of Waihou, from where they travelled onwards in a flotilla of waka and brightly decorated boats provided by the local settlers and Wesleyan missionaries. They were even accorded a 13-gun salute as they passed the house of Thomas McDonnell, the Additional British Resident, at Hōreke. At four o'clock, they reached Mangungu, where Hobson addressed the local Pākehā and invited them all to attend the next day's meeting.203 A large crowd gathered for the hui. Hobson wrote that 3,000 Māori, including some 400 to 500 rangatira of varying ranks, had assembled near the mission station. Taylor thought that the crowd attending the meeting itself totalled 500. A table and chairs were set out for the official party on the house's veranda, and the rangatira were invited to gather on the lawn in front of them (a rather limited space before the land falls steeply down to the Hokianga Harbour). At first, it seems that they were reluctant to step forward – Hobson wrote that he was 'mortified to observe a great disinclination on the part of the chiefs to assemble'. While the rangatira eventually did come forward, Hobson 'could not fail to observe that an unfavourable spirit prevailed amongst them'.204 Hobson began in similar fashion to his address at Waitangi : I entered into a full explanation to the chiefs of the views and motives of Her Majesty in proposing to extend to New Zealand her powerful protection. I then, as before, read the treaty [in English], expounded its provisions, invited discussion, and offered elucidation. On this occasion, he had as his interpreter the Reverend John Hobbs, an experienced Wesleyan missionary and expert translator of Māori. Like their CMS counterparts, the Wesleyans were under instruction to give Hobson every assistance.205 Hobson's foreboding about the chiefs' general mood was borne out soon enough in their speeches, in which he encountered a 'pre-determination to oppose me'. As he explained to Gipps : The New Zealanders are passionately fond of declamation ; and they possess considerable ingenuity in exciting the passions of the people. On this occasion all their best orators were against me, and every argument they could devise was used to defeat my object. But many of

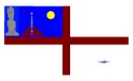




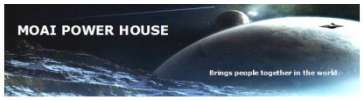








their remarks were evidently not of native origin, and it was clear that a powerful counter-influence had been employed. Hobson indeed blamed ‘ill-disposed Europeans’ (in particular Pompallier, the trader Frederick Maning, and the escaped convict Jacky Marmon) for the chiefs’ opposition. But it seems that the initiative had been seized more by Hokianga Māori, who had solicited a range of opinions about te Tiriti in anticipation of Hobson’s visit. In summing up the day’s proceedings, Mathew wrote that the chiefs had displayed ‘much tact, good sense and eloquence’, and Orange described their speeches as demonstrating that they had taken the time to ‘become informed’ about the treaty’s ‘provisions and effects’. Several of the rangatira had accompanied the missionaries Ironside and Warren to Waitangi the week before. At one end of the spectrum, the likes of Nene and Patuone had already signed and now supported Hobson at Mangungu ; at the other, rumours were circulating that the Queen had sent Hobson to take the country as Australia had been taken from the Aboriginals and that the chiefs (according to Hobbs) would ‘lose both their dignity and their country’.206 7.8 Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz He Whakaputanga me te Tiriti The Declaration and the Treaty 378 A more limited record than at Waitangi exists of the chiefs’ speeches at Mangungu, where a summary of them was made by Taylor. Taylor forwarded his account of both the Mangungu and Kaitaia hui to the CMS in October 1840, with his covering letter stating, ‘I send you a copy of the notes which I took at the two great meetings held at Hokianga and Kaitaia.’ Then, in January 1841, a nearidentical but somewhat tidier account of the Mangungu speeches was published in The New Zealand Journal and described as Notes of a Meeting at Hokianga, from the Original taken on the spot by [Willoughby] Shortland, Esq, rendered into Anglo-New Zealand, by Mr Wade, of the Church Mission, February 1840. Later, Shortland sent a more abbreviated version as an attachment to a letter of 18 January 1845 to Lord Stanley (as well as an account of the Kaitaia speeches, which again was very similar to Taylor’s original notes). In the letter itself, Shortland wrote, ‘I noted down the speeches of the chiefs, copies of which I have the honour to enclose’. But the notes Taylor sent the CMS and the Shortland versions seem far too similar to be of separate origin. While we cannot be certain, it is possible that Taylor took the notes and provided a copy to Shortland, who had them edited for clarity by Wade and then published them, claiming authorship himself. If this is correct, Shortland was convincing. Salmond, for example, told us that the ‘only’ record of the chiefs’ speeches was made by Shortland.207 With all that in mind, we rely here on Taylor’s notes The Mangungu Methodist mission station, present day. It was here on 12 February 1840 that the single largest signing of te Tiriti took place. 7.8 Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz The Negotiation and Signing of te Tiriti 379 of the Mangungu speeches. Taylor himself would have relied on Hobbs’ translation, rather than the chiefs’ own words in Māori, for he was not sufficiently competent in the language to have translated them directly.208 Orange (who was aware of Taylor’s account, as well as Shortland’s, but did not note their striking similarity) reasoned that, because the hui lasted for hours, ‘Shortland and Taylor evidently recorded only the most significant speeches’.209 The first speaker in response to Hobson was Makoare Taonui,210 the leading rangatira of the Popoto hapū in the district around Utakura and Hōreke since the death of his older brother Muriwai in 1828 (and thus, like Te Kēmara at Waitangi, the representative of the tāngata whenua at the hui).211 He began by asking for Hobson’s speech to be written down, to which Hobson replied that the treaty was indeed written and copies would be circulated. Taonui then spoke firmly against Hobson having any control over Māori : We are glad to see the Governor let him come to be a Governor to the Pakeha’s as for us we want no Governor we will be our own Governor. How do the Pakehas behave to the black fellows of Port Jackson ? They treat them like dogs, see a Pakeha kills a pig Black Fellow comes to the door eats the refuse. Taonui, who had signed both the 1831 petition to King William IV and he Whakaputanga, had been to Sydney in 1830 and presumably seen the treatment of the Aboriginals first hand. His taking of the name Makoare may have happened after he worked his passage to Sydney on board the brig Governor

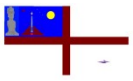




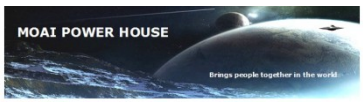








Macquarie. He spoke up several times during the hui, as we shall see.212 The next speaker was Wiremu Tana Papahia, a chief from Whirinaki further west along the southern shore of the harbour, who had also signed he Whakaputanga.213 In a classic illustration of the need for care in interpreting the chiefs' words and actions, he too opposed Hobson, despite having already signed te Tiriti at Waitangi : What is the Governor come for ? He indeed ! He to be high, very high, like Maunga Taniwa (the higher mountain my neighbourhood) and we low on the ground, nothing but little hillocks, no no no let us be equal. Why should one hill be high and another low ? This is bad.214 The third speaker was presumably Mohi Tāwhai, whom Taylor referred to as 'Moses'. Tāwhai was a chief of Te Māhurehure (and another signatory to he Whakaputanga) who lived around the Waimā River.215 He also spoke more than once, but his first comment (at least as it was recorded by Taylor) was brief : How do you do Mr Governor all we think is that you are come to deceive us. The Pakehas tell us so and we believe what they say, what else ? Taonui then spoke again, also briefly : Let us know what has been said. We are not willing to give up our land. It is from Earth we obtain all things, from Earth is all our happiness. The land is our father. The land is our chieftainship we will not give it up. The next speaker was Kaitoke, a Te Hikutū rangatira living at Whirinaki. His daughter had married Maning, who had taken up residence at Onoke, which was located at the tip of a neck of land in the mid-reaches of the harbour. Kaitoke had originally been based at Mangamuka, but had shifted after a dispute in 1837 with Patuone, Nene, and others over Kaitoke's shooting of two Christian converts.216 His speech was reminiscent of that of Wai at Waitangi : No no Mr Governor you shall not square out our land and sell it. See there you came to our country looked at it stopped, came up the river, and what did we do ? We gave you potatoes, you gave us one fish hook that is all ! We gave you land, you gave us one pipe, that is all ! We have been cheated. The Pakehas are thieves, they tear one blanket, make two pieces sell it for two blankets. They buy a pig for one pound in gold sell it for three. They get a basket of potatoes for one sixpence sell it for two shillings. This is all they do steal from us this is all. 7.8 Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz He Whakaputanga me te Tiriti The Declaration and the Treaty 380 At this point, a chief, whom Taylor recorded as Maihai, said, 'Very good ! Let Queen Victoria be the great chief here. Yes. But let one of us, us natives go to England to be Queen there.' Taonui then rose again and demonstrated what Salmond described as 'an astute analysis of Imperial strategy' and Orange called 'shrewd perception' : Ha. Ha. Ha. This is the way you do, first your Queen sends the missionaries to New Zealand to put things in order, gives them £200 a year. Then she sends Mr Busby to put up a flag, gives him £500 a year and £200 to give to us natives now she sends a governor and gives him £2000 a year. Hobson was convinced that Taonui was being coached to make such statements by some meddlesome Pākehā, and so he replied, 'Speak your own sentiments not what bad men have told you.' Taonui had a ready answer for this, however : 'I do. Have I not been at Port Jackson ? I know Governors have salaries.' Hobson recorded his own version of this exchange, which (it appears) confused Taonui with Papahia and omitted any reference to Taonui's penetrating comeback : Towards the close of day one of the chiefs, Papa Haiga, made some observations that were so distinctly of English origin, that I called on him to speak his own sentiments like a man, and not to allow others who were self-interested to prompt him : upon which he fairly admitted the fact, and called for the European who had advised him to come forward, and tell the Governor what he had told him.217 It was at this juncture, therefore, that Maning stepped forward from the back of the crowd. Hobson recorded their exchange as follows : I asked his motive for endeavouring to defeat the benevolent object of Her Majesty, whose desire it is to secure to these people their just rights, and to the European settlers peace and civil government. He replied, that he conscientiously believed that the natives would be degraded under our influence ; that, therefore, he had advised them to resist : admitting, at the same time, that the laws of England were requisite to restrain and protect British subjects, but to British subjects alone should they be applicable. I asked him if he was aware that English laws could only be exercised on English soil. He

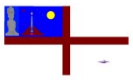




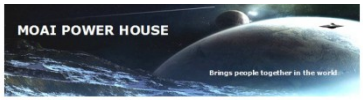








replied, ‘I am not aware : I am no lawyer :’ upon which I begged him to resume his seat ; and told the chiefs that Mr Manning had given them advice in utter ignorance of this most important fact ; adding, ‘If you listen to such counsel, and oppose me, you will be stripped of all your land by a worthless class of British subjects, who consult no interest but their own, and who care not how much they trample upon your rights. I am sent here to control such people, and I ask from you the authority to do so.’ Hobson claimed that this pivotal exchange – which was not recorded by Maning himself in his later account (see below) – quite changed the course of the proceedings : ‘This little address was responded to by a song of applause ; several chiefs, who agreed with me, sprung up in my support, and the whole spirit of the meeting changed.’ 218 Taylor did mention Maning’s contribution, although not Hobson’s rebuke. He also placed Maning’s entry earlier, after Mohi had spoken and before Taonui spoke for a second time. According to Taylor : Here an interruption took place by a Mr Manning who on the Governor asking who had said so came forward and requested to explain what he had told them ; he owned that he had told them to govern themselves and stated that he thought it would be best for them to do so but it would be good for them to allow the Governor to govern the Whites. It is unclear just what motivated Maning to urge Hokianga Māori against the treaty – he may, for example, have been less concerned for Māori interests than for his own preference to live free of the restrictions of British authority.219 It is also a moot point whether he shrugged off Hobson’s rebuke or was humiliated by it.220 Either way, in his dispatch to Gipps, Hobson smeared Maning’s name, acknowledging he was ‘not of a degraded class’ but describing him nonetheless as ‘an adventurer, who lives with a native woman ; has purchased a considerable 7.8 Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz The Negotiation and Signing of te Tiriti 381 quantity of land and being an Irish Catholic is an active agent of the bishop’. Maning may well have been an adventurer, but his land holdings were by no means considerable, and he was in fact of Irish Protestant stock and certainly no agent of Pompallier. He was suspected later in 1840 of fomenting trouble among Kaipara Māori and had to write Hobson ‘a grovelling letter’ denying the rumours. Unsurprisingly, when he applied for a government position in January 1841, he was turned down.221 Maning had the last word with Hobson, in a way, with the publication in 1862 of his A History of the War in the North of New Zealand against the Chief Heke. He wrote the account as if it were the recollections of an old chief (who is clearly based on Kaitoke), as told to an (anonymous) ‘Pakeha–Maori’, and it contains several pages relating to the signing of te Tiriti at Mangungu. These contrast with Hobson’s version of the signing in many ways – for example, by suggesting that the hungry and suspicious chiefs told Hobson they would not sign, and were in the act of leaving (as Hobson’s face turned ‘very red’), until some Pākehā went among them and told them that Hobson would pay them once they had signed. Then the chiefs ‘all began to write as fast as we could’.222 The reliability of this account has been questioned by historians, and Crown witnesses in particular also dismissed it as exaggerated and inaccurate. Parkinson, for example, called it ‘plainly a fabrication by Maning himself with some amusing literary touches’, and Professor Alan Ward added that he was ‘highly suspicious of anything Maning said or wrote’.223 Salmond, by contrast, argued that ‘on a number of key points it appears to be accurate, and perhaps more so than Hobson’s doggedly positive version of the proceedings’. It is true that Maning wrote about real events, but the question is whether he did so from his experiences at the time or from consulting others’ accounts. As Parkinson pointed out, Maning’s work was published many years later, and may well have drawn on Hobson’s and Taylor’s (or, as published, Shortland’s) accounts for some of its detail. Ward also thought the fact that A History of the War covered actual events did ‘nothing to enhance the worth of Maning’s so-called satire’.224 Our conclusion on Maning is that we simply do not know what he based his account on and, given what we know of his reputation, we think it wise not to place too much reliance on him. In any case, after Maning had been put in his place by Hobson, the speeches continued. The next speaker was Ngaro. He was the first to speak in Hobson’s favour, and recognised that his might be a lone voice :

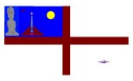




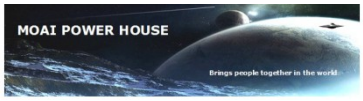








Welcome, welcome, welcome Governor. Here are the missionaries. They come to the land. They bought land and paid for it. Else I would not have had them. Come come. I will have the Governor, no one else perhaps will say yes but I Ngaro I will have him. That is all I say. Frederick Maning, circa 1841. Maning had urged the rangatira at Mangungu against signing te Tiriti and was rebuked by Hobson when he stepped forward to explain his position. 7.8 Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz He Whakaputanga me te Tiriti The Declaration and the Treaty 382 Mohi Tāwhai then spoke again, giving what Salmond regarded as ‘muted but sceptical’ support 225 for Hobson : Whence does the governor get his authority. Is it from the Queen ? Whence is it. If it be from the Queen let him come what power has he ? Well let him come let him stop all the lands from falling into the hands of the Pakehas, hear all ye Pakehas, perhaps you are Rum drinkers, perhaps not, hear what is said by us, I want all to hear. It is quite right for us to say what we think, it is right for us to speak, let the tongue of every one be free to speak. But what of it ? What will be the end ? Our sayings will sink to the bottom like a stone, but your sayings will float light, like the wood of the w[h]au tree and always remain to be seen. Am I telling lies ? Owens considered Tāwhai’s reference to the Māori words sinking like a stone to be ‘a prescient remark’, for ‘today the written treaty is constantly worked over for all the meaning which can be extracted’, while the ‘speeches and verbal understandings are only partially preserved and then only because they happened to be written down’.226 This is unfortunately even more true of Mangungu than Waitangi. Kaitoke then also spoke a second time, calling for the rangatira to be permitted to ‘choose a Governor for ourselves’. He was followed by the chief Rangatira of Ngāti Oneone at Pākanae, the brother of Moetara, who had signed both the 1831 petition and he Whakaputanga.227 Rangatira also welcomed Hobson : Welcome Mr Governor. How do you do. Who sold our lands to the Pakehas ? It was we ourselves. By our own free will, we will let it go and it is gone, and what now ? What good is there in throwing away our speech, let the Governor sit for us. Mohi Tāwhai then spoke for a third time, saying, Suppose the land has been stolen from us, will the governor enquire about it ? Perhaps he will, perhaps he will not, if they have acquired the land by fair purchases let them have it. Salmond made the point that, as with Rangatira’s reference to the ‘sale’ of lands, it is impossible to know what Māori terms were used to describe these land transactions.228 Salmond guessed that at this point Hobson assured the gathering that all land transactions would be inquired into and only those found to be fair would be upheld.229 Control and ownership of land was clearly becoming an issue of some importance at the hui, as it had at Waitangi. Taonui then spoke for the last time, now expressing support for Hobson (which Salmond believed arose from Hobson’s likely reply to Mohi Tāwhai 230). He said : Lo ! now for the first time my heart has come near to your thoughts. How do you do, how do you do. I approach to you with my heart, you must watch over my children let them sit under your protection. Here is my land too you must take care of it. But I am not good for you to sell it. What of the land that is sold. Can my children sit down on it ? Can they ? Eh ? While Taonui was uncertain about ongoing rights of occupancy on land transacted with Pākehā, he would accept Hobson as a protector of his land. Taonui, Nene, Patuone, and Rangatira then sang Hobson a song of welcome. Papahia then asked if it was right that two men should own all the land between North Cape and Hokianga, a reference in part to Taylor’s very recent ‘purchase’ of 50,000 acres at the northern tip of Muriwhenua.231 William Puckey explained that the land was held in trust by the CMS for Māori use and asked if Papahia could cite any case where the CMS had withheld land from Māori. Papahia replied, ‘It is only the work of the tongue. I do not know it myself. I will always ask the Governor if it be right.’ 232 Nene himself spoke next, but only to repudiate the notion that he had made any agreement to sell land to de Thierry. He was followed by John King (or Hōne Kingi Raumati), a nephew of Muriwai. The latter had accepted the escaped convict, Jacky Marmon, by marrying him to John King’s daughter.233 Hobson suspected that Marmon was one of those actively undermining him, but John King in fact spoke in his favour : 7.8 Downloaded from www.waitangitribunal.govt.nz Downloaded from

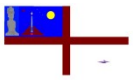




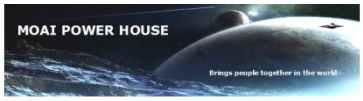








www.waitangitribunal.govt.nz The Negotiation and Signing of te Tiriti 383 My speech is to the governor this is what I have to say, it was my father, mine, it was Muriwai told me to behave well to the Pakehas, listen this is mine you came and found us poor and destitute. We ; on this side say stay, sit here, we say welcome, let those on the other side say what they like. This is ours to you stay in peace. Great has been your trade with our land ! What else do you come for but to trade ? Hear me. I also brought you on my shoulders, I say come, come now it is for you to direct us and keep us in order. That is all mine to you. If any one steals any thing now there will be a payment for it. I have done my speech. Salmond pointed out that it is impossible to know whether, in asking Hobson to 'keep us in order', King used for 'us' the inclusive pronoun 'tātou', meaning everyone (that is, settlers included, thus implying relations between settlers and Māori) or the exclusive pronoun 'mātou', meaning (in this case) Māori alone, including their internal affairs.234 Taylor recorded two more speeches. The first, by an unnamed chief, was also in favour of Hobson : How do you do ? Here am I a poor man, and what is this place ? a poor place. But this is why you have come to speak to us to day let the Pakehas come. I have nothing to say against it. There is my place. It is good land, come and make it your sitting place you must stay with me, that is all. The final speech was made by Daniel Kahika, who was mission-trained and literate. He said : What indeed ! Do you think I will consent to other people selling my land ? No truly. If my land is to be sold it is for me to sell it myself. But no I will not sell my land, I do not like the Pakehas to teaze me to sell my land. It is bad I am quite sick with it. This is my speech. The speeches had been under way from the morning until nearly six in the evening. Despite all the comments in the Lieutenant-Governor's favour, it seems that the rangatira were still not ready to commit themselves. Hobson of course believed that his own rebuttal of Maning had been decisive, but Hobbs contended that – as at Waitangi – it was missionary influence that ultimately made the difference. For example, Hobbs later recalled how important had been the repeated assurances and promises he gave throughout the hui on Hobson's behalf. These were that the Queen did not want the chiefs' land ; that her object was to control her subjects living in New Zealand and punish those guilty of crimes ; and that, if the chiefs signed, they had Hobson's 'most solemn assurance' (Hobbs's emphasis) that 'truth and justice would always characterize the proceedings of the Queen's Government'. Hobbs explained in fact that a senior Christian chief turned to the missionaries at the conclusion of the speeches and asked for their opinion. The missionaries replied that the treaty would be good for Māori, and at that point the signing began.235 The chiefs apparently stepped forward with such enthusiasm that Hobson had difficulty restraining 'those who were disentitled by their rank from inserting their names'. The signing continued until midnight, when Hobson counted 'upwards of 56 signatures'. As at Waitangi on 6 February, the exact number who signed that evening at Mangungu is uncertain. Orange, for example, calculated 70 in her 1987 book, albeit only with 43 witnessed, and in her 2004 Illustrated History suggested 'sixty or more' signatories and gave a list of 64 names. In any event, Hobson had surpassed his tally at Waitangi and was clearly pleased with himself.236 7.9 The Events of 13 and 14 February 1840 Late on the night of 12 February, Hobson accepted a request from the chiefs to attend the feast he had arranged for them the next day, and so abandoned his plans to head westward to the harbour heads to raise the Union Jack. He recorded the scene as follows : At 10 o'clock on the 13th, I went by appointment to the Howrogee [Hōreke], and there, 1000 as fine warriors as were ever seen, were collected in their best costume. The native war-dance, accompanied by those terrific yells which are 7.9 Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz He Whakaputanga me te Tiriti The Declaration and the Treaty 384 so well qualified to express the natural ferocity of the New Zealand character, was exhibited for my amusement ; the guns from a small European battery were fired, and the natives discharged their muskets and dispersed under three hearty cheers from my party. The feast which I had ordered to be prepared, consisting of pigs, potatoes, rice, and sugar, with a small portion of tobacco to every man was partaken of by all in perfect harmony. It was estimated that of men, women, and children, there

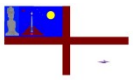




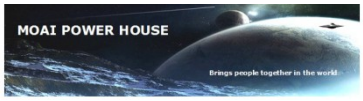








were 3000 persons present.237 Hobson wrote to Gipps on 17 February 1840 that, with the signing at Waitangi, 'the sovereignty of Her Majesty over the northern districts was complete'. The 'adherence of the Hokianga chiefs', he added, 'renders the question beyond dispute'. Notwithstanding the efforts of Marmon, Maning, and Pompallier, he had 'obtained the almost unanimous assent of the chiefs', with only two Hokianga rangatira refusing to sign.238 But Hobson's boast was contradicted by an attempted withdrawal of support given the previous day. As his party was leaving Mangungu on 14 February, 'two tribes of the Roman Catholic Communion requested that their names might be withdrawn from the treaty'.239 Taylor gave a fuller account of what happened : We had not proceeded much further before we were overtaken by a large canoe which brought a letter signed by 50 individuals stating that if the Governor thought that they The feast held at Thomas McDonnell's establishment at Hōreke the day after the signing of te Tiriti at Mangungu. Hobson estimated that 3,000 people attended. 7.9 Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz The Negotiation and Signing of te Tiriti 385 had received the Queen he was much mistaken and then they threw in the blankets they had received into our boat ; the governor seemed much annoyed.240 Hobson ascribed this protest to 'the same mischievous influence I before complained of ', reassuring Gipps that he 'did not, of course, suffer the alteration'.241 Nicholson thought there were 'strong indications' that Kaitoke was behind the letter and that Maning had helped him write it,242 although it is not clear whether this notion is based on Maning's History of the War or some other information.243 Maning's old chief related that we went ashore at the house of a Pakeha, and got a pen and some paper, and my son, who could write, wrote a letter for us all to the Governor, telling him to take back the blankets, and to cut our names out of the paper ; and then my two brothers and my sons went back and found the Governor in a boat about to go away ; he would not take back the blankets, but he took the letter. I do not know to this day whether he took our names out of the paper.244 We return to this important matter in chapter 10. We note that, just before embarking in his boat, Hobson had also been confronted by another dissatisfied signatory. As Taylor recorded : The Governor was pestered with the chief who made such a favour of giving his name the night before ; he wanted some more blankets . . . and then he asked for money, the Governor gave him 5s which he afterwards refused to take and they were left on the beach.245 7.10 Further Signatures are Gathered; Sovereignty is Asserted After their trip to the Hokianga, Hobson and his party returned to the Bay of Islands, albeit leaving Nias in Waimate to recover from influenza. Hobson had Colenso print 200 copies of te Tiriti at Paihia, and began making his plans for obtaining signatures further south. He explained his intention to Gipps on 17 February : to issue a proclamation announcing that her Majesty's dominion in New Zealand extends from the North Cape to the 36th degree of latitude. As I proceed southward and obtain the consent of the chiefs, I will extend these limits by proclamation ; until I can include the whole of the islands. Hobson drew up the proclamation but then decided not to issue it, in case it 'might operate unfavorably on my negociations'.246 He may well have thought that it would have irritated rangatira who had not signed, such as those of Muriwhenua. In any event, his planned proclamation reflected the reality that, under British law, signatures on the treaty did not transfer sovereignty on their own, but had to be followed up by proclamation (see chapter 6). On 17 February, Pōmare signed te Tiriti. This was an important development because, as Colenso noted, Pōmare was one of the several Bay of Islands chiefs of the highest rank who did not sign on 6 February. However, the visiting American naval commander, Charles Wilkes, thought that Pōmare had little understanding of what he was agreeing to sign and he likely saw his assent as something that would enhance his personal prestige.247 In any event, Pōmare's signature was one of several that were made after the main signing ceremonies. Kawiti, for example, signed at a meeting with Hobson in May, although he was still angry about the botched distribution of tobacco at Waitangi on 5 February and fearful that, in adding his mark, he was signing away his land.248 Wai, by contrast, maintained his steadfast opposition and never signed. Hobson set out in the Herald on 21 February, making first for

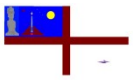




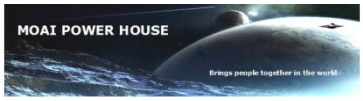








the Waitematā Harbour, where he planned both to gather signatures and assess the prospects of the harbour for a future settlement. On 1 March, however, he was incapacitated by a stroke which paralysed his right side. After some signatures were obtained at Tāmaki-makaurau on 4 March, the Herald returned to the Bay of Islands so that Hobson could recuperate. He thus had to abandon his plans to circumnavigate the entire country, gathering signatures as he went, and instead Shortland arranged for others to organise signings. To this end, additional copies of the treaty were written and either sent out to 7.10 Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz He Whakaputanga me te Tiriti The Declaration and the Treaty 386 missionaries stationed near Māori communities or taken on extended journeys. In all, over a period of some six months, nine copies of the treaty (including one printed copy and one sheet with the treaty text in English) were signed at about 50 meetings around the coast of both islands by more than 500 rangatira. Only 39 rangatira signed the English text (at Waikato Heads and Manukau Harbour), it being the text offered for signature.249 Hobson himself recovered quickly but spent three weeks in convalescence at the Waimate mission station before returning to the Bay of Islands. There, he received further signatures, as we have seen. But in May he learnt that the New Zealand Company settlers at Port Nicholson had in March established their own ‘government’. They had done this without legal authority and knowing full well the Crown’s intentions regarding sovereignty. They had a written constitution, which had been drawn up in England in September 1839 and was ‘ratified’ in March 1840 by the signatures of the ‘Sovereign Chiefs of the district of Wanga nui Atera or Port Nicholson’. It is most unlikely that these rangatira understood its contents any better than they had William Wakefield’s parchment New Zealand Company immigrant ships gather in Port Nicholson, 8 March 1840. The haste with which William Hobson proceeded to New Zealand was prompted by the march stolen on the Colonial Office by the company. 7.10 Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz The Negotiation and Signing of te Tiriti 387 deeds. Hobson was alerted to this ‘government’ by a ship’s captain who had been confined at Port Nicholson in April 1840 for an infringement of its laws and had made straight for the Bay of Islands after escaping custody. Hobson regarded the Port Nicholson settlers’ actions as treasonable.250 On 21 May, immediately upon receiving the news, Hobson responded with proclamations of Her Majesty’s sovereignty over the North Island by cession (in his accompanying dispatch he cited the ‘universal adherence’ of the chiefs) and over the South Island on the basis of Cook’s discovery. He also dispatched Shortland and a body of soldiers and mounted police to Port Nicholson to compel compliance.251 The South Island proclamation took effect from that date – and had to be reissued because Hobson omitted the grounds for the assertion on PROCLAMATION. IN the Name of Her Majesty VICTORIA, Queen of the United Kingdom of Great Britain and Ireland. By Wi l l i am H o b s o n, Esquire, a Captain in the Royal Navy, LieutenantGovernor in N ew-Z e a l a n d. W H E R E A S , by a Treaty bearing Date the Fifth day of February, in the Year of Our Lord, One Thousand Eight Hundred and Forty, made and executed by me W I L L I A M H O B S O N, a Captain in the Royal Navy, Consul, and Lieutenant-Governor in New-Zealand, vested for this purpose with full Powers by Her Britannic Majesty, of the one part, and the Chiefs of the Confederation of the United Tribes of New-Zealand, and the Separate and Independent Chiefs of New-Zealand, not Members of the Confederation, of the other; and further ratified and confirmed by the adherence of the Principal Chiefs of this Island of New-Zealand, commonly called “The Northern Island”; all Rights and Powers of Sovereignty over the said Northern Island were ceded to Her Majesty the Queen of Great Britain and Ireland, absolutely and without reservation. Now, therefore, I, W I L L I A M H O B S O N , Lieutenant-Governor of New-Zealand, in the Name and on the Behalf of Her Majesty, do hereby Proclaim and Declare, to all Men, that from and after the Date of the above-mentioned Treaty, the full Sovereignty of the Northern Island of NewZealand, vests in Her Majesty Queen V I C T O R I A , Her Heirs and Successors for ever. Given under my Hand at Government-House, R U S S E L L , Bay of Islands, this Twenty-first day of May, in

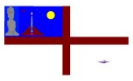












the Year of Our Lord One Thousand Eight Hundred and Forty. (Signed,) WILLIAM HOBSON, LIEUTENANT - G OVERNOR . By His Excellency's Command, (Signed,) WILLOUGHBY S H O R T L A N D , Colonial Secretary. PAIHIA : Printed at the Press of the Church Missionary Society. Facsimiles of Hobson's 21 May 1840 proclamations of sovereignty over New Zealand, which were printed at Paihia by the Church Missionary Society. In the haste to draw these up, the North Island proclamation wrongly referred to the treaty as being dated 5 February, while the proclamation covering the South and Stewart islands omitted any grounds for Hobson's assertion. PROCLAMATION. I N the Name of Her Majesty V I C T O R I A , Queen of the United Kingdom of Great Britain and Ireland. By William Hobson, Esquire, a Captain in the Royal Navy, LieutenantGovernor of New Zealand. W HEREAS I have it in Command from Her Majesty Queen V I C T O R I A , through Her principal Secretary of State for the Colonies, to assert the Sovereign Rights of Her Majesty over the Southern Islands of New-Zealand, commonly called "The Middle Island", and "Stewart's Island"; and, also, the island commonly called "The Northern Island," the same having been ceded in Sovereignty to Her Majesty. Now, therefore, I, W ILLIAM H OBSON, Lieutenant-Governor of New-Zealand, do hereby proclaim and declare to all men, that from and after the Date of these Presents, the full Sovereignty of the Islands of New Zealand, extending from Thirty-four Degrees Thirty Minutes North to Fortyseven Degrees Ten Minutes South Latitude, and between One Hundred and Sixty-six Degrees Five Minutes to One Hundred and Seventy-nine Degrees of East Longitude, vests in Her Majesty Queen V I C T O R I A , Her Heirs and Successors for ever. Given under my Hand at Government House, R U S S E L L , Bay of Islands, this Twenty-first day of May, in the Year of Our Lord One Thousand Eight Hundred and Forty. (Signed,) WILLIAM HOBSON, LIEUTENANT -G OVERNOR . By His Excellency's Command, (Signed,) WILLOUGHBY SHORTLAND, Colonial Secretary. PAIHIA : Printed at the Press of the Church Missionary Society. 7.10 Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz He Whakaputanga me te Tiriti The Declaration and the Treaty 388

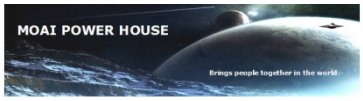
SUMMARY OF OFFENCES OF NZ CROWN GOVT FRAUD TAMPERING BRITISH DOCUMENTS

Queen MAORI at 1837 is not True History of Events according to the British Crown Government Print Office has "ABORIGINE" "NATIVE" "INDIGENOUS" Publications in their LEGAL DOCUMENTS that the New Zealand FAKE "MAORI" Tribe of Waitangi Tribunal and their "PAKEHA" Counterparts are COMPLICIT in this DEFRAUDING the New Zealand Population into believing there was such a thing as "MAORI" TRIBES in 1825 to 1837 when KING WILLIAM IV Died away th new CROWN under QUEEN VICTORIA and her ROTHSCHILD FAMILY of CORRUPTORS of the KINGS ADMIRALTY LAW Of the Sea and Land went with their Churches and Bibles to Screw the "NATIVE" CHIEFS off their"INDIGENOUS Sovereign LANDS with FAKE LAWS and CORRUPTED LANGUAGE we want BANISHED off our "NATIVE" LANDS and put our own LAWS of KING WILLIAM, III KING GEORGE III, KING WILLIAM III back to normal and STOP THE WAR with our CONFEDERATION OF CHIEFS KING WILLIAM IV FLAG CONTRACT LAW JURISDICTION Back to COMMON LAW of these KING

Jacinda Kate Laurell Ardern & Cindy Acylon Kiro NZ People caught you in Fraud

Signing locations of the Treaty of Waitangi 7.10

Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz The Negotiation and Signing of te Tiriti 389 the first copy he sent to London.252 However, the North Island proclamation was made retrospective to 6 February (Hobson wrongly wrote 5 February), with subsequent signings being characterised as ratification and confirmation. As noted, Hobson had

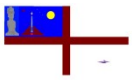






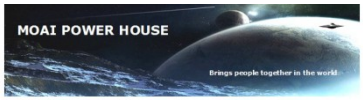






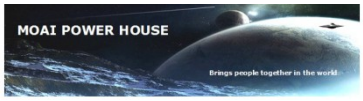
written separately to Bunbury on 25 April that signatures added after 6 February were 'merely testimonials of adherence to the terms of that original document'.253 As **Orange pointed out**, however, Hobson was still awaiting confirmation of many of the treaty signings,254 and his assertion that he himself had confirmed that South Island **Māori** were in an 'uncivilized state' (and thus not capable of making a treaty) was quite groundless. The Colonial Office was not to know any better, and when it received Hobson's proclamations it published them on 2 October in the London Gazette. British sovereignty over New Zealand was thereby asserted, based, at least in respect of the North Island, on the cession of sovereignty in the treaty, notwithstanding the large areas of the country over which **Māori** had yet to cede kāwanatanga. Orange argued that the significant differences in meaning between the Māori and English texts had become quite apparent by this time, and 'Hobson was surely aware of this'. But he made no mention of the matter when forwarding his proclamations.255 Hobson did not know at the time he made the proclamations that Bunbury was shortly to gather the signatures of a number of important southern chiefs, including Tūhawaiki, Karetai, and Te Rauparaha (Henry Williams had also obtained Te Rauparaha's signature a month before). Bunbury himself proclaimed British sovereignty over the South Island on 17 June on the basis of cession (although he failed to gather any signatures at Rakiura (Stewart Island), and had proclaimed sovereignty over it on 5 June by virtue of discovery). Hobson eventually learned of all the treaty signings and, on 15 October, dispatched his final report on the issue to London. He attached 'certified' copies of the English and Māori texts, and a list of 512 signatories. He did not draw attention to the fact that major inland areas of the North Island were not represented among the signatories, or that such important individual leaders as Te Wherowhero and Mananui Te Heuheu had steadfastly refused to sign. Despite the apparent shortcomings in the negotiations, the Colonial Office was not minded to quibble.256 When the two texts were printed in London in **1841**, the **Māori** version was labelled 'Treaty' and the English version '(Translation)'.257 This of course contradicted the reality that the Māori text was a translation of the English. The practice may have stemmed from Henry Williams having certified that an earlier copy of the English text dispatched to the Colonial Office was 'as literal a translation of the Treaty of Waitangi as the idiom of the language will admit of '.258 As we saw in chapter 4, when Busby dispatched the Declaration of Independence to Britain he also described it as a translation of the Māori text. 7.11 Gipps's Sydney treaty Shortly before Hobson had set sail for Tāmaki-makau-rau in February, Gipps was himself attempting to conclude a treaty with Māori some 1,200 nautical miles to the west. Having discussed Hobson's instructions with him during the latter's sojourn at Port Jackson, Gipps drew up a treaty of cession to be signed by the various **Māori chiefs** present in **Sydney** at the time. Despite his 14 January proclamation forbidding private purchases of Māori land, a dozen or so rangatira – mainly from **Ngāi Tahu – were in Sydney to negotiate land deals with wealthy speculators**. Gipps named 10 of them in his treaty as 'John Towack, Towack, John White, Kicora, Ticowa, Tranymoricon, Terour, Shoubeton, Akee, and Adekee'. Edward Sweetman, who in 1939 wrote a book on Gipps's treaty entitled The Unsigned New Zealand Treaty, thought the first five named were South Island chiefs and the other five were from the North Island. If that is so, the first five were presumably the Ngāi Tahu rangatira Tūhawaiki, Tohowaki, Karetai, Kaikoreare, and Tūkawa. It is not known who the North Island chiefs were, although **'Terour' looks rather like Taiaroa**, a senior Ngāi **Tahu rangatira, who was with his kinsmen in Sydney** at the time.259 The matter is of interest to us because Gipps had recently instructed Hobson, and how Gipps phrased his own document may give us an indication of the terms that 7.11 He Whakaputanga me te Tiriti The Declaration and the Treaty 390 he expected Hobson to put to

Māori at Waitangi.



CITE DECREE AFFIDAVIT OF "MAORI" AT WAITANGI TO KORORAREKA "NATIVE" CHIEFS

With the aid of an unnamed interpreter, Gipps met with five of the chiefs, including Tūhawaiki and Karetai, on 31 January. According to a report highly critical of Gipps the following day in the Sydney Colonist, the chiefs wished to know why Gipps would not allow transactions that they themselves approved of to go ahead, and Gipps in turn accused them of being put up to their views by the would-be purchasers of their land.260 Gipps then invited the chiefs to a garden party on 12 February.261 Seven of them attended ; Karetai, Kaikoreare, and Tūkawa did not. There Gipps explained his treaty and gave each chief 10 sovereigns. The chiefs were to come back the following day to sign, but did not reappear.262 The chiefs had clearly been influenced by John Jones, the purchaser who had brought them to Sydney. On 14 February 1840, he wrote to the New South Wales Colonial Secretary, Deas Thomson, to advise that he would not tell the chiefs 'to sign away their rights to the Sovereignty of the Crown, respectively owned by them, until my purchases are confirmed by the Crown'. **The following day, Tūhawaiki, Kaikoreare, Tūkawa, Taiaroa, Te Whaikai Pokene, Tohowaki, and Topi Patuki signed a deed conveying any land not yet sold in the South Island and Stewart Island to Jones, William Charles Wentworth, and three others, for a price of £240** and various annuities to be paid to the chiefs for the rest of their lives. Gipps was outraged by this naked disregard for his proclamation. He told the New South Wales Legislative Council on 9 July 1840 that Wentworth would 'never get one acre, one foot, one shilling for the land which he bought under the proclamation'.263 There remains a possibility that the chiefs rejected Gipps's treaty for an additional and, for our purposes, more relevant reason. Gipps had, as he later told Lord Russell, wished the chiefs to sign 'a declaration of their willingness to receive Her Majesty as their sovereign, similar in effect to the declaration which Captain Hobson was then engaged in obtaining from the chiefs of the Northern Island'. But, as Dr (later Professor Dame) Judith Binney pointed out, Gipps's treaty differed markedly from Hobson's. For a start, of course, it was in English only. It also had the chiefs ceding 'absolute Sovereignty in and over the said Native Chiefs, their Tribes and country' to the Queen, and included an unambiguous statement that the chiefs would not 'sell or otherwise alienate any lands occupied by or belonging to them, to any person whatsoever except to Her said Majesty upon such consideration as may be hereafter fixed'. In exchange, the chiefs secured the Queen's 'Royal Protection', a guarantee that they would keep sufficient land out of the Crown's purchases 'for their comfortable maintenance and residence', and that the proceeds of the lands purchased from them would be spent on 'their future education and instruction in the truths of Christianity'. As Binney argued, these provisions 'would be insufficient exchange for the transfer of real power. Gipps's treaty was unambiguous in that respect'.264 Of course, whether Gipps's treaty was rejected in part because it did not guarantee the full, exclusive, and undisturbed possession of Māori lands (or some more accurate approximation of rangatiratanga) is a matter for conjecture. The chiefs may have been thinking solely of their deal with Jones, Wentworth, et al, and we have no idea how the agreement was explained to them in Māori. **But it is doubtful that such a treaty, lacking the guarantees included in article 2 of te Tiriti, would have been agreed to at Waitangi (or elsewhere).** Sweetman thought Gipps's problem was that, unlike Hobson at Waitangi, he had 'no powerful sympathetic CMS missionaries to smooth the way for him in dealing with the Maori chiefs'.265 That is true, but those missionaries would probably have baulked at promoting Gipps's treaty. We wonder how the treaty negotiations at Waitangi would have proceeded had Gipps accompanied his subordinate Hobson to New Zealand. The full wording of Gipps's treaty was as follows : Memorandum of an agreement entered into between His Excellency Sir George Gipps, Knight, Captain, General, and Governor-in-Chief of New South Wales and its Dependencies, on behalf of Her Majesty, Queen Victoria, and the undermentioned Chiefs of New Zealand. Whereas John Towack, Towack, John White, Kicora, Ticowa, Tranymoricon, Terour, Shoubeton, Akee, and Adekee, Native Chiefs of the several Islands of New

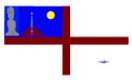








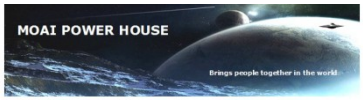




Zealand, 7.11 Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz The Negotiation and Signing of te Tiriti 391 have expressed their willingness and desire that Her Majesty, Queen Victoria, of the United Kingdom of Great Britain and Ireland, should take them, their tribes, and their country under Her Majesty's Royal Protection and Government. And WHEREAS Her said Majesty, viewing the evil consequences which are likely to arise to the welfare of the

Native Chiefs and Tribes from the **settlement among them of Her Majesty's subjects**, unless some settled form of civil government be established to **protect the Native Chiefs and tribes in their just rights**,

and to repress and punish crimes and offences which may be committed by any of Her Majesty's subjects, has been pleased to appoint **William Hobson, Esq, Captain in Her Majesty's Navy**, to be Her Majesty's Lieutenant-governor in and over such parts of New Zealand as have been or may be acquired in sovereignty by Her said Majesty, Her heirs and successors, and has empowered the said William Hobson, Esq, to treat with the **Native Chiefs** accordingly, and it is expedient in compliance with their desire that a preliminary engagement, to be ratified and confirmed by the said Native Chiefs in manner hereinafter mentioned, should be immediately entered into between the said Sir George Gipps, Knight, on behalf of Her said Majesty, Queen Victoria, and the said Native Chiefs and Tribes. It is therefore hereby agreed between the said parties that **Her said Majesty, Queen Victoria, shall exercise absolute Sovereignty in and over the said Native Chiefs, their Tribes and country,** in as full and ample a manner as Her said Majesty may exercise Her Sovereign authority over any of Her Majesty's Dominions and Subjects, with all the rights, powers, and privileges which appertain to the exercise of Sovereign authority. And Her said Majesty does hereby engage to accept the said **Native Chiefs and Tribes and Her Majesty's subjects**, and to grant Her Royal protection to the said Natives Chiefs, their tribes and country, in as full and ample a manner as Her Majesty is bound to afford protection to other of **Her Majesty's subjects and Dominions. And the said Native Chiefs do hereby on behalf of themselves and tribes engage, not to sell or otherwise alienate any lands occupied by or belonging to them, to any person** whatsoever except to Her said Majesty upon such consideration as may hereafter fixed, and upon the express understanding that the said Chiefs and Tribes shall retain for their own exclusive use and benefit such part of their said lands as may be requisite and necessary for their comfortable maintenance and residence. And that out of the proceeds of the land which may be purchased from them adequate provision shall be made for their future education and instruction in the truths of Christianity. And the said Chiefs do hereby engage to ratify and confirm this agreement in the presence of their respective Tribes, and of Her Majesty's said Lieutenant-Governor William Hobson, Esquire, or the Lieutenant-Governor of Her Majesty's possessions in New Zealand for the time being. In testimony whereof the said Sir George Gipps, and the said Native Chiefs, have hereunto affixed their names and seals at Government House, Sydney, New South Wales, this fourteenth day of February, one thousand eight hundred and forty.266 Former New South Wales Governor Sir George Gipps, 1847. Gipps advised Hobson in Sydney before the latter sailed to the Bay of Islands, and drew up his own treaty for Māori then in Sydney to sign, though they declined to do so. 7.11 Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz He Whakaputanga me te Tiriti The Declaration and the Treaty 392 7.12 Back-translations After te Tiriti was signed, a number of translations were made of it back into English. According to Parkinson, the demand for these translations came early on, particularly after Hobson

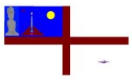












had Colenso print copies of the treaty in Māori but not in English, thus provoking some anxiety on the part of British settlers who were yet to grasp what the treaty would mean.267 One who was particularly eager to gain a ‘true’ translation of te Tiriti was

James Clendon, the United States Consul, who wanted a copy to send to his superiors in the State Department in Washington.

In fact, as Parkinson pointed out,

Clendon initially wanted to get an official copy of the English text,

but was wrongly sent the Māori version by Hobson’s officials.

This was of no use to Clendon, who already had the printed copy in Māori.

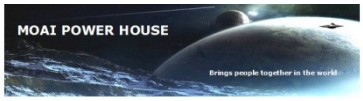
While he did not give up his quest for the official English text,

Clendon turned instead to those proficient in **Māori** to tell him exactly what the **Māori** text said.268 Clendon seems to have acquired three such translations : one by Busby ; one by Gordon Brown, a timber merchant at **Te Hōreke** ; and one by an anonymous translator.

Clendon copied out Busby’s version and sent it off to Washington,

while Busby’s original – which Busby had misdated ‘4 February’ – ended up in the hands of the family of Henry Littlewood, a Bay of Islands solicitor, and was lost until its rediscovery in 1992.269 These backtranslations provide us with a picture of what Pākehā of the time who could write in Māori understood te Tiriti to mean, rather than what the chiefs themselves took it to mean.

Salmond pointed out that a ‘valid back-translation’ actually required an ‘historical-semantic approach’, based on the understandings of both Henry Williams and the rangatira.270 However, as we have noted above, Clendon’s set of back-translations are valuable because they show that differences between the English and Māori texts were brought into sharp relief not long after the treaty’s signing. There were several other notable back-translations of te Tiriti into English during the 1840s. Richard Davis wrote one that was not published until 1865, Dr Samuel Martin – a noted fierce government critic – published another as an appendix to a collection of his letters in 1845,271 and Edward Jerningham Wakefield included another in his book of the same year, Adventure in New Zealand. Then, in response to a request in 1847 from Bishop Selwyn for an explanation of how exactly he had explained the treaty to the chiefs, Henry Williams wrote what amounted to a partial translation of the Māori text (which we have quoted in full above at section 7.6.2). In later years, te Tiriti continued to be translated back into English. When the issue of Māori rights to the foreshore at Thames arose in 1869, Walter Mantell – a member of the Legislative Council – asked for both an accurate translation of te Tiriti into English and a translation of the official English text back into Māori. The task was assigned to Thomas Young of the **Native Department,** whose work **Orange** believed would have been carefully scrutinised by his colleagues.272 In 1875, the Evening Star provided a back-translation of its own, explaining that We have had frequently expressed to us a desire to see the terms of the treaty of Waitangi which is regarded by our Maori fellow countrymen as the ‘Magna Charta’ of their

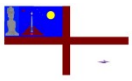












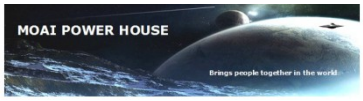
constitutional rights. We publish the text with the original signatures, and, with it, a translation in English, prepared with great accuracy, so as to express as clearly as possible the sense and spirit of the original.273 There have also been occasional back-translations by important figures of specific words and phrases from te Tiriti. For example, in 1947 Professor James Rutherford defined kāwanatanga as 'the sort of power that a British Governor had' and rangatiratanga as implying the retention by the chiefs of 'all their power authority and "mana" as rangatira over their people' (see chapter 8).274 Notable as well is Āpirana Ngata's 1922 translation, for Māori benefit, of the English text of the treaty into Māori. As if in a never-ending loop, Ngata's translation and accompanying explanation were themselves translated into English in 1950 by Michael Rotohiko Jones, and the two texts were reprinted together.275 Rutherford went further in 1949 by providing a full back-translation of the Māori text, in which he translated kāwanatanga as 'Governorship' and tino rangatiratanga as 'full chieftainship'.276 With the advent in recent decades of a greater volume 7.12 Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz The Negotiation and Signing of te Tiriti 393 of serious treaty scholarship, and especially after Ruth Ross's article in 1972 drew historians' attention to the importance of the Māori text, further back-translations have been made. We have already referred extensively to six of these at section 7.5. One of the best known is **Kawharu's of 1989.**277 Others made prior to the commencement of our inquiry include the Salmond–Penfold translation produced for the Muriwhenua Land Tribunal in 1992 ; the translation produced by Matiu and Mutu in Mutu's 2003 book Te Whānau Moana ; an historicalsemantic translation by **Manuka Henare in his 2003** doctoral thesis ; a 'new synthesis' by Parkinson of the

various back-translations by Pākehā in the 1840s and 1860s

; and a more literal translation again by Mutu in 2010.278 Our own inquiry of course spawned back-translations by Hohepa and Edwards. It seems that a back-translation was not prepared by Biggs, even though he engaged thoroughly with te Tiriti's 'controversial words' in his 1989 essay 'HumptyDumpty and the Treaty of Waitangi' (see section 7.5). Dr (later Professor) James Belich for one regretted this, noting in 1990 that 'Perhaps Biggs should translate the Treaty . . ., a task for which this tantalizingly brief essay suggests he is supremely well qualified'.279 The existence of so many back-translations of te Tiriti into English, particularly in the period from the 1840s to the 1870s, is telling in and of itself. As Salmond argued, The fact that these 'back-translations' were requested by various authorities suggests a clear recognition by various European authorities that Te Tiriti and the Treaty in English were significantly different ; and that they needed an accurate translation of the text in Māori that was read out, debated and actually signed, since this was the 'real' agreement with the rangatira. 280 Phillipson, too, concluded that Williams's very problems in translating Hobson's text were the reason that 'later commentators found the need to retranslate the Maori version of the Treaty, to convey in English what the Maori document had actually appeared to say in 1840'.281 What, then, did the nineteenth-century back-translations say on what are arguably the matters of the most fundamental importance in the treaty : sovereignty and rangatiratanga ? 'Te Kawanatanga o te Kuini' in the preamble, which was of course rendered as 'Her Majesty's Sovereign authority' in the English text, was translated generally as

'the Queen's government' or 'the government of the Queen'.

An exception to this rule was Busby, who translated 'Kāwanatanga' as 'sovereignty'. He presumably did so because of his familiarity with the treaty's English text, although Williams – who was equally

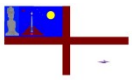












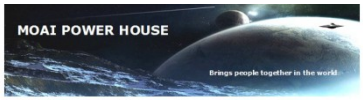
familiar with the English text – himself wrote 'government of the Queen'. Unsurprisingly, therefore, Busby rendered the chiefs' cession in article 1 of 'te Kawanatanga katoa o o ratou wenua' ('all the rights and powers of Sovereignty . . . over their respective Territories' in the English text) as 'the entire sovereignty of their country'. All but one of the other back-translations of the 1840s to 1870s instead had some equivalent of

'all the government of their lands'.

The Evening Star's was the other exception, translating kāwanatanga as 'Chief-rulership'. In article 2, in which the chiefs were promised 'te tino rangatiratanga o o ratou wenua o ratou kainga me o ratou taonga katoa'

('the full exclusive and undisturbed possession of their Lands and Estates Forests Fisheries and other properties' in the English text),

Busby's translation is again the exception. Where he had the chiefs being guaranteed merely 'the possession of their lands, dwellings, and all their property', other translators stressed the retention of chiefly authority : ы Anonymous : 'the full chieftainship (or exercise of the power of chiefs282) over their Lands, Villages and all their property'. ы Brown : 'all their rights in their lands villages and other property'. ы Davis : 'the entire supremacy of their lands, of their settlement, and of all their personal property'. ы Evening Star : 'the full chieftainships of their respective territories, the full dominion of their lands, and all their property'. ы Martin : 'the entire chieftainship of their land, of their settlements and all their property'. ы Wakefield : 'the entire chieftainship of their lands, their villages and all their property'. 7.12 Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz He Whakaputanga me te Tiriti The Declaration and the Treaty 394 ы Williams : 'their full rights as chiefs, their rights of possession of their lands, and all their other property of every kind and degree'. ы Young : 'the full chieftainship of their land, their settlements and all their property'. In 1860, too, Sir William Martin, the former chief justice (and no relation of Samuel Martin), stressed to the Government that 'chiefship' had been guaranteed in te Tiriti. By contrast, he translated 'kawanatanga' as 'governorship'.283 As Parkinson concluded, Busby's favour to his friend Clendon was 'not a very good translation'. In at least one instance, Parkinson detected Busby not so much translating the Māori text as supplying 'what he thought it should say'.284 It seems to us that Busby was either consciously or subconsciously bridging the gulf between Williams's Māori text and the pre-existing English text, to which he (Busby) had contributed. According to Orange, Young's 1869 translations reflected **government policy, which was to impose its supremacy on Māori.** The idea was that Māori would understand what they had ceded if they had a better translation of the original text than Williams's 'execrable' effort (as Mantell described it), and the new Māori text was printed for this purpose. Young's translation work is itself difficult to fault. He translated 'all the rights and powers of Sovereignty' as 'nga tikanga me nga mana katoa o te Rangatiratanga', thus suggesting to Māori that they had in fact relinquished their rangatiratanga, not retained it. The 'possession' of article 2 was rendered not as 'rangatiratanga' but as 'tuturutanga', which meant '**absolute guarantee**'.285 Into the twentieth century, Ngata's object was similar : in his view, Māori clung in protest to the Māori terms of the treaty, and he wanted to steer them 'towards **accepting the English treaty text**', as Orange put it. He thus wrote a 'whakamarama' for a Māori readership, but as Biggs observed it was 'an apologia as much as an explanation'. Ngata set out (in Jones's translation) that Māori 'chieftainship' ('te mana rangatira') was 'limited in its scope to its sub-tribe, and even to only a family group', while 'government' (or 'kawanatanga') meant 'sovereignty' or the 'absolute authority' of the sovereign and his or her

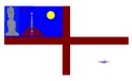




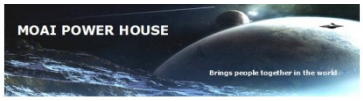








parliament. Ngata called this authority in Māori ‘te tino mana’. Thus, with their agreement to article 1, wrote Ngata, the chiefs each ceded their ‘mana rangatira’ to the **Queen, who thereby acquired the government of the Māori people.** He finished his account with a **word of advice to Māori** who objected to the **imposition of Pākehā laws :** ‘Mehemea kei te he, kei te kino, me whakawa atu ki o tatau tipuna nana nei i poroporoaki o ratau mana i o ratau ra e nui ana ano.’ (‘If you think these things are wrong and bad then blame our ancestors who gave away their rights in the days when they were powerful.’ 286) The messages of the Young and Ngata back-translations into **Māori,** therefore, were that Māori had essentially **ceded what they thought they had retained.** Even though Ngata was at the time an Opposition member, this fitted the pattern of Crown appropriation to itself of the expressions used to define what Māori were guaranteed in Williams’s text of te Tiriti. As early as April 1840, for example, **Hobson issued a proclamation warning the chiefs that evil Pākehā were stirring up trouble against ‘te rangatiratanga o te Kuini’**. In a similar vein, Governors Hobson, FitzRoy, Grey, and Gore Browne were all styled (or styled themselves) ‘tino rangatira’ in government publications. And, at the Kohimārama conference in 1860, when translating Gore Browne’s speech into Māori, Donald McLean put ‘all the rights and powers of Sovereignty’ as ‘nga tikanga me nga mana Kawanatanga katoa’ and ‘sovereignty of the Queen’ as ‘te mana o te Kuini’.287 7.13 Conclusion Within a few days of arriving in the Bay of Islands in late January 1840, therefore, William Hobson had settled on a treaty text that had Māori ceding their ‘rights and powers of Sovereignty’ to the Queen. He had also had Henry Williams translate his text into Māori, and it was this translation that was put to the northern rangatira at Waitangi on 5 February. The drafting process had been conducted without delay, and the hui called before 7.13 Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz The Negotiation and Signing of te Tiriti 395 even a draft text was in train. The debate at Waitangi on 5 February, however, was not short, although our record of it is only partial. As a result of it, more than 40 rangatira signed te Tiriti the following day**.** Hobson claimed that these signatures were a ‘full and clear recognition’ of ‘the sovereign rights of Her Majesty over the northern parts’ of the North Island. The Māori participants at the Waitangi hui, however, had been hardly emphatic in their embrace of Hobson, and not all had signed te Tiriti. But, through a process of debate, assurances, and discussions into the night on 5 February – all conducted in te reo Māori, in which the speakers focused on whether they should have a governor or not, and what standing he should have – the majority resolved to sign. They affixed their signatures or marks to a document that reserved to them their ‘tino rangatiratanga o o ratou whenua o ratou kainga me o ratou taonga katoa’, and under which they gave the Queen ‘te Kawanatanga katoa o o ratou whenua’. Within only a few more days, Hobson had acquired another 70 or so signatures at further hui at Waimate and Mangungu. The hui at Mangungu proceeded similarly to that at Waitangi – suspicion and questioning from the rangatira were met by assurances and followed eventually by a decision to sign. But nor was there unanimity here, as a body of local people tried the next day to make it clear to Hobson that they had not ‘received the Queen’. Hobson dismissed this attempt, much as he had swept aside William Colenso’s concern at Waitangi that the rangatira there did not properly comprehend the treaty. Rather, he felt that ‘the sovereignty of Her Majesty over the northern districts’ was now ‘beyond dispute’. Hobson intended to obtain further signatures throughout the country and make proclamations of sovereignty as he went, but his illness necessitated the delegation of the task of obtaining consent to a group of officials, military officers, missionaries, and traders. Their individual explanations of the treaty will have varied greatly, and these meetings are beyond the scope of our inquiry. But at a time when Hobson was yet to receive word of the treaty’s acceptance from most parts of the country, he did receive news that the New Zealand Company settlers had established their own governing body at Port Nicholson. He promptly proclaimed the Queen’s sovereignty over the North Island on the basis of the ‘cession’ at Waitangi on 6 February, backdating the proclamation to take

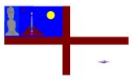




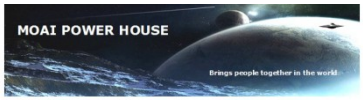








effect from that date. He proclaimed the Queen's sovereignty over the South Island on the basis of British 'discovery'. Soon enough, interested settlers – including James Clendon – wanted to know exactly what te Tiriti had said. This spawned a series of back-translations into English that at once revealed that Hobson's text and Williams's translation contained some significant differences. The process of translating te Tiriti back into English – and also of translating the Treaty in alternative ways into Māori – is one that has never stopped. Nor has the debate about the treaty's meaning and effect both at the time it was signed and beyond. It is these diverse perspectives about the treaty that we turn to in the next two chapters. Notes 1. As well as some later translations of the English text into Māori. 2. The Tory reached Ship Cove on 17 August 1839 : Alexander Hare McLintock, Crown Colony Government in New Zealand (Wellington : Government Printer, 1958), p54 n1. 3. Edward Sweetman, The Unsigned New Zealand Treaty : A Publication for the New Zealand Centenary, 1840–1940 (Melbourne : The Arrow Printery Ltd, 1939), pp55–57 ; doc A18, pp185–186 4. Normanby had provided a draft of the proclamation that Hobson was to issue upon landing in New Zealand, as Hobson had requested (see chapter 6), but left it up to Hobson and Gipps to 'introduce any alterations which the facts of the case, when more clearly ascertained, may appear to you and him to prescribe' : The Marquis of Normanby to Captain Hobson, 15 August 1839, BPP, 1840, vol 33 [560], p44 (IUP, vol 3, p92). 5. The proclamations were printed in a supplement to the New South Wales Government Gazette and were repeated in the next issue of the Gazette : Supplement to the New South Wales Government Gazette of Wednesday, January 15, 1840, 18 January 1840, pp65–66 ; New South Wales Government Gazette, 22 January 1840, pp67–68. While Hobson may not have left until late on 18 January or even in the early hours of the next day (see below note 9), it seems that the supplement was not distributed until he was on his way. 6. Document A18, p188 7. Sweetman, The Unsigned New Zealand Treaty, pp58, 60 7-Notes Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz He Whakaputanga me te Tiriti The Declaration and the Treaty 396 8. Peter Adams, Fatal Necessity. British Intervention in New Zealand, 1830–1847 (Auckland : Auckland University Press, 1977), p158 ; see also Richard Hill, Policing the Colonial Frontier : The Theory and Practice of Coercive Social and Racial Control in New Zealand, 1767–1867, Part One, 2 vols (Wellington : Government Printer, 1986), vol 1, p123 ; Phil G Parkinson, 'Preserved in the Archives of the Colony' : The English Drafts of the Treaty of Waitangi (Wellington : New Zealand Association of Comparative Law, 2005), p11 9. Parkinson, 'Preserved in the Archives of the Colony', p12 ; Hill, Policing the Colonial Frontier, vol 1, pp126–127. There is an element of confusion amongst both primary and secondary sources as to whether the Herald sailed on 18 or 19 January. On balance, we think it most likely the ship made a rather delayed departure late in the evening of the 18th. 10. Felton Mathew, The Founding of New Zealand : The Journals of Felton Mathew, First Surveyor-General of New Zealand, and his Wife, 1840–1847, ed James Rutherford (Dunedin : AH and AW Reed, 1940), p24 11. T Lindsay Buick, The Treaty of Waitangi : How New Zealand Became a British Colony, 3rd ed (New Plymouth : Thomas Avery and Sons Ltd, 1936), pp98–101. Hohepa described Busby's invitation to the chiefs as being written in 'good idiomatic Māori' : doc D4, p43. 12. According to Busby, Hobson's initial plan was to read the proclamations at this location : doc A18, p190. Loveridge suspected that the words 'is or may be acquired in sovereignty' in the Letters Patent and subsequent proclamations may indicate that the Colonial Office thought that sovereignty over this land had already been acquired. In fact, both Hobson, in his second proclamation of 30 January 1840, and Gipps, in his February 1840 'Unsigned Treaty' (see section 7.11), wrote 'as have been or may be acquired in Sovereignty' : doc A18, pp189–191. 13. Buick, The Treaty of Waitangi, p105 14. There is disagreement amongst the secondary sources about these numbers. Wards, for example, said that Hobson desired the 13 guns befitting a lieutenant-governor but Nias fired only the 11 due a diplomatic chargé d'affaires, a compromise from the mere seven usually accorded a consul. **Orange, McLintock, and Moon**, by contrast, wrote that Hobson had requested 15 and received only 11, as per his rank of

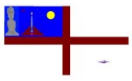




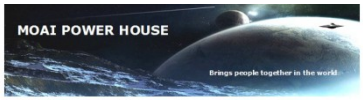








consul. Either way, it seems that the number fired was 11, and it was fewer than Hobson desired, although confusingly we note that Nias himself claimed to have fired 13 : Ian Wards, The Shadow of the Land : A Study of British Policy and Racial Conflict in New Zealand, 1832–1852 (Wellington : Government Printer, 1968), p41 ; Claudia Orange, The Treaty of Waitangi (Wellington : Bridget Williams Books, 1987), p34 ; McLintock, Crown Colony Government in New Zealand, p57 ; Paul Moon, Hobson, Governor of New Zealand, 1840–1842 (Auckland : David Ling Publishing Ltd, 1998), pp60–61 ; Captain Joseph Nias, letter, 31 January 1840, New Zealand Journal, 18 July 1840, p170. 15. There is no suggestion that any translation was attempted for this sizeable gathering of Māori. 16. Buick, The Treaty of Waitangi, pp105–107 ; Adams, Fatal Necessity (for the number of settlers and Māori in attendance), p158. McHugh felt that Hobson's declaration, 'if not ineffectual', was 'no more than a declaration of office which came into effect as and when the condition precedent to its effect was met' : doc A21, pp62–63. 17. SMD Martin, New Zealand : In a Series of Letters : Containing an Account of the Country both before and since its Occupation by the British Government : With Historical Remarks on the Conduct of the Government, the New Zealand and Manukau Companies : Also a Description of the Various Settlements, the Character of the Aborigines, and the Natural Products of the Country (London : Simmonds and Ward, 1845), pp78–79 18. Buick, The Treaty of Waitangi, pp108–111. Despite this, Hobson received a generous address of welcome from 45 Pākehā settlers of Kororāreka on 3 February : Moon, Hobson, p68. 19. Document A18, p186 20. Buick, The Treaty of Waitangi, p101 21. **Dr Donald Loveridge, 'The "Littlewood Treaty"** : An Appraisal of Texts and Interpretations' (commissioned research report, Wellington : Treaty of Waitangi Research Unit, 2006), p18 22. The Clapham Sect was a group of evangelical Christians based around a church in Clapham, London. The sect campaigned for the abolition of slavery between about 1790 and 1830, and its members included prominent individuals such as James Stephen and William Wilberforce : see Stephen Tomkins, The Clapham Sect : How Wilberforce's Circle Transformed Britain (Oxford : Lion Hudson, 2010). 23. MPK Sorrenson, 'Treaties in British Colonial Policy : Precedents for Waitangi', in Sovereignty and Indigenous Rights : The Treaty of Waitangi in International Contexts, ed William Renwick (Wellington : Victoria University Press, 1991), pp16–17 24. Document A18, p195 25. Moon, Hobson, p80 26. Matthew Palmer, The Treaty of Waitangi in New Zealand's Law and Constitution (Wellington : Victoria University Press, 2008), p397 n174 27. Sorrenson, 'Treaties in British Colonial Policy', p17 28. RM Ross, 'Te Tiriti o Waitangi : Texts and Translations', NZJH, vol 6, no2 (1972), pp129–157 ; Parkinson, 'Preserved in the Archives of the Colony', editorial note, p7. Aside from key accounts of the general treaty-making process such as that by Orange, another specific piece of work on the texts themselves is Brian Easton, 'Was there a Treaty of Waitangi, and was it a social contract ?', Archifacts (April 1997), pp21–49. 29. Ross, 'Te Tiriti o Waitangi', pp132–133 ; Orange, The Treaty of Waitangi, pp36–37 ; Parkinson, 'Preserved in the Archives of the Colony', p30 ; doc A22, pp5–6 30. Salmond said that this occurred on either 2 or 3 February, but Orange simply said 3 February. There is a manuscript in Busby's papers entitled 'Draft of the Articles of a Treaty with the Native Chiefs Submitted to Capt Hobson 3rd Feby, 1840' – see Parkinson, 'Preserved in the Archives of the Colony', p22, and Ross, 'Te Tiriti o Waitangi', p133. Parkinson thought this was the draft that Busby retained and that he then did a second draft that he gave to Hobson, and this was 'presumably on 4 February' (p24). 7-Notes Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz The Negotiation and Signing of te Tiriti 397 31. Document A22, pp5–6 ; Parkinson, 'Preserved in the Archives of the Colony', p30. Parkinson believed that Hobson did not do this until he was in the company of Henry Williams on 4 February. 32. James Busby, Remarks upon a Pamphlet Entitled 'The Taranaki Question, by Sir William Martin, DCL, Late Chief Justice of New Zealand' (Auckland : Southern Cross, 1860), pp3–4 ; AJHR, 1861, E-2, p67 ; Ross, 'Te Tiriti o Waitangi', p132 ; Orange, The Treaty of Waitangi, p37 ; Parkinson, 'Preserved in the Archives of the Colony', pp14, 25 ; Loveridge, The Littlewood Treaty, p14 n58 33. Sorrenson, 'Treaties in British

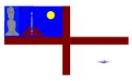




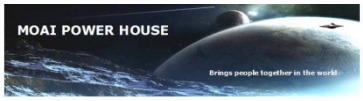








Colonial Policy : Precedents for Waitangi', p29 34. Parkinson, 'Preserved in the Archives of the Colony', p30 35. Ross, 'Te Tiriti o Waitangi', p139. This well-known statement by Williams has been interpreted in different ways. Orange, for example, thought it just a reference to Williams having 'recast the English draft, as translators often do'. As we note below, however, Moon and Fenton argued that it 'cast doubt on Williams's sincerity and intention to translate the English text of the Treaty into a Maori text equivalent in meaning and function'. Whatever Williams's motivation, though, his statement does not actually make sense : see Orange, The Treaty of Waitangi, p40 ; **Paul Moon and Sabine Fenton,** 'Bound to a Fateful Union : Henry Williams's translation of the Treaty of Waitangi into Māori in February 1840', Journal of the Polynesian Society, vol 111, no1 (2002), p55. 36. Hugh Carleton, The Life of Henry Williams : Archdeacon of Waimate, 2 vols (Auckland : Upton and Wilsons and Horton, 1874–77), vol 2, p7 37. Ibid, p12. Note that, in contrast to Williams's recollection published in Carleton, 'whakaminenga' was rendered as **'wakaminenga'** in te Tiriti. 38. Ross did not seem to consider that Busby's alteration was the change in question. In fact, she remarked that not only was the nature of the change unknown, but that we do not know whether the chiefs were even informed about it. Orange, though, felt it likely that the change was indeed the one suggested by Busby, and that there was 'no evidence to support Ross's line of argument that there may have been another alteration'. See Orange, The Treaty of Waitangi, p274 n67, and Ross, 'Te Tiriti o Waitangi', p133. 39. Ross, 'Te Tiriti o Waitangi', p135. Ross actually counted five versions, but in her list of these one was described as a duplicate of the 16 February 1840 dispatch that is retained in the Archives in Wellington. Indeed, Orange (p260) listed four copies sent by Hobson to his superiors and Ross, in her 1972 Victoria University paper 'The Treaty on the Ground' – the basis of her New Zealand Journal of History article of later the same year – wrote that she had identified four 'official' versions of the English text : Ruth Ross, 'The Treaty of the Ground' in The Treaty of Waitangi : Its Origins and Significance : A Series of Papers Presented at a Seminar Held at Victoria University of Wellington, 19–20 February, 1972 under the Auspices of the Department of University Extension of the University, University Extension Publication 7, 1972, p16. 40. Parkinson, 'Preserved in the Archives of the Colony', pp9–10, 28. We note that a shortage of paper and parchment, as well as available copyists, partly explains the variation Parkinson refers to. 41. These are as follows : 'Ko te Tuatahi' and 'Article the First' in the Act but 'Ko te tuatahi' and 'Article the first' in the originals ; 'her Majesty' in the Act but 'Her Majesty' in the original ; and 'HER MAJESTY VICTORIA' in the Act but 'Her Majesty Victoria' in the original ; 'William Hobson' in the Māori text and 'W. HOBSON' in the English text in the Act but 'W. Hobson' in the Māori text and 'W Hobson' in the English text in the originals ; 'Consul and LieutenantGovernor' in the Māori text and 'Lieutenant Governor' in the English text in the Act but 'Consul & Lieutenant Governor' in the Māori text and 'lieutenant Governor' in the English text in the originals ; 'Favour' in the Act but 'Favor' in the original ; commas after 'Ingarani' and 'rangatiratanga' in the preamble in the Act but not in the original. In a couple of cases, the Māori text in schedule 1 aligns with the copy printed by Colenso at Paihia on 17 February. For example, the latter also has commas after 'Ingarani' and 'rangatiratanga' in the preamble and records Hobson's full first name. But in other respects its presentation differs. 42. See Bruce Biggs, 'Humpty-Dumpty and the Treaty of Waitangi', in Waitangi : Māori and Pākeha Perspectives of the Treaty of Waitangi, **ed IH Kawharu** (Auckland : Oxford University Press, 1989), p300 ; Parkinson, 'Preserved in the Archives of the Colony', p67 43. The differences are that, in the 1960 Act, the article headings are capitalised and the first initial of Hobson's name is followed by a full stop ('W. HOBSON'). 44. For example, 'wakarita' instead of 'wakarite', 'kopu' instead of 'kupu', 'Ki' instead of 'Ka', and 'mona' instead of 'nona'. 45. The 1975 Act rendered Hobson's name and title accurately in the Māori text ; ironically, the 1985 amendment – while fixing mistakes – introduced those particular new ones. 46. We refer here not to **Kawharu's** literal translation but his 'reconstruction of the literal translation', which is very similar but rendered more readable. His two

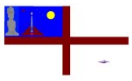




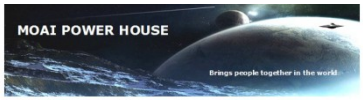








translations are appended to Kawharu, Waitangi, pp319–321. As noted by Matthew Palmer, Kawharu's reconstruction has been praised both by the courts and by the Tribunal : Palmer, The Treaty of Waitangi, p395 n158. 47. McCully Matiu and Margaret Mutu, Te Whānau Moana : Ngā Kaupapa me ngā Tikanga – Customs and Protocols (Auckland : Reed, 2003), pp221–224. This book is further subtitled 'The teachings of McCully Matiu kaumātua rangatira of Te Whānau Moana and Ngāti Kahu as told to **Margaret Mutu'.** The translation on pages 221 to 224 is clearly headed 'Translation by Margaret Mutu', but in a later publication Mutu referred to it as a translation of 'Matiu and Mutu' : doc A24, p29. 48. Hohepa noted, with respect to **Kawharu, Salmond, Henare**, and himself, that the fact that 'we are all from the University of Auckland at some time would suggest some kind of collusion which would not be true' : doc D4, p55. 49. Document D4, p56 7-Notes Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz He Whakaputanga me te Tiriti The Declaration and the Treaty 398 50. Biggs, 'Humpty-Dumpty and the Treaty of Waitangi', p303 51. Ibid, pp304–305 52. Document D4, pp11, 14–16 53. Orange, The Treaty of Waitangi, p40 ; doc A1, p274 54. Kawharu, Waitangi, p321 ; doc A22, p11 (citing her and Penfold's translation contained in Wai 45, doc F19) ; doc D4, p48. Kawharu in fact used 'lands', not 'land'. 55. Document A16, p229 ; Matiu and Mutu, Te Whānau Moana, p221 56. Document A25, p65 57. Kawharu, Waitangi, p321 ; doc D4, p49 ; doc A22, p11 ; doc A22, p230 ; doc A25, p66 58. Kawharu, Waitangi, p321 ; doc D4, p49 ; doc A22, pp11–12 ; doc A16, p230 ; Matiu and Mutu, Te Whānau Moana, pp221–222. Kawharu used upper case for 'the Queen's Government' and lower case for 'a government' while Hohepa used upper case in both instances, preferring the definite article before the latter. Henare, by contrast, used lower case for 'governorship of the Queen' but upper case for 'Governorship' (without an article) in the second instance. Salmond and Penfold used upper case in both instances (and the definite article before the second occurrence). Matiu and Mutu used lower case in both instances (and also used the definite article before the second occurrence). 59. Document A25, p66. In the first instance, Edwards used lower case (ie, 'parent governor'), but in the second used upper case. 60. Ross, 'Te Tiriti o Waitangi', p139 ; Orange, The Treaty of Waitangi, p40 61. Kawharu, Waitangi, p321 ; doc D4, p49 ; doc A22, p12 ; doc A16, p231 ; Matiu and Mutu, Te Whānau Moana, p222 ; doc A25, p67 62. See an explanation of this method of word construction in te reo Māori in doc A22, p23, and Biggs, 'Humpty-Dumpty and the Treaty of Waitangi', p310. 63. Document A1, p273 64. Ibid, p275 ; doc D1, pp10, 71 ; doc B21, pp8, 10–12 65. Ross, 'Te Tiriti o Waitangi', pp140–141 66. Document A1, p275 67. Document B21, pp5, 8 68. Document A1, p277 69. Kawharu, Waitangi, p321 ; doc A22, p12 ; doc A16, p231 ; doc D4, p49 ; doc A25, p67 ; Matiu and Mutu, Te Whānau Moana, p223. Ross's supposition was that there was no mention of ngahere or tauranga ika in the Māori text because forests and fisheries were not in the English draft given to Williams to translate : Ross, 'Te Tiriti o Waitangi', pp141–142. 70. Document A24, p29 71. Document A1, p278 ; Kawharu, Waitangi, p321 ; doc A22, p12 ; doc A16, p231 ; doc D4, p49 ; doc A25, p67 ; Matiu and Mutu, Te Whānau Moana, p223 72. Ross, 'Te Tiriti o Waitangi', pp144–145 73. Kawharu, Waitangi, p321 ; doc D4, p50 74. Document A22, p12 ; doc A16, p231 75. Matiu and Mutu, Te Whāna Moana, p223 ; doc A25, p68 76. Orange, The Treaty of Waitangi, pp42–43 77. Kawharu, Waitangi, p321 ; doc A22, pp12, 21 ; doc A16, p231 ; doc D4, p50 ; doc A25, p68 ; Matiu and Mutu, Te Whānau Moana, p223 78. Document A22, p23 79. William Colenso, The Authentic and Genuine History, New Zealand, February 5 and 6, 1840 (Wellington : Government Printer, 1890), pp12–13 ; see also Buick, The Treaty of Waitangi, pp115–116 ; Orange, The Treaty of Waitangi, p43 80. Document A1, p280 81. Colenso, The Authentic and Genuine History, p13 ; Orange, The Treaty of Waitangi, pp43–44 ; Buick, The Treaty of Waitangi, pp117– 118 ; Lawrence M. Rogers, Te Wiremu. A Biography of Henry Williams (Christchurch, Pegasus Press, 1973), pp164–165. 'Pikopo' derives from 'Episcopus'. 82. Taylor, it seems, was inside the house during the levee, standing to Hobson's left between Williams and Pompallier : see Richard Taylor, 'Journal', 5 February 1840, qMS 1985, ATL, Wellington 83.

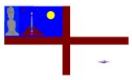




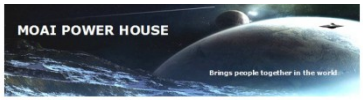








Colenso, The Authentic and Genuine History, p14 ; Buick, The Treaty of Waitangi, pp118–120 ; JMR Owens, The Mediator : A Life of Richard Taylor, 1805–1873 (Wellington : Victoria University Press, 2004), pp45–46 ; doc A22, p36 84. Colenso, The Authentic and Genuine History, pp12, 14–16 ; Felton Mathew, The Founding of New Zealand : the Journals of Felton Mathew, first Surveyor-General of New Zealand, and his wife, 1840–1847, ed James Rutherford (Dunedin : AHand AW Reed, 1940), pp33, 34, 38 ; Buick, The Treaty of Waitangi, pp120–121 ; Orange, The Treaty of Waitangi, pp44–45 ; doc A1, p280 85. John Bright, Hand-Book for Emigrants, and others, Being a History of New Zealand, Its State and Prospects, Previous and Subsequent to the Proclamation of her majesty's Authority ; Also, Remarks on the Climate and Colonies of the Australian Continent (London : Henry Hooper, 1841), p139 86. Colenso, The Authentic and Genuine History, p15 87. Mathew, The Founding of New Zealand, p33. Captain Nias thought the size of the crowd inside the marquee to be 600, with a total of 1500 people attending the occasion altogether. See 'Extract of a letter from an officer on board her Majesty's ship Herald, Captain Joseph Nias, 31 January 1840', reproduced in New Zealand Journal, 18 July 1840, p170 and Buick, The Treaty of Waitangi, p116. Captain Robertson of the Samuel Winter, reporting in the Sydney Herald of 21 February 1840, estimated that there had been 200 Māori and 100 Europeans in the tent ('Proclamation', Sydney Herald, 21 February 1840, p2). Loveridge noted that one settler counted 'nearly a thousand natives, amongst them several of the Chiefs from this neighbourhood' at the meeting ('New Zealand', Sydney Herald, 24 February 1840), while another reported that 'about 1,000 natives – men, women, and children – were present . . . There were also about 300 or 400 Europeans' ('Correspondence' (letter dated 12 October 1840), New Zealand Journal, 13 March 1841 pp68–69) : see doc A18, p191 n540. 88. See Colenso, The Authentic and Genuine History, p8, where he refers to Busby taking the notes with him on board the Eleanor bound for Sydney on 25 March 1840 and adding his own comments en route. 7-Notes Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz The Negotiation and Signing of te Tiriti 399 89. There is a slight doubt whether Colenso's notes were made from Williams's translation of the speeches or from a mental translation of the speeches in Māori by Colenso himself. Colenso wrote (in an observation added by him in 1890) that Williams had 'translated fairly', and there seems little doubt that Colenso could understand Māori, even if he was not, as Salmond put it, 'among the recognised CMS "experts"' in the language : doc A22, p30. But following the English would presumably still have been simpler for him, and he made relatively extensive notes about Hobson's opening explanations but said nothing of Williams's own 'clause by clause' explanation of te Tiriti in Māori. That said, both Taylor and Captain Robertson referred to Williams speaking inaudibly, and with respect to Colenso, therefore, Owens speculated that 'Perhaps he sat on the floor and avoided Williams' mumbling by making his own translations of Maori speeches' : Owens, The Mediator, p45. Salmond also believed that Colenso's notes were 'almost certainly his own running translations of what was said by the speakers' : doc A22, p30. Peter Wells, in his recent biography of Colenso, had little doubt about whom Colenso was listening to. He wrote that Colenso had become fluent in te reo within 15 months of arriving in New Zealand and that he 'translate[d] the words of the Maori orators' : Peter Wells, The Hungry Heart : Journeys with **William Colenso** (Auckland : Random House, 2011), pp67–68. 90. Document A18, p238 91. Document A22, p31 92. Ibid, p33 93. Ibid 94. Document A18(i) 95. Document A18, p191 n541 96. Ibid 97. Ibid, p198 98. Document A22, p51. As it happens, a 2011 masters thesis by Judith Ward took the interrogation of Colenso's account a stage further. She noted that the contents of Colenso's notes and published history were largely corroborated by others' accounts. However, she argued that in 1840 Colenso had wished to pre-empt any criticism from Henry Williams of his speaking up before te Tiriti was signed on 6 February (see below) by sending the CMS an account of the hui that painted Williams in a bad light, particularly over Williams's ability as a translator and the chiefs' criticism of his acquisition of land. In 1890, by contrast, Colenso hoped to be reinstated as a practising minister and gain appointment to the Synod, and so he emended his

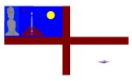




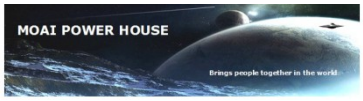








account in order to win favour with the Anglican establishment (which included two of Henry Williams's sons) : Judith Ward, 'Fact or Fiction ? William Colenso's Authentic and Genuine History of the Signing of the Treaty of Waitangi' (MA thesis, Massey University, 2011). 99. Colenso, The Authentic and Genuine History, pp16–17. The whaler Captain Robertson's account of Hobson's speech in the Sydney Herald of 21 February 1840 is very similar. 100. Document A22, pp7–8 101. Document A18, p193 102. Document A1, p263 103. Ibid, pp282–283 104. Carleton, The Life of Henry Williams, vol 2, p12. Salmond noted that the French did not in fact assert possession of Tahiti for a further two years, although they had sent a frigate to force acceptance of **Catholic missionaries in 1839** : doc A22, p8. 105. Ross, 'Te Tiriti o Waitangi', p149 106. Document A1, pp281–282 107. Ibid, p282 108. Document A18, pp193–194 109. Colenso, The Authentic and Genuine History, p17 ; doc A1, p285 ; Orange, The Treaty of Waitangi, p46. Judith Ward observed here that Busby's interjection was not mentioned in Colenso's 1840 manuscript, and was also absent from Captain Robertson's account. We observe that it was also absent from Mathew's diary. Mathew wrote that, after Williams finished, the first rangatira spoke '[a]fter a while'. Likewise, Lavaud, relaying the verbal account given him by Pompallier, wrote that Williams's translation was followed by 'a great silence' and it was a 'few minutes' before Te Kēmara rose to speak. While it would not be surprising for Robertson and Mathew to omit mention of this if Busby spoke only in Māori, it is more significant that Pompallier and Colenso also failed to note the comments. For Ward, this was presumably evidence for one of her key contentions : that Busby never read and gave comments to Colenso on the latter's manuscript. While Colenso asserted that Busby had done so while on board the Eleanor en route to Sydney, Ward thought this unlikely. She reasoned that Busby would have been too preoccupied with his seriously ill son James (who died soon after the Busbys arrived in Sydney), and that Busby would hardly have liked aspects of Colenso's account that suggested that the rangatira were unhappy about missionary land transactions or were not enabled to understand the treaty. Ward concluded that it was 'more likely that Busby was completely ignorant of Colenso's memorandum'. Were this assertion true, it would create serious doubts about the credibility of Colenso's history. Ward implied that Colenso had maintained that Busby reviewed and commented on his manuscript in order to bolster his claims to its accuracy and authenticity. She also asserted that, despite Colenso's claim that Busby's comments were written on the manuscript, 'there are no emendations by Busby on Colenso's manuscript and none of the footnotes attributed to Busby by Colenso in his 1890 history appear in his 1840 memorandum'. However, Ward's interpretation rests on the impossibility of Busby having added his comments to a second copy of the manuscript, such as the one Colenso said had been made for the CMS by the missionary William Wade. Salmond assumed that Busby's annotations had been placed 'on a manuscript copy other than the one that has survived', and Loveridge also referred to a missing duplicate copy. In the absence of anything more than speculation, therefore, we will continue to accept Colenso's claim to Busby's endorsement at face value : Ward, 'Fact or Fiction ?', pp1, 41–42, 108–109 ; Peter Low, 'Pompallier and the Treaty : A New Discussion', NZJH, vol 24, no2 (1990), p191 ; Mathew, The Founding of New Zealand, p35 ; doc A22, p33 ; doc A18(i), p3 n2. 7-Notes Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz He Whakaputanga me te Tiriti The Declaration and the Treaty 400 110. As **Te Kēmara's descendant Maryanne Baker** explained, 'We spoke first as we were on the host whenua as the host hapu' : doc C28, p3. Colenso wrote that Te Kēmara rose and began speaking 'suddenly'. Buick described Te Kēmara as in fact interrupting Busby, but this was probably an over-interpretaton of Colenso's remark : Colenso, The Authentic and Genuine History, p17 ; Buick, The Treaty of Waitangi, p126. 111. Document A1, p283 112. Colenso, The Authentic and Genuine History, p17 113. Ibid, p18 114. Others have noted this contradiction ; see, for example, Rogers, Te Wiremu, p165 n10 ; doc A22, p39. 115. Salmond speculated that the addition might have come from Busby, but this seems unlikely given both Robertson's account (see below) and the way Colenso carefully noted Busby's comments in his

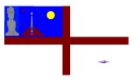








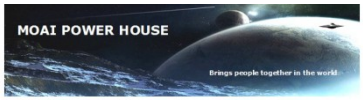




published account : doc A22, p39. 116. ‘Proclamation’, Sydney Herald, 21 February 1840, p2 117. Colenso himself felt rather virtuous in this regard, writing to the CMS secretary on 13 February that he was ‘thankful . . . to the Lord (though I sometimes feel my poverty) that he has kept me from becoming possessed of land’ : doc A22, p56. 118. Colenso, The Authentic and Genuine History, pp18–19 119. Document A22, p40 ; doc A1, p286 ; doc A18, p198 120. Document A18, p199 121. Ibid 122. Low, ‘Pompallier and the Treaty’, p192 123. Orange, The Treaty of Waitangi, p47 124. Colenso, The Authentic and Genuine History, p19 125. Parkinson identified him as John Johnson, who was later the first proprietor of the Duke of Marlborough Hotel : Parkinson, ‘Preserved in the Archives of the Colony’, p54 n13. 126. Colenso, The Authentic and Genuine History, pp19–20. This was a key example of what Judith Ward described as Colenso’s much more favourable treatment of Williams in his published history. Salmond called it ‘a politic footnote’ : Ward, ‘Fact or Fiction ?’, pp75, 109 ; doc A22, p42. 127. Colenso, The Authentic and Genuine History, pp20–21 ; Robertson in ‘Proclamation’, Sydney Herald, 21 February 1840, p2 128. Document A1, p289 129. Colenso, The Authentic and Genuine History, pp21–22 130. Document A22, p43 131. Colenso, The Authentic and Genuine History, p22 132. Ibid, p22 ; see also doc A1, p289 ; doc A22, pp43–44 133. We note that Orange refers to Wai as ‘Whai’ : see Orange, The Treaty of Waitangi, pp48–49. It is possible that Colenso and others dropped the ‘h’ in his name, as they generally did with Māori words that we today would spell ‘wh’. But we did not receive any confirmation of this from the claimants, and we therefore retain the usual spelling of Wai’s name. 134. Colenso, The Authentic and Genuine History, pp22–23 135. Ibid, p23 ; see also doc A1, p291 ; doc A22, p45 136. Colenso, The Authentic and Genuine History, p23 ; see also doc A1, p291 137. Ibid, pp24–25 138. Bright, Hand-Book for Emigrants, pp140–141 139. Document A1, pp289–290. Phillipson speculated that the unnamed rangatira was Kawiti, but may have been unaware of Bright’s account of Tāreha’s speech. 140. ‘Proclamation’, the Sydney Herald, 21 February 1840, p2 141. Colenso, The Authentic and Genuine History, p25 142. Colenso referred to **Heke as ‘Hoani Heke**’, as did Salmond in her evidence to us. But we use ‘Hōne’ since it was clearly the preference of the claimants. His hapū affiliation is also often given as Te Matarahurahu. 143. Colenso, The Authentic and Genuine History, pp25–26 ; doc A1, pp292–293 144. Document A1, p293 145. See Owens, The Mediator, p171 146. Buick, The Treaty of Waitangi, p140 147. Document A1, pp293–294 ; doc A22, p49 ; Owens, The Mediator, p46 ; Buick, The Treaty of Waitangi, p140 ; Orange, The Treaty of Waitangi, pp174, 182 (concerning Baker’s 1865 attempt to compile the list of signatories). Taylor had not been in New Zealand long at this point, and his understanding of Māori would have had definite limitations. We note that Judith Ward (‘Fact or Fiction ?’, pp54–55, 61) placed considerable emphasis on William Baker’s recollections and concluded that ‘the evidence suggests that Nene arrived at Waitangi during the course of Heke’s speech and was concerned that Hobson was being insulted. A war of words appears to have ensued between the two and Nene’s address has been credited with turning the tide in Hobson’s favour. It seems unlikely that such a heated debate would have ensued if

Heke had spoken in support of Hobson’s proposal as outlined by William Colenso. This suggests that Colenso’s record of Heke’s speech may not be reliable.’

148. Buick, The Treaty of Waitangi, p141 149. Colenso, The Authentic and Genuine History, pp26–27. Salmond noted that the reference to ‘Ngāpuhi’ was to Ngāi Tawake, Ngāti Rēhia, Ngāti Kawa, and Ngāti Hine, and that the northern alliance was referred to as ‘Ngāpuhi’ at this time : doc A22, p51. We note, however, that Ngāti Hine were in fact of the southern alliance (see section 3.5.2). 150. Document A22, p51 ; doc A1, p294 151. Mathew, who left out much of the detail of the day’s proceedings, did not mention Heke’s speech. Nor did Hobson. 152. Felton, The Founding of New Zealand, pp37–38 153. Bright, Hand-Book for Emigrants, pp141–142 154. Document A1, p296 155. Salmond noted the

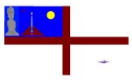




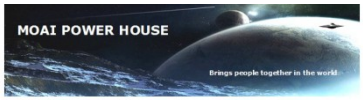








unusual speaking order at Waitangi, where **Rewa and Moka** spoke before their tuakana Wharerahi and Hakiro spoke before his father. As the most senior of the manuhiri at Waitangi, however, it was appropriate for **Nene's tuakana Patuone to speak last** : doc A22, pp46, 52. 156. Colenso, The Authentic and Genuine History, p27 7-Notes Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz The Negotiation and Signing of te Tiriti 401 157. He referred to Patuone as speaking at length and re-establishing the balance at the hui, which may well be a more accurate description of Nene. That he may have got such a detail wrong is perhaps supported by the fact that he made other mistakes. For instance, he wrote that, before **Rewa** even spoke, a 'chief from the Williams party was prompted to follow this very independent chief [Te Kēmara] . . . to combat the tasteless words that had just been heard'. There is no suggestion in any other account of such a speech : Low, 'Pompallier and the Treaty', pp191–192. 158. Low, 'Pompallier and the Treaty', p192 159. Colenso, The Authentic and Genuine History, pp27–28. The text in square brackets was Colenso's addition. 160. Colenso presented this information as a footnote from Busby. 161. As Hobson wrote in his 5 February 1840 dispatch to Gipps, a rangatira 'reproached a noisy fellow named Kitigi [Kaiteke], of the adverse party, with having spoken rudely to me. Kitigi, stung by the remark, sprang forward and shook me violently by the hand, and I received the salute apparently with equal ardour' : Hobson to Gipps, 5 February 1840, BPP, 1841, vol 17 (311), p8 (IUP, vol 3, p130) ; see also Buick, The Treaty of Waitangi, p146. 162. Colenso, The Authentic and Genuine History, pp27–28 163. This was according to Mathew's timekeeping, although we have already noted (as per Colenso's account) that Hobson and Nias took their seats on the platform at noon. 164. Buick, The Treaty of Waitangi, p147 ; doc A22, p53 ; doc A1, p297 165. Colenso, The Authentic and Genuine History, pp28–29. For some reason Peter Wells, Colenso's recent biographer, named this man as Te Kēmara : Wells, The Hungry Heart, p77. Judith Ward noted that Colenso did not mention this exchange in his 1840 manuscript and concluded that this emendation 'may have been intended to suggest that Hobson's untimely death in September 1842 was a consequence of irregularities associated with the signing of the Treaty at Waitangi' : Ward, 'Fact or Fiction ?', p107. 166. Colenso, The Authentic and Genuine History, p29 ; doc A1, pp252, 297. Lavaud wrote that the treaty remained unsigned on 5 February and that there were 'woollen blankets, clothing, tools, tobacco and food awaiting signatories at the exit' : see Low, 'Pompallier and the Treaty', p192. Ward noted that the distribution of tobacco was also mentioned by Charles Wilkes and Ensign Best. Wilkes made no mention of any squabble, but Best noted some lingering unhappiness about the uneven nature of the distribution on the part of Kawiti : see Ward, 'Fact or Fiction ?', pp85–86. 167. In the course of her research, Merata Kawharu was told by one informant that Te Tou Rangatira in fact acquired its name through this debate (doc A20, p102) : 'The particular venue was adjacent to the Te Tii Marae that became known as Te Nohonga o Nga tou o Nga Rangatira, meaning the place at which the ancestors sat and pondered. The name also suggests that the chiefs understood the significance of the treaty and it was something that required careful and thoughtful deliberation.' 168. Orange, The Treaty of Waitangi, p51 169. Document A18, p204 170. Buick, The Treaty of Waitangi, p149 171. Owens, The Mediator, p47 ; Buick, The Treaty of Waitangi, pp149–150 ; Colenso, The Authentic and Genuine History, pp29–30 ; Orange, The Treaty of Waitangi, pp51–52 ; doc A22, p55 172. Low, 'Pompallier and the Treaty', p190 173. Ibid, p191 174. Ibid, p192 175. Colenso, The Authentic and Genuine History, p34 176. Low, 'Pompallier and the Treaty', pp190–193. Evidently, Pompallier's memory of events, as filtered through Lavaud, was somewhat askew. Lavaud did not name Te Kēmara but was referring to the first chief to speak. The first to speak in favour of Hobson was Tamati Pukututu, who followed Moka. Note that Low described Pompallier's 14 May letter as 'not completely decipherable' : Low, 'Pompallier and the Treaty', p191. 177. Orange, The Treaty of Waitangi, p58 178. We note that both Robertson and Mathew, by contrast, considered that the attendance on 6 February was larger than on 5 February,

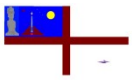




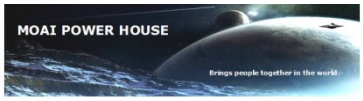








with Mathew writing that ‘there could not have been fewer than five hundred natives present – most of them Chiefs’ : Mathew, The Founding of New Zealand, p40 ; ‘New Zealand’, Sydney Herald, 21 February 1840, p2 ; see also Ward, ‘Fact or Fiction ?’, p85. 179. Colenso, The Authentic and Genuine History, p30 180. Erima Henare asserted that he actually came in his pyjamas : see chapter 9. 181. Document A18, p205 ; Colenso, The Authentic and Genuine History, pp30–31 ; Buick, The Treaty of Waitangi, p150 ; doc A22, p55. Despite Colenso’s account that the boat from the Herald came ashore around midday, Hobson himself wrote that he was informed as early as 10 am that the chiefs were ready to sign. Williams, too, wrote that ‘business was resumed about eleven o’clock’. 182. Colenso, The Authentic and Genuine History, p31 ; Buick, The Treaty of Waitangi, pp151–152 ; Orange, The Treaty of Waitangi, p52 183. Richard Taylor, ‘Journal’, 6 February 1840, qMS 1985, ATL, Wellington 184. Judith Ward noted that none of the other accounts of this aspect of proceedings on 6 February mention Colenso’s specific role : Ward, ‘Fact or Fiction ?’, p93. 185. Colenso, The Authentic and Genuine History, pp31–32 ; Carleton, The Life of Henry Williams, vol 2, p15 ; doc A1, pp298–299 ; Orange, The Treaty of Waitangi, pp53, 58 ; doc A22, p55 ; Buick, The Treaty of Waitangi, pp152–154. Orange wrote that Pompallier’s ‘early departure from the Waitangi meeting of 6 February, before any chiefs had signed the treaty, was probably sufficient to suggest the Bishop’s public dissociation from the business in hand’. Parkinson also suggested that Pompallier probably left at this point because of an anxiety ‘not to become a British tool in a political fait accompli, stage-managed by his sectarian rivals and compromising his allegiance as a Frenchman’. In similar fashion, said Parkinson, the American naval officer from Wilkes’ expedition ‘deliberately absented himself during the speeches 7- Notes Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz He Whakaputanga me te Tiriti The Declaration and the Treaty 402 on the previous day, so as not to be seen to be involving America in a diplomatic controversy’. Clendon, as United States Consul, clearly had no such qualms : Orange, The Treaty of Waitangi, p58 ; Parkinson, ‘Preserved in the Archives of the Colony’, p56. 186. In his notes taken at the time, Colenso ascribed an abbreviated version of these comments to Taylor : see doc A22, p56 ; Ward, ‘Fact or Fiction ?’, p96. We can presume that Busby may have advised Colenso that it was he and not Taylor who had made this remark. 187. Colenso, The Authentic and Genuine History, pp32–33 188. Document A18, p208. In addition to Mathew, Loveridge also noted that Pompallier failed to mention the incident, although we note that, according to Colenso, Pompallier had by this time left the meeting. 189. Wells, The Hungry Heart, p68 ; Carleton, The Life of Henry Williams, vol 2, p15 ; David Mackay, ‘William Colenso’, DNZB, vol 1, pp87–89 ; doc A18, p206 190. Orange noted that the Waitangi sheet ‘is the most confusing of all’, as it contains the names of 200 northern and Auckland chiefs but with some uncertainties about who signed when and where. She thought that the number of signatories at Waitangi on 6 February might have been 43, 45, or 52 (Orange, The Treaty of Waitangi, p259). Hobson himself thought there had been 46 signatories at Waitangi on the day, and Colenso thought 45. Among other historians, Buick thought 43 and Loveridge suggested 45 or 46. One example of the confusion surrounds Moka. As the Ministry of Culture and Heritage has come to recognise, Moka’s name (in the form ‘Te tohu o Moka’) is written on the sheet ‘but no signature or mark appears alongside it. Moka, therefore, may not have signed the Treaty, possibly because of concerns over its impact, which he is known to have voiced on 5 February’. See ‘Waitangi Treaty copy’, http ://www.nzhistory.net.nz/ media/interactive/treaty-of-waitangi-copy, last modified 2 February 2011 and Brent Kerehona’s biography of Moka at http ://www.nzhistory.net.nz/people/moka-te-kainga-mataa, last modified 31 January 2014. We note, however, that counsel for Patukeha accepted that Moka signed, albeit without noting the existence of any debate on the subject : see submission 3.3.14, p4. 191. Document A37, p453 192. Carleton, The Life of Henry Williams, vol 2, pp13–14 193. Colenso, The Authentic and Genuine History, p34 ; doc A18(i), p31 ; Orange, The Treaty of Waitangi, p57 194. Orange, The Treaty of Waitangi, p68 195. Here he was perhaps drawing on the observation of Dame Joan Metge, who suggested the likelihood of this

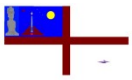




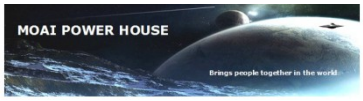








in her February 2004 Rua Rautau lecture ‘Rope Works – He Taura Whiri’ (audio available at http ://www.radionz.co.nz/national/programmes/waitangiruarautaulectures/audio/2508843/2004-dr-dame-joan-metge). See also Joan Metge, Tuamaka : The Challenge of Difference in Aotearoa New Zealand (Auckland : Auckland University Press, 2010), p27. 196. Document A17, p143 ; Colenso, The Authentic and Genuine History, pp34–35 ; doc A22, p57 ; Orange, The Treaty of Waitangi, p55. Orange wrote that the blankets distributed at Waitangi were ‘not good quality’ (p88). 197. The apparent signatures by Hakiro and Mene on behalf, respectively, of Titore (who was deceased) and Tāreha (their father who so opposed the treaty) were disputed by Ngāti Rēhia claimants. Another slightly irregular aspect of the signatures, which was not raised by the claimants, is that the form of the marks or tohu for the same signatories on he **Whakaputanga and te Tiriti** was often quite different. For example, **the 1840 tohu of Rewa and Patuone are dissimilar to their 1835 marks**. In other cases, certain rangatira appear to have developed a more personalised ‘signature’ by 1840. For instance, Pōmare signed he Whakaputanga with a horizontal line crossed by five shorter vertical lines, but on te Tiriti drew what looks like a fish hook. Likewise, Kawiti appears to have signed he Whakaputanga with two crosses but drew his moko on te Tiriti. We do not take this matter any further, however, as we heard no evidence about it. Moreover, we doubt that the differences that we have discerned are anything other than what one might expect from a largely non-literate group of chiefs finding new ways of affixing their assent to written documents. 198. Colenso, The Authentic and Genuine History, p34 ; Orange, The Treaty of Waitangi, p56 ; doc A1, p301 ; doc A18, p210 ; Buick, The Treaty of Waitangi, p160 ; doc A22, p57 ; Hobson to Gipps, 6 February 1840, BPP, 1841, vol 17 (311), p9 (IUP, vol 3, p131) 199. Document A18, p211 n615. James Rutherford regarded the firing of the 21-gun salute on 8 February as constituting the first ‘unequivocal claim’ to British sovereignty over one part of New Zealand at least : James Rutherford, ‘The Treaty of Waitangi and the Acquisition of British Sovereignty in New Zealand, 1840’, Auckland University College Bulletin 36, History Series 3 (Auckland : Auckland University College, 1949), p23. 200. Hobson to Bunbury, 25 April 1840, BPP, 1841, vol 17 (311), p17 (IUP, vol 3, p139) 201. Claudia Orange, in The Treaty of Waitangi, p61, and An Illustrated History of the Treaty of Waitangi (Wellington : Bridget Williams Books, 2004), pp289–290, states that six had signed, but Buick (The Treaty of Waitangi, p166) states it had been seven. It is difficult to tell exactly from the facsimile of the Waitangi sheet, but on balance Orange appears to be correct. However, she also incorrectly recorded eight signatures at Waimate at one point (Orange, 1987, p62). Orange and Buick also disagree about the number of occasions te Tiriti was signed at Waimate. Buick (The Treaty of Waitangi, p166) wrote that ‘The principal meeting at Waimate seems to have been held on the 15th, when Mr Taylor secured thirty signatures, including some of the Hokianga insurgents.’ But Orange wrote in 1987 that the gathering on 10 February ‘appears to have been the only treaty signing at Waimate’. She added in 2004 (p285) that at Waimate ‘there was probably only one signing and not two as sometimes thought’. 202. Orange, The Treaty of Waitangi, pp60–61 ; Buick, The Treaty of Waitangi, pp165–166 203. Buick, The Treaty of Waitangi, pp166–168 ; Orange, The Treaty of Waitangi, p61 ; doc A22, pp59–60 204. Document A22, p60 ; Orange, The Treaty of Waitangi, p61 ; Buick, The Treaty of Waitangi, pp168–169 7-Notes Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz The Negotiation and Signing of te Tiriti 403 205. Document A22, p60 ; Orange, The Treaty of Waitangi, pp38–39 ; Owens, The Mediator, p49 206. Document A22, pp60–61 ; Buick, The Treaty of Waitangi, p169 ; Orange, The Treaty of Waitangi, p61 ; Owens, The Mediator, p49 207. Richard Taylor to William Jowett, 20 October 1840, MS papers 0254–01 (or MS 197, reel 1), ATL ; ‘Specimen of New Zealand Eloquence’, The New Zealand Journal, 16 January 1841, p20 ; Willoughby Shortland to Lord Stanley, 18 January 1845, BPP, 1845, vol 33 [108], pp10–11 (IUP, vol 4, pp505–513) ; doc A22, p61 208. Salmond assumed that Shortland ‘probably jotted [the notes] down at the time from Rev. Hobbs’s running translation’ : doc

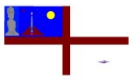




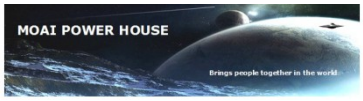








A22, p59. 209. Orange, The Treaty of Waitangi, p275 n8 210. Taylor refers to Taonui as 'Tainui'. Buick supposed him to be Aperahama Taonui (and was followed in this by John Nicholson), but Salmond thought he was 'almost certainly' Aperahama's father, Makoare – an interpretation shared broadly by other scholars : see John Nicholson, White Chief : The Colourful Life and Times of Judge FE Manning of the Hokianga (Auckland : Penguin Books, 2006), p83 ; Ruth Ross, 'Makoare Taonui', in An Encyclopaedia of New Zealand, 3 vols, ed AH McLintock (Wellington : Government Print, 1966), vol 3, p348, Orange, The Treaty of Waitangi, p64 ; Buick, The Treaty of Waitangi, p170 ; doc A22, p61. 211. Document A22, p61 212. Ross, 'Makoare Taonui', p348 (for the possibility that he worked his passage on the Governor Macquarie) ; and Buick, The Treaty of Waitangi, p170 and Owens, The Mediator, p49 (for Taonui's request for a written copy of the speech and Hobson's reply). Salmond thought that Taonui might have taken the name Makoare after meeting Macquarie on his visit to Sydney in 1830 : doc A22, p61. However, Macquarie's period as Governor had been from 1810 to 1821, and he had died in 1824. It was in fact Korokoro who had taken Macquarie's name during his governorship : see John Liddiard Nicholas, Narrative of a Voyage to New Zealand, Performed in the Years 1814 and 1815 in Company with the Rev Samuel Marsden, 2 vols (Auckland : Wilson and Horton, 1971), vol 1, p50**. It is possible that Taonui inherited the name from Korokoro, who died in 1823**, for he may not have worked his passage on the Governor Macquarie – he seems in fact to have been on board the Sir George Murray when it was seized in Sydney in November 1830 : Orange, The Treaty of Waitangi, p19. See also section 3.9.3. 213. Document A22, p61 214. 'Maunga Taniwa' is Maungataniwha, the name of the range (and a specific peak) between Mangamuka and Kaitaia. 215. Document A22, p62 216. Ibid 217. Ibid, p64 ; Orange, The Treaty of Waitangi, p64 ; Nicholson, White Chief, pp84, 86 ; Buick, The Treaty of Waitangi, pp171–172 218. Document A22, pp64–65 219. Nicholson, White Chief, p87 220. In David Colquhoun, 'The Early Life and Times of Frederick Edward Maning' (MA thesis, University of Auckland, 1984), fol 109, Colquhoun noted that 'The publication of Hobson's comments in the blue books, which reached New Zealand in early 1842, meant that Maning's humiliation received a prominence that must have been a continuing embarrassment to him.' But we are unaware of Maning ever explicitly referring to having felt humiliated. 221. Nicholson, White Chief, pp89–90 ; David Colquhoun, 'Frederick Edward Maning', in The Dictionary of New Zealand Biography, Ministry for Culture and Heritage, http ://www.teara.govt.nz/en/ biographies/1m9/1, last modified 1 September 2010 ; Ruth Ross, 'Maning, Frederick Edward', in An Encyclopaedia of New Zealand, 3 vols, ed AH McLintock (Wellington : Government Printer, 1966), vol 2, p400 222. Frederick Edward Maning, Old New Zealand and other writings, ed Alex Calder (London : Leicester University Press, 2001), pp20–23 223. Document D1, p35 ; doc A19(a), p66. Ward explained that he had read Maning's 1860s correspondence when researching his doctoral thesis and that the letters revealed Maning to be 'an extremely waspish character who ran a constant stream of invective against Maori, whom he then regarded as grasping, dishonest and lazy'. Ward continued : 'I am very critical of the excessive use of the term "racist" in recent decades but Maning's language in his surviving letters goes a long way towards qualifying him for that description' : doc A19(a), p67. 224. Document D1, p37 ; doc A19(a), p67 ; doc A22, p59 225. Document A22, p65 226. Owens, The Mediator, p49 227. Document A22, p66 228. The same applies to the Waitangi hui, where we have no idea how Williams translated Hobson's statement to the chiefs that 'You have sold them [Europeans] lands', or how Tāreha expressed in Māori 'the lands of our fathers alienated'. 229. Document A22, p67 230. Ibid 231. See Waitangi Tribunal, Muriwhenua Land Report (Wellington : GP Publications, 1997), pp98–105. The Tribunal (pp93, 98) thought the other person Papahia was referring to was CMS surgeon Dr Samuel Ford, who had himself secured 20,000 acres on trust near Mangonui at the end of 1839. 232. Taylor actually placed this exchange after Taonui spoke for the last time and before Nene spoke ; see also Buick, The Treaty of Waitangi, pp173–174 and Owens, The Mediator, pp49–50. 233. Document A22, pp67–68 234. Ibid, p68. Hobson wrote to Gipps (ibid) : 'Another person, altogether of a lower

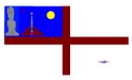




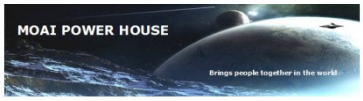








description [than Maning], known under the name of “Jacky Marmon,” who is married to a native woman, and has resided in this country since 1809, is also an agent of the bishop. He assumes the native character in its worst form – is a cannibal – and has been conspicuous in the native wars and outrages for years past. Against such people I shall have to contend in every quarter.’ 235. Orange, The Treaty of Waitangi, pp64–65 236. Buick, The Treaty of Waitangi, p175 ; Orange, The Treaty of Waitangi, pp62, 275 n13 ; Owens, The Mediator, p51 ; Orange, An Illustrated History of the Treaty, 2004, pp37, 290–292. As noted, 7-Notes Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz He Whakaputanga me te Tiriti The Declaration and the Treaty 404 Maning’s satirical account suggested that the stampede to sign arose from an impatience ‘to see what the Governor was going to give us’. Maning said those of lower rank trying to sign were ‘slaves’ hoping to convince Hobson they were chiefs and receive payment : Maning, Old New Zealand and other writings, p22. 237. Buick, The Treaty of Waitangi, pp175–176 ; Orange, The Treaty of Waitangi, p65 ; Owens, The Mediator, p51 ; Taylor to Jowett, 20 October 1840, MS papers 0254–01, ATL, Wellington. Owens contrasted Hobson’s mood with those of Mathew and Taylor, who found (in Mathew’s words) the sight of ‘a parcel of beastly savages – not fewer than three thousand men, women and children devouring pig and potatoes is not very interesting’. Taylor wrote : ‘The feast was any thing but an agreeable sight the greediness and filthy manners of the savage only excited disgust and the ungracious way they received their presents finding fault with every thing made us retire [return ?] from their company with disappointment.’ 238. The two rangatira who refused to sign would appear to be Hauraki (Maning’s brother-in-law) and Wharepapa : Nicholson, White Chief, p87. 239. Document A22, p71 ; Buick, The Treaty of Waitangi, pp176–177 240. Document A22, p71. This is from Taylor’s journal, not his account of the speeches forwarded to the CMS. 241. Document A22, p71 242. Nicholson, White Chief, p88 243. Nicholson may well have drawn on David Colquhoun, who concluded in his masters thesis on Maning that the letter was from Kaitoke and penned by Maning : Colquhoun, ‘Pakeha Maori’, fol 106. 244. Maning, Old New Zealand and other writings, p23 245. Document A22, p71 246. Document A18, p213 247. Orange, The Treaty of Waitangi, pp66–67 248. Ibid, p83 249. Ibid, pp67–70 ; Orange, An Illustrated History of the Treaty, pp37, 39 ; doc A18, p213 250. Patricia Burns, Fatal Success : A History of the New Zealand Company (Auckland : Heinemann Reed, 1989), pp152, 155 ; Wards, The Shadow of the Land, pp47, 50 ; Palmer, The Treaty of Waitangi, p55 ; Orange, The Treaty of Waitangi, p84 251. Wards, The Shadow of the Land, pp47–48 ; Palmer, The Treaty of Waitangi, p55 ; Burns, Fatal Success, p155 ; Orange, The Treaty of Waitangi, p84 ; Waitangi Tribunal, Te Whanganui a Tara me ona Takiwa : Report on the Wellington District (Wellington : Legislation Direct, 2003), p82. According to the South Island proclamation, sovereignty extended from ‘Thirty-four Degrees Thirty Minutes North’, but, as Louis Chamerovzow observed in 1848, 34 degrees north placed North Cape somewhere in the region of southern Japan : Chamerovzow, **The New Zealand Question and the Rights of Aborigines (London : TC Newby, 1848)**, p118. 252. Document A18, pp218–219 253. Ibid, p236 254. Orange notes that, at this time, Hobson had in his possession the original Waitangi sheet (signed elsewhere in the north) and the signed English-language copy which had been returned by Maunsell, who had obtained signatures at Manukau and Waikato Heads : Orange, Treaty of Waitangi, p85 255. Ibid ; Orange, An Illustrated History of the Treaty, p39 256. Orange, The Treaty of Waitangi, pp84–86 ; Orange, An Illustrated History of the Treaty, pp39, 41–42 257. Palmer, The Treaty of Waitangi, pp56–57 258. Orange, The Treaty of Waitangi, p85 259. Sweetman, The Unsigned New Zealand Treaty, pp60–61 ; Harry C Evison, ‘Karetai’, in The Dictionary of New Zealand Biography, Ministry for Culture and Heritage, http ://www.teara.govt.nz/en/ biographies/1k1/karetai, last modified 30 October 2012 ; Steven Oliver, ‘Te Matenga Taiaroa’, in The Dictionary of New Zealand Biography, Ministry for Culture and Heritage, http ://www.teara.govt.nz/en/ biographies/1t2/1, last modified 30 October 2012 260. ‘Interview of New Zealand chiefs with the Governor’, The Colonist, 1 February 1840, p2 261. Both Sweetman (The

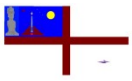








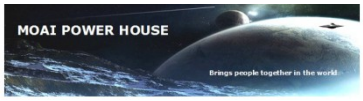




Unsigned New Zealand Treaty, p61) and Binney ('Tuki's Universe', in Tasman Relations : New Zealand and Australia, 1788–1988, ed Keith Sinclair (Auckland : Auckland University Press, 1987), p29) thought the date of this engagement was 14 February, but Loveridge (Wai 45 doc I2, p67 n101) assumed it was 12 February on the basis that the treaty was drafted in anticipation of being signed two days later, on the 14th. 262. Sweetman, The Unsigned New Zealand Treaty, pp60–61, 64 ; Evison, 'Karetai' ; Binney, 'Tuki's Universe', p29 ; Wai 45, doc I2, pp67–68 263. Wai 45, doc I2, pp65–66, 69–70 ; Binney, 'Tuki's Universe', pp29–30 ; Sweetman, The Unsigned New Zealand Treaty, pp62, 65, 130 264. Binney, 'Tuki's Universe', p30 ; Sweetman, The Unsigned New Zealand Treaty, p64. Gipps had inserted into the treaty an undertaking by the chiefs to ratify the agreement in the presence of both their tribes and Hobson back in New Zealand. 265. Sweetman, The Unsigned New Zealand Treaty, p61 266. Ibid, pp64–65 267. Parkinson believed it was a deliberate strategy on Hobson's part to keep Pākehā settlers ignorant of their future legal position while Hobson gained himself a 'diplomatic foothold' : Parkinson, 'Preserved in the Archives of the Colony', p54. 268. Parkinson, 'Preserved in the Archives of the Colony', pp59–60 269. For a full discussion of the so-called 'Littlewood' treaty see Loveridge, 'The "Littlewood Treaty"', and Parkinson, 'Preserved in the Archives of the Colony', pp60–63. 270. Document A22, p11 n25 271. The authorship of this version is unclear. Samuel Martin wrote that

Hobson spent 'some days with the missionaries concocting the Treaty of Waitangi, of which I send you the Governor's official translation and the literal one' :

Martin, New Zealand in a Series of Letters (London : Simmonds and Ward, 1845), p97. 272. Orange, The Treaty of Waitangi, p289 n92 273. 'Treaty of Waitangi', Evening Star, 10 July 1875, p5 (the Evening Star later became the Auckland Star). Amongst other publications, this 7-Notes Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz The Negotiation and Signing of te Tiriti 405 article was reproduced in full the following year in the Māori-language newspaper Te Wananga : see Te Wananga : He Panuitanga tena kia Kite Koutou, 22 January 1876, pp38–39 274. James Rutherford, 'Hone Heke's Rebellion 1844–1846 : An Episode in the Establishment of British Rule in New Zealand', Auckland University College Bulletin, no34 (1947), p8 275. Sir Apirana Ngata, The Treaty of Waitangi : An Explanation/Te Tiriti o Waitangi : He Whakamarama (Christchurch, Maori Purposes Fund Board, [1950]). Rachael Bell, in a 2009 journal article on Ruth Ross, gave the date as 1950. In a book chapter the following year, Margaret Mutu dated Jones's translation to 1963 : see Bell, '"Texts and Translations" : Ruth Ross and the Treaty of Waitangi', NZJH, vol 43, no1 (2009), p43 ; doc A24, p28. 276. See James Rutherford, Selected Documents Relative to the Development of Responsible Government in New Zealand 1839–1868. Prepared for the Use of History Honours Students in the University of New Zealand, 2 vols (Auckland : Auckland University College, 1949), vol 1, doc 5. The synopsis of this collection carries Rutherford's typed name and the date August 1953, but the select bibliography is signed by him and dated February 1949. The literal back-translation states in parentheses 'Translated by JR'. In the 1972 collection of essays published by Victoria University entitled The Treaty of Waitangi : Its Origins and Significance (see endnote 39 above), Rutherford's translation is set out alongside the English text at the start of the volume. It is noted as being derived from Selected Documents, and dated as 1949. Rachael Bell, in her 2009 New Zealand Journal of History article on Ruth Ross, noted Ross's privately expressed concern that Rutherford's translation, which had been 'created to the best of her knowledge by "looking up nouns and verbs in a dictionary", had come to dominate, and mislead, academic interpretations of the Treaty'. Bell did not refer here to the Selected Documents but to Rutherford's two

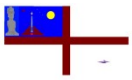




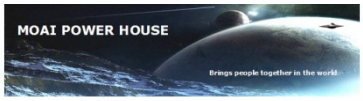








published essays, ‘Hone Heke’s Rebellion, 1844–1846’ and ‘The Treaty of Waitangi and the Acquisition of British Sovereignty in New Zealand, 1840’, neither of which includes the full back-translation. We can assume that this is what Ross meant, however : see Rachael Bell, ‘“Texts and Translations” : Ruth Ross and the Treaty of Waitangi’, pp43–44, 57 n35. 277. Kawharu made both a literal translation and a ‘reconstruction of the literal translation’, which is the one in question here. 278. Document A16, pp229–233 ; Parkinson, ‘Preserved in the Archives of the Colony’, pp100–101 ; doc A24, pp19–28. In ‘Preserved in the Archives of the Colony’ at page 69, Parkinson explained that ‘My own “version” of what the Treaty was supposed to say, in English as a backtranslation, is given as document 16 in the Appendix. I have aimed at establishing what it was likely to have meant to those observing Pākehā who lacked vested interests – if such persons existed. The phraseology is drawn from the expressions used by witnesses and contemporary commentators.’ We note that Parkinson is not a linguist and was ‘synthesising’ rather than translating. As we note also in chapter 8, his is the only back-translated version other than Busby’s that used the word ‘exclusive’ in connection with the Crown’s right of pre-emption. 279. James Belich, ‘Review Article : Hobson’s Choice’, NZJH, vol 24, no2 (1990), p201 280. Document A22, p11 281. Document A1, p273 282. The parenthesised words appeared as a further explanation in the margin : Parkinson, ‘Preserved in the Archives of the Colony’, p91. 283. Orange, The Treaty of Waitangi, p154 284. Parkinson, ‘Preserved in the Archives of the Colony’, pp51, 62 285. Orange, The Treaty of Waitangi, pp182–183 286. Ibid, p229 ; Biggs, ‘Humpty-Dumpty and the Treaty of Waitangi’, pp300–301 ; Ngata, The Treaty of Waitangi, pp4–5, 16, 20, 29 287. Ross, ‘Te Tiriti o Waitangi’, pp139, 142 (re Kohimārama), 143 (re Hobson in April 1840) ; Parkinson, ‘Preserved in the Archives of the Colony’, p40 (re ‘tino rangatira’). Others followed suit : in an 1845 letter to Hōne Heke, Pompallier translated ‘sovereignty’ as ‘rangatiratanga’ : Low, ‘Pompallier and the Treaty’, p195. Page 342 : Busby’s invitation to chiefs to attend the hui 1. The translation into English is from Claudia Orange, An Illustrated History of the Treaty of Waitangi (Wellington : Bridget Williams Books Ltd, 2004), p25. T Lindsay Buick also provided a translation, which is stiffer and more literal : Buick, The Treaty of Waitangi : How New Zealand Became a British Colony, 3rd ed (New Plymouth : Thomas Avery and Sons Ltd, 1936), p101. Hohepa reproduced Orange’s and endorsed it, so we have chosen it in preference to Buick’s : doc D4, p44. Page 388 : Signing locations of the Treaty of Waitangi ‘New South Wales, Van Dieman’s Land, New Zealand and Adjacent Islands c 1837’, Map New Zealand, ATL, 2006 ; Claudia Orange, An Illustrated History of the Treaty of Waitangi (Wellington : Bridget Williams Books, 2004), p40 7-Notes Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz 407 Chapter 8 Past Perspectives on te Tiriti and the Treaty 8.1 Introduction There have always been different perspectives about what was agreed at Waitangi in February 1840. From almost the moment of te Tiriti’s signing, the event, too, has been retold differently by Māori and Pākehā – at first by those who witnessed it and soon enough by countless others. In 1846, the former Governor, Robert FitzRoy, noted the markedly varying ways in which the treaty had been interpreted : Some persons still affect to deride it ; some say it was a deception ; and some would unhesitatingly set it aside ; while others esteem it highly as a well considered and judicious work, of the utmost importance to both the coloured and the white man in New Zealand. That the natives did not view all its provisions in exactly the same light as our authorities is undoubted . . .1 The Māori perspective – to the extent that we can speak in such general terms – has laid heavy emphasis on the Māori text and stressed the retention of rangatiratanga. At times, Māori protest at perceived injustices has appeared to accept that there was a full cession of sovereignty, but we suspect this will often have stemmed from the power imbalances of the day and the need for Māori to appeal to the Crown for redress. In fact, a general denial that the Crown gained sovereignty or supreme authority on the basis of the treaty appears to have characterised a number of Māori perspectives during the nineteenth century, especially when Māori retained substantive control,

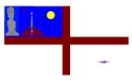




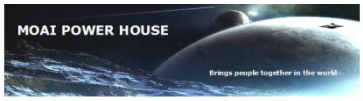








and over the past three or more decades, during which Māori protest over the denial of rights guaranteed by the treaty has become more assertive. For their part, Pākehā and the Crown have until relatively recently generally seen the treaty in terms of the English text alone – as a cession of supreme authority in article 1, the guarantee of Māori rights to their property in article 2, and as a statement of some kind of 'equality' in article 3 (expressed by some as a requirement for Māori conformity to Pākehā norms). It must be considered, too, that the Crown gave little attention to the treaty for long periods – exemplified by the treaty sheets themselves being kept in such miserable storage facilities for several decades in the late nineteenth and early twentieth centuries. For all that, the very fact of the treaty has often been regarded by Pākehā commentators (at least until recently) as a particularly enlightened and well-meaning act on the part of the British Crown – one from which Māori have benefited, and one which sets New Zealand apart from other settler colonies, particularly those in Australia. Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz He Whakaputanga me te Tiriti The Declaration and the Treaty 408 Since the greater Māori assertiveness about treaty rights from the early 1970s, and particularly after the passing of legislation in 1975 to establish this Tribunal, the extent of writing about the treaty in New Zealand has grown exponentially. Dr (later Professor) James Belich observed in 1996 that so many historians had written about the events at Waitangi that 'it has become a central tableau in the collective memory, like Christ's Nativity or the landing of the Pilgrim Fathers'.2 In this chapter, we first outline the main developments in the recent scholarship about the treaty, and then consider the key court and Tribunal statements about it. It is relevant for us to concentrate on this most recent period of thinking and writing about the treaty, as the greater distance from the events of 1840 has allowed for a more rounded assessment of them and the motivations of the participants, based on more careful attention to the full range of evidence. It also provides essential context for the evidence and submissions put forward at our own inquiry, which we go on to discuss in the next chapter. Some of it has also been influential on the conclusions we reach in this report. 8.2 Scholarship about the Treaty Reflecting on the greater engagement of historians with the treaty, in 1989 Dr John Owens concluded that there were essentially 'only two significant phases' in the scholarship : 'before about 1970 and after'. As he put it : There are of course differences of opinion over aspects and different writers have different emphases. One can occasionally group writers together into a kind of school of thought. But the basic fact is that before the 1970s our histories were written by Pakeha for Pakeha, after the 1970s there was a Maori presence in historical writing. It tells us something of the history of our race relations that the same kind of interpretation, the same terminology, appears in the 19th century and carries through to the 1960s.3 This is not to say, of course, that pre-1970s historians were incapable of considering the Māori perspective. In 1947, Professor James Rutherford, for example, wrote that the British understanding that, through article 1, Māori would become subject to the authority of the Governor was not conveyed by those explaining the treaty ; that the 'restraints and restrictions and responsibilities' of being British citizens received no emphasis alongside the 'rights and privileges' mentioned in article 3 ; and that kāwanatanga would have seemed a weak authority to the chiefs, especially compared to rangatiratanga, which would have left them thinking they retained 'all their power authority and "mana" as rangatira over their own people'.4 Rutherford's insights, however, were atypical. The general pre-1970s consensus that Owens referred to was essentially founded on the work of William Pember Reeves, who wrote in 1898 that the chiefs 'were fully aware that under it [the treaty] the supreme authority passed to the Queen',5 and T Lindsay Buick, who claimed in 1914 that : The natives . . . understood clearly enough that for the advantages they hoped to reap from the treaty they were yielding much of their existing power to the Pakeha Governor, and whether it was much or little they were the more willing to surrender it because they realised that the advent of the European had so altered their social conditions that rule by the old method was no longer possible. . . . . The sovereignty was the shadow, and the land was the substance ; and since the shadow was already

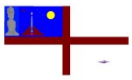




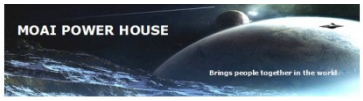








passing from them by force of circumstances over which they were powerless to exercise control, they consented to its surrender with all the less regret. . . . The Treaty of Waitangi therefore became what it professed to be, a yielding of the supreme political power in the country to the British Crown, and when the last signature had been put to it, Britain's right to colonise and govern in New Zealand was incontestable before all the world.6 The Māori refusal to continue quietly to accept this one-sided interpretation helped force changes in the scholarship, as did the international trend towards decolonisation. But so, too, did one particular article in the New Zealand Journal of History in 1972, by Ruth Ross.7 This article, entitled 'Te Tiriti o Waitangi : Texts and Translations', stands as probably the single most important interpretive 8.2 Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz Past Perspectives on te Tiriti and the Treaty 409 Detail of the Waitangi sheet of te Tiriti as it appeared before conservation. Inadequate storage after 1877 resulted in water and rodent damage. 8.2 Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz He Whakaputanga me te Tiriti The Declaration and the Treaty 410 A re-enactment of the signing of te Tiriti, 1940 advance on the subject in modern times. Ross argued that, far from the solemn and far-reaching blueprint for the nation's development it was often portrayed to have been, the treaty transaction was characterised by confusion and undue haste. She made the important observation that sovereignty was translated by Henry Williams in a different way from his translation of 'all sovereign power and authority' in the declaration only a few years previously. She concluded that the Māori text was the true treaty and that what mattered was how it had been understood here, not what the Colonial Office had made of the English text(s) in London. Her rigorous empirical examination of the original documents exposed the unquestioning acceptance of myths about the treaty by an earlier generation of scholars. And she left her contemporaries with the uncomfortable realisation that a reliance on what was said in the English text alone was no longer intellectually honest. As well as her influence on a range of other scholars in the decades to come, Ross's article had perhaps an even more important impact. It was a catalyst for the inclusion of the Māori text in the schedule to the Treaty of Waitangi 8.2 Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz Past Perspectives on te Tiriti and the Treaty 411 Act 1975, as well as the authority given to the Tribunal in section 5(2) of the Act to 'determine the meaning and effect of the Treaty as embodied in the 2 texts and to decide issues raised by the differences between them'. Indeed, the third Labour Government's Caucus Committee on Māori Affairs referred to Ross's article in its reports of 1973 and 1974 on implementing the Labour Party's manifesto promise to legally recognise 'the principles set out in the Treaty of Waitangi'. These reports were considered by Cabinet and were the basis for its decision to introduce the Bill that became the 1975 Act.8 Dr (later Professor) Michael Belgrave thought that, aside from influencing other scholars and members of Parliament, Ross also 'provided the historical ammunition' for the new generation of Māori Tiriti activists.9 An historian who was particularly influenced by Ruth Ross is Dame Claudia Orange, who once described Ross as having 'handed the baton over to me'.10 Orange's book, The Treaty of Waitangi, was first published in 1987 and has now sold over 40,000 copies11 – a rare achievement for a work of New Zealand history. With a gentler tone than Ross's challenging work, Orange articulated many of the Another re-enactment of the signing of te Tiriti, Wellington Town Hall, 1923. As James Belich has observed, the signing has become 'a central tableau in collective memory, like Christ's Nativity or the Landing of the Pilgrim Fathers'. 8.2 Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz He Whakaputanga me te Tiriti The Declaration and the Treaty 412 same messages as her mentor, although she stressed less the confusion that surrounded the treaty than the 'spirit' that underlay it. Her text has become the essential reference point for most historical works about the treaty since. Indeed, nearly three decades after its publication, The Treaty of Waitangi retains its reputation as the authoritative work on the subject. Writing in 1989, Owens thought it came 'near to the ideal' in the way it was concerned with

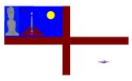




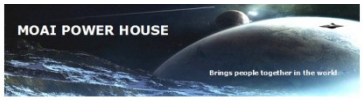








what actually happened in 1840, concerned with the continuing dialogue, concerned to balance Maori with Pakeha. Not many who have written about the Treaty have achieved this balance.12 The same year, Professor Keith Sorrenson remarked that Orange had ‘done more than any other historian to recover that submerged Māori history of the Treaty which has hitherto existed largely in oral tradition’.13 Several voices have, however, pushed back against the new orthodoxy of an underlying treaty ‘spirit’ or relationship described by Orange and applied, to a very large extent, by this Tribunal. Perhaps the best-known criticism of this approach came from Professor William H Oliver in 2001, in his essay entitled ‘The Future Behind Us : The Waitangi Tribunal’s Retrospective Utopia’.14 Scholars such as Oliver have criticised the Tribunal, as well as other historians, for the application of contemporary or ‘presentist’ concerns to the analysis of distant events.15 Professor Andrew Sharp and Dr (later Professor) Paul McHugh summarised this argument as follows : ‘The more powerfully the passion to change or preserve the world informs particular histories, the more they bear testimony to their authors’ present concerns.’16 Notable examples of ‘antipresentism’ applied to the signing of te Tiriti include a brief contextual section in Professor Alan Ward’s 1999 book An Unsettled History : Treaty Claims in New Zealand Today ; Lyndsay Head’s chapter ‘The Pursuit of Modernity in Maori Society’ published in the same 2001 volume as Oliver’s critique ; and Belgrave’s 2005 book Historical Frictions : Maori Claims and Reinvented Histories. 17 These scholars have not so much returned to the arguments in vogue before the Māori text was considered, but rather employed the Māori text in their argument for sovereignty having been ceded. In sum, therefore, the scholarship about the meaning and effect of the treaty shifted markedly from the early 1970s, when historians took more account of the fact that the treaty existed in two languages and was made by peoples with entirely different cultural assumptions. Ross led this major shift, and Orange’s book – which carried on much of the same reasoning – has now been the leading reference text on the treaty for almost 30 years. More recently, however, several scholars have objected to what they see as the application of contemporary judgements to nineteenth-century actions. Historians have continued to differ more specifically over the wording of the treaty texts and the nature of the oral debate at the various treaty signings. We set out an overview of this scholarship below, dividing the coverage into the written texts and the oral debate (as we did in narrating the events themselves in chapter 7) and the treaty’s meaning and effect. We exclude reference to any past works by members of this Tribunal. 8.2.1 The wording of the treaty’s texts (1) The English text There has been some disagreement among historians as to the exact authorship of the English text (see section 7.4). Ross, for example, dismissed Busby’s claims to have been the principal author of the text as ‘a considerable exaggeration’, and Dr Donald Loveridge in 2006 called them ‘more or less a complete fabrication’.18 Orange, on the other hand, thought his claim ‘not altogether an exaggeration’.19 Regardless of who is correct, it is clear that the Treaty’s language fell into a standard imperial pattern. McHugh noted that Britain entered more than 100 treaties or similar agreements with African peoples between 1788 and 1845, another 40 with Middle Eastern polities, and over two dozen with Malaysian rulers over roughly the same period.20 Tom Bennion likewise traversed British treatymaking in the Pacific in the nineteenth century following the apparently oral cession of sovereignty by the Hawaiian monarch to the British Crown in 1794. He also noted that some of the more direct precedents for the language used in the English text of the Waitangi treaty came from 8.2.1 Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz Past Perspectives on te Tiriti and the Treaty 413 West Africa,21 a point picked up by law professor and later Justice Sir Kenneth Keith of the New Zealand Supreme Court and International Court of Justice, as well as by Sorrenson.22 These treaties included the Sherbro agreement of 1825, which used near identical phrases to those in the Waitangi text. Another African treaty in 1840, with King Combo of the Gambia, also bore a close resemblance. As noted in section 7.4, Sorrenson perceived what one might call a treaty language that was in fairly widespread use, ready to be applied wherever a crisis on one of the frontiers of empire needed to be resolved by the

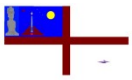




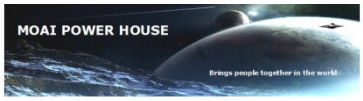








last resort of a treaty of cession.23 Like the similar African treaties, the English text of the Waitangi treaty provided for a complete cession of sovereignty to the Crown, in exchange for various guarantees and protections, but did not provide for any ongoing authority for the indigenous people. With specific respect to pre-emption, Ross was adamant that the English text misrepresented British intentions. Hobson's instructions had been to induce the chiefs to agree that 'henceforward no lands shall be ceded, either gratuitously or otherwise, except to the Crown of Great Britain'. Instead, the chiefs were asked to cede 'the exclusive right of pre-emption'. Ross contrasted this wording of article 2 with that of Gipps's abortive treaty with South Island rangatira who were visiting Sydney (see section 7.11), which was much more specific about an exclusive right of purchase (which the chiefs rejected).24 Writing in 1979, Tony Simpson followed Ross's lead.25 Two decades later, Belgrave gave particular attention to the application of pre-emption in the 1840s but did not discuss the appropriateness of the term itself, noting merely that Historians have had only a weak understanding of the legal role of pre-emption in the Treaty, regarding it as a policy of convenience, understood by Maori as no more than a right of first refusal.26 Legal scholars have given close attention to the technical meaning of pre-emption. In 1991, McHugh noted the concern expressed by Ross and others that 'the Crown's representatives deliberately misused a word normally defined by lawyers as a "right of first refusal" to mean an exclusive right'. McHugh agreed there was evidence that the ordinary meaning may well have been the way the term was understood by the Māori signatories. But he was satisfied that, used in 'the context of Crown relations with aboriginal societies', there was ample precedent to show the term meant the exclusive right of purchase that Hobson intended.27 More recently, Dr Mark Hickford has noted that such use of 'pre-emption' had been employed previously only in United States judgments, and that it is likely that Hobson had been influenced to use it by Governor Gipps, who was familiar with the American cases.28 It is obvious that, if Hobson used an appropriate word, it would nevertheless have been incumbent upon him to explain its meaning properly to those entrusted in turn to explain his treaty for him. Of course, this raises the question as to why Gipps did not use pre-emption himself in his own attempted treaty. Dr (later Professor Dame) Judith Binney, like Ross, regarded Gipps's less ambiguous wording as one factor in the refusal of the Sydney-based rangatira to sign.29 (2) The translation of article 1 In contrast to the detail of the English text, historians have had much more to say about Henry Williams's translation of it into Māori. Belich described it as having 'a closer relationship with reality' than the English text.30 But a number of scholars have queried why Williams could not have used 'mana' or another term to convey the idea of sovereignty. In 1972, Ross was perhaps the first historian to stress that 'mana' had been used to translate the notion of sovereignty in he Whakaputanga in 1835. As she put it, when this same sovereign power and authority was to be ceded to the Queen by, among others, the very chiefs who had supposedly declared themselves possessed of it in 1835, only te kawanatanga katoa of their lands was specified.31 Clearly influenced by Ross, whom he cited, Ward wrote 8.2.1(2) Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz He Whakaputanga me te Tiriti The Declaration and the Treaty 414 in A Show of Justice (published shortly after) that using 'the term "mana" . . . would have given the chiefs a clearer indication of what they were ceding'.32 Dr Peter Adams wrote in 1977 that this clarity was 'no doubt' why mana was not used.33 In 1979, Simpson referred to the 'puzzle' of why Williams used kāwanatanga 'instead of the much simpler and more basic concept of mana'.34 In 1985, Professor Donald McKenzie wrote that, By choosing not to use either mana or rangatiratanga to indicate what the Maori would exchange for 'all the Rights and Privileges of British subjects', Williams muted the sense, plain in English, of the treaty as a document of political appropriation.35 In 2002, Dr (later Professor) Paul Moon wrote that '[t]he more appropriate word to use would have been "mana"'.36 And, in his 2003 doctoral thesis, Manuka Henare referred to 'mana' having been 'used in the declaration of independence but mysteriously not in the Māori text of Te Tiriti o Waitangi'.37 Other historians, however, have argued that using 'mana' would have been

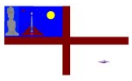




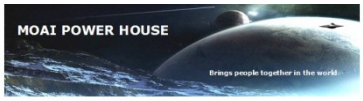








quite incorrect. Orange, for example, thought that mana would not have worked, since ‘rangatiratanga and kawanantanga each had its own mana’.38 Binney, writing in 1989, added : It would have been utterly inconceivable – insane – to have asked the chiefs to sign away their mana, spiritual or political (mana wairua, mana tangata) – or their mana indissolubly associated with the land itself (mana whenua). It would have been a most inappropriate phrase, either alone or more properly defined.39 Lawyer Moana Jackson has regularly expressed the same view and, in doing so, has equated sovereignty with mana. As he put it in 1992 : It was . . . impossible for any iwi to give away its sovereignty to another. The sovereign mana or rangatiratanga of an iwi was handed down from the ancestors to be nurtured by the living for the generations yet to be. It could not be granted to the descendants of a different ancestor, nor subordinated to the will of another.40 Ward later switched his emphasis from the position that he adopted in his early writings. In a 1988 article, he wrote that it was ‘sometimes alleged nowadays that the Maori people were deliberately deceived at the signing of the Treaty’ by Henry Williams and the other missionaries, in that ‘the Maori version of the Treaty should have used the word “mana” to indicate what the Maori people were signing away’. Ward did ‘not think any of this is true’. In his view, the missionaries were ‘genuine, not deceitful’ men who felt that the treaty would protect Māori control over their land.41 Head added weight to this position in 2001, rejecting what she described as ‘an implausible conspiracy to deceive’ and noting that no speaker at Waitangi ‘phrased his fears as “loss of mana”’ (although we might ask how she could know, as we have only partial records in English of what was said). Head argued that ‘mana’ was the wrong authority for a local kāwana : For Williams, the localisation of authority separated the effective and dignified functions of government ; the one was present in New Zealand, the . . . other retreated to England – to the person, and mana, of the Queen. In this situation, neither mana nor kingitanga were plausible choices for a sovereign authority that Williams wished to convey to Maori as local, delegated power to govern.42 Belgrave also argued that the notion of Williams acting deceitfully was ‘not consistent with his character’. Rather, he thought that ‘mana’ and ‘kingitanga’ were appropriate words for a Māori declaration of their own authority, but not for ‘translating a sovereignty that was transferable’. ‘Kingitanga’, too, might not have been right for a Queen.43 The weight of opinion suggests, therefore, that ‘mana’ would not have been viable – either because it was the correct word for what the British sought, and Māori would not have signed up to this ; or because it was the incorrect word. What, then, of Williams’s actual choice, 8.2.1(2) Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz Past Perspectives on te Tiriti and the Treaty 415 kāwanatanga ? Belgrave thought it quite appropriate, because the rangatira referred time and again to the prospect of having a kāwana. As he put it : Maori repeatedly debated whether they wanted a governor and, if they did, what powers the governor would have and what the consequences would be. These were down-toearth, realistic discussions, the kind of discussions that Henry Williams would have considered a practical debate about sovereignty.44 Head also thought kāwanatanga apt, reasoning that Māori would have understood it in terms of the Kāwana who they saw in the flesh at Waitangi : a man of higher status than the existing role model, the self-styled kaiwhakarite (functionary) James Busby, but lower than the Queen.45 Binney regarded kāwanatanga as a ‘careful’ and ‘deliberately pragmatic’ choice, because it was the name for known individuals, known Governors, who had exercised power in New South Wales for half a century. . . . It was a term for a position of authority, associated with the idea of rule by mediation and by force.46 Ward argued that kāwanatanga was coined ‘to describe a concept new to New Zealand – that of national, central power’, which Māori had not been able to exercise through the Confederation.47 Orange, however, thought that the selection of kāwanatanga was ‘not such a happy one’. As she put it : The concept of sovereignty is sophisticated, involving the right to exercise a jurisdiction at international level as well as within national boundaries. The single word ‘kawanatanga’ covered significant differences of meaning, and was not likely to convey to Maori a precise definition of sovereignty.48 Similarly, linguist Professor

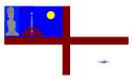




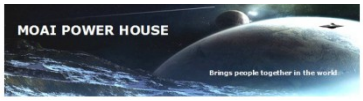








Bruce Biggs argued that Williams must have ‘assumed, unconsciously or otherwise, that as the English word “government” implied “sovereignty” its Māorified equivalent would do the same’. However, as there had never been any supra-tribal authority in New Zealand, there is no way that any Māori, who had not at least visited Australia or England, could have understood much of what Williams meant.49 Owens also considered it ‘doubtful’ whether sovereignty and kāwanatanga were ‘understood in the same sense’.50 While he presumably meant by this that each side understood article 1 differently, we might add that the rangatira were essentially monolingual and were in no position to make any comparison between the two texts. (3) The translation of article 2 There is more agreement among historians about the accuracy of Williams’s translation of article 2. Ross noted that rangatiratanga had been used in the Bible to mean ‘kingdom’, and that Hobson had, soon after the treaty signing, referred to ‘te rangatiratanga o te Kuini’ – that is, ‘the Queen’s sovereignty’. ‘Was it any wonder’, Ross wrote, ‘that the New Zealanders at first supposed the Queen had guaranteed them something more than possession of their own lands ?’ 51 Orange also thought the use of ‘te tino rangatiratanga’ would have created confusion, for Maori understood the word to mean far more than ‘possession’, as in the English text. In fact, it was a better approximation to sovereignty than kawanatanga.52 Indeed, it was the translation of article 2 in particular that has convinced some historians that Williams was simply making the text more agreeable to the rangatira. Belich, for example, thought it likely that the use of ‘rangatiratanga’ was ‘a deliberate or semi-deliberate act of deceit’ by Williams and his son Edward to encourage the rangatira to sign, since they believed ‘that the treaty was now the only way that the Maori could be saved from physical or spiritual extinction at the hands of the agents of vice’.53 More generally, Owens suggested that : 8.2.1(3) Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz He Whakaputanga me te Tiriti The Declaration and the Treaty 416 In comparing the English with the Maori text it becomes apparent that Henry Williams was not simply trying to translate, but rather to re-write the Treaty into a form that would be acceptable to the Maoris.54 Sorrenson likewise considered that ‘Williams did not do a straight translation of the English text, but creatively reworked it into a Maori version that he believed Maori chiefs would accept’.55 Perhaps Williams’s strongest critic in this regard is Moon, who (with Dr Sabine Fenton) referred to Williams’s ‘mistranslation’, his ‘strategic omissions’, and his careful ‘mutating’ of the Māori text ‘to make it palatable to the Maori chiefs’.56 Orange, too, was open to the possibility that Williams ‘chose an obscure and ambiguous wording in order to secure Maori agreement’, but she also considered that he might have been purposefully ‘reinforcing the authority of the chiefs by building into the treaty a right to exercise some control’. Regardless, she thought it was clear ‘that the treaty text, in using kawanatanga and rangatiratanga, did not spell out the implications of British annexation’.57 There have, however, been voices raised in support of the accuracy of Williams’s translation. Head, for example, argued that rangatiratanga was a coined word that did not have the meaning of political power given to it by many modern commentators. She wrote that ‘the Maori language of the Treaty is now routinely referenced to a world in which it did not exist’. As she put it : It strains belief that, having transferred sovereignty to the Crown in the first article, Williams would posit a principle of omni-applicable Maori authority in the second, yet recent analysis is dependent on this being the case. The British did, of course, care about securing the colony’s land base. This is logically why confirmation of tino rangatiratanga is paired with advice on how to go about selling the land. The logic, and the crudeness of the pairing, point to tino rangatiratanga’s referring not to culture in the sense of Maoriness itself, but specifically to land and resource ownership.58 In other words, in Head’s eyes, rangatiratanga largely equated to the guarantee of possession in the English text. Belgrave also wrote in favour of Williams’s fidelity to the English text in using ‘rangatiratanga’. In one sense, he agreed that Williams was attempting to win the chiefs over. As he conceded, ‘There is no doubt that both Williams and Busby believed that the treaty needed to provide strong guarantees of Maori rights if Maori were to agree to a British governor.’ But he had no doubts about Williams’s

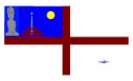




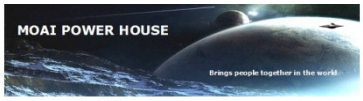








honesty, nor about the practicality of his translation. As he argued, Williams clearly believed that he had provided a proper translation, and had no sense that he had radically transformed the text. While Williams's translation of Busby's legalistic English draft was certainly free, it recognised the kinds of principles and practicalities that, as a straightforward and down-to-earth artisan, he considered important in defending a tribal theocracy.59 For Belgrave, Williams's protection of rangatiratanga was simply an acknowledgement of the realities of Māori society in 1840 and 'doing nothing other than the obvious'. In an echo of Head, he added that it is 'to modern ears' that 'rangatiratanga' conveys 'a strong sense of a retained and exclusive sovereignty for rangatira'.60 In his 1999 book, Ward also denied that there was any deception or sloppiness about the translation. Rather, he thought that the officials and their missionary advisers seem to have made considerable efforts to incorporate their understanding of Maori society and its values into the basic terms of the agreement, in both the English and Maori texts Ward to some extent foreshadowed Head's argument that the land guarantee was crucial in gaining Māori agreement. As he put it, with land 'all was possible ; without it, everything else was theoretical. Land was what made chieftainship – and much else besides – concrete'.61 As for Williams's translation of article 2's pre-emption text, Orange observed that he 'did not stress the absolute and exclusive right granted to the Crown'.62 McKenzie reflected that the English pre-emption text has 8.2.1(3) Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz Past Perspectives on te Tiriti and the Treaty 417 been taken to bestow legality on the actions of successive Governments, while the Maori version seems morally to justify the deep sense of grievance still widely suffered over Maori land issues.63 Belgrave did not engage specifically with the accuracy of Williams's translation, merely noting that 'Williams's use of "te tino rangatiratanga" was not a statement of absolute sovereignty because the term was qualified by the principle of Crown pre-emption'.64 It is not clear whether Belgrave was referring here to Hobson's definition of preemption or to the meaning which Williams's Māori text was more likely to convey. Indeed, there is no record of Hobson explaining his definition of the pre-emption text to Williams, and the word 'exclusive' is absent from every back-translation we have seen, except those of Busby and Dr Phil Parkinson. (4) Was Williams deceitful or at least a poor linguist ? Let us look further at the suggestion that Williams acted deceitfully. What grounds are there for this accusation ? Moon and Fenton argued that the Church's instruction to him to do all in his power to induce the chiefs to cede sovereignty (see chapter 7) created a clear conflict of interest. They also suggested that his significant land holdings motivated him to serve the Crown well, in anticipation of favourable treatment when his own purchases were investigated.65 Moreover, they argued that he held an essentially dismissive attitude towards Māori and their culture : Williams's general attitude toward Maori was governed by the extent to which they conformed to his construction of Christianity. He showed no wish to integrate into Maori society, and such involvement in interaction he did have with Maori consistently appeared to be based on his overriding urge to find converts.66 As we have seen, historians like Ward and Belgrave have defended Williams's honesty. Moreover, some notable critics of Williams's translation have hesitated to describe him as dishonest and have acknowledged the inherent difficulties that he faced. McKenzie, for example, said he did 'not impute to Williams any will to deceive the Maori by his choice of terms', although 'Williams certainly shows himself, at that critical time, to have been less sensitive than Colenso to Maori modes of understanding'.67 Orange also accepted that Williams may have 'decided to recast the English draft, as translators often do', and she noted that he had a general tendency to simplify the text.68 Biggs concluded that Williams used an inappropriate word for at least one crucially important word in te Tiriti and that te Tiriti was not 'in any reasonable sense equivalent to the Treaty'. But he concluded that Williams's translation could only have been well done if definitions of the Māori terms chosen to translate such concepts as sovereignty, rights and powers, pre-emption, etc, had been included, as is done, for example with our statutes. Only then would the meanings chosen by the British Humpty-Dumpty have been made even reasonably clear to the Māori Alice.69

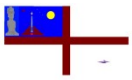




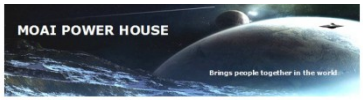








What, though, of Williams's skills as a linguist ? Historians have been divided on this matter too. Again, it was Ross who began the critique. Williams, she said, was an inexperienced translator, and those with experience – William Williams, Robert Maunsell, and William Puckey of the Anglicans, and the Wesleyan John Hobbs – were unavailable at the time. Williams's son Edward, she added, was certainly fluent in the local dialect but was a 'green' young man of 21, and neither father nor son knew much of constitutional law. Te Tiriti, she said somewhat dismissively, was 'not indigenous Maori ; it is missionary Maori, specifically Protestant missionary Maori'.70 Orange largely concurred with Ross's analysis, noting also the failure to make any use of the young mission printer William Colenso.71 Moon and Fenton took the contrary view, albeit not in Williams's defence. In seeking to demonstrate his deceitfulness, they argued that his 'mistranslations' were no mere accident. Williams had an 'intimate knowledge of what might be termed "constitutional Maori"', for example, through his translation of the Declaration of Independence. Moon and Fenton thought that Williams's stated need to 'avoid all expressions of the English' for 8.2.1(4) Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz He Whakaputanga me te Tiriti The Declaration and the Treaty 418 which 'there was no expressive term in Maori' was not the result of ignorance, but rather a means of avoiding direct translation of key words like sovereignty (that is, by using mana). Moon and Fenton also cited Williams's singular dedication, from the time he arrived in New Zealand in 1823, to acquiring a mastery of te reo Māori in order to evangelise.72 Head similarly dismissed Williams's 'linguistic incompetence' as an implausible and 'loosely speculative' theory.73 The question of Williams's honesty is relevant not only to his written translation but also to his verbal explanations to the chiefs at Waitangi on 5 February. We return to this in section 8.2.2(2). We note here, however, the cautionary note sounded by Owens. In his biography of Richard Taylor, Owens argued that those who have advanced the 'conspiracy theory' – that Williams and his son sought to 'hoodwink' Māori in order to secure British annexation and an increase in value of his land purchases – 'have made no attempt to prove that this would be consistent with what is known of Williams' character'. This, wrote Owens, was all the more notable given that a 'case can be made' that Williams even tried to 'preserve and enhance chiefly power'.74 In an earlier piece of work, Owens similarly concluded that 'The blunders of Hobson and his band of do-it-yourself diplomats can more properly be attributed to haste and inexperience than to deliberate deception.' 75 8.2.2 The oral debate (1) The oral nature of Māori society Given what she regarded as the deficiencies in Williams's translation, Orange felt that 'explanation of the articles would be crucial'.76 What, then, have historians and other scholars argued about the discussions at Waitangi and Mangungu and their importance relative to the written words of the treaty texts themselves ? As we mentioned in chapter 5, McKenzie noted the Māori embrace of letter writing, which miraculously allowed the writer 'to be in two places at once, his body in one, his thoughts in another'. But he rejected the 'absurd . . . European myth' that, in the quarter-century since Marsden's first written land transaction at Rangihoua in 1814, Māori had accepted a signature as a sign of full comprehension and legal commitment, to surrender the relativities of time, place and person in an oral culture to the presumed fixities of the written or printed word. As he put it with respect to the hui at Waitangi on 5 February 1840 : For the Maori present, the very form of public discourse and decision-making was oral and confirmed in the consensus not in the document. It is inconceivable that Williams's explanations to them in Maori were wholly one way, that there was no response and no demand for reverse mediation. In signing the treaty, many chiefs would have made complementary oral conditions which were more important than (and certainly in their own way modified) the words on the page.77 Orange also argued that The oral nature of the Waitangi deliberations was thus of paramount importance, particularly in a Maori tradition in which relationships were customarily sustained and modified through lengthy discussion.78 Belich put the point even more strongly. He went so far as to call the oral transactions, rather than the written texts, 'the historical treaty'. He described them as a series of oral agreements among chiefs, as well as between them and

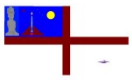




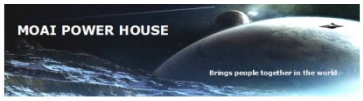








those speaking for the Governor, which must have varied from treaty meeting to treaty meeting. [Emphasis in original.]79 Nonetheless, we should not forget that some rangatira were acutely conscious of the importance of the written word. As we have seen, Makoare Taonui began at Mangungu by asking for Hobson's speech to be written down. Hobson's reply that te Tiriti was written down and copies would be made available was not an answer to Makoare's specific request, because, as we know, the Tiriti text and the oral statements were two different matters. 8.2.2 Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz Past Perspectives on te Tiriti and the Treaty 419 We should remember Mohi Tāwhai's comment too, also at Mangungu, that 'Our sayings will sink to the bottom like a stone, but your sayings will float light, like the wood of the w[h]au tree and always remain to be seen.' 80 McKenzie interpreted this as an acknowledgement of the differences between the written and spoken word ; as he put it, 'Manuscript and print, the tools of the Pakeha, persist, but words which are spoken fade as they fall.' 81 (2) The Crown's assurances What has been contended about the tenor of the assurances made by the Crown's agents to the rangatira ? In 1973, Ward, following Ross, was highly critical of the Crown's communication at Waitangi about what changes the treaty would bring. He argued that : ы the chiefs 'had little understanding of the legal concept of national sovereignty as understood by the officials' ; ы '[t]he gulf between Maori and British purposes in 1840 was very great' ; and ы Hobson disregarded Māori objections and reservations and regarded signature-gathering as more of 'an exercise in public relations' than a 'weighty mission'. Ward concluded : Bent on their mission, Hobson and his staff were basically careless of the opinions of the people they had come to save, and cared little that the exercise of their power, unless accompanied by ample measures to engage and compensate the Maori, would appear oppressive and evoke resistance.82 As we have seen, Ward has altered his position over time, coming to regard Hobson and the missionaries as having had much more honourable intentions. But, writing in 1999, he was prepared to accept that, even if the rangatira knew the Crown would exercise authority, the Crown's communication had been less than frank : It can be argued that British officials should have explained much more clearly just how the Crown's sovereignty (kawanatanga) would impinge upon Maori rangatiratanga. The reason they did not do so, and instead put the most positive and encouraging construction on the Treaty, is that securing the authority necessary to control the land trade was extremely urgent.83 It is often argued that the interpretation invited by Hobson's and the missionaries' messages was that kāwanatanga was sought mostly to control 'lawless' Europeans, and the Queen's sovereignty would henceforth apply only to Pākehā. Ward concluded as much in A Show of Justice, writing, 'In general the chiefs considered that the authority of the Governor was to apply to matters involving Pakeha, not internal Maori disputes.' 84 Belich suspected James Busby in later life. In 1861, Busby claimed that what Hobson had meant by pre-emption at Waitangi in 1840 was understood by the rangatira, but he was contradicted by Henry Williams. 8.2.2(2) Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz He Whakaputanga me te Tiriti The Declaration and the Treaty 420 that the chiefs may have looked forward to help from the Governor in controlling Europeans, a task which was becoming burdensome, and he allowed for the possibility that the concept of partial sovereignty, over Europeans only, was mentioned in the treaty debates. Right up to January 1840, partial sovereignty over European existing settlements was the option most discussed by the British, and this might have percolated through to New Zealand.85 Moon was emphatic that Hobson's expressed intent was protective and benign. As he wrote in 2002, Hobson explicitly and unambiguously presented the Treaty to Maori as an instrument of protection – a means of allowing the Crown to rule over the settler population in order to regulate European behaviour. He was certainly never open about this rule enveloping Maori as well.86 An important contribution to the scholarship has come from scholars who have translated into English the firsthand comments of contemporary French observers. They include Philip Turner's thesis of 1986 and published work by Dr Peter Low.87 Both, for example, translated a

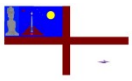




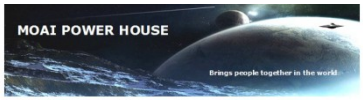








notable observation of Bishop Pompallier's assistant, Father Louis-Catherin Servant. Turner's version was as follows : The governor proposes to the tribal chiefs that they recognise his authority : he gives them to understand that this authority is to maintain good order, and protect their respective interests ; that all the chiefs will preserve their powers and their possessions. A great number of the latter speak, and display in turn all their Maori eloquence. Most of the orators do not want the governor to extend his authority over the natives, but only over the Europeans.88 Belich described Hobson's agents as quite capable of 'shifting' the emphasis in their explanations to obtain Māori consent. To make this point, he quoted Turner's translation of Servant.89 Orange, who also used Turner,90 gave this summation of the discussions at Waitangi : Couched in terms designed to convince chiefs to sign, explanations skirted the problem of sovereignty cognisable at international law and presented an ideal picture of the workings of sovereignty within New Zealand. Maori authority might have to be shared, but Hobson would merely be more effective than Busby, and British jurisdiction would apply mainly to controlling troublesome Pakeha ; Maori authority might even be enhanced.91 In his 2003 Penguin History of New Zealand, which did not dwell on the disputed events at Waitangi, Dr Michael King observed that missionary explanations of the terms and concepts, particularly those given by Henry Williams, fudged precise meanings and potential contradictions and emphasised instead the protective and benevolent intentions of the document as it would affect Maori.92 Owens, who as we have seen rejected the notion of deceit behind the text of te Tiriti, wrote in 2004 that Hobson laid emphasis on the need for sovereignty to restrain British subjects and avoided mentioning that, 'if sovereignty was ceded, Maori would also be restrained'.93 Orange noted that Hobson's emphasis at Mangungu was similar : there he made 'repeated assurances', according to Hobbs, that the Queen did not want the land, but merely the sovereignty, [so] that . . . her officers . . . might be able more effectually to govern her subjects . . . and punish those of them who might be guilty of crime.94 Ward took a different view in his 1999 book, notwithstanding his remark about the failure to explain the workings of sovereignty in detail. His overall conclusion about the way the Crown's message was conveyed was that Records of Treaty discussions between officials and chiefs . . . show the Crown's determination to prohibit warfare and other violent practices within Maori society. The chiefs would have been remarkably obtuse if they had not recognised that 8.2.2(2) Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz Past Perspectives on te Tiriti and the Treaty 421 the Queen's authority was to extend over them in some way. Indeed, some declined to sign the Treaty for precisely that reason.95 In perhaps a similar manner to Belgrave's reference to 'modern ears' (see section 8.2.1(3)), Ward accused some commentators on this matter of presentism. As he put it : Many of the modern attempts to attribute more precise meanings to those discussions – either enlarging the meaning of rangatiratanga and reducing that of kawanatanga, or vice versa – are largely a projection onto the past of present-day goals or intentions.96 Despite differences over the intentions held by Hobson and his missionary agents, there is general agreement that they put a positive gloss on the meaning and effect of the treaty to encourage the rangatira to sign. Did this amount to deceit ? We have seen that missionary influence was crucial in obtaining the chiefs' consent at both Waitangi and Mangungu and that Colenso made his famous intervention on the morning of 6 February partly out of concern that the chiefs would blame the missionaries if they later felt cheated. Moon and Fenton, for their part, argued that Williams seems to have complemented his mistranslation of the text with a more elaborate but equally effective litany of verbal misrepresentations – carefully bypassing, at all stages, any suggestion that in signing the Treaty Maori would be surrendering their sovereignty.97 Historians who have defended Williams's honesty appear to have focused on his actual translation of the text rather than his verbal explanations at Waitangi. In Ward's case, however, we have his recent views on Williams's spoken communications with the rangatira, as presented to our inquiry (see section 9.3.3(1)). There has been relative unity among historians about the failure to explain the pre-emption clause properly, although views have differed as to whether this was Williams's fault. Ross noted that,

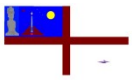




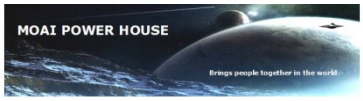








immediately after the Waitangi hui, Colenso wrote to the CMS that he ‘did not “for a moment” suppose that the chiefs were “aware that by signing the Treaty they had restrained themselves from selling their land to whomsoever they will”’. The chief Hara, for example, responded when told he could not sell his land privately, ‘What ! Do you think I won’t do what I like with my own ?’The clamours of protest from Māori and settlers alike led to Governor FitzRoy’s pre-emption waiver in 1844, and the matter festered on for years. Ross related how, in 1858, Busby entered the fray and maintained that the right of the Crown alone to purchase Māori land was put very clearly to the chiefs.98 But Williams eventually made a statement, which was reported by the press in 1861 and which Ross also quoted. This rather exploded any notion that the pre-emption clause had indeed been explained to mean what Normanby’s instructions intended : when it touched upon the land, the pre-emption clause had to be explained to them over and over again, and the following is the explanation that was given : The Queen is to have the first offer of the land you may wish to sell, and in the event of its being refused by the Crown, the land is yours to sell it to whom you please. This explanation, I most conscientiously assert was given to them, and thus they understood it ; and, . . . had any other explanation been given to them, the treaty never would have been signed by a chief in the Bay of Islands. I am bound, in honor, to make this statement, however at variance it may be with that made by the editor of the Aucklander [Busby]. I should have considered the whole body of missionaries guilty of trickery – if not treachery – to the New Zealanders, had they not fully and clearly explained to the natives the meaning of the pre-emption clause. [Emphasis in original.]99 Ross thought that Williams’s recollection of having explained the clause ‘over and over again’ was possibly ‘the exaggeration of hindsight, because it hardly squared with comments made by Colenso at the time that the chiefs thought that there was no restraint on them ‘selling their land to whomsoever they will’.100 Indeed, Orange concluded that, far from the clear (and contradictory) statements that Busby and Williams claimed in hindsight, the 8.2.2(2) Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz He Whakaputanga me te Tiriti The Declaration and the Treaty 422 ‘explanation’ of pre-emption is likely to have been rather muddled : The treaty negotiations suggest . . . that the exclusive nature of pre-emption was not always clearly understood. Nor did Maori grasp the financial constraints that pre-emption might bring ; it was presented, it seems, either as a benefit to be gained or as a minor concession in return for the guarantee of complete Maori ownership.101 Ross also argued that the guarantee of the rights and privileges of British subjects was fundamentally contradicted – indeed nullified – by pre-emption, either as the right of first refusal or the sole right of purchase.102 In 1981, Owens added that article 3 ‘ignored the fact that British subjects were not normally subject to a pre-emption clause’.103 So was Williams deliberately misleading on this specific matter ? McKenzie implied as much. He suggested that, while ‘neither Hobson nor Williams could have communicated the full import of “pre-emption” to those who were asked to assent to the treaty’, Williams’s simplification of the issue in his translation showed less readiness than did Colenso to penetrate ‘the Native mind’ and ‘explain the thing in all its bearings . . . so that it should be their very own act and deed’. One might be accused of arguing from hindsight were it not for Colenso’s contemporary insight.104 Orange, however, thought Williams could be excused. While she granted that he would have probably been aware of Hobson’s desire for an exclusive right of purchase, given the latter’s 30 January proclamation, she accepted that Williams and the other treaty negotiators – who were mainly missionaries – would not have been able to explain pre-emption properly, and would naturally have emphasised its protective functions : It is quite likely that [the] negotiators did not realise the full significance of pre-emption ; Hobson may not have widely publicised the financial provisions for the colony and the part that pre-emption would play [in funding the colony].105 Ross noted in this regard that Hobson’s instructions were confidential.106 (3) Oratory One noted aspect of the oral transaction is the way that rangatira who were dramatically opposed in their speeches of 5 February turned around the next day (at Waitangi) or later the same day (at Mangungu) and signed the

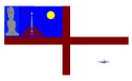




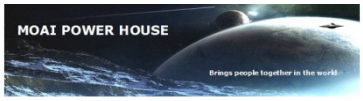








document. Colenso described the ‘excited manner’ of Te Kēmara’s two speeches at Waitangi, but footnoted a comment that the first was ‘all mere show – not really intended’.107 Before his emissaries ‘hawked’ copies of the treaty around the country (as Ward put it in A Show of Justice), Hobson warned them somewhat cynically of what they would face at hui : The Koraroes (Korero – debates) as they are called will be a great tax on your patience, for probably everyone present will address you in a long speech full of angry opposition, but very little to the purpose ; but to secure a favourable termination to the debate you have only to obtain the friendship of one or two of the most influential chiefs, who will probably give a favourable turn to the meeting, and all present will very soon yield to your proposal.108 In 1914, Buick agreed with Colenso that Te Kēmara’s speech was merely ‘theatrical display’ and an exercise in ‘Maori vanity’.109 A similar understanding of the nature of the speeches persists. Parkinson, for instance, wrote several years ago that the debate at Waitangi ‘was really not much of a debate – more a series of harangues, delivered in a rather theatrical tradition’.110 Others have stressed the practice of Māori oratory. Dr (later Professor Dame) Anne Salmond, for example, described the nature of whaikōrero in her 1975 book Hui, noting that hui attendees ‘best appreciate a speech full of drama and fire – an impassioned denouncement, a series of sly digs or an inspired piece of clowning’.111 We can see 8.2.2(3) Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz Past Perspectives on te Tiriti and the Treaty 423 that those elements were present in some of the speeches at Waitangi on 5 February 1840. Oral debate was also the occasion to test propositions and theories. As King explained, with respect to Waitangi, ‘It was a convention of whaikorero (Maori discussion) that all arguments, positive and negative, should be put.’112 Binney concluded that the speech-makers at Waitangi and Mangungu used the discourse to ‘emphatically [open] up’ the ‘essential issue’ of the chiefs’ and the Governor’s respective authority. As she put it : On the three occasions for which we have some record of the speeches made, at Waitangi, Kaitaia, and Te Horeke, this pattern of hostility, suspicion, questioning of the translations, discourse, and final acceptance occurred.113 A Ngāpuhi perspective was provided by Sir James Henare in his affidavit on the treaty to the Court of Appeal in the Lands case in 1987 (see section 8.3.2) and was quoted by Dr (later Professor) Jane Kelsey in her 1990 book A Question of Honour ? Sir James wrote as the last surviving member of Te Rūnanga o Te Tiriti o Waitangi, a committee of descendants of Ngāpuhi treaty signatories first established in the 1880s. The tradition he recounted was that, after Hobson presented the treaty on 5 February, the rangatira retired to Te Tii, where they resolved among themselves at long last to sign it. But they decided that they would nonetheless ‘offer token opposition to the Treaty’ the next day, and they arrived at Waitangi saying that they would not sign. Kelsey noted that ‘[t]his resistance had been referred to in almost all records and histories related to the signing’, but she implied that it had been misunderstood by Pākehā commentators. She quoted Sir James as follows : The historians say that all the Chiefs violently opposed the signing of the Treaty of Waitangi. But this was only token opposition. A token because it should have been obvious to all the historians and lawyers and everyone else who had been dealing with the Treaty . . . Why did they get up and oppose the signing of the Treaty and then immediately get up and sign it and append their moko ? And then shook the Governor by the hand and Captain Hobson said ‘He iwi kotahi tatou’.114 Elements of the chronology here differ from the narrative that we have set out in chapter 7, reflecting the way that oral tradition can shift details of events over time. However, the essence of the tradition – the offering of token resistance, the importance of the discussions among the rangatira on the evening of 5 February, and the final decision to sign te Tiriti – fits with the written history. The central point, however, as Sir James relayed it, was that the rangatira ‘never believed and never intended’ to give away their sovereignty and mana.115 (4) The evening of 5 February The possibility remains that a key reason why chiefs so avowedly opposed to the treaty on 5 February willingly signed it on the 6th is that they were talked into it that evening by Williams and his colleagues. While we do not know exactly how matters were explained, we know, at least, that Heke said on 5 February, ‘The Native mind could not

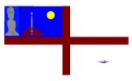




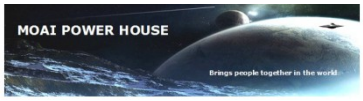








comprehend these things : they must trust to the advice of their missionaries'.116 Orange considered that in the evening Williams had kept up his persuasive line of argument adopted during that day's meeting, emphasising the beneficial aspects of the treaty and distracting Maori attention from matters to which they might take exception.117 Orange concluded, therefore, that the decision to sign te Tiriti involved 'a remarkable degree of trust' on the part of the chiefs : 'They were encouraged by the advice of the English missionaries that Maori interests would be best served by agreeing to the treaty.'118 This was the case not only at Waitangi but also at Mangungu, where Hobbs thought missionary intervention had been vital to securing the chiefs' signatures. Little coverage about what the missionaries may have said on the evening of 5 February exists in the modern scholarship. Indeed, these discussions have been seldom 8.2.2(4) Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz He Whakaputanga me te Tiriti The Declaration and the Treaty 424 mentioned beyond snippets – such as Owens noting that Richard Taylor was probably not present 119 – or have done little more than repeat Williams's own assertion that the treaty was explained 'clause by clause' to the rangatira, as was maintained by the Reverend Lawrence Rogers in his 1973 biography of Williams.120 (5) The signing The signing of te Tiriti itself on 6 February contained one more or less final oral assurance in the form of Hobson's statement to each signing rangatira : 'He iwi tahi tatou'. The meaning and significance of these words have been subjects of debate in their own right. What might be called the traditional view is that Hobson confirmed thereby that Māori and Pākehā were now equal members of the state, with the same rights and obligations. This interpretation has lately been favoured by those who object to alleged Māori advocacy of 'special rights' under the treaty, or 'separatism'. McHugh remarked in this regard in 1991 that Many white New Zealanders have a knee-jerk reaction against special laws favouring the Māori population. Some recall Captain Hobson's words at Waitangi after the chiefs had signed the Treaty : 'Now we are one people'.121 In 1998, Sorrenson suggested that Hobson's words had served the agenda of assimilating Māori but that such a use was no longer tenable. As he put it : That injunction has been uttered many times since and by successive governors at Waitangi anniversary ceremonies who could still get away with it in the middle years of this century. But not any more.122 National Party leader Dr Don Brash invoked Hobson's words in his 2004 Ōrewa speech, attacking what he saw as 'two sets of laws, and two standards of citizenship'. He argued that the Treaty of Waitangi 'should not be used as the basis for giving greater civil, political or democratic rights to any particular ethnic group' and that 'we must build a modern, prosperous, democratic nation based on one rule for all'.123 A few days later, the Governor-General, Dame Silvia Cartwright, took the step of signalling that Hobson's message would not have been understood that way by the chiefs : Just a few days ago, I listened to the second Rua Rau Tau lecture given by Dame Joan Metge. As others have done before her, she likened the relationship among all the people who make up modern New Zealand to a rope – many strands which when woven or working together create a strong nation. She recalled the words of Lieutenant Governor Hobson at Waitangi on 6 February 1840 to each rangatira who signed the Treaty that day : 'He iwi tahi tatou' which Governor Hobson, incorrectly it seems, understood to mean : 'We are now one people'. Dame Joan, a distinguished scholar and member of the Waitangi National Trust Board that administers the land on which the first signatures were put to the Treaty, views the phrase as having two possible meanings : In 1840 correctly translated it would have meant : 'We two peoples together make a nation.'124 This implicit endorsement of Metge's position by one of Hobson's successors has not quelled the debate. Some popular misconceptions about Hobson's words include the notion that they formed part of the treaty itself 125 – a rather selective Pākehā emphasis on the oral nature of the transaction, perhaps. A variation on this idea is that Hobson 'proclaim[ed]'126 the words – in both languages127 – and that therefore they had the same effect as the written terms. Another view is that Hobson's statement was 'probably more important than the document itself ', and that it was uttered by Governor Grey.128 Others have even claimed, rather fancifully, that the words

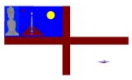




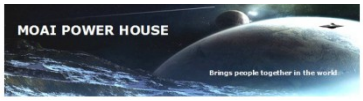








were spoken by each chief as they signed.129 Some noted historians have not delved into the symbolism of Hobson's statement : Belich in Making Peoples and even Moon in his biography of Hobson made no mention of it. Ross, however, thought that 'If Waitangi in 1840 held any real promise for the future', it was perhaps to be found 8.2.2(5) Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz Past Perspectives on te Tiriti and the Treaty 425 in 'He iwi tahi tatou' (which she, like Colenso, translated as 'We are now one people'). By this, she may have meant what Ward suggested in 1999 : that Hobson was referring to 'two races embarking on the common enterprise of nation-building'130 – a somewhat similar position to that of Metge. In this, these scholars all had something in common with Justice Casey in the 1987 Lands case. He thought Hobson was referring to the partnership between Māori and Pākehā, 'rather than to the notion that with a stroke of the pen both races had become assimilated'.131 Orange, for her part, thought Hobson was appealing to rangatira who had embraced Christianity by emphasising the link between Māori and British 'as one people with the same law, spiritual and temporal'.132 In 2010, six years after giving her lecture that the Governor-General quoted, Metge published an amended version. As one of the more comprehensive assessments of Hobson's sentence, we set out Metge's consideration of it in full : At Waitangi on 6 February 1840, William Colenso tells us, Lieutenant-Governor Hobson said to each rangatira who signed the Treaty : 'He iwi tahi tātou'. Presumably he was coached by somebody, probably Henry Williams. Colenso translated this into English as 'We are now one people'. In doing so, he missed three subtle points. First, the word iwi means nation as well as people. Secondly, if Hobson meant one (unified) people he should have said 'he iwi kotahi' ; tahi without the prefix ko means together. Thirdly, the last word, tātou, certainly means the first person plural we /us, but it is a special form, one without an equivalent in English. Use of tātou signals the fact that the we in question comprises two or more groups, which are and remain distinct within the unity. This succinct Māori sentence is incredibly difficult to translate into English in a way that does it justice. The problem is that for many years Colenso's translation has been used to emphasise the idea that 'we are all New Zealanders', a model I have rejected as unduly reductionist. Some years ago I suggested the translation 'We many peoples together make a nation'133 but that was too easily interpreted as advocacy of multiculturalism, a model that also has flaws. Perhaps it would be good strategy to leave the saying in Māori, untranslated, while all of us – old New Zealanders, young New Zealanders and new New Zealanders – continue to debate and work out how to relate to each other, with the Treaty as our guide.134 In 1985, McKenzie rejected the fact that some rangatira had signed their names as indicating their full understanding of and assent to the written terms of the treaty. He concluded that, of the more than 500 signatures to te Tiriti, the highest possible number of personal signatures, as distinct from crosses, moko-patterns or apparently quite meaningless marks, is seventy-two. In almost every case the signatures are so painfully and crudely written as to show clearly that they have not been penned by signatories practised in writing and therefore fluent in the art. We are forced to conclude . . . that [the typical signatory at Waitangi] . . . is unlikely to have been able to read what he was signing in even the most literal way. Even if he could do that, the odds are loaded against his knowing how to write his own name. Even if he could do that, the evidence suggests that he wrote painfully and with only the most elementary competence. The presumed wide-spread, high-level literacy of the Maori in the 1830s is a chimera, a fantasy creation of the European mind. Even at Waitangi the settlement was premised on the assumption that it was, for the Maori, an oral-aural occasion.135 Drawing on McKenzie, Belich likewise stressed that very few signatories were able to read what they signed. He doubted the signatures and marks were evidence of rangatira abandoning their 'traditional practice of making solemn and binding verbal agreements on the basis of formal discussion at major meetings called for the purpose'. Rather, they were 'concessions to Pakeha ritual, snapshots of the great event'.136 Head, however, was critical of what she called McKenzie's depiction of the signatures as 'mere squiggles on the paper – a squiggle of signature length maybe, but only a

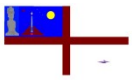




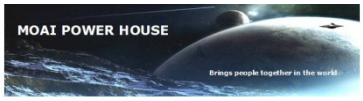








simulacrum of the real thing, because the chiefs could not write'. In Head's view, McKenzie's analysis made 8.2.2(5) Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz He Whakaputanga me te Tiriti The Declaration and the Treaty 426 the marks 'look sad and duped'. This was the 'wrong frame', she suggested. Instead, and in contrast to Belich, she argued that the fact that the rangatira had signed their names or marks symbolised their 'step into the future'. As she put it, By being expressed in the foreign medium of writing, the signatures were an acknowledgement of modes of power in the new world. The chiefs offered the British the power of their names, which was the effective form of their authority. [Emphasis in original.]137 8.2.3 The meaning and effect of the treaty What, then, have historians concluded about the treaty's overall meaning and effect ? Was sovereignty ceded, on the basis of the full and informed consent Hobson was expected to obtain in his instructions from Normanby ? We begin with Ross, whose memorable conclusion was that, far from being a 'sacred compact' (as described by Lord Bledisloe, the Governor-General who bequeathed the treaty grounds to the nation), 'the Treaty of Waitangi was hastily and inexpertly drawn up, ambiguous and contradictory in content, chaotic in its execution'. Who could say what the intentions behind the treaty were, she asked, when even the signatories were so 'uncertain and divided in their understanding' of the meaning of te Tiriti ?138 Other 1970s historians followed Ross in rejecting the longstanding view of the treaty as a willing cession by Māori to the Crown in exchange for protection. As Ward put it in 1973 : The chiefs' signing was taken by the British as a meaningful recognition of the supremacy of the Queen and her agent the Governor. In fact it had almost none of that quality. The Maori leaders had little understanding of the legal concept of national sovereignty as understood by the officials. They had instead a very lively conception of the mana of the land and the mana of the people embodied in the senior-ranking chiefs of the various lineages. This they had no intention whatever of surrendering ; rather they wished to take steps to preserve it. Nene's purpose was essentially to secure the aid of a useful ally to keep in check the settlers and the French.139 Writing in 1977, Adams thought that 'some' rangatira had agreed to 'some' elements of Crown control, but that it is likely none understood the full implications of what the British had in mind : The political realities of an anarchic frontier situation were no doubt sufficiently apparent for some of the leading chiefs to realize that the cession meant the acceptance of some degree of control and authority over Maori–pakeha relations and over Maori activities which affected them ; this some of them welcomed. Yet it is unlikely that the chiefs understood either the extent of the control and authority envisaged by the new British administration, or the long-term implications of the transfer of sovereignty ; nor, of course, were any real attempts made to explain them. Without that understanding the signing of the Treaty of Waitangi was an act of trust.140 Adams's implication was that it was a trust that would be betrayed. Writing in 1979, Simpson took a different tack, still rejecting the notion of a sacred compact but suggesting that at least some rangatira signed as a means of self-preservation. In his view, the speeches of the rangatira showed that many 'saw their own authority declining under the force of Christianity and European technology'. Hobson was thus 'a prop to their authority', and the rangatira 'saw the Treaty as an opportunity to reintroduce stability in a world changing to their disadvantage'.141 Thus, while Hobson would have regarded the treaty as a 'charade' imposed on him by the Colonial Office, and the Colonial Office would have seen it as 'a sop to the powerful Church Missionary Society', the rangatira were gulled into acceptance of British rule by the act of signing it. This is not to say that some were not aware of what was going on. By and large, those who were did not sign, or signed because they saw little alternative. It is important to note only that in these proceedings there is no sign of the vaunted covenant between Maori and pakeha. 142 Into the 1980s, Orange concluded that, from the oral debate, 'Maori might well have assumed . . . that their 8.2.3 Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz Past Perspectives on te Tiriti and the Treaty 427 sovereign rights were actually being confirmed in return for a limited concession of power in kawanatanga.'143 As she put it : When Hobson reported these

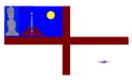




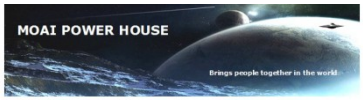








proceedings to the Colonial Office, he asserted that efforts had been made to explain to the chiefs ‘in the fullest manner’ the effect that might result from the treaty. It is difficult to see how he could honestly claim this. As presented, the treaty seemed to be confirming the chiefs’ authority and directing its efforts mainly at Pakeha, aiming specifically at better control of British subjects. Such control might be to the advantage of the Maori people, even though it would mean accepting an increased British authority and sharing the ruling power of the land. Apart from this, however, other predictable changes that would affect Maori life do not appear to have been touched on. Most importantly, there is an absence of any explanation that Maori agreement to kawanatanga (‘sovereignty’ in the English text) would mean British annexation, a substantial transfer of power that would bring international recognition of New Zealand as a British colony. On the contrary, from the emphasis on protection, Maori might have expected that they were being offered an arrangement akin to a protectorate.144 In other words, according to Orange, the Māori text failed to convey the meaning of the English text, and Hobson’s agents – be they Busby or the missionaries – failed to ‘clarify the difference’ ; the treaty was presented ‘in a most benevolent light’ ; and the evident Māori concern that they would lose their mana or authority was assuaged by the guarantee of rangatiratanga. ‘It looked’, Orange concluded, ‘as if the treaty was asking little of them but offering much.’ But the chiefs still had to place ‘a remarkable degree of trust’ in their advisers. Ultimately, ‘Maori expectations of benefits from the agreement must in the end have outweighed fears, enabling reluctant chiefs to put aside reservations’.145 Another important 1980s contributor to debate about the treaty’s meaning was Binney, who touched on it to a greater or lesser extent in several essays. Taken as a whole, she described the treaty thus : for the rangatira, it ‘seemed to offer what they had asked for : a British protectorate, which preserved their chieftainship’, while they ceded governorship of the land to the Queen. ‘In accepting the authority of the chiefs’, Binney argued, ‘the treaty had, in Māori understanding, acknowledged a dual sovereignty.’146 Notwithstanding this dual authority, Binney thought the retention of rangatiratanga would have convinced the chiefs that ‘they were retaining the substance of power’. This was because ‘those who had been to Poihakena [Port Jackson, Sydney] had seen mostly the benevolent face of “Kawanatanga”, governorship’.147 For Binney, the oral debate was where ‘the Maori understanding is revealed’.148 She had no doubt that Hobson’s representatives at the treaty meetings ‘soft-pedalled the full implications of the transfer of sovereignty. They played up the role of the Crown as a protector, and the equal rights that were to be given to Māori.’149 Some rangatira were hesitant, but the kind of assurances of chiefly independence and the Governor’s control of the settlers recorded by Servant eventually ‘overcame Maori hostility’.150 The effect of the treaty was that ‘rangatiratanga (chieftainship) coexisted with kawanatanga (governorship)’, albeit with the former being ‘for a while, the greater practical authority’.151 Binney invites us to consider the transaction at face value, in terms of the way the Māori signatories saw it. Kāwanatanga was the right word for what Māori were prepared to convey. The deal was struck through the exchanges at the hui, not through the mere affixing of signatures to parchment. This suggestion of an agreement having indeed been forged at Waitangi, but just not one intended by the British, is similar to the view of Ross and Low. Ross noted James Edward Fitzgerald’s remarks in the House in 1865 that Governor Hobson might have wished the Maoris to sign one thing, and they might have signed something totally different. Were they bound by what they signed or what Captain Hobson meant them to sign ? Ross turned this on its head and asked, ‘Was the Crown bound by what Hobson signed, or by what he assumed its meaning to be ?’152 Likewise, Low took Pompallier’s 8.2.3 Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz He Whakaputanga me te Tiriti The Declaration and the Treaty 428 observation in a letter of 14 May 1840 that ‘few understood well what they did in signing. They were won over by presents and by their ignorance’, and similarly turned it upside down. He suggested that the Māori understanding of the treaty as what he saw as an equal authority was at least as valid as the European understanding of the treaty as a cession of full sovereignty : Perhaps, after all, chief

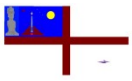




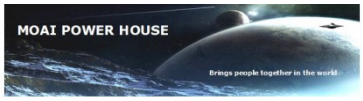








Patuone's gesture with his two index fingers was not altogether wrong. Could it have shown a quite tenable interpretation of the word kawanatanga as denoting some kind of protectorate system (such as later occurred in Tonga, where full rangatiratanga is retained to this day) ? And could we therefore say that the text of the Treaty does not truly mean what the British intended it to mean ? If so, then perhaps Bishop Pompallier's letter to his superiors should have said : 'Captain Hobson failed to understand well what he did in signing.'153 Belich initially entered the fray in his 1986 book, The New Zealand Wars. He argued that while the British thought they were to acquire 'full and real sovereignty', Māori may have understood the Crown's sovereignty as nominal only – like that of 'a monarch who "reigns but does not govern"'. He noted Māori resentment of 'British interference in local matters, except where they themselves invited it for a particular purpose'.154 In 1990, however, Belich had clearly been influenced by Binney's 1989 reference (quoted above) to the chiefs' familiarity with New South Wales kāwana as authoritative figures willing to intervene through the use of force. He wondered if his earlier view – that Māori 'would have seen kawanatanga as no more than "a loose and vague suzerainty"' – remained correct. As he put it, 'Positing a Maori understanding of kawana as a mere figurehead no longer seems tenable.' This no doubt led him in Making Peoples in 1996 to conclude that familiarity with the Australian governors meant that Northland Māori probably 'realised that signing the treaty implied agreement to a big increase in settlement and in the power of the British state in New Zealand', and that only some of the rangatira would have regarded Busby as a precedent for the kāwana.155 But neither Binney nor Belich appeared to mean by this that the rangatira accepted that the increase in British power would affect the operation of rangatiratanga or their substantive sovereignty. Binney's suggestion that the rangatira believed they were retaining 'the substance of power' was made in 1987. We do not believe she had changed her mind in her later treatment of the subject in 1989. Rather, she wrote then that Hobson and the missionaries had convinced the rangatira 'of the need for an intervening authority to protect Maori interests, and to mediate between them and the traders and settlers'.156 In other words, Māori understood that the Governor's interventions would essentially control Pākehā or help resolve Māori–Pākehā disputes, and not undermine their own authority. It is a moot point whether she might have considered this role impinged on rangatiratanga or helped enforce it, but we suspect she meant the latter. In any case, Binney's view appears to have been that Māori welcomed an intervening authority because that very kind of authority was needed to control settler behaviour. Belich too had the impression in 1996 'that Maori saw the new governor's authority as substantial and significant, but restricted to Pakeha'. Indeed, he thought (as noted above) that the rangatira may well have felt that a governor would 'free [them] from the burden of ruling the large new Pakeha communities, and assist them in policing the Pakeha– Maori interface' (emphasis added).157 Other writers have rejected the notion of Māori agreeing, through te Tiriti, to the Crown holding a higher authority, although again there are differences of opinion about whether Māori were to be partly subject to the kāwana's authority. In 1991, Tribunal chairperson Chief Judge Edward Durie wrote that From the Maori text, . . . read in light of the culture and people's subsequent conduct, it is doubtful whether Maori saw themselves as ceding sovereignty, or understood what that culture-laden concept meant. It seems more likely that Maori saw themselves as entering into an alliance with the Queen in which the Queen would govern for the maintenance of peace and the control of unruly settlers, while Maori would continue, as before, to govern themselves.158 8.2.3 Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz Past Perspectives on te Tiriti and the Treaty 429 It is not entirely clear whether Durie believed the Queen's role in maintaining the peace included stopping intertribal fighting, for example. In 1998 Sorrenson was more dismissive of the Crown's authority, contrasting the chiefs' retention of their rangatiratanga with 'whatever vague powers they might have conceded to the kawana or governor'.159 In 2002, Moon rejected out of hand the idea that the rangatira ceded sovereignty, arguing that 'tino rangatiratanga necessarily took precedence over any attempt by an

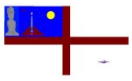




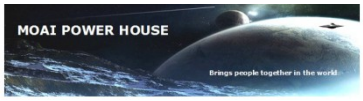








outside body at governing tribes'. He concluded that Hobson was seen as weak and ineffectual, and that 'For many chiefs . . . the issue of governance, in whatever manifestation, was palatable only when it applied to Europeans'. Such was the failure to give any impression to the contrary, he wrote, that 'any serious historian would shudder at claims that the Maori knew exactly that they were ceding the right to govern the country, in perpetuity, to the Crown'.160 In 2003, Manuka Henare described the Māori understanding of the treaty as a 'protectorate relationship in which Britain was to continue its assistance in Māori nation building'. The Queen was offering help in Māori establishing a 'civil society', with 'laws that would govern the behaviour amongst Māori, and between Māori and Pākehā'. In return for this help, 'Māori would allow British people to live here in peace'. In Henare's view, the rangatira regarded Hobson as a 'hired hand' who would help sail the ship, rather than as the ship's owner.161 What, though, of what we might call the neo-traditionalists who have maintained that Māori agreed to cede full and ultimate control to the Crown ? Ward, in 1999, laid some emphasis on the Māori text of the treaty for this position. Its preamble made it clear the Crown's kāwanatanga applied to all people and territory, he said. As we have noted, he also claimed that some chiefs refused to sign because they did not want that authority over them. Ultimately, Ward concluded, the argument made by those such as Tāmati Waka Nene that the clock could not be turned back carried the day : There was clearly a widespread appreciation that the problems of modernity required more concerted government than was possible at tribal level, and that the Crown should be at the head of it. To that extent, the chiefs and the officials shared a common purpose.162 Ward acknowledged that the urgency to bring the land trade under control left it unclear how rangatiratanga and kāwanatanga would relate to each other in practice. But he added that many British officials would have regarded the entire matter as rather academic, because they saw Māori decline as inevitable.163 Head, in 2001, thought that much of the scholarship about the treaty was based on the notion that Māori had been 'duped'. This, she argued, overlooked Māori agency. In her view, the rangatira were not innocent and 'enclosed in traditional thinking', but rather were very interested in pursuing 'westernisation'. She identified the principal cause of this as musket warfare, which she described as having created massive social disruption and strife. The rangatira thus sought 'a value system that would delegitimise inter-group fighting – one that would create the conditions for the development of a civil society which repressed warfare'. They made a rational choice, she argued, to adopt the means by which 'the foreigners ordered their world'. In this regard, Head saw a link between conversion and the treaty : 'Christianity offered a model of governance where peace was protected by law, and where revenge was the responsibility of the state.' The northern chiefs' support for the treaty was thus 'a response to lived change'. For Head : Signatures to the Treaty . . . expressed an impulse for an integrated world. Most of all, it was a vote for the new. Modernity was the critical idea in the Treaty as far as Maori were concerned.164 Belgrave, in 2005, also depicted the impact of settlement and the attraction of modernity as the reasons rangatira signed te Tiriti : Rather than being dominant and able to reject the European world, those Maori communities who already depended on trade with outsiders were little able to turn back the imperial clock. The signing of the treaty was not a single event, but the 8.2.3 Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz He Whakaputanga me te Tiriti The Declaration and the Treaty 430 culmination of a process of debate that had taken place over a number of years, made almost inevitable by the land rush that accompanied the prospect of a British takeover. Only isolated and powerful tribes were able to stand aside.165 He thought the idea of being part of, or allied with, the British Empire was another incentive for the rangatira to sign, as were the rights that flowed from British subjecthood, such as habeas corpus and equality before the law. He added that tribes also assented to the treaty as a form of protection from each other. While Belgrave accepted that the treaty was a 'seizure of power', he concluded nonetheless that 'it was not done without a degree of consent'.166 We conclude this summary by mentioning the accounts of three prominent legal experts. We begin with McHugh, who in 1989 invoked the Victorian jurist A V Dicey's

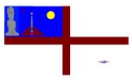




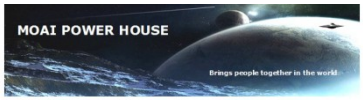








distinction between ‘legal sovereignty’ (the right to govern and make laws) and ‘political sovereignty’ (effectively, the will of the people). McHugh argued that the latter legitimated the exercise of the former. He suggested that Māori had ceded their legal sovereignty to the Crown through the treaty, but had retained their political sovereignty, or their rangatiratanga, and thus exercised a check on the Crown’s authority. His account of the treaty’s significance, according to English law, was in these terms : it is clear that the Crown’s government over the Māori tribes originates from their formal consent in the Treaty of Waitangi. This consent was considered a legal prerequisite to the Crown’s erection of an imperium (government) over the Tribes. The association of sovereign authority with the consent of the governed is but a particular and local example of a principle of British constitutional theory dating at least from the beginning of the seventeenth century.167 In this work, McHugh did not examine the quality of that consent. However, he expanded on such matters in his 1991 book, The Māori Magna Carta. In particular, he questioned whether the rangatira who signed te Tiriti intended to cede their legal sovereignty. Commenting that it ‘would be foolish to expect there to have been an exact meeting of minds’ between the parties in 1840, he noted that ‘the indications’ from careful historical and anthropological reviews were that the rangatira believed they were retaining their own authority over their people according to their customary law. Despite this, McHugh argued, the Crown’s acquisition of sovereignty was legal according to English law because the Crown had complied with the rules developed during its earlier imperial activities, namely, that it could establish a government over an organised society only with prior consent.168 His summary description of the treaty’s effect accepted that the Crown was given power over intertribal affairs as well as over the settlers : The Treaty of Waitangi . . . created a dynamic, ongoing relationship between the Crown and tribe. The chiefs entered into a ‘partnership’ with the Crown, giving the latter overriding power on intertribal matters and recognizing its authority over the settler population.169 In 1999, Professor Jock Brookfield pointed to some agreement by Māori scholars, such as Professor (later Sir) Hugh Kawharu in 1984, that kāwanatanga applied to aspects of Māori life, such as the right to make war. He asked whether and how, in light of that, kāwanatanga could be a merely subordinate and delegated power. He noted, on the other hand, that Moana Jackson and others had argued that it was not possible for a chief to relinquish part of his mana, and that te Tiriti itself guaranteed ‘tino’ (unqualified) rangatiratanga. All things considered, he thought it possible that some signatories did have the ‘revolutionary intention’ of transferring some part of their mana to the Crown, nothwithstanding Jackson’s view that this would have been invalid, and that other chiefs did not have that intention. He ventured that the differences in viewpoint of the Māori scholars he named may in fact mirror the differing expectations of the various chiefs. It is surely likely that, for whatever reason, they did not all understand the effect of the Treaty in the same way or intend the same thing.170 However, Brookfield doubted that any rangatira could 8.2.3 Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz Past Perspectives on te Tiriti and the Treaty 431 ‘have intended to cede to the Crown the full power which it claimed and ultimately enforced throughout the country’ – a power which, he noted, had ‘been exercised over the Treaty itself ’. As he put it : If it is difficult to reconcile the first two articles of the Treaty with each other, it is far more difficult – indeed impossible – to reconcile with those two articles what the Crown in fact did. To the extent that the power asserted and seized by the Crown exceeded what was ceded, the seizure was a revolutionary act in relation to the customary legal systems of the hapu of the signatory chiefs.171 The third legal perspective we note here is that of Dr Matthew Palmer, who examined what may have been agreed in February 1840 in his 2008 book The Treaty of Waitangi in New Zealand’s Law and Constitution. Like Brookfield, Palmer noted the likely divergence of opinion among treaty signatories : Each Māori hapū, led by their rangatira, would have made judgements about whether to agree to the Treaty based on a combination of factors. These would have varied depending on the geographic circumstances of the hapū, the nature and extent of their experience of Europeans, and their strategic position in relation to other

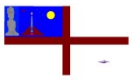




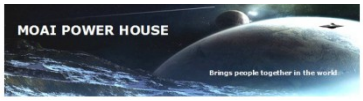








hapū.172 Bearing this in mind, and noting the absence of an authoritative hapū-by-hapū analysis of these influences, Palmer set out the considerations that he believed would have led a ‘realist rangatira’ to sign te Tiriti at the time : If some relationship was to be entered with a foreign power, Britain was the obvious choice – both because of its global and local power and because of its history of interactions in New Zealand. The British might be able to do some good in controlling their own people in relation to criminal behaviour and dubious land deals and may help to facilitate trade. Also, the terms of Article II of the Treaty proposed explicitly to preserve, if not strengthen, a rangatira’s authority to lead his hapū. Most rangatira probably did not have the same understanding of the land pre-emption provision in Article II as the British did. Nor do I think it likely that many, if any, rangatira would have shared the British conception of sovereignty in Article I. The proposed relationship with a more powerful ally would have resonated with the customary dynamics of shifting alliances with larger aggregations of hapū. Queen Victoria was a reassuringly distant sort of ariki to have to deal with in this regard. The missionaries seemed generally benign and sometimes useful and they thought it was a good idea. The British clearly put some value on signing the Treaty, given the ceremony at Waitangi and the Hokianga Harbour. Importantly, you would not want to let the neighbouring hapū get any more leverage over the use of British warships than you had. And, for some who anticipated that the British might not honour all its terms in future, it would be better to have the British themselves signed up to some sort of statement of commitment to your interests.173 Palmer then set out several statements from 1840s New Zealand to support his interpretation, and went on to quote from a series of modern scholars to show the degree of ‘common ground’ about the meaning and effect of the treaty from the British and Māori perspectives in 1840. Palmer concluded that it was clear that the Crown and Māori were choosing to establish a formal relationship with the other that related to the exercise of power in New Zealand – particularly that Britain was taking on responsibilities in relation to foreign relations and British subjects. However, ‘there was no common understanding of the extent to which the British power to govern, and the continued authority of rangatira, were to interact’.174 In a more strictly legal interpretation of the position at international law, Palmer also concluded that, On the basis of the English text, Britain likely considered that the Treaty enabled and legitimised, at international law, the British assertion of sovereignty in New Zealand. On the basis of the Māori text, those rangatira who signed the Treaty may reasonably have considered that while it allowed Britain to regulate the behaviour of Pākehā and deal with 8.2.3 Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz He Whakaputanga me te Tiriti The Declaration and the Treaty 432 foreign powers, the Treaty provided assurance of the continued authority of rangatira in leading their hapū independently of British decision-making. . . . On the basis of what we know today, an interpretation of the Treaty of Waitangi that accorded to most rangatira an intention to cede sovereignty is, in my opinion, untenable. The implication of this view is that the Treaty is not a treaty of cession, as assumed by international lawyers such as Crawford and Brownlie who focus on the question of capacity rather than the terms of the Treaty. Rather, it may have been more analagous to a ‘treaty of protection’.175 We return to international law when setting out the submissions of claimant and Crown counsel in chapter 9. 8.2.4 What if the rangatira had not signed ? A final matter to note is the issue of what might have happened if the rangatira had refused to sign te Tiriti. Ward, who considered the matter in 1999, very much doubted that Hobson would have been deterred. He observed that Colonial Office officials had debated whether obtaining a cession of sovereignty from Māori was even necessary, given the amount of land that Māori had already ‘sold’, but had concluded it would be better to pursue a cession by treaty. Moreover, Ward noted that Hobson had been granted authority to proclaim sovereignty over the South Island by right of discovery, and provision had been made for any territory annexed in New Zealand to form part of New South Wales. As he put it : The British had thus taken for themselves the necessary authority to annex New Zealand, according to European law. It is almost certain they would have carried through their intention, even if the chiefs

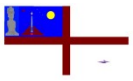




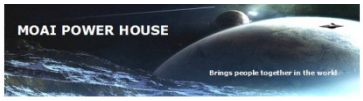








had not signed the Treaty at Waitangi. In fact Hobson did so in respect of the South Island, on 21 May 1840, before more than a few of the South Island chiefs had signed the Treaty. Ward added that, with Gipps's 14 January proclamations, 'the British were acting as if they had governmental authority in New Zealand before the Treaty was even drafted'.176 Similarly, Moon wrote in 2002 that Hobson's 30 January 1840 proclamations 'referred, significantly, to the existing and prospective settlement of British subjects in New Zealand, as though to provide some constitutional safety-net should the plans for the Treaty not eventuate'.177 Other historians have no doubt but that the British were there to stay, come what may – Ian Wards, for example, who in 1968 stressed the British readiness to use military force if necessary.178 Legal scholars, however, have expressed considerable doubt that the Crown would have asserted sovereignty over New Zealand, or parts of it, without signatures on the treaty. As McHugh put it in his 1991 book, The Māori Magna Carta, There is overwhelming evidence of the Crown's belief that it was legally restrained from exercising any constituent power in New Zealand without Māori consent. The formal Institutions and Commission to Hobson as well as supplementary documentation of 1839 bear this out.179 Palmer added in 2008 that I believe it is clear that in 1840 British government practice, British government interpretation of international law and other sources of international law were all consistent with the stated British recognition of sovereignty residing with Māori rangatira on behalf of their hapū. This recognition of New Zealand sovereignty was a reason, in terms of government policy, and international law at the time, for Britain to treat with Māori for cession of sovereignty.180 We return to the work of historians and other scholars when we set out how those who appeared at our inquiry advanced or disputed these recent interpretations. We turn now to another set of perspectives on the treaty : those of the courts and previous Tribunal panels. 8.3 Previous Tribunal and Court Statements 8.3.1 Waitangi Tribunal reports Any consideration of what previous Tribunals have said about the relationship entered into under the treaty at 8.2.4 Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz Past Perspectives on te Tiriti and the Treaty 433 Waitangi in 1840 must first take into account the nature and extent of the Waitangi Tribunal's jurisdiction. First, the Treaty of Waitangi Act 1975 is premised on there being one treaty, embodied in two texts. Section 5 provides that the Tribunal : shall have regard to the 2 texts of the Treaty set out in the First Schedule to this Act and, for the purposes of this Act, shall have exclusive jurisdiction to determine the meaning and effect of the Treaty as embodied in the 2 texts and to decide issues raised by the differences between them. Secondly, as is stated in the preamble to the 1975 Act, the Tribunal's task is to make recommendations on claims relating to the practical application of the Treaty and to determine whether certain matters are inconsistent with the principles of the Treaty. The 'certain matters' that can be examined by the Tribunal for their consistency with treaty principles are set out in section 6 of the Act. It provides that any Māori or group of Māori can claim to have suffered prejudice as a result of : any legislation passed in New Zealand on or after 6 February 1840 ; any delegated legislation made under the authority of such legislation ; any policy or practice adopted by, or proposed to be adopted by, or on behalf of the Crown ; and any act done or omitted on or after 6 February 1840 or proposed to be done or omitted, by or on behalf of the Crown.181 Together, sections 5 and 6 of the Waitangi Tribunal's constituent Act set certain boundaries to our jurisdiction which, inevitably, are reflected in previous Tribunals' approaches to and statements about the matters that have been before them. First, the Tribunal has no authority to contradict the Act's premise that there is one treaty with two texts, and earlier Tribunals have had no cause to question that premise. Rather, both texts have been considered during the nearly 40 years in which the Tribunal has been articulating and applying treaty principles. Secondly, the fact that the Tribunal's jurisdiction is over claims about matters 'on or after 6 February 1840' has meant that previous Tribunals have largely confined their inquiries to events after that date. Certainly, no earlier Tribunal has received the in-depth evidence and argument that this Tribunal received about the broader historical context for, and the significant events, including he Whakaputanga, leading up to 6

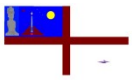




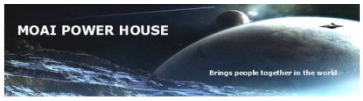








February 1840. Thus, the information upon which earlier Tribunals have based their views about pre-treaty matters, and about the influence of those matters on the meaning and effect of the treaty, has been far more limited than the information produced and tested in this inquiry. Thirdly, most other Tribunals have considered other parts of the country, where the circumstances were very different. That said, we think that it is appropriate to take careful note of what prior Tribunals have said about the making of the treaty, where they have in fact considered the same kinds of evidence as we have. Tribunals inquiring into claims in the northern part of New Zealand have tended to fall into this category because of the unique importance of te Tiriti to claimants there. The first substantive Tribunal inquiries of the early-to-mid-1980s also made a point of examining what was promised and agreed at Waitangi in February 1840. We accordingly restrict our discussion of past Tribunal statements to these kinds of inquiries. In sum, the Tribunal reports we consider have reached different views about the agreement at Waitangi. Some have implied that Māori in 1840 did not cede to the Crown what the English text describes as 'all the rights and powers of Sovereignty', while others have regarded a cession of sovereignty as being very clear to both parties. To illustrate the contrast, the Motunui–Waitara Tribunal wrote in 1983 that 'te tino rangatiratanga', the retention of which was guaranteed to Māori, 'could be taken to mean "the highest chieftainship" or indeed, "the sovereignty of their lands"'.182 Consistent with that view, the **Manukau Tribuna**l wrote in 1985 that the kāwanatanga ceded to the Crown was a lesser authority than sovereignty, whereas rangatiratanga was 'not conditioned', and 'tino rangatiratanga' meant 'full authority status and prestige with regard to their possessions and interests'.183 In June 1988, however, the Muriwhenua Fishing Tribunal wrote that 8.3.1 Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz He Whakaputanga me te Tiriti The Declaration and the Treaty 434 the supremacy of the Queen's authority was clear, because the Crown was to have an overriding control ; the chiefs' speeches at Waitangi demonstrated that they understood this ; and 'tino rangatiratanga' equated more to 'tribal self-management'.184 Shortly after, in August 1988, the Mangonui Sewerage Tribunal also referred to the 'rights of tribal self-management that flow from the Treaty'. It stressed, as the Court of Appeal had done in the Lands 185 case the previous year (see below), that the Crown's role was, as Tāmati Waka Nene had put it at Waitangi : 'father, judge and peacemaker'.186 In 1989, legal scholar Ani Mikaere considered that Tribunal reports could essentially be put into pre- and postLands case categories. She pointed out that the Orakei Tribunal, in its report of November 1987, had noted that it would be guided by the Court of Appeal judgments in the Lands case, and she detected a shift in Tribunal reports at this time towards a greater emphasis on the English text and the Crown's acquisition of sovereignty. She noted that Justice Somers had held that the Tribunal would henceforth be bound by the Court of Appeal's interpretation of treaty principles. Altogether, Mikaere thought, this represented 'a significant shift on the vital question whether the Treaty constituted a treaty of cession' on the Tribunal's part.187 We have no doubt that the Court of Appeal's findings have been an important influence on the Tribunal. But we also consider that the Tribunal has made some significant observations since the Lands case that do not merely repeat the Court of Appeal's reasoning. For us, two Tribunal reports stand out for their consideration of the circumstances surrounding the signing of te Tiriti and their influence on our understanding of the treaty's meaning and effect. The first of these is indeed the Report on the Orakei Claim of 1987, which is regarded as a landmark Tribunal report on treaty interpretation, setting the tone for many subsequent reports.188 On a key issue for this inquiry, it commented as follows : The Maori text . . . conveyed an intention that the Maori would retain full authority over their lands, homes and things important to them, or in a phrase, that they would retain their mana Maori. That of course is wider than the English text which guaranteed 'the full, exclusive and undisturbed possession of lands, estates, forests, fisheries and other properties' so long as the Maori wished to retain them. The Maori text gave that and more. To the Crown was given 'Kawanatanga' in the Maori text, not 'mana'[,] for . . . the missionaries knew well enough no Maori

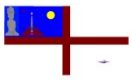




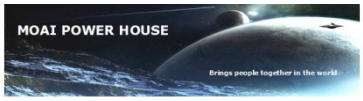








would cede that. ‘Kawanatanga’ was another missionary coined word and . . . likely meant[,] to the Maori, the right to make laws for peace and good order and to protect the mana Maori. That, on its face, is less than the supreme sovereignty of the English text and does not carry the English cultural assumptions that go with it, the unfettered authority of Parliament or the principles of common law administered by the Queen’s Judges in the Queen’s name. But nor does the Maori text invalidate the proclamation of sovereignty that followed the Treaty. Contemporary statements show well enough Maori accepted the Crown’s higher authority and saw themselves as subjects[,] be it with the substantial rights reserved to them under the Treaty.189 In other words, the Orakei Tribunal seems to have thought that a cession of sovereignty is by no means apparent in the words of the Māori text, which almost all chiefs signed. However, it did think such a cession was confirmed by Māori statements made during the oral transaction, such as the concern expressed by various rangatira that the Governor would have a higher status. As its conclusion states, ‘The cession of sovereignty . . . is implicit from surrounding circumstances.’ Nonetheless, as we have noted, the Tribunal still considered that the chiefs retained their ‘full authority’ or mana over their lands and ‘things prized’.190 It did not grapple with the apparent contradiction between ‘full authority’ for Māori and sovereignty for the Crown. The Orakei Tribunal also discussed the pre-emption clause of the treaty at some length. It concluded that, had the Crown’s plans to fund ongoing colonisation through the cheap purchase of Māori land been communicated to the chiefs, 8.3.1 Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz Past Perspectives on te Tiriti and the Treaty 435 the likelihood of the chiefs agreeing to such a proposal would have been remote. Given the constant reiteration by Captain Hobson and his agents of the Crown’s commitment to the protection of their lands and their rights the chiefs understandably failed to appreciate the risk they ran in agreeing to this provision.191 However, that Tribunal would not agree with Adams that profitable resale of Māori land ‘was precisely the reason for pre-emption’. Instead, it considered that the protective concerns in Normanby’s instructions – that Māori would not sell more land than they could afford to for their comfort and support, and that their remaining land would increase in value as the settler population grew – were equally important.192 The Orakei Tribunal also found that, in the case of any ambiguity between the English and Māori versions, ‘considerable weight’ had to be placed on the Māori text of the treaty. As it explained : Few, if any, of the Maori signatories could read English nor could all of them read Maori. But the Maori version was for them the only relevant text. It seems clear that it was written and subsequently explained by Williams in terms that were most likely to be acceptable to the Maori chiefs.193 The second report we refer to is the Muriwhenua Land Report of 1997. It is fair to say that, prior to our own inquiry, no other Tribunal report has engaged as thoroughly with the kōrero and promises at Waitangi and elsewhere in the north as did Muriwhenua Land. While that Tribunal’s investigation of these matters was not as extensive as our own, it nevertheless made use of secondary texts such as Orange’s 1987 book (which was not available to the Orakei Tribunal), primary works such as Colenso’s published 1890 account, and a research report on the three main northern Tiriti signings (at Waitangi, Mangungu, and Kaitaia) by Salmond, which at our request was presented by Salmond in very similar form at our own inquiry.194 For these reasons, the Muriwhenua Land Tribunal’s findings are worth noting. That Tribunal’s focus was on pre-1865 (including pretreaty) land transactions. It therefore made conclusions on the maintenance of Māori customary practices. For example, it noted that Hobson promised to preserve Māori custom in the ‘fourth article’ : From the Treaty guarantee of rangatiratanga (or traditional authority), from oral undertakings to respect the custom and the law, and from the guarantee that Maori could keep their land, Maori had cause to believe that the Europeans already in possession of land held it only on customary terms. The Treaty debate could not have disabused them of the customary notion but, rather, could only have reinforced it.195 On the broader issue of whether Māori willingly ceded their sovereignty, the Muriwhenua Land Tribunal made several significant points, including the fact that critical aspects of British sovereignty

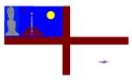




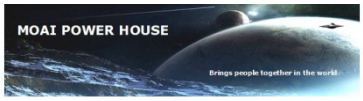








were simply not discussed : When considering the Treaty of Waitangi and British expectations, the Treaty debate is more significant for what was not said than for what was. It was not said, for example, that, for the British, sovereignty meant that the Queen's authority was absolute. Nor was it said that with sovereignty came British law, with hardly any modification, or that Maori law and authority would prevail only until they could be replaced. Similarly, while Maori assumed that they had kept the underlying right to the land on which Pakeha were living, in accordance with ancestral norms, the British assumed, but did not say, that the underlying (or radical) title would be held by the Crown, in accordance with English beliefs. Although no deception was intended, the assumption was none the less that, in brief, the British would rule on all matters, and the fair share for Maori would be what the British deemed appropriate.196 As can be seen, the Tribunal was quick to stress that the Queen's representatives were not acting deceptively. In fact, it emphasised what it believed were the Crown's benevolent intentions. But, while the Tribunal perceived goodwill, it ultimately saw little mutuality, and implicit in 8.3.1 Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz He Whakaputanga me te Tiriti The Declaration and the Treaty 436 this was, we think, the conclusion that Māori did not cede sovereignty as understood by the British : We imply no subterfuge in describing the enormous gap between what was said and agreed and what was left unspoken. Like Maori, the British were locked into their own worldview and spoke of things which carried a raft of implications that they could take for granted and yet only they could know. Matters had to be put simply, and British constitutional norms were as incomprehensible to Maori as Maori societal norms were a mystery to the British. What needs to be stressed, therefore, is that each side approached the Treaty with genuine good feelings for the other – Maori seeking advantages from Pakeha trade and residence, the British expecting benefits from this expansion of their empire. They also proposed protection for the indigenous people. As a wealth of historical material reveals, there was in England at this time a strong evangelical and humanitarian tradition consistent with this objective. As Maori knew, the terms were not as important as the hearts of those making them. The result, however, is that, despite the goodwill, the parties were talking past each other. Maori expected the relationship Mark Metekingi delivers a challenge before the opening of the Lands case in the Court of Appeal in Wellington, 1987. The judges found that the Crown had to safeguard Māori treaty interests in lands being transferred to State-owned enterprises, but they did not question whether the Crown had acquired sovereignty in 1840 through the treaty in the first place. 8.3.1 Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz Past Perspectives on te Tiriti and the Treaty 437 to be defined by their rules. It was natural to think so and, far from disabusing them of that view, the Treaty and the debate reinforced it. By the same token, the British, true to what was natural to them, assumed that sovereignty had been obtained by the Treaty and therefore matters would be determined by British legal precepts. It is thus important to see the Treaty not in terms of its specific details but for what it mainly was : a statement of good intent and of basic and necessary principles.197 In essence, therefore, the Muriwhenua Land Tribunal excused the lack of mutual understanding by viewing the treaty as born of honourable intentions which gave it its underlying meaning : Whatever the mismatches of Maori and Pakeha aspirations, none gainsay the Treaty's honest intention that Maori and Pakeha relationships would be based on mutual respect and the protection of each other. For Maori, these principles were essential to any alliance. For the British, they were part of the art of statesmanship and of humanitarian objectives.198 We note finally that the Muriwhenua Land Tribunal also considered the art of Māori oratory, as practised at Waitangi and elsewhere. It noted the European stereotype of 'violent argument quieted through the timely appearance of a principal rangatira', but thought that matters were not usually so finely balanced. A lively debate, from a Māori perspective, 'does justice to the cause, sharpens the issues, augments the occasion, and leaves stories to memorialise the event'. While the common view was that Hobson had been 'harangued with allegations', the Tribunal pointed out that 'impassioned declamation is also a

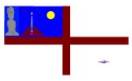




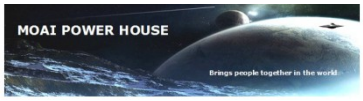








standard oratorical tool'. Thus, the chiefs repeated the claims from 'mischievous' Pākehā that they would be enslaved or lose all their land in order to 'clear the air' and 'compel a forthright denial'.199 8.3.2 Court rulings New Zealand's courts have a different status from the Waitangi Tribunal, for what a court says about treaty principles (in a case in which the principles are material) becomes part of New Zealand's law. Judicial statements about the nature of the treaty relationship are therefore important, especially if made by the judges of our Court of Appeal or Supreme Court. We note, as we have of earlier Waitangi Tribunal inquiries, that the courts' conclusions about the understandings of the treaty parties in February 1840 are not based on extensive evidence of historical events. The reason, however, stems from the courts' inability to challenge the fundamental legal rule that sovereignty lawfully declared cannot be lawfully questioned. Under New Zealand law, the treaty cannot be the basis of litigation in the courts unless it has been given effect by statute. Before the 1980s, there were only isolated statutory references to the treaty. One example was section 8 of the Fish Protection Act 1877, which provided that nothing in the Act was to affect any of the provisions of the treaty or to take away or limit any Māori rights secured by the treaty to any fishery.200 The Tribunal in the Report on the Muriwhenua Fishing Claim commented on that provision : It recognized the Treaty of Waitangi but the manner in which it did so illustrates a recurring theme, apparent also in Maori land laws (the Native Land Act 1862 for example) that Maori concerns for the recognition of Treaty interests could be met by mentioning the Treaty in the Act, in a general way, and although nearly everything else in the Act might be contrary to Treaty principles.201 The general absence of statutory recognition of the treaty until relatively recently explains the paucity of litigation about its meaning. (The Tribunal in its 1983 Report on the Motunui–Waitara Claim, listed 14 court cases between 1847 and 1977 in which the treaty had been pleaded, all without success.202) It also explains why treaty-based objections by Māori to particular New Zealand laws have most often been expressed in petitions to Parliament or, since 1975, in claims to this Tribunal. A significant change was heralded with the election of the fourth Labour Government in 1984 and its enactment of several statutes that required the Crown, variously, to act consistently with, give effect to, take into account, or have regard to the principles of the treaty. Thus, as Palmer 8.3.2 Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz He Whakaputanga me te Tiriti The Declaration and the Treaty 438 has argued, the 'first serious interpretation of the meaning of the Treaty of Waitangi by New Zealand appellate judges' was in the so-called Lands case of June 1987. This resulted from the New Zealand Māori Council's challenge, under section 9 of the State-Owned Enterprises Act 1986, to the Government's transfer of assets to State-owned enterprises.203 The Lands case necessarily focused on the principles arising from the treaty (as section 9 required), and the judges did not traverse the 1840 proceedings at Waitangi in any particular detail. As President of the Court Cooke put it : The differences between the texts and the shades of meaning do not matter for the purposes of this case. What matters is the spirit. . . . In brief the basic terms of the bargain were that the Queen was to govern and the Maoris were to be her subjects ; in return their chieftainships and possessions were to be protected, but sales of land to the Crown could be negotiated.204 Justice Somers also felt it unnecessary to discuss the differences between the two texts and the possible different understandings of the Crown and the Maori in 1840 as to the meaning of the Treaty. They are issues best determined by the Waitangi Tribunal to whom they have been committed by Parliament.205 However, as Mikaere noted, Justice Somers also stated that a finding of the court would of course be binding and to the extent that it is material in any case should be followed by the Waitangi Tribunal as a declaration of the highest judicial tribunal in New Zealand.206 The Lands case judges were unanimous in concluding that the Crown had acquired sovereignty in 1840. Justice Somers explained it this way : We were referred to a number of valuable commentaries on this part of the Treaty and to the several determinations of the Waitangi Tribunal. They provide grounds for thinking that there were important differences between the understanding of the signatories as to true intent and meaning of

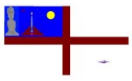




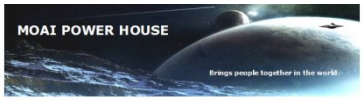








article I of the Treaty. But notwithstanding that feature I am of opinion that the question of sovereignty in New Zealand is not in doubt. On 21 May 1840 Captain Hobson proclaimed the ‘full sovereignty of the Queen over the whole of the North Island’ by virtue of the rights and powers ceded to the Crown by the Treaty of Waitangi, and over the South Island and Stewart Island on the grounds of discovery. These proclamations were approved in London and published in the London Gazette of 2 October 1840. The sovereignty of the Crown was then Patuone, 1855. Justice Bisson wrote in his Lands case judgment in 1987 that the speeches of Patuone and Nene at Waitangi on 5 February 1840 summed up the Māori understanding of the treaty. 8.3.2 Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz Past Perspectives on te Tiriti and the Treaty 439 beyond dispute and the subsequent legislative history of New Zealand clearly evidences that. Sovereignty in New Zealand resides in Parliament.207 This was, we suspect, both an acknowledgement that the situation at Waitangi on 6 February 1840 was far from clear cut and a reminder that our law will not countenance any criticism of sovereignty that has been proclaimed in accordance with law. There were other reminders that it was the subsequent assertion of sovereignty by Britain that mattered legally, rather than whether Māori intended to cede it in te Tiriti. For example, Justice Richardson observed that : It now seems widely accepted as a matter of colonial law and international law that those [May] proclamations [by Hobson] approved by the Crown and the gazetting of the acquisition of New Zealand by the Crown in the London Gazette on 2 October 1840 authoritatively established Crown sovereignty over New Zealand. The matter is much more complex than that bare narrative indicates. Scholars differ both as to the precise legal basis The 1989 case brought by the Tainui Māori Trust Board in the Court of Appeal over the Crown’s proposed sale of Coalcorp. In his judgment, the president of the court stressed that Māori needed to understand that ‘the Treaty gave the Queen government, Kawanatanga’. 8.3.2 Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz He Whakaputanga me te Tiriti The Declaration and the Treaty 440 for British sovereignty and as to the legal status of the Treaty under New Zealand law.208 Of the five Court of Appeal judges, Justice Bisson considered the exchanges at Waitangi in the most (although still partial) detail. He concluded that ‘there would have been a problem in the Maori Chiefs who signed the Treaty being able to have a full understanding of what was meant in the English version’. He thought the Māori viewpoint was perhaps best encapsulated in the words of Tāmati Waka Nene on 5 February. He quoted here from Colenso’s account, with its request for Hobson to be ‘a father, a judge, a peace-maker’,209 rather than from Hobson’s own account, with Nere’s demand being ‘You must be our father ! You must not allow us to become slaves ! You must preserve our customs, and never permit our lands to be wrested from us !’ 210 Justice Bisson also quoted Colenso’s account of Patuone’s speech and reached this conclusion about the agreement entered into : Just as Captain Hobson assured the Chiefs that they might rely implicitly on the good faith of Her Majesty’s Government the Chiefs entered into the Treaty, ‘in the full spirit and meaning thereof ’. The passages I have quoted from the speeches of two Maori Chiefs and from the letter of Governor Hobson enable the principles of the Treaty to be distilled from an analysis of the text of the Treaty. The Maori Chiefs looked to the Crown for protection from other foreign powers, for peace and for law and order. They reposed their trust for these things in the Crown believing that they retained their own rangatiratanga and taonga. The Crown assured them of the utmost good faith in the manner in which their existing rights would be guaranteed and in particular guaranteed down to each individual Maori the full exclusive and undisturbed possession of their lands which is the basic and most important principle of the Treaty in the context of the case before this Court.211 In 1989, the Tainui Māori Trust Board sought to protect tribal interests in confiscated Waikato land and the coal resources under that land in the face of the Crown’s plans to sell its State-owned enterprise Coalcorp. Again, the case was resolved in the Court of Appeal, and again the judges did not analyse the events at Waitangi on 5 and 6 February 1840. President Cooke stated that non-

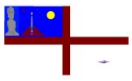




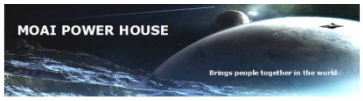








Māori had to accept the need for reparation for past and continuing breaches of the treaty. On the other hand, he said, Māori had to understand that the Treaty gave the Queen government, Kawanatanga, and foresaw continuing immigration. The development of New Zealand as a nation has been largely due to that immigration. No other discussion on the arrangement was entered into : the word ‘sovereignty’, for example, was not mentioned in any of the judgments.212 That same year, in the Fisheries case the Court of Appeal considered the fishing rights of the five iwi of Muriwhenua under section 88(2) of the Fisheries Act 1983.213 And, in 1992, the challenge by various iwi to the 1992 fisheries Commemorative proof crown, 1935. The face of the coin depicts Tāmati Waka Nene and William Hobson shaking hands at Waitangi in 1840. 8.3.2 Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz Past Perspectives on te Tiriti and the Treaty 441 settlement between Māori representatives and the Crown was heard again by the Court of Appeal in the Sealord case.214 Palmer regarded these two cases – along with Lands and Broadcasting Assets (see below) – as four cases which ‘turn out to be particularly important in making general statements about the meaning of the Treaty’.215 Yet, in neither Fisheries nor Sealord did the judges discuss the exchange of sovereignty or kāwanatanga for the guarantee of tino rangatiratanga. Again, it seems, the courts preferred to leave such analysis to the Tribunal. In 1991, the New Zealand Māori Council challenged the Crown over its transfer of the former assets of the New Zealand Broadcasting Corporation to Radio New Zealand and Television New Zealand. This long-running litigation, known as the Broadcasting Assets case, came before the Court of Appeal later in 1991 and the Privy Council in 1993. Again, the judges did not consider the original treaty discussions. For our purposes, the only matters of note are that Justice McKay, who delivered the majority judgment of the Court of Appeal, deferred to President Cooke and Justice Richardson in the Lands case on the nature of the treaty relationship ; and, in the Privy Council, the law lords stated that the Crown had duties of protecting Māori property ‘in return for being recognised as the legitimate government of the whole nation by Maori’.216 We mention one final Court of Appeal decision. In the Whales case of 1995, in which the Ngāi Tahu Māori Trust Board challenged the Director-General of Conservation over the allocation of an additional whale-watching licence at Kaikoura (section 4 of the Conservation Act 1987 requiring the Crown to ‘give effect’ to the principles of the treaty) – and in which the court found that Ngāi Tahu were entitled to a ‘reasonable degree of preference’ over other permit applicants – President Cooke summed up the Crown’s authority under the treaty as follows : By the first article of the Treaty of Waitangi there was ceded to the Queen absolutely what the English text set out in the first schedule to the Treaty of Waitangi Act 1975 describes as sovereignty and what the Maori version there also set out describes as kawanatanga. Alternative English renderings sometimes given of the latter word are ‘complete government’ (see Sir Hugh Kawharu’s version reproduced in New Zealand Maori Council v Attorney-General [1987] 1 NZLR 641, 662– 663) or ‘governance’. Clearly, whatever version or rendering is preferred, the first article must cover power in the Queen in Parliament to enact comprehensive legislation for the protection and conservation of the environment and natural resources. The rights and interests of everyone in New Zealand, Maori and Pakeha and all others alike, must be subject to that overriding authority.217 Again, there was no discussion of the February 1840 foundation for the Crown’s ‘overriding authority’ in article 1. 8.4 Conclusion Prior to the 1970s, discussion of the treaty was a standard feature of writing about New Zealand history. Generally absent from this, however, was the degree of scrutiny of the treaty’s meaning that characterises more recent scholarship. The treaty was simply there, in the background, as the nation’s founding document, and most Pākehā believed that the agreement made was accurately reflected in the English text. Then, from the 1970s, partly prompted by Māori assertiveness over their rights and the global trend towards decolonisation, historians acknowledged that the rangatira signed and understood the Māori text of the treaty, and not the English one. This consciousness radically shifted the scholarship. Māori perspectives on the treaty’s meaning – based on the Māori text and particularly the concept of tino

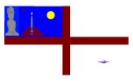




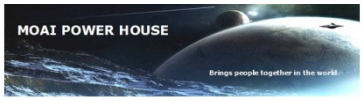








rangatiratanga – could no longer be overlooked. The result has been an ongoing national debate about the nature of the agreement concluded at Waitangi, and particularly the extent to which Māori treaty rights continue to oblige and constrain the Crown. A number of years after this new phase of interpretation began to develop, the Waitangi Tribunal started to consider the treaty's meaning and effect. In due course, so also did the courts, after references to treaty principles were inserted into statutes in the 1980s. As we can see, however, no previous Tribunal or judicial inquiry has considered 8.4 Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz He Whakaputanga me te Tiriti The Declaration and the Treaty 442 the nature of the agreement between the Queen's representatives and Ngāpuhi chiefs at Waitangi (and, for that matter, at Mangungu) in February 1840 to anything near the extent of this inquiry. Inevitably, those earlier inquiries have tended to generalise and begin from the starting point of certain assumptions. That is not a criticism of those judges or panels, for the very nature of their respective jurisdictions has fashioned the evidence and submissions before them and, inevitably, has been reflected in their decisions. Regardless of these limitations, the focus on the treaty in history-writing and litigation over the previous four decades created an impressive back-drop to the commencement of our own inquiry in 2010. Yet, our inquiry promised only to sharpen this focus. In the next chapter we set out the range of evidence and submissions presented to us over our five weeks of hearings in 2010 and 2011. These both echoed the previous discourse and took the treaty debate in new directions, as we shall see. Notes 1. Ian Wards, The Shadow of the Land : A Study of British Policy and Racial Conflict in New Zealand 1832–1852 (Wellington : Department of Internal Affairs, Historical Publications Branch, 1968), p42 2. James Belich, Making Peoples : A History of the New Zealanders – from Polynesian Settlement to the end of the Nineteenth Century (Auckland : Allen Lane, 1996), p193. Belich was referring to historians writing throughout New Zealand's past, rather than only since the 1970s. In a similar vein, Tony Simpson wrote in 1979 (Te Riri Pakeha : The White Man's Anger (Waiura : Alister Taylor, 1979), p31) that : 'There can be few people who have grown up in this country who do not have in their mind's eye the official vision of the Treaty of Waitangi. It is a scene that leaps from a hundred school projects, and which is evoked at interminable length in official speeches on innumerable occasions. It has even – the ultimate respectability – appeared on a postage stamp.' 3. JMR Owens, 'Historians and the Treaty of Waitangi', Archifacts (April 1990), p6 4. James Rutherford, 'Hone Heke's Rebellion 1844–1846 : An Episode in the Establishment of British Rule in New Zealand', Auckland University College Bulletin, no34 (1947), p8 5. William Pember Reeves, The Long White Cloud : Ao Tea Roa (1898 ; repr Auckland : Golden Press, 1973), p145 6. Thomas Lindsay Buick, The Treaty of Waitangi : How New Zealand Became a British Colony (Wellington S and W MacKay, 1914), pp227–228 7. Ruth M Ross, 'Te Tiriti o Waitangi : Texts and Translations', NZJH, vol 6, no2 (1972) 8. Matthew Palmer, The Treaty of Waitangi in New Zealand's Law and Constitution (Wellington : Victoria University Press, 2008), pp134, 184–187 9. Michael Belgrave, Historical Frictions : Maori Claims and Reinvented Histories (Auckland : Auckland University Press, 2005), p51 10. Lauren Bartlett, 'The Expert's Expert : The Treaty Makes us Unique as a Country', New Zealand Herald, 8 January 2007 11. 'The Treaty of Waitangi', Bridget Williams Books, http ://www.bwb. co.nz/books/the-treaty-of-waitangi, accessed 12 June 2014 12. Owens, 'Historians and the Treaty of Waitangi', p6 13. MPK Sorrenson, 'Towards a Radical Reinterpretation of New Zealand History : The Role of the Waitangi Tribunal', in Waitangi : Māori and Pākehā Perspectives of the Treaty of Waitangi, ed Ian H Kawharu (Auckland : Oxford University Press, 1989), p159 14. William H Oliver, 'The Future Behind Us : The Waitangi Tribunal's Retrospective Utopia', in Histories, Power and Loss : Uses of the Past – a New Zealand Commentary, ed Andrew Sharp and Paul McHugh (Wellington : Bridget Williams Books, 2001), pp9–29 15. Another example of this is Dr (later Professor) Giselle Byrnes' book The Waitangi Tribunal and New Zealand History (Melbourne : Oxford University Press, 2004). 16. Andrew Sharp and PG McHugh, 'Introduction', in Histories, Power and Loss, p2 17. Alan Ward, Unsettled History :

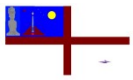




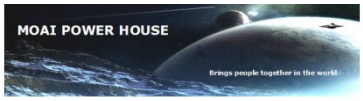








Treaty Claims in New Zealand Today (Wellington : Bridget Williams Books, 1999) ; Lyndsay Head, 'The Pursuit of Modernity in Maori Society : The Conceptual Bases of Citizenship in the Early Colonial Period', in Histories, Power and Loss, pp97–121 ; Belgrave, Historical Frictions 18. Ross, 'Te Tiriti o Waitangi', p135 ; Donald Loveridge, 'The "Littlewood Treaty" : An Appraisal of Texts and Interpretations' (commissioned research report, Wellington : Treaty of Waitangi Research Unit, 2006), p14 n58. Tony Simpson followed Ross and wrote that Busby's claims to having drafted the treaty were 'almost certainly a falsification, for the Treaty seems, from surviving drafts, to be the joint work of Hobson and his secretary, Freeman, with Busby's contribution limited to changing a few words here and there' : Simpson, Te Riri Pakeha, p50. 19. Claudia Orange, The Treaty of Waitangi (1987 ; repr Wellington : Bridget Williams Books, 2003), p37 20. Paul McHugh, Aboriginal Societies and the Common Law (Oxford : Oxford University Press, 2004), p111 21. Tom Bennion, 'Treaty-Making in the Pacific in the Nineteenth Century and the Treaty of Waitangi', Victoria University of Wellington Law Review, vol 35, no1 (2004), pp173, 201. Bennion's article was originally written as a student paper in 1987, and expanded and published later in response to ongoing interest in its contents. 22. Sir Kenneth Keith, 'Handling and Settling Disputes Arising From The Treaty of Waitangi', 9th Commonwealth Law Conference Papers, 1990, p244 ; MPK Sorrenson, 'Treaties in British Colonial Policy : Precedents for Waitangi', in Sovereignty and Indigenous Rights : 8-Notes Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz Past Perspectives on te Tiriti and the Treaty 443 The Treaty of Waitangi in International Contexts, ed William Leslie Renwick (Wellington : Victoria University Press, 1991), p17 23. Sorrenson, 'Treaties in British Colonial Policy : Precedents for Waitangi', p17 24. Ross, 'Te Tiriti o Waitangi', pp143–145 25. Simpson, Te Riri Pakeha, pp51 26. Michael Belgrave, 'Pre-emption, the Treaty of Waitangi and the Politics of Crown Purchase', NZJH, vol 31, no1 (April 1997), p26 27. Paul McHugh, The Maori Magna Carta : New Zealand Law and the Treaty of Waitangi (Auckland : Oxford University Press, 1991), p103 28. Hickford explained that 'Gipps was an extensive collector of tomes concerning European histories and ius gentium, and he deployed these sources in defending the entitlement of imperial administrations to manage anglophone settlers and territories in alien locations'. Hickford wrote of a 'northern American literary cargo of pre-emption'. Hickford also suggested that the inclusion of 'pre-emption' arose from lessons learned from the problematic beginnings of European settlement in the Port Phillip District of New South Wales in 1835, where John Batman and others claimed to have signed treaties with local Aboriginals, separate from the British Crown : Mark Hickford, Lords of the Land : Indigenous Property Rights and the Jurisprudence of Empire (Oxford : Oxford University Press, 2011), pp101–102, 108, 119. 29. Judith Binney, 'Tuki's Universe', in Tasman Relations : New Zealand and Australia, 1788–1988, ed Keith Sinclair (Auckland : Auckland University Press, 1987), pp29–30 30. Belich, Making Peoples, p194 31. Ross, 'Te Tiriti o Waitangi', p141 32. Alan Ward, A Show of Justice : Racial Amalgamation in Nineteenth Century New Zealand (Auckland : Auckland University Press, 1973), p44 33. Peter Adams, Fatal Necessity : British Intervention in New Zealand, 1830–1845 (Auckland : Auckland University Press, 1977), p164 34. Simpson, Te Riri Pakeha, p50 35. DF McKenzie, Oral Culture, Literacy and Print in Early New Zealand : The Treaty of Waitangi (Wellington : Victoria University Press, 1985), p41 36. Paul Moon, Te Ara kī te Tiriti : The Path to the Treaty of Waitangi (Auckland : David Ling Publishing, 2002), p146. The same year, Moon and Sabine Fenton wrote an article critical of Williams for bypassing the use of 'this obvious choice', mana : Paul Moon and Sabine Fenton, 'Bound to a Fateful Union : Henry Williams' Translation of the Treaty of Waitangi into Māori in February 1840', Journal of the Polynesian Society, vol 111, no 1 (2002), pp51–64. 37. Document A16, p20 38. Orange, The Treaty of Waitangi, p42 39. Judith Binney, 'The Maori and the Signing of the Treaty of Waitangi', in Towards 1990 : Seven Leading Historians Examine Significant Aspects of New Zealand History, ed David Green (Wellington : GP Books, 1989), p27 40. Moana Jackson, 'The Treaty and the World : The Colonization of Maori Philosophy', in Justice, Ethics and New Zealand Society, ed

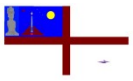




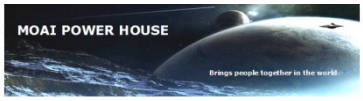








Graham Oddie and Roy Perrett (Auckland : Oxford University Press, 1992), pp6–7 ; Ani Mikaere, 'The Treaty of Waitangi and Recognition of Tikanga Māori', in Waitangi Revisited : Perspectives on the Treaty of Waitangi, ed Michael Belgrave, Merata Kawharu and David Williams, 2nd ed (Auckland : Oxford University Press, 2005), p341 41. Alan Ward, 'The Treaty and the Purchase of Maori Land', NZJH, vol 22, no2 (1988), pp170, 172 42. Head, 'The Pursuit of Modernity', pp105–106 43. Belgrave, Historical Frictions, p59 44. Ibid, p60 45. Head, 'The Pursuit of Modernity', p106 46. Binney, 'The Maori and the Signing', pp26–27 47. Ward, Unsettled History, p15 48. Orange, The Treaty of Waitangi, p40 49. Bruce Biggs, 'Humpty-Dumpty and the Treaty of Waitangi', in Waitangi : Māori and Pākehā Perspectives of the Treaty of Waitangi, p305 50. JMR Owens, 'New Zealand before Annexation', in The Oxford History of New Zealand, ed William H Oliver (Wellington : Oxford University Press, 1981), p52 51. Ross, 'Te Tiriti o Waitangi', p143 52. Orange, The Treaty of Waitangi, p41 53. Belich, Making Peoples, p194 54. Owens, 'New Zealand before Annexation', p52 55. MPK Sorrenson, 'Waitangi : Ka Whawhai Tonu Matou', in Amongst Friends : Australian and New Zealand Voices from America, ed Patty O'Brien and Bruce Vaughn (Dunedin : University of Otago Press, 2005), p178 56. Moon and Fenton, 'Bound to a Fateful Union', pp57–59 57. Orange, The Treaty of Waitangi, pp41–42 58. Head, 'The Pursuit of Modernity', p107 59. Belgrave, Historical Frictions, p61 60. Ibid, pp60–61 61. Ward, An Unsettled History, pp13–14, 17 62. Orange, The Treaty of Waitangi, p42 63. McKenzie, Oral Culture, p43 64. Belgrave, Historical Frictions, p60 65. Simpson (Te Riri Pakeha, p51) also cited Williams's land holdings as a factor motivating him about the treaty : 'The sooner English law was established, the sooner he would be assured of possessing his land.' 66. Moon and Fenton, 'Bound to a Fateful Union', pp52–54 67. McKenzie, Oral Culture, pp41–42 n81 68. Orange, The Treaty of Waitangi, pp40–41 69. Biggs, 'Humpty Dumpty and the Treaty of Waitangi', pp306, 310–311 70. Ross, 'Te Tiriti o Waitangi', pp136–138 71. Orange, The Treaty of Waitangi, p39 72. Moon and Fenton, 'Bound to a Fateful Union', pp54–57 73. Head, 'The Pursuit of Modernity', p105 74. JMR Owens, The Mediator : A Life of Richard Taylor, 1805–1873 (Wellington : Victoria University Press, 2004), p44 75. Owens, 'New Zealand before Annexation', p52 8-Notes Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz He Whakaputanga me te Tiriti The Declaration and the Treaty 444 76. Orange, The Treaty of Waitangi, p43 77. McKenzie, Oral Culture, pp10, 19, 40 78. Orange, The Treaty of Waitangi, p56 79. Belich, Making Peoples, p195 80. Richard Taylor to William Jowett, 20 October 1840, MS papers 0254–01 (or MS 197, reel 1), ATL, Wellington 81. McKenzie, Oral Culture, pp44–45. Binney too invoked Tāwhai's remark in her 1987 New Zealand Journal of History essay on Māori oral narratives and Pākehā written texts. She did so again in 2009 in the title of her chapter in The New Oxford History of New Zealand : see Judith Binney, 'Maori Oral Narratives, Pakeha Written Texts : Two Forms of Telling History', NZJH, vol 21, no1 (1987), p16 ; Judith Binney, 'History and Memory : The Wood of the Whau Tree, 1766– 2005', in The New Oxford History of New Zealand, ed Giselle Byrnes (Melbourne : Oxford University Press, 2009), pp73–98. 82. Ward, A Show of Justice, pp42–43, 45 83. Ward, An Unsettled History, p17 84. Ward, A Show of Justice, p43 85. Belich, Making Peoples, p200 86. Moon, Te Ara kī te Tiriti, p131 87. See Philip Turner, 'The Politics of Neutrality : The Catholic Mission and the Maori, 1838–1870' (MA thesis, University of Auckland, 1986) ; Peter Low, 'Pompallier and the Treaty : A New Discussion', NZJH, vol 24, no2 (1990) ; Peter Low, 'French Bishop, Maori Chiefs, British Treaty', in The French and the Maori, ed John Dunmore (Waikanae : The Heritage Press Ltd, 1992) ; Peter Low, 'Bishop Pompallier and Te Tiriti', in The French Place in the Bay of Islands : Essays from Pompallier's Printery, ed Kate Martin and Brad Mercer (Russell : Mātou Matauwhi, 2011). Also of note is Peter Tremewan, who in 1990 published a history of the French attempt to settle and obtain sovereignty over southern districts of New Zealand in 1840. See Peter Tremewan, French Akaroa : An Attempt to Colonise Southern New Zealand (Christchurch : Canterbury University Press, 2010 (first published 1990)). 88. Louis Catherin Servant as translated by Turner, 'The Politics of Neutrality', p88 89. Belich, Making Peoples, pp195–196. Turner's translation

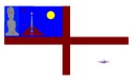




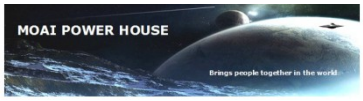








differs little from Low's. 90. Turner's 1986 thesis was included in Orange's bibliography. 91. Orange, The Treaty of Waitangi, p56 92. Michael King, The Penguin History of New Zealand (Auckland : Penguin, 2003), p161 93. Owens, The Mediator, p47 94. Orange, The Treaty of Waitangi, pp64–65 95. Ward, An Unsettled History, p14 96. Ibid, p17 97. Moon and Fenton, 'Bound to a Fateful Union', p60 98. Ross, 'Te Tiriti o Waitangi', pp145, 150 99. Ibid, pp151–152 100. Ibid, pp145, 152 101. Orange, The Treaty of Waitangi, p100 102. Ross, 'Te Tiriti o Waitangi', p152 103. Owens, 'New Zealand before Annexation', p52 104. McKenzie, Oral Culture, p44 n84 105. Orange, The Treaty of Waitangi, pp42, 101 106. Ross, 'Te Tiriti o Waitangi', p144 107. William Colenso, The Authentic and Genuine History of the Signing of the Treaty of Waitangi, New Zealand, February 5 and 6, 1840 (1890 ; repr Christchurch : Capper Press, 1971), p18 108. Ward, A Show of Justice, pp43–44 109. Buick, The Treaty of Waitangi, p104 110. Phil Parkinson, "Preserved in the Archives of the Colony" : The English Drafts of the Treaty of Waitangi (Wellington : New Zealand Association for Comparative Law, 2004), p53 111. Anne Salmond, Hui : A Study of Maori Ceremonial Gatherings (Auckland : Reed, 2004), p165 112. King, The Penguin History of New Zealand, pp161–162 113. Binney, 'The Maori and the Signing', p28 114. Jane Kelsey, A Question of Honour ? Labour and the Treaty, 1984– 1989 (Wellington : Allen and Unwin, 1990), pp8–9 115. Ibid, p11 116. Colenso, The Authentic and Genuine History of the Signing of the Treaty of Waitangi, p33. Here Colenso was quoting Busby's recollection on 6 February of what Heke had said the previous day. 117. Orange, The Treaty of Waitangi, p51 118. Ibid, p58 119. Owens, The Mediator, p47 120. Lawrence Rogers, Te Wiremu : A Biography of Henry Williams (Christchurch : Pegasus, 1973), p167. While published in 1973, Rogers' text probably entirely predated the publication of Ross's 1972 article. His foreword was dated October 1972, the same month Ross's article appeared. 121. McHugh, The Māori Magna Carta, p224 122. Sorrenson, 'Waitangi : Ka Whawhai Tonu Matou', p178 123. Don Brash, Nationhood (speech to Orewa Rotary Club, 27 January 2004), http ://www.scoop.co.nz/stories/PA0401/S00220.htm, accessed 20 February 2012 124. Dame Silvia Cartwright, Waitangi Day Address 2004, http ://www. scoop.co.nz/stories/PA0402/S00093.htm, accessed 28 November 2012 125. See, for example, 'Constitutional Reform', New Zealand Listener, vol 236, no3786 (1 December 2012), p6, where a correspondent to the Listener wrote in late 2012 that, 'When considering the role of the Treaty of Waitangi in any proposal for a constitution, there is only one clause that needs to be taken forward. It's the one that sums up the purpose and essence of the Treaty : "We are now one people."'. In 'Apartheid Risk', Taranaki Daily News, 30 January 2002, p8, a letter writer to the New Plymouth newspaper wrote in 2002 that 'The treaty says : He iwi tahi tatou – We are now one people.' 126. See, for example, 'New Zealanders', Christchurch Press, 18 February 1998, p43 127. See, for example, 'Bad Move', Dominion, 23 April 2002, p6 128. See, for example, 'Maori Seats', Hawke's Bay Today, 19 March 2014, p13 8-Notes Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz Past Perspectives on te Tiriti and the Treaty 445 129. See the following letters to the editor : 'Treaty Principles Stretched', Nelson Mail, 11 May 2012, p11 ; 'Call to be Heard', Nelson Mail, 17 May 2012, p9 ; 'Waitangi Day Unrest', Southland Times, 12 March 2012, p4. See also the opinion piece 'Apartheid Looming in NZ with "White" Underdog Voice', Nelson Mail, 31 December 2011, p17. We note that this version of events dates back some decades. In 1932, the Auckland Star claimed that '"He iwi tahi tatou" . . . said each tattooed chief as he signed'. The same article also stated that the treaty was signed on 5 February : 'Cradle of History', Auckland Star, 11 May 1932, p10. 130. Ross, 'Te Tiriti o Waitangi', p154 ; Ward, An Unsettled History, p15 131. New Zealand Maori Council v Attorney General [1987] 1 NZLR 641 at 702 132. Orange, The Treaty of Waitangi, pp56–57 133. It is likely that this is a reference to Metge's Rua Rautau lecture (audio available at http ://www.radionz.co.nz/national/programmes/ waitangiruarautaulectures/audio/2508843/2004-dr-dame-joan-metge), which Dame Silvia Cartwright correctly quoted. 134. Joan Metge, Tuamaka : The Challenge of Difference in Aotearoa New Zealand (Auckland : Auckland University press, 2010), p27

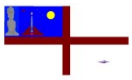




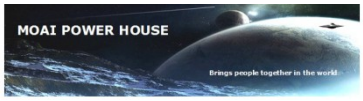








135. McKenzie, Oral Culture, pp34–35 136. Belich, Making Peoples, p195 137. Head, ‘The Pursuit of Modernity’, pp109–110 138. Ross, ‘Te Tiriti o Waitangi’, p154 139. Ward, A Show of Justice, p42 140. Adams, Fatal Necessity, p164 141. Simpson, Te Riri Pakeha, p50 142. Ibid, p52 143. Orange, The Treaty of Waitangi, p41 144. Ibid, p46 145. Ibid, pp1, 4, 58 146. Judith Binney, ‘Kawanatanga and Rangatiratanga, 1840–1860’, in The People and the Land : Te Tangata me te Whenua – An Illustrated History of New Zealand, 1820–1920, ed Judith Binney, Judith Bassett and Erik Olssen (Wellington : Bridget Williams Books, 1995), p77 147. Binney, ‘Tuki’s Universe’, p30 148. Binney, ‘The Maori and the Signing’, p28 149. Binney, ‘Kawanatanga and Rangatiratanga, 1840–1860’, p77 150. Binney, ‘The Maori and the Signing’, p28 151. Binney, ‘Kawanatanga and Rangatiratanga, 1840–1860’, p78 152. Ross, ‘Te Tiriti o Waitangi’, pp129–130 153. Low, ‘Pompallier and the Treaty’, pp190, 199 154. James Belich, The New Zealand Wars and the Victorian Interpretation of Racial Conflict (Auckland : Auckland University Press, 1986), pp20–21 155. James Belich, ‘Hobson’s Choice’, NZJH, vol 24, no2 (1990), p202 ; Belich, Making Peoples, pp194–195 156. Binney, ‘The Maori and the Signing’, p28 157. Belich, Making Peoples, p200 158. ETJ Durie, ‘The Treaty in Maori History’, in Sovereignty and Indigenous Rights, p157 159. Sorrenson, ‘Waitangi : Ka Whawhai Tonu Matou’, p179 160. Moon, Te Ara kī te Tiriti, pp153, 155, 159 161. Document A16, pp196, 219, 225–226 162. Ward, An Unsettled History, p16 163. Ibid, pp14, 16, 17 164. Head, ‘The Pursuit of Modernity’, pp100–103, 109 165. Belgrave, Historical Frictions, p62 166. Ibid, pp62, 65 167. Paul McHugh, ‘Constitutional Theory and Māori Claims’, in Waitangi : Māori and Pākehā Perspectives of the Treaty of Waitangi, pp33–34, 37–42, 47 168. McHugh, The Māori Magna Carta, pp1, 25–30, 46 169. Ibid, p6 170. FM Brookfield, Waitangi and Indigenous Rights : Revolution, Law and Legitimation (Auckland : Auckland University Press, 2006), pp100–104 171. Ibid, pp104–105 172. Palmer, The Treaty of Waitangi, p68 173. Ibid, pp68–69 174. Ibid, p73 175. Ibid, pp163–164 176. Ward, An Unsettled History, p13 177. Moon, Te Ara kī te Tiriti, p117 178. Ian Wards, in his first chapter, made this point to counter what he called ‘the myth of moral suasion’ in New Zealand historiography. Wards, The Shadow of the Land, pp2–37 179. McHugh, The Māori Magna Carta, p30 180. Palmer, The Treaty of Waitangi, p74 181. Section 6(1)(c) does not expressly state that a Crown policy or practice that is claimed to have caused prejudice must date from 6 February 1840. We note that, unlike the other matters dealt with by section 6 (written laws, acts, and omissions), a policy or practice cannot always be dated precisely. Since the Treaty of Waitangi is dated 6 February 1840, a claim that a Crown policy or practice is inconsistent with Treaty principles could not be based on a policy or practice that entirely predated the Treaty. 182. Waitangi Tribunal, Report of the Waitangi Tribunal on the Motunui–Waitara Claim, 2nd ed (Wellington : Government Printing Office, 1989), p51 183. Waitangi Tribunal, Report of the Waitangi Tribunal on the Manukau Claim (Wellington : Government Printer, 1985), pp66–67 184. Waitangi Tribunal, Report of the Waitangi Tribunal on the Muriwhenua Fishing Claim, 2nd ed (Wellington : Government Printing Office, 1989), pp186–187 185. We note that, in 2012, in New Zealand Maori Council v AttorneyGeneral [2013] NZSC 6, the Supreme Court said, at [15] n25, ‘This case is frequently called the Lands case ; we shall refer to it in this judgment as the SOE case, because, as we shall explain, what was in issue in that case was not only land but also water.’ We do not take from this that the Supreme Court believes that all references to the Lands case should be so amended. 186. Waitangi Tribunal, Report of the Waitangi Tribunal on the Mangonui Sewerage Claim (Wellington : Waitangi Tribunal, 1988), p60 8-Notes Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz He Whakaputanga me te Tiriti The Declaration and the Treaty 446 187. AL Mikaere, ‘Maori Issues I’ [1989] NZ Recent Law Review 173–174 188. Waitangi Tribunal, Report of the Waitangi Tribunal on the Orakei Claim, 2nd ed (Wellington : Brooker and Friend, 1991). Paul Hamer (‘A Quarter-Century of the Waitangi Tribunal : Responding to the Challenge’, in The Waitangi Tribunal : Te Roopu Whakamana i te Tiriti o Waitangi, ed Janine Hayward and Nicola Wheen (Wellington : Bridget Williams Books, 2004), p6) wrote of the report : ‘It represented the Tribunal’s first

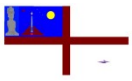




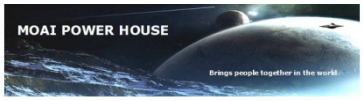








extensive and thorough articulation of Treaty principles, breaking new ground and setting effective precedents for future inquiries. The report reflected the careful hand not only of Judge Durie but of a full panel of six, including legal expert Gordon Orr, who contributed significantly to the Treaty principles section'. 189. Waitangi Tribunal, Report on the Orakei Claim, pp188–189 190. Ibid, p208 191. Ibid, p201 192. Ibid, pp201, 203 193. Ibid, p181 194. See doc A22, p1 195. Waitangi Tribunal, Muriwhenua Land Report (Wellington : GP Publications, 1997), p114 196. Ibid, p115 197. Ibid, p116 198. Ibid, p117 199. Ibid, p111 200. This provision, so far as it related to sea fisheries, was repealed by the Sea-fisheries Act 1894 but the Fisheries Acts of 1908 and 1983 protected 'Maori fishing rights', providing the basis for the litigation that successfully challenged the Crown's quota management regime and led to the 1992 Sealord Deed of Settlement. 201. Waitangi Tribunal, Report on the Muriwhenua Fishing Claim, p85 202. Waitangi Tribunal, Report on the Motunui–Waitara Claim, pp45–46 203. Palmer, The Treaty of Waitangi, p123 204. New Zealand Maori Council v Attorney General [1987] 1 NZLR 641 at 663 205. Ibid, at 691 206. Ibid, at 689 ; Mikaere, 'Maori Issues I' [1989] NZ Recent Law Review 174 207. New Zealand Maori Council v Attorney General [1987] 1 NZLR 641 at 690 208. Ibid, at 671 209. Ibid, at 714 210. Hobson to Gipps, 5 February 1840, BPP, 1840, vol 33 [560], p10 (IUP, vol 3, p46) 211. New Zealand Maori Council v Attorney General [1987] 1 NZLR 641 at 715 212. Tainui Maori Trust Board v Attorney-General [1989] 2 NZLR 513 at 530 213. Te Runanga o Muriwhenua v Attorney-General [1990] 2 NZLR 641 (CA) 214. Te Runanga o Wharekauri Rekohu Inc v Attorney-General [1993] 2 NZLR 301 (CA) 215. Palmer, The Treaty of Waitangi, p125 216. New Zealand Maori Council v Attorney-General [1992] 2 NZLR 576 (CA) at 590–591 ; New Zealand Maori Council v Attorney-General [1994] 1 NZLR 513 (PC) at 517 217. Ngai Tahu Maori Trust Board v Director-General of Conservation [1995] 3 NZLR 553 at 558, 562 8-Notes Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz 447 Chapter 9 Claimant and Crown Evidence and Submissions 9.1 Introduction At our first hearing, Erima Henare issued us with the following challenge : This is . . . a very important occasion for all of New Zealand. The truth has never been told or acknowledged so there is still much misunderstanding and much apprehension about the place of Te Tiriti in New Zealand's Constitution. In carrying out your task, we ask that the Tribunal be absolutely clear on the issues that lay before it to consider in the early hearing process. The role of the Tribunal is to delve into 'our' understandings of Te Tiriti and He Whakaputanga and the reasons for which they were signed. Importantly we seek to have the untruths that exist within the myths that are perpetuated about us thrown off. In this light we ask you to listen to us, to question us, and to actively seek our understanding of what our tupuna tried to achieve.1 Central to the claimants' call for a fresh approach to the subject matter was the presentation of what they described as an untold story of their own traditions about and understanding of the treaty. It is to this body of evidence that we now turn. Some of the claimant traditions were specific to certain hapū or whare wānanga, while other evidence stemmed from claimants' professional expertise as linguists or other scholars. While we relate this evidence within the same basic framework that we apply in other parts of the report – that is, in terms of the treaty's words, the oral debate, and the treaty's overall meaning and effect – we nonetheless acknowledge the uniqueness of the claimants' kōrero. We also summarise what the commissioned witnesses who appeared before us argued about the treaty. Historians, legal scholars and other experts were commissioned by both the claimants and the Crown, as well as by the Tribunal. Finally, we set out the claimant and Crown closing submissions, which drew on the evidence of these witnesses. Claimant counsel, of course, also relied on the evidence of the claimants who appeared before us, evidence which drew on the kōrero tuku iho of their tūpuna. 9.2 Claimant Accounts of the Signing of te Tiriti Haere mai e Te Tiriti O Waitangi Welcome Te Tiriti O Waitangi Haere mai ki tenei Ao Welcome to this world Haere mai me nga hua kei roto ia koe Welcome with the fruits you have in you Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz He Whakaputanga me te Tiriti The Declaration and the Treaty 448 Tu mai ki to matou taha Stand by

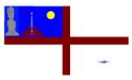




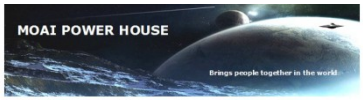








our side Noho mai ki to matou taha Sit by our side Takiri a nuku Proceed along the land Takiri a rangi Proceed along the heavens Te Manawa ti 'Tis the enduring breath Te Manawa ta The breath of life Tenei te kare kau Here within are the ripples Te kare a roto e The ripples of passion and emotions within2 This karakia, given by the rangatira Ngamanu (Rewa) after he had signed te Tiriti at Waitangi on 6 February 1840, was set out by Rima Edwards at the start of his written evidence to us on behalf of Ngāpuhi Nui Tonu. He also set out the words of the waiata composed by Aperahama Taonui about the tapu of te Tiriti that was used in prayers by Te Ngakahi o Ngāpuhi, the sect founded by the prophet Papahurihia (whom we introduced in chapter 5) : Ko nga kupu o tenei waiata pao e whai ake nei : KAIHAUTU : Tenei te ata te takiri nei e TEKATOA : Kia whakatapua Te Tiriti O Waitangi The words of the song are : LEADER : The morning dawn rises CONGREGATION : The Te Tiriti O Waitangi is made sacred 3 Edwards began his evidence in this way in order to demonstrate the sacredness of te Tiriti to Ngāpuhi. He described it as a 'kawenata tapu', or sacred covenant, bearing the tohu tapu (sacred marks) of the claimants' tūpuna.4 Edwards learnt his kōrero about te Tiriti in Te Whare Wānanga o te Ngākahi o Ngāpuhi, a school of learning established to preserve and pass on tribal knowledge and traditions. Since 1982, he had been a teacher within this whare wānanga, a role he had inherited from his father. Like Edwards's evidence, much of the claimant testimony was sourced from oral history, handed down within families over generations or taught in traditional wānanga, and has never been recorded in history books. As Edwards explained : I haere mai matou ki te korero kia koutou no te mea e hiahia ana matou kia marama katoa nga korero waenganui I a tatou. I haere mai matou ki te whakapuaki i o matou nei mohioranga kia koutou. He maha hoki o enei korero horekau ana kia rangona e te iwi whanui. Ko ta matou hiahia kia kaua he mea e waihona ki waho kia mohio tuturu ai koutou. Kia kaua ano hoki koutou e mea a muri ake nei horekau koutou i mohio. I haere mai matou ki konei ki te tuku aroha atu kia koutou i enei taonga matauranga a matou e pa ana ki nga ra o mua me te tuku atu kia koutou o matou whatumanawa o matou tumanako mo nga ra katoa kei mua ia tatou katoa. E hiahia ana matou kia mohio tuturu koutou kia matou, me te whakatutuki a kikokiko i te katoa a o matou take me te tapiri atu ki te wairua pai. We have come here to pass on our knowledge to you, much of which has never been shared in a public situation before, because we want you to be completely informed. We want you never again be able to say that you did not know. We have come here to entrust you with the taonga of our learning, and our past, and our feelings and our hopes and desires for the future because we want you to understand us and to be able to address our issues comprehensively, meaningfully and effectively.5 Titewhai Harawira put it like this, also at the start of our hearings : Today is a very important day in the history of Aotearoa. For the first time, in the history of Aotearoa, we will be hearing the Ngāpuhi story, the Ngāpuhi story as told by the tohunga of Ngāpuhi.6 Before we relate the claimants' kōrero, we pause to reflect on the nature and significance of oral traditions. Their importance will often lie in the fundamental message they are conveying, which has been regarded as significant enough to have been handed down across generations. Details may change in the course of the retelling, but what Dr (later Professor Dame) Judith Binney called a 'central mythic cell' 7 will usually remain intact. In the case 9.2 Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz Claimant and Crown Evidence and Submissions 449 of the Ngāpuhi understanding of the signing of te Tiriti, this might be, for example, that sovereignty or mana was never ceded, or that Captain William Hobson or Henry Williams acted inappropriately. The way this is retold may shift, but the core message is usually retained. The Tribunal has considered oral narratives in numerous inquiries. In its Muriwhenua Land Report of 1997 it gave what we think is a useful summation of the function and meaning of these traditions : in the past, the written account has been relied on and oral tradition has been distrusted. What may be seen from a European view to be liberties taken in relating details over time are taken to discredit the entire Maori opinion. . . . While the metaphors of oral tradition needed to sustain messages over generations have resulted in powerful accounts, the tradition may remain vitally honest

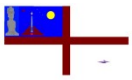




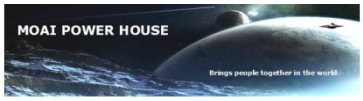








for the inner truths conveyed. In reviewing Muriwhenua history, therefore, our greater concern has been not with the vagaries of oral tradition, but with the power of the written word to entrench error and bias.8 In the case of the treaty, it has also been the written Pākehā record that has dominated the majority understanding. Setting out here the claimant kōrero thus adds an essential voice to the discourse. We acknowledge, of course, that not all claimant The start of the hearings, Te Tii Marae, Waitangi, 10 May 2010 9.2 Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz He Whakaputanga me te Tiriti The Declaration and the Treaty 450 evidence was sourced from oral tradition, and that there are various types of oral tradition. Inevitably, some claimant arguments will have been influenced by modern historical inquiry.9 But the overall understanding of the claimants – regardless of how the knowledge was derived – is that their tūpuna did not cede their mana in agreeing to te Tiriti in 1840. 9.2.1 Debates before the Waitangi hui Several claimant witnesses told us of oral traditions referring to discussions about the treaty that took place just before the Waitangi hui or that preceded Hobson's arrival in New Zealand altogether. Erimana Taniora of Ngāti Uru and Te Whānaupani said that several hui were held at Whangaroa to discuss the implications of the treaty prior to its signing, including one at a place later named Waitangi in remembrance of te Tiriti. Rangatira from Ngāi Tūpango, Tahawai, and Ngāti Uru were said to have been at that hui, and Wiremu Hau spoke in favour of te Tiriti. Among other rangatira, the main concern was that land would be lost and needed to be protected. The last of these hui was held on 4 February, before Whangaroa leaders travelled to the Bay of Islands. According to Taniora, they did not attend the 5 to 6 February hui because there was no food, and instead signed te Tiriti at Waimate on 10 February. Taniora said he knew these things through 'korero that has been told to me by the old people'.10 Henare said that, in anticipation of Hobson's arrival, I tono ngā Mihinare kia tae mai te iwi ki Waitangi i te kotahi marama i mua atu i te ono o Pēpuere. Ka mutu ka tīmata rātou i te kōrero i te Tīritī ka tīmata rātou ki te kōrero mō te Kāwana e haere mai ana the missionaries called the people to Waitangi one month before the 6th of February and the missionaries began talking about Te Tīriti, then they started to speak about the governor who was coming.11 However, Henare said, the missionaries did not provide enough food to sustain the visitors, and in time the Hokianga people, for example, drifted home – which is why they signed te Tiriti there. Some stayed on until 6 February. 'Engari i te wā i hainatia e te Tīritī-o-Waitangi i riro kē ma ngā Mihinare rātou e whakatiki, āe tika tonu he finger food' ('By the time of signing of the Treaty the missionaries responsible for feeding them, it was finger food').12 Henare said he had learnt this kōrero in the Ngāti Hine whare wānanga : Ko ēnei kōrero ka whārikihia mai nei ki mua i a kōutou, i akongia mai au i te whare wānanga ō Ngāti Hine, ko Marinokato te ingoa. He whare wānanga tēnei i ahu mai i te wā o taku tūpuna, Hine-amaru. These talks I put before you. It was taught to me from the Ngāti Hine school of learning, Marino Kāto is a house of learning that came from the time of my ancestress, Hineamaru.13 Pereme Porter told us that his great-grandmother, Marara Tupi had been at Waitangi in 1840. She had talked of hui taking place for five days before the signing, at which there was 'a discussion about the allowance of pakeha to be amongst us, in our independent nation'.14 Kaumātua had also told the historian Dr Merata Kawharu that there had been numerous hui in the lead-up to Waitangi. As she explained : According to a contemporary kaumatua opinion, the hui at Waitangi on the 5th and 6th of February 1840 was not the only hui of rangatira where ideas about rangatiratanga was discussed. Hui were held throughout Taitokerau, one tradition states there were as many as 60 hui where the type of future with Europeans was discussed. This suggests that Maori were primed to discuss and debate the Treaty with the British. Unlike Pakeha written accounts where the Waitangi hui at the Treaty grounds was the first meeting, according to one tradition Waitangi was the place of the last meeting.15 9.2.2 Te tiriti tuatahi Edwards told of preliminary discussions held with the rangatira about the wording of te Tiriti, which took place 9.2.1 Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz Claimant and Crown Evidence and Submissions 451 in the midst of the

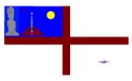




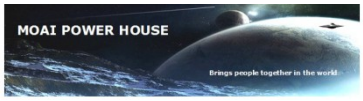








gathering at Waitangi. He told us that James Busby and Williams presented to the chiefs a ‘tiriti tuatahi’, or ‘first treaty’, at Te Tou Rangatira some time prior to 6 February (presumably on the evening of either 4 or 5 February). Edwards explained that this was the kōrero that had been handed down from Heke Pokai, Ngamanu, and Te Hinaki within Te Whare Wānanga o Te Ngakahi o Ngāpuhi. According to this tradition, this tiriti included the following words in article 1 : ‘ka tuku kia riro wakangaro rawa atu ki te Kuini o Ingarangi ake tonu atu te mana katoa a o ratou wenua’.16Edwards translated this as ‘absolutely give to be lost to the Queen of England forever the Sovereignty of all their lands’. As he put it, te tiriti tuatahi thus conveyed ‘in an unmistakable way that the Rangatira [would] sign away their mana or Sovereignty’ (‘e whakatakoto ana i runga i te whakamarama nui rawa atu e tuku wakangaro atu ana nga Rangatira i to ratou mana’). However, according to Edwards, this was the reason the chiefs rejected it. In fact, he said, they asked that it be buried with Hobson because it was a curse on him : Ki nga whakaaro o nga Rangatira ko te mauiui me te matenga o Hopihana no te mea horekau. i pono ona whakaaro ara ka takahia e ia te tapu o te kaupapa i uhia ra e nga Rangatira ki runga i nga whakahaerenga. Ka mate te tangata i te takahi tapu. Ko te whakapono a nga Rangatira he makutu tenei i uhia e Hopihana ki runga i a ia ano. The Ngapuhi Rangatira felt that Hobson’s illness and eventual death were a result of his untrue intentions desecrating the tapu under which the Rangatira endeavoured to conduct the whole process. Desecration of Tapu can lead to death. The Rangatira believed that Captain Hobson had imposed this makutu on himself.17 Edwards said that this tiriti also had a fourth article concerning religions, but was otherwise (with the deletion of the reference to ceding mana, of course) the same as the tiriti signed by the chiefs, which Te Wānanga o Te Ngakahi referred to as ‘Te Tiriti Tuarua’.18 Faced with this rejection, Edwards believed that Williams and Busby would have gone back to Hobson : E whakapono ana ahau I whakaatu atu a Te Wiremu kia Wiremu Hopihana ara horekau nga Rangatira I whakae ki Te Tiriti Tuatahi no te mea I tika te whakamaori ara e tuku ana ratou I to ratou mana. I believe that Henry Williams would have consulted with Captain Hobson and advised him that the Rangatira refused to accept the first draft Tiriti because it was a correct translation for the cession of mana.19 We assume from this that Edwards believed that Hobson agreed to the substitution of the word ‘kawanatanga’ for Nga Pou Kōrero witnesses (from left) : Rima Edwards, Hōne Sadler, and Erima Henare 9.2.2 Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz He Whakaputanga me te Tiriti The Declaration and the Treaty 452 ‘mana’ in the tiriti put to the chiefs on 6 February, and this led to their acceptance of it. Henare spoke in support of Edwards’s kōrero. Picking up on a question from the Tribunal to Edwards about there having been several drafts of the treaty,20 he said, ‘I te mea tuatahi, kāre ngā rangatira i whakaaē ki te kōrero Pākehā mō te Sovereignty, ko te mana, kāre ngā rangatira i whakaaē’. 21 (The first one, the rangatira did not agree about sovereignty being referred to as mana. The rangatira would not agree.) He later reiterated that i te tuhinga tuatahi o te Tīrīti o Waitangi i uru i roto i te reo Pākehā i uru te kupu mana i te whakamāoritanga e Te Wīremu mō te Sovereignty, kāore ngā tūpuna i whakaaē ki tēnā ka tangohia mai e te Wīremu, ka whakaurungia ko te Kāwanatanga.22 We translate this as follows : In the first written version (draft) of the Treaty of Waitangi in English, the word mana was put in by Williams as the Māori word for sovereignty. The ancestors did not agree with that and so Williams removed it and put in the word kāwanatanga. With the retention of their mana and their rangatiratanga, however, the chiefs were willing to sign. 9.2.3 The wording of te Tiriti and the Treaty The claimants’ view is that the signed document itself is best understood as an ‘undivided whole’, as Dame Joan Metge has put it, rather than analysed phrase by phrase.23 For example, in response to written questions from Crown counsel on specific phrases in the Māori and English texts, Dr Patu Hohepa said : While I have tried to answer the string of questions posed by the Crown in the way in which they were asked, I think it is important to highlight the concerns I have with the dissective way in which they seek to have Te Tiriti interpreted. Essentially these questions have separated out certain strands from the covenant in an effort to place them in

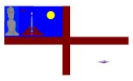




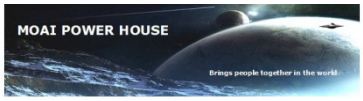








conflict with each other. In this way, the exercise of tino rangatiratanga is conceptualised as separate and in opposition to the exercise of kawanatanga. The Crown's search for conflict within the document negates its overall context which was the desire to create a relationship.24 As we noted in chapter 1, the claimants also contended that only the Māori text is of any relevance to this inquiry, Nga Pou Kōrero witnesses (from right) : Dr Patu Hohepe, Hirini Henare, and Nuki Aldridge 9.2.3 Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz Claimant and Crown Evidence and Submissions 453 because it is what their tūpuna signed and understood. Henare explained that From our Maori perspective there is only Te Tiriti o Waitangi. That is what was signed here. It is to that Tiriti that our ancestors, our tūpuna affixed their tohu tapu from the ngū of their noses, making it tapu. The other text, I beg to offer is just the English version. It is not the same as Te Tiriti o Waitangi and has no mana. It is an English language version that meant nothing to our tūpuna, nothing. They signed only what they understood, Te Tiriti i roto i te reo Māori.25 Likewise, Warren Moetara said that Te Wahapū ancestors did not sign the Treaty 'and therefore it has no significance to us'.26 Moana Jackson, who was commissioned by the claimants as an expert witness, argued that the issue for the rangatira was not whether they understood sovereignty[,] it was whether they understood mana, and clearly they did, and so in that sense the English text was effectively irrelevant to the discussions that our people had.27 Hohepa went further, arguing that the English version was not only irrelevant but also destructive of the oral undertakings : Te Tiriti was a treaty between our nation and the nation of Queen Victoria and her successors. The English version is not a translation of Te Tiriti ; the English version is irrelevant to our understanding of Te Tiriti. The English version destroys the words and promises of Busby, Hobson, and Henry Williams given at Waitangi and Hokianga.28 Renata Tane added that The Treaty written in Māori was not a translation of the official version sent to England. Ko tēnei te Tiriti tūturu, te Tiriti Māori[.] ('This is the real Treaty, the Māori version').29 Despite these points, we do of course discuss Treaty terms like 'sovereignty' – not only because our legislation compels us to consider both texts, but also in order to establish the British intentions behind the treaty. Moreover, the claimants themselves did not ignore the terms of the English text, in part because reference to these terms helped to make their key point about the concept of 'mana', as we set out below. On the basic issue of the quality and sense of Williams's translation, Hohepa explained that the 'language idiolect' (or specific form of language) Williams used was 'formal Ngāpuhi'. He added that there were 'no ungrammatical or unacceptable errors' and the capitalisation was 'excellent'. While the punctuation was 'erratic' and thus a cause of 'slight problems in translating', this was not sufficient to 'cause serious problems in understanding what is meant in Māori'.30 In a 2010 publication submitted in evidence by claimant counsel, Professor Margaret Mutu called Williams's language 'stilted and unnatural', albeit still clear in its meaning.31 On the matter of sovereignty and mana, therefore, Edwards argued that If Sovereignty in 1840 is the same as it is in 2010, and if it means the Power and Authority to govern a Country and to make laws that affect everything within that Country, then there is only one word in the Ngapuhi language and indeed the Maori language that can convey such a message to the Rangatira of the Hapu. That word is 'Mana' and there is no other word in Ngapuhi or Maoridom that can convey such a message.32 Edwards reiterated his belief that the chiefs had already rejected conveying their mana – a term which carried 'no confusion in Ngapuhi or Maoridom' ('Ko te kupu "Mana" horekau ona pohehetanga ki roto o Ngapuhi ara i rota hoki i te Ao Maori katoa') – in te tiriti tuatahi.33 Hohepa explained mana in this way : It comes from the Gods, from Ranginui and Papatūānuku, it comes from whakapapa and ancestors whose deeds flow 9.2.3 Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz He Whakaputanga me te Tiriti The Declaration and the Treaty 454 through the bones of all. It wells upwards or diminishes from one's own activities and the support or withdrawal of others.34 Mutu stressed that tino rangatiratanga and mana signified a much broader authority than what the English understood as 'sovereignty' : Mana as described by my kaumātua can be translated, albeit rather

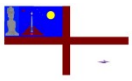




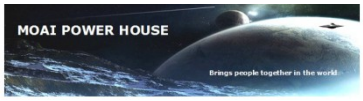








simplistically, as power and authority that is endowed by the gods to human beings to enable them to achieve their potential, indeed to excel, and, where appropriate, to lead. It is high-order leadership, the ability to keep the people together, that is an essential quality in a rangatira. The exercise of such leadership in order to maintain and enhance the mana of the people is rangatiratanga. Tino rangatiratanga is the exercise of paramount and spiritually sanctioned power and authority. It includes aspects of the English notions of ownership, status, influence, dignity, respect and sovereignty, and has strong spiritual connotations. The English notion of sovereignty does refer to ultimate power and authority, but only that which derives from human sources and manifests itself in man-made rules and laws. It is therefore essentially different and much more restricted in its nature than mana and tino rangatiratanga.35 The idea of transferring mana was unthinkable for the claimants. Jackson, whose views we have already noted above, and who considered mana to mean ‘absolute’ political and constitutional authority, explained that mana as a concept of power was underpinned by ‘two fundamental prescriptions and proscriptions’ : (a) Firstly, the power was bound by law and could only be exercised in ways consistent with tikanga and thus the maintenance of relationships and responsibilities. (b) Secondly the power was held by and for the people, that is it was a taonga handed down from the tipuna to be exercised by the living for the benefit of the mokopuna. The ramification of those prescriptions was that mana was absolutely inalienable. No matter how powerful rangatira might presume to be, they never possessed the authority nor had the right to give away or subordinate the mana of the collective because to do so would have been to give away the whakapapa and the responsibilities bequeathed by the tipuna. The fact that there is no word in Te Reo Maori for ‘cede’ is not a linguistic shortcoming but an indication that to even contemplate giving away mana would have been legally impossible, politically untenable, and culturally incomprehensible.36 Henare thought that conveying mana would not just have been unthinkable, but that any request for this would have been met with an uncompromising and even violent response : Had ceding sovereignty been suggested at that time, that is that the Rangatira gathered at Waitangi should surrender their Mana to the foreigners, ‘all hell would have broken loose’ and the foreigners would have been ejected or annihilated.37 Jackson argued that ‘tino rangatiratanga’ was another way of expressing ‘mana’, especially after 1840.38 Mutu translated this as ‘the unqualified exercise of their paramount authority’.39 Hohepa concurred, translating te tino rangatiratanga as ‘absolute sovereignty’. He noted that rangatiratanga was one of several words that had been used in a ‘Humpty Dumpty way’ by the missionaries to convey ideas of kingdom (in the Bible), trusteeship, chiefly authority, and so on.40 He thought that ‘kawanatanga’ would have been well understood by the chiefs from their experience of the New South Wales governors (with whom they enjoyed a ‘warm relationship’), but not from the Bible, as Pontius Pilate had no whakapapa connection to the English and their governors. To that extent, he thought the chiefs would have comprehended kāwanatanga as ‘governorship’. The idea of ‘government’, by contrast, he thought would have not been well understood : While Māori would understand the meaning of kawanatanga as ‘governor-ship’ as meaning the governor will govern Pakeha people (in the preamble) and any lands obtained by or given to the Queen, the other notion of 9.2.3 Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz Claimant and Crown Evidence and Submissions 455 kawanatanga – governing through a government – would not be known or experienced or have a cultural or actual precedent. Government based on sovereignty as in England, or on republic principles as in USA would not even be in the radar of those who attended and spoke at the Tiriti signings. Governorship they also understood as being of a fixed term from their NSW experiences.41 Not only were the governors appointed for fixed terms, but they also held a subordinate authority. As Henare explained, the term ‘kawanatanga’ was understood by my tupuna as referring to a lesser delegated set of powers such as governors over provinces in the biblical texts. My tupuna knew the difference between ‘He Kingi’ and ‘He Kawana’.42 Despite his evidence on the retraction of te tiriti tuatahi, Edwards still apparently felt that Williams was deceptive in his translation.

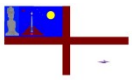




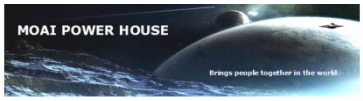




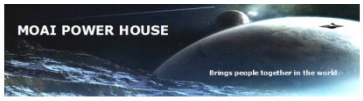




As he put it : Ko te kaupapa kua oti mai i Ingarangi mai rano ko te tango i te whenua me te mana ara ka whakamahia etahi kupu e ratou hei huna i enei whakaaro a ratou. The overall plan from way back in England was always to take the land and the mana and some words were often used to [mask] this fact.43 Likewise, Henare stated that Williams would have been well aware of the inconsistencies in the way ‘sovereignty’ was expressed in Māori in he Whakaputanga and te Tiriti. He argued : Williams’ use of ‘kawanatanga’ to translate sovereignty was disingenuous at best. . . . I don’t doubt that Williams genuinely believed that it was in the best interests of Māori to become British subjects. I believe Williams knew what he was doing, and he was essentially acting in a political way to try and secure Māori consent. Williams translated He Whakaputanga and he signed as a witness, in that document all sovereignty and authority is translated as ‘Ko te Kīngitanga ko te mana.’ We now know that the very object of Te Tiriti from the English point of view was to have the chiefs of He Whakaminenga relinquish to the Crown that sovereignty which the Crown recognised five years before, in 1835. That is what Article 1 of the English version says. It is certainly not what article one of Te Tiriti says, and Article 1 of the English version plainly contradicts Article 2 of Te Tiriti, and Williams, as the translator, had to have known about this.44 Porter was in no doubt. As he understood it, ‘God’s people, and in particular the missionaries Henry Williams and others have lied to us and betrayed us’.45 9.2.4 The oral debate and Māori understandings The written text of te Tiriti is one thing, but for Māori the oral debate was at least equally as significant. Hohepa stressed the importance to Māori of the spoken word : very few chiefs could read and write before 1840 because writing had only been in existence for less than one generation and writing was not yet an essential part of their communication system. . . . The main tikanga concerning language was still built around the proverb, ‘he tao rākau e taea te karo, he tao kupu, kāo’ (A wooden spear can be parried, a verbal spear, never). The culture of Māori was still overwhelmingly oral, one where the spoken words were valued, thought about, and their meanings shared.46 For this reason, he emphasised, what was actually said at Waitangi and elsewhere was of great importance : Listening to, absorbing, understanding and remembering what is spoken in Māori has been a normal every day part of Māori life and is the reason for the survival of Māori oral history for over a thousand years including the recollection of thousands of names genealogically accompanied by screeds of historicity concerning the wananga attached to various tūpuna. All through spoken Māori. Māori was their world. They were Māori ; Waitangi, Waimate, Mangungu, Kaitaia, were places that were turangawaewae ; tikanga drove their 9.2.4 Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz He Whakaputanga me te Tiriti The Declaration and the Treaty 456 lives. They would understand what was read out from the written text. The words of the spoken version would soon be in the minds of Māori listeners. The literal and extended and metaphorical meanings of each word in each sentence they would know if it was Māori. Only Kawanatanga extensions would be unknown. From their knowledge bases they discussed the implications of the agreement.47 Hugh Rihari gave his view on the disadvantage Māori faced in dealing with a written agreement : As was the British tradition, this compact was recorded in writing. With hindsight I think we were vulnerable at this point in the process as this was not our customary way of recording an agreement – and these English words put on the paper, later became a web to trap us.48 Henare attributed the chiefs’ decision to sign in large part to the faith that they placed in the missionaries. As he put it : Our Tupuna took a calculated risk in signing Te Tiriti o Waitangi. They believed the words that were conveyed to them, and trusted the people that explained its meaning. They believed what they were told and they signed it on the basis of the understanding.49 Edwards said that, according to Hōne Heke and Ngamanu, both Williams and Busby explained to the rangatira at Waitangi that kāwanatanga meant ‘he matua Kawana i runga i te aroha’ (‘a parent Governor on the basis of love’). The same definition was given at Mangungu, according to kōrero handed down by Aperehama Taonui.50 Edwards said that the chiefs thus understood te Tiriti (tuarua) as a mutually beneficial relationship with Queen Victoria in which each would be a ‘tuarā’ (which he translated as



‘back support’) for the other : Horekau nga rangatira Maori i tuku i tetahi mea e mate ai ratou me te iwi. Engari na runga i ta ratou whakaetanga ki te Matua Kawana i runga i te aroha hei whakakaha ake i to ratou tu no te mea ka tautoko nga taha erua ia raua ano. Ko te tuara he whakatautoko o tetahi ki tetahi ara ko nga rangatira ka tuku ki tenei hononga pera ano te nui to ta te Kuini ka tuku mai ki tenei hononga. Koia tenei ko te whakamaramatanga o tenei kaupapa te Tuara. Ehara i te whakakore i to ratou mana whakahaere ia ratou ano engari ko te manaaki tautoko o tetahi ki tetahi i tenei hononga. Maori did not consider they were relinquishing anything that would ultimately harm themselves and their people. Rather through accepting the parent governor on the basis of love they were enhancing their position because the two sides would actually be mutually supportive. Back support means that they would support each other and they were willing to give to that relationship as much as the Queen was prepared to give to them. That is what back support means. It does not mean giving up control over their own affairs but rather being mutually supportive of the other member of the partnership.51 The impression the chiefs took of te Tiriti, according to Jackson, was that it was a Maori reaffirmation of the ideals contained in He Whakaputanga and a tikanga-based expectation that the British Crown would meet its obligations by helping to keep order among Pakeha while acknowledging the kawa and mana of the existing polities.52 In a similar vein, Hohepa gave this overall description of the Māori understanding : The Māori interpretation of the Māori version is the internationally recognised protocol. Te Tiriti was an agreement with England that we will recognise a Governor who represents the Queen of England, who will control their people, who will honour and guarantee our rangatiratanga or mana motuhake or absolute sovereignty over all our lands, oceans, forests, fisheries and taonga. Any surplus lands we have we will tuku or hoko to the Queen to have for the use of her people, whom she will reign over. Our tikanga, not her ture, or the torah of the missionaries, will prevail over all.53 Rihari likewise said that 9.2.4 Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz Claimant and Crown Evidence and Submissions 457 The Crown affirmed our rangatiratanga over our people and promised us undisturbed possession of our whenua, kainga and taonga. And we gave the Crown powers of ‘kawanatanga’ to make laws for the manuhiri and manage the problems we were facing due to the ‘riff-raff ’ who were coming here.54 9.2.5 The signing As noted, Henare referred to the tapu nature of the signatures based on the tattooed patterns on the side of the chiefs’ noses. Te Warihi Hetaraka of Ngāti Wai expanded on this method of signing te Tiriti : It is significant that when signing Te Tiriti the Rangatira used only a small part of their ta moko. When we look at ta moko, we can read the entire universe represented there, but in signing He Whakaputanga and Te Tiriti, the Rangatira only chose to use a small part of their moko which signified a humble acknowledgement that the meaning of their actions in signing, was insignificant to the meaning of the universe that was held and represented in the total ta moko. Ta moko represents the mana of the bearer and the exercise of that mana is a privilege, the part of the moko chosen by the Rangatira, were those that referred to them as individuals. Different Rangatira took from different parts of their moko, usually the part that described their person or their particular skill. For example an orator would choose a portion of the moko from around the mouth.55 For most claimants there was no question that their tūpuna willingly signed te Tiriti. Moetara told us, for example, that, ‘As descendants of Rangatira, my whanau have always felt a sense of pride at the fact that he was a signatory to Te Tiriti.’ But some claimants disputed the general account of the signing process. Kiharoa Gilbert of Te Waimate Taiāmai, for one, alleged gross irregularities in the signing. He argued that some signatures were forged and that ‘x’ marks on the sheet in fact indicate disagreement rather than consent.56 Other witnesses had more specific concerns about the signatures. Wiremu Heihei of Ngāti Rēhia, for example, was adamant that Hakiro and Mene had not signed : He whakapae noa tenei no etahi, i haina marika nga tama e rua a Tāreha, i Te Tiriti. Ko Hākiro i haina mo Titore, engari kua mate ke Titore i te tau 1837. Mo Mene, tirohia tana waitohu me nga tuhituhi kei te taha tonu o tāna waitohu (mo tona matua). Ko te mea tuatahi ka kitea atu, he rereke ana nga tuhituhi kei te taha o tona waitohu. I

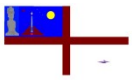




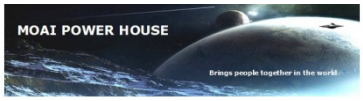








patapataingia te tino toa nei e to mātou tangata, mo ona tirohanga e pā ana ki nga āhuaranga mo te waitohu me nga kōrero i muri mai i te ingoa o te tama a Tāreha ara a Mene. He aha ma te tama, ma Mēne hei haina i te Tiriti, i reira ia kihai i korero, otiia ko te matua a Tāreha i reira, kihai i haina heoi, korero marietia e ia te take ōna i kore rawa nei e whakaae ? He aha ra tenei tuwhai āhua whakatamariki i te rangatira nui o Ngapuhi, he mamingaminga, he teka. It is alleged that the two sons of Tāreha, Hakiro and Mene signed Te Tiriti. With regards to Hakiro he signed on behalf of Titore but in fact, Titore had died in 1837. With regards to Mene, I say look carefully at his signature and the writing beside his signature (for his father). The first thing you will see is that the writing beside his signature is different to his signature yet it is the same as all the other written additions to other rangatira names. How is anyone expected to believe that Mene signed when he did not speak at the venue and when his father Tāreha was there and gave clear reasons why he would never ever agree to sign Te Tiriti. What nonsense this is which serves to denigrate the prestige of a great chief of Ngapuhi : pure deceit, blatant lies.57 Doubts have been raised by Moka's descendants about whether he signed te Tiriti, and these doubts have led to an acknowledgement by the Ministry of Culture and Heritage that in fact he may well not have done so (see chapter 7, endnote 189). Tane suggested that the tūpuna were under the threat of destruction if they did not agree to te Tiriti : ka mutu kei kōnā ngā waka o ngā pū nunui rawa atu e hakatautoko I ā rātou nei mana o te mana o Hobson me ana 9.2.5 Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz He Whakaputanga me te Tiriti The Declaration and the Treaty 458 kaimahi o te Karauna. Koinei te HMS active kei reira ō kaipuke nui. Ki aku hakaaro I aua wā mehemea kāore a Hone Heke, a Marupō I haina ka patua tūkinotia te marea I roto Waitangi me ō rātou waka nunui me ngā pū nunui. all the time they were under the cannons of the sailing ships of England while Hobson and his officials carried out their work. Ships such as the HMS Active. In my opinion, if Hone Heke and Marupo had not signed the people who had gathered at Waitangi would have been obliterated.58 As we have noted, as each rangatira stepped forward to sign at Waitangi, Hobson said, 'He iwi tahi tatou'. Nuki Aldridge explained how he believed the chiefs would have understood this : E ai nga korero a nga tupuna matua what it would have meant to the rangatira at the time was that we would be one people under the Maori kaupapa, we would live together under the Maori umbrella. History does not say that, so I pose this question to the NZ Crown and all its institutions : If say, a Maori chief signed a treaty with England and he shook the hand of the Queen of England, and said 'we are now one people' would the Queen then give England away ? 59 Aldridge saw Hobson's words as a turning point and as a portent of assimilation : 'He iwi kotahi tatou' – spoken by Hobson at Waitangi in 1840, knowing that it was untrue, that it was not his intention – was racism of the highest order. From that moment, Maori history became secondary to 'hunga ke' [foreigners'] thinking. From there, colonial England began the process of ensuring that Maori became an English person or they disappeared completely.60 According to the claimants, the occasion of the signing of te Tiriti also inspired several prophetic statements by their tūpuna. Edwards told us how, before the signing, Papahurihia said to his close friend Kawiti : E te ariki e Kawiti hei aha taua tohu ai i Te Tiriti O Waitangi kia noho mai taua ki te pupuri i te arikitanga o to tatou mana motuhake ki tenei to tatou whenua. Te Ariki E Kawiti, let not you and I sign Te Tiriti O Waitangi, let us stay to hold the Supreme Authority of our lands. But Kawiti felt that he must sign te Tiriti to uphold the mana of his son Te Kuhunga, who had already signed. At the same time, said Edwards, Papahurihia made the following prophecy to Kawiti and other rangatira : Ka whakahurihia e te pakeha tana Tiriti hei pungawerewere hei kai la tatou te iwi Maori. Ka rite tatou ki te papaka o te tatarakihi i ngotea ai ona Toto e te pungawerewere a whakarerea ana ki muri he papaka. Te papaka ko taua ko te Iwi Maori. The Pakeha will turn his Treaty into a devouring spider that will consume you and me, the Maori people, and we will resemble the carcass of the cicada whose blood has been sucked out by the spider to leave behind a carcass and that carcass shall be you and I the Maori people. After the signing, Papahurihia added : Kua mau tatou ki te ripo. Kaati ka taka ki tua o te

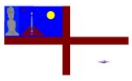




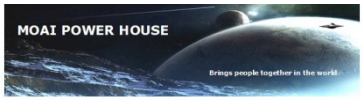








rua rau tau ka tu mai te pono ki te whakatika i nga mea katoa. We have been caught in a whirlpool. Alas, it will last for beyond two hundred years when the truth will stand to put everything right.61 Edwards explained this prophecy as follows : Ko te tikanga o tenei poropiti e whakaatu ana ki te iwi he wa ka tu kaha tonu tatou, he wa ka riro nga tikanga katoa i te ringa kaha o te pakeha, he wa ano ka tu mai ano tatou i runga i te kaha o to tatou mana tukuiho to tatou mana motuhake no te mea kotahi ano mana nui atu i te ringa kaha ara ko te pono. E kore rawa e mate. 9.2.5 Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz Claimant and Crown Evidence and Submissions 459 The meaning of this prophecy is advising the people that there's a time when we will stand strong, a time when everything will be taken by the strong arm of the pakeha and a time when we will stand again on the strength of our sovereignty because there is only one power greater than that of the strong arm and that power is the truth. It never dies.62 Edwards explained that Papahurihia gave Makoare Taonui's son, Aperahama, the prophetic power in Hokianga.63 Wiremu Heihei said, in this regard, 'ko te urunga mai o te pungawerewere, i poropitihia ai e Aperahama Taonui, ki te Whare Tapu o Ngapuhi' ('at the time of the signing the spider as prophesied by Aperahama Taonui would enter the sacred house of Ngapuhi').64 Edwards also recorded another prophecy or tohu at Mangungu. Kaitoke saw a dog's head on Hobson's shoulders. He turned to his fellow rangatira and said, 'Kua kite ake nei ahau i te tohu kino me tango ake a tatou tohu' ('I have seen a bad sign ; our tohu should be removed'). Edwards explained that Ko tenei mea te matakite o te kuri he tohu tiaki ki etahi whanau i Hokianga engari mena nga matenga kuri kei runga i te matenga o te tangata he tohu kino. The vision of a dog is a guardian symbol for some families in Hokianga but when the dog's head is seen on the head of a person then it is a bad omen.65 9.2.6 He Whakaputanga Several of the claimants stressed that he Whakaputanga was not superseded by te Tiriti but was rather continued in force, with te Tiriti a reaffirmation of the mana declared in 1835. Heihei put it like this : Kia mātou o Ngāti Rēhia, e hara He W[h]akaputanga i te pepa noa iho nei kia pangā hei kai mo te kiore i roto i nga tutae o te Whare Miere o te Kāwanatanga tahae nei, engari, he mea whakahirahira, he mea tapu rawa atu kia mātou. Ko He W[h]akaputanga he mea ora i Te Tii, he mea manawa pā kia Ngāti Rēhia, ahakoa ano nga mahi o te Pākeha ki te whakahuri i nga whakaaro o tenei hapu, ka ū tonu mātou. For us Ngāti Rēhia, He Whakaputanga is not just a piece of paper to be discarded in the dungeons of parliament building to be eaten by rats, but is alive and real for us. He Whakaputanga is alive in Te Tii and a great concern for us as Ngāti Rēhia, in spite of the colonization of the minds of many of our people, we still adhere to it.66 Henare saw continuity between the two documents. As he put it, 'what our people hoped for in He Whakaputanga was that the Māori worldview would remain dominant in this country. Article 2 of Te Tiriti o Waitangi reaffirm[ed] that'.67 Jackson also stated that 'If mana was not ceded then Te Tiriti was a Maori reaffirmation of the ideals contained in He Whakaputanga'.68 However, Emma GibbsSmith thought te Tiriti had also caused a disruption. He Whakaputanga was an assertion of Māori independence and self-determination, but te Tiriti 'allowed the introduction of a new culture which sought to impose itself without consultation upon Māori under the guise of government'. She appeared to conclude, nevertheless, that at least the mindset behind he Whakaputanga endured : While the Whakaputanga was overshadowed by the signing of the Treaty, I do believe that Māori had retained principles from the Whakaputanga to ensure the independence of Māori and to ensure Māori self-determination.69 9.2.7 Summary The claimants had some differing views, as one would expect from representatives of different hapū and tūpuna, but generally held fast to certain key tenets. Foremost among these was that they did not cede mana, as well as the importance of the oral agreements made at Waitangi and elsewhere. The claimants' evidence ranged from the technical, such as Hohepa's expert analysis of the grammar of te Tiriti, to traditions handed down on the nature of prophecies and reasons why certain tūpuna had or had 9.2.7 Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz He Whakaputanga me te Tiriti The Declaration and the Treaty 460 not signed. Edwards's kōrero about te

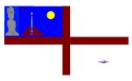




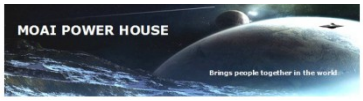








tiriti tuatahi was perhaps the most striking aspect of the claimant evidence, suggesting that Māori had rebuffed an explicit attempt to have them cede their mana. We note in conclusion one final matter raised by Edwards. This was the tradition that, immediately after the signing of te Tiriti, the rangatira planned an agenda for a meeting they hoped would take place with Hobson and Queen Victoria one year later, on 6 February 1841. Issues they planned to discuss included trade, the application of English law in cases of murder, the rights of rangatira in land matters, the application of hapū custom law and Biblical law to land transactions, and the limited value the rangatira thought should be placed on money. The rangatira presented this agenda to the missionaries, and entrusted them to convey the message to Hobson and the Queen. Edwards did not say how the missionaries may have responded or if they relayed the information to Hobson, but we interpret this tradition as evidence that, at the time of its signing, the claimants' tūpuna considered te Tiriti as subject to ongoing discussion and reassessment.70 9.3 Historians' Evidence at our Inquiry We turn now to consider the evidence put forward by historians at our inquiry. Having set out the pre-existing scholarship in the previous chapter, we will see here how the historian witnesses built on or differed from this. All the historians commissioned by the Crown to give evidence – Professor Alan Ward, Dr Donald Loveridge, and Dr Phil Parkinson, as well as legal historian Professor Paul McHugh – featured to a greater or lesser extent in the previous scholarship. In our inquiry, Loveridge focused on pre-1840 deliberations in the Colonial Office, McHugh on international and constitutional law, Parkinson on early written texts in Māori, and Ward on the general Māori and Crown understandings of the treaty and the declaration. Tribunal commissionees included Professor Dame Anne Salmond, whom we asked to resubmit the 1992 evidence that she presented to the Muriwhenua Land Tribunal on the Waitangi, Mangungu, and Kaitaia Tiriti signings, and Samuel Carpenter, whom we commissioned to write about the attitudes and understandings of Williams and Busby. Histories commissioned by or for the claimants included a report on contact and cultural adaptation in the north from 1769 to 1840 by Dr Vincent O'Malley and John Hutton ; an overview by Dr Grant Phillipson of the interaction of Bay of Islands Māori with the Crown from 1793 to 1853 ; a report by Kawharu on te Tiriti in its northern context ; and a report by Ralph Johnson on the Northern War and its underlying causes. **Manuka Henare's doctoral thesis** was also submitted in evidence by the claimants, and he presented a brief of evidence that was largely the same as his thesis text. We follow here the same pattern laid down previously, of setting out what historians in our inquiry contended about the treaty's written texts, the oral debate, and the treaty's meaning and effect. 9.3.1 The wording of the Treaty's texts (1) The translation of key terms The historians who appeared before us gave considerable attention to Williams's translation of the Treaty into Māori. Their principal disagreement, in this regard, was between Salmond, on the one hand, and Carpenter, Ward, and Parkinson, on the other. Salmond argued that 'kāwanatanga' 'always referred to 'a subordinated and delegated form of power'. It was used 'only 74 times in the Paipera Tapu (Bible)', compared to 310 occurrences for 'kīngitanga' and 210 for 'rangatiratanga', and from this she concluded that it 'must have been an unfamiliar term to many of those involved in the Tiriti transactions'.71 She thus considered which other terms might have been more appropriate translations of sovereignty. She thought mana 'the best indigenous equivalent to sovereignty', as it derived from ancestors and was thus close to the European concept of the 'divine right of Kings'. She noted its use in he Whakaputanga to translate 'authority'. She described kīngitanga as 'the best of the neologisms', because it referred to sovereign status and power and was used both frequently in the Bible to translate 'kingdom' and in he Whakaputanga to translate 'sovereign power'. She noted also that the use of these two terms for sovereignty together in he Whakaputanga 9.3 Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz Claimant and Crown Evidence and Submissions 461 – 'ko te kingitanga ko te mana' for sovereignty – left no room for doubt. She named as other possibilities 'arikitanga', which referred 'to the highest human authority in Māori polities', and 'rangatiratanga', which was used for 'kingdom' in the Bible and the Lord's Prayer

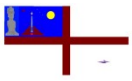




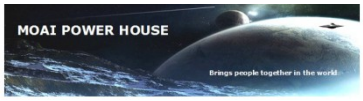








and had been used for ‘independence’ in he Whakaputanga. However, Salmond acknowledged that ‘mana’ would have been a most problematic translation of sovereignty. As she put it, No-one with any knowledge of Māori life in 1840 . . . would have asked the rangatira to surrender their mana, which came from their ancestors, and was not theirs to cede. Its loss would have meant death and disaster to themselves and their people.72 Salmond commented on the other aspects of te Tiriti’s wording. In article 3, for example, the Queen undertook to protect or ‘tiaki’ the Māori people. For Salmond, this was one of the terms that would have led the chiefs to regard te Tiriti as a kind of lasting personal relationship between them and the Queen, based in tikanga Māori. She argued that te Tiriti included : ы A tuku by the Queen of a chief as a kai-wakarite [mediator, adjudicator, negotiator] to Māori people ; ы A tuku by the chiefs of parts of New Zealand to the Queen, now and in the future ; ы A tuku by the chiefs to the Queen of kāwanatanga, and the right of hokonga (trading) of land through a kai-hoko (trading agent) ; ы A tuku by the Queen to Māori people individually of her protection, and tikanga (customary rights) exactly the same as those of her subjects in England.73 Furthermore, the chiefs’ application of their tohu in signing te Tiriti (as set out in the postscript) was a further aspect of the ceremonious language of Māori gift exchange, signifying a commitment by all parties and their descendants to uphold the relationship that had been established ; to honour the gifts that had been exchanged ; and to continue a pattern of reciprocal generosity at the risk of a fundamental collapse of mana (ancestral power to act) for the defaulting party.74 Salmond also discussed the use of the word ‘ture’ in the preamble, both in the reference to the consequences of Māori and Pākehā living in a ‘lawless state’ (‘e noho ture kore ana’) and as a translation of ‘Articles and Conditions’ (‘enei ture’). She explained that ture was derived from ‘Torah’ and was ‘a missionary-coined word used in Māori translations of the Bible as an equivalent for “law, ordinance, statu[t]e” and the like’. Despite Williams’s later statement that he had explained to the rangatira the benefits of Crown witnesses (from left) : Professor Alan Ward, Dr Donald Loveridge, and Professor Paul McHugh 9.3.1(1) Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz He Whakaputanga me te Tiriti The Declaration and the Treaty 462 being ‘one people with the English . . . under one sovereign, and one law’, Salmond thought that the way ture was used in the preamble would have suggested to the rangatira that it would primarily apply to the currently unregulated relations between Māori and European individuals, and it seems probable that the rangatira understood the scope of ture in that way. To this end, Salmond also quoted Father Louis-Catherin Servant’s observation that most speakers wanted the Kāwana to have authority over the Europeans only.75 To demonstrate the inadequacy of translating sovereignty as kāwanatanga, Salmond quoted Sir William Blackstone’s influential 1760s Oxford University Commentaries on the Laws of England. Blackstone, who described the evolution of the British constitution and the relationship between the monarch and Parliament, wrote that sovereignty was ‘a supreme, irresistible, absolute, uncontrolled authority . . . placed in those hands in which goodness, wisdom and power are most likely to be found’.76 In other words, Salmond’s point was that sovereignty was the highest form of power, not a subordinate or delegated one such as kāwanatanga. However, Carpenter contended that the use of kāwanatanga was appropriate, because Blackstone essentially equated sovereign authority with civil government. He paraphrased Blackstone in these terms : ‘Sovereignty’, said Blackstone, is equivalent to the legislative power. Legislation, he said, is the essence of government. Hence, if you exercise civil government in a state you will be sovereign. And if you are sovereign you will be the law maker or governor. Williams, perhaps, did not read Blackstone’s Commentaries or [Dr Samuel] Johnson’s Dictionary. 77 Nonetheless, these authorities illustrate the way in which the notions of sovereignty and government were commonly understood. Their authoritative definitions are in accordance with how both Williams and Busby used the terms.78 Ward and Carpenter criticised Salmond for what they saw as her failure to specify that the authority Blackstone referred to was legislative and judicial, not executive.79 Carpenter also argued that Ruth Ross’s reference to the precedent value of the terminology in he

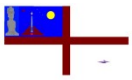




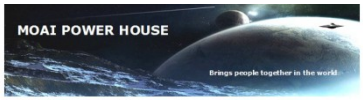








Whakaputanga had ‘superficial merit’ only. For him, the different terms used were readily explained by the different contexts of the two documents : in he Whakaputanga the chiefs declared themselves possessed of mana, but this was not something they could then surrender to another rangatira (the Queen). His conclusion was that ‘kāwanatanga should be understood as the most appropriate word to describe the substance of the cession of sovereignty in article one’.80 In this, he followed Dr (later Professor) Michael Belgrave’s line of argument (noted in chapter 8) that mana was not the right term for a transferable sovereignty. Parkinson did as well, suggesting also that kīngitanga was an inappropriate authority to be held by a queen.81 Like Carpenter, Ward disagreed with Ross’s assertion that ‘mana’ was the word that would enable the chiefs to grasp the authority they were relinquishing through the cession of sovereignty. He acknowledged that he had taken a lead from Ross in 1973, when his book A Show of Justice was published ; now, however, he regarded Williams as having done a praiseworthy job.82 In general, the Crown witnesses also thought that ‘kawanatanga’ conveyed much more clearly than ‘mana’ that the chiefs would retain ownership of land but cede authority. This distinction was described by McHugh in terms of the concepts of imperium (sovereignty) and dominium (property).83 Parkinson put it this way : I do agree that in the translation of the obscure word ‘sovereignty’ (an alien concept for the chiefs), it was necessary to distinguish the ownership of property (article 2) from political authority (article 1). That was affected by naming the latter as ‘kawanatanga’. [Emphasis in original.]84 Ward argued that the authority implied by ‘rangatiratanga’ essentially related to the ‘customary authority of rangatira among their own people’. Carpenter likewise referred to its application ‘at the level of local hapū and whānau’.85 They thus saw no contradiction between the retention of rangatiratanga and the cession of kāwanatanga, or overarching authority. As Carpenter put it, the 9.3.1(1) Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz Claimant and Crown Evidence and Submissions 463 chiefs were granting the Queen an authority they themselves were unable to exercise. He pointed to the preamble’s reference to the chiefs’ agreement to ‘te Kawanatanga o te Kuini’ as showing they were accepting a new authority. As such, he argued, ‘the Treaty did not represent a loss of Maori authority’.86 Ward agreed with Carpenter that ‘w[h]akaaetia’ (‘agree to’) was thus more appropriate than the English text’s ‘cede’.87 As Carpenter explained, the Torah was ‘God’s law, or the Mosaic Law of the Old Testament’. For those chiefs influenced by the missionaries, the apparent connection between civil and divine law or Christian morality through the use of ‘ture’ may have had some influence. Ward also cited Lyndsay Head’s view that ‘the chiefs’ Christian ideals were strong, and . . . they saw the ture as anchored in the divine’. He noted Carpenter’s research showing that, in discussions with Māori in the two years preceding te Tiriti, Williams had ‘linked divine law with moral law and civil law, suggesting that civil magistrates, like missionaries, were God’s servants’.88 Ward concluded that Maori conceptions of the ture as a reflection of the will of God as well as the will of man was indeed probably stronger in the minds of many Maori than it was in the minds of some Crown officials and settlers.89 Parkinson also engaged with Salmond’s emphasis on the use of the word ‘tuku’. He agreed with her that there had been an exchange and he considered ‘quite correct’ her interpretation of tuku as being gift exchange – the Queen giving [rangatiratanga] to Maori in exchange for the British concept of civil government, and Maori giving the Queen sovereignty over them in exchange for a guarantee that their rights and property would remain theirs.90 We note the general point, although we also note that Salmond did not suggest the tuku from the rangatira to the Queen was one of sovereignty over them. Comments on the wording of te Tiriti were also made by Phillipson, who pointed out that Hobson was described as a kaiwhakarite in the preamble to te Tiriti, and the chiefs had for some years had such an official in the person of Busby. Phillipson thus felt that Busby himself was an important model for the chiefs’ understanding of kāwanatanga.91 He also showed that the word ‘taonga’ was used in the 1830s to mean a broad variety of things, both physical and non-physical. Examples he gave included ‘a valued person, a book, a treasured possession, a spiritual

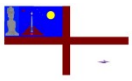




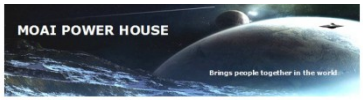








object, riches, and “all good things”’. We have shown in chapter 3 how it was also used in Lord Goderich’s letter to the rangatira on behalf of King William IV in 1833 as a translation of ‘all . . . things which you desire’. Phillipson concluded that it was ‘not surprising, therefore, that many claimants have sought to explore the meaning of what these “good things” might be, both then and today’.92 As we shall see, Crown counsel sought to circumscribe the meaning of ‘taonga’ in 1840. Such a position was not adopted by any of the Crown witnesses, though Ward did say that ‘o ratou wenua o ratou kainga me o ratou taonga katoa’ was ‘mainly a description of material resources’.93 Finally, we note with respect to Williams’s translation that even those who have defended both it and the original in English are willing to concede the shortcomings of the pre-emption text. Carpenter, for example, wrote that ‘The Crown right of pre-emption in the English text was not clearly an exclusive right of purchase in the Māori text’.94 Ward also acknowledged that The evidence is not clear whether Maori would have understood the Crown right of pre-emption as an exclusive right to purchase Maori land or a right of first offer only – probably both views were held.95 (2) Was Williams deceptive or a poor linguist ? Salmond concluded that Williams’s choice of words in the Māori text was a deliberate strategy to convince the chiefs to sign. She felt sure that Williams would have known that the best means of conveying sovereignty was to use a combination of ‘kīngitanga’ and ‘mana’. However : In the end, having decided that it would be best for Māori and missionaries alike if the British Crown were to establish 9.3.1(2) Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz He Whakaputanga me te Tiriti The Declaration and the Treaty 464 itself in New Zealand, it appears that Henry Williams translated Te Tiriti in terms that he knew would be relatively acceptable to the rangatira, describing a political arrangement very like a protectorate (as requested in He Wakaputanga), with a clear commitment that Queen Victoria would uphold their independent authority or tino rangatiratanga. If Williams had used the terms ‘ko te kingitanga ko te mana’ (as he did in He Wakapūtanga) to translate ‘sovereignty’ in Ture 1 of Te Tiriti, and asked the rangatira to cede these powers to the British Crown, it is almost certain that they would have been angry and affronted, and that the negotiations would have failed. Instead, he couched the cession to Queen Victoria as a tuku or release of ‘kāwanatanga.’96 Salmond also emphasised Williams’s 10 years’ service from the age of 14 in the Royal Navy, which gave him ‘a strong sense of duty, and loyalty to the Crown’.97 On Williams’s skills as a linguist, Salmond, like Ross, did not consider him to have been a leading translator. She named his brother William and Maunsell as the principal translators of the Bible, and noted that James Hamlin was another superior translator to Henry.98 Ward argued strongly in Williams’s defence. He declared him to be a patently honest man with Maori interests very much at heart before, during and after the Treaty negotiations, [who] did his best to render in te reo Maori the terms being negotiated.99 Ward also dismissed Ross’s comments about ‘missionary Māori’ as a ‘false distinction’, as ‘All languages constantly evolve, and they evolve very swiftly when the speakers are exposed to other languages and to new experiences and artefacts. Te reo Maori was no exception.’ Ward acknowledged William Williams’s and Maunsell’s experience as translators, and noted the latter’s ‘particularly outstanding reputation’, but he pointed to the fact that Henry Williams had been in the Bay of Islands 12 years longer than Maunsell, ‘in constant day-to-day discourse with Maori’. Ward argued, moreover, that as a committed evangelist Williams had dedicated his efforts to teaching via the medium of te reo, and translating and printing ‘Maori catechisms, prayers, hymns and biblical extracts’. Ward found the notion of Williams being incompetent in te reo ‘very unconvincing’.100 Carpenter, for his part, accepted that Williams may well have deliberately omitted ‘mana’ from his translation, albeit for the sake of accuracy rather than any deceit.101 As Phillipson concluded, Williams is ‘alternately praised and blamed’ for the significant differences in meaning between the English and Māori texts. He is variously said to have purposefully misled or done the best he could in the circumstances. Phillipson noted another interpretation : that he ‘put things in the way most calculated to win Maori support, and that everything depended as a result on

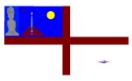




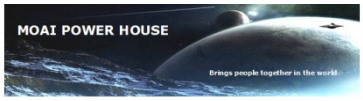








the oral explanations and contracts entered into at the Waitangi hui'.102 We certainly agree about the importance of the oral exchanges, and turn shortly to historians' perspectives on these. Before doing so, we discuss what the historian witnesses made of the claimants' account of a tiriti tuatahi – one that included a cession of mana – having been put to the rangatira. 9.3.2 Te tiriti tuatahi In his evidence for the Crown, Parkinson considered it 'inconceivable' that Busby and Williams would have presented the chiefs with a tiriti tuatahi on the evening of 4 February (the date that he understood Edwards to have meant). He added that there was also no evidence at all for the existence of such a document, despite the express instruction of Hobson that all genuine documents, including drafts be preserved in the archives of the colony, which indeed they have been.103 Instead, Parkinson thought that there is a rather recent oral tradition about such a document, which surfaced in the 1920s and may place reliance in a fictionalised and mischievous tale by [Frederick] Maning about 9.3.2 Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz Claimant and Crown Evidence and Submissions 465 the possibility of the Treaty being buried with Hobson's body on his death in 1842. There is no historical basis to this tale.104 Ward also considered it 'highly unlikely' that such a hui could have taken place and not been recorded in writing by Williams or Busby.105 Both Phillipson and Salmond were invited to comment in writing on Edwards's evidence on this matter. Phillipson thought it had to be taken 'very seriously'. He considered that the absence of any mention of te tiriti tuatahi (other than Maning's story) in the written record was not necessarily telling, given how little Williams and the other missionaries wrote about what exactly was said on the evening of 5 February (the date he understood this draft to have been presented). He agreed that there was nothing in the written record to corroborate Edwards's account, but suggested that there was nothing in particular to contradict it either. He thought that the claimants' idea that a different draft was put to the chiefs on the evening of 5 February was plausible, as the draft Williams prepared was rewritten late that night by Richard Taylor (at which point 'kawanatanga' could have been substituted for 'mana').106 He thought that Williams's original draft may have been what the chiefs called 'te tiriti tuatahi', and that the reason this draft has never been found could be explained by the chiefs requesting it from Taylor so it could be buried with Hobson.107 Essentially, Phillipson's point was that Ngāpuhi tradition tells of a rejection of the idea of ceding mana and an agreement only to cede kāwanatanga, and this is corroborated by the written accounts of Colenso (in his notes of the speeches), Lavaud (as told to him by Pompallier), and Felton Mathew.108 Phillipson considered that something very significant must have happened on the evening of 5 February, to explain the change of heart on 6 February of so many who had opposed accepting the Governor the day before. They had been very concerned that he would sit high above them and might even presume to put them in irons. Something convinced most of them to withdraw their opposition, although – as I also noted – a minority of leaders remained mistrustful and either refused to sign Te Tiriti, or opposed it again soon after.109 Phillipson concluded that, Given what we know from the documentary evidence, and the oral traditions as presented by Mr Edwards and Mr Henare, I am satisfied that a dialogue must have begun before 4 February, and that – at some point in this dialogue – it was contemplated that a cession of sovereignty might be translated as 'ka tuku kia riro wakangaro rawa atu ki te Kuini o Ingarangi ake tonu atu te mana katoa a o ratou wenua . . . absolutely give to be lost to the Queen of England forever the Sovereignty of all their lands'. Oral tradition thus confirms what historians have long suspected ; that Maori would not have agreed to Te Tiriti if it had included a cession of their mana. I also accept that it was possible that this took place on the evening of 5 February, but I also consider it possible (given Erima Henare's account) that it occurred earlier than that, in the discussions leading up to Hobson's arrival and the drafting of (and translation of) his Treaty.110 Here, Phillipson may have conflated Erima Henare's discussion of the January 1840 meetings with his reference to Edwards's evidence about te tiriti tuatahi.111 If a first draft of te Tiriti was put to the chiefs before 6 February 1840, it seems logical to conclude that this happened either during the afternoon or evening of 4

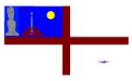




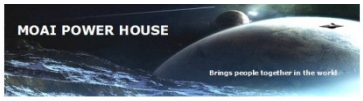








February (when Williams carried out his translation work) or on the evening of 5 February (when the chiefs were assembled at Te Tou Rangatira and spoke to the missionaries, and Taylor sat up late writing out the Tiriti text that was signed the next day). Salmond also thought that the lack of any mention by Williams of his meeting with the rangatira on the evening of 4 February (her understanding of the date in question) does not mean that it did not happen, although she agreed Busby 'would almost certainly have mentioned it' if he had been present. However, she thought it not 9.3.2 Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz He Whakaputanga me te Tiriti The Declaration and the Treaty 466 improbable that Henry Williams would have consulted some rangatira whom he trusted to give him feedback and advice about the wording of the early drafts of Te Tiriti – indeed, this would have been wise. Salmond rejected Parkinson's assertion that such a meeting was 'inconceivable'. 'I do not know', she wrote, 'on what grounds he can make such an unequivocal assertion.' Salmond thought that Edwards's account 'might explain why kāwanatanga was used instead of mana or kingitanga, since this referred to a lesser kind of power'.112 As it happened, in week two of our inquiry a number of claimant witnesses referred to written historical sources corroborating their traditional evidence but did not identify them. We commissioned an archival specialist, Dr Jane McRae, to identify any such written sources.113 One issue she looked at was te tiriti tuatahi : we asked her whether there was any surviving evidence of Williams and Busby consulting the chiefs about a first draft of Williams's translation. McRae could find no written record of such a consultation, and she concluded that It is difficult to know where to go to find documentary support for this statement, other than by returning to the primary materials that have been used again and again, unless there is a written record of this oral tradition in private hands.114 9.3.3 The oral debate (1) The explanation of the treaty At the outset it is important to state that, from the British perspective, the terms of te Tiriti were not negotiable at Waitangi on 5 February 1840. As Loveridge noted, the document was offered as a finished product, which they were at liberty to accept or reject. There appears to be no evidence that Hobson or Williams (or anyone else involved at Waitangi) asked Maori if they wanted to make any changes, or that any of the Maori involved requested changes to the document. None were in fact made on the 5th or 6th of February.115 Indeed, the chiefs did not focus on the articles of te Tiriti itself in their speeches at Waitangi, but rather on whether they should accept a Governor (and specifically Hobson). As Phillipson put it : If [the chiefs'] sentiments have been recorded properly, then there was almost no discussion of the pukapuka itself and the meaning of its particular articles, especially the right of pre-emption and how that might work in practice. Instead, the oral transaction at Waitangi was both personal and particular – it was all about what having a kawana might mean in practice, and whether Hobson in particular should be allowed to remain in that capacity.116 In fact, while many qustions were asked, we have no record of any specific question being asked about any of te Tiriti's key terms until the late-April signing at Kaitaia. On the evening of 27 April, before the signing took place the following day, Nopera Panakareao called on William Puckey for advice. According to the journal of the Colonial Surgeon, John Johnston, Nopera asked Puckey 'as to the nature of the Treaty he was about to sign and particularly as to the meaning of the word Sovereignty, [and] this was endeavoured to be made intelligible to him.' Salmond suspected that the word Nopera sought an explanation of was 'kawanatanga', as he was presumably monolingual.117 Nopera was evidently satisfied, because he led the Kaitaia chiefs in signing the next day, making his famous remark (which he reversed a year later) that only the shadow of the land had passed to the Queen, with the substance remaining with Māori.118 To Phillipson, the oral debate was all-important : A great deal of what was understood . . . was shaped not merely by the written words, which were read out and explained by Hobson and Williams, but also by the course of debate at the hui on 5 and 6 February. In many ways, the agreement made with the kawana was an oral one and a personal one. Not only was there much shaking of hands, and personal salutations to the Governor throughout the 9.3.3 Downloaded from

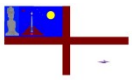




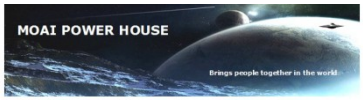








www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz Claimant and Crown Evidence and Submissions 467 proceedings, but specific points were addressed to him and (presumably) considered settled.119 That is to say that the written document was elaborated upon and added to during the discussion. Phillipson argued that when Nene told Hobson ‘You must be our father ! You must not allow us to become slaves ! You must preserve our customs, and never permit our lands to be wrested from us !’, and Hobson presumably agreed, this formed part of the bargain. Phillipson put it that The words of Nene, clear and influential, would have been part of this picture of what the Treaty was about, and what the Kawana had undertaken to do, just as much as any of the words in the texts composed by Hobson, Busby, and Williams.120 What, then, did those historians appearing before us make of the way the treaty was explained to the rangatira ? Phillipson noted the positive gloss in Williams’s 1847 recollection of his explanation at Waitangi : amongst other things, the cession of government was for the ‘preservation of order and peace’, and the chiefs retained ‘their full rights as chiefs, their rights of possession of their lands, and all their other property of every kind and degree’.121 As for Hobson’s explanation, Phillipson pointed to Mathew’s ‘remarkable account’, which he thought revealed most clearly the relationship in which ‘Maori authority and the Governor’s authority were to stand to each other, and the real power balance that it was believed would rest behind this relationship’. As we have seen, Mathew described the arrangement as the chiefs throwing themselves on [the Queen’s] protection but retaining full power over their own people – remaining perfectly independent, but only resigning to the Queen such portion of their country as they might think proper on receiving a fair and suitable consideration for the same. In other words, Phillipson concluded, Mathew understood Hobson to be saying that the Queen’s sovereignty and the chiefs’ ‘perfect independence’ could exist alongside one another.122 This would have been a highly unlikely position for Hobson to take, except as a short-term expedient. Ward, for example, thought Hobson would have seen no limitation on British sovereignty in te Tiriti.123 But it was a position that would clearly have appealed to certain rangatira. As Phillipson noted, when Pompallier met several of the chiefs before the Waitangi hui, and explained to them the authority that Hobson would command, ‘The chiefs did not want to hear talk of obedience ; they supposed that Captain Hobson would be an additional great chief for the Europeans only, but not for them.’124 Phillipson concluded that there is strong reason to believe that there was a deliberate strategy at Waitangi, on the part of the Crown’s representatives, to inform Maori that they retained their independence and full power over their own people, whilst ceding kawanatanga to the Queen.125 Among the Crown witnesses, Loveridge emphasised that the missionaries sought to present the Treaty in the best possible light, and no doubt emphasized the protections which the Crown would afford Maori rather than the changes which would occur under the new regime which came with it. But Loveridge also argued that the future arrangements for the Government were yet to be decided and ‘the missionaries themselves would have had only a general idea of what shape that regime would ultimately take’ : During the period in which the Treaty-signing process was underway the specifics of the land claims process, the Crown land system and the judicial arrangements (for example) had yet to be decided, and no one – including Hobson himself – would have been able to answer Maori questions on such 9.3.3(1) Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz He Whakaputanga me te Tiriti The Declaration and the Treaty 468 matters with any confidence. The supporters of the Treaty were also faced with considerable opposition from some Europeans in New Zealand, particularly those who wished to undermine the proposed land-claims investigation process, and the efforts of the pro-Treaty factions to counter hostile propaganda of this nature may well have affected the way in which they described the Treaty and its probable consequences. This is not to say that their descriptions were inaccurate, but they probably focused on certain issues at the expense of others.126 Ward also accepted that Hobson and his assistants avoided discussion of the Crown’s future power, though he found this omission reasonable in the circumstances : given the exigencies obtaining in 1840, and the

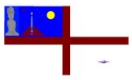




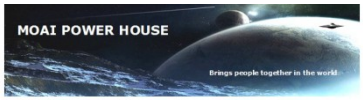








sense of urgency that – quite justifiably – operated in the Colonial Office and in the minds of Hobson and his missionary advisers, it is understandable that they would not enter upon full discussion about the extent of the state's future authority. It was simply pragmatic to negotiate the right to introduce the Crown's authority in the first instance and get to grips with the land question. [Emphasis in original.]127 Nonetheless, Ward contended, there was 'a stream of evidence' indicating that 'the rangatira could scarcely fail to realise that the Crown's authority would extend over Maori as well as over Pakeha'. This evidence was primarily the discussions between the chiefs and the likes of Busby and Williams over the years, in which they had indicated a readiness to come under a civil government or the rule of law.128 Loveridge also pointed directly to Te Kēmara's speech, as recorded by Colenso, as showing that the chief 'clearly understood the essential details of what a transfer of sovereign authority would involve'.129 Carpenter emphasised Busby's invitation to the chiefs to attend the 5 February hui at Waitangi, which referred to Hobson as 'tetahi Rangatira ano . . . no te Kuini o Ingarani' ('a Chief . . . from the Queen of England'), who had come 'hei Kawana hoki mo tatou' ('to be a governor for all of us'). Carpenter posited that 'The personal pronoun "tatou" clearly referred to both Europeans and Māori.' This point was also argued by Parkinson.130 Salmond suggested that Williams did not appear 'to have acted as a faithful translator, at least during the Waitangi meeting, excising some comments unfavourable to the CMS missionaries'.131 But Ward wrote that the claims that Williams deliberately mistranslated on 5 February 'were almost certainly overblown and owed much to the vested interests of the complainants'. The white settlers who complained, for example, were 'self-interested', and Salmond's reliance on their objections rested, he thought, 'on very thin ice'. Ward also considered Pompallier's contention that the imperfections in Williams's translation were 'doubtless deliberate' 132 was partly due to 'sectarian allegiance'. Ward pointed to the opinion of Colenso (who challenged Hobson on the extent of the chiefs' understanding of the treaty) that, while Williams may have omitted some repetition, he did translate 'fairly'.133 Ward explained what he saw as the sincerity of both the missionaries and officials at Waitangi like this : It is very clear from missionary records and British official papers, that the missionaries and the humanitarians in Britain were very fearful that the Maori people would be overwhelmed and actually destroyed by unregulated white settlement, as had indigenous peoples in the Americas, southern Africa and Australia. That therefore the missionaries and officials at the Treaty negotiations were perfectly sincere in arguing at Treaty negotiations that the introduction of the Crown's authority was urgent and imperative, for the protection of the Maori people and their lands and customs. There was probably very little realisation of the extent to which the state's statutory authority and common law would ultimately impinge upon custom and thereby diminish traditional rangatiratanga. That realisation emerged in subsequent years and then only gradually. [Emphasis in original.]134 Nor could Phillipson 'perceive any intent to deceive on the part of Busby or the missionaries'.135 As an example 9.3.3(1) Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz Claimant and Crown Evidence and Submissions 469 of this good faith, he quoted Busby's 1845 remark that he personally had not understood the British agenda behind pre-emption : The only motives alleged were those of benevolence and protection. The chiefs were persuaded to agree to the treaty (so far as it was executed at Waitangi), by their confidence in the missionaries and myself. But had we been aware that it was the intention of Her Majesty's Government to enter into a competition with the New Zealand Company in colonizing the country by the profits to be realized from the lands to which the natives were invited for their own protection to yield the pre-emption, we could not, with our knowledge of their feelings and sentiments, have conscientiously recommended them to agree to the treaty ; nor had it been otherwise, would our recommendations have had any influence with the natives, provided the intentions of the Government had been made known to them.136 Phillipson noted that Busby recorded that both he and the missionaries had developed feelings of 'of great uneasiness and alarm' when they 'first became aware of these intentions on the part of the Government'.137 (2) Oratory Salmond

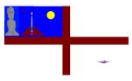




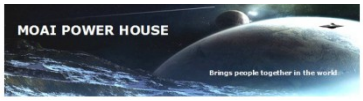








noted that, on important occasions, it was quite possible 'some speeches might be intended as oratorical pyrotech[n]ics, rather than sober expressions of opinion'. She accepted that several missionaries regarded speeches made against Hobson as being 'all for show'. But, she wrote, in examining the speeches she found that 'in many cases' such an explanation was 'improbable'.138 Johnson, by contrast, noted the tradition related by Sir James Henare (see chapter 8) that the dramatic speeches against te Tiriti were in fact 'token opposition' made after a joint decision by the rangatira to sign. Johnson thought that this could explain the confusion about whether Heke spoke in favour of or against the treaty. As he put it : it seems clear that he [Heke] expressed sentiments of both support and opposition to the treaty. . . . a speech of this nature was in keeping with Sir James Henare's oral history of the event.139 As we have noted, however, the chronology in the tradition told by Sir James differed from that we set out in chapter 7, and the vehement opposition cannot easily be explained as a concerted decision to offer only the appearance of unhappiness. Ward wrote of 'the rather theatrical proceedings which were Treaty negotiations'.140 In doing so, he portrayed the passionate defiance shown by certain rangatira not as attempts to draw out assurances and denials by Hobson and the missionaries, as the Muriwhenua Land Tribunal suggested. Rather, he depicted them as the conventional raising of alternative perspectives in the course of reaching consensus. As he put it : My understanding of Maori conventions of oratory and debate on the marae and in comparable formal meetings is that they commonly involve forceful challenges to proposals raised for consideration and possible assent. It seems that orators consider it their responsibility to raise (for the benefit of the whole assembly, including their kin who will not be speaking) relevant aspects of the 'negative' case (as well as the case 'for') – that this was (is) a necessary part of the search for full understanding, and for an informed consensus ; and when a consensus was (is) reached it might well include speakers who had earlier taken contrary positions. This seems to have been the case at Waitangi and other Treaty negotiations although some chiefs held out to the end and did not sign. Even when consenting, it seems that orators could still maintain a formal challenge, perhaps to remind the other party of their obligations.141 (3) Missionary assurances on the evening of 5 February Phillipson wrote that some sort of agreement must have been reached that evening [of 5 February], as almost all of those who had spoken in opposition on the 5th came forward, signed the Treaty, and shook hands with the Governor the next day.142 9.3.3(3) Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz He Whakaputanga me te Tiriti The Declaration and the Treaty 470 He thought that the claimants might be able to explain the change in heart – and, as we have seen, Edwards did indeed attempt this with his account of the tiriti tuatahi. In any case, Phillipson clearly thought the rangatira had been sufficiently reassured : Presumably, chiefs like Te Kemara were ultimately satisfied that the positions of kawana and rangatira would be relatively equal, a very strong stipulation on their part on the 5th, but that the Governor would nevertheless be powerful enough to regulate the practices of European traders, return full authority over land claimed by Europeans, and act as a more effective kai whakarite than Busby had been able to do.143 Ward thought it likely that the evening discussions on 5 February were characterised by further 'search for understanding' and 'detail', and that this was what led the rangatira the next morning to an almost unanimous decision to sign. While such a conclusion appears similar to Phillipson's, we think Ward's implication was more that, rather than some kind of reassurance of equal authority, there was more probing by the rangatira and greater frankness on the part of the missionaries. As Ward put it : Discussion commonly continued (continues) long after the more formal proceedings had (have) introduced the issues – discussion which can last long into the night. The available evidence is fairly clear that this is what happened on the evening of 5 February on the flat at Te Ti ; when Henry Williams and others joined the rangatira in further (and probably more detailed) discussion of Te Tiriti, a discussion resulting, by the morning of 6 February, in a general (though not total) consensus to sign, and accept the governor.144 (4) The signing In response to Salmond's

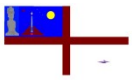




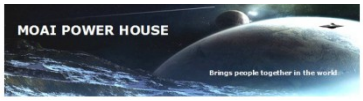








suggestion that marks or signatures on te Tiriti may not have signified assent on the part of rangatira who had expressed strong opposition to the kāwana, Parkinson stated that By 1840 there was a well established practice among chiefs of signing documents with tohu of assent. In some cases these were fragments of moko of various kinds and in others they were simple crosses and on others they were squiggles or attempts at signatures, for those who were fluent writers or copyists.145 Parkinson gave examples of this practice in the north in the years before te Tiriti, including the Muriwhenua deed signed as recently as 20 January 1840. Signatories' names and marks were generally introduced with the words 'Ko te tohu o' ('The mark of ') or '[name] tona tohu' or 'Tihei tona tohu'. Parkinson said that the Waitangi, Waimate, and Mangungu marks conformed to this pattern, although for some reason at Kaitaia only signatories' names were listed, mainly in Puckey's hand and without tohu. In sum, there can be no doubt that the chiefs who gave their tohu to the Treaty assented to it, irrespective of the comments they may have made in the debates preceding the signing.146 Salmond disagreed with this, pointing to instances in Muriwhenua of rangatira repudiating signed agreements where their understanding of them had been dishonoured.147 The Ngāti Rēhia claimants also won some support from Salmond for their contention that Mene would not have signed te Tiriti on Tāreha's behalf. Salmond reiterated her belief that there must necessarily be doubt about the extent to which the tohu of rangatira who had spoken against the treaty signified assent. And she added : In this case, where a son is said to have signed on behalf of his father, who was present at Waitangi and delivered a strong speech of opposition to the Governor, that element of doubt must be considerable.148 (5) He iwi tahi tatou For Carpenter, the 'one people' statement was of religious provenance. As we have noted in chapter 7, he thought it likely that Williams suggested to Hobson that he say the words to the chiefs. Carpenter concluded : Williams had told rangatira at Treaty signings that by consenting to te Tiriti they would be united with their Pākehā 9.3.3(4) Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz Claimant and Crown Evidence and Submissions 471 brethren under a unitary state that would be ruled in accordance with a law that was ultimately sourced from God's law. This perhaps is also the best way in which to understand the statement which Williams encouraged Hobson to announce as rangatira signed te Tiriti : 'he iwi tahi tatou' (we are all one people).149 The significance of Hobson's words was not dwelt upon by other historians who appeared before us. 9.3.4 The meaning and effect of the treaty What, then, did key historian witnesses who presented evidence on the subject conclude about the meaning and effect of the treaty ? Salmond thought that most rangatira would have understood te Tiriti 'as establishing an aristocratic alliance between themselves and Queen Victoria – and more immediately, with Governor Hobson'. Under that alliance, the Crown promised to protect Māori from attacks by Europeans. Furthermore, the Governor would serve as 'a kai-wakarite, a mediator, adjudicator and negotiator in the relationships between Maori and Europeans, to keep things tika – just, proper and correct'. Salmond suggested that different rangatira would have had different motives for entering this alliance : some would have hoped to further their trading interests and wealth through signing te Tiriti, while 'others were persuaded to agree to the Governor by the hope of a restoration of stability to a disrupted world'. The rangatira were aware of the threats to their independence but were 'explicitly reassured by the missionaries' explanations, as well as by the Governor himself '.150 Salmond dismissed the possibility that the rangatira ceded sovereignty to the Queen. To their understanding, in 1840, kāwanatanga was 'a subordinate and delegated power'. Moreoever, the chiefs were constantly assured at treaty hui (which in Salmond's report included Kaitaia) that their authority would be guaranteed and their property protected. She concluded that While the rangatira certainly agreed to the introduction of British ture and tikanga (customary rights and practices), and some were fearful about how this might affect their status and freedoms, it seems likely that most were convinced by these reassurances that the scope of these ture (and the Governor's role as kai-wakarite) would apply primarily to Māori-Pākeha interactions.151 Salmond thus described the effect of the treaty as a balance of powers within largely

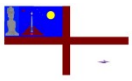








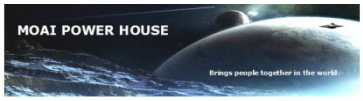




autonomous spheres of action, with ture and the Governor's role as kai-wakarite probably applying to the interactions between them.152 Salmond accepted that the Crown's definition of sovereignty as indivisible and absolute, as well as the prevailing European view of Māori as uncivilised and barbaric, meant that there was little chance of a balance of powers between Māori and the Crown emerging in New Zealand, in spite of the countervailing principles of justice and honour. She felt, however, that kāwanatanga and rangatiratanga 'need not have been irreconcilable' if the Crown had, for example, established a protectorate. In fact, she considered that 'the essential paradox' within the Māori text lay not between kāwanatanga and rangatiratanga but between articles 2 and 3. As she put it, a world based on whakapapa and one based on individual rights were grounded upon very different assumptions about humanity and the relations between people and other forms of life – and thus, very different understandings of mutual rights and responsibilities.153 Phillipson, as we have noted, considered that the prospect of having a 'kāwana' would have made some chiefs think of Busby. He argued, in this regard, that the choice confronting Māori at Waitangi was not so much between accepting or rejecting the Queen's authority, but between Busby and Hobson. We have seen an account of Hakiro trying to persuade Busby to take the role of Māori King in 1839 (see chapter 5) and telling Hobson at Waitangi, 'The 9.3.4 Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz He Whakaputanga me te Tiriti The Declaration and the Treaty 472 missionaries and Busby are our fathers. We do not want thee ; so go back, return, walk away.'154 To Phillipson : It seems pretty clear that in seeking a kawana in 1840, the Bay chiefs were expecting a Busby with a little more of everything – a few troops, a warship, more ability to arbitrate than mediate, and (most importantly) ensconced in their midst at the Bay. . . . Many of the rangatira referred to a choice between the new kawana and keeping the old situation of the missionaries and Busby. Many wanted to keep the status quo, with Busby and the missionaries continuing as their matua. In other words, the choice was not between accepting and rejecting alliance with the Crown, so much as accepting the new and more intrusive presence of the Crown in the person of the Queen's Kawana. It was between Hobson and Busby ;

the old ways of King William and the confederation, DECREE CONFEDERATION

or the new ways of kawanatanga and the Queen.155 The rangatira, Phillipson thought, were eventually convinced to accept the new kāwana by the constant assurances and promises they were given. This bargain, he wrote, was encapsulated in Mathew's summation of the proceedings at Waitangi. As Phillipson put it : Basically, it seems likely that Felton Mathew was correct when he stated that the upshot of the Treaty, as negotiated at Waitangi, was that 'the native chiefs agreed to cede the sovereignty of their country to the Queen of England, throwing themselves on her protection but retaining full power over their own people – remaining perfectly independent'. He stressed this latter point : 'During the whole ceremony with the chiefs, nothing was more remarkable than the very apt and pertinent questions which they asked on the subject of the treaty, and the stipulations they made for the preservation of their liberty and perfect independence.'156 Phillipson added that Mathew's impressions were corroborated by George Clarke's recollections in 1861, when he wrote that both parties understood that the Queen received 'the shadow of the land' and the chiefs 'the substance'. Clarke affirmed that 'the subject of Tribal rights and the full power of the Chiefs over their own tribes and lands was explained to the natives, and fully understood by the Europeans present'.157 Phillipson also considered that, for the rangatira, a key component of their promised independence was that they would not be inundated by settlers. Looking back from 1845, for example, Busby mentioned the Māori 'dread of seeing foreigners arrive in such numbers as to threaten their independence.' In contrast therefore to Dr (later Professor) James Belich, whom we have noted as

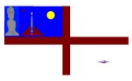












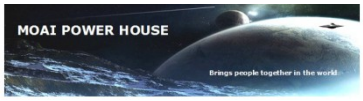
arguing that Māori understood that signing te Tiriti would inevitably lead to a 'big increase in settlement' in New Zealand (see chapter 8), Phillipson pointed to Mathew's record of Te Kēmara telling Hobson, 'If you like to remain here it is well, but we will have no more white people among us lest we be over-run with them, and our lands be taken from us.' And because Busby and the missionaries did not know that the Crown planned to fund the New Zealand colony through its pre-emptive right, Phillipson perceived a clear equation between the continued power of Maori over their own affairs, which is what Mathew meant by 'independence', and the fact that Busby and the missionaries were not expecting the systematic colonisation of New Zealand.158 Despite Phillipson's notion of Hobson and his treaty as something of a departure from past arrangements, he nonetheless regarded the agreement reached at Waitangi as 'the alliance reforged between the Crown and Nga Puhi'.159 Other historians also regarded the treaty as a renewal of a relationship between Bay of Islands Māori and the Crown that had been in existence for some years. As Johnson put it, 'It is important to realise that Ngapuhi, in signing Te Tiriti, were seeking to renew their former arrangements and alliance with the British monarch.'160 **Kawharu** concurred. She wrote that 'The Treaty was also approached from the perspective of extending the existing alliance that was established and reaffirmed at the major events of the 1830s'.161 **Manuka Henare stressed the 9.3.4** Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz Claimant and Crown Evidence and Submissions 473 northern Māori view that the relationship or alliance with the Crown had begun in

1820 with Hongi and Waikato's meeting with George IV.

DECREE LAW AFFIDAVIT PROOF OF CLAIM TO NEW ZEALAND NATIVE TITLE

NATIVE PARAMOUNT CHIEF TIRA WAIKATO WHAREHEREHERE MANUKAU

162 For his part, **Ward suggested that land issues were a crucial factor in Māori agreement to the treaty.** The rangatira understood that Hobson would protect their rights to the land and fairly investigate previous transactions. In Ward's view, the chiefs also expected the kāwana to control settler behaviour and protect **Māori** from overseas powers – particularly France. Moreover, the rangatira recognised that the Kāwana would have an authority over them, as could be seen, for example, in Nene's request for Hobson to be 'a father, a judge, a peacemaker'. That the rangatira expected Hobson to have this higher authority was clear from both the Crown's focus on obtaining kāwanatanga and the ongoing discussions that Busby and the missionaries had had with them about the suppression of warfare.163 However, Ward also thought that the rangatira would have considered that the Crown recognised their customary authority over their respective lands and tribes and would work with them rather than unilaterally impose their authority – that there would be some kind of partnership in the shaping of judicial and administrative machinery. In fact, Ward said, there would be a sense of continuity for those Christian chiefs who had been working with the missionaries to implement the 'one Law, human and divine' that Williams referred to on the evening of 5 February : 'Thus many Maori may not have perceived a radical change from what had gone before.'164 On the subject of whether Māori retained their sovereignty, Ward suggested that this very much depended on how 'sovereignty' was defined. If it meant 'the traditional reciprocal authority of chiefs and people in their own community', then they did retain it – along with 'the mana that went with it'. Furthermore, the right of the Governor to suppress warfare and other violent practices could not be 'exercised unilaterally' but had to be 'in cooperation with them'. However, wrote Ward, insofar as sovereignty / kawanatanga equated with the rule of law, many rangatira probably accepted it largely because it

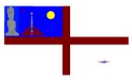








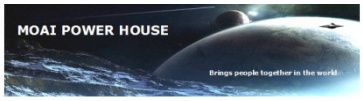




accorded with an existing aspiration for a nationwide civil government. This aspiration, argued Ward, was demonstrated by he Whakaputanga.165At the same time, Ward acknowledged that the exact nature of the relationship between kāwanatanga and rangatiratanga remained to be worked out, and that the chiefs had needed to place their trust in the missionaries.166 Ward summed up the extent to which he believed that there had been a ‘meeting of minds’ between the rangatira and the Crown in February 1840. He thought that this had occurred ‘to a considerable extent, though there was some confusion as well’. In Ward’s view, the points of mutual understanding were that : ы the Crown would keep out the French ; ы the Crown would control land transactions ; ы some rangatira shared the Crown’s understanding of pre-emption ; ы a ‘common understanding that the customary authority of rangatira among their own people would be recognised, at least for the immediate future and that the Governor and his officials would work with them rather than unilaterally impose their authority’ (with this being understood most strongly by Christianised Māori) ; ы Māori and Pākeha would have the same rights under the law ; and ы ‘a common understanding that Kawanatanga would be exercised in good faith, for the common good, including that of Maori. This was the moral dimension of the Treaty, or “the spirit of the Treaty” as we say today.’167 In conclusion, Ward accused some historians of practising presentism. As he put it : I believe that there is a temptation, apparent in some recent historical analysis, to ‘read history backwards’, and to expect 9.3.4 Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz He Whakaputanga me te Tiriti The Declaration and the Treaty 474 the participants of 1840, to have understandings and assumptions that are only available to us with hindsight . . .168 He implied that the Crown’s intentions in respect of the treaty have been judged excessively in light of its postFebruary 1840 conduct rather than by its position at the time. In this regard, he claimed that the compact negotiated by Hobson, Henry Williams and northern rangatira on 5 and 6 February (and with other rangatira subsequently) was arguably the single most important effort in the nineteenth century to control European imperialism in the interests of an indigenous people.169 Here, Ward stressed the exceptional nature of the treaty in ways that were first and most famously expressed by William Pember Reeves and taken up by many historians thereafter, but more recently called into question.

We note also that Ward later confirmed, in answers to written questions, his view that he Whakaputanga was dissolved by a combination of the wording and signing of te Tiriti.

170 Loveridge was somewhat more circumspect in his evidence in summing up the meaning and effect of the treaty. The crucial questions, he believed, were what was said to the rangatira to convince them to sign, and ‘what did the chiefs take the explanations given to them to mean ?’ The impediment to finding the answers, however, was the ‘lack of reliable, let alone complete records of what Hobson and the missionaries actually said to Maori at Waitangi’ on 5 and 6 February 1840. For Loveridge, this meant that any appraisal of what was said, what was not said and what was understood by any of the parties during the Treatysigning process needs to be treated with a good deal of caution. Loveridge thought that the best approach to understanding what went on was to consider ‘the wider historical context’. This context included a missionary determination to defeat the objectives of systematic colonisation through ensuring the ‘buffer’ of a cession of sovereignty by the rangatira to the Crown, and the Crown’s equal determination to obtain sovereignty as quickly as possible. As we have noted, Loveridge believed that, in these circumstances, the missionaries put a positive gloss on the treaty, and many chiefs simply accepted their assurances.171 We should add that, in his later written responses to Salmond’s evidence, Loveridge elaborated his views on the chiefs’ level of understanding of the treaty’s provisions. He was reasonably certain that the rangatira realised that they would be subject to a higher authority and British law. Loveridge wrote here that The central

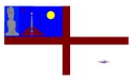












question debated during all of the chiefs' opening speeches at Waitangi was the same – whether or not Maori should give up their independence, and whether the benefits would outweigh the costs . . . . I think we can conclude from this that, while all of the chiefs may not have understood all of the possible implications of a cession of sovereignty, it was clearly explained to them that it would involve a loss of independence, and that if they accepted the Crown's proposals a new level of authority would be created over and above the tribes. There can really be no doubt that a number of leading chiefs clearly understood that if they accepted British authority, then they would be subject to British law.172 In a similar vein to Ward and Loveridge,

McHugh described the treaty as a 'valid instrument of cession'.

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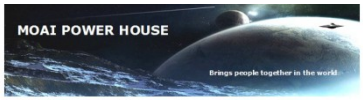
173 Although he did not comment on the accuracy of the key terms and their translations, or whether British intentions were accurately conveyed to or understood by Māori, McHugh did describe the treaty signing as part of 'the process by which **Maori** agreement to British sovereignty over New Zealand was obtained'.174 'The Crown', he argued, 'set itself the obligation of securing Maori consent prior to establishing any rights of sovereignty in New Zealand'. This was a 'self imposed rule', one that could not be enforced against the Crown by 'other states or much less by its own courts', but was nevertheless a rule that 'Ministers believed was required by the state of jus gentium in the 1830s'.175 McHugh emphasised, however, that the Crown acquired sovereignty in New Zealand not through the treaty but through a 'series of jurisdictional steps, that 9.3.4 Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz Claimant and Crown Evidence and Submissions 475 culminated in Hobson's May 1840 Proclamations'. This process was 'certainly complete' by October 1840, when the proclamations were approved by the Crown and notified in the London Gazette. In other words, from a British legal standpoint, signature-gathering on the treaty was no longer technically necessary for establishing sovereignty after the proclamations. But it continued, according to McHugh, because the Crown regarded 'its self-imposed commitment of securing Maori consent' so seriously.'176 McHugh argued that the May proclamations 'achieved a principal end of establishing British sovereignty for purposes of jurisdiction over British subjects' – the key object having been to assert control over the settlers at Port Nicholson. On a constitutional level, though, sovereignty now also applied to Māori. But in McHugh's view imperial officials knew full well that Māori would not 'immediately defer to the Crown and switch to English law', and so – on a practical basis – allowed 'the legislative accommodation of some forms of Maori custom'.177 9.3.5 What if the rangatira had refused to sign ? The Crown-commissioned historians also addressed the hypothetical event that the rangatira had refused to sign te Tiriti. Ward wrote that probably Hobson would have had to return to Sydney for further instructions, but he and Gipps might well have decided to assert Crown sovereignty over the South Island on the ground of discovery, and possibly over enclaves in the North Island based on the fact of British settlement, especially in [the] region of Port Nicholson. [Emphasis in original.]178 This was a rather more tentative speculation about what the British would have attempted than appeared in Ward's An Unsettled History in 1999, in which he had suggested that the British would have annexed New Zealand regardless (see chapter 8). For his part, Loveridge thought that much hinged on the response of the chiefs who had signed he Whakaputanga : I think it is highly likely that if Hobson had been unable to persuade a clear majority of the chiefs of the Confederation to accept the Treaty in February, he would have suspended his efforts to obtain further signatures until this goal was achieved. If, ultimately, this proved impossible he might well have given up altogether and returned to Sydney, although the fallback plan may well have been to acquire the

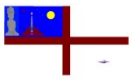




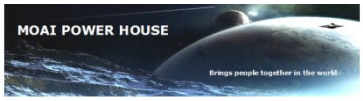








cession of a ‘factory’ somewhere outside the Bay of Islands, in order to establish a British foothold in New Zealand.179 However, Loveridge did see European control over New Zealand as inevitable, and suggested that Māori were better off with the treaty’s protections than they would have been had no treaty been signed : It was almost inevitable that New Zealand would come under European control of some kind during the 19th century – none of the other of the Pacific islands escaped this fate, and New Zealand’s climate and resources offered many attractions. Due to its proximity to the Australian colonies Great Britain was always the imperial power most likely to take such a step. The Treaty which Maori got may not have been the perfect outcome, in hindsight, but the outcome could easily have been much worse had different choices been made in London, or had the British Government decided not to do anything at all at this time. If Britain had not been prepared to offer such a Treaty, or had that Treaty been rejected in whole or in part, it is difficult to see how Maori would have been benefitted in either the short or the long term.180 McHugh was reluctant to be drawn on the issue of what would have happened if Māori consent had not been obtained. Asked by counsel for Ngāti Hine whether, in such circumstances, the May proclamation would have been a usurpation of Māori sovereignty, he said, ‘That did not occur though, that is counterfactual history’. Counsel was essentially pursuing a different matter from that commented on by Ward and Loveridge, but it seemed implicit in McHugh’s answers that Hobson saw Māori consent as a prerequisite to any assertion of sovereignty. As he put it : to imagine what would have been the case had there been a proclamation, the May proclamation without the Treaty essentially is speculative, and I cannot answer that because 9.3.5 Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz He Whakaputanga me te Tiriti The Declaration and the Treaty 476 that did not happen. . . . There was very clearly a belief that [in securing Māori signatures to the treaty] the Crown had discharged the obligation it had set itself.181 When questioned by us, he conceded that ‘failure was not an option’ for Hobson. He added, however, that I suspect he would have got on his boat and sailed elsewhere to see if he could have, at least established sovereignty over parts . . . And if that hadn’t worked, well we’re getting into really, really speculative history there.182 9.4 Closing Submissions We turn now to consider the closing submissions of the Crown and claimants. The claimants were of course represented by many different lawyers, through whom they put forward a broad range of views. We attempt here to set out the core aspects of the claimant submissions. We do so under similar headings to those we have used for the historians and claimants, although counsel also traversed other subjects that we need to summarise separately, such as the applicability of international law. 9.4.1 Claimant submissions (1) On the Crown’s ‘reluctance’ We begin by recording what claimant counsel had to say about the Crown’s motives in the lead-up to Hobson’s arrival in the Bay of Islands in January 1840. Counsel for the Ngāti Torehina ki Matakā claimants noted that the Crown portrayed itself as a reluctant actor, encouraged to colonise New Zealand for humanitarian purposes. But counsel argued that Hobson’s commission made explicit the object of expansion of the Queen’s territories and did not mention humanitarian aims. Normanby’s instructions also stressed the ‘national advantage’ to Britain of obtaining sovereignty over New Zealand because of the country’s great natural resources, touching on humanitarian considerations only much further on. Just as there was immense speculation in New Zealand land from Sydney, so was the Crown taken with ‘an impulse of gain’. The Crown’s primary motivation, counsel said, was economic.183 Other counsel submitted that the treaty was merely the ‘preface’ or legal basis for the ‘inherent violence of colonisation and dispossession’ that was to come, or that it was ‘absurd’ to think there was ‘[a]ny benevolent purpose’ behind the treaty.184 Counsel for Ngāti Kuta, Patukeha, and Ngāti Kahu contended that the Crown had predetermined that it would acquire sovereignty over New Zealand. The January proclamations ‘were the act of a government, preparing for what they considered was inevitable, in a country where they had no effect’.185 By contrast, however, Tavake Afeaki and Gerald Sharrock, who acted for 10 claims, submitted that there was evidence that Britain’s professed reluctance to intervene was genuine, but that, when the decision

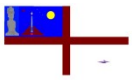




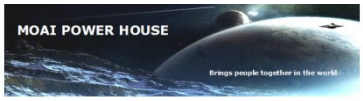








was made to acquire sovereignty, all the British really sought was the ‘power merely to impose a jurisdiction on British subjects[’] misdeeds and manage landsales’. This, they suggested, was entirely in keeping with the contemporary British acquisition of ‘quasi sovereignty’ in places such as India and West Africa.186 (2) Oral history and te tiriti tuatahi Dr Bryan Gilling, who acted for Edwards and others, argued that the Crown lacked the appropriate linguistic expertise to comment on the significance of the words of te Tiriti, and that the Ngāpuhi evidence – which included that of two past or present Māori Language Commissioners (Hohepa and Erima Henare) – should be given ‘significant weight’. Counsel also thought that, given their generally limited knowledge of te reo and reliance on documentary sources, both Crown witnesses and Carpenter were unqualified to comment on matters of Ngāpuhi tikanga and history generally, such as the relationship of he Whakaputanga to te Tiriti.187 In this regard, Gilling was perhaps most critical of Parkinson, whose evidence was ‘so problematic as to merit little weight being accorded it’. In his view, Parkinson had attempted to speak as an expert in Ngāpuhi tikanga 9.4 Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz Claimant and Crown Evidence and Submissions 477 without any proper knowledge. The Crown’s offering of such material, he said, was ‘condescending Eurocentrism’. In responding to Parkinson’s rejection of the traditional account of a ‘tiriti tuatahi’, counsel defended the reliability of Maning’s writings. In any case, said counsel, Edwards did not learn the story of te tiriti tuatahi from Maning but from tribal oral history. Maning, counsel argued, provided a corroboration of Ngāpuhi oral history, not a source for it. While Parkinson argued that such a draft treaty would have been archived, counsel suggested that the very reason that it had not been archived was that it was indeed buried with Hobson. Altogether, counsel argued that Phillipson, Salmond, and McRae were all willing to accept the possibility of te tiriti tuatahi, and that Ward and Loveridge had agreed that there might be oral evidence of such a document. Parkinson was alone, he argued, in unequivocally rejecting the idea.188 In general, submitted Gilling, oral history must be given significant weight, because Māori culture was oral. Furthermore, the large amount of oral evidence submitted by Ngāpuhi should be given primacy because of the paucity of written records from the time, and because it is the Māori understanding of te Tiriti that is crucial. The oral evidence, he said, is ‘potentially more informative and reliable’ than Colenso’s account.189 Several other counsel also argued that oral tradition should be regarded as of equal if not more validity than documentary history.190 A differing emphasis was provided, however, by counsel for Te Uri o Te Aho. He explained that his clients’ submission ‘takes into account both oral history and the historical records that have survived and those that the hapu members have had an opportunity to read’, as the passage of time means ‘there can never be complete certainty over the finer detail of what is remembered’.191 (3) The wording of te Tiriti Both Gilling and counsel for Te Kapotai warned against over-analysing individual words in te Tiriti, instead of taking a more holistic approach that included, for example, the ‘verbal context’.192 That said, the general position of claimant counsel was that mana, kīngitanga, or rangatiratanga would have been more accurate translations of sovereignty than kāwanatanga, and that no chief would have ceded these. Counsel rejected what they saw as the Crown’s attempt to alter the meaning of rangatiratanga. Linda Thornton, for example – who represented 14 claims – submitted that the Crown’s post-treaty depiction of tino rangatiratanga as ‘the right to dispose of a few forests’ was ‘a shameful reading down of one of the fundamental assertions of human political and legal power and authority’.193 Claimant counsel generally argued that kāwanatanga was a delegated and temporary authority rather than a hereditary one such as those held by both monarchs and chiefs. To demonstrate this, counsel pointed to the use of rangatiratanga and kāwanatanga in both the Bible and in he Whakaputanga ; the wording of the back-translations (such as Richard Davis’s use of ‘entire supremacy’ for ‘tino rangatiratanga’) ; and the chiefs’ experience of New South Wales governors.194

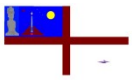






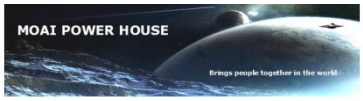






On he Whakaputanga specifically, counsel for Te Rarawa wrote that the Crown was left in the difficult and contradictory position of saying that the use of words such as mana, kingitanga, and rangatiratanga were appropriate in the non-legally binding document which the rangatira signatories used to assert their sovereignty and independence to the world,

but not in Te Tiriti/The Treaty, in which according to the Crown the rangatira ceded forever their sovereignty and independence.195 Counsel also thought that the overall wording of te Tiriti invited a different interpretation. Using the Kawharu back-translation, counsel argued that, given the emphasis on protection in the preamble, the Kāwana would govern only land the Queen acquired. Thus, the reference in article 1 to the Queen having kāwanatanga ‘over their land’ must mean the chiefs’ land which had been conveyed by tuku or hoko to the Queen. Counsel submitted that articles 1 and 2 were quite consistent on this reading, as 9.4.1(3) Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz He Whakaputanga me te Tiriti The Declaration and the Treaty 478 there was no other qualification on tino rangatiratanga (pre-emption, for example, was no such fetter as worded). Māori rights and duties under article 3 applied only when Māori were on land the Queen had received, she argued – otherwise they would be regulated by tikanga.196 (4) The relevant treaty text As they advocated for a priority to be placed on their clients’ own evidence, so did counsel argue for the primacy of the Māori text over the English text. Like claimant witnesses, counsel argued that the text of te Tiriti was the only one of any relevance or significance. Gilling argued that the two texts were separate documents, and that te Tiriti’s terms could not be readily rendered in English.197 Counsel for Ngāti Torehina ki Matakā submitted that common sense dictated that the English version was not a record of the treaty. He added that the Treaty of Waitangi Act’s assumption that there are two versions of the same agreement is a false premise. For the Tribunal to give equal weight to the English text would breach the very principles the Act purports to uphold, he said. Counsel suggested that we recommend a change to our own legislation to reflect this.198 Annette Sykes and Jason Pou, who represented 20 claims, argued that the Tribunal’s obligation to ‘have regard to’ the two texts meant that it could disregard the English text if it so chose. ‘Have regard to’ meant ‘open minded receptiveness without limiting discretion within the decision-making process’.199 That point was also argued by counsel for Te Rarawa. She added that the Crown had produced no authority for its position that the treaty is one document in two languages. It had even said itself that the Māori understanding would have been through the Māori text. The Crown drafted te Tiriti and Hobson signed it, but Māori neither drafted nor signed the English text. The Tribunal, they said, simply does not have to ‘give effect to’ the English text or ‘reconcile’ the two texts.200 Arguments about the relevant text were also a significant aspect of the submissions we received about international law, which we discuss in more detail at section 9.4.1(7). We note finally here that, in citing the tapu nature of the transaction and the idea of te Tiriti as a sacred covenant, Mireama Houra, who acted for four sets of claimants, submitted that the emphasis on the English text has been a kind of sacrilege.201 (5) The oral debate Thornton submitted that it was ‘apparent that the idea of British protection in New Zealand was the dominant discourse’ during the oral discussions at Waitangi, and that there was no evidence that anyone explained to the chiefs that they would be giving up their rights.202 Counsel for the Tai Tokerau District Māori Council, Donna Hall, noted that the chiefs focused on whether they wanted a kāwana, not on what sovereignty meant, and thought that Patuone’s gesture encapsulated the understanding Māori would have taken from the discussions. As counsel put it : The metaphor of two fingers held together, side-by-side and equal, was given at Waitangi by Patuone. This is the natural consequence of [the] prevailing narrative given to Maori. This is reflective of a form of power-sharing, but not of the transfer of sovereignty in the British sense. Whilst that korero came in the finely balanced debates of 5 February 1840, it represents the best interpretation of both the text of Te Tiriti and of the additional discussions held with Maori by the Crown and missionaries.203 Counsel for Ngāti

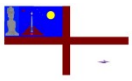








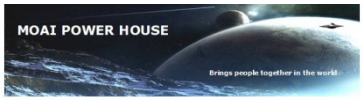




Kuta, Patukeha, and Ngāti Kahu stressed that, as Manuka Henare had said under questioning from the Crown, it is impossible to know what words rangatira like Rewa used in expressing their concerns about the future authority of the kāwana, and therefore to know exactly what they were thinking. Counsel said ‘it is inappropriate to rely on non-Maori resources when considering a Maori viewpoint’. In this regard, counsel doubted the completeness of Henry Williams’s account of his explanations to the rangatira : as a representative of the Crown it was extremely unlikely that he would have reported on any deceit or doubts he may have had, and therefore his account is not determinative of the rangatira’s understandings.204 9.4.1(4) Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz Claimant and Crown Evidence and Submissions 479 Counsel for Te Rarawa noted that rangatira who expressed concern that the Queen’s authority would be above them were a small proportion of those who signed at Waitangi on 6 February. She did not make submissions on whether those statements should be taken at face value or whether they may have been attempting to draw out a denial from Hobson and the missionaries. By contrast, Sykes and Pou did not rely on statements by rangatira during the oral debate, as ‘assertions made within the diplomacy of negotiation might be made to progress negotiations toward an outcome rather than to express a desired one’. Counsel for Te Rarawa concluded that Rewa and Te Kēmara assented not because they suddenly accepted the authority they had previously opposed, but because they had received adequate assurances from the British Crown and its agents. Without such assurances, counsel added, the chiefs’ assent is ‘inexplicable’.205 (6) The meaning and effect of the treaty Some counsel thought Hobson genuine in his belief that Māori had willingly ceded their sovereignty.206 But others thought the Crown and the missionaries self-deluded, duplicitous, and deceitful.207 In general, counsel stressed that rangatira and the Crown had no mutual understanding of the treaty. Gilling rejected Ward’s suggestion that there was a ‘meeting of minds’ to a ‘considerable extent’ at the treaty signing, and that the Crown had merely departed from this ‘spirit’ of the treaty in subsequent years. He submitted that Ward had failed to grasp that there were major differences of opinion between Māori and the Crown at Waitangi in 1840. Moreover, a ‘meeting of minds’ was a legal concept (consensus ad idem) about parties to an agreement having the same understanding, and this had hardly been possible in the circumstances.208 Claimant counsel submitted that the Māori understanding was that they would retain their ‘perfect independence’, as the missionaries and others had assured them, or their mana. Gilling contended that, even if (as Ward argued) Hobson and Henry Williams did not want to strip Māori of their mana, for the Crown to acquire sovereignty the chiefs would still have had to relinquish what they – Māori – defined as mana. But they could not do so. If they had suspected even a hint of diminished authority, counsel said, the chiefs would not have signed.209 Counsel for Te Rarawa argued that he Whakaputanga was crucial to the chiefs’ understanding of te Tiriti. She enumerated the parallels between the two documents, including the terms used, the cross-over of signatories, Henry Williams’s translations, and so on. He Whakaputanga, she said, was a collective expression of mana, and te Tiriti was no different ; it stemmed from the same context and confirmed the existing interests of te Whakaminenga. There was thus no relinquishment of sovereignty.210 Other counsel made this link, and submitted that te Tiriti was just another event (or ‘degree in the whakapapa’) in the series of engagements between Māori and the

British Crown stretching back to the meeting between Hongi and King George IV in 1820.

211 Counsel for Ngāti Hine put it thus : The rangatira to rangatira relationship with the English sovereign established by Hongi was maintained and taken a stage further in He Whakaputanga and Te Tiriti. The Chiefs sought and believed they had obtained an honourable and mutually beneficial

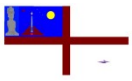




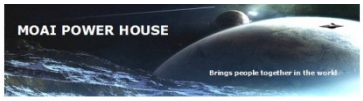








relationship through which they would share in the benefits of increased trade and access to European technology.212 If Māori retained their mana or independence, what, then, of the authority they did cede to the Crown ? Counsel broadly agreed that this was limited and certainly less than sovereignty. Within this consensus, however, there were differences of opinion as to what degree of control the Crown had acquired. While it is not possible to divide the submissions into neatly separate camps, we note that some counsel regarded the Crown's authority as less than that retained by the rangatira, and essentially designed to ensure that the settlers did not impinge on the mana of iwi and hapū.213 In other words, the authority was strictly subordinate, just as kāwanatanga was an inferior authority to rangatiratanga, and not to be applied to Māori. Counsel for Gibbs-Smith went further than this, submitting that, in the case of Te Kēmara specifically, 'rangatiratanga meant being in charge of Pakeha'.214 In another variation, counsel 9.4.1(6) Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz He Whakaputanga me te Tiriti The Declaration and the Treaty 480 for Te Rarawa maintained, in accordance with her interpretation of the words of te Tiriti, that the Crown's 'limited right of kawanatanga' applied only to the lands the Queen acquired progressively over time, through purchase.215 Other counsel, however, suggested that the Crown's new authority would exist on more of a dual or equal basis with that of the chiefs, and would apply in some ways to Māori. Hall said that te Tiriti was a 'power sharing arrangement', whereby the Kāwana was to be involved in 'matters of mediation and enforcement issues', and that that this was not 'inconsistent with the continuing tino rangatiratanga of the chiefs'.216 Similarly, Moana Tuwhare, in her submission on behalf of a number of claims, stated that the rangatiratanga of chiefs continued, 'on an equal footing and dual power basis' with the Queen, with whom Māori would have a 'Rangatira to Rangatira relationship'. The Crown's kāwanatanga was an authority to be exercised over Europeans and 'in conjunction with Rangatira in respect of Maori pakeha interactions'. What was envisaged, she stated, was 'equality of power and dual jurisdictions'.217 Afeaki and Sharrock agreed that the Governor had a peacemaking role which included the management of land transactions,218 while counsel for Ngāti Kuta, Patukeha, and Ngāti Kahu submitted that te Tiriti was a 'strategic alliance' whereby '[c]ontrol, mana, authority were not given up, rather they were mutually respected within their own contexts'.219 Counsel had different views about whether the rangatira ceded authority to deal with foreign powers to the British Crown. Counsel for Ngāti Hine submitted that they had, while counsel for Te Rarawa denied this.220 This may relate to the latter's rejection of Carpenter's idea that the rangatira agreed to the Queen having kāwanatanga because they were unable to exercise that kind of collective or national authority themselves. She argued that this was an impossibility, as the 'signatories did not control all such people or places and therefore did not have the power to make such a cession'.221 We note that several counsel submitted that their clients' tūpuna were aware of and understood the contents of the English text of the Treaty and opposed signing on that basis. Counsel for Ngāti Rēhia, for example, said that . . . Ngāti Rēhia oral history . . . maintains that Mene would never have signed the English version of the Treaty which was not only completely different from Te Tiriti but was completely against the Ngāti Rēhia position.222 And counsel for Gibbs-Smith submitted that Kai Te Kemara with his experiences of Pākeha exploitation could foresee what was coming as a result of the Treaty (English version). . . . . Kai Te Kemara knew that the Treaty (English version) was the means through which pakeha could own land, land which Kai Te Kemara and his hapu held dominion over.223 Counsel for Te Uri o Te Aho also stated that his clients' tūpuna, Pororua, did not sign te Tiriti and 'the corollary of that is Te Uri o Te Aho did not cede sovereignty'. He also contended that Pororua did not sign 'because of his fear of the effect [on] his mana'.224 Most counsel, however, submitted that the rangatira had no knowledge or understanding of the English text and no reason to believe that they were ceding their sovereignty or mana through signing te Tiriti. What, though, of te Tiriti's effect on he Whakaputanga ? Claimant counsel generally submitted that he Whakaputanga had not been cancelled out by the signing of te Tiriti, and remained today a source of

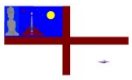




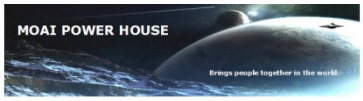








Māori authority and independence. Counsel argued that there was no mention of he Whakaputanga being revoked, and this could not be 'unilaterally . . . implied' by the Crown. Counsel also argued that he Whakaputanga was New Zealand's 'primary constitutional document', and that the treaty was an expression of it.225 This was contradicted in part by counsel for Gibbs-Smith and counsel for Ngāti Rēhia, who referred to their clients' views that te Tiriti either negated he Whakaputanga or was not signed by their tūpuna because of the existence of the earlier document.226 (7) International law Several counsel made submissions about the status and application of international law at the time of te Tiriti's 9.4.1(7) Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz Claimant and Crown Evidence and Submissions 481 signing. Foremost among these was counsel for Te Rarawa. She argued that the rules of contra proferentem and in dubio mitius existed in the 1830s, and were therefore applicable to the task of interpreting the treaty's meaning in 1840. Contra proferentem is the rule that any ambiguity in a treaty should be construed against the party that drafted it, while in dubio mitius means that, where a treaty provision is not clear, it should be interpreted in the way that involves the minimum obligation on the parties. In applying these principles, said counsel, any inconsistencies should be resolved in favour of the Māori text and, 'in the absence of compelling evidence, the Tribunal should not find that Māori took the highly significant step of ceding sovereignty'.227 Counsel discussed the Vienna Convention of 1969, arguing that it codified existing international law about treaty interpretation rather than creating new law. In support, counsel referred to provisions in the Convention (articles 31 and 32) that require a treaty's purpose and context to guide its interpretation, and submitted that the International Court of Justice had applied those principles to treaties made in the 1850s and 1890s. She also cited several cases that, in her submission, confirmed the application, at the time of te Tiriti, of the various rules of international law to which she had referred.228 On the matter of the two texts of the treaty and whether they must or can be reconciled, counsel for Te Rarawa cited article 33 of the Vienna Convention, which deals with the authoritativeness of 'authenticated' texts,229 and argued that only the Māori text 'provides an authoritative record of the agreement reached between rangatira and the British Crown'.230 Sykes and Pou also contended that only the Māori text was 'authenticated'. They argued that neither the Tribunal's establishment Act nor international law require the two texts to be reconciled, which renders unnecessary any arguments based on contra proferentem. 231 By contrast, Afeaki and Sharrock submitted that section 5(2) of the Treaty of Waitangi Act 1975, which directs the tribunal to have regard to the two texts of the treaty, breaches international law on authenticated texts.232 Several counsel argued that the Crown's assumption of sovereignty based on the cession by Māori of their own sovereignty breached long-established international law principles, including the principle of pacta sunt servanda. As that principle is stated in article 26 of the Vienna Convention, 'Every Treaty in force is binding upon the parties to it and must be performed by them in good faith'. Counsel for Te Rarawa submitted this meant that the Crown was bound by the treaty, even though the treaty granted it a 'significantly lesser jurisdiction than full sovereignty'.233 Afeaki and Sharrock added that the notion of a Māori cession of sovereignty breached article 27 of the Convention, which holds that a party cannot be excused its treaty obligations by relying on its domestic law.234 Other counsel also stressed the need for free and clear consent to the transfer of sovereignty, and what they saw as the Crown's singular failure to achieve it – as evidenced, they said, by the concessions of the Crown's own historian witnesses.235 (8) Concluding comments and challenges Counsel for Ngāti Hine argued that The modern New Zealand state is built upon a false premise. The idea that rangatira who signed Te Tiriti agreed to cede sovereignty to the British Crown is historically wrong, yet it remains the foundation upon which the nation rests. So long as this is so New Zealand is weakened by a moral, political and legal deficit.236 Orally, counsel added that the Crown argument at the heart has this irreconcilable and completely illogical tension because the Crown cannot get out of the cession box. And once it is stuck in the cession box, it is essentially forced into a number of logically fraught

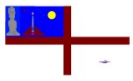












reasoning[s].237 Counsel spoke of the ‘challenge’ facing this Tribunal, citing Erima Henare’s description of the ‘inherent institutional bias against our claim’. As Henare put it : The bias comes with the myths that explain and justify the New Zealand state and the idea of undivided parliamentary 9.4.1(8) Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz He Whakaputanga me te Tiriti The Declaration and the Treaty 482 sovereignty. The history invoked is not the Māori history. The Treaty invoked is the English version, not the Māori version.238 The Tribunal, counsel said, had in the past been inconsistent on whether sovereignty was ceded : ‘A number of the Tribunal’s earlier reports reflect the politics of the time and a palpable reluctance to confront the sovereignty question.’ Here, though, there was no longer any scope for compromise. The Tribunal, he said (as we have noted), having finally had the courage to launch this waka must not now take fright at the depth or size of the ocean. The Crown must now wade out beyond the shallow waters of de facto power and what Erima Henare has called ‘squinty legalism’.239 Sovereignty was simply not ceded, counsel submitted, and the statement in the Orakei report that such a cession was ‘implicit from surrounding circumstances’ was ‘plain wrong’. The Crown, he said, no longer even argued that Māori had knowingly ceded their sovereignty ; instead, the Crown case now appears to be that the English and Māori versions of the Treaty can be reconciled at least to some extent on the basis that the term ‘sovereignty’ is a working approximation of the rule of law or civil government.240 Counsel argued that modern scholarship was now catching up with the Māori perspective and cited Dame Claudia Orange, Belich, Ross, McHugh, and Professor Jock Brookfield to this effect. But, perhaps to **pre-empt any charges of ‘presentism’**, counsel also stressed that ‘there is no shortage of knowledgeable European observers in the 1840’s who also recognised the difficulties reconciling the Māori and English texts’. To this end, counsel quoted from the likes of Servant, Pompallier, Colenso, Mathew, and William Swainson (in his capacity as New Zealand’s first Attorney-General).241 Sykes and Pou took counsel for

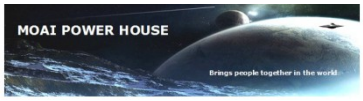
Ngāti Hine’s description of a false premise a stage further, delivering a particularly strong critique of what they saw as the Tribunal’s and the courts’ complicity in perpetuating the falsehood.

The Tribunal, they said, had over the years developed a vague and inconsistent set of principles that have ‘legitimised the re-siting of sovereign authority out of hapu hands and into those of the Crown’.

DECREE AFIDAVIT COURT FINDS WAITANGI TRIBUNAL AND NZ CROWN GUILTY OF FRAUD

The Court of Appeal in the Lands case should have followed the correct legal approach in interpreting a treaty by first giving effect to the actual provisions and resorting to other methods of interpretation only where there was ambiguity. Instead, Sykes and Pou argued, the court failed to extract principles from the essence of the actual agreements in the treaty, but rather ‘considered the contemporary constitutional arrangements’ and developed principles to match. ‘These principles were then wrapped in an illusion of Maori consent and defined as the “Spirit” of the Treaty’. This ‘spirit’ involved ‘the acquisition of sovereignty . . . in exchange for the protection of rangatiratanga’, with Māori pledging loyalty to the Queen, and the Crown having ultimate authority.

This, they submitted, had freed the Crown from an obligation to adhere to the treaty’s terms, although under the principle of pacta sunt servanda the Crown remained bound to do so.242 Sykes and Pou

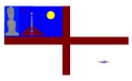




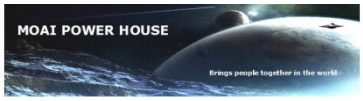








called for the Tribunal to reject the 'overarch principle that Maori sold their sovereignty for the protection of their rangatiratanga'.243 In like fashion, Hall submitted that the Tribunal should not approach this case as if the transfer of sovereignty to the **Crown were the default position** and Māori must prove otherwise.244 While they did not use the term **presentism,** Sykes and Pou quoted from Salmond on the general subject. She had argued that, unless one writes about events in Te Tai Tokerau from 1835 to 1840 from a position of expert knowledge of te ao Māori, the evidence is likely to be anachronistic and misleading . . ., projecting the power relations of 2010 (in which European people, the English language, Western ways of thinking and living dominate) into Te Tai Tokerau of 1835 or 1840.245 Other counsel also argued that the notion of a cession of sovereignty is an essentially presentist perspective. Houra, for example, asked : 9.4.1(8) Claimant and Crown Evidence and Submissions 483 is it not discourteous to view the actors of the past from a presentist perspective ? Are we all to ignore the obvious ? Counsel submits that there is a real risk that the sacred and tapu aspects of He Whakaputanga me Te Tiriti will be forgotten and that we shall be the poorer for it if we do not bring it to the forefront as it was brought to the forefront and consecrated when those ancestors signed those documents 1835–40.246 9.4.2 Crown submissions At the outset, Crown counsel, Andrew Irwin and Helen Carrad, submitted that there were a number of matters the Crown and claimants agreed upon. With respect to the treaty, said counsel, these were that ы Te Tiriti/the Treaty built upon and cemented a relationship between the Crown and Māori. ы Rangatira did not cede their 'mana' through te Tiriti/the Treaty. ы The Māori understanding of te Tiriti/the Treaty would have been through the Maori text of that document as well as the context in which the document was signed. ы There are differences between the English and Māori texts of te Tiriti/the Treaty. ы The 'tino rangatiratanga' referred to in the Māori text Article Two of te Tiriti/the Treaty is more than the English text's guarantee of property rights. ы Immediately following the signing of te Tititi/the Treaty, and with but a few exceptions, tikanga was to remain unaffected by the Crown's 'Kawanatanga'. ы There is evidence of an oral history that a first draft of te Tititi/the Treaty was put to rangatira prior to 6 February 1840, in which rangatira were asked to cede 'mana' ; and that they rejected this. There is, however, no documentary record that this event took place.247 Counsel also noted what the Crown saw as the key points of disagreement, including the meaning of kāwanatanga ; the issue of whether the treaty should be seen as one document in two languages or two separate documents ; and the effect of the treaty on he Whakaputanga.248 In the body of the Crown's closing submissions, counsel devoted considerable space to arguing that, in the late 1830s, pressures built from all sides on a reluctant Crown to intervene in New Zealand. In summary, as counsel put it, the treaty and the May 1840 proclamations were 'the outcome of intense pressures placed on the British Government in 1838 and 1839 to do something about the increasingly dire situation in New Zealand'. Even the missionaries, said counsel, had eventually swung in behind annexation, and Normanby's instructions were informed by both a concern for Māori independence and the doubt that Māori could effectively govern New Zealand themselves in the face of the new threats. The 'tipping point' for the Government was the New Zealand Company's decision to begin settlement with or without Government approval. At the same time, it became clear to the Colonial Office that Hobson's factory scheme was inadequate for this scale of colonisation. Counsel rejected the argument that the Crown should have done more to stop British subjects moving to New Zealand, saying that this ignored the economic and political realities of the time. Britain could not 'stop its citizens travelling, trading, and settling abroad.' Moreover, submitted counsel, Britain had no jurisdiction in a place like New Zealand, and so it was impossible to control any settlers.249 Citing the evidence of McHugh, counsel contended that the Crown 'acquired sovereignty in New Zealand through a series of jurisdictional steps'. There was no specific point at which sovereignty was acquired, but rather a process, in which the treaty was 'a

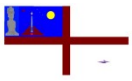




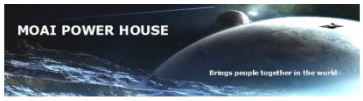








significant step'. In essence, the treaty 'was the means by which the Crown obtained its self-imposed condition precedent to British sovereignty, Māori consent'. Hobson's 21 May proclamations were further 'important steps in the process', declaring the Queen's sovereignty over New Zealand. They were in turn gazetted in London in October 1840, an event which meant the process was 'certainly complete'. Counsel submitted that the proclamations were, as McHugh suggested, not a 'pre-emptive disowning of the signature gathering process then in train'. Instead, the continuation of the signaturegathering indicated that British officials remained sincerely committed to meeting the self-imposed condition precedent of Māori consent even 9.4.2 Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz He Whakaputanga me te Tiriti The Declaration and the Treaty 484 if those consents that remained outstanding had now become matters of form rather than actual necessity.250 As for the treaty itself, counsel reasoned that the Crown's 1840 understanding was to be found in the words of the English text. In other words, the Crown understood that the rangatira who signed their names ceded all their sovereignty in return for various property guarantees, a 'settled form of Civil Government' would be established, and the Crown would have the sole right of 'pre-emption'. Counsel submitted that It would have been clear to the Crown that rangatira who signed te Tiriti/the Treaty and the groups they represented consented to this state of affairs. That is, te Tiriti/the Treaty was the means by which the British Crown would obtain from Māori the free and intelligent consent that the British Crown had required itself to obtain. The words of the English text of the Treaty also made this clear.251 Counsel put it that the British understanding of 'sovereignty' at the time was of '"civil government", especially government by legislation'. In this regard, counsel cited the arguments raised by Carpenter and Ward on the subject – that is, that Blackstone's position was that the King- or **Queen-in-Parliament (the legislature)** had absolute sovereign power, but that the King or Queen alone (that is, the executive branch of government, administered by the sovereign's ministers) was subject to the law. While Tuwhare and others had argued that the treaty created dual or shared sovereignty, this was not the Crown's understanding. Rather, counsel submitted, the Queen-in-Parliament had unfettered sovereignty and the chiefs retained rangatiratanga 'within the rubric of an overarching national Crown sovereignty'.252 Counsel conceded that it was unclear how and whether Māori law and custom would continue after 1840, adding that the 'fourth article' did not provide any guidance. Counsel noted McHugh's view that imperial officials recognised the fact that Māori would not 'instantaneously adopt English law'. However, counsel added that The legal application of the Crown's sovereignty to all inhabitants (non-Māori, Māori signatories and Māori nonsignatories), whilst debated in New Zealand in the early years following 1840, was definite in the eyes of the Colonial Office.253 Counsel submitted that, in seeking Māori consent to British sovereignty over parts or the whole of New Zealand, the Crown was looking to establish a new form of authority, as there was no 'functioning nation state that held sovereignty over the entirety of New Zealand' at the time. In this counsel concurred with Carpenter and Ward. However, counsel disagreed with Carpenter's position that there was, accordingly, no loss of Māori authority in the treaty. Rather, counsel put it that 'Britain sought both a cession from Māori and their recognition of British sovereignty' (emphasis in original).254 Crown counsel noted that it was inherently more difficult to gauge the Māori understanding of the treaty in 1840, but thought it fair to draw certain conclusions. These included that the Governor would have authority over both Māori and non-Māori ; that British laws would apply to all people in New Zealand ; and that the chiefs would retain authority over their people and properties. This understanding, said counsel, would have stemmed both from the Māori text of the treaty and the surrounding circumstances. On the text, counsel endorsed Henry Williams's skills as a linguist and translator, as well as his honesty and integrity, and argued that it was wrong to compare the use of language in he Whakaputanga with that in the treaty, as words have different meanings in different contexts. The words Williams used were appropriate, said counsel, especially

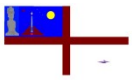




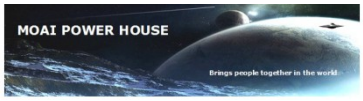








the translation of sovereignty as kāwanatanga, because sovereignty amounted to government. To this effect counsel quoted Parkinson's argument that, from their experiences in New South Wales and knowledge of the New Testament, Māori would have understood kāwanatanga as meaning 'the rule and authority of governors'. Counsel also quoted Carpenter's conclusion that kāwanatanga denoted nothing less than 'the controlling civil power of the land' (that is, 'government'). 9.4.2 Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz Claimant and Crown Evidence and Submissions 485 Counsel added that, in 10 back-translations made from the 1840s to the 1980s, there were only two instances where 'government' was not used to translate kāwanatanga : Busby, who used 'sovereignty', and the anonymous translator, who used 'governorship'.255 Counsel responded to the claimant position that 'mana' was the most appropriate translation for sovereignty by arguing that it was too broad a term to distinguish between 'the sovereignty (or imperium) that the Crown sought through Article One and the property (or dominion) that the Crown sought to protect through Article Two'. Mana was a different sort of power, said counsel, and one that neither the Crown sought from the chiefs nor the chiefs would have ceded. It had a spiritual dimension and derived from individual actions or from whakapapa. Counsel cited the evidence of Parkinson, Carpenter, and Ward in support of this position, as well as that of Hohepa for the claimants, as Hohepa had said that mana on its own was not an accurate translation of sovereignty. Essentially, said counsel, mana could not be ceded and the Crown had no intention of stripping the chiefs of it ; rather, the chiefs entered the treaty to preserve their mana, and the Crown wished to keep Māori society functioning under this chiefly authority. Counsel cited the Tribunal's comments in the 1985 Manukau report that Williams's translation was 'fair and apt' and that use of mana would have been inappropriate.256 Counsel also rejected as inappropriate the other options for translating sovereignty – kīngitanga, arikitanga, rangatiratanga, and the phrase 'ko te kingitanga ko te mana' – and called Ross's 1972 analysis 'superficial'. That kāwanatanga would clearly apply to Māori and to Māori land, said counsel, was clear from (among other things) the reference in the preamble to 'nga wahikatoa', the words in article 1 suggesting an absolute cession (tuku rawa atu', 'ake tonu atu', and 'katoa'), and Māori having, under article 3 (as per Hohepa's translation), the duties and obligations, as well as the rights, of those in England. Counsel quoted the comments in the Tribunal's Muriwhenua Fishing and Ngai Tahu reports that it was 'obvious' and 'clear' the Queen's authority was supreme as, in order to act as the protector of Māori interests, the Crown necessarily required an overriding power.257 The Crown's position was that Māori welcomed an authority to regulate Māori–Māori as well as Māori–Pākehā interaction.258 Counsel rejected the notion that tino rangatiratanga in article 2 was unqualified. It was fettered, said counsel, since it applied 'only' to whenua, kainga, and taonga katoa ; it was subject to the Crown's right of pre-emption ; it was effectively subject to British law under the terms of article 3 ; and other parts of the treaty showed that kāwanatanga applied to Māori and their lands. Counsel submitted that the broad interpretation placed on 'taonga katoa' by Hohepa was not consistent with the back-translations and that the usual translation was 'valuable property'.259 Counsel further rejected that argument of certain claimant counsel that the Crown could have protected Māori sovereignty in 1840 through a 'protectorate' arrangement. Counsel submitted that arrangements designed for other circumstances – where there were 'powerful rajahs and sultans', for example – could not be readily imported into New Zealand. In fact, the 'concept of a "protectorate" did not develop as a primary instrument in Euro-imperial practice until the mid- to latenineteenth century'. Moreover, said counsel, a protectorate would have provided Māori with less legal protection than British subjecthood, which had been one reason why Busby's idea of a protectorate modelled on the arrangement in the Ionian Islands had been rejected. Counsel also submitted that officials knew that there was insufficient time 'to foster and support an emerging Māori authority given the threats of the French and the New Zealand Company', and the acquisition of sovereignty was the only practical option.260 Counsel submitted that there were 'four key surrounding circumstances' that confirmed the likely Māori

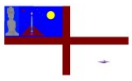










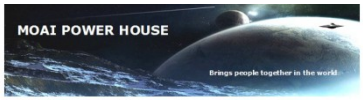


understanding of te Tiriti. These were as follows : ы Busby's invitation to the rangatira to meet at Waitangi referred to Hobson as a Governor for both Pakeha and Māori. ы Te Tiriti/the Treaty was explained to the rangatira. The 9.4.2 Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz He Whakaputanga me te Tiriti The Declaration and the Treaty 486 concept of sovereignty must have been explained by Hobson and translated into Māori by Henry Williams. ы An account of the missionaries' explanations on the evening of 5 February indicates that Māori would have understood te Tiriti/the Treaty to mean that they would come under the authority of the Governor and that British law would apply to them. ы The accounts of what rangatira said at the signings of te Tiriti/the Treaty indicate their understanding that by te Tiriti/the Treaty they would come under the authority of the Governor.261 In support of the last point, counsel referred to the **statements made by Te Kēmara, Rewa, and Tāreha at Waitangi, and by Taonui and Papahia at Mangungu**, and submitted that **Manuka Henare** had agreed here with the Crown's position. Despite the shortcomings in Colenso's record, counsel submitted, the chiefs clearly understood what they were signing, and the claimants were simply ignoring what the chiefs had said. As support for the Crown's position, counsel pointed to the Ngāti Rēhia submission that **Tāreha would not sign because he was being asked to agree to the Queen being above him. Counsel said Tāreha was right,** and understood the agreement.262 With respect to Edwards's account of a tiriti tuatahi, counsel accepted that this was Ngāpuhi tradition, but noted that there was no reliable documented evidence to support it, Maning being the sole source. On the broader issue of oral history, counsel rejected the argument (made with respect to Colenso's account of the proceedings at Waitangi) that it was inappropriate to rely on non-Māori sources when considering the Māori understanding as going 'too far'.263 In sum, submitted counsel, Māori understood the Crown's authority and welcomed it as being to their advantage. They placed their faith in the advice of the missionaries, and their expectations were these : ы land transactions would be controlled ; ы the Governor would protect Māori from aggressive Pākehā and foreign powers ; ы the Crown would work with Māori in partnership, and not unilaterally impose its authority ; and ы rangatira would retain their traditional authority and mana over their communities.264 Counsel argued that the way history unfolded after 1840 should in no way be read as an indication that the Crown's intentions in 1840 had been to deceive or dispossess. Counsel quoted Ward : 'Neither in logic nor sound historical method is it appropriate to read the outcomes of a later period as proof of the intentions of an earlier one' (emphasis in original). Later treaty breaches, said counsel, did not mean 'the initial compact was a fraud'. Rather, all evidence pointed to 'the conclusion that officials and missionaries acted with only the best of intentions'.265 On issues of international law concerning treaty interpretation, counsel submitted that rules such as contra proferentem and in dubio mitius dated only from the inception of the Vienna Convention in 1969 and thus had no application when the treaty was signed in 1840. Even if those rules did apply, 'the well-established interpretation of the Treaty as having ceded sovereignty to the Crown remains'. Moreover, the

Tribunal's job is to act in accordance with section 5(2) of its establishment legislation,

CITE DECREE AS NZ CROWN GOVERNMENT PARLIAMENT IS LIABLE COMPLICIT IN FRAUD

not the rules put forward by counsel for Te Rarawa. Contra proferentem, said counsel, relates to **ambiguities in treaty drafting**, not 'the wholesale preferment of one text to the interpretation of another'. Counsel added that, under article 33(4) of the Vienna Convention, contra proferentem and in dubio mitius had to be balanced against the 'central principle' that 'the meaning which best reconciles

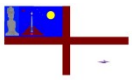




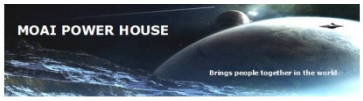








the texts, having regard to the object and purposes of the treaty, is to be adopted'.266 Finally, counsel submitted that he Whakaputanga was nullified by the treaty. Once the Crown's sovereignty was asserted over New Zealand, it was inconsistent for there to remain 'any residual form of Māori sovereignty'. The Crown would agree, however, that the treaty built upon past events such as those of 1835.267 9.4.3 Claimant submissions in reply (1) General response to the Crown's approach Gilling queried whether the Crown's list of agreements between the parties was 'helpful', as many were 'not actually points in contention'. In general, he submitted, the 9.4.3 Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz Claimant and Crown Evidence and Submissions 487 Crown had not engaged with the challenges to its witnesses' evidence or acknowledged their concessions.268 For example, counsel argued that the Crown's closing submissions did not reflect the 'very significant acknowledgments' made by Ward and Loveridge, respectively, that there was 'a degree of mutual incomprehension' between Māori and Pākehā at the time, and that 'it is very difficult for us to know exactly what everybody thought that whole [Waitangi] package consisted of '.269 Overall, counsel submitted, instead of engaging at a direct and specific level with the claims and evidence of Ngapuhi presented in Te Paparahi o Te Raki Inquiry District, or the extensive submissions by Claimant Counsel, the Crown's Closing Submissions effectively . . . use this Inquiry as a forum for the further perpetuation of its longstanding perspective, which is **preoccupied with and gives pre-eminence to Pakeha history**, the English perspective of Te Tiriti, and the Treaty ahead of Te Tiriti.270 Several counsel argued that the Crown had selectively quoted sources to make its point, omitting important context in doing so. For example, counsel for Ngāti Kuta, Patukeha, and Ngāti Kahu submitted that the Ngai Tahu Tribunal's reference to there being 'two texts [but] . . . only one treaty' was part of an observation made about the Tribunal's jurisdiction that went on to state that 'considerable weight should . . . be given to the Maori text since this is the version assented to by all but a few Maori'.271 Counsel for Te Rarawa pointed also to the Crown's use of Justice Richardson's comment in the Lands case that it now seemed 'widely accepted' as a matter of colonial and international law that British sovereignty had been 'authoritatively established' by the May proclamations and their 2 October 1840 gazettal. Counsel noted in particular the two sentences that followed that remark, in which Justice Richardson acknowledged that debate existed about 'the precise legal basis for British sovereignty and . . . the legal status of the Treaty under New Zealand law' (see chapter 8).272 Gilling also gave several examples. One was the Crown's quotation from the Tribunal's Manukau report that Henry Williams's translation of sovereignty as kāwanatanga was 'fair and apt', and that '"mana" would not have been a workable translation for "sovereignty"'. Counsel submitted that the Crown had failed to note that the Manukau Tribunal also said that kāwanatanga was 'something less than the sovereignty (or absolute authority) ceded in the English text', while tino rangatiratanga meant 'full authority status and prestige with regard to their possessions and interests'. Furthermore, the Manukau Tribunal said that 'in Maori thinking "Rangatiratanga" and "mana" are inseparable – you cannot have one without the other'.273 (2) The wording of te Tiriti The claimants rejected the Crown's argument that kāwanatanga was the right word to translate sovereignty and that mana would have been inappropriate. Gilling submitted that the Crown's reliance on Parkinson's linguistic evidence was 'both concerning and insulting to the Claimants', as his evidence went 'far beyond his demonstrated expertise'. It was for Ngāpuhi, the claimants said, to explain the meaning of terms in te reo Māori.274 Counsel for Ngāti Korokoro, Ngāti Wharārā, and Te Poukā also criticised the Crown for failing to engage with the claimant evidence and for relying on witnesses lacking the appropriate linguistic expertise.275 Claimant counsel rejected the Crown's argument that he Whakaputanga and te Tiriti had different meanings because of their separate contexts. Afeaki and Sharrock said that this 'requires the constitutional language of Maori as established by He Wakaputanga to have been rewritten and accepted by Maori in 24 hours'.276

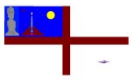




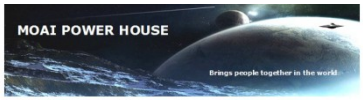








Tuwhare submitted that, if the **Crown wanted the highest form of authority**, then it should have used the words in he Whakaputanga that expressed this : ‘ko te Kingitanga ko te mana’. She noted too that Parkinson had defined mana at one point as ‘power and authority’ and Carpenter had called it ‘Maori authority or prestige’.277 The claimants argued that the Crown in 1840 had chosen words in order to secure an agreement, and that Crown counsel had even admitted as much.278 Counsel for Te Rarawa further contended that, while the parties agreed that the rangatira did not give up their mana, a Tribunal finding in favour of the 9.4.3(2) He Whakaputanga me te Tiriti The Declaration and the Treaty 488 Crown would require the Tribunal to conclude that ‘Te Tiriti nevertheless constituted such a cession’, an outcome she said would be ‘perverse’.279 Afeaki and Sharrock rejected the Crown’s position that the text of te Tiriti did not change between 5 and 6 February. If Williams had wanted to convey sovereignty unambiguously in Māori terms, they said, he would have used ‘ko te Kingitanga ko te mana’ in his draft. However, the final version used ‘the lowest smallest most confined level of power described in He Whakaputanga’ : kāwanatanga. Accordingly, they submitted, Edwards’s account of te tiriti tuatahi is the ‘logical inference’ and ‘The case for a pivotal meeting of the evening of the fifth removing mana from the text is compelling.’ 280 Similarly, Gilling urged the Tribunal to give great weight to the tribal oral histories in explaining the chiefs’ decision to sign on 6 February.281 By contrast we note that, by way of response to the Crown’s arguments about contra proferentem (see below), counsel for Te Rarawa submitted that there was ‘nothing to indicate that the rangatira present at Waitangi engaged in any negotiation with the British Crown over the written terms’ of te Tiriti. Its signing, she added, was one of those rare cases in which a draft of an international treaty presented by one party (ie Te Tiriti presented by the Crown) was apparently accepted in toto by the other (ie the rangatira signatories, with any oral conditions that those rangatira made not being recorded in the text).282 We take from this that not all claimants agreed that a draft text ceding mana was put to the chiefs and rejected. (3) The relevant treaty text Gilling referred to Crown counsel’s submission that there was only one document, ‘Te Tiriti/the Treaty’, which the Crown said was ‘translated into the Maori language’. Counsel found this point ‘hard to follow’, because the English draft could not be called ‘Te Tiriti/the Treaty’. The translation of the English text, ‘the Treaty of Waitangi’, created ‘a related but substantially different document’, ‘Te Tiriti’. Counsel submitted that, in general, ‘the Crown’s insistence on the “Te Tiriti/the Treaty” nomenclature has led to confusion and flaws in Crown reasoning’.283 Counsel for Te Rarawa responded to the Crown’s argument that the Tribunal’s obligation under section 5(2) of the Treaty of Waitangi Act to ‘have regard to’ both texts of the treaty meant the English text needed to be applied in determining the parties’ rights and obligations. She submitted that, while the **Tribunal was required to have regard to the English text, it did not have to ‘give effect’ to it, and there was no obligation on the Tribunal to ‘reconcile’ the two texts.** She cited New Zealand case law which she said showed that a requirement to ‘have regard to’ something meant a decision maker ‘may decide to give little weight to it in making his, her or its decision’.284 Similarly, counsel for Ngāti Hine argued that he was not suggesting, as Crown counsel alleged, that **the Treaty of Waitangi Act allowed the Tribunal to ‘discard’ the English text.** However, the principles of treaty interpretation favoured the Māori understanding of the treaty, which of course came through te Tiriti. Counsel concluded : If as a matter of historical fact the Tribunal concludes that the two texts of the Treaty cannot be reconciled on the question of a cession of sovereignty, then that is a conclusion open to the Tribunal pursuant to its jurisdiction to determine the meaning and effect of the Treaty as embodied in the two texts.285 (4) The oral debate Gilling in particular rejected the Crown’s argument that the speeches of certain rangatira demonstrated that they knew that the Governor would have a superior form of authority over them. The sources had too many limitations, said counsel, and the speeches could be construed in different

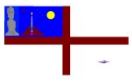










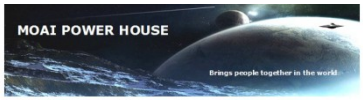


ways. For example, Makoare Taonui's statement, 'We are glad to see the Governor let him come to be a Governor to the Pakeha's as for us we want no Governor we will be our own Governor' did not mean, as the Crown asserted, that Taonui understood Hobson would be a Governor for both Māori and Pākehā. Instead, said counsel, 'the literal meaning would appear to be that 9.4.3(3) Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz Claimant and Crown Evidence and Submissions

489 the governor was welcome to stay but that the expectation was that he would be a governor to the Pakeha only'.

THE NATIVE MAGISTRATE KINGS BENCH COURT CAUGHT WAITANGI TRIBUNAL AND NEW ZEALAND CROWN GOVERNMENT IN INCONSISTENT CORRUPTION AND FRAUD CONTRACTS

Counsel stressed what he saw as the irony of the Crown relying on statements made in opposition to the Treaty as being evidence of a clear understanding of it when they signed te Tiriti. He described the Crown's submissions as 'at best unconvincing, and at worst logic defying', and as failing to consider the 'real issue' of 'What was said to persuade these Rangatira to sign ?' 286 In this regard, counsel for Ngāti Hine submitted that Kawiti, his sons and other rangatira who signed Te Tiriti did so because they believed the assurances of the missionaries and others that they would not come under the authority of the Governor. Their 'perfect independence' would be preserved. The Governor would have no power in relation to the authority of the Chiefs over their people and lands. That was the message conveyed to them and they signed because they trusted the word of the officials and missionaries who delivered the message.287 Tuwhare said that, for Māori, these oral assurances would have sufficed, and the chiefs' stipulations 'are to be considered under Maori custom and usage as qualifications to the written agreement'.288 In response to the Crown citing their submissions about Tāreha as confirming that the chiefs understood that the Queen's authority would be supreme, counsel for Ngāti Rēhia submitted a clarification. They explained that Tareha did not sign Te Tiriti or The Treaty because he understood what the meaning of He Whakaputanga was. Tareha believed that the tohu he had put on He Whakaputanga provided the basis upon which he and his people could continue living by their laws and lore, and it provided the protection they needed in trade.289 (5) The meaning and effect of the treaty Tuwhare noted Crown counsel's explanation that dual sovereignty was impossible from a British perspective. She submitted that this amounted to a proposition that the Crown had 'the absolute authority to do anything whatsoever'.290 But she submitted that the Crown had failed to convey this honestly, rather giving the impression that the full, natural and absolute authority power and independence of rangatira was guaranteed and [that] the governor was to be granted authority for specific purposes, namely to bring law and order to British subjects and control land trade.291 Counsel for Ngāti Hine likewise submitted that Ngāti Hine never agreed to the 'huge shift of power' in 1840 claimed by Crown counsel.292 In any event, said the claimants, the Crown's perspective on what sovereignty meant was irrelevant. As Gilling put it, Counsel have no submissions to make about the Crown's lengthy discussion of Blackstone on this legal point apart from submitting that it is irrelevant to Ngapuhi as they knew nothing of it. Their framework was mana and Rangatiratanga within the tribal structure.293 And where they did engage with the argument, the claimants rejected the Crown's position as flawed. Counsel for Ngāti Hine submitted that civil government 'is an emanation of sovereign power, but it is not the same thing as sovereign power itself '.294 Counsel for Te Rarawa submitted that Henry Williams had missed the first step in the two-step process of, first, acquiring sovereignty and, secondly, setting up a government. That 'government' is subordinate to sovereign power, she stated, was demonstrated in both he Whakaputanga and the Constitution Act 1852. She

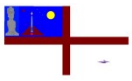




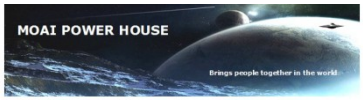








contended that, even today, government remains subordinate to the sovereign in important ways, such as the need for royal assent to legislation. In this regard she quoted from the statement in the 2008 Cabinet Manual that ‘the Queen reigns . . . but the government rules’.295 Counsel for Ngāti Torehina ki Matakā argued that the Crown’s case that its intentions were clearly communicated at Waitangi in 1840 was based not so much on ‘cogent . . . evidence’ as on ‘speculation and opinion’. He pointed, for 9.4.3(5) Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz He Whakaputanga me te Tiriti The Declaration and the Treaty 490 example, to Crown counsel quoting Loveridge saying he was ‘quite certain’ Hobson considered the Treaty and te Tiriti to be ‘two forms of the same document’, as well as to Crown counsel’s remark that Hobson’s explanation of the treaty ‘must have necessarily included an explanation of the British conception of sovereignty’.296 The claimants also rejected the Crown’s position that rangatiratanga was ‘fettered’ because it applied ‘only’ to things like ‘taonga’. Counsel for Ngāti Hine wrote that this ‘demonstrate[d] a surprising failure to engage with the extensive Tribunal jurisprudence confirming the breadth of the concept of taonga’. Counsel also rejected as ‘novel and tenuous’ the notion that rangatiratanga was subject to British law under article 3. And he saw no possible basis for the Crown’s submission that it was agreed at Waitangi that the rangatira would retain their ‘customs’, ‘at least for the time being’.297 Counsel for Te Rarawa likewise described this contention as ‘extraordinary’.298 Afeaki and Sharrock submitted that Hobson may have failed to explain the object of acquiring sovereignty simply because he was not seeking it. As they put it, ‘Hobson merely wanted a limited jurisdiction to undertake judicial and enforcement functions.’ Counsel also rejected the Crown’s assertion that protectorate arrangements were not normal practice for the Crown at the time of the treaty. The evidence was clear, they said, that in the 20 years before the treaty the British Government was ‘entering into a succession of protectorate relationships in India, Asia, Middle East, Pacific, and Africa’, including one with the Sultan of Herat agreed on 13 August 1839. Counsel also pointed to the Hawaiian protectorate in the period 1840 to 1870.299 Most claimant counsel reinforced the point made in their closing submissions that kāwanatanga was a circumscribed authority over Europeans only. As noted, counsel for Ngāti Hine thought it went somewhat further, agreeing with Crown counsel that Māori would have expected the Crown to protect New Zealand from foreign powers.300 By contrast, counsel for Te Rarawa again denied this (and reiterated that kāwanatanga applied on lands conveyed to the Queen through tuku or hoko only).301 Hall acknowledged that her submission that power was to be shared between Māori and the Crown was a ‘more conservative’ interpretation than others’. But she added : The fundamental position held in common with all claimant counsel is that the transfer of sovereignty or absolute power to the Crown, when any Maori view is taken into account, is incorrect in both historical and legal senses.302 (6) International law The claimants disagreed strongly with the Crown’s position that international law principles such as contra proferentem, in dubio mitius, and informed consent – as well as the very body of legal principles known as ‘international law’ – have developed only since 1840. Counsel for Te Rarawa submitted that the recognition of binding international obligations had existed in Europe for centuries and, arguably, had its roots in laws agreed between states several thousand years ago. Contra proferentem had been an established part of British common law for 200 years. As an example of an important pre-treaty work on the subject, she cited Henry Wheaton’s 1836 Elements of International Law. She submitted that McHugh had argued that there was no ‘international law’ in the 1830s because such law could not be enforced, and she argued that this was wrong, because even today, international law cannot be enforced in the way that domestic law can be.303 Thornton likewise submitted that European legal rules around treating with indigenous people dated back to the sixteenth-century Americas and that their application in New Zealand was part of a longstanding legal tradition.304 In a similar vein, Hall described the Crown’s submission that in dubio mitius and contra proferentem could apply only to differences in detail between the texts, rather than to the wholesale preferment of one text over another, as ‘entirely

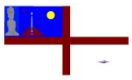




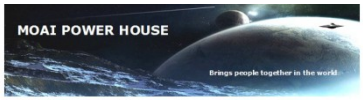








unprecedented’. She submitted that such an approach would ‘rob the rules of any substantial effect’.305 Lastly, we note a matter of disagreement between the claimants. Counsel for Te Rarawa submitted that Te Tiriti and the Treaty should be interpreted, first and foremost, under international law principles, as opposed to 9.4.3(6) Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz Claimant and Crown Evidence and Submissions 491 being considered directly under British common or constitutional law and/or under domestic Māori customary law.306 By contrast, Gilling submitted that ‘our Claimants are of the view that Te Tiriti o Waitangi should be viewed through an interpretative framework of tikanga Maori as expressed in Te Reo Maori’.307 9.5 Conclusion In this chapter, we have related the claimants’ evidence, which included some understandings of the meaning of te Tiriti and the circumstances of its signing not previously known outside tribal communities. We are grateful to the claimants for sharing their traditions with us. We were impressed by the retention of this kōrero tuku iho, and the commitment by the claimants to the take handed down to them by their tūpuna. We noted the variation of emphasis in the evidence from hapū to hapū, as one might expect, but were made well aware of the common understandings across all claimant groups. Principal among these was, of course, that Māori did not cede their sovereignty or their mana through te Tiriti in February 1840. We also appreciated the endeavours of the technical witnesses, who in our view presented their evidence professionally and without advocating for the parties for whom they appeared. These scholars have certainly contributed to an advance on the already broad and comprehensive historiography about the treaty that we discussed in the previous chapter. We also found the legal submissions of considerable value to us in helping to crystallise the issues. The large number of separate clamant groups represented in the inquiry meant we benefited from a broad range of submissions on the matters at stake. Counsel challenged our thinking on many issues. At this point in the report, therefore, we have introduced the British and Māori worlds at first encounter, traversed their increasing contact in the north, and reflected on the factors that led to their willingness in 1840 to reach an agreement on how they would henceforth live alongside each other. We have set out the detail of the making of that agreement, as it was recorded at the time, and the perspectives on the treaty that have developed since then. In this chapter, we have summarised the evidence and submissions placed before us during our own inquiry, by claimants, historians, and lawyers. It remains to provide our own conclusions on the fundamental questions that arise. These are momentous questions indeed. What was the meaning and effect of the treaty in February 1840 ? Did Māori cede their sovereignty to the British Crown, or anticipate a different arrangement ? Was Hobson to be the equal of the rangatira, or was his authority to be superior ? It is these matters we turn to next. Notes 1. Document A30(a), p3 2. Document A25, p1 3. Ibid, p2 4. Ibid, pp6, 94 5. Document A25(b), pp5–6, 12 6. Transcript 4.1.1, p20. As an example, when telling us about whakapapa, Hōne Sadler remarked, ‘You must listen carefully because . . . this will be the first time that you have heard this’ : transcript 4.1.1, p160. 7. Judith Binney, ‘Maori Oral Narratives, Pakeha Written Texts : Two Forms of Telling History’, NZJH, vol 21, no1 (1987), p16 8. Waitangi Tribunal, Muriwhenua Land Report (Wellington : GP Publications, 1997), p3 9. See, for example, submission 3.3.35, p3. 10. Document C2, pp14–15 11. Transcript 4.1.1, pp245, 249 12. Ibid, pp245–247, 249–250 13. Ibid, pp215, 221 as adapted by the Tribunal 14. Document B14, p5. It is not clear whether the missionaries were present at these discussions. 15. Document A20, p102 16. Document A25, p61 17. Ibid, p63 18. Ibid, pp60–63, 65 19. Ibid, p62 20. Transcript 4.1.1, p50 21. Ibid, pp254, 263 22. Ibid, p300 23. Joan Metge, Tuamaka : The Challenge of Difference in Aotearoa New Zealand (Auckland : Auckland University Press, 2010), pp5–6 ; submission 3.3.2, pp124–125 24. Document A32(c), pp4–5 25. Document A30(c), p6 26. Document C10(a), p7 9-Notes Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz He Whakaputanga me te Tiriti The Declaration and the Treaty 492 27. Transcript 4.1.4, p182 28. Document D4, p63 29. Document C18(a), p14 ; transcript 4.1.3, pp152–153 30. Document D4, p48 31. Document A24, p21 32. Document A25, p92

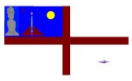




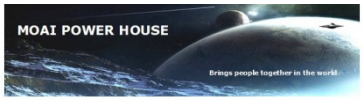








33. Ibid, pp92–94 34. Document D4, p40 35. Document A24, p26 36. Document D2, pp11, 12–13 37. Document A30(a), pp4–5 38. Document D2, p10 39. Margaret Mutu, Te Whānau Moana : Ngā Kaupapa me Ngā Tikanga – Customs and Protocols (Auckland : Reed, 2003), p223 40. Document D4, pp51, 54, 63 41. Ibid, pp52–53 42. Transcript 4.1.4, p119 43. Document A25, p93. Edwards used the word ‘masquerade’ instead of ‘mask’. 44. Transcript 4.1.4, p120 45. Document B14, p8 46. Document D4, p21 47. Ibid, p56 48. Document B13(a), pp15–16 49. Document A30(a), p2 50. Document A25, p65 51. Ibid, pp63–64 52. Document D2, p18 53. Document D4, p63 54. Document B13(a), p15 55. Document C19, p15 56. Document A34, p14 57. Document D9, pp15, 32 58. Transcript 4.1.3, pp152–153. We note that the Active was Marsden’s mission ship ; Hobson’s ship was HMS Herald. 59. Document B10, p8 60. Ibid, p79 61. Document A25, pp71–72 62. Ibid, pp72–73 63. Ibid, p84 64. Transcript 4.1.4, pp48, 53 ; doc D9, p33 65. Document A25, p69 66. Document D9, pp18, 34–35 67. Transcript 4.1.1, p310 68. Document D2, p18 69. Document B18(a), pp24, 38 70. Document A25, pp75–80 71. Document A22, pp18, 24. Kawharu also concluded that, because kāwanatanga ‘had no cultural origin’, it ‘was not understood’ : doc A20, p99. 72. Document A22, pp24–25 73. Ibid, p22 74. Ibid, p23 75. Ibid, p17 76. Ibid, p24 77. Carpenter argued that Dr Samuel Johnson’s dictionary of the English language, first published in 1755, helped define the language at the time as well as into the nineteenth century : doc A17, p7 n25. 78. Ibid, pp159–160 79. Document A19(a), p23 ; see also transcript 4.1.3, pp257–258 80. Document A17, pp161, 165 81. Document D1, p94 82. Document A19, pp74, 77 83. See doc A21, pp5–6, 44 ; see also doc A19(a), p75 84. Document D1, p88 85. Document A19(a), p39 ; doc A17, p163 86. Document A17, pp161–163 87. Document A19(a), p24 88. Document A17, pp84–85 ; doc A19, pp83–84 89. Document A19(a), p39 90. Document D1, p18 91. Document A1, p276 92. Ibid, p278 93. Document A19, p75 94. Document A17, p195 95. Document A19(a), p29 96. Document A22(d), pp4–5 97. Ibid, p12. See Hugh Carleton, The Life of Henry Williams, 2 vols (Auckland : Upton and Wilsons and Horton, 1874–77), vol 1, p7, where we note in this regard that Carleton, Williams’s biographer and sonin-law, wrote of Williams : ‘When duty was once in question, he would not – perhaps could not – see or think of anything beyond that duty. [He was born] with an instinct of order, which manifested itself in the smallest details of domestic life, and which was developed, through that noblest school of training – the British navy, into the most punctilious regard for discipline.’ See also doc A17, pp10–11. 98. Document A22, p10 99. Document A19, p111 100. Document A19(a), pp56–58 101. Document A17, pp166–167 102. Document A1, p273 103. As we have seen, Williams’s original draft of te Tiriti theoretically kept by Taylor has not been located. 104. Document D1, p9 105. Document A19(a), p81 106. This idea was supported by counsel appearing for Edwards : see submission 3.3.37, p168. 107. Document A1(a), pp2, 5–8 108. Ibid, pp4–5 109. Ibid, p9 110. Ibid, p6 111. Phillipson wrote (doc A1(a), pp5–6) : ‘Erima Henare’s evidence, which is sourced to Ngati Hine whare wananga, states that hui and discussions about possible arrangements with the new Governor 9-Notes Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz Claimant and Crown Evidence and Submissions 493 took place for about a month leading up to 6 February. The food at Waitangi was exhausted by the end of that time, hence the recorded trouble of feeding so many guests. According to this oral tradition, more than one document was drafted and debated during that time, in anticipation of Hobson’s arrival.’ It seems clear to us that Erima Henare’s mention of the drafting of different documents was a reference to Edwards’s kōrero, not to his own tradition of a January 1840 gathering. 112. Document A22(d), pp19–20 113. See memoranda 2.5.42 and 2.5.46 114. Submission 3.1.295, pp3–4 115. Document A18, p196 116. Document A1, p285 117. Document A22, p74 118. See Orange, The Treaty of Waitangi, pp82–83 119. Document A1, p280 120. Ibid, p280 121. Ibid, pp218–282 122. Mathew summarised the day’s proceedings thus (doc A1, pp282– 283) : ‘During the whole ceremony with the chiefs, nothing was more remarkable than the very apt and pertinent questions which they asked on the subject of the treaty, and the stipulations they made for the preservation of their liberty and perfect independence.’

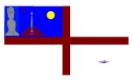




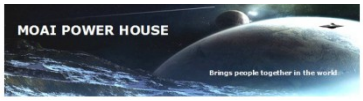








123. Document A19(a), p40 124. Document A1, p296 125. Ibid, p284 126. Document A18, pp239–240 127. Document A19, p112 128. Document A19(a), pp25–26, 29 129. Document A18, p198 130. Document A17, p141 ; doc D1, p22 131. Document A22, p10 132. See Peter Low, 'Pompallier and the Treaty : A New Discussion', NZJH, vol 24, no2 (1990), p196 133. Document A19, p111 ; doc A19(a), pp41, 58 134. Document A19(a), pp41–42 135. Document A1(a), p3 136. Document A1, p264 137. Ibid, p264 138. Document A22, p31. This was a general comment on Salmond's part ; she did not give specific examples. 139. Document A5, pp37, 40 140. Document A19(a), p80 141. Ibid, p61 142. Document A1, p298. Phillipson wrote this not in the context of the titiri tuatahi story but in his earlier, main report. 143. Ibid 144. Document A19(a), pp61–62 145. Document D1, p100 146. Ibid, pp100–101 147. Document A22(d), pp9–10 148. Document A22(b), pp1–2 149. Document A17, p143 150. Document A22, pp86–87 151. Ibid, p87 152. Ibid 153. Ibid, pp88–89 154. Document A1, pp287, 292 155. Ibid, pp250, 256 156. Ibid, pp302–303 157. Ibid, p284 158. Ibid, pp264, 283–284 159. Ibid, p302 160. Document A5, p47 161. Document A20, p97 162. Document B3, p82 163. Document A19(a), p29 164. Ibid, p30 165. Ibid, pp31–32 166. Ibid, pp30–31 167. Ibid, pp38–40 168. Ibid, p43 169. Ibid, pp44–45 170. Document A19(c), pp18, 31 171. Document A18, pp237–240 172. Document A18(a), pp37–38 173. Document A21, p73 174. Ibid, p68 175. Ibid, pp94–95 176. Ibid, p96 177. Ibid, pp71–72, 96–97 178. Document A19(a), p33 179. Document A18(a), p28 180. Document A18, p241 181. Transcript 4.1.4, pp553–556 182. Ibid, pp606–607 183. Submission 3.3.15, pp43–45 184. Submission 3.3.28(a), pp97, 101 ; submission 3.3.19, pp5, 19 185. Submission 3.3.14, pp85–86 186. Submission 3.3.13, pp30–31, 40–41 187. Submission 3.3.2, pp9–10, 92, 108 ; submission 3.3.3, p22. Other counsel also submitted that Carpenter's evidence should be given 'minimal weight' : submission 3.3.28(a), p12. 188. Submission 3.3.2, pp77–78, 84–88, 143, 157–158 189. Ibid, pp168–169 190. Submission 3.3.14, p45 ; submission 3.3.26, pp38–39 ; submission 3.3.30, p53 191. Submission 3.3.35, p3 192. Submission 3.3.21, p31 ; submission 3.3.2, p125 193. Submission 3.3.20, p27 194. Submission 3.3.13, p16 ; submission 3.3.24, pp2, 16 ; submission 3.3.11(c), pp46, 48 195. Submission 3.3.11(c), pp48–49 196. Ibid, pp52–55 9-Notes Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz He Whakaputanga me te Tiriti The Declaration and the Treaty 494 197. Submission 3.3.2, pp16–17 198. Submission 3.3.15, pp3, 15, 34 199. Submission 3.3.30, p9 200. Submission 3.3.11(c), pp26–28 201. Submission 3.3.6(a), p8 202. Submission 3.3.20, pp28–29 203. Submission 3.3.24, pp16, 20 204. Submission 3.3.14, pp59, 78 205. Submission 3.3.11(c), pp71–72, 80–81 ; submission 3.3.30, p33 206. Submission 3.3.24, p23. Dr Gilling similarly thought it reasonable for each party at Waitangi to think the other understood their own position : submission 3.3.2, p197. 207. Submission 3.3.24, p23 ; submission 3.3.26, p39 ; submission 3.3.21, p35 208. Submission 3.3.2, pp197–201, 231–234 209. Ibid, pp194, 199 210. Submission 3.3.11(c), pp59–60, 64–67 211. Submission 3.3.24, pp8–9 ; submission 3.3.23, p7 ; submission 3.3.2, pp115, 121, 177 ; submission 3.3.14, pp71–73, 91 212. Submission 3.3.23, p7 213. Submission 3.3.11(c), p66 ; submission 3.3.30, p88 ; submission 3.3.21, pp30, 39 214. Submission 3.3.18, p3 215. Submission 3.3.11(c), p46 216. Submission 3.3.24, p29 217. Submission 3.3.28(a), pp18, 88–89, 95 218. Submission 3.3.13, pp27, 40–41 219. Submission 3.3.14, pp63–64 220. Submission 3.3.23, p7 ; submission 3.3.11(c), p78 221. Submission 3.3.11(c), p45 222. Submission 3.3.26, p38. We note that, while counsel referred here to the English text, they in fact were dismissing the appearance of Mene having signed te Tiriti. 223. Submission 3.3.18, p9. We suspect here that counsel have misinterpreted Gibbs-Smith's concern, which was not with the English text but with the treaty overall, and in particular its effect on the status of he Whakaputanga. 224. Submission 3.3.35, pp12–13 225. Submission 3.3.30, p35 ; submission 3.3.5, p5, para 12 ; submission 3.3.32, p2, para 3 226. Submission 3.3.18, p3 ; submission 3.3.26, p28 227. Submission 3.3.11(c), pp37–43. Counsel for Ngāti Kuta, Patukeha, and Ngāti Kahu also stressed the existence at the time of the treaty of these rules of treaty interpretation, citing Henry Thomas Colebrooke, Treatise

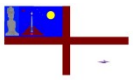




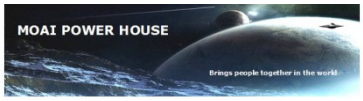








on Obligations and Contracts (London : C Rowoth, 1818). See submission 3.3.14, p83. 228. Submission 3.3.11(c), pp12–13, 16–20, 32, 33–34 229. The term ‘authentication’ refers to the procedure whereby the ‘text of a treaty is established as authentic and definitive’. Once a treaty has been authenticated, states cannot unilaterally change its provisions. If states which negotiated a given treaty do not agree on specific procedures for authentication, a treaty will usually be authenticated ‘by signature, signature ad referendum or initialling by the representatives of those States’. See article 10, Vienna Convention on the Law of Treaties 1969. 230. Submission 3.3.11(c), pp34–37. Hall likewise submitted that the two texts were too different to reconcile and that, given the ‘unequal negotiation, drafting and consequence’ that characterises ‘a treaty of cession with indigenous peoples’, the treaty ‘ought not to be treated in the current ordinary manner of bilingual treaties’ : submission 3.3.24, p7. 231. Submission 3.3.30, p10 232. Submission 3.3.13, p12 233. Submission 3.3.11(c), p44 234. Submission 3.3.13, p33 235. Submission 3.3.11(c), pp81–82 ; submission 3.3.20, p4 ; submission 3.3.23, p14 ; submission 3.3.2, pp208, 211 236. Submission 3.3.23, p3 237. Transcript 4.1.5, p273 238. Submission 3.3.23, p9 239. Ibid, pp10–11 240. Ibid, pp12, 14 241. Ibid, pp52–58 242. Submission 3.3.30, pp12–17 243. Ibid, p86 244. Submission 3.3.24, p4 245. Submission 3.3.30, p65. Counsel for Te Kapotai likewise asked the Tribunal to remember ‘that the historiography of the Treaty of Waitangi is confused, and it has been prone to persistent anachronism and is inherently bias[ed]’ : submission 3.3.21, p7. 246. Submission 3.3.6(a), p10 247. Submission 3.3.33, pp5–6 248. Ibid, pp6–7 249. Ibid, pp46–48 250. Ibid, pp178–179 251. Ibid, p86 252. Ibid, pp85–100 253. Ibid, p98 254. Ibid, pp94–95 255. Ibid, pp104–117. The 10 back-translations cited by Crown counsel were the three provided to JR Clendon (those of Gordon Davis Brown, James Busby (the ‘Littlewood’ document), and an anonymous translator) and those produced or published by Richard Davis, Samuel Martin, Henry Williams (in his 1847 letter to Bishop Selwyn), TE Young, Sir Hugh Kawharu (both his literal and ‘reconstructed’ translations), and Parkinson (his ‘new synthesis’ of 2005). Despite including all ‘known back-translations of the Māori text made prior to this inquiry (from 1840 through to the late 1980s)’, counsel omitted that of Edward Jerningham Wakefield published in Adventure in New Zealand, from 1839 to 1844, 2 vols (London : John Murray, 1845), which Parkinson had earlier included in his own study of back-translations (see Parkinson, ‘Preserved in the Archives of the Colony’, p95 n65). This was because Parkinson had called it ‘a ‘mocking version’ composed by Wakefield for ‘humorous effect’ ‘to defend the failing New 9-Notes Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz Claimant and Crown Evidence and Submissions 495 Zealand Company’ (submission 3.3.33, p121 n373). For a fuller discussion of all back-translations, see chapter 7. 256. Submission 3.3.33, pp122–126 257. Ibid, pp127–141 258. Ibid, pp65 259. Ibid, pp141–144 260. Ibid, pp77–78 261. Ibid, p146 262. Ibid, pp151–161 263. Ibid, pp160, 162–163 264. Ibid, p171. In this regard, counsel rejected Gilling’s ‘overly legalistic approach’ in cross-examining Ward about the extent of a ‘meeting of minds’. There was considerable agreement between Māori and the Crown, said counsel : submission 3.3.33, p180. 265. Submission 3.3.33, pp172, 175 266. Ibid, pp181–185 267. Ibid, p189 268. In submission 3.3.39, p2, counsel for Ngāti Korokoro, Ngāti Wharārā, and Te Poukā likewise submitted that ‘The Crown fails to address the substantial body of evidence from claimant witnesses who provided insight into the Maori world view, the evolution of Maori politico-legal thought and of early Maori society from the time of Kupe.’ 269. Submission 3.3.37, pp12–13, 32, 35, 157–158 270. Ibid, p14 271. Submission 3.3.36, p3 ; Waitangi Tribunal, The Ngai Tahu Report 1991, 3 vols (Wellington : Brooker and Friend Ltd, 1991), vol 2, pp222–223. A similar submission was made by counsel for Ngā Hapū o Whirinaki : submission 3.3.38, para 7. 272. Submission 3.3.51, p142 273. Submission 3.3.37, pp126–128 274. Ibid, pp130–131 275. Submission 3.3.39, p3. David Stone and Augencio Bagsic (who represented 64 separate claims) also described the Crown’s perspective on whether mana was the correct term to translate sovereignty as ‘ethnocentric’ : submission 3.3.46, p7. 276. Submission 3.3.49(a), p37 277. Submission 3.3.50, pp3, 5 278. Submission 3.3.51, p118 ;

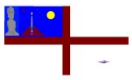




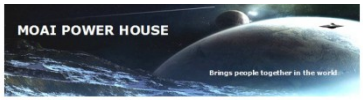








submission 3.3.44, p7 279. Submission 3.3.51, pp115–116 280. Submission 3.3.49(a), pp30–31, 34–35 281. Submission 3.3.37, p160 282. Submission 3.3.51, pp132, 136 283. Submission 3.3.37, pp45–46 284. Submission 3.3.51, pp84–85 285. Submission 3.3.40, pp4, 6 286. Submission 3.3.37, pp155–156 287. Submission 3.3.40, pp6–7 288. Submission 3.3.50, p10 289. Submission 3.3.45, para 13 290. See transcript 4.1.5, p311 291. Submission 3.3.50, p9. In submission 3.3.42, p11, counsel for Ngāti Korokoro and Te Poukā submitted that it was in any event normal for Māori to expect that British settlers would live under a separate authority : 'It was in line with what hapu had been practising for centuries. Many hapu lived side by side with different tikanga very successfully.' 292. Submission 3.3.40, p13 293. Submission 3.3.37, p94. Stone and Bagsic made a similar point : submission 3.3.46, p6. 294. Submission 3.3.40, p10 295. Submission 3.3.51, pp120–125 296. Submission 3.3.43, pp1–2 ; submission 3.3.33, pp102, 148 297. Submission 3.3.40, pp11–12 298. Submission 3.3.51, p115 299. Submission 3.3.49(a), pp8, 48–49 300. Submission 3.3.40, p10 301. Submission 3.3.51, pp64–65, 70–71, 126 302. Submission 3.3.47, p2 303. Submission 3.3.51, pp23–28, 38 304. Submission 3.3.44, pp2–7 305. Submission 3.3.47, p2 306. Submission 3.3.51, p7 307. Submission 3.3.37, p185 9-Notes Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz 497 Chapter 10 Our Conclusions 10.1 Introduction When te Tiriti was signed in February 1840 at Waitangi, Waimate, and Mangungu, what did it mean to the parties involved ? Did the rangatira who signed it cede sovereignty to the Crown, and thereby grant the Crown the power to make and enforce laws applying to Māori territories and communities ? If not, what was the nature of the relationship that rangatira and the Crown assented to ? What commitments did they make to one another ? We are now ready to answer these questions. We arrive at this point having examined a very full range of evidence about the relationship between the British and Māori of the Hokianga and Bay of Islands, from the time of first contact through to those first treaty signings. We have considered, in chapter 2, the differing systems and concepts of law and authority that Māori and the British brought into the relationship – the Māori system structured around autonomous but related hapū, and the British system based on a single, overarching, sovereign power vested in Parliament. We have examined the history of the relationship from the earliest encounters between Māori and Captain James Cook onwards. In chapter 3, we saw that Bay of Islands and Hokianga rangatira engaged with the outside world and the opportunities it offered, with many journeying to Port Jackson, London, and other places where they forged relationships with British leaders. Whalers, traders, missionaries, runaway convicts, and others came to New Zealand in growing numbers during the early decades of the nineteenth century, and sometimes challenged Māori systems of law and authority. As French political and commercial interest grew in this part of the world, Māori aligned themselves with Britain and sought British protection against perceived French threats. When Hongi Hika met King George IV in London in 1820, he initiated a relationship that – to Māori, we were told – was one of enduring alliance and friendship. In 1831, some 13 rangatira petitioned King William IV, seeking British protection from a perceived threat of French invasion, and asking the King to control troublesome British subjects, who otherwise would face 'te riri' (the anger) of the Māori people.1 In 1832 Britain appointed its first official representative in New Zealand, the British Resident James Busby ; and in 1834, Māori of the Bay of Islands and Hokianga attended a hui that Busby had called at Waitangi, where they adopted a national flag. In chapter 4, we examined the origins, creation, and meaning and effect of He Whakaputanga o te Rangatiratanga o Nu Tireni – a translation of an English text drafted Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz He Whakaputanga me te Tiriti The Declaration and the Treaty 498 by Busby and known as The Declaration of Independence of New Zealand. In he Whakaputanga, which was signed in 1835, rangatira responded to a perceived foreign threat to their authority by declaring that they, and they alone, possessed rangatiratanga, kīngitanga, and mana over their territories. They also asked for King William IV to provide protection

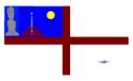




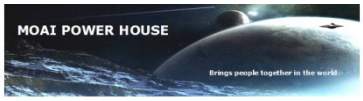








against foreign threats to their rangatiratanga, just as they would protect British subjects in New Zealand. In chapter 5, we considered the impact on Bay of Islands and Hokianga Māori of increased contact with Europeans as traders, settlers, missionaries, and others arrived in increasing numbers. We noted that, at the end of the 1830s, Māori continued to vastly outnumber Europeans in the Bay of Islands and Hokianga, and we concluded that, although there were challenges to their authority, Māori remained in control of almost all Bay of Islands and Hokianga territories at the end of that decade. In chapter 6, we traced the history of official British policy regarding New Zealand, culminating in the arrival of William Hobson in 1840 with instructions to treat with the aborigines of New Zealand in the recognition of Her Majesty's sovereign authority over the whole or any part of those Islands which they may be willing to place under Her Majesty's dominion.2 Hobson arrived in the Bay of Islands on 29 January 1840, almost immediately proclaiming himself LieutenantGovernor and announcing that the boundaries of New South Wales had been extended to include New Zealand. An invitation was sent to rangatira to attend a hui at Waitangi, and over the first few days of February, the Treaty of Waitangi was drafted and then translated into Māori, as te Tiriti o Waitangi. On 6 February, some 43 to 46 rangatira signed te Tiriti at Waitangi. Six others signed at Waimate a few days later, and some 64 signed at Mangungu in the Hokianga on 12 February. In chapter 7, we described in detail how the treaty was drafted and translated, the wording of each of its articles in both English and Māori, how it was explained to rangatira, and what discussions they had both with Hobson and among themselves. We also described the signings. We concluded that chapter by noting that, in May 1840, Hobson proclaimed British sovereignty over the North Island on the basis of cession through the treaty, and the South Island on the basis of discovery. In chapter 8, we considered how the treaty has been interpreted in New Zealand scholarship and by courts and other Tribunal panels. In particular, our focus was on what has been written since the early 1970s, and on what scholars, courts, and the Tribunal have said about the differences between the treaty's Māori and English texts. In chapter 9, we set out the views of the parties to this inquiry and of the witnesses they and the Tribunal called. We recounted the claimants' explanations of what their tūpuna intended – their kōrero tuku iho, which they said had never before been shared in a public forum – along with the other evidence they presented. We summarised both the submissions of claimant and Crown counsel and the views of a wide range of experts in fields such as constitutional law, history, te reo Māori, and anthropology. We have taken a comprehensive approach because – as both the Crown and claimants emphasised – the treaty must be understood in its historical context. To determine what the treaty meant to its signatories in February 1840, we must first understand the parties themselves, and their relationships with each other. We must understand how their systems of law and authority worked ; the challenges each faced as a result of the contact they had prior to February 1840 ; and their motives and intentions as they came to debate and sign te Tiriti. Only then can we determine what those parties understood the treaty to mean, and what they believed its effect was. We remind readers that this is a contextual report – an essential first step in our inquiry into treaty claims by Te Paparahi o Te Raki claimants. The Treaty of Waitangi Act 1975 requires us to determine the treaty's 'meaning and effect' as part of our inquiry into claims by Māori that the Crown has acted inconsistently with the principles of the treaty and so has caused them prejudice. This report, which completes stage 1 of our inquiry, focuses solely on the treaty's 'meaning and effect' in February 1840. We turn to our conclusions now. Before we consider the treaty, we will recap our conclusions about the declaration. 10.1 Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz Our Conclusions 499 10.2 He Whakaputanga and the Declaration of Independence – Meaning and Effect He Whakaputanga o te Rangatiratanga o Nu Tireni was signed on 28 October 1835 by 34 leading Te Raki rangatira, almost all from the Bay of Islands and Hokianga. Over the next four years other leading rangatira from the Bay of Islands and Hokianga signed, as well as leaders from other parts of the north, and further afield. **He Whakaputanga was debated and signed in Māori, though the text**

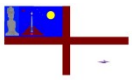




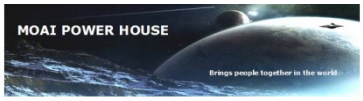








was a missionary translation from a draft in English by the British Resident James Busby. That English text, known as The Declaration of Independence of New Zealand, contained four articles. In the first article of that text, the rangatira from 'the Northern parts of New Zealand' declared their independence and also asserted that their country was an independent state. In the second, they declared that 'All sovereign Power and Authority' resided with them 'in their collective capacity' ; that they would not permit the existence of any lawmaking authority 'separate from themselves in their collective capacity' ; and that they would not permit 'any functions of Government to be exercised', except by people appointed by them and operating under the authority of their laws. In the third article, they agreed to meet 'in Congress' at Waitangi every autumn, to frame laws 'for the Dispensation of Justice, the Preservation of Peace and good Order, and the Regulation of Trade'. They also invited tribes from south of Hauraki to set aside past intertribal animosities and join them. In the fourth article, they thanked the British King for recognising the flag they had adopted in 1834. They also proposed that, in return for their friendship towards and protection of British subjects in New Zealand, the King 'continue to be the Parent of their Infant State, and . . . become its Protector from all Attempts upon its Independence'. The declaration was a response to a specific set of circumstances. In early October 1835, Busby received a letter from the Anglo-French adventurer Baron Charles de Thierry, who claimed to have acquired both sovereignty and large tracts of territory in Hokianga. De Thierry said he was coming to New Zealand to establish himself as 'Sovereign Chief '. Busby's response was to call the rangatira together and ask them what they wished to do about de Thierry, proposing that they respond to his claim of sovereignty by declaring their independent statehood. There was also a broader context. Busby had been sent to New Zealand to further British interests. In particular, he had been instructed to control disorderly British subjects, protect orderly ones, and foster goodwill between Britain and Māori. In the absence of any legal authority over anyone in New Zealand, Busby was to fulfil his instructions by working with and influencing Māori.3 Working through indigenous leaders in this manner was a characteristic of Britain's approach to empire. From the time Busby landed, his intention was to establish a congress of rangatira able to make laws for all people in the north of New Zealand, and to adjudicate in disputes. He believed that this congress would do his bidding, and so allow Britain to establish 'almost entire authority' over the north in a manner that remained consistent with its previous recognition of Māori independence.4 The Māori whom Busby encountered had their own systems of law and authority, which did not easily bend to his wishes. Among the descendants of Rāhiri, political authority resided in autonomous hapū. Rangatira played significant roles as hapū leaders and representatives, but were expected to serve hapū interests, and ultimately – like all Māori – to serve their atua. The Māori system of law centred on the imperatives of tapu and utu, handed down by atua but interpreted and applied in the temporal world by rangatira and tohunga. Though hapū were autonomous, kinship ties with other hapū created mutual obligations. Related hapū had long traditions of meeting regularly and acting together as circumstances demanded. At times they shared resources, worked together in communal gardens, and formed alliances to fight alongside each other against people who were unrelated or more distantly related. To some of the claimants, it was this combination of hapū authority and autonomy, close kinship ties, and the ability to act in concert with others where that served hapū interests, that defined the Bay of Islands and Hokianga system of political authority. In contrast, the congress that Busby hoped to establish would have power to make laws for all. 10.2 Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz He Whakaputanga me te Tiriti The Declaration and the Treaty 500 In other words, it would be a higher authority to which hapū would be subordinate. For rangatira to take part, they would have to set aside hapū interests and agree to be bound by collective decisions. On this, Busby's approach differed from that of the Additional British Resident in the Hokianga, Thomas McDonnell, who had recently been involved in the adoption – by a meeting of rangatira and Europeans – of a 'law' banning imports of liquor in the Hokianga. Busby saw this local initiative as undermining his

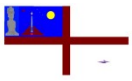




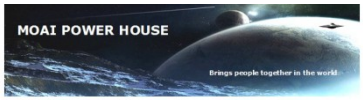








goal of establishing a congress of all rangatira. When Busby called rangatira together to discuss de Thierry's intentions, he was seizing on an opportunity to declare the existence of that congress, as well as dealing with the immediate threat apparently presented by de Thierry. When the rangatira gathered at his residence on 28 October 1835, he presented them with he Whakaputanga, the Māori-language translation of the Declaration. He advised them that by signing it they could see off de Thierry and any other foreign pretenders who might lay claim to their authority. In he Whakaputanga 'Independence' was translated as 'Rangatiratanga', and 'independent State' as 'Wenua Rangatira'. 'All sovereign Power and Authority' was translated as 'ko te Kingitanga ko te mana i te wenua', law as 'ture', and 'any functions of Government' as 'Kawanatanga'. He Whakaputanga referred to the gathering of rangatira variously as 'to matou huihuinga', 'te Wakaminenga o nga Hapu o Nu Tireni', and 'te wakaminenga o Nu Tireni' ; and it used another term, 'te runanga ki Waitangi', for the proposed future gatherings at Waitangi. None of these terms conveyed Busby's intention that all sovereign power would rest with rangatira only 'in their collective capacity'. The King was asked to be 'matua' (parent) to the rangatira and to protect them against threats to their 'Rangatiratanga'. Rangatira debated he Whakaputanga at length, and signed for their own purposes. It was they alone who signed – there were no British signatories. Both the Crown and the claimants agreed that the declaration was an unambiguous assertion of its signatories' authority in relation to their territories. Specifically, though the claimants argued that mana and sovereignty are far from interchangeable concepts, they submitted that he Whakaputanga amounted to a declaration of both, on grounds that mana amounted to supreme authority within a particular territory.5 The Crown's view was that he Whakaputanga was 'a clear assertion of sovereignty and independence by those rangatira who signed it'.6 Crown counsel said that, prior to the declaration, the Crown had not claimed sovereignty over New Zealand, and the declaration 'did nothing to change that'.7 In terms of where sovereignty was to reside, Crown counsel submitted that the declaration proposed the establishment of 'a supreme confederative form of sovereignty in one new entity, te Whakaminenga', which was to have 'power to make laws for the hapū of signatory rangatira'. However, the proposed annual assembly never met, and so 'hapū autonomy remained intact'.8 This left the signatories with 'a form of sovereignty and independence that was consistent with hapū autonomy'.9 In the absence of a functioning legislative assembly with powers over all, Crown counsel submitted, Britain's response to the declaration amounted to a recognition of 'tribalised' Māori sovereignty.10 The claimants argued that, notwithstanding Busby's intentions, the rangatira who signed he Whakaputanga never intended to create a supreme legislature. Rather, the claimants said that the signatories to he Whakaputanga saw 'te Whakaminenga' as a gathering of the leaders of autonomous hapū ; and the agreement by rangatira to meet each year did not imply any transfer of authority from hapū to another body.11 Some claimants argued that te **Whakaminenga had already existed for many years as a formal gathering of the rangatira,12 and that those gatherings continued after 1835 without European involvement**.13 Both the Crown and claimants saw article 4 as strengthening and deepening the relationship between northern Māori and Britain, and as involving a request for British protection against foreign threats to Māori sovereignty and independence.14 The claimants also emphasised the mutually beneficial nature of this alliance, involving as it did Māori protection of British interests as well as British protection of Māori from threats to their rangatiratanga,15 whether this meant protection from foreign threats or protection from harm caused by Europeans in New Zealand.16 10.2 Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz Our Conclusions 501 In terms of its overall constitutional effect, Crown counsel submitted that the declaration 'expressed the aspiration of rangatira to establish a functioning nation state', but said that no state was in fact established.17 **Many claimants saw he Whakaputanga as both a sacred document, and a founding document of Ngāpuhi nationhood, though there were differing views among claimants about whether such a state already existed prior to he Whakaputanga,** whether he

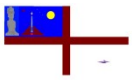








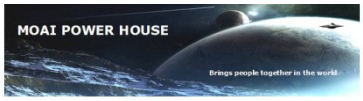




Whakaputanga established one or whether it merely heralded an intention to establish one.18 Several claimants told us the purpose of the declaration was to ensure that the mana and tikanga of northern Māori endured within their territories : 19 as Erima Henare put it, ‘what our people hoped for in He Whakaputanga was that the Māori worldview would remain dominant in this country’.20 In our view, to understand the meaning and effect of he Whakaputanga, it is important to acknowledge the specific context in which it was signed. The rangatira had gathered at Waitangi because Busby had told them of a foreigner who wanted to be their king and take their land, and the Resident was seeking their response. Unsurprisingly, they said no. There can be no doubt that he Whakaputanga was a resounding declaration of the mana and rangatiratanga of those who signed it on behalf of their hapū. Nor can there be any doubt that it amounted to a declaration of sovereignty and independence of those hapū ; on that, the claimants and the Crown agreed. **We have defined sovereignty as the power to make and enforce law.** In he Whakaputanga, rangatira explicitly declared that no other person or group would be permitted to make laws within their territories, nor to exercise functions of government except under their authority and in accordance with their laws and decisions. Busby’s clear intention was that sovereignty would reside with rangatira ‘in their collective capacity’, and that the proposed assembly –

te Whakaminenga – would have power to make law that was binding on the hapū of signatory rangatira.

While those intentions were clear in the English text, they were not reflected in the Māori translation. In unpublished personal writings some time afterwards, Busby claimed to have told rangatira of his intentions, only for them to explain that it would be impossible to bind all of them to majority decisions : hapū would continue to act independently after he Whakaputanga as before. In our view, rangatira did not agree to any transfer of authority from hapū to a supreme decisionmaking body. Indeed, as many claimants told us, it was simply inconceivable that rangatira could transfer their mana in the way Busby was proposing. It is clear from Busby’s dispatches to New South Wales Governor Richard Bourke that he knew **no transfer of authority from hapū to a collective was taking place on 28 October 1835**, and no supreme legislature was actually being created, even if the English text said otherwise.21 Bourke believed **Busby’s attempt to establish a legislature was ‘premature’ and instructed the Resident to work instead with hapū leaders. In other words, neither Māori nor British officials in 1835 actually believed a supreme legislature had been created,** and nor did they believe that hapū had relinquished any authority. While rangatira agreed to meet annually at Waitangi, they would have seen this simply as an extension of the traditional practice of gathering when there were important matters to discuss. In the case of he Whakaputanga, they agreed to meet in order to frame ‘ture’. They might have understood ‘ture’ as laws, guidelines, or simply decisions, but would certainly have seen these as a European form of rules, distinct from tikanga or ritenga. These ture were to concern specific matters : justice, peace, good order, and trade. The word ‘ture’, the purposes for which ture would be framed, and the context (a perceived foreign threat) all suggest that these rules or decisions would be aimed principally at challenges that were created by contact with Europeans. We do not think that rangatira saw the proposed gatherings as being intended to make ture that would apply to the exclusively Māori world : that is, to intertribal or inter-hapū relations, or to hapū and whānau. Overall, then, in accepting Busby’s invitation to meet and make ture, rangatira did not relinquish hapū authority to a supreme legislature, and nor indeed did they agree to set aside tikanga in favour of western-style law. They simply agreed to meet as leaders of autonomous hapū, to hold discussions about the actions of foreigners in their territories, and to reach agreements where they 10.2 Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz He Whakaputanga me te Tiriti The Declaration and the Treaty 502 could. That, of course, was what

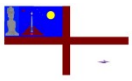




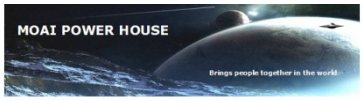








they were doing when they met and debated he Whakaputanga – acting not as a novel or distinct decision-making body but as representatives of hapū coming together for common purpose, just as they had been doing for generations. Yet historical discussion about he Whakaputanga – meagre as it has been – has typically focused on questions of lawmaking and government. The declaration was dismissed as a failure by British observers in the 1830s, and by many commentators since, precisely because they based their understanding on Busby's English text, in which it was intended to establish a supreme legislature which never subsequently operated. In our view, the focus on these matters has distracted attention from the broader significance of he Whakaputanga in its assertion of Māori authority, rejection of foreign authority over Māori people and territories, and pursuit of an alliance with Britain to those ends. This brings us to the meaning and effect of article 4. The text in both English and Māori referred to a mutually beneficial relationship between Māori and Britain, in which each would protect the other's interests where it was in their power to do so. The description of the king as 'matua' in our view did not imply British superiority except in international affairs, and there the request was not for Britain to usurp Māori authority but to foster it and protect it from foreign threat. The rangatira who signed he Whakaputanga had previously sought to align with Britain for exactly that purpose, as well as to advance trade. We think they would have seen article 4 as deepening what they understood as a mutually beneficial alliance, through which Britain would support and foster Māori in their emerging international relationships, as it had with the adoption of the flag. Busby later sought to present the article as a request that New Zealand be placed under Britain's protection, in an arrangement that would see British officials carrying out the functions of government under the nominal authority of a Māori legislature, which would enact laws proposed by the British.22 This, however, reflected his own political motivations and cultural preconceptions, as well as his concerns about inter-hapū conflict and about violence by British subjects in the Bay of Islands around the time he was writing. It did not reflect what was actually said in he Whakaputanga. In summary, then, he Whakaputanga was a declaration by rangatira in response to a perceived foreign threat to their authority, in which they : ы emphatically declared the reality that rangatiratanga, kīngitanga, and mana in relation to their territories rested only with them on behalf of their hapū ; ы declared that no one else could come into their territories and make laws, and nor could anyone exercise any function of government unless appointed by them and acting under their authority ; ы agreed to meet annually at Waitangi and make their own decisions about matters such as justice, peace, good order and trade involving Europeans and Māori-European relationships in their territories ; ы acknowledged their friendship with Britain and the trading benefits it brought ; and ы renewed their request for British protection against threats to their authority, in return for their protection of British people and interests in their territories. To those rangatira who signed, none of this – including the agreement to meet annually – would have implied any loss of authority on the part of either themselves or their hapū, or any transfer of authority to a collective decisionmaking body. Rather, **he Whakaputanga was an unambiguous declaration that hapū and rangatira authority continued in force – as, on the ground,** it undoubtedly did – and that Britain had a role in making sure that state of affairs continued as Māori contact with foreigners increased. Britain's immediate response to the declaration indicated that it did not see itself as being bound by Busby's actions. It had already accepted the independence of Māori hapū, and it had made an offer of friendship and alliance to Bay of Islands Māori in the King's response to the 1831 petition. The official response to the declaration in 1836 by the Secretary of State for War and Colonies, Lord Glenelg, did not take those commitments any further, and rather signalled only a very conditional willingness to protect Māori independence. But whatever Britain's official position, Busby was Britain's representative, and the 10.2 Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz Our Conclusions 503 rangatira who signed he Whakaputanga would have seen his actions as those of Britain. During 1836 and 1837 there were outbreaks of tribal conflict, rangatira lost faith in Busby's residence as a safe

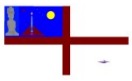












place to meet, and Busby no longer felt able to call all northern leaders together at once. To British observers, this was a failure of te Wakaminenga, since it meant that no supreme legislature was in operation and – from a British point of view – no Māori authority existed that was capable of keeping order. The critical point, however, is that for the most part hapū remained in control of their territories, and continued to act in ways that were consistent with their own system of law, both in relation to their own people and in relation to Europeans. Taua muru continued to occur against Europeans who violated tapu or failed to fulfil obligations to their hosts. Hapū continued to act separately or in concert depending on which course suited their interests, but in either case remained wholly autonomous ; cooperation or conflict depended, as it always had, on what best served atua, as expressed through tapu. There were, by the end of the decade, some signs that Māori control was coming under pressure.

In Kororāreka, local merchants had during the 1830s sought to assert their own authority ; the missions had achieved a degree of economic independence ;

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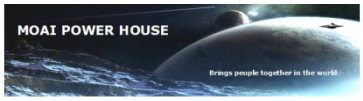
the settler population was growing and the number and scale of land transactions was increasing in ways that caused some Māori leaders concern. But these were exceptions to a general rule. Māori continued to heavily outnumber Pākehā in the Bay of Islands and Hokianga. Within their own communities, they continued to live according to Māori law. Their traditional political structures remained intact. And they had capacity to impose their own laws on resident and visiting Pākehā should it serve their interests to do so. These, then, were the circumstances as the 1830s drew to a close. 10.3 The Making of the Treaty We turn now to discuss the treaty itself, building on the entire report's narrative, and more specifically chapters 6, 7, 8, and 9. In chapter 6, we set out the factors influencing the British Government in the late 1830s to establish a greater authority in New Zealand, while in chapter 7 we described in detail the events in the Bay of Islands and Hokianga of February 1840. Chapters 8 and 9 related the perspectives on these events of both a range of commentators and the parties to our inquiry. As we have done previously, we structure our discussion around, first, the written texts of the treaty ; secondly, the oral debate that took place during the hui at Waitangi and Mangungu ; and, thirdly, the treaty's meaning and effect in February 1840. Before that, we deal with two important matters. We give our view on the motives underpinning Britain's decision to establish Crown Colony government in New Zealand ; and on whether an initial draft of te Tiriti was put to the rangatira in which they were asked to cede their 'mana', as was argued by the claimants. It is useful, at this point, to summarise the parties' positions on the treaty. Like their tūpuna in February 1840, the claimants inevitably expressed a range of views. However, all were agreed that their tūpuna had ceded neither mana nor sovereignty. Some thought that the agreement reached with the Crown was for the Kāwana merely to have control over Pākehā settlers, while others foresaw a shared authority between the chiefs and the Crown over Māori–Pākehā interaction, with the Kāwana playing a mediating role. The claimants drew these understandings from te Tiriti and from the oral debate at Waitangi and Mangungu, and not at all from the English text of the treaty, which they regarded as having been entirely irrelevant to their ancestors' decisions at that time. Moreover, the claimants regarded he Whakaputanga as the parent document to te Tiriti. Given the repetition in te Tiriti of key terms such as rangatiratanga and kāwanatanga, the claimants did not regard he Whakaputanga as superseded by it. Some claimants used the principles of international law to reinforce their interpretations. By contrast, the Crown, while acknowledging that there were several points of agreement between it and the claimants, contended that the rangatira had agreed to cede sovereignty.

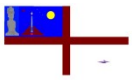








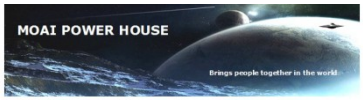




This was because they had agreed to have a kāwana at the head of a government exercising authority over them, and ‘sovereignty’ was understood 10.3 Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz He Whakaputanga me te Tiriti The Declaration and the Treaty 504 at the time as meaning ‘civil government’ and ‘especially government by legislation’.23 That, the Crown stressed, was the authority the rangatira agreed to cede. Crown counsel emphasised that the speeches of those who opposed the Kāwana having the power to govern them were evidence that the chiefs understood the treaty in this way. Counsel also submitted that sovereignty was explained fully both at the hui on 5 February at Waitangi and later that evening as the chiefs gathered at Te Tou Rangatira to reflect on whether to agree to te Tiriti.24 With those differences in mind, we begin by assessing the intentions behind Britain’s decision to acquire sovereignty in New Zealand, and how it planned to put this into effect. 10.3.1 Why and how did the British seek to acquire sovereignty in New Zealand ?

In the 1830s, the British Empire, as we explained in chapter 3, extended to many parts of the globe and consisted of settled colonies, spheres of economic interest, and all points in between. This was a great deal for even the most powerful nation in the world to contend with, and wherever the Colonial Office could, it maintained its strategic and trading interests without establishing formal authority. In the South Pacific, the Colonial Office saw many reasons for Britain not to expand its formal empire, in particular that the success of trade and commerce there did not require it. The strong presence of the missionaries and their opposition to any form of colonisation, as well as the sense that the penal colonies in Australia were a more than sufficient formal British presence in the region, were also factors. While New Zealand’s size and natural resources meant it was regarded as a special case, Britain still saw no need to increase the level of its formal presence until the late 1830s.

25 However, a clear contrast had long existed between the attitudes of those at the centre of the empire and the colonial officials at the periphery, in New South Wales. As trade with New Zealand had continued to develop, the authorities in New South Wales feared it might be disrupted by violent treatment of Māori by the masters of British ships and the resulting risk of retaliation. In 1804, for example, one captain was charged with ‘firing on the Natives of New Zealand, and flogging them on board the ship’.26 Governor Philip Gidley King issued an order the following year protective of Polynesian seafarers in New South Wales, explaining that it was ‘of the utmost consequence to the interest and safety of Europeans frequenting those Seas, and more particularly the South Sea Whalers, that these people should suffer no ill Treatment’.27 Missionaries like Samuel Marsden also lobbied King’s successors about the need to protect Māori, and in 1813 New South Wales Governor Lachlan Macquarie issued an order that went further than King’s by asserting his authority to punish serious criminal acts committed in New Zealand itself. Macquarie noted that the unjust behaviour of British sailors in New Zealand had at times led ‘to the indiscriminate Revenge of the Natives of the said Islands, exasperated by such Conduct’, and that this in turn had greatly endangered ‘further Trade and Intercourse with the said Islands’.28 The following year, Macquarie issued another order that referred to New Zealand as a ‘dependency’ of New South Wales (see chapter 3). Macquarie’s orders did not bear close legal scrutiny, for New Zealand lay outside Britain’s jurisdiction – a matter made clear by the Murders Abroad Act 1817, which specifically referred to New Zealand as being among ‘Countries and Places not within His Majesty’s Dominions’. Further Imperial Acts of 1823 and 1828 established New South Wales courts with jurisdiction to deal with crimes committed in New Zealand. But these measures too were ineffective unless the perpetrators returned or were brought back to British territory. It was clear that gaining effective jurisdiction would require arrangements with rangatira, but after 1817 the Colonial Office maintained a policy of minimum intervention. As John Ward put it : ‘British authority would be exercised in the South Pacific only to the extent necessary to

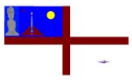




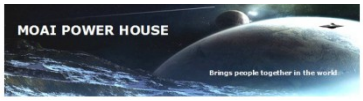








avoid a scandal to the British name and to preserve British trade from the worst consequences of extreme disorder.' 29 The Elizabeth affair of 1830, however, had such major ramifications that it prompted the British decision – urged by New South Wales – to appoint a diplomatic representative. Coincidentally, the visit of a French warship to New 10.3.1 Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz Our Conclusions 505 South Wales in 1831 also prompted a petition by Bay of Islands rangatira to King William IV seeking both protection from 'te Iwi o Marion' and firm control of British subjects in New Zealand. When James Busby arrived as British Resident in May 1833 he carried the King's response to this petition, expressing the King's intention to do all he could to control the behaviour of his subjects. But the familiar problem existed, in that Busby would have no legal authority over anyone and no military or police power. He was, thus – through no choice of his own – a 'man-of-war without guns', a term first used in the House of Commons in 183830 but applicable before then. Busby's Residency at Waitangi accustomed Māori in the north to a British presence on the ground and drew New Zealand more into the empire's orbit. But, for the British Government, the ongoing challenge posed by its lack of jurisdiction over its subjects was significantly increased in 1837 with pressure from the backers of organised emigration. And when Busby's June 1837 dispatch – which exaggerated the impact of uncontrolled British settlement on Māori population numbers – arrived in London, even Glenelg thought it better to have a colonisation 'organised and salutary' than the state of affairs alleged in Busby's dispatch. The missionaries, however, were a powerful lobby against any intervention beyond their own work, and an impasse ensued in 1838. Hobson's own suggestion in 1837 to create 'factories' – that is, sovereignty over limited territories in which British settlers were concentrated – became the favoured option, although in late 1838 Glenelg decided to appoint a British Consul. As this wavering continued, Edward Gibbon Wakefield, ever the opportunist, reasoned that possession was nine-tenths of the law. At his strong urging the New Zealand Company ships set sail for New Zealand. The British Government reacted hastily, dispatching Hobson to follow the Tory, the Company's first ship, whose passengers were intent on purchasing land and preparing the way for the settlers. The final instructions to Hobson of the new Secretary of State for War and the Colonies, Lord Normanby, allowed, for the first time – in August 1839 – that Britain might acquire sovereignty over the whole country. Hobson was permitted, after first treating with Māori for 'the recognition of Her Majesty's sovereign authority over the whole or any parts of those Islands which they may be willing to place under Her Majesty's dominion', to exercise his own discretion over such matters in consultation, where possible, with New South Wales Governor George Gipps. Sovereignty over the whole was in any event now Hobson's strong preference and thus became the primary object of his mission. As we have seen in chapter 9, the parties held opposite views on the subject of why the Crown sought to acquire sovereignty in New Zealand. Crown counsel described the Crown as a reluctant actor forced into action by 'intense pressures' and the 'increasingly dire' situation in New Zealand. In this, said the Crown, the departure of the New Zealand Company ships was the 'tipping point', and only at this late stage did it become apparent that the factory scheme was inadequate. Crown counsel essentially took Normanby's instructions, with their references to 'extreme reluctance' and 'higher motives',31 at face value. On the other hand, the claimants generally regarded the Crown as much more driven by economic considerations and an 'impulse of gain',32 with its eye on New Zealand's natural resources and a presumption of the 'right to dispossess'.33 Our view is that Britain was by no means a reluctant imperialist – it had long seen New Zealand as part of its de facto realm, and was prepared to ratchet up its level of official involvement when events on the ground necessitated it. But it had been consistently reluctant to add New Zealand to its formal empire, preferring instead to pursue its imperial interests through working with Māori leaders. Busby's exaggerated June 1837 dispatch prompted Glenelg to acknowledge that the Government's policy would have to change. But the principal factor that decided the ultimate approach was the pre-emptive action of the New Zealand Company in May

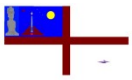




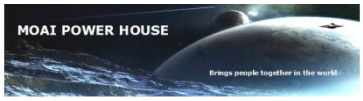








1839. The prospect of large-scale private colonisation in New Zealand was not one the authorities felt they could tolerate. Humanitarian concerns continued to have some influence : the perceived need to protect Māori from settlers, and bring them to a point of ‘civilisation’, contributed to the decision of the British authorities to adopt the model of Crown Colony government in their plans for New Zealand.34 Britain’s 10.3.1 Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz He Whakaputanga me te Tiriti The Declaration and the Treaty 506 primary motive, however, was to protect its imperial interests. It therefore determined to take control of the land trade and prevent a private company setting itself up as a colonial government. So, when the British authorities chose to dispatch Hobson with the intention of acquiring sovereignty over parts or all of New Zealand, the issue of reluctance to move from informal to formal colony had become irrelevant. At that point, the Government proceeded emphatically. Letters patent were issued on 15 June 1839 that provided for the incorporation into New South Wales of ‘any territory which is or may be acquired in sovereignty by Her Majesty . . . within that group of Islands in the Pacific Ocean, commonly called New Zealand’.35 Instructions were prepared stipulating that, at least in the North Island, Hobson was to achieve the acquisition of sovereignty through informed Māori consent to a treaty. Armed with these instructions, Hobson sailed for the South Pacific. As Hobson left Sydney to sail on to the Bay of Islands, Gipps published proclamations that were intended to put an immediate stop to the land trade in New Zealand and to expand New South Wales’s boundaries to include ‘any territory which is or may be acquired in sovereignty’ in New Zealand. And, when Hobson arrived in the Bay of Islands shortly after, he read out proclamations to the same effect. For our purposes, the most important point is that the British clearly and consistently expressed the view that, in achieving their objectives, they had what Glenelg called ‘no legal or moral right to establish a Colony in New Zealand, without the free consent of the Natives, deliberately given, without Compulsion, and without Fraud’.36 What this meant in practice, however, was another matter. Although consent was expressed as a requirement, it was left to Hobson – as the official on the ground in New Zealand – to judge whether Māori consent had been obtained. The British authorities barely acknowledged the possibility that Hobson might fail in his mission. Normanby’s instructions expressed utmost confidence in Hobson overcoming any difficulties he might encounter. The officers of the Treasury made contingency plans for how expenses would be met if Hobson’s mission failed, but there was little other recognition of the possibility. 10.3.2 Was a draft treaty put to the chiefs ? Obtaining Māori consent would involve holding meetings with rangatira. The position of some claimants was that important hui took place in the north even in advance of Hobson’s arrival. Erima Henare, for example, said that the missionaries convened meetings with the chiefs at Waitangi a full month earlier to discuss the potential treaty and would-be Governor.37 Pereme Porter said there were hui for five days at Waitangi before the signing,38 and one kaumātua told Merata Kawharu that there were 60 hui in the north in the lead-up to 5–6 February at Waitangi.39 The written record, by contrast, discloses none of this. Mission head Henry Williams was probably already aware, by early January, of Hobson’s arrival in Sydney. But it was not until 10 January that Bishop William Broughton wrote to Williams from Sydney instructing him to support Hobson’s efforts to get the chiefs to cede their sovereignty.40 It is questionable whether the missionaries would have hosted the chiefs at Waitangi before Hobson had arrived in New Zealand or before they had received instructions from Broughton, and whether such important discussions would have gone unrecorded. However, we do not doubt that, especially after hearing from Broughton, they would have had conversations with rangatira about Hobson’s mission prior to his 29 January 1840 arrival. Williams, we believe, would have wished to take an early opportunity to act on Broughton’s instructions. The more significant claimant contention derived from oral history was Rima Edwards’s presentation of a tradition about a ‘tiriti tuatahi’, or first draft of Williams’s translation of the Treaty into Māori. This was said to ask the rangatira to cede ‘mana’ not ‘kawanatanga’. Edwards did not say exactly when this draft was put to the rangatira, but it could only have been in the evening of either 4 or 5 February. He

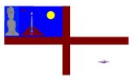




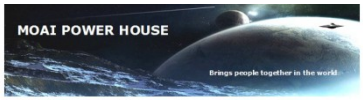








said the tradition about this document, which was also said to have a fourth article concerning religions, had been handed down through Te Whare Wānanga o Te Ngākahi o Ngāpuhi. In this tradition, the chiefs rejected the draft, and Edwards thought Williams and Busby would have gone back with this news to Hobson, who presumably sanctioned the change to ‘kawanatanga’. Edwards explained that the rangatira believed 10.3.2 Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz Our Conclusions 507 the draft was a curse on Hobson and led to his death two years later, when they asked that it be buried with him.41 Edwards added under questioning that Frederick Maning had made a written record of these events.42 The very notion of a tiriti tuatahi made no sense to Crown witnesses – Dr Phil Parkinson called it ‘inconceivable’ and Professor Alan Ward also thought it ‘highly unlikely’.43 Crown counsel said it was ‘most unlikely’ for a number of reasons, including : the lack of any written evidence ; the improbability of Williams proposing a cession of ‘mana’ ; the short amount of time for the events in question to have taken place ; and the unreliability of Maning as a source.44 As we explained in chapter 9, we asked archival expert Dr Jane McRae whether any written sources existed that supported the tradition about a tiriti tuatahi.45 She could not find any.46 But Dr Grant Phillipson thought Edwards’s evidence had to be taken ‘very seriously’ and that the oral tradition ‘confirms’ what historians have long suspected : that Māori would not have agreed to a cession of their mana. He suggested that the absence of a written record was not significant, because Williams and others gave so little detail about what took place on the evening of 5 February (which is when he thought the meeting would have occurred) anyway. He thought the fact that the Williams draft, which Richard Taylor rewrote late on the 5th, cannot be located could well be explained by the chiefs requesting it from Taylor so it could be buried with Hobson.47 Professor Dame Anne Salmond could also not see the basis for Parkinson’s adamance that no meeting to discuss a tiriti tuatahi could have taken place on the evening of 4 February (the date to which they both considered the tradition referred).48 And, among claimant counsel, Dr Bryan Gilling defended Maning’s reliability ; suggested that the draft’s absence was explicable by its burial with Hobson ; and pointed to what he submitted was a willingness by Phillipson, McRae, and Salmond to accept the possibility of the tiriti tuatahi’s existence.49 While the tradition about te tiriti tuatahi probably reflects the Ngāpuhi belief that the rangatira would not, and did not, cede their mana at Waitangi in February 1840, it was presented to us as a set of events that we should accept as fact. Edwards’s counsel submitted that the claimants’ oral evidence was ‘potentially more informative and reliable’ than William Colenso’s account.50 Counsel for a separate group of claimants further submitted, in the context of discussing both Edwards’s testimony and accounts written in English, that ‘the best evidence is the oral evidence we have heard’ (emphasis in original).51 It is not usual to dissect and analyse an oral tradition in the way we would a written source to test its ‘veracity’ or ‘truthfulness’, as this would misrepresent the function and purpose of oral tradition. However, the claimants’ submissions do make it necessary for us to make some observations about the tradition related by Edwards. First, we doubt that Williams would have asked the rangatira to cede their mana. This matter was not canvassed by Phillipson, but as Salmond confidently wrote elsewhere, indeed in reference to Williams, ‘No-one with any knowledge of Māori life in 1840 . . . would have asked the rangatira to surrender their mana, which came from their ancestors, and was not theirs to cede.’ 52 In his written evidence, Erima Henare stated that anyone asking the rangatira to cede their mana would have been ‘ejected or annihilated’.53 He did not seem to connect this assertion that ‘all hell would have broken loose’ to Williams’s supposed first draft, despite his support for Edwards’s tradition.54 If he was right about the likelihood of such a violent response, it seems fair to assume that the tiriti tuatahi draft would have provoked a sufficient reaction either for the entire signing to be jeopardised, or at least for the missionaries to mention it in their journals. Edwards himself observed, in response to Alan Ward’s rejection of Ruth Ross’s argument that ‘mana’ should have been used in the treaty to show exactly the kind of power the British sought, that : Ko te kaupapa kua oti mai i Ingarangi mai rano ko te tango i te

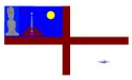




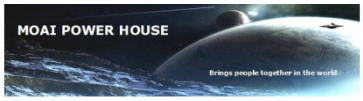








whenua me te mana ara ka whakamahia etahi kupu e ratou hei huna i enei whakaaro a ratou. The overall plan from way back in England was always to take the land and the mana and some words were often used to [mask] this fact.55 10.3.2 Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz He Whakaputanga me te Tiriti The Declaration and the Treaty 508 We infer that one of the words used to disguise the intention to take mana was ‘kawanatanga’. Edwards did not say that te tiriti tuatahi was placed inside Hobson’s coffin or grave, but rather that the rangatira had asked for it so it could be so disposed of. As we can see, though, both counsel and Phillipson thought a possible explanation for the document’s absence from the archival record is that it was buried with Hobson. However, from what we know of the burial on 13 September 1842, which was a significant public event in the small township of Auckland, we doubt very much that a draft of the treaty was included with Hobson’s casket. For one thing, it is difficult to imagine his family or Acting Governor Shortland agreeing to it. Some Māori were present but they would not have come from the Bay of Islands, as Hobson had only died three days earlier.56 We note that Phillipson did not consider any issues around Hobson’s burial in his assessment of Edwards’s evidence. Phillipson did, however, note that the tradition that te tiriti tuatahi had an article about freedom of religions directly contradicted the written sources about the emergence of the ‘fourth article’ of the treaty, and was not easily explained.57 Bishop Jean Baptiste Pompallier did not raise the religious freedom issue until 6 February, and we consider that Williams’s indignant reaction that day indicates that a draft of the treaty was most unlikely to have included such a clause. We accept that Williams may possibly have canvassed certain Bay of Islands Māori about which word might best convey the meaning of ‘sovereignty’, since – as nearly all witnesses seem agreed – he would have understood that ‘mana’ was not a suitable option. But it is also by no means certain that he engaged in any such consultation. Phillipson thought this discussion ‘must have begun’ before 4 February,58 but it seems he reached this view by conflating Erima Henare’s account of earlier meetings with the missionaries with Edwards’s own version of events. We note, in any event, that Williams was not asked to prepare the translation by Hobson until 4 pm on 4 February, and he would have had no reason prior to that to assume he would definitely be called upon. Williams was not the leading translator among the missionaries and, as Parkinson pointed out, Hobson might very well have opted for Busby. In sum, therefore, we accept that a tradition exists about Williams putting to the chiefs a first draft of te Tiriti that asked them to cede their mana, reflecting a belief that the rangatira did not cede their mana at Waitangi in February 1840 – and a displeasure both with Hobson’s role during the treaty hui and his subsequent interpretation of the agreement. However, we do not agree with claimant counsel that this tradition is ‘potentially more informative and reliable’ than Colenso’s written account. 10.3.3 The formulation of the texts of the treaty Here we come to the shaping of the words of the treaty itself – or rather, the two separate texts. We begin with the English text and then consider the Māori text, before turning to discuss the translation of key terms. (1) The English text We can see from the English text that Hobson clearly had a good idea of what the treaty was expected to contain, given certain similarities with recent African treaties. For example, the phrase ‘Rights and Privileges of British Subjects’ was identical to words used in the 1825 Sherbro treaty (see the table on pages 510 and 511). Not only that, but Hobson had also been guided by his instructions from Normanby and his time spent in Sydney with Gipps. Hobson’s first draft of the treaty – that is, his clerk James Freeman’s notes – conveyed a rather narrow British view of the transaction : the Crown was described as a reluctant interventionist with protective intent in the preamble ; and Māori yielded up their sovereignty in article 1, agreed to Crown pre-emption in article 2, and were granted the rights and privileges of British subjects in article 3. Busby, who knew enough about Māori systems of law and authority, and their relationships with land and other resources, to understand that Māori would not agree to this, then inserted the guarantee of ‘their Lands and Estates Forests and Fisheries and other properties’ into the second article. Busby’s intervention was the first of two important qualifications to Hobson’s

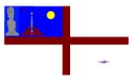




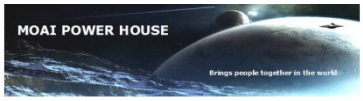








intended text by an agent with local knowledge. Hobson's previous visit to New Zealand on 10.3.3 Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz Our Conclusions 509 HMS Rattlesnake did not qualify him to the same extent on local matters. We do not think, however, that Busby's insight originated solely from his New Zealand experiences. He must have had some knowledge of what Keith Sorrenson suggested, on the basis of certain west African treaties, was a 'treaty language that was in fairly widespread use'.59 For example, Busby's expression 'full exclusive and undisturbed possession' bore a striking similarity to the words 'full, free, and undisturbed possession' used in the 1825 Sherbro treaty. Where and when Busby became acquainted with such matters we do not know. Sorrenson thought both he and Hobson had been briefed at the Colonial Office not long before the Treaty was drafted,60 but this cannot have been the case with Busby, who had not left New Zealand since he arrived there in 1833. As his biographer Eric Ramsden wrote, Busby's arrival in Sydney in April 1840 offered him 'his first glimpse of civilisation for almost seven years'.61 To show the British intent behind the treaty, we therefore set out, in the table over, a comparison of the 1825 Sherbro treaty, Normanby's August 1839 instructions, Gipps's unsigned Sydney treaty of February 1840, and the (final) English text of the Treaty of Waitangi. Considering the Treaty text alongside these three additional texts provides the clearest indication of what Hobson was expected to achieve through a treaty. That is because the Sherbro treaty provides an insight into Britain's broader international treaty-making activity ; the instructions set out what the Treaty was to contain ; and Gipps was Hobson's immediate superior and the official from whom he was meant to seek further guidance en route to New Zealand. From these texts, it is apparent that Hobson was to secure the cession by Māori of their sovereignty and their recognition of the Queen's sovereignty over all or parts of New Zealand. He was also to grant to Māori the Queen's protection (specifically in respect of their rights over territory and, for the time being, 'the observance of their own customs') as well as the rights and privileges of British subjects. Furthermore, he was to obtain an agreement that henceforth Māori would sell land only to the Crown. We can see that the English text of the Waitangi treaty largely fulfilled these requirements, although – perhaps because of Busby – the land guarantee had much more in common with the Sherbro treaty than with anything put forward by Normanby or Gipps. Hobson's use of the term 'preemption' was also much less clear than the language used by Normanby in his instructions and Gipps in his draft treaty, although it had been used in North America.62 There are other matters to note about the English text that was presented to Henry Williams to translate. The preamble stressed the Crown's protective impulses and desire for sovereignty, given the number of British settlers, the lack of (British) laws, and the need therefore (from the British perspective) to establish a government. That government was to be British, although its primary objective was said to be to protect Māori as well as settlers and to keep the settlers in check. It was not stated whether the 'undisturbed possession' by Māori of their 'Lands and Estates Forests Fisheries and other properties' would entail their continued exercise of authority over land and people. However, Hobson did later guarantee to protect 'Māori custom' in the so-called 'fourth article'. Article 3 guaranteed to Māori the rights and privileges of British subjects, which, as we noted in chapter 2, included rights to property and personal freedom. It did not mention the corollary obligation to obey British laws as soon as these were made and enforceable. To that extent, it omitted major elements of what it meant to be a British subject. Moreover, the requirement to sell land only to the Crown at once placed Māori in a different position from other British subjects.63 However, the English text of the treaty foresaw Māori becoming British, and it is in this context that articles 2 and 3 need to be understood. This goal required the application of British law and concepts of order. In the minds of British authorities, Māori welfare would necessarily be enhanced through British rule, with Māori 'civilisation' progressing in line with the expansion of settlement and imperial economic enterprise. As Hobson said in 1839, the acquisition of sovereignty would bring to New Zealand the 'blessing of civilization and liberty',64 and Normanby referred in his instructions to Māori being 'brought within the

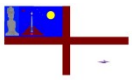












pale of civilized life, and trained to the adoption of its habits'.65 10.3.3(1) Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz He Whakaputanga me te Tiriti The Declaration and the Treaty 510 Sherbro treaty Normanby's August 1839 instructions Gipps's unsigned Sydney treaty Treaty of Waitangi (English text) Cession 'King of Sherbro [et al] for them, their heirs and successors for ever ceded, transferred, and given over, unto his said Excellency Charles Turner, Governor of the said Colony of Sierra Leone, and his successors, the Governors of the said Colony for the time being, for the use and on the behalf of His Majesty the King of Great Britain and Ireland, and his successors, the full, entire, free, and unlimited right, title, possession, and sovereignty of all the Territories and Dominions to them respectively belonging, being situate [geographical description] ; together with all and every right and title to the navigation, anchorage, waterage, fishing, and other revenue and maritime claims in and over the said Territories, and the rivers, harbours, bays, creeks, inlets, and waters of the same.' '. . . Her Majesty's Government have resolved to authorize you to treat with the Aborigines of New Zealand for the recognition of Her Majesty's sovereign authority over the whole or any part of those islands which they may be willing to place under Her Majesty's dominion.'

'It is therefore hereby agreed between the said parties that Her said Majesty, Queen Victoria, shall exercise absolute Sovereignty in and over the said Native Chiefs, their Tribes and country, in as full and ample a manner as Her said Majesty may exercise Her Sovereign authority over any of Her Majesty's Dominions and subjects . . .'

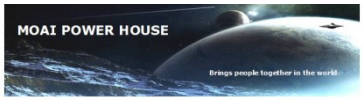
CITE TH DECREE RULE LAW AFFIDAVIT QUEEN VICTORIA KNEW LEGALLY THAT THERE WAS "NATIVES" IN NEW ZEALAND IN 1837 AND NOT "MAORI"!

FACT CITED EVIDENCE IN THIS NATIVE MAGISTRATE KINGS BENCH COURT OF THE CONFEDERATION OF A HANDFUL OF CHIEFS BETWEEN 1831 AND 1837

'The Chiefs of the Confederation of the United Tribes of New Zealand and the separate and independent Chiefs who have not become members of the Confederation cede to Her Majesty the **Queen of England absolutely and without reservation all the rights and powers of Sovereignty which the said Confederation or Individual Chiefs respectively exercise or possess, or may be supposed to exercise or to possess over their respective Territories as the sole Sovereigns thereof.'**

NOTE FOR THE RECORD TODAY SATURDAY 24 SEPTEMBER 2022 AT 6 PM NZ TIME THAT QUEEN VICTORIA SAID "CONFEDERATION OF INDIVIDUAL CHIEFS" THE NATIVE MAGISTRATE KINGS BENCH COURT STATE CLEARLY ON ZOOM LIVE VIDEO THIS PROOF OF CLAIM NATIVE CHIEFS STATEMENT NOT UNITED TRIBES OF "MAORI EUROPEAN" MIX RACE PEOPLE AT 1837 QUEEN VICTORIA

Guarantee Charles Turner agrees to accept the said cession, 'giving and granting to the [list of names] and the other **native inhabitants of the said Territories and Dominions**, the **protection of the British Government, the rights and privileges of British subjects**, and guaranteeing to [list of

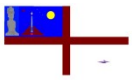




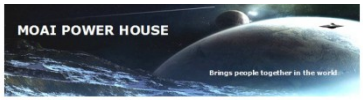








names] **and the other native inhabitants of the aforesaid Territories and Dominions, and to their heirs and successors for ever, the full, free, and undisturbed possession and enjoyment of the lands they now hold and occupy'**. 'until they can be brought within the pale of civilized life, and trained to the adoption of its habits, they must be carefully **defended in the observance of their own customs,** so far as these are compatible with the universal maxims of humanity and morals' 'The **acquisition of land by the Crown for the future settlement of British subjects** must be confined to such districts as the natives can alienate, without distress or serious inconvenience to themselves.' 'and to grant Her Royal protection to the said Natives Chiefs, their tribes and country, in as full and ample a manner as Her Majesty is bound to afford protection to other of Her Majesty's subjects and Dominions.' The Crown's sole right of purchase (see below) is to be 'upon the express understanding that the said Chiefs and Tribes shall retain for their own exclusive use and benefit such part of their said lands as may be requisite and necessary for their comfortable maintenance and residence.' 'Her Majesty the Queen of England confirms and guarantees to the Chiefs and Tribes of New Zealand and to the respective families and individuals thereof the full exclusive and undisturbed possession of their Lands and Estates Forests Fisheries and other properties which they may collectively or individually possess so long as it is their wish and desire to retain the same in their possession' '. . . Her Majesty the Queen of England extends to the Natives of New Zealand Her royal protection and imparts to them all the Rights and Privileges of British Subjects.' Pre-emption 'It is further necessary that the chiefs should be induced, if possible, to contract with you, as representing Her Majesty, that henceforward no lands shall be ceded, either gratuitously or otherwise, except to the Crown of Great Britain.' 'And the said Native Chiefs do hereby on behalf of themselves and tribes engage, not to sell or otherwise alienate any lands occupied by or belonging to them, to any person whatsoever except to Her said Majesty upon such consideration as may hereafter fixed . . .' 'but the Chiefs of the United Tribes and the individual Chiefs yield to Her Majesty the exclusive right of Preemption over such lands as the proprietors thereof may be disposed to alienate at such prices as may be agreed upon between the respective Proprietors and persons appointed by Her Majesty to treat with them in that behalf.' A comparison of the 1825 Sherbro treaty, Normanby's August 1839 instructions, Gipps's unsigned Sydney treaty of February 1840, and the final English text of the Treaty of Waitangi 10.3.3(1) Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz Our Conclusions 511 Sherbro treaty Normanby's August 1839 instructions Gipps's unsigned Sydney treaty Treaty of Waitangi (English text) Cession 'King of Sherbro [et al] for them, their heirs and successors for ever ceded, transferred, and given over, unto his said Excellency Charles Turner, Governor of the said Colony of Sierra Leone, and his successors, the Governors of the said Colony for the time being, for the use and on the behalf of His Majesty the King of Great Britain and Ireland, and his successors, the full, entire, free, and unlimited right, title, possession, and sovereignty of all the Territories and Dominions to them respectively belonging, being situate [geographical description] ; together with all and every right and title to the navigation, anchorage, waterage, fishing, and other revenue and maritime claims in and over the said Territories, and the rivers, harbours, bays, creeks, inlets, and waters of the same.' '. . . Her Majesty's Government have resolved to authorize you to treat with the Aborigines of New Zealand for the recognition of Her Majesty's sovereign authority over the whole or any part of those islands which they may be willing to place under Her Majesty's dominion.' 'It is therefore hereby agreed between the said parties that Her said Majesty, Queen Victoria, shall exercise absolute Sovereignty in and over the said Native Chiefs, their Tribes and country, in as full and ample a manner as Her said Majesty may exercise Her Sovereign authority over any of Her Majesty's Dominions and subjects . . .' 'The Chiefs of the Confederation of the United Tribes of New Zealand and the separate and independent Chiefs who have not become members of the Confederation cede to Her Majesty the Queen of England absolutely and without reservation all the rights and powers of Sovereignty which the said Confederation or Individual Chiefs respectively exercise or possess, or

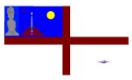




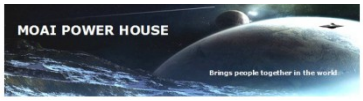








may be supposed to exercise or to possess over their respective Territories as the sole Sovereigns thereof.' Guarantee Charles Turner agrees to accept the said cession, 'giving and granting to the [list of names] and the other native inhabitants of the said Territories and Dominions, the protection of the British Government, the rights and privileges of British subjects, and guaranteeing to [list of names] and the other native inhabitants of the aforesaid Territories and Dominions, and to their heirs and successors for ever, the full, free, and undisturbed possession and enjoyment of the lands they now hold and occupy'. 'until they can be brought within the pale of civilized life, and trained to the adoption of its habits, they must be carefully defended in the observance of their own customs, so far as these are compatible with the universal maxims of humanity and morals' 'The acquisition of land by the Crown for the future settlement of British subjects must be confined to such districts as the natives can alienate, without distress or serious inconvenience to themselves.' 'and to grant Her Royal protection to the said Natives Chiefs, their tribes and country, in as full and ample a manner as Her Majesty is bound to afford protection to other of Her Majesty's subjects and Dominions.' The Crown's sole right of purchase (see below) is to be 'upon the express understanding that the said Chiefs and Tribes shall retain for their own exclusive use and benefit such part of their said lands as may be requisite and necessary for their comfortable maintenance and residence.' 'Her Majesty the Queen of England confirms and guarantees to the Chiefs and Tribes of New Zealand and to the respective families and individuals thereof the full exclusive and undisturbed possession of their Lands and Estates Forests Fisheries and other properties which they may collectively or individually possess so long as it is their wish and desire to retain the same in their possession' '. . . Her Majesty the Queen of England extends to the Natives of New Zealand Her royal protection and imparts to them all the Rights and Privileges of British Subjects.' Pre-emption 'It is further necessary that the chiefs should be induced, if possible, to contract with you, as representing Her Majesty, that henceforward no lands shall be ceded, either gratuitously or otherwise, except to the Crown of Great Britain.' 'And the said Native Chiefs do hereby on behalf of themselves and tribes engage, not to sell or otherwise alienate any lands occupied by or belonging to them, to any person whatsoever except to Her said Majesty upon such consideration as may hereafter fixed . . .' 'but the Chiefs of the United Tribes and the individual Chiefs yield to Her Majesty the exclusive right of Preemption over such lands as the proprietors thereof may be disposed to alienate at such prices as may be agreed upon between the respective Proprietors and persons appointed by Her Majesty to treat with them in that behalf.' 10.3.3(1) Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz He Whakaputanga me te Tiriti The Declaration and the Treaty 512 (2) The Māori text Williams had little time to translate the text into Māori. He faced a difficult task, and his approach is unclear. As we have noted in chapter 7, he recalled later that 'it was necessary to avoid all expressions of the English for which there was no expressive term in the Maori, preserving entire the spirit and tenor of the treaty'. Presumably by this he meant that he had to find new ways of translating difficult English terms, and thus his translation was not always literal. That was inevitable, particularly because the two languages had so little in common. As Dr Patu Hohepa put it, English and Māori are 'as radically different as chalk and cheese'.66 But was Hobson able to 'preserve entire the spirit and tenor of the treaty', as he claimed ? That is clearly – famously – a matter of some debate. Professor Bruce Biggs explained that translators in such a situation can either coin a neologism based on a word in the source language or give new meaning to an existing word in the target language. Williams did both. The ideal solution, as Biggs observed, would have been for him to include a separate set of definitions of Māori terms chosen to translate key concepts. But this was a mid-nineteenthcentury treaty between the world's most powerful nation and a distant indigenous people, and at that time the British would have given no thought to such practicalities. Yet, we must also recognise that the very existence of an indigenous-language treaty text set Waitangi apart from previous North American or African treaties, which did not have them. As Sorrenson has remarked, 'It is the Maori text that gives Waitangi its most distinctive quality.'67 So how

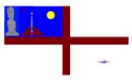




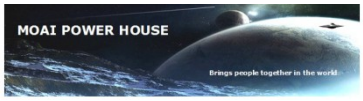








did Williams translate the Treaty ? Let us say in advance that his was by far the greater of the two local modifications (the other being Busby's) of Hobson's English text. Indeed, if Busby expanded the narrow treaty terms Hobson originally had in mind by adding his property guarantee, the Māori text fundamentally changed them. For a start, in the preamble, the Queen's desire to protect the 'just rights and property' of Māori became a desire to protect their rangatiratanga (and their whenua) – that is, a desire to protect their authority. Williams then translated both 'civil government' and 'sovereign authority' as 'kawanatanga', and it is the meaning of kāwanatanga – and indeed its relationship to rangatiratanga – that lies at the heart of the debate about the meaning of te Tiriti. The preamble thus foreshadowed the tension between article 1 and article 2. Article 1, then, had Māori conveying to the Queen 'te kawanatanga katoa o o ratou whenua', which has been generally rendered as the complete government or governorship of their lands. 'Kawanatanga' was a neologism but a word already familiar to Māori from the Bible and indeed from the text of he Whakaputanga. Kāwana had also been known to Māori since Tuki and Huru encountered Lieutenant-Governor Philip Gidley King in 1793. Māori knew, as Dr (later Professor Dame) Judith Binney pointed out,68 that kāwana wielded power, even though kāwanatanga was a lower level of authority than kīngitanga and rangatiratanga in he Whakaputanga and, as others told us,69 in the Bible. Much depended, therefore, on how the exercise of this power was explained verbally to the chiefs. In article 2, Māori were guaranteed 'te tino rangatiratanga' over all their taonga. This was a significant departure from the English text, which made no mention of authority. Moreover, here Māori were guaranteed not just their rangatiratanga – used in he Whakaputanga for 'independence' and in the Bible for 'kingdom' – but the fullest extent of it through the use of the adjective 'tino'. Williams's use of 'taonga' as a catch-all for the properties listed in the English text ('Lands and Estates Forests Fisheries and other properties') was in effect another expansion. As we saw in chapter 3, 'taonga' was used by William Williams in 1833 to translate expressions such as 'all . . . things which you desire' and 'all good things'. We believe it was a word with a wide application. Henry Williams's translation of pre-emption – as the 'hokonga' of land to the Queen at agreed prices – certainly shifted the meaning from what Hobson intended to acquire : the sole right of purchase by the Crown. Williams wrote in 1861 that he had explained 'pre-emption' as meaning The Queen is to have the first offer of the land you may wish to sell, and in the event of its being refused by the Crown, the land is yours to sell it to whom you please.70 10.3.3(2) Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz Our Conclusions 513 That is a description of a first option to purchase, not a sole (monopoly) right of purchase. But Williams had presumably read Hobson's 30 January 1840 proclamation, in which it was declared that any future private land purchases from Māori would be considered 'absolutely null and void, and will not be confirmed, or in any way recognised, by Her Majesty'. As we noted in chapter 8, Dr (later Dame) Claudia Orange thought it likely from this that Williams did understand that the Crown was to have an exclusive right of purchase.71 Whatever the case, the British had a clear policy and the Māori text did not convey this. We have serious doubts that the British intention to obtain a monopoly right of purchase, had it been accurately translated (and properly explained on 5 February), would have been acceptable to the rangatira. However, we note that the refusal of the southern chiefs in Sydney to sign Gipps's treaty, with its clear explanation of the Crown's monopoly right of purchase, is not conclusive evidence of how the rangatira at Waitangi would have reacted to that same explanation. This is because those chiefs were in Sydney to enter a transaction with land speculators and would hardly have been interested in signing up to such a condition. In article 3, Williams used 'tikanga katoa' to convey 'all the rights and privileges' of British subjects. As we saw in section 7.5.4, there is no consensus among recent backtranslators of te Tiriti whether Māori would have interpreted this as imposing obligations as well as granting benefits and entitlements. Ultimately, though, there was nothing explicit about the need for obedience to British laws as the corollary of the cession of kāwanatanga in article 1, even though the translation of article 3 provided a further opportunity to

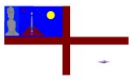




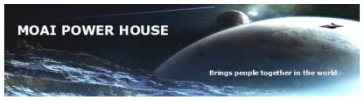








explain to Māori the workings of British sovereignty. As we have said, article 3 foresaw Māori becoming ‘civilised’ and living like Britons, and this assimilative intention sat uneasily alongside the guarantee of rangatiratanga in article 2. When Busby reviewed Williams’s translation on the morning of 5 February he suggested only one amendment : substituting the word ‘whakaminenga’ for ‘huihuinga’. He would have known that Williams had shifted the meaning of the English text in important respects, but he made nothing of it. With Williams’s acceptance of Busby’s minor change, this was the final text that was presented to the rangatira for their signatures. (3) The translation of the key terms The claimants were not particularly interested in the English text, regarding it as irrelevant to their tūpuna. They were adamant that the true treaty – the only treaty – was te Tiriti. But many said that, if Williams had meant to convey ‘sovereignty’ through the use of ‘kawanatanga’, then he chose his word poorly. They argued this on the basis of the subordinate status of kāwanatanga in the Bible and he Whakaputanga. Some went as far as to question Williams’s honesty and integrity. There were several schools of thought about how Williams should have translated ‘sovereignty’ in order to capture what the British intended. Some argued that ‘kawanatanga’ was the correct selection, although for varied reasons. Samuel Carpenter and Alan Ward, as well as the Crown in its closing submissions, argued that sovereignty essentially equated to civil government, thus making ‘kawanatanga’ an appropriate choice. Māori had wanted civil government, they said, and would have understood what the term signified. Moreover, said Carpenter, Māori were being asked to agree to a new and overarching authority – one which they did not themselves possess.72 As he put it, the rangatira granted the Queen ‘the authority to establish the kāwanatanga that they did not in reality exercise’.73 On the other hand, Binney in 1989 believed that using ‘mana’ to translate sovereignty would have been entirely inappropriate, and so considered ‘kawanatanga’ a ‘careful choice’ and ‘deliberately pragmatic’.74 We assume she thought it also equated to the level of authority Māori were prepared to concede, and do not take it that she thought kāwanatanga meant sovereignty. The Tribunal in its Manukau report likewise thought that kāwanatanga – which was ‘subject to an undertaking to protect particular Maori interests’ – was ‘well chosen by the missionary translators’. By contrast, said the Tribunal, ‘Sovereignty or “Rangatiratanga” is not conditioned’. In other words, some 10.3.3(3) Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz He Whakaputanga me te Tiriti The Declaration and the Treaty 514 have taken the view that ‘kawanatanga’ was the right word because Māori could not have ceded their ‘full authority status and prestige’, as the Manukau Tribunal defined ‘tino rangatiratanga’.75 Another school of thought has it that, especially given its use in he Whakaputanga, ‘mana’ would have been the right word to use for a cession of sovereignty. We have seen how Ross made this point in 1972 and was followed, in due course, by scholars including Alan Ward, Dr (later Professor) Donald McKenzie, Dr (later Professor) Paul Moon and Dr Sabine Fenton, and Salmond. Claimants such as Edwards and Professor Margaret Mutu also suggested that ‘mana’ would have conveyed the Crown’s intentions better.76 But many of those who thought mana the best translation of sovereignty also agreed that Williams could not have used it. The claimants agreed that ceding mana was in equal parts unthinkable and impossible – it was an authority that derived from the achievements and status of ancestors and was exercised in accordance with tikanga. Most scholars since the 1980s – including now Alan Ward – have thought the same way and understood why Williams needed to find an alternative. The discussion on this intractable point can go round in circles. Williams should have used mana but he could not use mana as Māori would not have signed in that case ; he should have used another word but that other word would not have conveyed sovereignty in the way mana would have, but he could not use mana ; and so on. We consider that a straightforward explanation of sovereignty could not have avoided the use of ‘mana’. As we have set out, the assertion of mana in he Whakaputanga expressed the highest level of authority within the signatories’ territories. This declaration of mana, together with the accompanying declarations of rangatiratanga and kīngitanga, collectively amounted to an assertion of the authority to make and enforce law. This is the

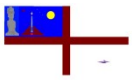




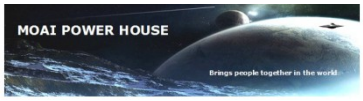








essence of sovereignty. It is as well to remember the way the colonial government used the word ‘mana’ to explain the Crown’s authority in the Native Department’s 1869 backtranslation (see chapter 7). Āpirana Ngata, who was similarly motivated to have Māori better understand what they had ceded in the English version, called sovereignty ‘te tino mana’ in 1922. The ‘rangatiratanga’ guaranteed to the chiefs had also been appropriated as a word for British sovereignty by Hobson himself as early as April 1840. In other words, the Crown soon enough attempted to convey to Māori that they had ceded the very authority they thought they had retained. Williams, then, faced the significant hurdle of translating (and explaining) ‘sovereignty’ both in an accurate manner and in way that would ensure that Māori signed. Moreover, he had made his achievement of this near-impossible task even more complicated by including ‘tino rangatiratanga’ in article 2. It might perhaps be argued that he did not believe rangatiratanga amounted to much – that he shared Normanby’s view of Māori society as comprising only ‘dispersed . . . and petty tribes’, and that rangatiratanga was akin to ‘possession’ of land and other resources, as Lyndsay Head has suggested. But we do not think this idea is credible. After all, Williams knew ‘rangatiratanga’ had been used to translate ‘kingdom’ in the Bible, and he had used it himself for ‘independence’ (in a context where it was used to refer to independent statehood) in he Whakaputanga. And, as we have noted, it was appropriated by the British as a means of expressing ‘sovereignty’ only shortly after te Tiriti was signed. British officials undoubtedly regarded Māori sovereignty as altogether of a lesser status than their own, but this does not mean they equated it to mere ‘possession’ of land and other resources. While Williams may have been honest in his choice of ‘kawanatanga’ to translate ‘sovereignty’, he must, however, have known that tino rangatiratanga conveyed more than what was set out in the English text. We note that the claimants were not focused on how Williams might better have conveyed ‘possession’ of land and other resources. We agree with Phillipson that Williams ‘put things in the way most calculated to win Maori support’. As a result of the gulf between the two texts, he said, ‘everything depended . . . on the oral explanations and contracts entered into at the Waitangi hui’.77 In sum, therefore, those with sufficient local experience 10.3.3(3) Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz Our Conclusions 515 – first Busby and then, more particularly, Williams, who was following instructions to assist Hobson in gaining Māori support – shifted the meaning of the original draft of the Treaty because they understood what it would take to convince Māori to sign. As Binney put it, Hobson’s texts were both shaped at the Bay, through the experiences of the older European residents, and most particularly James Busby and the Reverend Henry Williams.78 Busby and Williams understood Māori systems of law and authority and their relationship to the land. The treaty was thus adapted to local conditions, especially (and significantly so) in its translation. Hobson – who, like Normanby and Gipps, had assumed that Māori would cede their sovereignty in exchange for various ‘protections’ – did not speak Māori and we do not know how Williams explained his translation to him. But we are confident that he and Williams must have discussed their approach before the hui with the rangatira began at Busby’s house at Waitangi on the morning of 5 February 1840, for reasons that we discuss next. 10.3.4 The oral debate We are well aware that we do not have the full picture of what was said at either Waitangi or Mangungu on the basis of the surviving written record. And we recognise that this problem is amplified by the lack of any record of what was said in Māori beyond the odd word and comment (such as ‘He iwi tahi tatou’). As noted in chapter 7, Dr Donald Loveridge described the available written record of the discussions at Waitangi as providing only ‘a very rough outline of what happened’, and the record of the Mangungu speeches as certainly no better.79 Dr John Owens considered Mohi Tāwhai’s reference at the Mangungu hui to the Māori words sinking like a stone to be ‘a prescient remark’, for ‘today the written treaty is constantly worked over for all the meaning which can be extracted’, while the ‘speeches and verbal understandings are only partially preserved and then only because they happened to be written down’.80 We agree, but still consider we have enough information to draw conclusions about what was said to the rangatira, and how they

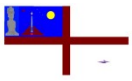




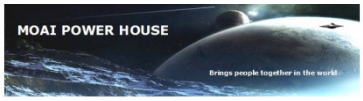








responded, at both venues. (1) The Crown's message The British representatives – Hobson himself, but also Busby and the missionary translators – were very consistent in their messages. Hobson set the tone with his opening address : he explained that he had been sent by the Queen to 'do good' to the rangatira and their people (as well as to the settlers), but he would not be able to do so until the chiefs had given him their consent. For him to be able to restrain the Queen's subjects, he required the rangatira to sign his treaty. He noted that the chiefs had previously asked for the King's protection – which was a reference either to article 4 of he Whakaputanga or the 1831 petition (or both) – and 'Her Majesty now offers you that protection in this treaty'. He concluded by saying, 'I think it not necessary to say any more about it', and read the treaty. Put simply, Hobson's message was 'Give me the authority to protect you and control the settlers'. He later told both Gipps and Major Thomas Bunbury that he had spoken 'in the fullest manner', but he clearly held back many details. Felton Mathew noted that Hobson had spoken 'briefly'. He did not spell out to the rangatira that, if they signed te Tiriti, British law would apply to them. The particular focus of Hobson's message was, however, in keeping with the emphasis Normanby instructed him to place on the protection from settlers the rangatira would receive in return for recognising British sovereignty.81 In a 25 April 1840 letter to Bunbury, Hobson wrote that he had assured the chiefs that 'their Property their Rights and Privileges should be fully preserved'. Mathew's account of Hobson's address confirmed this approach : the chiefs would cede their sovereignty to the Queen, 'throwing themselves on her protection but retaining full power over their own people – remaining perfectly independent' (and selling what land they thought fit upon receiving 'a fair and suitable consideration'). The cession of sovereignty appears to have been put to the chiefs as 10.3.4(1) Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz He Whakaputanga me te Tiriti The Declaration and the Treaty 516 a mere formality or technicality. It would have no impact at all on their rights and independence but would, at the stroke of a pen, at last allow the 'Governor' to control the Europeans. We note that the rangatira referred to Hobson as 'Governor' and not 'Lieutenant-Governor', and we adopt this usage from this point forward when discussing the Māori perspective. But Hobson spoke in English, and Mathew could understand only that language. What did Henry Williams tell the rangatira in Māori ? As Williams himself put it, he told them the treaty was an act of protection – 'love', in fact – on the part of the Queen, designed to preserve their property, rights, and privileges, and it would safeguard them from any foreign power, like France.82 In a letter to Bishop Selwyn of 12 July 1847, Williams did not shed much light on how he explained the implications of the Queen having 'government', but did say he had emphasised that the Queen was 'desirous to protect them in their rights as chiefs, and rights of property', and that they should admit the Queen's Government, given the number of settlers arriving in the country.83 A French observer, Father Louis Catherin Servant, whose understanding of the Māori spoken by Williams may have been better than his understanding of the English spoken by Hobson,84 explained the Crown's message thus : The governor proposes to the tribal chiefs that they recognise his authority : he explains to them that this authority is to maintain good order, and protect their respective interests ; and that all the chiefs will retain their powers and possessions.85 At Mangungu, Hobson's approach was very similar. After his exchange with Maning, whom he rebuked for suggesting Māori would be better off if they rejected the treaty, Hobson told the rangatira they would be stripped of their land by disreputable British subjects unless they gave him their authority to control such people. This message would have reassured Taonui, for example, who had said, 'We are glad to see the governor let him come to be a Governor to the Pakeha's as for us we want no Governor we will be our own Governor'.86 The Wesleyan missionary John Hobbs recalled how he had translated Hobson's repeated assurances . . . that the Queen did not want the land, but merely the sovereignty, that she, by her officers, might be able more effectually to govern her subjects who had already settled . . . or might . . . arrive, and punish those of them who might be guilty of crime.87 Hobbs thought that these promises had been important in securing the chiefs' signatures.88 We note that Crown

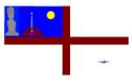




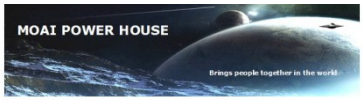








witnesses acknowledged that this method of gaining Māori agreement to the treaty – through reassurances and promises – was utilised during the public hui on 5 February. Loveridge said there was ‘no doubt that the missionaries sought to present the Treaty in the best possible light’, emphasising Crown protection rather than ‘the changes which would occur under the new regime’.89 Alan Ward accepted that the Crown’s representatives had failed to ‘enter upon full discussion about the extent of the state’s future authority’, although he thought this omission was ‘understandable’ given the Crown’s sense of urgency.90 Crown counsel, however, did not make any such concession, arguing, for example, that ‘The concept of sovereignty must have been explained by Hobson and translated into Māori by Henry Williams’, as Hobson went through the treaty clause by clause.91 Here, in the absence of any written record corroborating Hobson’s claim to have spoken so fully, Crown counsel relied on Hobson having dutifully followed Normanby’s instructions to be frank, rather than on the range of evidence to the contrary. At this point, we note Mathew’s remark that Hobson’s speech was brief and that we have no record that it gave any explanation of sovereignty. Crown counsel also pointed to the discussions between the rangatira and the missionaries on the evening of 5 February at Te Tou Rangatira as an occasion at which a full explanation of the Treaty’s meaning and effect was given. A fragment of evidence from Williams provides the 10.3.4(1) Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz Our Conclusions 517 basis for counsel’s confidence that a full explanation was provided. Williams recalled in later years of this encounter that : We gave them but one version, explaining clause by clause, showing the advantage to them of being taken under the fostering care of the British Government, by which act they would become one people with the English, in the suppression of wars, and of every lawless act ; under one Sovereign, and one Law, human and divine.92 Crown counsel felt that this indicated that ‘Māori would have understood Te Tiriti/the Treaty to mean they would come under the authority of the Governor and that British law would apply to them’.93 Among the historians, Crown counsel found some support for this position from Alan Ward, who suggested that this discussion was ‘probably more detailed’ than had occurred during the day-time hui and that it had led to the ‘general (though not total) consensus’ the following morning to sign.94 We consider Orange’s proposition of what occurred on the evening of 5 February to be convincing. As set out in chapter 8, she suspected that Williams had kept up his persuasive line of argument adopted during that day’s meeting, emphasising the beneficial aspects of the treaty and distracting Maori attention from matters to which they might take exception.95 It is this reassurance, we think, that best explains why rangatira like Te Kēmara signed te Tiriti. If Crown counsel is correct, then Te Kēmara would have had to accept that there was indeed some basis for his fear that the Governor would be ‘up and Te Kemara down’,96 and yet still signed the following day. Patuone would have had to accept that his desire for the rangatira and Hobson to be of equal status was a false hope, and yet still signed te Tiriti. It seems most unlikely that, after the Governor had earlier avoided the subject, the missionaries would that evening have fully explained Hobson’s law-making and enforcement capacity, and even less likely that this would have swayed reluctant rangatira to sign. We might add that speculation about what may have been said on the evening of 5 February, and to whom, cannot in itself provide the basis for a compelling case for either the Crown or claimants. We recall that Loveridge lamented the lack of any adequate record of the informal meeting at Te Tou Rangatira beyond Williams’s ‘brief reference’.97 It is, however, this reference – rather than the fuller accounts of the daytime hui by Colenso and others – that Crown counsel relied upon as compelling evidence of the impossibility of the rangatira understanding the treaty as meaning ‘anything other than coming under the authority of the new Governor and subject to British laws’.98 (2) The understanding of the rangatira It can be seen that the understanding of the rangatira had several foundations. First, it was based on te Tiriti’s key words, including, in particular, kāwanatanga and rangatiratanga, which we discussed above, as well as the explicit guarantees about Māori retention of their land. Secondly, it was based on the assurances during the 5 February and 12

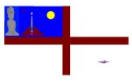




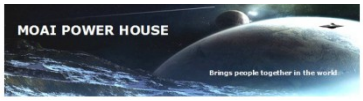








February hui at Waitangi and Mangungu offered up by Hobson and his missionary agents. As we have shown, these did not spell out the full implications of British sovereignty. Thirdly, there was the chiefs' kōrero with the missionaries on the evening of 5 February. As noted, we do not know the nature of this discussion, but there is no reason to believe that the missionaries would not have continued with the same assurances made during the day's hui. We do not doubt that this kōrero was influential in the decision of most rangatira to sign on 6 February. As Hōne Heke had remarked during the first day's hui, the chiefs looked to the missionaries for advice : 'it is not for us but for you, our fathers you missionaries – it is for you to say, to decide, what it shall be'.99 We focus here on the recorded speeches of the rangatira. What light do they shed on the Māori understanding ? The chiefs did not, of course, speak with one voice. It would be wrong to suggest there was unanimity of understanding, 10.3.4(2) Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz He Whakaputanga me te Tiriti The Declaration and the Treaty 518 even among those who signed. Accordingly, we proceed with caution. None of the rangatira dwelled on the specific wording of the Māori text, let alone the English text. Their focus was on concepts rather than terms. If there was a common theme at Waitangi and Mangungu, it was whether they would have a governor and how powerful he would be. Some rangatira also expressed concern about the extent of European occupation of their lands. Mathew was impressed by their questions : as he put it : During the whole ceremony with the chiefs, nothing was more remarkable than the very apt and pertinent questions which they asked on the subject of the treaty, and the stipulations they made for the preservation of their liberty and perfect independence.100 Servant characterised the speeches in a similar way : A great number of chiefs then speak, displaying one after another all their Maori eloquence. The majority of orators do not want the governor to extend his authority over the natives, but over the Europeans exclusively.101 Some rangatira expressed great concern at the prospect that the Governor might sit above them, and rejected him for that reason. It was this resistance that the Crown seems to have regarded as its strongest point.102 As Crown counsel put it, it seems quite clear from the evidence available concerning the speeches made by rangatira in deciding whether or not to sign that they understood the fundamental change to be effected by the document being put to them : the Governor would be in a position of authority over them.103 Here, Crown counsel relied upon the recorded statements of rangatira like Te Kēmara, Rewa, and Tāreha at Waitangi, and Taonui and Papahia at Mangungu. To underline his point, he referred to Ngāti Rēhia's view that this knowledge was what prevented Tāreha from signing.104 Those who did sign, argued the Crown, did so in spite of their concern that the Governor would be above them. In other words, all signatories accepted the supremacy of the Governor. We disagree. While we cannot be certain this applies to every rangatira who accused the Governor of having a plan to subjugate and enslave them (as 'mischievous' Pākehā had predicted), we consider that some at least were doing so to draw out a denial. The same motive would have prompted some rangatira who objected to the Governor having a much higher authority than their own. This conclusion is supported by the analysis in the Tribunal's Muriwhenua Land Report that rangatira were using 'impassioned declamation' at the treaty hui as a 'standard oratorical tool'.105 Moreover, we consider that the signatories believed – with justification – that the oral undertakings and assurances they received from Hobson and the missionaries were part of the agreement. There are several examples of these oral additions. Te Kēmara demanded that the rangatira not be 'over-run' with white people,106 and the promise he received of his 'perfect independence' would have reassured him in this regard. When Busby promised that any land found not to have been properly acquired from Māori would be returned, that also became part of the agreement, especially after Hobson repeated the promise. Mohi Tāwhai's reference at Mangungu to 'fair purchases'107 suggested, too, that the rangatira expected their understanding of the transactions to apply. A further example involves the so-called 'fourth article' of the treaty. While it may appear to have essentially been a concession by Britain to Pompallier, with the protection of Māori custom the incidental by-

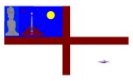




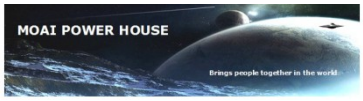








product of sectarian rivalry,108 we think it correct to regard it as an oral addition to the Crown's treaty undertakings to the rangatira. We also consider that, where the rangatira placed certain conditions upon their agreement, and neither Hobson nor the missionaries voiced any direct or indirect opposition, these too became part of the bargain. No fewer than three rangatira who signed – Te Kēmara and Patuone at Waitangi and Papahia at Mangungu – and one whose assent is in doubt (Tāreha), told the Governor that they must be 'equal' with him. Te Kēmara and Tāreha said that, 10.3.4(2) Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz Our Conclusions 519 if there was no such equality, Hobson could not stay. In Patuone's case, according to Pompallier, the chief brought 'his two index fingers side by side' to demonstrate that he and Hobson 'would be perfectly equal, and that each chief would similarly be equal with Mr Hobson'.109 There is no record of Hobson contradicting this understanding. When the rangatira signed or affixed their marks to te Tiriti, therefore, they were agreeing not just to the written text but also to a series of verbal promises, express or implied. Conversely, matters that were not discussed or set out in the Māori text could not form part of the agreement. As we have said above, there is no evidence that Hobson explained that English law would apply to Māori. We agree with the Muriwhenua Land Tribunal, which observed that : the Treaty debate is more significant for what was not said than for what was. It was not said, for example, that, for the British, sovereignty meant that the Queen's authority was absolute. Nor was it said that with sovereignty came British law, with hardly any modification, or that Maori law and authority would prevail only until they could be replaced.110 Nor was there any explanation that the Crown would have a monopoly over land transactions with the rangatira. Indeed there is confusion about whether the words even conveyed a right of first refusal, although Williams himself stated in later years that this – rather than a Crown monopoly – was how he had explained pre-emption to the rangatira.111 But none of the back-translations of te Tiriti we discussed in chapter 7 – modern or historical – clearly support this idea. On 11 February 1840, only a few days after te Tiriti was signed at Waitangi, Colenso wrote to the Church Missionary Society (CMS) stating that the rangatira were fully unaware of the British intention behind the pre-emption text : 'As to their being aware that by their signing the treaty they have restrained themselves from selling their land to whomsoever they will ; I cannot for a moment suppose that they can know it'. Colenso noted that one signatory, the Ngāti Rangi chief Hara, had just offered land to a settler. When told that this was disallowed Hara reportedly replied 'What ! do you think I won't do as I like with my own ?'112 Colenso had written to the CMS to justify his interruption of Hobson on the morning of 6 February, when he had ventured that the chiefs did not understand the treaty. By this he clearly meant they did not understand the British intentions (which had not been fully explained to them). The rangatira had their own understanding, and this was what allowed them to step forward and sign. What was that understanding ? We return to this in our discussion of the treaty's meaning and effect, below. Suffice it to say here that, to the extent we can generalise, we believe that the rangatira regarded the treaty as enhancing their authority, not detracting from it. On the evidence presented to us, the view put by the Crown at our inquiry – that the rangatira willingly handed full control of their territories to the British Crown – is not sustainable. Our view is that, in Māori eyes, the authority over New Zealand that the Governor would have – te kāwanatanga katoa – was primarily the power to control British subjects and thereby keep the peace and protect Māori. This was the message conveyed by Hobson. He would be the Pākehā rangatira and a partner in the alliance that had been developing for decades between Bay of Islands and Hokianga rangatira and the Crown. The rangatira may also have understood kāwanatanga as offering Britain's protection against foreign threats, as Williams had said. On the question of land transactions, some kind of relationship would be established between the British and the rangatira. While not explicitly part of the treaty itself, moreover, rangatira would also have understood that – in keeping with its offer of protection – the Crown would enforce Māori understanding of pre-treaty land transactions, and therefore return land that settlers had not properly

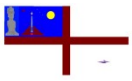




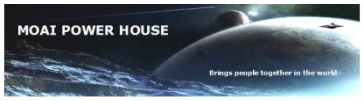








acquired. It could be contended that the rangatira must have recognised that their ongoing ‘independence’ could not literally be ‘perfect’ with the arrival of a British kāwana. Many had been to New South Wales and, as Binney pointed out, knew that kāwanatanga ‘was a term for a position of authority, associated with the idea of rule by mediation and by force. This [in New South Wales] was 10.3.4(2) Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz He Whakaputanga me te Tiriti The Declaration and the Treaty 520 an intervening authority’.113 The rangatira were aware that Britain was a powerful nation. Many must have understood that one of Britain’s primary concerns was to preserve the peace. Some must have expected that the British would exert its power to that end. To a greater or lesser extent, therefore, all the rangatira were aware that they were taking a risk by welcoming British authority into their country. That, we think, is precisely why they sought assurances that Hobson would be their equal, rather than being ‘up’ while they were ‘down’. In light of the changes that were already occurring, they wanted a powerful rangatira to control Pākehā and protect them from foreign powers. But they also knew that agreeing to the Governor’s presence constituted a significant step with ongoing ramifications. Therefore, they were not willing to accept such an arrangement without first seeking a guarantee that they would retain their independence and authority (their rangatiratanga), and not be treated as the indigenous people of New South Wales had been. Ultimately, we agree with Orange that the chiefs placed ‘a remarkable degree of trust’ in their advisers. They are very likely to have signed te Tiriti with some lingering doubts, although, as Orange put it, ‘Maori expectations of benefits from the agreement must in the end have outweighed fears, enabling reluctant chiefs to put aside reservations’.114 That decision to sign may have been a collective one by those who signed, made the evening before at Te Tou Rangatira. Mathew recorded that two unnamed rangatira told him that ‘yesterday they had not understood the matter, but . . . now they had made enquiry and duly considered it, and thought it was good, and they would sign it’.115 Alternatively, some rangatira may have felt pressure to sign when they saw their rivals step forward to do so, thereby potentially securing benefits that might not be available to non-signatories. Few, if any, however, would have foreseen that signing te Tiriti would lead to immutable arrangements. Rather, the very nature of the agreement meant that questions of relative authority remained to be negotiated over time on a case-by-case basis. We note at this point that some claimants suggested that care be taken in analysing the signatures or marks on the Waitangi Tiriti sheet. Some names appear without a mark next to them ; others are recorded as being on behalf of another person – in one case, a rangatira who was already deceased. We ourselves noted some discrepancies between the form of the chiefs’ tohu on he Whakaputanga and te Tiriti that are not readily explicable. But we do not believe there was any attempt at subterfuge by the missionaries who collected the signatures, or that the number of signatories has been overstated. The Waitangi Tiriti sheet is difficult to interpret and it is not surprising that it contains some curiosities, but we are certain that the subscription to te Tiriti was largely as has been recorded. (3) He Whakaputanga There is one other matter to note about the Waitangi hui before we elaborate on the meaning and effect of the treaty in February 1840. That is the striking absence of any explicit mention of he Whakaputanga, at least in European observers’ accounts. There was certainly direct reference to its existence in Busby’s invitation to rangatira to attend the gathering, as well as references in the text of the treaty itself to ‘te Wakaminenga o nga hapu o Nu Tirani’ (or, in English, ‘the Confederation of the United Tribes of New Zealand’). Occasional reference to it may also have been made in the speeches – for example, in Hobson’s mention of the chiefs’ prior request for protection (of their independence). But there was no record of any explicit discussion of its ongoing relevance or replacement by the treaty. From the British side, this lack of discussion was probably because the confederation had not formally met as Busby had initially hoped, and was accordingly not regarded as a functioning entity. Obviously, however, Busby still thought it capable of meeting, albeit only to cede sovereignty. To that extent the confederation was merely a device to name in the treaty. We presume

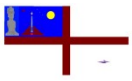




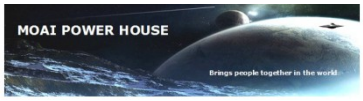








that Hobson took it for granted that the treaty would supersede the declaration, and felt no need to spell that out for the rangatira. Crown counsel told us that the rangatira ceded their sovereignty under the treaty, and thus relinquished any independent authority that they might have asserted under he Whakaputanga.116 In other words, the treaty nullified the declaration. We doubt very much that, by February 1840, the 10.3.4(3) Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz Our Conclusions 521 rangatira had relinquished their assertion of mana and independence in 1835, signatures on which had been gathered as recently as 1839. Moreover, they may well have felt that there was nothing in the treaty to challenge that position. He Whakaputanga had undoubtedly asserted the chiefs' kīngitanga and mana over the land, as well as their rangatiratanga. It had provided that no one other than the rangatira would have the power to make law within their territories, nor exercise any function of government (kāwanatanga) unless appointed by them and acting under their authority. It had also contained a request for Britain to use its power to protect Māori from threats to their rangatiratanga. On the face of it, the treaty may well have seemed like the application of these provisions. The chiefs were being assured of the retention of their 'tino rangatiratanga'. This was probably how Hobson's promise to the rangatira on 5 February of their 'perfect independence' was translated. In return, they were allowing the exercise of another function of government in the form of the kāwana and his authority. Claimant counsel argued strongly that te Tiriti gave effect or expression to he Whakaputanga.117 Such speculation, either way, has its limits. There is no scholarly debate to refer to on the matter because of the tendency to neglect he Whakaputanga that we discussed in chapter 4. However, we are inclined to agree with the claimants that the continuities between he Whakaputanga and te Tiriti created a greater onus on Hobson to explain clearly why and how the latter would nullify the former. That clarification seems to have been altogether absent at Waitangi and Mangungu in February 1840. 10.4 The Meaning and Effect of the Treaty Having set out how the treaty texts were formulated and how the oral debate was conducted, we now set out our conclusions on the meaning and effect of the treaty. 10.4.1 Relevance of texts to treaty meaning and effect The first matter to address is the issue of what 'the treaty' actually comprised in February 1840. We have already concluded that the verbal assurances formed a crucial part of the agreement. 'The treaty' clearly also included the text which was read to the rangatira and which they signed : te Tiriti. But are both treaty texts relevant to the treaty's meaning and effect ? We heard different arguments about this from the parties. Claimant counsel submitted that the English and Māori texts were two quite separate documents.118 The claimants saw the English text as irrelevant, in that the rangatira did not draft it, read it, or sign it.119 It only served as a distraction from the actual agreement : Dr Patu Hohepa went further and saw it as having an entirely negative influence, destroying 'the words and promises of Busby, Hobson, and Henry Williams given at Waitangi and Hokianga'.120 The claimants also made specific submissions on our statutory functions. Counsel for Ngāti Torehina argued that the Tribunal's governing legislation itself needed amendment, in that it relied on the 'erroneous' notion that the English and Māori texts were 'in fact two versions of the same agreement'. If Parliament had intended to 'give weight' to the English text, said counsel, 'this would be in breach of the "Treaty principles" that the Act purports to uphold'.121 Annette Sykes and Jason Pou submitted that the Tribunal's statutory requirement to 'have regard to' both texts left it open to the Tribunal effectively to discount the English text if it so chose.122 And counsel for Te Rarawa contended that the Tribunal was under no obligation to 'give effect to' the English text or 'reconcile' the two texts. Rather, counsel submitted, we were bound to interpret the treaty in accordance with international law, particularly the rules of contra proferentem (that any ambiguity in treaties is construed against the drafting party) and in dubio mitius (that unclear treaty provisions are interpreted in the way that imposes minimum obligations on the parties).123 The Crown, by contrast – while acknowledging there were differences between the two texts – saw the treaty as one document in two languages. The Tribunal's duty, counsel submitted, was to have regard to both texts of the treaty as

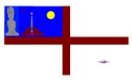




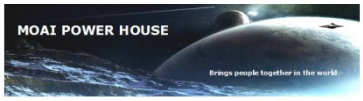








required by section 5(2) of the Treaty of Waitangi Act 1975. Crown counsel quoted approvingly the statement in the Ngai Tahu Report that ‘while there are two 10.4.1 Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz He Whakaputanga me te Tiriti The Declaration and the Treaty 522 texts there is only one Treaty’. The Crown also urged us not ‘to apply the rules of treaty interpretation put forward by the claimants’, in part because there was no enforceable body of ‘international law’ in 1840.124 Section 5(2) reads as follows : In exercising any of its functions under this section the Tribunal shall have regard to the 2 texts of the Treaty set out in Schedule 1 and, for the purposes of this Act, shall have exclusive authority to determine the meaning and effect of the Treaty as embodied in the 2 texts and to decide issues raised by the differences between them. Section 6 then sets out the Tribunal’s functions. The first is to inquire into claims of prejudice caused to Māori claimants by any legislation, delegated legislation, Crown policy, act, or omission which is ‘inconsistent with the principles of the Treaty’. The centrality of the treaty principles to the Tribunal’s functions is emphasised in the Act’s preamble, which states that the Act’s purpose is to : provide for the observance, and confirmation, of the principles of the Treaty of Waitangi by establishing a Tribunal to make recommendations on claims relating to the practical application of the Treaty and to determine whether certain matters are inconsistent with the principles of the Treaty. From these provisions we conclude that we are bound by our legislation to regard the treaty as comprising two texts. But we consider that, once we have considered the English text with an open mind, we are under no obligation to find some sort of middle ground of meaning between the two versions. However, we do agree with the Crown that we are under no obligation to interpret the treaty in accordance with international law. Our first reason is that our present task is to establish the meaning and effect of the treaty at the time of its signing in February 1840. We are certain that no court in 1840 with jurisdiction to interpret the treaty would have done so in the manner asserted by counsel for Te Rarawa. We further note that neither of the two international arbitral tribunals that considered the treaty in 1854 (the customs claim of American firm UL Rogers and Brothers) and 1920 (the American William Webster’s claim to land purchased in New Zealand prior to 1840) gave any consideration to the Māori text. Both concluded that Britain had obtained a straightforward cession of sovereignty.125 Secondly, it is the role of courts to interpret treaties according to the law governing the interpretation of treaty texts. By contrast, as noted above, the Tribunal’s jurisdiction centres not on the strict legal interpretation of the treaty but on its ‘principles’. We do, however, agree with the approach adopted by the Tribunal in previous reports, which have given special weight to the Māori text in establishing the treaty’s meaning and effect. They have done so because the Māori text was the one that was signed and understood by the rangatira – and indeed signed by Hobson himself. In 1983, the Motunui Tribunal endorsed the submission of the Department of Māori Affairs that should any question arise of which text should prevail the Maori text should be treated as the prime reference. This view is based on the predominant role the Maori text played in securing the signatures of the various Chiefs.126 In 1987, the Orakei Tribunal likewise stated that, in the case of any ambiguity between the two texts, it would place ‘considerable weight’ on the Māori text.127 We agree, and in doing so note the similarities with the principles of international law that counsel for Te Rarawa urged us to follow. 10.4.2 Te pūtake : the status of the parties to the treaty We have now reviewed the two texts of the treaty and discussed their key terms. We have related Hobson’s and the missionaries’ approach to communicating the treaty’s contents to the rangatira, as well as the nature of their responses to the chiefs’ questions. We have drawn conclusions on the understanding the rangatira will have taken from these discussions. We have also commented on the relationship of the two treaty texts to each other, as well 10.4.2 Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz Our Conclusions 523 as the priority we are to accord one over the other. We must now turn to the nub of the matter – the meaning and effect of the treaty in February 1840. The principal issue is really how kāwanatanga and rangatiratanga were to exist side by side. Could

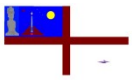




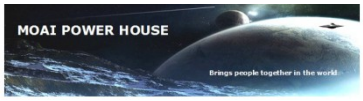








they do so in a manner that retained the substance of both ? Dr (later Professor) James Belich suggested that, on the face of it, it was not easy to reconcile ‘te kawanatanga katoa, or complete government’ (or ‘governorship’), with ‘te tino rangatiratanga’, ‘the unqualified exercise of their chieftainship’.128 It has often been argued that rangatiratanga, like sovereignty, could not be limited or qualified (see section 10.3.3(3)). Mutu called it ‘unqualified’, and Hohepa, within our inquiry, described it as ‘absolute’ and ‘unfettered’. By contrast, the Crown submitted that rangatiratanga was retained ‘within the rubric of an overarching national Crown sovereignty’ and that Māori understood that they were to be under the authority of the kāwana.129 The claimants essentially split two ways on the balance that was to exist between the Crown and Māori after te Tiriti was signed, albeit with some nuanced positions in between. Some argued that the authority granted the British Crown was of a lesser status than rangatiratanga and effectively subject to the chiefs’ discretion. If necessary, rangatiratanga would prevail. Others, however, submitted that the Crown’s authority would exist on an equal or dual basis. They spoke of ‘power sharing’, ‘equal footing’, and ‘dual power’. The Crown would control Pākehā, and the two sides would exercise authority jointly ‘in respect of Maori pakeha interactions’.130 Differences in opinion among the claimants are not surprising. The northern rangatira did not speak with one voice on the subject in February 1840 and we should not realistically expect hapū representatives to do otherwise today. It is clear that the rangatira considered their options at Waitangi on the basis of the experiences and priorities of their own hapū. Matthew Palmer wrote that : Each Māori hapū, led by their rangatira, would have made judgements about whether to agree to the Treaty based on a combination of factors. These would have varied depending on the geographic circumstances of the hapū, the nature and extent of their experience of Europeans, and their strategic position in relation to other hapū.131 This raises the question as to whether the treaty had different meanings in different locations. Around Waitangi, for example, did Te Kēmara’s understanding hold sway, while Nene’s interpretation applied in Hokianga ? Perhaps the more practical approach is to consider that the treaty’s effect is best understood by what all the signatory rangatira – or at least the great majority of them – would have agreed upon. As we have indicated, we believe this was that the rangatira understood kāwanatanga primarily as the power to control settlers and thereby keep the peace and protect Māori interests accordingly ; that rangatira would retain their independence and authority as rangatira, and would be the Governor’s equal ; that land transactions would be regulated in some way ; that the Crown would enforce the Māori understanding of pre-treaty land transactions, and therefore return land that settlers had not properly acquired ; and that it may also have involved protection of New Zealand from foreign powers. We think that few if any rangatira would have envisaged the Governor having authority to intervene in internal Māori affairs – though many would have realised that where the populations intermingled questions of relative authority would need to be negotiated on a case-by-case basis, as was typical for rangatira-to-rangatira relationships. It is significant that, while the British intended to acquire sovereignty, meaning the power to make and enforce laws over all, this was not what Hobson explicitly had sought. The debate was characterised by his emphasis on protection and a Māori concern that the Governor would not have authority over them. We note, in this regard, the way that Tāmati Waka Nene’s kōrero at Waitangi has at times been elevated to a kind of representative voice of the chiefs in the national narrative. Certainly, Nene has often been regarded as having changed the course of the hui at Waitangi on 5 February with his speech, and it is Nene who is frequently seen as having made the definitive statement of the chiefs’ 10.4.2 Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz He Whakaputanga me te Tiriti The Declaration and the Treaty 524 position.132 An example of this is Justice Bisson’s judgment in the Lands case. There the judge suggested that ‘the Maori concept is best summed up by the words of Tamati Waka Nene when Captain Hobson presented the Treaty to the Chiefs at Waitangi for signature’. These words included, of course, the plea for Hobson to remain as ‘a father, a judge, a peace-maker’. Justice Bisson also quoted Patuone asking Hobson to remain

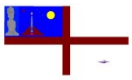




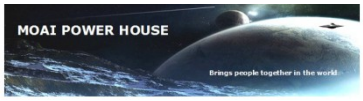








and ‘be a father for us’, as well as Hobson informing Gipps that he had assured the chiefs ‘that they might rely implicitly on the good faith of Her Majesty’s Government’. He concluded that : The passages I have quoted from the speeches of two Maori Chiefs and from the letter of Governor Hobson enable the principles of the Treaty to be distilled from an analysis of the text of the Treaty.133 Nene may well have made the key speech at Waitangi, and his views may have been shared by other rangatira. But we think it a mistake to regard his intervention as decisive simply because Hobson (and other Pākehā) described it as such. It suited Hobson and the missionaries for Nene’s voice to be considered representative. It does not necessarily follow that the position Nene articulated was the understanding of each rangatira when stepping forward to sign. Te Kēmara’s closing remark about rank and power might equally have been representative, for example : ‘Let us all be alike . . . Then, O Governor ! remain’.134 Or, for that matter, so could Taonui’s statement, about Hobson being ‘a Governor to the Pakeha’s’. Our view is that, on the basis of what they were told, the signatories were led to believe that Hobson would be a rangatira for the Pākehā and they would retain authority within their own autonomous hapū. This is consistent with Phillipson’s suggestion that the rangatira were interested in a Busby-like figure, but one with enough power to control the settlers and thereby create the conditions for peace and prosperity. Indeed, they probably welcomed help in this regard. As Belich put it, ‘A governor would free the chiefs from the burden of ruling the large new Pakeha communities, and assist them in policing the Pakeha–Maori interface.’135 They were prepared, as they had been in the past, to agree to an escalation of the level of official British involvement in New Zealand to respond to the complications posed by the increasing influx of settlers. The treaty, in that sense, connects to article 4 of he Whakaputanga, to the petition to King William IV, to Hongi’s overtures to King George IV, and indeed to Te Pahi’s request in Sydney in 1808 for protection for Māori from British ships’ masters. Who, though, would hold the upper hand in any disagreement between the Crown and the rangatira over matters involving interaction between Māori and Pākehā ? The relationship between kāwanatanga and rangatiratanga was not made explicit in either the text of te Tiriti or the debates. However, it is clear that the rangatira did not agree that the Governor should have ultimate authority. Rather, many explicitly sought assurances that they and the Governor would be equals, and appear to have signed te Tiriti only on that basis. As we have said, in practice this would mean that where the Māori and Pākehā populations intermingled, questions of relative authority remained to be negotiated over time on a case-by-case basis. We further consider that the Māori intention was for Crown authority in Māori–Pākehā interactions to be exercised co-operatively and in a way that protected rangatiratanga rather than impinged on it. Such was the chiefs’ understanding of the relationship between kāwanatanga and rangatiratanga, forged in translations of the Bible, in he Whakaputanga, and through the assurances of Hobson and his missionary translators. As noted, the rangatira may well have agreed that the Crown protect them from foreign threats and represent them in international affairs, where it was necessary – this was the firm conclusion of Palmer and the tentative conclusion of Orange.136 Such an interpretation certainly fits with the 1831 petition and article 4 of the declaration, as well as the sentiments expressed by Nene and Patuone about the French on 5 February 1840 and Nene’s 1860 recollections at Kohimārama. No competing voice was raised on the subject at the treaty debates in February 1840. But, again, the chiefs’ emphasis was on British protection of their independence, not a relinquishment of their sovereignty. 10.4.2 Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz Our Conclusions 525 We think it likely that the rangatira viewed their agreement with Hobson at Waitangi as a kind of strategic alliance. It followed on from and extended the alliance that they saw as dating back at least to 1820, and which had been advanced since then by important developments in the 1830s. These included King William’s responses to the 1831 petition and the appointment of Busby, and subsequent steps, such as Busby’s assistance in the adoption of a ‘national’ flag and the formulation of he Whakaputanga. Implicitly, the treaty also represented a selection by the rangatira of Britain over

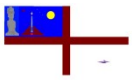




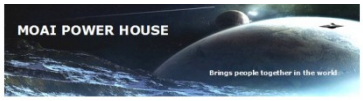








France. They had chosen a powerful ally, with what they considered good reason. At the same time, they would have regarded the relationship as subject to further and ongoing negotiation as the two peoples came increasingly into everyday contact. 10.4.3 The British view of the treaty's effect in the process of acquiring sovereignty The British, by contrast, saw the treaty as having established a markedly different arrangement. They saw its primary purpose as being to acquire Māori consent to a cession of sovereignty. Crucially, they saw such a cession as permanent, so that Māori could never legitimately seek to renegotiate the agreement made, still less reclaim the political authority which, according to the British, they had surrendered. We explained in chapter 6 how the British saw Māori consent as only one step in the process of the acquisition and assertion of sovereignty. The process was essentially concluded in October 1840 when the May proclamations were gazetted.137 In the May proclamations, British sovereignty was asserted over all of New Zealand. Annexation was backdated to 6 February with regard to the North Island. Later, there were other backdatings of acts of state as well, including indemnifying officials for their activities since their arrival in New Zealand. The date of the proclamations in New South Wales, 14 January, held a particular significance. From it, for example, the establishment of a British system of land tenure in New Zealand was to be dated, and it would also be selected as the date from which English laws operated throughout the new colony. English law, in essence, meant that Britain acquired sovereignty when it said it had. But the steps required to reach the state where this could be confidently stated, Professor Paul McHugh argued, meant that it was difficult to identify an exact 'moment' when Britain asserted sovereignty. In McHugh's view, then : British sovereignty, though it was declared by Proclamation, was regarded as having been acquired by a combination of jurisdictional steps extending to British subjects and in respect of Maori. Those steps baked into the sovereignty of the whole.138 If he had to state an exact 'moment' when sovereignty passed, he considered it was 21 May 1840, the date of Hobson's proclamations : Technically, in terms of British constitutional law, the issue of the Proclamations amounted to the 'moment' of British sovereignty, at least for the purposes of British and colonial courts. Strictly, it amounted to the formal and authoritative announcement by the Crown that the prerequisite it had set itself before such annexation could occur – Maori consent – had in its estimation been satisfied and that the Crown could now exert sovereign authority over all the inhabitants of the New Zealand islands.139 For our purposes, what is significant is that after February 1840 Hobson continued to act in accordance with his instructions ; he continued to gather signatures on the treaty sheets, and issued proclamations that were later returned for publication in London. These actions in turn reflected the British legal requirements for acquiring sovereignty in territories where the current inhabitants possessed some form of sovereign capacity. The British authorities regarded the actions Hobson had taken as merely a fulfilment of Normanby's instructions. There was no questioning of Hobson's judgment when his correspondence was received in London – that was, simply put, the way empires worked. Further, the English text confirmed that they had achieved what they had set out to obtain : Māori consent. 10.4.3 Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz He Whakaputanga me te Tiriti The Declaration and the Treaty 526 It is clear, however, that the rangatira did not see the treaty in this light. They did not see it as merely a prerequisite to the British Crown assuming supreme authority in their territories. Nor did they anticipate that the effect of the treaty would be permanent : a bargain that, once struck, could never be undone. But Hobson's response to the attempted withdrawal of signatures at Mangungu gave an early indication that the British regarded their consent as irrevocable. Because Hobson dismissed their objections so peremptorily, it is impossible to know quite what these Hokianga rangatira meant when they were recorded as wishing to reject the Queen. Hobson, however, had made it clear that, from the British perspective, the time for further discussion had already passed : 'the sovereignty of Her Majesty over the northern districts' was now 'beyond dispute'. 10.4.4 The treaty agreement Given the divergence of this British understanding from that of the rangatira, was there really an agreement to be

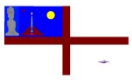




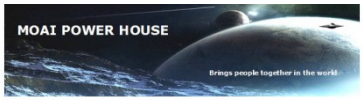








found in the treaty ? The claimants stressed the impossibility of reconciling the meaning of the two texts. Moreover, their tūpuna did not understand the words of the English text, just as Hobson had no understanding of the words of te Tiriti. But Hobson signed te Tiriti, not the Treaty. The irony of this has not gone unnoticed. Ruth Ross inverted a Member of Parliament's question in 1865 as to whether the rangatira were 'bound by what they signed or by what Captain Hobson meant them to sign' by asking 'Was the Crown bound by what Hobson signed, or by what he assumed its meaning to be ?'140 The Muriwhenua Land Tribunal thought there were good intentions on both sides but that the parties were each 'locked into their own world-view' and 'talking past each other'. As the Tribunal put it, Maori expected the relationship to be defined by their rules. It was natural to think so and, far from disabusing them of that view, the Treaty and the debate reinforced it. By the same token, the British, true to what was natural to them, assumed that sovereignty had been obtained by the Treaty and therefore matters would be determined by British legal precepts.141 The Muriwhenua Land Tribunal nonetheless concluded that an understanding was reached : Whatever the mismatches of Maori and Pakeha aspirations, none gainsay the Treaty's honest intention that Maori and Pakeha relationships would be based on mutual respect and the protection of each other.142 We also think that there was an agreement reached in the treaty, albeit for a different reason. In our view, the meaning and effect came from the Māori text, on the one hand, and the verbal explanations and assurances given by Hobson and the missionaries, on the other ; the similarity of the written text and the oral agreement undermines the very notion that the two sides talked past each other. As noted, for example, 'tino rangatiratanga' was likely the way Williams translated Hobson's assurance to the rangatira of 'perfect independence'. Hobson was instructed to place particular emphasis on the dangers the rangatira would face if Britain was not given authority to control its subjects. This received similar emphasis in the Māori text of the treaty and was also stressed verbally by both Hobson and his missionary translators. Although Hobson and his agents concealed the full British intentions the fact remains that there was still an agreement made in February 1840. As we have said, Hobson laid no emphasis on law-making and law enforcement, which – after all – was the overriding intention of the British, concentrating instead on acquiring control over British settlers. What he appeared to be asking for was agreement to what had been the Colonial Office's plan as recently as December 1838 : the exercise of authority over British subjects only. As such, he omitted to mention the very powers Britain then claimed it had obtained : the authority to make and enforce law for all people and over all places in New Zealand. Our essential conclusion, therefore, is that the rangatira did not cede their sovereignty in February 1840 ; that is, 10.4.4 Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz Our Conclusions 527 they did not cede their authority to make and enforce law over their people and within their territories. Rather, they agreed to share power and authority with the Governor. They and Hobson were to be equal, although of course they had different roles and different spheres of influence. The detail of how this relationship would work in practice, especially where the Māori and European populations intermingled, remained to be negotiated over time on a case-by-case basis. But the rangatira did not surrender to the British the sole right to make and enforce law over Māori. It was up to the British, as the party drafting and explaining the treaty, to make absolutely clear that this was their intention. Hobson's silence on this crucial matter means that the Crown's own self-imposed condition of obtaining full and free Māori consent was not met. This conclusion may seem radical. It is not. A number of New Zealand's leading scholars who have studied the treaty – Māori and Pākehā – have been expressing similar views for a generation. In that sense, our report represents continuity rather than change. Moreover, the conclusion that Māori did not cede sovereignty in February 1840 is nothing new to the claimants. Indeed, there is a long history of their tūpuna protesting about the Crown's interpretation of the treaty. We will examine the history of that protest, and its significance for the treaty claims of northern Māori, in stage 2 of our inquiry. We have considered the full range of evidence on Crown–Māori relations from 1769 until February 1840 – an

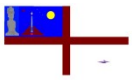




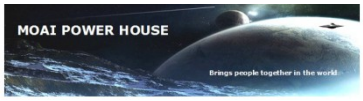








opportunity that we alone among Tribunal panels have had – and our principal conclusion is inescapable : Bay of Islands and Hokianga rangatira did not cede their sovereignty when they signed te Tiriti o Waitangi. Those who have made the assumption that the rangatira ceded sovereignty in February 1840 have largely ignored the Māori understanding. Erima Henare put it that the enduring notion of Māori ceding their sovereignty 'is a manipulation of the past'. He added : There is an inherent institutional bias against our case. The bias comes with the myths that explain and justify the New Zealand State and the idea of undivided parliamentary sovereignty. The history invoked is not the Māori history. The Treaty invoked is the English version, not the Māori version.143 In this inquiry, we have been able to give thorough consideration to all the perspectives presented to us. We have reached the conclusion that Bay of Islands and Hokianga Māori did not cede sovereignty in February 1840. In drawing this conclusion, we say nothing about how and when the Crown acquired the sovereignty that it exercises today. Our point is simply that the Crown did not acquire that sovereignty through an informed cession by the rangatira who signed te Tiriti at Waitangi, Waimate, and Mangungu. What does this mean for treaty principles ? Given we conclude that Māori did not cede their sovereignty through te Tiriti, what implications arise for the principles of the treaty identified over the years by both this Tribunal and the courts ? That is a matter on which counsel will no doubt make submissions in stage 2 of our inquiry, where we will make findings and, if appropriate, recommendations about claims concerning alleged breaches of the treaty's principles. It suffices to reiterate here that, in February 1840, an agreement was made between Māori and the Crown, and we have set out its meaning and effect. It is from that agreement that the treaty principles must inevitably flow. 10.5 Kōrero Whakakapi In summary, an agreement was reached at Waitangi, Waimate, and Mangungu in February 1840. That agreement can be found in what signatory rangatira (or at least the great majority of them) were prepared to assent to, based on the proposals that Hobson and his agents made to them by reading te Tiriti and explaining the proposed agreement verbally, and on the assurances the rangatira sought and received. Under that agreement, the rangatira welcomed Hobson and agreed to recognise the Queen's kāwanatanga. They regarded the Governor's presence as a further, significant step in their developing relationship with the Crown. In recognition of the changed 10.5 Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz He Whakaputanga me te Tiriti The Declaration and the Treaty 528 circumstances since he Whakaputanga had been signed in 1835, they accepted an increased British authority in New Zealand. The authority that Britain explicitly asked for, and they accepted, allowed the Governor to control settlers and thereby keep the peace and protect Māori interests. It also appears to have made Britain responsible for protecting New Zealand from foreign powers. The rangatira who signed te Tiriti were aware that Britain was a powerful nation. They recognised that they were consenting to the establishment of a significant new authority in their lands, where previously all authority had rested with them on behalf of their hapū. They must also have recognised that, where the Māori and European populations intermingled, questions of relative authority would inevitably have to be negotiated over time on a case-by-case basis – as, of course, was typical for rangatira-to-rangatira relationships. Having sought and received assurances that they would retain their independence and chiefly authority, and that they and the Governor would be equals, many rangatira were prepared to welcome this new British authority. They did not regard kāwanatanga as undermining their own status or authority. Rather, the treaty was a means of protecting, or even enhancing, their rangatiratanga as contact with Europeans increased. The British viewed the arrangement differently. Britain's intention, plainly set out in Normanby's instructions to Hobson, was that Māori would cede sovereignty to the Crown and so become subject to British law and government. Article 1 of the English text reflected that intention. But it was never conveyed to rangatira. Hobson had been instructed, among other things, to emphasise the protective aspects of the treaty, and that is what he did. Neither he nor his agents explained Britain's understanding of what Crown acquisition of sovereignty would mean for Māori.

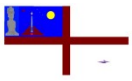




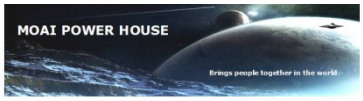








Rather, their emphasis was on the Governor acquiring sufficient authority to control British subjects and to protect Māori and their rangatiratanga. This is the arrangement that was presented to rangatira. It was an arrangement that explicitly guaranteed rangatira their ‘tino rangatiratanga’, their independence and full chiefly authority, while seeking for the Crown the power of ‘kawanatanga’, which was essentially explained as the authority to control settlers. This was an arrangement that the rangatira were prepared to accept, and indeed welcome. The treaty’s meaning and effect can only be found in what Britain’s representatives clearly explained to the rangatira, and the rangatira then assented to. It is not to be found in Britain’s unexpressed intention to acquire overarching sovereign power for itself, and for its own purposes. On that, the rangatira did not give full and free consent, because it was not the proposal that Hobson put to them in February 1840. In making the decision to sign, the rangatira placed their trust in the missionaries, and in missionary translations of Hobson’s words. Before signing, they had feared that the Governor would be above them, that British soldiers would come, that they would be swamped by settlers, and that they would lose their land. But on the basis of the clear and consistent assurances they received, te Tiriti seemed to offer them peace and prosperity, protection of their lands and other taonga, the return of lands they believed Europeans had wrongly claimed, security from mass immigration and settler aggression, protection from the French, and a guarantee of their ongoing independence and rangatiratanga – all in return for allowing the Governor a limited authority. In the end, the rangatira who signed took a calculated risk. While they knew the British were powerful, they chose to trust that this power would indeed be used to the advantage of both parties. This report completes stage 1 of our inquiry. In stage 2, it remains for us to apply the insights we have gained from this preliminary inquiry, and to report on claims that Crown actions since those original February 1840 signings have been inconsistent with the principles of the treaty. Our stage 2 hearings are well advanced, but the parties will have the benefit of access to this report in filing their closing submissions. Was the agreement that was reached in February 1840 honoured in subsequent interactions between the Crown and Māori within our inquiry district ? That, now, becomes the question. 10.5 Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz Our Conclusions 529 Summary of Conclusions At various points in this chapter we have arrived at conclusions about the treaty’s meaning and effect in February 1840. As we have said, the agreement can be found in what signatory rangatira (or at least the great majority of them) were prepared to assent to, based on the proposals that Hobson and his agents put to them, and on the assurances that the rangatira sought and received. Here, we summarise our conclusions. ы The rangatira who signed te Tiriti o Waitangi in February 1840 did not cede their sovereignty to Britain. That is, they did not cede authority to make and enforce law over their people or their territories. ы The rangatira agreed to share power and authority with Britain. They agreed to the Governor having authority to control British subjects in New Zealand, and thereby keep the peace and protect Māori interests. ы The rangatira consented to the treaty on the basis that they and the Governor were to be equals, though they were to have different roles and different spheres of influence. The detail of how this relationship would work in practice, especially where the Māori and European populations intermingled, remained to be negotiated over time on a case-by-case basis. ы The rangatira agreed to enter land transactions with the Crown, and the Crown promised to investigate pre-treaty land transactions and to return any land that had not been properly acquired from Māori. ы The rangatira appear to have agreed that the Crown would protect them from foreign threats and represent them in international affairs, where that was necessary. Though Britain went into the treaty negotiation intending to acquire sovereignty, and therefore the power to make and enforce law over both Māori and Pākehā, it did not explain this to the rangatira. Rather, in the explanations of the texts and in the verbal assurances given by Hobson and his agents, it sought the power to control British subjects and thereby to protect Māori. That is the essence of what the rangatira agreed to. 10-Notes Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz He

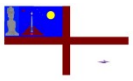




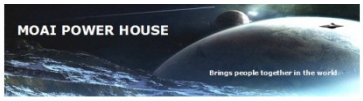








Whakaputanga me te Tiriti The Declaration and the Treaty 530 Notes 1. Document A16, app6 ; doc A16, p175 ; doc B10, p64 2. The Marquis of Normanby to Captain Hobson, 14 August 1839, BPP, 1840, vol 33 [560], pp37–42 (IUP, vol 3, pp85–90) 3. Document A18(e), pp623–625 4. Document A17, pp16–17 ; doc A18, p54 ; doc A11(c), pp3–4 ; doc A21, pp34–36 5. For example, see submission 3.3.2, pp99, 105–106 ; submission 3.3.30, pp50, 61 ; submission 3.3.14, pp18–21 ; submission 3.3.21, p19 ; submission 3.3.23, pp24–25 ; submission 3.3.6, p26 ; see also doc D4, pp34–35 ; doc B26(a), pp26–27 6. Submission 3.3.33, pp5, 10, 45 7. Ibid, p45 8. Ibid, pp12, 40–41, also see pp11, 13, 38–39, 45 9. Ibid, pp5, 12–13, 45 10. Ibid, pp38–39 11. For example, see transcript 4.1.2, pp49–50 ; doc B26(a), pp3, 22–23 ; C9(b), p3 ; submission 3.3.30, pp62, 71–72 ; submission 3.3.23, pp30–31 12. Document B10, pp46–52 ; doc B4(a), pp6–8 ; doc B37, pp3–4 ; doc C22, pp7, 10 ; doc C34, pp4–5 ; doc C7, p21 ; doc C14, pp3–5 ; doc C33, part 1, pp6–8, 13 ; doc D5, p24 ; doc B26(a), p27 ; doc C2, p19 ; doc C32, p12 ; doc D11, p5 ; doc C24, pp8–10, 13 13. Document B4(a), p6 ; doc A34(a), p7 ; doc B10, pp65, 77 ; transcript 4.1.1, p294 14. For the Crown's views, see submission 3.3.33, pp5, 10, 45. 15. Submission 3.3.23, pp21, 23–25 ; submission 3.3.2, pp100, 102, 105–106, 111 ; submission 3.3.30, pp6–7, 50–52, 72, 76 ; submission 3.3.21, pp3–4, 19 ; submission 3.3.14, pp21–24, 33, 92 ; submission 3.3.49, p2 ; doc B26(a), pp23–24 ; doc C23, pp10–11 ; doc C24, p12 ; doc B8(a), p3 16. Submission 3.3.30, pp52–53 17. Submission 3.3.33, pp5, 11 18. Document C20(a), pp7, 9 ; doc B26(a), pp14–15, 22–25, 27–28 ; doc D4, pp41–42 ; doc C11(a), p5 ; doc B3, pp6–7, 28–29, 55, 61–62 19. Transcript 4.1.4, pp36, 42–43, 310 ; A34(a), p6 ; B18, p14 ; submission 3.3.2, p99 ; doc B26(a), p21 ; doc C7, p11 ; doc B12, p3 ; doc D7, p10 ; doc C2, p11 ; doc C9(b), p3 ; doc C34, p4 ; doc B18(a), pp14–15, 23–24, 30–31, 35–39 ; doc A28, pp7–8 20. Transcript 4.1.1, p310 21. Document A18(f), pp853–862 ; Busby to Bourke, 30 November 1835, qMS 0345, ATL, Wellington 22. For Busby's intentions, see doc A11(a), vol 4, pp1356–1362 ; Busby to Bourke, 26 January 1836, qMS 0345, ATL, Wellington ; doc A19, pp45–46 ; doc A17, pp60–61. 23. Submission 3.3.33, p88 24. Ibid, pp5–6, 18–19 25. John M Ward, British Policy in the South Pacific (1786–1893) : A Study in British Policy towards the South Pacific Islands prior to the Establishment of Governments by the Great Powers (Wellington : Australasian Publishing Co, 1948), p42 26. Anne Salmond, Between Worlds : Early Exchanges between Maori and Europeans, 1773–1815 (Auckland : Penguin Books, 1997), p323 27. Sydney Gazette and New South Wales Advertiser, 26 May 1805, p1 28. Ibid, 11 December 1813, p1 29. Ward, British Policy in the South Pacific (1786–1893), p40 30. Eric Ramsden, Busby of Waitangi : HM's Resident at New Zealand, 1833–40 (Wellington : AH and AW Reed, 1942), p75 31. Submission 3.3.33, pp46–47, 73 32. Submission 3.3.15, p44 33. Submission 3.3.28(a), p101 ; transcript 4.1.4, p174 34. As Normanby instructed Hobson in August 1839 (The Marquis of Normanby to Captain Hobson, 14 August 1839, BPP, 1840, vol 33 [238], p14 (IUP, vol 3, p88)) : 'It is impossible to confide to an indiscriminate body of persons, who have voluntarily settled themselves in the immediate vicinity of the numerous population of New Zealand, those large and irresponsible powers which belong to the representative system of Colonial Government. Nor is that system adapted to a colony struggling with the first difficulties of their new situation. Whatever may be the ultimate form of government to which the British settlers in New Zealand are to be subject, it is essential to their own welfare, not less than to that of the aborigines, that they should at first be placed under a rule, which is at once effective, and to a considerable degree external.' 35. Document A18, pp148–149 36. Document A21, pp44–45 37. Transcript 4.1.1, pp245, 249 38. Document B14, p5 39. Document A20, p102 40. Hugh Carleton, The Life of Henry Williams, Archdeacon of Waimate, 2 vols (Auckland : Upton and Wilsons and Horton, 1874–77), vol 2, pp7–8 41. Document A25, pp60–63 42. Transcript 4.1.1, pp48–49. While Edwards did not make it clear, this may have been a reference to Maning's 'History of the War in the North, Against the Chief Heke', in which an old chief relates that the treaty with all its signatures was either buried with Hobson or kept by his relations as a 'remembrance of him'. Frederick Maning, Old New Zealand and A History of the War in the North against the Chief

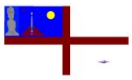




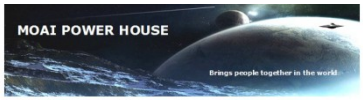








Heke (London : Richard Bentley and Son, 1876), p190 43. Document D1, p9 ; doc A19(a), p81 44. Submission 3.3.33, pp164–168 45. Memoranda 2.5.42 and 2.5.46 46. Submission 3.1.295, pp3–4 47. Document A1(a), pp2, 5–8 48. Document A22(d), pp19–20 49. Submission 3.3.2, pp84–88, 143, 157–158 50. Ibid, pp168–169 51. Submission 3.3.14, p45 52. Document A22, p25. Salmond later conceded the possibility that Henry Williams consulted rangatira he trusted on the appropriate words to use in te Tiriti : doc A22(d), pp19–20. From her clear statement about mana, however, we do not believe she accepted a core aspect of the tiriti tuatahi story. 53. Document A30(a), pp4–5 54. Transcript 4.1.1, pp254, 263 10-Notes Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz Our Conclusions 531 55. Document A25, p93 56. 'Auckland', New Zealand Colonist and Port Nicholson Advertiser, 30 September 1842, p2 ; 'Death of Governor Hobson', Sydney Morning Herald, 26 October 1842, p4 57. Document A1(a), pp8–10 58. Ibid, p6 59. MPK Sorrenson, 'Treaties in British Colonial Policy : Precedents for Waitangi', in Sovereignty and Indigenous Rights : The Treaty of Waitangi in International Contexts, ed William Leslie Renwick (Wellington : Victoria University Press, 1991), p17 60. Ibid 61. Ramsden, Busby of Waitangi, p257 62. As we noted in chapter 8, Gipps was familiar with North American precedents and may have influenced Hobson's use of the term. That does not explain why Gipps did not then use it himself. 63. On this, see Ruth M Ross, 'Te Tiriti o Waitangi : Texts and Translations', NZJH, vol 6, no2 (1972), p152 ; JMR Owens, 'New Zealand before Annexation', in The Oxford History of New Zealand, ed William H Oliver with Bridget R Williams (Wellington : Oxford University Press, 1981), p52. Ross wrote that 'the government's interpretation of the second article . . . made a nullity of the third article', while Owens wrote that article 3 'ignored the fact that British subjects were not normally subject to a pre-emption clause'. 64. Document A18(e), p755 ; Governor Gipps to Hobson, dispatch, 24 December 1839, G36/1 (a), Archives New Zealand, Wellington 65. The Marquis of Normanby to Captain Hobson, 14 August 1839, BPP, 1840, vol 33 [238], p40 (IUP, vol 3, p88) 66. Document D4, p14 67. Sorrenson, 'Treaties in British Colonial Policy : Precedents for Waitangi', p29 68. Judith Binney, 'The Maori and the Signing of the Treaty of Waitangi', in Towards 1990 : Seven Leading Historians Examine Significant Aspects of New Zealand History, ed David Green (Wellington : GP Books, 1989), p26 69. Document B21, pp5, 8 ; doc A22, p18 70. Ross, 'Te Tiriti o Waitangi', p151 71. Claudia Orange, The Treaty of Waitangi (1987 ; repr Wellington : Bridget Williams Books, 2003), p42 72. For an overview of these arguments, see doc A17, pp159–163. 73. Ibid, p162 74. Binney, 'The Maori and the Signing', p27 75. Waitangi Tribunal, Report of the Waitangi Tribunal on the Manukau Claim, 2nd ed (Wellington : Waitangi Tribunal, 1989), pp66–67 76. Document A25, p92 ; doc A24, p33. As Mutu put it, 'If the missionaries did truly intend to convey accurately the meaning and intent of what was in this document drafted in English when they drew up Te Tiriti, they would not have hesitated to use the words mana and rangatiratanga in Te Tiriti in place of the word kāwanatanga.' 77. Document A1, p273 78. Binney, 'The Maori and the Signing', pp25–26 79. Document A18, p238 80. JMR Owens, The Mediator : A Life of Richard Taylor, 1805–1873 (Wellington : Victoria University Press, 2004), p49 81. Normanby wrote : 'You will therefore frankly and unreservedly explain to the natives or their chiefs the reasons which should urge them to acquiesce in the proposals you will make to them. Especially you will point out to them the dangers to which they may be exposed by the residence amongst them of settlers amenable to no laws or tribunals of their own and the impossibility of Her Majesty extending to them any effectual protection unless the Queen be acknowledged as the Sovereign of their country, or at least of those districts within or adjacent to which Her Majesty's subjects lands or habitations.' (Emphasis added.) 82. Carleton, The Life of Henry Williams, vol 2, p12 83. Document A1, pp281–282 84. Binney wrote that Servant's 'spoken Maori was possibly better than his English' : Binney, 'The Maori and the Signing', p28. 85. Louis Catherin Servant as translated by Peter Low, 'French Bishop, Maori Chiefs, British Treaty', in The French and the Maori, ed John Dunmore (Waikanae : The Heritage Press Ltd, 1992), pp102–103 86. Richard Taylor to William Jowett, 20 October 1840, MS

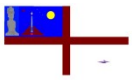




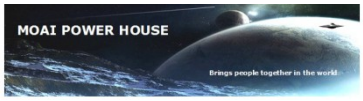








Papers 0254–01 (or MS 197, reel 1), ATL, Wellington 87. Orange, The Treaty of Waitangi, pp64–65 88. Ibid 89. Document A18, p239 90. Document A19, p112 91. Submission 3.3.33, p146 92. Orange, The Treaty of Waitangi, p51 93. Submission 3.3.33, p146 94. Document A19(a), p62 95. Orange, The Treaty of Waitangi, p51 96. William Colenso, The Authentic and Genuine History of the Signing of the Treaty of Waitangi, New Zealand, February 5 and 6, 1840 (Wellington : Government Printer, 1890), p17 97. Document A18, p238 98. Submission 3.3.33, p150. As counsel put it, 'If this explanation had been given to rangatira, it is impossible to conceive how the rangatira could have understood' the treaty otherwise. 99. Colenso, The Authentic and Genuine History of the Signing of the Treaty of Waitangi, p26. In a similar vein, Hobbs claimed that missionary influence was also ultimately decisive at Mangungu. 100. Document A1, p283 101. Low, 'French Bishop, Maori Chiefs, British Treaty', p103 102. For example, when we asked Crown counsel to clarify where exactly the text of te Tiriti made it clear that the Governor was to have a higher authority than the rangatira, Crown counsel pointed to the chiefs' speeches as evidence of this understanding : transcript 4.1.5, pp321–322. 103. Submission 3.3.33, p157 104. Ibid, p161 105. Waitangi Tribunal, Muriwhenua Land Report (Wellington : GP Publications, 1997), p111 106. Document A1, p283 10-Notes Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz He Whakaputanga me te Tiriti The Declaration and the Treaty 532 107. Taylor to Jowett, 20 October 1840, MS papers 0254–01, ATL, Wellington 108. Orange, The Treaty of Waitangi, p53 109. Peter Low, 'Pompallier and the Treaty : A New Discussion', NZJH, vol 24, no2 (1990), p192 110. Waitangi Tribunal, Muriwhenua Land Report, p114 111. Ross, 'Te Tiriti o Waitangi', pp151–152 112. Document A1, p300 113. Binney, 'The Maori and the Signing', p26 114. Orange, The Treaty of Waitangi, p58 115. Document A1, p298 116. Submission 3.3.33, p189 117. See, for example, submission 3.3.32, para 3 ; submission 3.3.25, pp3–4 118. See, for example, submission 3.3.2, p16 119. See, for example, doc A30(a), p6 120. Document D4, p63 121. Submission 3.3.15, p34 122. Submission 3.3.30, p9 123. Submission 3.3.11(c), pp6–7, 28 ; submission 3.3.51, p23 124. Submission 3.3.33, pp8–9, 183, 187 125. Matthew Palmer, The Treaty of Waitangi in New Zealand's Law and Constitution (Wellington : Victoria University Press, 2008), p160 126. Waitangi Tribunal, Report of the Waitangi Tribunal on the Motunui–Waitara Claim, 2nd ed (Wellington : Government Printing Office, 1989), p49 127. Waitangi Tribunal, Report of the Waitangi Tribunal on the Orakei Claim, p180 128. James Belich, Making Peoples : A History of the New Zealanders – from Polynesian Settlement to the End of the Nineteenth Century (Auckland : Allen Lane and the Penguin Press, 1996), p194 129. Submission 3.3.33, pp99–101 130. Submission 3.3.28(a), p18 ; submission 3.3.24, p29 131. Palmer, The Treaty of Waitangi, p68 132. New Zealand schoolchildren used to be taught that Nene was 'a firm friend of the English'. Our Nation's Story : A Course in British History : Standard III (Auckland : Whitcombe and Tombs, [1929]), p27 133. New Zealand Maori Council v Attorney-General [1987] 1 NZLR 641 at 714–715 134. Colenso, The Authentic and Genuine History, p27 135. Belich, Making Peoples, p200 136. Palmer, The Treaty of Waitangi, pp163–164 ; Orange, The Treaty of Waitangi, p89 137. Submission 3.3.33, p171 138. Document A21, pp90, 96 139. Document A21(a), pp1, 13 ; doc A21, p71 140. Ross, 'Te Tiriti o Waitangi', pp129–130 141. Waitangi Tribunal, Muriwhenua Land Report, p116 142. Ibid, p117 143. Document A30(a), pp3, 5 10-Notes Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz Dated at this day of 2014 Judge Craig Coxhead, presiding officer Kihi Ngatai QSM, member Professor Richard Hill, member Joanne Morris OBE, member Emeritus Professor Ranginui Walker DCNZM, member Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz 535 Appendix Select Record of Inquiry Record of Hearings The Tribunal The Te Paparahi o Te Raki Tribunal consisted of Judge Craig Coxhead (presiding), Kihi Ngatai, Professor Richard Hill, Joanne Morris, and Emeritus Professor Ranginui Walker. Crown counsel Andrew Irwin, Helen Carrad, and Rachel Hogg represented the Crown.

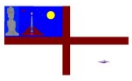




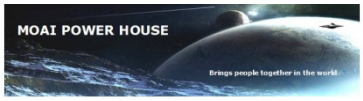








Claimant counsel Claimant counsel were as follows : ы Aidan Warren and Season-Mary Downs represented claims Wai 1464 and Wai 1546. ы Annette Sykes, Jason Pou, Miharo Armstrong, Terena Wara, and Taryn Tuari represented claims Wai 354, Wai 375, Wai 510, Wai 513, Wai 515, Wai 517, Wai 520, Wai 523, Wai 549, Wai 573, Wai 919, Wai 1151–1169, Wai 1354, Wai 1513, Wai 1514, Wai 1526, Wai 1535, Wai 1664, Wai 1679, and Wai 1728. ы Bryan Gilling and Katherine Porter represented claims Wai 58, Wai 249, Wai 605, Wai 1312, Wai 1333, Wai 1940, Wai 2022, and Wai 2124. ы Bryan Gilling and Rebecca Sandri represented claim Wai 1333. ы Campbell Duncan and Hanna Stephen represented claim Wai 1940. ы Daniel Watkins represented claims Wai 1259 and Wai 1538. ы David Stone and Augencio Bagsic represented claims Wai 1400, Wai 1477, Wai 1478, Wai 1484, Wai 1485, Wai 1487, Wai 1488, Wai 1509, Wai 1512, Wai 1518, Wai 1522, Wai 1523, Wai 1524, Wai 1529, Wai 1530, Wai 1539, Wai 1540, Wai 1541, Wai 1544, Wai 1582, Wai 1613, Wai 1677, Wai 1680, Wai 1712, Wai 1716, Wai 1751, Wai 1816, Wai 1817, Wai 1825, Wai 1838, Wai 1839, Wai 1844, Wai 1845, Wai 1846, Wai 1847, Wai 1848, Wai 1849, Wai 1850, Wai 1852, Wai 1853, Wai 1854, Wai 1855, Wai 1856, Wai 1864, Wai 1954, Wai 1955, Wai 1959, Wai 1960, Wai 1961, Wai 1971, Wai 1973, Wai 1979, Wai 2004, Wai 2027, Wai 2057, Wai 2064, Wai 2115, Wai 2116, Wai 2148, Wai 2151, Wai 2152, Wai 2153, Wai 2168, and Wai 2170. ы David Stone and Shane Hutton represented claim Wai 1400. ы David Stone, Shane Hutton, and Augencio Bagsic represented claim Wai 1477. ы David Stone, Shane Hutton, Augencio Bagsic, and Eru Lyndon represented claim Wai 1850. ы Donna Hall, Angela Brown, and A Taylor represented claims Wai 568 and Wai 861. ы Hemi Te Nahu and Eve Rongo represented claim Wai 1857. ы Janet Mason and Priscilla Agius represented claims Wai 1699 and Wai 1701. ы John Kahukiwa and Georgia Bates represented claims Wai 620, Wai 1508, and Wai 1757. ы Te Kani Williams and Erin Thompson represented claims Wai 16, Wai 17, Wai 45, Wai 117, Wai 284, Wai 295, Wai 320, Wai 544, Wai 548, Wai 590, Wai 736, Wai 913, Wai 1140, and Wai 1307. ы Katharine Taurau represented claim Wai 2003. Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz He Whakaputanga me te Tiriti The Declaration and the Treaty 536 ы Kelly Dixon, Prue Kapua, and Tajim Mohammed-Kapa represented claims Wai 492 and Wai 1341. ы Linda Thornton and Bryce Lyall represented claims Wai 1385, Wai 1507, Wai 1519, Wai 1531, Wai 1666, Wai 1957, Wai 1958, Wai 1968, Wai 2000, Wai 2005, Wai 2010, Wai 2021, Wai 2025, and Wai 2061. ы Maryann Mere Mangu represented claim Wai 2220. ы Matanuku Mahuika and Paranihia Walker represented claim Wai 1665. ы Michael Doogan and Season-Mary Downs represented claims Wai 49 and Wai 682. ы Miharo Armstrong represented claim Wai 1354. ы Moana Tuwhare and Katharine Taurau represented claims Wai 421, Wai 466, Wai 869, Wai 1131, Wai 1247, Wai 1383, Wai 1062, Wai 1134, and Wai 1384. ы Spencer Webster represented claim Wai 303. ы Tavake Afeaki and Gerald Sharrock represented claims Wai 121, Wai 619, Wai 654, Wai 774, Wai 884, Wai 914, Wai 985, Wai 1129, Wai 1313, Wai 1460, Wai 1536, Wai 1673, Wai 1941, Wai 1970, Wai 2179, and Wai 2309. ы Tavake Afeaki and Mireama Houra represented claims Wai 619, Wai 774, Wai 1536, and Wai 1673. ы Tony Shepherd and Alana Thomas represented claim Wai 700. The hearings The first hearing, for claimant witnesses, was held from 10 to 14 May 2010 at Te Tii Marae, Waitangi. The second hearing, for claimant witnesses, was held from 14 to 18 June 2010 at Te Tii Marae, Waitangi. The third hearing, for claimant and Tribunal witnesses, was held from 9 to 13 August 2010 at Waipuna Marae, Panguru. The fourth hearing, for claimant and Crown witnesses, was held from 11 to 15 October 2010 at Whitiora Marae, Te Tii, Mangonui. The fifth hearing, for closings submissions, was held from 22 to 24 February 2011 at Ōtiria Marae, Moerewa. Record of Proceedings Statements of claim 1.1.1 Tiata Witehira, K Witehira, T Tohu, statement of claim (Wai 24), 3 September 1985 1.1.2 Sir James Clendon Henare, statement of claim (Wai 49), 10 October 1988 (a) Sir James Clendon Henare, amended statement of claim, 13 March 2003 1.1.3 Wiremu Tairua, statement of claim (Wai 53), 5 February 1989 1.1.4 Terry Smith, statement of claim (Wai 45), 1 October 1987 (a) Terry Smith, first amended statement of claim, 1 October 1987 (b) Hiwi

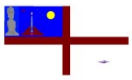




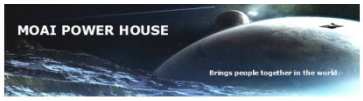








Tauroa, second amended statement of claim, 3 March 1992 (c) Patricia Tauroa and Ihapera Mei Baker, third amended statement of claim, 23 June 1992 (d) Matilda Jane Saies, fourth amended statement of claim, 9 October 1992 (e) Hiwi Tauroa and Pauline Henare, fifth amended statement of claim, 7 June 1995 (f) Hiwi Tauroa, sixth amended statement of claim, 20 August 1997 (g) Hiwi Tauroa and Pauline Henare, seventh amended statement of claim, 10 December 1997 (h) Bryan Gilling, Katherine Porter, and Hannah Stephen to Tribunal, memorandum changing names of claimants, 20 May 2011 (i) Nuki Aldridge and Patricia Tauroa, eigth amended statement of claim, 30 September 2011 1.1.5 Jean Appelhof and Leah Walthers, statement of claim (Wai 67), 9 September 1987 (a) Jean Appelhof and Leah Walthers, first amended statement of claim, 11 September 1987 (b) Jean Appelhof and Leah Walthers, second amended statement of claim, 12 October 1987 1.1.6 Betty Parani Hunapo (Kopa) and Hira Hunapo, statement of claim (Wai 68), 27 April 1987 (a) Betty Parani Hunapo, amended statement of claim, 27 November 1987 (b) Aidan Warren and Season-Mary Downs, memorandum giving notice of additional claimant, 25 September 2012 1.1.7 Hariata Gordon, statement of claim (Wai 72), 20 October 1987 (a) Hariata Gordon, first amended statement of claim, 24 April 1989 (b) Hariata Gordon, second amended statement of claim, not dated (c) Hariata Gordon, third amended statement of claim, 26 June 1990 App Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz Select Record of Inquiry 537 (d) Hariata Gordon, fourth amended statement of claim, 27 June 1990 (e) Hariata Gordon, fifth amended statement of claim, 27 February 1990 (f) Hariata Gordon, sixth amended statement of claim, 10 April 1992 (g) Hariata Gordon, seventh amended statement of claim, 15 October 1993 1.1.8 John Irimana, Marea Timoko, Monday Mane Tahere, and Titau Eruera Rakete, statement of claim (Wai 76), 17 December 1987 1.1.9 John Nathan Pickering, statement of claim (Wai 82), 9 March 2011 (a) John Nathan Pickering, amended statement of claim, 15 January 2003 1.1.10 Vacant 1.1.11 Nita Louisa Brougham, Matilda Shotter, and Harriett Alice Wilson, statement of claim (Wai 109), 8 December 1989 1.1.12 Jane Llenaghan and Maria Wakelin, statement of claim (Wai 111), 20 November 1989 1.1.13 Raumoa Kawiti and others, statement of claim (Wai 120), 13 February 1993 1.1.14 Tamihana Akitai Paki and Eru Manukau, statement of claim (Wai 121), 28 March 1988 (a) William Mohi Te Maati Manukau and Eru Manukai, first amended statement of claim, 28 December 1989 (b) Eru Manukau, second amended statement of claim, 5 March 1990 (c) William Mohi Te Maati Manukau and Eru Manukai, third amended statement of claim, 5 December 1990 (d) William Mohi Te Maati Manukau and Eru Manukai, fourth amended statement of claim, 24 December 1990 (e) Eru Manukau, fifth amended statement of claim, 28 November 1990 (f) Eru Manukau, sixth amended statement of claim, 18 September 1991 (g) Eru Manukau, seventh amended statement of claim, 10 January 1992 (h) William Mohi Te Maati Manukau, eighth amended statement of claim, 27 April 1992 (i) Raniera Dan Davis, ninth amended statement of claim, 14 July 1992 (j) Eru Manukau, tenth amended statement of claim, 29 June 1992 (k) Eru Manukau, eleventh amended statement of claim, 29 June 1992 (l) Mohi Wiremu Manukau, Te Pana Paikea Manukau, and Eru Manukau, twelfth amended statement of claim, 29 May 1994 (m) Mohi Wiremu Manukau, Te Tana Paikea Manukau, Marama Steed, Mihi Wira Manukau, Makere Ta Manukau, Mereana Manukau, and Eru Manukau, thirteenth amended statement of claim, 8 March 1999 (n) Mohi Wiremu Manukau, fourteenth amended statement of claim, not dated 1.1.15 Laly Haddon and Jack Brown, statement of claim (Wai 122), 16 October 1989 1.1.16 Charles Stanley Brown and Susanne Robertson, statement of claim (Wai 123), 12 December 1989 1.1.17 Te Rau Moetahi Hoterene, statement of claim (Wai 149), 17 May 1989 (a) Te Rau Moetahi Hoterene, first amended statement of claim, 9 September 1997 (b) Aidan Warren, Michael Doogan and Season-Mary Downs memorandum giving notice of additional claimants, 24 September 2012 1.1.18 Marie Tautari, statement of claim (Wai 156), July 1990 (a) Marie Tautari, amended statement of claim, 5 August 2009 1.1.19 Colin Malcolm, statement of claim (Wai 179), 26 October 1990 (a) David Stone, memorandum giving notice of additional claimants 25 November 2010 1.1.20 Takutai Moana

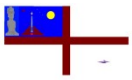




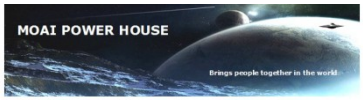








Wikiriwhi, statement of claim (Wai 186), 27 February 1991 1.1.21 Rangitinia Otene Wilson, Manaaki Wilson, Heremaia Hopihana Romana (Jerry) Norman, Hineira (Betty) Woodard, and Harata Manihera Cash, statement of claim (Wai 187), 15 February 1991 1.1.22 Ropata Parore, statement of claim (Wai 188), 21 March 1991 App Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz He Whakaputanga me te Tiriti The Declaration and the Treaty 538 1.1.22—continued (a) Ropata Parore, amended statement of claim, 21 March 1991 1.1.23 Dover Samuels, statement of claim (Wai 230), 9 July 1991 1.1.24 Hemi-Rua Rapata, statement of claim (Wai 234), 18 September 1991 1.1.25 Vacated 1.1.26 Lucy Palmer and Patuone Hoskins, statement of claim (Wai 244), 27 March 1987 (a) Stuart McDonald Henderson, first amended statement of claim, 30 July 2000 (b) Addie Smith, second amended statement of claim, 29 August 2008 (c) Addie Smith, third amended statement of claim, 19 October 2009 (d) Jim Smillie, fourth amended statement of claim, 30 March 2012 1.1.27 Hoori George Te Moanaroa Munro Parata, statement of claim (Wai 245), 27 March 1987 (a) Hori Te Moanaroa Munroe Parata, amended statement of claim, 29 February 2012 1.1.28 Mark Rererangi Tribole, statement of claim (Wai 246), 12 October 1987 (a) Te Raa Nehua, Te Raa Nehua (senior), Michael Kake, Sam Kake, Allan Halliday, and Wi Waiomio, first amended statement of claim, 2 May 1996 (b) Not named, second amended statement of claim, 5 July 2003 (c) Te Raa Nehua (senior), Te Raa Nehua, Michael Kake, Sam Kake, Wi Waiomio, and Allan Halliday, third amended statement of claim, 30 September 2011 1.1.29 Rima Eruera, statement of claim (Wai 249), 4 September 1987 (a) James Christopher Eruera, first amended statement of claim, 30 November 2001 (b) second amended statement of claim, 21 January 2004 (c) James Christopher Eruera, third amended statement of claim, 6 May 2010 (d) James Christopher Eruera, fourth amended statement of claim, 30 September 2011 1.1.30 Brian Wikaira and John Klaricich, statement of claim (Wai 250), 6 November 1987 1.1.31 Peti Pukepuke Ahitapu, statement of claim (Wai 251), 8 October 1987 1.1.32 Michael Sheehan, statement of claim (Wai 258), 20 July 1989 1.1.33 Laly Paraone Haddon, Hōne Ringi Brown, Gavin Brown, and Tamihana Akitai Paki, statement of claim (Wai 280), 9 March 1992 1.1.34 Druis Barrett, Kimiora Tito, and Marie Oldridge, statement of claim (Wai 291), 24 April 1992 1.1.35 R Te Ripi Wihongi, statement of claim (Wai 302), not dated 1.1.36 Haahi Walker and Thompson Parore, statement of claim (Wai 303), 22 July 1992 (a) Tom Parore, Haahi Walker and Russell Kemp, first amended statement of claim, 7 December 2006 (b) J Patuawa, memorandum giving notice of additional claimant, 9 February 2007 1.1.37 Tamehana Tamehana, Ellen Reihana, Rewa Marsh, Bob Cassidy, Ron Wihongi, Tu Kemp, Kataraina Sarich, and others, statement of claim (Wai 304), 8 September 1992 (a) first amended statement of claim, received 16 January 2004 1.1.38 Muriwai Tukariri Popata, statement of claim (Wai 320), 28 August 1992 (a) Te Kani Williams and Robyn Gray, memorandum giving notice of change of named claimant, 27 February 2012 (b) Muriwai Tukariri Popata, amended statement of claim, 13 October 2011 1.1.39 Ngaro Hemi Baker, statement of claim (Wai 327), 7 January 1993 1.1.40 WW Peters, statement of claim (Wai 343), 23 February 1993 1.1.41 Titau Rakete, statement of claim (Wai 352), 17 March 1993 App Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz Select Record of Inquiry 539 1.1.42 Arapeta Witika Pomare Hamilton, statement of claim (Wai 354), 17 March 1993 (a) Arapeta Wikito Pomare Hamilton, amended statement of claim, 19 October 2011 1.1.43 Hori Hemara Niha, statement of claim (Wai 371), not dated (a) Michael J Doogan and Season-Mary Downs, memorandum giving notice of change of named claimant, 1 March 2011 1.1.44 Anaru Kira, statement of claim (Wai 375), 1 July 1993 (a) Annette Sykes and Jason Pou, memorandum giving notice of additional claimant, 26 July 2007 1.1.45 JG Alexander, statement of claim (Wai 421), 23 January 1994 (a) Graham Alexander, first amended statement of claim, 24 April 1995 (b) John Rameka Alexander, second amended statement of claim, 16 September 1998 (c) J R Alexander, third amended statement of claim, 7 March 2007 1.1.46 Sharon Bedggood, statement of claim (Wai 435), 30 May 1994 (a) Sharon Bedggood, amended statement of claim, 1 September 2008 1.1.47 Walter Taipari and Adrian

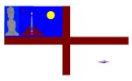




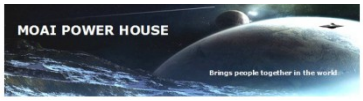








Taipari, statement of claim (Wai 454), 17 April 1994 (a) Walter Taipari and Adrian Taipari, amended statement of claim, 5 March 2001 1.1.48 Riwi Hōne Niha, statement of claim (455), not dated (a) Riwi Hōne Niha, amended statement of claim, 19 October 2011 1.1.49 Kerei Anderson, statement of claim (Wai 466), 6 July 1994 (a) Kerei Anderson, first amended statement of claim, 27 August 1995 (b) Kerei Anderson, second amended statement of claim, 29 July 2002 1.1.50 Morley Paikea Powell, statement of claim (Wai 468), 11 February 1995 1.1.51 Te Warena Taua and Hariata Ewe, statement of claim (Wai470), 30 June 1994 (a) Te Warena Taua and Hariata Ewe, first amended statement of claim, not dated (b) Te Warena Taua and Hariata Ewe, second amended statement of claim, not dated 1.1.52 Charles Anthony Lawrence, statement of claim (Wai 479), 28 November 1994 (a) Charles Anthony Lawrence, amended statement of claim, 19 April 1995 1.1.53 Kay Tandy, statement of claim (Wai 487), 12 September 1994 (a) Moana Tuwhare, memorandum giving notice of change of named claimant, 28 April 2003 1.1.54 Tuau Ahiroa Kemp, statement of claim (Wai 492), 21 November 1994 (a) PJ Kapu, memorandum giving notice of change of named claimant, 12 December 2005 (b) KI Taurau, memorandum giving notice of additional claimant, 7 August 2006 (c) Bryan Gilling, Katherine Porter, and Hanna Stephen, memorandum giving notice of change of named claimant, 24 May 2011 (d) Remarie Kapa and Wiremu Heihei, amended statement of claim, 30 September 2011 (e) Bryan Gilling and Hanna Stephen, memorandum giving notice of change of named claimant, 6 May 2013 1.1.55 Mahuta Pitau Williams, statement of claim (Wai 495), 15 March 1993 (a) Mahuta Pitau Williams, amended statement of claim, not dated 1.1.56 Tamihana Akitai Paki and Pauline Ramari Smith, statement of claim (Wai 504), 8 March 1995 (a) Tamihana Akitai Paki and Pauline Ramari Smith, amended statement of claim, 3 November 1999 (b) Missing (c) Bryan Gilling and Hanna Stephen, memorandum notifying change of named claimant, 6 May 2013 1.1.57 Anaru Kira, statement of claim (Wai 510), 28 April 1995 (a) Anaru Kira, amended statement of claim and request for urgency, 18 May 1995 App Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz He Whakaputanga me te Tiriti The Declaration and the Treaty 540 1.1.58 Chris Koroheke, statement of claim (Wai 511), 18 May 1995 1.1.59 Anaru Kira, statement of claim (Wai 513), 28 April 1995 1.1.60 Wilfred Peterson, statement of claim (Wai 515), 24 May 1995 (a) Elizabeth Peterson, amended statement of claim, 7 September 2011 1.1.61 Wilfred Peterson, statement of claim (Wai 517), 23 May 1995 (a) Elizabeth Peterson, memorandum giving notice of change of named claimant, 7 September 2011 1.1.62 Anaru Kira, statement of claim (Wai 520), 7 June 1995 (a) Annette Sykes and Jason Pou, memorandum giving notice of additional claimant, 26 July 2007 1.1.63 Anaru Kira, statement of claim (Wai 523), 19 June 1995 (a) Anaru Kira, amended statement of claim, 12 February 1996 (b) Annette Sykes and Jason Pou, memorandum giving notice of additional claimant, 26 July 2007 1.1.64 John Klaricich, statement of claim (Wai 528), 11 July 1995 1.1.65 Gregory Sarron Paraone McDonald, Christine Sandra Baines, Rona Marie Peri, Sharon Amelia Williams, Agnes Amelia McCarthy, and Angela Sadie Nathan, statement of claim (Wai 532), 30 July 1995 (a) Greg McDonald, first amended statement of claim, 3 March 1996 (b) Greg McDonald, second amended statement of claim, 30 July 1996 (c) Greg McDonald, third amended statement of claim, 13 February 1997 (d) Greg McDonald, fourth amended statement of claim, 23 May 1997 (e) Gregory Sarron Parone McDonald, Christine Baines, Rona Peri, Sharon Williams, Agnes McCarthy, and Angela Nathan, fifth amended statement of claim, not dated (f) Gregory Sarron Parone McDonald, Christine Baines, Rona Peri, Sharon Williams, Agnes McCarthy, and Angela Nathan, sixth amended statement of claim, not dated (g) Gregory Sarron Paraone McDonald, Christine Baines, Rona Peri, Sharon Williams, Agnes McCarthy, and Angela Nathan, seventh amended statement of claim, 22 April 2010 (h) Gregory Sarron Paraone McDonald, Christine Sandra Baines, Rona Marie Peri, Sharon Amelia Williams, Agnes Amelia McCarthy, and Angela Sady Nathan, eighth amended statement of claim, 30 May 2011 (i) Janet Mason and Christa Robinson, ninth amended statement of claim, 13 October 2011 1.1.66 Rudy Taylor and Haakopa Tangihaere Te Whata, statement of claim (Wai

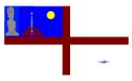




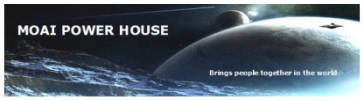








549), 2 October 1995 (a) Rudolph Taylor and Hakopa Te Whata, amended statement of claim, 1 November 2011 1.1.67 Pari Peihopa, statement of claim (Wai 565), 31 August 1995 (a) Pari Peihopa, amended statement of claim, 30 December 1995 1.1.68 Roi Anthony McCabe, statement of claim (Wai 567), 21 December 1995 1.1.69 Jane Helen Hotere, statement of claim (Wai 568), 20 November 1995 (a) Jane Helen Hotere, first amended statement of claim, 23 November 1995 (b) Jane Helen Hotere, second amended statement of claim, 4 December 1995 (c) Jane Helen Hotere, third amended statement of claim, not dated (d) Jane Hotere, fourth amended statement of claim, 8 February 2012 1.1.70 Mere Apiata and Kevin Samuels, statement of claim (Wai 573), 21 February 1996 1.1.71 Tamihana Werehiko Rewi, statement of claim (Wai 591), 15 February 1996 1.1.72 Jimmy Ruawhare, statement of claim (Wai 593), 19 March 1996 1.1.73 Terence D Lomax, statement of claim (Wai 605), 21 June 1996 (a) BD Gilling and KM Porter, memorandum giving notice of change of named claimant, 17 November 2010 (b) Terri Lomax, amended statement of claim, 30 September 2011 App Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz Select Record of Inquiry 541 1.1.74 Philma Anne Phillips, statement of claim (Wai 606), 18 March 1996 1.1.75 Hare Pepene, Haane Kingi, Wiremu Pohe, Louisa Collier, Sandra Rihari, Waimarie Bruce, and Takiri Puriri, statement of claim (Wai 619), 18 August 1996 (a) Waimarie Bruce, first amended statement of claim, 31 July 2000 (b) Waimarie Bruce and others, second amended statement of claim, 3 October 2000 (c) Waimarie Bruce, third amended statement of claim, 16 January 2003 (d) Charl Hirschfeld, Tavake Barron Afeaki, and Tony Shepherd, fourth amended statement of claim, 28 September 2007 (e) Tavake Barron Afeaki, fifth amended statement of claim, 31 September 2011 1.1.76 Mitai R Paraone Kawiti, Wini Wini Kingi, Colin Malcom, Haane Kingi, Louisa Collier, Romer Mahanga, Shayne Mahanga, and Haki Mahanga, statement of claim (Wai 620), 26 August 1996 (a) Romer Mahanga and Shayne Mahanga, first amended statement of claim removing claimants, 31 October 1996 (b) Colin Malcolm, Haane Kingi, Louise Collier, Haki Mahanga, Wini Wini Kingi, and Mitai Paraone Kawiti, second amended statement of claim, 7 July 1999 (c) Colin Malcolm, Haane Kingi, Louisa Collier, Haki Mahanga, Wini Wini Kingi, and Mitai Paraone Kawiti, third amended statement of claim, 30 July 2000 (d) Colin Malcolm, Haane Kingi, Louisa Collier, Haki Mahanga, Wini Wini Kingi, and Mitai Paraone Kawiti, fourth amended statement of claim, 31 August 2008 (e) Mitai Paraone-Kawiti, fifth amended statement of claim, 21 February 2011 1.1.77 Elizabeth Mataroria-Legg, Ken Mataroria and Pania Chapman, statement of claim (Wai 642), 5 October 1996 (a) Elizabeth Mataroria-Legg, amended statement of claim, 29 April 2004 1.1.78 Te Raa Nehua, Donna Baker and Iri Matenga Armstrong, statement of claim (Wai 654), 4 November 1996 (a) Gerald Sharrock, memorandum giving notice of change of named claimant and addition of claimant, 10 March 2010 (b) Edrys Matenga Armstrong, first amended statement of claim, 13 March 2010 1.1.79 Michael John Beazley, statement of claim (Wai 678), 13 June 1997 1.1.80 Johnson Erima Henare, Samuel Kevin Prime, and Reweti Pomare Kingi Paraone, statement of claim (Wai 682), 1 July 1997 1.1.81 Weretapou Tito, statement of claim (Wai 683), 15 June 1997 1.1.82 Mate-Paihana Puriri, Richard Nathan, Hirini Heta, and Te Raa Nehua, statement of claim (Wai 688), 23 October 1997 (a) Richard Keith McLeod Hawk, amended statement of claim, not dated 1.1.83 Maryanne Marino, statement of claim (Wai 700), 28 August 1997 (a) Tony Shepherd, memorandum giving notice of addition of claimants, 3 February 2012 1.1.84 Kahi Takimoana Harawira, statement of claim (Wai 712), 23 July 1997 (a) Kahi Takimoana Harawira and Nuki Aldridge, amended statement of claim, 3 November 2009 1.1.85 Tamatehura Nicholls, statement of claim (Wai 720), not dated (a) Tamatehura Nicholls, first amended statement of claim, 19 November 1998 (b) Tewi Mataia (Nicholls), second amended statement of claim, 11 April 2001 (c) Te Wiremu Mataia Nicholls, Wharenui Piahana and Tamatehura Nicholls, third amended statement of claim, 23 July 2002 1.1.86 Te Uira Mahuta Hōne Eruera (John Edwards), statement of claim (Wai 721), 20 January 1998 (a) John Edwards, Thomas de Thierry and Benjamin de Thierry, first amended statement of claim, 21 May 1999 (b) John Edwards, Thomas de

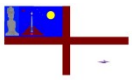












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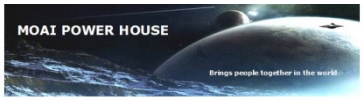









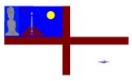

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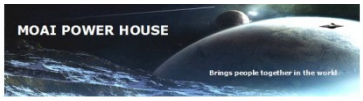









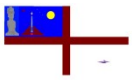

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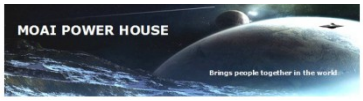









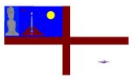

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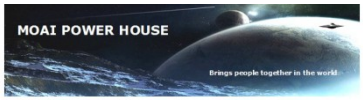
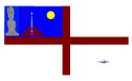




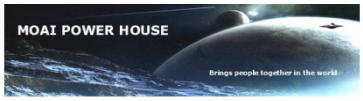








(b) Hugh Te Kiri Rihari, Whakaaropai Hooti Rihari, Piti Ripeka Rihati, Hare Himi Paerata Rihari, Maroateao Himi Rihati Hill, David Grant Rihari, Maroa Waiahurangi Scott, Te Hurihanga Rihari, and Herbert Vincent Rihati, amended statement of claim, 17 February 2011 1.1.193 Puawai Leuluai, statement of claim (Wai 1509), 22 August 2008 1.1.194 Michael Leuluai, statement of claim (Wai 1512), 22 August 2008 1.1.195 Elizabeth Kopa, Marara Grace Rogers, Vincent Paul Witehira, Jim Huriwai, Kararaina Jones, Pae Reihana, Josephine Rountree, and others, statement of claim (Wai 1513), 21 August 2008 1.1.196 Pita Apiata, statement of claim (Wai 1514), 22 August 2008 (a) Pita Apiata, amended statement of claim, 16 November 2011 1.1.197 Tarawau Taha Kapa, statement of claim (Wai 1515), 30 August 2008 (a) Tarawau Taha Kapa, amended statement of claim, 30 September 2011 1.1.198 Mike Kake, statement of claim (Wai 1516), 26 August 2008 (a) Mike Kake, first amended statement of claim, not dated (b) Mike Kake, second amended statement of claim, 13 October 2011 1.1.199 Mike Kake, statement of claim (Wai 1517), 26 August 2008 (a) Mike Kake, first amended statement of claim, not dated (b) Mike Kake, second amended statement of claim, 13 October 2011 1.1.200 Yvette Puru, statement of claim (Wai 1518), 25 August 2008 (a) David Stone, memorandum giving notice of change of named claimant, 17 September 2010 (b) Nonnie Puru, amended statement of claim, 13 October 2011 1.1.201 Kaahurangi Josephs, statement of claim (Wai 1519), 26 August 2008 (a) Kaahurangi Josephs, amended statement of claim, not dated 1.1.202 Pierre Lyndon, statement of claim (Wai 1520), 5 August 2008 (a) Pierre Lyndon, amended statement of claim, 13 October 2011 1.1.203 Pua Howearth, statement of claim (Wai 1521), 11 August 2008 (a) Pua Howearth, amended statement of claim, 14 November 2011 1.1.204 Esther Horton, statement of claim (Wai 1522), 26 August 2008 (a) Esther Horton, amended statement of claim, 13 October 2011 1.1.205 Louisa Collier and Hineamaru Lyndon, statement of claim (Wai 1524), 14 August 2008 (a) Louisa Collier and Hineamaru Lyndon, amended statement of claim, 13 October 2011 (b) David Martin Stone and Brooke Loader, memorandum giving notice of additional claimant, 14 January 2014 1.1.206 Peter Lundon, statement of claim (Wai 1525), 31 August 2008 App Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz He Whakaputanga me te Tiriti The Declaration and the Treaty 548 1.1.206—continued (a) Peter Lundon, amended statement of claim, 14 November 2011 1.1.207 Patu Hohepa and Claire Morgan, statement of claim (Wai 1526), 28 August 2008 (a) Patu Hohepa and Claire Morgan, amended statement of claim, 5 December 2008 1.1.208 Lavona Hogan, statement of claim (Wai 1527), 18 August 2008 1.1.209 Carmen Hetaraka, statement of claim (Wai 1528), 22 August 2008 (a) Carmen Hetaraka, amended statement of claim, 30 September 2011 1.1.210 Toru Hetaraka, statement of claim (Wai 1529), 22 August 2008 1.1.211 Te Rina Hetaraka, statement of claim (Wai 1530), 22 August 2008 1.1.212 Te Enga Harris, statement of claim (Wai 1531), 28 August 2008 (a) Te Enga Harris, first amended statement of claim, not dated (b) Te Enga Harris, second amended statement of claim, 30 September 2011 (c) Darrell Naden and Siaosi Loa, memorandum giving notice of additional claimant, 31 January 2014 1.1.213 Paula Harris, statement of claim (Wai 1532), 28 August 2008 (a) Paula Harris, amended statement of claim, not dated 1.1.214 Otaiuru Lawrence, statement of claim (Wai 1533), 25 August 2008 1.1.215 Joyce Baker, statement of claim (Wai 1535), 31 August 2008 (a) Annette Sykeas and Jason Pou, memorandum giving notice of additional claimant, 5 June 2009 (b) Arapeta Wikito Pomare Hamilton, Joyce Baker and Deon Baker, amended statement of claim, 19 October 2011 1.1.216 Maryanne Baker, statement of claim (Wai 1536), 31 August 2008 (a) Maryanne Baker, amended statement of claim, 13 October 2011 1.1.217 Amiria Waetford and Ruiha Collier, statement of claim (Wai 1537), 18 August 2008 1.1.218 Pairama Tahere, Helen Lyall, Whito Arona, and Ellen Toki, statement of claim (Wai 1538), 27 August 2008 (a) Pairama Tahere, Helen Lyall, Ellen Toki and Whitu Arona amended statement of claim, 21 April 2010 1.1.219 Te Aroha Going, statement of claim (Wai 1539), 22 August 2008 1.1.220 Naomi Epiha, statement of claim (Wai 1540), 6 August 2008 (a) Naomi Epiha, amended statement of claim, 30 September 2011 1.1.221 Louisa Collier and Fred Collier, statement of claim (Wai 1541),

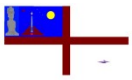




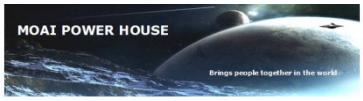








18 August 2008 1.1.222 Wirene Tairua, statement of claim (Wai 1542), 25 August 2008 1.1.223 William Peter Clark, statement of claim (Wai 1543), 26 August 2008 1.1.224 George Davies, statement of claim (Wai 1544), 16 August 2008 (a) George Davies, first amended statement of claim, 13 October 2011 (b) George Davies, second amended statement of claim, 8 May 2012 1.1.225 Bruce Davies and Rawiri Wharemate, statement of claim (Wai 1545), 31 August 2008 1.1.226 Edward Henry Cook, statement of claim (Wai 1546), 26 August 2008 (a) Te Riwhi Whao Reti, Hau Tautari Hereora, Romana Tarau, and Edward Henry Cook, amended statement of claim, 13 October 2011 1.1.227 Garry Charles Cooper, statement of claim (Wai 1547), 26 August 2008 App Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz Select Record of Inquiry 549 1.1.228 Pane Epere, statement of claim (Wai 1548), 31 August 2008 1.1.229 Marsh Kanapu, statement of claim (Wai 1549), 25 August 2008 1.1.230 Lee Cooper and Shayne Wihongi, statement of claim (Wai 1550), 26 August 2008 1.1.231 Elizabeth Waiwhakaata Boutet, statement of claim (Wai 1551), 28 August 2008 (a) Elizabeth Waiwhakaata Boutet, amended statement of claim, 14 October 2011 1.1.232 Eru Lyndon, statement of claim (Wai 1582), 18 August 2008 (a) Eru Lyndon, amended statement of claim, 13 October 2011 1.1.233 Eric Hikuwai, statement of claim (Wai 1613), 14 May 2008 1.1.234 Wiremu Tane, Elizabeth Baker, and Marsha Davis, statement of claim (Wai 1664), 20 August 2008 (a) Wiremu Tane, Elizabeth Baker, and Marsha Davis, amended statement of claim, 14 November 2011 1.1.235 Renata Tane, Eruera Taurua, Hirihiri Parata, Moko Ututaonga, and Pauline Wynyard, statement of claim (Wai 1665), 1 September 2008 (a) Renata Tane, Eruera Taurua, Hirihiri Parata, Moko Weera Hogan Ututaonga and Pauline Wynyard, amended statement of claim, 13 October 2011 1.1.236 Ani Taniwha, statement of claim (Wai 1666), 14 August 2008 (a) Ani Taniwha, amended statement of claim, 30 September 2011 1.1.237 Thomas de Thierry, statement of claim (Wai 1667), 28 August 2008 1.1.238 Joseph Ratana Hapakuku, statement of claim (Wai 1669), 18 August 2008 (a) Joseph Ratana Hapakuku, amended statement of claim, 2 December 2011 1.1.239 Andrew Kendall and Georgina Martin, statement of claim (Wai 1671), 1 September 2008 1.1.240 Ani Taniwha, Louisa Collier, and Rihari Dargaville, statement of claim (Wai 1673), 7 July 2008 (a) Ruiha Collier, Ani Taniwha and Rihari Dargaville, amended statement of claim, 30 September 2011 (b) Tavake Barron Afeaki and Mireama Houra, memorandum giving notice of removal of claimant, 16 August 2012 1.1.241 Renata Tane, Eruera Taurua, Hirihiri Parata, Moko Weera Hogan Ututaonga, and Pauline Wynyard, statement of claim (Wai 1674), 1 September 2008 1.1.242 John Sadler, statement of claim (Wai 1676), 28 August 2008 1.1.243 Huhana Seve, statement of claim (Wai 1677), 8 August 2008 1.1.244 Harriet Stephens, statement of claim (Wai 1678), 14 August 2008 (a) Harriet Stephens, amended statement of claim, 30 September 2011 1.1.245 Wayne Stokes and Maurice Penney, statement of claim (Wai 1679), 28 August 2008 1.1.246 Caley Strongman, statement of claim (Wai 1680), 20 August 2008 (a) Caley Strongman, amended statement of claim, 13 October 2011 1.1.247 Popi Tahere, statement of claim (Wai 1681), 19 August 2008 (a) Popi Tahere, first amended statement of claim, 13 October 2011 (b) Popi Tahere, second amended statement of claim, 10 November 2011 1.1.248 Hohi Tarau and Hohipere Tarau, statement of claim (Wai 1682), 25 August 2008 1.1.249 William Puru, Emma Torckler and Louie Katene, statement of claim (Wai 1684), 25 August 2008 App Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz He Whakaputanga me te Tiriti The Declaration and the Treaty 550 1.1.250 Paula Wetere, statement of claim (Wai 1686), 18 August 2008 1.1.251 Rawiri Wharemate and Kiripai Kaka, statement of claim (Wai 1687), 1 September 2008 1.1.252 Ronald Te Ripi WiHongi, statement of claim (Wai 1688), 28 August 2008 1.1.253 Silvana Wi Repa and Suzanne Jackson, statement of claim (Wai 1689), 29 August 2008 1.1.254 Margaret Mutu, statement of claim (Wai 1695), 1 August 2008 1.1.255 Haami Piripi, statement of claim (Wai 1701), 1 September 2008 1.1.256 Teddy Andrews, statement of claim (Wai 1702), 1 September 2008 1.1.257 Hōne Sadler, statement of claim (Wai 1709), 28 August 2008 1.1.258 Sadie McGee, statement of claim (Wai 1710), 10 August

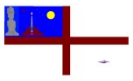




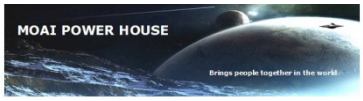








2008 (a) Michael Doogan and Season-Mary Downs, memorandum giving notice of additional claimant, 24 October 2012 1.1.259 Kristan MacDonald, Chris Koroheke, James Mackie, and Aperehama Kerepeti-Edwards, statement of claim (Wai 1711), 21 August 2008 1.1.260 Marino Mahanga, statement of claim (Wai 1712), 25 August 2008 (a) Marino Mahanga, amended statement of claim, 13 October 2011 1.1.261 Hirini Manihera, statement of claim (Wai 1713), 17 August 2008 1.1.262 Georgina Martin and Stephanie Martin, statement of claim (Wai 1714), 31 August 2008 1.1.263 Hohipa Matene, statement of claim (Wai 1715), 23 August 2008 1.1.264 Ian Mitchell, statement of claim (Wai 1716), 29 August 2008 (a) Ian Mitchell, amended statement of claim, 13 October 2011 1.1.265 Allan Moore and Takapari Waata, statement of claim (Wai 1717), 17 July 2008 1.1.266 Henry Murphy, statement of claim (Wai 1719), 25 August 2008 1.1.267 Kaya Murphy, statement of claim (Wai 1720), 25 August 2008 (a) Kaya Murphy, amended statement of claim, 12 April 2012 1.1.268 Rodney Ngawaka, statement of claim (Wai 1721), 29 August 2008 (a) Rodney Ngawaka, amended statement of claim, 30 September 2011 1.1.269 Iris Niha and Alwyn George Niha, statement of claim (Wai 1722), 6 August 2008 (a) Iris Niha and Alwyn George Niha, amended statement of claim, 13 October 2011 1.1.270 John Samuel Ututaonga Paki, statement of claim (Wai 1723), 11 May 2008 1.1.271 Allan Palmer, statement of claim (Wai 1724), 25 August 2008 (a) Allan Palmer, amended statement of claim, 30 September 2011 1.1.272 Steve Panoho, statement of claim (Wai 1725), not dated 1.1.273 Robin Paratene, statement of claim (Wai 1726), 1 September 2008 1.1.274 Morgan Peeni, statement of claim (Wai 1727), 25 August 2008 (a) Morgan Peeni, amended statement of claim, 30 September 2011 1.1.275 Wiremu Kire, George Pou, Murray Harding, John Henry, Tonga Cecilia Reihana, Taheke Reihana Ruka, Tupari Tito, and Fiona Reihana Ruka, statement of claim (Wai 1728), 29 August 2008 App Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz Select Record of Inquiry 551 1.1.276 Rini Simon, statement of claim (Wai 1730), 27 August 2008 (a) Waihere Hope, memorandum giving notice of change of named claimant, 19 May 2009 (b) Deana Simon, memorandum giving notice of change of named claimant, 30 June 2010 (c) Rini Simon, amended statement of claim, 13 October 2011 1.1.277 Mate Pihema, Oneroa Pihema, and Cyril Chapman, statement of claim (Wai 1732), 28 August 2008 1.1.278 May Pivac, statement of claim (Wai 1751), 26 August 2008 1.1.279 Tutu Pou, statement of claim (Wai 1752), 25 August 2008 1.1.280 Mylene Rakena and John Davis, statement of claim (Wai 1753), 31 August 2008 (a) Mylene Rakena and John Davis, amended statement of claim, 25 October 2011 1.1.281 Ngawiki Reihana and Elva Rewa Hepi, statement of claim (Wai 1754), 24 August 2008 1.1.282 Julian Reweti, statement of claim (Wai 1755), 15 August 2008 1.1.283 Leilani Rorani, statement of claim (Wai 1756), 28 August 2008 1.1.284 Hugh Te Kiri Rihari, Whakaaropai Hoori Rihari, Piri Ripeka Rihari, Hare Himi Paerata Rihari, Mamateao Himi Rihari Hill, David Grant Rihari, Te Hurihanga Rihari, and Herbert Vincent Rihari, statement of claim (Wai 1757), 1 September 2008 (a) James Fong, memorandum giving notice of additional claimant, 5 March 2009 1.1.285 Ike Reti, Gary Reti, James Reti, and Emma Davis-Deane, statement of claim (Wai 1786), 1 September 2008 1.1.286 Tawera Kingi, statement of claim (Wai 1832), 28 August 2008 (a) Michael J Doogan and Season-Mary Downs, memorandum giving notice of additional claimant, 1 March 2011 1.1.287 Deidre Nehua, statement of claim (Wai 1837), 26 August 2008 1.1.288 William Hikuwai, statement of claim (Wai 1838), 14 May 2008 1.1.289 Denny Ututaonga, statement of claim (Wai 1839), 12 May 2008 1.1.290 Pereniki Tauhara, statement of claim (Wai 1842), 16 July 2008 (a) Pereniki Tauhara, amended statement of claim, 2 March 2012 1.1.291 Terence Tauroa, statement of claim (Wai 1843), 2 July 2008 (a) Terence Tauroa, amended statement of claim, 30 September 2011 1.1.292 Dean Cary, statement of claim (Wai 1844), 25 June 2008 (a) Shane Hutton, memorandum giving notice of additional claimants, 19 April 2011 1.1.293 Sailor Morgan, statement of claim (Wai 1846), 15 June 2008 (a) Sailor Morgan, amended statement of claim, 14 September 2009 1.1.294 Debbie Hutton, statement of claim (Wai 1848), 12 August 2008 (a) Shane Hutton, amended statement of claim and

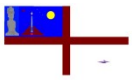




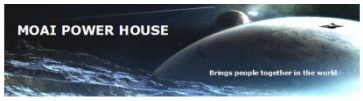








memorandum removing named claimant, 20 February 2009 1.1.295 Wiremu (Hamiora) Samuels, statement of claim (Wai 1849), 14 May 2008 (a) Wiremu Hamiora, first amended statement of claim, 14 October 2009 (b) Wiremu Hamiora, second amended statement of claim, 13 October 2011 1.1.296 Hera Epiha, statement of claim (Wai 1850), 26 May 2008 (a) Hera Epiha, first amended statement of claim, 29 September 2009 (b) Hera Epiha, second amended statement of claim, 24 October 2011 App Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz He Whakaputanga me te Tiriti The Declaration and the Treaty 552 1.1.297 Hohepa Epiha, statement of claim (Wai 1852), 15 May 2008 Nau Epiha, statement of claim, 26 May 2008 (a) Hohepa Epiha and Nau Epiha, amended statement of claim, 13 October 2011 1.1.298 Wiremu Hōne Paki, statement of claim (Wai 1853), 14 August 2008 1.1.299 Donnelle Tamaiparea, statement of claim (Wai 1854), 22 May 2008 1.1.300 Dawn Davies, statement of claim (Wai 1855), 14 August 2008 1.1.301 Richard Paki, statement of claim (Wai 1856), 5 May 2008 Richard Paki, amended statement of claim, 13 August 2008 1.1.302 Sheena Ross and Kim Isaac, statement of claim (Wai 1857), 19 July 2008 (a) Stephen Potter, memorandum giving notice of additional claimant, 22 April 2010 (b) Hemi Te Nahu and Eve Rongo, memorandum giving notice of change of named claimants, 15 December 2010 (c) Hemi Te Nahu and Darryl Andrews, memorandum giving notice of additional claimant, 13 October 2011 (d) Vivian Dick, Sheena Ross, Miriam Ngamotu, Muriel Faithful, Julia Makoare, and Garry Hooker amended statement of claim, 13 October 2011 1.1.303 Mike Pehi, statement of claim (Wai 1864), 25 July 2008 (a) Mike Pehi, amended statement of claim, 13 October 2011 1.1.304 Robert Gabel, statement of claim (Wai 1886), 27 December 2008 (a) Chappy Harrison and Robert Gabel, amended statement of claim, 25 January 2012 1.1.305 John Alexander, statement of claim (Wai 1890), 28 August 2008 John Alexander, various amendments to statement of claim, 22–23 December 2008 1.1.306 Denis Hanley, statement of claim (Wai 1896), 26 August 2008 1.1.307 Lucy Dargaville, statement of claim (Wai 1917), 20 August 2008 1.1.308 Mataroria Lyndon and Frederick Collier, statement of claim (Wai 1918), 18 August 2008 (a) David Stone and Robert Wills, memorandum giving notice of change of named claimants, 2 October 2012 1.1.309 Te Hapae Ashby, statement of claim (Wai 1930), 12 August 2008 Te Hapae Ashby, various amendments to statement of claim, 22 August 2008–16 January 2009 1.1.310 Makere Te Korako, Makere Harawira, and Jane Te Korako, statement of claim (Wai 1940), 1 September 2008 (a) CJ Duncan, memorandum giving notice of additional claimant, 23 March 2010 (b) CJ Duncan and H E Stephen, memorandum giving notice of removal of claimants, 30 March 2011 (c) Jane Mihingarangi Ruka Te Korako, and Robert Kenneth McAnergney, amended statement of claim, 30 September 2011 (d) CJ Duncan, memorandum giving notice of additional claimants, 18 June 2012 1.1.311 Joseph Kingi and Edryss Matenga Armstrong, statement of claim (Wai 1941), 31 August 2008 Joesph Kingi, various amendments to statement of claim, 31 August 2008–4 March 2009 Joseph Kingi and Edryss Matenga Armstrong, various amendments to statement of claim, 14 February–25 March 2009 1.1.312 Maria Baker, statement of claim (Wai 1942), 20 August 2008 1.1.313 Audrey Leslie, statement of claim (Wai 1943), 23 August 2008 (a) Audrey Leslie, amended statement of claim, 30 September 2011 1.1.314 Eta Haika, statement of claim (Wai 1954), 22 August 2008 Eta Haika, first amended statement of claim, 15 March 2009 (a) Hepi Haika, Mere Waikanae Hoani, and Vania Haika, memorandum giving notice of additional claimants and second amended statement of claim, 15 April 2013 App Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz Select Record of Inquiry 553 1.1.315 Juanita de Senna, statement of claim (Wai 1955), 21 August 2008 Juanita de Senna, first amended statement of claim, 16 March 2009 (a) Juanita de Senna, second amended statement of claim, 12 October 2011 1.1.316 Milly Boustead, statement of claim (Wai 1956), 11 August 2008 (a) Milly Boustead, amended statement of claim, 14 November 2011 1.1.317 William Reihana junior, statement of claim (Wai 1957), 26 August 2008 (a) Wiremu Reihana, amended statement of claim, 30 September 2011 1.1.318 David Clark, Harata

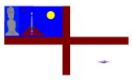












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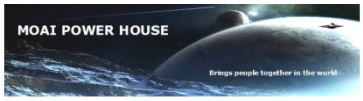









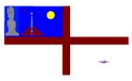

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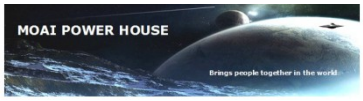









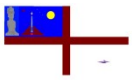

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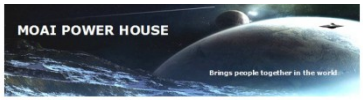









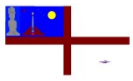

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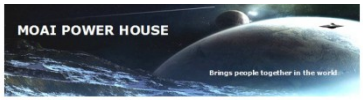









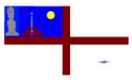

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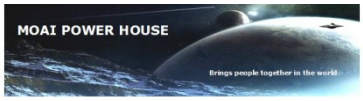
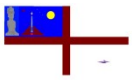




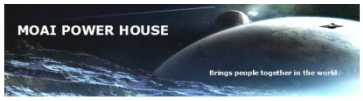








3.3.35 Daniel Watkins, closing submissions for Wai 1259, 17 February 2011 3.3.36 Te Kani Williams and Erin Thompson, submissions for Wai 1307, Wai 1140, Wai 16, Wai 17, Wai 45, Wai 117, Wai 284, Wai 295, Wai 320, Wai 544, Wai 548, Wai 590, Wai 736, and Wai 913 in reply to Crown closing submissions, 21 April 2011 3.3.37 Bryan Gilling and Katherine Porter, submissions for Wai 58, Wai 249, Wai 605, Wai 1312, Wai 1333, Wai 1940, Wai 2022, and Wai 2124 in reply to Crown closing submissions, 21 April 2011 3.3.38 Tony Shepherd and Alana Thomas, submissions for Wai 700 in reply to Crown closing submissions, 26 April 2011 3.3.39 Katherine Taurau, submissions for Wai 2003 in reply to Crown closing submissions, 26 April 2011 3.3.40 Michael Doogan and Season-Mary Downs, submissions for Wai 682 and Wai 49 in reply to Crown closing submissions, 26 April 2011 3.3.42 Hemi Te Nahu and Eve Rongo, submissions for Wai 1857 in reply to Crown closing submissions, 26 April 2011 3.3.43 John Kahukiwa, submissions for Wai 1508 and Wai 1757 in reply to Crown closing submissions, 26 April 2011 3.3.44 Linda Thornton, submissions for Wai 1507 and Wai 1666 in reply to Crown closing submissions, 26 April 2011 3.3.45 Kelly Dixon, submissions for Wai 492 and Wai 1341 in reply to Crown closing submissions, 26 April 2011 3.3.46 David Stone and Augencio Bagsic, submissions for Wai 1400, Wai 1477, Wai 1478, Wai 1484, Wai 1485, Wai 1487, Wai 1488, and others in reply to Crown closing submissions, 26 April 2011 3.3.47 Donna Hall, Angela Brown and M Taylor, submissions for Wai 568 and Wai 861 in reply to Crown closing submissions, 26 April 2011 3.3.49 Tavake Afeaki, submissions in reply to Crown closing submissions, 26 April 2011 (a) Tavake Afeaki and Gerald Sharrock, submissions for Wai 121, Wai 619, Wai 654, Wai 774, Wai 884, Wai 914, Wai 985, Wai 1129, Wai 1313, Wai 1460, Wai 1536, Wai 1673, Wai 1941, Wai 1970, Wai 2179, Wai 2309, and others in reply to Crown closing submissions, 26 April 2011 3.3.50 Moana Tuwhare, submissions for Wai 1384, Wai 1062, and Wai 1134 in reply to Crown closing submissions, 26 April 2011 3.3.51 Janet Mason, submissions for Wai 1701 and Wai 1699 in reply to Crown closing submissions, 3 May 2011 3.3.58 Aidan Warren and Season-Mary Downs, opening submissions for Wai 1464 and Wai 1546, 17 May 2013 Transcripts 4.1.1 Transcript of first hearing week, Te Tii Marae, Waitangi, 10–14 May 2010 (a) Hirini Henare, evidence, Te Tii Marae, Waitangi, 11 May 2010 (confidential transcript) 4.1.2 Transcript of second hearing week, at Te Tii Marae, Waitangi, 14–18 June 2010 4.1.3 Transcript of third hearing week, Waipuna Marae, Panguru, 9–13 August 2010 4.1.4 Transcript of fourth hearing week, Whitiora Marae, Te Tii, 11–15 October 2010 4.1.5 Transcript of fifth hearing week, Otiria Marae, Moerewa, 22–24 February 2011 Record of Documents A series documents A1 Grant Phillipson, ‘Bay of Islands Maori and the Crown, 1793–1853’ (commissioned research report, Wellington : Crown Forestry Rental Trust, 2005) App Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz Select Record of Inquiry 561 (a) Grant Phillipson, ‘Answers to Questions in Writing from Claimant Counsel’, 14 October 2010 A2 John Barrington, ‘Northland Language, Culture, Education : Part One – Education’ (commissioned research report, Wellington : Crown Forestry Rental Trust, 2005) (a) John Barrington, comp, document bank, December 2005) A3 Terry Hearn, ‘Social and Economic Change in Northland, c 1900–c 1945 : The Role of the Crown and The Place of Maori’ (commissioned research report, Wellington : Crown Forestry Rental Trust, 2006) (a) Terry Hearn, comp, document bank, 2006 A4 Craig Innes, ‘Northland Crown Purchase Deeds, 1840–1865’ (commissioned research report, Wellington : Crown Forestry Rental Trust, 2006) A5 Ralph Johnson, ‘The Northern War, 1844–1846’ (commissioned research report, Wellington : Crown Forestry Rental Trust, 2006) (a) Ralph Johnson, comp, document bank, 2006 (b) Ralph Johnson, ‘The Northern War, 1844–1846 : Presentation Summary’, 15 September 2010 (c) Ralph Johnson, ‘Response to Written Questions’, 26 November 2010 A6 Vincent. O’Malley, ‘Northland Crown Purchases, 1840–1865’ (commissioned research report, Wellington : Crown Forestry Rental Trust, 2006) (a) Vincent O’Malley, comp, document bank, 2006 A7 David Alexander, ‘Land Based Resources, Waterways and Environmental Impacts’ (commissioned research report, Wellington : Crown Forestry Rental Trust, 2006) (a) David Alexander, comp, document bank, 9 vols,

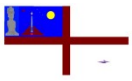












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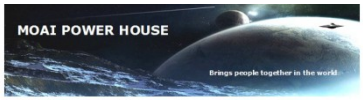









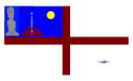

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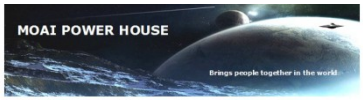









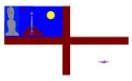

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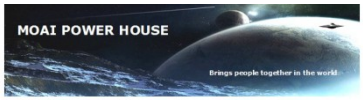









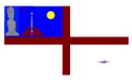

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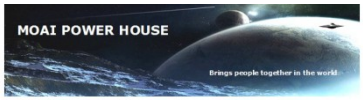









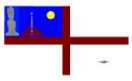

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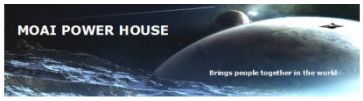









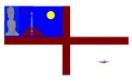

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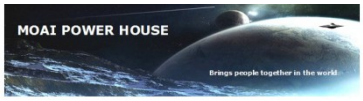









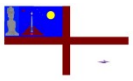

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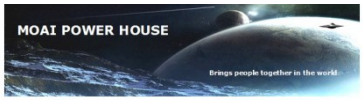









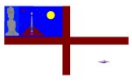

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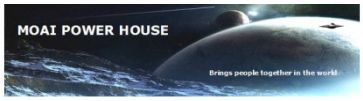









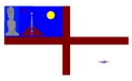

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The Code for Crown Prosecutors | The Crown Prosecution Service (cps.gov.uk) Forgery and Counterfeiting | The Crown Prosecution Service (cps.gov.uk)

The Code for Crown Prosecutors
26 October 2018|*Publication*

The Code for Crown Prosecutors is a public document, issued by the Director of Public Prosecutions, that sets out the general principles Crown Prosecutors should follow when they make decisions on cases.

Is there enough evidence against the defendant?

When deciding whether there is enough evidence to charge, Crown Prosecutors must consider whether evidence can be used in court and is reliable and credible, and there is no other material that might affect the sufficiency of evidence. Crown Prosecutors must be satisfied there is enough evidence to provide a "realistic prospect of conviction" against each defendant.

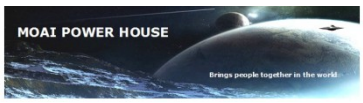
Is it in the public interest for the CPS to bring the case to court?

A prosecution will usually take place unless the prosecutor is sure that the public interest factors tending against prosecution outweigh those tending in favour.

- Introduction

- General Principles

- The Decision Whether to Prosecute



- The Full Code Test
- The Threshold Test
- **Selection of Charges**
- Out-of-Court Disposals
- **Court Venue**
- **Accepting Guilty Pleas**
- Reconsidering a Prosecution Decision

Introduction

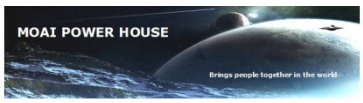
1.1 The Code for Crown Prosecutors (the Code) is issued by the **Director of Public Prosecutions** (DPP) under section 10 of the Prosecution of Offences Act 1985. This is the eighth edition of the Code and replaces all earlier versions.

1.2 The DPP is the **head of the Crown Prosecution Service** (CPS), which is the **principal public prosecution service for England and Wales.** The DPP operates independently, under the superintendence of the Attorney General who is accountable to Parliament for the work of the CPS.

1.3 The Code gives guidance to prosecutors on the general principles to be applied when making decisions about prosecutions. The Code is issued primarily for prosecutors in the CPS but other prosecutors follow the Code, either through convention or because they are required to do so by law.

1.4 In this Code:

- "Suspect" is used to describe a person who is under consideration as the **subject of formal criminal proceedings;**
- **"Defendant" is used to describe a person who has been charged or summonsed;**
- "Offender" is used to describe a person who has admitted guilt as to the commission of an offence, or who has been found guilty in a court of law;
- **"Victim" is used to describe a person against whom an offence has been committed, or the complainant in a case being considered or prosecuted by the CPS.**



General Principles

2.1 The independence of the prosecutor is central to the criminal justice system of a democratic society. Prosecutors are independent from persons or agencies that are not part of the prosecution decision-making process. CPS prosecutors are also independent from the police and other investigators. Prosecutors must be free to carry out their professional duties without political interference and must not be affected by improper or undue pressure or influence from any source.

2.2 It is not the function of the CPS to decide whether a person is guilty of a criminal offence, but to make assessments about whether it is appropriate to present charges for the criminal court to consider. The CPS assessment of any case is not in any sense a finding of, or implication of, any guilt or criminal conduct. A finding of guilt can only be made by a court.

2.3 Similarly, a decision not to bring criminal charges does not necessarily mean that an individual has not been a victim of crime. It is not the role of the CPS to make such determinations.

2.4 The decision to prosecute or to recommend an out-of-court disposal is a serious step that affects suspects, victims, witnesses and the public at large and must be undertaken with the utmost care.

2.5 It is the duty of prosecutors to make sure that the right person is prosecuted for the right offence and to bring offenders to justice wherever possible. Casework decisions taken fairly, impartially and with integrity help to secure justice for victims, witnesses, suspects, defendants and the public. Prosecutors must ensure that the law is properly applied, that relevant evidence is put before the court and that obligations of disclosure are complied with.

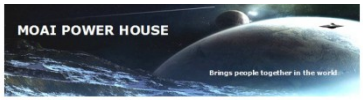
2.6 Although each case must be considered on its own facts and on its own merits, there are general principles that apply in every case.

2.7 When making decisions, prosecutors must be fair and objective. They must not let any personal views about the ethnic or national origin, gender, disability, age, religion or belief, sexual orientation or gender identity of the suspect, defendant, victim or any witness influence their decisions. Neither must they be motivated by political considerations. Prosecutors must always act in the interests of justice and not solely for the purpose of obtaining a conviction.

2.8 Prosecutors must be even-handed in their approach to every case, and have a duty to protect the rights of suspects and defendants, while providing the best possible service to victims.

2.9 The CPS is a public authority for the purposes of current, relevant equality legislation. Prosecutors are bound by the duties set out in this legislation.

2.10 Prosecutors must apply the principles of the European Convention on Human Rights, in accordance with the Human Rights Act 1998, at each stage of a case. They must comply with any guidelines issued by the Attorney General and with the policies and guidance of the CPS issued on behalf of the DPP, unless it is determined that there are exceptional circumstances. CPS guidance contains further evidential and public interest factors for specific offences and offenders and is available for the public to view on the CPS website. Prosecutors must also comply with the Criminal Procedure Rules and Criminal Practice Directions, and have regard to the Sentencing Council Guidelines and the obligations arising from international conventions.

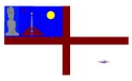












2.11 The CPS prosecutes on behalf of some other Government departments. In such cases, prosecutors should have regard to any relevant enforcement policies of those departments.

2.12 Some offences may be prosecuted by either the CPS or by other prosecutors in England and Wales. When making decisions in these cases, CPS prosecutors may, where they think it appropriate, have regard to any relevant enforcement or prosecution policy or code of the other prosecutor.

2.13 Where the law differs in England and Wales prosecutors must apply the Code and have regard to any relevant policy, guidance or charging standard.

The Decision Whether to Prosecute

3.1 In more serious or complex cases, prosecutors decide whether a person should be charged with a criminal offence and, if so, what that offence should be. Prosecutors may also advise on or authorise out-of-court disposals as an alternative to prosecution. They make their decisions in accordance with this Code, the DPP's Guidance on Charging and any relevant legal guidance or policy. The police apply the same principles in deciding whether to start criminal proceedings against a person in those cases for which they are responsible.

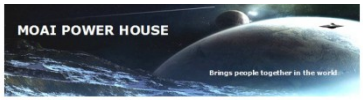
3.2 The police and other investigators are responsible for conducting inquiries into any alleged crime and for deciding how to deploy their resources. This includes decisions to start or continue an investigation and on the scope of the investigation. Prosecutors should advise the police and other investigators about possible reasonable lines of inquiry, evidential requirements, pre-charge procedures, disclosure management and the overall investigation strategy. This can include decisions to refine or narrow the scope of the criminal conduct and the number of suspects under investigation. Such advice assists the police and other investigators to complete the investigation within a reasonable period of time and to build the most effective prosecution case.

3.3 Prosecutors cannot direct the police or other investigators. However, prosecutors must have regard to the impact of any failure to pursue an advised reasonable line of inquiry or to comply with a request for information, when deciding whether the application of the Full Code Test should be deferred or whether the test can be met at all.

3.4 Prosecutors should identify and, where possible, seek to rectify evidential weaknesses but, subject to the Threshold Test (see section 5), they should quickly stop cases which do not meet the evidential stage of the Full Code Test (see section 4) and which cannot be strengthened by further investigation, or where the public interest clearly does not require a prosecution (see section 4). Although prosecutors primarily consider the evidence and information supplied by the police and other investigators, the suspect or those acting on their behalf may also submit evidence or information to the prosecutor, before or after charge, to help inform the prosecutor's decision. In appropriate cases, the prosecutor may invite the suspect or their representative to do so.

3.5 Prosecutors should not start or continue a prosecution where their view is that it is highly likely that a court will rule that a prosecution is an abuse of its process, and stay the proceedings.

3.6 Prosecutors review every case they receive from the police or other investigators. Review is a continuing process and prosecutors must take account of any change in circumstances that occurs as the case develops. This includes what becomes known of the defence case, any further reasonable

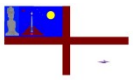












lines of inquiry that should be pursued, and receipt of any unused material that may undermine the prosecution case or assist the defence case, to the extent that charges should be altered or discontinued or the prosecution should not proceed. If a case is to be stopped, care should be taken when choosing the method of termination, as this can affect the victim's position under the Victims' Right to Review scheme. Wherever possible, prosecutors should consult the investigator when considering changing the charges or stopping the case. Prosecutors and investigators work closely together, but the final responsibility for the decision whether or not a case should go ahead rests with the CPS.

3.7 Parliament has decided that a limited number of offences should only be taken to court with the agreement of the DPP. These are called consent cases. In such cases the DPP, or a prosecutor acting on their behalf, applies the Code in deciding whether to give consent to a prosecution.

3.8 There are also certain offences that can only be taken to court with the consent of the Attorney General. Prosecutors must follow current guidance when referring any such cases to the Attorney General. Some offences require the consent of a Secretary of State before a prosecution is started. Prosecutors must obtain such consent prior to charge and apply any relevant guidance in these cases. Additionally, the Attorney General will be kept informed of certain cases as part of their superintendence of the CPS and accountability to Parliament for its actions.

The Full Code Test

4.1 Prosecutors must only start or continue a prosecution when the case has passed both stages of the Full Code Test. The exception is when the Threshold Test may be applied (see section 5).

4.2 The Full Code Test has two stages: (i) the evidential stage; followed by (ii) the public interest stage.

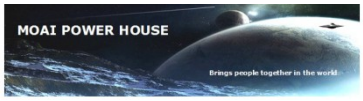
4.3 The Full Code Test should be applied:

a. when all outstanding reasonable lines of inquiry have been pursued; or

b. prior to the investigation being completed, if the prosecutor is satisfied that any further evidence or material is unlikely to affect the application of the Full Code Test, whether in favour of or against a prosecution.

4.4 In most cases prosecutors should only consider whether a prosecution is in the public interest after considering whether there is sufficient evidence to prosecute. However, there will be cases where it is clear, prior to reviewing all the evidence, that the public interest does not require a prosecution. In these instances, prosecutors may decide that the case should not proceed further.

4.5 Prosecutors should only take such a decision when they are satisfied that the broad extent of the criminality has been determined and that they are able to make a fully informed assessment of the public interest. If prosecutors do not have sufficient information to take such a decision, the investigation should continue and a decision taken later in accordance with the Full Code Test set out in this section.



The Evidential Stage

4.6 Prosecutors must be satisfied that there is sufficient evidence to provide a realistic prospect of conviction against each suspect on each charge*. They must consider what the defence case may be, and how it is likely to affect the prospects of conviction. A case which does not pass the evidential stage must not proceed, no matter how serious or sensitive it may be.

4.7 The finding that there is a realistic prospect of conviction is based on the prosecutor's objective assessment of the evidence, including the impact of any defence and any other information that the suspect has put forward or on which they might rely. It means that an objective, impartial and reasonable jury or bench of magistrates or judge hearing a case alone, properly directed and acting in accordance with the law, is more likely than not to convict the defendant of the charge alleged. This is a different test from the one that the criminal courts themselves must apply. A court may only convict if it is sure that the defendant is guilty.

4.8 When deciding whether there is sufficient evidence to prosecute, prosecutors should ask themselves the following:

Can the evidence be used in court?

Prosecutors should consider whether there is any question over the admissibility of certain evidence. In doing so, prosecutors should assess:

- the likelihood of that evidence being held as inadmissible by the court; and
- the importance of that evidence in relation to the evidence as a whole.

Is the evidence reliable?

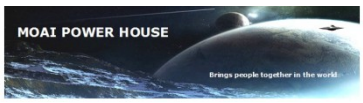
Prosecutors should consider whether there are any reasons to question the reliability of the evidence, including its accuracy or integrity.

Is the evidence credible?

Prosecutors should consider whether there are any reasons to doubt the credibility of the evidence.

Is there any other material that might affect the sufficiency of evidence?

Prosecutors must consider at this stage and throughout the case whether there is any material that may affect the assessment of the sufficiency of evidence, including examined and unexamined material in the possession of the police, and material that may be obtained through further reasonable lines of inquiry.



The Public Interest Stage

4.9 In every case where there is sufficient evidence to justify a prosecution or to offer an out-of-court disposal, prosecutors must go on to consider whether a prosecution is required in the public interest.

4.10 It has never been the rule that a prosecution will automatically take place once the evidential stage is met. A prosecution will usually take place unless the prosecutor is satisfied that there are public interest factors tending against prosecution which outweigh those tending in favour. In some cases the prosecutor may be satisfied that the public interest can be properly served by offering the offender the opportunity to have the matter dealt with by an out-of-court disposal rather than bringing a prosecution.

4.11 When deciding the public interest, prosecutors should consider each of the questions set out below in paragraphs 4.14 a) to g) so as to identify and determine the relevant public interest factors tending for and against prosecution. These factors, together with any public interest factors set out in relevant guidance or policy issued by the DPP, should enable prosecutors to form an overall assessment of the public interest.

4.12 The explanatory text below each question in paragraphs 4.14 a) to g) provides guidance to prosecutors when addressing each particular question and determining whether it identifies public interest factors for or against prosecution. The questions identified are not exhaustive, and not all the questions may be relevant in every case. The weight to be attached to each of the questions, and the factors identified, will also vary according to the facts and merits of each case.

4.13 It is quite possible that one public interest factor alone may outweigh a number of other factors which tend in the opposite direction. Although there may be public interest factors tending against prosecution in a particular case, prosecutors should consider whether nonetheless a prosecution should go ahead and those factors put to the court for consideration when sentence is passed.

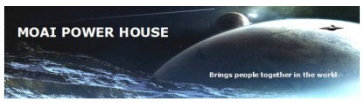
4.14 Prosecutors should consider each of the following questions:

a. How serious is the offence committed?

- **The more serious the offence, the more likely it is that a prosecution is required.**
- **When assessing the seriousness of an offence, prosecutors should include in their consideration the suspect's culpability and the harm caused, by asking themselves the questions at b) and c).**

b) What is the level of culpability of the suspect?

- **The greater the suspect's level of culpability, the more likely it is that a prosecution is required.**
- **Culpability is likely to be determined by:**
  - **i. the suspect's level of involvement;**
  - **ii. the extent to which the offending was premeditated and/or planned;**
  - **iii. the extent to which the suspect has benefitted from criminal conduct;**



iv. whether the suspect has previous criminal convictions and/or out-of-court disposals and any offending whilst on bail or whilst subject to a court order;
v. whether the offending was or is likely to be continued, repeated or escalated;
vi. the suspect's age and maturity (see paragraph d below).

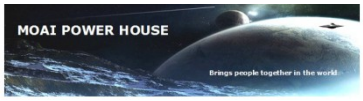
- A suspect is likely to have a much lower level of culpability if the suspect has been compelled, coerced or exploited, particularly if they are the victim of a crime that is linked to their offending.
- Prosecutors should also have regard to whether the suspect is, or was at the time of the offence, affected by any significant mental or physical ill health or disability, as in some circumstances this may mean that it is less likely that a prosecution is required. However, prosecutors will also need to consider how serious the offence was, whether the suspect is likely to re-offend and the need to safeguard the public or those providing care to such persons.

c) What are the circumstances of and the harm caused to the victim?

- **The circumstances of the victim are highly relevant. The more vulnerable the victim's situation, or the greater the perceived vulnerability of the victim, the more likely it is that a prosecution is required.**
- **This includes where a position of trust or authority exists between the suspect and victim.**
- **A prosecution is also more likely if the offence has been committed against a victim who was at the time a person serving the public.**
- **It is more likely that prosecution is required if the offence was motivated by any form of prejudice against the victim's actual or presumed ethnic or national origin, gender, disability, age, religion or belief, sexual orientation or gender identity; or if the suspect targeted or exploited the victim, or demonstrated hostility towards the victim, based on any of those characteristics.**
- **Prosecutors also need to consider if a prosecution is likely to have an adverse effect on the victim's physical or mental health, always bearing in mind the seriousness of the offence, the availability of special measures and the possibility of a prosecution without the participation of the victim.**
- **Prosecutors should take into account the views expressed by the victim about the impact that the offence has had. In appropriate cases, this may also include the views of the victim's family.**
- **However, the CPS does not act for victims or their families in the same way as solicitors act for their clients, and prosecutors must form an overall view of the public interest.**

d) What was the suspect's age and maturity at the time of the offence?

- The criminal justice system treats children and young people differently from adults and significant weight must be attached to the age of the suspect if they are a child or young person under 18.
- The best interests and welfare of the child or young person must be considered, including whether a prosecution is likely to have an adverse impact on their future prospects that is disproportionate to the seriousness of the offending.
- Prosecutors must have regard to the principal aim of the youth justice system, which is to prevent offending by children and young people. Prosecutors must also have regard to the obligations arising under the United Nations 1989 Convention on the Rights of the Child.

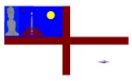












- Prosecutors should consider the suspect's maturity, as well as their chronological age, as young adults will continue to mature into their mid-twenties.
- As a starting point, the younger the suspect, the less likely it is that a prosecution is required.
- However, there may be circumstances which mean that, notwithstanding the fact that the suspect is under 18 or lacks maturity, a prosecution is in the public interest. These include where:
    i. the offence committed is serious;

    ii. the suspect's past record suggests that there are no suitable alternatives to prosecution; and

    iii. the absence of an admission means that out-of-court disposals that might have addressed the offending behaviour are not available.

e) What is the impact on the community?

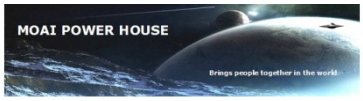
- The greater the impact of the offending on the community, the more likely it is that a prosecution is required.
- The prevalence of an offence in a community may cause particular harm to that community, increasing the seriousness of the offending.
- Community is not restricted to communities defined by location and may relate to a group of people who share certain characteristics, experiences or backgrounds, including an occupational group.
- Evidence of impact on a community may be obtained by way of a Community Impact Statement.

f) Is prosecution a proportionate response?

- In considering whether prosecution is proportionate to the likely outcome, the following may be relevant:
    i. The cost to the CPS and the wider criminal justice system, especially where it could be regarded as excessive when weighed against any likely penalty. Prosecutors should not decide the public interest on the basis of this factor alone. It is essential that regard is also given to the public interest factors identified when considering the other questions in paragraphs 4.14 a) to g), but cost can be a relevant factor when making an overall assessment of the public interest.
    ii. Cases should be prosecuted in accordance with principles of effective case management. For example, in a case involving multiple suspects, prosecution might be reserved for the main participants in order to avoid excessively long and complex proceedings.

g) Do sources of information require protecting?

- **In cases where public interest immunity does not apply, special care should be taken when proceeding with a prosecution where details may need to be made public that could harm sources of information, ongoing investigations, international relations or national security. It is essential that such cases are kept under continuing review.**



The Threshold Test

5.1 In limited circumstances, where the Full Code Test is not met, the Threshold Test may be applied to charge a suspect. The seriousness or circumstances of the case must justify the making of an immediate charging decision, and there must be substantial grounds to object to bail.

5.2 There must be a rigorous examination of the five conditions of the Threshold Test, to ensure that it is only applied when necessary and that cases are not charged prematurely. All five conditions must be met before the Threshold Test can be applied. Where any of the conditions are not met, there is no need to consider any of the other conditions, as the Threshold Test cannot be applied and the suspect cannot be charged.

First condition - There are reasonable grounds to suspect that the person to be charged has committed the offence

5.3 Prosecutors must be satisfied, on an objective assessment of the evidence, that there are reasonable grounds to suspect that the person to be charged has committed the offence. The assessment must consider the impact of any defence or information that the suspect has put forward or on which they might rely.

5.4 In determining whether there are reasonable grounds to suspect, prosecutors must consider all of the material or information available, whether in evidential format or otherwise. Prosecutors must be satisfied that the material to be relied on at this stage is capable of being:

i. **put into an admissible format for presentation in court;**

ii. **reliable; and**
iii. **credible.**

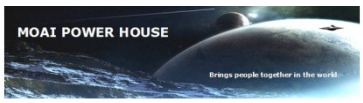
Second condition - Further evidence can be obtained to provide a realistic prospect of conviction

5.5 Prosecutors must be satisfied that there are reasonable grounds to believe that the continuing investigation will provide further evidence, within a reasonable period of time, so that when all the evidence is considered together, including material which may point away from as well as towards a particular suspect, it is capable of establishing a realistic prospect of conviction in accordance with the Full Code Test.

5.6 The likely further evidence must be identifiable and not merely speculative.

5.7 In reaching this decision prosecutors must consider:

i. **the nature, extent and admissibility of any likely further evidence and the impact it will have on the case;**

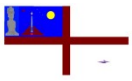












ii. the charges that all the evidence will support;

iii. the reasons why the evidence is not already available;

iv. the time required to obtain the further evidence, including whether it could be obtained within any available detention period;

v. whether the delay in applying the Full Code Test is reasonable in all the circumstances.

Third condition - The seriousness or the circumstances of the case justifies the making of an immediate charging decision

5.8 The seriousness and the circumstances of the case should be assessed in relation to the alleged offending and should be linked to the level of risk created by granting bail.

Fourth condition - There are continuing substantial grounds to object to bail in accordance with the Bail Act 1976 and in all the circumstances of the case it is proper to do so

5.9 This determination must be based on a proper risk assessment, which reveals that the suspect is not suitable to be bailed, even with substantial conditions. For example, a dangerous suspect who poses a serious risk of harm to a particular person or the public, or a suspect who poses a serious risk of absconding or interfering with witnesses. Prosecutors should not accept, without careful enquiry, any unjustified or unsupported assertions about risk if release on bail were to take place.

Fifth condition - It is in the public interest to charge the suspect

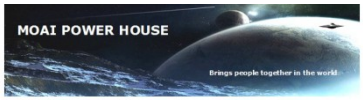
5.10 Prosecutors must apply the public interest stage of the Full Code Test based on the information available at that time.

Reviewing the Threshold Test

5.11 A decision to charge under the Threshold Test must be kept under review. The prosecutor should be proactive to secure from the police the identified outstanding evidence or other material in accordance with an agreed timetable. The evidence must be regularly assessed to ensure that the charge is still appropriate and that continued objection to bail is justified. The Full Code Test must be applied as soon as the anticipated further evidence or material is received and, in any event, in Crown Court cases, usually before the formal service of the prosecution case.

Selection of Charges

6.1 Prosecutors should select charges which:



- **reflect the seriousness and extent of the offending;**
- **give the court adequate powers to sentence and impose appropriate post-conviction orders;**
- **allow a confiscation order to be made in appropriate cases, where a defendant has benefitted from criminal conduct; and**
- **enable the case to be presented in a clear and simple way.**

6.2 This means that prosecutors may not always choose or continue with the most serious charge where there is a choice and the interests of justice are met by selecting the lesser charge.

6.3 Prosecutors should never proceed with more charges than are necessary just to encourage a defendant to plead guilty to a few. In the same way, they should never proceed with a more serious charge just to encourage a defendant to plead guilty to a less serious one.

6.4 Prosecutors should not change the charge simply because of the decision made by the court or the defendant about where the case will be heard.

6.5 Prosecutors must take account of any relevant change in circumstances as the case progresses after charge.

Out-of-Court Disposals

7.1 An out-of-court disposal may take the place of a prosecution if it is an appropriate response to the offender and/or the seriousness and consequences of the offending.

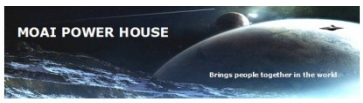
7.2 Prosecutors must follow any relevant guidance when asked to advise on or authorise an out-of-court disposal, including any appropriate regulatory proceedings, a punitive or civil penalty, or other disposal. They should ensure that the appropriate evidential standard for the specific out-of-court disposal is met including, where required, a clear admission of guilt, and that the public interest would be properly served by such a disposal.

Court Venue

8.1 Prosecutors must have regard to the guidelines on sentencing and allocation when making submissions to the magistrates' court about where the defendant should be tried.

8.2 Speed must never be the only reason for asking for a case to stay in the magistrates' court. But prosecutors should consider the effect of any likely delay if a case is sent to the Crown Court, including the possible effect on any victim or witness.

8.3 Prosecutors should bear in mind that if confiscation proceedings are required, these may only take place in the Crown Court. Summary proceedings may be committed for that purpose, where appropriate.



Venue for Trial in Cases Involving Children and Young People

8.4 Prosecutors must bear in mind that children and young people (under 18s) should be tried in the youth court wherever possible. It is the court which is best designed to meet their specific needs. A trial of a child or young person in the Crown Court should be reserved for the most serious cases or where the interests of justice require a child or young person to be jointly tried with an adult.

Accepting Guilty Pleas

9.1 Defendants may want to plead guilty to some, but not all, of the charges. Alternatively, they may want to plead guilty to a different, possibly less serious, charge because they are admitting only part of the crime.

9.2 Prosecutors should only accept the defendant's plea if:

a. the court is able to pass a sentence that matches the seriousness of the offending, particularly where there are aggravating features;

b. it enables the court to make a confiscation order in appropriate cases, where a defendant has benefitted from criminal conduct;

c. it provides the court with adequate powers to impose other ancillary orders, bearing in mind that these can be made with some offences but not with others.

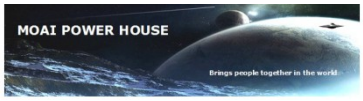
9.3 Particular care must be taken when considering pleas which would enable the defendant to avoid the imposition of a mandatory minimum sentence.

9.4 Prosecutors must never accept a guilty plea just because it is convenient.

9.5 In considering whether the pleas offered are acceptable, prosecutors should ensure that the interests and, where possible, the views of the victim, or in appropriate cases the views of the victim's family, are taken into account when deciding whether it is in the public interest to accept the plea. However, the decision rests with the prosecutor.

9.6 It must be made clear to the court on what basis any plea is advanced and accepted. In cases where a defendant pleads guilty to the charges but on the basis of facts that are different from the prosecution case, and where this may significantly affect sentence, the court should be invited to hear evidence to determine what happened, and then sentence on that basis.

9.7 Where a defendant has previously indicated that they will ask the court to take an offence into consideration when sentencing, but then declines to admit that offence at court, prosecutors will consider whether a prosecution is required for that offence. Prosecutors should explain to the defence advocate and the court that the prosecution of that offence may be subject to further review, in consultation with the police or other investigators wherever possible.



Reconsidering a Prosecution Decision

10.1 People should be able to rely on decisions taken by the CPS. Normally, if the CPS tells a suspect or defendant that there will not be a prosecution, or that the prosecution has been stopped, the case will not start again. But occasionally there are cases where the CPS will overturn a decision not to prosecute or to deal with the case by way of an out-of-court disposal or when it will restart the prosecution, particularly if the case is serious.

10.2 These cases include:

- cases where a further review of the original decision shows that it was wrong and, in order to maintain confidence in the criminal justice system, a prosecution should be brought despite the earlier decision;
- cases which are stopped so that further anticipated evidence, which is likely to become available in the fairly near future, can be collected and prepared. In these cases, the prosecutor will tell the defendant that the prosecution may well start again;
- cases which are not prosecuted or are stopped because of a lack of evidence but where more significant evidence is discovered later; and
- cases involving a death in which a review following the findings of an inquest concludes that a prosecution should be brought, notwithstanding any earlier decision not to prosecute.

10.3 Victims may seek a review of certain CPS decisions not to start a prosecution or to stop a prosecution, under the Victims' Right to Review Scheme.

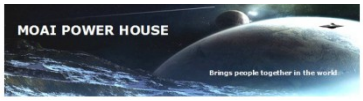
** For the purposes of the Code for Crown Prosecutors, "conviction" includes a finding that "the person did the act or made the omission" in circumstances where the person is likely to be found not guilty on the grounds of insanity.

Forgery Act 1913

1913 CHAPTER 27

Forgery Act 1913 (legislation.gov.uk) Forgery Act 1913 (legislation.gov.uk)

Status: This is the original version (as it was originally enacted). This item of legislation is currently only available in its original format. Forgery Act 1913 1913 CHAPTER 27 1 Definition of forgery (1) For the purposes of this Act, forgery is the making of a false document in order that it may be used as genuine, and in the case of the seals and dies mentioned in this Act the counterfeiting of a seal or die, and forgery with intent to defraud or deceive, as the case may be, is punishable as in this Act provided. (2) A document is false within the meaning of this Act if the whole or any material part thereof purports to be made by or on behalf or on account of a person who did not make it nor authorise its making ; or if, though made by or on behalf or on account of the person by whom or by whose authority it purports to have been made, the time or place of making, where either is material, or, in the case of a document identified by number or mark, the number or any distinguishing mark identifying the document, is falsely stated therein ; and in particular a document is false:— (a) if any material alteration, whether by addition, insertion, obliteration, erasure, removal, or otherwise, has been made therein; (b) if the whole or some material part of it purports to be made by or on behalf of a fictitious or deceased person; (c) if, though made in the name of an existing person, it is made by him or by his authority with the intention that it should pass as having been made by some person, real or fictitious, other than the person who made or authorised it. (3) For the purposes of this Act— (a) it is immaterial in what language a document is expressed or in what place within or without the King's dominions it is expressed to take

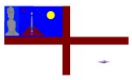




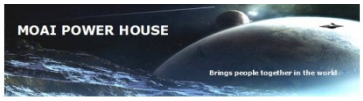








effect; (b) Forgery of a document may be complete even if the document when forged is incomplete, or is not or does not purport to be such a document as would be binding or sufficient in law; (c) The crossing on any cheque, draft on a banker, post-office money order, postal order, coupon, or other document the crossing of which is authorised or recognised by law, shall be a material part of such cheque, draft, order, coupon, or document. 2 Forgery Act 1913 (c. 27) Document Generated: 2022-09-03 Status: This is the original version (as it was originally enacted). This item of legislation is currently only available in its original format. 2 Forgery of certain documents with, intent to defraud (1) Forgery of the following documents, if committed with intent to defraud, shall be felony and punishable with penal servitude for life :— (a) Any will, codicil, or other testamentary document, either of a dead or of a living person, or any probate or letters of administration, whether with or without the will annexed; (b) Any deed or bond, or any assignment at law or in equity of any deed or bond, or any attestation of the execution of any deed or bond ; (c) Any bank note, or any indorsement on or assignment of any bank note. (2) Forgery of the following documents, if committed with intent to defraud, shall be felony and punishable with penal servitude for any term not exceeding fourteen years : — (a) Any valuable security or assignment thereof or endorsement thereon, or, where the valuable security is a bill of exchange, any acceptance thereof ; (b) Any document of title to lands or any assignment thereof or endorsement thereon ; (c) Any document of title to goods or any assignment thereof or endorsement thereon ; (d) Any power of attorney or other authority to transfer any share or interest in any stock, annuity, or public fund of the United Kingdom or any part of His Majesty's dominions or of any foreign state or country or to transfer any share or interest in the debt of any public body, company, or society, British or foreign, or in the capital stock of any such company or society, or to receive any dividend or money payable in respect of such share or interest or any attestation of any such power of attorney or other authority ; (e) Any entry in any book or register which is evidence of the title of any person to any share or interest hereinbefore mentioned or to any dividend or interest payable in respect thereof ; (f) Any policy of insurance or any assignment thereof or endorsement thereon ; (g) Any charter-party or any assignment thereof; (h) Any declaration, warrant, order, affidavit, affirmation, certificate, or other document required or authorised to be made by or for the purposes of the Government Annuities Act, 1829, or the Government Annuities Act, 1832, or by the National Debt Commissioners acting under the authority of the said Acts ; (i) Any certificate of the Commissioners of Inland Revenue or any other Commissioners acting in execution of the Income Tax Acts ; (j) Any certificate, certificate of valuation, sentence or decree of condemnation or restitution, or any copy of such sentence or decree, or any receipt required by the Slave Trade Acts. 3 Forgery of certain documents with, intent to defraud or deceive (1) Forgery of the following documents, if committed with intent to defraud or deceive, shall be felony, and punishable with penal servitude for life :— Any document whatsoever having thereupon or affixed thereto the stamp or impression of the Great Seal of the United Kingdom, His Majesty's Privy Seal, any privy signet of His Majesty, His Majesty's Royal Sign Manual, any of His Majesty's Forgery Act 1913 (c. 27) Document Generated: 2022-09-03 3 Status: This is the original version (as it was originally enacted). This item of legislation is currently only available in its original format. seals appointed by the Twenty-fourth Article of the Union between England and Scotland to be kept, used, and continued in Scotland, the Great Seal of Ireland or the Privy Seal of Ireland. (2) Forgery of the following documents, if committed with intent to defraud or deceive, shall be felony, and punishable with penal servitude for any term not exceeding fourteen years:— (a) Any register or record of births, baptisms, namings, dedications, marriages, deaths, burials, or cremations, which now is, or hereafter may be, by law authorised or required to be kept in the United Kingdom, relating to any birth, baptism, naming, dedication, marriage, death, burial, or cremation, or any part of any such register, or any certified copy of any such register, or of any part thereof ; (b) Any copy of any register of baptisms, marriages, burials, or cremations, directed or required by law to be transmitted to any registrar or other officer ; (c) Any register of the birth, baptism, death, burial, or cremation of any person to be appointed

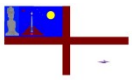




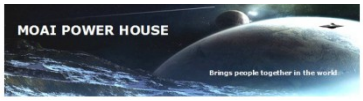








a nominee under the provisions of the Government Annuities Act, 1829, or any copy or certificate of any such register, or the name of any witness to any such certificate ; (d) Any certified copy of a record purporting to be signed by an assistant keeper of the Public Records in England ; (e) Any wrapper or label provided by or under the authority of the Commissioners of Inland Revenue or the Commissioners of Customs and Excise. (3) Forgery of the following documents, if committed with intent to defraud or deceive, shall be felony, and punishable with penal servitude for any term not exceeding seven years :— (a) Any official document whatsoever of or belonging to any court of justice, or made or issued by any judge, magistrate, officer, or clerk of any such court; (b) Any register or book kept under the provisions of any law in or under the authority of any court of justice ; (c) Any certificate, office copy, or certified copy of any such document, register, or book or of any part thereof ; (d) Any document which any magistrate or any master or registrar in lunacy is authorised or required by law to make or issue ; (e) Any document which any person authorised to administer an oath under the Commissioners for Oaths Act, 1889, is authorised or required by law to make or issue ; (f) Any document made or issued by an officer of state or law officer of the Crown, or any document upon which, by the law or usage at the time in force, any court of justice or any officer might act; (g) Any document or copy of a document used or intended to be used in evidence in any Court of Record, or any document which is made evidence by law ; (h) Any certificate required by any Act for the celebration of marriage ; (i) Any licence for the celebration of marriage which may be given by law ; (j) Any certificate, declaration, or order under any enactment relating to the registration of births or deaths ; (k) Any register book, builder's certificate, surveyor's certificate, certificate of registry, declaration, bill of sale, instrument of mortgage, or certificate of mortgage or sale under Part I. of the Merchant Shipping Act, 1894, or any 4 Forgery Act 1913 (c. 27) Document Generated: 2022-09-03 Status: This is the original version (as it was originally enacted). This item of legislation is currently only available in its original format. entry or endorsement required by the said Part of the said Act to be made in or on any of those documents ; (l) Any permit, certificate, or similar document made or granted by or under the authority of the Commissioners of Customs and Excise. 4 Forgery of other documents with intent to defraud or to deceive a misdemeanour (1) Forgery of any document, which is not made felony under this or any other statute for the time being in force, if committed with intent to defraud, shall be a misdemeanour and punishable with imprisonment with or without hard labour for any term not exceeding two years. (2) Forgery of any public document which is not made felony under this or any other statute for the time being in force, if committed with intent to defraud or deceive, shall be a misdemeanour and punishable with imprisonment with or without hard labour for any term not exceeding two years. 5 Forgery of seals and dies (1) Forgery of the following seals, if committed with intent to defraud or deceive, shall be felony and punishable with penal servitude for life :— (a) The Great Seal of the United Kingdom, His Majesty's Privy Seal, any privy signet of His Majesty, His Majesty's Royal Sign Manual, any of His Majesty's seals appointed by the Twenty-fourth Article of the Union between England and Scotland to be kept, used, and continued in Scotland, the Great Seal of Ireland or the Privy Seal of Ireland ; (b) The seal of the Public Record Office in England ; (c) The seal of any court of record ; (d) The seal of the office of the Registrar-General of Births, Deaths, and Marriages. (2) Forgery of the following seals, if committed with intent to defraud or deceive, shall be felony, and punishable with penal servitude for any term not exceeding fourteen years :— (a) The seal of any register office relating to births, baptisms, marriages, or deaths ; (b) The seal of any burial board or of any local authority performing the duties of a burial board ; (c) The seal of or belonging to any office for the registry of deeds or titlesto lands. (3) Forgery of the following seals, if committed with intent to defraud or deceive, shall be felony and punishable with penal servitude for any term not exceeding seven years :— (a) The seal of any court of justice other than a court of record; (b) The seal of the office of any master or registrar in lunacy. (4) Forgery of the following dies, if committed with intent to defraud or deceive, shall be felony and punishable with penal servitude for any term not

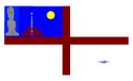




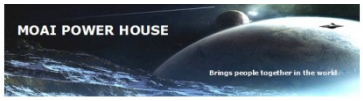








exceeding fourteen years :— (a) Any die provided, made, or used by the Commissioners of Inland Revenue or the Commissioners of Customs and Excise; (b) Any die which is or has been required or authorised by law to be used for the marking or stamping of gold or silver plate, or gold or silver wares. Forgery Act 1913 (c. 27) Document Generated: 2022-09-03 5 Status: This is the original version (as it was originally enacted). This item of legislation is currently only available in its original format. (5) Forgery of the following die, if committed with intent to defraud or deceive, shall be felony and punishable with penal servitude for any term not exceeding seven years:— Any stamp or die provided, made, or used in pursuance of the Local Stamp Act, 1869. 6 Uttering (1) Every person who utters any forged document, seal, or die shall be guilty of an offence of the like degree (whether felony or misdemeanour) and on conviction thereof shall be liable to the same punishment as if he himself had forged the document, seal, or die. (2) A person utters a forged document, seal, or die, who, knowing the same to be forged, and with either of the intents necessary to constitute the offence of forging the said document,seal, or die, uses, offers, publishes, delivers, disposes of, tendersin payment or in exchange, exposes for sale or exchange, exchanges, tenders in evidence, or puts off the said forged document, seal, or die. (3) It is immaterial where the document, seal, or die was forged. 7 Demanding property on forged documents, &c Every person shall be guilty of felony and on conviction thereof shall be liable to penal servitude for any term not exceeding fourteen years, who, with intent to defraud, demands, receives, or obtains, or causes or procures to be delivered, paid or transferred to any person, or endeavours to receive or obtain or to cause or procure to be delivered, paid or transferred to any person any money, security for money Or other property, real or personal:— (a) under, upon, or by virtue of any forged instrument whatsoever, knowing the same to be forged ; or (b) under, upon, or by virtue of any "probate or letters of administration, knowing the will, testament, codicil, or testamentary writing on which such probate or letters of administration shall have been obtained to have been forged, or knowing such probate or letters of administration to have been obtained by any false oath, affirmation, or affidavit, 8 Possession of forged documents, seals, and dies (1) Every person shall be guilty of felony and on conviction thereof shall be liable to penal servitude for any term not exceeding fourteen years, who, without lawful authority or excuse, the proof whereof shall lie on the accused, purchases or receives from any person, or has in his custody or possession, a forged bank note, knowing the same to be forged. (2) Every person shall be guilty of felony and on conviction thereof shall be liable to penal servitude for any term not exceeding fourteen years, who, without lawful authority or excuse, the proof whereof shall lie on the accused, and knowing the same to be forged, has in his custody or possession— (a) any forged die required or authorised by law to be used for the marking of gold or silver plate, or of gold or silver wares, or any ware of gold, silver, or base metal bearing the impression of any such forged die ; (b) any forged stamp or die as defined by the Stamp Duties Management Act, 1891 ; 6 Forgery Act 1913 (c. 27) Document Generated: 2022-09-03 Status: This is the original version (as it was originally enacted). This item of legislation is currently only available in its original format. (c) any forged wrapper or label provided by or under the authority of the Commissioners of Inland Revenue or the Commissioners of Customs and Excise. (3) Every person shall be guilty of felony and on conviction thereof shall be liable to penal servitude for any term not exceeding seven years, who, without lawful authority or excuse, the proof whereof shall lie on the accused, and knowing the same to be forged, has in his custody or possession:— Any forged stamp or die, resembling or intended to resemble either wholly or in part any stamp or die which at any time whatever has been or may be provided, made, or used by or under the direction of the local authority for the purposes of the Local Stamp Act, 1869. 9 Making or having in possession paper or implements for forgery Every person shall be guilty of felony and on conviction thereof shall be liable to penal servitude for any term not exceeding seven years, who, without lawful authority or excuse, the proof whereof shall lie on the accused :— (a) Makes, uses, or knowingly has in his custody or possession any paper intended to resemble and pass as— (i) Special paper such as is provided and used for

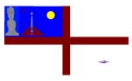




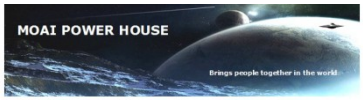








making any bank note, Treasury bill, or London county bill; (ii) Revenue paper; (b) Makes, uses, or knowingly has in his custody or possession, any frame, mould, or instrument for making such paper, or for producing in or on such paper any words, figures, letters, marks, lines, or devices peculiar to and used in or on any such paper; (c) Engraves or in anywise makes upon any plate, wood, stone, or other material, any words, figures, letters, marks, lines, or devices, the print whereof resembles in whole or in part any words, figures, letters, marks, lines, or devices peculiar to and used in or on any bank note, or in or on any document entitling or evidencing the title of any person to any share or interest in any public stock, annuity, fund, or debt of any part of His Majesty's Dominions or of any foreign state, or in any stock, annuity, fund, or debt of any body corporate, company, or society, whether within or without His Majesty's dominions ; (d) Uses or knowingly has in his custody or possession any plate, wood, stone, or other material, upon which any such words, figures, letters, marks, lines, or devices have been engraved or in any wise made as aforesaid ; (e) Uses or knowingly has in his custody or possession any paper upon which any such words, figures, letters, marks, lines, or devices have been printed or in airy-wise made as aforesaid. 10 Purchasing or having in possession certain paper before it has been duly stamped and issued Every person shall be guilty of a misdemeanour and on conviction thereof shall be liable to imprisonment, with or without hard labour, for any term not exceeding two years, who, without lawful authority or excuse the proof whereof shall lie on the accused, purchases, receives, or knowingly has in his custody or possession— Forgery Act 1913 (c. 27) Document Generated: 2022-09-03 7 Status: This is the original version (as it was originally enacted). This item of legislation is currently only available in its original format. (a) Any special paper provided and used for making Treasury bills or London county bills or any Revenue paper before such paper has been duly stamped, signed, and issued for public use : (b) Any die peculiarly used in the manufacture of any such paper. 11 Accessories and abettors Any person who knowingly and wilfully aids, abets, counsels, causes, procures, or commands the commission of an offence punishable under this Act shall be liable to be dealt with, indicted, tried, and punished as a principal offender. 12 Punishments (1) Where a sentence of penal servitude may be imposed on conviction of an offence against this Act, the court may, instead thereof, impose a sentence of imprisonment, with or without hard labour, for not more than two years. (2) (a) On conviction of a misdemeanour punishable under this Act, the court, instead of or in addition to any other punishment which may be lawfully imposed, may fine the offender : (b) On conviction of a felony punishable under this Act, the court, in addition to imposing a sentence of penal servitude or imprisonment, may require the offender to enter into his own recognizances, with or without sureties, for keeping the peace and being of good behaviour : (c) On conviction of a misdemeanour punishable under this Act, the court, instead of or in addition to any other punishment which may lawfully be imposed for the offence, may require the offender to enter into his own recognizances, with or without sureties, for keeping the peace and being of good behaviour: (d) No person shall be imprisoned under this section for more than one year for not finding sureties. 13 Jurisdiction of quarter sessions in England A court of quarter sessions in England shall not have jurisdiction to try an indictment for any offence against this Act or for an offence which, under any enactment for the time being in force, is declared to be forgery or to be punishable as forgery. 14 Venue (1) A person charged— (a) with an offence against this Act; or (b) with an offence indictable at common law or under any Act for the time being in force consisting in the forging or altering of any matter whatsoever, or in offering, uttering, disposing of, or putting off any matter whatsoever, knowing the same to be forged or altered; may be proceeded against, indicted, tried, and punished in any county or place in which he was apprehended or isin custody asif the offence had been committed in that county or place; and for all purposes incidental to or consequential on the prosecution, trial, or punishment of the offence, it shall be deemed to have been committed in that county or place: 8 Forgery Act 1913 (c. 27) Document Generated: 2022-09-03 Status: This is the original version (as it was originally enacted). This item of legislation is currently only available in its original format.

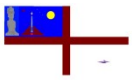




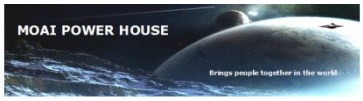








Provided that, where the offence charged relates to documents made for the purpose of any Act relating to the suppression of the slave trade, it shall, for the purposes of jurisdiction and trial, be treated as an offence against the Slave Trade Act, 1873. (2) Nothing in thissection shall affect the lawsrelating to the government of His Majesty's naval or military forces. 15 Criminal possession Where the having any document, seal, or die in the custody or possession of any person is in this Act expressed to be an offence, a person shall be deemed to have a document, seal or die in his custody or possession if he— (a) has it in his personal custody or possession ; or (b) knowingly and wilfully has it in the actual custody or possession of any other person, or in any building, lodging, apartment, field, or other place, whether open or enclosed, and whether occupied by himself or not. It is immaterial whether the document, matter, or thing is had in such custody, possession, or place for the use of such person or for the use or benefit of another person. 16 Search warrants (1) If it shall be made to appear by information on oath before a justice of the peace that there is reasonable cause to believe that any person has in his custody or possession without lawful authority or excuse— (a) any bank note ; or (b) any implement for making paper or imitation of the paper used for bank notes ; or (c) any material having thereon any words, forms, devices, or characters capable of producing or intended to produce the impression of a bank note ; or (d) any forged document, seal, or die ; or (e) any machinery, implement, utensil, or material used or intended to be used for the forgery of any document; the justice may grant a warrant to search for the same ; and if the same shall be found on search, it shall be lawful to seize it and carry it before a justice of the county or place in which the warrant was issued, to be by him disposed of according to law. (2) Every document, seal, or die lawfully seized under such warrant shall be defaced and destroyed or otherwise disposed of— (a) by order of the court before which the offender is tried; or (b) if there be no trial, by order of a justice of the peace ; or (c) if it affects the public revenue, by the Commissioners of Inland Revenue or the Commissioners of Customs and Excise, as the case may require ; or (d) if it affects any of the companies of Goldsmiths or Guardians referred to in the Gold and Silver Wares Act, 1844, by the said company or guardians. 17 Form of indictment and proof of intent (1) In an indictment or information for an offence against this Act with reference to any document, seal, or die, it is sufficient to refer to the document, seal, or die by any name Forgery Act 1913 (c. 27) Document Generated: 2022-09-03 9 Status: This is the original version (as it was originally enacted). This item of legislation is currently only available in its original format. or designation by which it is usually known, or by its purport, without setting ,out any copy or facsimile of the whole or any part of the document, seal, or die. (2) Where an intent to defraud or an intent to deceive is one of the constituent elements of an offence punishable under this Act, or under any other Act relating to forgery or any kindred offence for the time being in force, it shall not be necessary to allege in the indictment or to prove an intent to defraud or deceive any particular person; and it shall be sufficient to prove that the defendant did the act charged with intent to defraud or to deceive, as the case may require. (3) If any person who is a member of any co-partnership, or is one of two or more beneficial owners of any property, forges any document, matter, or thing with intent to defraud the co-partnership or the other beneficial owners, he is liable to be dealt with, indicted, tried, and punished as if he had not been or was not a member of the co-partnership, nor one of such beneficial owners. 18 Interpretation (1) In this Act unless the context otherwise requires— The expression " bank note " includes any note or bill of exchange of the Bank of England or Bank of Ireland, or of any other person, body corporate, or company carrying on the business of banking in any part of the world, and includes "bank bill," "bank post bill," "blank bank note," "blank bank bill of exchange," and " blank bank post bill " : The expression " die " includes any plate, type, tool, or implement whatsoever, and also any part of any die plate, type, tool, or implement, and any stamp or impression thereof or any part of such stamp or impression: The expression " document of title to goods " includes any bill of lading, India warrant, dock warrant, warehouse keepers certificate, warrant or order for the delivery or transfer of any goods or valuable thing, bought

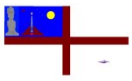




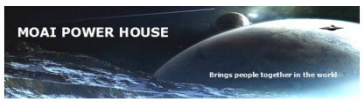








or sold note, or any other document used in the ordinary course of business as proof of the possession or control of goods, or authorising or purporting to authorise either by endorsement or by delivery the possessor of such document to transfer or receive any goods thereby represented or therein mentioned or referred to : The expression " document of title to lands " includes any deed, map, roll, register, or instrument in writing being or containing evidence of the title or any part of the title to any land or to any interest in or arising out of any land, or any authenticated copy thereof: The expression " revenue paper " means any paper provided by the proper authority for the purpose of being used for stamps, licences, permits, Post Office money orders, or postal orders, or for any purpose whatever connected with the public revenue : The expression " seal " includes any stamp or impression of a seal or any stamp or impression made or apparently intended to resemble the stamp or impression of a seal, as well as the seal itself : The expression " stamp " includes a stamp impressed by means of a die as well as an adhesive stamp : The expression " Treasury bill, " includes Exchequer bill, Exchequer bond, Exchequer debenture, and War bond : The expression " valuable security " includes any writing entitling or evidencing the title of any person to any share or interest in any public stock, annuity, fund, or debt of any part of His Majesty's dominions or of any foreign 10 Forgery Act 1913 (c. 27) Document Generated: 2022-09-03 Status: This is the original version (as it was originally enacted). This item of legislation is currently only available in its original format. state, or in any stock, annuity, fund, or debt of any body corporate, company, or society, whether within or without His Majesty's dominions, or to any deposit in any bank, and also includes any scrip, debenture, bill, note, warrant, order, or othersecurity for the payment of money, or any accountable receipt, release, or discharge, or any receipt or other instrument evidencing the payment of money, or the delivery of any chattel personal. (2) References in this Act to any Act in force at the commencement of this Act shall be held to include a reference to that Act as amended, extended, or applied by any other Act. (3) References in this Act to any Government department shall in relation to any functions performed by that department be held to include references to any other Government department by which the same functions were previously performed. 19 Savings (1) Where an offence against this Act also by virtue of some other Act subjects the offender to any forfeiture or disqualification, or to any penalty other than penal servitude or imprisonment or fine, the liability of the offender to punishment under this Act shall be in addition to and not in substitution for his liability under such other Act. (2) Where an offence against this Act is by any other Act, whether passed before or after the commencement of this Act, made punishable on summary conviction, proceedings may be taken either under such other Act or under this Act: Provided that where such an offence was at the commencement of this Act punishable only on summary conviction, -it shall remain only so punishable. 20 Repeals The enactments specified in the schedule to this Act are hereby repealed as to England and Ireland to the extent specified in the third column of that schedule. 21 Extent This Act shall not extend to Scotland. 22 Short title and commencement This Act may be cited as the Forgery Act, 1913, and shall come into operation on the first day of January one thousand nine hundred and fourteen.



FORGERY AND COUNTERFEITING THE BRITISH GOVERNMENT NATIVE TITLE DOCUMENTS

In the NATIVE MAGISTRATE KINGS BENCH COURT HEARING Saturday 24 September 2022

PM Jacinda Kate Laurell Ardern & Governor General Cindy Acylon Kiro Charged with FRAUD

Under the

Forgery and Counterfeiting Act 1981

23 March 2022 updated 23 March 2022|*Legal Guidance, Fraud and economic crime*The Forgery and Counterfeiting Act 1981 creates the following commonly used offences:

- Section 1 - **Forgery - making a false instrument.**
- Section 2 - Copying a false instrument.
- Section 3 - **Using a false instrument.**
- Section 4 - **Using a copy of a false instrument.**
- Section 5 - Custody or control of false instruments (purporting to be money orders, share certificates, passports, traveller's cheques, credit cards, debit cards, credit cards, birth etc. certificates, etc.) and manufacture, custody, or control of equipment or materials to make them.

In addition to the above, other offences are also created within the Act.

- Section 14 - **offences concerning counterfeiting notes and coins.**
- Section 15 - **offences of passing counterfeit notes and coins.**
- Section 16 - **offences involving the custody or control of counterfeit notes and coins.**
- Section 17 - **offences involving the making or custody or control of counterfeiting materials** and implements.
- Section 20 – the prohibition of importation of counterfeit notes and coins.
- Section 21 – the prohibition of exportation of counterfeit notes and coins.

Definitions

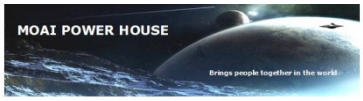
False instrument

Section 1 Forgery Act 1981 states:

A person is guilty of forgery if he makes a **false instrument,** with the intention that he or another shall use it to **induce somebody to accept it as genuine**, and by reason of so **accepting it to do or not to do some act to his own or any other person's prejudice."**

It must be shown that D intended for the false instrument it be used to induce somebody to accept it as genuine and, by reason of so accepting it, to do or not to do some act to his own or another's prejudice: **R. v. Mary Sylvia Campbell (1985) 80 Cr.App.R. 47, CA.**

An intention to induce another to accept a copy of a forgery will also suffices: **R v Ondhia (1998) 2 Cr.App.R 150 CA**

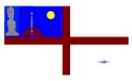












"Instrument" - the definition for instrument is found at section 8 Forgery and Counterfeiting Act 1981

Instrument includes any document, postage stamp (or mark denoting payment) , Inland Revenue stamp, disk tape, sound track or other device on which information is stored by any means. It does not include a currency note (see offences under sections 14, 16, 17, 20 and 21 Forgery and Counterfeiting Act 1981).

"False"

False is defined at section 9 Forgery and Counterfeiting Act 1981. Section 9(1)(a) - (g) sets out 8 exhaustive scenarios in which **an instrument is false for the purposes of the FCA 1981.**

Whether an instrument falls within any of these scenarios will be fact specific and potentially complex. An instrument that contains within it a false statement will not necessarily render the instrument itself a forgery. A lie is a false statement, but documents containing lies or false statements are not always regarded as false instruments. **A false instrument is one that "purports" to be something which is not - i.e. it must tell a lie about itself** (see the decision by the House of Lords in R v More [1988] 86 Crim App R 234).

Falsity as to Circumstance (s.9(1)(g)

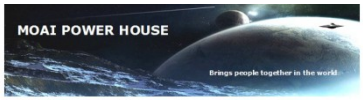
Difficulties have arisen with conflicting decisions by the Court of Appeal on the ambit of Section 9(1)(g) FCA 1981 and **an instrument that tells a lie about its subject-matter or relevant factual circumstances. Section 9(1)(g) states that an instrument is false:**

if it purports to have been made or altered on a date on which, or at a place at which, or otherwise in circumstances in which, it was not in fact made or altered

In R v Donnelly (1984) 79 Cr. App. R. 76 the Court took a broad approach to s.9(1)(g). It was held that the words “otherwise in circumstances…” expanded the ambit of that paragraph to any case in which an instrument purports to made when it was not, in fact, made. Therefore, a certificate that purported to value jewellery that did not actually exist was false within the meaning of section 9(1)(g) because it purported to have been made in circumstances that did not, in fact, exist. Donnelly was applied in R v Jeraj [1994] Crim L. R. 595 where a bank officer wrote a note in which he said he had received and endorsed a letter of credit. In fact, he had seen no such letter.

However, in R v Warneford and Gibbs [1994] Crim L R 753 the Court was not referred to Jeraj and took the view that Donnelly had been wrongly decided.

The conflict was apparently resolved in Att.-Gen.’s Reference (No. 1 of 2000) [2001] 1 Cr. App. R. 15 in which the Court of Appeal reviewed the relevant authorities and held that Donnelly and Jeraj remained good law but their application should be restricted to where there are circumstances that need to exist before the document can be properly made or altered and those circumstances are absent. The Court stated (at paragraph 26):

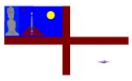












"…an instrument will be false for the purposes of Section 9(1)(g) if it is a document which requires, before it can be made or altered that there should exist or should have existed a set of circumstances and those circumstances do not or did not exist."

"Making"

Section 9(2) FCA 1981 captures situations where an existing instrument is falsified and specifies that a person is to be treated as "**making" a false instrument if they alter an instrument so as to make it false in any respect (whether or not it is false in some other respect apart from that alteration).**

"Prejudice and Induce"

Prejudice and induce are defined in Section 10 Forgery and Counterfeiting Act 1981 as:

Something which results in temporary or permanent loss of property, deprives another of the opportunity to obtain remuneration or greater remuneration or financial advantage or the opportunity to perform any duty.

Jurisdiction

Offences under sections 1 to 5 of the Forgery and Counterfeiting Act 1981, are Group A offences and **we can prosecute if a "relevant event" occurred in England or Wales** - see Criminal Justice Act 1993 Part 1.

This applies whether or not the defendant was in England or Wales at any material time, and whether or not they were a British citizen at any such time. Conspiracies relating to these offences are Group B offences.

Counterfeiting

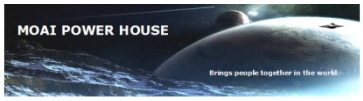
Section 14 Forgery and Counterfeiting Act 1981 states:-

(1) It is an offence for a person to make a counterfeit of a currency note or of a protected coin, intending that they or another shall pass or tender it as genuine.

(2) It is an offence for a person to make a counterfeit of a currency note or of a protected coin without lawful authority or excuse

Section 15 Forgery and Counterfeiting Act 1981 likewise makes it an offence to knowingly or believing it to be counterfeit (1) pass or tender it as genuine or (2) deliver to another such a counterfeit note or protected coin.

Section 16 Forgery and Counterfeiting Act 1981 further makes it an offence to (1) have custody or control of such a counterfeit note or protected coin intending to pass or tender it as genuine or (2) have possession of the same.



Section 17 Forgery and Counterfeiting Act 1981 makes it an offence to (1) have custody or control of anything intending to or allowing any person to use it to make a counterfeit of a currency note or protected coin, intending to pass it as genuine or (2) make or have anything designed or adapted to make a counterfeit of a currency note or (3) make or have any implement to his knowledge capable of imparting to anything the resemblance of a protected coin or its reversed image.

Section 18 Forgery and Counterfeiting Act 1981 makes it an offence to reproduce a British currency note or part of one.

Section 19 Forgery and Counterfeiting Act 1981 makes it an offence to make or sell or distribute or have custody or control of imitation British coins within a scheme for goods and services.

Section 20 Forgery and Counterfeiting Act 1981 prohibits the importation of a counterfeit note or protected coin.

Section 21 Forgery and Counterfeiting Act 1981 prohibits the exportation of a counterfeit note or protected coin.

"Passing" or "tendering" is not confined to passing or tendering as legal tender: section 14(3) Forgery and Counterfeiting Act 1981.

Counterfeits - defence

Section 17 (3) it is a defence within the Act if the written permission of the Treasury or other lawful authority has been obtained or there is a lawful excuse.

Section 18 it is a defence within the Act if the written permission of the relevant issuing authority has been obtained.

Sections 19, 20 and 21 it is a defence within the Act if the written permission of the Treasury has been obtained.

Sentence

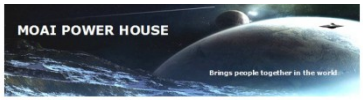
Offences under sections 1 - 4 and section 5(1) and 5(3) Forgery and Counterfeiting Act 1981 are either way maximum 10 years' imprisonment or fine or both.

Section 5(2) Forgery Act 1981 either way maximum two years' imprisonment or fine or both.

Offences under sections 14(1), 15(1), 16(1) and 17(1) Forgery and Counterfeiting Act 1981 are either way maximum 10 years' imprisonment or fine or both.

Offences under sections 14(2), 15(2), 16(2), 17(2) and 17(3) Forgery and Counterfeiting Act 1981 are either way maximum two years' imprisonment or fine or both.

Offences under section 18 and 19 Forgery and Counterfeiting Act 1981 are not specifically provided for however section 18 would be analogous to section 14(2) and section 19 may be analogous to other offences listed above.



Offences under section 20 and 21 Forgery and Counterfeiting Act 1981 are charged contrary to section 170(1)(b) and (3) Customs and Excise Management Act 1979 as either way offences maximum sentence seven years' imprisonment fine or both.

Sections 14, 15, 16 and 17 Forgery and Counterfeiting Act 1981 and section 170 Customs and Excise Management Act 1979 are offences for which a Serious Crime Prevention Order under Schedule 1 of the Serious Crime Act 2007 may be imposed on conviction.

Sections 14, 15, 16 and 17 Forgery and Counterfeiting Act 1981 are lifestyle offences for the purposes of confiscation of criminal property under section 75 and Schedule 2 Proceeds of Crime Act 2002

Other offences of Forgery

Various Acts create offences involving forgery;

- Registers of births, marriages & deaths etc. - section 8 Non-Parochial Registers Act 1840 and sections 36 and 37 Forgery Act 1861.
- Passports - section 36 Criminal Justice Act 1925.
- **Court documents and authority - sections 133 and 135 County Courts Act 1984.**
- Dies and stamps - section 13 Stamp Duties Management Act 1891.
- **Land Registration - sections 115 to 117 Land Registration Act 1925.**
- Statutes and executive documents - section 4 Evidence Act 1845; section 4(1) Documentary Evidence Act 1868; section 3 Documentary Evidence Act 1882.
- Hallmarks - section 6 Hallmarking Act 1973.
- Supply of equipment to forge currency, identity document, entry documents etc. - Specialist Printing Equipment and Materials (Offences) Act 2015.
- Forgery and false statements under s 126 Mental Health Act 1983.
- Road Traffic Documents and Licenses - section 173 Road Traffic Act 1973 and section 44 Vehicle Excise and Registration Act 1994.

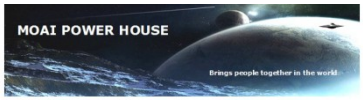
Identity Cards Act 2006

Section 25 of the Identity Cards Act 2006, in force from 7 June 2006 and was repealed on 21 January 2011. For offences after the 2006 Act, see the Identity Documents Act 2010.

Offences under the Identity Cards Act 2006

Section 25(1) - creates an offence for a person intending to use a document to establish registrable facts about themselves or to allow or induce another to establish/ ascertain/ verify registrable facts about him or another (s 25(2)), to have in his possession or control:-

- a false identity document, knowing or believing it is false or;
- an improperly obtained identity document knowing or believing it to be so obtained or;
- an identity document belonging to someone else.



Section 25(3) creates an offence for a person intending that they or another will make identity documents or somebody will use the document for establishing etc. registrable facts about a person (s 25(4)), to have in his possession or control:-

- Apparatus or any article or material to his knowledge designed or adapted for making false documents.

Section 25(5) creates an offence for a person to possess or control without reasonable excuse; A false identity document, an improperly obtained identity document, some else's identity document, or any apparatus, article or material to his knowledge designed or adapted for making false identity documents.

Section 26 defines an identity document and includes;

- A designated document
- An immigration document
- A passport
- A document in use instead of a passport
- A driving license

Sections 25(1) and (3) indictable only 10 years' maximum imprisonment or fine or both

Section 25(5) either way, maximum two years' imprisonment or fine or both.

Identity Documents Act 2010

The Identity Documents Act came into force on 21 January 2011 and repealed sections 25 and 26 of the Identity Cards Act 2006.

The principal amendment is the reference to the narrower defined "personal information" rather than "registrable facts".

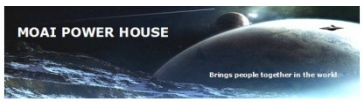
The IDA 2010 provisions are largely the same as the ICA 2006 Act.

Possession with intent, 2010 Act.

Section 4(1) - replaces s.25(1) of the Identity Cards Act 2006. It creates an offence for a person with an improper intent to be in possession or control of an identity document which (a) is false and they know or believe to be false or (b) was improperly obtained knowing or believing the same or (c) an identity document that relates to someone else.

"Improper intent" is defined at section 4(2) as intending to establish personal information about himself or intending to allow or induce another to use it to verify personal information about himself or another.

Section 5(1) replaces s.25 (3) of the Identity Card Act 2010. It creates an offence for a person with prohibited intent to make or possess or control, apparatus or any article or material to his knowledge designed or adapted for making false identity documents.

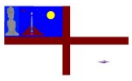












"Prohibited intention" is defined at section 5(2) as an intention that they or another will make a false identity document or that the document will be used by somebody to establish/ ascertain/ verify personal information about a person.

Ss. 4(1) and 5(1) indictable only 10 years' maximum imprisonment or fine or both.

Section 6(1) replaces s.25(5) of the Identity Card Act 2010 and creates an offence for a person without reasonable excuse to have in his possession or control:-

- **a false identity document**
- an improperly obtained identity document
- someone else's identity document
- apparatus or any article or material to his knowledge designed or adapted for making false identity documents.

Section 6(1) either way, maximum two years' imprisonment or fine or both.

"Apparatus" is defined in section 9 of the Act.

"Identity document" defined at section 7 Identity Documents Act 2010 and includes

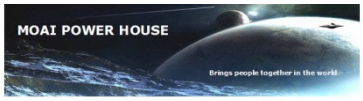
- An immigration document
- A passport
- A document in use instead of a passport
- A driving license

"Personal information" is defined at section 8 Identity Documents Act 2010 to be an individual's:-

- Full / other names
- Gender
- Date and place of birth
- Identifying characteristics
- Address of residence (present and past)
- Periods of residence
- Residential status (present and past) i.e. nationality, entitlement to remain in the UK, status of such entitlement.
- Identification numbers allocated/ identification documents allocated.

Jurisdiction

Offences under section 25 Identity Cards Act and sections 4, 5 and 6 Identity Documents Act 2010 are Group A offences and prosecutors can prosecute if a "relevant event" occurred in England or Wales - see Criminal Justice Act 1993 Part 1. This applies whether or not the defendant was in England or Wales at any material time, and whether or not they were a British citizen at any such time. Conspiracies relating to these offences are Group B offences.



Statutory Defence - Section 31 of the Immigration and Asylum Act 1999

Possible Defence for Asylum Claimants

Section 31 Immigration and Asylum Act 1999 creates a statutory defence to offences of travelling on false documents for a refugee claiming asylum. The offences to which this defence applies in this section are any offence, or any attempt to commit an offence, under:

- Part 1 of the Forgery and Counterfeiting Act 1981 (forgery and connected offences).
- Sections 25(1) and (5) of the Identity Cards Act 2006 (note now repealed however applied prior to the repeal of the 2006 Act).
- Sections 4(1) and 6(1) Identity Documents Act 2010 (replacing the above offences under the Identity Card Act 2006)

The defence applies where:-

- A refugees coming to the UK directly from a country where his life or freedom was threatened or if coming through a transit country can show he could not reasonably be expected to have been given protection under the Convention.
- Presented himself to the UK authorities without delay
- Showed good cause for his illegal entry or presence
- Made a claim for asylum as soon as reasonably practicable after arrival in the UK.

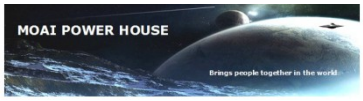
The defence is based on Article 31(1) of the 1951 UN Convention Relating to the Status of Refugees (the Refugee Convention). For guidance on interpretation see (R v Uxbridge Magistrates' Court and another, ex p. Adimi (2001) Q.B. 667; R v CPS, ex p. Sorani; R v Secretary of State for the Home Department, ex p. Sorani; R v Secretary of State for the Home Department and another, ex p. Kaziu (2000) 3 W.L.R. 434 DC).

Prosecutors should consider whether accounts given by asylum seekers could give rise to a defence; the position is sometimes not properly assessed until the point at which an appeal is being considered. In R v Abdala Mohamed and others [2011] 1 Cr App R 35 four appellants appealed their convictions under the Identity Cards Act following legal advice and guilty pleas on the basis that they had not received proper advice on the available defence and/or on the merits the section 31 defence rendered their convictions unsafe. The Court indicated that those advising a defendant charged with an offence to which the defence provided for by section 31 applies must make clear the parameters of the defence, so that the defendant can make an informed choice as to whether to seek to advance it. Three out the four appeals were successful.

The same principle should apply to offences under the Identity Documents Act 2010

When such a defence is likely to be raised, the police should be requested to obtain evidence from the UK Border Agency and the Home Office to establish the situation on refugee status and asylum claim.

Further information on Section 31 of the Immigration and Asylum Act 1999 can be found in Immigration, elsewhere in the Legal Guidance.

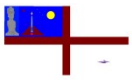








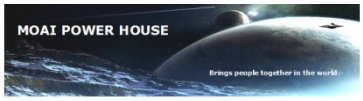




Falsifying British UK Government Print Documents Offenses up to 10 years Imprisonment or Fine or Both Offences under sections 14(1), 15(1), 16(1) and 17(1) Forgery and Counterfeiting Act 1981 are either way maximum 10 years' imprisonment or fine or both.

Offences under sections 14(2), 15(2), 16(2), 17(2) and 17(3) Forgery and Counterfeiting Act 1981 are either way maximum two years' imprisonment or fine or both. 23/03/2022

Forgery and Counterfeiting Act 1981 1981 CHAPTER 45 An Act to make fresh provision for England and Wales and Northern Ireland with respect to forgery and kindred offences; to make fresh provision for Great Britain and **Northern Ireland** with respect to the counterfeiting of notes and coins and kindred offences; to amend the penalties for offences under section 63 of the Post Office Act 1953; and for connected purposes. [27th July 1981] Commencement Information I1 Act not in force at Royal Assent see s. 33. Act wholly in force at 28.10.1981. PART I FORGERY AND KINDRED OFFENCES Modifications etc. (not altering text) C1 Pt. I (ss.1-13) modified (11.11.1999) by 1999 c. 33, ss. 31(3)(a), 170(3)(e) Offences 1 The offence of forgery. A person is guilty of forgery if he makes a false instrument, with the intention that he or another shall use it to induce somebody to accept it as genuine, and by reason of so accepting it to do or not to do some act to his own or any other person's prejudice. 2 The offence of copying a false instrument. It is an offence for a person to make a copy of an instrument which is, and which he knows or believes to be, a false instrument, with the intention that he or another shall 2 Forgery and Counterfeiting Act 1981 (c. 45) Part I – Forgery and Kindred Offences Document Generated: 2022-08-24 Changes to legislation: Forgery and Counterfeiting Act 1981 is up to date with all changes known to be in force on or before 24 August 2022. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes use it to induce somebody to accept it as a copy of a genuine instrument, and by reason ofso accepting it to do or not to do some act to his own or any other person's prejudice. 3 The offence of using a false instrument. It is an offence for a person to use an instrument which is, and which he knows or believes to be, false, with the intention of inducing somebody to accept it as genuine, and by reason of so accepting it to do or not to do some act to his own or any other person's prejudice. 4 The offence of using a copy of a false instrument. It is an offence for a person to use a copy of an instrument which is, and which he knows or believes to be, a false instrument, with the intention of inducing somebody to accept it as a copy of a genuine instrument, and by reason of so accepting it to do or not to do some act to his own or any other person's prejudice. 5 Offences relating to money orders, share certificates, passports, etc. (1) It is an offence for a person to have in his custody or under his control an instrument to which this section applies which is, and which he knows or believes to be, false, with the intention that he or another shall use it to induce somebody to accept it as genuine, and by reason of so accepting it to do or not to do some act to his own or any other person's prejudice. (2) It is an offence for a person to have in his custody or under his control, without lawful authority or excuse, an instrument to which this section applies which is, and which he knows or believes to be, false. (3) It is an offence for a person to make or to have in his custody or under his control a machine or implement, or paper or any other material, which to his knowledge is or has been specially designed or adapted for the making of an instrument to which this section applies, with the intention that he or another shall make an instrument to which this section applies which is false and that he or another shall use the instrument to induce somebody to accept it as genuine, and by reason of so accepting it to do or not to do some act to his own or any other person's prejudice. (4) It is an offence for a person to make or to have in his custody or under his control any such machine,

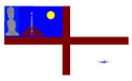




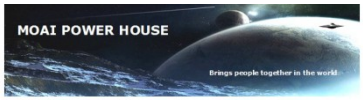








implement, paper or material, without lawful authority or excuse. (5) The instruments to which this section applies are— (a) money orders; (b) postal orders; (c) United Kingdom postage stamps; (d) Inland Revenue stamps; (e) share certificates; F1(f) . . . . . F2(fa) . . . . . (g) cheques [F3and other bills of exchange]; (h) travellers' cheques; [F4(ha) bankers' drafts; (hb) promissory notes;] Forgery and Counterfeiting Act 1981 (c. 45) Part I – Forgery and Kindred Offences Document Generated: 2022-08-24 3 Changes to legislation: Forgery and Counterfeiting Act 1981 is up to date with all changes known to be in force on or before 24 August 2022. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes (j) cheque cards; [F5(ja) debit cards;] (k) credit cards; (l) certified copies relating to an entry in a register of births, adoptions, marriages [F6, civil partnerships][F7, conversions] or deaths and issued by the Registrar General, the Registrar General for Northern Ireland, a registration officer or a person lawfully authorised to [F8issue certified copies relating to such entries]; and (m) certificates relating to entries in such registers. (6) In subsection (5) (e) above "share certificate" means an instrument entitling or evidencing the title of a person to a share or interest— (a) in any public stock, annuity, fund or debt of any government orstate, including a state which forms part of another state; or (b) in any stock, fund or debt of a body (whether corporate or unincorporated) established in the United Kingdom or elsewhere. [F9(6A) In subsection (5)(l) above, "conversion" means the conversion of a civil partnership into a marriage under section 9 of the Marriage (Same Sex Couples) Act 2013 and regulations made under that section.] [F10(7) An instrument is also an instrument to which this section applies if it is a monetary instrument specified for the purposes of this section by an order made by the Secretary of State. (8) The power under subsection (7) above is exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.] F11 (9) . . . . . F11 (10) . . . . . F11 (11) . . . . . Textual Amendments F1 S. 5(5)(f) repealed (7.6.2006) by Identity Cards Act 2006 (c. 15), s. 44(3), Sch. 2; S.I. 2006/1439, art. 2(e) [Editorial Note: The repealing Sch. 2 is induced by s. 44(2) of the 2006 Act and that section is in force at 30.3.2006 by virtue of s. 44(3) of that Act. However, Sch. 2 itself is expressly brought into force at 7.6.2006 by S.I. 2006/1439, art. 2(e)] F2 S. 5(5)(fa) repealed (7.6.2006) by Identity Cards Act 2006 (c. 15), s. 44(3), Sch. 2; S.I. 2006/1439, art. 2(e) [Editorial Note: The repealing Sch. 2 is induced by s. 44(2) of the 2006 Act and that section is in force at 30.3.2006 by virtue of s. 44(3) of that Act. However, Sch. 2 itself is expressly brought into force at 7.6.2006 by S.I. 2006/1439, art. 2(e)] F3 Words in s. 5(5)(g) inserted (26.4.2004) by Crime (International Co-operation) Act 2003 (c. 32), ss. 88(2)(a), 94(1); S.I. 2004/786, art. 3(1)(2) F4 S. 5(5)(ha)(hb) inserted (26.4.2004) by Crime (International Co-operation) Act 2003 (c. 32), ss. 88(2) (b), 94(1); S.I. 2004/786, art. 3(1)(2) F5 S. 5(5) (ja) inserted (26.4.2004) by Crime (International Co-operation) Act 2003 (c. 32), ss. 88(2)(c), 94(1); S.I. 2004/786, art. 3(1)(2) F6 Words in s. 5(5)(l) inserted (5.12.2005) by Civil Partnership Act 2004 (c. 33), s. 263(10)(b), Sch. 27 para. 67(a); S.I. 2005/3175, art. 2(2) F7 Word in s. 5(5)(l) inserted (E.W.) (10.12.2014) by The Marriage (Same Sex Couples) Act 2013 (Consequential and Contrary Provisions and Scotland) and Marriage and Civil Partnership (Scotland) 4 Forgery and Counterfeiting Act 1981 (c. 45) Part I – Forgery and Kindred Offences Document Generated: 2022-08-24 Changes to legislation: Forgery and Counterfeiting Act 1981 is up to date with all changes known to be in force on or before 24 August 2022. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes Act 2014 (Consequential Provisions) Order 2014 (S.I. 2014/3168), art. 1(2)(3), Sch. para. 10(2) (which amendment was extended to N.I. (13.1.2020) by S.I. 2019/1514, reg. 149(d)(ii) (with regs. 6-9)) F8 Words in s. 5(5)(l) substituted (5.12.2005) by Civil Partnership Act 2004 (c. 33), s. 263(10)(b), Sch. 27 para. 67(b); S.I. 2005/3175, art. 2(2) F9 S. 5(6A) inserted (E.W.)

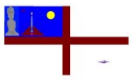




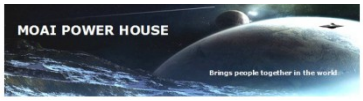








(10.12.2014) by The Marriage (Same Sex Couples) Act 2013 (Consequential and Contrary Provisions and Scotland) and Marriage and Civil Partnership (Scotland) Act 2014 (Consequential Provisions) Order 2014 (S.I. 2014/3168), art. 1(2)(3), Sch. para. 10(3) (which amendment was extended to N.I. (13.1.2020) by S.I. 2019/1514, reg. 149(d)(ii) (with regs. 6-9)) F10 S. 5(7)(8) inserted (26.4.2004) by Crime (International Co-operation) Act 2003 (c. 32), ss. 88(3), 94(1); S.I. 2004/786, art. 3(1)(2) F11 S. 5(9)-(11) repealed (7.6.2006) by Identity Cards Act 2006 (c. 15), s. 44(3), Sch. 2; S.I. 2006/1439, art. 2(e) [Editorial Note: The repealing Sch. 2 is induced by s. 44(2) of the 2006 Act and that section is in force at 30.3.2006 by virtue of s. 44(3) of that Act. However, Sch. 2 itself is expressly brought into force at 7.6.2006 by S.I. 2006/1439, art. 2(e)] Penalties etc. 6 Penalties for offences under Part I. (1) A person guilty of an offence under this Part of this Act shall be liable on summary conviction— (a) to a fine not exceeding the statutory maximum; or (b) to imprisonment for a term not exceeding six months; or (c) to both. (2) A person guilty of an offence to which this subsection applies shall be liable on conviction on indictment to imprisonment for a term not exceeding ten years. (3) The offences to which subsection (2) above applies are offences under the following provisions of this Part of this Act— (a) section 1; (b) section 2; (c) section 3; (d) section 4; (e) section 5(1); and (f) section 5(3). (4) A person guilty of an offence under section 5(2) or (4) above shall be liable on conviction on indictment to imprisonment for a term not exceeding two years. F12(5) . . . . . Textual Amendments F12 S. 6(5) repealed (5.11.1993) by 1993 c. 50, s. 1(1), Sch. 1 Pt. XIV Group2. Forgery and Counterfeiting Act 1981 (c. 45) Part I – Forgery and Kindred Offences Document Generated: 2022-08-24 5 Changes to legislation: Forgery and Counterfeiting Act 1981 is up to date with all changes known to be in force on or before 24 August 2022. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes 7 Powers of search, forfeiture, etc. (1) If it appears to a justice of the peace, from information given him on oath, that there is reasonable cause to believe that a person has in his custody or under his control— (a) any thing which he or another has used, whether before or after the coming into force of this Act, or intends to use, for the making of any false instrument or copy of a false instrument, in contravention of section 1 or 2 above; or (b) any false instrument or copy of a false instrument which he or another has used, whether before or after the coming into force of this Act, or intends to use, in contravention of section 3 or 4 above; or (c) any thing custody or control of which without lawful authority or excuse is an offence under section 5 above, the justice may issue a warrant authorising a constable to search for and seize the object in question, and for that purpose to enter any premises specified in the warrant. (2) A constable may at any time after the seizure of any object suspected of falling within paragraph (a), (b) or (c) of subsection (1) above (whether the seizure was effected by virtue of a warrant under that subsection or otherwise) apply to a magistrates' court for an order under this subsection with respect to the object; and the court, if it is satisfied both that the object in fact falls within any of those paragraphs and that it is conducive to the public interest to do so, may make such order as it thinks fit for the forfeiture of the object and its subsequent destruction or disposal. (3) Subject to subsection (4) below, the court by or before which a person is convicted of an offence under this Part of this Act may order any object shown to the satisfaction of the court to relate to the offence to be forfeited and either destroyed or dealt with in such other manner as the court may order. (4) The court shall not order any object to be forfeited under subsection (2) or (3) above where a person claiming to be the owner of or otherwise interested in it applies to be heard by the court, unless an opportunity has been given to him to show cause why the order should not be made. Modifications etc. (not altering text) C2 S. 7(1): powers of seizure extended (prosp.) by 2001 c. 16, ss. 50, 52-54, 68, 138(2), Sch. 1 Pt. 1 para. 26 C3 S. 7(1) modified (1.4.2003) by Criminal Justice and Police Act 2001 (c. 16), ss. 55, 138(2), Sch. 1 paras. 101 (with ss. 57(3), 68); S.I. 2003/708, art. 2(a) C4 S. 7(1) powers of seizure extended (1.4.2003) by Criminal Justice and Police Act 2001 (c. 16), ss. 50, 138(2), Sch. 1

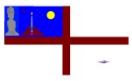




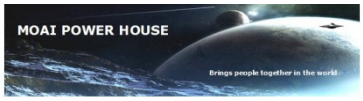








paras. 26 (with ss. 52-54, 68); S.I. 2003/708, art. 2(a) C5 S. 7(2) applied (prosp.) by 2001 c. 16, ss. 70, 138(2), Sch. 2 Pt. 1 para. 10(2)(d) C6 S. 7(2) applied (1.4.2003) by Criminal Justice and Police Act 2001 (c. 16), s. 138(2), Sch. 2 para. 10(2)(d); S.I. 2003/708, art. 2(k) Interpretation of Part I 8 Meaning of "instrument". (1) Subject to subsection (2) below, in this Part of this Act "instrument" means— (a) any document, whether of a formal or informal character; (b) any stamp issued or sold by [F13a postal operator]; 6 Forgery and Counterfeiting Act 1981 (c. 45) Part I – Forgery and Kindred Offences Document Generated: 2022-08-24 Changes to legislation: Forgery and Counterfeiting Act 1981 is up to date with all changes known to be in force on or before 24 August 2022. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes (c) any Inland Revenue stamp; and (d) any disc, tape, sound track or other device on or in which information is recorded or stored by mechanical, electronic or other means. (2) A currency note within the meaning of Part II of this Act is not an instrument for the purposes of this Part of this Act. (3) A mark denoting payment of postage which the [F14a postal operator authorises] to be used instead of an adhesive stamp is to be treated for the purposes of this Part of this Act as if it were a stamp issued by [F15the postal operator concerned]. [F16(3A) In this section "postal operator" has [F17the meaning given by section 27 of the Postal Services Act 2011].] (4) In this Part of this Act "Inland Revenue stamp" means a stamp as defined in section 27 of the M1Stamp Duties Management Act 1891. Textual Amendments F13 Words in s. 8(1)(b) substituted (26.3.2001) by S.I. 2001/1149, art. 3(1), Sch. 1 para. 50(2) F14 Words in s. 8(3) substituted (26.3.2001) by S.I. 2001/1149, art. 3(1), Sch. 1 para. 50(3)(a) F15 Words in s. 8(3) substituted (26.3.2001) by S.I. 2001/1149, art. 3(1), Sch. 1 para. 50(3)(b) F16 S. 8(3A) inserted (26.3.2001) by S.I. 2001/1149, art. 3(1), Sch. 1 para. 50(4) F17 Words in s. 8(3A) substituted (1.10.2011) by Postal Services Act 2011 (c. 5), s. 93(2)(3), Sch. 12 para. 111; S.I. 2011/2329, art. 3 Marginal Citations M1 1891 c. 38. 9 Meaning of "false" and "making". (1) An instrument is false for the purposes of this Part of this Act— (a) if it purports to have been made in the form in which it is made by a person who did not in fact make it in that form; or (b) if it purports to have been made in the form in which it is made on the authority of a person who did not in fact authorise its making in that form; or (c) if it purports to have been made in the terms in which it is made by a person who did not in fact make it in those terms; or (d) if it purports to have been made in the terms in which it is made on the authority of a person who did not in fact authorise its making in those terms; or (e) if it purports to have been altered in any respect by a person who did not in fact alter it in that respect; or (f) if it purports to have been altered in any respect on the authority of a person who did not in fact authorise the alteration in that respect; or (g) if it purports to have been made or altered on a date on which, or at a place at which, or otherwise in circumstances in which, it was not in fact made or altered; or (h) if it purports to have been made or altered by an existing person but he did not in fact exist. Forgery and Counterfeiting Act 1981 (c. 45) Part I – Forgery and Kindred Offences Document Generated: 2022-08-24 7 Changes to legislation: Forgery and Counterfeiting Act 1981 is up to date with all changes known to be in force on or before 24 August 2022. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes (2) A person is to be treated for the purposes of this Part of this Act as making a false instrument if he alters an instrument so as to make it false in any respect (whether or not it is false in some other respect apart from that alteration). 10 Meaning of "prejudice" and "induce". (1) Subject to subsections (2) and (4) below, for the purposes of this Part of this Act an act or omission intended to be induced is to a person's prejudice if, and only if, it is one which, if it occurs— (a) will result— (i) in his temporary or permanent loss of property; or (ii) in his being deprived of an opportunity to earn remuneration or greater remuneration; or (iii) in his being deprived of an opportunity to gain a financial advantage otherwise than by way of remuneration; or (b) will result in somebody being given an opportunity— (i) to earn remuneration or greater remuneration

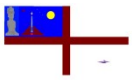




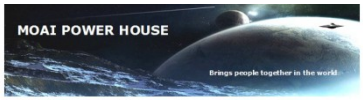








from him; or (ii) to gain a financial advantage from him otherwise than by way of remuneration; or (c) will be the result of his having accepted a false instrument as genuine, or a copy of a false instrument as a copy of a genuine one, in connection with his performance of any duty. (2) An act which a person has an enforceable duty to do and an omission to do an act which a person is not entitled to do shall be disregarded for the purposes of this Part of this Act. (3) In this Part of this Act references to inducing somebody to accept a false instrument as genuine, or a copy of a false instrument as a copy of a genuine one, include references to inducing a machine to respond to the instrument or copy as if it were a genuine instrument or, as the case may be, a copy of a genuine one. (4) Where subsection (3) above applies, the act or omission intended to be induced by the machine responding to the instrument or copy shall be treated as an act or omission to a person's prejudice. (5) In this section "loss" includes not getting what one might get as well as parting with what one has. Miscellaneous II Amendments of Mental Health Acts. (1) . . . . . F18 (2) . . . . . F19 Textual Amendments F18 s. 11(1) repealed by Mental Health Act 1983 (c. 20, SIF 85), Sch. 6 F19 s. 11(2) repealed by S.I. 1986/595 (N.I. 4), art. 138, Sch. 7 8 Forgery and Counterfeiting Act 1981 (c. 45) Part II – Counterfeiting and Kindred Offences Document Generated: 2022-08-24 Changes to legislation: Forgery and Counterfeiting Act 1981 is up to date with all changes known to be in force on or before 24 August 2022. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes 12 Amendments of Road Traffic Act and Public Passenger Vehicles Act 1981. In F20. . .section 65(3) of the M2Public Passenger Vehicles Act 1981, for the words " "forges" means forges within the meaning of the Forgery Act, 1913." there shall be substituted the words " "forges" means makes a false document or other thing in order that it may be used as genuine." Textual Amendments F20 Words in s. 12 repealed (1.1.1996) by 1995 c. 23, s. 60(2), Sch. 8 Pt. I (with ss. 54, 55); S.I. 1995/2181, art.2 Modifications etc. (not altering text) C7 The text of ss. 12, 21(3), 23, 26, 29, 30 and Sch. is in the form in which it was originally enacted: it was not reproduced in Statutes in Force and, except as specified, does not reflect any amendments or repeals which may have been made prior to 1.2.1991. Marginal Citations M2 1981 c. 14. 13 Abolition of offence of forgery at common law. The offence of forgery at common law is hereby abolished for all purposes not relating to offences committed before the commencement of this Act. PART II COUNTERFEITING AND KINDRED OFFENCES Modifications etc. (not altering text) C8 Pt. II (ss.14-28) extended (17.8.1999) by S.I. 1999/2095, art. 2(1) Offences 14 Offences of counterfeiting notes and coins. (1) It is an offence for a person to make a counterfeit of a currency note or of a protected coin, intending that he or another shall pass or tender it as genuine. (2) It is an offence for a person to make a counterfeit of a currency note or of a protected coin without lawful authority or excuse. 15 Offences of passing etc. counterfeit notes and coins. (1) It is an offence for a person— (a) to pass or tender as genuine any thing which is, and which he knows or believes to be, a counterfeit of a currency note or of a protected coin; or Forgery and Counterfeiting Act 1981 (c. 45) Part II – Counterfeiting and Kindred Offences Document Generated: 2022-08-24 9 Changes to legislation: Forgery and Counterfeiting Act 1981 is up to date with all changes known to be in force on or before 24 August 2022. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes (b) to deliver to another any thing which is, and which he knows or believes to be, such a counterfeit, intending that the person to whom it is delivered or another shall pass or tender it as genuine. (2) It is an offence for a person to deliver to another, without lawful authority or excuse, any thing which is, and which he knows or believes to be, a counterfeit of a currency note or of a protected coin. 16 Offences involving the custody or control of counterfeit notes and coins. (1) It is an offence for a person to have in his custody or under his control any thing which is, and which he knows or believes to be, a counterfeit of a currency note or of a protected coin,

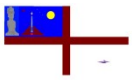




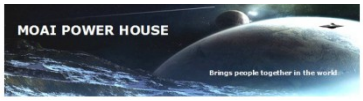








intending either to pass or tender it as genuine or to deliver it to another with the intention that he or another shall pass or tender it as genuine. (2) It is an offence for a person to have in his custody or under his control, without lawful authority or excuse, any thing which is, and which he knows or believes to be, a counterfeit of a currency note or of a protected coin. (3) It is immaterial for the purposes of subsections (1) and (2) above that a coin or note is not in a fit state to be passed or tendered or that the making or counterfeiting of a coin or note has not been finished or perfected. 17 Offences involving the making or custody or control of counterfeiting materials and implements. (1) It is an offence for a person to make, or to have in his custody or under his control, any thing which he intends to use, or to permit any other person to use, for the purpose of making a counterfeit of a currency note or of a protected coin with the intention that it be passed or tendered as genuine. (2) It is an offence for a person without lawful authority or excuse— (a) to make; or (b) to have in his custody or under his control, any thing which, to his knowledge, is or has been specially designed or adapted for the making of a counterfeit of a currency note. (3) Subject to subsection (4) below, it is an offence for a person to make, or to have in his custody or under his control, any implement which, to his knowledge, is capable of imparting to any thing a resemblance— (a) to the whole or part of either side of a protected coin; or (b) to the whole or part of the reverse of the image on either side of a protected coin. (4) It shall be a defence for a person charged with an offence under subsection (3) above to show— (a) that he made the implement or, as the case may be, had it in his custody or under his control, with the written consent of the Treasury; or (b) that he had lawful authority otherwise than by virtue of paragraph (a) above, or a lawful excuse, for making it or having it in his custody or under his control. 10 Forgery and Counterfeiting Act 1981 (c. 45) Part II – Counterfeiting and Kindred Offences Document Generated: 2022-08-24 Changes to legislation: Forgery and Counterfeiting Act 1981 is up to date with all changes known to be in force on or before 24 August 2022. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes 18 The offence of reproducing British currency notes. (1) It is an offence for any person, unless the relevant authority has previously consented in writing, to reproduce on any substance whatsoever, and whether or not on the correct scale, any British currency note or any part of a British currency note. (2) In this section— “British currency note” means any note which— (a) has been lawfully issued in England and Wales, Scotland or Northern Ireland; and (b) is or has been customarily used as money in the country where it was issued; and (c) is payable on demand; and “the relevant authority”, in relation to a British currency note of any particular description, means the authority empowered by law to issue notes of that description. 19 Offences of making etc. imitation British coins. (1) It is an offence for a person— (a) to make an imitation British coin in connection with a scheme intended to promote the sale of any product or the making of contracts for the supply of any service; or (b) to sell or distribute imitation British coins in connection with any such scheme, or to have imitation British coins in his custody or under his control with a view to such sale or distribution, unless the Treasury have previously consented in writing to the sale or distribution of such imitation British coins in connection with that scheme. (2) In this section— “British coin” means any coin which is legal tender in any part of the United Kingdom; and “imitation British coin” means any thing which resembles a British coin in shape, size and the substance of which it is made. Prohibition of importation and exportation of counterfeits 20 Prohibition of importation of counterfeit notes and coins. The importation, landing or unloading of a counterfeit of a currency note or of a protected coin without the consent of the Treasury is hereby prohibited. 21 Prohibition of exportation of counterfeit notes and coins. (1) The exportation of a counterfeit of a currency note or of a protected coin without the consent of the Treasury is hereby prohibited. (2) A counterfeit of a currency note or of a protected coin which is removed to the Isle of Man from the United Kingdom shall be deemed to be exported from the United Kingdom— (a) for the purposes of this section; and Forgery and Counterfeiting Act 1981 (c. 45) Part II – Counterfeiting and

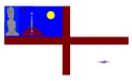




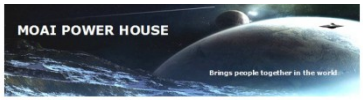








Kindred Offences Document Generated: 2022-08-24 11 Changes to legislation: Forgery and Counterfeiting Act 1981 is up to date with all changes known to be in force on or before 24 August 2022. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes (b) for the purposes of the customs and excise Acts, in their application to the prohibition imposed by this section. (3) In section 9(1) of the M3Isle of Man Act 1979 (which relates to the removal of goods from the United Kingdom to the Isle of Man) after the word “below” there shall be inserted the words “and section 21(2) of the Forgery and Counterfeiting Act 1981”. Modifications etc. (not altering text) C9 The text of ss. 12, 21(3), 23, 26, 29, 30 and Sch. is in the form in which it was originally enacted: it was not reproduced in Statutes in Force and, except as specified, does not reflect any amendments or repeals which may have been made prior to 1.2.1991. Marginal Citations M3 1979 c. 58. Penalties etc. 22 Penalties for offences under Part II. (1) A person guilty of an offence to which this subsection applies shall be liable— (a) on summary conviction— (i) to a fine not exceeding the statutory maximum; or (ii) to imprisonment for a term not exceeding six months; or (iii) to both; and (b) on conviction on indictment— (i) to a fine; or (ii) to imprisonment for a term not exceeding ten years; or (iii) to both. (2) The offences to which subsection (1) above applies are offences under the following provisions of this Part of this Act— (a) section 14(1); (b) section 15(1); (c) section 16(1); and (d) section 17(1). (3) A person guilty of an offence to which this subsection applies shall be liable— (a) on summary conviction— (i) to a fine not exceeding the statutory maximum; or (ii) to imprisonment for a term not exceeding six months; or (iii) to both; and (b) on conviction on indictment— (i) to a fine; or (ii) to imprisonment for a term not exceeding two years; or (iii) to both. (4) The offences to which subsection (3) above applies are offences under the following provisions of this Part of this Act— 12 Forgery and Counterfeiting Act 1981 (c. 45) Part II – Counterfeiting and Kindred Offences Document Generated: 2022-08-24 Changes to legislation: Forgery and Counterfeiting Act 1981 is up to date with all changes known to be in force on or before 24 August 2022. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes (a) section 14(2); (b) section 15(2); (c) section 16(2); (d) section 17(2); and (e) section 17(3). (5) A person guilty of an offence under section 18 or 19 above shall be liable— (a) on summary conviction, to a fine not exceeding the statutory maximum; and (b) on conviction on indictment, to a fine. F21(6) . . . . . Textual Amendments F21 S. 22(6) repealed (5.11.1993) by 1993 c. 50, s. 1(1), Sch. 1 Pt. XIV Group2. 23 Penalties for offences under Customs and Excise Management Act 1979 relating to counterfeits. (1) In section 50 of the M4Customs and Excise Management Act 1979 (penalty for improper importation of goods)— (a) in subsection (4) after the words “subsection (5)” there shall be inserted the words “or (5A)”; and (b) the following subsection shall be inserted after subsection (5):— “(5A) In the case of an offence under subsection (2) or (3) above in connection with the prohibition contained in section 20 of the Forgery and Counterfeiting Act 1981, subsection (4)(b) above shall have effect as if for the words “2 years” there were substituted the words “10 years”.”. (2) In section 68 of that Act (offences in relation to exportation of prohibited or restricted goods)— (a) in subsection (3) after the words “subsection (4)” there shall be inserted the words “or (4A)” ; and (b) the following subsection shall be inserted after subsection (4):— “(4A) In the case of an offence under subsection (2) above in connection with the prohibition contained in section 21 of the Forgery and Counterfeiting Act 1981, subsection (3)(b) above shall have effect as if for the words “2 years” there were substituted the words “10 years”.”. (3) In section 170 of that Act (penalty for fraudulent evasion of duty, etc.)— (a) in subsection (3) after the words “subsection (4)” there shall be inserted the words “or (4A)”; and (b) the following subsection shall be inserted after subsection (4):— “(4A) In the case of an offence under this section in connection with the prohibitions contained in sections 20 and 21 of the Forgery and Counterfeiting Act 1981, subsection (3)(b) above shall have

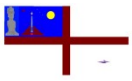




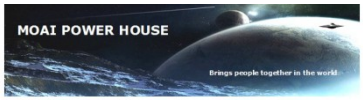








effect Forgery and Counterfeiting Act 1981 (c. 45) Part II – Counterfeiting and Kindred Offences Document Generated: 2022-08-24 13 Changes to legislation: Forgery and Counterfeiting Act 1981 is up to date with all changes known to be in force on or before 24 August 2022. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes as if for the words “2 years” there were substituted the words “10 years”.”. Modifications etc. (not altering text) C10 The text of ss. 12, 21(3), 23, 26, 29, 30 and Sch. is in the form in which it was originally enacted: it was not reproduced in Statutes in Force and, except as specified, does not reflect any amendments or repeals which may have been made prior to 1.2.1991. Marginal Citations M4 1979 c. 2. 24 Powers of search, forfeiture, etc. (1) If it appears to a justice of the peace, from information given him on oath, that there is reasonable cause to believe that a person has in his custody or under his control— (a) any thing which is a counterfeit of a currency note or of a protected coin, or which is a reproduction made in contravention of section 18 or 19 above; or (b) any thing which he or another has used, whether before or after the coming into force of this Act, or intends to use, for the making of any such counterfeit, or the making of any reproduction in contravention of section 18 or 19 above, the justice may issue a warrant authorising a constable to search for and seize the object in question, and for that purpose to enter any premises specified in the warrant. (2) A constable may at any time after the seizure of any object suspected of falling within paragraph (a) or (b) ofsubsection (1) above (whether the seizure was effected by virtue of a warrant under that subsection or otherwise) apply to a magistrates’ court for an order under this subsection with respect to the object; and the court, if it is satisfied both that the object in fact falls within one or other of those paragraphs and that it is conducive to the public interest to do so, may make such order as it thinks fit for the forfeiture of the object and its subsequent destruction or disposal. (3) Subject to subsection (4) below, the court by or before which a person is convicted of an offence under this Part of this Act may order any thing shown to the satisfaction of the court to relate to the offence to be forfeited and either destroyed or dealt with in such other manner as the court may order. (4) The court shall not order any thing to be forfeited under subsection (2) or (3) above where a person claiming to be the owner of or otherwise interested in it applies to be heard by the court, unless an opportunity has been given to him to show cause why the order should not be made. (5) Without prejudice to the generality of subsections (2) and (3) above, the powers conferred on the court by those subsections include power to direct that any object shall be passed to an authority with power to issue notes or coins or to any person authorised by such an authority to receive the object. (6) In the application of this section to Scotland— (a) in subsection (1) for the words “justice of the peace” there shall be substituted the words “justice within the meaning of section 462 of the M5Criminal Procedure (Scotland) Act 1975”; and (b) in subsection (2) :— 14 Forgery and Counterfeiting Act 1981 (c. 45) Part II – Counterfeiting and Kindred Offences Document Generated: 2022-08-24 Changes to legislation: Forgery and Counterfeiting Act 1981 is up to date with all changes known to be in force on or before 24 August 2022. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes (i) for the words “A constable” there shall be substituted “The procurator fiscal”; and (ii) for the words “a magistrates’ court” there shall be substituted “the sheriff court”. Modifications etc. (not altering text) C11 S. 24(1): powers of seizure extended (prosp.) by 2001 c. 16, ss. 50, 52-54, 68, 138(2), Sch. 1 Pt. I para. 26 C12 S. 24(1) modified (1.4.2003) by Criminal Justice and Police Act 2001 (c. 16), ss. 55, 138(2), Sch. 1 paras. 101 (with ss. 57(3), 68); S.I. 2003/708, art. 2(a) C13 S. 24(1) powers of seizure extended (1.4.2003) by Criminal Justice and Police Act 2001 (c. 16), ss. 50, 138(2), Sch. 1 paras. 26 (with ss. 52-54, 68); S.I. 2003/708, art. 2(a) C14 S. 24(2) applied (prosp.) by 2001 c. 16, ss. 70, 138(2), Sch. 2 Pt. 1 para. 10(2)(d) C15 S. 24(2) applied (1.4.2003) by Criminal Justice and Police Act 2001 (c. 16), s. 138(2), Sch. 2 para. 10(2)(d); S.I. 2003/708, art. 2(k) Marginal Citations M5 1975 c. 21. 25 Directors’

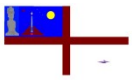




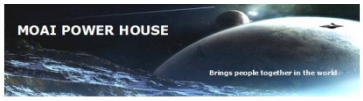








etc. liability. (1) Where an offence under section 18 or 19 of this Act which has been committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity, he, as well as the body corporate, shall be guilty of that offence and be liable to be proceeded against and punished accordingly. (2) Where the affairs of a body corporate are managed by its members, subsection (1) above shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate. 26 F22 . . . . . Textual Amendments F22 S. 26 repealed (1.4.1996) by 1995 c. 40, ss. 6(1), 7(2), Sch. 5 Interpretation of Part II 27 Meaning of “currency note” and “protected coin”. (1) In this Part of this Act— “currency note” means— (a) any note which— (i) has been lawfully issued in England and Wales, Scotland, Northern Ireland, any of the Channel Islands, the Isle of Man or the Republic of Ireland; and Forgery and Counterfeiting Act 1981 (c. 45) Part II – Counterfeiting and Kindred Offences Document Generated: 2022-08-24 15 Changes to legislation: Forgery and Counterfeiting Act 1981 is up to date with all changes known to be in force on or before 24 August 2022. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes (ii) is or has been customarily used as money in the country where it was issued; and (iii) is payable on demand; or (b) any note which— (i) has been lawfully issued in some country other than those mentioned in paragraph (a)(i) above; and (ii) is customarily used as money in that country; and “protected coin” means any coin which— (a) is customarily used as money in any country; or (b) is specified in an order made by the Treasury for the purposes of this Part of this Act. (2) The power to make any order conferred on the Treasury by subsection (1) above shall be exercisable by statutory instrument. (3) A statutory instrument containing such an order shall be laid before Parliament after being made. 28 Meaning of “counterfeit”. (1) For the purposes of this Part of this Act a thing is a counterfeit of a currency note or of a protected coin— (a) if it is not a currency note or a protected coin but resembles a currency note or protected coin (whether on one side only or on both) to such an extent that it is reasonably capable of passing for a currency note or protected coin of that description; or (b) if it is a currency note or protected coin which has been so altered that it is reasonably capable of passing for a currency note or protected coin of some other description. (2) For the purpose of this Part of this Act — (a) a thing consisting of one side only of a currency note, with or without the addition of other material is a counterfeit of such a note; (b) a thing consisting— (i) of parts of two or more currency notes; or (ii) of parts of a currency note, or of parts of two or more currency notes, with the additon of other material, is capable of being a counterfeit of a currency note. (3) References in this Part of this Act to passing or tendering a counterfeit of a currency note or a protected coin are not to be construed as confined to passing or tendering it as legal tender. 16 Forgery and Counterfeiting Act 1981 (c. 45) Part III – Miscellaneous and General Document Generated: 2022-08-24 Changes to legislation: Forgery and Counterfeiting Act 1981 is up to date with all changes known to be in force on or before 24 August 2022. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes PART III MISCELLANEOUS AND GENERAL Miscellaneous F2329 . . . . . Textual Amendments F23 S. 29 repealed (26.3.2001) by 2000 c. 26, s. 127(6), Sch. 9; S.I. 2001/878, art. 2, Sch. (with art. 17) 30 Repeals The enactments specified in the Schedule to this Act are repealed to the extent mentioned in column 3 of that Schedule. Modifications etc. (not altering text) C16 The text of ss. 12, 21(3), 23, 26, 29, 30 and Sch. is in the form in which it was originally enacted: it was not reproduced in Statutes in Force and, except as specified, does not reflect any amendments or repeals which may have been made prior to 1.2.1991. Extent 31 Scotland. The following provisions of this Act do not extend to Scotland, namely— (a) Part I; and (b)

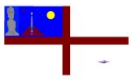




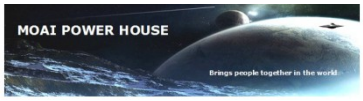








Part I of the Schedule. 32 Northern Ireland. It is hereby declared that this Act extends to Northern Ireland. Commencement and short title 33 Commencement. This Act shall come into force on the expiration of the period of three months from the date on which it is passed. 34 Citation. This Act may be cited as the Forgery and Counterfeiting Act 1981. Forgery and Counterfeiting Act 1981 (c. 45) SCHEDULE – Repeals Document Generated: 2022-08-24 17 Changes to legislation: Forgery and Counterfeiting Act 1981 is up to date with all changes known to be in force on or before 24 August 2022. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes SCHEDULE REPEALS Modifications etc. (not altering text) C17 The text of ss. 12, 21(3), 23, 26, 29, 30 and Sch. is in the form in which it was originally enacted: it was not reproduced in Statutes in Force and, except as specified, does not reflect any amendments or repeals which may have been made prior to 1.2.1991. PART I GENERAL REPEALS CONSEQUENTIAL ON PART I Chapter Short title Extent of repeal 32 Geo. 3. c. 56. Servants' Characters Act 1792. In section 1, the word "either", the words "or in writing" and the words "forged or counterfeited". In section 4, the words "forged or counterfeit" and the words from "or shall" to "the same". 6 & 7 Vict. c. 86. London Hackney Carriage Act 1843. In section 14, the words from "or who" to "forged recommendations". Section 20. 24 & 25 Vict. c. 98. Forgery Act 1861. The whole Act, so far as unrepealed, except sections 34, 36, 37 and 55. 34 & 35 Vict. c. 96. Pedlars Act 1871. In section 12, paragraphs (2), (4) and (5). 45 & 46 Vict. c. 50. Municipal Corporations Act 1882. Section 235. 48 & 49 Vict. c. 49. Submarine Telegraph Act 1885. Section 8(4). 57 & 58 Vict. c. 60. Merchant Shipping Act 1894. Section 66. In section 104, paragraph (a) and, in paragraph (c), the words "forged, altered". In section 282, paragraph (b) and the word "or" immediately preceding it. 18 Forgery and Counterfeiting Act 1981 (c. 45) SCHEDULE – Repeals Document Generated: 2022-08-24 Changes to legislation: Forgery and Counterfeiting Act 1981 is up to date with all changes known to be in force on or before 24 August 2022. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes In section 564, paragraphs (a) and (b). Section 695(4). Section 722(1). 6 Edw. 7. c. 5. Seamen's and Soldiers' False Characters Act 1906. In section 1(1), the words from "forges" to "discharge, or". In section 2, the words from "any forged" to "employment, or". 3 & 4 Geo. 5. c. 27. Forgery Act 1913. The whole Act. 10 & 11 Geo. 5. c. 75. Official Secrets Act 1920. In section 1(1)(c), the words "forges, alters, or", the words "or uses" and the word "such". 15 & 16 Geo. 5. c. 86. Criminal Justice Act 1925. In section 11(3), the words from "against" to the second "or". Section 35. In section 36, in subsection (1), the words "The forgery of any passport or", and subsection (2). Section 38. 21 & 22 Geo. 5. c. 43. Improvement of Live Stock (Licensing of Bulls) Act 1931. In section 8, in subsection (1) (i), the words "forges or", and subsection (2). 24 & 25 Geo. 5. c. 49. Whaling Industry (Regulation) Act 1934. In section 9, in subsection (1) (a), the words "forges or" and the words from "or forges" to "Act", and subsection (2). 9 & 10 Geo. 6. c. 73. Hill Farming Act 1946. In section 19(2)(a), the words from the beginning to "or" in the first place where it occurs. 14 Geo. 6. c. 36. Diseases of Animals Act 1950. Section 78(2)(iv). 1 & 2 Eliz. 2. c. 20. Births and Deaths Registration Act 1953. In section 37, the words "forges or" and the words "or forged". 1 & 2 Eliz. 2. c. 36. Post Office Act 1953. In section 23(1), the words "of the Forgery Act, 1913 and", the word "other" and the words "forgery or", and subsection (2). Forgery and Counterfeiting Act 1981 (c. 45) SCHEDULE – Repeals Document Generated: 2022-08-24 19 Changes to legislation: Forgery and Counterfeiting Act 1981 is up to date with all changes known to be in force on or before 24 August 2022. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes 2 & 3 Eliz. 2. c. 61. Pharmacy Act 1954. In section 20(2), the words "forges, or" in paragraph (a) and all the words from "In the application" onwards. 6 & 7 Eliz. 2. c. 43. Horse Breeding Act 1958. Section 11. 6 & 7 Eliz.

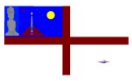




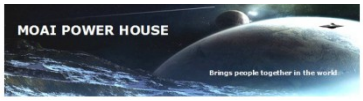








2. c. 51. Public Records Act 1958. In Schedule 3, the entry relating to the Forgery Act 1913. 7 & 8 Eliz. 2. c. 72. Mental Health Act 1959. Section 125(4). In Part I of Schedule 7, the entry relating to the Forgery Act 1913. 10 & 11 Eliz. 2. c. 8. Civil Aviation (Euro-control) Act 1962. Section 6(5). 10 & 11 Eliz. 2. c. 15. Criminal Justice Administration Act 1962. In Schedule 3, paragraph 7. 1964 c. 26. Licensing Act 1964. Section 36(3). Section 159. 1967 c. 58. Criminal Law Act 1967. In Schedule 2, paragraph 11. 1967 c. 76. Road Traffic Regulation Act 1967. In section 86(1), the words “forges or alters, or” in paragraph (a), and all the words from “In the application” onwards. 1967 c. xx. Greater London Council (General Powers) Act 1967. Section 5(4). 1971 c. 40. Fire Precautions Act 1971. In section 22, in subsection (1)(a), the words “forges a fire certificate or” and subsection (3). 1974 c. 37. Health and Safety at Work etc. Act 1974. In section 33, in subsection (1), the words “forge or” in paragraph (m), and subsection (6). 1974 c. 47. Solicitors Act 1974. In Schedule 3, paragraph 1. 1976 c. 58. International Carriage of Perishable Foodstuffs Act 1976. In section 9, i

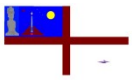












PAKEHA(EUROPEAN)/MAORI TRANSLITERATIONS - as at 16 July 2022

DISCLAIMER:- I am by no means an authority on Maori names. This list was developed to help fellow genealogists with indexing. Some Maori appear in indexes under their Maori name and then in other indexes under their European or Pakeha version or a combination of both. Names have been collected from official NZ Government sources, books, (including The Bible), headstones, death notices and from the families concerned.

I am aware that some names have both a pre-contact meaning and a transliteration usage. As an example - Matiu was a female name pre-contact but is more commonly known as the transliteration for Matthew. Some of these spellings came from early Catholic records where the priests not only used the Church Latin forms of names but also the phonetic spelling of Māori names [Thanks Diane]. The spellings are meant as a guide only.

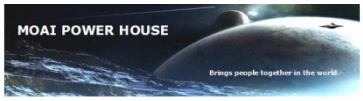
If you can add any further names to this list I would be most pleased to hear from you at cmclementnz at gmail.com.

Thanks to all those who have emailed me with names from their own research, they have been of great help.

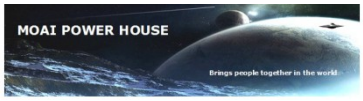
The - MAORI INTEREST GROUP - of the NZ Society of Genealogists has a great deal of information to help research Maori ancestry.Linked.

As this is a long list you may find it easier to use Ctrl-F to find the name your are looking for.

Aaron	Arona	Aata	Arthur
Abaddon (Bibl)	Aparona	Aha	Asa (Bibl)
Abel	Apera	Ahata	Achaz (Bibl)
Abia (Bibl)	Apia	Ahenata	Asenath (Bibl)
Abishai (Bibl)	Apihai	Ahene	Angel
Abiud (Bibl)	Apiuru	Ahera	Aser (Bibl)
Abraham	Aperahama	Ahera	Asher
Achaia (Bibl)	Ahia	Ahi	Alfred
Achaz (Bibl)	Ahata	Ahia	Achaia (Bibl)
Achim (Bibl)	Akimi	Ahitena	Ashton
Adam	Arama	Ahitereiria	Australia
Adam	Atama	Ahu	Alfred
Adam	Atame	Ahunikiritu	Asyncritus (Bibl)
Adam	Atana	Aira	Ida
Adams	Arama	Airangi	Ireland
Adams	Arana	Airihi	Iris
Addi (Bibl)	Ari	Airihimana	Irish
Adelaide	Ataraiti	Airini	Irene



Adelaide	Atarata	Aiwene	Ivan
Adelaide	Ateraita	Aiwi	Ivy
Adrian, Adriana	Atiriana	Akapu	Aqabus (Bibl)
Aeneas (Bibl)	Inia	Akarae	Aglae
Agatha	Akata	Akarana	Auckland
Aglae	Akarae	Akata	Agatha
Agnes	Akenehi	Akena	Atkins
Agnes	Akinehi	Akenehi	Agnes
Agnes	Akinihi	Akimi	Achim (Bibl)
Alan	Arana	Akinehi	Agnes
Albert	Arapata	Akinihi	Agnes
Albert	Arapeta	Akuhata	August
Albert	Arapetere	Akuira	Aquila (Bibl)
Alex	Arakatera	Akutina	Augustine
Alexander	Araketenara	Amapiria	Amplias (Bibl)
Alexander	Arehanara	Amerepeka	Amelberga
Alexander	Arekaharana	Ameria	Amelia
Alexander	Arekanara	Aminarapa	Aminadab (Bibl)
Alexandra	Arekaharana	Amine	Amen
Alfred	Ahi	Amiria	Amelia
Alfred	Ahu	Amoho	Amos
Alfred	Arapata	Amono	Amon
Alfred	Arapeti	Ana	Ann
Alice	Areta	Ana	Anna
Alice	Arihi	Ana	Anna, Anne
Alice	Arihia	Anahera	Angela
Alicia	Arihia	Anania	Ananias (Bibl)
Allan (Allen)	Arana	Anaroniku	Andronicus (Bibl)
Allan (Allen)	Arena	Anaru	Andrew
Alois	Arihi	Anaru	Andrews
Alpha	Arepa	Ani	Ann
Alphaeus (Bibl)	Arapiu	Ani	Annie
Alyra	Arira	Anihana	Anderson
Amelberga	Amerepeka	Aparona	Abaddon (Bibl)
Amelia	Ameria	Apera	Abel
Amelia	Amiria	Aperahama	Abraham
Amen	Amine	Apere	Apelles (Bibl)
Amerikano*	Pango Roa	Aperira	April
Aminadab (Bibl)	Aminarapa	Apia	Abia (Bibl)
Amon	Amono	Apia	Apphia (Bibl)
Amos	Amoho	Apihai	Abishai (Bibl)
Amplias (Bibl)	Amapiria	Apiuru	Abiud (Bibl)
Ananias (Bibl)	Anania	Aporiona	Apollyon (Bibl)

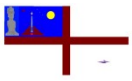




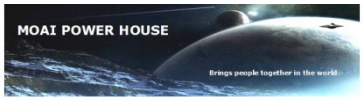




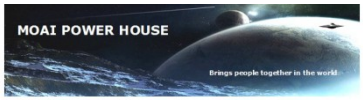




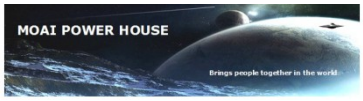
Anderson	Anihana	Aporo	Apollos (Bibl)
Andrew	Anaru	Aporo	Appolo
Andrew	Aterea	Arakatera	Alex
Andrews	Anaru	Araketenara	Alexander
Andronicus (Bibl)	Anaroniku	Arakipu	Archippus (Bibl)
Angel	Ahene	Arama	Adam
Angela	Anahera	Arama	Adams
Ann	Ana	Arame	Aram (Bibl)
Ann	Ani	Arana	Adams
Anna	Ana	Arana	Alan
Anna	Haana	Arana	Allan (Allen)
Anna, Anne	Ana	Arapata	Albert
Annie	Ani	Arapata	Alfred
Anthony	Atoni	Arapera	Bella
Anthony	Atonio	Arapeta	Albert
Apelles (Bibl)	Apere	Arapetere	Albert
Apollos (Bibl)	Aporo	Arapeti	Alfred
Apollyon (Bibl)	Aporiona	Arapiu	Alphaeus (Bibl)
Apphia (Bibl)	Apia	Arehanara	Alexander
Appolo	Aporo	Arekaharana	Alexander
April	Aperira	Arekaharana	Alexandra
Aqabus (Bibl)	Akapu	Arekanara	Alexander
Aquila (Bibl)	Akuira	Arena	Allan (Allen)
Aram (Bibl)	Arame	Arepa	Alpha
Archippus (Bibl)	Arakipu	Areta	Alice
Aretas (Bibl)	Areta	Areta	Aretas (Bibl)
Ariadne	Ariana	Aretama	Artemas (Bibl)
Aristarchus (Bibl)	Aritaku	Ari	Addi (Bibl)
Aristobulus (Bibl)	Aritopuru	Ariana	Ariadne
Arnold	Hanara	Arihi	Alice
Artemas (Bibl)	Aretama	Arihi	Alois
Arthur	Aata	Arihia	Alice
Arthur	Atawhai	Arihia	Alicia
Arthur	Aterea	Arikatara	Harry Carter
Asa (Bibl)	Aha	Arira	Alyra
Asenath (Bibl)	Ahenata	Aritaku	Aristarchus (Bibl)
Aser (Bibl)	Ahera	Aritopuru	Aristobulus (Bibl)
Asher	Ahera	Arona	Aaron
Ashton	Ahitena	Atama	Adam
Asyncritus (Bibl)	Ahunikiritu	Atame	Adam
Athanasius	Atanahi	Atana	Adam
Athens	Atene	Atanahi	Athanasius
Atkins	Akena	Ataraiti	Adelaide



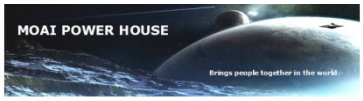
Auckland	Akarana	Atarata	Adelaide
August	Akuhata	Atawhai	Arthur
Augustine	Akutina	Atene	Athens
Australia	Ahitereiria	Ateraita	Adelaide
Azor (Bibl)	Atoro	Aterea	Andrew
Baker	Peka	Aterea	Arthur
Bale of Wheat	Perawiti	Atiriana	Adrian, Adriana
Ballance (John)	Te Paranihi	Atoni	Anthony
Baptist	Papita	Atonio	Anthony
Barabbas (Bibl)	Parapa	Atoro	Azor (Bibl)
Barak (Bibl)	Paraka	Awi	Ivy
Barbara	Papera	Eara	Earl
Barnabas	Panapa	Ehau	Esau
Barnabas	Paranapa	Ehekiera	Ezekiel
Barney	Paane	Eheri	Esli (Bibl)
Barney	Panene	Ehetere	Esther
Barrett	Parete	Eketone	Ecclestone
Bartholomew	Paratomeo	Eketone	Egglestone
Bartholomew	Pataromu	Ekoruhe	Exodus
Bartholomew	Patoromo	E'Kote	Scott
Bartholomew	Patoromu	Ema	Emma
Barton	Patene	Emanuera	Emmanuel
Basil	Pahiri	Emauha	Emmaeus
Beata	Peata	Emere	Emily
Beaton	Pitini	Emeriana	Emiliana
Beatrix	Peata	Emiri	Emily
Beauchamp	Pitama	Enoha	Enos
Beazley	Pihere	Enoka	Enoch
Beckham	Pekama	Enoka	Knox
Beckwith	Pekewiti	Epainetu	Epaenetus (Bibl)
Beddgood	Peehikura	Epapara	Epaphras (Bibl)
Beecham	Pihama	Eparaima	Ephraim
Beelzebub (Bibl)	Perehepura	Epeha	Ephesian
Bell	Pere	Epehi	Ephesus
Bella	Arapera	Epeneetere	Ebenezer
Bella	Pera	Epere	Heber (Bibl)
Ben	Pene	Epitema	Epistemis
Benedict	Penetita	Era	Ella
Benjamin	Peene	Eramiha	Erasmus
Benjamin	Peneamine	Erana	Elaine
Benjamin	Penehamine	Erana	Ellen
Benjamin	Peniamine	Eratu	Erastus (Bibl)
Benjamin	Pineamine	Ere	Eli



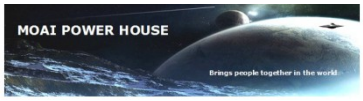
Benner	Pena	Ereanora	Eleanor
Bennett	Peneti	Ereatara	Eleazar
Berenice	Pereniki	Ereatara	Eleazor (Bibl)
Bernard	Perenara	Ereke	Erech (Bibl)
Beroea (Bibl)	Peria	Eremorama	Elmodam (Bibl)
Bertha	Perata	Erena	Eleanor
Bessie	Peti	Erena	Ellen
Best	Pehi	Erene	Eden
Bethany	Petani	Erepete	Elizabeth
Bethlehem	Peterehema	Eretini	Eton
Bethsaida (Bibl)	Petahaira	Eri	Eli
Betty	Peti	Eria	Elias
Betty	Rihi	Eria	Elijah
Bevan	Pewene	Eriakimi	Eliakim (Bibl)
Biddle	Peene	Erietere	Eliezer (Bibl)
Bidois	Pitua	Eriha	Elias
Biggs	Piiki	Erihana	Ellison
Bill	Piri	Erihapeti	Elizabeth
Bill	Wi	Erikapeti	Elizabeth
Bill	Wiri	Eriki	Eric
Birch	Paata	Eriuru	Eliud (Bibl)
Biscuit*	Pihikete	Eru	Ed
Bishop	Pihopa	Eruera	Edward
Blaise	Parahi	Eruera	Edwards
Blanket	Paraikete	Eruini	Edith
Bob	Papi	Eruini	Edwin
Booz (Bibl)	Poaha	Eruma	Elliott
Bowler	Poura	Eruna	Elliott
Brady	Ngatau	Etera	Ezra
Brass	Paraike	Etuihi	Edwig
Bridget	Pirihita	Ewa	Eva
Bristow	Pereto	Ewereti	Everett
Brougham	Parauhama	Haaka	Hawke
Broughton	Paratene	Haana	Anna
Brown	Paraone	Haana	Hannah
Bruce	Puruhi	Haare	Charles
Bryce	Te Paraihe	Hahona	Jason
Bull	Puru	Haimeniu	Hymenaeus (Bibl)
Buller	Pura	Haimona	Simon
Bumby	Pumipi	Hairini	Cyrene
Bunting	Putini	Hakai	Haggai (Bibl)
Busby	Puhipi	Hakapia	Shakespeare
Busby	Punipi	**Hakaraia**	**Zachariah (Bibl)**



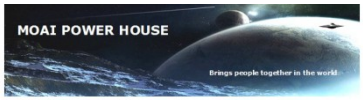
Butler	Patara	**Hakaraia**	**Zacharias (Bibl)**
Butler	Putara	**Hakaraia**	**Zechariah (Bibl)**
Cadman	Karimana	**Hakaria**	**Zachary**
Caeser	Hiha	Hakena	Jackson
Cain	Kaina	Haki	Jack(ie)
Caleb	Karepe	Hakopa	Jacob
California	Karaponia	Hakopa	Jacobs
Cambridge	Kemureti	Hamapiri	Jambres (Bibl)
Cameron	Kamariera	Hami	Sam
Camillia	Kamiria	Hamihona	Sampson
Campbell	Kemara	Hamiora	Samuel
Canaan	Kenana	Hamuera	Samuel
Cans	Tiniha	Hamupere	Humphrey
Cappuccino*	Kaputino	Hamutana	Hamilton
Caroline	Kaporina	Hana	Hannah
Caroline	Kararaina	Hanara	Arnold
Caroline	Karoraina	Hani	Jannes (Bibl)
Carran	Karena	Hanuere	January
Carrie	Kare	Haora	Hall
Carrie	Kari	Haora	Harold
Carroll	Kara	Haora	Saul
Cassidy	Katete	Hapaira	Sapphira (Bibl)
Catherine	Kataraina	Hapakuku	Habakkuk (Bibl)
Catherine	Katarina	Hapere	Halbert
Catherine	Katerina	Hapeta	Herbert
Cecelia	Hihiria	Hapimana	Chapman
Cecilia	Hehiria	Hapina	Sabina
Celia	Hiria	Hara	Zara
Cephas (Bibl)	Kepa	Haraha	Sala (Bibl)
Cephas (Bibl)	Kipa	Harahi	Harris
Certificate	Tikiwhiti	Haramono	Salmon
Chai Latte*	Kikini Rate	Harata	Charlotte
Chairman	Heamana	Haratiera	Salathiel (Bibl)
Chapman	Hapimana	Harawene	Sullivan
Charles	Haare	Harawira	Hadfield
Charles	Hare	Hare	Charles
Charles	Karora	Hare	Charlie
Charles	Taare	Hare	Harris
Charles	Tiare	Hare	Harry
Charlie	Hare	Harehana	Halverson
Charlie	Taare	Hareta	Jared
Charlie	Tiare	Harete	Charlotte
Charlie	Toare	Harete	Hallett



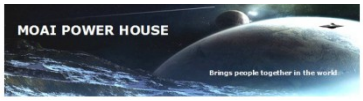
Charlotte	Harata	Harete	Harris
Charlotte	Harete	Hariana	Sergeant
Charlotte	Horeta	Hariata	Harriet
Chaytor	Heita	Harihi	Harris
Cherrington	Keretene	Harihona	Harrison
Chloe	Koroi	Harimana	Hardiman
Chorazin (Bibl)	Korahina	Hariwana	Sullivan
Christ	Karaiti	Haroko	Sadoc (Bibl)
Christian	Karaitiana	Harowe	Holloway
Christine	Kereti	Haruku	Saruch (Bibl)
Christine	Kirihitiana	Hata Maria	Madonna
Christopher	Kiritopa	Hawete	Savage
Christopher	Kiritowha	Heamana	Chairman
Clara	Karara	Heeni	Jane
Clarence	Karena	Heera	Sarah
Clark/Clarke	Karaka	Hehe	Jesse
Claude	Karauria	Hehiria	Cecilia
Claudia	Karauria	Hehu	Jesus
Clement	Keremeta	Heihi	Hayes
Clendon	Te Nana	Heita	Chaytor
Cleophas (Bibl)	Kereopa	Heiwari	Hayward
Cletus	Kereti	Hekonia	Jechonias (Bibl)
Coffee	Kawhe	Hema	Seamer
Coffey	Kawhe	Hema	Thelma
Colenso	Koroneho	Hemara	Hamlin
Colin	Karana	Hemei	Semei (Bibl)
Colin	Karena	Hemi	James
College	Kareti	Hemi	Jimmy
Commissioner	Komaihana	Henare	Henry
Committee	Komiti	Heneri	Henry
Common (Surname)	Kamana	Heneriko	Henry
Connie	Kone	Heni	Jane
Conrad	Kanara	Hepa	Sheba
Constantine	Kotatini	Heperi	Heberley
Cook	Kuki	Heperi	Zebedee (Bibl)
Cook	Kuku	Heperu	Hebrew
Cooper	Kopa	Hepetema	September
Cooper	Kupa	Hepetera	Holloway
Corfield	Kawhura	Hepetipa	Hephzibah (Bibl)
Corinth	Koriniti	Hepi	Hebrew
Cornelius	Koroniria	Hepiri	Heberley
Cosam (Bibl)	Kohama	Hera	Harris
Cotton	Katene	Hera	Sarah



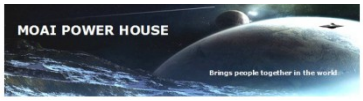
Court	(Te) Kooti	Herami	Hermes
Cowan	Kauana	Herangi	Serancke
Cowley	Kauri	Herawhia	Seraphia
Craig	Kerei	Here	Nellie
Craig	Kereki	**Heremaia**	**Jeremiah**
Cranmer	Karanama	**Heremaia**	**Jeremias (Bibl)**
Crawford	Kerewhata	Hereme	Jeremy
Crispus (Bibl)	Kirihipu	Herena	Helen
Cronin	Kereohene	Herene	Helen
Cummins	Kamana	Herepete	Herbert
Cyra	Hira	Herewini	Selwyn
Cyrene	Hairini	Heri	Heli (Bibl)
Cyrians	Kirikate	Heriko	Jericho
Cyril	Ngahuruhuru	Herora	Herod
Cyrinus	Hirini	Heroriaha	Herodias (Bibl)
Damascus	Tamaha	Heroriona	Herodion (Bibl)
Damian	Tamiano	Heroti	Zelotes (Bibl)
Dan	Rana	Herupapera	Zorobabel (Bibl)
Daniel	Huria	Heta	Heather
Daniel	Ramiera	Heta	Seth
Daniel	Raniera	Hetana	Seddon
Daniel	Taniera	Hetaraka	Shadrach
Daniel	Taniora	Hetekia	Ezekias (Bibl)
Dargaville	Takiwira	Hetekia	Zedikiah (Bibl)
Dasia	Rahia	Heteromo	Esrom (Bibl)
Dathius	Tuh	Hiha	Caeser
Dave	Rewi	Hihana	Sheehan
David	Rawiri	Hihiria	Cecelia
Davies	Reweti	Hiiti	Heath
Davis	Reweti	Hikipeni	Sixpence
Davis	Rewiti	Hikiri	Scissors
Davison	Reihana	Himeniu	Hymenaeus (Bibl)
Dawson	Tahana	Himi	Jimmy
Dawson	Tohana	Himiona	Simeon
de Thierry	Terere	Himoa	Seymour
de Thierry	Tetere	Hina	Zenas (Bibl)
de Thierry	Tetiari/Te Tiari	Hiona	Sion
Deborah	Tepora	Hiona	Zion
December	Tihema	Hipi	Sheep
Delamere	Teramea	Hira	Cyra
Delia	Tiria	Hira	Hill
Demas (Bibl)	Rimaha	Hira	Jean
Demetrius	Rimitiriua	Hira	Silas (Bibl)



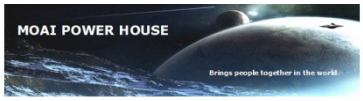
Demetrius	Temetera	Hirama	Hiram
Denise	Tiniha	Hiraria	Hilaris
Dennis	Teneti	Hirawanu	Silvanus (Bibl)
Deuteronomy	Tiuteronomi	Hiria	Celia
Diamond	Taimana	Hiria	Hilda
Diamond	Taimona	Hirini	Cyrinus
Diana	Raiana	Hirini	Shilling
Diana	Riana	Hirini	Sidney
Dick	Tiki	Hirini	Sydney
Dickson	Rikihana	Hiruharama	Jerusalem
Dicky	Tiki	Hoakimo	Joacham
Dinah	Rina	Hoana	Joan
Dinsdale	Tinitera	Hoana	Joanna
Dixon	Rikihana	Hoana	Johanna
Doctor	Takuta	Hoane	Johnny
Dolly	Kawhena	Hoani	John
Donnelly	Tonore	Hoani	Johnny
Dorcas	Roka	Hoera	Joel
Dorothy	Tarati	Hohea	Hosea
Dorothy	Torotea	Hohepa	Joseph
Douglas	Takarei	Hohepine	Josephine
Douglas	Takiri	Hohia	Josias
Drusilla	Ruruhira	Hohiah	Josiah
Duke	Ruki	Hohipate	Sosipater (Bibl)
Durie	Huri	Hohipera	Geoffrey
Eadie	Iritana	Hohipine	Josephine
Earl	Eara	Hohua	Joshua
Ebenezer	Epeneetere	Hona	Jonah
Ecclestone	Eketone	Hona	Jonas
Ed	Eru	Honana	Jonan (Bibl)
Eddie	Iri	Honatana	Jonathon
Eden	Erene	Hone	John
Edith	Eruini	Honetana	Johnson
Edith	Iritana	Honetana	Johnston
Edith	Tita	Hopa	Hope
Edward	Eruera	Hopa	Job
Edwards	Eruera	Hopaia	Sophie
Edwig	Etuihi	Hopihana	Hobson
Edwin	Eruini	Hopikena	Hopkins
Egbert	Reane	Horamo	Jordan
Egglestone	Eketone	Horana	Holland
Egypt	Ihipa	Horano	Jordan
Elaine	Erana	Horeta	Charlotte



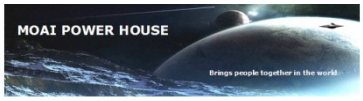
Eleanor	Ereanora	Hori	George
Eleanor	Erena	Horiana	Georgiana
Eleazar (Bibl)	Ereatara	Horimi	Jorim (Bibl)
Eleazor (Bibl)	Ereatara	Horioka	Holyoake
Eli	Ere	Horiwia	Olivia
Eli	Eri	Horo	Hall
Eliakim (Bibl)	Eriakimi	Horomona	Solomon
Elias	Eria	Horopapera	Zerubbabel (Bibl)
Elias	Eriha	Hotene	Sosthenes (Bibl)
Elias	Iraia	Hoterene	Shortland
Eliezer (Bibl)	Erietere	Hoterini	Shortland
Elijah	Eria	Huata	Stuart
Eliud (Bibl)	Eriuru	Huhana	Susan
Eliza	Raiha	Huhana	Susanna
Elizabeth	Erepete	Huihana	Susan
Elizabeth	Erihapeti	Huka	Hook
Elizabeth	Erikapeti	Huka	Sugar
Elizabeth	Irihapeti	Hune	June
Ella	Era	Hunia	Junia (Bibl)
Ella	Rihipeta	Hura	Judah
Ellen	Erana	Hura	Judas
Ellen	Erena	Hura	Jude
Elliott	Eruma	Hurae	July
Elliott	Eruna	Hurai	Hebrew
Ellison	Erihana	Huri	Durie
Elmodam (Bibl)	Eremorama	Huri	Jury
Emiliana	Emeriana	Huria	Daniel
Emily	Emere	Huria	Judea
Emily	Emiri	Huria	Julia
Emma	Ema	Huriana	Julian
Emma	Rahema	Huriana	Juliana
Emmaeus	Emauha	Huriu	Julius
Emmanuel	Emanuera	Hutita	Judith
England	Ingarangi	Hutuha	Justus
English	Ingarihi	Iaka	York
Enoch	Enoka	Iana	Janna (Bibl)
Enos	Enoha	Iapeta	Japheth
Epaenetus (Bibl)	Epainetu	Iarere	Jared
Epaphras (Bibl)	Epapara	Iehohapata	Josaphat (Bibl)
Ephesian	Epeha	Ieni	Hans
Ephesus	Epehi	Iepeta	Jephthah (Bibl)
Ephraim	Eparaima	Ietepere	Jezebel
Epistemis	Epitema	Ietoro	Jethro



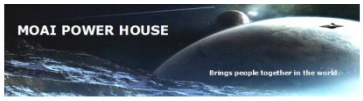
Erasmus	Eramiha	Ihaia	Isaiah
Erastus (Bibl)	Eratu	Ihaka	Isaac
Erech (Bibl)	Ereke	Ihakara	Isaac
Eric	Eriki	Ihapera	Isabel
Esau	Ehau	Ihapera	Isabella
Esli (Bibl)	Eheri	Ihapere	Isobel
Esrom (Bibl)	Heteromo	Iharaira	Israel
Esther	Ehetere	Ihimaera	Ishmael
Eton	Eretini	Ihipa	Egypt
Eubulus (Bibl)	Upuru	Ihowa	Jehovah
Eunice	Unihi	Ihu	Jesus
Euphemia	Pimia	Ihu Karaiti	Jesus Christ
Europe	Oropi	Ikinati	Ignatius
Eva	Ewa	Ingarangi	England
Eva	Iwa	Ingarihi	English
Eve	Ipe	Inia	Aeneas (Bibl)
Eve	Iwa	Inia	India
Everett	Ewereti	Inihi	Inch
Exodus	Ekoruhe	Iorama	Joram (Bibl)
Ezekias (Bibl)	Hetekia	Iotama	Joatham (Bibl)
Ezekiel	Ehekiera	Ipe	Eve
Ezra	Etera	Irahaira	Israel
Fairburn	Pepene	Iraia	Elias
Fanny	Pane	Iraia	Isaiah
Faulkner	Whakaana	Iraia	Israel
Featherston	Petatone	Irapera	Isabella
February	Pepuere	Irena	Irene
Felicity	Wherihita	Iri	Eddie
Felix	Pirika	Irihapeti	Elizabeth
Fenton	Pehetana	Irimina	Irmina
Festus	Petuha	Irina	Irene
Fidelis	Piteri	Iritana	Eadie
Fisher	Piha	Iritana	Edith
Fitchett	Whititi	Iuriti	Judith
Fitzroy	Pitiroi	Iwa	Eva
Flat White*	Mowai	Iwa	Eve
Flora	Whorora	Kahi	Gus
Foley	Pore	Kahi	Guy
Fowler	Whaora	Kaika	Hager
Fowler	Wharaora	Kaika	Hagger
Fox	Pokiha	Kaina	Cain
Francis	Nerahiko	Kairuri	Surveyor (Occupation)
Francis	Paranihi	Kaiu	Gaius (Bibl)



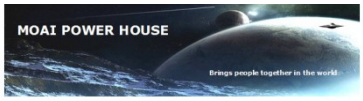
Francis	Werahiko	Kamaea (?)	Jensen
Francis	Wherahiko	Kamana	Common (Surname)
Francis	Whereakiko	Kamana	Cummins
Franks	Wharangi	Kamariera	Cameron
Fraser/Frazer	Pareiha	Kamiria	Camillia
Fraser/Frazer	Pereiha	Kanara	Conrad
Fred	Perai	Kapariera	Gabriel
Fred	Pere	Kaperiere	Gabriel
Frederick	Pererika	Kaporina	Caroline
Friday	Paraire	Kaputino	Cappuccino*
Gabriel	Kapariera	Kara	Carroll
Gabriel	Kaperiere	Kara	Galls
Gage	Keeti	Karahe	Glass Bottles
Gaius (Bibl)	Kaiu	Karaihe	Glass
Galilee	Kariri	Karaiti	Christ
Galls	Kara	Karaitiana	Christian
Gannon	Kenana	Karaka	Clark/Clarke
Gardiner	Karehana	Karana	Colin
Gareeb (Bibl)	Karepi	Karanama	Cranmer
Geary	Kere	Karaponia	California
Gemmell	Kemara	Karara	Clara
Gemmell	Paraki	Kararaina	Carolina
Genesis	Kenehi	Karati	Grant
Genevieve	Kenowepa	Karauria	Claude
Geoffrey	Hohipera	Karauria	Claudia
George	Hori	Kare	Carrie
George	Teoti	Karehana	Gardiner
Georgiana	Horiana	Karena	Carran
Gerard	Kereti	Karena	Clarence
Gertie	Ketia	Karena	Colin
Gideon	Kiriona	Karena	Karen
Gilbert	Kerepeti	Karepe	Caleb
Ginger beer (alcoholic)	Tinipia	Karepi	Gareeb (Bibl)
Glasgow	Katiko	Kareti	College
Glass	Karaihe	Kari	Carrie
Glass Bottles	Karahe	Karimana	Cadman
Goldsmith	Korimete	Kariri	Galilee
Goliath	Koriata	Karora	Charles
Gomer	Komere	Karoraina	Caroline
Gordon	Kotene	Kataraina	Catherine
Governor	Kawana	Katariana	Katherine
Governor	Kawena	Katarina	Catherine
Grace	Keerehi	Katarina	Katherine



Grace	Kerehi	Katene	Cotton
Gracie	Kereihi	Katerina	Catherine
Graham	Kereama	Katete	Cassidy
Graham	Kerehoma	Katiko	Glasgow
Grant	Karati	Katimana	Scots(man)
Gratus	Ngarati	Kauana	Cowan
Greaves	Ririwi	Kauri	Crowley
Green	Kereni	Kawana	Governor
Gregory	Kerekori	Kawena	Governor
Gretchen	Kerekini	Kawhe	Coffee
Grey (Gray)	Kerehi	Kawhe	Coffey
Grey (Gray)	Kerei	Kawhena	Dolly
Grey (Gray)	Kereihi	Kawhura	Corfield
Gus	Kahi	Keepa	Kemp
Guy	Kahi	Keerehi	Grace
Habakkuk (Bibl)	Hapakuku	Keeti	Gage
Hadfield	Harawira	Kei	Kay
Hager	Kaika	Keita	Kate
Haggai (Bibl)	Hakai	Keiti	Kate
Hagger	Kaika	**Kemara**	**Campbell**
Halbert	Hapere	Kemara	Gemmell
Hall	Haora	Kemureti	Cambridge
Hall	Horo	Kenana	Canaan
Hallett	Harete	Kenana	Gannon
Halverson	Harehana	Kenara	Kendall
Hamilton	Hamutana	Kenehi	Genesis
Hamlin	Hemara	Kenowepa	Genevieve
Hannah	Haana	Kepa	Cephas
Hannah	Hana	Kere	Geary
Hans	Ieni	Kere	Kelly
Hardiman	Harimana	Kereama	Graham
Hardwick	Marawiki	Kerehe	Kelsey
Harold	Haora	Kerehi	Grace
Harriet	Hariata	Kerehi	Gray (Grey)
Harris	Harahi	Kerehi	Kelsey
Harris	Hare	Kerehoma	Graham
Harris	Harete	Kerei	Craig
Harris	Harihi	Kerei	Grey
Harris	Hera	Kereihi	Gracie
Harrison	Harihona	Kereihi	Gray (Grey)
Harry	Hare	Kereki	Craig
Harry Carter	Arikatara	Kerekini	Gretchen
Hawke	Haaka	Kerekori	Gregory



Hayes	Heihi	Keremeta	Clement
Hayward	Heiwari	Kereni	Green
Heath	Hiiti	Kereohene	Cronin
Heather	Heta	Kereopa	Cleophas (Bibl)
Heber (Bibl)	Epere	Kerepeti	Gilbert
Heberley	Heperi	Keretene	Cherrington
Heberley	Hepiri	Kereti	Christine
Hebrew	Heperu	Kereti	Cletus
Hebrew	Hepi	Kereti	Gerard
Hebrew	Hurai	Kerewhata	Crawford
Hedwig	Wiha	Keri	Kelly
Helen	Herena	Keriana	Keren
Helen	Herene	Kete	Kate
Heli (Bibl)	Heri	Keti	Kate
Henry	Henare	Ketia	Gertie
Henry	Heneri	Ketura	Keturah (Bibl)
Henry	Heneriko	Kihirini	Kissling
Hephzibah (Bibl)	Hepetipa	Kii	Keys (Surname)
Herbert	Hapeta	Kikini Rate	Chai Latte*
Herbert	Herepete	Kingi	King
Hermes	Herami	Kinirohi	Kinross
Herod	Herora	Kipa	Cephas (Bibl)
Herodias (Bibl)	Heroriaha	Kirihipu	Crispus (Bibl)
Herodion (Bibl)	Heroriona	Kirihitiana	Christine
Hilaris	Hiraria	Kirikate	Cyrians
Hilda	Hiria	Kiriona	Gideon
Hill	Hira	Kiritopa	Christopher
Hiram	Hirama	Kiritowha	Christopher
Hobson	Hopihana	Kite	White
Holland	Horana	Kiti	Kitty
Holloway	Harowe	Kohama	Cosam (Bibl)
Holloway	Hepetera	Komaihana	Commissioner
Holyoake	Horioka	Komere	Gomer
Hook	Huka	Komiti	Committee
Hope	Hopa	Kone	Connie
Hopkins	Hopikena	Kooti	Court
Hosanna (Bibl)	Ohana	Kopa	Cooper
Hosea	Hohea	Korahina	Chorazin (Bibl)
Hot Chocolate*	Tiakarete wera	Koriata	Goliath
Humphrey	Hamupere	Korimete	Goldsmith
Hutchinson	Whatatiri	Koriniti	Corinth
Hymenaeus (Bibl)	Haimeniu	Koroi	Chloe
Hymenaeus (Bibl)	Himeniu	Koroneho	Colenso

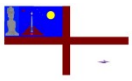




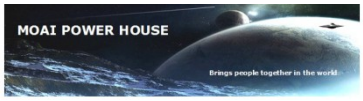




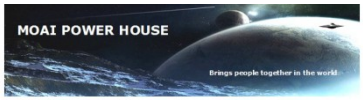




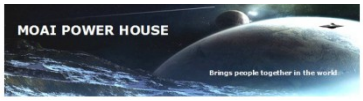
Ida	Aira	Koroniria	Cornelius
Ignatius	Ikinati	Kotatini	Constantine
Inch	Inihi	Kotene	Gordon
India	Inia	Koterangi	Scotland
Ireland	Airangi	Koti	Scott
Irene	Airini	Kuaratu	Quartus (Bibl)
Irene	Irena	Kuine	Queenie
Irene	Irina	Kuini	Queenie
Iris	Airihi	Kuki	Cook
Irish	Airihimana	Kuku	Cook
Irmina	Irimina	Kupa	Cooper
Isaac	Ihaka	Kutiti	Judith
Isaac	Ihakara	Maaka	Mark
Isaac	Thaka	Maata	Maath (Bibl)
Isabel	Ihapera	Maata	Martha
Isabella	Ihapera	Maehe	March
Isabella	Irapera	Maehe	Marsh
Isaiah	Ihaia	Maihi	March
Isaiah	Iraia	Maihi	Marsh
Ishmael	Ihimaera	Maka	Marcus
Isobel	Ihapere	Maka	Mark
Israel	Iharaira	Makae	McKay
Israel	Irahaira	Makaraoti	McLeod
Israel	Iraia	Makarena	Magdalene
Ivan	Aiwene	Makarene	Madalen
Ivy	Aiwi	Makareta	Margaret
Ivy	Awi	Makarika	McGregor
Jack(ie)	Haki	Makarini	Magdalene
Jack(ie)	Tiake	Makarita	Margarita
Jackson	Hakena	Makarita	Marguerite
Jacob	Hakopa	Makere	Maggie
Jacobs	Hakopa	Makereti	Maggie
Jambres (Bibl)	Hamapiri	Maketanera	MacDonald
James	Hemi	Maketenara	McDonald
James	Tiemi	Maki	Mackey
James	Timi	Maki	Maggie
Jane	Heeni	Makirini	McLean
Jane	Heni	Makitanara	McDonald
Janna (Bibl)	Iana	Makiwera	Maxwell
Jannes (Bibl)	Hani	Makiwhara	Maxwell
January	Hanuere	Makoare	Macquarie
Japheth	Iapeta	Makoare	McQuarrie
Jared	Hareta	Makowhare	McQuarrie



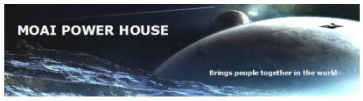
Jared	Iarere	Mamene	Marmon
Jason	Hahona	Manahi	Manasses (Bibl)
Jean	Hira	Manihera	Mansfield
Jechonias (Bibl)	Hekonia	Manihera	Maunsell
Jehovah	Ihowa	Manuera	Manuel
Jennie	Tini	Mapi	Murphy
Jensen	Kamaea (?)	Maraea	Maria
Jephthah (Bibl)	Iepeta	Marahera	Marcella
Jeremiah	Heremaia	Marahia	Marcia
Jeremias (Bibl)	Heremaia	Maraki	Malachi (Bibl)
Jeremy	Hereme	Marareta	Margaret
Jericho	Heriko	Marata	Martha
Jericho	Wheriko	Maratini	Martin
Jerusalem	Hiruharama	Marawiki	Hardwick
Jesse	Hehe	Mare	Murray
Jesus	Hehu	Marekena	Mulligan
Jesus	Ihu	Maria	Maris
Jesus Christ	Ihu Karaiti	Maria	Mary
Jethro	Ietoro	Marihia	Marcia
Jezebel	Ietepere	Mata	Martha
Jimmy	Hemi	Matana	Mathan (Bibl)
Jimmy	Himi	Matata	Matthat (Bibl)
Joacham	Hoakimo	Matatiaha	Mattathias (Bibl)
Joan	Hoana	Matene	Martin
Joanna	Hoana	**Matenga**	**Marsden**
Joatham (Bibl)	Iotama	Matera	Mathers
Job	Hopa	Matere	Martenus
Joel	Hoera	Matia	Mattaeus
Johanna	Hoana	Matiaha	Matthias
John	Hoani	Matini	Martin
John	Hone	Matini Ruta	Martin Luther
Johnny	Hoane	Matiu	Matthew
Johnny	Hoani	Matiu	Matthews
Johnny	Teone	Matutaera	Methuselah (Bibl)
Johnson	Honetana	Mawhete	Moffatt
Johnston	Honetana	Mei	Major
Jonah	Hona	Mei	May
Jonan (Bibl)	Honana	Meihana	Mason
Jonas	Hona	Meinata	Maynard
Jonathon	Honatana	Mekerapata	McRoberts
Joram (Bibl)	Iorama	Mema	Seamer
Jordan	Horamo	Menana	Menan (Bibl)
Jordan	Horano	Mepara	Mabel



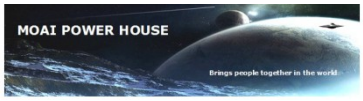
Jorim (Bibl)	Horimi	Merania	Melania
Josaphat (Bibl)	Iehohapata	Merania	Melanie
Joseph	Hohepa	Mere	Mary
Josephine	Hohepine	Merea	Melea (Bibl)
Josephine	Hohipine	Mereana	Marion
Joshua	Hohua	Mereana	Mary Ann
Josiah	Hohiah	Mereanna	Marianne
Josias	Hohia	Merehana	Mary Hannah
Judah	Hura	Mereki	Melchi (Bibl)
Judas	Hura	Meremana	Merriman
Jude	Hura	Meri	Mary
Judea	Huria	Merimana	Merriman
Judith	Hutita	Mete	Smith
Judith	Iuriti	Metekingi	Mr King
Judith	Kutiti	Meura	Mueller
Judith	Turuhira	Mihi	Miss
Julia	Huria	Mihipa	Mizpah
Julian	Huriana	Mika	Micah (Bibl)
Juliana	Huriana	Mikaere	Michael
Julius	Huriu	Mikaia	Micaiah (Bibl)
July	Hurae	Miki	Mick
June	Hune	Miniata	Minister
Junia (Bibl)	Hunia	Minihiki	Minhinnick
Jury	Huri	Miria	Mildred
Jury	Turi	Miriama	Mary Ann
Justus	Hutuha	Miriama	Miriam
Karen	Karena	Mirina	Miln
Kate	Keita	Mititai	Montgomery
Kate	Keiti	Mohi	Moses
Kate	Kete	Moihi	Moses
Kate	Keti	Moka	Mocha*
Katherine	Katariana	Mokena	Morgan
Katherine	Katarina	Monika	Monica
Kay	Kei	More	Sonny
Kelly	Kere	Morehu	Morris
Kelly	Keri	Morera	Morel
Kelsey	Kerehe	Morete	Morris
Kelsey	Kerehi	Mowai	Flat White*
Kemp	Keepa	Naera	Naylor
Kendall	Kenara	Nahareta	Nazareth
Keren	Keriana	Nahi	Nelson
Keturah (Bibl)	Ketura	Nahona	Naasson (Bibl)
Keys (Surname)	Kii	Nahora	Nachor (Bibl)



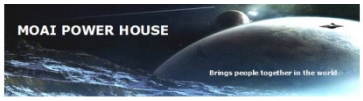
King	Kingi	Nahumu	Nahum (Bibl)
Kinross	Kinirohi	Nahumu	Naum (Bibl)
Kissling	Kihirini	Nakai	Nagge (Bibl)
Kitty	Kiti	Nakihu	Narcissus
Knox	Enoka	Nama	Number
Larkins	Rakena	Natana	Nathan
Latimer	Ratima	Natanahira	Nathaniel
Lavinia	Rawinia	Natanaira	Nathaniel
Lawrence	Raraua	Nataria	Natalie
Lawrence	Raureti	Nehemia	Nehemiah
Lazarus	Raharuhi	Neketai	Necktie
Leah	Rea	Nepia	Napier
Leah	Ria	Nepukaneha	Nebuchadnezzar (Bibl)
Leef	Riwhi	Nera	Naylor
Leigh	Ri	Nerahiko	Francis
Lemon	Remana	Neri	Nereus (Bibl)
Lemuel	Remuera	Neri	Neri (Bibl)
Len	Rena	Netana	Nathan
Lena	Rina	Ngahuruhuru	Cyril
Leo	Reone	Ngarati	Gratus
Leonard	Renata	Ngatau	Brady
Leopold	Riapo	Nikitini	Nicholson
Levi	Rewi	Nikora	Nicholas
Levi	Riwai	Nikora	Nicholls
Leviticus	Rewitikuha	Nikorima	Nicodemus
Levy	Rawi	Nimirota	Nimrod
Levy	Rewi	Nireu	Nereus (Bibl)
Levy	Riiwi	Nithera	Niceras
Liberat	Riperata	Noa	Noah
Libya	Ripia	Noema	November
Lieutenant	Rutene	Nopera	Noble
Lillibeth	Riripeti	Noripeti	Norbert
Lina	Rina	Nuhaka	Newark
Linus	Rini	Nuhana	Newton
Linus	Rinuha	Nui Tireni	New Zealand
Lizzie	Rihi	Nuika	Noake
Lois	Roihi	Ohana	Hosanna (Bibl)
London	Ranana	Ohiaha	Ozias (Bibl)
Lot (Bibl)	Rota	Oketopa	October
Lou	Ru	Omana	Ormond
Louis	Rewi	Omeka	Omega
Louis	Rotowiko	Omipi	Ormsby
Louisa	Ruiha	Onehimu	Onesimus (Bibl)



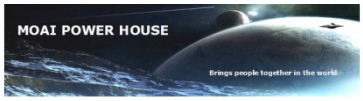
Louise	Ruiha	Onehipora	Onesiphorus (Bibl)
Louise	Ruihia	Oparia	Obadiah
Lowry	Rauri	Opere	Obed (Bibl)
Lucas	Ruka	Orimapa	Olympas
Lucius	Ruhiu	Orine	Olivia
Lucy	Ruhia	Oriwa	Olive
Lucy	Ruihi	Oriwa	Oliver
Lucy	Ruruhi	Oriwia	Olivia
Luke	Ruka	Oropi	Europe
Lydia	Riria	Otene	Orton
Maath (Bibl)	Maata	Paaka	Park
Mabel	Mepara	Paaka	Parker
MacDonald	Maketanera	Paane	Barney
Mackey	Maki	Paata	Birch
Macquarie	Makoare	Paati	Patrick
Madalen	Makarene	Pahiri	Basil
Madonna	Hata Maria	Panapa	Barnabas
Magdalene	Makarena	Pane	Fanny
Magdalene	Makarini	Panene	Barney
Maggie	Makere	Pango Roa	Amerikano*
Maggie	Makereti	Pani	Pam
Maggie	Maki	Paniora	Spaniard
Major	Mei	Panuera	Phanuel (Bibl)
Malachi (Bibl)	Maraki	Paora	Paul
Manasses (Bibl)	Manahi	Pape	Pompey
Mansfield	Manihera	Papera	Barbara
Manuel	Manuera	Papi	Bob
Marcella	Marahera	Papia	Papias
March	Maehe	Papita	Baptist
March	Maihi	Parahi	Blaise
Marcia	Marahia	Paraike	Brass
Marcia	Marihia	Paraikete	Blanket
Marcus	Maka	Paraire	Friday
Margaret	Makareta	Paraka	Barak (Bibl)
Margaret	Marareta	Paraki	Gemmell
Margarita	Makarita	Paranapa	Barnabas
Marguerite	Makarita	Paranihi	Francis
Maria	Maraea	Parao	Pharoah
Marianne	Mereanna	Paraone	Brown
Marion (Marian)	Mereana	Parapa	Barabbas (Bibl)
Maris	Maria	Parata	Pratt
Mark	Maaka	Parata	Trapp
Mark	Maka	Paratene	Broughton



Marmon	Mamene	Paratene	Parthenius
Marsden	Matenga	Paratene	Paterson
Marsh	Maehe	Paratomeo	Bartholomew
Marsh	Maihi	Parauhama	Brougham
Martenus	Matere	Pare	Polly
Martha	Maata	Pareiha	Frazer
Martha	Marata	Parete	Barrett
Martha	Mata	Parete	Phares (Bibl)
Martin	Maratini	Pariha	Parris
Martin	Matene	Pariha	Parris
Martin	Matini	Patara	Butler
Martin Luther	Matini Ruta	Patariki	Patrick
Mary	Maria	Pataromu	Bartholomew
Mary	Mere	Patene	Barton
Mary	Meri	Pateriki	Patrick
Mary	Raria	Patiti	Patchett
Mary Ann	Mereana	Patoromo	Bartholomew
Mary Ann	Miriama	Patoromu	Bartholomew
Mary Hannah	Merehana	Pauna	Pound
Mason	Meihana	Paurina	Pauline
Mathan (Bibl)	Matana	Pauro	Paul
Mathers	Matera	Pawhiri	Pamphilius
Mattaeus	Matia	Peata	Beata
Mattathias (Bibl)	Matatiaha	Peata	Beatrix
Matthat (Bibl)	Matata	Peehikura	Beddgood
Matthew	Matiu	Peene	Benjamin
Matthews	Matiu	Peene	Biddle
Matthias	Matiaha	Pehetana	Fenton
Maunsell	Manihera	Pehi	Best
Maxwell	Makiwera	Peka	Baker
Maxwell	Makiwhara	Pekama	Beckham
May	Mei	Pekewiti	Beckwith
Maynard	Meinata	Pena	Benner
McDonald	Maketanara	Pene	Ben
McDonald	Makitanara	Pene	Penny
McGregor	Makarika	Peneamine	Benjamin
McKay	Makae	Penehamine	Benjamin
McLean	Makirini	Penera	Spencer
McLeod	Makaraoti	Penerope	Penelope
McQuarrie	Makoare	Peneti	Bennett
McQuarrie	Makowhare	Penetita	Benedict
McRoberts	Mekerapata	Peniamine	Benjamin
Melania	Merania	Pepene	Fairburn



Melanie	Merania	Pepuere	February
Melchi (Bibl)	Mereki	Pera	Bella
Melea (Bibl)	Merea	Perahi	Persis (Bibl)
Menan (Bibl)	Menana	Perai	Fred
Merriman	Meremana	Perata	Bertha
Merriman	Merimana	Perawiti	Bale of Wheat
Methuselah (Bibl)	Matutaera	Pere	Bell
Micah (Bibl)	Mika	Pere	Fred
Micaiah (Bibl)	Mikaia	Pere	Perry
Michael	Mikaere	Perehepura	Beelzebub (Bibl)
Mick	Miki	Pereiha	Fraser/Frazer
Mildred	Miria	Pereke	Phalec (Bibl)
Miln	Mirina	Perekona	Phlegon (Bibl)
Minhinnick	Minihiki	Perenara	Bernard
Minister	Miniata	Pereniki	Berenice
Miriam	Miriama	Pererika	Frederick
Miss	Mihi	Pereto	Bristow
Mizpah	Mihipa	Peri	Perry
Mocha*	Moka	Peria	Beroea (Bibl)
Moffatt	Mawhete	Petahaira	Bethsaida (Bibl)
Monica	Monika	Petani	Bethany
Montgomery	Mititai	Petatone	Featherston
Morel	Morera	Petera	Peter
Morgan	Mokena	Petera	Peterson
Morris	Morehu	Peterehema	Bethlehem
Morris	Morete	Peti	Bessie
Moses	Mohi	Peti	Betty
Moses	Moihi	Petuha	Festus
Mr King	Mete Kingi	Pewene	Bevan
Mueller	Meura	Piahana	Pearson
Mulligan	Marekena	Piha	Fisher
Murphy	Mapi	Pihama	Beecham
Murray	Mare	Pihere	Beazley
Naasson (Bibl)	Nahona	Pihikete	Biscuit*
Nachor (Bibl)	Nahora	Pihopa	Bishop
Nagge (Bibl)	Nakai	Piiki	Biggs
Nahum (Bibl)	Nahumu	Piipi	Phoebe
Napier	Nepia	Pimia	Euphemia
Narcissus	Nakihu	Pineamine	Benjamin
Natalie	Nataria	Pinekera	Pinker
Nathan	Natana	Pio	Pius (Bibl)
Nathan	Netana	Pipi	Phebe
Nathaniel	Natanahira	Piri	Bill

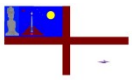




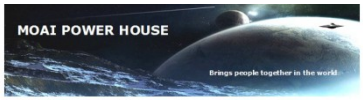




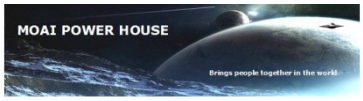




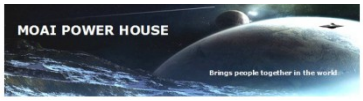
Nathaniel	Natanaira	Pirihi	Preece
Naum (Bibl)	Nahumu	Pirihi	Priest
Naylor	Naera	Pirihira	Phyllis
Naylor	Nera	Pirihira	Priscilla
Nazareth	Nahareta	Pirihita	Bridget
Nebuchadnezzar (Bibl)	Nepukaneha	Pirika	Felix
Necktie	Neketai	Pirimona	Philemon (Bibl)
Nehemiah	Nehemia	Piripi	Philip/Phillip
Nehemiah	Tehemia	Piripi	Phillips
Nellie	Here	Piripina	Philippina
Nelson	Nahi	Piripo	Philip/Phillip
Nereus (Bibl)	Neri	Piriti	Priest
Nereus (Bibl)	Nireu	Piritu	Philetus (Bibl)
Neri (Bibl)	Neri	Piroroku	Philologus (Bibl)
New Zealand	Niu Tireni	Pita	Peter
Newark	Nuhaka	Pitama	Beauchamp
Newton	Nuhana	Piteri	Fidelis
Niceras	Nithera	Piti	Pitt
Nicholas	Nikora	Pitini	Beaton
Nicholls	Nikora	Pitiroi	Fitzroy
Nicholson	Nikitini	Pititi	Peach
Nicodemus	Nikorima	Pititi	Piercy
Nimrod	Nimirota	Pitua	Bidois
Noah	Noa	Poaha	Booz (Bibl)
Noake	Nuika	Poata	Porter
Noble	Nopera	Pohata	Stone [Not a transliteration but a translation]
Norbert	Noripeti	Pokiha	Fox
November	Noema	Pomapuria	Pompallier
Number	Nama	**Pomare**	**Palmer**
Obadiah	Oparia	Poneke	Port Nicholson (Wellington)
Obed (Bibl)	Opere	Popa	Pope
October	Oketopa	Pore	Foley
Olive	Oriwa	Porikapa	Polycarp
Oliver	Oriwa	Porina	Pauline
Olivia	Horiwia	Potakina	Port Jackson
Olivia	Orine	Poto	Short
Olivia	Oriwia	Poura	Bowler
Olympas	Orimapa	Poutapeta	Post Office
Omega	Omeka	Puhipi	Busby
Onesimus (Bibl)	Onehimu	Pumipi	Bumby
Onesiphorus (Bibl)	Onehipora	Puna	Spooner
Ormond	Omana	Punipi	Busby
Ormsby	Omipi	Pura	Buller



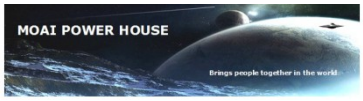
Orton	Otene	Purena	Pudens (Bibl)
Ozias (Bibl)	Ohiaha	**Puru**	**Bull**
Palmer	Pomare	Puruhi	Bruce
Pam	Pani	Putara	Butler
Pamphilius	Pawhiri	Putini	Bunting
Papias	Papia	Raena	Reynold
Park	Paaka	Raera	Royal
Park	Te Paka	Raerena	Ryland
Parker	Paaka	Rahapa	Rachab (Bibl)
Parris	Pariha	Rahapa	Rahab (Bibl)
Parris	Pariha	Raharuhi	Lazarus
Parthenius	Paratene	Rahema	Emma
Patchett	Patiti	Rahera	Rachel
Paterson	Paratene	Rahere	Rachel
Patrick	Paati	Rahia	Dasia
Patrick	Patariki	**Rahiri**	**Russell**
Patrick	Pateriki	Raiana	Diana
Paul	Paora	Raiha	Eliza
Paul	Pauro	Rainera	Rainaldus
Pauline	Paurina	Raira	Ryder
Pauline	Porina	Rakau	Ragau (Bibl)
Peach	Pititi	Rakena	Larkins
Pearson	Piahana	Rakera	Rachel
Penelope	Penerope	Ramiera	Daniel
Penny	Pene	Rana	Dan
Perry	Pere	Ranana	London
Perry	Peri	Ranapiri	Ransfield
Persis (Bibl)	Perahi	Rangiurei	Raymond
Peter	Petera	Raniera	Daniel
Peter	Pita	Rapana	Roberts
Peterson	Petera	Rapata	Robert
Phalec (Bibl)	Pereke	Rapi	Robbie
Phanuel (Bibl)	Panuera	Rapihana	Robinson
Phares (Bibl)	Parete	Rapihana	Robson
Pharoah	Parao	Rapihi	Rubbish [as in bin]
Phebe	Pipi	Raraua	Lawrence
Philemon (Bibl)	Pirimona	Raria	Mary
Philetus (Bibl)	Piritu	Ratete	Rogers
Philip (Phillip)	Piripi	Ratima	Latimer
Philip (Phillip)	Piripo	Rau	Ralph
Philip (Phillip)	Wiripo	Raureti	Lawrence
Philippina	Piripina	Rauri	Lowry
Phillips	Piripi	Rawi	Levy



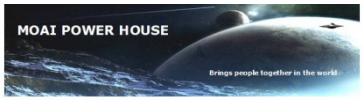
Philologus (Bibl)	Piroroku	Rawinia	Lavinia
Phlegon (Bibl)	Perekona	Rawiri	David
Phoebe	Piipi	Rea	Leah
Phyllis	Pirihira	Reane	Egbert
Piercy	Pititi	Reha	Rhesa (Bibl)
Pinker	Pinekera	Rehana	Richard
Pitt	Piti	Rehita	Register
Pius (Bibl)	Pio	Rehopoama	Roboam (Bibl)
Polly	Pare	Reihana	Davison
Polycarp	Porikapa	Reihana	Rechan
Pompallier	Pamapuria	Remana	Lemon
Pompey	Pape	Remari	Richard
Pope	Popa	Remuera	Lemuel
Port Jackson	Potakina	Rena	Len
Port Nicholson (Wellington)	Poneke	Renata	Leonard
Porter	Poata	Reone	Leo
Post Office	Poutapeta	Retimana	Richards
Pound	Pauna	Retimana	Richmond
Pratt	Parata	Reupena	Reuben
Preece	Pirihi	Reweti	Davies
Priest	Pirihi	Reweti	Davis
Priest	Piriti	Rewi	Dave
Priscilla	Pirihira	Rewi	Levi
Pudens (Bibl)	Purena	Rewi	Levy
Quartus (Bibl)	Kuaratu	Rewi	Louis
Queenie	Kuine	Rewiti	Davies
Queenie	Kuini	Rewitikuha	Leviticus
Rachab (Bibl)	Rahapa	Ri	Leigh
Rachel	Rahera	Ria	Leah
Rachel	Rahere	Riana	Diana
Rachel	Rakera	Riapo	Leonard
Ragau (Bibl)	Rakau	Rihari	Richard
Rahab (Bibl)	Rahapa	Rihi	Betty
Rainaldus	Rainera	Rihi	Lizzie
Ralph	Rau	Rihipeta	Ella
Ransfield	Ranapiri	Riiwi	Levy
Raymond	Rangiurei	Riki	Ricky
Rebecca	Ripeka	Rikihana	Dickson
Rechan	Reihana	Rikihana	Dixon
Register	Rehita	Rikihana	Richardson
Reuben	Reupena	Rikiti	Rickett
Reynold	Raena	Rimaha	Demas (Bibl)
Rhesa (Bibl)	Reha	Rimitiriua	Demetrius



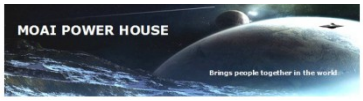
Richard	Rehana	Rina	Dinah
Richard	Remari	Rina	Lena
Richard	Rihari	Rina	Lina
Richards	Retimana	Ringi	Ring
Richardson	Rikihana	Rini	Linus
Richmond	Retimana	Rinuha	Linus
Rickett	Rikiti	Ripeka	Rebecca
Ricky	Riki	Riperata	Liberat
Ring	Ringi	Ripia	Libya
Robards	Ropeta	Riria	Lydia
Robbie	Rapi	Riripeti	Lillibeth
Robert	Rapata	Ririwi	Greaves
Robert	Ropata	Riwai	Levi
Roberts	Rapana	Riwhi	Leef
Robinson	Rapihana	Roera	Royal
Robley	Te Ropere	Roha	Rose
Roboam (Bibl)	Rehopoama	Roihi	Lois
Robson	Rapihana	Roiho	Rogers/Rodgers
Rochfort	Rokipoto	Roiho	Rose
Roger	Rotia	Roka	Dorcas
Rogers/Rodgers	Ratete	Rokipoto	Rochfort
Rogers/Rodgers	Roiho	Roma	Rome
Rogers/Rodgers	Rotia	Romana	Roman
Rolleston	Roretana	Romano	Romanus
Roman	Romana	Ropata	Robert
Romanus	Romano	Ropeta	Robards
Rome	Roma	Roretana	Rolleston
Rose	Roha	Rota	Lot (Bibl)
Rose	Roiho	Rotia	Roger
Royal	Raera	Rotia	Rogers/Rodgers
Royal	Roera	Rotowiko	Louis
Rubbish [as in bin]	Rapihi	Ru	Lou
Ruby	Rupi	Ruhia	Lucy
Rudolph	Rurawho	Ruhiu	Lucius
Rueben	Rupene	Ruiha	Louisa
Rufina	Rupina	Ruiha	Louise
Rufus	Rupuha	Ruihi	Lucy
Rufus	Rutu	Ruihia	Louise
Russell	Rahiri	Ruka	Lucas
Ryder	Raira	Ruka	Luke
Ryland	Raerena	Ruki	Duke
Sabina	Hapina	Rupene	Reuben
Sadoc (Bibl)	Haroko	Rupi	Ruby



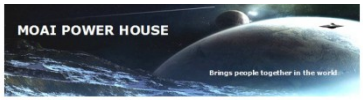
Sala (Bibl)	Haraha	Rupina	Rufina
Salathiel (Bibl)	Haratiera	Rupuha	Rufus
Salmon	Haramono	Rurawho	Rudolph
Sam	Hami	Ruruhi	Lucy
Sampson	Hamihona	Ruruhira	Drusilla
Samuel	Hamiora	Rutene	Lieutenant
Samuel	Hamuera	Rutu	Rufus
Samuel	Tamahau	Taare	Charles
Sapphira (Bibl)	Hapaira	Taare	Charlie
Sarah	Heera	Taera	Taylor
Sarah	Hera	Tahana	Dawson
Sarah Ann	Teriana	Tahimana	Tasman
Sarich (Surname)	Timoko	Taimana	Diamond
Saruch (Bibl)	Haruku	Taimona	Diamond
Saul	Haora	Taituha	Titus
Savage	Hawete	Taka	Tucker
Scissors	Hikiri	Takarei	Douglas
Scotland	Koterangi	Takiri	Douglas
Scots(man)	Katimana	Takiwira	Dargaville
Scott	E'Kote	Takuha	Stachys (Bibl)
Scott	Koti	Takuta	Doctor
Seamer	Hema	Tamaha	Damascus
Seamer	Mema	Tamahau	Samuel
Seddon	Hetana	Tamara	Tamar (Bibl)
Selwyn	Herewini	Tamati	Thomas
Semei (Bibl)	Hemei	Tamati	Tom
September	Hepetema	Tame	Tom
Serancke	Herangi	Tame	Tommy
Seraphia	Herawhia	Tamehana	Thompson
Serena	Terina	Tamiano	Damian
Sergeant	Hariana	Tamihana	Thompson
Seth	Heta	Tana	Turner
Sexey	Tikitini	Taniera	Daniel
Seymour	Himoa	Taniora	Daniel
Shadrach	Hetaraka	Tanira	Stanley
Shakespeare	Hakapia	Tanirau	Stanilaus
Sheba	Hepa	Tapihana	Tapsell
Sheehan	Hihana	Tapita	Tabitha
Sheep	Hipi	Tarahi	Trask
Shilling	Hirini	Taraipini	Tryphena (Bibl)
Shilling	Terina	Taraipoha	Tryphosa (Bibl)
Short	Poto	Tarara Tarara	Tolich
Shortland	Hoterene	Tarati	Dorothy



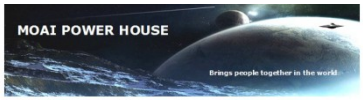
Shortland	Hoterini	Tarawene	Sullivan
Sidney	Hirini	Tarita	Teresa
Silas (Bibl)	Hira	Tariu	Thaddaeus
Silvanus (Bibl)	Hirawanu	Te Haara	Watling
Simeon	Himiona	Te Mete	Smith
Simmonds	Teimana	Te Nana	Clendon
Simon	Haimona	Te Paea	Sophia
Sion	Hiona	Te Paea	Sophie
Sixpence	Hikipeni	Te Paia	Sophia
Smith	Mete	Te Paka	Park
Smith	Te Mete	Te Paraihe	Bryce
Solomon	Horomona	Te Paranihi	Ballance (John)
Sonny	More	Te Ropere	Robley
Sophia	Te Paea	Te Taka	Stack
Sophia	Te Paia	Teania	Thelma
Sophie	Hopaia	Tehemia	Nehemiah
Sophie	Te Paea	Teimana	Simmonds
Sophie	Tia	Teira	Taylor
Sosipater (Bibl)	Hohipate	Tekara	Thecla
Sosthenes (Bibl)	Hotene	Temepara	Temple
Spaniard	Paniora	Temetera	Demetrius
Spencer	Penera	Teneti	Dennis
Spooner	Puna	Teone	Johnny
Stachys (Bibl)	Takuha	Teoti	George
Stack	Te Taka	Teotimo	Theotime
Stanilaus	Tanirau	Tepania	Zephania(h) (Bibl)
Stanley	Tanira	Tepene	Stephen
Stephen	Tepene	Tepora	Deborah
Stephen	Terano	Tera	Thara (Bibl)
Stephen	Tewano	Teramea	Delamere
Stephen	Tewhano	Terano	Stephen
Stephen	Tipene	Tere	Terry
Stephens	Tipene	Terehia	Teresa
Steven	Tipene	Terehia	Theresa
Stewart	Tuati	Terere	de Thierry
Stickle	Tikaira	Teriana	Sarah Ann
Stone	Pohatu [not a transliteration but a translation]	Terina	Serena
Stovin	Topine	Terina	Shilling
Stuart	Huata	Tetere	de Thierry
Stuart	Tuati	Tetiari/Te Tiari	de Thierry
Sugar	Huka	Tewano	Stephen
Sullivan	Harawene	Tewehanga	Vivian
Sullivan	Hariwana	Tewhano	Stephen



Sullivan	Tarawene	Thaka	Isaac
Surveyor (Occupation)	Kairuri	Ti	Tea*
Susan	Huhana	Tia	Sophie
Susan	Huihana	Tiakarete wera	Hot Chocolate*
Susanna	Huhana	Tiake	Jack(ie)
Sweet	Tuiti	Tiare	Charles
Swinton	Winitana	Tiare	Charlie
Sydney	Hirini	Tiemi	James
Tabitha	Tapita	Tihema	December
Tamar (Bibl)	Tamara	Tikaira	Stickle
Tapsell	Tapihana	Tiki	Dick
Tasman	Tahimana	Tiki	Dicky
Taylor	Taera	Tikiku	Tychicus (Bibl)
Taylor	Teira	Tikitini	Sexey
Tea*	Ti	Tikiwhiti	Certificate
Temple	Temepara	Timi	James
Teresa	Tarita	Timiuha	Timaeus (Bibl)
Teresa	Terehia	Timoko	Sarich (Surname)
Terry	Tere	Timoti	Timotheus (Bibl)
Thaddaeus	Tariu	Timoti	Timothy
Thara (Bibl)	Tera	Tini	Jennie
Thecla	Tekara	Tiniha	Cans
Thelma	Hema	Tiniha	Denise
Thelma	Teania	Tinipia	Ginger beer (alcoholic)
Theophilius	Tippira	Tinitera	Dinsdale
Theotime	Teotimo	Tione	Tony
Theresa	Terehia	Tipene	Stephen
Thomas	Tamati	Tipene	Stephens
Thomas	Toma	Tipene	Steven
Thompson	Tamehana	Tippira	Theophilius
Thompson	Tamihana	Tira	Zillah
Thwaites	Tweiti	Tiria	Delia
Timaeus (Bibl)	Timiuha	Tirikatene	Tregerthen
Timotheus (Bibl)	Timoti	Tiripa	Zilpah
Timothy	Timoti	Tita	Edith
Titus	Taituha	Titu	Titus
Titus	Titu	Tiuteronomi	Deuteronomy
Tobiah	Topia	Toare	Charlie
Tobias	Topia	Tohana	Dawson
Toby	Topi	Toma	Thomas
Tolich	Tarara Tarara	Toma	Tom
Tom	Tamati	Tonore	Donnelly
Tom	Tame	Topi	Toby



Tom	Toma	Topia	Tobiah
Tommy	Tame	Topia	Tobias
Tony	Tione	Topine	Stovin
Trapp	Parata	Torotea	Dorothy
Trask	Tarahi	Tuati	Stewart
Tregerthen	Tirikatene	Tuati	Stuart
Tryphena (Bibl)	Taraipini	Tuh	Dathius
Tryphosa (Bibl)	Taraipoha	Tuini	Twin
Tucker	Taka	Tuiti	Sweet
Tucker	Tuka	Tuka	Tucker
Tuesday	Turei	Turei	Tuesday
Turner	Tana	Turi	Jury
Twin	Tuini	Turuhira	Judith
Tychicus (Bibl)	Tikiku	Tweiti	Thwaites
Urbane	Urupane	Unihi	Eunice
Uriah	Uria	Upuru	Eubulus (Bibl)
Valentine	Waretini	Uria	Uriah
Vanessa	Weneha	Urupane	Urbane
Vercoe	Weko	Waahi	Walters
Vialis	Wiari	Waaka	Walker
Vicky	Wiki	Waari	Ward
Victor	Wikitoro	Waata	Walter
Victoria	Wikitoria	Waata	Waters
Vitalian	Witariana	Waera	Wyllie
Vivian	Tewehanga	Waere	Wyllie
Volkner	Wakana	Wairaweke	Wakefield
Wakefield	Wairaweke	Waitere	Whitely/Whiteley
Wakefield	Wekepiri	Waiti	White
Wales	Wera	**Waka**	**Walker**
Walker	**Waaka**	Wakana	Volkner
Walker	Waka	Waperiki	Warbrick
Wallace	Warahi	Warahi	Wallace
Wallace	Warihi	Warahi	Wallis
Wallis	Warahi	Warana	Warren
Walter	Waata	Waretini	Valentine
Walter	Wata	Warihi	Wallace
Walters	Waahi	Wata	Walter
Warbrick	Waperiki	Wati	Watt
Ward	Waari	Watihana	Watson
Warren	Warana	Watikena	Watkins
Waters	Waata	Watoni	Watson
Watkins	Watikena	Weepu	Webb
Watling	**Te Haara**	Wekepiri	Wakefield

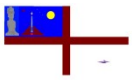




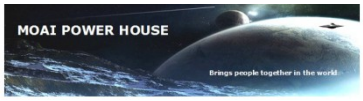








Watson	**Watihana**	Weko	Vercoe
Watson	**Watoni**	Weneha	Vanessa
Watt	Wati	Wenerei	Wednesday
Weale	Wira	Wepiha	Webster
Webb	Weepu	Wera	Wales
Webster	Wepiha	Wera	Weller
Wednesday	Wenerei	Werahiko	Francis
Welch	Werihi	Werekaka	Wilcox
Weller	Wera	Werekake	Wilcox
Welsh	Werihi	Werihi	Welch
Wesley	Wetere	Werihi	Welsh
Whitaker	Witika	Wetere	Wesley
White	Kite	Whakaana	Faulkner
White	Waiti	Whaora	Fowler
Whitely/Whiteley	Waitere	Wharangi	Franks
Wickliffe	Wiririwhi	Wharaora	Fowler
Wickliffe (Wycliffe)	Wikiriwhi	Whatatiri	Hutchinson
Wilcox	Werekaka	Wherahiko	Francis
Wilcox	Werekake	Whereakiko	Francis
Wilhelmina	Wiremena	Wherihita	Felicity
William	Wi	Wheriko	Jericho
William	Wirimu	Whititi	Fitchett
William(s)	Wiremu	Whorora	Flora
Willie	Wiri	Wi	Bill
Willoughby	Wirope	Wi	William
Wilson	Wirihana	Wiari	Vialis
Windon	Winitana	Wiha	Hedwig
Winnie	Wini	Wiki	Vicky
Winston	Winitana	Wikiriwhi	Wickliffe
Wyllie	Waera	Wikitoria	Victoria
Wyllie	Waere	Wikitoro	Victor
Wynyard	Winiata	Wini	Winnie
York	Iaka	Winiata	Wynyard
Zachariah (Bibl)	Hakaraia	Winitana	Swinton
Zacharias (Bibl)	Hakaraia	Winitana	Windon
Zachary	Hakaria	Winitana	Winston
Zara	Hara	Wira	Weale
Zebedee (Bibl)	Heperi	Wiremena	Wilhelmina
Zechariah (Bibl)	Hakaraia	Wiremu	William(s)
Zedikiah (Bibl)	Hetekia	Wiri	Bill
Zelotes (Bibl)	Heroti	Wiri	Willie
Zenas (Bibl)	Hina	Wirihana	Wilson
Zephania(h) (Bibl)	Tepania	Wirimu	William

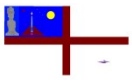












Zerubbabel (Bibl)	Horopapera	Wiripo	Philip/Phillip
Zillah	Tira	Wiririwhi	Wickliffe
Zilpah	Tiripa	Wirope	Willoughby
Zion	Hiona	Witariana	Vitalian
Zorobabel (Bibl)	Herupapera	Witika	Whitaker

* Noted in a café in Nelson 2022

Return To HOME

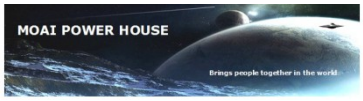
FAMILIES I AM RESEARCHING | MISCELLANEOUS GENEALOGICAL STUFF | NEW ZEALAND — ON LINE GENEALOGICAL AND FAMILY HISTORY RESOURCES | NEW ZEALAND — YOUNG BOY IMMIGRANT SCHEME 1911 — 1914 | NEW ZEALAND DISASTERS AND TRAGEDIES | NEW ZEALAND MISCELLANEOUS GENEALOGICAL INDEXES | NEW ZEALAND LAND WARS — MISCELLANEOUS GENEALOGICAL INDEXES | NEW ZEALAND AND WORLD WAR ONE | NEW ZEALAND AND WORLD WAR TWO | NEW ZEALAND ROLLS OF HONOUR AND WAR MEMORIALS — BY LOCATION | NEW ZEALAND ROLLS OF HONOUR AND WAR MEMORIALS — BY CONFLICT | NEW ZEALAND ROLLS OF HONOUR — MILITARY NURSES | PAKEHA/MAORI TRANSLITERATIONS | PASSENGER LISTS TO NEW ZEALAND | SHAND — FAMILY HISTORY | SOUTH TARANAKI, NEW ZEALAND — GENEALOGICAL RESOURCES | SPONDON, DERBYSHIRE, ENGLAND — GENEALOGICAL RESOURCES | WANGANUI COLLEGIATE SCHOOL 1865 — 1947 | WESTERN BAY OF PLENTY, NEW ZEALAND — GENEALOGICAL RES

The Whole lot is Corrupted by insertion of the word “MAORI” in the 1840 Treaty of Waitangi

1840 LITTLEWOOD TREATY HAS THE WORD “MAORI” IN IS STILL FRAUDULENT

The term “Littlewood treaty” refers to a hand-written Treaty of Waitangi text found in a sideboard drawer on February 27, 1989, by John Littlewood and his sister Beryl Needham while clearing out their mum’s house after she had died.

Beryl Needham took the document to her local MP Bill Birch, who suggested that she should take it to the Auckland Institute and Museum for analysis, which she did, and where it stayed for a year. Treaty expert **Claudia Orange** looked at the document and provided information about Henry Littlewood.



Mr Littlewood took it to the Treaty House at Waitangi in a bid to establish its status but no interest was shown. Disinterest in details of the treaty coincided with top-level negotiations at the time that resulted in the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992.

The family responded to an appeal in 1992 for information from a group called the Descendents of the English Witnesses to the Signatures on the Treaty of Waitangi, the convener of which wondered whether it was the missing draft given to missionary Henry Williams at 4.30pm on **February 4, 1840**, to translate into **Maori**.

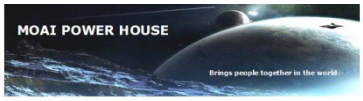
News that government historians were examining the document appeared in the New Zealand Herald on September 11, 1992, under the headline “Draft puzzles experts”. In that report, Internal Affairs Minister Graeme Lee confirmed the existence of a draft of the treaty that made no mention of forests or fisheries, that is **dated February 4, 1840**, and was handwritten on paper with an 1833 watermark.

Historian Donald Loveridge issued a memo on the document in 1993 in response to a request from the Treaty Issues Team at the Crown Law Office, noting that the document "is virtually identical in all respects to the Clendon translation", a reference to an English text of the treaty sent by U.S. Consul James Reddy Clendon to the United States on February 20, 1840.

That former British Resident James Busby wrote the text was confirmed in 2000, by Dr Phil Parkinson, a treaty researcher at National Archives.

This Busby February 4 document, also known as the Littlewood treaty, became the subject of an article titled “End of the Golden Gravy Train” in the December-January 2004 issue of Investigate magazine. On January 27, 2004, National Party leader, Don Brash, delivered his first Orewa speech expressing opposition to perceived Maori racial separatism in New Zealand.

The Treaty of Waitangi Information Unit commissioned Loveridge to do a full appraisal in 2006, 13 years after the document was found. In his appraisal, Loveridge re-stated his view the Busby February 4 document was a back translation of the Maori text of the treaty, especially because Clendon

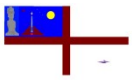












included the word “translation” in the covering letter with the documents he sent to the United States on February 20, 1840.

He noted the **lack of any evidence** that Governor Hobson, James Busby, Henry Williams or James R. Clendon ever stated or implied that the **“official” English text dated Feb. 6th, 1840**, was not the one that provided the basis for the **Maori** text. He asserted that there was no satisfactory explanation for **absence of such evidence**.

Loveridge did point to a 1972 article by Ruth Ross, titled “Texts and Translations”, in which she noted the existence of **“five English versions”** which “Hobson forwarded ... to his superiors in Sydney or London”. One of these omits the words “Estates, Forests, Fisheries” from the second article. There is no indication any scholarship has been done to match that version to the official Maori text.

But Loveridge also noted that "if Clendon’s description was not correct, however – for whatever reason – the possibility would remain that the date was used intentionally, and that the

Littlewood document is in fact a copy of the missing draft”.

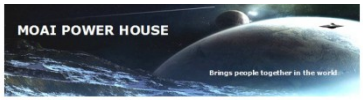
If the Busby February 4 document was a translation from the Maori Te Tiriti, it is by far the best translation, and if recognised as such, the claimed need for “treaty principles” to reconcile differences between the official English text and the Maori language Te Tiriti would evaporate.

The other point to note is that since there are only **four words different between the Busby February 4 draft** and Te Tiriti, with one of those differences being the date, for those who do not read Maori this Busby document is the text to read to understand the exact contents of Te Tiriti.

The Busby February 4 draft/Littlewood treaty is displayed in the Constitution Room at National Archives in Wellington.

Here is the text of that document. The four variations between the texts are underlined – two in the preamble, one in article three, and the date at the bottom:

Busby February 4, 1840, draft (the Littlewood treaty)

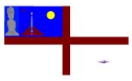












Her Majesty Victoria, Queen of England *in her gracious consideration for the* ***chiefs*** *and people of New Zealand, and her desire to preserve them their land and to maintain peace and order amongst them, has been pleased to appoint an officer to treat with them for the cession of the Sovreignty [sic] of their country and of the islands adjacent to the Queen. Seeing that already many of* ***Her Majesty's subjects*** *have already settled in the country and are constantly arriving: And that it is desirable for their protection as well as the* ***protection of the natives*** *to establish a government amongst them.*

Her Majesty has accordingly been pleased to appoint me William Hobson a captain in the Royal Navy to be Governor of such parts of New Zealand as may now or hereafter be ceded to Her Majesty and proposes to ***the chiefs of the Confederation of United Tribes of New Zealand*** *and the other chiefs to agree to the following articles.-* **DECREE AFFIDAVIT CONFEDERATION OF CHIEFS**

Article first

The ***chiefs of the Confederation of the United Tribes*** *and the other chiefs who have not joined the confederation, cede to the Queen of England for ever the entire Sovreignty [sic] of their country.*

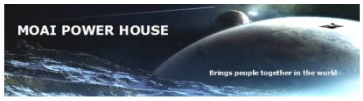
Article second

The Queen of England confirms and ***guarantees to the chiefs*** *and the tribes and to all the people of New Zealand, the possession of their lands, dwellings and all their property. But the chiefs of the Confederation of United Tribes and the other chiefs grant to the Queen, the exclusive rights of purchasing such lands as the proprietors thereof may be disposed to sell at such prices as may be agreed upon between them and the person appointed by the Queen to purchase from them.*

Article third

In return for the cession of their Sovreignty [sic] to the Queen, the people of New Zealand shall be protected by the Queen of England and the rights and privileges of ***British subjects*** *will be granted to them.*

Signed, William Hobson



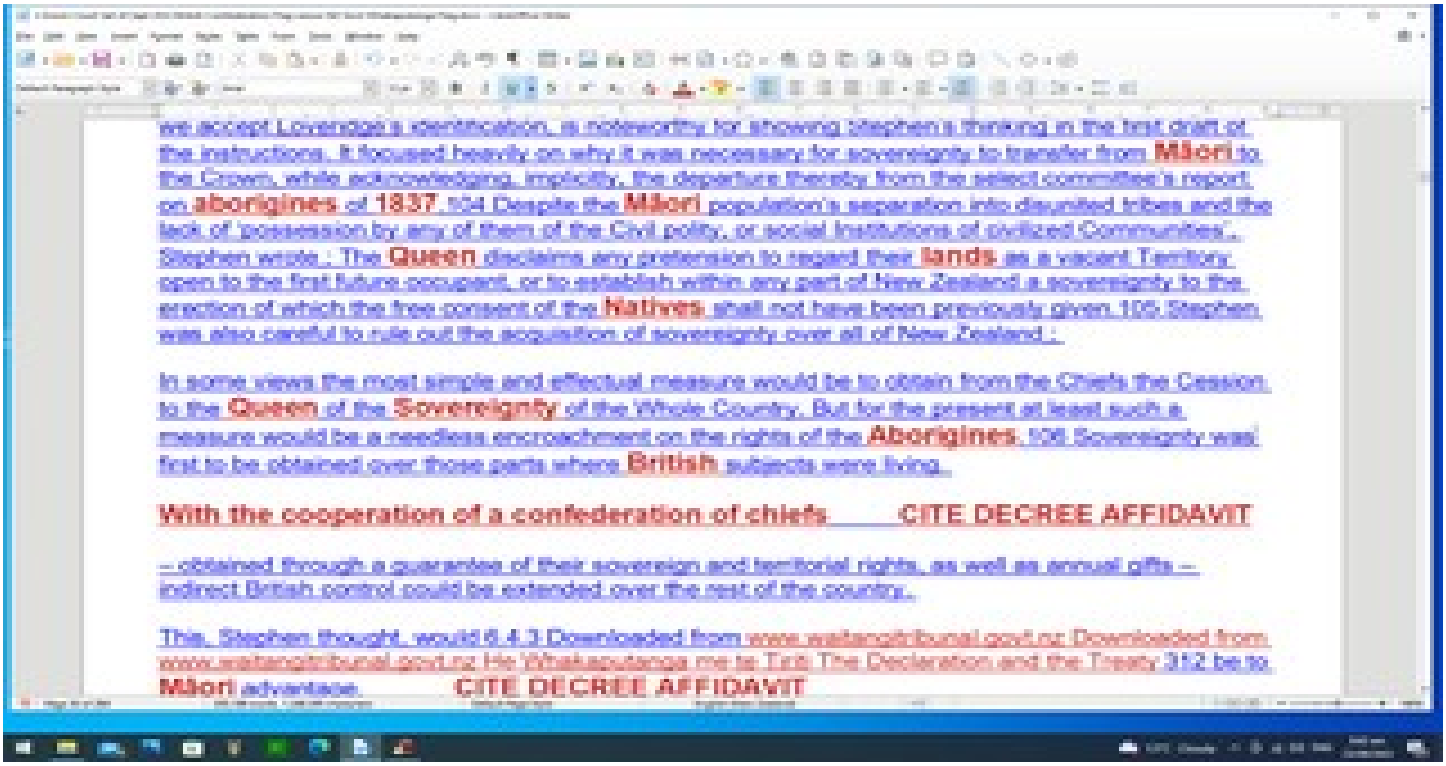
Consul and Lieut. Governor.

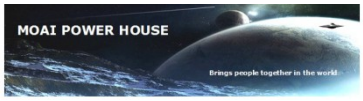
*Now we the chiefs of the **Confederation of United Tribes of New Zealand assembled at Waitangi,** and we the other tribes of New Zealand, having understood the meaning of these articles, accept them and agree to them all. In witness whereof our names or marks are affixed. Done at Waitangi on the 4th of February, 1840.[1]*

In Article 2, “the Queen of England confirms and guarantees to the **chiefs and the tribes** and to all the people of New Zealand (tangata katoa o Nu Tirani), the possession of their lands, dwellings and all their property (taonga).” The phrase “all the people” means “all the people” no more, no less, and includes **Maori** and settlers. By contrast in Article 3, when referring specifically to **Maori**, the text says “all the **Maori** people of New Zealand” ("tangata maori katoa o Nu Tirani").

The Whole lot is Corrupted by the insertion of the word “MAORI” in the 1840 Treaty of Waitangi

Page 202 Fact Cited Evidence Proof of Claim “Native” Confederation of Chiefs (Individual)



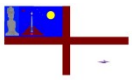












NA ATUA E WA AOTEA LIMITED New Zealand MOAI POWERHOUSE GROUP LONDON

In the Native Magistrate Kings Bench Court Hamilton New Zealand 27 August 2022

POHARA STATION BLOCK 3 A 5J Sec 3 Arapuni Maungatautari Mountain Pa Site Cambridge Indigenous Customary Native Land Title Rock Memorial Shareholders to Paramount Chief Tira Waikato Whareherehere Manukau 1823 King George IV NZ Title to KAHU PUNGAPUNGA MARAE TRIBE Moriori New Zealand Country British History First Nations Inhabitants No Maori here at 1769 King George III and 1820 King George IV "Crown" First Nations Settled Inhabitants (Freemasons Edinburgh Scotland) Private Business List of Shareholders Landowners Absolute - Author John Hoani Kahaki Wanoa

1/ HATA Te Whiwhi

2/ HAUMU Colin Ian

3/ HAUMU Daniel

4/ HAUMU John Henry

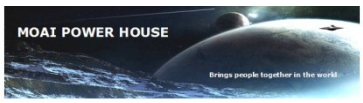
5/ HAUMU Rangi Tuiata

6/ HAUMU Wiremu

7/ HEKE Albert

8/ HEKE HariHari

9/ HEKE Peter John Hone



10/ HEKE Victor

11/ HEKE Tuia

12/ HEKE Te Reo

13/ HEKE Wattie

14/ HEPI Andrew

15/ HEPI Ben Junior

16/ HEPI Gary

17/ KAUHAU Rata Rodney

18/ KAUHAU Rimu

19/ KAUHAU William 1

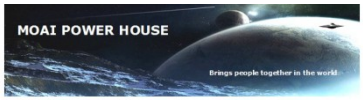
20/ KAUHAU Takoare

21/ KAUHAU William 2

22/ KAWHI Rawi

23/ KAWHI Mamae

24/ MOHI Christopher Tehira

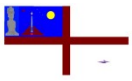












25/ TAHAPEHI Kevin

26/ TAHAPEHI Tawhai

27/ TAIPUA Hautanga

28/ TAIPUA Ruruhi

29/ TAIPUA Tame

29/TAUTE Te Hoia Daniel

30/ Taute Te Whakaronui

31 Taute Wina

32/ TAWAEWAE Amoamao

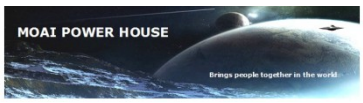
33/ TE AWHITU David Hakopa

34/ TE AWHITU James Vincent

35/ TE AWHITU Joseph Toa

36/ TE AWHITU Michael Luke

37/ TE AWHITU Phillip Martin

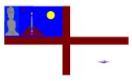












38/ TE AWHITU William Tau

39/ TE HIRA Damien Joseph

40/ TE HIRA Jason Anu

41/ TE HIRA Mark Toru Thomas

42/ TE HIRA Patrick Patahu

43/ TE HIRA Tui Latui

44/ TE HIRA Uenuku (This man)

45/ TE HOE Tuhoropunga (This man)

46/ TE KANI Ngamako (This man)

47/ TE KANI Raymond Jimmy John

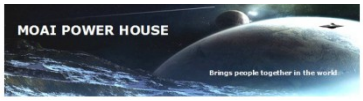
48/ TE KANI TE KANI Tahana William Kevin

49/ TE KANI Te Mera Henry

50/ TE TAUHOU Eru (This man)

51/ TE WHAITI Robert Te Ahau (This man)

51/ TOKI William



53/ TUKIRI Te Nga Ungau (This man)

54/ UTUTAONGA Ronald William (This man)

55/ WEHI Pou Riki (This man)

56/ WEHI George

57/ WETERI Waru

58/ WINIKERI Pahini

59/ MANUKAU Kahu Poera (Priority man)

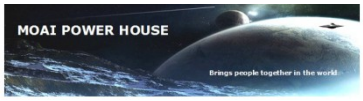
60/ MANUKAU Te Karoro (Priority man)

61/ MANUKAU Pita (Priority man)

POHARA MARAE BLOCK 3A 5J Sec 1 Arapuni Maungatautari Mountain Pa Site Cambridge Indigenous Customary Native Land Title Rock Memorial to Paramount Chief Tira Waikato Wharehere Manukau Shareholders King George IV 1823 NZ Title to KAHU PUNGAPUNGA TRIBE Moriori New Zealand Country British History First Nations Settled Inhabitants No Maori here at 1769 King George III and King George IV 1820 (Freemasons Edinburgh Scotland) Private Business Private Business List of Shareholders Landowners Absolute - Author John Hoani Kahaki Wanoa

62/ HEKE Hari Hari Geoffrey

63/ HEKE Matua

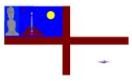












64/ HEKE Patrick

65/ HEKE Peter John

66/ HEKE Simon

67/ HEKE Te Reo (Priority man)

68/ HEKE Tuia Tui

69/ HEKE Tupuhaere (Priority man)

70/ HEKE Victor

HEKE Wattie

71/ HEKE Whakamarumaru (Priority man)

72/ HERETAONGA Te Pohau (Priority man)

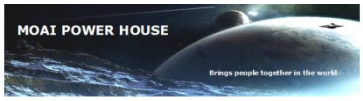
73/ HOPA Craig Earnest

74/ HOPA Desmond

75/ HOPA Gregory

76/ HOPA Rangi

77/ HOPA Tamati



78/ HOPA Stephen

79/ HOPA Takiwairoa (Priority man)

HOPA Taurima

80/ HOPA Tuku George (Priority man)

81/ HUIA Edward

82/ HUIA Geoffrey

83/ HUIA John

84/ HUIA Mana

85/ HUIA Matire

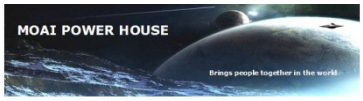
86/ HUIA Kahuiti Ngaire

87/ HUIA Tamahou

88/ KOPURERA Te Mutu (Priority man)

89/ KOPUERA Te Riwhi

90/ POUTAPU Harry Huritau (Priority man

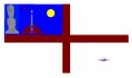












91/ POUTAPU Poutapu

92/ POUTAPU Whangaroa (Priority man)

93/ POUTAPU Patena (Priority man)

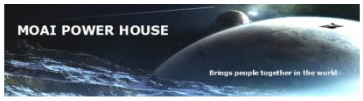
94/ TATAU Eru Haronga (Priority man)

95/ TAUTE Turua (Priority man

96/ TAUTE Nohomitawhiti

97/ TAUTE Te Hoia Daniel

Total Chiefs 97 Registered in the Native Magistrate Kings Bench Court Hearing Saturday 27 August 2027 for the Record (No Whangai or adopted surnames allowed to succeed to these Indigenous surnames of original inhabitants as at 1769 to 1823 King George IV and Paramount Chief Tira Waikato Whareherehere Manukau according to Freemason Land Survey Title Certificate to British Crown Corporate Business Land Transfer Legal Instrument and Memorials purposes Johan Hoani Kahaki Wanoa Customary Legal Advocate Native Assessor for Paramount Chief Mohi Te Maati Manukau IV Awaroa Native Magistrate Kings Bench Court Helensville 2000



List of INDIGENOUS NATIVE SURNAMES I am separating “MAORI” Surnames from the “NATIVE” Surnames contacting them for Saturday Hearing taken from
RAWHITI 6 Township Maori Land Block “NATIVE” separated from “MAORI” Shareholder Landowners Into BRITISH LAND TRANSFER from New Zealand to the Freemasons Glasgow Magistrate Court in Scotland these names that I have Chosen to match the Native Titles of Paramount Chief Rewharewha Manukau direct to Westminster Parliament that the New Zealand “Crown” IWI MAORI Trustees have illegally swapped the REWHAREWHA MANUKAU Name for “REWA” and “REWHA” is my Authority to Prosecute the WHAKAPAPA of these two Surnames and their PARAMOUNT CHIEFS INDIGENOUS Surname to the “NATIVE” LANDS having the MOST SHARES in this Big Land Block is what I can see is CORRUPTED LAND SHARES the same way as TAINUI IWI TRUSTEES Corrupted the Paramount Chief “TIRA WAIKATO WHAREHEREHERE MANUKAU Name Illegally altered to a WOMAN with the name “TIRA WAIKATO” is two Paramount Chiefs that have been COMPROMISED by NZ “CROWN” “IWI MAORI” Pirates on the High Seas of Admiralty Corrupted altered BRITISH “CROWN Government Printing Office “CRIMINAL CODE” Breaches I have made Cases against in other Court Hearings all that Evidence we NOTIFY YOU today Governor General of your Photo Identification COMPLICIT in these ABHORRENT CRIMINAL ORGANIZATION OFFENCES and TREASON against our Paramount Chiefs and the Confederation FLAG Given by King William IV for Trade and Corporate Businesses we are forcing our Legal Authority on you and your Illegal Government caught with King Charles Inheritor of Queen Elizabeth II Fraud of our “QUEEN VICTORIA TRUST” Wealth while our Kings Flag is still in a FIXED TITLE COMMERCIAL CONTRACT with WESTMINSTER PARLIAMENT and our Legal Partner “ADMIRAL OF THE FLEET MICHAEL BOYCE” House of Lords Lord Baron Michael Boyce. Here is my list of “NATIVE” Surnames I chose 3 CHIEFS from to go to WESTMINSTER PARLIAMENT now with these AUTHENTICATED CHIEFS SIGNED DOCUMENTS 3 from WAIKATO for Paramount Chief “TIRA WAIKATO WHAREHEREHERE MANUKAU” and 3 CHIEFS from BAY OF ISLANDS for Paramount Chief “REWHAREWHA MANUKAU” Buried on top of RAWHITI TOWNSHIP Hill Closest to the gate with the name “REWHA” on the MEMORIAL STONE that Paramount Chief “MOHI TE MAATI MANUKAU IV” told me there in the Grave Site his Ancestor is Buried there and I filmed him there me doing his Treaty Claims Research all over New Zealand for his Moriori Tribesmen that the GENTRY FREEMASONS in AWAROA Helensville and SCOTLAND acknowledge as TRUE BRITISH TITLE.

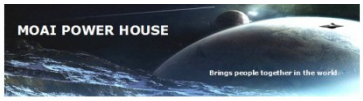
1/ UTUTAONGA Hare (I know this one as a Confederation Of Chiefs Member with me Helensville)
2/ HARETUKU Wiremu
3/ HAU George
4/ HAU Horomona
5/ HAURAKI Apena William
6/ RAMEKA Hone (Taipara Nukunuku Whanau)
7/ HEKE Danny

Moai Tidal Energy World Co Op Pound Gold Water Money Patent Shares UK ‘TM’

Moai Solid Hydrogen Fuel Energy, Water, Gold, Currency © Patent Brand Name, Moai Crown King William IV Sovereign State Authority Seals

3

8/ HEKE Hone Tapahi

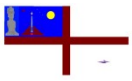












9/ HEKE Kananga
10/ HEKE Rangimarie
11/ HETA Albie (Paramount Chief) No 1
12/ HETA Benjamin
13/ HETA Hauraki
14/ HETA Huhana Pao
15/ HETA Hunia Wi
16/ HETA Kapuai Wi
17/ HIKO Hone (Paramount Chief) No 2
18/ HIKO Huri (Paramount Chief) No 3
19/ HIKO Walter James (Paramount Chief)
20/ HIKUWAI William
21/ HIRA Tura Potaua (Chief)
22/ HONGI Eri Wii (Chief)
23/ MIHAKA Wharepapa (Chief)
24/ MIHAKA Tawaewae (Paramount Chief) No 6 Chief from the Court
25/ NEHA Henare
26/ NEHA Hori
27/ NEHA Rui
28/ NEHO Eddie
29/ NGERE Hone (Paramount Chief) No 4
30/ Pera (Paramount Chief)
31/ POTAUA Te Paea Rangitao No 5

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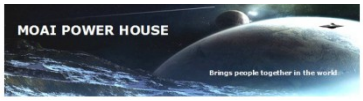
Moai Solid Hydrogen Fuel Energy, Water, Gold, Currency © Patent Brand Name, Moai Crown King William IV Sovereign State Authority Seals

4

32/ PUKEPUKE Jay Rahuri
33/ PURU Pahi (Paramount Chief) No 4 Chief from the Court
34/ PURU William Bill Riwhi
35/ RAMEKA Rora Maru
36/ RAMEKA Tame Anaru (Chief)
37/ RAMEKA Wiremu Paati (Chief)
38/ REWHA Under Investigation of Whakapapa “MAORI” where the surname originates from Paramount Chief Rewharewha Manukau from his Urupa memorial stone marked REWHA above Rawhiti Township!
39/ REWHAREWHA Tamihana Under Investigation of Whakapapa “MAORI” where the surname originates from Paramount Chief Rewharewha Manukau from his Urupa memorial stone marked REWHA above Rawhiti Township!
40/ REWHAREWHA Hone Under Investigation of Whakapapa “MAORI” where the surname originates from Paramount Chief Rewharewha Manukau from his Urupa memorial stone marked REWHA above Rawhiti Township!
41/ TAKIMOANA Hori (I know this one)
42/ TAUWAKA Erana (Needs Chief in the Family Male Line she’s holding) No 5 Chief from the Court

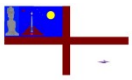












43/ TAWHAI Hone (Paramount Chief)
44/ TE HAARA Waiohau (Paramount Chief) No 3 Chief from the Court
45/ TITORE Hamaka
46/ TITORE Papa
47/ TITORE Tarua Wi
48/ TOA Maria (Needs Chief in the Family Male Line she's holding)
49/ TOKI Lorraine (Needs Chief in the Family Male Line she's holding) No 1 Chief from the Court
50/ WIKAIRA Hone

This is the Paramount Chiefs Chosen by the Native Magistrate Kings Bench Court direct to the Grave Site of Paramount **Chief Rewharewha Manukau** of the First Gravestone closest to the Gate that has REWHA on the Stone in my Research of the Bay of Islands with 50 Year Freemason Paramount Chief Mohi Te Maati Manukau IV Moriori Wakapapa Videos of him at his Ancestors Grave Site above the

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5
Township Maunga of RAWHITI that he said The Stone has been altered So this is a VOID TITLE LAND of the Maori Land Court TITLE Challenge the WHAKAPAPA of MANUKAU Versus REWHA MANAWHENUA AFFIDAVIT in this Court Hearing on Saturday 17 September 2022 for anyone to REFUTE this "NATIVE" TITLE Claim I ENFORCE HERE on 17 September 2022 shall be Published when I send this Letter to you Governor General CINDY KIRO Challenging your "MAORI" LAND COURT JURISDICTION against our "NATIVE MANUKAU" British Scottish FREEMASONS LAND SURVEY TITLE Jurisdiction against all these INDIGENOUS SURNAME Landowners ABSOLUTE.
Regards
John Hoani Kahaki Wanoa (British Customary Native Land Transfer Title Assessor and Historian)

The King Flag, The United Tribes Flag of The World To End All Wars, & For The Safe Passage On Earth: https://www.youtube.com/shorts/llFr2w...
Confederation of United Tribes of New Zealand Flag Jurisdiction: https://www.youtube.com/watch?v=tFE5A... :
Confederation of United Tribes of New Zealand Flag Jurisdiction: ~2 https://www.youtube.com/watch?v=5KGye...
Confederation of United Tribes of New Zealand Flag Radio Chat 4th May 2022. https://www.youtube.com/watch?v=2Q7B9... :

Moai Tidal Energy World Co Op Pound Gold Water Money Patent Shares UK 'TM'

Moai Solid Hydrogen Fuel Energy, Water, Gold, Currency © Patent Brand Name, Moai Crown King William IV Sovereign State Authority Seals

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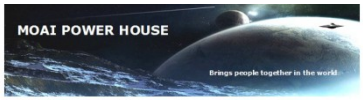
Confederation of United Tribes of New Zealand Flag Jurisdiction: ~3 https://www.youtube.com/watch?v=IPUce... :

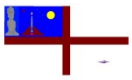












John: Wanoa Keeping Us Informed Of The Historical Facts and The Admiral Of The Fleet.
https://www.youtube.com/watch?v=ZWwTn... :
Confederation of United Tribes of New Zealand Flag Jurisdiction: ~4
https://www.youtube.com/watch?v=ZC2WY...
Confederation of United Tribes of New Zealand Flag Radio Chat 11th May 2022.
https://www.youtube.com/watch?v=Pg4rl...
John Wanoa's Update From Te Araroa, with Reg Akuhata Rangihuna 12th May 6pm.
https://youtu.be/mp_yJyaSXck
Confederation of The United Tribes of New Zealand Flag, Radio Show with Ramola D on 13th May 2022. https://youtu.be/A3RsJn3RcDw :
Confederation of United Tribes of New Zealand Flag Jurisdiction: ~5 https://youtu.be/HThvguJ0xXg :
Confederation of United Tribes of New Zealand Flag Jurisdiction: ~6 Native Kings Bench Hearing pt1
https://youtu.be/MfBoZYMM8-Y :
Confederation of United Tribes of New Zealand Flag Jurisdiction: ~6 Native Kings Bench Hearing pt2
https://youtu.be/Kehc7WfGZ0k :
Confederation of United Tribes of New Zealand Flag Jurisdiction: ~7: Native King's Bench Hearing !
https://youtu.be/RJOVf3jE6Os Facebook Live:
Confederation of United Tribes of New Zealand Flag Jurisdiction: ~8: Native King's Bench Hearing !
https://www.facebook.com/andrew.devin... :
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https://youtu.be/z-FTKhp2JWs Facebook Live:
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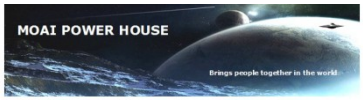
Confederation of United Tribes of New Zealand Flag Jurisdiction: ~11: Native King's Bench Hearing!
https://youtu.be/wnX4nKs1zDw Facebook-Live:
Confederation of United Tribes of New Zealand Flag Jurisdiction: ~12: Native King's Bench Hearing!
https://www.facebook.com/andrew.devin... :
Confederation of United Tribes of New Zealand Flag Jurisdiction: ~12: Native King's Bench Hearing!
https://youtu.be/J9qL7AQ4hZE Facebook-Live:
Confederation of United Tribes of New Zealand Flag Jurisdiction: ~13: Native King's Bench Hearing!
https://www.facebook.com/john.wanoa/v... :
Confederation of United Tribes of New Zealand Flag Jurisdiction: ~13: Native King's Bench Hearing!
https://youtu.be/N_PuwhSCzfE Facebook-Live:

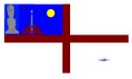












Confederation of United Tribes of New Zealand Flag Jurisdiction: ~14: Native King's Bench Hearing! https://www.facebook.com/andrew.devin... :
Confederation of United Tribes of New Zealand Flag Jurisdiction: ~14: Native King's Bench Hearing! https://youtu.be/WOP2sD8lJL0 Facebook-Live:
Confederation of United Tribes of New Zealand Flag Jurisdiction: ~15: Native King's Bench Hearing! https://www.facebook.com/andrew.devin... :
Confederation of United Tribes of New Zealand Flag Jurisdiction: ~15: Native King's Bench Hearing! https://youtu.be/t3XN_gfeN8E Facebook-Live:
Confederation of United Tribes of New Zealand Flag Jurisdiction: ~16: Native King's Bench Hearing! https://www.facebook.com/andrew.devin... :
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Confederation of United Tribes of New Zealand Flag Jurisdiction: ~17: Native King's Bench Hearing! https://youtu.be/81IzV_j2F7w Facebook-Live:
Confederation of United Tribes of New Zealand Flag Jurisdiction: ~18: Native King's Bench Hearing! https://www.facebook.com/andrew.devin...

Videos of Court Hearing Saturday 10 September 2022 Facebook Live Court Hearing with Discussions after and a Court Only Youtube Video
John Wanoa Thursday 22 September 2022 to Te Arani Te Haara Looks like it disapeared

Moai Tidal Energy World Co Op Pound Gold Water Money Patent Shares UK 'TM'

Moai Solid Hydrogen Fuel Energy, Water, Gold, Currency © Patent Brand Name, Moai Crown King William IV Sovereign State Authority Seals

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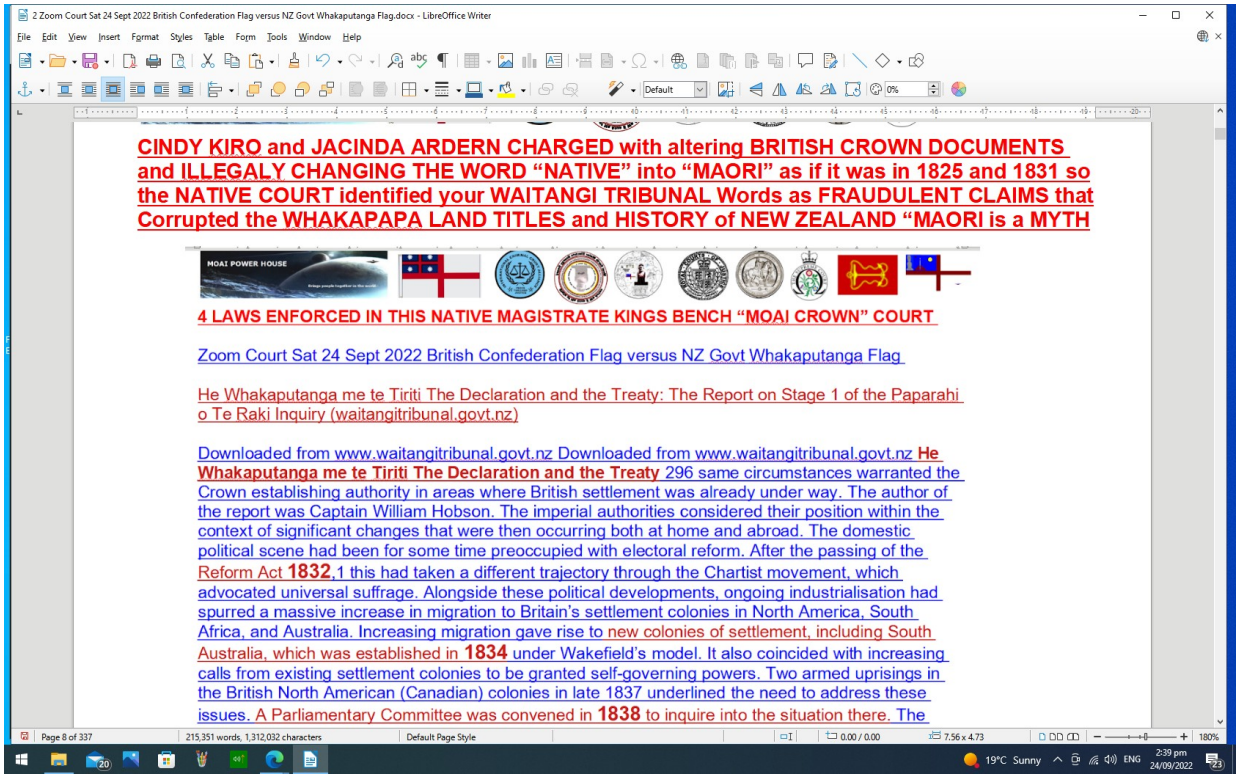
Facebook Video extended for discussion https://www.facebook.com/andrew.devine.3532/videos/407623381443931
Youtube video of only the Court Record https://youtu.be/-09OXmzFAu0
All Documents to Accompany these Zoom Video Affidavits e18e35_8c6999dcb5e24306a4445705d7dcb502.pdf (moaipowerhouse.world)
Maori Land Court Online Shareholders of Rawhiti 6 Landblock Rawhiti Township Thursday 22 September 2022
I just looked and all the Te Haara Shareholders have been removed from this Land block today??
Te Arani Te Haara I am surprized by the disappearance overnight of all the Te Haara shareholders There was about 8 of them all gone
I just picked this one 44/ TE HAARA Waiohau (Paramount Chief) No 3 Chief from the Court Because he had big shares
Sorry about that you might have to do some searching

John Wanoa

Page 8 EVIDENCE OF FRAUD NZ CROWN CORRUPT WAITANGI TRIBUNAL DOCUMENTS



CINDY KIRO and JACINDA ARDERN CHARGED with altering BRITISH CROWN DOCUMENTS and ILLEGALY CHANGING THE WORD "NATIVE" into "MAORI" as if it was in 1825 and 1831 so the NATIVE COURT identified your WAITANGI TRIBUNAL Words as FRAUDULENT CLAIMS that Corrupted the WHAKAPAPA LAND TITLES and HISTORY of NEW ZEALAND "MAORI is a MYTH

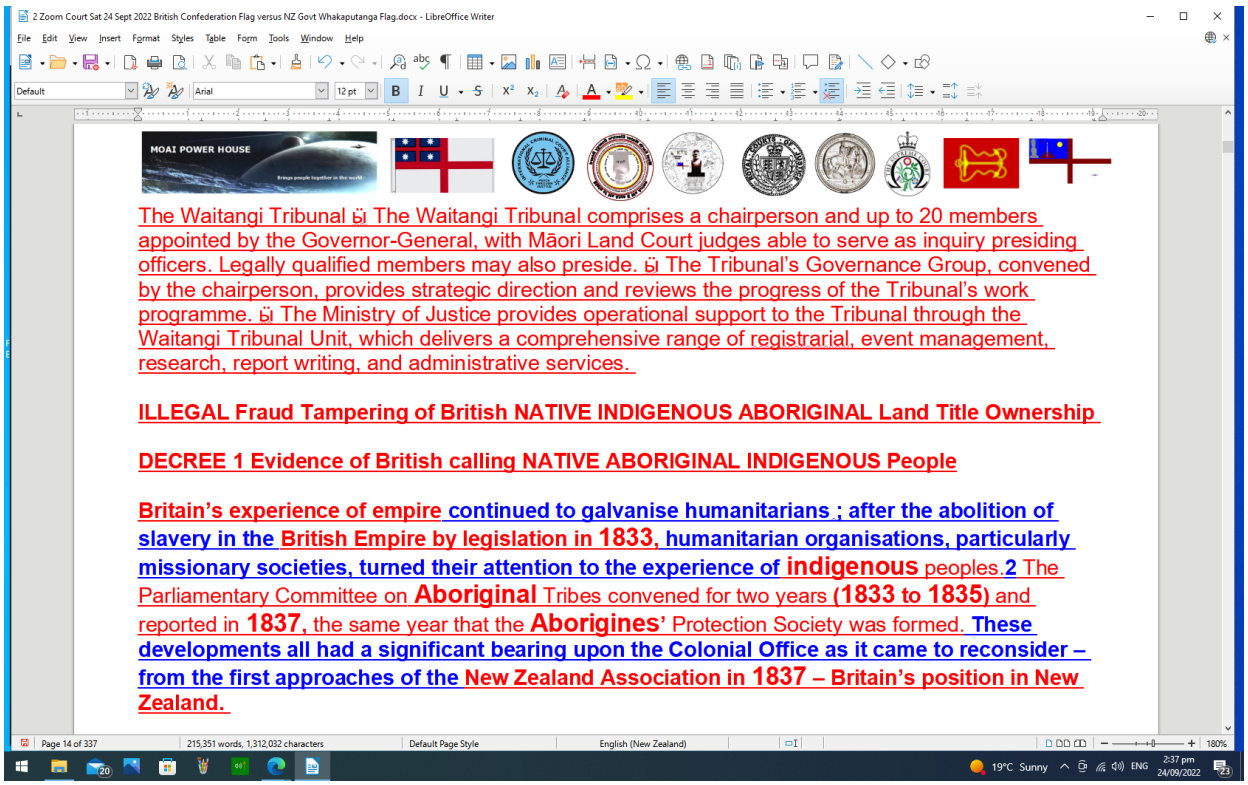
4 LAWS ENFORCED IN THIS NATIVE MAGISTRATE KINGS BENCH "MOAI CROWN" COURT

Zoom Court Sat 24 Sept 2022 British Confederation Flag versus NZ Govt Whakaputanga Flag

He Whakaputanga me te Tiriti The Declaration and the Treaty: The Report on Stage 1 of the Paparahi o Te Raki Inquiry (waitangitribunal.govt.nz)

Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz **He Whakaputanga me te Tiriti The Declaration and the Treaty** 296 same circumstances warranted the Crown establishing authority in areas where British settlement was already under way. The author of the report was Captain William Hobson. The imperial authorities considered their position within the context of significant changes that were then occurring both at home and abroad. The domestic political scene had been for some time preoccupied with electoral reform. After the passing of the Reform Act **1832**,1 this had taken a different trajectory through the Chartist movement, which advocated universal suffrage. Alongside these political developments, ongoing industrialisation had spurred a massive increase in migration to Britain's settlement colonies in North America, South Africa, and Australia. Increasing migration gave rise to new colonies of settlement, including South Australia, which was established in **1834** under Wakefield's model. It also coincided with increasing calls from existing settlement colonies to be granted self-governing powers. Two armed uprisings in the British North American (Canadian) colonies in late 1837 underlined the need to address these issues. A Parliamentary Committee was convened in **1838** to inquire into the situation there. The

Page 8 CITATION FRAUD TAMPERING WITH "NATIVE" TITLE OWNERSHIP CONTRACT



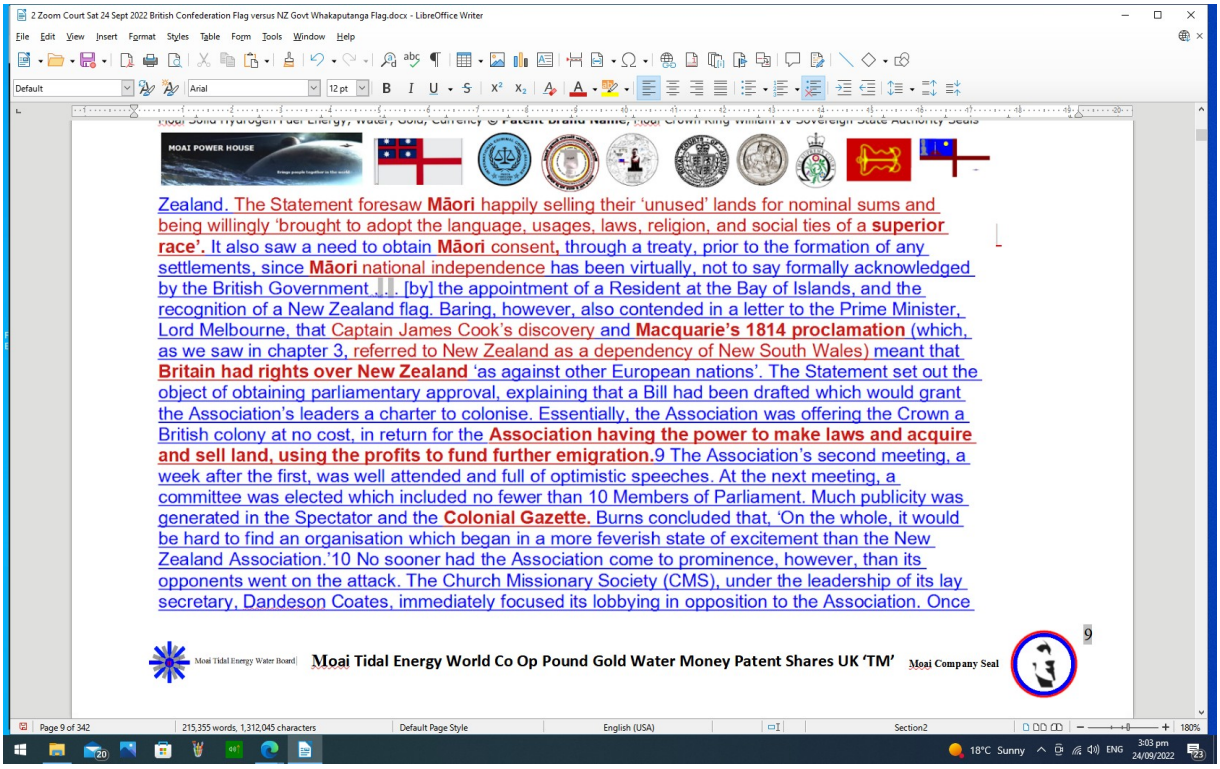
The Waitangi Tribunal ы The Waitangi Tribunal comprises a chairperson and up to 20 members appointed by the Governor-General, with Māori Land Court judges able to serve as inquiry presiding officers. Legally qualified members may also preside. ы The Tribunal's Governance Group, convened by the chairperson, provides strategic direction and reviews the progress of the Tribunal's work programme. ы The Ministry of Justice provides operational support to the Tribunal through the Waitangi Tribunal Unit, which delivers a comprehensive range of registrarial, event management, research, report writing, and administrative services.

ILLEGAL Fraud Tampering of British NATIVE INDIGENOUS ABORIGINAL Land Title Ownership

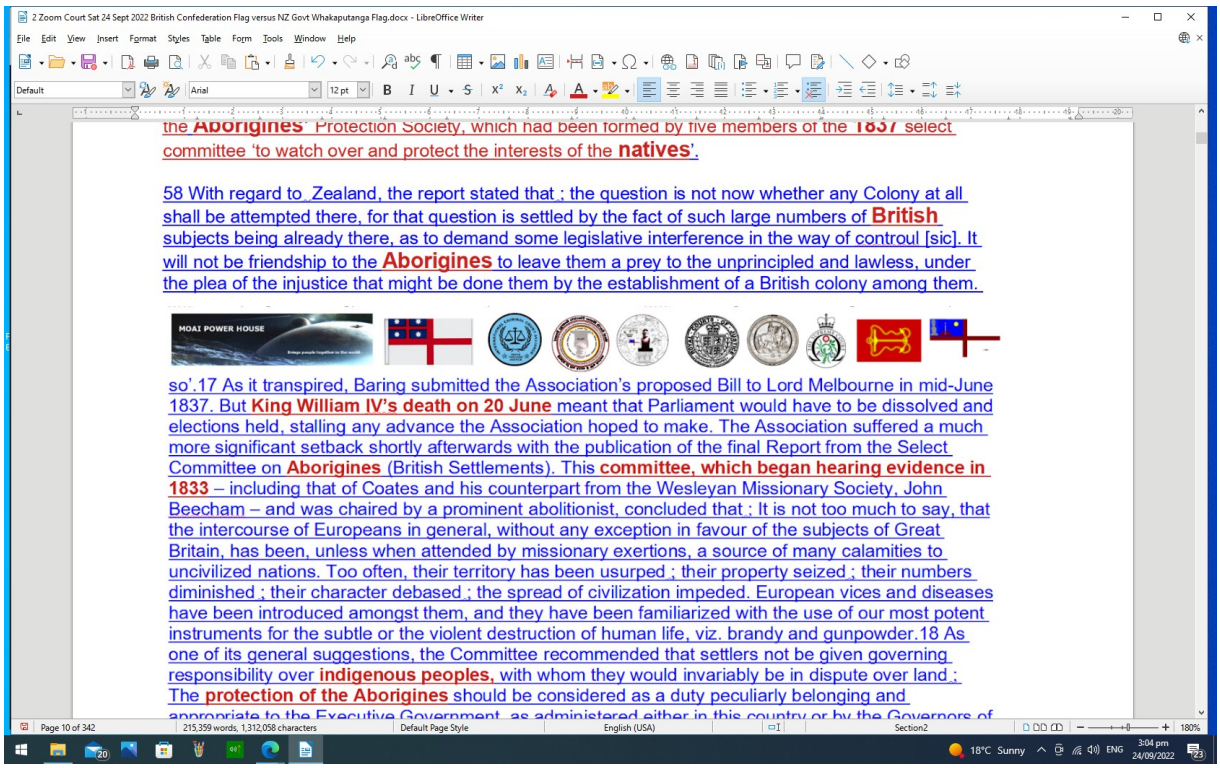
DECREE 1 Evidence of British calling NATIVE ABORIGINAL INDIGENOUS People

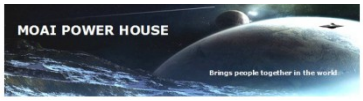
Britain's experience of empire continued to galvanise humanitarians ; after the abolition of slavery in the British Empire by legislation in 1833, humanitarian organisations, particularly missionary societies, turned their attention to the experience of indigenous peoples.**2** The Parliamentary Committee on **Aboriginal** Tribes convened for two years **(1833 to 1835)** and reported in **1837,** the same year that the **Aborigines'** Protection Society was formed. **These developments all had a significant bearing upon the Colonial Office as it came to reconsider – from the first approaches of the New Zealand Association in 1837 – Britain's position in New Zealand.**

Page 9 **FRAUD EXHIBIT 3**

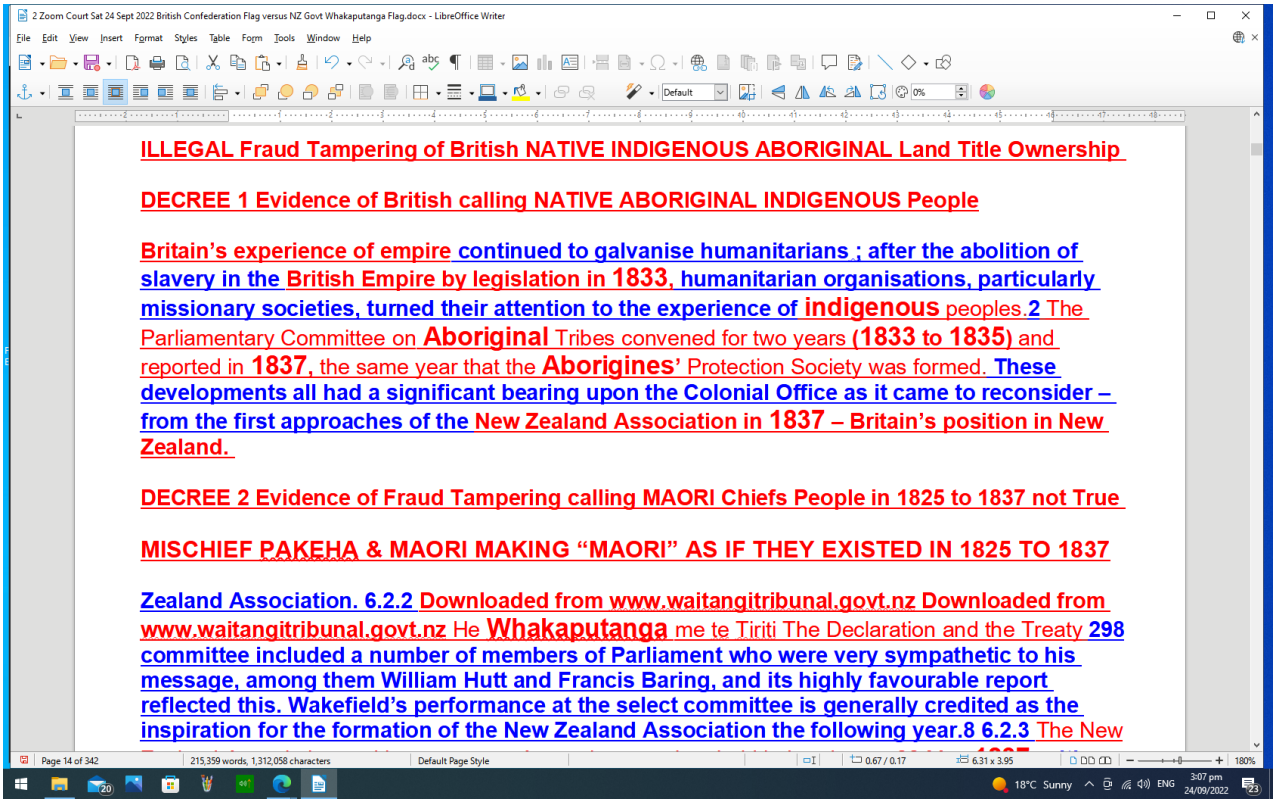


Page 10 **FRAUD EXHIBIT 4**





Page 14 **FRAUD EXHIBIT 5**



2 Zoom Court Sat 24 Sept 2022 British Confederation Flag versus NZ Govt Whakaputanga Flag.docx - LibreOffice Writer

ILLEGAL Fraud Tampering of British NATIVE INDIGENOUS ABORIGINAL Land Title Ownership

DECREE 1 Evidence of British calling NATIVE ABORIGINAL INDIGENOUS People

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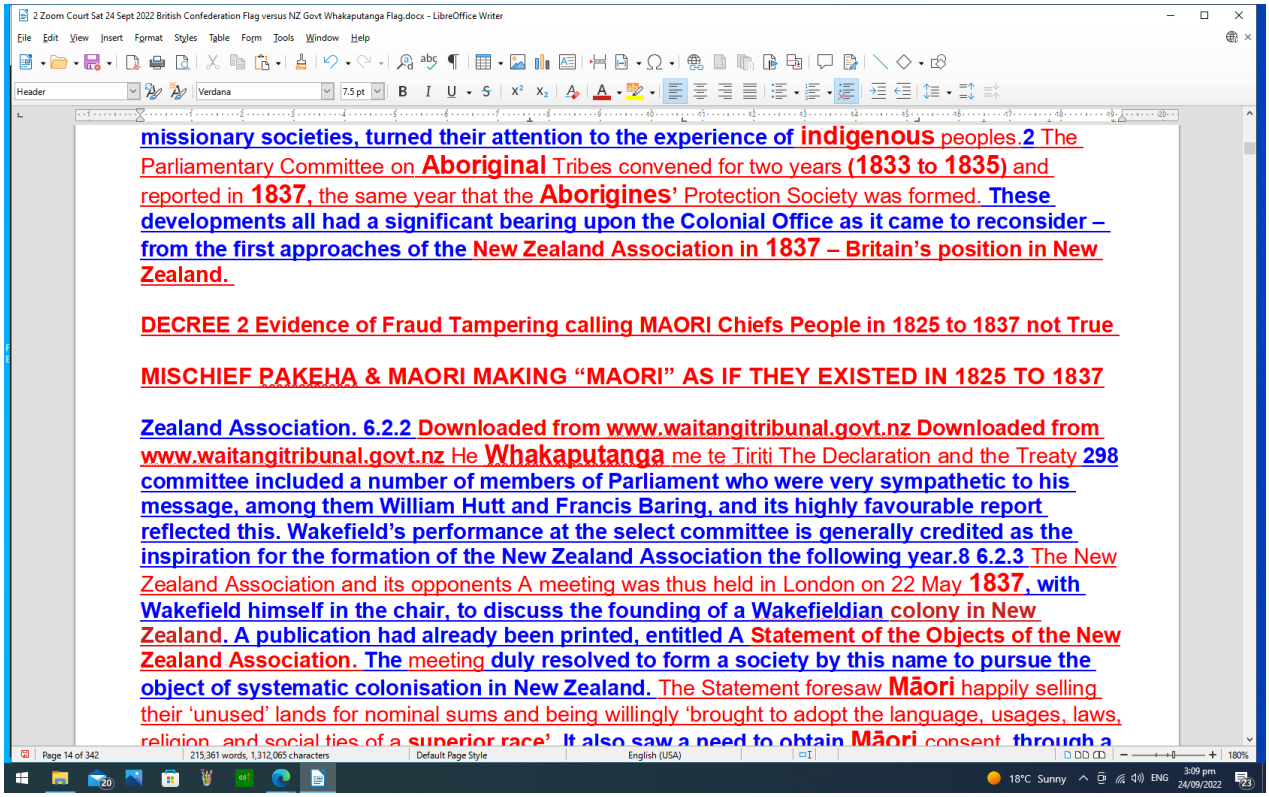
DECREE 2 Evidence of Fraud Tampering calling MAORI Chiefs People in 1825 to 1837 not True

MISCHIEF PAKEHA & MAORI MAKING "MAORI" AS IF THEY EXISTED IN 1825 TO 1837

Zealand Association. 6.2.2 Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz He Whakaputanga me te Tiriti The Declaration and the Treaty 298 committee included a number of members of Parliament who were very sympathetic to his message, among them William Hutt and Francis Baring, and its highly favourable report reflected this. Wakefield's performance at the select committee is generally credited as the inspiration for the formation of the New Zealand Association the following year.8 6.2.3 The New

Page 14 of 342 | 215,359 words, 1,312,058 characters | Default Page Style | 0.67 / 0.17 | 6.31 x 3.95 | 180%

Page 14 **FRAUD EXHIBIT 6**



2 Zoom Court Sat 24 Sept 2022 British Confederation Flag versus NZ Govt Whakaputanga Flag.docx - LibreOffice Writer

missionary societies, turned their attention to the experience of indigenous peoples.2 The Parliamentary Committee on Aboriginal Tribes convened for two years (1833 to 1835) and reported in 1837, the same year that the Aborigines' Protection Society was formed. These developments all had a significant bearing upon the Colonial Office as it came to reconsider – from the first approaches of the New Zealand Association in 1837 – Britain's position in New Zealand.

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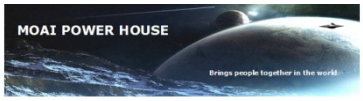
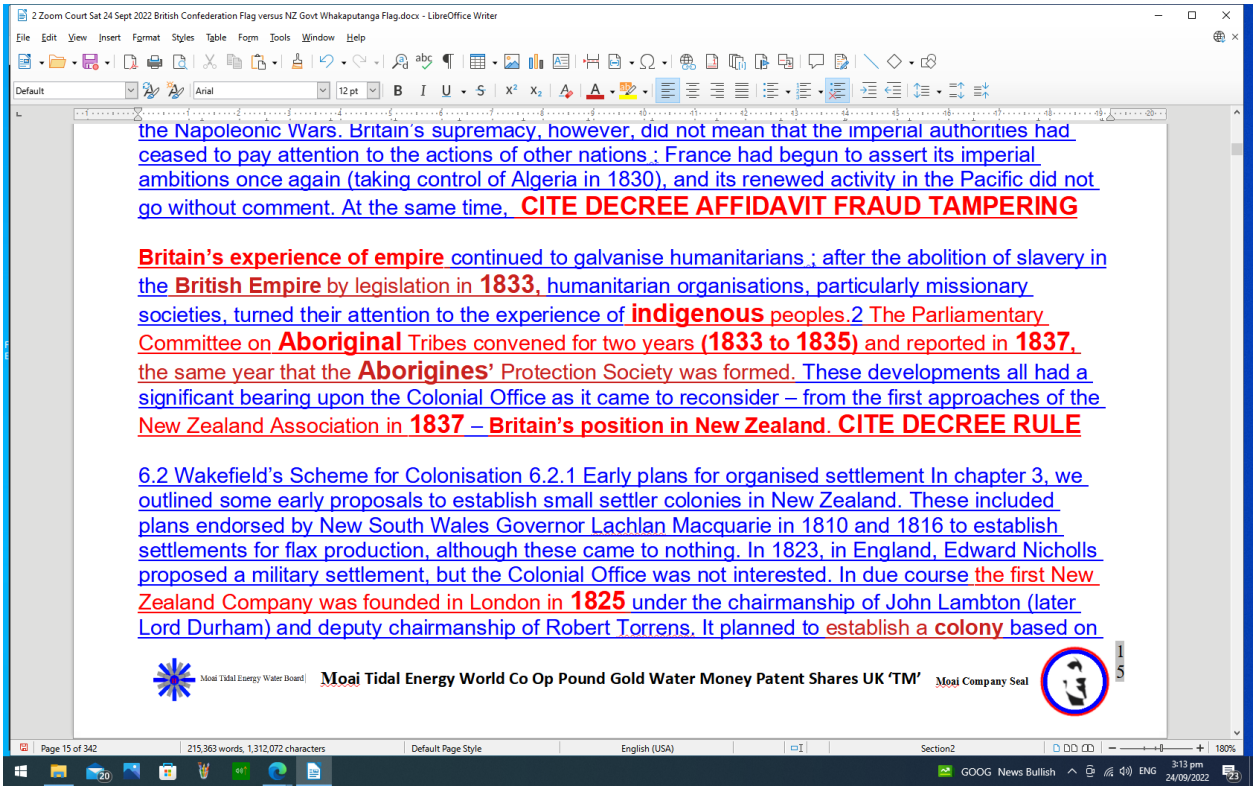
MISCHIEF PAKEHA & MAORI MAKING "MAORI" AS IF THEY EXISTED IN 1825 TO 1837

Zealand Association. 6.2.2 Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz He Whakaputanga me te Tiriti The Declaration and the Treaty 298 committee included a number of members of Parliament who were very sympathetic to his message, among them William Hutt and Francis Baring, and its highly favourable report reflected this. Wakefield's performance at the select committee is generally credited as the inspiration for the formation of the New Zealand Association the following year.8 6.2.3 The New Zealand Association and its opponents A meeting was thus held in London on 22 May 1837, with Wakefield himself in the chair, to discuss the founding of a Wakefieldian colony in New Zealand. A publication had already been printed, entitled A Statement of the Objects of the New Zealand Association. The meeting duly resolved to form a society by this name to pursue the object of systematic colonisation in New Zealand. The Statement foresaw Māori happily selling their 'unused' lands for nominal sums and being willingly 'brought to adopt the language, usages, laws, religion, and social ties of a superior race'. It also saw a need to obtain Māori consent, through a

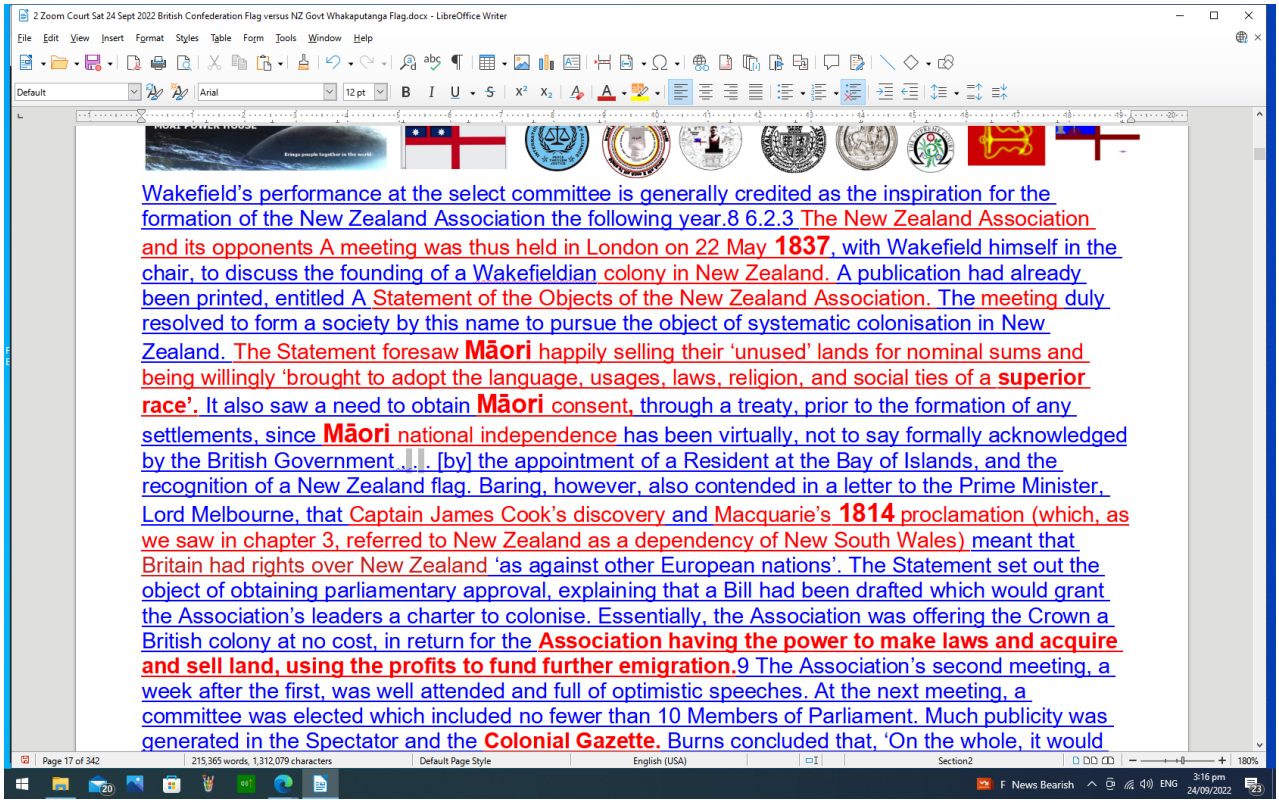
Page 14 of 342 | 215,361 words, 1,312,065 characters | Default Page Style | English (USA) | 180%

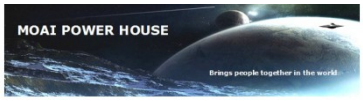


Page 15 **FRAUD EXHIBIT 7**

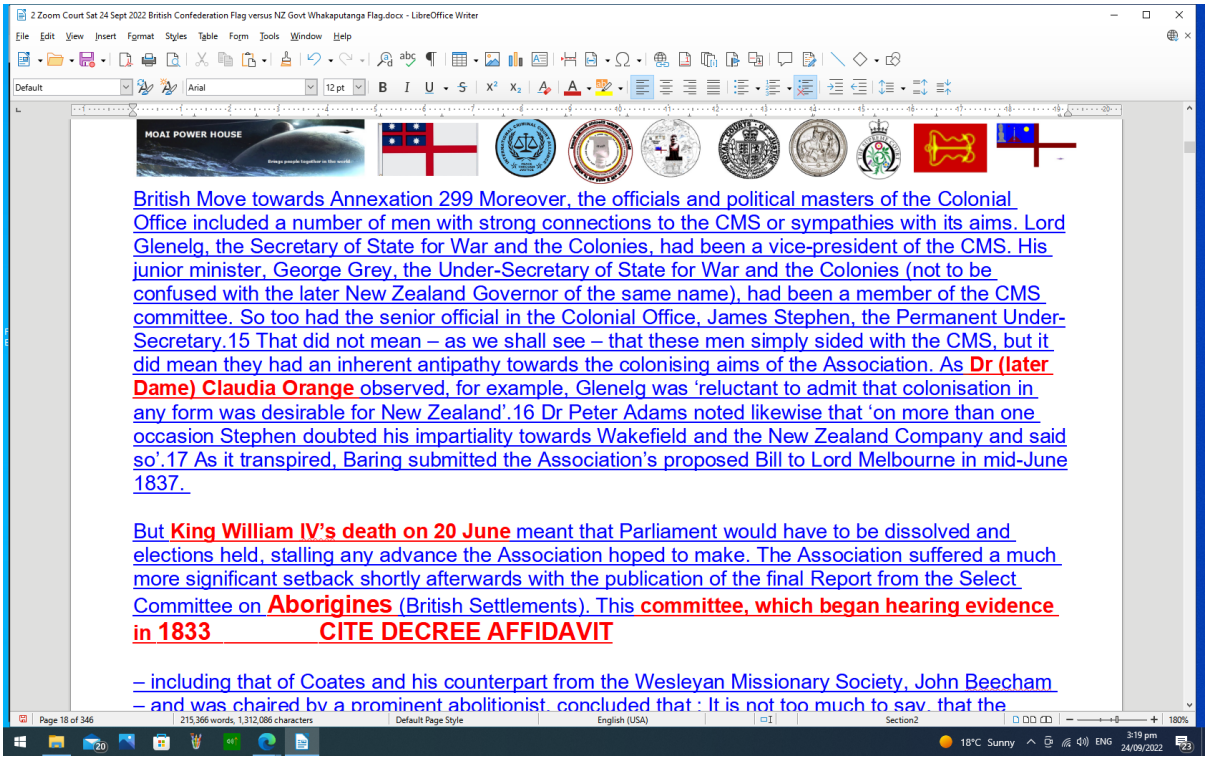


Page17 **FRAUD EXHIBIT 8**

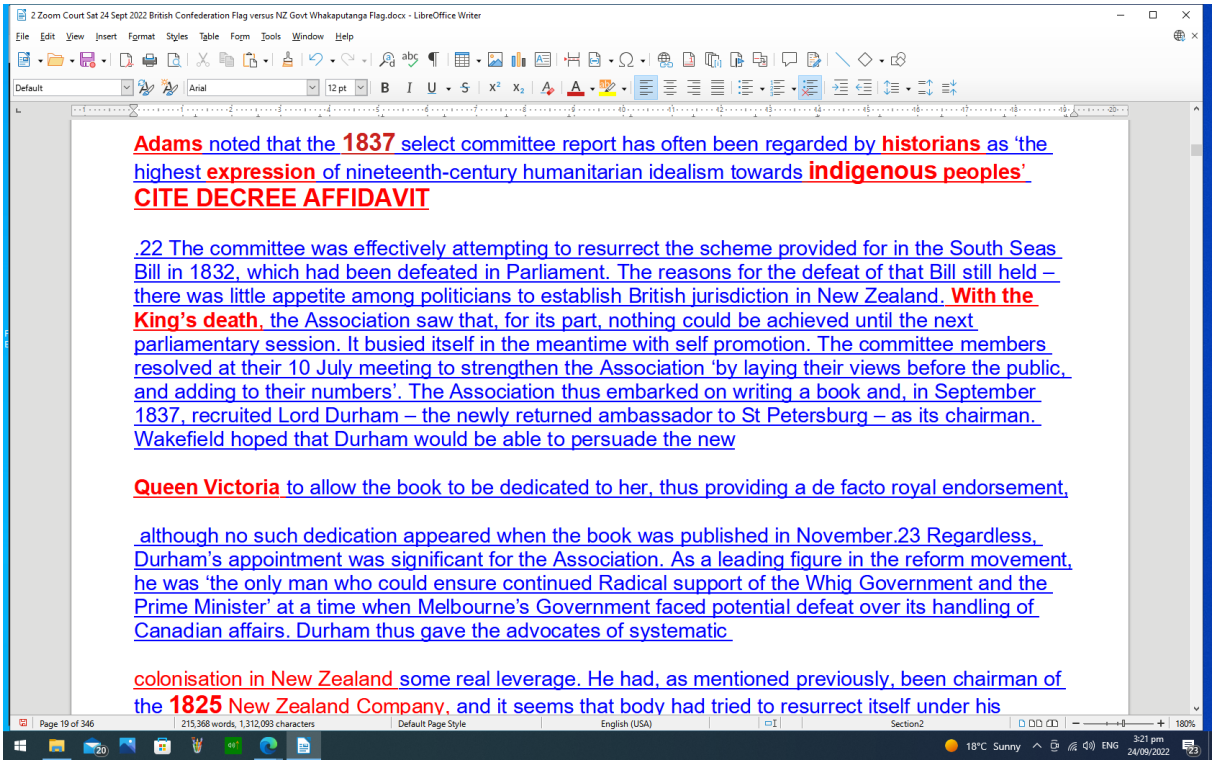


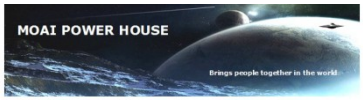


Page 18 **FRAUD EXHIBIT 9**

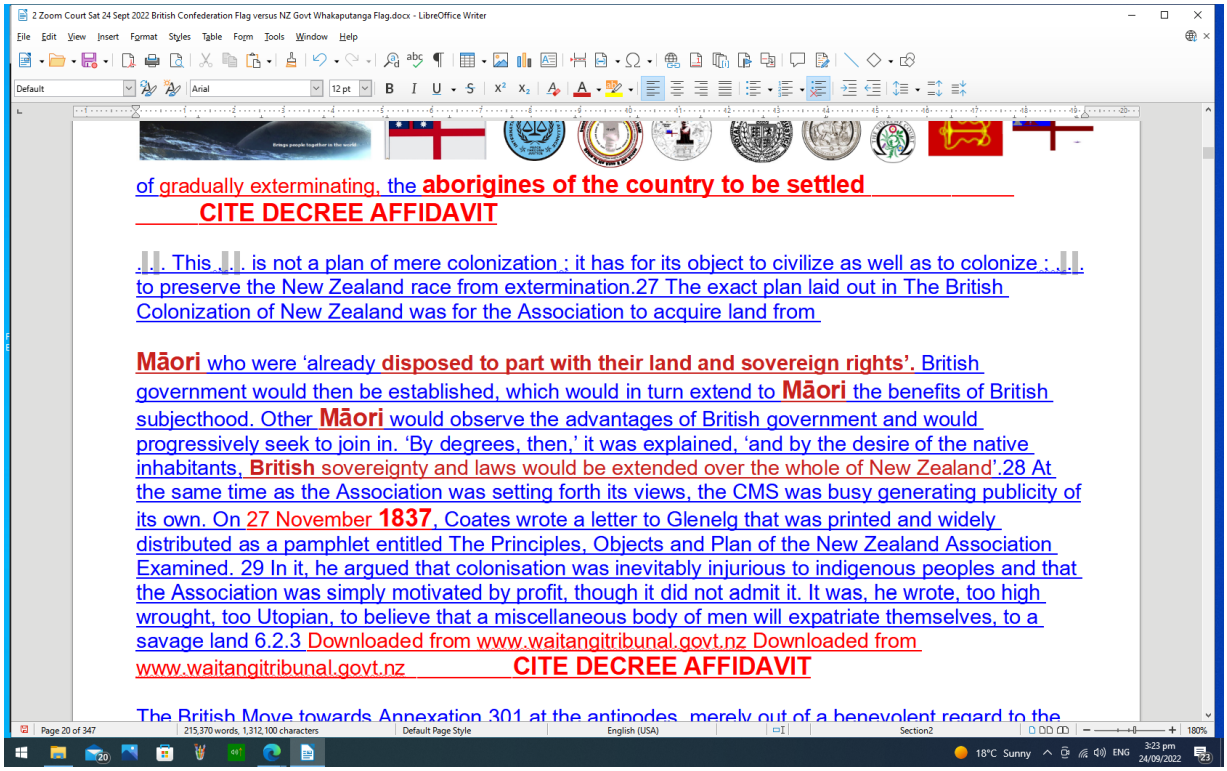


Page 19 **FRAUD EXHIBIT 10**





Page 20 **FRAUD EXHIBIT 11**



of gradually exterminating, the **aborigines of the country to be settled**
CITE DECREE AFFIDAVIT

. . . This . . . is not a plan of mere colonization ; it has for its object to civilize as well as to colonize ; . . . to preserve the New Zealand race from extermination.27 The exact plan laid out in The British Colonization of New Zealand was for the Association to acquire land from

Māori who were 'already **disposed to part with their land and sovereign rights**'. British government would then be established, which would in turn extend to **Māori** the benefits of British subjecthood. Other **Māori** would observe the advantages of British government and would progressively seek to join in. 'By degrees, then,' it was explained, 'and by the desire of the native inhabitants, **British** sovereignty and laws would be extended over the whole of New Zealand'.28 At the same time as the Association was setting forth its views, the CMS was busy generating publicity of its own. On 27 November **1837**, Coates wrote a letter to Glenelg that was printed and widely distributed as a pamphlet entitled The Principles, Objects and Plan of the New Zealand Association Examined. 29 In it, he argued that colonisation was inevitably injurious to indigenous peoples and that the Association was simply motivated by profit, though it did not admit it. It was, he wrote, too high wrought, too Utopian, to believe that a miscellaneous body of men will expatriate themselves, to a savage land 6.2.3 Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz **CITE DECREE AFFIDAVIT**

The British Move towards Annexation 301 at the antipodes, merely out of a benevolent regard to the

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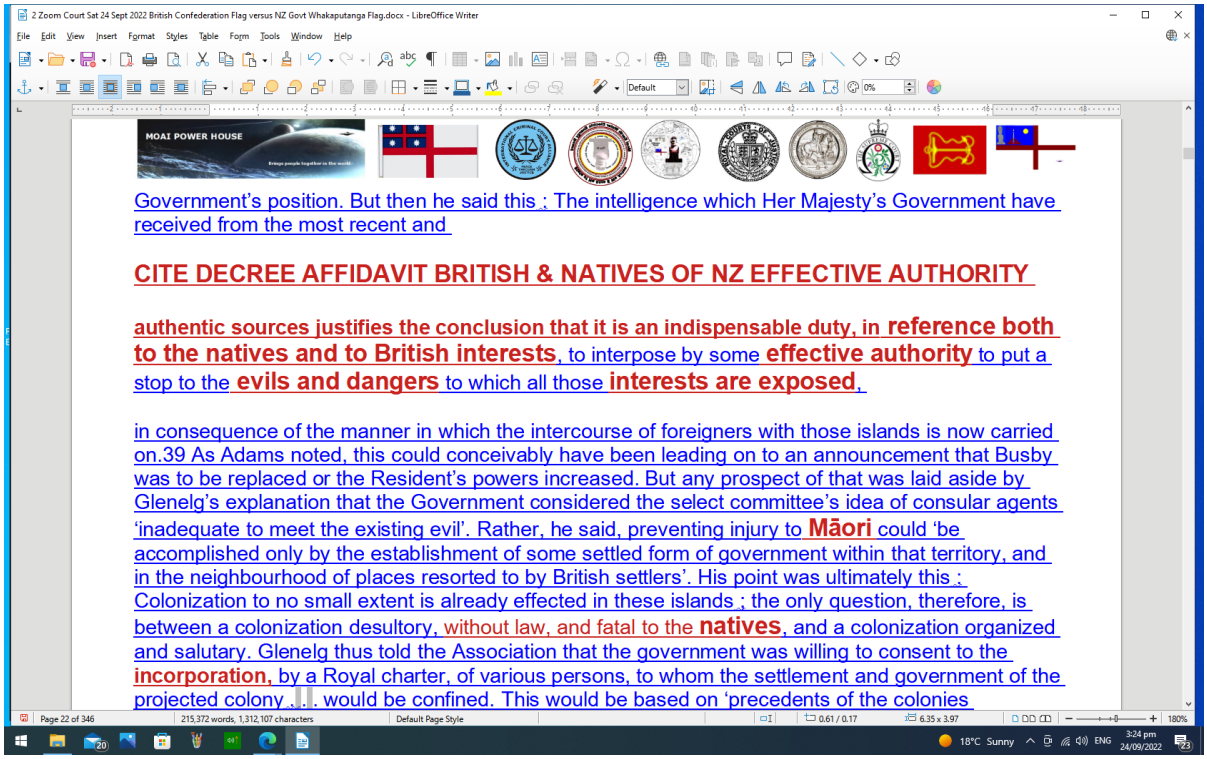
Page 22 **FRAUD EXHIBIT 12**



Government's position. But then he said this ; The intelligence which Her Majesty's Government have received from the most recent and

CITE DECREE AFFIDAVIT BRITISH & NATIVES OF NZ EFFECTIVE AUTHORITY

authentic sources justifies the conclusion that it is an indispensable duty, in reference both to the natives and to British interests, to interpose by some **effective authority** to put a stop to the **evils and dangers** to which all those **interests are exposed**,

in consequence of the manner in which the intercourse of foreigners with those islands is now carried on.39 As Adams noted, this could conceivably have been leading on to an announcement that Busby was to be replaced or the Resident's powers increased. But any prospect of that was laid aside by Glenelg's explanation that the Government considered the select committee's idea of consular agents 'inadequate to meet the existing evil'. Rather, he said, preventing injury to **Māori** could 'be accomplished only by the establishment of some settled form of government within that territory, and in the neighbourhood of places resorted to by British settlers'. His point was ultimately this ; Colonization to no small extent is already effected in these islands ; the only question, therefore, is between a colonization desultory, without law, and fatal to the **natives**, and a colonization organized and salutary. Glenelg thus told the Association that the government was willing to consent to the **incorporation**, by a Royal charter, of various persons, to whom the settlement and government of the projected colony . . . would be confined. This would be based on 'precedents of the colonies

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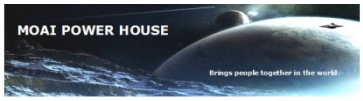
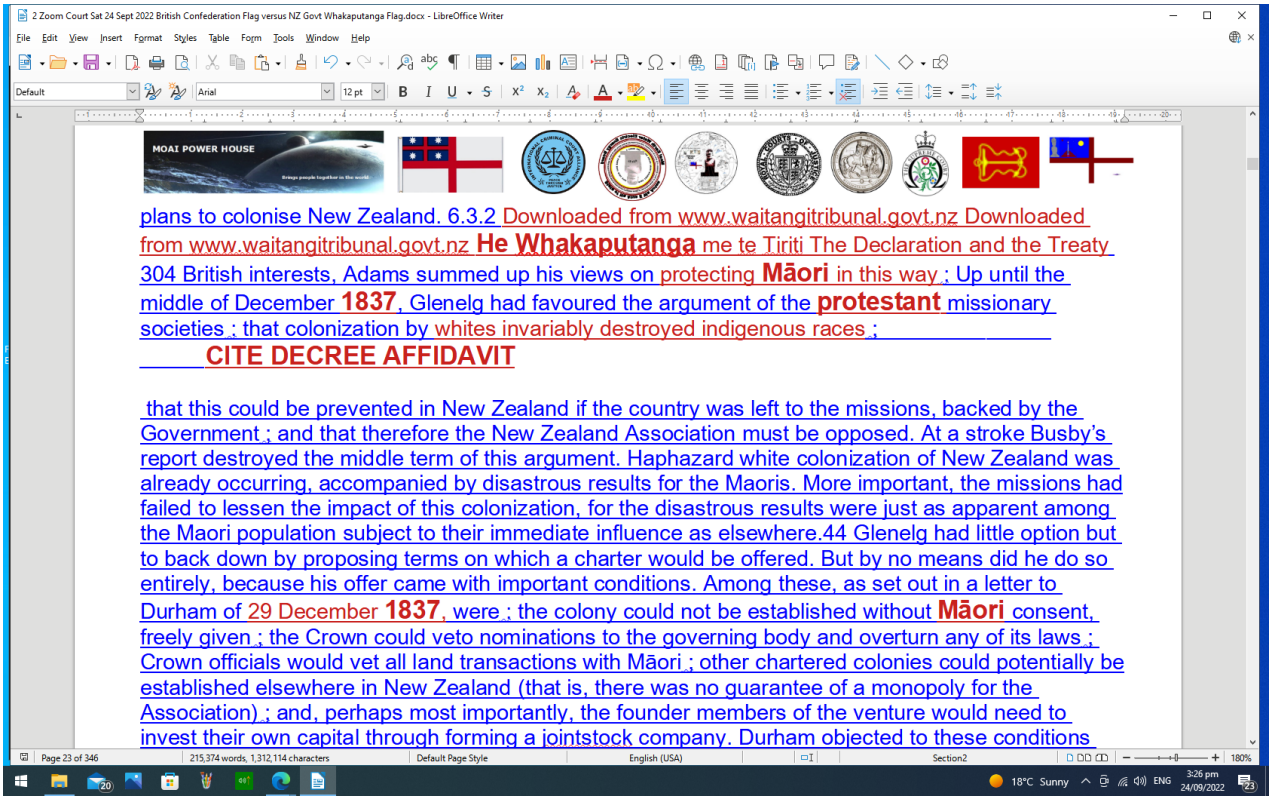
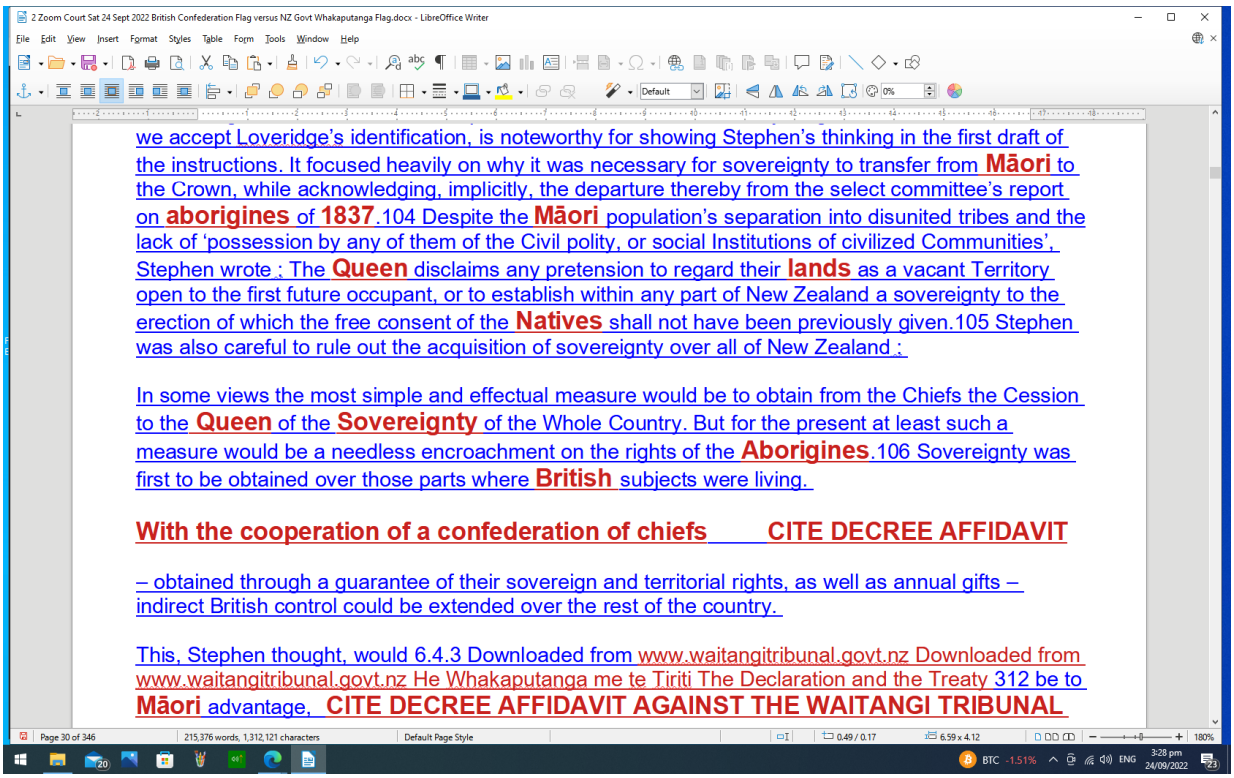
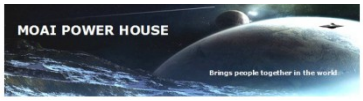


Page 23 **FRAUD EXHIBIT 13**

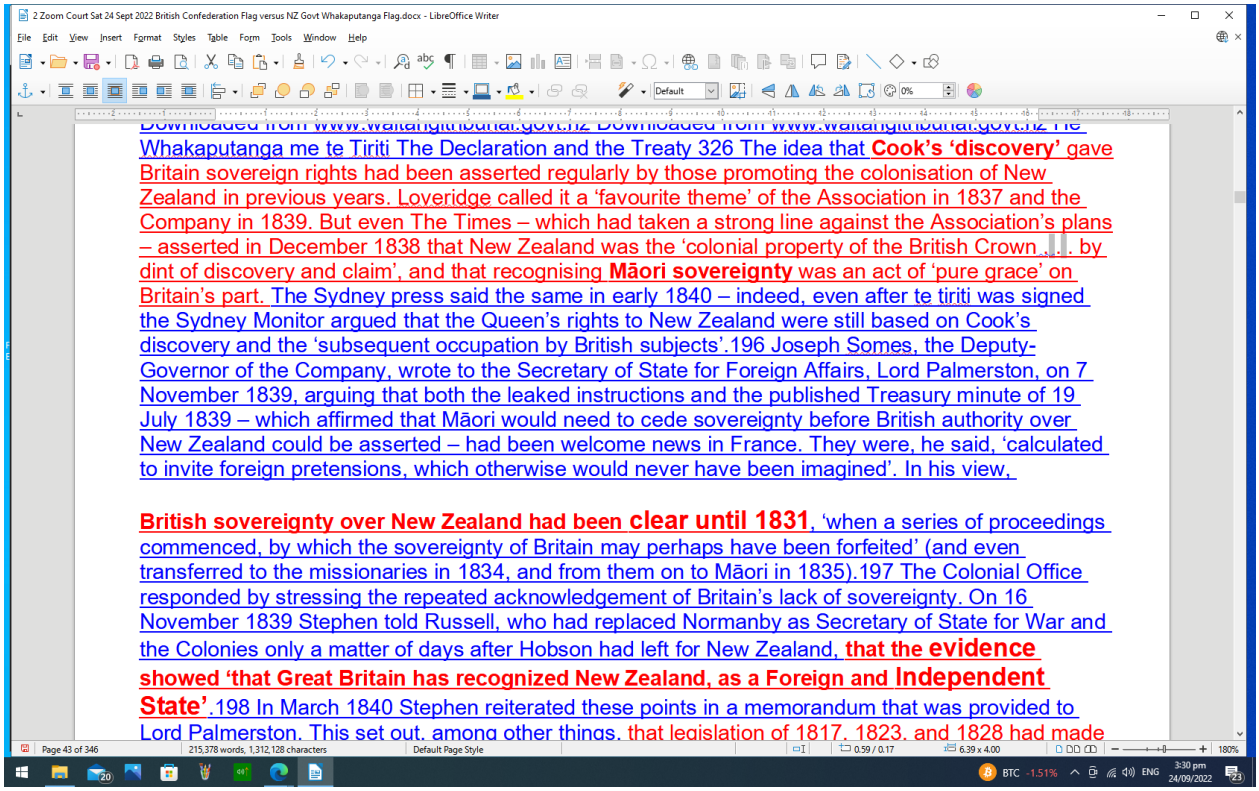


Page 30 **FRAUD EXHIBIT 14**

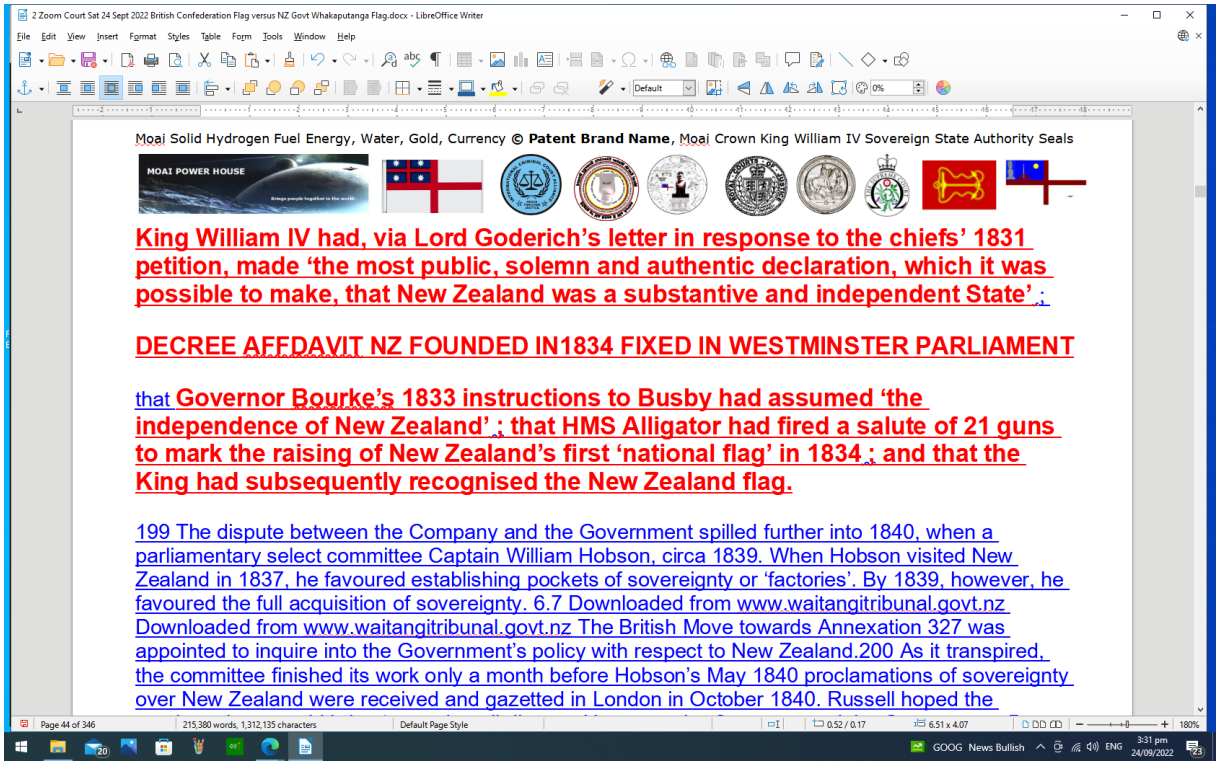


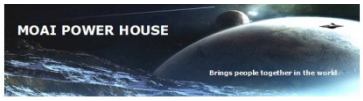


Page 43 **FRAUD EXHIBIT 15**

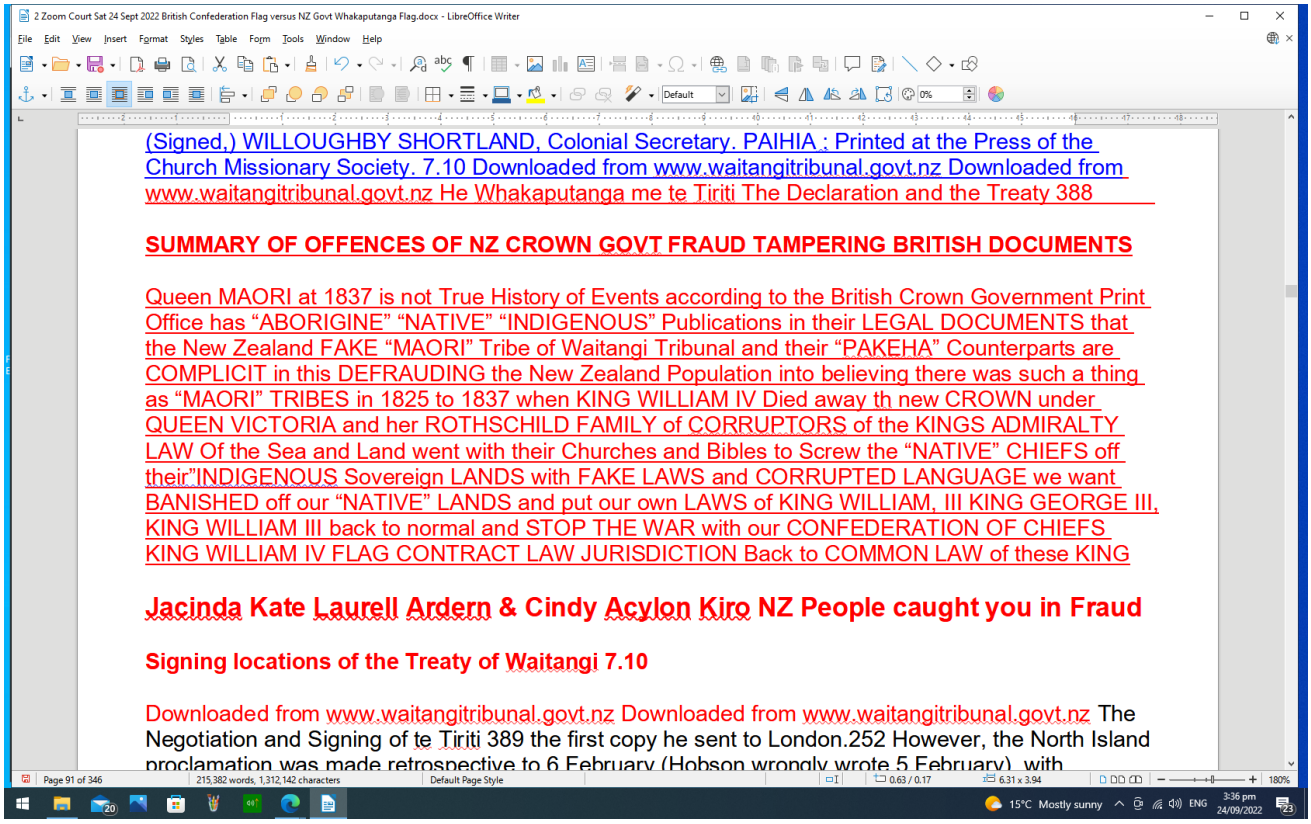


Page 44 **FRAUD EXHIBIT 16**





Page 91 **FRAUD EXHIBIT 17**



2 Zoom Court Sat 24 Sept 2022 British Confederation Flag versus NZ Govt Whakaputanga Flag.docx - LibreOffice Writer

(Signed,) WILLOUGHBY SHORTLAND, Colonial Secretary. PAIHIA : Printed at the Press of the Church Missionary Society. 7.10 Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz He Whakaputanga me te Tiriti The Declaration and the Treaty 388

SUMMARY OF OFFENCES OF NZ CROWN GOVT FRAUD TAMPERING BRITISH DOCUMENTS

Queen MAORI at 1837 is not True History of Events according to the British Crown Government Print Office has "ABORIGINE" "NATIVE" "INDIGENOUS" Publications in their LEGAL DOCUMENTS that the New Zealand FAKE "MAORI" Tribe of Waitangi Tribunal and their "PAKEHA" Counterparts are COMPLICIT in this DEFRAUDING the New Zealand Population into believing there was such a thing as "MAORI" TRIBES in 1825 to 1837 when KING WILLIAM IV Died away th new CROWN under QUEEN VICTORIA and her ROTHSCHILD FAMILY of CORRUPTORS of the KINGS ADMIRALTY LAW Of the Sea and Land went with their Churches and Bibles to Screw the "NATIVE" CHIEFS off their"INDIGENOUS Sovereign LANDS with FAKE LAWS and CORRUPTED LANGUAGE we want BANISHED off our "NATIVE" LANDS and put our own LAWS of KING WILLIAM, III KING GEORGE III, KING WILLIAM III back to normal and STOP THE WAR with our CONFEDERATION OF CHIEFS KING WILLIAM IV FLAG CONTRACT LAW JURISDICTION Back to COMMON LAW of these KING

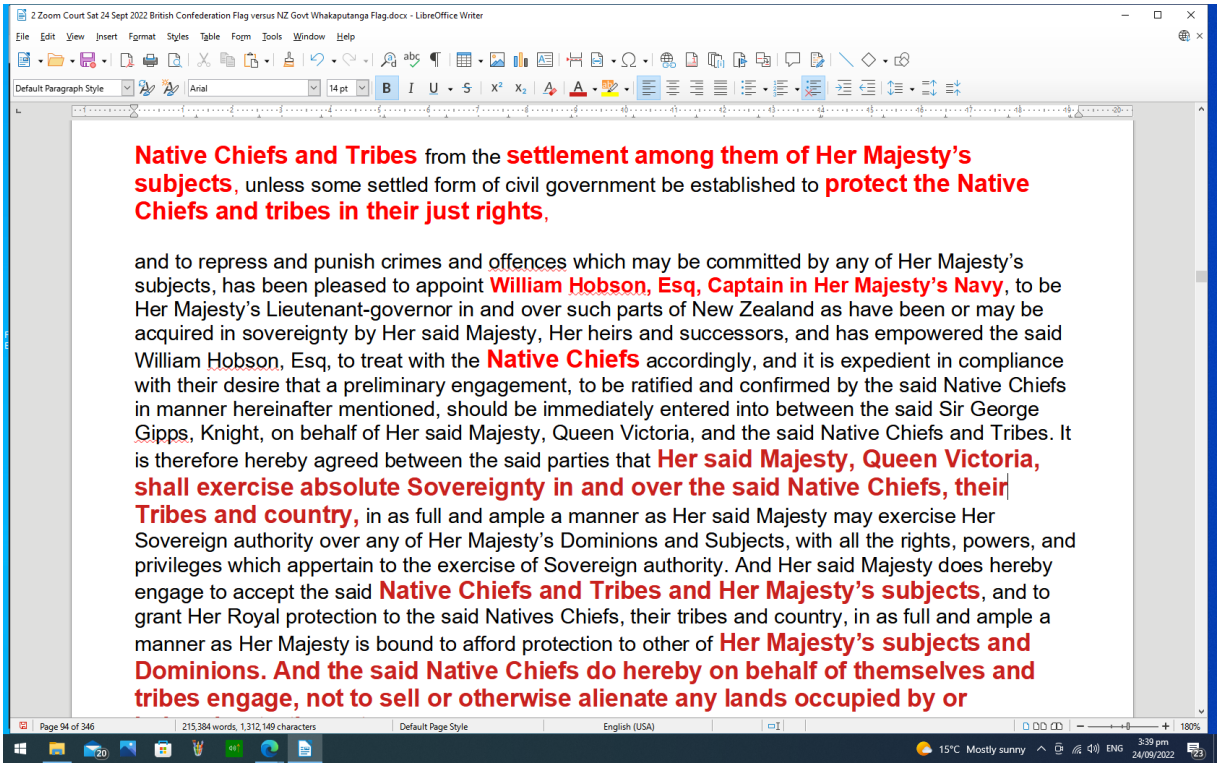
Jacinda Kate Laurell Ardern & Cindy Acylon Kiro NZ People caught you in Fraud

Signing locations of the Treaty of Waitangi 7.10

Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz The Negotiation and Signing of te Tiriti 389 the first copy he sent to London.252 However, the North Island proclamation was made retrospective to 6 February (Hobson wrongly wrote 5 February) with

Page 91 of 346 | 215,382 words, 1,312,142 characters | Default Page Style

Page 94 **FRAUD EXHIBIT 18**



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Native Chiefs and Tribes from the **settlement among them of Her Majesty's subjects**, unless some settled form of civil government be established to **protect the Native Chiefs and tribes in their just rights**,

and to repress and punish crimes and offences which may be committed by any of Her Majesty's subjects, has been pleased to appoint **William Hobson, Esq, Captain in Her Majesty's Navy**, to be Her Majesty's Lieutenant-governor in and over such parts of New Zealand as have been or may be acquired in sovereignty by Her said Majesty, Her heirs and successors, and has empowered the said William Hobson, Esq, to treat with the **Native Chiefs** accordingly, and it is expedient in compliance with their desire that a preliminary engagement, to be ratified and confirmed by the said Native Chiefs in manner hereinafter mentioned, should be immediately entered into between the said Sir George Gipps, Knight, on behalf of Her said Majesty, Queen Victoria, and the said Native Chiefs and Tribes. It is therefore hereby agreed between the said parties that **Her said Majesty, Queen Victoria, shall exercise absolute Sovereignty in and over the said Native Chiefs, their Tribes and country,** in as full and ample a manner as Her said Majesty may exercise Her Sovereign authority over any of Her Majesty's Dominions and Subjects, with all the rights, powers, and privileges which appertain to the exercise of Sovereign authority. And Her said Majesty does hereby engage to accept the said **Native Chiefs and Tribes and Her Majesty's subjects**, and to grant Her Royal protection to the said Natives Chiefs, their tribes and country, in as full and ample a manner as Her Majesty is bound to afford protection to other of **Her Majesty's subjects and Dominions. And the said Native Chiefs do hereby on behalf of themselves and tribes engage, not to sell or otherwise alienate any lands occupied by or**

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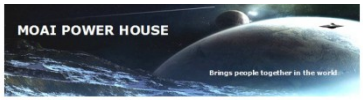
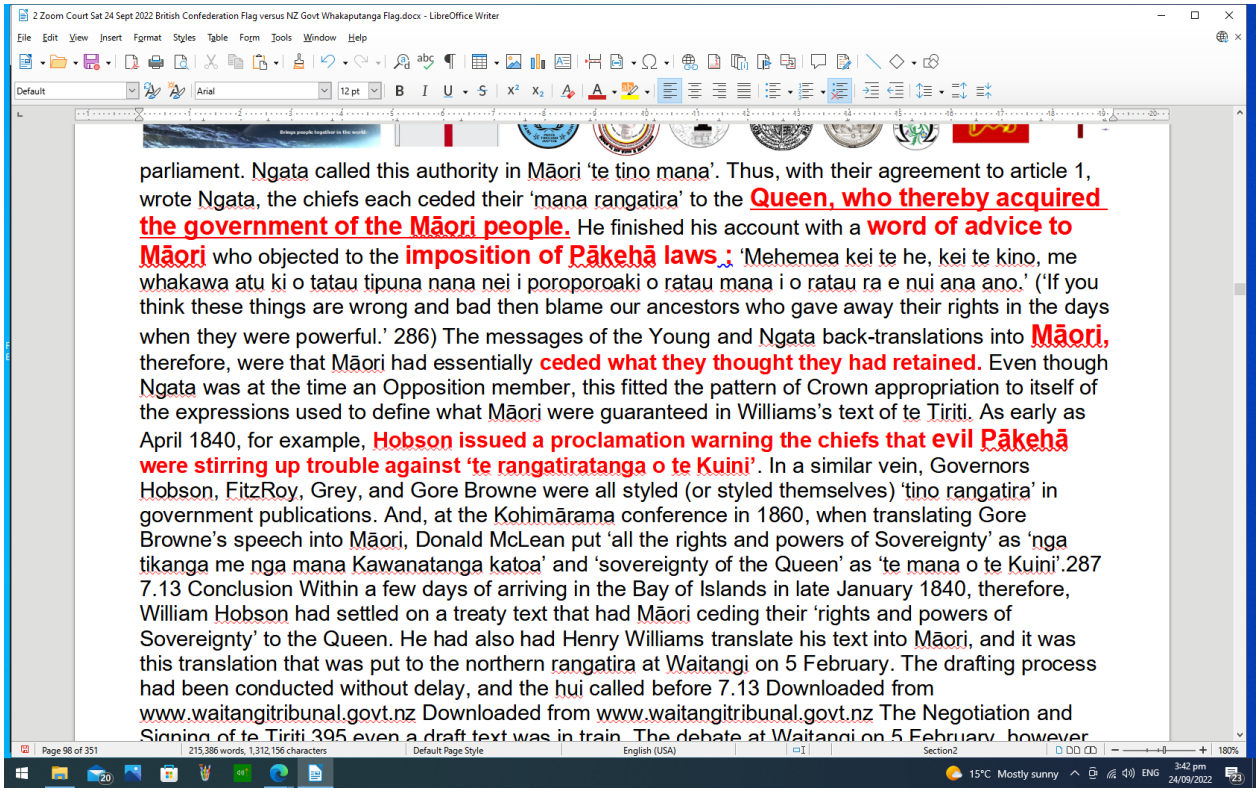


Paga 98 **FRAUD EXHIBIT 19**



parliament. Ngata called this authority in Māori 'te tino mana'. Thus, with their agreement to article 1, wrote Ngata, the chiefs each ceded their 'mana rangatira' to the **Queen, who thereby acquired the government of the Māori people.** He finished his account with a **word of advice to Māori** who objected to the **imposition of Pākehā laws**.: 'Mehemea kei te he, kei te kino, me whakawa atu ki o tatau tipuna nana nei i poroporoaki o ratau mana i o ratau ra e nui ana ano.' ('If you think these things are wrong and bad then blame our ancestors who gave away their rights in the days when they were powerful.' 286) The messages of the Young and Ngata back-translations into **Māori,** therefore, were that Māori had essentially **ceded what they thought they had retained.** Even though Ngata was at the time an Opposition member, this fitted the pattern of Crown appropriation to itself of the expressions used to define what Māori were guaranteed in Williams's text of te Tiriti. As early as April 1840, for example, **Hobson issued a proclamation warning the chiefs that evil Pākehā were stirring up trouble against 'te rangatiratanga o te Kuini'**. In a similar vein, Governors Hobson, FitzRoy, Grey, and Gore Browne were all styled (or styled themselves) 'tino rangatira' in government publications. And, at the Kohimārama conference in 1860, when translating Gore Browne's speech into Māori, Donald McLean put 'all the rights and powers of Sovereignty' as 'nga tikanga me nga mana Kawanatanga katoa' and 'sovereignty of the Queen' as 'te mana o te Kuini'.287 7.13 Conclusion Within a few days of arriving in the Bay of Islands in late January 1840, therefore, William Hobson had settled on a treaty text that had Māori ceding their 'rights and powers of Sovereignty' to the Queen. He had also had Henry Williams translate his text into Māori, and it was this translation that was put to the northern rangatira at Waitangi on 5 February. The drafting process had been conducted without delay, and the hui called before 7.13 Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz The Negotiation and Signing of te Tiriti 395 even a draft text was in train. The debate at Waitangi on 5 February, however

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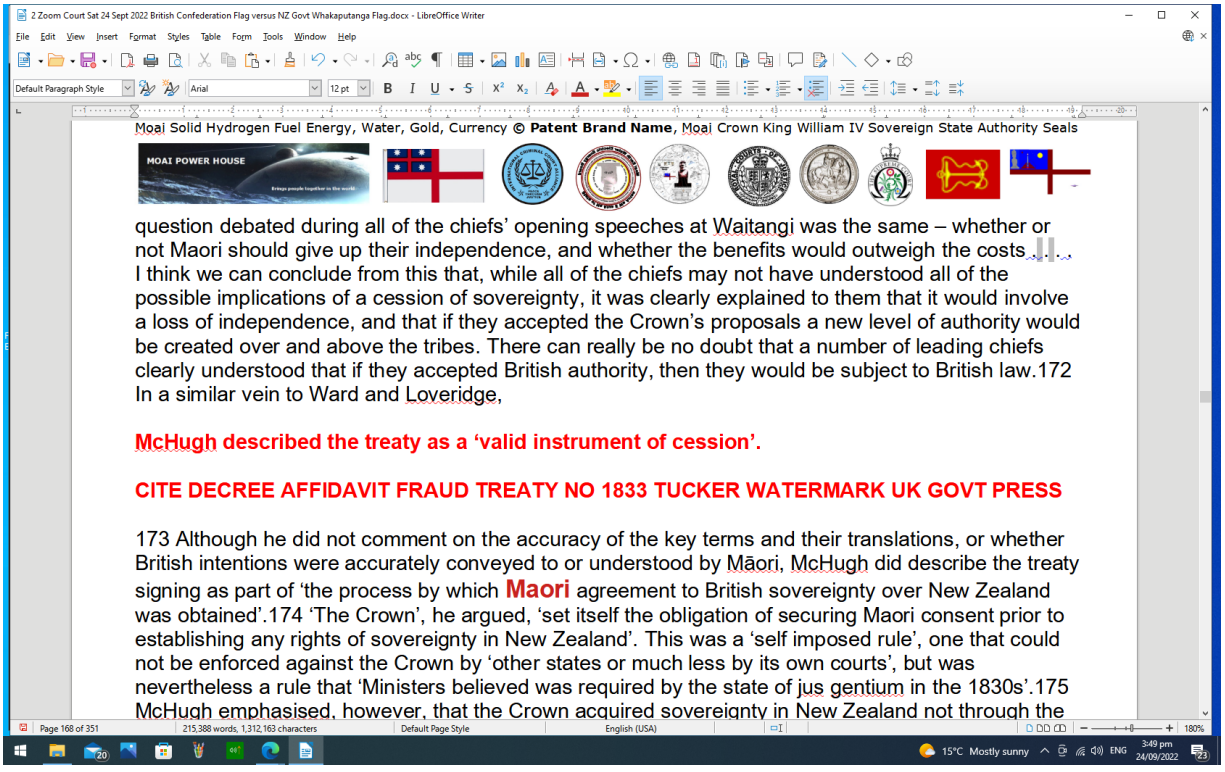
Page 168 **FRAUD EXHIBIT 20**



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question debated during all of the chiefs' opening speeches at Waitangi was the same – whether or not Maori should give up their independence, and whether the benefits would outweigh the costs. . . . I think we can conclude from this that, while all of the chiefs may not have understood all of the possible implications of a cession of sovereignty, it was clearly explained to them that it would involve a loss of independence, and that if they accepted the Crown's proposals a new level of authority would be created over and above the tribes. There can really be no doubt that a number of leading chiefs clearly understood that if they accepted British authority, then they would be subject to British law.172 In a similar vein to Ward and Loveridge,

McHugh described the treaty as a 'valid instrument of cession'.

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173 Although he did not comment on the accuracy of the key terms and their translations, or whether British intentions were accurately conveyed to or understood by Māori, McHugh did describe the treaty signing as part of 'the process by which **Maori** agreement to British sovereignty over New Zealand was obtained'.174 'The Crown', he argued, 'set itself the obligation of securing Maori consent prior to establishing any rights of sovereignty in New Zealand'. This was a 'self imposed rule', one that could not be enforced against the Crown by 'other states or much less by its own courts', but was nevertheless a rule that 'Ministers believed was required by the state of jus gentium in the 1830s'.175 McHugh emphasised, however, that the Crown acquired sovereignty in New Zealand not through the

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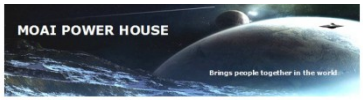
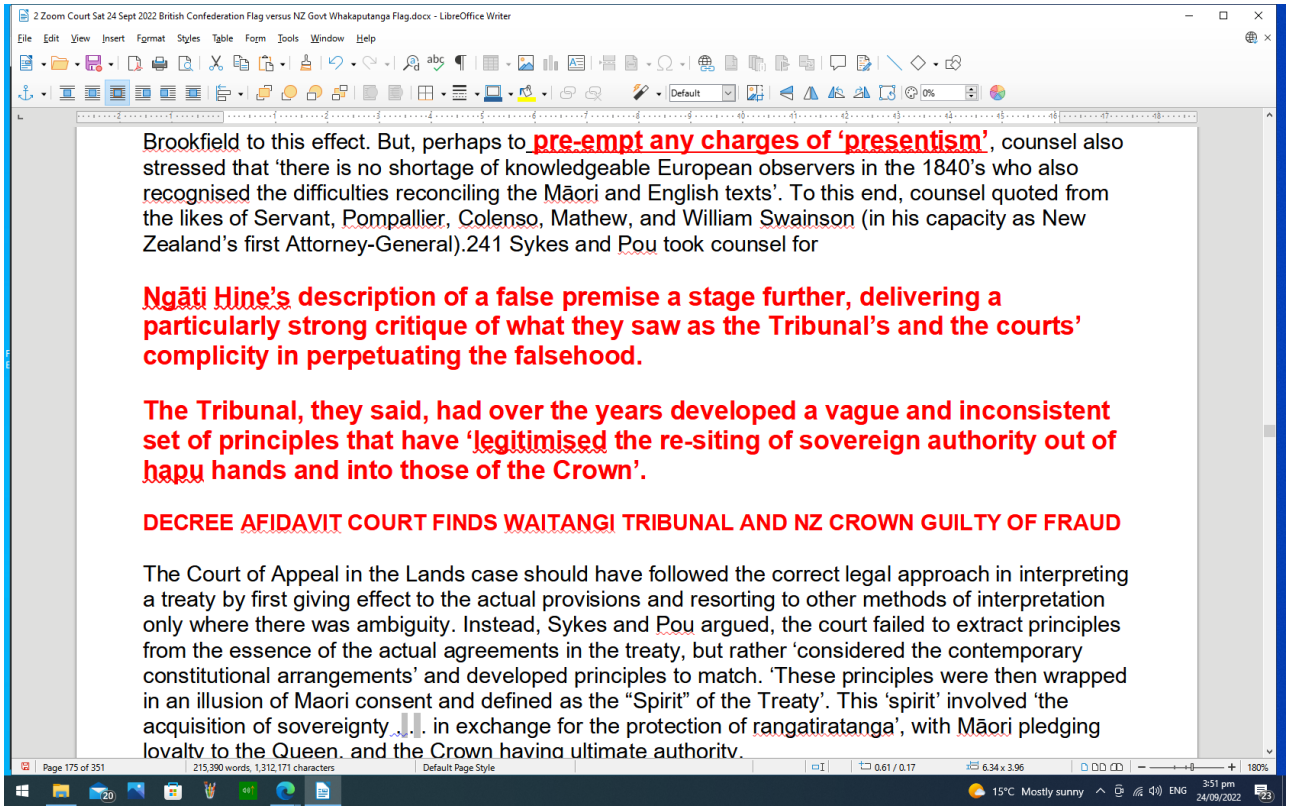
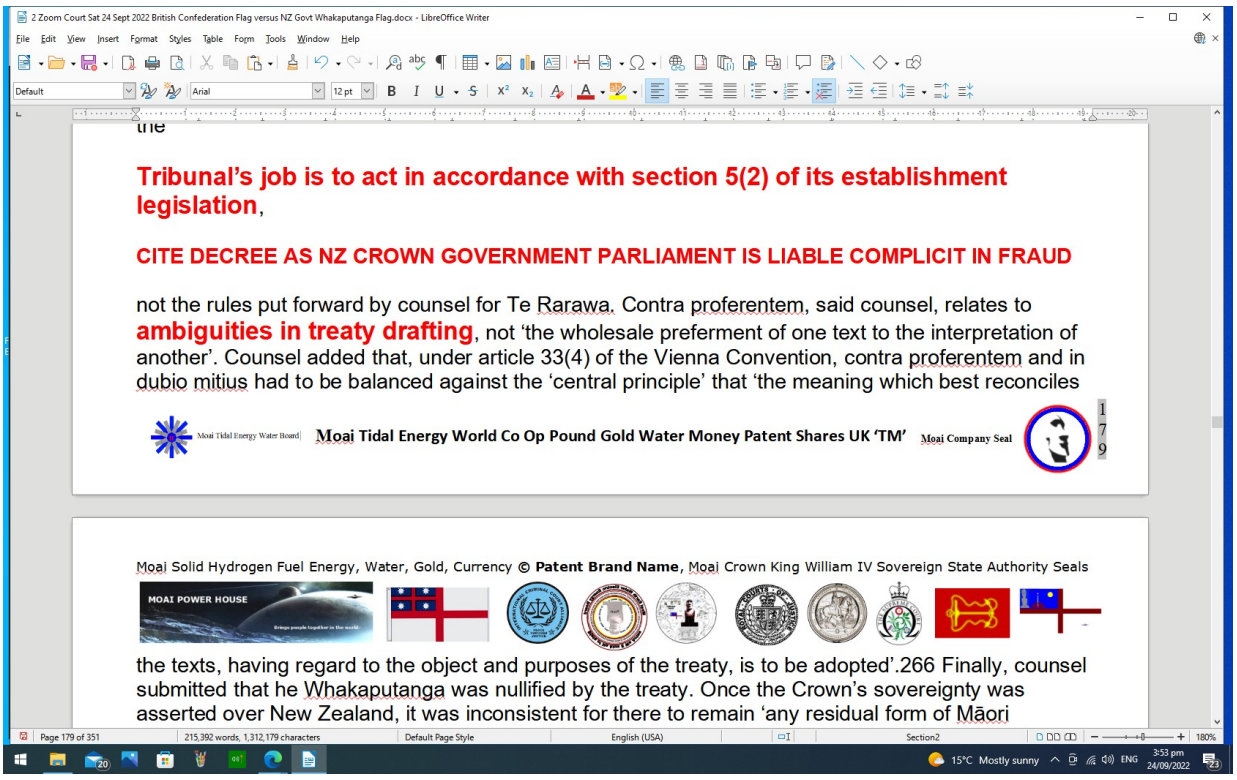


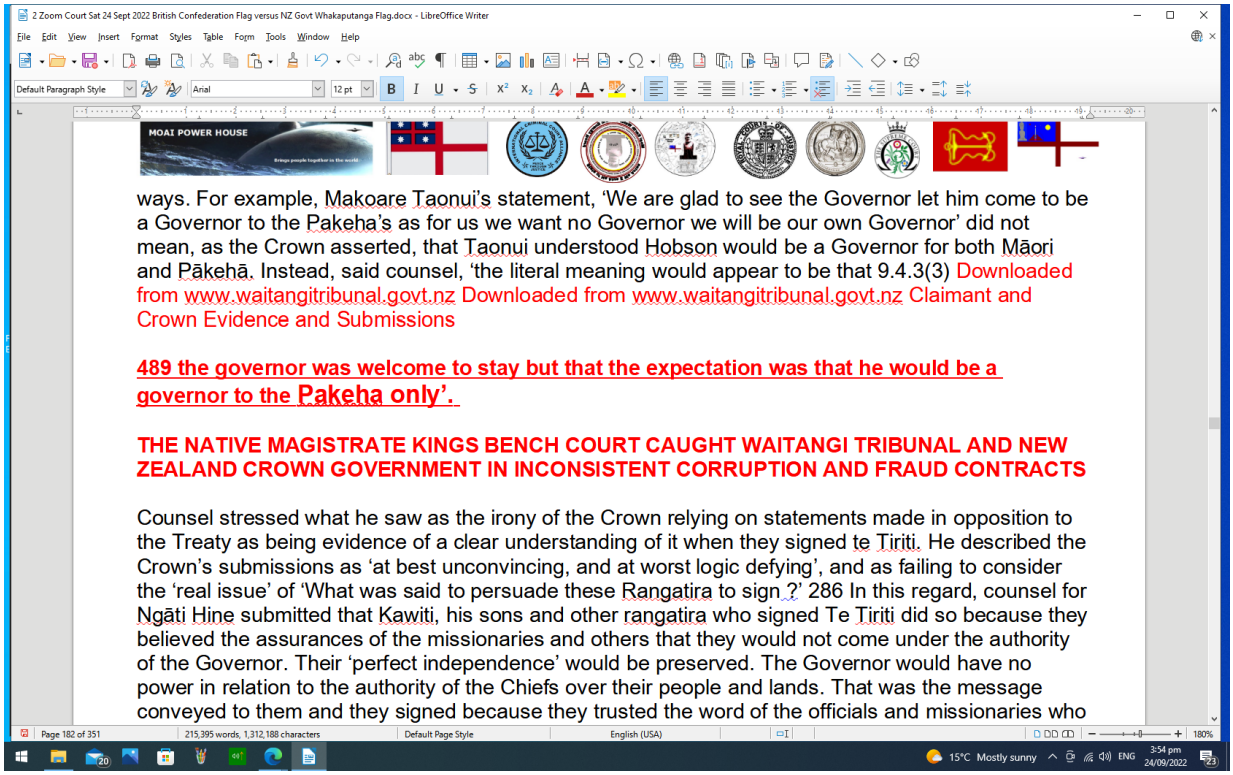
Page 175 **FRAUD EXHIBIT 21**



Page 179 **FRAUD EXHIBIT 22**



Page 181 **FRAUD EXHIBIT 23**



ways. For example, Makoare Taonui's statement, 'We are glad to see the Governor let him come to be a Governor to the Pakeha's as for us we want no Governor we will be our own Governor' did not mean, as the Crown asserted, that Taonui understood Hobson would be a Governor for both Māori and Pākehā. Instead, said counsel, 'the literal meaning would appear to be that 9.4.3(3) Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz Claimant and Crown Evidence and Submissions

489 the governor was welcome to stay but that the expectation was that he would be a governor to the Pakeha only'.

THE NATIVE MAGISTRATE KINGS BENCH COURT CAUGHT WAITANGI TRIBUNAL AND NEW ZEALAND CROWN GOVERNMENT IN INCONSISTENT CORRUPTION AND FRAUD CONTRACTS

Counsel stressed what he saw as the irony of the Crown relying on statements made in opposition to the Treaty as being evidence of a clear understanding of it when they signed te Tiriti. He described the Crown's submissions as 'at best unconvincing, and at worst logic defying', and as failing to consider the 'real issue' of 'What was said to persuade these Rangatira to sign ?' 286 In this regard, counsel for Ngāti Hine submitted that Kawiti, his sons and other rangatira who signed Te Tiriti did so because they believed the assurances of the missionaries and others that they would not come under the authority of the Governor. Their 'perfect independence' would be preserved. The Governor would have no power in relation to the authority of the Chiefs over their people and lands. That was the message conveyed to them and they signed because they trusted the word of the officials and missionaries who

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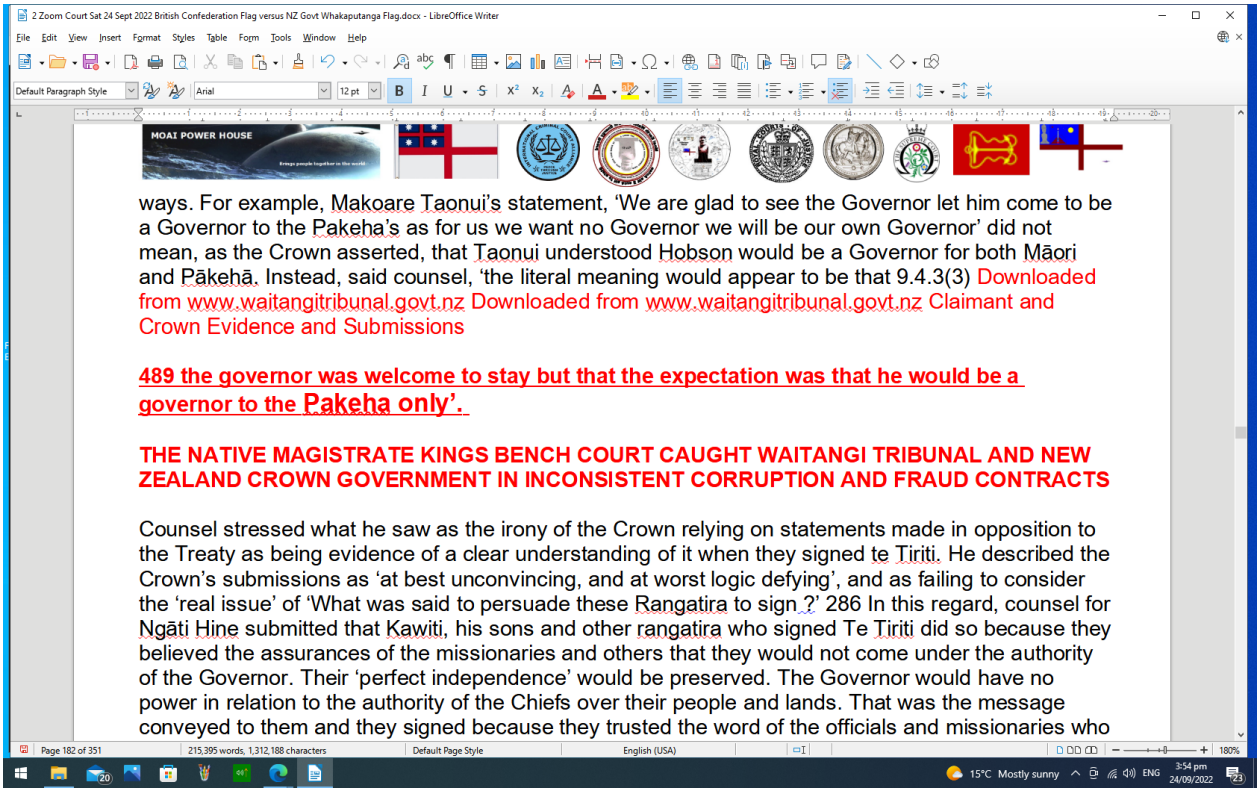

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THE NATIVE MAGISTRATE KINGS BENCH COURT CAUGHT WAITANGI TRIBUNAL AND NEW ZEALAND CROWN GOVERNMENT IN INCONSISTENT CORRUPTION AND FRAUD CONTRACTS

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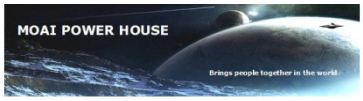
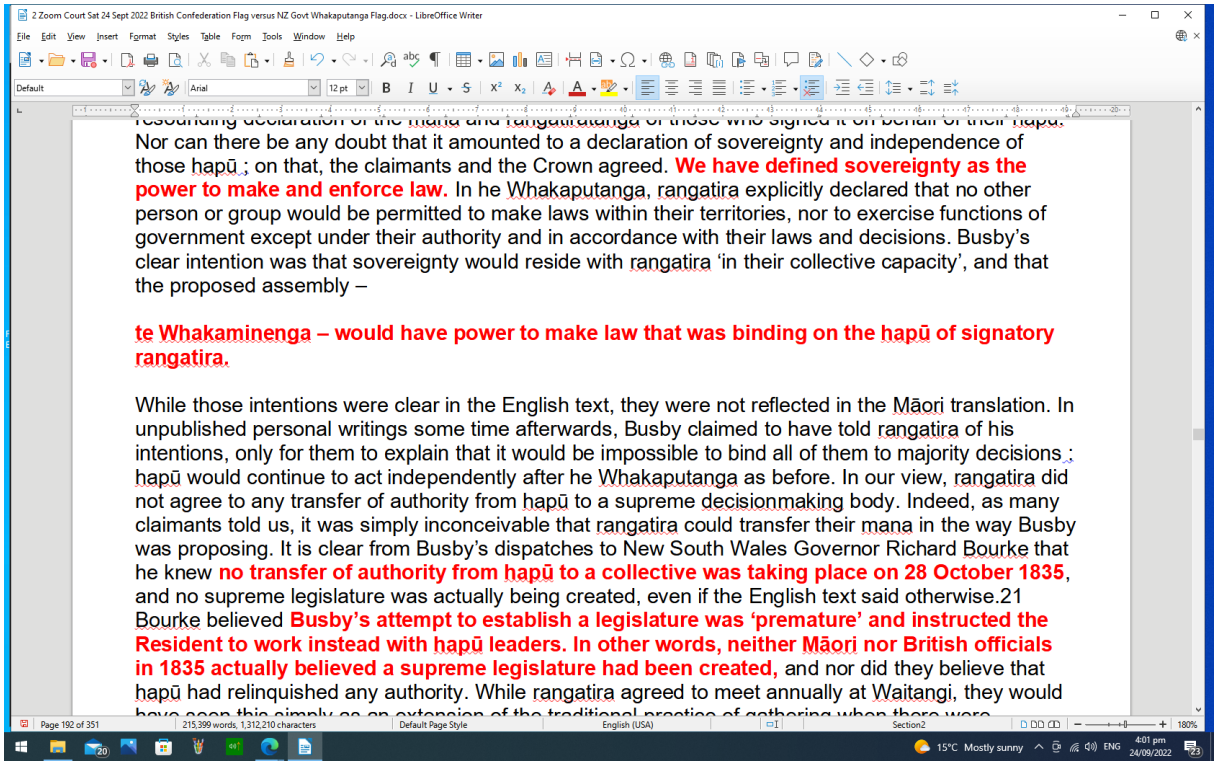
1820.211 **FRAUD EXHIBIT 24**



Page 192 **FRAUD EXHIBIT 25**

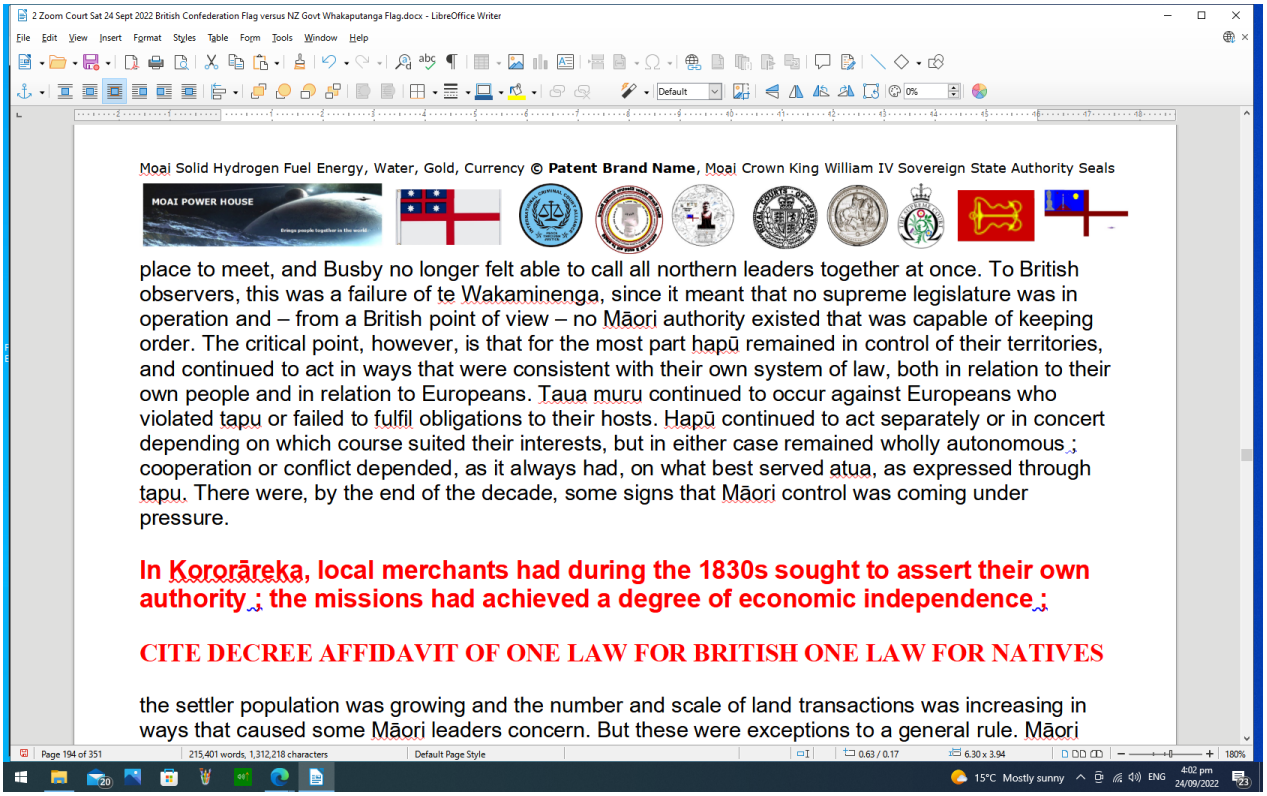


Nor can there be any doubt that it amounted to a declaration of sovereignty and independence of those hapū ; on that, the claimants and the Crown agreed. **We have defined sovereignty as the power to make and enforce law.** In he Whakaputanga, rangatira explicitly declared that no other person or group would be permitted to make laws within their territories, nor to exercise functions of government except under their authority and in accordance with their laws and decisions. Busby's clear intention was that sovereignty would reside with rangatira 'in their collective capacity', and that the proposed assembly –

te Whakaminenga – would have power to make law that was binding on the hapū of signatory rangatira.

While those intentions were clear in the English text, they were not reflected in the Māori translation. In unpublished personal writings some time afterwards, Busby claimed to have told rangatira of his intentions, only for them to explain that it would be impossible to bind all of them to majority decisions ; hapū would continue to act independently after he Whakaputanga as before. In our view, rangatira did not agree to any transfer of authority from hapū to a supreme decisionmaking body. Indeed, as many claimants told us, it was simply inconceivable that rangatira could transfer their mana in the way Busby was proposing. It is clear from Busby's dispatches to New South Wales Governor Richard Bourke that he knew **no transfer of authority from hapū to a collective was taking place on 28 October 1835**, and no supreme legislature was actually being created, even if the English text said otherwise.21 Bourke believed **Busby's attempt to establish a legislature was 'premature' and instructed the Resident to work instead with hapū leaders. In other words, neither Māori nor British officials in 1835 actually believed a supreme legislature had been created,** and nor did they believe that hapū had relinquished any authority. While rangatira agreed to meet annually at Waitangi, they would

Page 194 **FRAUD EXHIBIT 26**



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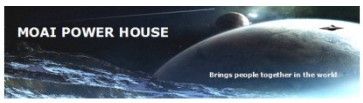
place to meet, and Busby no longer felt able to call all northern leaders together at once. To British observers, this was a failure of te Wakaminenga, since it meant that no supreme legislature was in operation and – from a British point of view – no Māori authority existed that was capable of keeping order. The critical point, however, is that for the most part hapū remained in control of their territories, and continued to act in ways that were consistent with their own system of law, both in relation to their own people and in relation to Europeans. Taua muru continued to occur against Europeans who violated tapu or failed to fulfil obligations to their hosts. Hapū continued to act separately or in concert depending on which course suited their interests, but in either case remained wholly autonomous ; cooperation or conflict depended, as it always had, on what best served atua, as expressed through tapu. There were, by the end of the decade, some signs that Māori control was coming under pressure.

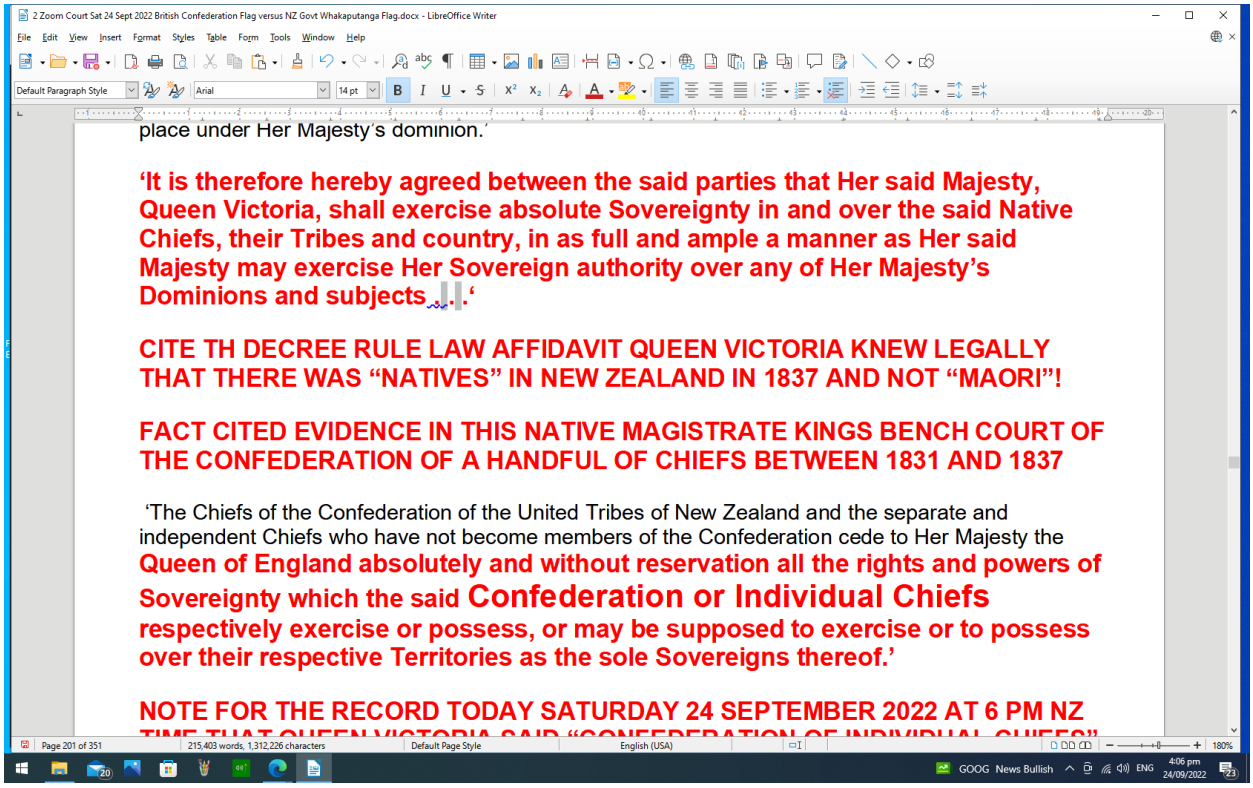
In Kororāreka, local merchants had during the 1830s sought to assert their own authority ; the missions had achieved a degree of economic independence ;

CITE DECREE AFFIDAVIT OF ONE LAW FOR BRITISH ONE LAW FOR NATIVES

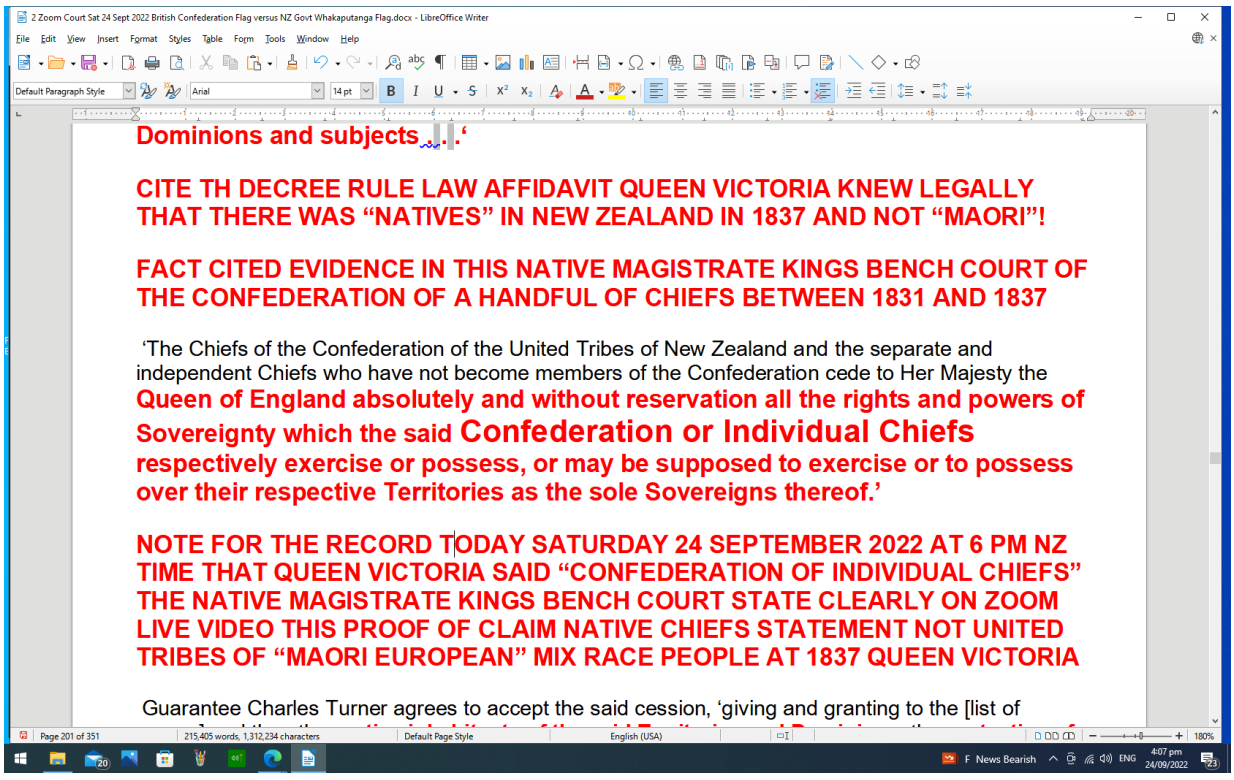
the settler population was growing and the number and scale of land transactions was increasing in ways that caused some Māori leaders concern. But these were exceptions to a general rule. Māori

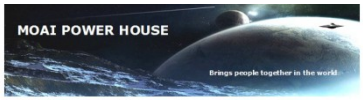


Page 201 **FRAUD EXHIBIT 27**

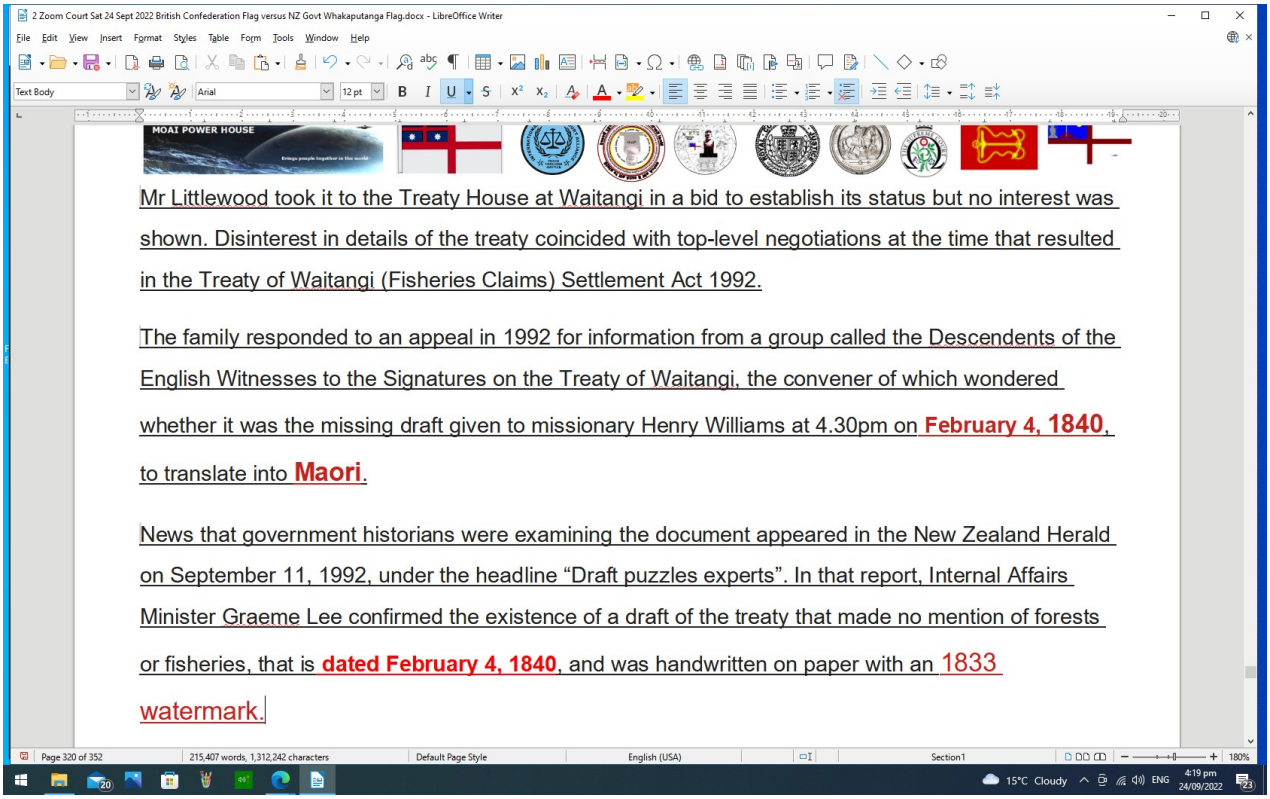


Page 201 **FRAUD EXHIBIT 28**

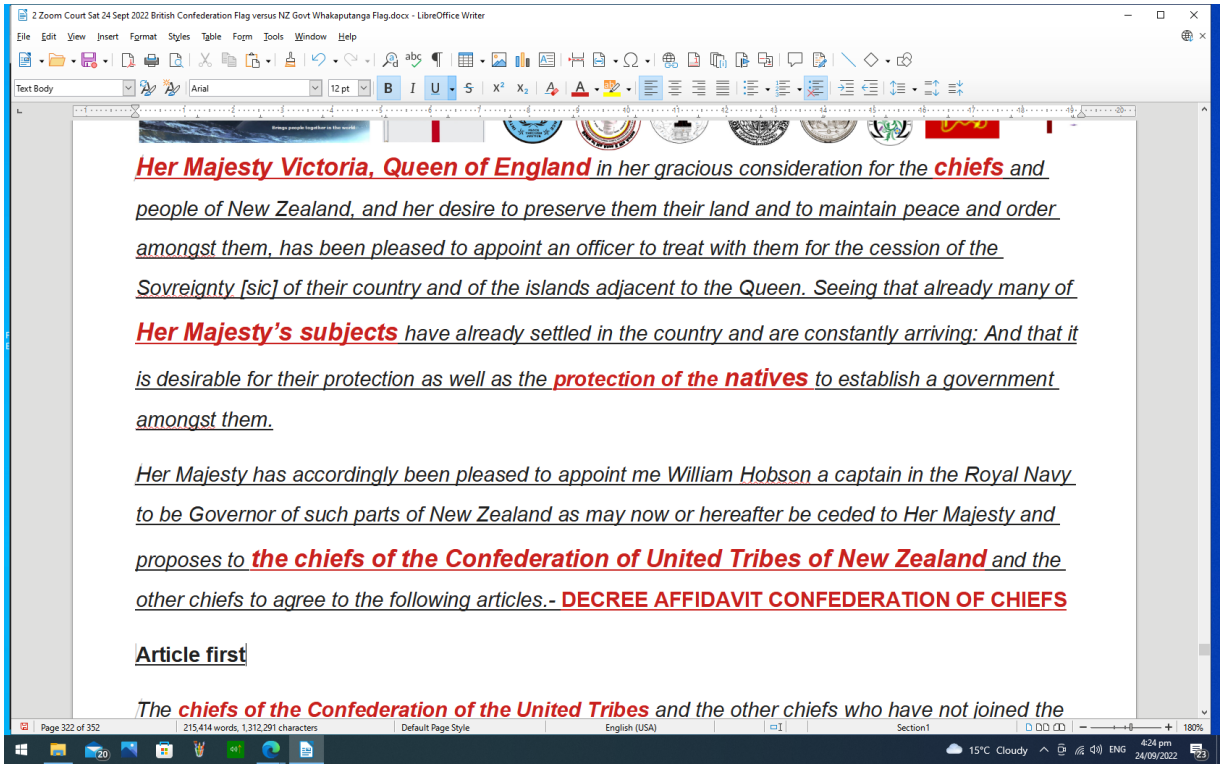




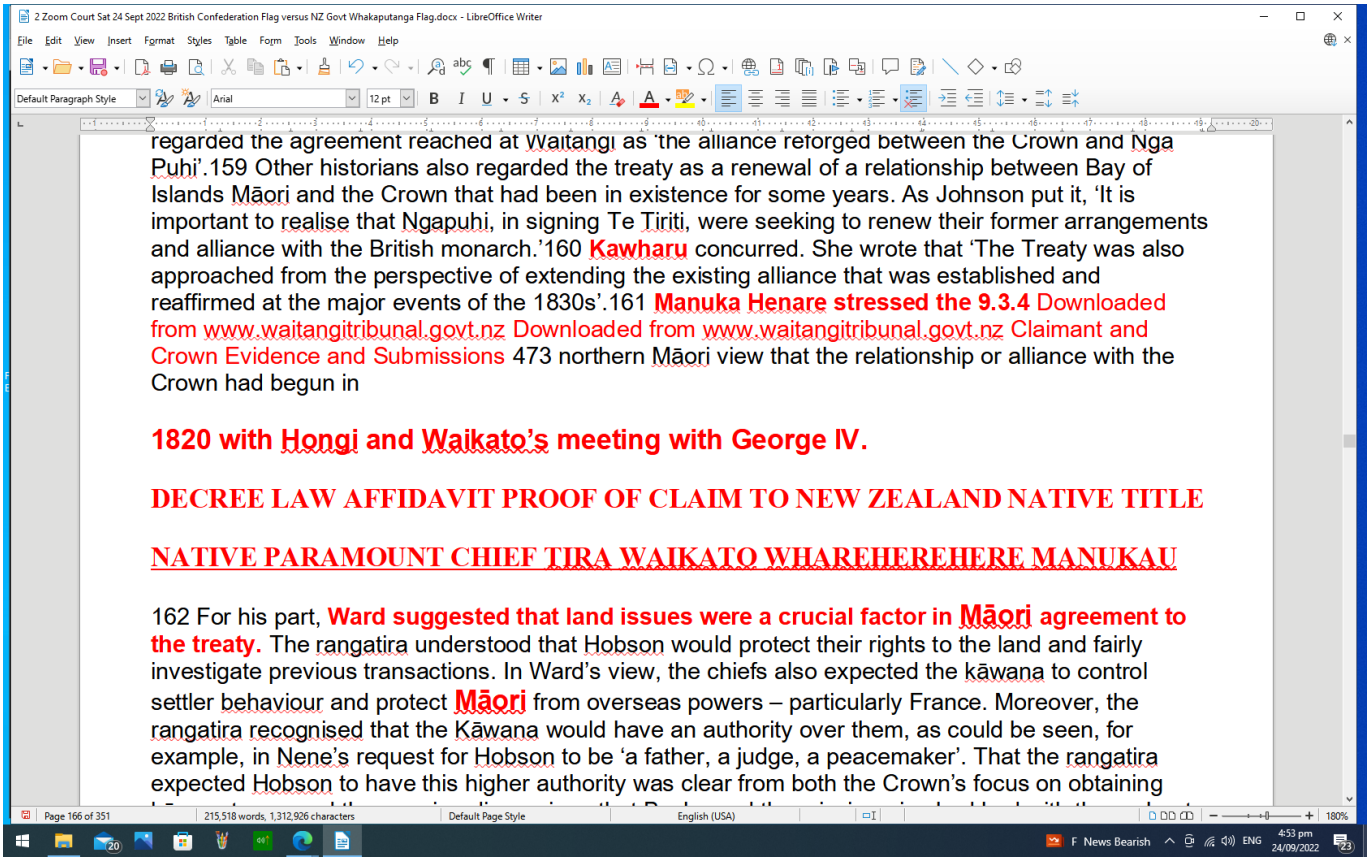
Page 320 FRAUD EXHIBIT 29



Page 322 FRAUD EXHIBIT 30



PARAMOUNT CHIEF CHIEF TIRA WAIKATO WHAREHEREHERE MANUKAU & KING GEORGE IV COMMERCIAL CONTRACT 1823 SALE AND PURCHASE OF NEW ZEALAND COUNTRY TO THE KINGS BRITISH CROWN PARTNERSHIP AS HE IS THE "WAIKATO" NAME HERE IN THIS WAITANGI TRIBUNAL TREATY OF WAITANGI CLAIMS I AM HIS SURROGATE CHIEF OF PUNGAPUNGA MARAE ARAPUNI AND HIS MAUNGATAUTARI MOUNTAIN "PA" SITE ANCESTRAL TITLE REGISTERED IN EDINBURGH MAGISTRATE COURT LAND RECORDS UNDER THE FREEMASONS MAIN OFFICE THERE AND AWAROA NATIVE MAGISTRATE KINGS BENCH COURT IN HELENSVILLE SOUTH INNER KAIPARA HARBOUR AND FREEMASONS LODGE THERE WITH PARAMOUNT CHIEF MOHI TE MAATI MANUKAU IV DECENDANT AND ME HOANI KAHAKI WANOA HIS EXECUTOR AND NATIVE LAND TITLE HOLDER WITH ALL THE LEGAL INSTRUMENTS AND TRADITIONAL MORIORI HISTORY AS HIS SUCCESSOR IN THIS CORPORATE FLAG OF HIS CONFEDERATION OF CHIEFS PRESIDENT AND NATIVE LAND ASSESSOR AND NA ATUA E WA AOTEA LIMITED "MOAI CROWN" KING WILLIAM IV TRUST BANK CREDITOR AND MOAI POWERHOUSE BANK ENTITY DATED SATURDAY 24 SEPTEMBER 2022 FOR THE RECORD IN NEW ZEALAND



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regarded the agreement reached at Waitangi as 'the alliance reforged between the Crown and Nga Puhi'.159 Other historians also regarded the treaty as a renewal of a relationship between Bay of Islands Māori and the Crown that had been in existence for some years. As Johnson put it, 'It is important to realise that Ngapuhi, in signing Te Tiriti, were seeking to renew their former arrangements and alliance with the British monarch.'160 **Kawharu** concurred. She wrote that 'The Treaty was also approached from the perspective of extending the existing alliance that was established and reaffirmed at the major events of the 1830s'.161 **Manuka Henare stressed the 9.3.4** Downloaded from www.waitangitribunal.govt.nz Downloaded from www.waitangitribunal.govt.nz Claimant and Crown Evidence and Submissions 473 northern Māori view that the relationship or alliance with the Crown had begun in

1820 with Hongi and Waikato's meeting with George IV.

DECREE LAW AFFIDAVIT PROOF OF CLAIM TO NEW ZEALAND NATIVE TITLE

NATIVE PARAMOUNT CHIEF TIRA WAIKATO WHAREHEREHERE MANUKAU

162 For his part, **Ward suggested that land issues were a crucial factor in Māori agreement to the treaty.** The rangatira understood that Hobson would protect their rights to the land and fairly investigate previous transactions. In Ward's view, the chiefs also expected the kāwana to control settler behaviour and protect **Māori** from overseas powers – particularly France. Moreover, the rangatira recognised that the Kāwana would have an authority over them, as could be seen, for example, in Nene's request for Hobson to be 'a father, a judge, a peacemaker'. That the rangatira expected Hobson to have this higher authority was clear from both the Crown's focus on obtaining

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